



United States Department of Agriculture

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# Draft Record of Decision

## New Special-Use Permits for Recreation Residences on the Safford Ranger District

Coronado National Forest  
Graham County, Arizona



September 2014



Forest Service

Coronado  
National Forest

Safford  
Ranger District

MB-R3-05-10  
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# DRAFT RECORD OF DECISION

## New Special-use Permits for Occupancy of Recreation Residences

Safford Ranger District  
Coronado National Forest  
Graham County, Arizona

### 1.0 Introduction

The Coronado National Forest (NF) proposes to issue new special-use permits (SUPs) to the owners of 88 recreation residences on the Safford Ranger District (District). This administrative action would authorize continued occupancy and use of the residences as specified in the terms and conditions of individual permits. Approval of the proposed action would not change the use of the residences nor would it authorize the addition of structures or other improvements. New permits would expire 20 years from their most recent expiration date, which was December 31, 2008.<sup>1</sup>

Two recreation residence tracts, Old Columbine and Turkey Flat, are located in the Pinaleno Mountains, which cover more than 300 square miles in southeastern Arizona (see Figure 1). There are 14 recreation residences on 25 acres on the Old Columbine tract, for which the legal description is “protracted Section 29, unsurveyed Township 8 South, Range 24 East.” The Turkey Flat tract has 74 residence lots on 52 acres in protracted Sections 19 and 20, unsurveyed Township 9 South, Range 25 East. Relative locations of the Coronado NF and the tracts are shown in Figure 2.

The Piñaleno Mountains rise from semi-desert grasslands to a sub-alpine forest. This mountain range includes the greatest cross-section of ecological communities in the Southwest. It is home to numerous endemic or rare wildlife and plant species, including the endangered Mount Graham red squirrel (*Tamiasciurus hudsonicus grahamensis*) and the threatened Mexican spotted owl (*Strix occidentalis lucida*), both of which are protected by the U.S. Fish and Wildlife Service (FWS) under the authority of the Endangered Species Act (ESA) of 1973.

The Western Apache people refer to the Pinaleno Mountains as *Dzil Nchaa Si'an*, or “big-seated mountain,” given the appearance of the mountains’ multiple peaks. *Dzil Nchaa Si'an* is recognized under Section 101(d) of the National Historic Preservation Act (NHPA) as a Traditional Cultural Property (TCP) of the Western Apache people, and it is eligible for listing on the National Register of Historic Places (NRHP).

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<sup>1</sup> Interim permits have been issued periodically while the National Environmental Policy Act (NEPA) review of the proposal was being completed.

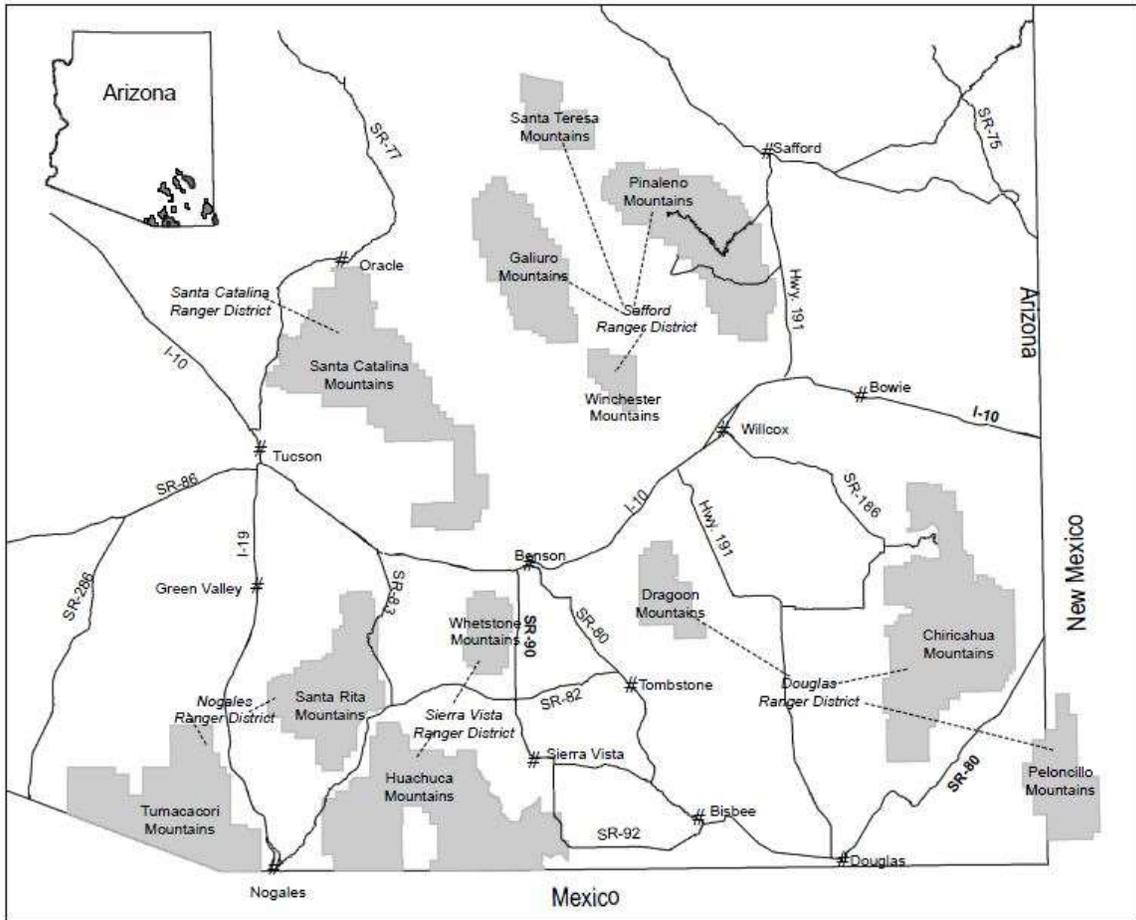
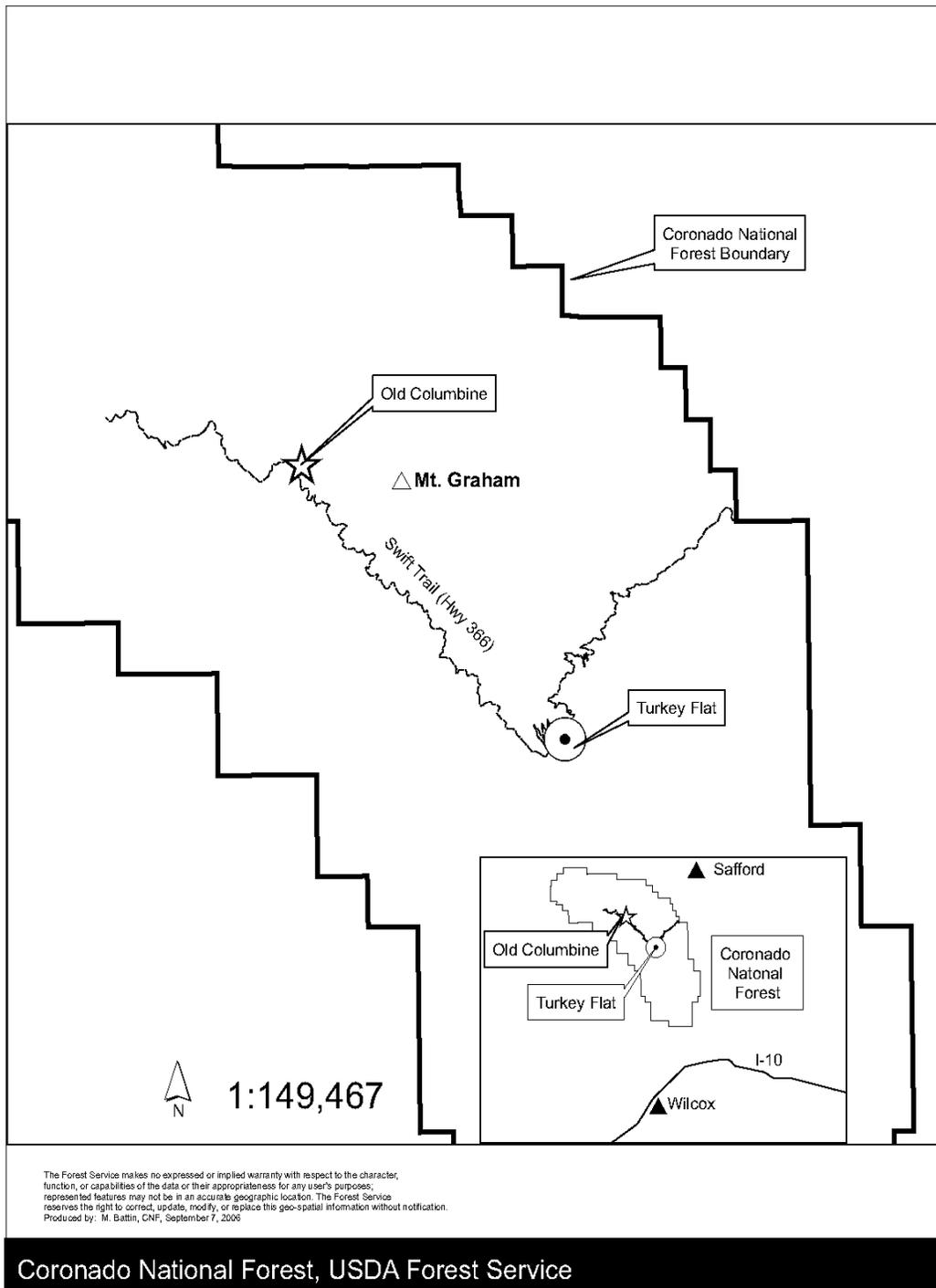


Figure 1. Location of the Coronado National Forest and its Districts in southeastern Arizona.



**Figure 2. Relative locations of Old Columbine and Turkey Flat recreation residence tracts on the Coronado National Forest, Safford Ranger District.**

## 2.0 Decision and Rationale

A National Environmental Policy Act (NEPA) review of the proposed action is documented in a Final EIS (FEIS) that will be released for public inspection concurrently with the release of this draft record of decision (ROD). This draft ROD documents my selection of an alternative for approval and provides the rationale on which my selection is based. I have weighed the results of a comparative analysis of the potential environmental and social effects of the proposed action and three alternatives, all of which are disclosed in the FEIS; consideration of public input during all steps in the NEPA review process; and the best available scientific and commercial data and information.

I am selecting Alternative 2, the proposed action, for approval.

This authorizes new SUPs to be issued for each recreation residence on the Old Columbine and Turkey Flat tracts. The term of each SUP will be 20 years, beginning on December 31, 2008—the date on which all residence permits last expired. Permit holders will be required to abide by all terms and conditions expressed in their individual SUPs, including an annual operation and maintenance (O&M) plan that will accompany each permit.

Before the proposed action is implemented, each recreation residence will be inspected by Forest Service staff to confirm that the permit holder has complied to date with the terms and conditions of his/her interim permit [Forest Service Handbook (FSH) 2709.11, Chapter 41.23a (3)]. If so, a new SUP will be granted.

## 2.1 Mitigation and Related Requirements

An operation and maintenance (O&M) plan conveyed with each new SUP will include the mitigation measures listed below. These measures were identified by Forest resource specialists and heritage program staff, and approved by former Forest Supervisor, Jeanine Derby, following several years of consultation and dialogue with the White Mountain and San Carlos Apache Tribes regarding ways to minimize effects on a Traditional Cultural Property (TCP), *Dzil Nchaa Si'an*. Future homeowner compliance with O&M requirements will help mitigate the effects on the TCP that the Apache associate with the presence and continued occupancy of recreation residences on Mt. Graham.

Along with restrictions on modifications of residences and the prohibition of certain activities listed below, each new SUP will contain specific information intended to raise homeowner awareness of the value and significance of the TCP in the culture and history of the Western Apache people. This will include acknowledgement of the Forest Service's general trust responsibility toward American Indian tribes; that Federal law requires the agency to consider the potential adverse effects of projects on historic properties; and that, within the limits of Federal law, the agency will continue to provide for American Indian access to sacred sites.

During Forest Service consultation with Western Apache leaders, heritage staff learned that the Tribes believe that residents have previously not complied with specific mitigation measures in their SUPs. Therefore, the following items will be emphasized in each new SUP:

- Color standards that apply to all cabins, trim, roofs, and other structures
- Design standards to ensure that improvements integrate well with the natural setting

- Constraints on public access to the residence tracts
- Fire-prevention measures
- Domestic animal restrictions, e.g., a requirement that they be kept inside homes or on leashes not to exceed 6 feet in length
- Restrictions on human activities that may adversely affect wildlife breeding and foraging
- Notification to homeowners that in the event of a wildland fire, the Forest Service does not have a responsibility to protect recreation residences.

Each SUP/O&M plan will prohibit the following activities:

- Expanding structures and constructing room additions
- Planting non-native vegetation
- Diverting or retaining stream water flow
- Ground-disturbing activities without case-by-case District Ranger approval
- Attaching swings, yard lights, signs, electric or other wires, and other materials to vegetation in a harmful manner
- Constructing outdoor fire-pits and sports courts
- Outdoor storage of building materials, recreation vehicles, television antennas, sports equipment, picnic tables, lawn chairs, etc.
- Driving off-road or parking outside designated parking areas. It is permissible to park up to 30 feet off National Forest System roads that access the residences.
- Constructing gates, fences, or walls
- On-site burning or burial of trash
- Creating unreasonable or excessive noise.

At 36 CFR 261.10 i, 261.10 j, the Forest Service has established general noise guidelines for recreation sites and national forests that include quiet hours at developed sites from 10:00 p.m. to 6:00 a.m.

Finally, recreation residences and associated structures must be compliant with direction provided in the most recent (October 2012) “Architectural Guidelines for Recreation Residences on the Coronado National Forest” (project record, item # 198). A copy of the guidelines report is available at the Safford Ranger District Office and at the Forest Supervisor’s Office in Tucson, Arizona.

## **2.2. Responsiveness of Alternative 2 to Purpose of and Need for Action**

By issuing new SUPs to 88 owners of recreation residences, the Forest will fully respond to the need for new permits to replace those that expired in 2008. The proposed action will achieve the purpose of adhering to the Forest Service policy of continuing recreation residence use when it is consistent with the Forest Plan and continuing to work in partnership with permit holders to maximize public recreational benefits [Forest Service Manual (FSM) 2347.1 (USDA-FS, 2006b) and USDA-FS, 1986, pp. 9, 41 and 59].

## **2.3 Responsiveness of Alternative 2 to Issues**

Issues and concerns expressed by the public during the NEPA review focused on the potential for occupancy of recreation residences to adversely affect Federally listed (ESA) species (Mt. Graham red squirrel and Mexican spotted owl) and the integrity of a TCP, *Dzil Nchaa Si’an* (see Section 4.2 below). The new permits would not authorize any change in use of the residences in the surrounding area or their structure. Therefore, effects on the two species and TCP from future

recreational use of the residences would be the same as those occurring today under current conditions. There would be no net change in effects to these specific resources about which issues were raised.

### **3.0 Alternatives to the Proposed Action**

In addition to the proposed action, Alternative 2, the following three alternatives were analyzed in detail in the EIS.

#### **3.1 Alternative 1: No Action**

No action is included as an alternative to the proposed action, in accordance with the requirements of Council on Environmental Quality (CEQ) regulations at 40 CFR Part 1502.14(d). No action is generally intended to provide a baseline against which the impacts of action alternatives may be compared.

In addition to providing an environmental baseline, the no-action alternative evaluated by this NEPA review would deny new SUPs for both recreation residence tracts. As specified in FSM 2721.23(e)(2)(b), after a decision is made to terminate recreation residence permits, homeowners shall be allowed to occupy the residences for 10 years from the date of notification of non-renewal. For the purpose of the EIS analysis of no action, the Forest Service assumed that all recreation residence holders would continue to occupy their residences for the full 10-year permit period.

According to the terms and conditions of each 10-year permit, owners will have a reasonable timeframe to remove structures and/or improvements and to restore each site to natural conditions, at their expense. The process of removal may take up to five years. Thus, all structures and improvements on a tract should be gone within 15 years, if the no-action alternative is selected for implementation. Before residences are removed, a site-specific NEPA review of proposed restoration plans will be completed.

General improvements on recreation residence tracts include small cabins, decks, patios, outbuildings, permanent grills, and other stationary improvements; pumps; overhead wiring; propane gas tanks; water tanks; and concrete foundations. As part of the removal process, permit holders will be required to secure wells with welded steel caps, pump and fill septic tanks and vault toilets with dirt, and fill pit toilets with dirt. Pipelines, underground wiring, sewage distribution boxes, and drain fields are permitted to remain. Each site and associated use area will be contoured to the original landscape and planted with a native seed mix.

After sites are restored, access to the Old Columbine and Turkey Flat tracts will be gated by the Forest to prevent future motorized access. Vegetation will be allowed to repopulate the road beds. At present, no specific use for the decommissioned tracts is proposed. However, the area would continue to be open to visitors for dispersed recreational use, as it is at present.

Pursuant to the Arizona-Idaho Conservation Act of 1988, P.L. 100-696, Section 605(c), *“If ... termination, modification or nonrenewal of special use authorizations ... are prescribed, the United States Forest Service shall, with the cooperation and approval of the holders of these special use authorizations, develop a relocation plan for such individuals and entities.”* Therefore, implementation of Alternative 1 may require the Forest to allow relocation of up to 88

recreation residences, which in turn would require the potential development of residence tracts in other areas of the Forest.

### **3.2 Alternative 3: Issue Turkey Flat Permits Only**

Implementation of Alternative 3 would authorize new SUPs for 74 recreation residences at the Turkey Flat tract only. Each new SUP term would extend 20 years, from January 1, 2009, through December 31, 2028. Permit holders would be required to abide by all terms and conditions expressed in their respective SUPs and an annual O&M plan. Prior to new SUPs being issued, each recreation residence would be inspected by the Forest Service to confirm that the permit holder is compliant with the terms and conditions of his/her interim permit [FSH 2709.11, 41.23a (3)]. If so, a new SUP will be granted.

Implementation of Alternative 3 would deny new permits for 14 recreation residences within the Old Columbine tract. Instead, Old Columbine permit holders would be issued an SUP that authorizes 10 years of occupancy, after which all improvements would be removed at the expense of homeowners [FSM 2721.23a (10)]. Removal activities at Old Columbine would be the same as those described for alternative 1 (no action).

Pursuant to the Arizona Idaho Conservation Act of 1988, P.L. 100-696, Section 605(c), *“If ... termination, modification or nonrenewal of special use authorizations ... are prescribed, the United States Forest Service shall, with the cooperation and approval of the holders of these special use authorizations, develop a relocation plan for such individuals and entities.”* Therefore, implementation of this alternative may require relocation of up to 14 Old Columbine residences, which in turn would require the potential development of residence tracts in other areas of the Forest.

### **3.3 Alternative 4: Issue Old Columbine Permits Only**

Implementation of alternative 4 would authorize new SUPs for 14 recreation residences at the Old Columbine tract only. Each new SUP term would extend 20 years, from January 1, 2009, through December 31, 2028. Permit holders would be required to abide by all terms and conditions expressed in their respective SUPs and an annual O&M plan. Prior to new permits being issued, each recreation residence would be inspected by special-uses program staff to confirm that the permit holder is compliant with the terms and conditions of his/her interim permit [FSH 2709.11, 41.23a (3)]. If so, a new SUP will be granted.

Implementation of Alternative 4 would deny new permits for 74 recreation residences within the Turkey Flat tract. Instead, Turkey Flat permit holders would be issued an SUP that authorizes 10 years of occupancy, after which all improvements would be removed at the expense of the homeowners [FSM 2721.23a (10)]. Removal activities at Turkey Flat would be the same as those described for alternative 1 (no action).

Pursuant to the Arizona Idaho Conservation Act of 1988, P.L. 100-696, Section 605(c), *“If ... termination, modification or nonrenewal of special use authorizations ... are prescribed, the United States Forest Service shall, with the cooperation and approval of the holders of these special use authorizations, develop a relocation plan for such individuals and entities.”* Therefore, implementation of this alternative may require relocation of up to 74 Turkey Flat

residences, which in turn would require the potential development of residence tracts in other areas of the Forest.

### 3.4 Environmentally Preferable Alternative

Under the National Environmental Policy Act, federal agencies are required to identify an environmentally preferable alternative [40 CFR 1505.2(b)] from among those evaluated in an EIS. This is expected to be the alternative that would have the least impact on the biological and physical components of the environment, and offer the best protection, preservation, and conservation of historic, cultural, and natural resources (“Forty Most Asked Question Concerning Council on Environmental Quality’s National Environmental Policy Act Regulations”, 46 Federal Register 18026).

After weighing the short-term impacts against the long-term benefits of the proposed action, I find that the environmentally preferable alternative for this NEPA review is Alternative 2, the proposed action. Implementation of Alternative 2 would balance the benefits of continued use of the residences for public recreation with the need to conserve Mt. Graham red squirrel and Mexican spotted owl habitat on the residence tracts as well as maintain the physical integrity and cultural value of the Western Apache TCP, *Dzil Nchaa Si’an*.

Alternative 2 is environmentally preferred over Alternative 1 (no action), even though the latter would have a long-term legacy of restoration of red squirrel habitat through natural succession on 25 acres at Old Columbine. In the short-term, public recreation opportunities would decrease dramatically upon the removal of 88 residences. Further, if Alternative 1 is implemented, relocation of up to 88 residences may be necessary in response to AICA direction. As noted above, the AICA requires that “*If ... termination, modification or nonrenewal of special use authorizations... are prescribed, the United States Forest Service shall, with the cooperation and approval of the holders of these special use authorizations, develop a relocation plan for such individuals and entities.*” Ground disturbance for access roads and recreation home construction, among other residence-tract-development activities, have the potential to adversely affect natural resources, especially protected wildlife populations, habitat, and vegetation.

Implementation of Alternatives 3 and 4 would achieve a similar but lesser balance between recreational opportunities and wildlife conservation as Alternative 2 (loss of 14 residences and 74 residences, respectively). However, both would be less environmentally preferable than Alternative 2 because of the potential need for future Forest Service actions in response to direction in the AICA. This means is that if either Alternative 3 or 4 is implemented, relocation of 14 and 74 residences, respectively, may occur at one or more new and different locations on the Forest. For these reasons, none of the three alternatives to the proposed action would be environmentally preferable to the proposed action.

## 4.0 Public Involvement

### 4.1 Notice of the Proposed Action

The proposed action was first announced to the public in July 2005, when the project was listed in a Schedule of Proposed Actions (SOPA) on the forest public website. Since that time, the project has been listed on each quarterly update of the SOPA.

The scope of the NEPA review was based, in part, on input that was provided in written and oral comments that responded to a Notice of Intent to Prepare an EIS (NOI). The U.S. Environmental Protection Agency (EPA) published the NOI in the Federal Register on March 9, 2006 (project record, item #5). Concurrently, the NOI and a scoping notice were distributed to stakeholders and interested parties by postal mail and electronic mail (email). The NOI was sent to 154 stakeholders, including the general public, agencies, government officials, and various organizations (project record, item #8). On March 24, 2006, a government-to-government scoping letter was sent to 31 tribal leaders among 12 Indian Nations with historic ties to southeast Arizona (project record, item #7).

Two public open-houses were held during the scoping period: one in Tucson, Arizona, on March 27, 2006, that had 27 attendees (project record, item #60) and the other in Safford, Arizona, on March 28, 2006, that had 48 attendees (project record, item #64). Scoping comments were accepted at both meetings.

### 4.2 Scoping

Public comments received during scoping were reviewed by Forest resource specialists, who are identified in chapter 4 of the FEIS. They were catalogued by resource and/or issue and determined to either be relevant to the impacts analysis or beyond the scope of this environmental review<sup>2</sup> (project record, items #8 through 11; #13 through 59; #61 through 63; #65 through 167; #172). Each specialist subsequently developed an approach to analyze potential impacts related to resource-relevant issues.

Ninety-eight (98) parties offered comments in various formats (email, U.S. mail, telephone, person-to-person) during the scoping period. Ninety-three (93) comment letters expressed advocacy for the proposed actions, and two letters included requests to be placed on the mailing list for the NEPA review.

One comment letter expressed concern for potential adverse impacts to the Mt. Graham red squirrel, citing several factors of concern (project record, item #172), which were considered and addressed in the EIS by the District wildlife biologist.

One comment letter was received from among the Native American Tribes and Nations who were contacted (project record, item #68). The former Chairman of the White Mountain Apache Tribe commented that the continued existence of the recreation residences in itself was an adverse

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<sup>2</sup> Those that (1) expressed concern about an issue that had already been decided by law, regulation, Forest Plan, or another higher-level decision; (2) were unrelated to the decision to be made; (3) were conjectural and not supported by scientific or factual evidence; (4) expressed an opinion of advocacy or opposition; or (5) were so general that a meaningful issue could not be discerned.

effect on the TCP, *Dzil Nchaa Si'an* (project record, item #68). This concern was considered and addressed in the EIS by the Forest heritage program leader, who, with the former Forest Supervisor, consulted with Tribes and the Arizona State Historic Preservation Officer (SHPO) to develop mitigation to help minimize adverse effects to the TCP.

The remaining comment letter expressed opposition to the Forest Service recreation residence program, in general, and recommended that all permits for recreation residences be discontinued nationwide. This comment was considered to be outside the scope of the review and was not addressed in the impacts analysis in chapter 3 of the FEIS.

## **Issues Identified During Scoping**

### **Potential Effects on the Mt. Graham Red Squirrel**

#### **Background**

The Mt. Graham red squirrel (MGRS) is one of 25 subspecies of red squirrels in North America. Its habitat is coniferous forest, especially old-growth spruce-fir, Douglas-fir, and mixed conifer. The only known remaining population of MGRS is within the upper elevations of the Pinaleno Mountains. The decrease in available MGRS habitat here is a legacy of past logging activity. More recent declines have resulted from drought, insect infestation, and uncharacteristic high-intensity wildland fire.

The MGRS was believed to have become extinct during the 1950s. This was discounted when a small population of red squirrels was "rediscovered" on Mt. Graham in the 1970s. The subspecies was added to the Federal ESA endangered list in 1987 by the FWS after the 1986 population was estimated to be less than 400.

Human presence at the recreation residences at both tracts and, in fact, all recreation sites on Mt. Graham, increases the probability that individual squirrels may be accidentally injured or killed. Vehicles, domestic animals, and wildland fire all pose threats to the squirrel and its habitat. Suppression of wildland fire, which is the typical response to ignitions in MGRS habitat, compounds threats to the squirrel, because protection of private property is favored over management of wildland fire for resource benefits. If fire suppression is continued on and near the tracts, it will continue to impede the return of a frequent, low-intensity, natural fire to the ecosystem.

The 14 recreation residences at Old Columbine are all located within MGRS habitat. They were built and occupied seasonally for about 30 years prior to the MGRS being considered extinct. Recreational use of the Old Columbine tract is small in scale, and occupancy of the residences has not been directly correlated with the MGRS population decline. However, from the perspective of some members of the public, the continued presence of the residences at Old Columbine impedes the eventual restoration of approximately 25 acres of Forest to historic vegetation conditions, which are expected to be suitable as MGRS habitat. In perspective with the potentially suitable MGRS habitat on Mt. Graham, which is estimated to be between 17,000 to 27,000 acres, the acres at Old Columbine, when restored, would add an increment of 0.01 percent of squirrel habitat on the mountain.

To address issues related to the MGRS and its habitat at Old Columbine, an alternative to issue new permits for 74 residences at only the Turkey Flat tract is evaluated in the FEIS. The no-action

alternative, whereby all recreation residence SUPs would be terminated after a 10-year transitional period, also offers potential restoration of MGRS habitat at Old Columbine.

### **Presence of the Mt. Graham International Observatory**

Twenty-five years ago, the Forest issued a special-use permit to the University of Arizona (University) authorizing the construction and operation of telescopes and related facilities on Mt. Graham (the Mt. Graham International Observatory or MGIO). Prior to the realization of this project, the potential decline of the MGRS was already the subject of public interest.

In July 1988, the FWS issued a biological opinion (BO) addressing the potential effects of a preferred alternative for the MGIO, in which it concluded that the MGRS is "extremely vulnerable to extinction" and that construction of the telescopes was likely to jeopardize its continued existence (USDI-FWS, 1988). As part of the BO, the FWS proposed three "reasonable and prudent alternatives" (RPAs) to the proposed action that would allow the project to proceed while providing a specific degree of protection to the red squirrel.

Significant public controversy followed. As a consequence, Congress passed the Arizona-Idaho Conservation Act of 1988 (AICA; project record, item #196), which, among other things, altered the requirements of the RPAs in the BO. Section 602 (a) of the AICA declared that the requirements of Section 7 of the ESA were satisfied with regard to the terms and conditions of RPA 3 and allowed the Forest to issue an SUP for the first three telescopes, necessary support facilities, and an access road to the MGIO site.

In the 1988 BO, RPA 3 recommended that the SUPs not be issued upon their expiration. AICA Section 605(a) changed the content of RPA 3. The AICA stated that the permits "shall continue subject to the terms and conditions of the authorizations, for the duration of the term specified in each authorization. Prior to the *termination, non-renewal or modification* of those special use authorizations, a biological study to determine the effects of such special uses authorizations upon the Mt. Graham red squirrel and other threatened and endangered species would be conducted. The biological study would include public involvement and consultation with the US Fish and Wildlife Service."

Scientific research and field studies related to the MGRS, its habitat, and the Mt. Graham ecosystem have been ongoing since the passage of the AICA. In 2007, the Safford District Biologist prepared a Biological Assessment and Evaluation (BAE) of the potential effects of issuing new SUPs on the MGRS and its habitat. Conclusions were disclosed in chapter 3 of the FEIS. The BAE was submitted to FWS on January 24, 2007, as required for formal ESA, Section 7 consultation. The FWS issued a BO regarding the proposed action on August 18, 2008 (appendix C of the FEIS), in which it assigns "take" for two Mt. Graham red squirrels. According to the BO, "...this level of take is not likely to result in jeopardy to the species."

### **Potential Effects on Traditional Cultural Property, *Dzil Nchaa Si'an***

The Forest Service has a trust responsibility toward American Indian tribes. Legislation and Executive Orders mandate that the agency consider the effects of proposed actions on historic properties, ensure American Indian access to sacred sites, and protect the physical integrity of such sites wherever possible.

During the NEPA review, the chairman of the White Mountain Apache Tribe expressed the Tribe's perspective that the ongoing presence of the residences continues the damage to and desecration of the Western Apache sacred mountain. The Tribe considers the presence of recreation residences and public uses of *Dzil Nchaa Si'an* as negatively affecting its long-standing and ongoing historical, cultural, religious, and spiritual importance to the Western Apache.

*Dzil Nchaa Si'an* is associated with Western Apache oral history and tradition and plays a vital role in Western Apache lifeways and continued tribal well-being. *Dzil Nchaa Si'an* is home to mountain spirits, a source of natural resources and traditional medicine for ceremonial uses, a place of prayer, and a source of power to Western Apache people. The area within the Forest boundary has been determined eligible for listing on the National Register of Historic Places as a TCP, but the sacred character of the mountain range is more extensive to the Apache people, as it encompasses all landforms, minerals, plants, and waters associated with or flowing from *Dzil Nchaa Si'an*.

Individuals, families, and guests at recreation residences are often not aware of the mountain's role in Western Apache history and culture. The Western Apache considers *any effects* that the residences have on the natural wildlife, soils, vegetation, and streams as detrimental to the sacred site. Further, the presence of the residences affects land and fire management because it increases the importance of suppressing wildland fires that may otherwise play a natural role in achieving resource management objectives and promoting ecosystem function. The Forest's response to wildland fires has predominantly focused on the protection of private property rather than on the restoration of ecosystem functions or the protection and expansion of the habitat of endangered species.

To help mitigate the effects of the presence and use of recreation residences on the TCP, the Forest heritage program leader worked closely with leaders of the White Mountain and San Carlos Apache Tribes to develop stipulations and requirements for inclusion into each newly issued SUP. These are reported earlier in the FEIS and in Section 2.1 of this draft ROD under the heading, Mitigation and Related Requirements.

#### **4.3 Review of Draft EIS**

In accordance with Forest Service Handbook 1909.15, chapters 23.2 and 23.3, the public was offered a 45-day period to review a draft of this EIS. The EPA published a Notice of Availability (NOA) of the draft EIS for public review in the Federal Register on December 5, 2008 (project record, item #184), and copies of the draft EIS were distributed to Federal, state and local agencies and other parties who offered comments during the scoping period (project record, items #180 through 183; and #185 through 187). Public comments about the draft EIS (project record, items #189 through 192; and #194) were reviewed by Forest Service resource specialists and me prior to our making minor revisions to the FEIS. Comments are reproduced in their entirety in appendix D of the FEIS and Forest Service responses to comments are provided in appendix E.

#### **5.0 Findings Required by Other Laws**

I find that implementation of Alternative 2, including the mitigation described above, is consistent with environmental laws and regulations applicable to each resource area. Detailed discussions of

findings required by laws and regulations other than NEPA are provided in the FEIS, Chapter 3, pp. 57 to 198, and its appendices. The following sections summarize these findings.

## **5.1 National Forest Management Act (NFMA) and Forest Plan Direction**

The National Forest Management Act requires projects to be designed in accordance with direction in the Coronado Forest Land and Resource Management Plan (Forest Plan) (USDA-FS 1986, as amended), which establishes Forest-wide goals and objectives, standards and guidelines and management-area (MA)-specific goals, standards and guidelines. Projects and activity decisions must demonstrate and explicitly document consistency and compliance with Forest-wide standards, MA-specific standards, and monitoring plan requirements.

Direction for allocation and management of land for specific uses and activities on the Coronado NF, including the recreation residence program, is provided in the current Forest Plan. The Safford recreation residences are located in management areas (MAs) 3A and 3B. Applicable standards and guidelines, both Forest-wide and MA-specific, are referenced in chapter 3 of the FEIS under the heading “Affected Environment.”

Forest plan standards and guidelines for the Old Columbine and Turkey Flat tracts include the following statements (USDA-FS, 1986, p. 59):

“Recreation residences, with the exception of those on tenure in the Santa Catalina Mountains and Madera Canyon, will be maintained unless and until a determination has been made that the site involved is needed for a higher priority public purpose.”

“Prior to the termination, non-renewal or modification of the special use permits for the Arizona Bible School Organization Camp and the Columbine Summer Home Tract located in the Pinaleno Mountains, the effect of these special use authorizations on the Mt. Graham red squirrel and other threatened or endangered species will be determined.”

The Forest Planner reviewed the proposed action for NFMA compliance and found that it is consistent with Forest Plan direction. No Forest Plan amendments are necessary.

## **5.2 Endangered Species Act (ESA) Regional Forester (Region 3) Sensitive Species Forest Management Indicator Species**

Chapter 3 of the FEIS reports potential effects of the proposed action and alternatives on species and habitat protected under the authority of the ESA and species listed by the Regional Forester, Region 3, as “sensitive” (FSS). As mentioned in the discussion of issues previously in this ROD, the Safford District Biologist prepared a BAE of the proposed action, which found that issuing new SUPs “may affect, and would likely adversely affect” the Mount Graham red squirrel; “may affect, would not likely to adversely affect” the Mexican spotted owl and the Apache trout; and would have “no effect” on MSO designated critical habitat. It also reported that the proposed action may incidentally affect individuals of Region 3 FSS and Forest management indicator species, but would not lead to a loss of population viability or a trend toward Federal listing for any of them.

The FWS concurred with Forest Service determinations in a BO issued on August 18, 2008. In it, the FWS assigned “incidental take” for two (2) Mt. Graham red squirrels (one “harm” and one “harass”), and stated that “...this level of take is not likely to result in jeopardy to the species.” Applicable to incidental take of the MGRS, the FWS issued a BO on April 30, 2012, regarding continued implementation of the Forest Plan. In it, the FWS stated that “under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act, provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement.”

After consultation had been considered completed in 2008, the threatened Gila trout was introduced back into Ash and Frye Creeks in the Piñaleno Mountains as part of a multi-agency effort to restore native species to the fishery. The Forest updated the BAE to include the potential effects on the Gila trout, finding that the proposed action "may affect, but would not likely adversely affect" the species. This updated determination was submitted to FWS on December 16, 2010. The Forest Service received concurrence on this in a letter dated May 6, 2011. All FWS concurrences and the BO are included in an appendix to the FEIS and filed in the administrative record of this NEPA review.

### **5.3 Clean Water Act (CWA)**

An Intergovernmental Agreement between the Arizona Department of Environmental Quality (ADEQ) and the Forest Service is the basis for managing non-point-source pollution and maintaining the quality of water resources on the Forest. It provides guidance related to the planning, application, and monitoring of best management practices (BMPs) as the primary means to control non-point source water pollution. The proposed action would require residence occupants to abide by all ADEQ requirements that protect the quality and integrity of surface waters on residence tracts and to implement BMPs where they are warranted.

### **5.4 National Historic Preservation Act (NHPA) of 1966 Preservation of American Antiquities Act of 1906**

The Forest heritage program leader consulted with Tribes having traditional ties to and interests in the project area and southeastern Arizona, and the Arizona SHPO about the potential effects of the proposed action on historic and Tribal resources and interestes. A finding of “no adverse effect” was made, and the SHPO concurred with this finding on May 5, 2008. Concurrence is provided in an appendix to the FEIS and filed in the administrative record of this NEPA review.

### **5.5 American Indian Religious Freedom Act of 1978**

This Act provides for the maintenance of “access to sites ... freedom to worship through ceremonials and traditional rites.” My decision allows for continued access to sacred sites and special places by American Indians and does not abridge any rights they have to continue to “worship.”

## **5.6 Religious Freedom Restoration Act (RFRA)**

The RFRA (40 USC Section 2000bb) re-established Supreme Court jurisprudence regarding the free exercise of religion under the First Amendment to the United States Constitution. [See Navajo Nation v. USFS, 535 F.3d 1058, 9<sup>th</sup> Cir. (2008).] My decision does not impose a substantial burden on the free exercise of religion as defined under the applicable case law.

## **5.7 Arizona-Idaho Conservation Act of 1988, P.L. 100-696 (AICA)**

Section 605 of the AICA sets forth procedures and analyses required if the SUPs will be renewed or if they will be terminated, modified, or not renewed. Because my decision is to renew the recreation residence permits, it is compliant with the requirements set forth in the AICA.

## **5.8 Executive Order 13007 - Indian Sacred Sites**

This Order specifies that Federal land management agencies “shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners, and (2) avoid adversely affecting the physical integrity of such sacred sites.” This Order is based on a “government-to-government” relationship between agencies and tribal government. Government-to-government consultations about this project have been ongoing since 2007. The proposed action does not change American Indian access to their sacred sites or the physical integrity of such sites.

## **5.9 Executive Order 12898 - Environmental Justice**

Executive Order 12898 requires Federal agencies to determine whether or not their proposed action would result in disproportionate adverse health and/or environmental effects on minority and low-income populations. I have determined that the proposed issuance of recreation residence permits will not cause environmental justice impacts.

## **6.0 Predecisional Administrative Review (Objection) Process**

It is my determination that information disclosed in the FEIS and filed in the administrative record of the NEPA review supports my reasoned choice of action. Implementing the selected alternative (the proposed action, Alternative 2) will cause no unacceptable individual and cumulative impacts to natural and societal resources. There are no adverse environmental effects that cannot be avoided, and there will be no irreversible and irretrievable commitment of resources associated with the selected alternative.

As the Responsible Official, I am issuing this draft Record of Decision (ROD) after EPA has published a Notice of Availability (NOA) of the Final EIS in the Federal Register. It will be uploaded to the Forest public website concurrent with publication of a Legal Notice of its availability in the *Arizona Daily Star* newspaper.

The draft ROD is subject to a Forest Service Predecisional Administrative Review Process [36 CFR 218 (Subparts A and B)], which became effective on March 27, 2013. In accordance with 218 regulations, a 45-day public review of the draft ROD will be offered. Only those parties who submitted comments during public scoping of the NEPA review and those who commented on the Draft EIS or otherwise expressed interest in the action will be eligible to object to the ROD (see

36 CFR 218.5). And, each objection must be linked to the original comments that were submitted by a specific party (see 36 CFR 218.2).

Objections, including attachments, must be filed within the 45-day period that begins on the day after publication of a legal notice that announces the draft ROD and FEIS in the *Arizona Daily Star* (36 CFR 218.25). This publication date is the exclusive means for calculating the time period in which the public may file an objection. Anyone who seeks eligibility to object to this draft decision should not rely upon dates or timeframe information provided by any other source. Objections received after the 45-day objection period will not be considered. The objection period may NOT be extended.

Objections may be submitted by U.S. mail to “Reviewing Officer, Safford Recreation Residences EIS”, USDA Forest Service, Southwestern Region, 333 Broadway SE, Albuquerque, NM 87102. They may also be sent by facsimile to (505) 842-3173 to the attention of “Reviewing Officer, Safford Recreation Residences EIS”. Hand-carried objections should be delivered to the the Albuquerque address between 8:00 a.m. and 4:30 p.m., Monday through Friday, excluding Federal holidays.

Electronically mailed objections (emails) should be directed to “[objections-southwestern-regional-office@fs.fed.us](mailto:objections-southwestern-regional-office@fs.fed.us)” with “Reviewing Officer, Safford Recreation Residences EIS” in the subject line. Objections may be submitted within the text of an email message, or as plain text (.txt), rich text format (.rtf), or Microsoft Word (.docx). In cases where no identifiable name is attached to an electronic message, a verification of identity will be required.

At a minimum, an objection must include the following information [36 CFR 218.8(d)]:

1. The objector’s name and address, with a telephone number, if available;
2. A signature or other verification of authorship upon request (a scanned signature for email may be filed with the objection);
3. When multiple names are listed on an objection, identification of the lead objector (verification of the identity of the lead objector shall be provided upon request);
4. The name of the proposed project, the name and title of the Responsible Official, and the name(s) of the National Forest(s) and/or Ranger District(s) on which the proposed project will be implemented;
5. A description of those aspects of the proposed project addressed by the objection, including specific issues related to the proposed project if applicable, how the objector believes the environmental analysis or draft decision specifically violates law, regulation, or policy; suggested remedies that would resolve the objection; supporting reasons for the reviewing officer to consider; and
6. A statement that demonstrates connection between prior specific written comments on the particular proposed project or activity and the content of the objection.

Incorporation of documents by reference is permitted only as provided in §218.8(b). It is the objector’s responsibility to ensure timely filing of a written objection with the reviewing officer pursuant to §218.9. All objections are available for public inspection during and after the objection process.

## **7.0 Implementation of the Proposed Action**

The objection process offers objectors an opportunity to meet with the reviewing officer and the responsible official with the intent of resolving the concerns expressed in the objection (see 36 CFR 218.11).

If no objections are filed, a decision may be signed by the Responsible Official and implementation of the decision may occur on, but not before, five business days from the close of the objection filing period.

If objections are filed, informal resolution meetings and/or conference calls may be held among the Reviewing Officer, Responsible Official, and the objector(s). The Responsible Official may not sign a final ROD until the Reviewing Officer has responded in writing to all pending objections. The final ROD must be consistent with any instructions issued by the reviewing officer (see 36 CFR 218.12). The proposed action may be implemented immediately upon the final ROD being signed.

## **8.0 Contact Information**

For additional information concerning this ROD and the Forest Service NEPA and objection processes, contact:

Ms. Cornelia (Connie) Lane  
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Ms. Margaret Van Gilder  
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333 Broadway SE  
Albuquerque, NM 87102  
(505) 842-3223  
mvangilder@fs.fed.us

## Signature of Responsible Official

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JIM UPCHURCH  
FOREST SUPERVISOR  
CORONADO NATIONAL FOREST

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DATE