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Department of  
Agriculture

Forest  
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Southwestern  
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**File Code:** 1570-1 (5430)

**Date:** August 23, 1999

Sonoita Crossroads Community Forum  
Attn: Sheldon Clark  
P.O.Box 1274  
Sonoita, AZ 85637

Re: Appeal #99-03-00-069-A215, Sierra Grande Land Exchange, Nogales Ranger District, Coronado National Forest

Dear Mr. Clark:

This is my review decision on the appeal you filed regarding the decision made by Forest Supervisor John McGee on May 21, 1999. The Forest Supervisor is identified as the Responsible Official, whose decision is subject to administrative review under 36 CFR 215 appeal regulations.

### **BACKGROUND**

On May 21, 1999, the Responsible Official issued a Decision Notice and Finding of No Significant Impact in which he decided to implement Alternative 1. The Alternative proposes to exchange 500 acres of Federal land in Santa Cruz County, Arizona for 429.56 acres in fee of non-Federal land in Santa Cruz County, Arizona.

Pursuant to 36 CFR 215.16, a teleconference was held on July 20, 1999, with you in an attempt to seek informal resolution of the appeal. The record reflects that informal resolution of the appeal was not reached.

My review of this appeal has been conducted in accordance with 36 CFR 215.17. I have thoroughly reviewed the appeal record, including the recommendation of the Appeal Reviewing Officer. My review decision incorporates the appeal record. My review and findings are enclosed.



**APPEAL DECISION**

After a detailed review of the records and the Appeal Reviewing Officer's recommendation, I affirm the Responsible Official's decision to implement Alternative 1.

My decision constitutes the final administrative determination of the Department of Agriculture (36 CFR 215.18 (c)).

Sincerely,

/s/ James T. Gladen  
JAMES T. GLADEN  
Appeal Deciding Officer  
Deputy Regional Forester, Resources

Enclosure

cc Forest Supervisor, Coronado NF  
District Ranger, Nogales RD  
Lands and Minerals, R-3  
Appeals and Litigation, R-3  
Jake Kittle  
Kirby Knoy

**REVIEW AND FINDINGS**  
**of the**  
**Sonoita Crossroads Community Forum Appeal #99-03-00-069-A215**  
**regarding the**  
**Sierra Grande Land Exchange**

**ISSUE 1:** The decision is a different one than the public was asked to comment on.

**Contention:** Since 40 acres was removed from the exchange, along with two conservation easements the proponent was going to give to the Forest Service, it is not the same action proposed and therefore, a new EA should have been prepared, with a new opportunity for the public to comment.

**Response:** Following the National Lands Team review of this project in February 1999, the proponent voluntarily removed 40 acres and the two conservation easements from the exchange. Forest Service Handbook 1909.15 18.4, titled "Reconsideration of Decision Based on an Environmental Assessment and Finding of No Significant Impact", provides direction to the Responsible Official after a decision to implement a proposed action has been made and when the consideration of new information leads to the supplementation or revision of environmental documents. It was well within the Responsible Official's purview to make a decision with fewer acres in the exchange. Since land was taken away from the exchange, and not added to, all impacts were assessed. Removing the land did not change the nature of the action, nor the agency objectives, the issues, context or intensity of anticipated effects.

**Finding:** Policy was followed and allowed the Responsible Official to make a decision based on new information because it did not change the issues, context or intensity of the anticipated effects.

**ISSUE 2:** More homes will be developed than the proponent states, thus destroying the rural character of the area.

**Contention:** There is a concern the proponent will develop more lots than he has publicly stated to the Forest Service. Appellant suggests that a "critical factual error" (the proponent could subdivide into 14 lots of 36 acres which he claims are not governed by state laws concerning subdivisions; then each new owner could subdivide those 36 acre lot into 6 more lots, resulting in over 70 new residences) was used and therefore, "critical assumptions" were made using those erroneous facts.

**Response:** The proponent has publicly stated his intention to subdivide this 500 acre parcel into 14 lots of 36 acres in size. Arizona law does state that division of land into lots of 36 acres or greater is not subject to the definition of a subdivision (see item 54 on page 169, ARS 32-2101). However, this does not exempt the owner of these lands from complying with state, county and local statutes concerning residential development of property. In fact, Arizona law provides penalties for a subdivider who tries to circumvent or ignore state statutes. For example, the law on water availability says, "Vendor who owns several subdivided lots could be held liable on theory of negligence per se for misrepresentation by omission for failing to disclose problems with availability of water service to lot, based on duty posed on owner's subdivided lands under subdivision reporting statutes...".

Future use or development of lands conveyed out of Federal ownership are subject to all laws, regulations and zoning authorities of Arizona, Santa Cruz County, and local governing bodies. Currently, Santa Cruz County ordinances allows one residence for every 4.22 acres under its definition of General Rural. Proponents proposal is well within the limits of this regulation. If the proponent does attempt to "wildcat" subdivide, as the appellant charges, he could be liable for civil penalties under Arizona statues ARS 11-809, Review of land divisions, which states it is unlawful for a person or group of persons acting in concert to attempt to avoid the provision of the law. ARS 11-809 may be enforced by any county where the division occurs or by the state real estate department pursuant to title 32, chapter 20.

The appellant sought relief by asking for restrictions in the deed on number of residences developed. Reservations on the patent conveyed by the Federal government to the private landowner are for protection of natural resources and any other interest needing protection (e.g., roads, powerline or waterline rights-of-way, archeological resources, wetlands). Since state and local government regulations are in force concerning division of lots and subdivisions, there is no need to encumber the deed with Federal covenants.

**Findings:** While there is no guarantee the proponent will do what he has stated, there is no evidence to support that he will not do as he has stated. The Responsible Official correctly states that lands conveyed out of Federal ownership are subject to all laws, regulations and zoning authorities of the state, county and local governing bodies. The proponent must follow these laws or be subject to penalty.

**ISSUE 3:** This exchange is part of a series of exchanges which should be analyzed as cumulative actions.

**Contention:** The exchange should not be analyzed separately but as one of a series of actions including the proposed Cote Land Exchange, the CERCLA removal of hazard waste in Mansfield Canyon, and the proposed Temporal Allotment Coordinated Ecosystem Restoration Project.

**Response:** The CERCLA removal of waste from Mansfield Canyon is a Washington Office approved project, involving federal HAZMAT money and several different agencies including EPA, State of Arizona EPA and the Forest Service. This project has its own NEPA documentation and is progressing with guidance from OGC-Washington.

The Temporal Allotment Coordinated Ecosystem Restoration Project is a range project with its own issues, context and scope. It has its own NEPA analysis process and its own documentation. This exchange has no impact on that analysis.

While there are several land exchange proposals being considered for the base-in-exchange land located near Sonoita, the issue of cumulative effects from land exchanges was addressed in the DN, Appendix D, Response to Comments. It is consistent with the Coronado National Forest Land and Resource Management Plan (LRMP - see pages 21, 22) and with the Land Ownership Adjustment Plan which is a part of the LRMP, approved in August, 1986 and reviewed in 1991 (see pages 40 and 43) Also see EA pages 3-5. Land exchanges are actions which we respond to when a proponent comes to us with a proposal. They are not normally instigated by the Forest Service. When base-in-exchange land is identified in a Land Ownership Adjustment Plan, it is often Federal land which would be better utilized in some other ownership because of management issues (isolated tracts, difficult boundary management issues including trespass, lands needed for community development). The Federal land in this case was identified as base-in-exchange years ago, to help the community of Sonoita with its need for expansion.

Those who have moved into this area for its rural character would understandably like no more development to occur. They feel strongly that while any development they have promulgated is okay, further development ruins what they now enjoy. The Federal land offered in the exchange is bounded on three sides by private land with limited or no physical legal access for the rest of the public. Those whose land adjoins the National Forest enjoy a "beautiful backyard" but the general public has no access to it. It is land which is suitable for exchange because of these very reasons, laid out in the LRMP.

**Finding:** The EA provided sufficient analysis of cumulative effects for the Responsible Official to make his decision. Other actions listed by the proponent are not part of a cumulative set of actions as defined by 40 CRF 1508.25.