

ENVIRONMENTAL ASSESSMENT
FEE-TO-TRUST TRANSFER OF 293 ACRES FOR THE TONTO APACHE TRIBE

Submitted to

BUREAU OF INDIAN AFFAIRS
and
TONTO APACHE TRIBE

Submitted by

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DISCLAIMER STATEMENT

Pursuant to the requirements of 40 CFR Section 1506.5, the Consultant declares under oath that it has no interest, financial or otherwise, in the outcome of this project.

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ACRONYMS

ADEQ	Arizona Department of Environmental Quality
ADOT	Arizona Department of Transportation
AGFD	Arizona Game and Fish Department
APS	Arizona Public Service
BIA	Bureau of Indian Affairs
CAP	Central Arizona Project
EA	Environmental Assessment
EPA	Environmental Protection Agency
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FIRM	Flood Insurance Rate Maps
gpm	Gallons Per Minute
IHS	Indian Health Services
ITA	Indian Trust Assets
NEPA	National Environmental Policy Act
NRHP	National Register of Historic Places
OSHA	Occupational Safety & Health Administration
ROW	Right-of-Way
SR	State Route
TES	Threatened, endangered or sensitive
Town	Town of Payson
Tribe	Tonto Apache Tribe
USFS	United States Forest Service
USFWS	United States Fish and Wildlife Service

ABSTRACT

The Secretary of the Interior, through the Bureau of Indian Affairs (BIA), is considering the approval of the transfer of title of Tonto Apache Tribe (Tribe) owned fee land to the United States. The BIA's approval of the transfer constitutes a federal action, requiring preparation of an Environmental Assessment (EA) in compliance with the National Environmental Policy Act (NEPA), as amended. Del Sol Group is the consultant who has been contracted to prepare this EA on behalf of the BIA and the Tribe. An EA for the exchange of 273 acres of lands between the Tribe and United States Forest Service (USFS) was approved in 2006 and is available through the Tonto National Forest. In addition to the 273-acres, a 20-acre fee status parcel owned by the Tribe is being considered for trust transfer. Total fee-to-trust transfer under consideration is 293-acres.

This EA is available for public review at the BIA Truxton Canon Field Office in Valentine, Arizona and at the BIA Western Regional Office in Phoenix, Arizona. This EA describes the Proposed Action and the No Action Alternative, the affected environment, and environmental consequences. Because the Proposed Action involves the transfer of fee land into trust to provide for the Tonto Apache Tribe in its permanent Tribal homeland, no other alternatives would meet the project purpose and need and thus, were eliminated from further consideration. The key issues analyzed in the EA include: living resources, water resources, air resources, cultural resources, socioeconomic resources, resources use patterns, and other values.

1.0 PURPOSE AND NEED FOR ACTION

The Tribe has acquired approximately 273 acres of land adjacent to their existing Reservation through a land exchange with the USFS in order to increase their very small Reservation land base of approximately 85 acres. This property, along with an existing 20-acre parcel adjacent to the Reservation, which is also held in fee simple status by the Tribe, is being considered for fee-to-trust transfer. The Proposed Action is to increase the Reservation from 85 acres to approximately 378 acres to provide for critically needed housing on the Reservation within the Tribe's permanent Tribal homeland. Due to overcrowded conditions on the Reservation, some Tribal Members are forced to live off the Reservation or live on the Reservation with three and sometimes four generations of their family in one home. The Reservation is located along the southern boundary of the Town of Payson (Town).

To provide for the long-term benefit of the Tribe and Tribal members and to consolidate the land ownership of its fee parcel holdings adjacent to its existing Reservation, the Tribe is requesting that title to the 293 acres held in simple fee status by the Tribe be transferred to the United States, and be held in trust for the Tribe. Land may be placed into trust status when the property is located within the exterior boundary of the Tribe's reservation or adjacent thereto. This allows the property in question to be held in perpetuity in trust for the Tribe by the United States. In 2008, the Tribe passed a Resolution confirming the conveyance of these lands to Trust status (Appendix A).

The parcels held in fee are eligible for transfer into trust to the United States and are within the aboriginal territory of the Tribe. The Tribe is a federally recognized Indian Tribe pursuant to the Apache Treaty of 1852, 10 Stat. 979 (July 1, 1852), and P.L. 92-470, 86 Stat. 783 (October 6, 1972). Pursuant to P.L. 92-470, 85 acres of land were set apart for the Tonto Apache Reservation and were officially designated on May 31, 1974 under Public Land Order 5422. Through P.L. 92-470 Congress confirmed the Tribe to be within the purview of the Indian Reorganization Act of 1934, 25 U.S.C. 461-479, and permits the transfer of the 293-acres into trust.

An EA is required since the fee-to-trust land transfer constitutes a federal action under NEPA of 1969 (42 U.S. Code [USC] 4371 *et seq.*, as amended). The BIA is the lead and approving agency under NEPA. The format of this EA is based on BIA NEPA guidance provided in 59 IAM-3H. This EA was prepared in accordance with NEPA and the Council on Environmental Quality Guidelines for Implementing NEPA (40 Code of Federal Regulations [CFR], Parts 1500-1508). As part of this EA, attention was given, but not limited to, the following laws and regulations:

- American Indian Religious Freedom Act (42 USC 1996)
- Archaeological Resources Protection Act (16 USC 470aa-mm)
- Clean Air Act (42 USC 7401 *et seq.*)
- Clean Water Act (33 USC 1251 *et seq.*)
- Comprehensive Environmental Response, Compensation and Liability Act (42 USC 9601 *et seq.*) and Superfund Amendments and Reauthorization Act (42 USC 11001 *et seq.*)
- Endangered Species Act (16 USC 1531-1542)
- Executive Order 11593, Protection and Enhancement of the Cultural Environment
- Executive Order 11988 on Floodplain Management
- Executive Order 12898 on Environmental Justice
- Farmland Protection Policy Act (Public Law 97-98)
- Migratory Bird Treaty Act (16 USC 703 *et seq.*)
- National Historic Preservation Act (16 USC 470 *et seq.*)
- Native American Graves Protection and Repatriation Act (25 USC 3001)
- Resource Conservation and Recovery Act (42 USC 6901 *et seq.*)
- Safe Drinking Water Act (42 USC 300f *et seq.*)

2.0 ALTERNATIVES

The following sections describe the alternatives evaluated in this document and summarize their environmental consequences. The presentation of alternatives illustrates the differences between the actions, especially in regards to the respective environmental impacts.

2.1 The Proposed Action

The Proposed Action involves the transfer of approximately 293 acres of undeveloped fee lands owned by the Tribe to the United States to be held in trust for the Tribe. The land is located immediately adjacent and contiguous to the Reservation on the east and west sides of State Route (SR) 87 and includes a portion underlying SR 87, with SR 87 issued as a Right-of-Way (ROW) to the Arizona Department of Transportation (ADOT) by the United States Department of Transportation. The parcels are located within portions of Sections 9 and 10 of Township 10 North, Range 10 East, in Gila County, Arizona (Figure 1, Photos 1 and 2).



Photo 1: View to the east toward the 20-acre fee parcel



Photo 2: View to the southwest within the 273-acre fee parcel

2.2 Intended Uses

The parcels being considered for Reservation trust status are presently undeveloped. Approximately 22 initial housing units would be built on the 273-acre parcel over the next five years to meet the immediately foreseeable residential needs of the Tribe. In addition, open space would be maintained in order to provide land for possible gardens and a small amount of livestock, which are culturally significant to the Tribe. Approximately 28 acres may be suitable for commercial development, and a small amount of commercial development may be planned in the future along the SR 87 frontage, however no plans have been made by the Tribe at this time since housing for Tribal members is an immediate priority of the Tribe. A summary of possible uses are provided in Table 2-1.

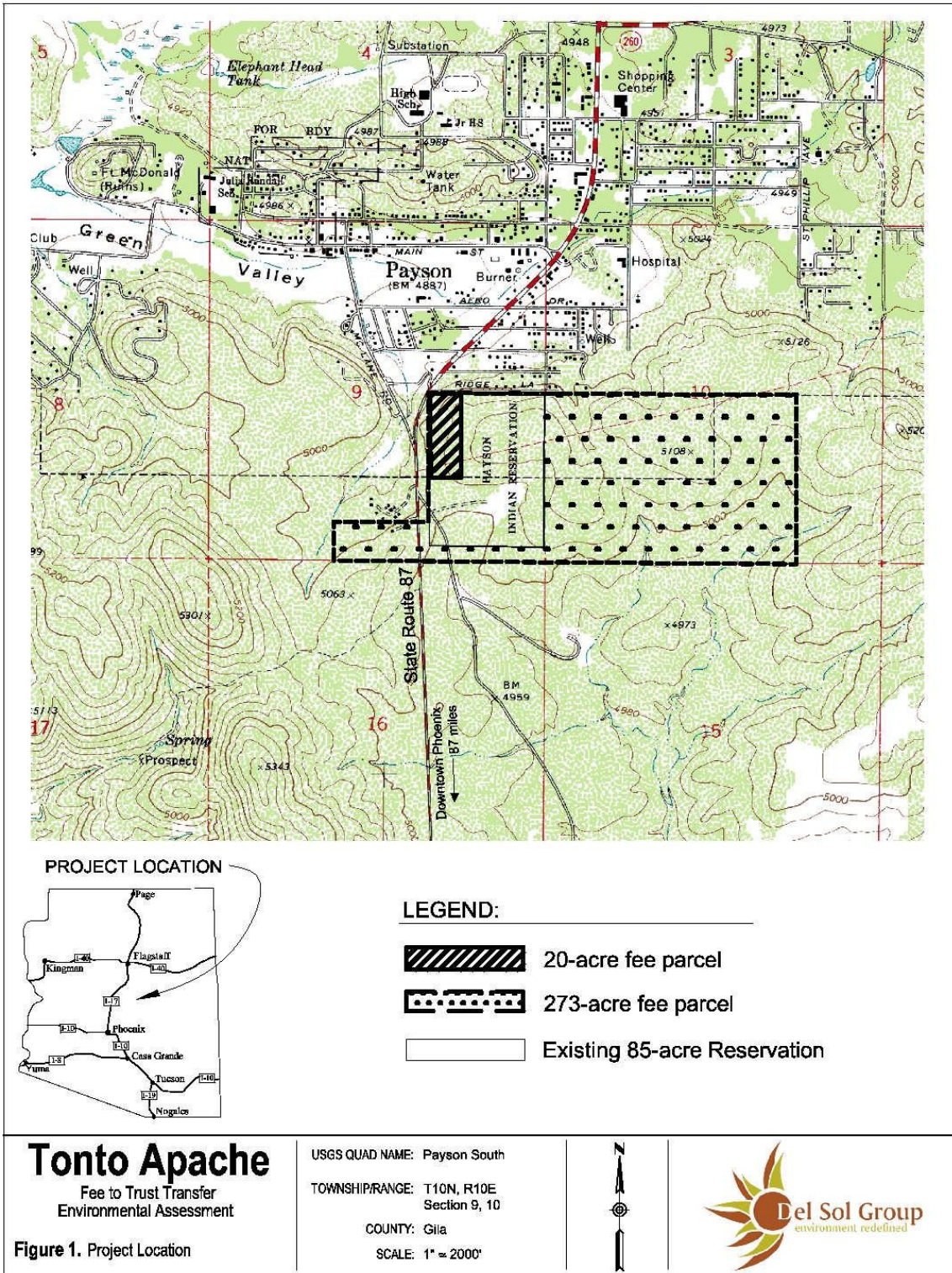


Table 2-1. Summary of Uses on the Fee Status Parcels		
Intended Use	Acres	Location
Residential/Open Space	265	Gila County (portion within Payson Town limits)
Commercial ¹ /Open Space	28	Gila County (outside Payson Town limits)
TOTAL	293	

2.2.1 Residential Housing

Residential homes and open space are proposed on the 293 acres. Housing would be planned and constructed with associated infrastructure for utilities and roads. Although housing design is not yet complete, homes would likely vary in size allowing for two, three and four bedroom single-family homes. Furthermore, the number of homes to be built on each parcel will be determined when the site plan is prepared. Each home will likely be located on approximately 0.5 to 1.0 acres of land, similar to that of the existing Reservation lands.

Water for the residential homes will be connected to the Town water supply system in the near term pursuant to the Tribe’s Water Services Agreement with the Town.²

Sewer treatment for the houses will be connected to the Tribe’s waste water treatment plant on the Tribe’s existing Reservation. The treatment plant has the capacity to store 500,000 gallons of treated effluent with an average daily flow of 80,000 gallons per day and a maximum flow of 120,000 gallons per day (Interpreter 2006).

2.2.2 Commercial /Open Space

Approximately 28 acres of the land west of SR87 may be suitable for commercial development. However, no plans have been made by the Tribe for commercial use at this time. For now and the immediate future, the Tribe intends to keep this parcel as open space.

2.3 No Action Alternative

Under the No Action Alternative, 293-acres of tribally owned fee lands would not be transferred to trust and would remain owned by the Tribe in fee. Proposed land uses would continue regardless of the fee-to-trust transfer. Development of homes and associated infrastructure would occur under applicable local laws.

2.4 Alternatives Considered but Eliminated from Further Consideration

Other alternatives considered but eliminated from further consideration included additional lands to be transferred in trust (e.g., other non-contiguous parcels owned by the Tribe), and placement of deed restrictions to limit future development. These alternatives were eliminated from further consideration because no other fee status parcels or alternate land uses would meet the project purpose and need to provide for the Tonto Apache Tribe in its permanent Tribal homeland.

¹ No plans have been made by the Tribe for commercial use at this time. See Section 2.2.2.

² Water Agreement dated November 4, 2005.

3.0 AFFECTED ENVIRONMENT

This chapter describes the existing environment that may be potentially affected by the Proposed Action. Environmental resources considered during this evaluation include: land resources, water, air, living resources, cultural resources, socioeconomic conditions, resource use patterns, and other values.

3.1 Land Resources

The land proposed for transfer is located along the southern corporate boundary of the Town of Payson in Gila County, Arizona. The land is adjacent to the current Reservation and accessible by SR 87. National Forest Service land bounds the site on the east, south and west, with privately owned single family residences located to the north. A portion of the 273-acre parcel extends west of SR 87, along with a small portion of SR 87 frontage road to the southwest.

The lands are undeveloped, without evidence of permanent surface water, and include approximately 293 acres of gently to moderately sloped landscape containing scattered pinion, juniper and manzanita. ADOT holds a ROW for SR 87, and a utility corridor parallels SR 87 along the 273-acre parcel, within the highway ROW. The utility corridor within the ADOT Right of Way consists of electric (Arizona Public Service [APS]), telephone (Qwest) and cable television (NPG Cable) lines.

This area enjoys a mild, four-season climate with an annual average rainfall ranging from 20-25 inches and an annual average snowfall amount of approximately 23.8 inches. The nearest weather station is in Payson. Average summer temperatures range from lows in the upper 50's to highs in the middle 90's (Fahrenheit) and winter low temperatures in the middle 20's to highs in the low 50's (Fahrenheit).

3.1.1 Topography

Elevations within the project area range from 4,950 feet to 5,108 feet above sea level. The land is located within the Transition Zone, also known as the Central Mountain Province, and is characterized by rugged, deformed mountain ranges of igneous, sedimentary and metamorphic rocks of Precambrian to Cenozoic age (USDA 2006). Slope of the fee-to-trust parcels is generally to the southwest averaging approximately nine percent.

A variety of major landforms surround the parcels, including the Mogollon Rim to the north, the Sierra Ancha Mountain Range to the south, and Mazatzal Mountains to the west.

Several small drainages occur throughout the 293-acre fee parcel, mostly handling off-site runoff from adjacent, higher areas. Commercial site runoff drains via several culverts under SR 87. Standing or flowing water is seen only during and immediately after snow melt or heavy rain.

3.1.2 Soils

Soils within the fee parcels are characterized as moderately deep well drained soils that form alluvium (transported by water) and residuum (weathered in place) from mixed sources. Surface soils are medium textured loams and subsoil's are clay loams and sandy clay loams. Litter dams are common due to excessive surface runoff. Sodium concentrations are sufficient to have a dispersing effect on soil particles and reduce infiltration. Rock outcrops are prominent on the west side of SR 87. Hazards are moderate for sheet and rill and severe for gully erosion (USDA 2006).

3.1.3 Geological Setting and Mineral Resources

The Town is situated below the Mogollon Rim, which tends generally northwest-southeast and is the eroded edge of the Colorado Plateau defined by a well-delineated, steep to nearly vertical scarp extending approximately 2,000 feet high (Parker et.al., 2005). The Payson granite is the main geological form, which is extensively fractured and

faulted and what the Town relies upon for its water supply. Two faults were mapped within the fee-to-trust status parcels and include the Lousy Gulch Fault, which strikes NE-SW and is Proterozoic age. The Birch Mesa Fault is inferred to extend through the 273-acre parcel, which strikes SE-NW (USDA 2005a).

No known metallic mineral deposits or special characteristic sand or gravel deposits exist on the proposed fee-to-trust land. No known thermal wells or springs exist in this area, nor is it located within a Known Geothermal Resources Area. There is no known value for oil and gas, sodium, potassium, coal or any other leasable minerals within the proposed transfer land and the potential for salable minerals is low.

3.1 Water Resources (surface and groundwater, quality and quantity, use, rights)

3.1.1 Surface Waters

There is no perennial surface water flow on the 293-acres proposed for transfer. Surface waters such as springs, seeps and streams are limited in the immediate vicinity of Payson. A portion of the 273-acre parcel lies within the Rye Creek-Tonto Creek watershed and includes an area comprising a portion of the headwaters of Gibson Creek and a tributary to Gibson Creek, which are located north-south through the center of the 273-acre parcel for approximately .66 miles. Gibson Creek flows through Round Valley to Houston Creek and eventually to Tonto Creek. A few shallow drainages occur throughout the 273-acre parcel. However, standing or flowing water is seen only during and immediately after snow melt or a heavy rain. The fee parcels do not contain wetlands as defined in the *Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1*.

3.1.2 Groundwater

The Payson aquifer is a primary source of water for the Town of Payson, the Tribe and surrounding areas. It consists primarily of Payson granite and to a lesser extent the Gibson Creek batholith, gneissic granitoids (granite-like), and basaltic dikes. Water is found throughout the upper 300 to 800 feet of this aquifer, primarily in joints, fractures and faults. The Town estimates that the aquifer underlying the Town can provide 2,681 acre-feet of water annually on a sustained basis to meet safe-yield. In 2008, groundwater consumption was reported by the Town at 1,649 acre-feet, or 62% of estimated safe yield of 2,681 ac-ft/yr (Town of Payson, 2009d). This consumption was decreased by 5% from the previous calendar year 2007. In addition to the Town's use, there are some private wells scattered throughout the area.

The existence of groundwater underlying the fee parcels is unknown. No wells are located within the Tonto Apache Reservation or within the 293-acres proposed to be taken into trust. While the Tribe owns a well located on another parcel outside of the Reservation with a historic capacity of approximately 50 gpm, this well is not being used by the Tribe because it no longer delivers the water required to serve the Reservation. The Tribe presently relies upon water deliveries from the Town of Payson to serve the Reservation pursuant the Water Services Agreement between the Tribe and Town (Water Services Agreement).

Some of the nearest registered wells within the closest proximity to the fee-to-trust parcels are shown in Table 3-1.

Table 3-1. Summary of Registered Wells Located Nearest to Fee Status Parcels		
Well Number	Location	Owner/Use
55-525108	SE ¼ Section 9, T10N, R10E	Private/Domestic
55-545329	SE ¼ Section 9, T10N, R10E	Arizona Department of Water Quality/Monitoring
55-556676	SE ¼ Section 9, T10N, R10E	Private/Monitoring

Table 3-1. Summary of Registered Wells Located Nearest to Fee Status Parcels		
Well Number	Location	Owner/Use
55-569447	SE ¼ Section 9, T10N, R10E	General Radiology PC Profit Sharing/Domestic
55-631409	SE ¼ Section 9, T10N, R10E	Private/Domestic
Source: ADWR 2007		

Most of the 293-acres proposed for transfer are underlain by the Payson granite at depth. Well yields from the Payson granite are generally predicted to be in the range of 10-15 gpm (USDA 2006). Higher yields of 50 to 150 gpm may be available at the inferred intersection of two faults in the northern part of the parcel (USDA 2006). The actual volume of water available, if any, would not be known unless wells are completed in the formation.

The Town of Payson is almost entirely dependent on wells drilled into the Payson granite for its water supply, part of which is delivered to the Tribe pursuant to the existing Water Services Agreement.

3.1.3 Effluent

The Tribe has constructed a wastewater treatment facility on the existing Reservation which will serve both existing Reservation uses and certain uses contemplated on the fee parcels proposed to be transferred into trust. Construction was completed in early 2007 and partial use is intended to be brought online during 2009. The effluent generated by the facility will be A+ quality and a portion of this treated water will be stored in a 500,000 gallon tank on the existing Reservation, to be used for fire suppression. The remainder of the water generated by the facility will be used for landscape watering and other uses as appropriate.

3.1.4 CAP Water and C.C. Cragin Water

The Tribe has a contract with the Secretary of Interior for the delivery of Central Arizona Project (CAP) water to the Reservation, dated December 11, 1980, which totals 128 ac-ft/year. To date, the Tribe has not secured a delivery method for the CAP water to the Reservation although it is undertaking an appraisal level study funded by the Bureau of Reclamation to investigate and determine a delivery method. One possible delivery scenario for this CAP water may include a joint works system between the Tribe and Town from the C.C. Cragin Reservoir, or access to Town constructed delivery works from C.C. Cragin for delivery of this CAP water by exchange.

In May 2008, the Town reached an agreement with Salt River Project, where the Town has agreed to cap its groundwater production at 2,520 acre feet per year on a ten year average in consideration of receiving up to 3,500 acre-feet per year of water from C.C. Cragin Reservoir (Town of Payson, 2009d). The Town is currently engaging in planning for the development of the necessary infrastructure to take delivery of this water.

3.1.5 Floodplains

Under Executive Order 11988 for floodplain management, the fee status parcels were identified using the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM) maps for Gila County. Floodplain FIRM panel (04007C0427D, effective Dec. 4, 2007) designates the lands proposed for fee to trust transfer as Zone X showing minimal flooding or undetermined flood hazard areas.

3.1.6 Water Quality

Since surface water is not present and groundwater is provided by the Town of Payson, water quality has not been identified as a resource concern within the fee status parcels.

3.1.7 Water Management and Use

3.1.7.1 Water Services Agreement

The Tribe and the Town have entered into a Water Services Agreement as of November 4, 2005, which establishes municipal water services the Town will provide to the Tribe for a period of five years and which is automatically renewable annually (Water Services Agreement). The Tribe relies upon the Town's delivery of water to the Tribe under the Water Services Agreement as its primary source of water supply.

The Water Services Agreement provides an average of 32,000 gallons per day for existing uses, and an additional average of 33,847 gallons per day for planned uses, with a maximum quantity of water to be delivered to the Tribe not to exceed 100 gallons per minute (gpm) and an average of 65,847 gallons per day based on a calendar year average for both existing and planned future water uses (Water Services Agreement). The maximum peak daily demand associated with the delivery of water under the Water Services Agreement is 144,000 gpd (100 gpm delivered continuously 24 hours per day).

3.1.7.2 Town of Payson Water Supply

The Town of Payson Water Department, which is a public water utility, supplies drinking water to approximately 16,000 people within a 19.5 square mile area in and around the Town of Payson. The Town water system includes 42 active production wells, 8.1 million gallon capacity storage, over 120 miles of distribution lines, nine booster pumping stations, two groundwater recharge projects, and two water remediation facilities (Town of Payson 2008a). At this time, the Town relies strictly upon water pumped from area wells.

3.1.7.3 Water Use Ordinances

The Town has adopted a water use and conservation ordinance which provides restrictions on water use within the Town. Since enacting the ordinance, residential use has dropped substantially in the past decade from a high of 104 gallons per person per day in 1996 to approximately 80 gallons per person per day in 2008 (Town of Payson, 2009d). The current conservation level in Payson is Conservation Level I, which is in place for one year and reviewed every year in May (Town of Payson 2009d).

The Tribe has adopted its own water use and conservation ordinance³ for Reservation lands which are similar to the Town's regulations and standards.

3.1.8 Water Rights

Arizona maintains a bifurcated system of water rights which separates the legal treatment of surface and groundwater. Under Arizona law, surface water, including subflow, is subject to the doctrine of prior appropriation, or "first in time – first in right." Groundwater, on the other hand, is not appropriable and is only subject to the doctrine of reasonable use where, for instance, overlying adjacent landowners generally cannot prevent the pumping of groundwater among each other except if the groundwater is not being applied to a reasonable use.

Notwithstanding the doctrine of reasonable use, in certain parts of the State of Arizona which are considered Active Management Areas, the use of groundwater is more restricted. However, the Payson area and the lands which are considered in this fee to trust transfer are not within an Active Management Area, and thus, the use of groundwater is not restricted under Arizona state law, other than those restrictions which may be placed on such use by local counties and municipalities. The Town of Payson has placed certain restrictions on the approval of developments within its jurisdiction related to water use.

³ Tribal Resolution 06-14 dated May 2, 2006, adopting Conservation Ordinance.

Under federal law, as it is applied to Indian Tribes in Arizona and elsewhere, the United States holds federal reserved and possible other water rights in trust for the benefit of a tribe. These water rights can include a federal reserved water right in both surface and groundwater.

The Arizona Supreme Court has ruled that the measure of federal reserved rights for Indian Tribes is water sufficient to sustain the Tribe in its permanent Tribal homeland. *See In Re the General Adjudication of All Rights to Use Water In the Gila River System and Source, W1-4, 201 Ariz. 307 (2001)*. Although the right may not yet be quantified, it is considered “present and perfected” under federal law.

Where an Indian Tribe has a federal reserved water right in groundwater, such groundwater is subject to greater protection from other Arizona groundwater users. *See In Re the General Adjudication of All Rights to Use Water In the Gila River System and Source, W1-4, 195 Ariz. 411 (1999)*.

The Tribe, and the United States on behalf of the Tribe, has claims for water rights pending in Arizona’s Gila River General Stream Adjudication for the existing 85-acre Reservation, including to both surface and groundwater necessary to satisfy the purpose of the Tonto Apache Reservation as a permanent Tribal homeland, with a priority date of time immemorial. *See* Statement of Claimant Nos. 39-05-50058 and 39-07-12675. These Statement of Claimants do not include claims for federal reserved or other water rights appurtenant to the 293-acres proposed for fee to trust transfer. The Tribe’s and United States’ claims to water rights for the Reservation have not yet been adjudicated in Arizona’s Gila River General Stream Adjudication and are not expected to be adjudicated by the court at any time in the reasonably foreseeable future.

3.2 Air Resources

The Environmental Protection Agency (EPA) regulates activities affecting air quality on federal and Indian lands. Because the Tribe does not yet have authority to administer Tribal Implementation Plans, the Tribe does not have its own air quality program in place. The Tribe refers to the Payson Moderate Area PM₁₀ Maintenance Plan (ADEQ 2002) for air quality guidance. The Arizona Department of Environmental Quality (ADEQ) monitors for PM₁₀ (particles 10 microns and smaller) within the Town. Annual average measurements in 2001 and 2002 for PM₁₀ included 16µg/m³ and 13µg/m³, which are within the standard range of compliance below 50µg/m³ within the Town (ADEQ 2004).

3.3 Living Resources

3.3.1 Wildlife (terrestrial, aquatic, threatened/endangered)

A Biological Assessment was completed to determine the presence of any threatened, endangered or sensitive (TES) species or their habitat within the area proposed for the fee-to-trust transfer (USDA 2006). An assessment of the proposed 20-acre parcel was not completed although the parcel was inspected and habitat found within the parcel is very similar to habitat found within the 273-acre parcel.

Species and habitat evaluated included the Colorado Pikeminnow, the Razorback sucker, the Chiricahua leopard frog, Mexican spotted owl, and the southwestern willow flycatcher. It was determined that there were no known TES species or habitat within the subject area (USDA 2006). As habitat within the 20-acre open space parcel is similar to the 273-acre parcel, no TES are expected to occur on the 20-acre parcel (Table 3-2).

In accordance with the Migratory Bird Treaty Act, no known migratory bird populations are known to occur regularly within the fee-to-trust parcels.

Table 3-2. Summary of Federal Listed Wildlife Species Within Gila County		
Federally-Listed Species (protected under the Endangered Species Act)		
Species	Status	Likelihood of Occurrence in Project Area
Apache trout <i>Oncorhynchus apache</i>	T	No potential. No bodies of water exist within the project boundaries.
Bald Eagle (<i>Haliaeetus leucocephalus</i>)	T	No potential. No bodies of water exist within the project boundaries.
Chiricahua leopard frog <i>Rana chiricahuensis</i>	T	The parcel is not within boundaries of the Chiricahua leopard frog habitat.
Colorado pikeminnow <i>Ptychocheilus lucius</i>	E, EXPN	No potential. No bodies of water exist within the project boundaries.
Gila chub <i>Gila intermedia</i>	E	No potential. No bodies of water exist within the project boundaries.
Gila topminnow (incl. Yaqui) <i>Poeciliopsis occidentalis</i>	E	No potential. No bodies of water exist within the project boundaries.
Grey Wolf <i>Canis lupus</i>	DR, E, EXPN, T	Possible habitat; although the potential for food source is outside project boundaries. No wolves were observed within the fee status the parcels.
Headwater Chub <i>Gila nigra</i>	C	No potential. No bodies of water exist within the project boundaries.
Lesser long-nosed bat <i>Leptonycteris curasoae yerbabuena</i>	E	Possible habitat; although the potential for habitat exists within the project boundaries, disturbance and proximity to high human traffic areas will likely deter bats from living in these outcrops. No caves were observed on the parcels.
Loach minnow <i>Tiaroga cobitis</i>	T	No potential. No bodies of water exist within the project boundaries.
Mexican spotted owl <i>Strix occidentalis lucida</i>	T	The parcel is not located within the boundaries of the Mexican spotted owl habitat.
Northern Mexican garter snake <i>Thamnophis eques megalops</i>	C	No potential. Parcel has no wetland or riparian habitat to support this species.
Razorback sucker <i>Xyrauchen texanus</i>	E	No potential. No bodies of water exist within the project boundaries.

Table 3-2. Summary of Federal Listed Wildlife Species Within Gila County		
Federally-Listed Species (protected under the Endangered Species Act)		
Species	Status	Likelihood of Occurrence in Project Area
Southwestern willow flycatcher <i>Empidonax traillii extimus</i>	E	There is no critical habitat for the southwestern willow flycatchers located within the project area.
Spikedace <i>Meda fulgida</i>	T	No potential. No bodies of water exist within the project boundaries.
Yellow-billed Cuckoo <i>Coccyzus americanus</i>	C	No potential. No wetlands exist near the site. There is no habitat which would support yellow-billed cuckoo within the project boundaries.
Yuma clapper rail <i>Rallus longirostris yumanensis</i>	E	No potential. No bodies of water or marshy habitat are present within the project boundaries.
Listing Status Definitions: C: Candidate Taxon, Ready for Proposal, DM: Delisted Taxon, Recovered, Being Monitored First Five Years, E: Endangered, EXPN: Experimental Population, Non-Essential, PE: Proposed Endangered, T: Threatened, DR -- Delisted Taxon, Taxonomic Revision (Improved Understanding) (USFWS 2009, Appendix B)		

3.3.2 Vegetation (terrestrial, aquatic, threatened/endangered)

The proposed fee-to-trust parcels are located within the Great Basin Conifer Woodland biotic community (Brown 1994). Vegetation within the parcels consists of pinyon pine (*Pinus edulis*), one-seed juniper (*Juniperus monosperma*), and a thick presence of shrubs such as shrub live-oak (*Quercus turbinella*), Manzanita (*Arctostaphylos pungens*), squawbush (*Rhus trilobata*), and mesquit acacia (*Acacia constricta*). In addition, banana yucca (*Yucca baccata*), soap tree yucca (*Yucca elata*), bear grass (*Nolina microcarpa*), agave (*Agave sp.*), prickly pear cactus (*Opuntia engelmannii*), and ephedra (*Ephedra sp.*) are represented. Blue grama (*Bouteloua gracilis*) and side-oats grama (*Bouteloua curtipendula*) grasses were also observed. Very few herbaceous plants were observed. Disturbance of the existing vegetation is light. Table 3-3 shows the TES plants listed on the United States Fish and Wildlife Service's (USFWS) Gila County list. No TES plants or suitable habitat were found (USDA 2006). No TES plants or habitat are likely to occur on the 20-acre fee owned parcel as this parcel contains similar habitat as the 273-acre parcel (Appendix B).

Table 3-3. Summary of Federal Listed Plants With the Potential to Occur Within the Project Area		
Species	Status	Likelihood of Occurrence in Project Area
Arizona hedgehog cactus <i>Echinocereus triglochidiatus</i> <i>var. arizonicus</i>	E	No Potential. Habitat consists of rugged steep-walled canyons, boulder-pile ridges and slopes. Commonly found among shrubby vegetation within the Arizona desert grassland from 3,300 – 5,700 ft.
Listing Status Definitions: E: Endangered Sources: USFWS 2009, AGFD 2003a		

3.3.3 Ecosystems and Biological Communities

Evergreen woodland occupies the parcel and contains pinyon pine, one-seed juniper, and a thick presence of shrubs such as shrub live-oak, manzanita, squawbush and mesquit acacia. In addition, banana yucca, soap tree yucca, bear grass, agave, prickly pear cactus and ephedra are represented. Blue grama and side-oats grama grasses are also present within the parcels (USDA 2006).

3.3.4 Agriculture

None of the proposed fee-to-trust parcels have any known historical agriculture use.

3.4 Cultural Resources

3.4.1 Historical, Cultural, and Religious Properties

The Tonto Apache are considered to be part of a subgroup of the Western Apache, which includes the Chiricahua (*Chishi*), Jicarilla (*Beehai*), Mescalero (*Naashgall*), San Carlos and White Mountain (*Dzitolgha'a'l*) Apache Tribes. The traditional lifestyles of the Tonto Apache included hunting, gathering, raising livestock, trading and subsistence farming prior to the coming of the Europeans. Prior to 1870, Payson and surrounding areas were inhabited by various Apache bands, including the Dilzhe'e Apache (Tonto Apache), who considered the Payson area their homeland. In 1872, the Tonto Apache people were forcibly removed to a military reserve in Camp Verde, then subsequently onto the San Carlos Indian Reservation in 1875. By 1900 the Tonto Apache people began to migrate back to their homeland in the Payson area, living on a small parcel of privately owned land called Indian Hill. When the Indian Hill parcel was lost in a tax sale in 1958, Tribal members in the Payson area lived on Tonto National Forest land and were subject to constant attempts at eviction by the Forest Service, even though the land was within their aboriginal territory. A portion of the lands on the west side of SR 87 which are considered for fee to trust transfer are these former Tonto National Forest lands. In 1972, pursuant to P.L. 92-470, 85 acres of land were set apart for the Tonto Apache Reservation and were officially designated on May 31, 1974 under Public Land Order 5422. This amount of land was equivalent to one acre of land for each of the existing Tribal members in 1972.

Within the proposed fee-to-trust parcels, certain petroglyph boulders within the property were documented and have potential religious and/or traditional significance to the Tribe and other local Native American tribes.

3.4.2 Archaeological Resources

As part of the USFS land exchange, nine potentially eligible sites were discovered on the 273-acre parcel. Seven of these sites were tested to determine eligibility for the National Register of Historic Places (NRHP) and two sites were found to be not eligible. Testing of the seven sites subsequently determined that five sites were found eligible for the NRHP. Data recovery was conducted for the five sites, which included two isolated petroglyphs, several artifact scatters with features and a portion of the Historic Forest Highway 9 (Spurr 2005). The 20-acre fee parcel has not been surveyed as this parcel is proposed to remain as open space for the Tribe (Appendix B).

3.4.3 Indian Trust Assets

Indian Trust Assets (ITAs) are legal interests in assets held in trust by the United States for Indian Tribes or individual Indians. Assets are anything owned that has monetary value. The asset need not be owned outright, but could be some other type of property interest, such as a lease or right-of-use. Assets can be real property, physical assets or intangible property rights. Common examples of ITAs may include lands, minerals, hunting and fishing rights, water rights, other natural resources, money or claims. The United States, with the Secretary of the Interior as trustee, holds many assets in trust for Indian Tribes or Indian individuals. The BIA, as a federal agency, is charged with protection of ITAs (Secretarial Order 3175).

3.5 Socioeconomic Conditions

3.5.1 Employment and Income

The Tribe is a major employer in Payson with over 400 employees on payroll. The casino employs over 300 people. Over 70 percent of the Tribe's members are employed at the Mazatzal Casino, Tribal government or other

enterprises. Tribally owned enterprises include a tribal market and gas station, and hotel. The Tribe leases the Sonic Drive-in to an outside operator and is not a Tribal business (Gibson 2005).

The Tribe’s payroll is over \$8 million and annual payroll taxes are estimated over \$1 million, with an estimated \$811,000 paid from the Casino to the federal and state government (Gibson 2005). The current fee status parcels are subject to property taxes, however the taxes for the 273 acre parcel have yet to be calculated due to recent realty transactions. For the 20-acre parcel, taxes were \$2,786.46 for 2008.

3.5.2 Demographic Trends

Population growth within Gila County has averaged less than one percent over the past five years. In 2000, the U.S. Census documented nearly 14,000 individuals in the Town. Taxable sales documented for 2001 were slightly over \$5 million for the Town. Residents of the Town area are employed in mining, construction, ranching, light-industry, trade and service, casino and by the government (Town of Payson 2008c).

The Tribe has experienced a growth in population exceeding that at the County level, with the population for the Tribe increasing more than 30% since 1990, from an estimated 102 people in 1990 to an estimated 132 people in 2000 (Arizona Department of Commerce 2006). Current Tribal enrollment is 134 members with 150 residents living on the existing reservation (Appendix D). The population of the Tonto Apache Reservation is relatively young, with approximately 18 percent of the members under the age of 16 and approximately 82 percent between the ages of 16-64 (Gibson 2005).

3.5.3 Environmental Justice

Executive Order 12898, dated February 11, 1994, established the requirement to address environmental justice concerns, within the context of agency operations. As part of the NEPA process, agencies are required to identify and address disproportionately high and adverse human health or environmental effects on minorities and low-income communities (Council on Environmental Quality 1997). Data on minority and poverty status for Arizona, the Town and Tribe are shown in Table 3-4. In compliance with Executive Order 12989, consideration was given to local minority and low-income groups, which may be affected by the Proposed Action. The Tribe initiated the proposed land transfer in order to provide additional residential housing and consolidate land holdings. No concerns related to Environmental Justice have been identified.

Table 3-4. Household Income, Poverty Status, and Minority Populations in Arizona			
Indicator	Gila County	Town of Payson	Tonto Apache Tribe
Estimated Median Household Income	\$30,917	\$33,638	\$40,417
Estimated Percent of Population in Poverty	17.4%	9.9%	9.8%
Minority Population Proportions			
Native American & Alaska Native	12.9%	1.9%	87.1%
African American	0.4%	0.3%	0.0%
Asian / Pacific Islander	0.5%	0.6%	0.0%
White	77.8%	94.8%	10.6%
Hispanic (of any race)	16.6%	5.2%	3.8%
Sources: Census Bureau 2000, Arizona Department of Commerce 2006			

3.5.4 Attitudes, Expectations, Lifestyle and Cultural Values

Historically, the lifestyle of the Tonto Apache was based on hunting, gathering, trading, raising livestock and subsistence farming prior to the coming of the Europeans. After their incarceration at the San Carlos Reservation and prior to 1972, the Tonto Apaches worked in and around Payson, mostly as day laborers and housemaids for the local non-Indian residents. During the past 34 years, the Tribe has instituted economic development activities

that include a convenience store, casino, restaurant, and tourist facilities. During the 1990's, the Mazatzal Casino was opened and expanded to provide additional employment and revenue opportunities for the Tribe.

Economic development activities, in conjunction with community development activities are improving the lifespan, lifestyles and expectations for members of the Tribe. The Tribe continues to maintain its cultural identity and values through regular community activities, ceremony and gatherings.

3.5.5 Infrastructure

Utilities in support of residential and commercial uses on the Reservation include electricity, propane, telephone, sewer, and water. Cable is not currently available on the Reservation. Electricity is provided by APS provided by both overhead and underground lines. Phone service is provided by Qwest. Additionally, most residents of the Reservation have operable cellular phone connections.

Sewer services are presently provided by the Northern Gila County Sanitary District under an Agreement dated September 2, 1993. However, the Tribe has constructed a wastewater treatment facility to process all wastewater generated on the Reservation and on the parcels proposed to be transferred into trust. The Tribe anticipates bringing the wastewater treatment plant partially online in 2009, and to make it fully operational by 2010.

Water services are currently being provided to the Tonto Apache Reservation by the Town pursuant to a Water Services Agreement, and it is expected that these services will continue into the near future. ADOT maintains a 400-foot wide ROW for SR 87 through the proposed 293-acre fee-to-trust parcels. APS, Qwest and NPG Cable also have easements within this highway ROW.

3.6 Resource Use Patterns

3.6.1 Hunting, Fishing, and Gathering

Proposed fee-to-trust parcels are located within Arizona Game and Fish Department (AGFD) Region VI Game Management Region 22. Species with the potential to occur within this area include bighorn sheep, black bear, elk, javalina, Merriam's turkey, mountain lion, white-tailed deer, tree squirrel and quail. There is no water within the parcels to support fishing. The Tribe has historically utilized lands for hunting and gathering.

3.6.2 Timber Harvesting

No timber harvesting activities occur within the parcels.

3.6.3 Mining

No mining activities occur within the parcels.

3.6.4 Recreation

No recreational activities occur within the parcels.

3.6.5 Transportation Networks

Automobiles are the principal transportation mode in the vicinity of the project area. The four-lane, SR 87, located within the parcels, provides access to Payson. Annual Average Daily Traffic along SR 87 show recordings of 24,100 vehicles in 2005, 31,300 vehicles in 2006 and 26,100 vehicles in 2007, an approximate 3% increase over the last three years (ADOT 2009).

Paved and unpaved roads provide access to residences and community facilities for the Tribe. In 2001, the Tribe completed an access corridor study on the existing Reservation lands and evaluated two alternative access points including one access area south of the existing access as well as another on the north end of the Casino parking lot. Longer term access was also evaluated which determined the need for a connecting loop into the existing neighborhoods and proposed fee parcels (Tetra Tech 2001). There continues to be only one main access point to the Reservation lands from SR 87. No new access points are planned at this time.

3.6.6 Land Use Plans

The Tribe does not have a land use plan for the Reservation. However, the Tribe does have a Fire Management Plan, which designates the management of fire on Reservation lands. Four management activities were approved for mechanical and chemical fuel treatment, prescribed fire and other direct modifications (BIA 2005). Several encumbrances and land use features are within the boundaries of the fee status parcels (Table 3-5, Figure 2).

Table 3-5. Summary of Known Encumbrances Located on Fee Status Parcels		
Encumbrance	Type	Description
Fence	ROW	Two fence ROWs, one four feet in width, another eight feet in width
Highway	ROW	SR 87 totaling 400 feet in width
Utility	Easement	Electric, phone and cable easements within Highway ROW
Source: USDA 2005b		

3.7 Other Values

3.7.1 Visual Resources

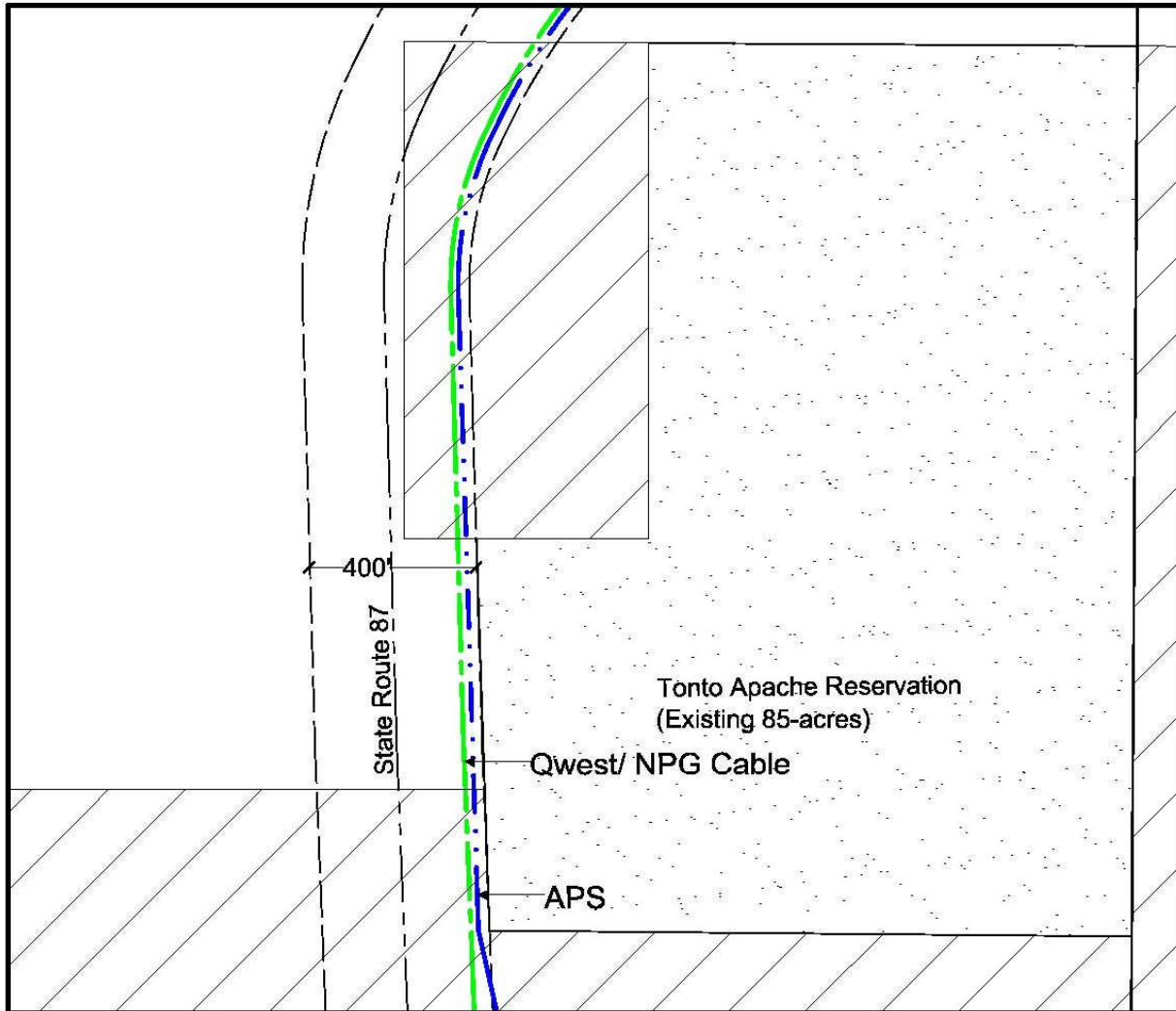
A site-specific visual quality assessment was not conducted for the proposed fee status parcels. However, visual quality in the vicinity of the Reservation is based on the existing land uses, which is dominated by residential and commercial uses. With transportation corridors such as SR 87 bisecting the fee parcels, visual resource quality has already been affected as the surrounding community has been modified from its natural state.

3.7.2 Wilderness

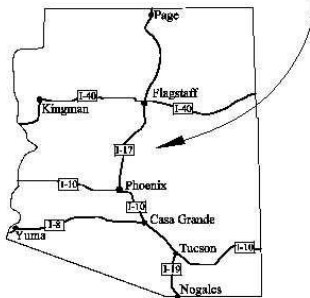
The proposed fee status parcels are not adjacent to any designated wilderness.

3.7.3 Sound and Noise




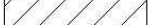

The majority of sound and noise surrounding the fee status parcels is generated from SR 87, which averages approximately 24,000 vehicles per day producing a variety of decibel levels ranging from 70 to 100 decibels. Traffic noise is not usually a serious problem for people who live more than 500 feet from heavily traveled freeways or more than 100 to 200 feet from lightly traveled roads (FHWA 2006). Currently, no Tribal members live within 500 feet of SR 87.



PROJECT LOCATION



LEGEND:

-  Right-of-Way (Highway)
-  APS Easement
-  Qwest/ NPG Cable Easement
-  Fee Parcel
-  Tonto Apache Reservation

Tonto Apache

Fee to Trust Transfer
Environmental Assessment

Figure 2. Approximate Location of Highway ROW and Easements on Fee Status Land

USGS QUAD NAME: Payson South

TOWNSHIP/RANGE: T10N, R10E
Section 9, 10

COUNTY: Gila

SCALE: N.T.S.



3.7.4 Public Health and Safety

For hazardous materials, public health and safety is reviewed in accordance with the U.S. Department of Labor, Occupational Safety & Health Administration (OSHA) Asbestos Regulations, EPA's National Emission Standard for Asbestos, Housing & Urban Development's Guidelines for the Evaluation and Control of Lead-Based Paint Hazards and Housing. To date, a Phase I hazardous materials study has been completed and no de minimis conditions were detected on the fee to trust parcels (AMEC 2009).

The Tribe has its own police force which is now the primary law enforcement service provider for the Reservation. The Tribe's P.L. 93-638 Indian Self-Determination contract has been in place since October 2007 and law enforcement for the Reservation is conducted through the Tonto Apache Tribal Police Department. Medical services are available through contract health care at the Payson Regional Medical Center with local Payson Fire Department assistance.

The Tribe and the Town are in the process of negotiating a mutual aid agreement where the Town will provide backup services to the Reservation and the Tribe will provide backup services to the Town in the case of emergencies where additional assistance is necessary. Currently, the Tribe's Water Services Agreement with the Town provides that water will be supplied to the Tribe for fire suppression needs. However, the Tribe plans to have treated effluent available from the wastewater treatment plant to assist in fire suppression in the near future. The Tribe is also working on an intergovernmental agreement for mutual aid and assistance in the event of disaster with Gila County and the Town of Payson.

4.0 ENVIRONMENTAL CONSEQUENCES

This chapter describes the environmental impacts and mitigation measures of the proposed transfer of lands from fee-to-trust status (Proposed Action) and the No Action Alternative. The chapter is organized in the same manner as Chapter 3, with impacts of each alternative described for the resources of the project area. An environmental impact is defined as an anticipated modification in the condition of the environment as it presently exists as a result of the Proposed Action. Impacts can be positive (beneficial) or negative (adverse); can be primarily a result of the action (direct) or a secondary (indirect); and can be permanent, long term, or short term. Impacts can vary in degree from no change, or very slightly discernable to the total change in an environmental resource system. Short-term (2-4 years) impacts are those changes or stresses to the environment that would generally revert to pre-construction conditions soon after project completion. Although short in duration, such impacts are normally obvious and disruptive. Long-term impacts are changes or stresses to the environment that would remain for the life of the proposed project and beyond. Residual impacts, also referred to as the irretrievable commitment of resources, are permanent.

4.1 Land Resources

4.1.1 Proposed Action

Under the Proposed Action, no impacts would occur to land resources as a result of the fee-to-trust transfer transaction. If the Proposed Action was approved, future impacts to land resources would likely include residential and commercial development providing changes to local topography and soils, just as if the lands remained in fee status under the No Action Alternative.

Under the Proposed Action, the County and local municipality would not have planning and zoning control of the parcels. The Tribe would assume primary planning and zoning control of the parcels in conformity with the Tribal Law and Order Code for the existing Reservation lands.

Under the Proposed Action, the lands would also continue to be subject to development in accordance with applicable federal laws and regulations. Preservation of native plants and other available resources would be managed by the federal government and Tribe and subject to applicable federal and Tribal law.

4.1.2 No Action Alternative

Under the No Action Alternative, impacts to land resources would be the same because future land use would be consistent with the Proposed Action. The lands would be subject to development under applicable federal, State, county and local law.

4.2 Air Resources

4.2.1 Proposed Action

Under the Proposed Action, impacts would not occur to air resources as a result of the fee-to-trust land transfer. Temporary impacts to air resources are expected during home construction whether the land is in fee or trust status; however the Tribe will manage this impact by utilizing standard construction practices (e.g., dust suppression).

4.2.2 No Action Alternative

Under the No Action, impacts to air resources would be the same as the Proposed Action as the fee status parcels would remain under Tribal ownership.

4.3 Water Resources

4.3.1 Surface Water

4.3.1.1 Proposed Action

Under the Proposed Action, impacts to surface water would be the same as the No Action alternative because there is no physically available surface water on the 293-acres proposed for fee-to-trust land transfer other than intermittent run off from precipitation.

4.3.1.2 No Action Alternative

Under the No Action Alternative, impacts to surface water would be the same as the Proposed Action.

4.3.2 Groundwater

4.3.2.1 Proposed Action

Under the Proposed Action, no impacts would occur to groundwater resources as a result of the fee-to-trust land transfer.

The Tribe estimates that 22 additional houses are needed in order to accommodate the existing Tribal population. Water service for the development of these 22 houses has been provided for under the terms of the Water Services Agreement. The Town has agreed to deliver that water to the Tribe for those purposes, regardless of the status of the land as being in fee or trust status. Thus, the Town has determined that this development is not anticipated to jeopardize the Town's water supply demand.

The maximum increase in water usage that could occur on the Reservation and lands proposed for fee-to-trust transfer for future uses under the Water Services Agreement (of which some uses have already been implemented, such as the hotel with the pool and casino renovation) is estimated at about 38 acre-feet per year pursuant to the Water Services Agreement. This amount represents 1.4% of the Town's total estimated safe-yield (2,681 acre-feet/yr) (Town of Payson, 2009d) for the Payson aquifer. The total groundwater consumption of the Payson aquifer for 2008 was 62% of safe-yield, leaving 1,032 acre-feet of water to reach safe-yield as defined by Payson. Further, the Tribal members that are anticipated to live in the houses already receive water service from the Town, either on the existing Reservation where they live with multiple generations of their family, or in homes within the Town of Payson which the Tribe has purchased to address its present housing shortage. Functionally, this means that the amount of water that might be additionally consumed from the Payson aquifer with the development of the houses on the lands is less than if the houses were being built for newcomers to the Payson area.

Additionally, under the Water Services Agreement, the Tribe has agreed to limit its use of groundwater if that use would negatively impact the Town's wells.

The exact nature of any future commercial development on the Reservation or the parcels proposed for transfer into trust is currently unknown and is not currently planned by the Tribe. However, any other future development beyond that provided for in the Water Services Agreement will require the Tribe to secure an additional water supply.

4.3.2.2 No Action Alternative

Under the No Action, impacts to groundwater resources would be the same as the Proposed Action. The Tribe's Water Services Agreement with the Town would remain in effect and the water for the 22 new homes and other "future" uses under the terms of the Water Services Agreement would be serviced regardless of the proposed transfer.

4.3.3 Effluent

4.3.3.1 Proposed Action

There will be no impact on effluent use as a result of the Proposed Action. The Class A+ effluent generated by the wastewater treatment facility on the Reservation will be used for fire suppression with the remainder to be used for landscape watering and other uses as appropriate, regardless of the status of the lands as fee or trust. Any necessary environmental compliance for use of the effluent will be undertaken.

4.3.3.2 No Action Alternative

Under the No Action alternative, effluent use by the Tribe will not change.

4.3.4 CAP Water

4.3.4.1 Proposed Action

Under the Proposed Action, the Tribe's CAP water allocation could be used as an alternate water supply to service the lands proposed for fee-to-trust transfer. Presently, the Tribe may use its CAP water to provide a water supply to the existing Reservation. However, the Tribe must still determine a delivery method for its CAP allocation, of which C.C. Cragin Reservoir may offer a possible solution. Investigation regarding this possibility is ongoing and not yet determined. Any proposed delivery of CAP water to the Tribe will require future NEPA compliance to determine possible impacts in accordance with applicable laws related to CAP development. The future delivery of CAP water to service the lands proposed for fee-to-trust transfer could be an indirect and beneficial effect of the Proposed Action, as it would assist in bringing an additional water supply to the Payson area.

4.3.4.2 No Action Alternative

Under the No Action alternative, the Tribe's CAP water allocation would not be able to be used as an alternate water supply to service the lands proposed for fee-to-trust transfer but would continue to be eligible for use on the Tribe's existing Reservation pursuant to the Tribe's CAP contract.

4.3.5 Floodplains

4.3.5.1 Proposed Action

Under the Proposed Action, there would be no impact on floodplains as a result of the fee-to-trust transfer. FEMA would continue to be the authority for designating flood zones and compliance with all applicable federal laws would continue.

4.3.5.2 No Action Alternative

There would be no impact to floodplains under the No Action alternative.

4.3.6 Water Management and Use

4.3.6.1 Proposed Action

Under the Proposed Action, there would be no change or additional impacts to water management. The Tribe's existing Water Services Agreement would remain with planned water use of up to 65,847 gallons per day based on a calendar year average, per the existing agreement with the Town (Tonto Apache 2005). The Tribe and Town's complimentary water conservation ordinances would remain in place and apply to the lands proposed for fee to trust transfer.

The water delivered under the Water Services Agreement can presently be used on both the existing Reservation and on the 273-acres of fee lands proposed for fee to trust transfer. The major "future" uses in the Water Services

Agreement provide for water service for 22 new residential units which will likely be sited on the 273-acre parcel, as well as one casino expansion project and one full-service 40 room hotel with pool which have been completed on the existing Reservation. The Water Services Agreement also includes a commitment by the Tribe to implement water conservation measures which are comparable to the Town's own ordinance; a commitment by the Tribe during the term of the Agreement to not utilize new wells that would negatively impact existing Town wells; and commitments by the Town and Tribe to work cooperatively to identify and procure additional and new water supplies.

The Tribe's Reservation and the lands proposed for transfer into trust do not have any appreciable amount of surface water, other than from flood flows and diffused surface flows from precipitation. Therefore, there would be no impact to surface water as a result of the Proposed Action. Development of the lands proposed for fee to trust transfer will likely occur regardless of their status as fee or trust lands and would be developed in accordance with applicable laws.

If the Proposed Action were approved, any future groundwater uses on the parcels proposed for transfer into trust would be managed by the Tribe and Indian Health Service (IHS).

4.3.6.2 No Action Alternative

Under the No Action Alternative, impacts to water management would be the same as the Proposed Action.

4.3.7 Water Rights

4.3.7.1 Proposed Action

If the Proposed Action were approved, there would likely be no impacts to existing water rights and the range of possible impacts are too speculative for analysis. Under State law, the use of groundwater outside of an Active Management Area is limited only by the requirement of beneficial use. Pursuant to the Water Services Agreement, groundwater use is further limited on the lands proposed for fee to trust transfer if it negatively impacted the Town's wells.

In the event there is a determination that groundwater is necessary to fulfill the purposes of the Tonto Apache Reservation as a permanent Tribal homeland, then such groundwater would be subject to greater protection under the law. In this case, it is not known if there is any groundwater available in any appreciable amounts under the lands proposed for fee to trust transfer. Further, no claim has yet been made by the Tribe or the United States in the Arizona General Stream Adjudication for groundwater underneath the lands proposed for fee to trust transfer. Any such claim which might be filed in the future will likely not be adjudicated by the court for many years to come and it is not possible to know the legal outcome at this juncture. It is anticipated that anyone objecting to the Tribe's water rights claims would have the opportunity to argue their position to the court in the Adjudication.

Similarly, no claim for federal reserved or other rights to surface water for the lands proposed for fee to trust transfer has been filed by the Tribe or United States and it is unknown if any such claim would be filed, given the limited amount of water on the surface which only occurs as runoff in precipitation events. Further, the legal outcome of such a claim cannot be predicted.

4.3.7.2 No Action Alternative

Under the No Action alternative, there would be no impact on existing water rights. The Tribe would continue to have the right under State law to pump groundwater, if any, for beneficial use, except to the extent such pumping would be limited by the Water Services Agreement. The Tribe would have the opportunity to assert a surface water right claim for the lands proposed for fee to trust transfer. However, the nature of that claim is not yet known and would be subject to resolution in the Adjudication court, after allowing for objections by interested parties.

4.4 Living Resources

4.4.1 Proposed Action

No impacts to threatened or endangered species, vegetation or other fauna, ecosystems or agriculture would occur as a result of the fee-to-trust land transfer under the Proposed Action. Although temporary impacts might occur during construction, any possible future impacts to living resources would be managed by the Tribe and the BIA.

4.4.2 No Action Alternative

Under this alternative, impacts to living resources would be the same as the Proposed Action.

4.5 Cultural Resources/Indian Trust Assets

4.5.1 Proposed Action

Under the Proposed Action, impacts to previously identified cultural resources would not occur as a result of the fee-to-trust land transfer. During construction, undocumented cultural resource sites identified within the project area would require notification to the BIA Western Regional Office Archaeologist and would be managed by the Tribe under the Archaeological Resources Protection Act and NHPA. Preservation of existing sites would be implemented by the Tribe (Appendix C).

The fee-to-trust land transfer meets the criteria that would provide for the residential needs of Tonto Apache Tribal members. Converting the vacant parcels to residential use would best serve the short-term and long-term interests of the Tribe. No concerns related to the protection of ITAs have been identified.

4.5.2 No Action Alternative

Under this alternative, impacts to cultural resources would be the same as the Proposed Action, but would not be under federal protection.

4.6 Socioeconomic Conditions

4.6.1 Proposed Action

Under the Proposed Action, existing property tax payments on the fee-to-trust transfer lands would be discontinued. Specifically, the Gila County school districts would not receive property tax income, as the fee status parcels would become exempt and return to federal control. This is offset by the Tribe's contributions to local schools and local economy through economic development enterprises such as Mazatzal casino (Appendix D).

Under the Proposed Action, the jurisdictional status of Tribal Members living on the 293-acres would be the same as that of the existing Reservation, which would provide for the uniform application of federal and Tribal laws to all Tribal Members and reduce confusion regarding civil and criminal law enforcement on the lands.

4.6.2 No Action Alternative

Under this alternative, property taxes for the parcels would remain as they are today, as the fee-to-trust transfer would not occur. The jurisdictional status of Tribal Members living on the 293-acres under the No Action alternative would subject them primarily to State and local laws instead of federal and Tribal law.

4.7 Resource Use Patterns

4.7.1 Hunting, Fishing, Gathering, Recreation

4.7.1.1 Proposed Action

Implementation of this alternative would not impact fishing, mining, timber harvesting or gathering, as these activities would likely continue.

4.7.1.2 No Action Alternative

Under this alternative, resource use patterns would continue as they do today.

4.7.2 Transportation Networks

4.7.2.1 Proposed Action

Impacts to transportation networks under the Proposed Action would likely not change outside the Reservation. The Tribe will continue to access the Reservation and fee status parcels via SR 87. Additionally, the Tribe will implement transportation plans on the Reservation relative to future development of homes and/or commercial uses under this alternative.

4.7.2.2 No Action Alternative

Under this alternative, impacts to transportation networks would be the same as the Proposed Action because the fee parcels would remain in Tribal ownership.

4.7.3 Land Use Plans

4.7.3.1 Proposed Action

Under the Proposed Action, future use of these lands would include housing, open space and possible commercial development. Land uses would be regulated by the Tribe and federal government and limited to the amount of water available to the Tribe to serve such purposes. No other land uses would be impacted under this alternative.

4.7.3.2 No Action Alternative

Under this alternative, the parcels would remain in fee status without federal protection and subject to the jurisdiction of the Town and Gila County. Land uses would be regulated by the planning and zoning regulations of the Town and Gila County as applicable. The Tribe would develop the land for uses which are already subject to the Water Services Agreement with the Town.

4.8 Other Values

4.8.1 Wilderness Area

The alternatives would not affect wilderness areas as none occur within or adjacent to the project area.

4.8.2 Sound and Noise

4.8.2.1 Proposed Action

Under the Proposed Action, no sound or noise impacts would occur as a result of the fee-to-trust transfer. If the Proposed Action were approved, future sound and noise impacts from the parcels would be managed by the Tribe, such as temporary use of noise barriers during construction.

4.8.2.2 No Action

Under the No Action alternative, noise impacts would be the same as the Proposed Action. Future sound and noise impacts from the parcels would be managed by the Tribe and the Town.

4.8.3 Public Health and Safety

4.8.3.1 Proposed Action

Under the Proposed Action, no impacts to public health and safety would occur as a result of the fee-to-trust transfer. Temporary impacts to public health and safety during construction would be managed by the Tribe. SR 87 traffic incidents would continue to be handled by the Arizona Department of Public Safety (Highway Patrol) as traffic is routinely monitored along this route.

4.8.3.2 No Action

Under the No Action, impacts to public health and safety would be managed by the Tribe and Town.

4.9 Comparison of Alternatives

The Proposed Action alternative would not have a higher impact level than the No Action Alternative, however, the Proposed Action allows for protection of the resources by the Tribe and the federal government. For example, foreseeable use of the parcels would require Tribal and, in many cases, federal approval, prior to any development. Moreover, the character of the community would not change as a result of the land status change. Under the No Action Alternative, the Reservation would not expand and the lands would not be subject to federal oversight.

4.9.1 Summary of Cumulative Impacts

Cumulative environmental impacts are defined as those environmental changes resulting from the accumulation or interaction of effects of one action with the effects of one or more other actions. Cumulative impacts can result from individual minor impacts as collectively significant actions take place over a period of time. They can occur in succession or synergistically, by piecemeal or slow degradation, and can be on-site or off-site. For this Proposed Action, the principal cumulative impact is the transfer of fee lands to trust status as coupled with the previous exchange of these lands from the USDA Forest Service.

In terms of cumulative impacts, the Proposed Action would have a minimal affect on the Town resources as the Town and Tribe generally communicate and address such issues as necessary. Even though development of 22 homes would increase demand for infrastructure, this impact is relatively minor when compared to the development projections as proposed by the Town in their General Plan Update (PSA 2003). Furthermore, the foreseeable Tribal development of the land is intended to provide homes for Tribal Members already living in and around the Payson area, making the demand on area resources generally the same.

4.9.2 Summary of Unavoidable Adverse Impacts

Under the Proposed Action, approximately 293 acres of lands would be transferred from fee owned lands into trust and the size of the Reservation would increase. No adverse impacts are expected as a result of the Proposed Action.

5.0 CONSULTATION AND COORDINATION

This section describes public notification efforts and public comment solicitation for the proposed project.

5.1 Scoping

In accordance with the requirements of NEPA, a project scoping letter was mailed out to interested parties on September 1, 2006. The primary objective of this effort was to solicit public comments to better identify potential issues and concerns. Comment letters received from interested parties are provided in Appendix E. A copy of this EA will be sent to interested parties. The following entities were consulted during the preparation of this EA:

Arizona Public Service	Gila County
Arizona Department of Environmental Quality	Indian Health Services
Arizona Department of Transportation	National Park Service
Arizona Department of Water Resources	National Resource Conservation Service
Army Corps of Engineers	NPG Cable
Arizona Game & Fish Department	Payson Town Council
Arizona State Land Department	Prudential Arrowhead Realty
Arizona State Parks	Qwest
Bureau of Indian Affairs	SRP
Bureau of Land Management	Tonto Apache Tribe
Bureau of Reclamation	Tonto National Forest
Elk Ridge Adjacent Landowners	US Fish and Wildlife Service
Environmental Protection Agency	

6.0 LIST OF PREPARERS

Preparer/Title	Task	Company/Agency
Ms. Noelle Sanders	Preparation of EA	Del Sol Group
Ms. Amy Heuslein	Project Oversight	BIA, Western Regional Office
Mr. Garry Cantley	Cultural Resources	BIA, Western Regional Office
Ms. Leah Burrows	Realty	BIA, Western Regional Office
Mr. Jim Williams	Agency Coordination	BIA, Truxton Canon Agency
Ms. Diane Devlin	Realty Specialist	BIA, Truxton Canon Agency

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APPENDIX A: TRIBAL RESOLUTION 08-29



Tonto Apache Tribe

Tonto Apache Reservation #30
Payson, Arizona 85541
Telephone: (928) 474-5000
Fax: (928) 474-9125

**RESOLUTION NO. 08-29
OF THE GOVERNING BODY OF THE
TONTO APACHE TRIBE
(A Federally Recognized Indian Tribe)
PAYSON, ARIZONA**

WHEREAS, the Tonto Apache Tribe ("Tribe") is a federally-recognized Indian Tribe pursuant to the Apache Treaty of 1852, 10 Stat. 979; P.L. 92-470, 86 Stat. 783; and Section 16 of the Indian Reorganization Act of 1934, 48 Stat. 984; and

WHEREAS, Article VII, Section 2(b) and 2(l) of the Constitution of the Tonto Apache Tribe, permits the Tribal Council of the Tonto Apache Tribe to make agreements with the United States and to acquire lands or interests in lands within or without the Reservation; and

WHEREAS, the Tribe presently occupies its Reservation which consists of 85 acres of land near the Town of Payson in east-central Arizona; and

WHEREAS, the Tribe has acquired approximately 273 acres of land contiguous to the Reservation through a land exchange with the United States Forest Service ("Exchange Parcel"); and

WHEREAS, the Tribe owns approximately 20 additional acres of land which is also contiguous to the Reservation ("Jones Parcel"); and

WHEREAS, the Exchange Parcel and the Jones Parcel are owned by the Tribe in fee simple; and

WHEREAS, the population of the Reservation is over 150 people living on the Reservation, including Tribal Members, their spouses and families; and

WHEREAS, the Reservation is completely built out and there is no more room for additional housing, which requires two and sometimes three families to live in a single family dwelling; and

WHEREAS, to meet the needs for Tribal housing, 22 new homes should be constructed in the next 5 years; and

WHEREAS, the present Reservation land base is severely inadequate to meet even the most fundamental needs of the Tribe for housing and open space; and

WHEREAS, approximately 28 acres of the Exchange Parcel might be suitable for commercial development, the Tribe has no definite plans for commercial development of this parcel; and

WHEREAS, the Tribe previously submitted an application dated September 8, 2004, to the Bureau of Indian Affairs ("BIA") for the acquisition of the Exchange Parcel pursuant to 25 C.F.R. Part 151 and Tribal Resolution No. 22-04 ("Application"), and

WHEREAS, on August 8, 2006, the Tribe submitted Tribal Resolution No. 06-18 requesting that the Jones Parcel be added to the Tribe's Application; and

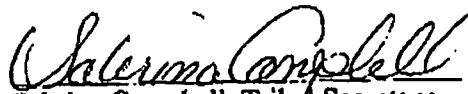
WHEREAS, the Tribe continues to desire to have both the Exchange Parcel and the Jones Parcel conveyed to the United States in trust for the benefit of the Tribe in order to facilitate the Tribe's immediate and emergency need for housing and open space; and

NOW THEREFORE BE IT RESOLVED AS FOLLOWS:

1. The Tribe hereby amends its Application for the On-Reservation Acquisition of Land into Trust for the Tonto Apache Tribe and to Add Such Lands to the Existing Tonto Apache Reservation dated September 8, 2004, and the August 8, 2008, Supplement, to recognize and confirm that the land described in the legal description contained in the patent and map attached as **Exhibits A and B** (Exchange Parcel) has now been transferred and conveyed by the United States to the Tonto Apache Tribe in fee simple, and that the land described in the legal description contained in the deed and map attached as **Exhibits C and D** (Jones Parcel) is presently owned by the Tonto Apache Tribe in fee simple.
2. The Tribe confirms its request that the Secretary of Interior acquire the Exchange Parcel and Jones Parcel, with such lands to be held in trust by the United States of America for the benefit of the Tonto Apache Tribe, pursuant to the statutory authority of 25 U.S.C. §465.
3. The Tribe confirms its request that the Secretary of Interior declare the Exchange Parcel and Jones Parcel as added to the existing Tonto Apache Reservation pursuant to the statutory authority of 25 U.S.C. §467, upon the conveyance of the Exchange Parcel and Jones Parcel to the United States in trust for the benefit of the Tonto Apache Tribe.
4. The Chairperson and Vice-Chairperson are authorized and directed to take such action as may be necessary to implement the intent of this Resolution.

CERTIFICATION

I, the undersigned, Secretary of the Tonto Apache Tribal Council, hereby certify that the Council is composed of five (5) members, of whom FOUR (4), constituting a quorum, were present at a Regular Meeting hereto held on the 19th day of November, 2008, and that the foregoing Resolution No. 08-28 was duly adopted by a vote of FOR 4; OPPOSED 0; of the Tribal Council pursuant to the provisions of Constitution and Bylaws of the Tonto Apache Tribe.


Sabrina Campbell, Tribal Secretary
Tonto Apache Tribal Council

APPENDIX B: USFWS CORRESPONDENCE



United States Department of the Interior

U.S. Fish and Wildlife Service

Arizona Ecological Services Field Office

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
22410-2010-TA-0021

November 2, 2009

Mr. James Williams, Superintendent
Bureau of Indian Affairs
Truxton Canyon Agency
13067 East Highway 66
Valentine, Arizona 86437



Dear Mr. Williams:

Thank you for your correspondence of August 24, received in our office via email September 1, 2009. This letter documents our recommendations regarding the fee-to-trust transfer of two parcels adjacent to the Tonto Apache Reservation in compliance with section 7 of the Endangered Species Act of 1973 (ESA) as amended (16 U.S.C. 1531 et seq.). The parcels total 293 acres and are located adjacent to Payson, Arizona, within sections 9 and 10, Township 10 North, Range 10 East, Gila County. Your consultant, Del Sol Group, has provided information on biological resources to us in a technical memorandum dated September 1, 2009 and additional information via email on October 14, 2009. Based on the information that you and your consultant have provided, we believe that no endangered or threatened species or critical habitat will be affected by this project; nor is this project likely to jeopardize the continued existence of any proposed species or adversely modify any proposed critical habitat. No further review is required for this project at this time. Should project plans change or if additional information on the distribution of listed or proposed species becomes available, this determination may need to be reconsidered.

In keeping with our trust responsibilities to American Indian Tribes, by copy of this letter/memorandum, we will notify the Tonto Apache Tribe. We encourage you to coordinate review of this project with the Arizona Game and Fish Department.

Should you require further assistance or if you have any questions, please contact John Nystedt (x104) or Brenda Smith (x101) at (928) 226-0614 of our Flagstaff Suboffice. Thank you for your continued efforts to conserve endangered species.

Sincerely,

Steven L. Spangle
Field Supervisor

Mr. Williams

2

cc: Chairperson, Tonto Apache Tribe, Payson, AZ
Environmental Specialist, Environmental Services, Western Regional Office, Bureau of
Indian Affairs, Phoenix, AZ
Tribal Liaison, Southwest Region, Fish and Wildlife Service, Albuquerque, NM (ARD-EA)

W:\John Nystedt\BIAtontoFee2Trust.docx: jkey

APPENDIX C: SECTION 106 CORRESPONDENCE



United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WESTERN REGIONAL OFFICE
TWO ARIZONA CENTER, 12TH FLOOR
400 NORTH 5TH STREET
PHOENIX, ARIZONA 85004



IN REPLY
REFER TO:
Environmental Quality Services
(602) 379-6750

OCT 25 2007

MEMORANDUM

To: Superintendent, Truxton Canon Agency
Attention: Environmental Coordinator

From: Regional Director /s/ Allen J. Anspach

Subject: Section 106 of NHPA, Project No. 2004-277, Tonto Apache Land Exchange, Additional 20 Acre Parcel, Tonto-Apache Indian Reservation

As the certifying authority at Supplement 2, 30 BIAM 1.5B(1), I have reviewed the proposed undertaking, **Tonto Apache Land Exchange, Additional 20 Acre Parcel**, and find there is no potential for this undertaking to cause effects on historic properties. I therefore invoke 36 CFR 800.3(a)(1), whereby no further steps are required for the Section 106 process of the National Historic Preservation Act, as amended (NHPA).

By memorandum dated January 18, 2005, I determined that the original application for acquisition of 273 acres in trust status on behalf of the Tonto Apache Tribe had no potential to cause effects on historic properties. Since that time, the application has been modified to include twenty additional acres, which are addressed by this memorandum to make the application complete.

This determination should be included as part of the National Environmental Policy Act documentation associated with the proposed action to demonstrate compliance with Bureau responsibilities under Section 106 of the NHPA.

If you have any questions, please contact Mr. Garry J. Cantley, Regional Archeologist, at (602) 379-6750.

UNITED STATES GOVERNMENT
memorandum

DATE: **JAN 18 2005**
REPLY TO: ^{Acting} Western Regional Director
ATTN. OF: Environmental Quality Services
SUBJECT: Section 106 of NHPA, Project No. 2004-277, Tonto Apache Land Exchange,
Tonto-Apache Indian Reservation
TO: Superintendent, Truxton Canon Agency
Attention: Environmental Coordinator

As the certifying authority at Supplement 2, 30 BIAM 1.5B(1), I have reviewed the proposed undertaking, Tonto Apache Land Exchange, and find there is no potential for this undertaking to cause effects on historic properties. I therefore invoke 36 CFR 800.3(a)(1), whereby no further steps are required for the Section 106 process of the National Historic Preservation Act, as amended 1992 (NHPA).

This determination should be included as part of the National Environmental Policy Act (NEPA) documentation associated with the proposed action to demonstrate compliance with Bureau responsibilities under Section 106 of the NHPA.

If you have any questions, please contact Mr. Garry J. Cantley, Regional Archeologist, at (602) 379-6750.

Bryan Bowker

cc: Chairperson, Tonto Apache Tribal Council
Real Estate Services, WRO



Tonto Apache Tribe

Tonto Apache Reservation #30
Payson, Arizona 85541
Telephone: (520) 474-5000
Fax: (520) 474-9125

September 20, 2005

Via Facsimile (602) 225-5295 and U.S. Mail

Gene Blankenbaker, Forest Supervisor
TONTO NATIONAL FOREST
2324 E. McDowell Rd.
Phoenix, Arizona 85006-2440

Re: Tonto Apache Land Exchange - Protection of Petroglyphs at Sites AR-03-12-04-1463, -1551 and -1552 on Parcel to be Exchanged to the Tonto Apache Tribe

Dear Mr. Blankenbaker:

The State Historic Preservation Office (SHPO) has concurred regarding the Heritage Inventory Standards and Accounting for the Tonto Apache Land Exchange currently pending, contingent upon the Tonto Apache Tribe's protection of the petroglyphs located at sites AR-03-12-1463, -1551 and -1552 on the Federal parcel which is to be conveyed to the Tribe.

This letter will confirm that the Tribe is committed to protecting the petroglyphs and will take steps to protect them upon consummation of the land exchange. Enclosed is a resolution of the Tribe approving the protection of the petroglyphs. If you have any questions, please contact the Tribe's General Counsel, Mr. Joe Sparks or Ms. Robyn Interpreter of Sparks, Tehan & Ryley, P.C.

Yours Truly,

TONTO APACHE TRIBE

Ivan Smith

Enclosure

cc: Scott Wood, Forest Archaeologist

IS/rl

\\INDIAN\TONTOLA\LAND EXCHANGE\tr to Blankenbaker(2).wpd



Tonto Apache Tribe

Tonto Apache Reservation #30
Payson, Arizona 85541
Telephone: (928) 474-5000
Fax: (928) 474-9125

RESOLUTION NO. 05-38

TRIBAL RESOLUTION TONTO APACHE TRIBE

WHEREAS, the Tonto Apache Tribe ("Tribe") is a federally-recognized Indian Tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934, 48 Stat. 984; and

WHEREAS, the Tribe is presently negotiating a federal land exchange with the United States Forest Service; and

WHEREAS, a Heritage Inventory Standards and Accounting Report was approved by the State Historic Preservation Office on May 13, 2005, "contingent upon the Tribe's protection of petroglyphs at sites -1463, -1551, and -1552" (attached here as Exhibit "A"); and

WHEREAS, the Tribe deems it important to protect these petroglyphs; and

NOW THEREFORE, be it resolved as follows:

1. Upon consummation of the federal land exchange which conveys to the Tribe the property where the petroglyphs are located, the Tribe will take the appropriate steps reasonably necessary to protect the petroglyphs.

CERTIFICATION

I, the undersigned, Secretary of the Tonto Apache Tribal Council, hereby certify that the Council is composed of five (5) members, of whom FIVE (5), constituting a quorum, were present at a Tribal Council Meeting; hereto held on the 20th day of September, 2005, and that the foregoing Resolution No. 05-38 was duly adopted by a vote of 5 FOR; 0 OPPOSED; 0 ABSTAINING; of the Tribal Council, pursuant to the provisions of Constitution and Bylaws of the Tonto Apache Tribe.

Sabrina Campbell, Tribal Secretary,
Tonto Apache Tribal Council

APPENDIX D: RESPONSE TO COMMENTS



SUSAN B. MONTGOMERY
Admitted in Arizona &
South Dakota
smontgomery@milawaz.com

ROBYN L. INTERPRETER
Admitted in Arizona &
Navajo Nation
rinterpreter@milawaz.com

December 5, 2008

Mr. James E. Williams
BUREAU OF INDIAN AFFAIRS
Truxton Canon Agency
P.O. Box 37
Valentine, Arizona 86437

Re: Tonto Apache Tribe's Response to Comments Regarding the Draft Environmental Assessment for the Fee to Trust Acquisition for Land Adjacent to the Tonto Apache Reservation

Dear Mr. Williams:

This Firm represents the Tonto Apache Tribe (Tribe) in the processing of the Tribe's Application for a Fee to Trust Application for acquisition of approximately 293 acres of land located immediately adjacent to the Tonto Apache Reservation (Reservation) near Payson, Arizona.

This letter is written on behalf of the Tribe in response to the comments to the Draft Environmental Assessment (EA) provided by the Town of Payson (Town), Salt River Project (SRP), and Suzanne Covert and Leo McDonald (Covert Letter). The Tribe hopes that the information provided here will clarify any misunderstandings regarding the Tribe's request for this fee to trust acquisition.

Fundamentally, the Tribe immediately requires the addition of this land to the Tonto Apache Reservation to provide for urgently needed housing for Tribal members and their families. The present 85-acre Reservation is completely built out and most houses on the Reservation hold two, three, and sometimes four *generations* of families. In addition, some Tribal members are currently forced to live in the Town of Payson due to overcrowded conditions on the Reservation.

While other uses of the lands may be considered by the Tribe in the future to provide for Tribal self-determination and economic development, the Tribe has no plans for these purposes at this time. The Tribe's most urgent need and priority is for housing.

Water Resources

The Tribe estimates that 22 new homes need to be built to provide for the most immediate housing needs on the Reservation within the next 5 years, and to provide open space for the Tribe. When planning for its water needs for these new homes, the Tribe worked with the Town of Payson to obtain the delivery of an adequate water supply to serve these additional homes, as reflected in the Water Services Agreement between the Tribe and Town, dated November 4, 2005.

SRP's comment letter suggests that the Tribe could put approximately 530 houses on the lands proposed for trust acquisition, and argues that such development would not be sustainable because of the limited water supplies in the Payson area. SRP's projection of 530 houses is without any foundation. The Tribe only has approximately 134 Tribal members and a total of approximately 150 residents living on the existing Reservation. Furthermore, SRP's projection presupposes that all of the lands taken into trust would be amenable for housing development. This is incorrect. In fact, certain of the lands are only appropriate to be maintained as open space, while other lands may be needed for other Tribal purposes in the future. Because SRP's projection of 530 houses is, at best, highly speculative, it should be disregarded.

It is also important to note that the Tonto Apache People have lived in the Payson area since time immemorial and they will not be leaving the area since this is their permanent Tribal homeland. Since the Tonto Apache Tribal members and their families already live in the area and are using the Payson area aquifer, there simply will be no significant change in the demand upon local water resources with the acquisition of the land into trust.

To the extent there is any "incremental demand" placed upon the regional aquifer system resulting from the proposed trust acquisition, this demand has already been evaluated by the Town in cooperation with the Tribe as part of the Water Services Agreement. Thus, the limits of any increased water demand on the area aquifer system arising from the Planned Future Water Uses (as defined in the Water Services Agreement at ¶ 1.2) on the proposed trust lands has been set forth with particularity and agreed by the Town to be within the threshold for safe-yield for the area.

The Town's comment letter, through its attorney, also suggests that the EA underestimates the "incremental demand unregulated development will place on the Payson aquifer." This suggestion is misplaced.

It is difficult to understand the basis for the Town's conclusion that any development on newly acquired trust lands will be conducted in an "unregulated"

manner. While it is true that development on the Tribe's trust lands will not be governed under the Town's development standards, this does not mean that such development will be "unregulated." As part of the Reservation, the trust lands would be subject to regulation by the governing body of the Tonto Apache Tribe and applicable federal law.

In addition, any Tribal development on the proposed trust lands would necessarily be limited by the amount of water that is physically and legally available to the Tribe both now and in the future to serve such development, just as any other person or entity would be so limited.

The Tribe, like the Town, has long been mindful of the limited water supplies since the population of the area has exponentially increased with people moving to the region over the past 30 years. Indeed, in an effort to work cooperatively to manage the area water supply, the Tribe has installed and retrofitted its governmental facilities and many Tribal houses with low flow water fixtures whenever possible, and in recent years, has enacted a stringent Water Conservation Code which is commensurate with the Town's own water conservation ordinance. In sum, the Tribe has not engaged in any "unregulated development" to date, and the suggestion that the Tribe will be spurred to do so once the subject lands are taken into trust is incorrect.

The Tribe and the Town have also agreed in the Water Services Agreement to cooperate regarding water supplies for the region, and the Tribe has conceded that, during the term of the Agreement, it will not develop any new wells that would negatively impact the Town's existing wells, including on the proposed trust lands. See Water Services Agreement, ¶ 11.0 ("During the term of this Agreement, the Tribe will not utilize new wells that negatively impact existing Town wells.").

The Town's concern about an increase in water demand on the area aquifer system also fails to consider that the water demand for the Planned Future Uses will be significantly *offset* by a reduction in demand by Tribal members at other locations in the Payson area, either in homes located in Town or on the existing Reservation.

At its base, there are simply no direct or secondary impacts to water resources which will arise out of the proposed action; that is, the placement of lands currently owned in fee by the Tribe into trust. Indeed, if the proposed lands were to remain in fee ownership, the Tribe would still have the right, under the Town's own development code, to develop residential units on the lands proposed for trust acquisition.

The Town also suggests that water from the C.C. Cragin Reservoir is not a water source available to the Tribe for use on the lands proposed for trust acquisition. While the Tribe agrees with the Town that delivery of water from C.C. Cragin is not yet a physical reality, the opportunity for the Tribe to secure a reliable amount of water from this source to meet its permanent Tribal homeland needs still exists. Nonetheless, as stated above, whether or not the Tribe will be able to conduct development on the lands proposed for trust acquisition, other than that which is provided for under the Water Services Agreement, will depend upon physical and legal access to an additional water supply, just as the Town would depend upon it for its own growth.

The Town further comments that the Tribe's Central Arizona Project (CAP) water "cannot reasonably be considered an available water supply for the land that would be taken into trust." The Town's comment is misplaced. Whether or not the Tribe's CAP water is available to serve the Tribe's Reservation is not changed by taking the lands into trust. The Tribe's CAP water remains available to the existing Reservation if the related CAP infrastructure is built. The EA simply describes the Tribe's CAP water as an additional possible water supply for the lands to be taken into trust.

Planning and Commercial Development

The Covert Letter suggests dismay that the Tribe has not provided a master land use plan for the lands that are the subject of this fee to trust acquisition. The Tribe has determined that it requires 22 new homes to be constructed on the lands in the near future. In addition, although approximately 28 acres of the land may be *suitable* for commercial development, the Tribe simply has *no plans* to develop the land for commercial purposes or any other purposes at this time. Therefore, a master land use plan is unwarranted. With this being said, however, the Tribe's plans for the proposed trust lands have not been hidden from public scrutiny by any means, as much of its intended use for the lands is outlined in the Water Services Agreement as Planned Future Uses.

The Town of Payson, through its attorney, also commented that the EA must consider the impact of *likely* commercial development that is undefined. Contrary to the Town's suggestion, the EA is not required to create a commercial development scenario from whole cloth, estimate its water demand, and then evaluate its possible impact in the EA process.¹ The analysis must be grounded in reality. See *Sierra Club v. Marsh*, 976 F.2d 763, 768 (1st Cir. 1992) ("Agencies must consider only those indirect effects that are 'reasonably foreseeable.' They need not consider potential effects that are highly speculative or indefinite.").

¹ Indeed, many commercial development projects could be created from whole cloth which have positive impacts on the human and natural environment.

In addition, even assuming the Tribe *did* contemplate using certain of the proposed trust lands for commercial development, there is simply no causal relationship between taking the lands into trust and the possibility of indirect or secondary effects arising from commercial development. The land itself is suitable for commercial development and could be developed commercially whether or not the land is taken into trust. The act of taking the lands into trust does not create the possibility of commercial development, as it is already possible. The EA is not required to address indirect effects which have no causal relationship to the proposed action. See *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774, 103 S. Ct. 1556 (1983) (NEPA requires a "reasonably close causal relationship between a change in the physical environment and the effect at issue.").

Traffic Pattern

The Covert Letter suggests that the Tribe would provide access to the lands proposed for trust acquisition through their neighborhood and Phoenix Street. The Tribe has no plans to access these lands from Phoenix Street. Indeed, the most logical access to the lands is from the main entry point for the existing Reservation from Highway 87.

Highway 87 Jurisdiction

The Town suggests that there is some ambiguity as to whether or not the Highway 87 right-of-way that traverses the parcels will continue to exist if the lands are taken into trust. As the title documents reveal, the status of Highway 87 as a right-of-way through the parcels will remain unchanged if the lands are taken into trust and therefore, there will be no affect upon its status as a right-of-way held by the Arizona Department of Public Safety if the lands are taken into trust.

Property Taxes

The Town's comment letter and the Covert letter express concern regarding a loss of property taxes if the lands are acquired into trust. For instance, the Town states that even though the Tribe has, "from time to time," "made *voluntary* monetary contributions for local projects that benefit the entire community," "it has done so without a binding commitment that such generous contributions will continue, let alone at what level and whether for purposes to which the local governments responsible for discharging governmental obligations assign the highest priorities." The Tribe is disheartened by this statement as it seems to discount the Tribe's ongoing commitment and concern for its neighbors in the Town of Payson and nearby communities.

Nonetheless, on the 20 acre parcel located to the northwest of the existing Reservation (Jones Parcel), the Tribe was assessed \$2,786.46 in Gila County taxes for 2008. The 273 acre parcel (Exchange Parcel) that was recently acquired in a land exchange from the United States Forest Service has not yet been assessed taxes by Gila County. Historically, this land was part of the Tonto National Forest and thus, was not subject to county taxation. The loss of property taxes for the Jones Parcel pales in comparison to the Tribe's regular contributions to the local community and economy. The Tribe's casino is the largest employer in the Payson area and the Tribe has consistently provided its 12% gaming revenue under its Gaming Compact with the State of Arizona to the local towns for public works for all local residents. In addition to this regular contribution, the Tribe places the highest value on education and has consistently supported the Payson School District.

In 2003, the Payson High School's all weather track was constructed with the help of a \$150,000 donation from the Tribe, the largest donation ever received by the High School. Again this year, the Tribe made a sizeable donation to resurface the track. In addition, the Tribe regularly provides significant college scholarships to Payson High School graduating students. One need only refer to the local newspaper, the Payson Roundup, for documentation of the Tribe's contributions to the local community.² The addition of the lands to the Reservation will only serve to enhance the quality of life of Tonto Apache Tribal Members and the ability of the Tribe to continue to be an active partner in the health of the Payson area community and economy.

The Tribe hopes that this response clarifies any misunderstandings regarding its Lands to Trust Application and requests that the BIA acquire the lands into trust for the benefit of the Tonto Apache Tribe as soon as possible.

Yours Truly,

MONTGOMERY & INTERPRETER, PLC



Robyn L. Interpreter

² The Town, through its attorney, comments that the EA provides no support for its statements regarding the Tribe's financial contributions. Since the Town has received most of the Tribe's contributions over the years, it seems incongruous that it would make such a statement. Nonetheless, for support, the EA cites to a 2005 report by L.J. Gibson regarding the Tribe's contributions to the local economy entitled, "Economic Assessment: The Tonto Apache Tribe's Impact on the Payson, Arizona Region.

Cc: Tonto Apache Tribal Council
Amy Heuslein, Bureau of Indian Affairs
Noelle Sanders, Del Sol Group
Ronnie Hawks, Salmon, Lewis & Weldon, PLC
Lauren Caster, Fennemore Craig, PC
Sam Streichman, Town of Payson
Suzanne Covert & Leo McDonald

APPENDIX E: SCOPING COMMENT LETTERS

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April 18, 2008

HAND-DELIVERED

Ms. Amy Heuslein
Regional Environmental Protection Officer
Western Regional Office
Two Arizona Center
400 North 5th Street, 12th Floor
Phoenix, Arizona 85004



Re: Town of Payson's Comments on the Bureau of Indian Affairs, Truxton Cañon Field Office, *Draft Environmental Assessment, Fee-To-Trust Transfer of 293 Acres for the Tonto Apache Tribe* (March 2008)

Dear Ms. Heuslein:

This firm represents the Town of Payson (the "Town" or "Payson") and submits the following comments on the Town's behalf concerning the Bureau of Indian Affairs, Truxton Cañon Field Office, *Draft Environmental Assessment, Fee-To-Trust Transfer of 293 Acres for the Tonto Apache Tribe* (March 2008) (the "Draft EA"). The action alternative evaluated in the Draft EA will have significant impacts that merit preparation of an environmental impact statement at a minimum.

A. Overview

The Bureau of Indian Affairs' responsibility in preparing an environmental assessment of the proposed fee-to-trust transfer is in part to produce a "concise public document . . . that serves to: (1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact." 40 C.F.R. § 1508.9(a)(1) (2007). To prepare an environmental assessment properly, an agency must accurately identify the relevant environmental concerns; take a "hard look" at the problems in preparing the environmental assessment; if the agency enters a finding of no significant impact, it must be able to make a convincing case for its finding; and if the agency finds an impact of true significance, it can avoid preparation of an environmental impact statement only if the agency finds that changes or safeguards in the project sufficiently reduce the impact to a minimum. *See Great Old Broads for Wilderness v. Kempthorne*, 452 F. Supp. 2d 71, 83 (D.D.C.), *motion to amend denied*, 462 F. Supp. 2d 61 (D.D.C. 2006).

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The proposed fee-to-trust transfer also requires the Secretary of the Interior to consider a variety of specific factors. Among those factors are the following:

- (a) The existence of statutory authority for the acquisition and any limitations contained in such authority;
- (b) The need of the individual Indian or the tribe for additional land;
- (c) The purposes for which the land will be used;
-
- (e) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls;
- (f) Jurisdictional problems and potential conflicts of land use which may arise

25 C.F.R. § 151.10 (2007).

The Draft EA failed to identify environmental concerns accurately, and relied on incomplete and inaccurate information to evaluate the concerns it did address. As the following discussion illustrates, the Bureau did not satisfy its obligation to take a “hard look” under the National Environmental Policy Act.

B. The Draft EA Failed to Evaluate Properly the Environmental Impacts of the Proposed Fee-to-Trust Transfer on the Area’s Water Resources.

Payson’s greatest concern with the proposed fee-to-trust transfer is the impact of the proposed transfer on the water resources of the Town and surrounding area. The Draft EA underestimated future water demand associated with the lands proposed to be transferred into trust. It also has drawn unrealistic conclusions concerning potential sources of supply needed to meet that demand. The Bureau of Indian Affairs must reevaluate its conclusions and take a “hard look” at the impacts of the proposed transfer into trust status on the area’s water supplies. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) quoting *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n. 21 (1976).

1. The Draft EA Miscalculated the Likely Water Demand Associated with the Land Proposed To Be Taken Into Trust.

The Town and the Tonto Apache Tribe (“Tribe”) are parties to an Agreement Between the Town of Payson and the Tonto Apache Indian Tribe for Municipal Water Services dated November 4, 2005 (“Water Services Agreement”). Under that Agreement, the Town committed

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to deliver water to the Tribe at a rate not exceeding 100 gpm, and in a total volume not exceeding an average of 65,847 gallons per day based on a calendar year average. The Water Services Agreement specified that not more than an average of 32,000 gallons per day based on a calendar year average would be delivered for "Existing Water Uses," a term defined by the Agreement, and not more than an average of 33,847 gallons per day based on a calendar year average would be delivered for "Planned Future Water Uses," also a term defined by the Agreement. ¶¶ 2.1, 1.1, 1.2. The Agreement is for a term of five years, to renew automatically for a one-year period and from year to year thereafter unless either party gives specified notice of the intent not to renew. ¶ 8(a). Despite the existence of the Water Services Agreement, the proposed transfer of land into trust status presents a serious risk that the water demand will exceed available uncommitted supply. This stems from the unconstrained potential water demand associated with the land once it achieves trust status. The *peak* daily demand associated with the committed delivery under the Water Services Agreement is 144,000 gallons per day, being the lesser of 100 gpm delivered continuously 24 hours per day, 365 days per year, and 163,718 gallons, calculated by multiplying the total of 65,487 gallons per day average based on a calendar year by the peaking factor of 2.5. As shown below, the *peak* demand remaining uncommitted totals only 22,872 gallons per day.

The Town delivered an average of 42,951 gallons per day to the Tribe during the calendar year 2005. Its *peak* daily delivery to the Tribe during that year, calculated by the daily average multiplied by a peaking factor of 2.5, was 107,378 gallons per day. The Town estimates that the 22 new residential units mentioned in the Draft EA will require, in the aggregate, an average of 5,500 gallons per day based on a calendar year, while the peak demand for that housing will be 13,750 gallons per day using a peaking factor of 2.5. The current situation is portrayed below in tabular form.

Water Services Agreement Commitment	Committed Demand	Unused Commitment Under Water Services Agreement
"Existing Water Uses" – 32,000 gallons per day average based on calendar year	42,951 gallons per day average (from calendar year 2005)	None
"Planned Future Water Uses" – 33,487 gallons per day average based on calendar year	10,951 gallons per day exceedance from "Existing Water Uses," plus 5,500 gallons per day average for 22 new residential units	9,148 gallons per day average based on calendar year (available peak demand of 22,872 gallons per day divided by peaking factor of 2.5)

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To place the remaining unused commitment under the Water Services Agreement in perspective, 9,148 gallons per day average based on a calendar year would be consumed by 21 new apartments, or one 80-room motel.

The Draft EA's focus on daily average demand over a calendar year ignores the need to accommodate the Tribe's likely peak daily demand. Development on the property proposed to be transferred into trust will only increase this maximum demand. Failure to articulate the "baseline" demand correctly results in an understatement of the cumulative impact the proposed transfer will have on overall water demand.

2. The Draft EA Erroneously Disregarded the Impact of Future Commercial Development.

The Draft EA represents on one hand that the Tribe has made no plans for commercial development. *E.g.*, Draft EA at 4, § 2.2; 6, § 2.2.2; 17, § 3.7.6; 21, § 4.2.2.1. Still, it advises that "[i]f the Proposed Action was approved, *future impacts to land resources would likely include residential and commercial development . . .*" Draft EA at 20, § 4.1.1 (emphasis added). Paragraph 1.2 of the Water Services Agreement states:

Planned Future Water Uses. Planned Future Water Users mean the following described water uses *which the Tribe intends to construct within five (5) years from the date of this Agreement:*

- (a) 22 residential units
- (b) 1 Casino expansion project, to include a new restaurant, food court, lounge, arcade, offices and meeting rooms, and associated facilities
- (c) 1 full service 40 room hotel with pool
- (d) 2 Tribal administration buildings (90x30 feet each)
- (e) small playground/park with bathrooms
- (f) low water use landscaping

(emphasis added). The Town understands that all but items (a), (e) and (f) have been constructed already. Current service to the Tribe, then, in addition to satisfying the demand of 22 new residential units mentioned in the Draft EA and a very limited additional supply as discussed above, exhausts the Town's commitment under the Water Services Agreement.

As noted above, applicable regulations require the Secretary of the Interior to consider "[t]he purposes for which the land will be used," as well as "[j]urisdictional problems and potential conflicts of land use which may arise . . ." 25 C.F.R. § 151.10(c) & (f). It is difficult

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to perceive how the Secretary can evaluate these factors when commercial development on the land that would be transferred into trust status is “likely” to occur, Draft EA at 20, § 4.1.1, yet is undefined. Similarly, the Draft EA is deficient in failing to evaluate the impact of commercial development in this circumstance. *See Thomas v. Peterson*, 753 F.2d 754, 760 (9th Cir. 1985). It is inappropriate to ignore the impact of “likely” future development simply because the Tribe has not provided plans for that development. Absent those plans, the Secretary should not approve the application because its impact is unknowable.

3. The Draft EA Improperly Discounted the Importance of the Incremental Demand of Unregulated Development on Land that Would Be Taken Into Trust.

The Draft EA unjustifiably discounts the significance of the incremental demand unregulated development will place on the Payson area aquifer. It states that “the Proposed Action would have a minimal affect [sic] on the Town resources” Draft EA at 24, § 4.9.1. *See also* Draft EA at 20, § 4.2.1.1 (“Under the Proposed Action, there would be no change or additional impacts to water management.”). This misstates the importance of the additional water demand involved. The Town is close to exceeding its safe yield supply in the local area aquifer. Demand associated with unregulated development of land taken into trust could cause the Town to crowd safe yield even more closely if the Town elected to serve demand in excess of that contemplated by the Water Services Agreement. Moreover, the differential between the Town’s existing demand (including its obligation under the Water Supply Agreement) and its safe yield supply is fully committed. That remaining capacity is allocated already to pre-approved developments within the Town’s corporate limits. The assumption that the water is available for use by the Tribe, other than that quantity committed under the Water Services Agreement for the duration of that accord, is incorrect.

There remain significant uncertainties regarding the scale of the increased demand associated with development of the fee land if it is transferred into trust status. These uncertainties are exacerbated by what appear to be the Bureau of Indian Affairs’ unreliable methods to calculate associated water demand. The Town can only conclude that the Bureau did not consider the extent to which the Payson aquifer already is committed. The Town requests, for the reasons stated above and those that follow, that the Bureau revise its Draft EA and conclude that a full environmental impact statement is warranted.

4. The Town Is Negotiating for Access to Water From C.C. Cragin Reservoir, but Those Negotiations Have Not Been Completed, and Physical Access to That Water Is Years Away Under the Best of Circumstances.

The Town currently is in negotiations with the Salt River Project to gain access to water from C.C. Cragin Reservoir. If that effort succeeds, the Town’s water supply would be enhanced significantly. The negotiations have not been completed, however. Even if the Town signs an agreement with the Project, the Town must secure the transfer of a portion of the certificate of water right for C.C. Cragin Reservoir to enable it to use Cragin water within the Town; arrange

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appropriate financing; and secure federal environmental approvals and permits, all before it can begin to construct the infrastructure required to utilize the water. Physical access to Cragin water is, at best, years away. The Draft EA simply cannot assume at this juncture that Cragin water is a reliable source for the Town. Given the Tribe's failure to engage the Town in discussions over its own access to any Cragin water delivered through the Town's infrastructure, it is not a water source available for use on the lands proposed to be transferred into trust.

5. The Draft EA Inaccurately Described the Likelihood of the Tribe's Receipt of Delivery of CAP Water.

The Draft EA at 20, § 4.2.1.1, declares that "[t]he delivery of the Tribe's CAP water, through exchange with a local surface water source, will likely occur regardless if the Proposed Action is implemented." The Town is aware of no justification for this statement, and the Draft EA offers none. The Draft EA itself concedes that the Tribe has no method for delivering its CAP water to the reservation, and that it is "undertaking an appraisal level study . . . to investigate and determine a delivery method." Draft EA at 9, § 3.2.1.2. Under the circumstances, the Tribe's CAP allocation cannot reasonably be considered an available water supply for the land that would be taken into trust.

6. The Draft EA Inaccurately Characterized the Formation Underlying the Land Proposed To Be Taken Into Trust.

The Draft EA at 10, § 3.2.2, states that "[m]ost of the 273-acre parcel is underlain by the Payson granite at depth. Well yields from the Payson granite are generally predicted to be in the range of 10-15 gpm (USDA 2006). Higher yields of 50 to 150 gpm may be available at the inferred intersection of two faults in the northern part of the parcel (USDA 2006). The actual volume of water available would not be known until wells are completed in the formation. The Town is almost entirely dependent on wells drilled into the Payson granite for its water supply." The land proposed to be taken into trust in fact is underlain by the Gibson Creek Batholith, or more specifically a "Gabro/Diorite Complex." The Draft EA's mischaracterization is important because the two formations exhibit distinctly different aquifer characteristics. Wells constructed in a Gabro/Diorite Complex typically have significantly lower yields than identically constructed wells in Payson granite. The appropriate range of yields should be 1-25 gpm. No yields exceeding 50 gpm have been identified from the Gibson Creek Batholith.

C. The Draft EA Failed to Evaluate Properly the Impacts of the Proposed Fee-to-Trust Transfer on Land Use Coordination and Control.

The land proposed for transfer into trust is located entirely within the Town's corporate limits. Any contrary suggestion from the Draft EA's description of the land as being situated "along the southern corporate boundary of the Town" is inaccurate. See Draft EA at 7, § 3.1.

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Contrary to the Draft EA's prediction, the transfer of fee land into trust status will not mean that "[o]pportunities between the Town and Tribe would increase for future land use planning" Draft EA at 24, § 4.9.1. As the Draft EA recognizes, one consequence of the transfer from fee into trust status would be that the Town would lose any role it now has in regulating development on the transferred lands. Draft EA at 23, comparing §§ 4.7.3.1 and 4.7.3.2; *see also* 25 C.F.R. § 1.4(a) (2007). The result of taking the land into trust status would be to diminish rather than enhance land use planning cooperation between the Town and the Tribe.

D. The Draft EA Understated the Impact of the Proposed Removal of Land from the Tax Base.

The Secretary of the Interior is required to consider "[i]f the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls" 25 C.F.R. § 151.10(e). The Draft EA at 22, § 4.6.1, notes that the proposed transfer of land into trust status will eliminate that land from the property tax base. It represents, however, that "[t]his is offset by the Tribe's contributions to local schools and local economy through economic development enterprises such as Mazatzal casino." *Id.* The Draft EA offers no supporting data for this assumption. From time to time the Tribe has made *voluntary* monetary contributions for local projects that benefit the entire community. It has done so without a binding commitment that such generous contributions will continue, let alone at what level and whether for purposes to which the local governments responsible for discharging governmental obligations assign the highest priorities. Only 2% of the land in Gila County is privately-owned, the lowest percentage of private ownership among the State's counties. University of Arizona, *Arizona Statistical Abstract 2003 Data Handbook* at 199, Table 8.3. Payson is a small island in a sea of federal land. The loss of fee land into trust status will have an inescapable negative impact on the local governments charged with providing services to their residents.

E. The Draft EA and Superintendent Williams Erroneously Suggested that the Proposed Transfer from Fee to Trust Status Is Tantamount to Enlargement of the Tonto Apache Reservation.

Truxton Cañon Agency Superintendent James E. Williams's transmittal memorandum dated March 17, 2008, and the Draft EA itself, state that following transfer of the land into trust status, "the transferred lands will be added to the Reservation land base," or "[t]he Proposed Action is to increase the Reservation from 85 acres to approximately 378 acres," or words to that effect. *See* Williams memorandum at 1; Draft EA at 3, § 1.0; 25, § 4.9.2. These statements ignore Congress's direction to the contrary: "No Indian reservation shall be created, nor shall any additions be made to one heretofore created, within the limits of the States of New Mexico and Arizona, except by Act of Congress." 25 U.S.C.A. § 211.

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F. Taking the Land Underlying SR 87 into Trust Status Would Complicate Law Enforcement Jurisdiction on that Highway.

The Secretary of the Interior must assess “[j]urisdictional problems . . . which may arise” if the land is taken into trust. 25 C.F.R. § 151.10(f). The Draft EA at 4, § 2.1, points out that the land proposed to be taken into trust includes property underlying SR 87. While as the Draft EA states, the Arizona Department of Transportation currently holds a right-of-way on this property granted by the U.S. Department of Transportation, *id.*, it is unclear what the status of that right-of-way will be following transfer into trust status. *See, e.g.*, 25 C.F.R. § 151.13 (2007) (“After having the title evidence examined, the Secretary shall notify the applicant of any liens, encumbrances, or infirmities which may exist. The Secretary may require the elimination of any such liens, encumbrances, or infirmities prior to taking final approval action on the acquisition and he shall require elimination prior to such approval if the liens, encumbrances, or infirmities make title to the land unmarketable.”). The Draft EA at 24, § 4.8.3.1, represents that “SR 87 traffic incidents would continue to be handled by the Arizona Department of Public Safety (Highway Patrol) as traffic is routinely monitored along this route.” No authority is cited in support of this proposition. SR 87 is a vital transportation corridor for the Town and northern Gila County. Its status cannot be left to chance. No land underlying SR 87 should be taken into trust.

G. Other Issues.

The Town notes several other errors in the Draft EA requiring correction. First, the Draft EA at 6, § 2.2.1, at 9, § 3.2.1.3, and at 16, § 3.6.5, implies that the sewer treatment plant on the reservation is either operational now, or will be operational in 2008. The Town’s understanding is that the plant is not operational at this time, and its operation is not imminent.

Second, the Draft EA at 9, § 3.2.1.4, cites to an outdated FEMA map. The last sentence of that section should read: “For the fee status parcels, FIRM panel (04007C0427D, effective Dec. 4, 2007) designated the Reservation and surrounding areas as Zone X showing minimal flooding or undetermined flood hazard areas.”

Third, the Draft EA at 19, § 3.8.4, reports that “[t]he Tribe and the Town are in the process of negotiating a mutual aid agreement where the Town will provide backup services to the Reservation and the Tribe will provide backup services to the Town in the case of emergencies where additional assistance is necessary.” There is no mutual aid agreement in effect, and no discussions ongoing at this time.

Conclusion

The Town requests that the Bureau reevaluate the proposed action, and prepare an environmental impact statement addressing the significant environmental concerns that action

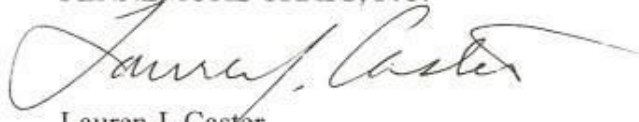
FENNEMORE CRAIG, P.C.

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presents. The Town appreciates the opportunity to submit these comments. Should you have any questions or concerns, please contact us.

Very truly yours,

FENNEMORE CRAIG, P.C.

A handwritten signature in cursive script, appearing to read "Lauren J. Caster".

Lauren J. Caster

cc : Senator John McCain
Senator Jon Kyl
Representative Rick Renzi
Bob Edwards, Mayor, Town of Payson
Ivan Smith, Chairperson, Tonto Apache Tribal Council
Debra Galbraith, Manager, Town of Payson
Colin P. Walker, Public Works Director, Town of Payson
Samuel I. Streichman, Town Attorney, Town of Payson

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April 18, 2008

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Of Counsel
Richard N. Morrison
Janis L. Bladine

HAND DELIVERED

Ms. Amy Heuslein
Regional Environmental Protection Officer
Bureau of Indian Affairs - Western Regional Office
Two Arizona Center
400 North 5th Street, 12th Floor
Phoenix, Arizona 85004



Re: Environmental Assessment of Fee-to-Trust Transfer, Tonto Apache Reservation

Dear Ms. Heuslein:

On behalf of the Salt River Project ("SRP"), we submit the following comments on the March 2008 Environmental Assessment ("EA") regarding the fee-to-trust transfer of two parcels adjacent to the Tonto Apache Reservation ("Tribe") totaling approximately 293 acres. SRP appreciates the opportunity to comment on the EA.

SRP provided comments on the original land exchange that made these parcels available for this fee-to-trust transfer. SRP raised numerous water resource issues in that process which we believe continue to exist today. Surface water supplies are fully appropriated and groundwater resources continue to be strained. The Town of Payson, the Tribe, and surrounding areas continue to depend exclusively on a limited aquifer system in which water is found only in fractures in the Payson granite underlying the Mogollon Rim region.

Fortunately, the Town has taken steps to address the serious water supply issues facing this area. The imposition of one of the most stringent water conservation ordinances in the State has helped reduce per capita consumption in the last few years. The Tribe also adopted a water use and conservation ordinance for Reservation lands. While these efforts have helped reduce overall water use to stay within "safe-yield" conditions, the extended drought depleted the amount of groundwater stored in the aquifer system. With continued growth in the area, this depletion of groundwater in storage will continue to occur despite normal precipitation. This condition is not sustainable. Payson has recognized the unsustainable nature of local groundwater resources and has moved forward in discussions with SRP to obtain up to 3000 acre feet of surface water supplies from Blue Ridge Reservoir, now called C.C. Cragin Reservoir.

April 18, 2008

Page 2

The EA recognizes the contract with the Secretary of Interior for 128 acre feet of Central Arizona Project ("CAP") water and a possible delivery scenario from C.C. Cragin Reservoir (See EA at P.9). Based on the EA description of future needs for residential development (one home per .5 acre), approximately 530 homes could be constructed on the fee-to-trust lands (See EA at P.6). Based on Payson's water use of 86 gallons per capita per day and 2.6 persons per household, the typical home would use approximately 81,600 gallons per year, or about 4 homes for every acre foot of water. The Tribe's CAP contract could fulfill this water demand. Any commercial development will require additional amounts of water. Without renewable water supplies from C.C. Cragin to implement an exchange of the Tribe's CAP contract, there would likely be adverse impacts to groundwater and related resources both on and off the trust lands, and the Tribe's development may not be sustainable.

Payson is moving forward with its plan to construct a pipeline from the C.C Cragin facilities to the Town and is very near completion of its water delivery agreement with SRP. The Tribe's long-term water needs may best be satisfied through an agreement with SRP, the Town, and others to exchange the Tribe's Central Arizona Project ("CAP") water allocation for water from C.C. Cragin Reservoir. The pipeline to bring C.C. Cragin water to the Town of Payson represents a potential mechanism for the Tribe to use its CAP allocation. SRP, as the operator of C.C. Cragin Reservoir, stands ready and willing to meet with the Tribe to discuss possible water exchange scenarios as part of an overall settlement of the Tribe's water rights.

If you have any questions or would like to discuss these issues further, please contact Dave Roberts at 602-236-2343.

Very truly yours,

Salmon, Lewis and Weldon, P.L.C.

By 
Ronnie P. Hawks

cc: John F. Sullivan
Dave Roberts
Joe Sparks
Samuel I. Streichman
Colin "Buzz" Walker

"Managing and conserving natural, cultural, and recreational resources"

In Reply Refer to:
SHPO-2003-2361 (35860)
General Comments



April 11, 2008

James E. Williams, Superintendent
USDOJ Bureau of Indian Affairs
Truxton Canon Agency
P. O. Box 37
Valentine, Arizona 86437

Re: Receipt of Notice of Availability of a Draft Environmental Assessment (EA) and Invitation to Comment for the Fee-to-Trust Transfer of Two Land Parcels Adjacent to the Tonto Apache Reservation in Payson, Gila County, Arizona (SHPO-2003-2361)

Janet Napolitano
Governor

Dear Mr. Williams:

State Parks
Board Members

The Arizona State Historic Preservation Office (SHPO) is in receipt of your letter of March 17, 2008 concerning the availability of a Draft Environmental Assessment for the transfer of two land parcels adjacent to the Tonto Apache Reservation in Payson, Arizona. We understand the Bureau of Indian Affairs (BIA) Truxton Canon Agency is the lead federal agency for this project. As you know, our office reviews federal undertakings pursuant to the National Historic Preservation Act as implemented by 36 C.F.R. 800 to protect and preserve our valuable cultural resources.

Chair
William C. Cordasco
Flagstaff

Arlan Colton
Tucson

William C. Scalzo
Phoenix

Reese Woodling
Tucson

Tracey Westerhausen
Phoenix

William C. Porter
Kingman

Mark Winkleman
State Land
Commissioner

Kenneth E. Travous
Executive Director

Arizona State Parks
1300 W. Washington
Phoenix, AZ 85007

Tel & TTY: 602.542.4174
www.azstateparks.com

800.285.3703 from
(520 & 928) area codes

General Fax:
602.542.4180

Director's Office Fax:
602.542.4188

Thank you for notifying our office of the availability of the Draft Environmental Assessment, and for considering Arizona's cultural resources in your planning. We have no objection to Alternative 1, the Proposed Action of approving the fee-to-trust transfer. We understand cultural resource requirements have been met, including mitigation of adverse effects under the *Memorandum of Agreement Among the United States Department of Agriculture and the Arizona State Historic Preservation Officer Regarding the Tonto Apache Land Exchange, Tonto National Forest* of 2003. The final cultural resource report entitled *Archaeological Investigations at Seven Sites for a Land Exchange Between the Tonto National Forest and the Tonto Apache Tribe, Gila County, Arizona* by K. Spurr was accepted by the SHPO in 2005, and is a welcome addition to Arizona's preservation library.

We trust the Tonto Apache Tribe will continue to protect the petroglyphs identified in the cultural resource survey and all cultural resources within their jurisdiction. If you have any questions or concerns, please contact me at (602) 542-7137, email cgibson@azstateparks.gov.

Sincerely,

Connie Thompson Gibson, RPA
Archaeologist & Compliance Specialist
Arizona State Historic Preservation Office



Cc: Amy Heuslein, Regional Environmental Protection Officer, BIA Western Regional Office
Garry Cantley, Archaeologist, BIA Western Regional Office

620 EQS

Suzanne Covert & Leo McDonald
805 E. Phoenix St.
Payson, AZ 85541
(928) 472-8772

APR 14 A 9:07

BIA DIRECTOR

April 10, 2008

Ms. Amy Heuslein
Regional Environmental Protection Officer
Western Regional Office
Two Arizona Center
400 N. 5th St., 12th Floor
Phoenix, AZ 85004

Re: Response to BIA Environmental Assessment
For the fee to trust status of two
parcels of land adjacent to the Tonto
Apache Reservation (Tribe), totaling 293 acres

Dear Ms. Heuslein:

We thank the BIA for the opportunity to express our thoughts and concerns on the above referenced environmental assessment.

After thoroughly reading the assessment we still have some concerns about the transfer of the 293 acres from fee to trust status. We do not dispute the Tribe's need for additional reservation land to enhance the quality of life for their members. However, the lack of a master plan for all of the 293 acres is disturbing.

A portion of the 293 acres borders Town of Payson neighborhoods comprised of upscale housing. The lack of a definitive Tribe plan for land remaining after the additional housing is completed remains a serious concern for the neighboring subdivisions.

The Tribe has stated some of the 293 acres would be for future commercial development, but again no specified plan has been defined. This presents a concern relative to the use of Town water. The Town currently has an agreement with the Tribe, signed 11-4-2005, to supply the Tribe water not to exceed 65,847 gallons per day.



This agreement is on a 5-year basis and can be rescinded by either party with a 30-day notice. The Town of Payson Water Department has informed us that the 65,847 gallons per day would be adequate for the additional 22 houses the Tribe proposes to build. However, that amount of water would not be sufficient for any commercial development by the Tribe. It is important for the Tribe to continue to conform to the Town's use and conservation ordinance to protect the Town water for the entire community. Therefore, the 293 acres of Tribe land needs to remain in fee status.

The Town of Payson receives water via Town wells, as well as, the Salt River Project and has been negotiating with SRP for a portion of the C.C.Cragin Reservoir. This project will not be completed for several years before water will be delivered to Payson. Without the additional water, the Town can not increase or delegate more water for Town or Tribe use. Therefore, water remains our biggest concern if the fee to trust land transfer takes place. The water rights for future land use would be managed under laws given the Tribe by the Federal Government and could put our most precious resource in jeopardy through over use by the Tribe.

The Tribe has been a good partner with the Town of Payson, which has been to the benefit of both parties. We would like to see this relationship continue and Tribal land remaining in fee status all Tribal housing and commercial projects will conform to state and local land use and zoning regulations, as well as environmental, health and safety standards. If this does not happen we feel the community and Tribal relationship could deteriorate.

Without a master plan available to the Town government and citizens, the Tribe has not demonstrated how the needs or demands, other than additional housing, for placing this land into trust will benefit its members. Nothing is indicated why the Tribe's plans for this land cannot be fulfilled if the land remains in fee.

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The Tribe has indicated it has determined the future need for a connecting loop road from the reservation into existing neighborhoods on E. Phoenix St. This is a serious concern for the neighborhoods due to a current Town plan to make E. Phoenix St. a de-facto town bypass from Hwy. 87 to Mud Springs Rd., and extend to Hwy. 260. This plan will greatly increase traffic through 3 upscale subdivisions. If the Tribe builds a loop connection road to Phoenix St., it would not be long before northbound Hwy. 87 travelers would discover an even easier bypass through the reservation to Phoenix St. to Mud Springs to Hwy 260 and proceed east. If the exchange land is put into trust and the Tribe made the connection road, it would greatly harm the relationship between the Tribe and the neighborhoods. Again, keeping the land in fee status would control how any additional roadways on the reservations are handled as well as the neighborhoods.

Another issue is the loss of property taxes to the Town and Gila County School Districts if the land is put into trust. With the financial crisis in the Federal Government, as well as the Arizona State Government, the Gila County and Payson School Districts are receiving fewer and fewer dollars each year to run the schools. The Tribe monetarily contributes to the Payson school district each year, but it is difficult to imagine the Tribe's economic enterprises can possibly make up for the loss in taxes under current economic conditions. The Town and school district need the reservation to stay in fee status to maintain services at present level.

We have no objection to the Tribe receiving the 293 acres to increase the size of their reservation for additional member housing, but urge the BIA to keep the land in fee status for the benefit of the larger Payson area.

Sincerely,

Suzanne Covert & Leo McDonald

Suzanne J. Covert
Leo M. McDonald

c. Buzz Walker, Town of Payson Water Dept.



Prudential Arizona Properties
Payson Office
609 S. Beeline Hwy.
Payson, AZ 85541-5302
Bus 928-474-2337 Fax 928-474-5711
Toll Free 1-800-238-0337 www.PrudAZ.com

September 11, 2006

RECEIVED
SEP 14 2006
BIA Truxton Canon
Valentine, AZ

Office of the Superintendent
United States Department of the Interior
Bureau of Indian Affairs
Truxton Canon Agency
13067 East Highway 66, PO Box 37
Valentine, AZ 86437-0037

Re: 293 Acre Fee to Trust Transfer
Payson South

Dear Sirs:

I appreciate the opportunity to comment. I completely support the transfer of forest service lands to the Tonto Apache Tribe. I don't have any objection to the land east of Highway 87 being transferred to trust status.

I objected in the exchange Environmental Assessment and I still object to the conveyance and transfer to trust status of the highway Right of Way and the land to the West of Highway 87. This land could possibly be a site for a future ranger station or perhaps the town could acquire it for a visitor center or part of the multi-event center, or it could be left unimproved National Forest.

Sincerely,


Clifford E. Potts
Associate Broker
Branch Manager

is

LEGAL DEPARTMENT
TOWN OF PAYSON
303L NORTH BEELINE HIGHWAY
PAYSON, ARIZONA 85541
(928) 474-5242
FAX: (928) 474-8472
E-MAIL: TOPLEGAL@CBMWIRELESS.COM

SAMUEL I. STREICHMAN
TOWN ATTORNEY
EXTENSION 208

TIMOTHY M. WRIGHT
DEPUTY TOWN ATTORNEY
EXTENSION 277

September 11, 2006

Mr. Robert Begay
United States Department of the Interior
Bureau of Indian Affairs
Truxton Cañon Agency
13067 East Highway 66
P. O. Box 37
Valentine, Arizona 86437-0037

[Handwritten Signature]
BIA Truxton Cañon
Valentine, AZ
SEP 13 2006
RECEIVED

Re: Environmental Assessment of Trust Status of
Tonto Apache Tribe Land Exchange Deeds

Dear Mr. Begay:

We have received a letter dated September 1, 2006 from James E. Williams, Superintendent. This correspondence will confirm our telephone conversation of September 11, 2006, wherein you graciously agreed to provide the Town of Payson with more time, until September 22, 2006, within which to comment and provide input regarding the environmental assessment which the Bureau of Indian Affairs is preparing. We understand this assessment concerns an analysis of the effects of transferring private land exchange lands into federal ownership in trust status for the Tonto Apache Tribe.

Thank you for granting the additional time.

Very truly yours,

[Handwritten Signature]
Samuel I. Streichman
Town Attorney

SIS:drs

cc: James E. Williams, Superintendent
Amy Heuslein, Western Regional Office