

Appendix

A. Example of Special-Use Permit, with Operation and Maintenance Plan

Authorization ID _____
Contact ID _____
Expiration Date _____ (mm/dd/yyyy)

FS-2700-5a (8/99)
OMB No. 0596-0082

U.S. DEPARTMENT OF AGRICULTURE
Forest Service
TERM SPECIAL USE PERMIT
For Recreation Residences
As of March 4, 1915, As Amended
(Ref. FSM 2710)

<Holder Name> of <Address, City, State, Zip Code> (hereafter called the holder) is hereby authorized to use national forest lands, for a recreation residence for personal recreational use on the <NF Name> National Forest, subject to the provisions of this permit including items I.A through ___, on page(s) ___ through ___. This permit covers ___ acres.

Described as: (1) Lot ___ of the <Name of Tract> tract.
(A plat of which is on file in the office of the Forest Supervisor.)

OR (2) <Legal Description> as shown on the attached map.

The following improvements, whether on or off the lot, are authorized in addition to the residence structure:

This use shall be exercised at least 15 days each year, unless otherwise authorized in writing. It shall not be used as a full-time residence to the exclusion of a home elsewhere.

THIS PERMIT IS NOT TRANSFERABLE
PURCHASERS OF IMPROVEMENTS ON SITES AUTHORIZED BY THIS PERMIT MUST
SECURE A NEW PERMIT FROM THE FOREST SERVICE.

THIS PERMIT IS ACCEPTED SUBJECT TO ALL OF ITS TERMS AND CONDITIONS.

ACCEPTED _____
HOLDER'S NAME AND SIGNATURE DATE

APPROVED _____
AUTHORIZED OFFICER'S NAME AND SIGNATURE TITLE DATE

TERMS AND CONDITIONS

I. AUTHORITY AND USE AND TERM AUTHORIZED.

- A. This permit is issued under the authority of the Act of March 4, 1915, as amended (16 U.S.C. 497), and Title 36, Code of Federal Regulations, Sections 251.50-251.64. Implementing Forest Service policies are found in the Forest Service Directives System (FSM 1920, 1950, 2340, 2720; FSH 2709.11, Chap. 10-50). Copies of the applicable regulations and policies will be made available to the holder at no charge upon request made to the office of the forest supervisor.
- B. The authorized officer under this permit is the forest supervisor, or a delegated subordinate officer.
- C. This permit authorizes only personal recreation use of a noncommercial nature by the holder, members of the holder's immediate family, and guests. Use of the permitted improvements as a principal place of residence is prohibited and shall be grounds for revocation of this permit.
- D. Unless specifically provided as an added provision to this permit, this authorization is for site occupancy and does not provide for the furnishing of structures, road maintenance, water, fire protection, or any other such service by a Government agency, utility association, or individual.
- E. Termination at End of Term: This authorization will terminate on <Insert Date>.

II. OPERATION AND MAINTENANCE.

- A. The authorized officer, after consulting with the holder, will prepare an operation and maintenance plan which shall be deemed a part of this permit. The plan will be reviewed annually and updated as deemed necessary by the authorized officer and will cover requirements for at least the following subjects:
 - 1. Maintenance of vegetation, tree planting, and removal of dangerous trees and other unsafe conditions
 - 2. Maintenance of the facilities.
 - 3. Size, placement and descriptions of signs.
 - 4. Removal of garbage or trash.
 - 5. Fire protection.
 - 6. Identification of the person responsible for implementing the provisions of the plan, if other than the holder, and a list of names, addresses, and phone numbers of persons to contact in the event of an emergency.

III. IMPROVEMENTS.

- A. Nothing in this permit shall be construed to imply permission to build or maintain any improvement not specifically named on the face of this permit or approved in writing by the authorized officer in the operation and maintenance plan. Improvements requiring specific approval shall include, but are not limited to: signs, fences, name plates, mailboxes, newspaper boxes, boathouses, docks, pipelines, antennas, and storage sheds.
- B. All plans for development, layout, construction, reconstruction or alteration of improvements on the lot, as well as revisions of such plans, must be prepared by a licensed engineer, architect, and/or landscape architect (in those states in which such

licensing is required) or other qualified individual acceptable to the authorized officer. Such plans must be approved by the authorized officer before the commencement of any work.

IV. RESPONSIBILITIES OF HOLDER.

- A. The holder, in exercising the privileges granted by this permit, shall comply with all present and future regulations of the Secretary of Agriculture and all present and future federal, state, county, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit. However, the Forest Service assumes no responsibility for enforcing laws, regulations, ordinances and the like which are under the jurisdiction of other government bodies.
- B. The holder shall exercise diligence in preventing damage to the land and property of the United States. The holder shall abide by all restrictions on fires which may be in effect within the forest at any time and take all reasonable precautions to prevent and suppress forest fires. No material shall be disposed of by burning in open fires during a closed fire season established by law or regulation without written permission from the authorized officer.
- C. The holder shall protect the scenic and esthetic values of the National Forest System lands as far as possible consistent with the authorized use, during construction, operation, and maintenance of the improvements.
- D. No soil, trees, or other vegetation may be removed from the National Forest System lands without prior permission from the authorized officer. Permission shall be granted specifically, or in the context of the operations and maintenance plan for the permit.
- E. The holder shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer. The holder shall fully repair and bear the expense for all damage, other than ordinary wear and tear, to national forest lands, roads and trails caused by the holder's activities.
- F. The holder assumes all risk of loss to the improvements resulting from acts of God or catastrophic events, including but not limited to, avalanches, rising waters, high winds, falling limbs or trees and other hazardous natural events. In the event the improvements authorized by this permit are destroyed or substantially damaged by acts of God or catastrophic events, the authorized officer will conduct an analysis to determine whether the improvements can be safely occupied in the future and whether rebuilding should be allowed. The analysis will be provided to the holder within 6 months of the event.
- G. The holder has the responsibility of inspecting the site, authorized rights-of-way, and adjoining areas for dangerous trees, hanging limbs, and other evidence of hazardous conditions which could affect the improvements and or pose a risk of injury to individuals. After securing permission from the authorized officer, the holder shall remove such hazards.
- H. In case of change of permanent address or change in ownership of the recreation residence, the holder shall immediately notify the authorized officer.

V. LIABILITIES.

- A. This permit is subject to all valid existing rights and claims outstanding in third parties. The United States is not liable to the holder for the exercise of any such right or claim.

- B. The holder shall hold harmless the United States from any liability from damage to life or property arising from the holder's occupancy or use of national forest lands under this permit.
- C. The holder shall be liable for any damage suffered by the United States resulting from or related to use of this permit, including damages to national forest resources and costs of fire suppression. Without limiting available civil and criminal remedies which may be available to the United States, all timber cut, destroyed, or injured without authorization shall be paid for at stumpage rates which apply to the unauthorized cutting of timber in the state wherein the timber is located.

VI. FEES.

- A. Fee Requirement: This special use authorization shall require payment in advance of an annual rental fee.
- B. Appraisals:
 - 1. Appraisals to ascertain the fair market value of the lot will be conducted by the Forest Service at least every 20 years. The next appraisal will be implemented in <Insert Date>.
 - 2. Appraisals will be conducted and reviewed in a manner consistent with the Uniform Standards of Professional Appraisal Practice, from which the appraisal standards have been developed, giving accurate and careful consideration to all market forces and factors which tend to influence the value of the lot.
 - 3. If dissatisfied with an appraisal utilized by the Forest Service in ascertaining the permit fee, the holder may employ another qualified appraiser at the holder's expense. The authorized officer will give full and complete consideration to both appraisals provided the holder's appraisal meets Forest Service standards. If the two appraisals disagree in value by more than 10 percent, the two appraisers will be asked to try and reconcile or reduce their differences. If the appraisers cannot agree, the Authorized Officer will utilize either or both appraisals to determine the fee. When requested by the holder, a third appraisal may be obtained with the cost shared equally by the holder and the Forest Service. This third appraisal must meet the same standards of the first and second appraisals and may or may not be accepted by the authorized officer.
- C. Fee Determination:
 - 1. The annual rental fee shall be determined by appraisal and other sound business management principles. (36 CFR 251.57(a)). The fee shall be 5 percent of the appraised fair market fee simple value of the lot for recreation residence use. Fees will be predicated on an appraisal of the lot as a base value, and that value will be adjusted in following years by utilizing the percent of change in the Implicit Price Deflator – Gross National Product (IPD-GNP) index as of the previous June 30. A fee from a prior year will be adjusted upward or downward, as the case may be, by the percentage change in the IPD-GNP, except that the maximum annual fee adjustment shall be 10 percent when the IPD-GNP index exceeds 10 percent in any one year with the amount in excess of 10 percent carried forward to the next succeeding year where the IPD-GNP index is less than 10 percent. The base rate from

which the fee is adjusted will be changed with each new appraisal of the lot, at least every 20 years.

2. If the holder has received notification that a new permit will not be issued following expiration of this permit, the annual fee in the tenth year will be taken as the base, and the fee each year during the last 10-year period will be one-tenth of the base multiplied by the number of years then remaining on the permit. If a new term permit should later be issued, the holder shall pay the United States the total amount of fees foregone, for the most recent 10-year period in which the holder has been advised that a new permit will not be issued. This amount may be paid in equal annual installments over a 10-year period in addition to those fees for existing permits. Such amounts owing will run with the property and will be charged to any subsequent purchaser of the improvements.
- D. Initial Fee: The initial fee may be based on an approved Forest Service appraisal existing at the time of this permit, with the present day value calculated by applying the IPD-GNP index to the intervening years.
- E. Payment Schedule: Based on the criteria stated herein, the initial payment is set at \$ per year and the fee is due and payable annually on <Insert Date>. Payments will be credited on the date received by the designated collection officer or deposit location. If the due date(s) for any of the above payments or fee calculation statements fall on a non-workday, the charges shall not apply until the close of business of the next workday. Any payments not received within 30 days of the due date shall be delinquent.
- F. Late Payment Interest, Administrative Costs and Penalties: Pursuant to 31 U.S.C. 3717, et seq., interest shall be charged on any fee amount not paid within 30 days from the date the fee or fee calculation financial statement specified in this authorization becomes due. The rate of interest assessed shall be the higher of the rate of the current value of funds to the U.S. Treasury (i.e., Treasury tax and loan account rate), as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins annually or quarterly or at the Prompt Payment Act rate. Interest on the principal shall accrue from the date the fee or fee calculation financial statement is due.

In the event the account becomes delinquent, administrative costs to cover processing and handling of the delinquency will be assessed.

A penalty of 6 percent per annum shall be assessed on the total amount delinquent in excess of 90 days and shall accrue from the same date on which interest charges begin to accrue.

Payments will be credited on the date received by the designated collection officer or deposit location. If the due date for the fee or fee calculation statement falls on a non-workday, the charges shall not apply until the close of business on the next workday. Disputed fees are due and payable by the due date. No appeal of fees will be considered by the Forest Service without full payment of the disputed amount. Adjustments, if necessary, will be made in accordance with settlement terms or the appeal decision.

If the fees become delinquent, the Forest Service will:

Liquidate any security or collateral provided by the authorization.

If no security or collateral is provided, the authorization will terminate and the holder will be responsible for delinquent fees as well as any other costs of restoring the site to its original condition including hazardous waste cleanup.

Upon termination or revocation of the authorization, delinquent fees and other charges associated with the authorization will be subject to all rights and remedies afforded the United States pursuant to 31 U.S.C. 3711 et seq. Delinquencies may be subject to any or all of the following conditions:

Administrative offset of payments due the holder from the Forest Service. Delinquencies in excess of 60 days shall be referred to United States Department of Treasury for appropriate collection action as provided by 31 U.S.C. 3711 (g), (1).

The Secretary of the Treasury may offset an amount due the debtor for any delinquency as provided by 31 U.S.C. 3720, et seq.)

- G. Nonpayment Constitutes Breach: Failure of the holder to make the annual payment, penalty, interest, or any other charges when due shall be grounds for termination of this authorization. However, no permit will be terminated for nonpayment of any monies owed the United States unless payment of such monies is more than 90 days in arrears.
- H. Applicable Law: Delinquent fees and other charges shall be subject to all the rights and remedies afforded the United States pursuant to federal law and implementing regulations. (31 U.S.C. 3711 et seq.).

VII. TRANSFER, SALE, AND RENTAL.

- A. Nontransferability: Except as provided in this section, this permit is not transferable.
- B. Transferability Upon Death of the Holder:
 - 1. If the holder of this permit is a married couple and one spouse dies, this permit will continue in force, without amendment or revision, in the name of the surviving spouse.
 - 2. If the holder of this permit is an individual who dies during the term of this permit and there is no surviving spouse, an annual renewable permit will be issued, upon request, to the executor or administrator of the holder's estate. Upon settlement of the estate, a new permit incorporating current Forest Service policies and procedures will be issued for the remainder of the deceased holder's term to the properly designated heir(s) as shown by an order of a court, bill of sale, or other evidence to be the owner of the improvements.
- C. Divestiture of Ownership: If the holder through voluntary sale, transfer, enforcement of contract, foreclosure, or other legal proceeding shall cease to be the owner of the physical improvements, this permit shall be terminated. If the person to whom title to said improvements is transferred is deemed by the authorizing officer to be qualified as a holder, then such person to whom title has been transferred will be granted a new permit. Such new permit will be for the remainder of the term of the original holder.
- D. Notice to Prospective Purchasers: When considering a voluntary sale of the recreation residence, the holder shall provide a copy of this special use permit to the prospective

- purchaser before finalizing the sale. The holder cannot make binding representations to the purchasers as to whether the Forest Service will reauthorize the occupancy.
- E. Rental: The holder may rent or sublet the use of improvements covered under this permit only with the express written permission of the authorized officer. In the event of an authorized rental or sublet, the holder shall continue to be responsible for compliance with all conditions of this permit by persons to whom such premises may be sublet.

VIII. REVOCATION.

- A. Revocation for Cause: This permit may be revoked for cause by the authorized officer upon breach of any of the terms and conditions of this permit or applicable law. Prior to such revocation for cause, the holder shall be given notice and provided a reasonable time – not to exceed ninety (90) days – within which to correct the breach.
- B. Revocation in the Public Interest During the Permit Term:
 - 1. This permit may be revoked during its term at the discretion of the authorized officer for reasons in the public interest. (36 CFR 251.60(b)). In the event of such revocation in the public interest, the holder shall be given one hundred and eighty (180) days prior written notice to vacate the premises, provided that the authorized officer may prescribe a date for a shorter period in which to vacate ("prescribed vacancy date") if the public interest objective reasonably requires the lot in a shorter period of time.
 - 2. The Forest Service and the holder agree that in the event of a revocation in the public interest, the holder shall be paid damages. Revocation in the public interest and payment of damages is subject to the availability of funds or appropriations.
 - a. Damages in the event of a public interest revocation shall be the lesser amount of either (1) the cost of relocation of the approved improvements to another lot which may be authorized for residential occupancy (but not including the costs of damages incidental to the relocation which are caused by the negligence of the holder or a third party), or (2) the replacement costs of the approved improvements as of the date of revocation. Replacement cost shall be determined by the Forest Service utilizing standard appraisal procedures giving full consideration to the improvement's condition, remaining economic life and location, and shall be the estimated cost to construct, at current prices, a building with utility equivalent to the building being appraised using modern materials and current standards, design and layout as of the date of revocation. If revocation in the public interest occurs after the holder has received notification that a new permit will not be issued following expiration of the current permit, then the amount of damages shall be adjusted as of the date of revocation by multiplying the replacement cost by a fraction which has as the numerator the number of full months remaining to the term of the permit prior to revocation (measured from the date of the notice of revocation) and as the denominator, the total number of months in the original term of the permit.
 - b. The amount of the damages determined in accordance with paragraph a. above shall be fixed by mutual agreement between the authorized officer and the holder and shall be accepted by the holder in full satisfaction of all claims against the United States under this clause: Provided, That if mutual agreement is not reached, the authorized officer shall determine the amount and if the holder is

dissatisfied with the amount to be paid may appeal the determination in accordance with the Appeal Regulations (36 CFR 251, Subpart C) and the amount as determined on appeal shall be final and conclusive on the parties hereto: Provided further, That upon the payment to the holder of the amount fixed by the authorized officer, the right of the Forest Service to remove or require the removal of the improvements shall not be stayed pending final decision on appeal.

IX. ISSUANCE OF A NEW PERMIT.

- A. Decisions to issue a new permit or convert the permitted area to an alternative public use upon termination of this permit require a determination of consistency with the Forest Land and Resource Management Plan (Forest Plan).
 - 1. Where continued use is consistent with the Forest Plan, the authorized officer shall issue a new permit, in accordance with applicable requirements for environmental documentation.
 - 2. If, as a result of an amendment or revision of the Forest Plan, the permitted area is within an area allocated to an alternative public use, the authorized officer shall conduct a site specific project analysis to determine the range and intensity of the alternative public use.
 - a. If the project analysis results in a finding that the use of the lot for a recreation residence may continue, the holder shall be notified in writing, this permit shall be modified as necessary, and a new term permit shall be issued following expiration of the current permit.
 - b. If the project analysis results in a decision that the lot shall be converted to an alternative public use, the holder shall be notified in writing and given at least 10 years continued occupancy. The holder shall be given a copy of the project analysis, environmental documentation, and decision document.
 - c. A decision resulting from a project analysis shall be reviewed two years prior to permit expiration, when that decision and supporting environmental documentation is more than 5 years old. If this review indicates that the conditions resulting in the decision are unchanged, then the decision may be implemented. If this review indicates that conditions have changed, a new project analysis shall be made to determine the proper action.
- B. In issuing a new permit, the authorized officer shall include terms, conditions, and special stipulations that reflect new requirements imposed by current Federal and State land use plans, laws, regulations, or other management decisions. (36 CFR 251.64).
- C. If the 10-year continued occupancy given a holder who receives notification that a new permit will not be issued would extend beyond the expiration date of the current permit, a new term permit shall be issued for the remaining portion of the 10-year period.

X. RIGHTS AND RESPONSIBILITIES UPON REVOCATION OR NOTIFICATION THAT A NEW PERMIT WILL NOT BE ISSUED FOLLOWING TERMINATION OF THIS PERMIT.

- A. Removal of Improvements Upon Revocation or Notification That A New Permit Will Not Be Issued Following Termination Of This Permit: At the end of the term of occupancy authorized by this permit, or upon abandonment, or revocation for cause, Act

- of God, catastrophic event, or in the public interest, the holder shall remove within a reasonable time all structures and improvements except those owned by the United States, and shall return the lot to a condition approved by the authorized officer unless otherwise agreed to in writing or in this permit. If the holder fails to remove all such structures or improvements within a reasonable period – not to exceed one hundred and eighty (180) days from the date the authorization of occupancy is ended – the improvements shall become the property of the United States, but in such event, the holder remains obligated and liable for the cost of their removal and the restoration of the lot.
- B. In case of revocation or notification that a new permit will not be issued following termination of this permit, except if revocation is for cause, the authorized officer may offer an in-lieu lot to the permit holder for building or relocation of improvements. Such lots will be nonconflicting locations within the national forest containing the residence being terminated or under notification that a new permit will not be issued or at nonconflicting locations in adjacent national forests. Any in-lieu lot offered the holder must be accepted within 90 days of the offer or within 90 days of the final disposition of an appeal on the revocation or notification that a new permit will not be issued under the Secretary of Agriculture's administrative appeal regulations, whichever is later, or this opportunity will terminate.

XI. MISCELLANEOUS PROVISIONS.

- A. This permit replaces a special use permit issued to: <Previous Holder> on <Date>.
- B. The Forest Service reserves the right to enter upon the property to inspect for compliance with the terms of this permit. Reports on inspection for compliance will be furnished to the holder.
- C. Issuance of this permit shall not be construed as an admission by the Government as to the title to any improvements. The Government disclaims any liability for the issuance of any permit in the event of disputed title.
- D. If there is a conflict between the foregoing standard printed clauses and any special clauses added to the permit, the standard printed clauses shall control.

<Note: Additional clauses may be added by the authorized officer to reflect local conditions. Delete these instructions prior to printing.>

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection on information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082.

This information is needed by the Forest Service to evaluate requests to use National Forest System lands and manage those lands to protect natural resources, administer the use, and ensure public health and safety. This information is required to obtain or retain a benefit. The authority for that requirement is provided by the Organic Act of 1897 and the Federal Land Policy and Management Act of 1976, which authorize the Secretary of Agriculture to promulgate rules and regulations for authorizing and managing National Forest System lands. These statutes, along with the Term Permit Act, National Forest Ski Permit Act, Granger-Thye Act, Mineral Leasing Act, Alaska Term Permit Act, Act of September 3, 1954, Wilderness Act, National Forest Roads and

Trails Act, Act of November 16, 1973, Archeological Resources Protection Act, and Alaska National Interest Lands Conservation Act, authorize the Secretary of Agriculture to issue authorizations for the use and occupancy of National Forest System lands. The Secretary of Agriculture's regulations at 36 CFR Part 251, Subpart B, establish procedures for issuing those authorizations.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.

Public reporting burden for this collection of information, if requested, is estimated to average 1 hour per response for annual financial information; average 1 hour per response to prepare or update operation and/or maintenance plan; average 1 hour per response for inspection reports; and an average of 1 hour for each request that may include such things as reports, logs, facility and user information, sublease information, and other similar miscellaneous information requests. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

OPERATION AND MAINTENANCE PLAN
FOR
RECREATION RESIDENCE
UNDER PERMIT TO

Permit Holder/Owner

XXXXXXXXXX Tract, Lot No.

XXXXXXXXXX RANGER DISTRICT
CORONADO NATIONAL FOREST

I. INTRODUCTION

- A. As owner of a recreation residence (cabin) on National Forest System (NFS) lands, you have been issued a term special-use permit, which is a contract between the Forest Service and the person(s) who signed that permit.
 - 1. Clause II.A. of the special use permit requires that the Forest Service prepare (in consultation with the permit holder) an Operation and Maintenance Plan. This document fulfills that requirement, and is hereby made a part of the special-use permit. It will be reviewed annually and updated as necessary by the District Ranger.
 - 2. If a change in the operation and maintenance plan warrants an environmental analysis, it will be conducted in accordance with National Environmental Policy Act (NEPA) and the effects of the changes documented.
- B. To ensure that the lot and cabin are being appropriately maintained, an inspection will be scheduled annually, with a copy of the findings sent to you. A copy of the checklist we will use is available for review at the Ranger Station. If this Operation and Maintenance Plan is followed, in conjunction with the Term Special-Use Permit, together we can assure that mutual objectives are met.
- C. The permit holder responsible for implementing this plan is:

NAME

ADDRESS

PHONE

The person(s) to contact in the event of an emergency (if other than the holder) is:

NAME

PHONE

II. LOT MAINTENANCE

A. Hazard Removal

It is the permit holder's responsibility to inspect the lot, driveway, and immediate adjoining areas to their lot for dangerous trees, hanging limbs, and other evidence of hazardous conditions and, after securing written permission from the Forest Service, to remove such hazards. If it is felt that any snag (a dead, standing tree), large limb, leaning tree (whether dead or green), etc., on or off the lot, is (or could become) a safety hazard, notify Douglas District Ranger. It is the permit holder's responsibility to remove any hazard, on or off the lot, which may pose a threat to safety.

B. Vegetation Maintenance

Vegetation maintenance, other than the fire prevention requirements (VIII. B.) of this plan, is discouraged due to a number of potential adverse impacts, such as erosion problems, reduction of wildlife habitat, and visual screening. If there is some vegetation removal that the holder considers necessary, contact the Ranger District office with a written proposal.

Planting of native species of trees, shrubs and flowers may be done to enhance or restore a natural appearing forested setting – after securing written permission from the Forest Service. Remember that little trees become big ones, so do not plant them too close to buildings. Planting of non-native species of trees, shrubs and flowers, is prohibited.

C. Miscellaneous Items

1. Swings, yard lights, signs, wires or other materials shall not be attached to trees.
2. Outdoor fire rings or pits are not authorized.
3. All items not specifically stated on the permit must be stored inside the cabin or removed from NFS lands when the residence is not in use. This includes all sports and play equipment (including horseshoe stakes, swings, etc), tools, signs, barbeque grills, picnic tables, fake plants, etc.
4. Authorization for outside lights needed for safety may be granted. Lights must be mounted on buildings. All outside lights must be shielded so the light shines directly on the yard or on entrances and not affect adjacent lots or NFS lands.
5. When approved, new electric lines (excluding the main service line) must be buried. Existing over-head lines will be buried when they are in need of replacement. All electrical work will meet current county codes.
6. Precautions to prevent soil erosion will be taken by keeping vehicles on established roads and by parking only in approved areas. Approved areas will be sufficient to hold two vehicles. Enlarging areas to allow additional vehicles is prohibited. Road culverts and water bars will be maintained free of debris and replaced when damaged.
7. The lot is not intended to be used as a storage area. After securing written permission from the District Ranger, all building materials that will be used within three months must be stored out-of-sight or neatly stacked. All other materials will be removed. No items will be stored on or under decks or patios.
8. The storage of motor vehicles, and the storage or use of camp trailers, fifth-wheeled trailers, recreational vehicles, etc, is prohibited.

9. Television antennas and satellite dishes may be used but must be removed and stored indoors when the cabin is not occupied. Antennas/dishes may not be attached to trees.
10. Gates, fences and walls will not be constructed.
11. The national flag of the United States of America and/or the flag of its States or Territories may be displayed. No other flags, banners, holiday ornaments, or lights may be displayed.
12. The District Ranger will be consulted prior to any soil disturbing activity, and work will not begin until approval is granted.

III. FACILITY MAINTENANCE

A. Structures

1. The foundation of the cabin should be checked yearly to ensure that it is structurally sound and in good repair. If dirt or leaves have accumulated against the foundation, they must be cleared away. If the cabin is on a slope and has an open space under it, a screen or latticework enclosing the foundation is required to prevent debris from collecting under it. Combustible material should never be stored under any structure.
2. All roof areas and gutters must be kept free of limbs, needles, and other debris. Loose roofing or shingles must be repaired. Check the eaves and around flashing for wood rot.
3. To blend with the national forest landscape and provide consistency between all recreation residence tracts on the Coronado National Forest, paint industry standards, to define appropriate colors, will be used. These standards include the Munsell Color System (combinations of hue, value and chroma are used to define each color) and light reflectance values (LRV). Generally, shades of green and brown are recommended; subdued grays may also be acceptable. Table 1 gives the range of the units that must be met within the authorized hues.

Table 1

Hue	Green	Green-Yellow	Yellow	Yellow-Red
Value	<5	<4	<5	<6
Chroma	<7	<4	<8	<4

- a. Additionally, the following requirements must be met:
 - (1) The cabin, roof, and all other improvements must meet the color standards listed in Table 1. The only exception is propane tanks, which may be left white.
 - (2) Do not use glossy colors
 - (3) Colors of paint, stains, and other building materials (such as roofing) shall have a light reflectance value under 30.
 - (4) If roof color is different than wall color, avoid highly contrasting colors.
 - (5) Color of trim, doors, and windows shall be the same or similar color as siding.

4. Prior to selecting your paint, stain, or any other exterior materials, permittee must secure approval from the Forest Service. If a deck is to be left in unfinished natural wood color, the surface must be treated with some type of clear waterproofing or linseed oil. Once a surface has been painted, it must be repainted regularly.
5. Exceptions to the color requirements include newly installed wood with clear protective coatings, existing cabins constructed of red brick or natural block.

IV. ADDITION OF STRUCTURES OR FACILITIES & CABIN RECONSTRUCTION

- A. Only those structures listed on page 1 of the Term Special-Use Permit are authorized. Additional structures and facilities may be approved where & when appropriate. Environmental analysis for additional structures must be conducted, with the cost borne by the permit holder.
- B. Construction of, addition to, or significant modification of, any building or structurally-significant facility will require detailed review and written approval, as follows:
 1. Proposals will be submitted to the District Ranger as per Clause III.B. of the Term Special-Use Permit. The detail of the plans will be commensurate with the scope of the project. After review of the concept, a letter of approval or disapproval will be provided to the permit holder.
 2. Environmental analysis for the reconstruction of, addition to, or significant modification of, any building or structurally-significant facility may be necessary, with the cost borne by the permit holder.
 3. Upon receipt of approval in concept, and the completion of any required environmental analysis, the permit holder shall apply for a building permit from the appropriate County. If the County does not require a construction permit, the holder will work with a registered/certified architect and acquire stamped plans.
 4. Upon receipt of the County building permit or stamped plans, the permit holder will forward a copy to the District Ranger.
 5. After review of the above documents by appropriate staff, the proposal will be approved by an amendment to the Term Special-Use Permit, returned for revisions, or disapproved by letter.
 6. Construction shall not begin until the project receives final approval.
 7. Reconstruction of any facilities, if approved, would be limited to the existing approved square footage.
 8. Room additions, screened porches, etc., will not be approved. The only exception for an increase in the square footage is for an indoor toilet facility which would replace existing outdoor toilet facilities. This addition should blend with the existing structure and may be approved up to 100 square feet. County permit or stamped plans are required. Outdoor facilities must be removed when replaced and not utilized as a shed.
 9. New sun decks may be authorized by the District Ranger and, if approved, would be no greater than the length of one side of the existing cabin by ten feet in depth.
 10. Cabins shall be simple, traditional, compact forms, not modern in architecture. Modest structures that blend with the landscape will minimize their visual impact on the national forest landscape. Proposals that include elements that are not typical, or

that draw attention to themselves, may be denied. Some examples of items to avoid include unnecessarily high foundations, unusual angles, nontraditional window styles or placement, ornate details, or synthetic siding (such as plastic or aluminum).

Additional information can be found in *The Environment Image Guide for the National Forests and Grasslands*, which is available on the internet at <http://www.fs.fed.us/recreation/programs/beig/>. For guidance on recreation residences on the Coronado National Forest, refer to chapter 4.6 "The Rocky Mountain Province."

- C. The construction and maintenance of a wood storage box measuring no greater than 3 feet in width, 2 feet in height and 2 feet in depth may be constructed on a deck or adjacent to the cabin. This box must meet the color requirements.
- D. The construction and maintenance of sports courts, including horseshoe pits, is not authorized. Sports equipment may be placed on site when the cabin is occupied, but must be removed when the cabin is not occupied.
- E. Minor improvements and major maintenance activities can be authorized by the District Ranger.

V. SIZE, PLACEMENT AND DESCRIPTIONS OF SIGNS

Lot numbers will be posted at the driveway or on the cabin. The number must be plainly visible from the main road passing in front of the cabin. The owner's last name may be posted as well in letters no greater than 4 inches in height. Only one sign may be installed, and no other message may be on the sign. It should blend with the forest environment in color and texture. It may not be attached to a dead or green tree. No other signs will be authorized, except for temporary real estate "For Sale" signs.

VI. WATER SYSTEMS (if applicable)

A. Drinking Water Systems

- 1. The holder, as the water supplier and owner or operator of the drinking water system, is responsible for compliance with all applicable Federal, State, and local drinking water laws and regulations for the operation and maintenance of a public water system. This includes, but is not limited to, developing, operating, and maintaining the system, and conducting drinking water testing and taking the appropriate corrective and follow-up actions in accordance with Federal, State, and any other applicable requirements. For the purposes of this authorization, public water systems are defined in the Safe Drinking Water Act, as amended (42 U.S.C. 300f et seq.), and in the National Primary Drinking Water Regulations, Title 40, Code of Federal Regulations, part 141 (40 CFR part 141), or by State regulations if more stringent.

VII. WASTE DISPOSAL

A. Trash Disposal

- 1. "On-Site" trash disposal and the use of "burn barrels" or open pits are not authorized. All trash must be removed from NFS lands and disposed of in an approved sanitary landfill. If used, garbage cans must have secure lids; they must be emptied regularly.

If the garbage cans are not bear proofed, they must be stored inside at night and when the cabin is not occupied.

2. Unless authorized, branches and logs will not be disposed of either on or near the lot.
- B. Sewage and Gray Water Disposal
1. Septic tank systems, and alternative on-site disposal systems must be installed and maintained in compliance with all applicable Federal, State, and local laws and regulations. See Arizona Administrative Code Title 18, Chapter 9 “Department of Environmental Quality Water Pollution Control” for the latest standards.
 2. Gray water (wastewater collected separately from a sewage flow that originates from a clothes washer, bathtub, shower, and sink, but does not include wastewater from a kitchen sink, dishwasher, or toilet) may be separated from the black water waste (toilet, kitchen sink wastes) if disposed of by an approved method. See Arizona Administrative Code Title 18, Chapter 9 “Department of Environmental Quality Water Pollution Control” for the latest standards.
 3. New Pit toilets (using vaults that are not sealed) are not allowed. Existing pit toilets shall be monitored and phased out (including building removal) within two years of permit issuance.
 4. All outhouses must be fly-proofed, with a self-closing door.

VIII. FIRE PROTECTION

- A. Structural Fires. The Forest Service limits action by its personnel on structural fires to the following, so long as such action can be carried out safely and is within the capability and training of the involved personnel:
1. Activities necessary for the protection of human life.
 2. Activities necessary to control or contain the fire to the immediate area (using conventional wild-land fire suppression equipment).

**YOU, AS THE PERMIT HOLDER, HAVE THE RESPONSIBILITY
FOR PROTECTION OF THE CABIN FROM FIRE.**

- B. Fire Prevention
1. Firewood will be stacked in piles at least thirty feet from the main building and at least ten feet from smaller structures. The reason for this separation is that a large concentration of fuels would increase the severity of a fire, if one occurred. Dead flammable fuels will also be cleared to a distance of thirty (30) feet around the main building and ten (10) feet around woodpiles, butane tanks, etc.
 2. A twenty-inch path will be cleared of flammable vegetation down to mineral soil around every structure. A path 5 feet wide will also be cleared to mineral soil around barbecue pits and grills. It is advisable to keep a hose or a bucket of water handy when cooking outdoors.
 3. Permit holders shall abide by Coronado National Forest fire restrictions and closures. Fire restrictions and closures apply to indoor fires as well.
 4. Stovepipes must extend at least 24" above the roof ridge and be equipped with spark arrester.

5. The spark arrester shall be twice the area of the chimney vent and constructed of corrosion resistant material of not less than 14 gauge mesh wire with openings not over 1/2" or less than 5/16".
6. Proper disposal of fireplace ashes requires that they be put in a covered metal container (no cardboard or wooden boxes!) and soaked with water. They should then sit overnight to make sure they are cold, before being taken off NFS lands to an appropriate disposal site.
7. All wires shall be a minimum of four feet from the chimney or stove pipe.
8. The electric meter box must be grounded, and all electrical wires must meet the National Electrical Code (NFPA 70).
9. Tree limbs must be trimmed to at least five feet back from electrical wires, and at least ten feet from chimney, stovepipe, and flue outlets.
10. If the cabin has running water, it should have an outside faucet in case of fire. Large-size fire extinguishers (A, B, C – 10 pound or larger) and at least one smoke detector are also encouraged.
11. No fireworks shall be stored or used on the land covered in the Term Special-Use Permit or in the structures thereon. Using fireworks will result in a citation and may result in the permit being suspended or terminated.

IX. ACCESS

The holder agrees to permit the free and unrestricted access to and upon the lot. See Section XI Miscellaneous Provision Clause R of the Term Special-Use Permit.

X. SALE OR TRANSFER OF THE CABIN

- A. If a decision is made to sell the cabin, the following procedure will be followed:
 1. Contact the appropriate Ranger District Office and advise them of your intent to sell; this action should also be verified in a letter to the District Ranger. If possible, a forest officer will make a transfer inspection, noting substandard items (if any) which need correction. A copy of the inspection form will be sent to the permit holder; any deficient items should either be corrected immediately, or discussed with the prospective purchaser to ensure that proper corrective action will be taken. Upon completion of the corrective work, notify District personnel. If the cabin is sold with major deficiencies, a short-term permit may be issued to the new owner to allow time to correct the situation. When corrected, the standard permit would be issued.
 2. A copy of the Special-Use Permit must be provided to the prospective purchaser before finalizing the sale. They will be informed that the cabin shall not be used as a principal place of residence, which is defined as the main residence where most of the year (more than 183 days per annum) is spent. See I.R.S. Publication #17.
 3. The current permit holder and prospective buyer will submit Form-2700-3a, "Holder Initiated Revocation of Existing Authorization/ Request for a Special-Use Permit or Term Special-Use." Permits may only be issued to an individual or to a husband and wife. The Forest Service may not issue permits to (and thus the improvements may not be owned by) corporations, partnerships, multiple individuals or trusts. In addition to this form, a recorded Bill of Sale (or comparable legal document) is required. The completed forms and recorded Bill of Sale should be mailed or

delivered to the Ranger District office along with a \$25.00 transfer fee (check or money order made payable to U.S.D.A. Forest Service).

4. The application will be processed and a new Permit prepared for signature(s), at which time the new owners will be contacted and an appointment made to review and issue the new Permit, and also prepare a new Operation and Maintenance Plan. This conference/phone call allows the opportunity for the prospective Permit Holder to ask questions, and to become a partner in the management of this area.
- B. If a transfer of the cabin is necessary due to death or incapacity of the permit holder, the beneficiary or designee, so designated in a recorded will & testament, trust, or other legal document, must proceed as follows:
1. Contact the appropriate Ranger District Office and advise them of the situation; this action should also be verified in a letter to the District Ranger. Submit a copy of the death certificate or a certified letter by an attending physician, and the recorded legal document(s) granting new possession of the cabin. If not specifically stated in the document who shall receive the cabin, a document designating the one person to be responsible for the cabin, must be submitted. All heirs of the deceased or incapacitated permit holder must sign and have their signature notarized.

If possible, a forest officer will make a transfer inspection, noting substandard items (if any) which need correction. A copy of the inspection form will be sent to the prospective permit holder; any deficient items must be corrected prior to issuance of the new permit.

XI. MISCELLANEOUS PROVISIONS

- A. Wildlife. The permit holder is responsible for taking action on their lot to minimize conflicts with wildlife.
1. Feeding wildlife is strictly prohibited, including, but not limited to, bears, birds & squirrels. Treat all wild animals as dangerous.
 2. All food must be stored indoors and shall not be left unattended where animals could have access to it.
 3. Food preparation, cooking and eating areas shall be cleaned immediately after use and kept clean. Dishes and other food preparation materials shall be cleaned and stored indoors immediately after food service has been completed. Thoroughly clean barbecue grills after use; remove and dispose of grease and food particles in garbage cans.
 4. Do not bury garbage, scatter organic waste, or leave foil or other food packaging on or near grills.
 5. Garbage storage shall not be allowed to overflow and will be brought indoors each night. They shall be cleaned weekly and prior to leaving with hot water, soap, and disinfectant in order to minimize odors.
 6. All garbage shall be transported to an approved sanitary landfill at frequent intervals, but at a minimum of once per week.

Bears. Black bears are forest residents. They are wild and unpredictable. They normally do not attack or threaten people unless provoked, but food will attract their interest. Bears recognize food and food containers by sight and smell, including ice chests, grocery sacks, cardboard boxes, canned goods, freeze-dried foods and pet foods. Bears consider odorous products to be potential food. Odorous items include things such as food, garbage, toothpaste, insect repellent, suntan lotion, etc. It is important to prevent bears from detecting the presence of stored garbage, but if discovered by bears, it must be stored in a manner that will prevent them from getting to it. Bears are active at all hours, both day and night. They are clever and resourceful. If a bear is encountered, throw objects, bang pots, yell or clap hands to frighten them away. Do this before the bear gets close to you. Do not try to approach a bear and do not tease or crowd them. Avoid getting between a sow and her cubs. Frighten bears away before they reach food, otherwise they will be difficult to remove. All employees, guests, and visitors must be informed that they are to abide by the following requirements.

In addition to bears, other wildlife such as skunks, raccoons, and coatis, are also attracted to available foodstuffs. Therefore, the following requirements will be enforced at all times.

Further information and assistance to prevent conflicts with wildlife is available from the local Arizona Game and Fish Department, North American Bear Society, and your Forest Service office.

B. Heritage Resources

1. If permit renewal or amendment authorizes ground-disturbing activities, removal or alteration of buildings or structures, or other potential impacts to significant heritage resources, the forest heritage staff will be contacted to initiate National Historic Preservation Act (NHPA) compliance.
2. If any external modifications, additions, or removals are approved for a National Register of Historic Places– eligible building during the life of the permit, the forest heritage staff must be contacted to initiate NHPA compliance.

C. Other Miscellaneous

1. Domestic animals must be under physical control when outdoors. Leashes are limited to a maximum of 6 feet in length.
2. Building of impoundments to divert or hold surface water without water rights from the State is prohibited.

XII. CONCLUSION

As a part of this Operation and Maintenance Plan, you agree to conduct, if necessary, an annual Self-Inspection of your cabin and permit area. A self-inspection form will be mailed to you in the Spring prior to the main use season. This self-inspection form certifies your compliance with this Operation and Maintenance Plan.

This Operation and Maintenance Plan is not intended to unduly restrict the enjoyment of the National Forest, or the Recreation Residence within it. It is meant to protect the cabin and lot, the National Forest System lands and resources upon which the cabin lies, and the people utilizing them. After appropriate consultation, it will be amended and up-dated as often as

needed. It can not, however, cover every possible operation and maintenance situation that could be encountered. Common sense and safety awareness must be the foundation for all activities.

As the permit holder, I have read this plan, and understand that it is a part of my Term Special-Use Permit.

Permit Holder

Date

Permit Holder

Date

B. Heritage Resources

Copy of Scoping Letter Sent to Native American Tribes and Nations March 24, 2006

««GreetingLine»»;

In the next few months, the Forest Service will be considering whether to renew recreation residence permits on Forest lands across the country. On the Coronado National Forest, we have 254 recreation residence permits, located in the Santa Catalina, Chiricahua, and Pinalaño Mountains. The “proposed action” is to renew the permits when they expire on December 31, 2008. The renewal period would extend for 20 years, from January 1, 2009 through December 31, 2028. The proposed action would not authorize new cabins, but rather would allow existing cabins to continue. Permit holders would be required to abide by all terms and conditions of their individual special-use permits. I am writing to ask you if renewing the permits would affect sites of religious or cultural significance to your tribe.

The enclosed documents and maps provide some background and more information about the proposed action. To summarize, the recreation residence permit program was initiated in the 1920s to encourage city-dwellers to enjoy the recently established national forests by permitting them to construct vacation homes on specified plots. Some of the permits on the Coronado were issued for vacation homes that had been constructed before the forest was established. The program was discontinued in the 1960s, but there are still about 15,000 cabins nationwide, each of which is maintained under the terms and conditions of special-use permits issued by the managing Forest.

On the Santa Catalina Ranger District, there are 131 recreational residences located in five tracts near the Catalina Highway. Five full-time residences are located on the Coronado National Forest south and east of the town of Oracle. On the Douglas Ranger District, there are 30 recreation residences in the Chiricahua Mountains, located at Cave Creek, Rustler Park, South Fork Cave Creek, and West Turkey Creek. On the Safford Ranger District, there are 88 recreational residences in the Pinalaño Mountains, 74 of them located near the Swift Trail at Turkey Flat, and 14 higher up the mountain, at Columbine.

No changes to the permits are proposed. Current restrictions, such as a prohibition on year-round residency and constraints on any remodeling that would change a home’s footprint, would stay in place.

So that I can best consider your concerns in making my decision, I would appreciate your comments by April 28, 2006. If you have any questions about the permits or proposal, please contact me, or Forest Archaeologist Mary Farrell, at the above address, (520) 388-8391, or email mfarrell@fs.fed.us.

Sincerely,

JEANINE A. DERBY
Forest Supervisor

Enclosures:

cc: «Chairperson», «Tribe»

Appendix B. Heritage Resources

Recipients:

Ak-Chin Indian Community

Ft. Sill Apache Tribe

Gila River Indian Community

Hopi Cultural Preservation Office

Mescalero Apache Tribe

Pascua Yaqui Tribe

Pueblo of Zuni

Salt River Pima-Maricopa Indian Community

San Carlos Apache Tribe

Tohono O'odham Nation

White Mountain Apache Tribe

Yavapai-Apache Nation

SHPO Concurrence Letter 2006-1640-30130

RECEIVED

R3-FS-2300-4 (10/86)

USDA Forest Service Forest: Cornudas 07 2006

INVENTORY STANDARDS AND ACCOUNTING
(Reference: FSM 2361)

ARIZONA STATE FORESTS SERVICE

1. REPORT NUMBER				2. REPORT DATE			3. ROUTING: copies to	
YEAR	FOREST	NUMBER	SERIES	MONTH	DAY	YEAR	<input type="checkbox"/> SHPO	<input type="checkbox"/> DISTRICT
2006	05	042		07	31	2006	<input checked="" type="checkbox"/> S.O. Heritage: C LeBlanc	
							<input type="checkbox"/> Other:	

4. AUTHOR: A. Farrell, Mury B.

5. PROJECT NAME/REPORT TITLE (Abbreviate if necessary; Do Not Exceed 50 Characters)
Determination of Effect - Safford Ranger District Recreation Residences Permits

6. ABSTRACT/SUMMARY of report and findings: The Coronado National Forest proposes to issue permits for 88 existing recreation residences located in the Pinalo Mountains, on the Safford Ranger District, Graham County, Arizona. This report discusses the effects the proposal (issuing the permits) and the "no action" alternatives (requiring removal of some or all of the cabins) would have on historic properties eligible for listing on the National Register of Historic Places, per 36 CFR 800. In the current proposal, no changes or additions to cabins would be authorized. Two heritage resource issues are considered: (1) the effect that allowing the cabins to continue in existence would have on the Mt Graham (*Dził Nchaá zì an*) traditional cultural property; and (2) the effect that requiring the removal of the cabins would have on the 21 cabins that have been determined eligible for the National Register (report 2006-05-051).

[xx] cont. p. 2

7. CONSULTATION/CLEARANCE

A. CONDITIONS OF CLEARANCE:

AVOID sites specified below NONE (No poten. eligible sites in project area)
 REPORT new sites to Forest Archeologist MONITOR sites specified below
 OTHER/ADDITIONAL COMMENTS:

B. ADDITIONAL FIELDWORK REQUIRED: EVALUATE sites specified below OTHER:

C. REPORT ACCEPTED: D. CLEARANCE RECOMMENDED:

YES NO YES NO N/A *Mary M. Mury* 8/11/06
FOREST ARCHAEOLOGIST DATE

E. EFFECT ON CULTURAL RESOURCES:

No Historic Properties Affected No Adverse Effect Adverse Effect N/A
 No potential to affect historic properties, per 36 CFR 800 (a)(1)

F. TRANSMITTAL TO SHPO: Consultation on:

Effect Eligibility Info Only SHPO consultation not required *Jeanine A. Derby* 8/1/06
FOREST SUPERVISOR DATE

G. SHPO CONCURRENCE: YES YES, per comment below NO *Ann E. Howard* 8/9-1-06
SHPO DATE

Comments: (Additional comments attached)
We concur with a "No Adverse Effect" finding.

H. CLEARANCE APPROVED: YES NO *Jeanine A. Derby* 9/3/06
FOREST SUPERVISOR DATE

Appendix B. Heritage Resources

8. RANGER DISTRICT: <u>04</u>	23. PROJECT LOCATION (Surveys only):
9. PROJECT FUNCTION: <u>23</u>	
10. PRIMARY ACTIVITY TYPE:	
11. SECONDARY ACTIVITY TYPE:	
12. PROGRAMMING: <u>P</u>	
13. TOTAL PROJECT ACREAGE: _____	24. INSTITUTION CONDUCT. PROJ./SURVEY: <u>FA</u>
14. ACREAGE COMPLETELY SURVEYED: _____	15. SAMPLE: _____
16. ACREAGE RESURVEYED: <u>0</u>	Name of Institution <u>Forest Service Archaeologist</u>
17. TOTAL NO. SITES IN PROJ. AREA: <u>N/A</u>	19. SITES EVALUATED AS ELIGIBLE: _____
NEW SITES: <u>N/A</u>	20. SITES EVALUATED AS NOT ELIG.: _____
	(By Professional CRM Specialist, Request SHPO Concurrence)
21. SITES INSPECTED, MONITORED, ENHANCED, ETC.: _____	27. FIELD HOURS: _____
(Projects other than survey, evaluation)	28. LAB/LIB HOURS: <u>20</u>
22. RECOMMENDED DETERMINATION OF EFFECT: <u>2 & 3</u> (Initial: _____)	29. TRAVEL HOURS: _____
(By USFS Professional CRM Specialist)	30. ADMIN. HOURS: <u>40</u>
1. No Historic Properties Affected	(RD: _____ SO: <u>40</u>)
2. No Adverse Effect	31. MILEAGE: _____
3. Adverse Effect	32. PER DIEM RATE: _____
4. Not Applicable: not an undertaking	33. DAYS OF PER DIEM: _____
5. No potential to affect historic properties	34. COST WEIGHT FACTOR: <u>9</u>
	35. COST (CODE): <u>A</u>
	or
	36. ACTUAL COST: <u>5</u>
37. REMARKS/CONTINUATION from page 1. As discussed below, the cabins were present when Mt Graham was determined eligible for the National Register. Their existence was considered irrelevant to the property's integrity and eligibility. The cabins' continued existence in their current form and location would not alter, directly or indirectly, any of the characteristics of the traditional cultural property that qualified it for inclusion in the National Register. Therefore, the proposed permit issuance is found to have No Adverse Effect on the traditional cultural property, and No Potential to Affect the cabins. The "no action" alternatives, requiring removal of some or all of the cabins, would have an Adverse Effect on cabins eligible for listing on the National Register, and a No Adverse Effect on the traditional cultural property.	

SHPO Concurrence Letter 2006-1640-30677

USDA Forest Service		R3-FS-2300-4 (10/86)		Forest: <u>Coronado</u> SEP 14 2006		
INVENTORY STANDARDS AND ACCOUNTING				ARIZONA STATE PARKS/S.W.		
(Reference: FSM 2361)						

1. REPORT NUMBER				2. REPORT DATE			3. ROUTING: copies to	
YEAR	FOREST	NUMBER	SERIES	MONTH	DAY	YEAR	<input type="checkbox"/> SHPO	<input type="checkbox"/> DISTRICT
2006	05	060		09	8	2006	<input checked="" type="checkbox"/> S.O. Heritage: C. LeBlanc	
							<input type="checkbox"/> Other:	

4. AUTHOR: A. Farrell, Mary B

5. PROJECT NAME/REPORT TITLE (Abbreviate if necessary; Do Not Exceed 50 Characters)
Determination of Eligibility - Safford Ranger District Recreation Residences SUPPLEMENT

6. ABSTRACT/SUMMARY of report and findings: The Coronado N.F. proposes to issue special use permits for 88 existing recreation residences located in two tracts in the Pinaleno Mountains (Mt. Graham). The proposed action would authorize the existing cabins for 20 additional years after the current permits expire December 31, 2008. Three "no action" alternatives are also being considered, which would require the removal of some or all of the cabins within 10 years. In order to determine the effect of the "no action" alternatives, this report evaluates the 88 cabins for their eligibility for listing on the National Register of Historic Places. Twenty-one of the cabins are at least 50 years old and have been minimally modified. In a preliminary report (2006-05-051), these 21 cabins were considered potentially eligible for listing on the National Register of Historic Places. However, consultation with the Arizona State Historic Preservation Officer has clarified the applicability of the National Register criteria in this case.
[xx] cont. p. 2

7. CONSULTATION/CLEARANCE

A. CONDITIONS OF CLEARANCE: NONE (No poten. eligible sites in project area)
 AVOID sites specified below MONITOR sites specified below
 REPORT new sites to Forest Archeologist OTHER/ADDITIONAL COMMENTS:

B. ADDITIONAL FIELDWORK REQUIRED: EVALUATE sites specified below OTHER:

C. REPORT ACCEPTED: D. CLEARANCE RECOMMENDED: *Mary M. Farrell* 9/11/06
 YES NO YES NO N/A FOREST ARCHAEOLOGIST DATE

E. EFFECT ON CULTURAL RESOURCES:
 No Historic Properties Affected No Adverse Effect Adverse Effect N/A
 No potential to affect historic properties, per 36 CFR 800 (a)(1)

F. TRANSMITTAL TO SHPO: Consultation on: *Jamaine A. Derby* 9/11/06
 Effect Eligibility Info Only SHPO consultation not required FOREST SUPERVISOR DATE

G. SHPO CONCURRENCE: YES YES, per comment below NO *William Collins* 9/21/06
Comments: (Additional comments attached) SHPO DATE

H. CLEARANCE APPROVED: YES NO *Jamaine A. Derby* 10/2/06
FOREST SUPERVISOR DATE

Appendix B. Heritage Resources

<p>8. RANGER DISTRICT: <u>04</u></p> <p>9. PROJECT FUNCTION: <u>23</u></p> <p>10. PRIMARY ACTIVITY TYPE:</p> <p>11. SECONDARY ACTIVITY TYPE:</p> <p>12. PROGRAMMING: <u>P</u></p>	<p>23. PROJECT LOCATION (Surveys only):</p>
<p>13. TOTAL PROJECT ACREAGE: <u>--</u></p> <p>14. ACREAGE COMPLETELY SURVEYED: <u>15</u> SAMPLE: <u>---</u></p> <p>16. ACREAGE RESURVEYED: <u>0</u></p> <p>17. TOTAL NO. SITES IN PROJ. AREA: <u>89</u> NEW SITES: <u>88</u></p>	<p>24. INSTITUTION CONDUCT. PROJ./SURVEY: <u>FA</u></p> <p>Name of Institution: <u>Forest Service Archaeologist</u></p> <p>25. AVERAGE NUMBER OF INDIVIDUALS USED: <u>1</u></p> <p>26. AVERAGE INDIVIDUAL/TRANSECT SPACING: <u>N/A</u> (Feet)</p>
<p>19. SITES EVALUATED ELIGIBLE: <u>---</u> 20. SITES EVALUATED AS NOT ELIG.: <u>88</u></p> <p>(By Professional CRM Specialist, Request SHPO Concurrence)</p>	<p>27. FIELD HOURS: <u>0</u></p> <p>28. LAB/LIB HOURS: <u>4</u></p> <p>29. TRAVEL HOURS: <u>0</u></p>
<p>21. SITES INSPECTED, MONITORED, ENHANCED, ETC.: <u>---</u></p> <p>(Projects other than survey, evaluation)</p>	<p>30. ADMIN. HOURS: <u>4</u></p> <p>(RD: <u>---</u> SO: <u>4</u>)</p> <p>31. MILEAGE: <u>0</u></p>
<p>22. RECOMMENDED DETERMINATION OF EFFECT: <u>---</u> (Initial: <u>---</u>)</p> <p>(By USFS Professional CRM Specialist)</p> <p>1. No Historic Properties Affected 2. No Adverse Effect 3. Adverse Effect 4. Not Applicable: not an undertaking 6. No potential to affect historic properties</p>	<p>32. PER DIEM RATE: <u>N</u></p> <p>33. DAYS OF PER DIEM: <u>0</u></p> <p>34. COST WEIGHT FACTOR: <u>9</u></p> <p>35. COST (CODE): <u>A</u></p> <p>or</p> <p>36. ACTUAL COST: <u>5</u></p>
<p>37. REMARKS/CONTINUATION from page 1.</p> <p>Individually the cabins lack sufficient association with historic events or trends, or persons significant in our past. None represents the distinctive characteristics of a type, period, or method of construction, or represents the work of a master, or possesses high artistic values. Because the majority of cabins in each tract are less than 50 years old or have been modified substantially within the last 40 years, neither tract forms a distinguishable historic entity. The 88 cabins are considered Not Eligible for the National Register of Historic Places.</p>	

C. Endangered Species Act Consultation

Copy of Letter Initiating Formal Consultation with FWS, January 17, 2007

Steve Spangle
Field Supervisor
Arizona Ecological Services
U. S. Fish and Wildlife
1321 W. Royal Palm Road, Suite 103
Phoenix, AZ 85021-4951

Dear Steve:

I am writing to request formal consultation between the U.S. Forest Service and the U.S. Fish and Wildlife Service regarding a project in the Pinaleño Mountains. The proposed action is to re-issue the permits for the cabins at Turkey Flat and Old Columbine Summerhome Areas. Consultation will involve the effects of this project to Mount Graham red squirrels (*Tamiasciurus hudsonicus grahamensis*), Mexican spotted owls (*Strix occidentalis lucida*), and their critical habitat, and the Apache trout (*Oncorhynchus apache*).

The enclosed assessment determined that cabin permit renewals may affect, and are likely to adversely affect, the Mount Graham Red Squirrel, will not affect its designated critical habitat, may affect, but are not likely to adversely affect the Mexican Spotted Owl, its critical habitat, and the Apache Trout.

If you have any questions concerning this assessment, please contact Anne Casey, Safford Ranger District Biologist (928-348-1962), or Tom Skinner, Forest Wildlife Program Manager, here in my office (520-388-8371).

Sincerely,

JEANINE A. DERBY
Forest Supervisor
cc: Safford District Ranger

Copy of Letter to U.S. Fish and Wildlife Service -Re: Newly Discovered Midden at Turkey Flat

Subject: Turkey Flat Midden Update

Re: Summerhome Permit Renewal, Baseline Change

To: Jim Rorabaugh, Marit Alanen, Toni Strauss, Tim Snow

Hello, all—

During tree-marking activities for the Special Use Area Thinning, the Safford Ranger District Forester (Lisa Angle) found a new Mount Graham red squirrel midden within the Upper Turkey Flat summerhome area. This midden is located along the road into the summerhome area (UTM 12 S 610887, 3610668; see attached map). On June 23, 2008, the District Biologist (Anne Casey) accompanied Ms. Angle to the area. The summerhome area was then swept to search for additional middens, but none were found. In regards to the thinning project, a 92-foot buffer will be protected around the midden site; no thinning activities will occur within the buffered area.

Because this squirrel midden represents a change in the baseline for the Summerhome Permit Renewal (Consultation # AESO/SE 22410-2007-F-0163), additional information regarding the condition of the middens and potential effects from the continued existence of the summerhomes is provided below.

The midden is set at the base and inside an opening in a mature Gambel oak, which is approximately 3 feet from this dirt access road. The midden is currently active and fluffy in texture; there is fresh sign of feeding, with cone scales, cone cobs, and partially-eaten cones in and around the midden site. There is a high amount of sign of Abert's squirrels in the area around the summerhomes themselves.

The midden site is located approximately 20 m from the nearest cabin, 30 m from Swift Trail (Hwy 366), and 1 m from the entrance road. Because it is so near the turn-off point from Swift Trail, traffic is likely to be traveling slowly in this location. However, the area will also receive both incoming and outgoing traffic. Because this squirrel is likely to forage on both sides of the entrance road, there is potential for lethal take due to roadkill.

Ongoing management for this area will include a yearly monitoring session. This monitoring will occur on a weekend when the summerhome area is expected to be busy (i.e., a holiday weekend, weekends of large gatherings, etc.). Monitoring will allow Forest Service personnel to assess midden activity and whether activities occurring in the area may have harmful effects on the midden or squirrel.

If further information is needed, please contact me at the office (928-348-1962) or by cellphone (XXX-XXX-XXXX).

Sincerely,

Anne L. Casey
District Biologist

Biological Opinion, U.S. Fish and Wildlife Service

United States Department of the Interior
U.S. Fish and Wildlife Service
2321 West Royal Palm Road, Suite 103
Phoenix, Arizona 85021-4951
Telephone: (602) 242-0210 FAX: (602) 242-2513

In Reply Refer To:
AESO/SE
22410-2007-F-0163

August 18, 2008

Ms. Jeanine Derby
Forest Supervisor, Coronado National Forest
300 West Congress, 6th Floor
Tucson, Arizona 85701

RE: Mount (Mt.) Graham Summerhome Special Use Permit Residence Renewals

Dear Ms. Derby:

Thank you for your request for formal consultation with the U.S. Fish and Wildlife Service (FWS) pursuant to section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), as amended (Act). Your request was dated January 17, 2007, and received by us on January 18, 2007. At issue are impacts that may result from the proposed Mt. Graham Summerhome Special Use Permit Renewals located in the Pinaleno Mountains in Graham County, Arizona. The proposed action is likely to adversely affect the Mt. Graham red squirrel (*Tamiasciurus hudsonicus grahamensis*) (MGRS).

In your letter you requested our concurrence that the proposed action may affect, but is not likely to adversely affect, the Mexican spotted owl (*Strix occidentalis lucida*) (MSO) and its critical habitat (CH), and the Apache trout (*Oncorhynchus apache*). Our concurrences are contained in Appendix A.

This biological opinion is based on information provided in the January 17, 2007, biological assessment and evaluation, the project proposal, telephone conversations, meetings among our staffs, field investigations, and other sources of information. Literature cited in this biological opinion is not a complete bibliography of all literature available on the species of concern, special use permits and effects, or on other subjects considered in this opinion. A complete administrative record of this consultation is on file at our Phoenix Field Office.

Re: Issue Special-Use Permits for Safford Ranger District Recreation Residences

United States Department of the Interior
U.S. Fish and Wildlife Service
2321 West Royal Palm Road, Suite 103
Phoenix, Arizona 85021-4951
Telephone: (602) 242-0210 FAX: (602) 242-2513

In Reply Refer To:
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August 18, 2008

Ms. Jeanine Derby
Forest Supervisor, Coronado National Forest
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RE: Mount (Mt.) Graham Summerhome Special Use Permit Residence Renewals

Dear Ms. Derby:

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CONSULTATION HISTORY

- March 10, 2006: Received letter from Coronado National Forest (Forest) asking for comments on the environmental analysis for re-issuance of special use permits for the summerhomes on Mt. Graham.
- November 28, 2006: Received draft biological assessment and evaluation (BAE) from Safford Ranger District. Returned with staff comments. Verbal discussion between our respective staff clarified concerns and ideas.
- January 24, 2007: Received final BAE from Safford Ranger District (dated January 17, 2007).
- March to June 2007: Updated the draft biological opinion after review of the final Nuttall-Gibson Complex biological opinion (#02-21-04-M-0299).
- July 11, 2007: Mutually agreed on a 90-day extension.
- July 24, 2007: Our respective staff met at your Safford office to update and clarify additional information for this consultation and discussed possible meetings with respective legal representatives regarding actions that could be taken under the Arizona-Idaho Conservation Act.
- July 31, 2007: Received an e-mail from Anne Casey of your staff clarifying elements of the proposed action and environmental baseline.
- September 4, 2007: Our respective staff met at your Safford office to discuss conservation measures and future Forest minimization plans for MGRS.
- August 17, 2007: Received maps of cabin locations in each summerhome area.
- December 13, 2007: Our Draft Biological Opinion was sent.
- June 5, 2008: We received your comments on the Draft Biological Opinion and a request to extend the consultation period to August 15, 2008.
- June 24, 2008: We received an electronic mail from Anne Casey of your staff that a new MGRS midden had been found in the upper Turkey Flat Summerhome area.
- August 4, 2008: Additional discussions were held and we received an electronic mail from Anne Casey of your staff that remaining issues had been resolved.

BIOLOGICAL OPINION

DESCRIPTION OF THE PROPOSED ACTION

You propose to re-issue the special use permits for two summerhome areas (Old Columbine and Turkey Flat) located in the Pinaleno Mountains (the Grahams, or Mt. Graham) for the next 20 years (January 1, 2009 through December 31, 2028). The proposed action would permit the continuance of human-use patterns currently in effect in these areas by allowing the current cabins/structures to remain on the landscape and continue to be occupied.

The project area consists of two parts: the approximately 25 acres of mixed-conifer in the Old Columbine area and about 52 acres in the predominately ponderosa pine and pine-oak types in the Turkey Flat area. Both summerhome areas consist of cabins and associated structures scattered through a forested landscape. A total of 14 and 74 summerhomes will be re-permitted in the Old Columbine and Turkey Flat areas, respectively. Associated existing structures (outhouses, water tanks, a community-use building) occur within the Old Columbine and Turkey Flat summerhome areas, with the water tank for Turkey Flats located on the farthest, southwestern edge of the summerhome area boundary. Both summerhome areas are reached by use of State Highway 366 (Swift Trail). Old Columbine is reached via a short access road, and Turkey Flat sits on both sides of the Swift Trail on a relatively gentle slope. The Old Columbine summerhomes are clustered closely together due to the small, level site and the steep surrounding terrain; summerhomes in Turkey Flat occur over a larger area. Four maps of the summerhome areas are provided in Appendix D.

In the Old Columbine summerhome area, resident presence involves light to moderate use in spring and fall and heavier use in the summer, with many people and vehicles present. Winter residential use is not permitted between November 15 and April 15, annually. An occasional, foot-traffic only maintenance visit is allowed for owners to check for leaks at their cabins. This has typically been one daytime visit by a few cabin owners, annually. In the Turkey Flat area, heavy (summer) to moderate and lighter (spring, fall, and winter), year-round use is typical.

Your permitting process ensures that all permittees are in compliance with their permits and that no unauthorized uses are occurring. Prior to a new special use permit being issued, each recreational residence will be inspected by the Forest Service to confirm that occupancy is in compliance with the terms and conditions of the expiring permit. All summerhome residents (and visitors) are made aware of all Forest restrictions and rules, particularly those involving fire activity levels and warnings. Permit terms include, but are not limited to: use of bear-proof garbage containers; pets must be leashed while within Forest boundaries (including summerhome areas); all motorized vehicle travel must occur only on designated roads; no damage (hangings, nails, wires, etc.) will occur to live trees; no birdfeeders of any type will be permitted; and no additional buildings or additions will be built. Permittees are required to remain in compliance with these permits. A process is in place to resolve instances of non-compliance. You note that the primary use observed by summerhome residents is generally contained within the immediate area of the two summerhome sites, Riggs Lake, and travel on Swift Trail between the two, primarily during the summer months (Anne Casey, personal communication 2007).

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CONSERVATION MEASURES

The following conservation measures are included in the proposed action and act to reduce or offset adverse effects of the summerhomes on the MGRS and its CH, or to monitor those effects:

1. You will begin planning for conifer seedling plantings in addition to the ones already underway in burned areas of the MGRS Refugium. Additional seedlings within the high-severity areas will remain top priority, as these areas are most in need of revegetation. Future planting efforts may include areas that were burned at moderate severity.
2. Middens found within the two summerhome areas will be assessed twice each year for activity levels and summarized in a yearly report to the FWS.
3. You will meet with your legal representatives regarding the terms of the Arizona-Idaho Conservation Act of 1988 (AICA), particularly regarding your legal obligations and authorities under this congressional act. We agree to meet and discuss our understandings of the AICA at a future time. We believe this to be a conservation measure, as it will assist both agencies in planning future Forest projects that will assist with recovery and continuance of the species with a minimum of adverse effects.

STATUS OF THE SPECIES AND CRITICAL HABITAT

In 1987, we listed the MGRS as endangered (52 FR 20994). The final rule concluded that MGRS was endangered because its range and habitat were reduced, and its habitat was threatened by a number of factors, including the (then) proposed construction of an astrophysical observatory, occurrences of catastrophic wildfires, proposed road construction and improvements, and recreational developments at high elevations on the mountain. The rule noted that MGRS might also suffer due to resource competition with the introduced Abert's (tassel-eared) squirrel (*Sciurus aberti*). In 1990, we designated critical habitat for the MGRS (55 FR 425) (MGRS CH). We finalized the first MGRS Recovery Plan in 1993; it is currently undergoing revision.

On January 5, 1990, we designated MGRS CH (55 FR 425-429). MGRS CH includes three areas: the area above 10,000 feet in elevation surrounding Hawk and Plain View peaks and a portion of the area above 9,800 feet; the north-facing slopes of Heliograph Peak above 9,200 feet; and the east-facing slope of Webb Peak above 9,700 feet. The main attribute of these areas at that time was the existing dense stands of mature (about 300 years) spruce-fir forest. The MGRS Refugium established by the AICA is considered to have the same boundary as the designated MGRS CH boundary (about 2,000 acres). Unfortunately, most of the habitat in the refugium and in CH has been devastated by wildfire and insect damage. There remains a small, unknown amount of habitat in the Refugium (A. Casey, personal communication).

Our biological opinion (BO) pursuant to section 7 of the Act for the proposed astrophysical development and Forest Management Plan was completed on July 14, 1988. The Forest

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Management Plan was found not to jeopardize the continued existence of MGRS; but the proposed seven-telescope astrophysical development was found to jeopardize the continued existence of MGRS. Three reasonable and prudent alternatives were described, but before the Forest Service (FS) agreed to any, the AICA was passed by Congress. It mandated the third reasonable and prudent alternative with some modifications. It authorized the construction of three telescopes on Emerald Peak, necessary support facilities, and an access road to the site. The law further required the University of Arizona (UA), with the concurrence of the Secretary of the Interior, to develop a management plan for the MGRS. Construction of additional telescopes will require a new section 7 consultation. The 1988 BO established the MGRS Refugium; the boundary of which became the boundary for MGRS critical habitat.

Reasonable and prudent alternative 3 in the 1988 BO included removal of the summerhomes at Columbine; however, section 605(a) of the AICA allowed continued special use authorizations for the Columbine summerhomes and the Arizona Bible Camp for the duration of the term of the permits in place at that time. The AICA also mandated that prior to the "termination, nonrenewal, or modification" of those authorizations, the Secretary of Agriculture shall, with assistance from the FWS, conduct a biological study to determine the effects of such authorizations upon the MGRS and other threatened or endangered species. The current proposed action does not include termination, nonrenewal, or modification of those special use permits, hence that study is not required prior to implementation. Section 605(a) of the AICA goes on to require the Secretary of Agriculture to initiate consultation with the FWS regarding the "termination, nonrenewal, extension, or modification" of the special use authorizations.

MGRS are small, grayish-brown arboreal rodents with a rusty to yellowish tinge along the back (Spicer *et al.* 1985). Their tails are fluffy and the ears are slightly tufted in winter (Spicer *et al.* 1985). In summer, a thin, black lateral line separates the upper parts from the whitish underparts. The cheek teeth number 16 (P1/1, M3/3), are low-crowned and tuberculate (with small knob-like processes), and the skull is rounded, with the postorbital process present (Hoffmeister 1986). The species ranges from 10.8 – 15.4 inches in total length and from 3.7 – 6.3 inches in tail length (Gunnell 1987).

First described in 1894 by J. A. Allen, the MGRS type specimen is from the Pinaleno Mountains, Graham County, Arizona. Allen (1894) designated it as a separate subspecies based on pelage (fur) differences and its isolation for at least 10,000 years from other red squirrel populations. The MGRS is slightly smaller than the Mogollon red squirrel (*T. h. mogollonensis*) of northern Arizona in body measurements including total body, hind foot, and skull length (Hoffmeister 1986). The skull is also narrower postorbitally than that of *T. h. mogollonensis*. Hoffmeister (1986) found no sexual dimorphism in measurements of adult MGRS. Based on measurements from 10 specimens, Hoffmeister (1986) calculated an average total length of 13.3 inches, body length of 7.8 inches, and tail length of 5.4 inches. Average adult weight from nine specimens was 236.4 grams (Froehlich 1990).

Although Hoffmeister (1986) thought the subspecies was not strongly differentiated from the Mogollon red squirrel, he (1986) and Hall (1981) retained the subspecies designation. Research with both protein electrophoresis (Sullivan and Yates 1995) and mitochondrial DNA (Riddle *et*

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al. 1992) has provided data that, in conjunction with morphological and ecological considerations, demonstrate that MGRS is a distinct population that deserves subspecific status.

Found in the southernmost portion of the range of the red squirrel, MGRS is found only in the Pinaleno Mountains. MGRS inhabit a narrow selection of habitats in the high-elevation areas that support primarily Engelmann spruce (*Picea engelmannii*) and corkbark fir (*Abies lasiocarpa* var. *arizonica*); in the mixed-conifer stands dominated by Douglas fir (*Pseudotsuga menziesii*), with white fir (*Abies concolor*) and Mexican white pine (*Pinus strobiformis*) sub-dominants; and in the ecotone life zone between these areas. MGRS apparently do not inhabit pure stands of ponderosa pine (*Pinus ponderosa*) (U.S. Fish and Wildlife Service 1992). With the relatively recent loss of almost all the higher-elevation habitat in the spruce-fir zone due to wildfire and insect damage, MGRS now occur primarily in the mixed-conifer zone on the mountain but also in remaining patches of spruce-fir.

MGRS create middens, which are areas that consist of piles of cone scales in which squirrels cache additional live, unopened cones as an over-wintering food source. Placement of these middens tends to be in areas with high canopy closure near food sources (e.g. Douglas fir, corkbark fir, and Engelmann spruce). This type of placement allows specific moisture levels to be maintained within the midden, thereby creating prime storage conditions for cones and other food items, such as mushrooms, acorns, and bones. They also seem to prefer areas with large snags or downed logs that provide cover and safe travel routes, especially in winter, when open travel across snow exposes them to increased predation.

Threats facing MGRS include predation, loss of habitat due to native and exotic insect infestations (Koprowski *et al.* 2005), direct mortality and loss of habitat and middens due to large-scale wildfires (Koprowski *et al.* 2006), loss of habitat due to human factors (e.g., disturbance, conversion to roads, trails, and/or recreation sites, permitted special uses, etc.; U. S. Fish and Wildlife Service 1992), loss or reduction of food sources due to drought, and apparent dietary and territory competition with Abert's squirrel, which were introduced in the 1940s by the Arizona Game and Fish Department (AGFD) (Edelman *et al.* 2005).

MGRS historically resided predominantly in the upper elevation and the ecotone life zones, with some middens located in the mixed-conifer life zone. Most of the habitat was above about 8,000 feet in elevation. That spruce-fir vegetation life zone is now greatly reduced in distribution due to two large, catastrophic wildfires (Clark Peak in 1996 and Nuttall-Gibson Complex in 2004) and a four-insect epidemic that devastated the spruce-fir ecosystem (1996 to present). MGRS are now primarily found at lower elevations, and more middens are found in the mixed-conifer life zone than before. Some drainage bottoms reach well down the mountain into mixed-conifer and ponderosa stands, which is believed to have resulted in closer association and likely more resource competition between MGRS and introduced Abert's squirrel (T. Snow personal communication 2007). As recently as the 1960s, MGRS possibly ranged as far east as the Turkey Flat area and as far west as West Peak, but are now located only as far west as Clark Peak. A local extirpation occurred on West Peak, possibly due to a wildfire in the mid-1970s that isolated the West Peak subpopulation from the rest of the range and destroyed existing red squirrel habitat that has not recovered to date (U.S. Fish and Wildlife Service 1992).

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Observations indicate that MGRS eat: (1) conifer seeds from closed cones, (2) above-ground and below-ground macro-fungi and rusts, (3) pollen (pistillate) cones and cone buds, (4) cambium of conifer twigs, (5) bones, and (6) berries and seeds from broadleaf trees and shrubs. Each food is used seasonally; pollen and buds in the spring, bones by females during lactation, fungi in the spring and late summer, and closed cones low in lipids in the early summer. Closed, live-cut cones high in lipids are stored for winter-time use (Smith 1968).

MGRS eat seeds and store live cones from Englemann spruce, white fir, Douglas-fir, corkbark fir, and white pine. Midden surveys indicate that Englemann spruce and Douglas-fir are the most common tree species supplying food to MGRS. Douglas-fir, generally a consistent cone producer (Finley 1969), is important in the Pinalenos, especially in areas where it co-exists with Englemann spruce, which is more prone to cone crop failure. Use of ponderosa pine seeds or caching ponderosa pine cones by MGRS is extremely limited, probably due to microclimate considerations. Cone caching and consumption of cone seeds by red squirrels have been reported in more northerly latitudes (Hatt 1943, Finley 1969, Ferner 1974). The number of mature seed trees per territory needed to supply MGRS food requirements in the Pinaleno Mountains has not been determined. Miller (1991) found that nutritional values of seeds from several conifer species in the Pinalenos vary seasonally and by tree species.

MGRS also frequently eat fungi (Froehlich 1990). Miller (1991) analyzed the nutritional content of the three above-ground species of mushrooms eaten by MGRS. Percent crude protein and percent digestible protein were higher than all conifer seeds except Englemann spruce in summer (Miller 1991). Truffle protein content also was as high as some conifer seeds per unit weight (Smith 1968). Mushrooms and truffles may take less effort to eat than extracting seeds from cones. Combined with information on nutritional values, this may explain in part the relative importance of fungi in the diet.

In other populations studied, red squirrels generally breed from February through early April. Nests can be in a tree hollow, a hollow snag, a downed log, or among understory branches of a sheltered canopy. Nests may be built in natural hollows or abandoned cavities made by other animals, such as woodpeckers, and enlarged by squirrels (U.S. Fish and Wildlife Service 1992). In the Pinalenos, snags are important for cone storage as well as nest location. Both nests and stored cones have been found in the same log or snag. Froehlich (1990) found that MGRS built 60 percent of their nests in snags, 18 percent in hollows or cavities in live trees, and 18 percent in logs or underground. Only four percent of nests were bolus grasses built among branches of trees.

In red squirrel populations studied, trends in age-specific red squirrel survivorship demonstrate a classic mammalian Type III survivorship curve (Steele 1998) in which mortality is greater than 60 percent during the first year of life, about half that rate during the second year of life, followed by relatively high survivorship and constant mortality through the adult years (Kemp and Keith 1970, Davis and Sealander 1971, Rusch and Reeder 1978, Halvorson and Engeman 1983, Erlen and Tester 1984). Juvenile survival during the first three months of age is markedly lower than survival is for adults (Boutin and Larsen 1993, Stuart-Smith and Boutin 1995a), but often approaches adult survival levels by the first winter of life (Stuart-Smith and Boutin 1995a). Survivorship is often higher for females than males (Boutin and Larsen 1993, Halvorson and

Engeman 1983, Erlien and Tester 1984). Recent studies indicate that MGRS differ in survivorship from red squirrels in other parts of their range and that mortality is relatively high during the winter. Koprowski (March 2006 recovery team meeting minutes) determined that up to 50 percent of adults and yearlings perish from December to June. Additional studies by Koprowski (2005a) further indicate that MGRS typically survive less than one year in the Pinaleno Mountains, with no difference in survivorship between males and females. The mean survivorship of MGRS is 251 days, and only 20 percent of them survive to the second year of reproduction. Maximum longevity for the species in the wild is reported to be 10 years (Walton 1903). Studies of radio-collared animals suggest that predation accounts for a large majority of mortality in red squirrels (Kemp and Keith 1970, Rusch and Reeder 1978, Stuart-Smith and Boutin 1995a&b, Kreighbaum and Van Pelt 1996, Wirsing *et al.* 2002); however, the availability of alternative prey for predators (Stuart-Smith 1995a), availability of food for red squirrels (Halvorson and Engeman 1983, Wirsing *et al.* 2002), and variation in vigilance and use of open areas by individual squirrels (Boutin 1995b) has been suggested to predispose some animals to higher susceptibility to predation.

Results from research conducted since 1993 indicate that female MGRS go into estrus for about six hours on one day each year. MGRS live a shorter life (about 251 days) than other subspecies of red squirrels (four years) and most MGRS only reproduce once in their life. Female MGRS give birth to fewer young (two) compared to other red squirrels (three or more) (Koprowski, unpublished data).

Mammalian predators of MGRS include mountain lions, black bear, bobcat, coyote and gray fox (Hoffmeister 1956, Coronado National Forest 1988). On Mt. Graham, a bobcat was observed stalking a MGRS (Schauffert *et al.* 2002) and a gray fox captured an adult female MGRS (24 Feb 2003, Koprowski, unpublished data). Avian predators of MGRS are likely goshawks, red-tailed hawks, MSOs, great horned owls, and Cooper's hawks (Coronado National Forest 1988, Schauffert *et al.* 2002). On Mt. Graham, Kreighbaum and Van Pelt (1996) reported that four juvenile MGRS were killed by raptors during natal dispersal. Additionally, a MSO was documented killing one juvenile MGRS near the natal nest (Schauffert *et al.* 2002). During Fall-Winter 2002-2003, raptors accounted for more than 75 percent of over 30 mortalities of MGRS. It has been estimated that MGRS mortality is higher (80 percent to predation) than other red squirrels (Koprowski, unpublished data).

The red squirrel is highly territorial (C. Smith 1968), and the concept of one squirrel per midden is widely accepted and used for MGRS management (Vahle 1978). Occasionally, conditions arise where more than one squirrel occupies a midden or a MGRS uses more than one midden (Froehlich 1990), but these are likely exceptional cases and usually seem to occur when food is either extremely abundant or rare.

Rangewide, multi-agency MGRS surveys, based on a sample of middens throughout the range of the MGRS, have been conducted since 1986. In 1998, the surveys were expanded from a single survey per year to two surveys per year, one in fall and one in spring. The numbers in Appendices B and C represent two different estimates (conservative and optimistic). These are derived by simple formulas used by AGFD that use the percent of active middens in each vegetation type found in the random sample and the number of known middens in each

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vegetation type. The conservative estimate uses only those middens where activity is certain; the optimistic estimates include uncertain classifications as if they were considered to be active middens. Midden surveys show increasing numbers of MGRS into 1998-2000, with peaks over 500, after which the population declined. Population estimates dropped 42 percent in 2001 as compared to 1998-2000; since that time, population estimates have shown no apparent trend, but have varied from 199 to 346 (Appendices B and C).

The MGRS Monitoring Program at the University of Arizona (UA) was established by the AICA to monitor effects of the Mount Graham International Observatory (MGIO) on the MGRS. As part of that program, Koprowski *et al.* (2005) monitored all middens in 624 acres surrounding the MGIO from 1989-2002. Middens were visited monthly from 1989-1996 and quarterly thereafter. Their study area contained 17.8 percent of all middens known in the mixed conifer forest and 66.9 percent of all middens known in the spruce-fir forest. From 1994-2002, the mixed conifer forest supported 54-83 middens, while the spruce-fir forest contained 120-224 middens. The population trend in the mixed conifer forest was found to be relatively stable from 1994-2002; however, by 2002, only two occupied middens were found in the spruce-fir forest. Population declines in the spruce-fir forest corresponded with a period of insect damage and wildfires that began in 1996 and had devastated that forest type by 2002. Census data collected by the MGRS Monitoring Program indicate a more dramatic decline than do the data of the multi-agency surveys (which have shown no apparent trends since Fall 2001 after a steep decline from 1998-2000). The differences in the results are likely due to differences of scale. The MGRS Monitoring Program has focused on a subset of the mountain in which impacts of fire and insect damage have been pronounced in the spruce-fir forest, whereas the multi-agency surveys sample the population rangewide.

Koprowski *et al.* (2005b) characterized the decline of the MGRS in their study area as catastrophic. They note that in areas of high tree mortality in Alaska and Colorado, red squirrels did not completely disappear but rather persisted in residual stands of trees where conditions remained suitable. The ability of the MGRS to survive the current catastrophic decline is unknown; however, it apparently survived a similar situation in the late 1600s. Grissino-Mayer *et al.* (1995) sampled fire-scarred trees in four areas of the Pinaleno Mountains from Peter's Flat east to Mt. Graham. The oldest trees in the spruce-fir forest were about 300 years old. They found evidence for a widespread, stand-replacing fire in 1685 that probably eliminated much of the forest atop the Pinalenos. Although the MGRS population persisted through that event and may persist through the current catastrophic event, small populations can exhibit genetic or demographic problems that further compromise the ability of the subspecies to survive. Low genetic variability in small populations is a concern because deleterious alleles are expressed more frequently, disease resistance might be compromised, and there is little capacity for evolutionary change in response to environmental change. Koprowski *et al.* (2005b) recommended management actions to increase available habitat and population size in the near and distant future. A captive breeding program was also recommended, the concept of which has been endorsed by the MGRS Recovery Team. Options for initiating that captive program are currently being explored.

In 2003, the Forest began developing the Pinaleno Ecosystem Restoration Project. This project is being designed to restore the higher elevations of the Pinaleno Mountains to conditions prior

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to the Federal policy of suppressing all fires; further the needs of native species of plants and wildlife (including threatened and endangered species); and reduce the risk of catastrophic wildfire and its devastating effects on the heavily fuel-loaded mountain range. The project, which targets primarily mixed-conifer communities, will reduce stand stocking and fuel loading and promote the more open and healthy conditions that existed before widespread, long-term (50 years or more) fire-suppression actions lead to unnatural and unhealthy forest conditions. The Pinalaño Ecosystem Restoration Project is designed in such a way as to be sensitive to the needs of MGRS; when complete, it is anticipated to strongly reduce the risk of catastrophic wildfire severely affecting the Forest and the MGRS.

The MGRS and its critical habitat have been the subject of numerous section 7 consultations since its listing in 1987. The July 14, 1988, BO on the astrophysical development and Coronado National Forest Forest Management Plan, described above, is the only jeopardy opinion issued for the species. That BO also anticipated incidental take of five MGRS per year. In a June 8, 2007, BO, we anticipated that incidental take occurred during suppression activities in the Nuttall-Gibson Complex Wildfires.

ENVIRONMENTAL BASELINE

The environmental baseline includes past and present impacts of all Federal, State, or private actions in the action area, the anticipated impacts of all proposed Federal actions in the action area that have undergone formal or early section 7 consultation, and the impact of State and private actions that are contemporaneous with the consultation process. The environmental baseline defines the current status of the species and its habitat in the action area to provide a platform to assess the effects of the action now under consultation.

Description of the Action Area

The action area is defined as the area within which effects to the listed species and its critical habitat (if any is designated) are likely to occur and is not limited to the actual footprint of the proposed action. We define the action area to be:

1. The Swift Trail from the Turkey Flat summerhome area to Riggs Lake and Forest-established recreation sites (including the Visitor Center) that occur in the mixed-conifer vegetation association;
2. the two summerhome areas (Old Columbine and Turkey Flat) and a surrounding "ring" of human use around the summerhome footprints out to 200 feet;
3. Forest roads open to the public;
4. short, level portions of hiking trails within and immediately adjacent to the summerhome areas; and
5. Riggs Lake, the picnic area, and the immediate shoreline around the lake.

Most of the action area is within mixed-conifer forest occurring at differing aspects and elevations from above 7,750 feet to over 10,000 feet. The forest in and around Old Columbine summerhome area consists of Douglas-fir, southwestern white pine, and some ponderosa pine (mixed conifer), along with species characteristic of higher elevations (corkbark fir and Engelmann spruce). The Turkey Flat summerhome area is within the edge of the drier, lower elevation conifer and brush association, leading downhill into the pine-oak vegetation type.

The current state of the Old Columbine summerhome area has been influenced by many factors. The understory within the immediate Old Columbine summerhome area is thinned out; large areas (roadways and parking) in front of these summerhomes are bare or covered in short, mowed grass. Fuel reduction efforts continue in the Turkey Flat summerhome area. Hazard trees are removed when they pose a danger to humans; insect infestations throughout the mountain have left many dead and dying trees in this area; and drought and winds have caused additional damage and loss of trees. In addition, the eastern and southern sides of the area have been treated under the Pinaleno Ecosystem Management project (PEM), and the west end received some fire damage during the 2004 Nuttall-Gibson Complex wildfire. This area of forest has been struggling against many factors, and an overall loss of live trees is prevalent. The area in the center of Old Columbine is a meadow, likely pre-existing but broadened during the cabin-building phase. The meadow does not serve as functional squirrel habitat, and the surrounding area is not currently supporting high densities of squirrels due to many natural stresses on the trees. Outside the footprint of the Old Columbine summerhome area is the surrounding, relatively intact mixed-conifer forest. Current fuelwood thinning operations (file #02-12-05-I-0818) in a buffer zone surrounding this summerhome area are designed to reduce fire risk while not causing adverse effects to wildlife.

Large trees are scattered among the cabins and in the forest surrounding the Turkey Flat summerhome area. They provide a shady ponderosa pine and pine-oak canopy over most of the cabins. Some understory brushy growth remains between cabins and groupings of cabins on both sides of the Swift Trail. The Turkey Flat summerhome area is also located in pine-oak vegetation, with the resulting loss of canopy and increased aridity. Designated Forest roads and trails are bounded by generally intact forested stands, with the exception of those passing through any areas severely burned by the 2004 Nuttall-Gibson Complex wildfire. The forest surrounding Riggs Lake is large and intact, with a denser, more interlocked canopy, several large-sized downed logs per acre, a more diverse and full understory, and the retention of a generally cooler, moister understory regime that favors MGRS reproductive needs.

A. Status of the Species and Critical Habitat Within the Action Area

Based on all known (historical and present) midden locations, only two middens have been found in the vicinity of the Turkey Flat summerhome area. One midden, which is currently active, is about 450 feet away from the nearest structure (a water tank) and more than 700 feet away from any of the summerhomes (see Appendix D). It is over the top of a steep, rugged, northern-aspect slope and in a stand of mixed-conifer, a spot of vegetation cooler and moister than the summerhome area vegetation. This hill is not easily climbed and has no trail, discouraging casual access by people. Because of its specific location and isolation from people, we believe project effects to this midden and its associated MGRS are unlikely to occur (discountable). The second midden, which was discovered in June 2008, is set at the base and

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inside an opening in a mature Gambel oak. The midden is currently active and fluffy in texture; there is fresh sign of feeding, with cone scales, cone cobs, and partially-eaten cones in and around the midden site. It is approximately 65 feet from the nearest cabin, 100 feet from Swift Trail (Hwy 366), and three feet from the dirt entrance road into the upper Turkey Flat summerhome area (not illustrated in Appendix D). The midden is located in pine-oak woodland, which is atypical for this species. After the midden was found, a Forest Service biologist surveyed the remainder of the summerhome area for MGRS middens. No additional middens were found.

The mixed-conifer forest surrounding and extending beyond the Old Columbine summerhome area westward across the mountain tops to Riggs Lake is predominately suitable MGRS habitat (with the exception of those portions of the mountain that burned severely in the 2004 Nuttall-Gibson Complex wildfire). Within the Old Columbine summerhome area, two midden locations are known; one located just at the entry point of the road that turns into the summerhome parking area and another located about 15 feet from an outhouse that receives occasional summertime use by people (see Appendix D). A third midden is located outside the summerhome area, on a bench that lies about 100 feet below the steep, rocky hillside just off the edge of the community building that receives occasional summertime use. This midden is not easily seen from the community building; there is no easy or desirable way down to it. The steep and rocky hillside right off the edge of the building has no trail and is discouraging to recreational hikers.

Because these three middens had not been surveyed for at least three or more survey periods, Coronado National Forest district wildlife staff conducted site visits to them in June 2006 and again in September 2007. They determined that one midden had disappeared (there was no cone scale mound, no scales indicating recent feeding, and no signs that the site had been used by a MGRS for more than three survey periods) (T. Snow, personal communication) due to the small island of conifer trees around it that naturally died and fell, exposing the midden site to more intensity and duration of sunlight and heat than when the trees were alive. The dryness and heat on this site (there are no surrounding trees; it was an "island" surrounded by bare, dry soil) will likely preclude its future use by MGRS. This "island" is right next to the dirt road and the parking area is nearby; these open areas will be maintained at current levels of openness, likely preventing the future return of conifers in this small, specific location. FWS staff visited the other two middens in October 2007 and determined them to be active.

In other parts of the action area, data from the fall midden surveys of September 2007 roughly indicate that, where habitat conditions are suitable for MGRS middens in mixed-conifer vegetation types and other cooler areas on the mountain, MGRS continue to survive and use these midden sites located near trails, some Forest roads, and in the forest surrounding Riggs Lake and other public facilities. Midden activity in other suitable portions of the action area appears to typically cycle between active and inactive states, as do middens elsewhere on the mountain as indicated by midden surveys formally conducted since 1986.

Designated MGRS CH does not occur in the two summerhome areas but is included within the action area because it is possible (but not likely) that a summerhome permittee or their visitor(s) may hike up into the Refugium area (which is also MGRS CH).

B. Factors Affecting Species Environment And Critical Habitat Within the Action Area

Both summerhome areas (the key portions of the action area) support significant levels of human presence, accompanied by varying levels and duration of human and mechanical noise disturbance. The 14 Old Columbine summerhomes receive three-season use; residents inhabit the action area from about late May to the first snow in October or November, annually. Residents do not occupy their cabins at any time, per permit, during the winter months (November 15th through April 15th), although an occasional maintenance visit from concerned cabin owners to check for leaks or damage is allowed during winter. Typical use here peaks during the late spring and summer months, tapering off to light use in the fall. Typically two or three of the Old Columbine cabins are occupied on the weekends during MGRS breeding and foraging seasons (Spring and Fall), particularly in good weather. On weekdays, there may be none to four or five people in residence. During a typical Fourth of July holiday (summer), there have been as many as 25 people in the immediate summerhome area. At Turkey Flat, due to year-round access, about 95 percent of the 74 cabins are used at some point in the year. Most cabin owners use their cabins for a week or two during the summer (two to six family members) and for a couple of fall weekends, and occasionally in winter. About 10 cabins are used all summer long by retired cabin owners (two family members) with occasional visits from other family members over one summer weekend. As many as 50 people were noted in the immediate Turkey Flat summerhome area on a typical Fourth of July holiday weekend (D. Bennett, personal communication, 2007).

The forested lands immediately encircling the small sites of relatively flat ground where each summerhome area occurs are very steep and rough terrain. Current information indicates that most residents remain close to their respective summerhome area (S. Wallace, personal communication 2007). Some residents (and likely a few of their visitors) may hike a short distance uphill on designated trails, but the elevation, the steep and rugged terrain, and the general age and abilities of the resident population make it unlikely these people use the trails very much (if at all) or leave the trail for the forest (A. Casey, personal communication 2007). Because no new summerhomes or additions will be permitted, the number of people using these portions of the action area is expected to remain at current levels (S. Wallace, personal communication 2007).

Other portions of the action area, as defined in the Environmental Baseline section above, are posted for speed limits on the roads and types of permitted activities at the sites. Bear-proof garbage containers are provided at public sites (especially picnic areas, camp sites, and Riggs Lake) and are serviced regularly by Forest Service personnel. Surveys for MGRS middens have documented many active (and some inactive) middens in the surrounding forest that supports denser, interlocking canopy and a cooler, moister climate regime deeper into the forest than that found on the edge of roads and trails mountain-wide. A few middens are known to be visible from some portions of some hiking trails, and some are very close to the edges of Forest roads, but we believe they remain relatively inconspicuous to the typical permittee. While roads and trails have a drying effect on the immediate forest edge, middens tend to be far enough away from these edges to remain active over time. No formal study has been conducted on edge effects of trails and roads on midden persistence.

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As noted in the Nuttall-Gibson Complex BO conservation measures, you are hand-planting about 9,000 conifer seedlings at appropriate elevations and densities in selected, small areas (burned by the 2004 Nuttall-Gibson Complex wildfire) in former MGRS habitat and MGRS CH deemed best suited for such plantings. This project was consulted on, and we issued our BO (#02-21-04-M-02999) on June 8, 2007. The extent of the project is uncertain but is estimated at 10 acres in 2007. Planting began in July 2007 and will continue for five to seven years (2007-2014). These seedlings are grown from seeds taken from cones collected on Mt. Graham. They remain growing in a tree nursery facility until ready for planting. Tree survival is anticipated to be at least 60 percent and likely higher, but we are aware this will depend on variable and unmanageable factors such as climate, local weather, insects, rainfall, and wildfires (L. Angle, personal communication).

As noted in the Status of the Species section above, insect destruction and catastrophic wildfire remain the biggest factors affecting MGRS CH. As noted in section B of the Environmental Baseline above, you are planting trees in MGRS CH (MGRS Refugium) and other select areas on the mountain. Planting seedlings in these areas will not realize a great short-term habitat gain, but conifer survivors will contribute to long-term cone crop and MGRS habitat formation over time.

EFFECTS OF THE ACTION

Anticipated effects resulting from the re-issuance of these permits for the next 20 years will be continued vehicle and human presence and disturbance occurring at both summerhome areas and on designated Forest roads, some light intermittent human voice noise on relatively gentle trails, and human presence and use of designated recreation sites at current, typical levels and times. This is determined by you to be light to moderate spring and fall use, heavier summer use, and no winter use at Old Columbine and areas at higher elevations due to snow loads and road closure. The Turkey Flat summerhome area will experience similar use levels, but will also experience some light winter use due to its lower elevation and greater accessibility during winter.

The active MGRS midden located about 450 feet from the Turkey Flat water tank, is located over the top of a hill, in a stand of mixed-conifer, and on the northern aspect of a slope that is not conducive to hiking or exploring. As a result, this midden and the MGRS that uses it are unlikely to be affected by activities associated with the Turkey Flat summerhomes. The second midden in the Turkey Flat area, which is also active, is about three feet from the dirt access road into the upper Turkey Flat area and about 100 feet from the nearest cabin. Because the access road at this location is close to the turnoff from Swift Trail, vehicles traveling past the midden are likely to be going fairly slowly. Nonetheless, there is some possibility of the MGRS using this midden to dart into the road and be killed or injured by a passing vehicle associated with summerhome use. The ponderosa pine and pine-oak forests at and in the immediate vicinity of the Turkey Flat summerhome area are generally thought to be unsuitable for MGRS needs. The midden in this area is highly atypical. This MGRS may not be successful at this site because of the habitat, and it is unlikely that additional MGRS will take up residence in the Turkey Flat summerhome area.

There are two MGRS middens within the Old Columbine summerhome area; one at the entry point of the road that turns into the summerhome parking area and another located 15 feet from an outhouse. We believe there have been, and will continue to be, occasional visual observations and/or non-fatal-to-MGRS interactions between individual MGRS and summerhome residents, their visitors, and (leashed) pets that may temporarily disturb or harass a MGRS that might be inhabiting or foraging within the summerhome area. One exception is the single MGRS that actively maintains and defends its midden about 15 feet away from an outhouse that receives occasional summertime (human) use. This squirrel may have become habituated to a certain level of human presence during a certain timeframe. The midden has been active for many years and was again confirmed active in both survey periods of 2007 (spring and fall) (T. Gamberg, personal observation, 2007). As a result, it has likely been occupied by a number of different MGRS, and will likely be occupied by a succession of MGRS into the future. Because of the proximity to the outhouse, MGRS using this midden are especially susceptible to harm or harassment.

Vehicle and human noise, depending on levels and proximity to a midden site, may be disruptive to MGRS, particularly during their breeding season. If noise arouses an animal, it has the potential to affect its metabolic rate by making it more active. Increased activity can, in turn, deplete energy reserves (Bowles 1995). This may be a temporary or occasional disruption. Species that are sensitive to the presence of people may be displaced permanently, which may be more detrimental to wildlife than recreation-induced habitat changes (Hammit and Cole 1987, Gutzwiller 1995, Knight and Cole 1995). If animals are denied access to areas that are essential for reproduction and survival, that population will most likely decline. Likewise, if animals are disturbed while performing behaviors such as foraging or breeding, that population will also likely decline (Knight and Cole 1995).

At least some MGRS in and very near portions of the action area appear to have become relatively habituated to the presence and noise levels of people and machinery that typically occur seasonally on the mountain (A. Casey, T. Gamberg, personal observation, 2007). Mountain-wide, active middens are known to be visible from trails; others are just beyond visual range from Forest roads (depending on cover, from 3 yards out). Other individual MGRS may respond differently and could be adversely affected or excluded from areas of intense human activities such as would occur during the summer months of high use at the Old Columbine summerhome area.

We believe that most of the active MGRS middens, as indicated by more than 20 years of midden surveys, appear to be far enough away from Forest roads, trails, and designated recreational sites (picnic and camp sites and Riggs Lake) to remain active in and around these sites. We note new middens are created in and around these recreational sites and that other middens in these same areas become inactive. Exact causes are unknown at this time, but continued creation of new middens suggests MGRS are continuing to inhabit these areas. Summerhome residents (and their visitors) will travel higher up the mountain on Forest roads and use designated trails and recreational sites, such as Riggs Lake, where MGRS are more common, and where interactions with MGRS are more likely to occur. This activity level has been ongoing since the cabins were built and occupied (in the 1940s) and is believed to be stable in noise levels and times for the last 20 years, at least (A. Casey, personal communication 2007).

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Another effect of renewing these permits will be some level of continued difficulty for the Forest to implement the Coronado National Forest Wildfire Use Amendment, which involves using natural-ignition fires (i.e., lightning-caused fires) to burn areas that are typically adapted to certain (non-catastrophic) fire regimes. This difficulty in fuel reduction efforts may indirectly affect MGRS when catastrophic wildfires burn in suitable MGRS habitat surrounding the summerhome areas. In the Old Columbine summerhome area, fuel-reduction thinning operations have recently involved dropping only designated hazard trees near the cabins; the greater thinning/clearing was conducted years ago.

The Turkey Flat summerhomes are located at the high end of a canyon, leaving them very vulnerable to wildfire. Typical fire behavior in this vegetation type, exposure, and dryness suggest that fires that start downhill of the summerhomes will burn up the canyon (especially in the dense fuels that exist now) into the cabins. The Forest is currently conducting fuel-reduction work in this summerhome area and is taking measures to ensure homeowner safety, as far as can be done in this particular circumstance.

The reissuance of these permits for the next 20 years may exclude an unknown but likely small number of individual MGRS from creating new middens in the Old Columbine summerhome area due to human disturbance and the continued need to reduce fuel levels around the cabins. We believe the drier vegetation association and warmer aspect of the Turkey Flat summerhome area is why MGRS rarely create middens or reside in this area. As stated previously, the midden located about 450 feet from the Turkey Flat water tank is in a highly specific site; over a hilltop, on a northern-aspect slope, and the vegetation association is a stand of mixed-conifer and is cooler and moister than the summerhome area of Turkey Flat. The other midden near the access road is in habitat highly atypical for MGRS.

There is an unknown increment of increased likelihood of wildfire and road mortality of MGRS on Forest roads due to the presence of summerhome residents (and their visitors) that might not be there but for the summerhomes. The Arizona Department of Transportation has conducted preliminary traffic counts on the Swift Trail, but no data are available at this time.

Effects to critical habitat would occur primarily from incidental use of trails by summerhome residents and visitors. Such incidental use is unlikely to have adverse effects to constituent elements of MGRS critical habitat. Those constituent elements have largely been lost due to recent fire and insect damage. Neither would incidental trail use likely affect the restoration of constituent elements.

In summary, the proposed action to re-issue the summerhome special use permits for another 20 years will directly affect one MGRS and its midden at Old Columbine, one MGRS and its midden at upper Turkey Flat, and will have indirect effects at both localities and elsewhere in the action area. However, the distribution, reproduction rate, and other demographics of MGRS in the action area are not expected to be significantly affected.

Effects of Conservation Measures

The proposed conservation measures will aid in offsetting the effects of the presence of the two summerhome areas by beginning reforestation of MGRS CH; controlling the number of

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summerhomes (and to some extent, the number of people); enforcing permitted occupancy limits and activities; and monitoring middens in the summerhome areas. In accordance with 50 CFR 402.16(b), if the monitoring of the middens in the summerhome areas reveals effects of the action in a manner or to an extent not considered in this opinion, we expect you to reinitiate consultation, at which time the conclusions herein would be reevaluated.

CUMULATIVE EFFECTS

Cumulative effects include the effects of future State, Tribal, local or private actions that are reasonably certain to occur in the action area considered in this BO. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act.

The Forest manages lands (except private) of the Pinaleno Mountains and administer projects and permits on those lands; thus, almost all activities that could potentially affect MGRS in the action area are Federal activities subject to section 7 consultation under the Act.

CONCLUSION

After reviewing the current status of the MGRS, the environmental baseline for the action area, the effects of the proposed re-issuance of Special Use Permits for the Mt. Graham summerhomes at Old Columbine and Turkey Flat, and the cumulative effects, it is our biological opinion that the actions, as described, are neither likely to jeopardize the continued existence of MGRS, nor result in destruction or adverse modification of critical habitat. This biological opinion does not rely on the regulatory definition of "destruction or adverse modification" of critical habitat at 50 CFR 402.02. Instead, we have relied upon the statutory provisions of the Act to complete our analysis with respect to critical habitat.

Our findings are based on the following:

- MGRS remains a highly endangered species, although MGRS middens (and by extension, MGRS population numbers) in the action area appear to be relatively stable. Declines in MGRS population numbers across the Pinaleno Mountains reflect recent large-scale habitat losses due to wildfires and insect damage (T. Snow personal communication Appendix B).
- MGRS distribution in the action area appears to be stable; surveys note that the same areas support new middens even as old middens are abandoned.
- Human occupancy in the Old Columbine summerhome area is restricted during the winter (November 15th through April 15th) to an occasional maintenance-type visit from concerned cabin owners to check for leaks or damage.
- Although two active middens currently occur in the Turkey Flat summerhome area, one is in an area not expected to be affected by summerhome activities, and the other is in habitat not typical for the species. In general, the forested area in the Turkey Flat

summerhome area is hotter and drier than mixed-conifer sites mountain-wide that support MGRS. The ponderosa pine and pine-oak vegetation types in the Turkey Flat area are not the preferred MGRS habitat.

- All permittees are required to be in compliance with their permits.
- A process is in place and will be followed to correct instances of non-compliance.
- The only anticipated effects to critical habitat would occur through occasional trail use of the Refugium by summerhome residents and visitors. Such use is unlikely to have adverse effects.
- The proposed action includes conservation measures that are intended to minimize or offset adverse effects of reissuing permits for the summerhomes.

In conclusion, we believe the MGRS is critically endangered, and recent insect outbreaks, drought, and catastrophic wildfires have been the major factors that, over time, have pushed this species nearer to extinction. The primary reason why we believe the re-issuance of the special use permits for the Mt. Graham summerhomes does not jeopardize the continued existence of MGRS or result in adverse modification or destruction of critical habitat is that these permitted structures have been occupied, and roads and trails have been used in the action area since at least the 1940s. Despite this use, MGRS have continued to breed, nest, forage, create middens, and rear young apparently in coexistence with these levels and times of summerhome permittee effects. We conclude that continued use of the summerhomes will not appreciably reduce the likelihood of the survival and recovery of the MGRS because MGRS continue to breed and maintain populations in the action area. The continued use will not be expanded; thus, it will not further reduce the distribution of the MGRS, and we are unaware of the proposed action having adverse effects on reproduction of MGRS.

The conclusions of this biological opinion are based on full implementation of the project as described in the Description of the Proposed Action section of this document, including any Conservation Measures that were incorporated into the project design.

INCIDENTAL TAKE STATEMENT

Section 9 of the Act and Federal regulations pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. "Take" is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. "Harm" is defined (50 CFR 17.3) to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. "Harass" is defined (50 CFR 17.3) as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering. "Incidental take" is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not

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intended as part of the agency action is not considered to be prohibited taking under the Act, provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement.

The measures described below are non-discretionary and must be undertaken by the FS so that they become binding conditions of any grant or permit issued to the applicant, as appropriate, for the exemption in section 7(o)(2) to apply. The FS has a continuing duty to regulate the activity covered by this incidental take statement. If the FS (1) fails to assume and implement the terms and conditions or (2) fails to require the (applicant) to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, the FS must report the progress of the action and its impact on the species to the FWS as specified in the incidental take statement. [50 CFR §402.14(i)(3)].

AMOUNT OR EXTENT OF TAKE

We anticipate that in the action area, one MGRS (associated with the one currently active midden 15 feet from an outhouse in the Old Columbine summerhome area) will be taken as a result of this proposed action. The incidental take is expected to be in the form of harassment due to human presence and vehicle and human noise at a level and duration that currently occurs in the action area. We also anticipate that one MGRS will be taken in the upper Turkey Flat summerhome area (the MGRS associated with the midden next to the access road). This MGRS is likely to be incidentally taken due to road mortality or injury. Once abandoned, this midden is unlikely to be reoccupied due to the marginal suitability of the surrounding habitat.

We believe the one midden and associated MGRS located about 450 feet from the water tank at the Turkey Flat summerhome area will not be affected by the proposed action. Although presence and activities of summerhome residents in recreational areas and on roads elsewhere in MGRS habitat outside of the summerhome areas continues to pose a low level of threat to MGRS, we do not anticipate that incidental take will occur from such activities.

EFFECT OF THE TAKE

In this biological opinion, we determine that this level of anticipated take is not likely to result in jeopardy to the species.

REASONABLE AND PRUDENT MEASURES AND TERMS AND CONDITIONS

In order to be exempt from the prohibitions of section 9 of the Act, you must comply with the following terms and conditions, which implement the reasonable and prudent measure described below and outline required reporting/monitoring requirements. These terms and conditions are non-discretionary.

The following reasonable and prudent measure, with its accompanying terms and conditions, is necessary and appropriate to minimize incidental take of MGRS:

1. You will monitor human activities and MGRS presence and activities in the summerhome areas and work with us to eliminate or minimize any human activities that are likely to result in incidental take.
 - A. You will conduct monitoring of summerhome user presence and general activity levels and types at both summerhome areas once a year, every year, through 2028. These visits will be during a busy summer weekend. The observer will note the total number of summerhomes apparently occupied in each summerhome area; an estimate of the total number of people in each summerhome area; and an estimate of existing noise or other disturbance levels and types likely to affect MGRS. A standardized form may be developed for recording these data.
 - B. You will conduct monitoring of MGRS presence or activity(s) at both summerhome areas at least two times a year, every year through 2028. A monitoring visit for MGRS shall include a thorough ground search for nests, middens, or other obvious signs of MGRS activity. This includes searching a reasonable distance out from the perimeter (as safely as can be done) of the summerhome areas. A standardized form may be developed to record these data.
 - C. If, based on the monitoring in parts A and B, incidental take appears likely to occur (or you know of a circumstance that incidental take has occurred), you shall contact us immediately and we will work together to develop alternatives that can be implemented to minimize incidental take. The results of the monitoring, including the completed survey forms and any interpretation of the data, shall be submitted as a part of the Coronado National Forest Annual Monitoring Report to this office.

Review requirement: The reasonable and prudent measures, with their implementing terms and conditions, are designed to minimize incidental take that might otherwise result from the proposed action, but will also allow assessment of whether anticipated incidental take has been exceeded. If, during the course of the action, the level of incidental take is exceeded, such incidental take would represent new information requiring review of the reasonable and prudent measures provided. The FS must immediately provide an explanation of the causes of the taking and review with the Arizona Ecological Service Office the need for possible modification of the reasonable and prudent measures.

Upon locating a dead, injured, or sick listed species, initial notification must be made to the FWS's Law Enforcement Office, (2450 W. Broadway Rd, Suite 113, Mesa, Arizona, 85202, telephone: 480/967-7900) within three working days of its finding. Written notification must be made within five calendar days and include the date, time, and location of the animal, a photograph if possible, and any other pertinent information. The notification shall be sent to the Law Enforcement Office with a copy to this office. Care must be taken in handling sick or injured animals to ensure effective treatment and care and in handling dead specimens to preserve the biological material in the best possible state.

CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information.

1. We recommend that you continue to assist us in the implementation of the MGRS recovery plan and its revisions, including providing funding for carrying out key recovery actions under your authorities.
2. We recommend that you pursue the completion of a Forest-wide consultation on wildland fire use for resource benefit and wildfire suppression activities.
3. The status of the MGRS is dire and its habitat has declined precipitously in recent years. We recommend you take immediate action to minimize or eliminate effects resulting from Forest-authorized activities (e.g. recreation, road use, etc.) in MGRS habitat and begin and continue rehabilitation and restoration of habitats destroyed by wildfire and insect damage.
4. We recommend that you plan the Pinaleno Ecosystem Restoration Project very conservatively, with the ultimate goal of recovering the MGRS while providing protection from catastrophic wildfire.
5. We recommend that you continue to participate with us and the AGFD in the bi-annual MGRS midden surveys, which provide crucial data on population trends and MGRS distribution in the Pinaleno Mountains, including the Old Columbine and Turkey Flat summerhome areas.
6. We recommend that you conduct a study to determine the effects the special-use-permitted summerhomes (and associated people, machinery, and activities) on the MGRS and other threatened or endangered species that may be affected. The study would include likely scenarios of plant and wildlife changes in response to the removal of the permitted summerhome areas, spatially and temporally. The scope of work for the study should be jointly developed by biologists from the FWS and Forest. The Arizona Game and Fish Department (AGFD) should be asked to assist with study design. The study should be consistent with section 605(a) of the Arizona-Idaho Conservation Act of 1988 (P.L. 100-696, November 18, 1988). That study, as prescribed in section 605(a), is necessary for the Forest to terminate, nonrenew, or modify the summerhome special use permits.

In order for us to be kept informed of actions minimizing or avoiding adverse effects or benefiting listed species or their habitats, we request notification of the implementation of any conservation recommendations.

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REINITIATION NOTICE

This concludes formal consultation on proposed re-issuance of special use permits in two summerhome areas (Old Columbine and Turkey Flat) located in the Pinaleno Mountains. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

We appreciate your efforts to identify and minimize effects to listed species from this project. For further information, please contact Jim Rorabaugh at (520) 670-6150 (x230) or Sherry Barrett (520) 670-6150 (x223) of my staff. Please refer to consultation number 22410-2007-F-0163 in future correspondence concerning this project.

Sincerely,

/s/Denise Baker for

Steven L. Spangle
Field Supervisor

cc: Regional Director, Fish and Wildlife Service, Albuquerque, NM (ARD-ES)
Assistant Field Supervisor, Fish and Wildlife Service, Tucson, AZ

Chief, Habitat Branch, Arizona Game and Fish Department, Phoenix, AZ
Regional Supervisor, Arizona Game and Fish Department, Tucson, AZ (Attn: T. Snow)

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**APPENDIX A
CONCURRENCES**

We concur with your determination that the proposed action may affect, but is not likely to adversely affect, the Mexican Spotted Owl (MSO), its critical habitat (CH), and the Apache trout. The rationale for these concurrences are as follows.

Mexican Spotted Owl

- Except for two acres located on the edge of the MSO Turkey Flat Protected Activity Center (PAC) where the Turkey Flat summerhome water tank exists, no summerhome facilities occur within designated MSO PACs. This PAC has been surveyed 12 times since 1990; it has been considered occupied all years but one. At least one MSO core (100 acre-area of highest-quality habitat surrounding a nest site) is known for each PAC. No MSO cores occur in proximity to the summerhome areas; they (inside designated MSO PACs) stretch out over the ridge tops of the mountain range. Based on years of survey information, habitat availability, and forest suitability for MSO, we believe it extremely unlikely that MSO would choose to roost or nest in or very close to either summerhome area. There is a slight possibility that MSO may forage in and near the summerhomes. Since MSO prefer crepuscular and nighttime foraging, we believe that human and mechanical noise disturbance will be at minimum levels during those times. We believe that any potential effects to MSO (such as porch lights left on during nighttime hours; a dog barking) are insignificant.
- We believe that distances between the summerhome areas and known MSO nest/roost sites (one or two are about two miles away; others are much farther away) are far enough and the dense vegetation and steep terrain is discouraging enough to preclude the summerhome residents "bushwhacking" through to, or even seeing, a nest/roost site. The ages and abilities of the summerhome residents (and visitors) is such that few hike any but the most gentle trails, and none is likely at all to leave the trail for the forest interior. The steep terrain and dense understory in these areas also make it unlikely that summerhome residents (and visitors) would leave the trail to walk in the direction of a nest/roost site. We believe that any potential disturbance effects to the species (an occasional hiker, off-trail, and/or passing through the area) will be insignificant.
- The likelihood of any direct or indirect effects of the proposed action on MSO CH primary constituent elements is extremely low; therefore, we believe that any effects to MSO CH will be discountable.

Apache Trout

- Apache trout populations appear unaffected by current permitted summerhome use and activities. The population occurs at least one mile from the Old Columbine summerhome area. There remains professional discussion as to whether or not the Mt. Graham Apache trout population is a hybrid; however, we include it in this consultation.

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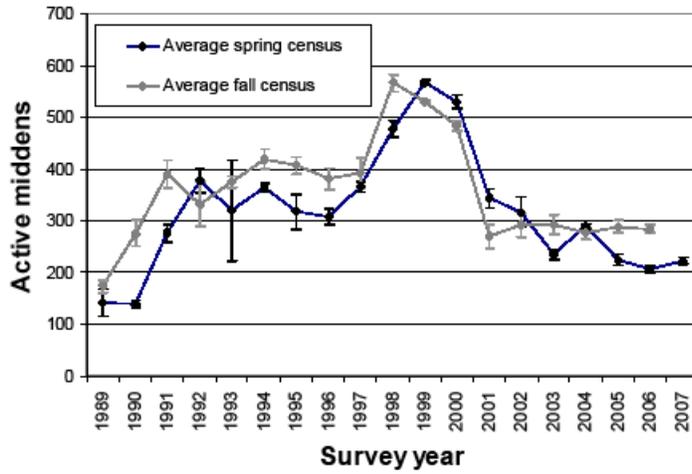
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- Maintaining both summerhome areas at current permitted use and activity levels is not anticipated to create additional runoff or siltation issues for the downstream population of Apache trout in Ash Creek; therefore, we believe any potential effects to the species are insignificant and discountable.

**APPENDIX B
MGRS MIDDEN SURVEY RESULTS**

FIGURE 1: Spring and fall census results 1989-2007. Symbols indicate occurrence of major wildfires and forest insect outbreaks. Error bars represent the conservative and optimistic estimates for each census.



**APPENDIX C
MGRS Population Estimates**

<u>Month/Year</u>	<u>Population</u>	<u>Estimate</u>
June 1986	323	
October 1987	242	
March 1988	207 (+/- 62)	
October 1988	conservative optimistic average	178 (+/- 62) 226 (+/- 62) 202
January 1989	197 (+/- 63)	
April 1989	conservative optimistic average	99 (+/- 53) 148 (+/- 59) 124
June 1989	conservative optimistic average	116 (+/- 29) 167 (+/- 32) 142
October 1989	conservative optimistic average	162 (+/- 15) 185 (+/- 15) 174
May 1990	conservative optimistic average	132 (+/- 15) 146 (+/- 16) 139
October 1990	conservative optimistic	250 300
June 1991	conservative optimistic	259 293
October 1991	conservative optimistic	364 417
June 1992	conservative optimistic	354 399
October 1992	conservative optimistic	290 374
June 1993	conservative optimistic	223 (+/- 31) 417 (+/- 31)
October 1993	conservative optimistic	365 (+/- 22) 385 (+/- 22)

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May 1994	conservative	357 (+/- 18)
	optimistic	372 (+/- 18)
October 1994	conservative	398 (+/- 11)
	optimistic	439 (+/- 11)
June 1995	conservative	283 (+/- 12)
	optimistic	352 (+/- 12)
October 1995	conservative	391 (+/- 12)
	optimistic	423 (+/- 12)
Spring 1996	conservative	292 (+/- 10)
	optimistic	323 (+/- 12)
Fall 1996	conservative	360 (+/- 12)
	optimistic	402 (+/- 12)
Spring 1997	conservative	356 (+/- 12)
	optimistic	376 (+/- 12)
Fall 1997	conservative	364 (+/- 12)
	optimistic	420 (+/- 11)
Spring 1998	conservative	462 (+/- 11)
	optimistic	492 (+/- 11)
Fall 1998	conservative	549 (+/-11)
	optimistic	583 (+/-11)
Spring 1999	conservative	562 (+/-12)
	optimistic	571 (+/-11)
Fall 1999	conservative	528 (+/-11)
	optimistic	531 (+/-11)
Spring 2000	conservative	516 (+/-11)
	optimistic	544 (+/-11)
Fall 2000	conservative	474 (+/-11)
	optimistic	493 (+/-11)
Spring 2001	conservative	326 (+/- 12)
	optimistic	362 (+/- 12)
Fall 2001	conservative	247 (+/- 12)
	optimistic	292 (+/- 11)
Spring 2002	conservative	288 (+/- 12)
	optimistic	346 (+/- 12)
Fall 2002	conservative	269 (+/- 8)
	optimistic	315 (+/- 8)

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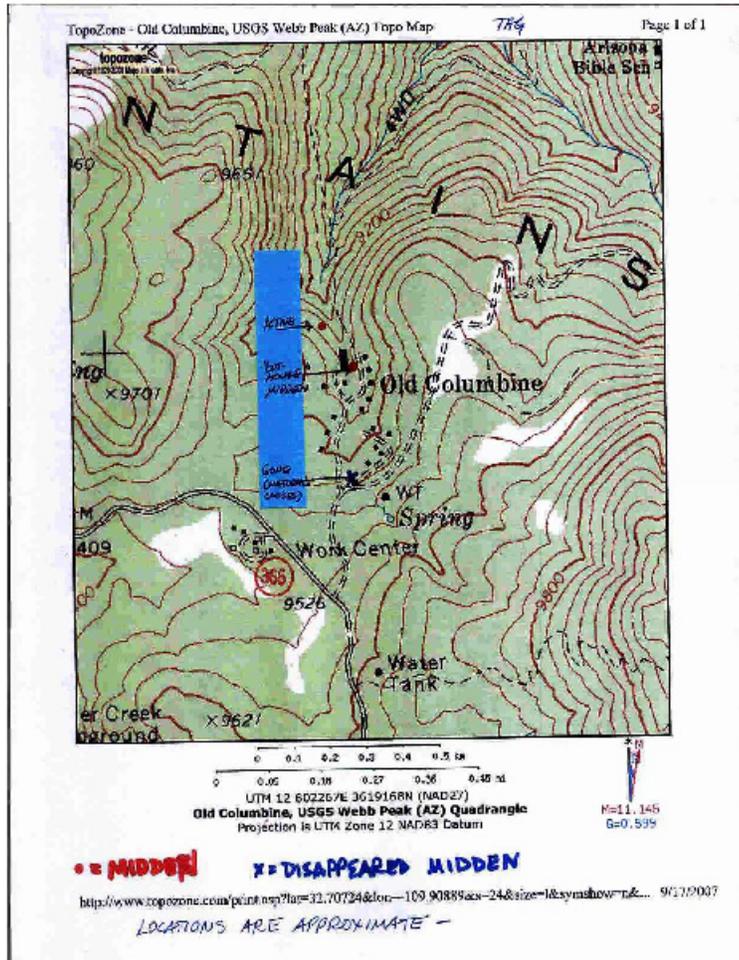
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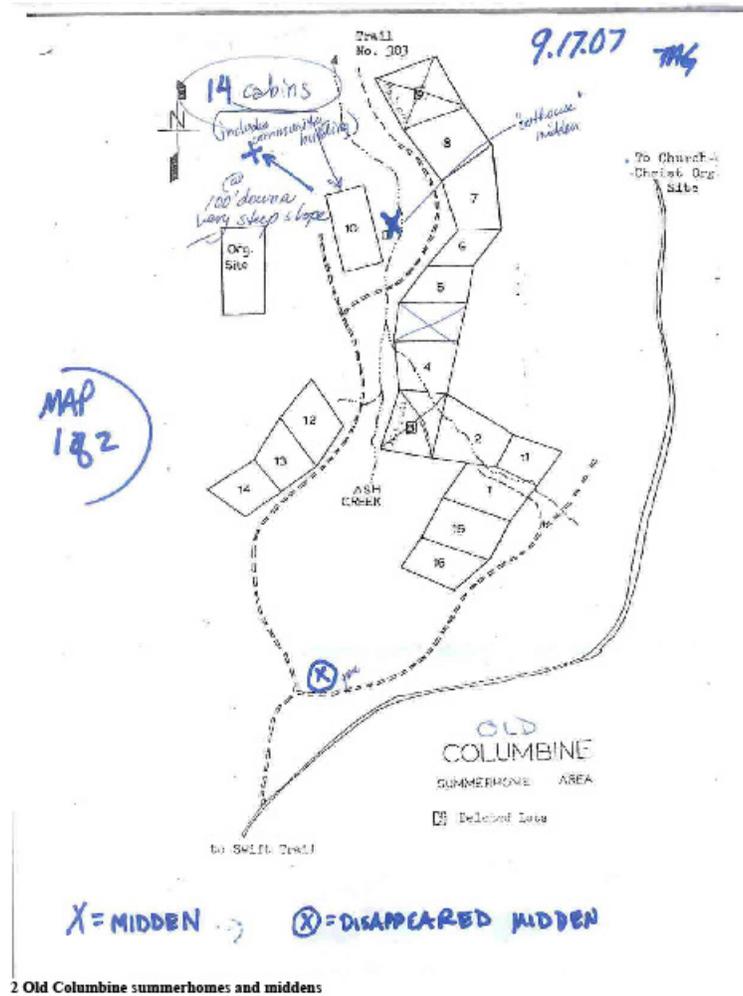
Spring 2003	conservative	224 (+/- 11)
	optimistic	245 (+/- 11)
Fall 2003	conservative	274 (+/- 13)
	optimistic	311 (+/- 13)
Spring 2004	conservative	284 (+/- 13)
	optimistic	295 (+/- 12)
Fall 2004	conservative	264 (+/- 12)
	optimistic	288 (+/- 12)
Spring 2005	conservative	214 (+/- 12)
	optimistic	235 (+/- 12)
Fall 2005	conservative	276 (+/- 12)
	optimistic	301 (+/- 12)
Spring 2006	conservative	199 (+/- 15)
	optimistic	214 (+/- 15)
Fall 2006	conservative	276 (+/- 12)
	optimistic	293 (+/- 11)
Spring 2007	conservative	216 (+/- 12)
	optimistic	230 (+/- 12)
Fall 2007	conservative	299 (+/- 11)
	optimistic	310 (+/- 11)

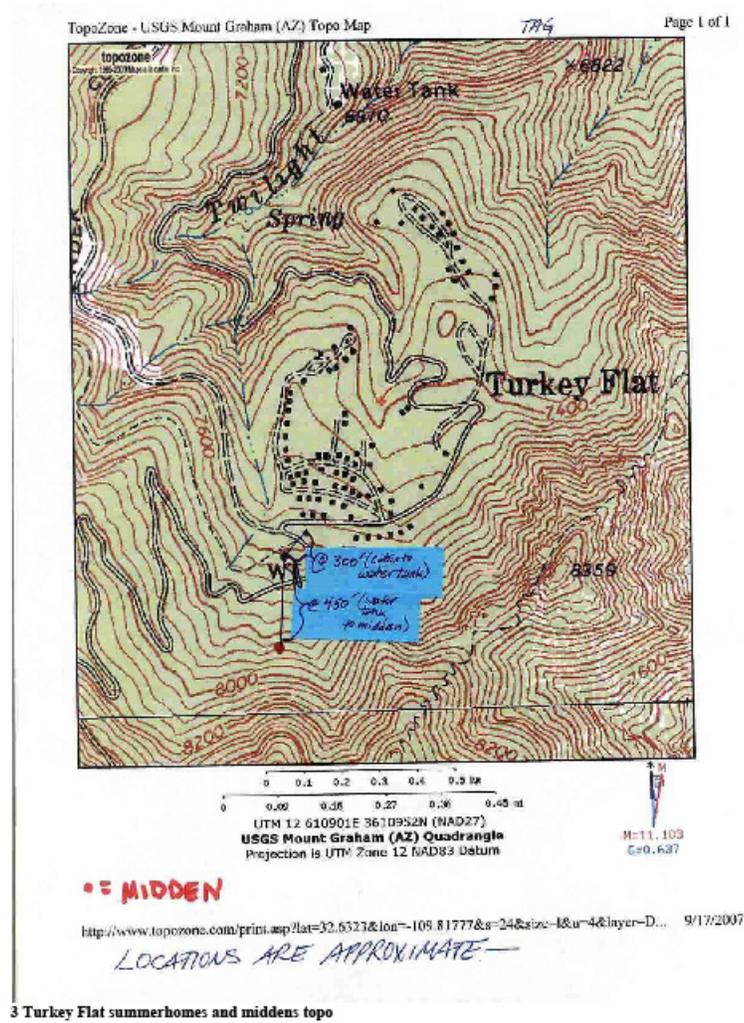
*Note – as of this writing, the Spring 2008 surveys are complete, but population estimates have not yet been calculated.

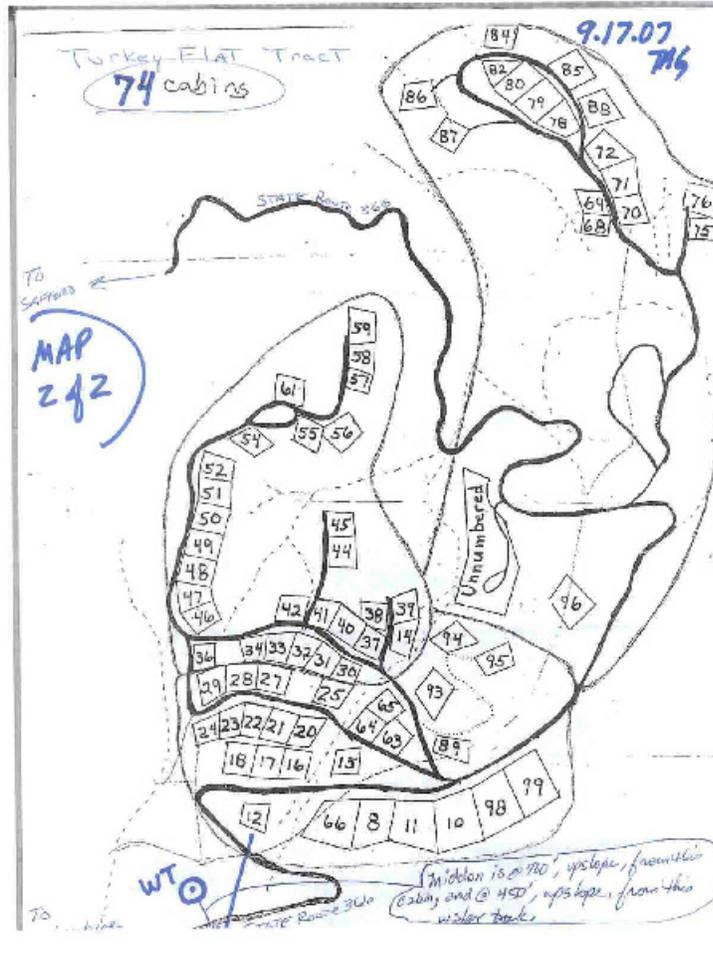
APPENDIX D
MAPS OF SUMMERHOMES AND MGRS MIDDENS



1 Old Columbine summerhomes and middens topo







4 Turkey Flat summerhomes and middens