PURSUANT TO A.R.S. SECTION 38-431 THE GILA COUNTY BOARD OF SUPERVISORS WILL HOLD AN OPEN MEETING IN THE SUPERVISORS' AUDITORIUM, 1400 EAST ASH STREET, GLOBE, ARIZONA. ONE OR MORE BOARD MEMBERS MAY PARTICIPATE IN THE MEETING BY TELEPHONE CONFERENCE CALL OR BY INTERACTIVE TELEVISION VIDEO (ITV). **ANY MEMBER OF THE PUBLIC IS WELCOME TO ATTEND THE MEETING VIA ITV WHICH IS HELD AT 610 E. HIGHWAY 260, BOARD OF SUPERVISORS' CONFERENCE ROOM, PAYSON, ARIZONA.** THE AGENDA IS AS FOLLOWS:

SPECIAL MEETING - TUESDAY, OCTOBER 11, 2011 - 10 A.M.

1 Call to Order - Pledge of Allegiance – Invocation

2 **CONSENT AGENDA ACTION ITEMS:**

3 Information/Discussion regarding the draft Gila County Unified Development Code as developed and recommended by the Gila County Planning and Zoning Commission. **(Robert Gould)**

4 Information/Discussion/Action to consider issuing official comments from the Board of Supervisors to the U.S. Fish and Wildlife Service as to their proposal regarding designation of revised critical habitat for the southwestern willow flycatcher. **(Jacque Griffin)**

5 **CALL TO THE PUBLIC:** Call to the Public is held for public benefit to allow individuals to -- address issue(s) within the Board's jurisdiction. Board members may not discuss items that are not specifically identified on the agenda. Therefore, pursuant to Arizona Revised Statute §38-431.01(G), action taken as a result of public comment will be limited to directing staff to study the matter, responding to criticism, or scheduling the matter for further discussion and decision at a future date.

6 At any time during this meeting pursuant to A.R.S. §38-431.02(K), members of the Board of Supervisors and the Chief Administrator may present a brief summary of current events. No action may be taken on issues presented.

IF SPECIAL ACCOMMODATIONS ARE NEEDED, PLEASE CONTACT THE RECEPTIONIST AT (928) 425-3231 AS EARLY AS POSSIBLE TO ARRANGE THE ACCOMMODATIONS. FOR TTY, PLEASE DIAL 7-1-1 TO REACH THE ARIZONA RELAY SERVICE AND ASK THE OPERATOR TO CONNECT YOU TO (928) 425-3231.

THE BOARD MAY VOTE TO HOLD AN EXECUTIVE SESSION FOR THE PURPOSE OF OBTAINING LEGAL ADVICE FROM THE BOARD'S ATTORNEY ON ANY MATTER LISTED ON THE AGENDA PURSUANT TO A.R.S. SECTION 38-431.03(A)((3).

THE ORDER OR DELETION OF ANY ITEM ON THIS AGENDA IS SUBJECT TO MODIFICATION AT THE MEETING.

ARF-887 **3**

Special Meeting

Meeting Date: 10/11/2011

Submitted For: Robert Gould Submitted By: Beverly Valenzuela, Community Development Division

Department: Community Development Division Division: Community Development Administratio

Presenter's Name: Bob Gould

Information

Request/Subject

Draft Gila County Unified Development Code

Background Information

Our aim in updating our current zoning ordinance is to bring about a major change in how Gila County regulates the use of land in Gila County. The most obvious change is bringing regulations from several different codes together into one document. Most land development regulations for Gila County will be contained in this one document that will be called the Gila County Unified Development Code.

Evaluation

It is not the intent of providing a complete amended Code at this time. There are amendments included in this document, but our aim is to go through this document section by section over the next two years or less to complete the update process. Providing a fully amended Code all at once would be too much for the Planning and Zoning Commission or Board of Supervisors. By taking smaller bites at a time we believe there will be far more discussion on more individual elements.

As we get into the amendment process, much effort will be made to eliminate legalese type language to facilitate easier reading and we will be utilizing graphics much more to describe what individual regulations actually mean.

This report is to provide details to the current amendments that will be incorporated into the Unified Development Code Draft.

Conclusion

The most obvious change is bringing regulations from several different codes together into one document.

Recommendation

At the Planning and Zoning Commission meeting held September 22, 2011, the Commission approved the presentation to the Board of Supervisors.

Suggested Motion

Information/Discussion regarding the draft Gila County Unified Development Code as developed and recommended by the Gila County Planning and Zoning Commission. **(Robert Gould)**

Attachments

Proposed amendments

Staff Report for Oct. 11, 2011 meeting

Draft of the Unified Development Code dated Sept 22, 2011

n

Proposed Amendments to Unified Development Code

Changing how we regulate land development

The purpose of this report is to provide the details to the current amendments that have been incorporated into the Unified Development Code. The first part describes the general changes that can't be attributed to a single article and then goes into describing the changes one article at a time. Some very minor amendments such as replacing zoning ordinance with Unified Development Code will not be mentioned in this report.

Robert Gould
Community Development Director
9/22/2011

Proposed Amendments to Unified Development Code

Changing how we regulate land development

General Amendments to Regulating Land Development

The most obvious change is bringing regulations from several different codes together into one document. Most land development regulations for Gila County will be contained in this one document. We did not include the Floodplain Ordinance due to concerns that were expressed by FEMA that it remains a stand-alone document.

It is not the intent of providing a completely amended code at this time. There are amendments included in this document, but our aim is to go through this document section by section over the next two years or less to complete the update process. Providing a fully amended code all at once would be too much for the Commission or Board of Supervisors to fully digest and know what is in there. By taking smaller bites at a time we believe there will be far more discussion on more individual elements.

As we get into the amendment process much effort will be made to eliminate legalese type language to facilitate easier reading and we will be utilizing graphics much more to describe what individual regulations actually mean.

Several changes were made to citations regarding state law. We had occurrences where the statute number had changed since last update or adoption.

Article #1 General Provisions

1. Amended regulations that apply to mining and agricultural use. These uses are exempted by the State from restrictions of our Zoning Ordinance. What we have done here is to more clearly state how those exemptions work or when are they applicable. This is not a change in regulation. We have simply included the process we use administratively in determining if the exemption is applicable.
2. Added a new item #7 on page three that deals with Added a new item #7 on page three that deals with *"Accessory Uses and Structures"* Allows structures to be as close as 3 feet from side or rear property lines. Requires the applicant to apply for an administrative variance.
3. The amendments to Nonconforming regulations are primarily to do with more clearly stating the application of these regulations to nonconforming uses that exist at the time this code is adopted. There are three amendments included that have been implemented in the past through state statutes. Here we simply spell out those statutes in our code with the exception of the first item:

a. Section 1-20, Item C.4 allows the Director to approve modifications to existing nonconforming uses that decrease the infringement on adjoining properties while not fully complying with current regulations.
b. Section 1-20, Item C.6 allows us to remove nonconforming uses when a rezoning or variance is requested.
c. Allows the Board of Supervisors to acquire by purchase or condemnation a nonconforming use or structure.

ARTICLE #2 ADMINISTRATION

This section is new. It states the responsibilities for staff, boards and commissions. Even though this is a new section the only real change from current practices is to allow the commission to make the final decision on conditional use permits with the right to appeal their decision to the Board of Supervisors.

ARTICLE #3 PROCEDURES

1. This is also a new section. The purpose of this section is to list the procedures one would need to follow. As with the preceding section conditional use permits are being changed to allow the Commission to make a decision to approve or deny with appeal rights being assigned to the Board of Supervisors.
2. The Board of Adjustments has been assigned to hear appeals to the Director's decision on use permits. The appeal must be filed within 15 days of the director's decision.
3. Added language that requires an expiration date be included on a temporary use permit.

ARTICLE #4 AMENDMENTS

1. Added a new section for amending the Comprehensive Plan most of this section was currently under state staatutes.
2. Added a requirement that an application to amend other than that owned by the applicant must include a petition with at least 75% of property owners agreeing to the application.

ARTICLE #5 AMENDMENTS

No amendments to this section other than cleaning up references made to reflect Locations in this code.

ARTICLE #6 ESTABLISHMENT OF ZONES

No amendments to this section other than cleaning up references made to reflect Locations in this code.

Article #7 Residential Zoning Districts, Single Family

1. Guest houses are permitted in single family residential zoning with a use permit. Kept the language that a guest house cannot be used as a rental unit.
2. We included language that allows group homes. This is currently mandated under the fair housing act.
3. Section 7-10, item B.10 includes language for cottage industries and home occupations which is very vague and should be clarified.
4. Included regulation that placed a limit on yard sales of no more than three consecutive days, or more than two consecutive weeks or more than eight times a year.
5. Included language to allow fencing at a maximum height of six (6) feet and that they would not create a line of site traffic problem.
6. Included language to allow livestock.

Article #8 Residential Zoning Districts, Multiple Family

No amendments to this section other than cleaning up references made to reflectLocations in this code.

Article #9 Commercial Zoning Districts

No amendments to this section other than cleaning up references made to reflect Locations in this code.

Article #10 Industrial Zoning Districts

No amendments to this section other than cleaning up references made to reflect Locations in this code.

Article #11 Special zoning Districts

No amendments to this section other than cleaning up references made to reflect Locations in this code.

Article #12 Overlay Zoning Districts

This is a new section with minor changes such as citations being fixed to this code rather than the Zoning Ordinance. Districts in this section must have a base zoning district from the code. These regulations simply adjust development standards within the hard districts.

Article #13 Density Districts

No amendments to this section other than cleaning up references made to reflect Locations in this code.

ARTICLE #14 PARKING REQUIREMENTS

1. This section was removed from Section 103 of the Zoning Ordinance and given its' own section
2. Added ADA parking requirements as they are currently applied in accordance with federal regulations.

ARTICLE #15 SIGNAGE REGULATIONS

As with the Parking requirements this section was removed from Section 103 of our Zoning Ordinance and given a separate article.

No amendments to this section other than cleaning up references made to reflect Locations in this code.

ARTICLE #16 ENFORCEMENT

No amendments to this section other than cleaning up references made to reflect Locations in this code.

ARTICLE #17 PERMITS

No amendments to this section other than cleaning up references made to reflect Locations in this code.

ARTICLE #18 DIVISION OF LAND INTO LOTS, TRACTS OR PARCELS

This article includes the Subdivision Regulations, Minor Land Division Regulations and Small Subdivision Regulations.

No amendments to this section other than cleaning up references made to reflect Locations in this code.

ARTICLE #19 WASTEWATER SYSTEMS

This section needed significant cleanup. When Wastewater was moved into Community Development it should have been changed. As it is now it is under the Health Division and not the Community Development Division but is operated by the Community Development Division. The basic change was to delete any reference to the Health Division.

1. The Wastewater Department currently provided training for those who install, perform soils evaluations and not ADEQ. So this change was made to reflect that.
2. Included language that if a person provided false information on three occasions they could be barred from doing any further soils investigations or future designs of wastewater sytems.
3. Included language to define a public nuisance.

4. Added language to provide a 24 hour requirement for cleaning up wastewater spills and included language to remove water supplies or power sources from the property if spills are not cleaned up.
5. Provides language to give authority for enforcement to the Community Development Division
6. Provided language to allow both civil or criminal violations

Article #20 Drainage and Erosion Control

No amendments to this section other than cleaning up references made to reflect Locations in this code.

Article #21 Outdoor Lighting

The only change to this section was to delete a type of bulb that is no longer allowed.

Article #22 Reserved for future use

Article #23 Definitions

Took definitions from various parts of our code and placed them together in this article. We did not take Drainage and Grading definitions because of definitions can be different than the normal definitions. In other words the same word can mean something different in this ordinance from the rest of the ordinance.

Article #24 Permitted Use Tables

The intent here was to portray uses in an easier to read manner. There is still a permitted uses section in each zoning district that contains uses with certain criteria attached.

September, 26 2011

Update of the Zoning Ordinance

Report from Planning & Zoning Commission

INTRODUCTION

Gila County adopted its first zoning ordinance right around 1960. That is over 50 years ago. The Chamber of Commerce was the driving force to have land use regulations established throughout the county.

At the time the first zoning ordinance was adopted the population for Gila County was 25,000 persons. Today the population is over 53,000 people. Almost one half of our population resides in the unincorporated areas of the county. Two very critical elements that fostered this change were the idea that development needed to be sustainable and the 2003 Comprehensive Plan for the County.

Our Comprehensive Plan has done a good job in identifying issues that need to be addressed. The following was taken directly from the Comprehensive Plan.

Community Land Use Issues: (Items/Issues of Concern to Residents)

- Adequacy of existing and future water supplies
- Limited amount of privately owned property
- Lack of economic development opportunities
- Actual and potential impacts of septic tanks to the environment
- Lack of managed growth and development
- Maintenance and access of private roads
- Road maintenance
- Emergency response times and accessibility
- Wildfire danger

Transportation related Issues identified by County residents:

- Adequacy of Emergency Access
- All Weather Property Accessibility
- Lack of Alternative Transportation Mode Facilities
- Unimproved Roadways / Dust Control
- Deficiency in Roadway Construction and Maintenance Funding
- Need for Regional Transportation Planning
- Inadequate Roads and Rights-of-Way

Community facility-related issues identified by county residents:

- Potential negative impacts due to excessive use of individual septic systems
- Adequacy and reliability of water supply to residents
- Adequacy and response timing of fire and medical emergency services
- Adequacy and response timing of law enforcement services
- Lack of capacity of existing jail facilities
- Travel distances required to access governmental offices and functions
- Lack of automated and remote service options
- Lack of funding for service expansion and lack of service coordination

The first step in building a land use regulatory system is to know what it is you want to be. This is the role of the Comprehensive Plan. It is common practice to modify the land use regulatory system once the comprehensive planning process is completed. It is through the land use regulations that we can achieve the vision of our comprehensive plan.

Our comprehensive plan has provided the following directions for updating our codes:

1. We need to promote infill developments in order to reduce housing costs.
    - Continue to find ways to expedite and streamline permit review process and review feasibility of tax incentives
2. We need to provide greater protection for hazardous areas such as floodplains and steep topographic areas.
    - Consider allowing a "Transfer of Development" to decrease density in sensitive areas and increase density in nonsensitive areas.
3. We need to promote planned developments that have adequate utilities and infrastructure.
    - Promote the development of subdivisions in GU zoning
4. We need to provide more buffering between noncompatible land uses.
    - Include a landscape and buffering ordinance in the UDC
5. We need to assure a diversification of residential land uses.
    - Allowing housing for seniors and granny flats should be provided for in our code
6. We need to develop location standards for regional and neighborhood commercial development.
    - Promote the creation of small commercial establishments within residential areas
7. We need to encourage the development of shared driveways where feasible.
    - This is primarily a State issue. We can have standards allowing minimum frontage on State highways, minimum distance between driveways etc.
8. We need to provide adequate opportunity for lodging and resort developments.
    - Rethink zoning allowances to promote guest ranches in rural areas with appropriate access and infrastructure
9. We need to provide a more aesthetically pleasing development
    - Consider expanding our design review program to other areas of the county
10. We need to expand our water requirements to ensure an adequate water supply for future generations
    - We want to encourage adequate water supply for future generations
        i. This includes promoting safe water quality
        ii. Protection of public wells
    - Encourage reuse of high quality discharged waters
11. We need to provide protection for historical and geological features.
    - Develop a Historic Overlay program
12. We need to assure that buildings and signage do not detract from our natural environment
    - Expand and rethink signage regulations
13. We need to provide adequate screening for outdoor storage areas.
    - Include In landscaping and buffering ordinance

WHAT DO WE WANT TO ACCOMPLISH WITH AN UPDATED CODE

Our aim in updating our current zoning ordinance is to bring about a major change in how Gila County regulates the use of land in Gila County.

- The new code must recognize the need for increased flexibility in the application of land use regulations. No one rule will work in all cases. We don't want to stand at the counter and say no way you can do what you want and there's no way to change that. We need to provide other avenues for our customers to achieve what they want within the guidelines of our code. Let's provide the opportunity to be creative while creating a more attractive county that enhances our ability to bring in new investment.

- The new code must find other avenues by which to reduce processing times and costs for our customers. We need to explore use of administrative and quasi-legislative procedures that are much quicker. An example would be to allow the Commission to render a final decision on Conditional Use Permits with appeal rights to the Board of Supervisors.

- We want our regulatory system to provide greater protection against the adverse dangers of developing in hazardous areas such as floodplains, floodways and hillsides. Provide options that enhance their ability for economic gain while decreasing the dangers of development in these hazardous areas.

- We want the new code to enhance our ability to provide protection from the loss of beautiful scenic vistas, loss of significant geologic formations, and loss of historically significant structures and areas.

- We want our new code to be clear and understandable to our customers. Graphics can say so much more than words sometimes and we need to get away from legalese language.

- We want our entire land use regulatory system to be coordinated within a single code book so that our customers don't have to search through numerous document s find out what they need to do.

- We want our new code to incorporate smart growth principles so that we can preserve our valuable resources for both quantity and quality. We want our focus to be more on sustainable development.

- We want our new code to help a village or community foster the sense of place by looking at local design parameters that will enhance their identity.

- We want the new code to provide more options to the developer to create attractive and sustainable communities.

- We want the new code to foster the ability to provide more affordable housing by allowing use of accessory structures such as a guest house to be utilized for rentals and providing the opportunity for senior housing and granny flats.

- We want the new code to be more conducive to the promotion of Gila County as an excellent recreation area for Valley residents.

- We want the impact of this code to foster more privately owned land in Gila County.

SMART GROWTH PRINCIPLES

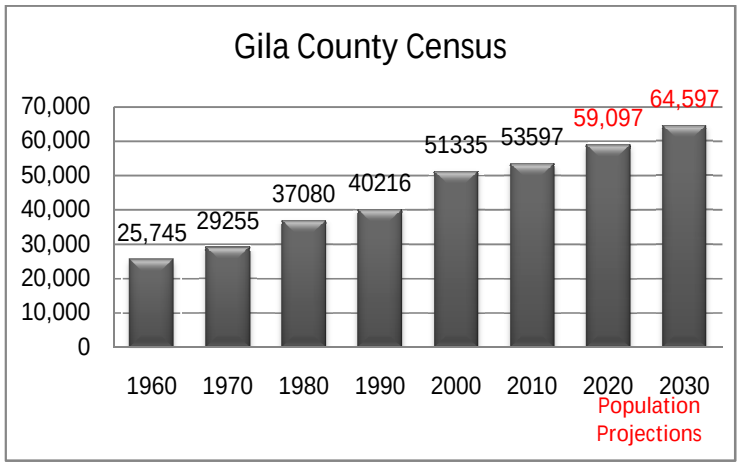
Probably one of the most effective tools that has been created in the last 20 years is the smart growth principles. The driving force behind the creation of these principles is the need to assure that future generations have the ability to have a quality of life that is as good as or better than we have today. Wise use of resources is of critical importance here.

Since the mid-1990s, the Smart Growth Network, a network of non-governmental organizations representing diverse interests, has been identifying best practices, policies, and strategies that help communities get the results they want from growth. The framework for these findings is a set of ten Smart Growth Principles (see below), which apply to a range of communities, from urban to rural, and were developed based on the experiences of communities around the country.

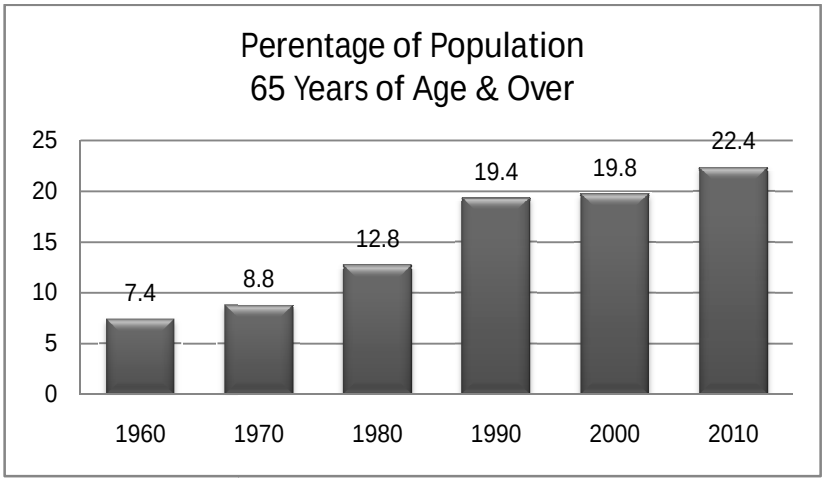
- Mix land uses.
- Take advantage of compact design.
- Create a range of housing opportunities and choices.
- Create walkable communities.
- Foster distinctive, attractive communities with a strong sense of place.
- Preserve open space, farmland, natural beauty, and critical environmental areas.
- Strengthen and direct development toward existing communities.
- Provide a variety of transportation options.
- Make development decisions predictable, fair, and cost effective.
- Encourage community and stakeholder collaboration in development decisions.

POPULATION GROWTH (1960 – 2010)

The population of Gila County when the zoning ordinance was adopted was just over 25,000 persons, today our population is well over 53,000 persons, more than doubled. The makeup of our population has also changed.

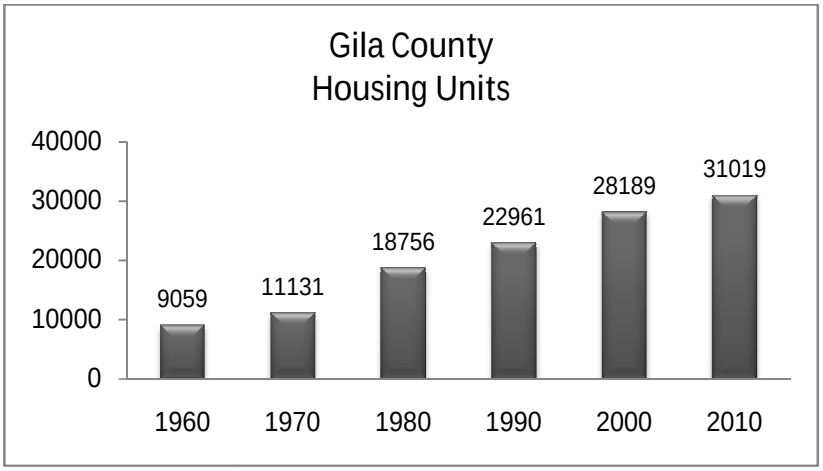


In 1960 41.6% of our population was under 18 years of age. Today 21.4% of our population is under 18 years of age. In 1960 7.4% of our population was 65 years of age or older. Today 23.2% is 65 years of age or older. In fact 40.1% of our households will have someone who is 65 or older living there.



We had a total of 7,289 households in 1960. Today we have more seasonal homes than that. The average household had 3.5 persons in 1960 while today we have 2.39. The total number of housing units has grown by 350% since 1960 for a total of 32,298 units.

Today our population is older, our housing units have fewer people living in them and we have more than twice the total number of people living here. Our housing unit count has increased by more than 3 times while our population has only doubled.

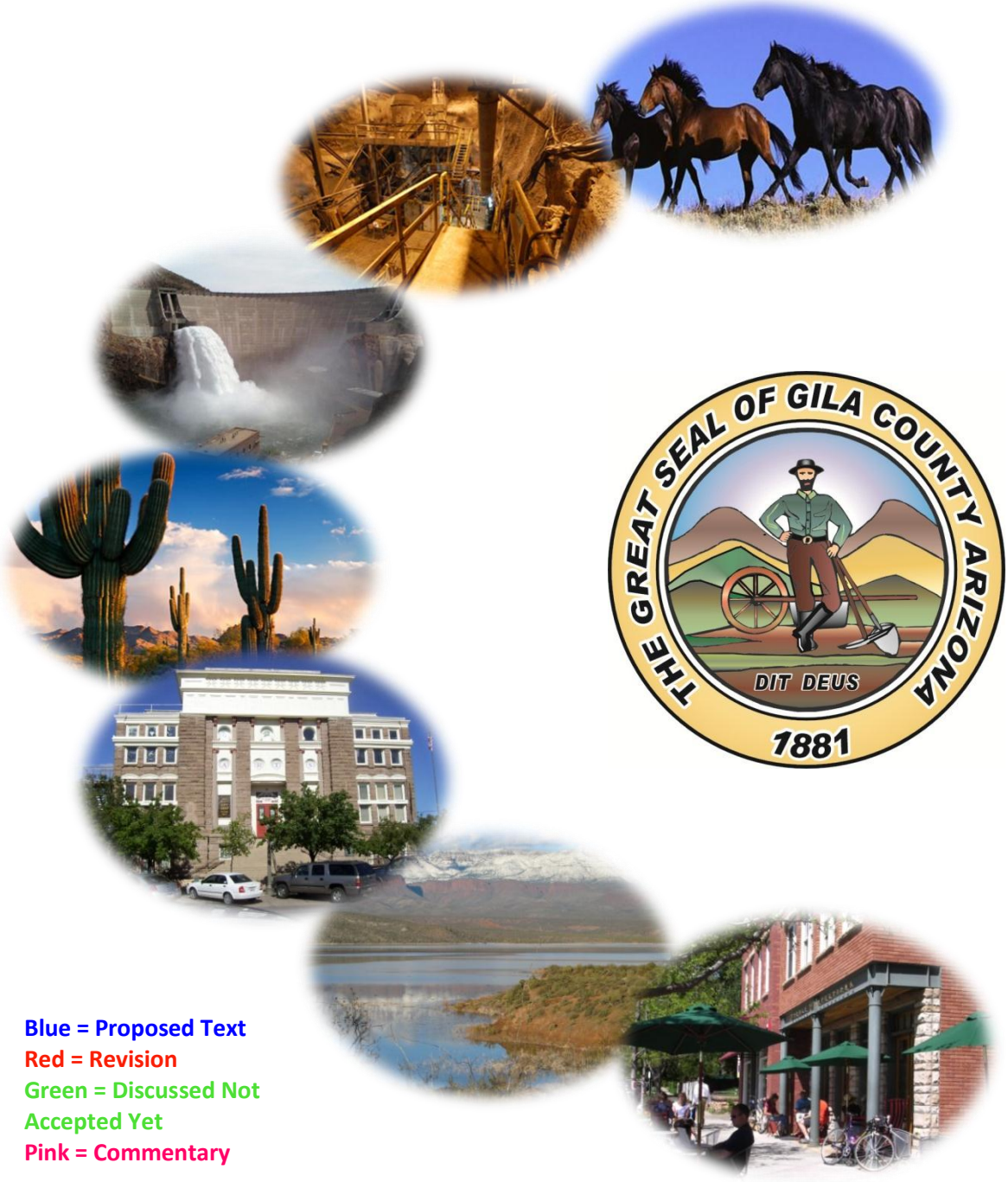


In 1960 the makeup of our population pretty much mirrored that for the State of Arizona. Since that time we have changed significantly in regards to the age of our population. Our population for 65 years and older constitutes 22.4% of our total population while the state is 13.1%.

Draft

September 22, 2011

Gila County
Unified Development Code



Blue = Proposed Text
Red = Revision
Green = Discussed Not Accepted Yet
Pink = Commentary

Gila County

Unified Development Code **Draft**

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Don Ascoli – Chairman Planning & Zoning Commission
Randy Slapnika – Commissioner
Travis Williams- Commissioner

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Board of Supervisors

Tommie Martin – Chairman of the Board
Shirley Dawson – Supervisor
Mike Pastor - Supervisor

September 22, 2011

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ARTICLE 1
GENERAL PROVISIONS

SECTION 1–10
AUTHORITY

This Unified Development Code is adopted for the Unincorporated Areas of Gila County pursuant to the authority granted to Counties in Title 11 of the Arizona Revised Statutes. This Code is designed to treat in one unified text those areas of regulation currently dealt with in separate zoning, land division and land use ordinances.

SECTION 1-11
PURPOSE AND TITLE

In order to conserve and promote the public health, safety and general welfare by guiding and accomplishing a coordinated, adjusted and harmonious County development and future growth, there is hereby adopted, as part of a comprehensive long-term plan, an official zoning, land division and land use ordinance, together with zoning maps, rules and regulations for Gila County, Arizona, and shall hereafter be known collectively as the "GILA COUNTY UNIFIED DEVELOPMENT CODE."

In the interpretation and application, the provisions of this ordinance, unless otherwise provided, shall be held to be minimum requirements designed to lessen congestion in the neighborhood; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent over-crowding of land; to prevent ground water contamination; to avoid undue concentration of population in certain areas; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; and to maintain stable values of land and buildings.

SECTION 1-12
RELATIONSHIP TO THE COMPREHENSIVE MASTER PLAN

This Unified Development Code is the primary tool for the implementation of the Gila County Comprehensive Master Plan, and the planning and land use policies adopted by the Board of Supervisors.

SECTION 1-13
APPLICABILITY

All buildings, structures, uses of land and appurtenant structures, subdivisions, small subdivisions, minor land divisions and private properties within the unincorporated boundaries of Gila County shall be subject to the provisions of this Code; except private properties that have requested to remain unzoned and properties unzoned because of irregular mining claim uses.

SECTION 1-14
REPEAL OF INCONSISTENT PROVISIONS

All ordinances and portions of ordinances of Gila County in conflict herewith are hereby expressly repealed.

SECTION 1-15
SEVERABILITY

This Ordinance and the various parts hereof are hereby declared to be severable. If any article, section, subsection, sentence, clause, phrase or word is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 1-16
GENERAL STIPULATIONS AND PROVISIONS, ALL DISTRICTS

The following stipulations and provisions shall apply to all districts unless supplanted and/or supplemented by differing stipulations and provisions established in any particular district.

SECTION 1-17
GENERAL STANDARDS FOR STRUCTURES AND USES

A. No building or other structure shall be erected, altered, or moved, nor shall any land or building be used, designed or intended to be used for any purpose or in any manner other than is included among the uses hereinafter listed as permitted in the District in which such structure or land is located, except that any structure may be removed from any property.

B. No structure shall be removed from any property without a demolition permit that considers life safety issues for hazardous materials such as asbestos and lead paint.

C. No building or other structure shall be erected or added to so as to exceed in height the limit hereinafter designated for the District in which located, whether such height be designated in stories, number of feet or otherwise.

D. No building or other structure shall be erected or added to in such manner as to encroach upon or reduce any open space, yard setback requirement, lot area, or parking area as is hereinafter designated for the District in which such structure or open space is located. No yard or other space on one lot shall be considered as providing a yard or open space for a structure on any other lot.

E. No building or structure shall be erected, constructed, reconstructed, altered, maintained or used in such a manner that the life, health, property or safety of the public or its occupants are endangered. This includes, but is not limited to, a building or structure or portion thereof:

1. In which the means of exist does not provide safe and adequate means of egress in case of fire or panic;

2. In such a condition that it is likely to partially or completely collapse;

3. That is manifestly unsafe for the purpose for which it is being used;

4. That is used or intended for use as a dwelling and is determined by the Health Official to be unfit for human habitation or in such a condition that it is likely to cause sickness or disease.

5. That is determined by the Fire Marshall to be a fire hazard.

6. No property or use shall be operated or maintained in a manner that is a fire and/or explosion hazard; no property or use shall be allowed to emit toxic fumes or generate toxic waste; neither shall there be emitted into the atmosphere smoke, soot, dust, radiation, odor, noise, vibration, heat or glare to such an extent that it constitutes a nuisance; no property or use shall be operated or maintained to store junk or in such a manner as to be deemed a junk yard, unless permitted within a specific zoning district.

7. Accessory Uses and Structures

    a. Setbacks for an exempt structure shall be the same as those established for non-exempt structures except that the applicant can apply for an administrative variance to reduce the setback to no less than three feet from the side and rear setback requirements.
    b. No accessory structure or use shall be placed in the front yard.
    c. Accessory uses or structures may be established without the principle or primary use through the Use Permit Process where it can be clearly established that the structure or use will not be a nuisance to surrounding neighbors or negatively impact the neighborhood.

SECTION 1-18
GENERAL REQUIREMENTS FOR LOTS

No lot shall hereafter be created, whether by minor land division, record of survey, small subdivision or subdivision, that contains less than the minimum number of square feet or minimum lot dimensions established for the zoning district or density district in which it is located.

SECTION 1-19
RESTRICTION ON REGULATING THROUGH ZONING

Nothing contained in this ordinance shall:

A. Affect existing uses of property or the rights to its continuing use, or the reasonable repair or alteration thereof, for the purpose for which it was used at the time the ordinance affecting the property takes effect.

B. Prevent, restrict, or otherwise regulate the use or occupation of land or improvements for railroad, mining, metallurgical, grazing or general agricultural purposes, if the following qualifications are met:

1. To qualify for an exemption from zoning regulations as property used for "mining or metallurgy purposes," the property must meet each of the following standards:

    a. The property is at least five (5) contiguous commercial acres in size. (A commercial acre is thirty-six thousand (36,000) square feet.)
    b. The primary function of the property is to extract and/or process raw materials such as metals, minerals or coal.
    c. The primary investment in the property is for the purpose of commercial mining and/or metallurgy.
    d. The property is capable of being utilized solely for its mining or metallurgical abilities to sustain economic self-sufficiency and return a normal profit.
    e. The mining or metallurgical uses are considered legally established, when they are approved and permitted by the office of the State Mining Inspector.

2. To qualify for an exemption from zoning regulations as property used for "grazing or general agricultural purposes," the property must meet each of the following standards:

    a. The property is at least five (5) contiguous commercial acres in size. (A commercial acre is thirty-six thousand (36,000) square feet.)
    b. The primary use of, and investment in, the property is directed toward the production of agricultural products through agronomy, horticulture or animal husbandry ('exempt purposes').
    c. The property is intended for, and is reasonably capable of, producing a normal profit through exempt purposes.
    d. The primary function of the property is to produce an agricultural crop or commodity and is found by the Gila County Assessor's Office to be a qualifying agricultural property in accordance with the Arizona Department of Revenue Agricultural Manual.

SECTION 1-20
NONCONFORMING USES

Nonconforming Uses - Legally existing nonconforming uses, structures, buildings and other improvements existing upon the real property at the time this code is adopted subject to a nonconforming use may continue as provided below, unless the use creates a nuisance or otherwise violates any other law, rule or regulation.

A. Continuing Existing Uses: Any use of land, building, structure, or improvement lawfully existing at the time this Code is adopted may be continued, even though such use does not conform to the provisions of this Code.

B. A non-conforming business use within a district may expand, if such expansion does not exceed one hundred percent of the area of the business at the time of code adoption.

C. Discontinuance or abandonment of nonconforming uses:

1. If a non-conforming use of land or structure is discontinued or abandoned for 12 consecutive months, any and all future uses shall conform to this Code. Intention to abandon a use may be evidenced by a change in that use, removal of equipment, materials, improvements, structures, or other indications that the use is no longer intended to continue on that property.

2. Discontinuance of a nonconforming use may be evidenced by removal of equipment, materials, improvements or other indications that such nonconforming use is no longer being made of that property, and/or by a lack of use of the nonconforming use of the subject property for the 12 month period, whether or not any intention to abandon such use is present.

3. If a nonconforming use or structure is damaged or destroyed by fire, earthquake, flood, explosion, natural disaster, or act of public enemy, the nonconformance may be reconstructed and used as before if done within 12 months of the event date.

4. The Community Development Director may approve a change in a legal nonconforming use or structure, when he determines that the change will reduce the nuisance aspects to adjoining property users or the neighborhood.

5. The Board of Supervisors may acquire, by purchase or condemnation, any nonconforming lot, structures, or signs, provided, the amount paid does not exceed the amount to which the owner would otherwise be entitled in a condemnation proceeding.

6. Any request for rezoning or variance by the property owner shall be grounds to require that existing nonconforming uses be brought into compliance with this Code.

D. Notwithstanding items B and C3 above and normal maintenance; a nonconforming use of land or structure shall not be enlarged, extended, reconstructed or structurally altered, unless such enlargement, extension, expansion, reconstruction or structural alteration and further use of such property conforms with the provisions of this Code.

ARTICLE 2
ADMINISTRATION

The purpose of this section is to set forth the powers, duties and organization of the offices responsible for the administration of this Code.

SECTION 2-10
BOARD OF SUPERVISORS

The Board of Supervisors shall have the following duties in the administration of the provisions of this Code:

A. Hear, review, and adopt amendments to the text of this Unified Development Code after a recommendation from the Planning and Zoning Commission.

B. Hear, review, and adopt amendments to the zoning districts and the zoning map after a recommendation from the Planning and Zoning Commission.

C. Hear, review, and consider appeals from decisions of the Planning and Zoning Commission or Community Development Division Director.

D. Hear, review, and approve preliminary, final, and small subdivision plats after recommendation from the Planning and Zoning Commission.

E. The Board of Supervisors may take other actions deemed necessary or desirable to implement the provisions of these regulations, the Land Use and Resource Policy Plan and the Comprehensive Master Plan.

SECTION 2-11
PLANNING AND ZONING COMMISSION

The Planning and Zoning Commission shall primarily serve as an advisory body to the Board of Supervisors to direct the growth and physical development of the private unincorporated areas of Gila County in a sound and orderly manner for the prosperity, health, safety, and welfare of the citizens. The membership and meetings shall be as provided in 11-803 of the Arizona Revised Statutes.

A. Duties

It shall be the duty of the Commission to hold public hearings when necessary and make recommendations to the Board of Supervisors on all matters concerning or related to the creation of zoning districts and boundaries, the appropriate regulations to be enforced therein, the amendment of this Code, and any other matter within the scope of the zoning power.

1. To hear, review, and make recommendations to the Board of Supervisors regarding applications for amendments to the Comprehensive Master Plan and other planning documents.

2. To serve as an advisory body to the Board of Supervisors, and to furnish to the Board of Supervisors, through its assistants, the facts concerning the adoption of any report or recommendation.

3. To initiate, hear, and review amendments to the Zoning Map in accordance with the provisions of Section 4-11 of this Code.

4. To initiate, hear, and review amendments to the Text of this Code.

5. To make investigations, maps, reports and recommendations in regard to the physical development of the unincorporated areas of Gila County.

6. To review and adopt a Comprehensive Master Plan for the unincorporated areas of Gila County and recommend to the Board of Supervisors any amendments or adoption of said document.

7. To hear, review and make recommendations to the Board of Supervisors regarding preliminary, small and final subdivision plats in accordance with rules and procedures of the subdivision regulations.

8. To hear, review, determine compatibility requirements and make the decision regarding all Conditional Use Permits applications.

SECTION 2-12
BOARD OF ADJUSTMENTS

The Board of Adjustment shall be organized, have meetings and make decisions as provided in 11-807 of the Arizona Revised Statutes.

A. Duties

1. The Board of Adjustments shall Interpret this Unified Development Code when the meaning of any word, phrase, or section is in doubt, when there is a dispute between the appellant and enforcing officer, or when the location of a district boundary is in doubt.

2. Hear and decide appeals in which it is alleged that there is an error in a requirement or decision made by the Director of the Community Development Division in the enforcement of this Code.

3. Hear and decide appeals for variances from the terms of this Code, because of special circumstances applicable to the property, including its size, shape, topography, location, or surroundings where the strict application of the provisions of this Code will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district. Any Variance granted is subject to such conditions as will assure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which property is located.

4. A Board of Adjustment may refund all or portions of the application filing fee if a decision of the Director is deemed in error or a requirement is substantially modified.

5. In approving an application, in all or in part, the Board of Adjustment may designate conditions that secure substantially the objectives of this Code and may require guarantees in such a form as it deems proper to insure that such conditions be complied with. Where any such conditions are violated or not complied with, the approval shall cease to exist, and the Director of the Community Development Division shall act accordingly.

6. The granting by the Board of Adjustment permission to proceed on a specific development scheme or of a permit for a construction variance shall be contingent upon permits being obtained and work commencing within six months and being diligently pursued. Failure of such shall void the ruling unless a longer time has been granted by the Board.

SECTION 2-13
COMMUNITY DEVELOPMENT DIRECTOR

A. For the purpose of implementing and enforcing this Code within the zoned areas of unincorporated Gila County, the position of County Zoning Inspector is established.

   1. The Director of the Gila County Community Development Division is designated as the County Zoning Inspector.

   2. The Director may designate Deputy Zoning Inspectors as deemed necessary for the proper administration and enforcement of this Code.

B. Duties

   The duties of the Community Development Director shall be:

   1. To serve as the planning agency and administer all planning, zoning, lighting, subdivision and land use regulations as provided in this Code.

   2. To enforce all regulations as provided for in this Unified Development Code.
   3. To interpret and administer the Comprehensive Master Plan and the related policies established by the Board of Supervisors.

4. To establish forms and processes for the administration and review of map amendments, conditional use permits, variances, subdivision plats, text amendments and appeals.

5. To conduct pre-application conferences prior to the submission of applications for map amendments, conditional use permits, variances, subdivision plats, text amendments, and appeals.

6. To accept, review, and make recommendations regarding map amendments, conditional use permits, variances, subdivision plats, text amendments, and appeals.

7. To provide assistance with the Land Use and Resource Policy Plan.

8. To provide assistance to facilitate all public hearing requirements necessary under the provisions of these regulations.

9. To provide assistance to the Board of Supervisors, the Planning and Zoning Commission, and the Board of Adjustments in the execution of their responsibilities under this Code.

SECTION 2-14
PUBLIC WORKS DIRECTOR

The Public Works Department provides the technical expertise necessary to evaluate developments, land divisions and infrastructure interfacing.

A. Duties

The Public Works Department shall have the following powers and duties:

1. To review all development plans for infrastructure improvements to determine compliance with the Board of Supervisor's policies and Gila County standards.

2. To determine appropriate rights-of-way widths, roadway widths, drainage facilities and level of improvements needed.

3. To review the preliminary, small subdivision and final plats and prepare a report of responses to the Community Development Division, the Planning and Zoning Commission or Board of Supervisors on the proposed design and infrastructure improvements.

4. To participate, at the discretion of the Public Works Director, in pre-application meetings with developers for new subdivisions.

5. To review, for compliance with State and Gila County standards, Records of Survey for: Minor Land Divisions, Lot Consolidations, Lot Line Adjustments, abandonment and establishment of easements and similar land uses as determined by the Public Works Director.

6. To inspect all infrastructure improvements for new subdivisions to determine compliance with Gila County standards and prepare a report of acceptance to the Board of Supervisors.

7. To review and determine appropriateness of cost estimates for infrastructure improvements.

SECTION 2-15
DESIGN REVIEW COMMITTEE

A. The Design Review Committee will serve as an advisory committee to the Planning and Zoning Administrators (or equivalent) of the governmental agencies involved.

B. Each governmental agency will appoint three members to serve on the Design Review Board.

C. At least one of the three members should be from property owners within the overlay district.

D. All members should be appointed to four-year terms.

E. At the time of initial appointment the governmental jurisdiction should appoint one member for two years and one member for three years and one member for four years. Thereafter all appointments should be for four-year terms.

F. The Design Review Committee shall elect a Chairman and a Vice Chairman to serve one-year terms to coordinate meetings and the Committee's proceedings in compliance with the requirements of the Arizona Open Meeting Laws. Their responsibilities shall include preparation and publication of the notices of the meeting, an agenda, and minutes of the meetings.

G. All meetings of the Design Review Board must comply with requirements of the Arizona Open Meeting laws.

H. Non-voting/advisory membership may be extended to a representative of other governmental agencies for the purpose of consultation at the discretion of the committee. (i.e. ADOT.)

I. Upon receiving design packets from the property owners in accordance with Section V above, the staff of the governmental agency having jurisdiction will transmit those packets to the Design Review Committee.

J. The Design Review Committee shall meet within 15 days of receipt of a Design Packet and prepare a written recommendation to the staff of the governmental agency having jurisdiction. If a written recommendation is not received within 30 days from the date of transmittal

described above the governmental agency having jurisdiction will assume the packet is approved with no recommendation from the Design Review Committee.

ARTICLE 3
PROCEDURES

The purpose of this section is to provide for the orderly processing of land use and zoning applications according to the administrative offices and duties cited in Article two (2) of this code.

The development review procedures set forth in this section establish the standards for review and approval of all proposed development of unincorporated private properties in Gila County, except properties that have requested and remain unzoned and properties unzoned because of irregular mining claim uses.

SECTION 3-10
ADMINISTRATIVE VARIANCE

A. When compliance with the minimum building setback regulations would cause extreme hardship due to: conditions of extreme topography, unnecessary destruction of vegetation, close proximity to water ways, substandard size, irregular shape and minimal impacts to adjoining property uses the Director may grant a variance not to exceed fifty percent (50%) of the minimum required yard. However, under no circumstances shall there be a yard of less than five (5) feet.

B. Application Requirements

1. An application for an Administrative Variance shall be filed with the Gila County Community Development Division, on forms provided for that purpose.

2. An application for an Administrative Variance shall only be initiated by a property owner, an agent authorized by the owner or a person having a written contractual interest in the affected property. Proof of ownership of the subject property or a notarized 'authorized agent' form shall be required.

3. A complete application form may require a site plan, depicting the special circumstance or location of the deviation from district standards.

4. The application shall be accompanied by the payment of the appropriate non-refundable fee per the schedule of such charges as adopted by the Board of Supervisors

C. Review

The Planning Director or his designated representative shall inspect the property to determine the circumstances and shall approve or deny the variance based on his findings and shall set forth his findings and recommendations on a form provided for that purpose.

D. Decision

Notice of the decision of the Director shall be sent by United States Mail to the applicant and the owners of record, according to the official assessment rolls of the Gila County Assessor and all adjacent properties.

E. Appeals

Appeals of the decision of the Director may be made to the Board of Adjustment and must be filed in writing with the Community Development Division within fifteen (15) days following the date of mailing of the notice of decision.

The decision of the Director shall become effective at the expiration of the fifteen-day appeal period, provided that no appeals have been filed.

SECTION 3-11
CITIZEN PARTICIPATION PLAN

A. Purpose

The purpose of the citizen participation plan is to:

1. Ensure that applicants pursue early and effective citizen participation in conjunction with their applications, giving them the opportunity to understand and try to mitigate any real or perceived impacts their application may have on the neighborhood and community.

2. Ensure that the citizens and property owners of Gila County have an adequate opportunity to learn about applications that may affect them and to work with applicants to resolve concerns at an early stage of the process.

3. Facilitate ongoing communications between the applicant, interested citizens, property owners, Gila County staff and elected officials throughout the application review process.
4. The citizen participation plan is not intended to produce complete consensus on all applications, but to encourage applicants to be good neighbors and to allow for informed decision-making.

B. Applicability

The following applications shall require a citizen participation plan:

1. Applications to amend the zoning classifications and the zoning maps in the unincorporated private properties of Gila County.

2. Applications for a Conditional Use Permit in the unincorporated private properties of Gila County.

Note: Applications for the subdivision process which have received an approved rezoning of the property within the past 12 months, and prepared a citizen participation plan and citizen participation report, and the proposed subdivision is in substantial compliance with the site plan submitted for the rezoning process shall not be required to submit another plan.

3. Applications for a Conditional Use Permit in the unincorporated private properties of Gila County.

   Note: Applications for a conditional use permit for single family residential developments shall not require a citizen participation plan.

4. Applications for a Variance from the zoning regulations in the unincorporated private properties of Gila County.

   Note: Applications for a variance on a single family residential property shall not require a citizen participation plan.

C. Notification Area

The level of citizen interest and area of involvement will vary depending on the nature of the application and the location of the site. The neighboring properties for early notification are determined after consultation with the Community Development Division. At a minimum, the neighboring properties shall include the following:

1. Property owners within the 300' radius of the subject site.

2. The head of any homeowner's association or registered neighborhood within the 300' radius of the subject site.

D. Staff Assistance

To assist citizens with the neighborhood maps and property owner information, after the Pre-application Meeting where the applicable review process and procedures are explained, Community Development Division staff will:

1. Prepare a map of the subject site with the 300' radius from the property boundaries that identifies the notification area and the neighboring properties.

2. Prepare a list of the property owners, and their mailing addresses, that are part of the 300' notification area.

3. Prepare an example 'neighborhood' meeting letter for the applicant.

4. Provide the map, list and example letter in 10 working days.

E. Applicants' Responsibilities

1. The applicant shall invite and meet with his neighbors, being the property owners in the notification area, at a specific time and place, convenient for assembly and often the subject site, to discuss his proposed request.

2. The applicant shall provide the Community Development Division with: a copy of the neighborhood invitation letter, a 'sign in' list of attendees, all invitations returned by the Post Office and a list of concerns that were expressed at the meeting or through mail or email.

SECTION 3-12
CONDITIONAL USE PERMIT

Conditional Uses are those uses, which although not specifically permitted in a given zoning district, would become harmonious or compatible with neighboring uses through the application and maintenance of qualifying conditions. Conditional Use Permits shall be issued setting forth all qualifying conditions.

A. Application Requirements

1. The applicant shall submit a Conditional Use Permit Application in the form of a narrative description of the proposed use on a form provided by the Department for that purpose and the application shall be accompanied by the appropriate non-refundable fee per the schedule of such charges as adopted by the Board of Supervisors.

2. An application for a Conditional Use Permit shall be initiated only by a property owner, an agent authorized by the owner or a person having a written contractual interest in the affected property. Proof of ownership of the subject property or a notarized 'authorized agent' form shall be required.

3. Accompanying the application, the applicant shall submit a reproducible site plan on sheets not to exceed 24" by 36", at a scale not to exceed 100 feet per inch. The site plan shall contain, at a minimum, the following information:

   a. The location and boundaries of the property.

   b. Scale and north arrow.
   c. The location of all existing and proposed improvements, provision for onsite parking, internal or external access.
   d. Such other information as the Director may deem necessary.

B. Review

1. Upon receipt of a complete application, site plan and the non-refundable application fee, a hearing on the application shall be scheduled before the Planning and Zoning Commission.

C. Decision

1. The Planning and Zoning Commission may deny the application, accept the recommendation of staff, modify the recommendation of staff, or send the application back to the staff for further study.

2. A Conditional Use Permit shall be issued by the Community Development Division setting forth all qualifying conditions, when the Planning and Zoning Commission approves a CUP application.

D. Appeal

Appeals of the decision and conditions of the Planning and Zoning Commission may be made to the Board of Supervisors and must be filed in writing with the Community Development Division within thirty (30) days following the date of the decision. A non-refundable application fee, set by the Board of Supervisors, is required.

SECTION 3-13
USE PERMITS

Use Permits are issued by the Community Development Director for the development or use of any property that is subject to a Use Permit. Such permit shall set forth by incorporation or reference all stipulations and limitations of the use of said property, as well as the time period for which such permit shall be issued. Use Permits are different from Conditional Use Permits because CUP's are for more intense uses that require public hearings. See the Residential Use Tables in the Appendix for specific district uses.

A. Application Requirements

1. The applicant shall submit a Use Permit Application on a form provided for that purpose.

2. Accompanying the application, the applicant shall provide a site plan setting forth the location of the proposed use.

   a. The site plan shall be prepared on 8.5" x 11" or 11" x 17" sheet or sheets not to exceed 24" X 36".
   b. The plan shall be drawn to a scale not to exceed one hundred (100) feet per inch and shall set forth, at a minimum, the following information:

i. The boundaries of the subject property.
ii. A legal description.
iii. The location of existing and proposed improvements.
iv. Such other information as the Director may deem necessary.

c. Upon submitting the application, the applicant shall pay the appropriate nonrefundable fee.

B. Review

1. Upon receipt of the application, site plan and fee, the Director or his designee shall:

a. Set a date for an administrative hearing not later than twenty-one (21) days following receipt of same.
b. Notify all adjoining property owners of the purpose of the application and the date, time and location of the administrative hearing.
c. Make a record of all testimony in favor or against the application at the administrative hearing.

C. Decision

The Director shall notify the applicant in writing no later than fifteen (15) working days after the administrative hearing of his decision to approve or deny the application, fully stating the reasons for denial or any stipulations or limitations regarding approval.

D. Appeals

The applicant may appeal the denial of an application or appeal the conditions required for the use by filing a form of appeal with the Board of Adjustment within fifteen (15) working days following the issuance or denial of a permit.

SECTION 3-14
TEMPORARY USE PERMIT

A. The purpose of a temporary use permit is to permit one-time or short time use of land for a special event or an interim use. Application for a Temporary Use Permit shall be made on a form provided for such purpose by the Department and the appropriate non-refundable fee shall be paid. An expiration date will be provided when each temporary use permit is issued.
B. Temporary Uses may be granted in all zoning districts subject to conditions, which shall consider the Intent and Purpose of the particular zoning district and minimize adverse impact on the neighborhood.

C. All temporary uses shall be subject to a Temporary Use Permit that shall be issued by the Director or his designated representative subject to the provisions of this Section.

D. Any proposed Temporary Use on property owned or directly controlled by Gila County shall be subject to a Temporary Use Permit issued by the Gila County Board of Supervisors.

E. Application Requirements

1. Application for a Temporary Use Permit shall include a written authorization of the property owner of the property on which the temporary use is proposed and setting forth any specific conditions placed by the property owner on the proposed use, which conditions shall be incorporated into the Temporary Use Permit.

2. The owner of the property on which the Temporary Use Permit is granted shall be a co-applicant for the permit, and shall be held responsible for the conformance of the use to the conditions set forth in the Temporary Use Permit and for the restoration of the property to its original condition following the termination of the use.

3. If deemed necessary by the Director due to the nature of the use, the applicant may be required to provide for private security, post bond or provide proof of insurance and shall indemnify Gila County against any claims arising from permitted uses.

4. Any Temporary Use Permit may be revoked without notice, if the Community Development Director determines that conditions have been violated or that the use is causing a nuisance.

F. Performance Standards

Approval of a Temporary Use Permit application shall require compliance with the following performance standards, along with any further conditions deemed necessary by the Director in order to reduce possible detrimental effects to surrounding properties and to protect the public health, safety and welfare:

1. Noise shall not be generated by any use to the point of disturbing the peace, quiet and comfort of neighboring properties.

2. Adequate on-site parking shall be provided.

3. No permit shall be issued if the use at the proposed location is deemed to be potentially hazardous to the public. No use shall be permitted in a public right-of-way.
4. Adequate sanitary facilities shall be provided for on-site; sanitary facilities shall conform to State and County Health Department requirements.

5. Provision shall be made for the collection and disposal of all solid waste generated in conjunction with the proposed use.

6. Lighting shall be limited to that necessary to conduct the proposed use safely and shall be shielded so that direct illumination shall be confined to the boundaries and site access. The operation of searchlights and similar lighting sources is prohibited.

7. Any required County or State Health Department or Sheriff's Office permits or licenses must be obtained.

G. Uses Requiring a Temporary Use Permit

1. Special events, having a maximum duration of five days per event, including such outdoor activities as:

    a. Transient amusement activities (such as carnivals, circuses, outdoor concerts).
    b. Tent revivals.
    c. Outdoor flea markets.
    d. Outdoor product shows.
    e. Christmas tree sales lots.
    f. Contractor's offices and storage yards on the site of active construction projects.
    g. Mobile homes or recreational vehicles for security purposes on the site of an active construction project, but not for a total of more than six months in any twelve month period.
    h. Roadside sales stands and temporary food sales stands, but not for a total of more than six months within any twelve month period.
    i. Batch plants and crushing operations in conjunction with a specific construction project for a period not to exceed the duration of the project.
    j. Other uses of a temporary nature similar to the above.

SECTION 3-15
PRE-APPLICATION MEETING

Prior to application for any variance, appeal, amendment, conditional use permit, temporary use permit, development plan, comprehensive plan amendment, or any other review or permit process, a pre-application meeting with the Community Development Division staff is strongly encouraged. The review is free and often saves duplication of effort and avoids misunderstandings.

A. The purpose of the pre-application review is:

1. To familiarize the Community Development Division with the request.

2. To determine application requirements and familiarize the applicant with the review process and procedures.

3. To identify land use and development policies which may affect the outcome of the request.

4. To permit a cursory technical review at a conceptual stage to identify conflicts in objectives and to identify potential solutions for those conflicts.

5. To identify the requirements for citizen participation and familiarize the applicant with related issues.

SECTION 3-16
PROPERTY DEVELOPMENT PLAN

Application for a permit for construction or site work related to home occupation, multi-family, commercial, industrial, professional or mixed use shall be subject to prior approval by the Director or his designate of a Property Development Plan.

A. Application Requirements

Application for approval of a Property Development Plan shall be made on a form provided for such purpose by the Department and, in addition to the appropriate fee, shall be accompanied by maps, drawings and such other materials necessary to show the following:

1. The location and proposed use of all structures and site improvements drawn to scale on a site plan. These site improvements could include, but are not limited to: dwellings, carports, shops, outbuildings, pools, sanitary facilities, wells, ham radio towers, water features, access ways and easements, and utility easements and lines for electric power, communication, water or sanitary facilities.

2. On-site parking arrangements, including loading areas and handicap parking spaces. Handicap parking spaces and the access aisle shall be constructed of a hard surface (concrete, asphalt concrete or similar) material so that required slopes can be maintained to safety tolerances.

3. All related signage; depicting the size, type and location of the signage and whether the signage is to be illuminated.

4. The type and location of landscaping to be used. The location of any vegetation that could cause a line of sight problem at intersections on access ways.

5. The proposed off-site circulation pattern and related improvements including right-of-way dedications, street improvements, traffic control measures, location and design of driveways acceleration and/or deceleration lanes.
6. Such additional information as the Director may deem necessary to evaluate the impact of the proposed development on surrounding uses.

B. Review

1. The Planning Director or his designated representative shall review the Development Plan for compliance with Unified Development Code regulations. These may include: the land use, density, yard setbacks, building separation, structure heights, outdoor lighting, parking, signage, vehicular access, utilities and easements.

2. The applicant shall provide evidence of an approved means of sanitary disposal as permitted by Gila County Wastewater Department and meeting the Arizona Department of Environmental Quality requirements.

3. The applicant shall provide evidence of an approved review by the Floodway Department and meeting FEMA requirements for the proposed location of the improvements.

C. Decision

The Community Development Director or his designated representative shall: determine that the Development Plan is approved, request the applicant to comply with specific development requirements or deny the Development Plan, if the use is prohibited, causes a nuisance or cannot demonstrate compliance.

D. Appeals

Appeals of the decision of the Director may be made to the Board of Adjustment and must be filed in writing with the Community Development Division and be accompanied with the applicable, nonrefundable fee.

SECTION 3-17
PUBLIC HEARINGS

The Board of Supervisors, Planning and Zoning Commission and Board of Adjustment shall hold public hearings as required by Arizona Revised Statutes and this Unified Development Code.

A. Applicability

The following applications shall require a public hearing:

1. Applications to amend the Comprehensive Master Plan for the unincorporated private properties of Gila County.

2. Applications to amend the zoning classifications and the zoning maps in the unincorporated private properties of Gila County.

3. Applications to subdivide land in the unincorporated private properties of Gila County where a Preliminary, Small or Final Subdivision Plat is required.

4. Applications for a Conditional Use Permit in the unincorporated private properties of Gila County.

5. Applications for a Variance from the requirements of the Unified Development Code in the unincorporated private properties of Gila County.

B. Noticing

1. A Public Hearing shall be held by the Board of Supervisors, Planning and Zoning Commission or Board of Adjustment within a reasonable time after filing of an application, after first

causing notice to be given to parties of interest and the public, by posting the property of application, if a property is involved, and publishing once in a newspaper of general circulation in northern and southern Gila County at least fifteen (15) days prior to the hearing.

2. The notice shall include the time and place of the hearing, a general explanation of the matter to be considered and a general description of the area affected.

3. In applications not involved with property, notice shall be posted in three public places such as fire stations, libraries and post offices.

4. In applications involving land that abuts municipalities or reservations, copies of the notice shall be transmitted to the planning agency of the governmental unit abutting such land.

5. In applications involving a subject property, notice by first class mail shall be sent to each real property owner, as shown on the last assessment of the property, within three hundred (300) feet of the subject property.

6. Posting on and near the subject property shall be required not less than fifteen (15) days prior to the hearing. The posting shall set forth the time and place of the hearing including a general explanation of the matter to be considered and a general description of the area affected.

7. It shall not be the responsibility of the Board of Supervisors or its agents to maintain the posting once erected.

SECTION 3-18
VARIANCE

The purpose of the Variance procedure is to provide a means whereby the literal terms of this Code need not be applied, where there are practical difficulties or unnecessary hardships so that the spirit of this Code shall be observed, public safety and welfare secured, and substantial justice done.

A. Application Requirements

1. An application for a variance shall be filed with the Community Development Department, on forms provided.

2. An application for a variance shall only be initiated by a property owner, an agent authorized by the owner or a person having a written contractual interest in the affected property. Proof of ownership of the subject property or a notarized 'authorized agent' form shall be required.

3. A complete application form may require; a site plan, depicting the special circumstance or location of the deviation from district standards, a detailed description of the request or the specific grounds for an appeal of a Community Development Division decision.

4. A map of the subject property and surrounding properties within 300' of the subject property boundaries shall be required. (Staff will assist with maps and property information, when a pre-application meeting is requested.)

5. Two (2) sets of the site plan (8.5" x 11" or 11"x 17") drawn to scale and accuracy, commensurate with its purpose, shall be required. As a site plan is specific to a particular situation, the applicant shall confer with the Community Development Division to determine the information required. (i.e. locations of structures and buildings, building floor plans, elevations, parking areas and accesses, trees and vegetation, signage, drainages, etc.)

6. The application shall be accompanied by payment of the appropriate fee on the schedule of such charges as adopted by the Board of Supervisors. When a variance request is for a deviation from district standards, fees are not refundable. When appeals are made of a Community Development Division decision, the Board of Adjustments shall have the discretion to refund all, a portion, or none of the application-filing fee.

B. Review

1. An application for a variance shall be submitted to the Community Development Director and shall be reviewed by the Board of Adjustments within 30 calendar days of receipt of a completed application as determined by the Director.

2. The Director shall submit the application and a written report to the Board of Adjustments with a recommendation on whether the variance should or should not be granted or modified.

C. Criteria for Granting a Variance

A variance shall be granted only under the following:

1. Due to special circumstances applicable to the property, including its size, shape, topography, location, impact to adjoining property uses and destruction of vegetation, the strict application of these regulations will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district.

2. That a grant of a variance will be subject to conditions as will ensure that the adjustment authorized will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.

3. The special circumstances applicable to the property are not self-imposed by any person presently having an interest in the property.
4. The variance will not allow the establishment of a use which;

   a. is not otherwise permitted in the zoning district;
   b. would result in the extension of a non-conforming use, or
   c. would change the zoning classification of any or all of the property.

D. Decision

The Board of Adjustments shall hold a public hearing, review the standards and the Directors' report, consider the testimony and other evidence presented at the hearing and grant a variance with specific conditions or deny the variance.

E. Appeal

Any person aggrieved by a decision of the Board of Adjustment shall have the right, within thirty (30) days, to appeal to the Superior Court. The appeal shall be based on the record before the Board of Adjustment.

ARTICLE 4
AMENDMENTS

SECTION 4-10
AMENDMENTS, ADOPTION, READOPTING OF THE COMPREHENSIVE PLAN

A. Amendments to Comprehensive Plan

The Board of Supervisors may periodically amend, supplement or change provisions to the Gila County Comprehensive Master Plan. Proposed changes may be initiated by Gila County Staff, the Planning and Zoning Commission, Gila County Supervisors or by petition and application of property owners.

1. Application Requirements

   a. An application for an amendment to the Comprehensive Master Plan shall be filed with the Community Development Division on forms provided.
   b. A complete application for amendment shall require a detailed description of the request and the specific grounds or reasons for the proposed amendment.
   c. The application shall be accompanied by payment of the appropriate fee on the schedule of such charges as adopted by the Board of Supervisors. None of such fees shall be refundable. Gila County Staff, the Planning and Zoning Commission, and Gila County Supervisor initiatives to amend the Comprehensive Master Plan shall not be required to pay the application fee.
   d. Applications for major amendments shall only be considered by the Board of Supervisors once in a calendar year.
   e. A complete application shall include a map showing the area to be amended in the Land Use Element and the surrounding land use designations.
   f. The applicant shall also include a written narrative addressing the positive aspects of the proposed changes and provide mitigation for adverse aspects.
   g. In the event that an application to amend the Comprehensive Master Plan, Land Use Element includes properties other than that owned by the applicant, before the application will be accepted for processing, the applicant shall file a petition in favor of the request signed by the real property owners, or their agent or attorneys which show a representation of at least 75% of the total number of property owners affected. Such petition shall bear the property owners' signatures, addresses, and legal description of their property.

2. Review

   Amendments to the Comprehensive Master Plan shall require a dissemination of the proposals, opportunity to review and consider comments, and notice to various public offices.

a. Prior to initiating the process to provide an amendment to the Comprehensive Master Plan, Gila County staff shall provide notice and seek input from the Board of Supervisors.

   i. Notice of Board of Supervisors discussion shall be published in the local newspaper with a brief description of the proposed amendment at least 10 days prior to the scheduled meeting.
   ii. A public service announcement shall be distributed to the local radio station at least 10 days prior to the Board of Supervisors discussion.

b. Copies of the application and staff report shall be transmitted to all government offices in Gila County as well as the Central Arizona Association of Governments and the Arizona Department of Commerce.
c. Transmittals to the above recipients in items 1 and 2 above shall include instructions to allow written comments to be transmitted to the Commission and Board of Supervisors prior to the public hearing or attendance at the hearing to provide comments.
d. The Commission and the Board of Supervisors shall provide opportunity for those wanting to provide written or verbal comments to be heard and considered.
e. Notice of Public Hearings shall be in accordance with Section 11-806 of the Arizona Revised Statutes.

3. After the Board of Supervisors provides direction to Gila County staff, the proposed Comprehensive Master Plan amendment is processed in the following manner:

   a. The complete application to amend the Comprehensive Master Plan, Land Use Element, shall be submitted to the Community Development Director, and shall be reviewed and a report prepared to the Planning & Zoning Commission.
   b. In compiling the report, the Community Development Director shall consult with, advise, and provide an opportunity for official comment by public officials and agencies, to include: the county, school districts, regional planning agency, public land management agencies, other appropriate governmental jurisdictions, public utility companies, civic, educational, professional and other organizations, property owners and citizens generally to secure maximum coordination of plans and to indicate properly located sites for all public purposes on the Comprehensive Master Plan.
   c. The Planning and Zoning Commission shall hold at least one public hearing before making a recommendation to the Board of Supervisors regarding any amendment to the Comprehensive Master Plan. Notice of the time and place of a hearing and availability of studies and summaries related thereto shall be given at least fifteen (15) and not more than thirty (30) calendar days before the hearing by publication at least once in a newspaper of general circulation published or circulated in the municipality.
   d. At least sixty (60) days before the Comprehensive Master Plan or a portion, element or major amendment of a Comprehensive Master Plan is adopted, the Community Development Division shall transmit the proposal to the Board of Supervisors, and submit a copy for review and further comment to:

      i. Each municipality in Gila County.

ii. Each county that is contiguous to Gila County.
iii. The regional planning agency in Gila County.
iv. The Arizona Department of Commerce and any other State agency that is subsequently designated as the general planning agency for the State.
v. The Arizona Department of Water Resources for review and comment on the water resources element, if a water resources element is required.
vi. Any person or entity that requests in writing to receive a review copy of the proposal.

4. Decision

a. At the completion of the sixty (60) day review process, the Board of Supervisors shall schedule at least one public hearing before adopting or readopting the Comprehensive Master Plan or any amendment to the Comprehensive Master Plan.
b. Notice of the time and place of the public hearing, and availability of studies and related summaries, shall be given at least fifteen (15) and not more than thirty (30) calendar days before the hearing by publication at least once in newspapers of general circulation published or circulated in northern and southern Gila County.
c. The adoption or readoption of the Comprehensive Master Plan or any amendment to such plan shall be by resolution of the Board of Supervisors.
d. The adoption or readoption of, or a major amendment to, the Comprehensive Master Plan shall be approved by affirmative vote of at least two-thirds of the members of the Board of Supervisors. If a majority vote fails to approve a new Comprehensive Master Plan, then the current Comprehensive Master Plan remains in effect.
e. A copy of the adopted Comprehensive Master Plan for Gila County shall be sent to the Arizona Department of Commerce and any other State agency that is subsequently designated as the general planning agency for the State.

SECTION 4-11
AMENDMENTS TO THE ZONING MAP AND/OR TEXT OF THE ZONING ORDINANCE

The Board of Supervisors may, from time to time, after receiving a report from the Planning and Zoning Commission, and after public hearings as prescribed herein, amend, supplement, or change the Zoning Map and/or the text of the ordinance regulations. Any such proposed change may be initiated by the Commission or by the application of property owners.

A. Application Requirements

1. Application for amendment shall be filed with the Community Development Division on forms provided and shall be accompanied by the appropriate non-refundable fees per the schedule of such charges as adopted by the Board of Supervisors.

2. An application to establish or change a zoning classification shall be initiated by a property owner, an agent authorized by the owner or a person having a written contractual interest in the affected property. Proof of ownership of the subject property or a notarized 'authorized agent' form shall be required.

3. An application to change zoning ordinance regulations initiated by the Gila County Planning and Zoning Commission or Gila County staff shall not require the fee.

4. Upon submittal of a rezoning or specific plan application and prior to a public hearing, notification will be sent to adjacent landowners and other potentially affected citizens of the substance of the application.

5. The applicant is responsible for written contact of all property owners within the notification area and of affected neighborhood associations, and shall offer to hold a meeting, with a specified date, for review of the proposed request.

6. The applicant shall provide written proof of contact and offer of meeting to the Community Development Division at least thirty days prior to the date of the public hearing by the Commission. The request shall not be set for public hearing without such written proof.

7. A complete application form may require:

   a. A detailed narrative justifying the application.
   b. A legal description of the subject property.
   c. A map showing the particular property or properties for which the change of zone is requested and substantially the adjoining properties and the public streets and ways within a radius of three hundred (300) feet of the exterior boundaries.
   d. A true statement revealing any restrictions of record that would affect the requested uses of the property and the applicable dates of expiration.
   e. A preliminary site plan, depicting the proposed development or land use which is intended with the proposed amendment.
   f. The Director shall determine requirements and may request other property information as he deems necessary to evaluate the proposed changes in land uses. Other information could include: title reports, records of survey, easements establishing and depicting rights of use, existing topographic maps and similar.

B. Review

1. The complete application to amend the zoning classification shall be submitted to the Community Development Director, shall be reviewed and a report prepared for the Planning and Zoning Commission.

2. Prior to publishing and posting a petitioned Zoning Map change the Commission may, on its own motion, delimit the extent and boundaries of such area so as to constitute a reasonable zone.

3. Should the Commission initiate a proposed zoning amendment at the request of a person or persons, notice of such proposed change shall not be processed until the required filing fee has been paid.

4. Prior to reporting to the Board, the Commission shall hold at least one public hearing, after giving at least fifteen (15) days notice by publication at least once in a newspaper of general circulation in northern and/or southern Gila County, by posting the area included in any proposed Zoning Map change and by providing notice to property owners according to state law requirements.

5. In the event an application is denied by the Commission and/or Board of Supervisors, the Commission shall reserve the right of refusal to consider a similar application within a year of the date of application.

6. Failure of the Commission to report to the Board within sixty (60) days after date of application shall be deemed to be approval.

C. Decision

1. Upon receipt of the Commission's recommendation, the Board shall hold at least one public hearing within a reasonable time, after first providing notice in the same manner as is required of the Commission, and may then take appropriate action.

D. Appeals

1. If twenty percent (20%) or more of the owners of property by area and number within the zoning area file a protest to such change, the change shall not be made except by ¾ affirmative vote of the Board of Supervisors.

ARTICLE 5
SPECIAL LAND USE ACTIVITIES

SECTION 5-10
AMATEUR RADIO ANTENNA

A. Amateur Radio Antenna (Ham Radio)

1. Amateur Radio Antenna intended for non-commercial purposes are permitted in all residential districts, provided:

   a. Such structures shall not be located in any required setback or in front of the front line of the dwelling or principal building; and
   b. such structures shall not exceed a height of 75'; and
   c. not more than one such structure per lot or parcel is allowed; and
   d. no antenna shall be located closer than its height to any adjacent property or public right-of-way or any unrelated structures unless accompanied by structurally engineered plans that eliminate the need for a fall zone.

SECTION 5-11
COMMERCIAL COMMUNICATION TOWERS

A. Communication towers are permitted in all zoning districts with a conditional use permit approved by the Planning and Zoning Commission.

B. In all zoning district, communications towers shall be subject to the following stipulations:

1. All communications towers must be structurally engineered.

2. No cellular tower shall be located closer than its height to any adjacent property, public right of way or any unrelated structure unless accompanied by structurally engineered plans that eliminate the need for a fall zone.

C. Amateur Radio Antenna intended for non-commercial purposes, that are located on poles, towers, or elevated structures, are permitted in all residential districts, provided:

1. Such structures shall not be located in any required setback or in front of the front line of the dwelling or principal building; and

2. such structures shall not exceed a height of 75'; and

3. not more than one such structure per lot or parcel is allowed; and

4. no antenna shall be located closer than its height to any adjacent property or public right-of-way or any unrelated structures unless accompanied by structurally engineered plans that eliminate the need for a fall zone.

SECTION 5-12
SEXUALLY ORIENTED BUSINESS

A. Findings

Based on evidence of the adverse secondary effects of adult uses presented in reports made available to the Board of Supervisors as set forth in Resolution #04-03-07 enacting this section, and on findings, interpretations, and narrowing constructions incorporated in the cases described in said Resolution, the Board of Supervisors has made specific findings concerning the adverse secondary effects of sexually oriented businesses and the need for additional requirements for the operation of such businesses.

B. Purpose

It is the purpose of this section of the Zoning Ordinance to provide for the orderly regulation of sexually oriented businesses by establishing certain minimum standards in order to protect the health, safety, and general welfare of the citizens of Gila County, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the County. The provisions of this section of the Zoning Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this section of the Zoning Ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment to the United States Constitution or the corresponding provisions of the Arizona Constitution, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this section of the Zoning Ordinance to condone or legitimize the distribution of obscene material.

C. Stipulations and Provisions

1. Classifications

Sexually Oriented Businesses shall be classified as follows:

a. Adult Arcade
b. Adult Bookstore, Adult Video Store, or Adult Novelty Store
c. Adult Cabaret
d. Adult Live Entertainment Establishment
e. Adult Motel
f. Adult Motion Picture Theater
g. Adult Theater
h. Adult Video Facility

i. Dual Purpose Business
j. Escort Agency
k. Exotic Dance Service
l. Massage Establishment that offers or provides Adult Service
m. Nude Model Studio
n. Sexual Encounter Center
o. Any business, facility or person that offers or provides Adult Service

2. Enclosure

A sexually oriented business shall be operated solely and totally within an enclose building or structure in a manner that does not allow any activities occurring within that enclosure to be viewed from outside that enclosure.

3. Number of Sexually Oriented Businesses

There shall be no more than one sexually oriented business and no more than one classification of sexually oriented business per lot, parcel or tract or building.

4. Location

A sexually oriented business is allowed in the C-3 District.

5. Spacing

A sexually oriented business shall not be located or operated within 2640 feet (½ mile) of the following:

a. Another sexually oriented business; or
b. a building that contains another sexually oriented business; or
c. any daycare center, preschool, kindergarten, elementary or secondary school whether public, private or parochial; or
d. a public or private park or playground; or
e. a church, synagogue, temple, seminary, convent, or monastery, or
f. any residential zoning district, a single or multiple family dwelling or any established residential area whether zoned residentially or not; or
g. a museum, art gallery, library or community building whether public or private; or
h. any family oriented business including but not limited to restaurants, amusement parks, recreational facilities, movie theaters, semipublic and public pools, roller or ice skating rinks, batting cages, go-kart tracks, miniature golf courses, sports courts or fields, or any facility, commercial establishment, store, or business, whether public or private, that provides entertainment or services to persons under 18 years of age.

6. Method of Measurement

The distance requirement set by this section of the Zoning Ordinance shall be measured in a straight line without regard for intervening structures or objects, from the lot line of the

property occupied by the sexually oriented business to the lot line of the property of the business or facility being measured to. In the case of residential zoning districts, the measurement shall be taken from the lot line of the property occupied by the sexually oriented business to the closest boundary line of that district. In the case of established residential areas, the measurement shall be taken from the lot line of the property occupied by the sexually oriented business to the closest property line of the property upon which a residence (single or multiple family dwelling) or residential accessory structure sits.

7. Hours of Operation

   A sexually oriented business shall not be open or remain open for business at any time between the hours of 10:00 p.m. to 10:00 a.m. on Monday through Saturday and must remain closed on Sundays. However, a sexually oriented business which has obtained a license from the State of Arizona to sell alcoholic beverages may remain open to sell alcoholic beverages under the terms of that license but may not operate any sexually oriented business during the times prohibited.

8. Signage

   It is prohibited for explicit sexual material to be put on public display for the purpose of advertising, describing or to assist in locating a sexually oriented business.

9. Preexisting and Nonconforming Sexually Oriented Businesses

   a. The provisions of this section of the Zoning Ordinance shall apply to the activities of all sexually oriented businesses and sexually oriented business employees described herein, whether such businesses or activities were established or commenced before, on, or after the effective date of this section of the Zoning Ordinance subject to the protection provided by Arizona State Statutes and the Constitution of the State of Arizona.
   b. On the effective date of this section of the Zoning Ordinance, any person or entity holding a Certificate of Occupancy to lawfully operate a sexually oriented business shall be permitted to continue to operate as a legal nonconforming use; provided, however, that the use remains restricted to the same classification, location and area (square footage) it occupied prior to that effective date. Should such business cease to operate or be discontinued for any period of time, it shall not thereafter be reestablished without being in full compliance with all provisions of this section of the Zoning Ordinance and other applicable codes and ordinances subject to the protection provided by Arizona State Statutes and the Constitution of the State of Arizona. The terms “cease to operate” or “discontinued for any period of time” shall mean the voluntary or intentional termination, cessation or discontinuance of the business by the owner or other party in interest or an involuntary termination of the business resulting from a violation of any applicable rule, regulation, ordinance, statute or law. The holder of the certificate of occupancy or operator of the business shall be responsible for providing documentation, acceptable to the Director, that a nonconforming sexually oriented business has not ceased to operate or been discontinued. A nonconforming

sexually oriented business shall not be enlarged, increased or altered. Any change in use shall require full compliance with all provisions of this Zoning Ordinance and any other applicable codes subject to the protection provided by Arizona State Statutes and the Constitution of the State of Arizona.

c. A sexually oriented business lawfully operating with a Certificate of Occupancy describing the sexually oriented business use as a conforming use is not rendered a nonconforming use by the subsequent location within 2,640 feet, of one or more of the business or uses listed under Section 5-12, Item C.

10. Certificate of Occupancy

A Certificate of Occupancy is required to legally operate a business in Gila County. Any change made or added to an existing business must be reflected in that Certificate of Occupancy. Sexually oriented businesses are recognized as a separate and distinct business use and that use must be reflected in the Certificate of Occupancy. A Certificate of Occupancy is required whether the sexually oriented business is a legal nonconforming use or a conforming use. Prior to issuance of a Certificate of Occupancy, the owner or applicant shall be required to file a Development Plan as required by this Zoning Ordinance.

11. Inspection

a. Sexually oriented businesses and sexually oriented business employees shall permit officers or agents of Gila County to inspect the business premises for the purpose of ensuring compliance with the specific regulations of this section of the Zoning Ordinance, during those times when the sexually oriented business is occupied by patrons or is open for business. This section of the Zoning Ordinance shall be narrowly construed by the County to authorize reasonable inspections of the licensed premises pursuant to this section, but not to authorize a harassing or excessive pattern of inspections.
b. The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

12. Severability

Any County ordinance containing any provision in conflict with any provision of this section of the Zoning Ordinance is hereby repealed. Each section, subsection and provision of this section of the Zoning Ordinance is hereby declared to be an independent division and subdivision and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this section of the Zoning Ordinance, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions are severable and would have been passed independently of such section or provision so known to be invalid.

13. Penalties and Enforcement

    a. A person, who knowingly violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this section of the Zoning Ordinance or any part thereof is guilty of a Class 2 Misdemeanor. Each day the violation is committed, or permitted to continue, shall constitute a separate offense and shall be treated as such.
    b. The County Attorney is authorized to institute civil proceedings necessary for the enforcement of this article to prosecute, restrain, or correct violations.
    c. Such proceedings including injunction, shall be brought in the name of the County, provided, however, that nothing in this section of the Zoning Ordinance and no action taken hereunder, shall be held to exclude such criminal proceedings as may be authorized by other provisions of the Gila County Zoning Ordinance, or any of the laws or ordinances in force in the County or State, or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred.

ARTICLE 6
ESTABLISHMENT OF ZONES

In conformity with the intent and purpose of this Ordinance, "Use" and "Density" districts are adopted in order to classify, regulate, restrict and separate uses of land and structures, lot dimensions and areas, yard widths and depths, percent of lot coverage and open spaces, lot area required for dwelling units and other structures, spacing of buildings, and the height and bulk of structures.

SECTION 6-10
USE DISTRICTS – GENERAL

A. The uses that are permitted in each of the various "Use" districts and the regulations are established in Article 7 through Article 12. The express enumeration and authorization herein of a particular class of structure or use in a designated district shall be deemed a prohibition in all other districts where such are not specifically designated as allowable. A use that is not permitted in a particular district shall not be considered an accessory use in that district. The determination of whether or not a use is specifically permitted, permitted with conditions or not permitted shall be determined by the Community Development Director.

B. Uses that the Director determines are not permitted or uses that the Director determines are permitted but with conditions that are questioned, may be appealed to the Board of Adjustment.

SECTION 6-11
DENSITY DISTRICTS – GENERAL

Density Districts shall be established in Article 13 in order to maintain a desirable amount of open space and regulate the intensity of use within single and multiple family residential subdivisions or those unplatted areas primarily devoted to single and multiple family residential uses.

ARTICLE 7
RESIDENTIAL ZONING DISTRICTS, SINGLE FAMILY

SECTION 7-10
SINGLE FAMILY GENERAL REGULATIONS

A. Intent and Purpose

To promote the development of areas primarily of single family dwellings, intending that all other uses be installed, operated and maintained in a manner so as to either complement, or at least be of a minimum disruption to such single family uses. Any use not in accordance with the Intent and Purpose, District Stipulations and Provisions, and Permitted Uses as set forth in this section shall be deemed a nuisance.

B. District Stipulations and Provisions

1. The permitted uses shall be installed, operated and maintained in a manner commensurate with quiet family living, and all lighting shall be of a minimum necessary to serve the purpose for which it is intended.

2. If no density is established on any particular lot or parcel of land, then all provisions of the D10 Density District Standards shall prevail.

3. No use shall be operated in such a manner as to cause a fire or explosion hazard; no use shall be allowed that will emit toxic fumes or generate toxic waste; neither shall there be emitted into the atmosphere smoke, soot, dust, radiation, odor, noise, vibration, heat, or glare to such an extent as to constitute a nuisance.

4. Signage:

   a. General

      i. Signage shall be the minimum necessary to identify the permitted use.
      ii. No sign shall be installed in such a manner as to interfere with the view of a motorist or pedestrian entering a street from an alley, private drive or intersection.
      iii. Signs may be indirectly illuminated only to such an extent as may be necessary for a motorist to identify the use or occupant from a street adjacent to the subject property.

   b. On Site Signs

      i. Shall be limited to one (1) single or double-faced sign for each permitted use located on the property for the purpose of identifying the occupants or uses, along with a reasonable amount of directional signs.

ii. Shall be limited to two (2) square feet of panel area for residential and directional signs and six (6) square feet for non-residential permitted uses.
iii. Shall be limited to a height of six (6) feet from the top of the sign to ground level.

c. Political signs shall be removed within fourteen (14) days following any general or special election.

d. Real Estate Sales

i. Shall be limited to a maximum panel area of four (4) square feet, except that larger temporary advertising panels pertaining to subdivisions may be displayed as provided under Article 15.
ii. Shall be limited to one sign for each 200 feet of street frontage.

e. Subdivision Entrance

i. Limited to not more than two (2) signs at the major entrance to the subdivision.
ii. Shall have a maximum panel area of twenty (20) square feet per sign.
iii. Design, colors, materials, height and location shall be subject to the approval of the Director.

5. A Conditional Use Permit shall be required for any building exceeding two (2) stories or thirty (30) feet above ground level.

6. Yard sales shall be permitted as temporary and accessory uses during daylight hours only not more than three consecutive days or more than two consecutive weeks, and not more than eight (8) times during the calendar year.

7. Fences and free-standing walls with a maximum height of six feet above current grade are permitted. Fencing and free-standing walls shall not create a nuisance such as, but not limited to, obstruction of view of oncoming traffic.

8. Where the code allows up to four additional residential units the following conditions shall be applied:

a. Each residence must occupy an area which is the greater of either 10,000 square feet or the minimum square footage and dimensions of the existing density district, and must be able to conform to the required setbacks if the property should be divided.
b. Access is provided to each additional residence by a dedicated public street or by a private ingress-egress easement having a minimum width of twenty (20) feet which does not encroach into the minimum required setbacks for the existing density district.

9. Group homes for the disabled as defined in the Fair Housing Act Amendments of 1988 shall be permitted in all single family residential districts.

10. Fences and free standing walls with a maximum height of six (6) feet above the ground; provided, however, that no fence or free standing walls shall be constructed in such a way as to create a hazard to safety by restricting the view of a driver entering a street from a private drive or alley or approaching the intersection of two streets.

11. The non-commercial unenclosed storage of unlicensed; inoperable motor vehicles, parts, building materials and other materials necessary for the operation and maintenance of the household under the following conditions:

    a. The storage area shall not exceed 200 square feet for up to one acre of gross lot area. Thereafter, an additional 100 square feet of storage space shall be allowed for each additional acre of land, up to a maximum of 2,000 square feet.
    b. Storage shall be confined to the rear one-half of the property, and shall not encroach into any required setback.
    c. A wall or non-transparent fence not exceeding six feet in height may be required to minimize adverse visual impact.

12. Other uses customarily accessory and incidental to the principle use and located on the same parcel therewith.

C. Uses Permitted Subject to a Use Permit

1. A detached guest house appurtenant to the main dwelling only, subject to the following conditions:

    a. The guest house shall be confined to the rear one-half of the property, shall be separated from the main dwelling by at least ten (10) feet and shall be located at least ten (10) feet from the rear property line.
    b. The total square footage of the guest house shall not exceed 800 square feet.
    c. A deed restriction shall be recorded for the subject property which prohibits the rental, lease or sale of the guest house.

2. Bed and breakfast establishments, subject to the following conditions:

    a. Applicants for a use permit shall be the property owner.
    b. No more than three (3) bedrooms shall be designated and/or used as guest rooms.
    c. The maximum duration of stay of any one guest shall be ten (10) days.
    d. Guests must enter through the main entrance to the dwelling to get to their rooms with no separate entrance allowed.
    e. All parking must be accommodated on the site.
    f. All meals or snacks provided to guests shall be served in a common dining area.
    g. Any applicable State and County Health Department regulations must be complied with, and all required permits must be obtained and remain valid so long as the use is in operation.
    h. The Use Permit shall be issued for periods of two years. Prior to the expiration date of the permit, the Director, or his designate, shall review the establishment for compliance

with the terms of the permit. Full compliance shall result in an automatic two year extension; violations shall result in suspension or revocation.

3. Public utility facilities (but not business offices, repair facilities or storage and equipment yards) subject to the following conditions:

    a. Water Storage Tanks

        i. Shall be no taller than sixteen (16) feet.
        ii. Shall be painted in neutral "earth tone" shades of green or brown and landscaped to minimize adverse visual impact to surrounding properties.
        iii. All exposed valves and piping shall be vandal proofed and screened or painted to match tanks.

    b. Water Wells

        i. Shall be enclosed in well houses constructed of durable materials finished in neutral "earth tones" and landscaped to minimize any adverse visual impact to surrounding properties.
        ii. Shall be made secure and vandal proofed.

    c. Electrical and Natural Gas Facilities

        i. Shall be screened by an opaque fence or wall finished in neutral "earth tones" and landscaped to minimize any adverse visual impact to surrounding properties.
        ii. Shall be made secure and vandal proofed.

13. Home Occupations.

D. Uses Subject to a Conditional Use Permit

1. Bed and breakfast establishments subject to the same conditions as those under which a Use Permit may be granted, with the following exceptions:

    a. Up to five bedrooms may be designated and/or occupied as guest rooms.
    b. Guest rooms may be located in buildings on the same property other than the main dwelling, provided, however, that these rooms shall contain no facilities for the storage or preparation of food.
    c. Guest rooms may be accessed by entrances other than the main entrance to the dwelling.

E. Temporary Uses

Subject to the Provisions of Section 3-14, Temporary Use Permits.

SECTION 7-11
GENERAL RURAL ZONING DISTRICT (GR)

A. Intent and Purpose

1. To provide a land use category for those unincorporated areas of Gila County not specifically designated in any other zone classification.

2. To allow for a minimum regulation in the rural and sparsely populated areas of the County while still providing protection against uncontrolled urbanization or industrialization and fulfilling the statutory responsibility to conserve and promote the public health, safety, convenience and general welfare and plan and provide for the future growth and improvement of Gila County.

B. District Stipulations and Provisions:

Supplemental to and/or supplanting the General Stipulations and Provisions", Article 1.

1. There shall be a lot area of not less than three acres.

2. No use shall be operated in such a manner as to create a hazard to life or property, nor shall there be emitted into the atmosphere smoke, soot, dust, radiation, odor, noise, vibration, heat, glare, or toxic fumes to such an extent as to constitute a nuisance to the adjoining property holders.

3. Signs: Sign provisions shall be the same as those set forth in the RR District (Section 7-13).

   a. Setback Requirements/Space between Buildings/Building Height.
   b. No structure may be erected closer than ten (10) feet from a property line abutting a public street, private street, or non-exclusive ingress-egress easement.
   c. No structure may be erected closer than five (5) feet from any property line not abutting a public street, private street, or non-exclusive ingress-egress easement.
   d. No structure may be erected closer than six (6) feet from any other structure unless those structures are joined by a common breezeway.
   e. A Conditional Use Permit shall be required for any building exceeding two (2) stories or thirty (30) feet in height.
   f.

C. Permitted Uses (See Permitted Uses Tables in back of this document)

1. All uses permitted in the RR District with the limitation that there shall be no more than three individual housing units on any one lot or parcel.

2. Mobile Home Developments when the General Rural District is combined with a "T" District, subject to site plan review and approval.

3. Other occupations and uses which may require special signage or parking provisions, but which may be operated in such a manner as to cause a minimum disruption to the neighborhood in terms of noise, visual impact, atmospheric emissions, and traffic.

SECTION 7-12
SUBURBAN RANCH ZONING DISTRICT

A. Intent and Purpose

To preserve and promote the beneficial aspects of rural living by providing a zone classification for low density single family residential development on large tracts with related low intensity agricultural uses and minimal commercial activity.

B. District Stipulations and Provisions:

Supplemental to and/or supplanting the "General Provision", Article 1.

1. There shall be a lot area of not less than one acre.

2. The permitted uses shall be operated in a manner commensurate with the intent and purpose of this section, and all lighting shall be of the minimum necessary to serve the purpose for which it was intended.

3. No use shall be operated nor material stored in such a manner as to constitute a fire or explosion hazard or to cause to be emitted into the atmosphere smoke, soot, dust, radiation, odor, noise, vibration, heat, glare, or toxic fumes to such an extent as to constitute a nuisance or cause pollution of the groundwater.

4. Required front and street side yard setbacks shall not be used for the repair or storage of inoperable motor vehicles, nor shall operable or inoperable vehicles be parked or stored in such a manner as to restrict the view of motorists entering a street from an alley, side street or driveway; nor shall there be permitted the repair or storage of more than one unregistered, inoperable motor vehicle within the property boundaries.

5. Up to ten percent of the lot area may be used for the unenclosed storage of items necessary for the operation and maintenance of the household or other permitted activities provided, however, that such storage shall be confined to the rear one-half of the property and that such storage be maintained in a neat and orderly manner. Such storage shall be maintained a minimum of twenty-five (25) feet from the nearest property line provided, however, that

this distance may be waived if the adjacent property is shielded by an opaque fence or wall a minimum of six (6) feet in height. Nothing in this section shall be construed to restrict the storage of firewood for use by the occupants of the premises.

6. Where public or semi-public uses are established adjacent to residential uses, an opaque wall or fence up to six (6) feet in height may be required to be erected.

7. Signs

   See the provisions of R1 (Residence One District).

8. Construction:

   Shall be limited to conventional, prefabricated, or precut type with the following exceptions:

   a. Mobile or modular homes exceeding seven hundred twenty (720) square feet of living space, affixed to permanent foundation and for which an Affidavit of Affixture has been issued by the office of the Gila County Assessor.

9. Setbacks

   Fifty (50) feet front and street side yards; twenty (20) feet rear and interior side yards.

10. Livestock

    The keeping of domestic livestock shall be permitted with the following stipulations:

    a. Buildings for the housing of livestock shall be confined to the rear one-half of the property and shall be located no closer than one hundred (100) feet from a front or side street property line or thirty (30) feet from a rear or interior property line.
    b. It shall be the responsibility of the livestock owner to ensure that all livestock is kept confined within the property boundaries.
    c. The keeping of dangerous wild, exotic or non-domestic animals shall be prohibited.
    d. All domestic animals shall be kept and maintained in such a manner as to conform with all applicable State and County health requirements and to cause a minimum of disruption to neighboring property owners in terms of noise, odor, and insect and vermin infestation.
    e. There shall be no more than a combination of three (3) horses or cattle and a combination of five (5) sheep or goats and a combination of forty (40) rabbits or poultry for each acre of lot area.
    f. Up to two (2) swine per acre shall be permitted, provided that all applicable state and county health and livestock requirements are met.

11. No structure may be erected closer than six (6) feet from any other structure unless joined by a breezeway.

12. A Conditional Use Permit shall be required for any building exceeding two (2) stories or thirty (30) feet in height.

C. Permitted Uses (See Permitted Uses Tables in back of this document)

1. One main residence and one detached, non-rental guest house with separate kitchen and sanitary facilities.

2. Aviaries and apiaries provided such are confined to the rear one-half of the property and are located no closer than thirty (30) feet from the nearest property line.

3. The following home occupations when conducted within the residence or other fully enclosed structures:

   a. Sales of handicrafts produced on the premises.
   b. Fine arts studios.
   c. Sewing and tailoring.
   d. Small appliance repair.
   e. Key making and saw sharpening.
   f. Gun smithing.
   g. General and specialty contracting offices, but not equipment storage yards.
   h. Bed and breakfast, limited to maximum of two (2) guest rooms within the main residence.
   i. Other occupations which require no special signage and parking provisions and which may be operated in such a manner as to create a minimum disruption to the neighborhood in terms of noise, atmospheric emissions, environmental damage, and traffic.
   j. The occasional sale of surplus firewood, dairy products, honey, eggs, baked goods, individual animals, and produce.

7-13
RURAL RESIDENTIAL DISTRICT (RR)

A. Intent and Purpose

1. To provide a zone classification for those unincorporated areas of the County not committed to any specific urban use.

2. To preserve and promote the beneficial aspects of rural living by reserving areas of the county for low-density residential uses with related agricultural and commercial pursuits.

B. District Stipulations and Provisions

Supplemental to and/or supplanting the “General Stipulations and Provisions”, Article 1:

1. There shall be a lot area of not less than one acre.

2. Required front and street side yard setbacks shall not be used for the parking or storage of inoperable motor vehicles. Neither shall operable or inoperable vehicles or vehicle accessories be parked in such a manner as to restrict the vision of persons entering a street or highway from a private drive, side street, or alley.

3. Up to ten percent (10%) of the area of any lot or parcel may be used for the non-commercial, unenclosed storage of items necessary for the operation and maintenance of the household and permitted activities, provided, however, that such unenclosed storage shall be maintained in a neat and orderly manner, and provided further that such storage area shall be located no closer than twenty-five (25) feet from the nearest property line. The provisions of this paragraph shall not be construed so as to restrict the storage of firewood for use by the occupants of the premises.

4. Where public or semi-public uses are established adjacent to residential uses, an opaque wall or fence six (6) feet in height may be required to be erected and maintained between such uses. Such wall or fence, however, may not exceed three (3) feet in height within fifteen (15) feet of the intersection of a private drive and a street, easement, or right-of-way.

5. No use shall be operated in such a manner as to create an explosion or fire hazard; nor shall there be emitted into the atmosphere smoke, soot, dust, radiation, odor, noise, vibration, heat, glare, or toxic fumes to such an extent as to constitute a nuisance to adjoining property holders.

6. Signs: The following signs shall be permitted in the Rural Residential zone:

    a. Residential Uses: One nameplate, not exceeding three (3) square feet in area, indicating name of occupant. The sign may be indirectly lighted.
    b. Agricultural, Public, Semi-Public and Other Permitted Uses: One appurtenant sign, unlighted or indirectly lighted, not exceeding sixteen (16) square feet in face area, or one unlighted or indirectly lighted free-standing sign, single or double-faced, not exceeding eight (8) square feet per face.
    c. Special Uses: Signs identifying special uses shall be as authorized by the use permit required for the establishment of special uses.

7. Setback requirements shall conform to those required under D8 Density District.

8. Building Height: A Conditional Use Permit shall be required for any building exceeding two (2) stories or thirty (30) feet in height.

C. Permitted Uses (See Permitted Uses Tables in back of this document)

1. One dwelling unit per acre up to a maximum of three dwelling units per individually owned parcel.

2. All types of horticulture. The sale of horticultural products raised on the premises shall be permitted.

3. The following home occupations, when conducted within a residence or enclosed structure by the property holder and up to two employees not members of the household:

   a. Beauty and barber shops.
   b. Handicraft manufacture and sales.
   c. Fine arts studios, galleries, and schools.
   d. Sewing and tailoring.
   e. Small appliance and small engine repair.
   f. Key making and saw sharpening.
   g. Bed and breakfast establishments.
   h. Gun smithing.
   i. Real estate brokerage offices.
   j. General and specialty contracting offices.
   k. Antique stores.
   l. Florist shops.
   m. Professional offices.
   n. Other occupations which require no special signage or parking provisions and which may be operated in such a manner as to create a minimum disruption to the neighborhood in terms of noise, atmospheric emissions, and traffic.

SECTION 7-14
SINGLE FAMILY RESIDENTIAL DISTRICT (SFR)

A. Intent and Purpose

To preserve and promote the beneficial aspects of rural living by providing a zone classification for single family residential development.

B. District Stipulations and Provisions

Supplemental to and/or supplanting the "General Provisions", Article 1:

1. Any future division of land must comply with the density district requirements.

2. The permitted uses shall be installed, operated and maintained in a manner commensurate with quiet family living and the intent and purpose of this Section. All lighting shall be of a minimum necessary to serve the purpose for which it was intended.

3. No use shall be operated nor material stored in such a manner as to constitute a fire or explosion hazard or to cause to be emitted into the atmosphere smoke, soot, dust,

radiation, odor, noise, vibration, heat, glare, or toxic fumes to such an extent as to constitute a nuisance or cause pollution of the groundwater.

4. Required front and street side-yard setbacks shall not be used for the parking or storage of inoperable motor vehicles, nor shall operable or inoperable vehicles be parked or stored in such a manner as to restrict the view of motorists entering a street from a side street or driveway; nor shall there be permitted the parking or storage of more than one unregistered, inoperable motor vehicle within the property boundaries.

5. No use shall allow the unenclosed storage of materials in such a manner or to such an extent as to constitute a Junk Yard as defined in Article 23 of this Ordinance.

6. There shall be no more than one (1) travel trailer or recreational vehicle stored on the same lot. Recreational vehicles shall not be used as permanent dwellings.

7. Construction of Dwelling: Shall be limited to conventional, prefabricated or precut type exceeding seven hundred twenty (720) square feet, with the following exceptions: Mobile or modular homes manufactured and maintained in accordance with current HUD specifications, exceeding seven hundred twenty (720) square feet of living space, affixed to a permanent foundation or set on permanent piers, and for which an Affidavit of Affixture has been issued by the Office of the Gila County Assessor. Such mobile or modular homes that are on piers shall be skirted.

8. A Conditional Use Permit shall be required for any building exceeding two (2) stories or thirty (30) feet in height.

9. All provisions of Section 13-10.A, Density Districts General Regulations, shall apply.

10. Animals: One horse shall be allowed per each 5,000 square feet of lot, with the following stipulations:

    a. Buildings for housing of horses shall be confined to the rear half of the property.
    b. The keeping of dangerous wild, exotic or non-domestic animals shall be prohibited.
    c. All horses shall be kept and maintained in such a manner as to conform with all applicable State and County health requirements and cause minimum disruption to neighboring property dwellers in terms of noise, odor and insect or vermin infestation.

C. Permitted Uses (See Permitted Uses Tables in back of this document)

1. One single family dwelling on any lot or parcel of land which may, in addition, contain quarters for servants or non-paying guests provided no facilities for preparation or cooking

of food are contained therein. If such quarters are detached from the main building, such accessory buildings shall be located no closer to property lines than is allowed for the main building.

2. Aviaries shall be permitted, however, they must be located no closer than seven (7) feet from the property line.

3. Up to five percent (5%) of the lot area may be used for the non-commercial unenclosed storage of materials or items necessary for the operation and maintenance of the household provided, however, that such storage shall be confined to the rear half of the property and be maintained in a neat and orderly manner. Such storage shall be maintained a minimum of seven (7) feet from the nearest property line, however, this distance may be waived if the adjacent property is shielded by an opaque fence or wall a minimum of six (6) feet in height. Nothing in this Section shall be construed to restrict the storage of firewood for use by the occupants of the household.

4. Allowed are fences and free-standing walls with a maximum height of six (6) feet above ground level; provided, however, that no fence or free-standing wall shall be constructed in such a way as to create a hazard to safety by restricting the view of drivers entering a street from a private drive or alley or approaching an intersection of two streets.

5. Other permitted uses are those customarily accessory and incidental to the principal use and located on the same lot.

SECTION 7-15
RESIDENTIAL DISTRICT LIMITED (R1L)

A. Intent and Purpose

To promote the development of areas primarily of site-built single family detached dwellings, intending that all other uses be installed, operated and maintained in a manner so as to complement and cause a minimum disruption to such single family uses. Any use not in accordance with the intent and purpose, district stipulations and provisions and permitted uses as set forth in this section shall be deemed a nuisance.

B. District Stipulations and Provisions

1. No mobile home or recreational vehicle may be occupied as a permanent or temporary dwelling unit in the Residence One Limited zone.

2. All other stipulations and provisions shall be the same as those set forth in the Residence One zone.

C. Permitted Uses (See Permitted Uses Tables in back of this document)

1. One conventional, modular, precut or prefabricated single family dwelling on any lot or parcel containing the minimum square footage and dimensions prescribed by the existing density district.

2. Up to four additional conventional, modular, precut or prefabricated single family dwellings, subject to the provisions of the Residence One District.

3. All other uses permitted in the Residence One District.

D. Uses Subject to a Use Permit

Shall be the same as the provisions in the R1 Residence One zone.

E. Uses Subject to a Conditional Use Permit

Shall be the same as the provisions of the R1 Residence One District.

F. Temporary Uses

Subject to the provisions of Section 3-14, Temporary Use Permits.

SECTION 7-16
RESIDENCE ONE DISTRICT (R1)

A. Intent and Purpose

To promote the development of areas primarily of single family dwellings, intending that all other uses be installed, operated and maintained in a manner so as to either complement, or at least be of a minimum disruption to such single family uses. Any use not in accordance with the Intent and Purpose, District Stipulations and Provisions, and Permitted Uses as set forth in this section shall be deemed nuisance.

B. District Stipulations and Provisions

Supplemental to and/or supplanting the "General Stipulations and Provisions, Article 1:

1. The permitted uses shall be installed, operated and maintained in a manner commensurate with quiet family living, and all lighting shall be of a minimum necessary to serve the purpose for which it is intended.

2. If no density is established on any particular lot or parcel of land, then all provisions of the D10 District shall prevail.

3. No use shall be operated in such a manner as to cause a fire or explosion hazard; no use shall be allowed that will emit toxic fumes or generate toxic waste; neither shall there be emitted into the atmosphere smoke, soot, dust, radiation, odor, noise, vibration, heat, or glare to such an extent as to constitute a nuisance.

4. Signage

   a. General:

      i. Signage shall be the minimum necessary to identify the permitted use.
      ii. No sign shall be installed in such a manner as to interfere with the view of a motorist or pedestrian entering a street from an alley, private drive or intersection.
      iii. Signs may be indirectly illuminated only to such an extent as may be necessary for a motorist to identify the use or occupant from a street adjacent to the subject property.

   b. On Site Signs:

      i. Shall be limited to one (1) single or double-faced sign for each permitted use located on the property for the purpose of identifying the occupants or uses, along with a reasonable amount of directional signs.
      ii. Shall be limited to two (2) square feet of panel area for residential and directional signs and six (6) square feet for non-residential permitted uses.
      iii. Shall be limited to a height of six (6) feet from the top of the sign to ground level.

   c. Political signs shall be removed within fourteen (14) days following any general or special election.

5. Real Estate Sales

   a. Shall be limited to a maximum panel area of four (4) square feet, except that larger temporary advertising panels pertaining to subdivisions may be displayed as provided under Article 15.
   b. Shall be limited to one sign for each 200 feet of street frontage.

6. Subdivision Entrance

   a. Limited to not more than two (2) signs at the major entrance to the subdivision.
   b. Shall have a maximum panel area of twenty (20) square feet per sign.
   c. Design, colors, materials, height and location shall be subject to the approval of the Director.

7. A Conditional Use Permit shall be required for any building exceeding two (2) stories or thirty (30) feet above ground level.

C. Permitted Uses with conditions (See Permitted Uses Tables in back of this document)

1. One single family residence on any lot or parcel containing the minimum square footage and dimensions prescribed by the existing density district.

2. Up to four (4) additional single family residences on a single lot or parcel, subject to the following conditions:

    a. Each residence must occupy an area which is the greater of either 10,000 square feet or the minimum square footage and dimensions of the existing density district, and must be able to conform to the required setbacks if the property should be divided.
    b. Access is provided to each additional residence by a dedicated public street or by a private ingress-egress easement having a minimum width of twenty (20) feet which does not encroach into the minimum required setbacks for the existing density district.

3. Temporary offices, construction sheds, storage yards, work yards, and appurtenant signs, incidental to an approved subdivision development or construction project, for a period not to exceed twelve (12) months unless otherwise authorized by the Board of Adjustment and Appeals.

4. Fences and free standing walls with a maximum height of six (6) feet above the ground; provided, however, that no fence or free standing walls shall be constructed in such a way as to create a hazard to safety by restricting the view of a driver entering a street from a private drive or alley or approaching the intersection of two streets.

5. The non-commercial unenclosed storage of unlicensed; inoperable motor vehicles, parts, building materials and other materials necessary for the operation and maintenance of the household under the following conditions:

    a. The storage area shall not exceed 200 square feet for up to one acre of gross lot area. Thereafter, an additional 100 square feet of storage space shall be allowed for each additional acre of land, up to a maximum of 2,000 square feet.
    b. Storage shall be confined to the rear one-half of the property, and shall not encroach into any required setback.
    c. A wall or non-transparent fence not exceeding six feet in height may be required to minimize adverse visual impact.

6. Other uses customarily accessory and incidental to the principle use and located on the same parcel therewith.

D. Uses Permitted Subject to a Use Permit

1. A detached guest house appurtenant to the main dwelling only, subject to the following conditions:

a. The guest house shall be confined to the rear one-half of the property, shall be separated from the main dwelling by at least ten (10) feet and shall be located at least ten (10) feet from the rear property line.
b. The total square footage of the guest house shall not exceed 800 square feet.
c. A deed restriction shall be recorded for the subject property which prohibits the rental, lease or sale of the guest house.

2. Bed and breakfast establishments, subject to the following conditions:

   a. Applicants for a use permit shall be the property owner.
   b. No more than three (3) bedrooms shall be designated and/or used as guest rooms.
   c. The maximum duration of stay of any one guest shall be ten (10) days.
   d. Guests must enter through the main entrance to the dwelling to get to their rooms with no separate entrance allowed.
   e. All parking must be accommodated on the site.
   f. All meals or snacks provided to guests shall be served in a common dining area.
   g. Any applicable State and County Health Department regulations must be complied with, and all required permits must be obtained and remain valid so long as the use is in operation.
   h. The Use Permit shall be issued for periods of two years. Prior to the expiration date of the permit, the Director, or his designate, shall review the establishment for compliance with the terms of the permit. Full compliance shall result in an automatic two year extension; violations shall result in suspension or revocation.

3. Public utility facilities (but not business offices, repair facilities or storage and equipment yards) subject to the following conditions:

   a. Water Storage Tanks

      i. Shall be no taller than sixteen (16) feet.
      ii. Shall be painted neutral “earth tone” shades of green or brown and landscaped to minimize adverse visual impact to surrounding parcels.
      iii. All exposed valves and piping shall be vandal proofed and screened or painted to match tanks.

   b. Water Wells

      i. Shall be enclosed in well houses constructed of durable materials finished in neutral “earth tones” and landscaped to minimize any adverse visual impact to surrounding properties.
      ii. Shall be made secure and vandal proofed.

   c. Electrical and Natural Gas Facilities

      i. Shall be screened by an opaque fence or wall finished in neutral “earth tones” and landscaped to minimize any adverse visual impact to surrounding properties.

ii. Shall be made secure and vandal proofed.

E. Uses Subject to a Conditional Use Permit

1. Bed and breakfast establishments subject to the same conditions as those under which a Use Permit may be granted, with the following exceptions:

   a. Up to five bedrooms may be designated and/or occupied as guest rooms.
   b. Guest rooms may be located in buildings on the same property other than the main dwelling, provided, however, that these rooms shall contain no facilities for the storage or preparation of food.
   c. Guest rooms may be accessed by entrances other than the main entrance to the dwelling.

2. Golf courses, but no commercial driving ranges or miniature golf courses.

3. Other uses which can become harmonious or compatible with neighboring uses through the application and maintenance of qualifying conditions.

F. Temporary Uses

Subject to the Provisions of Section 3-14, Temporary Use Permits.

ARTICLE 8
RESIDENTIAL ZONING DISTRICTS
MULTI-FAMILY

SECTION 8-10
RESIDENCE THREE ZONING DISTRICT (R2)

A. Intent and Purpose

To promote the development of residential areas containing, as a general rule, a heavier concentration of people than the R1 District, but still maintaining the other desirable living and features thereof .

B. District Stipulations and Provisions

Supplemental to and/or supplanting the "General Provisions", Article 1.

1. The permitted uses shall be installed, operated and maintained in a manner commensurate with quiet family living, and all lighting shall be of a minimum necessary to serve the purpose for which it is intended.

2. A Conditional Use Permit shall be required for any building exceeding two stories or thirty (30) feet in height.

C. Permitted Uses

1. All uses permitted in R1 District.

2. Multiple living units, apartment houses and apartment hotels, provided all such living units permitted on any particular lot or parcel of land must be confined in one building.

3. Structures containing five or more living units shall be permitted subject to a Use Permit.

D. Density and Intensity of Use

1. Use density shall be limited to seven dwelling units per gross acre.

2. Where multifamily dwellings are confined to single lots, there shall be a lot area of no less than six thousand (6,000) square feet.

3. There shall be a minimum lot area of two thousand (2,000) square feet per dwelling unit.

4. Lot coverage shall not exceed fifty percent (50%).

5. Minimum lot width shall be sixty (60) feet.

6. Front, rear and side yard setbacks shall conform to those applicable in the R1 District.

7. There shall be a minimum distance between buildings of ten (10) feet.

SECTION 8-11
RESIDENCE THREE ZONING DISTRICT (R3)

A. Intent and Purpose

To promote the development of residential areas containing, as a general rule, a heavier concentration of people than the R1 District, but still maintaining the other desirable living features thereof other than the establishment of additional building necessitated by installation of multiple living units on lots and parcels of land.

B. District Stipulations and Provisions

Supplemental to and/or supplanting the "General Stipulations and Provisions", Article 1.

1. The permitted uses shall be installed, operated, and maintained in a manner commensurate with quiet family living, and all lighting shall be of a minimum necessary to serve the purpose for which it is intended.

2. A Conditional Use Permit shall be required for buildings exceeding three (3) stories or thirty-six (36) feet in height.

C. Permitted Uses

1. All uses permitted in R2 Districts, except that all living units permitted on any particular lot or parcel of land need not be confined under one common roof.

2. Structures containing five or more living units shall be permitted subject to a Use Permit.

D. Density and Intensity of Use

1. Use density shall be limited to ten (10) dwelling units per gross acre.

2. Where multi-family dwelling units are confined to a single lot, there shall be a lot area of no less than six thousand (6,000) square feet.

3. There shall be a minimum lot area of one thousand (1,000) square feet per dwelling unit.

4. Lot coverage shall not exceed fifty percent (50%).

5. Minimum lot width shall be sixty (60) feet.

6. Front, rear and side yard setbacks shall conform to those applicable in the R1 District.

SECTION 8-12
RESIDENCE FOUR ZONING DISTRICT (R4)

A. Intent and Purpose

Adaptable as a buffer between higher residential districts and the lower use districts. While this District permits a mixture of uses, the residential features should be reasonably protected, particularly those in adjacent higher residential districts.

B. District Stipulations and Provisions

Supplemental to and/or supplanting the "General Provisions", Section 103, Article 1.

1. The permitted uses shall be installed, operated, and maintained in a manner commensurate with quiet family living, and all lighting shall be of a minimum necessary to serve the purpose for which it is intended.

2. A Conditional Use Permit shall be required for buildings exceeding three (3) stories or thirty-six (36) feet in height.

C. Permitted Uses (See Permitted Uses Tables in back of this document)

1. All uses permitted in R3 District, except that unless specifically provided herein to the contrary, the following is waived:

   a. Requirement for use permit, except where such use is adjacent to a higher class residential district.
   b. Home occupations permitted sign in conformity to sign allowed for other uses in the District.

2. Hospitals or sanitariums for the treatment of human ailments, nursing or convalescent homes. Any building so used shall be not less than fifty (50) feet from any adjoining property. These uses shall be subject to a use permit.

3. Private clubs and lodges, provided the chief activity is not a service customarily carried on as a business. A dining room and/or bar may be operated incidental thereto for the benefit only of the members and their guests, and provided no sign shall be displayed in connection with such accessory use, except the name thereof.

4. Mobile Home Developments when the R4 District is combined with a "T" District, subject to a site plan review and approval by the Planning Director, and/or Planning and Zoning Commission and the issuance of a use permit. Non-compliance with the use permit and site plan will be cause for revocation of the Use Permit.

5. Radio and transmitter stations and tower for automatic transmitting, wherein only maintenance personnel are employed, and provided further that no tower shall be located closer than its height to any adjacent property or public right-of-way.

6. The following uses when conducted within a residence by the occupant thereof, and allowing two employees, not members of the household:

   a. Beauty and barber and massage.
   b. Hand binding and tooling.
   c. Photographic and art.
   d. Teaching of individual or class instruction of the fine arts.
   e. Tailoring, including hand cleaning and spotting only.
   f. Cleaner pick-up.
   g. Clock, radio, television, precision and musical instruments; optical.

7. Signs

   The following supplements sign permission from R3 District.

   a. On Site Signs

      Single or double-faced signs identifying the use and/or occupants thereof.

      i. Limited to a total aggregate panel area for such signs of one hundred twenty (120) square feet, except that same may be increased up to two hundred (200) square feet at the rate of one square foot of panel area for each lineal foot of lot width in excess of one hundred (100) feet. No one panel area shall exceed sixty (60) square feet.
      ii. Signs exceeding six (6) square feet of panel area limited to an eight (8) foot minimum bottom height and a twelve (12) foot maximum top height.
      iii. Placing of such signs other than flush to or forward of the front of the main building shall require the securing of a Use Permit.

8. Structures containing five or more living units shall be permitted subject to a Use Permit.

D. Density and Intensity of Use

1. Use density shall be limited to twenty (20) dwelling units per gross acre.

2. Where multifamily dwellings are confined to single lots, there shall be a lot area of no less than six thousand (6,000) square feet.

3. There shall be a minimum lot area of eight hundred (800) square feet per dwelling unit.

4. Lot coverage shall not exceed fifty percent (50%).

5. Minimum lot width shall be sixty (60) feet.

6. Front, rear and side yard setbacks shall conform to those applicable in the R1 District.

7. There shall be a minimum space between buildings of ten (10) feet for buildings up to two stories in height and an additional ten (10) feet for each additional story.

SECTION 8-13
TRANSITIONAL RESIDENTIAL ZONING DISTRICT (TR)

A. Intent and Purpose

1. To provide a degree of flexibility in land use in transitional areas where a mixture of residential and light commercial uses will be beneficial.

2. To allow for certain mixed-use developments subject to an approved site plan, provided such developments shall be in harmony with, and will result in a minimum disruption to, surrounding uses.

3. To create transitional zones to serve as buffers between residential districts and commercial or industrial districts.

B. District Stipulations

Shall conform to the stipulations of the Residence One District, with the following exceptions or additional provisions:

1. Retail, service and professional uses established within this district shall be limited to those primarily concerned with serving the incidental daily needs of adjacent residential uses.

2. Non-residential uses shall be conducted within a completely enclosed building.

3. No use shall be conducted in such a manner as to constitute an explosion or fire hazard, nor shall there be emitted into the atmosphere smoke, radiation, odor, dust, noise, vibration, heat, glare, or toxic fumes to such an extent as to constitute a nuisance.

4. No commercial activity shall be permitted between the hours of 11:00 P.M. and 6:00 A.M.

5. Outdoor lighting for non-residential uses shall be hooded or shielded so as to deflect light away from adjacent residential area.

6. No outdoor area lighting shall be permitted between the hours of 11:00 P.M. and 6:00 A.M. except for a minimum necessary to provide for security and public safety.

7. Signage

    a. The provisions of the Residence Four district shall apply to signs identifying non-single family residential uses.

    b. No illuminated signs identifying non-residential uses shall be permitted between the hours or 11:00 P.M. and 6 A.M.

    c. Additional or modified signage subject to an approved Property Development Plan.

C. Property Development Plan

Application for a change to the TR zoning classification or for a permit for construction or site work related to multi-family, commercial, professional or mixed use shall be subject to the approval by the Director or Board of Supervisors, as appropriate, of a Property Development Plan.

1. Application for approval of a Property Development Plan shall be made on a form provided for such purpose by the Department and shall be accompanied by maps, drawings and such other materials necessary to show the following:

    a. A site plan, drawn to scale, showing the location and proposed use of all site improvements.
    b. On-site parking arrangements, including loading areas.
    c. Signage provisions for all proposed uses.
    d. The location and treatment of landscaped areas.
    e. The purposed off-site circulation pattern including, as appropriate, right-of-way dedications, street improvements, traffic control measures, location and design of driveway openings, acceleration/deceleration lanes.
    f. Such additional information as the Director may deem necessary to evaluate the impact of the proposed development on surrounding uses.

D. Permitted Uses

1. All uses permitted in the Residence Three district subject to the provisions of Section 11-12.E. Density and Intensity of Use.

2. Mobile Home Developments when the TR district is combined with the T district.

3. General retail business establishments engaged in selling goods and services to the public provided that the gross floor area of such establishments shall not exceed 2,500 square feet.

4. Bed and Breakfast Establishments under the provisions of Section 7-16.E.1., but not subject to a Conditional Use Permit.

5. Private and semi-public golf courses when developed in conjunction with an approved residential development.

E. Uses Subject to a Use Permit

Shall be the same as the provisions of the Residence One district except as specifically permitted in Section 8-13.D. above.

F. Uses Subject to a Conditional Use Permit

Shall be the same as the provisions of the Residence One district except as specifically permitted in Section 8-13.D. above.

G. Temporary Uses

Subject to the provisions of Section 3-14 Temporary Use Permits.

ARTICLE 9
COMMERCIAL ZONING DISTRICTS

SECTION 9-10
C1 -- COMMERCIAL ONE DISTRICT (NEIGHBORHOOD CONVENIENCE DISTRICT)

A. Intent and Purpose

To accommodate only those small-scale retail and service establishments which are directly concerned with serving the incidental daily convenience needs of immediately adjacent residential area. The size of any C1 area should be limited to that area necessary to serve a given neighborhood and should be developed contiguously. All neighborhood commercial areas should be located and developed in a manner to complement and be compatible with the residential character of the neighborhood.

B. District Stipulations and Provisions

Supplemental to and/or supplanting the "General Stipulations and Provisions", Article 1.

1. A shopping center or contiguous commercial area developed under the provisions of this section shall be limited to a maximum site area (gross land area) of four (4) acres and maximum gross floor area of thirty thousand (30,000) square feet.

2. All operations and storage shall be conducted within a completely enclosed building or within an area enclosed by an opaque wall or fence six (6) feet high, or by an approved landscaping screen.

3. There shall be a six (6) foot high opaque wall, fence, or approved landscape screen along rear and/or side property lines adjacent to any residential district.

4. All outdoor lighting shall be hooded or shielded so as to deflect light away from adjacent residential districts.

5. No use shall be conducted in such a manner as to constitute an explosion or fire hazard, nor shall there be emitted into the atmosphere smoke, dust, radiation, odor, noise, vibration, heat, glare, or toxic fumes to such an extent as to constitute a nuisance.

6. Sales of junk, as defined in Article 23 of this Ordinance, shall be prohibited within the boundaries of this District.

7. No commercial activity shall be permitted between the hours of 11:00pm and 6:00am, except for a minimum necessary to provide for security and public safety.

8. No outdoor area lighting or illuminated signs shall be permitted between the hours of 11:00PM and 6:00AM, except for a minimum necessary to provide for security and public safety.

9. The sale of intoxicating beverages shall be restricted to that for off-site consumption only.

C. Permitted Uses (See Permitted Uses Tables in back of this document)

1. Retail establishments selling a line of convenience goods similar to that of supermarkets, but more limited in scale.

2. Service establishments classified by S.I.C. two-digit code numbers 72, 73, 76, 80, 81, 82, 84 and 89.

D. Uses Subject to a Use Permit

1. Gasoline service stations, subject to the following:

   a. Facilities for tire changing and repair, polishing, greasing, washing and minor repair and servicing of motor vehicles shall be entirely within an enclosed building.

2. Structures shall be of a design that is appropriate to the area in which they are constructed.

   a. Such other limitations as the Director may deem appropriate to insure harmony with the surrounding neighborhood.
   b. Retail trade establishments classified by S.I.C. two-digit code numbers 52, 56, 57 and 58.
   c. Service establishments classified by S.I.C. two-digit code numbers 78, 79, 83 and 86.

E. Signs

See Article 15. The following supplements sign permission from R4 District.

1. On Site Signs

   Single or double-faced signs identifying the use and/or occupants thereof:

   a. Limited to a total aggregate panel area for all such signs of 200 sq. ft. except that same may be increased at the rate of one square foot of panel area for each lineal foot of lot width in excess of 50 feet, and provided that directional signs not exceeding 6 square feet of panel area shall not be counted against aggregate panel area. No one panel area to exceed 100 square feet.

b. Limited to 20 ft. maximum height and any sign portion extending into any required yard or parking area limited to a minimum 10 ft. bottom heights, and provided further that any directional sign shall be limited to a 6 foot maximum height.
c. May be illuminated except that any direct illumination must be located flush to or forward of the front of the main building, and is limited to a maximum transformer capacity of a constant 30 MA.
d. No sign other than a flush sign, all parts of which are on the front of the main building, shall be closer than 25 feet to a residential district.

2. Deleted 2/5/98

F. Yards Required

Except as required under "General Stipulations and Provisions", Article 1.

1. Front: A minimum of twenty (20) feet from any street.

2. Side: None; provided, however, that no building shall be closer than twenty (20) feet to any residential district or any side street or intervening alley.

3. Rear: A minimum of twenty (20) feet.

G. Parking

Subject to the provisions of Article 14.

H. Building Height

No building shall exceed a height of two stories or thirty (30) feet.

I. Building Density

The total gross area of all buildings shall not exceed fifty percent (50%) of the total area of the lot.

J. S.I.C. CODES RELATING TO C1 ZONING IN GILA COUNTY ZONING ORDINANCE

52 -- Building Material, Hardware, Garden Supply and Mobile Home Dealers

56 -- Apparel and Accessory Stores

57 -- Furniture, Home Furnishings and Equipment Stores

58 -- Eating and Drinking Places

72 -- Personal Services (Beauty and Barber Shops; Laundromats, etc.)

73 -- Business Services (Janitorial and Secretarial Services, Pest Control and similar)

76 -- Miscellaneous Repair Services

79 -- Amusement and Recreation Services, except Motion Pictures

80 -- Health Services

81 -- Legal Services

82 -- Education Services

83 -- Social Services

84 -- Museums, Art Galleries, Botanical and Zoological Gardens

86 -- Membership Organizations (Churches, Lodges, and similar)

89 -- Miscellaneous Services (Tax Services and similar)

SECTION 9-11
C2 -- COMMERCIAL TWO DISTRICT (INTERMEDIATE COMMERCIAL)

A. Intent and Purpose

To permit most types of commercial activities oriented to a larger segment of population than the average neighborhood. This District is designed for cluster application along major streets or highways. Although uses within this District should be operated in such a manner as to be compatible with surrounding residential uses, this District is not intended for mixed residential and commercial uses.

B. District Stipulations and provisions

Supplemental to and/or supplanting the "General Provisions", Article 1.

1. Shopping center development within this District shall be limited to 150,000 square feet of gross leasable area on sites no larger than twenty-five (25) gross acres.

2. All operations and storage shall be conducted within a completely enclosed building or within an area contained by an opaque six (6) foot high wall, fence, or approved landscape screen.

3. There shall be a six (6) foot high opaque wall, fence, or approved landscape screen on rear and side property lines adjacent to any residential district.

4. All outdoor lighting shall be hooded or shielded so as to deflect light away from adjacent residential districts.

5. No use shall be conducted in such a manner as to constitute an explosion or fire hazard, nor shall there be emitted into the atmosphere smoke, dust, radiation, odor, noise, vibration, heat, glare, or toxic fumes to such an extent as to constitute a nuisance. Sales of junk, as defined in Article 23 of this Ordinance, shall be prohibited within the boundaries of this district.

C. Permitted Uses: (See Permitted Uses Tables in back of this document)

1. All uses allowed in the C1 District.

2. Retail sales of apparel and accessories; shoes; dry goods; foods; drugs and pharmaceutical; flowers and gardening supplies; hobby and craft supplies; jewelry; package liquor; music, records and related products; books, magazines, stationery and related products; paints, wallpaper and glass; sporting goods; toys; variety store goods; similar convenience goods which can be displayed and sold in accordance with the District Stipulations.

3. Office building uses related to any of the following: Government; executive; administrative; professional; accounting; estate; research; design and sales; banking, savings and loan, stock brokerage and related financial services.

4. Health services such as hospital, clinics, medical and dental offices, veterinary clinics, nursing homes, and homes for the aged.

5. Establishments serving food or beverages, indoors or out-of-doors, including entertainment and dancing, but excluding drive-in and carry-out services (see D.2, below).

6. Repair and construction service establishments having enclosed workshop combined with retail outlet or office, such as heating and plumbing, equipment, electrical fixtures and service, air conditioning, custom upholstering and furniture repair, auto body, tire retreading, tool sharpening, sign painting, auto, boat and truck parts, and similar activities no more objectionable in character.

7. Signs: (See Article 15). The following supplements sign permission from C1 District.

   a. On Site Signs: Single or double-faced signs identifying the use and/or occupants thereof:

i. Limited to a total aggregate panel area for all such signs of three hundred (300) square feet, except that same may be increased at the rate of one (1) square foot of panel area for each lineal foot of lot width in excess of fifty (50) feet, and provided that directional signs not exceeding six (6) square feet of panel area shall not be counted against aggregate panel area. No one panel area shall exceed one hundred (100) square feet.
ii. Limited to twenty (20) feet maximum height, and any sign portion extending into any required yard or parking area limited to a minimum ten (10) feet bottom height.
iii. May be illuminated, except any direct illumination is limited to a maximum transformer capacity of thirty (30) MA.
iv. No sign other than a flush sign, all parts of which are on the front of the main building, shall be closer than twenty-five (25) feet to a residential district.
v. Deleted 2/5/98

D. Uses Subject to Use Permits

1. Indoor or outdoor sales or rental of new and used autos, trucks, boats, mobile homes, trailers, agricultural implements, lumber, lawn furniture, nursery stock and home gardening supplies and equipment; provided that no sales, rentals or displays are performed in the required front setback.

2. Drive-in establishments, including eating and drinking places and car washes; provided that all structures are architecturally compatible with the area in which they are constructed.

3. Hotels and motels, subject to the following;

   d. All direct vehicular access shall be from an abutting arterial street or highway.
   e. Paved areas shall be reduced to the smallest area commensurate with efficient operation and function of the site. All unpaved areas shall be maintained in lawns, landscaping, or recreational areas.

4. Gasoline service station, subject to the following:

   a. Facilities for tire changing and repair, polishing, greasing, washing and minor repair and servicing of motor vehicles shall be entirely within an enclosed building. Access to the building shall be from the rear.
   b. All structures shall be of unique design that is appropriate to the area in which they are constructed.
   c. Paved areas shall be reduced to the smallest area commensurate with efficient operation and function of the site. All unpaved areas shall be maintained in lawns and landscaping. The frontage to any street shall be landscaped to a minimum depth of fifteen (15) feet from the right-of-way line. Drives of maximum width of thirty-three (33) feet may penetrate frontage landscaping.
   d. Minimum lot size is twenty two thousand five hundred (22,500) square feet, and minimum frontage is two hundred (200) feet.

e. All sources of artificial light shall be concealed from view, except for free standing standards, which shall have translucent covers so as to diffuse the light and eliminate glare.

5. Drive-in theaters, provided that:

   a. The screen surface is not visible from the street.
   b. All direct vehicle access is from an abutting arterial street or highway.

E. Yards Required (Except as required under Article 13: Same as C1 District.

F. Building Height: A Conditional Use Permit shall be required for any building exceeding three (3) stories or thirty-six (36) feet in height. Further, no building exceeding two (2) stories or thirty (30) feet in height shall be permitted within three hundred (300) feet of any residential district.

G. Building Density: The total of all buildings shall not exceed an area greater than fifty percent (50%) of the total lot area.

SECTION 9-12
C3 -- COMMERCIAL THREE DISTRICT (CENTRAL COMMERCIAL DISTRICT)

A. Intent and Purpose

To provide a district wherein a full range of sales, services, and office uses are permitted, and wherein the density of traffic and building area are not conducive to residential development.

B. District Stipulations and Provisions

Supplemental to and/or supplanting the "General Provisions", Article 1).

1. There shall be a six (6) foot high opaque wall, fence, or approved landscape screen adjacent to any residential district.

2. All outdoor lighting shall be hooded or shielded so as to deflect light away from any residential district or public right-or-way within two hundred (200) feet of said lighting.

3. No use shall be operated in such a manner as to be an explosion or fire hazard, nor shall there be emitted into the atmosphere any smoke, soot, dust, radiation, odor, noise, vibration, heat, glare, or toxic fumes to such an extent as to constitute a nuisance.

4. Sales of junk, as defined in Article 23 of this Ordinance, shall not be conducted within three hundred (300) feet of any residential district; further, such sales shall be conducted within a

fully enclosed building or within an area shielded by a six (6) foot high opaque wall, fence, or approved landscape screen.

C. Permitted Uses (See Permitted Uses Tables in back of this document)

1. All uses allowed within the C2 District, with the exception that the following requirements shall be waived:

   a. Requirement for a use permit.
   b. Requirement that tire changing and repair, etc., facilities be entered from the rear.

D. On-Site Signs

Requirements shall be the same as those set forth in the C2 District (See E.3 below for Off-Site Sign Requirements).

E. Uses Permitted Subject to a Conditional Use Permit

1. Facilities for the dismantling of automobiles and sale of used auto parts, with the further stipulation that such activity shall not be permitted within three hundred (300) feet of any residential district.

2. Sales of liquid petroleum gas, with the further provision that no above-ground storage tank in excess of one hundred (100) gallon capacity may be located within three hundred (300) feet of any residential district, hospital, school, or public facility.

3. Off Site Signs (Billboards): Single or Double-faced off-site signs may be permitted on a lot subject to the following conditions and restrictions:

   a. Off-site signs shall be located only along arterial roads that are designated as State highways.
   b. Off-site signs shall not be located within 200 feet of a residential zone.
   c. No such sign shall be located in any block in which the front third of any of the lots used for residential purposes comprise 50% or more of the block frontage.
   d. Off-site signs shall not be located within 1500 feet of another off-site sign.
   e. Off-site signs shall not be located within 50 feet of any on-site freestanding sign located along the same side of the street. A site plan shall be required noting the proposed signs relation to existing signage and to insure the proposed sign will not impede the visibility of existing signage.
   f. Off-site signs shall not be located on a designated scenic route.
   g. Off-site signs shall not encroach upon or overhang any public right-of-way or adjacent property. In addition, off-site signs shall be setback a minimum of three feet

from any structure or building on the same parcel and a minimum of three feet from any adjacent property line. Refer to Construction Standards Matrix for Off-Site Signs for additional information.

h. Off-site signs shall comply with Gila County's Dark Sky Ordinance and all applicable Building Codes and Regulations in place at the time of permit issuance.

i. ADOT approval shall be received prior to the issuance of any Gila County sign or building permits.

j. It shall be the policy of Gila County to disallow rezoning of a property solely for the purpose of installing off-site signage.

k. In addition to the provisions of Article Signage Regulations, all off-site signs shall conform to the Construction Standards Matrix for Off-Site Signs.

Construction Standards Matrix for Off-Site Signs (Billboards)

Highway Speed Limit	Maximum Height	Maximum Panel Area	R.O.W. Setbacks
0 to 35 MPH	20 feet	72 sq. feet	10 feet
36 to 55 MPH	22 feet	144 sq. feet	10 feet
56 to 75 MPH	24 feet	301 sq. feet	10 feet
76 MPH and up	To be determined in the future if / as necessary		

4. Other uses compatible with the intent and purpose of the District but not pacifically enumerated herein.

F. Yard Required

There shall be no minimum yard requirement, with the exception that no structure except a required fence or wall may be closer than twenty (20) feet from any residential district.

G. Building Height

Buildings exceeding three stories or forty (40) feet in height shall be subject to a Conditional Use Permit. Further, no building exceeding two stories or thirty (30) feet in height shall be permitted within three hundred (300) feet of any residential district.

H. Building Density

There shall be no restriction on building density, provided, however, that all parking requirements for the permitted uses are met.

ARTICLE 10
INDUSTRIAL ZONING DISTRICTS

SECTION 10-10
INDUSTRIAL ONE ZONING DISTRICT (M1)

A. Intent and Purpose

To provide the type of industrial uses which, while not necessarily attractive in operational appearance, such use is conducted in a manner so as not to cause inconvenience to neighboring properties.

B. District Stipulations and Provisions

Supplemental to and/or supplanting the "General Provisions", Article 1):

1. No use shall be operated in such a manner as to be an explosion or fire hazard; nor shall there be emitted into the atmosphere any smoke, soot, dust, radiation, odor, noise, vibration, heat, glare, or toxic fumes to such an extent as to constitute a nuisance.

2. Residential uses, other than one dwelling unit for occupancy by caretaker and family, are discouraged and shall be permitted under a use permit only where it is shown that such permission will not cause a shortage of land for future industrial development.

C. Permitted Uses (See Permitted Uses Tables in back of this document)

1. All uses permitted in C3 District, except residential, and except that, unless specifically provided herein to the contrary, the following limitations are waived:

   a. Use permits.
   b. Maximum area to be occupied by any use.
   c. Confining any use to closed buildings.

2. All industrial uses wherein the operation of such complies with the "Intent and Purpose" and "Stipulation" of this District and do not impose hazard to health or property in the neighborhood.

   a. Where uncertainty exists as to compliance with the "Intent and Purpose" and "Stipulations", the Board of Adjustment shall determine.

3. Fences or free-standing walls.

4. Medical Marijuana Dispensaries, and/or Medical Marijuana Dispensary Offsite Cultivation Location. Subject to a Conditional Use Permit and the related provisions of Article 3.

5. Medical Marijuana Infusion (or Manufacturing) Facility Subject to the following:

   a. Applicant shall provide:

      i Name and location(s) of the offsite dispensary.
      ii A copy of the operating procedures adopted in compliance with A.R.S. §36-2804(B)(1) (c).
      iii A survey sealed by a registrant of the State of Arizona showing the location of the nearest medical marijuana dispensary or cultivation location if within 1,500 feet.

   b. The facility shall not be located within 1,500 feet of the same type of use. This distance shall be measured from the exterior walls of the building or portion thereof in which the businesses are conducted or proposed to be conducted.

   c. The facility shall not be located within 1,500 feet of a residentially zoned property. This distance shall be measured in a straight line from the exterior walls of the building or portion thereof in which the businesses are conducted or proposed to be conducted to the zoning boundary line of the residentially zoned property.

   d. The facility shall not be located within 1,500 feet of a preschool, kindergarten, elementary, secondary or high school, place of worship, public park, or public community center.

   e. This distance shall be measured in a straight line from the exterior walls of the building or portion thereof in which the business is conducted or proposed to be conducted to the property line of the protected use.

   f. Medical Marijuana Infusion may be a part of a dispensary or cultivation location for a dispensary.

   g. There shall be no emission of dust, fumes, vapors, or odors into the environment from the facility.

D. Signs

Requirements shall be the same as set forth in the C3 District.

E. Yard and Height Requirements

Except as required under "General Provisions", Article 1:
None, except installations storing and/or dispensing inflammable fuels shall maintain such setbacks as required in the C3 District.

SECTION 10-11
INDUSTRIAL TWO ZONING DISTRICT (M2)

A. Intent and Purpose

To provide all types of commercial and industrial uses except that controls may be imposed to minimize air pollution, radiation, and/or explosion dangers.

B. District Stipulations and Provisions

Supplemental to and/or supplanting the "General Stipulations and Provisions", Article 1.

1. Residential uses, other than one dwelling unit for occupancy by caretaker and family, are prohibited.

C. Permitted Uses (See Permitted Uses Tables in back of this document)

1. All uses permitted in the M1 District.

2. All commercial or industrial uses and accessory uses, except that the Building Inspector must deny permission where a proposed use will cause to be exhausted or emitted into the air pollutants such as smoke, soot, dust, gases or toxic fumes, or where there is latent radiation or explosion danger within or without the District.

    a. In the event the Building Inspector denies a use for the reasons stated, an application may be filed to the Board of Supervisors for a conditional permit. Each use requested shall be considered on its merits as to how the area shall be affected and, if granted, such stipulations may be invoked so as to maintain consideration for the promotion and protection of public health, peace, safety, comfort, convenience and general welfare.

i. Such application must be heard by the Board within thirty (30) days following such application, but after first receiving a report and recommendation from the Building Inspector and Health Officer.
ii. The procedure of application, notice and schedule of fees shall be the same as that required for hearings on use permits by the Board of Adjustment. The notice postings may designate the hearing dates for both Commission and Board, and provided further that the Board hearing date may be the first regular Board meeting day after the date fixed for hearing by the Commission.
iii. Any person aggrieved in any manner by any such conditional permit may, within thirty (30) days, appeal to the Superior Court, and the matter shall be heard de-novo as appeals from the Justice of the Peace Court.

D. Yard and Height Requirements

Except as required under "General Provisions", Article 1): None, except that installations storing and/or dispensing inflammable fuels shall maintain such setbacks as required in the C3 District.

SECTION 10-12
INDUSTRIAL THREE ZONING DISTRICT (M3)

A. Intent and Purpose

To provide all types of commercial or industrial uses without restrictions.

B. District Stipulations and Provisions

Supplemental to and/or supplanting the "General Provisions", Article 1): Residential uses, other than one dwelling unit for occupancy by caretaker and family, are prohibited.

C. Permitted Uses

All commercial or industrial uses and accessory uses.

D. Yard and Height Requirements

Except as required under "General Provisions", Article 1: None.

ARTICLE 11
SPECIAL ZONING DISTRICTS

SECTION 11-10
GENERAL UNCLASSIFIED ZONING DISTRICT (GU)

A. Intent and Purpose

To provide for all the unincorporated areas of Gila County not otherwise designated for some other specific zone to be included in the "General Unclassified District" by this Ordinance.

B. District Stipulations and Provisions

1. No subdivision of land for sale, rent, or lease, for residential, commercial, or industrial use, shall be conducted or approved in the GU District without prior rezoning of the land so intended.

2. Off-site signs (Billboards) are not permitted in this Zoning District.

3. Sexually oriented businesses are not permitted in this Zoning District.

C. Permitted Uses (See Permitted Uses Tables in back of this document)

Farm and non-farm residential uses; farms, ranches, recreational, and commercial uses.

SECTION 11-11
PERFORMANCE INDUSTRIAL ZONING DISTRICT

A. Intent and Purpose

To promote the development and operation of certain uses, such as, but not limited to, laboratories, light manufacturing and assembly, in such a restricted and limited manner that, because of the limitations on type of structures and uses, control on height and density, prohibitions against open land facilities, omission of such nuisances as fumes, odors, noise, glare and vibration, prohibition of general retail sales and services or other uses that cater to the general public, and the landscaping requirements, so as to protect and foster residential desirability adjacent to such industries.

B. District Stipulations and Provisions

Supplemental to and/or supplanting the "General Provisions", Article 1.

1. Residential uses, other than one dwelling unit for occupancy by caretaker and family, are prohibited.

2. General retail sales and service or other uses that cater to the general public are prohibited.

3. All uses except parking, loading and unloading, as provided herein, shall be confined to within closed buildings.

4. Space for automobile parking area shall be initially provided and kept available on the premises at the rate of two square feet of land area for each square foot of floor area. As the development of facilities progresses, there shall be installed and maintained no less than one parking space for each two employees. All ground area used for parking, loading, unloading, and vehicular movements shall be surfaced and maintained with dust-free surfacing, preferably hard surface.

5. All development on any one parcel in the District must progress in accordance with general layout, architectural, and landscape plans for such parcel, all to be approved by the building inspector; the Board of Adjustment may modify the Building Inspector's requirements, provided such modifications do not defeat the intent and purpose of the District.

6. All outdoor lighting shall be hooded or shielded so as to deflect the light away from residential districts. Such lighting shall be the minimum required to illuminate the area needed to be lighted.

7. No use shall be operated in such a manner as to be an explosion or fire hazard; nor shall there be emitted into the atmosphere any smoke, soot, dust, radiation, odor, noise, vibration, heat, glare, or toxic fumes to such an extent as to constitute the slightest nuisance.

8. The first fifty (50) feet of depth adjacent to any street or street easement must be used for landscaping purposes, and may not contain any other uses or structure, except for driveways, signs and lighting, as permitted in this District.

C. Permitted Uses

Provided such uses meet the intent and purpose of the District.

1. Manufacturing, machining, processing, assembly, compounding, fabrication, mixing, baking, equipping, printing and publishing, cooking, glazing, weaving, knitting, and sewing.

2. In-plant restaurants as an appurtenant use, and including roof or landscaped patio dining facilities.

3. Facilities incidental to a construction project, including storage, all located on the project site for a period not to exceed twelve (12) months.

4. Churches or similar places of worship. Open land recreation facilities in connection with such project may be permitted subject to a use permit.

5. Accredited schools, colleges, universities, including dormitories, athletic fields, playgrounds and swimming pools on the same parcel of land. Private school playgrounds, athletic fields and swimming pools are subject to securing a use permit.

6. Public utility facilities, when necessary for serving the surrounding territory (but not storage yards).

7. Regulation type golf courses, but not miniature, pitch and putt courses, nor commercial driving ranges, and subject to securing a use permit.

8. Offices wherein professional, administrative, clerical or sales (other than to the general public) are rendered, including management and /or realty offices appurtenant to an industrial subdivision and located therein.

9. Publicly owned or operated buildings or properties.

10. Publicly owned or operated parks and playgrounds, and other recreational uses, including eating and drinking sales and service establishments (which may be operated on a concession basis) accessory to the use of such public facility; provided, however, that such shall be located no closer than three hundred (300) feet to any adjacent property.

11. Private parking space as provided for the District.

12. Railroad, mining, metallurgical, or general agricultural uses on five or more contiguous commercial acres under one ownership. Such uses are exempt from any restrictive provisions of this Section.

13. Customary accessory uses and buildings, including private parks and swimming pools, provided such are incidental to the principal use.

14. Fences or free-standing walls (not to exceed eight (8) feet in height), provided same are not located closer than fifty (50) feet to any street or street easement line, except that when same are adjacent to a residential district, the height shall conform to the maximum height requirements for such residential property.

15. Signs

    As follows, which may be lighted by indirect illumination:

    a. Signs appurtenant to or identifying a permitted use of the property upon which displayed and subject to the following additional provisions and stipulations:

i. Limited to a total overall sign area of two hundred (200) square feet, in addition to one name plate and necessary informational or directional signs; provided, however, that each such name plate or other accessory sign shall not exceed an area of six (6) square feet. The name plate may be located at or within four (4) feet of a street line, provided same is unlighted and does not exceed a height of seven (7) feet.

ii. Any flush sign may have an area not to exceed one hundred sixty-eight (168) square feet. Signs pertaining to the name of the operating company will not be limited in size, provided such signs are incorporated into the architectural design as an integral part of the building, and shall have a minimum setback of one hundred fifty (150) ft. from any dedicated street or residential district, and shall not exceed a height of forty (40) feet above ground grade, and shall be subject to approval of the Building Inspector.

iii. Any free-standing or extended sign may have a sign panel area not to exceed eighty-four (84) square feet.

b. Temporary advertising signs pertaining to the sale or lease of land or buildings upon which property same are displayed and subject to the following additional provisions and stipulations:

i. Limited to one single or double-faced or V-shaped sign for each 300 lineal feet or fraction thereof of frontage on all street sides for each lot or establishment, provided no two signs on the same property are closer than one hundred (100) feet to each other nor closer than one hundred (100) feet to any residential property line.

ii. If the portion of the property being advertised is unimproved, such sign not exceeding sixty (60) square feet of panel area and seven (7) feet in height may be displayed up to the street line, provided same be no closer than one hundred (100) feet to any building. Such signs, when located within one hundred (100) feet to developed land, must parallel the street.

iii. If the portion of the property being advertised is improved, such signs shall be regulated by the provisions and stipulations of signs appurtenant to the use of the property, except that no panel area may exceed eighty-four (84) feet.

D. Lot Area and Dimensions

1. No lot shall hereafter be subdivided to provide less than seventy two thousand (72,000) square feet (commercial two acres) of area, a width of one hundred (100) feet, nor a depth of three hundred (300) feet, and provided further that no lot shall exceed a depth of six hundred fifty (650) feet, unless it can be shown that deeper lots will not block a future street pattern.

E. Yards Required

There shall be a yard measuring from any street or street easement of not less than fifty (50) feet.

1. There shall be a side yard of not less than twenty-five (25) feet from any common property line or alley, except that such side yard shall measure not less than fifty (50) feet from any residential district boundary.

2. There shall be a rear yard adjacent to any residential district of not less than fifty (50) feet to the residential side line and twenty-five (25) feet to the residential rear line or the rear alley centerline of what would be the centerline if a full alley existed.

F. Height Limits

1. No structure shall exceed a height of thirty (30) feet plus one (1) foot for each additional ten (10) feet such structure is located beyond setback lines, provided such height does not exceed forty (40) feet, except that towers, poles and water tanks necessary to serve the lot and/or the area may exceed the height limitations when the location of such exceeds a setback from any property line of twice its height.

G. Building Density

The total area of all buildings shall not exceed thirty percent (30%) of the total area of the lot.

H. Space and Between Buildings

No building shall be closer to any other building than thirty (30) feet, except when such are attached by a common wall so as to be treated as one building.

SECTION 11-12
MOBILE HOME SUBDIVISION ZONING DISTRICT (MHS)

A. Purpose and Intent

This district provides for the exclusive placement and occupancy of mobile homes for residential purposes on individually owned lots. The district standards promote developments of single-family residential character oriented toward permanent occupancy of medium density, five and one-half (5.5) units per acre or less.

B. Approvals

No building, structure or mobile home shall be placed upon land in the MHS District until approval of a subdivision plat has been obtained and until a building permit has been issued.

C. Use Regulations

1. Permitted uses

   a. Mobile homes.
   b. Private accessory buildings and uses, including home occupations, storage areas, swimming pool, and other similar accessory uses on individual lots.
   c. Fences and free-standing walls with a maximum height of six feet above ground level; provided, however, that no fence or free-standing wall shall be constructed in such a way as to create a hazard to safety by restricting the view of a driver entering a street from a private drive or alley or approaching an intersection of two streets.

D. Uses Subject to Special Permit & Site Plan Approval

1. The Planning and Zoning Commission may permit the following uses within the District or at the time of subdivision plat approval for a planned development.

   a. Communal recreation building, laundry facilities, swimming pool, playground and other common area uses for the exclusive benefit of subdivision residents.
   b. Golf courses, except miniature courses or practice driving tees operated for commercial purposes.
   c. Parks, playgrounds, and community-owned buildings.
   d. Temporary buildings used for the sale of lots.

E. Property Development Standards

The following property development standards shall apply to all land and structures in the MHS District.

1. Lot Areas

   a. (1) Minimum area for a mobile home lot: Six thousand (6,000) square feet.

2. Lot Dimensions

   a. (1) Minimum width: sixty (60) feet.

3. Density and Intensity

   a. There shall be not more than one (1) mobile home per lot.

4. Maximum Height

   a. One story or fourteen (14) feet.

5. Setback Requirements

   a. Minimum distance from any portion of the mobile home and its accessory structures to the following lines shall be as specified:

      i. Front -- ten (10) feet;
      ii. Side -- eight (8) feet, with the following exception: five (5) feet to any canopy that is open on three sides, provided, however, that no mobile home may be placed closer than sixteen (16) feet from any other mobile home within the subdivision;
      iii. Rear -- ten (10) feet;
      iv. Exterior boundary of subdivision: twenty (20) feet.

   b. Design and Development Standards

      i. The minimum distance between main buildings or mobile homes on adjacent lots is thirty (30) feet.
      ii. The minimum distance between a detached accessory building and the main building or mobile home is ten (10) feet.
      iii. All utility lines shall be placed underground within the mobile home subdivision. Each mobile home lot shall be provided with all utilities.
      iv. The front yard of each lot and the street side of any lot shall be landscaped and maintained adjacent to all streets.
      v. Exterior boundaries of the subdivision abutting a public street shall be provided with an opaque wall or fence having a height of six (6) feet and designed to create an attractive border. In addition, a setback of at least ten (10) feet in depth shall be appropriately designed and maintained as landscaped open space between any perimeter street and the required wall.
      vi. Exterior boundaries of the subdivision which do not abut a public street shall be bounded by a six (6) foot high solid wall or fence.
      vii. Trees shall be planted as follows: a minimum average of two (2) trees per lot, with a minimum trunk caliper of three-quarters (3/4) inch. A minimum fifty percent (50%) of the aforementioned tree requirement shall be planted in front yards and/or in landscaped areas adjacent to a dedicated public street.

F. Parking and Loading Requirements

1. Mobile home subdivisions shall have vehicular access from a major street or highway.

2. All lots within any mobile home subdivision shall have frontage on a dedicated public street of at least thirty-two (32) feet in width.

3. A minimum of two (2) parking spaces, each being not less than eight (8) feet by twenty (20) feet, exclusive of driveways, shall be provided on each mobile home lot, and one (1) additional parking space for each five (5) mobile homes shall be provided as guest parking.

4. Parking for other than residential uses permitted within the district shall conform with the provisions of Article 14 or the stipulations of the Planning & Zoning Commission at the time of plat approval.

G. Signs

The provisions of the R1 District, Section 7-16.B.4 through 6 shall apply.

SECTION 11-13
PARKING ONE ZONING DISTRICT (P1)

A. Intent and Purpose

To serve one purpose only -- that of providing vehicular parking space either by preserving existing parking areas by zoning them to P1, or establishing similar zoning on areas to be used for providing parking requirements of this Ordinance.

B. District Stipulations and Provisions

Supplemental to and/or supplanting the "General Provisions", Article 1.

1. All requirements under Article 14, shall be adhered to when applicable, and provided further that other stipulations and provisions may be imposed at the time of such zoning for the protection of adjacent properties or in the interest of public welfare.

C. Permitted Uses

1. Open land parking area providing spaces to satisfy all or a portion of the off-street parking requirements of a permitted use or uses.

    a. Installation, operation and maintenance of such lots shall adhere to all provisions established elsewhere in this Ordinance for such required parking.
    b. Such use is contingent upon first obtaining approval from the Traffic Engineer or other designated official as to ingress and egress and traffic circulation patterns.

2. Signs

   See “Article 15. Appurtenant use signs same as permitted under R4 District.

3. Other uses customarily accessory and incidental to the parking use provided same is located on the same lot or on the lot containing the principal use for which the parking is being provided.

ARTICLE 12
OVERLAY ZONING DISTRICTS

SECTION 12-10
PLANNED AREA DEVELOPMENT OVERLAY DISTRICT

A. Definition

The PAD District is an alternative to conventional land use regulations, substituting procedural protections for the requirements in Gila County's Zoning Ordinance. The PAD District is an overlay district that shall be used only in conjunction with other zoning districts described in the Gila County Zoning Ordinance, but which will allow flexibility in the requirements of the underlying zone and shall require approval by the Board of Supervisors of a specific plan of development.

B. Intent and Purpose

Gila County recognizes that in certain instances the objectives of the Zoning Ordinance may be best achieved by development of planned areas which may not conform in all respects to the underlying zoning district. Gila County further has determined that in the best interests of the health, welfare and safety of the citizens of Gila County, specific planned communities can provide better alternatives for some land development than the conventional zoning districts. The purpose of the PAD district is to encourage imaginative and innovative planning of neighborhoods, particularly with respect to diversification in the use of the land and flexibility in site design with respect to various features, including but not limited to, spacing, heights, density, open space, circulation, preservation of natural features, and innovation in residential development that results in the availability of a variety of housing opportunities, both in terms of afford-ability and lifestyle to all citizens and guests of Gila County; and to ensure the establishment of developments consistent with the goals and objectives of the Board of Supervisors of Gila County. All Townhouse, Condominium, and Time-Shares, together with resort, recreational and commercial activities directly related thereto shall only be in a Planned Area Development District.

C. Location

A PAD may be established in any zoning district upon a finding that such a development would comply with the intent of this section of the Zoning Ordinance and that the PAD substantially complies with any previously approved area plans, by virtue of its unique character, topography or other features. If a proposed project requires rezoning, a request may be considered by the Planning Commission simultaneously with its consideration of the development plan.

D. Application Requirements

Each application for approval of a PAD District shall be filed in accordance with the provisions of Article 3 of this Ordinance. In addition to the filing fee established for amendments, an

additional fee of $500.00 shall be paid by the applicant for processing the PAD request. The application shall be accompanied by such information and representations required by this Ordinance or deemed necessary by the Planning Director, which together shall comprise the application package.

E. Development Plan

The rezoning application shall be accompanied by a Development Plan which shall consist of:

1. The proposed development shall be drawn at sufficient scale so as to not exceed a print size greater than 24" x 36". Lettering shall be of sufficient size to be reasonably legible when reduced to an 8 ½" x 11" clear print.

2. Title of the project, such as "Planned Area Development for_____" in bold faced letters.

3. Name of the landowner, developer, applicant and the firm or person who prepared the plan.

4. North arrow, scale (written and graphic), and dates of plan preparation and subsequent revision dates.

5. Inset vicinity map showing the relationship of the proposed project to existing area developments and surrounding zoning districts.

6. Legal description of the entire property.

7. Delineate and dimension by bearing and distance the exact boundaries of the proposed development.

8. Show existing perimeter streets, including center lines, names, dimensions of existing dedications and proposed dedications.

9. Show the general locations and scheme of proposed interior streets with proposed rights-of-way or easements. All points of ingress and egress to the site must be shown.

10. Indicate the general location of proposed residential areas and types of housing proposed for each area. Show and label areas of open space, public areas, drainage areas and any proposed facilities such as golf courses, parks, recreation center, sewage treatment facilities.

11. Indicate who will own, control and maintain landscaping, open areas, streets, recreation facilities, refuse disposal and private utility systems.

12. Show typical lots for each dwelling type, including typical lots in cul-de-sacs, on corners and in any unusual location. Show the arrangement of units which will be clustered, if

applicable. These typicals should show the building envelope, the proposed minimum setbacks, the minimum lot dimensions and individual walls and fences.

13. Indicate the location and width of any existing roadway or utility easements on the property.

14. Show existing contours; contour interval to vary according to grades as follows: grades up to 5%, 2'; over 5% to 10%, 5'; over 10%, 10'.

15. Indicate the general direction of storm water runoff. Identify by note or notes the existing drainage pattern and the proposed drainage plans for handling onsite and offsite storm water runoff. A preliminary drainage report will be required at the time of filing the tentative/preliminary plat.

16. Indicate the locations, type, height and material of proposed perimeter fences and/or walls. All proposed signs should also be located, identified and dimensioned.

17. Note the general location and type of existing and proposed landscaping on the site.

18. Show phase lines, if applicable.

F. Development Plan Data

1. Land Use Table or Tables to include the following:

   a. Total gross acreage of site.
   b. Total area of the streets, public and private.
   c. Total area of public open space, if applicable.
   d. Total area of open space which is designed for the exclusive use of the residents of the PAD area who receive an undivided ownership of such areas.
   e. Maximum allowable density permitted under base zoning district.
   f. Total number of each dwelling type and the total number of all dwelling units.
   g. Average lot area per dwelling unit.
   h. The overall density proposed.

2. A table which compares the requirements of the existing zoning, the requirements of the base zoning requested, and the variations proposed under the PAD. The table should include lot area per dwelling unit, setbacks, maximum lot width, maximum building height, number of stories and parking requirements. A Conditional Use Permit shall be required for buildings exceeding three (3) stories or thirty-six (36) feet in height.

3. A table which lists the type and source of proposed utilities and services which include sewer, water, electric, telephone, police, fire, schools and solid waste disposal.

4. A table which shows the proposed rights-of-way or easements and pavement widths for each type of street proposed for the planned area and perimeter.

G. Narrative Report

The following information shall be included in a supporting narrative report.

1. Title Page

   The title page should clearly indicate "Planned Area Development for_____", the name of the applicant and date.

2. Purpose of Request

   The first section of the report should explain why the project is being proposed, and why the site has been selected.

3. Description of Proposals

   The character and type of development shall be thoroughly explained. All of the proposed non-residential buildings and structures and their intended uses should be described.

4. Relation to Surrounding Properties

   Surrounding land use and zoning should be described. The impact of the proposal on surrounding properties in each direction should be discussed. The impacts on schools should be explained.

5. Location and Accessibility

   The means of access, distance from major streets and surrounding road conditions should be described. Any proposed interior streets, drives or parking areas and proposed improvements should also be described.

6. Timing of Development

   A section of the report should contain a schedule of development phasing.

7. Public Utilities and Services

   Letters of serviceability from all public and private utilities and services shall be submitted with the report. Additionally, any correspondence involving transportation issues shall be included.

8. Maintenance of Streets and Common Areas

   The provisions for the maintenance of the private streets, common areas and public and private landscaped areas should be discussed.

H. Waiver of Specific Submissions

Any information required under Section 12-10.E.may be waived by the Planning Director on the basis that the information is not necessary to a review of the proposed PAD. Such waiver shall be in writing, shall specify the reasons for such waiver and shall be included in the materials submitted to the Planning Commission.

I. Public Hearings

After proper application has been made for a PAD, the Planning Commission and Board of Supervisors shall hold public hearings as provided in Article 3 of the Zoning Ordinance**.**

1. The Planning Commission and Board of Supervisors may approve the plan as submitted, may require the applicant to modify, alter, adjust or amend the plan in such manner and to such extent as it may deem appropriate to the public interest, or disapprove the plan.

2. The Planning Commission and Board of Supervisors may approve a plan even though the use of buildings and land, the location and height of buildings to be erected in the area, the nature of ownership, and the yards and open spaces contemplated by the plan do not conform in all respects to the regulations of the zoning district in which it is located or the plan does not conform in other particulars.

J. Findings Required

Before approval of an application for a PAD District, the Planning Commission and the Board of Supervisors shall find that the development conforms to the following general criteria:

1. That the location, design and size are such that the development can be well integrated with the surroundings; is planned and developed with the intention to harmonize with any existing or proposed development in the adjacent neighborhood; or in the case of a departure of character from surrounding uses, that the location and design will adequately reduce the impact of the development so that the project will not be detrimental to the adjacent property.

2. That the streets and thoroughfares proposed are suitable and adequate to serve the proposed uses and the anticipated traffic which will be generated thereby and that proper provision for the maintenance of the such streets has been provided.

3. That the value of the use of the property adjacent to the area included in the plan will not be adversely affected to a significant extent and to this end, the Planning Commission and Board of Supervisors may require, in the absence of an appropriate physical barrier, the uses of least intensity be arranged along the boundaries of the project. As further protection to adjacent properties, the Planning Commission and Board of Supervisors may impose either or both of the following requirements:

    a. Structures located on the perimeter of the planned development be set back a distance sufficient to protect the privacy and amenity of adjacent existing uses.
    b. Structures located on the perimeter of the planned development be permanently screened in a manner sufficient to protect the privacy and amenity of the adjacent existing uses.

4. That suitable retention and drainage areas have been provided to protect the property and adjoining properties from hazards resulting from water falling on or flowing across the site, and that proper provision for maintenance of such retention and drainage areas has been provided.

5. That the location, design, size and uses are such that the residents or establishments to be accommodated will be adequately served by existing or planned public facilities and services.

6. That the location, design, size and uses are such that traffic generated by the development can be accommodated safely.

7. That adequate and visible refuse disposal has been provided for or exists for the development.

K. Implementation of Plan

1. Once a plan has been approved, it can be amended, changed or modified only through the procedure prescribed herein for the initial application for approval. The Board of Adjustment may not grant any variances for an approved PAD.

2. A development schedule for residential uses shall be submitted as part of the project plan and the construction of provision of all the common open spaces and public and recreational facilities which are shown on the Development Plan must proceed at the same rate as the construction of dwelling units. If it is determined that the rate of dwelling unit construction is greater than the rate at which common open areas and public and recreational facilities are being constructed or provided, the developer will be notified that

no building permits for dwelling unit construction will be issued until the rate of construction conforms with the development schedule.

3. The development schedule shall provide for stage construction of the Development Plan. Building Permits will not be issued for any stage of the plan unless the common open space allocated to that stage by the development schedule has been conveyed to the appropriate parties.

L. Minimum Planned Area Development Requirements and Limits

The following requirements and limits are mandatory for all Planned Area Developments and may not be waived or modified without amendment of this section by the Board of Supervisors.

1. No residential PAD, or the residential portion of any PAD including commercial, shall have less than fifteen (15%) percent of its gross total area allocated to open space or other common areas or facilities. Streets, sidewalks and entry areas shall not be included in the fifteen percent.

2. PADs that include manufactured/mobile home lots shall have an under-lying zone of MHS-Mobile Home Subdivision District.

3. Any private streets approved by the Planning Commission and the Board of Supervisors as part of a PAD shall meet the minimum requirements as established by Gila County Engineering Services.

SECTION 12-11
TRAILER DISTRICT

A. Intent and Purpose

To promote the development and operation of certain uses, such as, but not limited to, laboratories, light manufacturing and assembly, in such a restricted and limited manner that, because of the limitations on type of structures and uses, control on height and density, prohibitions against open land facilities, omission of such nuisances as fumes, odors, noise, glare and vibration, prohibition of general retail sales and services or other uses that cater to the general public, and the landscaping requirements, so as to protect and foster residential desirability adjacent to such industries.

B. District Stipulations and Provisions

Supplemental to and/or supplanting the “General Provisions”, Article 1.

1. Residential uses, other than one dwelling unit for occupancy by caretaker and family, are prohibited.

2. General retail sales and service or other uses that cater to the general public are prohibited.

3. All uses except parking, loading and unloading, as provided herein, shall be confined to within closed buildings.

4. Space for automobile parking area shall be initially provided and kept available on the premises at the rate of two square feet of land area for each square foot of floor area. As the development of facilities progresses, there shall be installed and maintained no less than one parking space for each two employees. All ground area used for parking, loading, unloading, and vehicular movements shall be surfaced and maintained with dust-free surfacing, preferably hard surface.

5. All development on any one parcel in the District must progress in accordance with general layout, architectural, and landscape plans for such parcel, all to be approved by the building inspector; the Board of Adjustment may modify the Building Inspector's requirements, provided such modifications do not defeat the intent and purpose of the District.
6. All outdoor lighting shall be hooded or shielded so as to deflect the light away from residential districts. Such lighting shall be the minimum required to illuminate the area needed to be lighted.

7. No use shall be operated in such a manner as to be an explosion or fire hazard; nor shall there be emitted into the atmosphere any smoke, soot, dust, radiation, odor, noise, vibration, heat, glare, or toxic fumes to such an extent as to constitute the slightest nuisance.

8. The first fifty (50) feet of depth adjacent to any street or street easement must be used for landscaping purposes, and may not contain any other uses or structure, except for driveways, signs and lighting, as permitted in this District.

C. Permitted Uses

Provided such uses meet the intent and purpose of the District.

1. Manufacturing, machining, processing, assembly, compounding, fabrication, mixing, baking, equipping, printing and publishing, cooking, glazing, weaving, knitting, and sewing.

2. Research and testing laboratories.

3. Warehouses.

4. Motion picture production, radio and television studios.

5. In-plant restaurants as an appurtenant use, and including roof or landscaped patio dining facilities.

6. Facilities incidental to a construction project, including storage, all located on the project site for a period not to exceed twelve (12) months.

7. Churches or similar places of worship. Open land recreation facilities in connection with such project may be permitted subject to a use permit.

8. Accredited schools, colleges, universities, including dormitories, athletic fields, playgrounds and swimming pools on the same parcel of land. Private school playgrounds, athletic fields and swimming pools are subject to securing a use permit.

9. Public utility facilities, when necessary for serving the surrounding territory (but not storage yards).

10. Regulation type golf courses, but not miniature, pitch and putt courses, nor commercial driving ranges, and subject to securing a use permit.

11. Offices wherein professional, administrative, clerical or sales (other than to the general public) are rendered, including management and /or realty offices appurtenant to an industrial subdivision and located therein.

12. Publicly owned or operated buildings or properties.

13. Publicly owned or operated parks and playgrounds, and other recreational uses, including eating and drinking sales and service establishments (which may be operated on a concession basis) accessory to the use of such public facility; provided, however, that such shall be located no closer than three hundred (300) feet to any adjacent property.

14. Private parking space as provided for the District.

15. Railroad, mining, metallurgical, or general agricultural uses on five or more contiguous commercial acres under one ownership. Such uses are exempt from any restrictive.

16. Customary accessory uses and buildings, including private parks and swimming pools, provided such are incidental to the principal use.

17. Fences or free-standing walls (not to exceed eight (8) feet in height), provided same are not located closer than fifty (50) feet to any street or street easement line, except that when same are adjacent to a residential district, the height shall conform to the maximum height requirements for such residential property.

18. Signs

    As follows, which may be lighted by indirect illumination.

    a. Signs appurtenant to or identifying a permitted use of the property upon which displayed and subject to the following additional provisions and stipulations:

i. Limited to a total overall sign area of two hundred (200) square feet, in addition to one name plate and necessary informational or directional signs; provided, however, that each such name plate or other accessory sign shall not exceed an area of six (6) square feet. The name plate may be located at or within four (4) feet of a street line, provided same is unlighted and does not exceed a height of seven (7) feet.
ii. Any flush sign may have an area not to exceed one hundred sixty-eight (168) square feet. Signs pertaining to the name of the operating company will not be limited in size, provided such signs are incorporated into the architectural design as an integral part of the building, and shall have a minimum setback of one hundred fifty (150) ft. from any dedicated street or residential district, and shall not exceed a height of forty (40) feet above ground grade, and shall be subject to approval of the Building Inspector.
iii. Any free-standing or extended sign may have a sign panel area not to exceed eighty-four (84) square feet.

b. Temporary advertising signs pertaining to the sale or lease of land or buildings upon which property same are displayed and subject to the following additional provisions and stipulations:

i. Limited to one single or double-faced or V-shaped sign for each 300 lineal feet or fraction thereof of frontage on all street sides for each lot or establishment, provided no two signs on the same property are closer than one hundred (100) feet to each other nor closer than one hundred (100) feet to any residential property line.

c. If the portion of the property being advertised is unimproved, such sign not exceeding sixty (60) square feet of panel area and seven (7) feet in height may be displayed up to the street line, provided same be no closer than one hundred (100) feet to any building. Such signs, when located within one hundred (100) feet to developed land, must parallel the street.
d. If the portion of the property being advertised is improved, such signs shall be regulated by the provisions and stipulations of signs appurtenant to the use of the property, except that no panel area may exceed eighty-four (84) feet.

19. Lot Area and Dimensions

a. No lot shall hereafter be subdivided to provide less than seventy two thousand (72,000) square feet (commercial two acres) of area, a width of one hundred (100) feet, nor a depth of three hundred (300) feet, and provided further that no lot shall exceed a depth of six hundred fifty (650) feet, unless it can be shown that deeper lots will not block a future street pattern.

20. Yards Required

    a. There shall be a yard measuring from any street or street easement of not less than fifty (50) feet.
    b. There shall be a side yard of not less than twenty-five (25) feet from any common property line or alley, except that such side yard shall measure not less than fifty (50) feet from any residential district boundary.
    c. There shall be a rear yard adjacent to any residential district of not less than fifty (50) feet to the residential side line and twenty-five (25) feet to the residential rear line or the rear alley centerline of what would be the centerline if a full alley existed.

21. Height Limits

    No structure shall exceed a height of thirty (30) feet plus one (1) foot for each additional ten (10) feet such structure is located beyond setback lines, provided such height does not exceed forty (40) feet, except that towers, poles and water tanks necessary to serve the lot and/or the area may exceed the height limitations when the location of such exceeds a setback from any property line of twice its height.

22. Building Density

    The total area of all buildings shall not exceed thirty percent (30%) of the total area of the lot.

23. Space and Between Buildings

    No building shall be closer to any other building than thirty (30) feet, except when such are attached by a common wall so as to be treated as one building.

SECTION 12-12
DESIGN REVIEW OVERLAY DISTRICT (DSR)

A. Purpose and Intent

The purpose of the design review program is to preserve and enhance the beauty and uniqueness of the region, facilitate incorporation of the region's culture and natural resources into property, increase the value of the property, pedestrian friendly planning, and to contribute to the further enhancement of the economic base of our area through increased awareness and appeal of the properties adjacent to the U.S. Highway 60-70 corridor benefiting all property owners, residents, and visitors to the region.

B. Applicability

These guidelines, upon adoption by each respective government jurisdiction through ordinance, shall be applicable to all developable properties that front on the U.S. Highway 60/70 corridor from the West end of Miami to the East end of Globe. The Program's guidelines will also apply

to all currently developed properties on that same corridor that undertake property and/or structure redevelopment involving modification of 50 % or more of their present property or structure to include modification to design, layout, signage, or exterior appearance for which a building permit is required.

C. Exemptions

1. The guidelines of this Design Review Program shall not apply to the following activities:

    a. Maintenance of the exterior of an existing structures such as repainting, re-roofing, residing, where similar materials and colors~~,~~ are used.
    b. Interior remodeling.
    c. Existing nonconforming aspects of a building or site not addressed in an application for a design review permit.
    d. Short-term/temporary preventative maintenance as a result of an emergency situation. i.e. fire, flood, natural disaster.

D. Application Procedures

1. Applications for a Design Review requires submission of nine (9) design packets for review by the government agency with jurisdiction over the property and the Regional Design Review Committee.

2. Each packet must contain:

    a. Site Plan that provides the following:

        i. Pedestrian & Vehicular Circulation.
        ii. Building floor plans showing orientation of windows & doors on the exterior walls of the proposed structure.
        iii. Location and description of exterior signage.
        iv. Landscape plan, including plant~~s~~ type and placement, and hardscape details.
        v. Exterior Lighting; location, type, and orientation.
        vi. Fences and walls, (material and surface textures).

    b. Building Elevations which provide the following:

i. Façade Treatment.
ii. Architectural Design.
iii. Building Height.
iv. Building Materials.
v. Design Detail for windows and doors.

E. Review Procedures

Upon submittal of a completed Application, the Design Review Committee shall review and prepare a written recommendation to the governmental agency having jurisdiction over the subject property regarding the following elements to which the Design Review Program's guidelines apply:

1. Site Layout

   a. Site Layout: Orientation and location of buildings, hardscape, natural features and landscaped areas in relation to physical characteristics of the site, neighborhood character, and the appearance and harmony of adjacent buildings.
   b. For the purpose of these guidelines a property not immediately adjacent to the corridor shall be considered as adjacent to the corridor if the property adjacent to the corridor is undeveloped.
   c. The appearance and safety of the proposed pedestrian system.
   d. Landscaping:

      i. The location, height and species of hedges, trees, and xeriscape to ensure harmony with the ambiance of the area and the intent of these guidelines.
      ii. The planting of groundcover to prevent dust and erosion.
      iii. The preservation of existing healthy trees.

   e. Hardscaping
      The location, height and material of walls, fences, and other artificial embellishments to ensure harmony with the ambiance of the area and the intent of these guidelines.
   f. Outdoor Signage
      The number, location, color, size, lighting, and landscaping of outdoor advertising devices as they relate to pedestrian and vehicular traffic, their appearance and harmony with the existing adjacent structures, and the intent of these guidelines.

2. Architectural Character
   a. The consistency of the applications of the proposed design with approved design guidelines.
   b. The compatibility of the character of the proposed design with adjacent structures and the intent of these regulations.
   c. Preservation of historical structures (if within registered Historic Districts).

3. Overall Compliance with Development Standards

   The Design Review Committee or the Planning Staff of the government agency with jurisdiction over the said property, on a case-by-case basis, may make exceptions to the provisions of Section VIII, Development Standards, due to unique characteristics of the site or economic hardship to the applicant.

F. Development Standards (Site Design)

1. Pedestrian and Vehicular Circulation Circulation patterns should be obvious and simple. All likely pedestrian routes should be considered in the design phase to eliminate "short cuts" that damage landscaped areas. Circulation systems should limit conflicts between vehicular, bicycle and pedestrian traffic.

2. Where pedestrian routes cross vehicular traffic paths~~,~~ a change in grade; materials; textures and/or colors should be provided.

3. Pedestrian routes/paths should be provided to the front entrance of a building from the public right of way.

4. Bicycle parking facilities may be substituted for automobile parking spaces required at a ratio of five (5) bicycle spaces for one required vehicle parking space. A maximum of 5% of the total required parking spaces may be reduced from the total number of parking spaces required under the established Parking spaces related requirements in the government agency's standards. Bicycle parking facilities should include provisions for locking of the bicycle in a secure rack.

5. Building Set Backs

   a. Buildings should be placed as close to the front property line as reasonable with consideration for the safe passage of vehicular and pedestrian traffic.
   b. Where no side yard setback is provided, structural wall construction must be Two-hour fire rated, and the roof must not drain directly onto adjoining property.
   c. Rear yard setback is not required except when the adjoining property is residential. Where this occurs a case-by-case review will determine appropriate setbacks that are compatible with the adjoining properties.
   d. Overhead structures such as porches and balconies may be placed on the front property line except where adjoining structures have larger front yards.

6. Parking Facilities

   Parking should not be positioned between the public sidewalk and the front of the building, here feasible. Parking at the side of the property must be landscaped and screened.

7. Multiple Buildings

   Multiple buildings on the same property should be designed to create a cohesive visual relationship between buildings.

8. Driveways

   a. Shared or common driveways are encouraged.
   b. There should be a maximum of one driveway per lot or parcel except where the lot has more than one hundred (100) feet of frontage on the Highway Corridor. Driveways should be separated by a minimum of 100 feet. Approval of the Arizona Department of Transportation must be obtained in each case. The State's jurisdiction and decision shall always prevail if different than the recommendation of the Design Review Committee.

9. Signage

   a. No roof sign should be permitted except where significant negative grade change exists from the roadway to the building site.
   b. Portable freestanding signs must not exceed three (3) feet in height, six (6) square feet on each face, and must not obstruct pedestrian ways or cause line of sight problems.
   c. Permanent freestanding signs should not exceed thirty-two (32) square feet on each face and must be low profile.
   d. Marquee signs must not be installed in such a manner that the illumination from the sign causes distraction or hindrance to vehicles on the corridor nor occupants of nearby properties.
   e. Colors should be used from the approved color board.
   f. Signs must be properly maintained.
   g. Signs should be architecturally integrated with their surroundings in terms of size, shape, color, texture and lighting.
   h. Signs should not be in visual competition with each other.
   i. In the event that these signage guidelines are found to be in conflict with the adopted sign code provisions of the government agency with jurisdiction, the established governmental sign code requirements shall have precedence.

10. Lighting

    a. Colored lighting is allowed but should not:

       i. spill over onto adjacent properties,
       ii. be the primary lighting theme,
       iii. contain moving or streaming lights or components.

    b. Lighting fixtures should be historically appropriate to the area, close in appearance to other installed historic lighting within the government jurisdiction.

11. Utility Equipment

    a. Mechanical systems equipment should be screened and sound attenuated, using approved building materials and positioned to maintain minimum intrusion on the public view.
    b. Utility areas and equipment, such as trash receptacles, storage areas, service yards and loading/unloading areas should be screened from public view with approved building materials.
    c. Permanently installed utility standards and communication equipment should blend into the surrounding environment. The use of earth colors and/or the installation of faux foliage, and/or the installation of equipment constructed to replicate a living plant, such as a palm tree, cactus, or other tree as appropriate to blend the equipment into the environment should be considered.

12. Landscaping

    a. Landscaping should soften the visual appearance of the site, and provide a pedestrian friendly environment.
    b. Any planting within the rights of way should not create a line of sight nuisance, or be a nuisance to pedestrian and vehicular traffic in any way.
    c. All undeveloped areas, within public view, should be landscaped or left with undisturbed natural vegetation.

        i. Deciduous or evergreen shrubs and trees can be used.
        ii. Planter boxes are encouraged for flowers.

13. Hardscape

    a. Colors, textures and materials selected for walkways, patios, and other ground plane enhancements must support the architectural character of the area.
    b. Materials should not impede accessibility to those who are physically challenged.
    c. The texture and color of hardscape should clearly differentiate between driveways, parking facilities, and those areas used by bicyclists or pedestrians.
    d. Stone, brick, colored concrete, pavers, covered boardwalks, and concrete finishes are acceptable.
    e. Natural materials should be used to the maximum extent; Synthetic materials may be considered.

14. Street Furniture

    a. Street furniture should be of design and character consistent with municipal streetscape elements.
    b. Synthetic or Plastic elements are not permitted.

15. Fences and Walls

    When adding fences and walls, the building materials should comply with the approved building materials in this guideline.

16. Overhead Protection Structures

    a. Overhead protection structures should be installed on the façade of the ground floor above any installed or planned pedestrian pathways.
    b. A minimum of seven (7) foot vertical clearance is required for overhead structures above potential pedestrian pathways.

G. Development Standards (Architectural and Structural Design)

1. Architectural Features

    a. Architectural design should be compatible with the character of the area. Design compatibility should include complimentary building style, form, size, color and materials.
    b. Diversity of architectural design is encouraged that portrays the historical and cultural influence~~s~~ of the area.
    c. Detail is required at/around all doorways and windows that front on the street or are part of visible sidewalls.
    d. Rough sawn wood reflecting “pioneer” look is encouraged.

2. Building Materials

    a. The preferred building materials include wood, stone, brick, and adobe. Stucco and synthetic materials may be considered.
    b. Metal buildings are permitted if the facade visible from the right-of way is composed of building materials specified in paragraph G.1.b above.

3. Building Colors

    a. Exterior colors should be selected from the recommended color board, Historic Colors of America.
    b. Trim and body colors should be complimentary, and brilliant, bold colors should be avoided.

4. Roof Design

    Acceptable roof materials include galvanized and colored metal, or dimensional asphalt shingles. The use of composite material will be reviewed on a case-by-case basis. The use of natural wood shake roof material is highly discouraged.

5. Facade Treatment

    a. The concealing of original facades as part of restoration/rehabilitation should be avoided.
    b. Storefront restoration should return the façade to its original character as much as is reasonable and appropriate and meets design review requirements.
    c. Reflective or mirrored glass should be avoided. Tinted glass should comply with Arizona Standards of 30% maximum reduction of transparency.
    d. A minimum of 35% of the front first floor of the building at the front property line should be windows or doors.
    e. No new construction or remodeling of an existing building will use mill finished aluminum windows, doors, or display devices.
    f. In new construction Glass block windows visible from public walkways should be avoided.

6. Side Walls

    a. Blank or solid walls/wall sections visible from the pedestrian or vehicular right-of-way should be limited to prevent the disruption of existing architectural patterns.
    b. Side facades should be carefully designed with similar detailing and should be compatible with the principal façade of the building.
    c. Visible blank or solid walls will be limited to no more than a 20-foot section of wall without required breaks or other changes.

H. Reporting of the Project Approvals by the Government Agency

1. Upon receipt of the recommendations of the Design Review Committee, the designated project review officials of the government agency of jurisdiction will communicate the committee's recommendations, along with other review comments by the government agency to the property owner or their designated representative.

2. If the government agency finds conflict between its application of codes, engineering standards, and other established and appropriate project-approval requirements; the government agency's officials shall prepare a report explaining the reasons why recommendations of the Design Review Committee could not be incorporated in the overall review comments and requirements for the project and submit a copy of the report to Design Review Committee. If a project requires specific approval of the government agency's Planning & Zoning Commission or the elected governing body, the Planning and Zoning Official shall include a copy of the above report in the information package submitted to the Commission or governing elected officials prior to their consideration and final decision on the project.

I. Guideline Review

This guideline is subject to continuous review by the Design Review Committee and the governmental agencies to which it applies. Significant changes to this document will require full concordance of all affected agencies before those changes are implemented.

ARTICLE 13
DENSITY DISTRICTS

Density Districts shall be established in order to maintain a desirable amount of open space and regulate the intensity of use within conventionally designed, detached single-family residential subdivisions or those unplatted areas primarily devoted to detached single-family residential use.

SECTION 13-10
GENERAL STANDARDS

A. General Regulations

Except as enumerated to the contrary under any particular density district or under "General Provisions" (Article 1), the following, where applicable, shall apply to all density districts or to any residential use in use districts not combined with density districts.

1. Lot Area and Dimensions

   a. Any lot which is substandard for the district in which it is located, either as to dimensions or area, that was legally established as such when it came under the influence of the minimum regulations of such district, shall be considered a legal lot in that district.
   b. No lot shall be further divided in such a manner that any division of such lot shall contain more living units and/or percent of lot coverage than is permitted on that area by the minimum regulations of the district in which such lot is situated.

2. Yard Dimensions/Space Between Buildings

   Minimum yard requirements in all density districts shall be as follows:

   a. Front Yard -- twenty (20) feet.
   b. Rear Yard -- twenty (20) feet.
   c. Street Side of Corner Lot -- ten (10) feet.
   d. Interior Side Yard -- seven (7) feet; nine (9) feet on one interior side yard if vehicular access is needed per Section 13-10.A.3a.
   e. Distance Between Buildings -- No dwelling shall be closer than six (6) feet to any other building on the same lot.
   f. Detached Accessory Buildings -- Shall conform to front and side yard requirements for main buildings and shall be at least seven (7) feet from rear lot line. (See Sections 13-10.A.3 "Yard Deviations" and 13-10.A.4 "Projection Into Yards").

3. Yard Deviations

   See yard definition for measure requirements.

a. Side Yards -- On any lot where a garage or carport is not attached to the main building, one side yard must measure no less than nine (9) feet to provide vehicular access to rear parking.

4. Projection into Yards is prohibited, except as herein enumerated:

   a. All Yards

      i. Cornices, eaves, coolers, open balconies, open fire escapes, stairways, or fire towers may project not more than five (5) feet into any minimum yard, provided such projection shall be no closer than two (2) feet from any property line.
      ii. Sills, leaders, belt courses and similar ornamental and chimneys may project not more than two (2) feet into any minimum yard or court.

   b. Front Yard

      i. A bay window, oriel, entrance or vestibule, which is not more than ten (10) feet in width, may project not more than three (3) feet into any minimum front yard.
      ii. An attached open porch, carport, or balcony may project not more than six (6) feet into any minimum front yard.

   c. Rear Yard

      i. A bay window, oriel, entrance or vestibule, which is not more than ten (10) feet in width, may project not more than three (3) feet into any minimum rear yard.
      ii. An attached open porch, carport, or balcony may project not more than (10) feet into any minimum rear yard, provided no such projection shall be less than eight (8) feet from any common rear property line.

5. Building Height

   Unless otherwise stipulated in the individual zoning district, a Use Permit shall be required for any building exceeding three (3) stories or thirty (30) feet in height.

6. Maximum Density

   The maximum density within single-family detached residential subdivisions shall not exceed 6.6 dwelling units per gross acre, except as otherwise enumerated herein.

7. Variance Due to Extreme Conditions

   a. When compliance with the minimum building setback regulations would cause extreme hardship due to conditions of extreme topography or the unnecessary destruction of vegetation, the Planning Director may grant a variance not to exceed fifty percent (50%) of the minimum required yard. However, under no circumstances shall there be a yard of less than five (5) feet.

b. The Planning Director or his designated representative shall first inspect the property to determine the circumstances and shall approve or deny the variance based on his findings and shall set forth his findings and recommendations on a form provided for that purpose.
c. Notice of the decision of the Director shall be sent by United States Certified Mail to the applicant and the owners of record, according to the official assessment rolls of the Gila County Assessor, or all adjacent properties.
d. Appeals of the decision of the Director may be made to the Board of Adjustment & Appeals and must be filed in writing with the Development Office within fifteen (15) days following the date of mailing of the notice of decision.
e. The decision of the Director shall become effective at the expiration of the fifteen-day appeal period, provided that no appeals have been filed.

SECTION 13-11
DENSITY DISTRICT STANDARDS

A. D6 -- 6.6 Dwelling Units Per Acre

1. Minimum Lot Area -- Six thousand (6,000) square feet.
2. Minimum Lot Width at Front Setback Line -- forty-four (44) feet.
3. Minimum Lot Depth -- Sixty (60) feet.
4. Maximum Building coverage -- Fifty percent (50%) of gross lot area.
5. Maximum Impervious Surface Coverage -- Sixty-five percent (65%) of gross lot area.

B. D8 -- Five Dwelling Units Per Acre

1. Minimum Lot Area -- Eight thousand (8,000) square feet.
2. Minimum Lot Width at Front Setback Line -- forty-eight (48) feet.
3. Minimum Lot Depth -- Eighty (80) feet.
4. Maximum Building coverage -- Forty-five percent (45%) of gross lot area.
5. Maximum Impervious Surface Coverage -- Sixty percent (60%) of gross lot area.

C. D10 -- Four Dwelling Units Per Acre

1. Minimum Lot Area -- Ten thousand (10,000) square feet.
2. Minimum Lot Width at Front Setback Line -- Fifty-two (52) feet.
3. Minimum Lot Depth -- One hundred (100) feet.
4. Maximum Building Coverage -- Forty percent (40%) of gross lot area.
5. Maximum Impervious Surface Coverage -- Fifty-five percent (55%) of gross lot area.

D. D12 -- 3.3 Dwelling Units Per Acre

1. Minimum Lot Area -- Twelve thousand (12,000) square feet.
2. Minimum Lot Width at Front Setback Line -- Fifty-six (56) feet.
3. Minimum Lot Depth -- One hundred (100) feet.
4. Maximum Building Coverage -- Thirty-five percent (35%) of gross lot area.

5. Maximum Impervious Surface Coverage -- Fifty percent (50%) of gross lot area.

E. D18 -- 2.2 Dwelling Units Per Acre

1. Minimum Lot Area -- Eighteen thousand (18,000) square feet.
2. Minimum Lot Width at Front Setback Line -- Sixty-eight (68) feet.
3. Minimum Lot Depth -- One hundred (100) feet.
4. Maximum Building coverage -- Thirty percent (30%) of gross lot area.
5. Maximum Impervious Surface Coverage -- Forty percent (40%) of gross lot area.

F. D20 -- Two Dwelling Units Per Acre

1. Minimum Lot Area -- Twenty thousand (20,000) square feet.
2. Minimum Lot Width at Front Setback Line -- Seventy-two (72) feet.
3. Minimum Lot Depth -- One hundred twenty (120) feet.
4. Maximum Building Coverage -- Twenty-five percent (25%) of gross lot area.
5. Maximum Impervious Surface Coverage -- Thirty-five percent (35%) of gross lot area.

G. D40 -- One Dwelling unit Per Acre

1. Minimum Lot Area -- Forty thousand (40,000) square feet.
2. Minimum Lot Width at Front Setback Line -- Ninety-two (92) feet.
3. Minimum Lot Depth -- One hundred eighty (180) feet.
4. Maximum Building Coverage -- Twenty percent (20%) of gross lot area.
5. Maximum Impervious Surface Coverage -- Twenty-five percent (25%) of gross lot area.

H. D70 -- .62 Dwelling Units Per Acre

1. Minimum Lot Area -- Seventy Thousand (70,000) square feet.
2. Minimum Lot Width at Front Setback Line -- One hundred forty-five (145) feet.
3. Minimum Lot Depth -- Two Hundred Forty-Two (242) feet.
4. Maximum Building Coverage -- Fifteen percent (15%) of gross lot area.
5. Maximum Impervious Surface Coverage -- Twenty percent (20%) of gross lot area.

I. D175 -- .25 Dwelling Units/Acre

1. Minimum Lot Area -- One Hundred Seventy-Five thousand (175,000) square feet.
2. Minimum Lot Width at Front Setback Line -- Two Hundred Thirty-Four (234) feet.
3. Minimum Lot Depth -- Three Hundred Ninety (390) feet.
4. Maximum Building Coverage -- Eight and One Half percent (8 1/2%) of gross lot area.
5. Maximum Impervious Surface Coverage -- Twelve percent (12%) of gross lot area.

ARTICLE 14
PARKING REQUIREMENTS

SECTION 14-10
OFF-STREET PARKING

A. In order to help alleviate congestion on public streets, the following vehicular parking requirements shall apply, and no building permit shall be issued for use permitted other than in conformity with the following requirements.

   1. Where parking spaces are referred to, such space shall represent an area of not less than 9 feet by 20 feet, exclusive of driveways required to make such space accessible from public streets or alleys.

   2. Where parking requirements are referenced to floor areas, such shall be construed to mean the gross building floor area used by, or to serve, people in connection with such use, but shall not include floor areas used for vehicular parking and incidental storage or other accessory space.

   3. Where parking spaces are referenced to seats, each 18 inches of pew width may be considered as one seat.

   4. If such required parking is located other than on the lot upon which use it serves, or adjacent property permitting such parking requirements, once approved and/or provided, must be continuously maintained in the manner provided by this Ordinance, together with any additional parking facilities necessitated by expansion of floor areas and/or uses.

   5. In the case of mixed uses, the total parking requirements shall by the sum of the requirements of the various uses computed separately.

B. General Requirements for off-street parking uses are as follows:

   1. For the purpose of converting parking spaces into the required or permitted parking area, plans must be submitted to show how the required or permitted parking spaces shall be arranged in the area supplied for that purpose and to indicate sufficient space for turning maneuvers, as well as adequate ingress and egress to the parking area, before a permit is granted.

   2. In any district other than in R1, R1L, SFR, RR, SR, GR, or GU where such space is required, the area of such space shall be surfaced with asphaltic surfacing, concrete, or other paving material acceptable to the Department, to prevent dust and erosion.

   3. The parking of two or more commercial vehicles of more than one ton capacity on any lot in any residential district shall be considered a commercial use and is prohibited.

4. “Floor areas” shall mean the gross floor area and/or the open land area used for service to the public as customers, patrons, clients, or patients, including areas occupied by fixtures and equipment used for display or sale of merchandise. It shall not mean floors or parts of floors used principally for non-public purposes, such as storage, automobile parking, incidental repair, processing or packaging of merchandise, show windows, or for offices incidental to the management or maintenance of stores or buildings, or for restrooms or powder rooms.

5. In any case, in a Commercial C1 or less restricted district, where a lot used for automobile parking space adjoins a residence district, there shall be a solid wall of masonry not more than six nor less than four feet in height along the lot line of such lot, which lot line forms the boundary of said residence district; except where such wall adjoins the front yard of the adjoining residential lot, said wall shall be three feet in height. The lot owner or occupant of the C1 or less restricted district shall maintain said wall in a neat and orderly condition. As appropriate, on a case by case basis, an alternative selection of landscape delineation may be utilized to meet these needs as approved concurrently by the Director.

6. Any lights used to illuminate parking space in a commercial district shall be so arranged as to reflect the light away from the adjoining rights of way.

7. Except where a wall is required, a minimum six-inch high curb or bumper guard shall be constructed so that no part of a vehicle shall extend over or beyond any property line.

8. Whenever a building permit has been granted and the plans so approved for off-street parking, the subsequent use of such property shall be deemed to be conditional upon the unqualified continuance and availability of the parking provisions contained in such plans. Any use of such property in violation hereof shall be deemed in violation of this Ordinance. Should the owner or occupant of any building to whom a building permit has been granted containing off-street parking requirements so change the use to which such building is put as to increase off-street parking as required under this Ordinance, it shall be unlawful and a violation of this chapter to begin or maintain such altered use prior to compliance with increased off-street parking provisions of this section.

9. No addition or enlargement of an existing building or use shall be permitted unless parking requirements of this Ordinance are met for the entire building or use.

10. In the Case of mixed use, the total requirements for off-street parking space shall be the sum of the requirements of the various uses computed separately as specified in this section, and the off-street parking spaces for one use shall not be considered as providing the required off-street parking for any other use.

11. All parking areas, except in an R1, R1L, SFR, RR, SR, GR, or GU District, shall be entered and exited in a forward motion of the vehicle. Sufficient space for maneuverability in compliance with this section shall be included in plans submitted pursuant to Section 14-10.A.1 above.

12. There shall be no commercial parking lots in an R1, R1L, SFR, RR, SR, GR, or GU District, except for a walled or fenced and landscaped RV and boat storage area for the private use of the residents of the same subdivision.

13. Handicapped parking shall be provided in accordance with the Arizona Revised Statues.

14. In any computations of fractions of parking space requirements, the total number of spaces required shall be rounded to the next highest whole number.

C. Space Requirements by Use

1. Automobile parking space shall be provided according to the following schedule and subject to the following schedule and subject to the following conditions in any district in which any of the following uses shall be established. Where off-street parking requirements are specified in the regulations of any of the various zoning districts, those requirements shall apply therein, and compliance therewith shall be made.

    a. Single-family dwellings and two-family dwelling (duplexes) shall have two off-street parking spaces for each dwelling unit, which space shall be provided on the lot upon which such dwelling unit is located.
    b. "Multi-unit dwellings" include triplexes, fourplexes, boarding houses, hotels, apartments, and all similar structures devoted to habitation. The following requirements shall apply for said dwellings: One and one-half parking spaces for each studio, efficiency, or one bedroom unit; one and three-fourths parking spaces for each unit containing two bedrooms; two parking spaces for each unit containing three or more bedrooms; and for each development containing more than five units, one parking space in addition to the above requirements shall be provided for each ten units or major fraction thereof for visitor parking. All parking spaces shall be provided on the lot upon which the units are located.
    c. Places of public assembly, including private clubs, lodges, and fraternal buildings not providing overnight accommodations, assembly halls, skating rinks, dance halls, bowling alleys, theaters, amusement parks, race tracks, funeral homes, must have at least one off-street parking space for each five seats provided for patron use and/or at least one off-street parking space for each seventy-five square feet of floor areas used for public assembly but not containing fixed seats.
    d. Churches and related buildings: At least one off-street parking space for each five seats or ninety inches of pew space, or, if fixed seats are not provided, then one off-street parking space shall be provided for each thirty square feet of floor area in the main assembly area. Accessory buildings in the church complex shall provide parking spaces in accordance with the following: Classrooms, whether used for school or church activities, shall have one parking space for each four hundred square feet of gross floor area. Other buildings shall have one parking space for each four hundred square feet of gross floor area. All such parking will be located on the same lot as the building or on a contiguous lot.
    e. Restaurants, bars, taverns, nightclubs, and all other similar dining and/or drinking establishments shall have off-street parking space of at least one space for each seventy

five square feet of floor area and one parking space for each two hundred square feet of outdoor patio area (exclusive of kitchen, restrooms, storage, etc.). Such parking shall be located on the same lot or contiguous lots.

f. Hotels, motels, guest lodges, fraternities and sororities shall have one off-street parking space for each two beds.
g. Hospitals shall have parking space for each three patient beds, plus at least one off-street parking space for each resident doctor, plus at least one additional off-street parking space for each three employees including nurses not domiciled on the property.
h. Doctors' offices, dentists' offices, medical clinics, and medical centers shall have one parking space for each one hundred fifty square feet of gross floor area between exterior walls, plus one parking space for each employee, and such parking shall be located on the same lot or on contiguous lots with said uses.
i. Nursing or convalescent home health care facilities, including specialized care facilities and minimal care facilities, shall have one parking space for each two beds.
j. Office buildings, retail establishments, commercial buildings, and any commercial establishment not specified herein shall have one off-street parking space for each three hundred square feet of gross floor area.
k. Wholesale, manufacturing, and industrial plants, including warehouses and storage buildings and yards, public utility buildings, contractor equipment and storage yards, business service establishments such as blueprinting, printing and engraving, soft drink bottling establishments, fabricating plants, and all other structures devoted to similar mercantile or industrial pursuits, shall have at least one off-street parking space for each three employees and an additional one parking space for each one thousand square feet of gross floor area.
l. Schools shall have at least one off-street parking space for each three employees, including administrators, teachers, and building maintenance personnel, and at least one off-street parking space for each ten high school, college or university students, predicated upon the designed capacity of the physical plant. Such parking shall be located on the same lot or on continuous lots with said uses.

D. Off-Street Loading Space

In order to avoid undue interference with the public use of streets, alleys, and sidewalks, on-the-property berths are required for the standing, loading, and unloading of vehicles. Such berths shall not be less than 10 feet in width and 30 feet in length, exclusive of access aisles and maneuvering space. Any building exceeding a gross floor area of 25,000 square feet, except residences and apartments, shall provide one such berth plus an additional berth for each additional 80,000 square feet of gross floor area.

E. Handicapped Requirements

All off-street parking areas, except for single family residential, shall include spaces reserved for use by persons with disabilities. Spaces shall be provided in proportion to the total number of spaces required. American Disability Act standards will be used in determining compliance.

Total Parking Required on Lot	Required Number of Accessible Parking Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 and over	+1 space / 50 spaces

Each accessible parking space shall have on its right side, an adjacent access aisle not less than five feet in width, except that two accessible spaces may share a single access aisle. Every access aisle shall lead directly to a curbed ramp and accessible route of travel to the principle building or buildings on the site.

ARTICLE 15
SIGNAGE

A. TEMPORARY ADVERTISING SIGNS

1. Temporary single-faced or V-shaped signs advertising sale of lots from a recorded subdivision which was been approved by the proper authorities are permitted any district, subject to the following provisions and stipulations, when located in any Residential, C1, or PM District:

    a. Must be removed after 12 months or 30 days after completion of such sales, whichever time is shorter, unless such time is extended by the Board of Adjustment.
    b. Must be on or at the property being subdivided.
    c. Shall not be closer than 30 feet to a residential zoned property adjacent to such subdivision and provided further that when such sign is placed within 100 feet of a residence adjacent to said subdivision (or if a residence is later placed on such adjacent property within 100 feet of such existing sign), then the sign must be located (or relocated) to the setback required for such and the sign face made parallel to the street.
    d. No such sign exceeding 36 square feet of panel area shall be located closer than 300 feet to any other such sign in the same subdivision.
    e. Shall not exceed the height allowed for signs in the district where located.
    f. Shall not be audible or animated, including banners, pennants or devices set in motion by movement of air.
    g. May be lighted by indirect illumination as provided herein.

B. ON-STREET SIGNS:

(This section deleted as of February 5, 1998, “On-Street signs no longer allowed”)

C. OFF-STREET SIGNS

Signs, other than traffic safety signage, will not be allowed in any existing or projected street right-of-way or street easement.Any portion of a sign located other than in a street right-of-way or street easement shall be subject to the following provisions and stipulations:

1. Shall exercise installation and operational precautions necessary to assure adequate traffic safety and so as not to interfere with the efficiency of traffic control devices.

2. Safety and so as not to interfere with the efficiency of traffic control devices.

3. Any such sign placed in any unoccupied portion of the triangular area on a corner lot formed by measuring 33 feet along both street lines or street easement lines, as the case may be, from their intersection shall have a minimum bottom height of 8 feet above the ground level directly below such sign.

4. Shall have no supports or guys in any portion of a street or street easement, or alley occupied by roadway, curb, or sidewalk.

5. Shall not exceed a height of 20 feet above the ground grade level at the point of erection.

D. LIGHTING, ANIMATION, NOISE

Except where specifically designated to the contrary under a particular use district, no sign shall be illuminated, animated, or audible, including banners, pennants or devices set in motion by movement of air. Where lighting is permitted, the same shall be indirect illumination and the following provisions and stipulations shall prevail:

1. Shall not be intermittent, flashing, or scintillating.
2. All sources of light shall be set in hood type reflectors with sides extended beyond the light source, so that no direct light is visible to the side.
3. All light beams shall be trained directly on the copy space.
4. No light bulb or tube exceeding 100 watts is permitted, nor shall the combined illumination from all sources exceed 1.5 watts for each square foot of copy space.
5. Such illumination shall be controlled by automatic switch timed to turn off no later than 11:00 PM.

E. NON-CONFORMING SIGNS

Non-Conforming Signs shall be subject to the following regulations:

1. Subject to the remainder of this section, non-conforming signs that were lawful when established may be continued.

2. No sign may be enlarged or altered in such a manner as to increase the extent of the nonconformity nor may illumination be added to any nonconforming sign.

3. A nonconforming sign may not be moved or replaced except to bring the sign into complete conformity with this ordinance.

4. Restoration of a damaged sign may be accomplished in accordance with the following regulations:

    a. Minor repairs and routine maintenance of nonconforming signs is permitted and encouraged. Major renovation, i.e.: work estimated to cost more than 25% of the appraised value of the structure to be renovated, may only be done with the granting of a conditional use permit. Cost shall mean the fair market value of the materials and services necessary to accomplish the repair or maintenance.
    b. If a nonconforming sign is damaged to an extent of 50% or less of theappraised value of the damaged structure, then it may be repaired and replaced and the nonconforming use may be resumed, provided that restoration is started within three (3) months and

completed within six (6) months. If the damage exceeds 50% or the structure is voluntarily razed or is required by law to be razed, the structure shall not be restored except in full conformity with the regulations for the zone in which it is located, and the nonconforming use shall not be resumed.

c. For the purpose of paragraph b. above, the extent of damage shall be based on the ratio of the estimated cost of restoring the structure to its condition prior to such damage or partial destruction to the estimated cost of duplicating the entire structure as it existed prior to the damage. Estimates for this purpose shall be reviewed and approved by the Director of Community Development or Chief Building Official and shall be based on the minimum cost of construction in compliance with adopted building codes and ordinances.

5. The message of a nonconforming sign may be changed so long as this does not create any new nonconformity (for example - creating an on-site sign which is not in conformance with on-site sign regulations).

6. Routine maintenance and repairs may be done so long as the cost of such work does not exceed 50 % of the value of such sign within any 12-month period.

7. If a nonconforming sign advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that has not been offered or conducted for a period of 180 days, that sign shall be considered abandoned and shall be removed within 30 days after such abandonment by the owner, agent or person having the beneficial use of the building, lot or structure upon which the sign may be found. If the business is resumed following the abandonment, all signs shall conform to this ordinance.

8. If a nonconforming billboard remains blank for a continuous period of 180 days, that billboard shall be deemed abandoned and shall be removed within 30 days after such abandonment by the owner, agent or person having the beneficial use of the building, lot or structure upon which the sign may be found. For the purposes of this section, a sign is blank if:

   a. It advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that is no longer operating or being offered or conducted; or
   b. The advertising message it displays becomes illegible in whole or substantial part; or the advertising copy, paid for by a party other than the sign owner or promoting an interest other than the rental of the sign, has been removed.

ARTICLE 16
ENFORCEMENT

SECTION 16-10
ESTABLISHMENT OF POSITION OF COUNTY ZONING INSPECTOR

A. For the purpose of the enforcement of this Ordinance within the zoned area of Gila County, the position of County Zoning Inspector is hereby established.

   1. The Director of the Gila County Community Development Office is hereby designated County Zoning Inspector.

   2. The Board of Supervisors may also designate such Deputy Zoning Inspectors as it deems necessary for the proper administration and enforcement of this Ordinance.

B. From and after the establishment and filling of this position, it shall be unlawful to erect, construct, reconstruct, alter or use any building or other structure within a zoning district covered by this Ordinance without first obtaining a building permit. Inspectors shall recognize the limitations placed on their authority and the exceptions to zoning and permitting regulations imposed by Arizona Revised Statutes Chapter 6, Article 2, § 11-808.

SECTION 16-11
VIOLATIONS

A. It is unlawful to erect, construct, reconstruct, alter, maintain, or use any structure or land in violation of any provision of this Ordinance, and any such violation constitutes a public nuisance.

   1. Criminal Penalties

      Any person, firm or corporation, whether as principal, owner, agent, tenant, employee or otherwise, who violates any provision of this ordinance or violates or fails to comply with any order or regulation made hereunder **is** guilty of a Class 2 Misdemeanor pursuant to A.R.S. § 11-808. Each and every day during which the illegal activity, use or violation continues is a separate offense.

   2. Civil Penalties

      Any person, firm or corporation, whether as principal, owner, agent, tenant, employee or otherwise, who violates any provisions of this ordinance **shall** be subject to a civil penalty. Each day of a continuing violation is a separate violation for the purpose of imposing a separate penalty. The civil penalty for violations of this ordinance shall be established by separate resolution of the Board of Supervisors, but shall not exceed the amount of the maximum fine for a Class 2 Misdemeanor. An alleged violator shall be entitled to an

administrative hearing on his liability, and review by the Board of Supervisors as provided in A.R.S. §11-808. Pursuant to that Section 16-11.A. The Board of Supervisors shall adopt written Rules of Procedures for such hearing and reviews.

3. Remedies

An alleged violator who is served with Notice of Violation subject to civil penalty shall not be subject to a criminal prosecution for the same factual situation. However, all other remedies provided for herein shall be cumulative and not exclusive. The conviction and punishment of any person hereunder shall not relieve such person from the responsibility to correct prohibited conditions or improvements nor prevent the enforcement, correction or removal thereof. In addition to the other remedies provided in this article, the Board of Supervisors, the County Attorney, the Inspector, or any adjacent or neighboring property owner who shall be damaged by the violation of any provision of this ordinance, may institute, in addition to the other remedies provided by law, injunction, mandamus, abatement or any other appropriate action, proceeding or proceedings to prevent or abate or remove such unlawful erection, construction, reconstruction, alteration, maintenance or use.

SECTION 16-12
LEGAL PROCEDURES

A. Notice of Violation/Summons

Except in cases of alleged imminent hazards, the Community Development Director or the Director's designee shall provide reasonable written notice to the owner, occupant, and/or the person, firm, sole proprietorship, corporation, partnership, LLC, or other entity in possession of the property in violation of the UDC in an attempt to obtain voluntary compliance with the provisions of the UDC or go to hearing.

1. Reasonable notice shall consist of written notification and shall include the following:

    a. Identification of the property in violation by street address if known and if not known, by tax parcel number.
    b. A clear description of the violation(s) of the UDC and request for voluntary compliance by correction of the described violation(s) within thirty (30) days from the date of the Notice of Violation. Such thirty-day period shall include weekends and holidays.
    c. A warning that if the violation(s) is not corrected within thirty (30) days from the date of the Notice of Violation, the County may pursue enforcement of the UDC by issuance of summons to the individual to be present at the next hearing.
    d. A warning that each person, firm, sole proprietorship, corporation, partnership, LLC, or other entity violating any provision of the UDC shall be subject to the Civil Penalties set in accordance with Article 16 of this Unified Development Code.

e. The right to meet with and discuss the Notice of Violation with the issuer of the Notice, within (30) days of the date of the Notice. Such thirty-day period shall include weekends and holidays.

B. Service of Notice of Violation

1. The Notice of Violation shall be hand delivered or mailed by certified mail to the property address;

2. to the last known mailing address of the property owner; and

3. to the occupant, or such other person, firm, sole proprietorship, corporation, partnership, LLC, or other entity in possession or control of the property, if such mailing address is different from the property address.

C. Notice of Violation/Summons/Complaint for appearance before hearing officer

1. Commencement of Action

   Every action or proceeding brought before the Hearing Officer for a civil violation of any referenced ordinance shall be commenced by the filing of a complaint with the Code compliance Supervisor by an officer authorized to file such complaints.

2. Complaints shall contain the name and address of the alleged violator, or legal description and/or the address of site of violation, a statement of facts constituting the specific violation, and the ordinance or regulation of designation of the violation.

3. Service of Notice of Violation/Summons/Complaint

   Service of the Notice of Violation/Summons may be accomplished and will be deemed effective and complete by any of the following methods:

   a. The complaint shall be accompanied by a Notice of Hearing which shall set forth a date for appearance.
   b. The Complaint and Notice of Hearing shall be personally served on the alleged violator at least fifteen (15) days prior to the appearance date. If the County Officer is unable to personally serve the notice, then the complaint and notice may be served by Certified Mail in accordance with Section 16-12, Paragraph C of this code.
   c. Any Notice served upon the alleged violator other than by personal service shall be served at least thirty (30) days prior to the date for appearance.

D. Procedure in Hearing

1. Civil Hearing Officer

   The Hearing Officer shall be hired by the county.

2. Appearance

    a. The defendant may admit or deny responsibility by appearing in person at the time and date set to appear and entering a plea, or by mailing to the Code Compliance Supervisor a completed, signed and dated Notice to Appear and Entry of Plea form provided with the complaint.
    b. In lieu of such form, a short statement signed by the defendant or his/her attorney admitting or denying the allegations of the complaint, which must be received in the office of the Code Compliance Supervisor by 5:00 p.m. on the business day prior to the date set for appearance and plea.

3. Default Judgment

    a. Failure to appear per Notice of Violation/Summons

        i. If the defendant fails to appear as directed on the Notice of Violation/Summons, the hearing officer shall enter a default judgment against the defendant and impose civil penalties.
        ii. If the defendant fails to comply with the decision entered by the Hearing Officer, the County may file an affidavit setting forth the facts relating to the defendant's noncompliance and request the Hearing Officer to enter an Order to Show Cause requiring the defendant to appear and show cause why additional penalties should not be imposed for noncompliance.

    b. Failure to appear at final hearing
    If the defendant fails to appear at the final hearing, the hearing officer shall enter a default judgment against the defendant.

4. Record of proceedings

    A record of the hearing shall be made by audio tape. Defendant may have proceedings recorded by a court reporter at defendant's expense.

5. Burden of proof at hearing; Witnesses

    Each party shall be responsible for compelling the attendance of its respective witnesses. The burden of proof at the hearing shall be by a preponderance of the evidence.

6. Rules of Evidence

    The Arizona Rules of Evidence shall not apply. Any evidence offered may be admitted subject to a determination by the hearing officer that the offered evidence is relevant and material and has some probative value to a fact at issue. Nothing in this rule is to be construed as abrogating any statutory provision relating to privileged communications.

7. Judgment

   If, after final hearing, the hearing officer determines the existence of a violation(s), or in the event the defendant admits the allegations in the Notice of Violation/Summons or complaint, the hearing officer shall enter judgment in favor of the plaintiff. Written judgment shall be rendered not later than ten (10) working days after conclusion of the final hearing.

8. Penalties

   If the defendant at the conclusion of the hearing is found responsible for the civil violation, the Hearing Officer shall enter a decision for the County and impose a civil penalty as set forth in the applicable Gila County Development Codes.

   a. Monetary penalty
      A penalty for the first violation for an individual person is not more than $700.00 per day of continuing violation as determined by the hearing officer, or as admitted by defendant. For an enterprise, not more than $10,000 per day of continuing violation.
   b. Other Penalties
      Any other order deemed necessary or appropriate in the discretion of the hearing officer.
   c. Additional penalty for failure to comply with judgment
      Failure of a defendant to comply with any order contained in a judgment entered by the hearing officer shall result in an additional penalty for an individual of not less than $100.00 nor more than $700.00 per day of continuing violation for each day such defendant fails to comply after the date ordered to do so. For an enterprise, not more than $10,000 per day of continuing violation.

9. Notice of Right to Appeal

   Following the decision and imposition of a civil penalty and at the conclusion of the hearing, the Hearing Officer shall advise the defendant of defendant's right to a review of the Hearing Officer's final decision by the Board of Supervisor.

   a. Notice of Request for Appellate Review
      The party requesting appellate review shall file a written Notice of Request for Appellate Review with the Code Compliance Supervisor within fifteen (15) days after the signing of the final decision, notice or order by the Hearing Officer.
   b. Transmission of Record
      Within twenty (20) working days after notice of appeal is filed, the Code Compliance Supervisor shall prepare and transmit the record to the Clerk of the Board.
   c. The parties may stipulate that the review may be on less than a complete record or upon stipulated facts. The designation of the stipulated record shall be in writing and filed with the Code Compliance Supervisor within (10) days after filing of the Notice of Request for Appellate Review.

d. Upon transmission of the record, the Clerk of the Board shall send notice by mail to all parties that the record has been transmitted and stating that written memoranda are due within fifteen (15) working days from the date of transmission of the record by the Code Compliance Supervisor.

10. Appellate Memoranda

a. Each party may file a written memorandum no later than fifteen (15) working days following the date of transmission of the record to the Board.
b. Oral Argument
   i. Limited to five (5) minutes for each party, unless extended by the Board.
   ii. Oral argument shall be based on the record and there shall be no presentation of new evidence.
c. Disposition by the Board
   After determination of an appeal, the Board of Supervisors may:
   i. Affirm the decision of the hearing officer; or
   ii. Affirm in part and reverse in part and, if necessary remand for further proceedings; or
   iii. Reverse the action of the Hearing Officer and, if necessary remand for further proceedings.

SECTION 16-13
INSPECTION

The Zoning Inspector or any Deputy Inspector, or any other enforcement officer may, in the discharge of his or her duties as stated herein, and for good or probable cause, enter any premises, building, or structure at any reasonable hour to inspect the same in connection with any application made under the terms of this Ordinance, or for any investigation or inspection as to whether or not any portion of such premise, building or structure is being used in violation of this Ordinance. In all cases in which permission to inspect has been refused, the owner or occupant of any premises sought to be inspected shall be given written notice personally or by registered mail at least twenty-four (24) hours before such inspection takes place. Every person who denies, prevents, or obstructs access to such premises after receipt of such written notice, or so attempts, shall be considered guilty of misdemeanor.

SECTION 16-14
CLEAN AND LIEN

A. Purpose

Pursuant to A.R.S. §11-268, requiring an owner, lessee or occupant of buildings, grounds or lots located in the unincorporated areas of the county to remove rubbish, trash, weeds, filth, debris, or dilapidated buildings which constitute a hazard to public health and safety from buildings, grounds, lots, contiguous sidewalks, streets and alleys; prescribing the procedure for notice and appeal; providing for the removal thereof by the county and the assessment of the cost thereof

as a lien against the property in the event of non-compliance; and prescribing a penalty for the placement of such materials on the property of another.

B. Violation

A person shall have created a hazard to Public Health and Safety and committed a Violation of this ordinance if such person, without lawful authority, in any unincorporated area of the county.

1. Places, permits or provides for a dilapidated building to remain upon property of which they are owner, lessee or occupant or upon any other private or public property not owned or under the control of such person.

2. Places, permits or provides for an accumulation of rubbish, trash, weeds, filth, debris maintained in such a manner that it constitutes a serious fire hazard to remain upon property of which they are owner, lessee or occupant or upon any other private or public property not owned or under the control of such person.

C. Duty to Remove

A person shall remove or otherwise abate a hazard to Public Health and Safety as defined herein within 30 calendar days after receiving service of a Notice of Violation from the Code Compliance Officer.

D. Notice of Violation

1. Upon reasonable belief that a violation of this ordinance has occurred, the Code Enforcement Officer shall issue a Notice of Violation in which shall be served in person or by certified mail upon the owner, occupant or lessee at their last known address or at the address on file in the County Treasurer's Office to which the most recent tax bill was mailed. If the owner does not reside on the property, a copy of the notice shall be served upon the owner in person or by certified mail to the owner's last known address. Failure by any party to receive the notice shall not be a bar to abatement, assessment of costs or lien of assessment pursuant to this Ordinance.

2. If 30 days after service of the Notice of Violation the hazard to Public Health and Safety has not been removed, the Code Enforcement Officer may issue a Complaint and Notice of Hearing pursuant to Section 16-12.C, and 16-12.D which shall be served pursuant to 16-12.D upon the person believed to be in violation of this Ordinance.

3. The Gila County Hearing Officer Rules of Procedure shall be the Procedural Rules that the Hearing Officer shall follow to conduct the hearing.

4. If, at the hearing or any subsequent review hearing, the Hearing Officer finds that a person has failed to remove or otherwise abate a hazard to Public Health and Safety pursuant to this Ordinance, he may issue a written Order to Abate.

E. ORDER TO ABATE

The ORDER to abate shall contain the following:

1. The street address, parcel number and/or the legal description sufficient for identification of the property on which the violation occurred.

2. A statement indicating that there is reasonable belief a violation has occurred.

3. A statement that all items causing the violation shall be removed from the property and legally disposed of by a certain date, not less than 30 days from the date of the notice.

4. A statement that Gila County may cause the violation to be removed or abated if not removed or abated by a certain date.

5. A statement that rubbish, trash, weeds, filth, debris or building materials must be disposed of at an approved waste collection facility or by other legal means, and that a tipping fee receipt or other evidence of legal disposal is to be submitted to the County Officer prior to a determination of a compliance with the Notice to Abate.

6. A statement acquired by the Code Enforcement Officer containing an estimate of costs, fees and penalties, including incidental costs and the costs of additional inspections, to be incurred by Gila County should the responsible party not remove or abate the violation by a certain date.

7. A statement that all costs, fees and penalties incurred by Gila County shall be assessed against the responsible party, that this assessment shall be recorded as a lien against the property, and that the assessment may also be collected by a collection agency. The collection agency may add another twenty-five percent (25%) to the total amount of the civil penalties which retains it's compensation for its services.

8. A statement that an appeal to the Gila County Board of Supervisors of an Order to Abate must be filed in writing within 15 days after the Order is signed by the Hearing Officer. Failure to file an appeal according to the appeal procedures in the Gila County Hearing Officer Rules of Procedure shall be a waiver of the right to appeal to the Board of Supervisors.

9. A statement that any person that places any rubbish, trash, filth or debris upon any private or public property located in the unincorporated areas of the county not owned or under the control of the person is guilty of a class 1 misdemeanor and may be subject to criminal penalties in addition to the costs of abatement.

F. Appeal an Order to Abate

Person receiving an Order to Abate may appeal to the Board of Supervisors as follows:

1. A written Notice of Appeal shall be filed with the Code Compliance Supervisor within 15 days after the Order to Abate was mailed or personally served. The date of receipt by the Code Compliance Supervisor shall be the date of filing.

2. Contents of Notice of Appeal. The Notice of Appeal shall state in reasonable detail why the appellants should not be required to comply with the Order to Abate. The Notice of Appeal and information related to the Order to Abate will be forwarded to the Planning and Zoning Commission for review and recommendation. The Commission will forward their recommendation to the Clerk of the Board for consideration by the Board of Supervisors.

3. Hearing on Appeal. Upon receipt of the Notice of Appeal and the Planning and Zoning Commission recommendation, the Clerk of the Board shall set a date, time and place. The County Officer shall appear and present evidence of the existence of the hazard to Public Health and Safety. The appellant may present evidence controverting the existence of the hazard to Public Health and Safety. The hearing shall be informal and without regard to the rules of procedure or evidence governing court proceedings. The Board shall decide the appeal, and its decision shall be final.

G. Extension of Time for Compliance

If the Board's decision is adverse to the appellant, the date for compliance set forth in the Order to Abate shall be extended by thirty (30) days from the date of the Board's decision**.**

H. Removal by Board

If the Owner, Lessee, or Occupant fails to remove or otherwise abate the hazard to Public Health and Safety within 30 calendar days of mailing and or personal service of the Order to Abate (or such extension thereof as may be granted in writing by the Board), the Board may, at the expense of the owner, lessee or occupant, remove or abate the hazard to Public Health and Safety or cause it to be removed or abated; provided, however, that if such removal or abatement is not undertaken within 180 days after the right to do so accrues, a new Notice of Violation shall be served as provided in Section 16-14.D.

1. Cost of Removal

   The costs assessed for removal or abatement shall not exceed the actual costs and incidental expenses thereof.

2. Historical review

   Before the removal of a dilapidated building, the Board shall consult with the state historic preservation officer to determine if the building may be of historical value.

3. Removal from Tax Rolls

   Upon the removal of a dilapidated building, the County Assessor shall adjust the valuation of the Real Property on the property assessment tax roll from the date of removal.

I. Assessment

Upon the removal or abatement of hazard to Public Health and Safety, the actual cost of removal or abatement, together with the actual costs of any additional inspections and other incidental costs, shall be an Assessment against the Real Property on which the hazard to Public Health and Safety was located.

J. Notice of Assessment

A written Notice of Assessment shall be served in the same manner as the Order to Abate.

The Notice of Assessment shall contain:

1. The street address (if one exists), parcel number and/or a legal description sufficient for identification of the property on which the violation occurred.

2. A statement of what the violation was.

3. A statement that the items causing the violation were removed from the property according to the Order to Abate.

4. A statement of the actual costs, fees and penalties, including incidental costs and the costs of additional inspections, incurred by Gila County to remove or abate the violation.

5. The Notice shall state that entire cost is due and payable in full no later than 30 days from the date of issuance of the Notice and that the assessment will become delinquent as of that date. The Notice shall be signed by the Code Enforcement Officer. The Notice shall also contain the following statement in bold face print:

   NOTICE: THIS NOTICE OF ASSESSMENT PURSUANT TO A.R.S. § 11-268 SHALL CONSTITUTE A LIEN UPON THE PROPERTY DESCRIBED IN THE NOTICE IN FAVOR OF GILA COUNTY. THE COUNTY MAY TAKE LEGAL ACTION TO FORECLOSE THE LIEN AND SELL THE PROPERTY DESCRIBED TO RECOVER THE COSTS STATED IN THE NOTICE OF ASSESSMENT.

6. A statement that all costs, fees and penalties incurred by Gila county shall be assessed against the responsible party, that this assessment shall be recorded as a lien against the property, and that the assessment may also be collected by a collection agency.

7. A statement that an appeal to the Gila County Board of Supervisors of a Notice of Assessment must be filed in writing to the Code Compliance Supervisor within 15 days after the service of the Notice. Failure to file an appeal according to the appeal procedures in the section of the code shall be a waiver of the right to appeal to the Board of Supervisors.

K. Report of Assessment

1. If an appeal of the Notice of Assessment is not filed in a timely manner, the Code Enforcement Officer shall prepare a Report of Assessment for consideration by the Board of Supervisors and shall contain:

   a. The street address, parcel number and/or a legal description sufficient for Identification of the property on which the violation occurred;
   b. A statement of what the violation is; and
   c. An itemized listing of the actual costs of removal or abatement of the violation, the actual costs of additional inspections and other incidental costs. Upon acceptance of the Report, the Chairman of the Board shall sign it.

L. Appeal of Notice of Assessment

All appeals of assessments shall be in writing and shall specify the grounds for appeal of the assessment. The date of receipt of the Notice of Appeal by the Board shall be the date of filing. No appeals of violations shall be heard upon appeal of Notice of Assessment.

M. Hearing on Appeal

Upon receipt of the Notice of Appeal, the Clerk of the Board shall set date for review and mail the parties a written notice of time and place of the Appellate review.

1. The Code Enforcement Staff shall appear and present the facts supporting the assessment as well as an itemized listing of the actual cost of removal or abatement, the costs of any additional inspections and other incidental costs. The Appellant may present evidence controverting the imposition of the assessment.The Board shall determine whether the assessment was made in accordance with the applicable ordinance or resolution and whether the amount of the assessment is sufficient to cover the actual costs of abatement and related activities.

2. The Board shall issue its findings in writing upholding or modifying the amount of the assessment.

3. Written notice of the final decision of the Board shall be hand delivered or mailed by first class mail to all parties by the Clerk of the Board within fifteen (15) calendar days of the Board's decision.

4. Appeal to the Superior Court. Judicial review of the final decision of the Board shall be pursuant to Arizona Revised Statutes, Title 12, Chapter 7, Article 6 (12-901 et seq.)

N. Recordation

If the owner, lessee, or occupant fails to pay the assessment within 30 calendar days after receipt of the Notice of Assessment (or any extension as may be granted in writing by the County) the assessment shall be delinquent and may be recorded in the office of the Gila County Recorder.

O. Lien of Assessment

The assessment shall be a lien against the real property from and after the date of recordation and shall accrue interest at the statutory judgment rate until paid. The lien of the assessment shall be subject and inferior to all prior recorded mortgages and encumbrances, and to such other liens as specifically provided by law.

P. Foreclosure

The Board may, but shall not be obligated to, bring an action to enforce the assessment lien in the Gila County Superior Court at any time after the recordation of the assessment. The recorded assessment is prima facie evidence of the truth of all matters recited therein and of the regularity of all proceedings before the recordation thereof.

1. Imposed assessments run against the property until they are paid and are due and payable to the Community Development Division in equal annual installments as follows:

    a. Assessments of less than five hundred dollars ($500) shall be paid within one (1) year after the assessment is recorded.
    b. Assessment of five hundred dollars ($500) or more but less than one thousand dollars ($1,000) shall be paid within two (2) years after the assessment is recorded.
    c. Assessments of one thousand dollars ($1,000) or more but less than five thousand dollars ($5,000) shall be paid within three (3) years after the assessment is recorded.
    d. Assessments of five thousand dollars ($5,000) or more but less than ten thousand dollars ($10,000) shall be paid within six (6) years after the assessment is recorded.
    e. Assessments of ten thousand dollars ($10,000) or more shall be paid within ten (10) years after the assessment is recorded.

Q. Subsequent Assessments

A prior assessment shall not constitute a bar to a subsequent assessment or assessments for such purposes and any number of liens on the same lot or tract of land and any or all liens may be recorded and may be enforced in the same or separate actions by the County.

R. Additional Penalties

1. Classification; liability.

    In addition to the penalties imposed pursuant to the abatement and assessment provisions of this Ordinance, any person, firm, or corporation placing any rubbish, trash, filth or debris

upon any private or public property located in the unincorporated areas of the County not owned or under the control of the person, firm or corporation shall be guilty of a Class 1 Misdemeanor and, in addition to any fine which may be imposed for a violation of any provision of this Ordinance, shall be liable for all costs which may be assessed pursuant to this Ordinance for the removal of the rubbish, filth or debris.

2. Fine

   Upon conviction of a violation of Section 16-14.R.1 of this Ordinance, the court shall impose a fine of not less than One Hundred ($100.00) Dollars.

3. Non-Exclusive Remedy

   The remedies provided for in this ordinance shall be in addition to any and all other remedies, civil or criminal, available to Gila County pursuant to statute or common law, specifically including A.R.S 13-2908, 36-602, and 49-143.

ARTICLE 17
PERMITS

Application for building permits shall be made in the office of Building Safety, Gila County Community Development. See the Gila County Building Code Ordinance for specific regulations and procedures that apply.

ARTICLE 18
DIVISION OF LAND INTO LOTS, TRACTS, AND/OR PARCELS

SECTION 18-10
MINOR LAND DIVISIONS

A. Title, Purpose and Administration

1. The intent of this Ordinance is to provide for the orderly growth and harmonious development of Gila County by prescribing certain minimum requirements regulating the conditions under which minor divisions of land within Gila County may be permitted, and by establishing a review procedure for minor divisions of land within Gila County.

2. The purpose of this Ordinance shall be to insure that minor land divisions shall: comply with existing zoning regulations; provide for adequate legal access; not constitute a subdivision; not constitute an attempt to evade or circumvent the laws and regulations governing subdivisions; insure compliance with related ordinances, laws and regulations; and provide for conveyance by accurate legal description.

B. Authority

The Gila County Minor land Division Ordinance is authorized by Sections 11-809, title 11, Ch. 6, and 11-251.05 of Arizona Revised Statues, as amended, and is hereby declared to be in accordance with all provisions of these statutes.

C. Administration

The Gila County Community Development Division is hereby authorized to administer this Ordinance.

D. Jurisdiction

This Ordinance shall govern minor land division in those areas of Gila County lying outside the corporate limits of any municipality.

E. General Requirements and Procedures

1. Permit Required Prior to Recordation.

a. No parcel of land may be divided into five or fewer separate parcels, lots or fractional interests either by recordation of a contract of sale or deed of conveyance, or by requesting the creation of a separate tax parcel through the Gila County Assessor's Office, without first obtaining a Minor Land Division Permit issued by the Director subject to the Provisions of this Ordinance. The completed application form will serve as the Minor Land Division Permit.

2. Filing an Application

   a. Any applicant proposing a minor land division shall file an application for a Minor Land Division Permit with the Director on the form provided. A fee of $125.00 for the first split and $25.00 per split thereafter with the maximum fee not to exceed $200.00; is to be paid at the time of filing.
   b. The fee is non-refundable and is to cover the costs of processing the application.
   c. Required Information.

      i. A legal description of the property prepared by a qualified Arizona Registrant as established by the Arizona State Board of Technical Registration.
      ii. A scaled plat drawn by a qualified Arizona registrant as established by the Arizona State Board of Technical Registration showing the existing and proposed boundaries, access, and utility easements.
      iii. Names, addresses, and telephone numbers of all parties of interest to the division.
      iv. A description of access to the parcels proposed to be divided and method by which such access is to be granted.
      v. The current zoning of the parcels proposed to be divided.
      vi. A scaled site plan on blue-line or other reproduction showing the location of all; existing improvements and structures (wells, septic tanks, fences, etc.) showing setbacks and distances between structures, on both the remaining parcels and parcels to be created by the proposed division.
      vii. The plat must comply with State and County standards as outlined in the "Gila County Record of Survey - Minor Land Division Map Guidelines."

3. Action of the Director

   a. The Director shall review the completed application and shall issue a decision to approve of or deny the permit within thirty (30) days from receipt of the completed application which includes any required additional information, corrections and/or clarifications, otherwise the minor land division shall be deemed approved as submitted. A denial can only be based on one of the following findings:

      i. The parcels resulting from the division do not conform to the applicable zoning regulations.
      ii. The proposed division constitutes a subdivision or conspiracy to subdivide as defined by this Ordinance.
      iii. One or more of the resulting parcels does not have legal access.
      iv. The plat or legal description is found to be inaccurate.

   b. The Director shall review the decision to deny a minor land division upon the presentation of evidence that any deficiency in the application which resulted in denial has been complied with.

c. Recordation Without Approval

Pursuant to the provisions of Arizona Revised Statutes, Section 11-809.E, recordation of a division of land may not be denied for non-compliance with the requirement for legal access or compliance with applicable zoning regulations. Should an applicant choose to record a Minor Land Division plat without a permit approved by the Director, the following statement shall be required to be placed on any deed or recorded plat in such manner that it becomes a matter of public record related to the parcels, lots or fractional interests created by the division:

> "Notice is hereby given that the parcel of real estate created by the division recorded pursuant to this document either does not conform to the zoning regulations in force at the time of recordation, or that no legal access exists in accordance with the provisions of the Minor Land Division Ordinance of Gila County. In consequence, any and all Gila County Development permits may be denied until such time as deficiencies relative to this parcel are corrected."

F. Enforcement and Effectuation

1. Violations

a. Henceforth, it shall be unlawful to create minor land divisions within the unincorporated areas of Gila County in violation of the terms of this Ordinance.
b. Henceforth, it shall be unlawful for a person or group of persons acting in concert to attempt to avoid the provisions of this Ordinance or the subdivision laws of the State of Arizona by acting in concert to divide a parcel of land into six (6) or more lots or sell or lease six (6) or more lots by using a series of owners or conveyances.

2. Penalties

Failure to comply with the terms of this Ordinance shall result in the withholding of any Gila County permits for development until such time as deficiencies relative to the parcels created by the Minor Land Division are corrected.

SECTION 18-11
SMALL SUBDIVISIONS

A. Purpose and Authority

1. The purpose of this article is to provide an alternative process for smaller subdivisions that assures compliance with the intent of current subdivision regulations while completing the review process within a shorter time frame and providing greater flexibility in the application of current standards. It is also the intent to encourage small scale development which conforms to the current Comprehensive Plan and Zoning Regulations that provides a means for land development other than the conventional land division process.

2. The authority to develop special regulations for small subdivisions is granted under A.R.S. §11-806.01(N).

3. To encourage green building projects.

B. Applicability

1. Subdivisions with 20 or fewer lots are eligible for this expedited review process and shall meet the following criteria:

   a. Lot sizes are flexible so long as health and safety issues, including water and sanitation are properly addressed along with the requirements of the applicable zoning district.
   b. No construction is proposed within a floodway or 100 year flood plain.
   c. The proposed subdivision is not part of a larger planned development.
   d. The primary purpose of the development is for residential use but mixed uses may be considered where commercial uses are compatible with residential development.
   e. The proposed subdivision complies with existing zoning requirements and is compatible with the Gila County Comprehensive Plan.

C. General Requirements and Procedures for Submission of Plats

1. Section 18-12.B of the Subdivision Ordinance shall be modified to the following Sections 18-12.B.1, B.2, B.3, B.4, B.8 and B.9 shall be applicable with all applications for a Small Subdivision.

2. The pre-application conference shall be held with the applicant prior to distributing the final draft to reviewing agencies.

3. At the completion of the Pre-Application process the applicant will submit 12 copies of the Draft Final Plat to be reviewed by staff along with improvement plans.

4. The Community Development Director shall send copies of the Draft Final Plat to all affected staff, adjacent property owners and agencies requesting a response within 30 days.

5. At the end of the 30 day period the Community Development Director shall schedule a meeting with the Planning & Zoning Commission to review all comments and secure a recommendation from the Commission to the Board of Supervisor's regarding the disposition of the Final Plat.

D. Design Standards

1. Design Standards as shown in Article 5 of the Subdivision Regulations shall be applicable to all requests for approval of a Minor Subdivision. The following waivers may be considered by the Public Works Director or his/her designee.

E. Improvement Standards

1. Article 6 of the Subdivision Ordinance shall be applicable to all requests for approval of a Minor Subdivision.

F. Green Building Incentive

1. Applicants who propose to include green building concepts, where at least 10% of the total subdivision improvement costs or housing development costs are dedicated to green building, may be eligible for up to 20% density bonus from the Board of Supervisors. (Number of lots allowed will be rounded to next higher number if 20% equals a fraction of a lot).

   a. Project includes utilization of solar power.
   b. Project includes reuse of grey water and water harvesting strategies.
   c. Project includes landscaping with vegetation common to the area.
   d. Other Green Building concepts may be proposed for consideration.

G. Fees

1. The fees for processing an application for a small subdivision shall be the same as the fees for a preliminary plat, plus the cost to record.

H. Miscellaneous

1. Sections 18-12.F, G, and H of the Subdivision Ordinance shall be applicable to applications for a Minor Subdivision.

SECTION 18-12
SUBDIVISIONS

A. Title, Purpose and Administration

The purpose of these regulations is to provide for the health, safety, and general welfare and the harmonious development of Gila County; to secure adequate traffic circulation through properties having optimum utility and livability; to secure adequate provisions for water supply and distribution, drainage and flood control, sanitary sewerage, and other health requirements; to insure and facilitate provision of sites for schools, recreation, and other public purposes; to promote conveyance of land by accurate legal description; and to establish procedures which will achieve a basis of mutual understanding and equitable relationships between public and private interests.

1. Authority

   The Gila County Subdivision Regulations are authorized by Title 11-251 and Title 11-802 of the Arizona Revised Statutes, as amended, and are hereby declared to be in accordance with all provisions of these statutes.

2. Short Title

   For the purpose of identification, these Regulations shall hereafter be referred to as the "Gila County Subdivision Regulations".

3. Application of Regulations

   a. Plat Approval
      No plat shall be recorded, nor offered for record, nor shall any land be offered for sale with reference to such plat, until said plat has been approved in writing by the Planning Commission and by the County Board of Supervisors. The Planning Commission shall ascertain, before approving it, that said plat has satisfied all of the requirements of these regulations.
   b. Plans, Plats and Replats
      All plans of streets, highways, alleys, or other portions of the same intended to be dedicated to a public use or to the use of purchasers or owners of lots fronting thereon or adjacent thereto, and all plans, plats, plots, and replats of land laid out in a subdivision or building lots, shall be submitted to the Planning Commission for approval. The Planning Commission shall ascertain, before approving it, that said plan, plat, plot, or replat has satisfied all of the requirements of these regulations.
   c. Controlling Regulations
      Where these regulations impose a greater restriction upon land improvement or development and land use than is imposed or required by existing provisions of law, ordinance, contract, or deed, these regulations shall control. These regulation include, by reference, the current adopted Gila County Drainage and Grading Ordinance, Floodplain Management Ordinance and Roadway Design Standards Manual.

4. Prohibition of Circumvention

   No person, firm, corporation, or other legal entity shall, for the purpose of circumventing any of these regulations, hereafter sell, offer to sell, or divide any lot, piece or parcel of land which constitutes a subdivision or part thereof, as defined herein, without first having recorded a plat thereof in accordance with these regulations. Nothing contained in these regulations shall be construed as releasing a subdivider from full compliance with the Arizona Revised Statutes and the rules and regulations of the Arizona Department of Real Estate pertaining to the establishment of subdivisions.

5. Jurisdiction

   These regulations shall govern the subdivision of all land in Gila County that lies outside of the corporate limits of any municipality, excluding public domain and tribal lands.

6. Administration

   a. The Gila County Planning and Zoning Commission is hereby authorized to receive, process and otherwise act upon preliminary and final subdivision plats in accordance with these regulations. The County Planning and Zoning Department, the County Engineering Department, and the County Health Department are hereby designated as Planning Advisors to the Commission and the Board of Supervisors and charged with the duty of investigating and reporting upon matters referred to them in accordance with these regulations.
   b. No final plat of a subdivision shall be approved by the Planning Commission and accepted by the Board of Supervisors unless it conforms to the provisions of these regulations and to the provisions of the Planning and Zoning Ordinance for Gila County.

7. Processing Fee Schedule

   The submission of a preliminary or final plat shall include payment to the County Planning Department of a filing fee according to a fee schedule as determined by the Planning Commission and approved by the Board of Supervisors. At the time the final plat is approved and submitted for recording, a filing fee is required for the County Recorder.

B. General Requirements and Procedures for Subdivision of Plats

1. General

   Until such time that the final plat of a subdivision has been approved in accordance with this article, no person proposing a subdivision within Gila County, outside the corporate limits of any city or town, shall subdivide or file a record of survey, map or plat for record, or sell any part of said subdivision, or proceed with any *grading, construction or other work on same.

   * Solely at the discretion of the Gila County Engineering Department, an “at risk” grading permit may be issued in some instances prior to approval of the final plat. The developer/contractor assumes all risk related to commencing grading prior to approval of the final plat, and the “at risk” grading permit issued by the Engineering Department does not warrant and/or guarantee to the developer/contractor that the final plat will be approved and/or that modifications to the final plat including lot and road configuration will not be required prior to final plat approval.

2. Duties of Subdivider

   a. While a subdivision is in the preliminary planning stage, the subdivider shall consult the Planning Commission or its designated representative to determine conformity

to the Comprehensive Plan, the Zoning Regulations, and compliance with the provisions of these regulations and requirements for the design and installation of public improvements as required by Gila County.

b. Good counsel on all phases of a proposed subdivision is essential at an early stage.
c. Through this type of review, the subdivider may be able to save time, avoid unnecessary mistakes, and to make the most of his opportunities.

3. Preliminary Planning

The following factors should be considered in the preliminary stage of planning a subdivision:

a. Demonstrated need for additional residential sites in the area.
b. Type and quality of homes to be built.
c. Lot sizes most adaptable to the use proposed.
d. Areas to be reserved for business or industrial use.
e. Special scenic locations or areas of historical, archeological, biological, environmental or drainage importance which need to be reserved.
f. School and/or park sites that will be required.
g. Access features which may be desirable along arterial and collector streets.
h. Areas subject to flooding and washes potentially subject to preservation under Section 404 of the Clean Water Act.
i. Suitability of land for urban development including topographic and natural features.
j. Water, sanitary sewer, solid waste disposal, storm sewer, electric, telephone, telecommunications, gas, and cable television utility services to be provided.
k. Fire and police protection.
l. Integration of the subdivision with existing and proposed development.
m. Appropriateness of the site for the proposed use.
n. Legal or tax problems likely to be encountered.
o. Impact to existing infrastructure.

4. Pre-Application Meeting

a. The subdivider shall schedule an informal Pre-Application Conference with the Planning Staff at least seven (7) days after providing the planning staff with a general outline of the proposal in the form of the following:

i. A legal description of the land to be developed.
ii. Sketch plans of land use, street layout, lot arrangement and anticipated lot sizes.
iii. Proposals for water supply, sewage disposal, drainage, street improvements, and treatment of environmentally sensitive lands, such as riparian habitats, natural open space, native vegetation stands and archaeological remains.
iv. Provide a map delineating potentially environmentally sensitive areas.
v. During the Pre-Application Meeting the planning staff shall discuss the proposal with the applicant and advise him/her on procedural steps, design and improvement standards and general plat requirements.

b. Prior to the Pre-Application Conference, the planning staff shall:

   i. Determine the necessity for a zoning change and advise the applicant.
   ii. Assess adequacy of infrastructure.
   iii. Inspect the site to determine relationship to streets, utility systems, and adjacent land uses, noting any unusual aspects thereof such as topography, utilities, flooding, stands of native or riparian vegetation, habitat and existing trails.

c. The pre-application step shall conclude with specific directions to the applicant for the further processing of the proposed subdivision. However, the planning staff cannot bind the County, and the applicant should expect that additional issues will likely be raised by the County at later stages. The County is not precluded from raising additional issues.

d. As a result of staff investigations, any findings of unique or extreme site conditions shall be noted and communicated to the applicant, discussed with regard to possible mitigating techniques, and cited as issues to be addressed in the preliminary plat submittal. Those factors may include, but are not limited to:

   i. Certain lands are not appropriate for some land use intensities, by reason of adverse topography, propensity for flooding, unstable soils, subsidence, lack of water or other hazard to life or property.
   ii. Special treatments pertaining to lot size, grading, preservation of natural drainage, access for emergency vehicle or general traffic, utility extension deemed necessary for public health, safety or general welfare with respect to potential site development.
   iii. Opportunities or requirements for protecting natural resources such as wildlife habitats, natural vegetation, trail access, archaeological sites and scenic views in the interest of preserving the public welfare in terms of community character.
   iv. Submittal of a preliminary grading plan and/or preliminary drainage report where warranted by unusual topographic features or hillside development.

e. Since agreement on the preliminary plat is deemed an important step in these proceedings, it is important for the subdivider to review the initial proposal for the subdivision with the Planning Director prior to preparation of the preliminary plat, while his plans are still in preliminary form and other elements of the proposed development are still flexible, it being the purpose at this stage to make available general advice on the purpose and effect of this article, the comprehensive plan, zoning, and other County planning, engineering, drainage, sewage, water systems, environment and similar standards, requirements and plans.

5. Subdivision Plat Submittal Process/ Pre-Application Conference

   a. Prior to formal acceptance of an application for preliminary plat review, a pre-application conference will be held to determine compliance with applicable ordinances, regulations and policies, pursuant to Resolution No. 00-06-04, Gila County Development

Division Policy. The following outlines the plat submittal process.

b. Preliminary Plat – Planning and Zoning Commission Upon submittal of the appropriate application, fees and twelve (12) copies of the preliminary plat, Community Development will transmit a copy to the reviewing agencies, where applicable.
c. Upon completion of Community Development, Engineering Department and Health Department review, comments from all reviewing agencies will be compiled and forwarded to the developer and the developer's engineer. A pre-hearing conference will be scheduled with the Subdivision Review Committee, developer and the developer's engineer. Review comments will be addressed at that time. Any corrections, changes, additional submittals, etc. must be submitted by a specified date, which will be established at the pre-hearing conference. Upon approval of the Subdivision Review Committee, the preliminary plat will be scheduled for hearing before the Planning and Zoning Commission.
d. Final Plat – Planning and Zoning Commission Twelve (12) copies of the final plat, together with the appropriate application and fee, must be submitted within 180 days of preliminary plat approval.
e. Improvement Plans, Engineer's Estimate of Required Improvements, acceptable form of financial assurances and proposed CC&R's need to be submitted to Community Development in the early stage of the final plat review.
f. Upon completion of Engineering/Community Development Staff Review, comments from all reviewing agencies will be compiled and forwarded to the developer and the developer's engineer. A pre-hearing conference will be scheduled with the Subdivision Review Committee, developer and developer's engineer. Review comments will be addressed at that time. Any corrections, changes, additional submittals, etc. must be submitted by a specified date, which will be established at the pre-hearing conference. Any required submittal, study, report, etc. that could possibly cause a change in the plat design, shall be in its approved final form prior to presentation to the Planning and Zoning Commission.
g. Final Plat – Board of Supervisors Prior to scheduling the final plat before the Board of Supervisors, the following shall be submitted to Community Development. They shall be in their final form and be approved by the applicable agency:

    i. Improvement Plans and Engineer's Estimate (Gila County Engineering Department).
    ii. Financial assurances (Gila County Attorney's Office).
    iii. Final CC&R's (Gila County Planning and Zoning Department).
    iv. Certificates of Approval and permits from the Arizona Department of Environmental Quality.
    v. Assured Water Supply Report from the Arizona Department of Water Resources.

6. Master Development Plan

    a. Under certain conditions the Planning Department Staff, upon the request of the Planning Commission, may require that the developer prepare and submit a Master Development Plan (MDP). The Commission may also require that a MDP shall be submitted where the tract is sufficiently large to comprise an entire neighborhood, or the tract proposed for platting is only a portion of a larger land area of which the

development is complicated by unusual topography, land use and ownership, utility or other conditions. The entire land area need not in this case be under the subdivider's control.

b. Preparation: The MDP shall be prepared to scale and accuracy commensurate with its purpose, and shall include:

   i. General street pattern of existing and proposed major arterial and collector roads.
   ii. Indication of single family and multi-family residential areas and indication of general lot size and number of lots per acre anticipated.
   iii. General location and size of school sites, parks open spaces and other public areas.
   iv. Location of shopping centers and other non-residential land uses and indicating their proposed use.
   v. Methods proposed for sewage disposal, water supply and storm drainage.
   vi. An indication of the areas to be developed in accordance with a planned development schedule.

c. Approval

   Upon acceptance of general design approach by the Planning Department Staff and the County Engineering Department, the MDP shall be submitted to the Planning Commission for its consideration. If general approval is given, notice to that effect shall be recorded in the minutes of the Commission and a copy of said minutes transmitted to the subdivider and his engineer. If development is to take place in several phases, the MDP should be submitted as supporting data for each phase.

7. Preliminary Plat

   The subdivider shall cause to be prepared a preliminary plat of the proposed subdivision and other exhibits as specified herein. The Planning Department and the County Engineering Department shall review the Preliminary Plat and submit their recommendations to the Planning Commission as specified herein. The Planning Commission shall hold a public hearing and let it be known of its finding and decision.

8. Final Plat and Recording

   The subdivider shall cause to be prepared a Final Plat as specified in Section 18-12.C.3, which shall conform substantially to the Preliminary Plat as approved; and if desired by the subdivider, it may constitute only that portion of the approved Preliminary Plat which is proposed to be recorded and developed at the time, provided that such portion conforms to all requirements of these regulations. The approved and executed copy will be recorded in the Gila County Recorder's Office after full compliance with the regulations.

9. Building Permits and Certificates of Occupancy

   a. Building Permits
      No building shall be erected, nor shall a building permit be issued for a building, unless

the street giving access to the lot upon which such building is proposed to be placed shall have been properly improved to the satisfaction of the County, and the lot upon which such building is to be erected shall have been platted, approved and recorded in conformance with the provisions of these regulations.

b. Certificates of Occupancy
No certificate of occupancy shall be issued for any building unless all the requirements of these regulations and any and all requirements of any other applicable regulatory ordinance or regulation have been met and complied with.

C. Specifications for Plans and Plats

1. Preliminary Plat and Engineering Drawings

a. Preliminary Plat to be Submitted: After the Pre-Application Conference and general approval of the sketch plans and Master Development Plan, if required, the subdivider shall prepare a preliminary plat of the proposed subdivision and other exhibits as hereinafter specified, and , shall submit two (2) copies of the preliminary plat to any city or incorporated town with a 3-mile radius (See Section 18-12.C.2.b herein) and twelve (12) copies to the Planning and Zoning Department, together with (1) a preliminary plat application and filing fee, (2) a reproducible 8 ½" x 11" copy, (3) a copy of the letter of transmittal to the city or incorporated town if applicable, (4) one (1) copy of the preliminary CC&Rs, (5) letter of request for waiver, if applicable, and (6) any required supplementary material such as drainage and/or environmental reports.
b. Departmental Review of Preliminary Plat: The Planning Department, shall obtain the recommendations of the above (18-12.C.1.a) reviewing agencies and shall check the preliminary plat for conformity to these regulations. The preliminary plat, together with any agency recommendations, shall be submitted to the Planning Commission for their consideration not later than sixty (60) days from receipt of a complete preliminary plat application. The sixty (60) day period does not commence until the application package is deemed complete by the Planning Department. The subdivider or his agent and his engineer shall be present at the Planning Commission meeting. The subdivider's engineer may act as agent.
c. Commission Findings: Within forty (40) days after receipt of a completed preliminary plat application from the Planning Department, submitted in conformance to these regulations, the Planning Commission shall express its approval and conditions of approval, if any, or its disapproval and its reasons therefor at a scheduled public meeting.
d. The action of the Planning Commission shall be noted on two (2) copies of the preliminary plat, referenced and attached to any conditions determined. One copy shall be returned to the subdivider and the other retained in the Planning Commission's records.
e. Approval or conditional approval of the preliminary plat shall not constitute approval of the final plat. Rather, it shall be deemed an expression of approval to the layout and design submitted on the preliminary plat as a guide to the preparation of the final plat. The final plat shall be submitted for approval by the Planning Commission and the

County Board of Supervisors upon fulfillment of the requirements of these regulations and the conditions of the approved preliminary plat.

f. The preliminary plat shall include and indicate by boundary all contiguous landholdings of the subdivider.

2. Preliminary Plat Requirements

a. Preliminary plat shall be submitted on one or more sheets of not larger than 24" x 36" and normally at a scale not greater than 200 ft. to an inch such that all necessary details may be clearly shown.
b. Preliminary plats within a three-mile radius of any city or town having subdivision regulations must be submitted by the subdivider to the Planning Department or Town Clerk of the city or town for their recommendation, pursuant to A.R.S. 9-474 as amended.
c. Any area where a subdivision is being proposed and rezoning is required, the Land Owner shall file the necessary application and filing fees requesting the subject property to be classified to a zoning district to accommodate the proposed subdivision prior to submittal of the preliminary plat.
d. All preliminary plats shall contain the following information as well as additional information as may be required to fulfill the purpose and intent of Gila County ordinances.

i. Proposed name of subdivision and its location by section, township and range; small scale vicinity map showing relative location of the subdivision; reference by dimension and bearing to section corners and quarter-section corners; and subdivision boundaries and existing and/or proposed zoning districts clearly identified.
ii. Name, address and phone number of each person having an interest in the proposed subdivision and the extent of such interest.
iii. Name, address and phone number of the qualified registrant as applicable, preparing the plat, including registration number.
iv. Scale, north point, and date of preparation, including dates of any subsequent revisions.
v. The legal description and general location of the proposed subdivision, the nearest town by route and distance over said route and a sufficient description of existing landmarks and boundaries to locate and field inspect the proposed subdivision by vehicle. A preliminary title report including copies of Schedule B documents must accompany the legal description.
vi. Topography by contours relating to USGS survey datum, or other datum approved in writing by the County Engineering Department, to be shown on the same map as the proposed subdivision layout. Location and elevation of the bench mark used should also be shown on the plat. Acceptable contour interval: grades up to 5 percent, 2 feet; 5 percent to 10 percent grades, 5 feet; grades over 10 percent, 10 feet.
vii. Location by survey of existing or proposed streams, washes, canals, irrigation laterals, private ditches, culverts, lakes, or other water features. The developer shall

submit a detailed preliminary drainage report prepared by an Arizona registered civil engineer, which shall determine the limits of the 100-year floodplain**.** The limits of the 100-year floodplain shall be clearly shown on the preliminary plat. Each lot, parcel, or tract that is proposed to be located within, partially located within or adjacent to said floodplain shall show the minimum floor elevation necessary to protect future development from the high water line of a 100-year flood. Preliminary layout of proposed system, location and invert elevation of outlet, and statement as to extent of improvements proposed, if any.

viii. The drainage report shall describe proposed and existing drainage improvements including, but not limited to, conveyances, detention/retention facilities and shall provide supporting calculations. The floodplain delineation and drainage report shall be prepared in accordance to the Drainage and Grading Ordinance and the Floodplain Management Ordinance of Gila County.

ix. Locations, widths and names of all existing public and private roads and improvements therein; railroads; utility easements or rights-of-way, including any existing facilities therein; public areas; all existing structures, with an indication of whether or not they are to remain; and municipal corporation lines within or adjacent to the tract. (See e. above)

x. Name, book and page numbers of any recorded subdivisions within or having a common boundary with the tract, or notation "unsubdivided" where appropriate.

xi. Location, width and names of proposed roads, alleys, drainage ways, crosswalks and easements, including all connections to adjoining platted or unplatted tracts. Road names must be pre-approved by Gila County Rural Addressing. Streets and alley locations and widths must be to County standards.

xii. Lot layout including: Minimum building setback lines related to all roads; typical lot dimensions (scaled) and area for each lot; dimensions of all corner lots and lots on curvilinear sections of road; each lot numbered individually; total number of lots shown; and identification of parcels and/or tracts by number and area; and typical lot grading if lots are to be graded by the developer and a separate grading plan is not submitted.

xiii. Designation of all land to be dedicated or reserved for public or semi-public use, with use indicated.

xiv. Reference by note to source of proposed electricity, gas, telephone service, and cable TV if available, and if such service will be placed underground.

xv. If plat includes land for which multi-family, commercial, or industrial use is proposed, such areas shall be clearly designated together with existing zoning classification, present district boundary lines, and status of any pending zoning change.

xvi. A draft copy of all instruments creating covenants conditions, restrictions (CC&Rs), reservations, easements, owner's associations or other conditions, if any.

xvii. Sewage Disposal

It shall be the responsibility of the subdivider to furnish the County Health Department and the Arizona Department of Environmental Quality such evidence as those agencies/departments may require for its satisfaction as to the design and operation of sanitary sewage facilities proposed. A statement as to the type of facilities proposed shall appear on the preliminary plat.

xviii. Subdivision Utilizing Individual Lot Sewage Disposal

Where sewage treatment and disposal will be by individual lot septic tanks and leachfields or other acceptable individual lot treatment and disposal methods requiring percolation, approved percolation tests, soil evaluations and test boring logs performed at appropriate locations within each lot in the proposed subdivision shall be submitted with the preliminary plat. All percolation tests and soil evaluations shall be in accordance with Rule # R18-9-A310, "Site Investigation for On-Site wastewater Treatment Facilities," found in Chapter 9 of Title 18 of the Arizona Administrative Code. Design Standards for individual lot septic tanks and leachfields and other Type 4 General Permits for Wastewater Disposal are found in Article 3 of Title 18. The specific rule for septic tanks is covered in R18-9-E302, "4.02 General Permits: Septic Tank with Disposal by Trench, Bed, Chamber Technology, or Seepage Pit, Less than 3000 Gallons Per Day Design Flow."

xix. Water Supply

The subdivider shall submit plans for the provision of water service for the subdivision with the preliminary plat. If the water service is to be provided by a water company, a letter of intent to serve from the water company must accompany the preliminary plat.

xx. Landfill and Solid Waste Disposal Areas

Indicate location and distance to nearest landfill or disposal area. Identify the entity or agency having operating jurisdiction.

xxi. Identification of method of fire protection Indicate location and distance to nearest fire station. Identify the entity or agency having jurisdiction.

xxii. Additional information as may be required to fulfill the purpose and intent of these regulations.

3. Final Plat, Engineering Drawings and Recording

Improvement Plans and Grading/Drainage Report shall be approved by the Engineering Department prior to Final Plat going before the Board of Supervisors. The final plat stage includes submittal, review and approval of the final plat by the Board of Supervisors and recording of the plat with the County Recorder. Application for approval of the final plat is made to the Planning Department.

a. Final Plat Application Submittal

The final plat shall be submitted to the Planning Department within 180 days of preliminary plat approval by the Planning Commission. A 180-day extension may be granted by the Planning Commission if circumstances warrant the extension. Upon receipt of the final plat submittal application, the Planning Department staff shall check it for completeness. If the final plat submittal is not deemed complete by the Planning Department, it will be returned to the applicant. The review period for the application may be longer or shorter based on the applicant's compliance with these regulations. The final plat application will not be considered for processing until all required information is provided to the planning department and the required fees are paid.

The final plat shall be in substantial conformance to the approved preliminary plat and any stipulations or conditions required by the Planning Commission. A final plat application and fee shall be submitted to the Planning Department, and paper copies of the final plat shall be submitted to the following:

Six (6) copies to the Gila County Planning and Zoning Department:

One (1) copy to: Any city or incorporated town within a 3-mile radius

One (1) electronic copy of the Final Plat shall be submitted to the Planning

Department utilizing Auto Cad 13 or above.

In the event a final plat is not filed with the Planning Department within 180 days or subsequent extension from the date of preliminary plat approval, then the preliminary plat must be refiled as a new application and subject to the regular preliminary plat filing fee.

b. Departmental Review of Final Plat and Hearing

i. In accordance with Title 9-461.11, Title 9-462.07, and Title 9-463.04 of A.R.S., if any part of the boundary of the proposed subdivision or if the boundary of the Master Development Plan of which the subject final plat is a part, is within three miles of the corporate limits of a city or town having subdivision regulations, the subdivider shall submit copies of the final plat to said city for its review. If additional information or changes are recommended by any of the reviewing departments of the city or town, a revised final plat must be submitted to the Planning Department. Referral and scheduling of a revised final plat shall be the same as that required for the original final plat. Plats not in satisfactory form to be considered by the Commission or Board will not be scheduled for a hearing.

ii. If the final plat is complete but the time limit for the preliminary plat approval has expired, or if it is not in conformance with the preliminary plat or stipulations attached thereto, it will be returned to the subdivider for compliance.

iii. If approval and acceptance of a subdivision is predicated upon a change of zoning, the final plat will not be scheduled for hearing until the necessary zoning has been adopted by the Board of Supervisors. If a subdivision is located in an unzoned area, the final plat will not be scheduled for final hearing until the necessary zoning hearings have been held resulting in adoption by the Board of Supervisors of the zoning required for the subdivision.

iv. If the plat is deemed complete by the Planning Department and conforms to the approved preliminary plat, and after receipt of all letters of approval from all departments concerned, the final plat will be forwarded to the Board of Supervisors for final approval.

c. Supervisors' Approval

i. The subdivider or his agent and his engineer or land surveyor shall be present at the Board of Supervisors hearing set for consideration of the final plat.
ii. When the final plat receives approval of the Board of Supervisors, the subdivider shall prepare and provide to the Planning Department the following copies of the final plat, which shall bear the original signatures of the owner or owners and be duly acknowledged:

One (1) full size reproducible mylar, for the County Recorder

One (1) electronic copy utilizing Auto Cad 13 or above

iii. The Chairman of the Board of Supervisors shall be authorized to sign the plat for recording at the time all of the requirements for subdivision improvements and financial assurances of Article 6 hereof and any stipulations have been satisfactorily met. After the approval and signature of the Board of Supervisors, the approved and signed final plat shall be assigned to the Planning Department, which shall submit the final plat to the County Recorder for recording. The recording date, book and page number, shall be affixed to the mylar copies of the final plat.
iv. If the Supervisors deny approval of the final plat, they shall express the reasons therefore within the minutes of the meeting, of which one copy shall be attached to the plat and returned to the subdivider.

d. Final Plat Certificates

The following certificates and acknowledgements shall appear on the final plat. Such certificates shall be lettered or printed legibly with opaque, permanent ink and shall be signed and dated as prescribed hereafter.

i. A certificate signed and acknowledged by all persons holding title or deed to the lands, or if lands dedicated are held in trust, the trustee shall sign the certificate, or if lands dedicated are encumbered by mortgage(s), the mortgagee(s) shall sign the certificate consenting to the preparation and recordation of said final plat and offering for dedication all streets, alleys, drainage ways, easements, tracts and other parcels for public uses, as shown on said final plat. Signatures shall be acknowledged. The execution of the certification shall be acknowledged and certified by a notary public.
ii. A certificate executed by the land surveyor registered to practice in the State of Arizona under whose direction the survey, subdivision and plat of the land described on the said final plat was made stating that the plat is a correct representation of all the exterior boundaries of the land surveyed and the subdivision of it; stating that he or she has prepared the description of the land shown on the plat and that he or she certifies to its correctness; stating that the bearings shown on the plat are expressed in relation to the true meridian, or a previously established meridian or bearing; and that all monuments shown on the plat are actually located in the

ground and their location, size and material are correctly shown, and that all lots are staked or will be staked in accordance with the provisions of these Subdivision Regulations. The certificate shall include the registration number, seal and signature of the registered land surveyor.

iii. A certificate for signature by the Planning Director, Chairman of the Planning Commission, and County Engineering Department that the final plat has been verified for conformance to the preliminary plat as approved by the Commission and to the requirements of the Gila County Subdivision Regulations and any other applicable ordinances and regulations and appears to comply with all requirements within their jurisdiction to check and approve.

iv. A certificate to be signed by the Chairman of the Board of Supervisors and attested by the Clerk of the Board of Supervisors that said Board of Supervisors approved the final plat and showing the date of said approval.

v. A certificate to be executed by the Gila County Recorder showing the date, time of day, fee number, book and page number of recordation.

e. Related Exhibits

i. A check made payable to the Gila County Recorder in the amount as set forth in the fee schedule established by the County Recorder.

ii. One original copy of any private CC&R's to be imposed upon the final plat or any part or parts thereof shall be submitted with the final plat. Said deed restrictions must be in proper form to be recorded as a separate instrument. Space for cross-referencing to the deed restrictions shall be provided on the final plat and completed by the County Recorder, e.g., "See restrictions recorded in Fee Number _____, Gila County Recorder's Office." All conditions, Covenants and Restrictions (CC&Rs) shall be submitted for staff review and comment for all subdivisions having common areas, homeowners associations or other assessment entities in accordance with State law. Staff review and comment upon CC&Rs shall not under any circumstances be deemed approval of the CC&Rs by Gila County.

iii. The original and three (3) copies of the contract to be entered into by the Board of Supervisors and the subdivider wherein a bond, trust, or other suitable security is to be provided to guarantee the performance of the required improvements consistent with the provisions of these Subdivision Regulations.

iv. A copy of an "Engineer's Opinion of Probable Construction Cost" prepared by a professional civil engineer registered to practice in the State of Arizona based on the Gila County approved construction plans for the improvements required by these Subdivision Regulations. Such opinions of cost shall be in the amount which would be necessary for Gila County to have constructed said improvements in the event the subdivider defaults. Such opinions of cost shall include engineering and surveying, testing, construction supervision and administrative costs and an appropriate cost inflation factor by which the opinion of cost would be adjusted annually. Such opinions of cost shall be transmitted to the County Engineering Department for review.

v. A copy of the surveyor's calculations (See 18-12.C.3.d above) showing the closure of the subdivision boundary, and of each block and lot, and all other excluded or

dedicated tracts and rights-of-way. The error of closure and the area bounded shall be shown for each calculation. The relative error of the unbalanced field measurement closure for the subdivision boundary shall be included. Such calculations shall be transmitted to the County Engineering Department for review and approval.

f. Water Supply

i. It shall be the responsibility of the subdivider to disclose to potential buyers the plans for supplying water to the subdivision. These plans should be in compliance with State of Arizona requirements for adequate water supply disclosure as set forth in A.R.S. 45-108. Except as provided in subsection E of A.R.S. 45-108 wherein a developer may demonstrate an adequate water supply by obtaining written commitment of water service from a water provider that in turn has a proven adequate supply, the subdivider shall submit plans for the water supply for the subdivision and demonstrate the adequacy of the water supply for the subdivision to the Arizona Department of Water Resources (ADWR). One copy of the report filed with ADWR shall be filed with the final plat, along with a copy of the ADWR report attached.

ii. If an adequate water supply cannot be demonstrated, the subdivider shall be required to disclose such facts as required by law. Furthermore, the Planning Commission or Board of Supervisors may take the lack of a demonstrated adequate water supply as sufficient grounds to deny the application to subdivide lands.

g. In cases where an onsite wastewater disposal system will be required, a Certificate of Approval to Construct issued by the Arizona Department of Environmental Quality (ADEQ) must accompany the submittal package.

h. When all applicable provisions of these Subdivision Regulations have been met, notice thereof shall be transmitted by the Planning Department to the Clerk of the Board of Supervisors.

i. Provided that adequate notice has been given to the Clerk of the Board of Supervisors, the Board of Supervisors shall consider said final plat, the offers of dedication and agreements, and guarantees and securities for required improvements at a regularly scheduled meeting. If the Board of Supervisors shall determine that said final plat is in conformity with the requirements of these Subdivision Regulations and all other applicable ordinances and regulations, and if the agreements, guarantees and securities for required improvements, and unpaid taxes or assessments are all in order, the board shall approve said final plat; and the Chairman and Clerk of the Board of Supervisors shall so certify and attest such action upon said final plat. If the Board of Supervisors shall determine that said final plat is not in conformity with the requirements of these Subdivision Regulations or other ordinances, requirements, or agreements, guarantees, securities, taxes and assessments are not in order, it shall deny said final plat approval specifying in writing its reason or reasons for such denial.

4. Final Plat Requirements

The final plat shall be drawn in opaque, permanent ink on clear polyester film, on sheets not exceeding 36” x 24” inches in size. Copies of the final plat shall be reproduced in the form of blueline or blackline prints on a white background. The plat shall be drawn to an accurate scale of not greater than 1-inch equals 50 feet (1"=50 ') unless otherwise permitted by the Planning Department.

The final plat shall contain the following information:

a. A title, which includes the name of the subdivision and its location by section, township, range and county, legal description (metes and bounds) and zoning district.
b. Name, registration number and seal of the Arizona registered land surveyor responsible for preparing the plat.
c. Every plan sheet of the plat must have the scale (written and graphic), north point, legend, sheet number, number of sheets comprising the plat and the date of preparation.
d. Location and description of primary control points to which all dimensions, angles, bearings, and similar data on the plat shall be referenced, and where a coordinate system shall have been established by the County Engineering Department, primary control points shall have been referenced thereto; at least two corners of the subdivision shall be tied by course and distance to a section corner or established County survey monument, and the final plat must include a description of the corner marker. The final plat must indicate the basis of bearings.
e. Any excepted parcel(s) within the plat boundary shall be accurately described by bearings and distances. Proper street and alley dedications adjacent to any proposed tracts or excepted parcels shall be provided by the subdivider by inclusion within the final plat or by separate dedication noted on the final plat.
f. Boundaries of the tract to be subdivided fully balanced and mathematically closed, showing right-of-way lines of streets, easements and other rights-of-way, and property lines of all lots and other tracts or exceptions with accurate bearings and distances determined from an accurate field survey of the site. All dimensions shall be expressed in feet and decimals thereof to the nearest one-hundredth. No final plat showing plus or minus distances will be approved. All corners of the subdivision boundary should be noted and monuments found or set should be indicated by location and type; each of two corners of the subdivision traverse shall be tied by course and distance to separate section corners or quarter section corners. The Engineering Department may make such office and field checks as may be necessary to assure the correctness of the plat and may require the owner of the subdivision to pay for such checking.
g. Names, centerlines, right-of-way lines, courses, lengths and widths of all public and private roads, streets, alleys and utility easements, radii, points of tangency and central angles of all curvilinear streets and alleys, and radii and central angle of all rounded street line intersections.
h. All drainageways, drainage tracts and drainage easements shall be shown on the final plat. The rights-of-way of all major drainageways, as designated by the County Engineering Department, shall be dedicated to the public.

i. The location, width and use of all public or private utility easements shall be noted. All private utility easements shall be marked "private easements" and clearly designated with the purpose/use of the easement.
j. Location and dimensions of all lots shall be shown. Lot dimensions including feet and decimal thereof as well as bearings shall be indicated for each lot. All minimum setback lines shall also be located and dimensioned. Minimum finished floor elevations shall be indicated on all lots. Finished floor elevations shall be a minimum of one foot above the highest grade within 10 feet of the building. In no case shall the finished floor elevation be less than the regulatory flood elevation defined in accordance to the Gila County Floodplain Management Ordinance.
k. All lots shall be numbered consecutively throughout the plat. Other parcels, tracts and private parks shall be so designated, lettered or named, and clearly dimensioned.
l. The accurate outline of all property which is offered for dedication for public use with the purpose indicated thereon, and all property that may be served by deed covenant for the common use of the property owners in the subdivision.
m. Name, book and page number of adjacent recorded subdivisions, with location of existing adjacent lots, easements and rights-of-way shown, or notation "unsubdivided" where appropriate. All proposed conditions should be graphically differentiated from existing conditions on adjacent properties and on excepted parcels within the final plat.
n. Statement of dedication of all county roads, streets, alleys, cross-walks, drainage ways, and other easements and/or rights-of-way for public uses, as shown on the final plat, by the person holding title by deed to the lands, by persons holding any other title of record, by persons holding title as vendees under any land contract, and by spouses of said parties. If lands dedicated are mortgaged, the mortgagee shall also sign the plat. Dedication shall reference the tract as indicated on the plan. Signatures must be witnessed. If the final plat contains private streets, the public shall be reserved the right to maintain and control drainage and flood diversion channels.
o. The execution of dedication shall be acknowledged and certified by a notary public.
p. Space for approval by the County Board of Supervisors under the signature of the Chairman of the Board and attested by the Clerk of the Board.
q. Space for approval by the County Planning Commission under the signature of the Chairman of the Commission.
r. Space for approval by the County Engineering Department.
s. The limits of the 100-year regulatory floodplain, as certified by a civil engineer registered in Arizona, shall be delineated with sufficient detail as to allow for those limits to be identified by field survey.

5. Hillside Subdivisions

a. Planning, platting and development of hillside subdivisions involve special conditions and require special handling by the subdivider, his engineer, the Planning Commission, County staff and reviewing officials. These special conditions offer opportunities and constraints for preservation of scenic beauty for the benefit of the general public, safe construction of public improvements commensurate with lower density and lesser public use, and safe construction of private improvements relating to sewage disposal, water supply, storm drainage and foundation bearing.

b. Lot Width and Lot Area
Lot width and lot area shall be closely related to the zoning requirements, terrain, drainage, percolation factors or construction of sanitary sewers, with emphasis placed on selection of home sites (building envelopes, see Section 18-12.C.4).

c. Special Preliminary Plat Requirements

i. Existing topography shown by suitable contour interval with location of major and minor washes as defined and outlined in the Gila County Drainage and Grading Ordinance. A separate exhibit showing proposed finished contours overlaying existing contours may also be required if extensive re-grading is proposed. The exhibit will also show how slope stabilization and erosion control will be handled, and building envelopes or limits of area of disturbance (See Section 18-12.C.4) if required by the Planning Department Staff.

ii. Road profiles and cross-sections at appropriate intervals are required and are to be submitted to the County Engineering Department. Special attention will be given to depth of cut and height of fill as well as maximum slopes.

iii. Percolation tests and test boring logs in accordance with the requirements of the Gila County Health Department should be taken at the proposed subdivision prior to the submittal of the preliminary plat. Results of the percolation and boring tests shall be submitted as part of the preliminary plat submittal.

iv. A preliminary soils/geology report including test boring logs must be submitted with the Preliminary Plat. The report must address existing soil conditions, including shrink swell and compaction recommendations for foundation construction, cut and fills, slope stabilization and recommended pavement sections.

d. Plat Processing Time
Due to conditions requiring special field and office review by the County Health Department, the County Engineering Department and staff, subdividers should expect processing time for hillside plats to exceed that otherwise required for non-hillside plats.

e. Hillside Subdivision Design
Special conditions of hillside subdivision design are discussed under the Design Standards, Section 18-12.D.12

6. Revisions of Final Plats or Replats

a. Any division of a lot in a recorded subdivision into six (6) or more parcels, or any changes in lot lines involving six (6) or more adjoining lots in a recorded subdivision, but creating no new street(s), may be processed in accordance with final plat procedures and requirements of these Subdivision Regulations.

b. Any replat involving dedication or abandonment of land for a public road or street shall comply with all procedures set forth in these Regulations, Section 18-12.C.7 and 18-12.C.8.

c. If abandonment of a public street, alley, tract or public utility easement in a recorded subdivision is requested or required by necessity or by replat, the replat of that area shall not be forwarded to the Board of Supervisors for final action until abandonment

proceedings per these Regulations, Section 18-12.C.7 and 18-12.C.8, are completed and recording data noted on the final plat.

7. Abandonment of a Recorded Subdivision or Reversion to Acreage

   a. If no lots in a subdivision, for which a final plat has been previously approved and recorded, have been sold within three (3) years from the date of recordation, and if none of the improvements have been made within two (2) years from the date of approval, the Board of Supervisors may, on its own motion, hold a public hearing after notice to determine whether the approval of such final plat should be revoked. Such revocation shall be effective upon recordation of a certified copy of such resolution; and thereupon, all streets, rights-of-way and easements dedicated or offered for dedication by such map shall be of no further force or effect.
   b. Pursuant to the Arizona Revised Statutes, the abandonment of all or part of a recorded subdivision may be initiated by written petition to the Board of Supervisors, said petition to be signed by ten or more owners of real property in Gila County, requesting abandonment of all streets, alleys and easements within said subdivision and giving the legal description and recording information thereof. The applicant for the abandonment shall file a Reversion to Acreage map with the petition.
   c. Applications or petitions for abandonment are filed with the Clerk of the Board of Supervisors and referred for recommendation to the County Planning Department, County Engineering Department and the utility providers concerned. After approval of the abandonment of the streets, alleys and easements by the Board of Supervisors and upon recordation of the abandonment resolution, the subdivision is removed from the recorder’s official maps and the land reverts to acreage as far as the Assessor's records are concerned.
   d. Any abandonment and/or reversion to acreage may necessitate consideration for rezoning.
   e. Any action considered by the Board relating to revocation of all or part of a subdivision, whether lots or lots and rights-of-way, shall be referred to the Planning Commission for evaluation for the following:

      i. Correlation with the Gila County Comprehensive Plan.
      ii. Correlation with proposed development in adjacent areas.
      iii. Recommendation as to whether or not zoning changes should accompany such action.
      iv. Effect of such action on existing development in areas affected by proposed reversion or abandonment.
      v. Any other actions applicable to the above process and permitted by State Laws are permissible.

   d. Requisite actions under the Arizona Revised Statutes to abandon the roads and easements, should be carried on separately and simultaneously with any procedure to abandon a subdivision or revert it to acreage.

8. Amended Subdivision Plats

Any plat of a subdivision that has been filed for record may be amended to correct an error in any course or distance or other necessary item that was omitted therefrom, or to correct a drafting, graphic, technical or similar type error; by the filing for record of an amended plat of said subdivision. The County Recorder shall examine such amended plat; and if such examination discloses that the only changes on the amended plat are changes above authorized, he shall certify this to be a fact over his signature on the amended plat. Thereafter, the amended plat shall be entitled to be recorded in the office of the recorder in which the original subdivision plat was recorded. Such plat shall be marked "AMENDED PLAT OF _____." Subsequently, if more than one amended plat is necessary, the successive plats shall be titled "SECOND AMENDED PLAT OF _____, " and follow in numerical sequence. The use of the terminology of "amended plat" shall not be used to change or vary or add any lot lines, streets or easements or statements that were not contained on the approved preliminary plat, since such actions necessitate re-processing of that plat.

To make corrections as authorized herein, an Arizona certified surveyor may submit an "Affidavit of Correction" that shall be recorded.

D. Design Standards

1. General

a. The Planning Commission shall insure that appropriate provision is made for the harmonious development of the County by requiring (a) the coordination of roads within subdivisions with existing or planned streets or with other features of the County Comprehensive Plan, (b) a regulation of population density and traffic volume which will create conditions favorable to public health, safety and convenience, and by (c) recommending adequate spaces for public use (such as for parks, schools, recreational area, open areas, etc.).
b. Adequate access shall be provided from an existing public road(s) to land being subdivided. A minimum of two (2) access points from the access road into the new subdivision is required. Approval of such access shall be a condition of approval of the final plat by the Planning Commission and Board of Supervisors.
c. In all subdivisions, the subdivider shall make every effort to preserve the site's natural features such as trees, water courses, historical and archaeological sites and similar community assets, which when preserved, will add attractiveness and value to the property and community.
d. Portions of any contiguous property within the ownership of the subdivider shall not be excluded from within the boundaries of a subdivision when needed or required for any traffic, drainage, or flood control facility pertinent to said subdivision.
e. Portions of any contiguous property within the ownership of the subdivider not included within the boundaries of the subdivision, shall be of such size and configuration that it could be used in the future for some purpose compatible to surrounding development and meet the specifications of other applicable County ordinances and regulations.

f. Separate parcels that form lots or building sites within the ownership of the subdivider of less than five (5) acres each and are contiguous to the proposed subdivision, but are not intended by the subdivider to be included in the proposed subdivision, and that could be a part of the proposed subdivision by extending proposed roads, shall be included in the proposed subdivision.
g. The design of those elements of a subdivision involving structural components, location, and design and construction of roads, drainage provisions, water supply and sewage disposal shall be made under the direction and supervision of an engineer registered in the State of Arizona and qualified to specify the standards for such design.
h. A supplementary set of standards may be adopted by the Planning Commission and approved by the Board of Supervisors for each item as described. These standards shall be separate from this Ordinance and shall be developed by the County Engineering Department and the County Planning Department. These standards may be revised whenever environmental regulations, conditions, or technological improvements necessitate or justify such changes.
i. It is the responsibility of the subdivider to comply with these regulations. At any time in the processing of a subdivision plat that non-compliance is detected, notification by certified or registered mail of said non-compliance shall be transmitted to the subdivider. If compliance is made by the subdivider after notification, processing shall proceed from date of compliance as if the non-compliance had not existed. If compliance is not made within thirty (30) days of the mailing of the certified letter, processing shall be terminated. Once processing is terminated, a plat must be resubmitted through the normal process.

2. Suitability of the Land

The Planning Commission shall not approve the division of land as submitted if, from adequate investigations, it has determined that said land is not suitable for the land use proposed due to such factors as flooding, inadequate drainage, abandoned mine shafts, steep slopes, rock formation, or design features likely to be harmful to the safety, welfare and general health of the future residents, unless corrections acceptable to the Planning Commission are submitted by the developer.

3. Water Courses

In the event that the subdivision is traversed by or is adjacent to lakes, streams or other bodies of water or other drainage conveyances, the subdivider shall provide sufficient right-of-way for storm drainage conforming substantially with the line of such natural water course, channel, stream or creek, or provide an acceptable re-alignment of said water course, based upon a detailed drainage report prepared by a civil engineer registered in Arizona.

4. Roads, General

   a. The arrangement, character, extent, grade, width, and location of all roads shall conform to the County Comprehensive Plan**.** All design for road improvements and roadway drainage shall conform to the current Gila County Roadway Design Standards Manual.
   b. Where such is not shown on the County Comprehensive Plan or preliminary plans, the arrangement of roads shall provide for continuation or appropriate projection of existing major roads in surrounding areas. All centerlines of proposed roads shall be continuations of the centerlines of existing roads in contiguous territory. In cases where tangent connection of a proposed centerline to an existing road centerline is not possible, the centerlines may be connected by a curve or by a series of curves and tangents.
   c. Improvement plans for all subdivision road improvements shall be prepared by a civil engineer registered in the State of Arizona. Plans shall be prepared and submitted in accordance with the current Gila County Roadway Design Standards Manual.
   d. The minimum width of right-of-way shall be in accordance to the current Gila County Roadway Design Standards Manual. Proposed roads shall extend from or project to existing streets at their same or greater width, but never at a width less than that prescribed by the Roadway Design Standards Manual.
   e. All roads shall be designed, graded, surfaced, and improved to cross sections and grades approved by the County Engineering Department as set forth in the Roadway Design Standards Manual.
   f. Drainage crossing structures or culverts shall be installed as deemed necessary by the County Engineering Department for drainage, access and public safety. Such drainage crossing structures and culverts shall be placed to grades and be of a design and size approved by the County Engineering Department. Adequate drainage of the subdivision access and public ways shall be provided by means of said drainage crossing structures or culverts and by other approved means, in accordance with the Roadway Design Standards Manual.
   g. All private roads within a subdivision shall have sufficient proof of a maintenance district or homeowner's association with adequate capacity to perform the roadway maintenance in perpetuity. This capability will have to be demonstrated to the satisfaction of the County Attorney, County Engineering Department and Board of Supervisors.
   h. Adequate provisions shall be made in the design of subdivisions for access to each lot or parcel and for access to adjacent properties. Dead-end streets are required where a street connection is necessary to serve adjacent properties that may develop at a future date.
   i. In accordance to the Roadway Design Standards Manual, a full road section is required for all interior subdivision roads and a minimum half-road section is required for perimeter roads, and in some cases at their discretion, the County Engineering Department may require full road sections for perimeter streets. The configuration of arterial half-roads will be determined on a case-by-case basis subject to approval by the Gila County Engineering Department. Half-road design, drainage and pavement transitions shall be in accordance to the Roadway Design Standards Manual.

j. When a proposed subdivision fronts on an arterial road, the Planning Commission may require lots abutting the arterial road to have driveway access to roads internal to the subdivision only.
k. Provisions shall be made for railroad and other public or private utility crossings necessary to provide access to or circulation within the proposed subdivision, including obtainment of all necessary permits from the public or private utilities involved and any regulatory agencies having jurisdiction. The cost of such crossings shall not be assumed by the County.
l. Dead-End Streets
Dead-end streets shall be designed in accordance to the Roadway Design Standards Manual.
m. Intersections

    i. Intersections shall be designed in accordance to the Roadway Design Standards Manual.
    ii. When necessary to permit the construction of a curb having a desirable radius without curtailing the sidewalk at a street corner to less than normal width, the property line at such a corner shall be rounded or otherwise set back sufficiently to permit such construction.

n. Offset Intersections
Offset intersections shall be designed in accordance to the Roadway Design Standards Manual.
o. Street Names
Proposed roads, which are in obvious alignment with other existing named or numbered roads in that vicinity, as determined by the Rural Addressing Department, shall be given the designation of said existing road. In no case shall the name for proposed roads duplicate those of existing roads within the same planning area, except as aforementioned, irrespective of the use of such varying suffixes as street, avenue, road, boulevard, drive, place, court, or other designation. Through its index of road names and numbers, the Planning Department may offer assistance to the subdivider in avoiding such duplications.
p. Alleys
Alleys are discouraged and subject to approval by the County Engineering Department. Where permitted, alleys shall be designed in accordance to the Roadway Design Standards Manual. Dead-end alleys will not be permitted.

q. Sidewalks and Paths
Pedestrian walkways (sidewalks and paths) may be incorporated into roadway design at the request of Gila County. Where required, sidewalks and paths shall be designed in accordance to the Roadway Design Standards Manual. Sidewalks will be provided on all urban roads and as called for in the Roadway Design Standards Manual.
r. Blocks
The length, width and shape of blocks shall be determined with due regard to provisions for adequate building sites, the zoning requirements as to lot area and dimensions, limitations and opportunities of topography, needs for convenient access and circulation

control and safety to roads and pedestrian traffic.

i. Length: Blocks shall not be more than 1,320 feet in length except as the Planning Commission considers appropriate to secure efficient use of land or as desired feature of road design.
ii. In blocks over 660 feet in length in urban areas, crosswalks may be required.
iii. Width: In general blocks shall be wide enough to allow two (2) tiers of lots.

5. Lots

a. Arrangement: The lot area, width, depth, shape and orientation and the minimum building setback lines shall be appropriate for the location of the subdivision, for the type of development and use contemplated, and shall conform to the requirements of zoning and these regulations.

   Insofar as practical, side lot lines shall be at right angles to straight street lines or radial to curved street lines. Each lot must front upon a public or private road or approved access.

b. Accessibility: Each lot shall be accessible to the street on which it fronts. Where necessary, as determined by the County Engineering Department lots shall be graded as a condition of approval of a final plat to insure access to and adequate use of property.
c. Minimum Size: The size, shape and orientation of lots shall be such as the Planning Commission deems appropriate. Each lot shall be suitable for the purpose for which it is intended and shall contain a usable building site. With the building envelope shown on the Preliminary Plat, the area of a lot shall be deemed the area shown, exclusive of any area designated for road purposes or any easement for access or road purposes shown on the plat. No lot shall contain less than the minimum number of square feet or minimum lot dimensions established for the zoning district or density district in which it is located.
d. Corner lots are required to be wider than interior lots in order to provide adequate yard setbacks from both streets. Property lines at corners must be rounded in accordance to the Roadway Design Standards Manual.
e. Large Tracts or Parcels
   When land is subdivided into larger parcels than smallest allowed building lots, such parcels shall be arranged so as to allow for the opening of future streets and logical further re-subdivision.
f. Lot Numbering

   i. Each lot shall be designated by an "Arabic" numeral.
   ii. If block designations are not used, numbering shall be in consecutive sequence within the block beginning with the number "1" wherever lots have common side boundaries within a subdivision or within a block along each street, and continuous consecutive numbering shall follow from one block to another.
   iii. When block designations are used, numbering shall be in consecutive sequence within each block area commencing with the number "1" for each block.

iv. Parcels shall be designated by capital letters and be designated in sequence within a tract starting with the letter "A".

6. Sanitary Sewage and Water Systems

a. Where an existing public sanitary sewer is located within reasonable access to the subdivision, the County Health Department may, at its discretion, require as a condition of approval that each lot be provided with a connection to such sanitary sewer.
b. A sewage collection, treatment and disposal system shall be provided as a condition of approval for any subdivision with density greater than four dwelling units per acre or containing building lots with areas less than ten thousand (10,000) square feet. The design must meet the standards set forth in the rules of the Arizona Department of Environmental Quality.
c. Where connection to a public sanitary sewer system is not feasible, in the opinion of the County Health Department, septic systems or other acceptable treatment and disposal methods for individual lots may be permitted, provided that evidence is submitted to the Planning Commission by the County Health Officer or his authorized representative certifying that field investigation has shown that ground slopes and soil conditions will allow for satisfactory disposal by the method being proposed with the lot arrangement and size as shown on the subdivision map and that any required drainage fields are either contained within the property or permitted on adjoining land by the owners thereof.

   The standards and requirements for testing and design are described and outlined in Title 18 of the Arizona Administrative Code. They include the use of BADCT standards to demonstrate that the applicant is not violating the aquifer at the point of discharge, and that the applicant has demonstrated that he or she has provided the financial and technical capability to complete the project.

   Further, the proposed individual systems must comply with BADCT standards set forth in the rules of the Arizona Department of Environmental Quality (ADEQ) for Individual Aquifer Protection Permits (APP) and General Permits under the Arizona Administrative Code Title 18 “Environmental Quality, Chapter 9, Department of Environmental Quality.” In general, Gila County has been delegated authority to approve conventional septic systems with a discharge of less than 24,000 gallons per day. For any other treatment technologies with discharges greater than 3,000 gallons per day, subdividers must obtain an APP from ADEQ.

d. Where connection to a public sanitary sewer system is not currently feasible but, in the opinion of the County Health Department, may be accessible in the foreseeable future, dry sewers will be required to be constructed. Individual sewage disposal systems will be installed for each lot at the time of building construction per 18-12.D.6.c above. Mandatory abandonment of these individual systems will be accomplished at the time the public sewer system is extended into the area of the subdivision. The connection of the dry sewer to the future extended public sewer will be mandatory and bonding for this connection may be required at the discretion of the County Health Department.

e. Every subdivision shall be provided with a water system as a condition of final plat approval for any subdivision containing lots or parcels less than five (5) acres in area. Where an existing water system is within reasonable access to the subdivision, in the opinion of the County Health Department, the existing system will be extended to service all lots within the subdivision. The subdivider shall provide guarantees acceptable to the Board of Supervisors that the subdivision can and will be served with an adequate supply of water from a water system operated by a certified water company or a municipality in compliance with existing state law. Those guarantees shall include, but not be limited to, a letter from the governing body of the water system attesting to the ability of the system to serve the subdivision and that a satisfactory agreement has been reached for connection to the system. These guarantees must be submitted prior to approval of the final plat.

f. Where connection to a water system is not feasible, in the opinion of the County Health Department, the subdivider may provide service by the establishment of a mutual water system. The subdivider shall provide guarantees acceptable to the Board of Supervisors that the subdivision can and will be served with an adequate supply of water from the mutual water system. The source of supply for the system shall be developed and improved to provide a supply of water adequate to satisfy the requirements of Gila County's Water Availability Guidelines, ADEQ and the County Health Department.

g. Fire hydrants shall be provided for all subdivisions including lots 90,000 square feet or less in area. Fire hydrants shall be provided with an adequate supply of water in accordance with the criteria herein established and/or requirements of the water departments, water companies and/or fire departments or districts having jurisdiction. Water mains and fire hydrants shall be installed to grades, location, design and sizes as indicated and called for on plans prepared by a civil engineer registered in the State of Arizona and approved by the County Engineering Department.

h. The following water availability guidelines for water production are hereby established for all new subdivisions or expansions of existing subdivisions within the unincorporated areas of Gila County.

    i. Gila County's Gallon Per Day minimum requirements are hereby established as outlined below.

        a) Subdivisions within areas, determined to be year around use areas shall provide sufficient evidence to demonstrate water availability in the amount of two hundred and fifty (250) gallons per day, per potential residence, on an annual basis.
        b) Subdivisions within areas determined to be seasonal use areas shall provide sufficient evidence to demonstrate water availability in the amount of one hundred and thirty five (135) gallons per day, per potential residence, on an annual basis.

    ii. For purposes of these guidelines; potential residences shall be calculated using the highest possible density established by the governing zoning district.

    iii. Water demands may exist within a Subdivision requiring additional water availability, such as laundry facilities, club houses, swimming pools, fountains,

etcetera. These facilities will be subject to water availability requirements as well. These requirements will be determined based on the proposed facility and potential water consumption.

iv. On-site storage shall be maintained to provide the total required water availability for a minimum of forty-eight hours.

v. These guidelines are subject to revision.

i. For subdivisions with lots over five (5) acres in area, the water supply may be from other than a community system. In this case, sufficient evidence shall be submitted showing that potable water is available and can be obtained for all lots in the subdivision.

j. Minimum lot size may be affected by requirements of the County Health Department and ADEQ pertinent to water and sanitary sewage systems.

k. Public Sanitary Sewage and Water Systems
All public sanitary sewage collection and treatment systems shall meet the requirements set forth in the Arizona Administrative Code for the Arizona Department of Environmental Quality (ADEQ) under Title 18, "Environmental Quality, Chapter 9, Department of Environmental Quality Water Pollution Control." In general, those facilities will need to obtain an Aquifer Protection Permit from ADEQ.

i. Public water service providers shall comply with the requirements for public water systems set forth in the Arizona Administrative Code under Title 18, "Environmental Quality, Chapter 4, Department of Environmental Quality Safe Drinking Water," as revised from time to time.

l. Certification
The final plat shall contain a statement that an Adequate Water Supply Report has been issued by ADWR. If an Inadequate determination is made by ADWR, such a statement will be noted on the final plat and all applicable disclosures required by the Arizona Department of Real Estate shall be made.

7. Solid Waste Disposal

Subdivider shall indicate distance to approved Solid Waste Disposal areas. If none are available, the Board of Supervisors may require that a detailed plan for Solid Waste Disposal be furnished by the subdivider as a condition of approval of the final plat.

8. Easements and Utilities

Except where alleys are provided for that purpose or where all utilities are within street right-of-ways or within easements adjacent to the streets on which lots front, easements at least eight (8) feet in total width shall be provided along rear lot lines for poles, wires, conduits, sanitary sewers, gas mains, water mains, or for other utilities. Where necessary, additional easements shall be located along the side lot lines. Half or partial easements may only be approved where written commitment of dedication of necessary additional easements are on record. All easements shall be in accordance with those approved by the concerned utility companies. Whenever possible, utilities shall be located underground

along the front of lots.

9. Monuments

The subdivider shall be responsible for the installation of permanent survey markers and monuments at required locations subject to approval by the Planning Commission or County Engineering Department. Generally, monuments shall not be installed at intervals greater than one thousand three hundred twenty (1,320) feet or less than six hundred sixty (660) feet. Iron pipe, steel bars, brass caps or concrete monuments shall be installed at all street intersections, points of tangency, points of curvature, alley intersections, lot corners and at such other points as may be required by the Planning Commission or County Engineering Department to ensure that retracing of the lines shown on County Official Maps may be accomplished. All monuments shall be clearly stamped or marked with the registration number of the Arizona Registered Land Surveyor who placed them.

Iron pipe and steel bar monuments shall be at least 18-inches in length, and shall be set at all lot corners, angle points and points of curvature.

All monuments installed within the public rights-of-way shall be brass caps set in concrete in accordance to MAG Standard Details 120-1 and –2. An Arizona registered land surveyor shall examine the locations of all survey markers and monuments and certify the accuracy of placement of said monuments.

10. Public Requirements

Consideration shall be given to the requirements for public land and open spaces as specified in the Comprehensive Plan during the design and layout of the subdivision. The Planning Commission may require certain lands to be dedicated or reserved for public purposes in conformance with the Comprehensive Plan as specified in these regulations.

11. Aesthetic Considerations

The subdivider shall give consideration to preserving natural features in the design and layout of a subdivision. Lots and buildings should be oriented to make advantageous use of any views or natural vistas. Wherever possible utility installations should be underground to assure that they do not detract from the design and amenities of the subdivision. Building pads shall be graded by the subdivider or individual lot owner to insure harmony with aesthetic features of the subdivision.

12. Special Design Standards for Hillside Subdivisions

a. Streets in hillside subdivisions shall be designed in accordance to the Gila County Roadway Design Standards Manual and the Drainage and Grading Ordinance.
b. Longitudinal grades of urban local roads shall not exceed twelve (12) percent below elevation 4,000 and shall not exceed ten (10) percent at or above elevation 4,000.
c. Longitudinal grades of rural local roads shall not exceed twelve (12) percent below

elevation 4,000 and shall not exceed ten (10) percent at or above elevation 4,000.

d. That portion of roads with maximum longitudinal grades shall have a maximum length of six hundred (600) feet.
e. Minimum dedicated street right-of-way widths shall be in accordance to the Gila County Roadway Design Standards Manual; width reductions due to extreme cross-slope cut and fill areas or similar conditions shall be subject to approval by the County Engineering Department.
f. "T" or "Y" type turning and backing areas may be substituted for circular turnarounds.
g. "Panhandle", double frontage, and other unorthodox lots may be permitted so long as it can be adequately demonstrated that no such lot will adversely affect any other lot, and that access to building envelope may be reasonably accomplished.
h. Private roads or driveways serving not more than three (3) lots shall be permitted to a maximum length of three hundred (300) feet.
i. Road plan views, profiles and cross sections are required showing the cut-fill slopes, culverts, etc. necessary to construct a roadway to current standards.
j. Right-of-way dedications will be of the width necessary to include all cut-fill slopes.

E. Improvement Standards and Procedures

1. General

a. The subdivider shall be responsible for installation of all subdivision improvements as specified herein both within the subdivision and adjacent thereto (offsite) when required to serve the subdivision.
b. The subdivider shall cause to be installed and constructed all road improvements, public utilities, survey monuments and markers, lot grading (when required) and drainage improvements. All such improvements shall conform to the requirements of these regulations and all other applicable Gila County and State standards, specifications, codes and regulations. These standards may be obtained, among others, from the County Recorder, Board of County Supervisors, County Planning Commission, County Health Department, and County Highway Department, Arizona Department of Water Resources (ADWR), and Arizona Department of Environmental Quality (ADEQ).
c. This article is to establish the minimum acceptance standards for private land development improvements, to insure the public health, safety, convenience and general welfare, to define the responsibility of subdivider and/or developer in the planning, construction, and financing of said improvements, and establish procedures for review and approval of preliminary and final plats and engineering plans.

2. The subdivider is responsible for costs related to design and installation of the following:

a. Setting of survey monuments and markers.
b. Street and road construction for all required road improvements, including but not limited to base, grading, curbs, gutters, sidewalks, pavement, landscaping, signage including traffic control and street naming, culverts and bridges.
c. Water and sewer line installations including fire hydrants, manholes and all appurtenances.

d. Required storm water system and/or other drainage improvements.
e. Landscaping and fencing where this is made a provision or condition of any approval, on recommendation by the Planning and Zoning Commission.
f. Required site and lot grading when required.

3. The subdivider shall be responsible for the installation of the following site utilities required by the Planning Commission and Board of Supervisors:

   a. Electric service.
   b. Telephone service.
   c. Street lighting.
   d. Natural gas lines or other fuel lines.
   e. Cable television service.

4. Responsibility

   All improvement of roads, alleys, public and private utilities, and lots which are required as a condition of subdivision plat or development plan approval shall be the responsibility of the subdivider or developer. All improvements shall be installed in accordance with the specifications and under the general review of the appropriate public agencies. All improvements installed as a result of the land development project shall be inspected by the civil engineer of record during construction. Upon completion of the improvements, the engineer shall furnish the County with a letter certifying the improvements were constructed to County Standards and that said improvements are in substantial compliance with the approved construction plans and specifications. Upon completion, the engineer shall also submit a set of "as- built" drawings prepared to the satisfaction of the County Engineering Department.

5. Required Improvements

   a. The subdivider shall be responsible for installation of permanent survey monuments in accordance to Section 18-12.D.9.
   b. When required, the subdivider shall cause to be installed public or private water facilities, including fire hydrants and appurtenances thereto, public sanitary sewer collection and disposal systems, and a storm sewer system and/or other drainage improvements designed and constructed according to plans and specifications approved by the County Engineering Department and the Board of Supervisors.
   c. The subdivider shall cause to be installed and constructed according to plans and specifications approved by the County Engineering Department and the Board of Supervisors, all road improvements, including grading, surfacing, curb and gutter installations, sidewalk construction, planting of landscaping, installation of street name and traffic control signs, and installation of street lights, where required.
   d. In addition to the above, the subdivider shall cause to be installed according to plans and specifications, all other improvements, including those discussed in 18-12.E.3 above, as required by the Planning Commission and the Board of Supervisors.

6. Plans, Engineering

Engineering Requirements
The subdivider and/or developer shall be responsible for having improvement plans prepared by a professional civil engineer registered to practice in the State of Arizona. These plans shall be prepared in conformance to all applicable current County, State and Federal standards and specifications.

7. Plan Requirements

a. Plans are to be prepared on standard plan-profile sheets (24” x 36” with ½” margins on top, bottom and right side and a 1 ½” margin on the left side), to a standard engineering scale of not less than 1” = 50'. The drawings must be clear, neat, legible and complete and to the requirements and satisfaction of the County Engineering Department. Road, sewer, drainage, water, and utility plans shall show natural ground profile and elevations, and the proposed grade of the improvements. The basis of elevation shall be shown and approved by the County Engineering Department.
b. Road plans shall show depth and type of base and surfacing material; sizes, types, and locations of features and structures for proper drainage. Adequate construction details for all features illustrated shall be included in the plan set. When required by the County Engineering Department calculations for structures shall be submitted with the plan set.
c. The testing and analysis of soils and materials shall be by an approved Geotechnical and Soils Laboratory. Testing reports shall be submitted directly to the County Engineering Department with the findings of all material and construction tests made on or for the required improvements in the subdivision. The cost of all sampling and testing necessary to substantiate the soils report shall be born by the developer.

8. Plan Review

a. The County Engineering Department and other County Departments will review the improvement plans of all subdivisions for conformance to County, State and Federal specifications and standards. Fees for these reviews shall be included with the subdivider’s plan submittal. Said fees shall be in the amount as required in the current adopted fee schedules.
b. The first and subsequent follow-up review are covered by the initial review fee. Any further reviews will, at the discretion of the County, require additional fees per the current adopted fee schedule. The additional fees must be paid before the additional reviews will commence.
c. The review period commences on the date of the receipt of the plans by the County Engineering Department. The review period for the first submittal shall not extend beyond sixty (60) working days from the date the plans and fees are received by the County Engineering Department. Acceptance is conditioned upon the plans meeting the requirements of these regulations and current County standards, specifications, and details. Written notice of submittal acceptance or rejection shall be sent by the County Engineering Department to the engineer of record within ten (10) working days.

d. Follow-up (second) reviews shall be completed within forty-five (45) working days from receipt of revised plans and reports provided that all necessary plan and report revisions resulting from the initial review are addressed.

9. Plans, Acceptance

a. Written notification of County acceptance and approval of the improvement plans will be sent by the County Planning Department to the subdivider's engineer at the time it is deemed that all conditions and requirements of the County have been met. The subdivider shall submit to the County Planning Department original mylars and two (2) copies of the improvement plans for signature by the reviewing agencies.
b. Acceptance and approval of improvement plans will be valid for a period of one (1) year from the date of acceptance. Plans for any work not started under permit within the one year period or completed within a two (2) year period must be resubmitted for plan acceptance. The acceptance and approval process shall be in accordance with the provisions and requirements of the review procedure discussed above and will be subject to current County standards and specifications.

10. Plan, Revisions

Written approval by the County Engineering Department must be received prior to constructing any changes to the accepted original plans. Three (3) copies of the original accepted drawings with the proposed changes illustrated in red must be submitted by the subdivider's engineer to the County Engineering Department for review. The Engineering Department shall stamp the revised sheets "Accepted" after review for conformance with County development standards. These revisions shall be incorporated into the required "as-built" drawings.

11. Plans, "As-Built"

The developer will provide a set of “as-built” drawings that accurately reflect the nature, locations, and dimensions of the improvements illustrated on the County approved plans. The civil engineer of record who makes the measurements to verify or correct the information shown on the plans must provide and place his/her signature on an "as-built" drawing certification on the cover sheet of the improvement plans being submitted to the County as "as-built" drawings. The certification statement shall be placed on the improvement plans cover sheet on the lower half of the cover sheet near the acceptance block.

12. Construction and Inspection

All site improvements shall be constructed under the general inspection and approval of the County Engineering Department. Before any construction begins, a Pre-Construction Conference shall be held with the developer, developer’s engineer, contractor, and Gila County Engineering Department in attendance. Primary responsibility for control of the quality of improvements remains with the subdivider, and he/she shall, upon completion of

the improvements, provide a certification from a registered civil engineer, engaged by the subdivider to monitor the construction, that all work has been completed in substantial conformance with the accepted plans and specifications. Inspections by the County Engineering Department will not in any way eliminate the need for regular inspection during the entire construction period by the subdivider's engineer. The County Engineering Department shall be notified at least five (5) working days prior to start of construction, and if work has been discontinued for any reason, notification shall again be given at least three working days prior to the restart of any construction.

13. Acceptance of Improvements

    Upon receipt of the required engineer's" as-built" certification the County Engineering Department shall conduct a final inspection to determine the acceptability of the improvements. If at this inspection, it is determined that the improvements are ready for acceptance, the Engineering Department will notify the Director of the Planning Department in writing. Should the County Engineering Department find that further work is required prior to acceptance, the County Engineering Department shall publish a "punch list" which reflects the remaining work to be done. The "punch list" will be forwarded to the developer and the Planning Department. Upon satisfactory completion of the "punch list" items, the County Engineering Department will notify the Planning Department in writing to release the subdivider's financial assurances.

14. Guarantees of Performance

    a. Before recording of a subdivision plat by the Board of Supervisors, the subdivider shall have designed all streets and alleys in the proposed subdivision together with sidewalks, curbs and gutters in accordance with the requirements of the Planning Commission. The Planning Commission may impose and specify requirements as to grading, paving, width, location, drainage, cul de sacs, culverts, bridges, and other necessary requirements. The subdivider shall enter into written agreement with the County Board of Supervisors wherein the subdivider shall agree to deposit a performance bond, funds in escrow, or irrevocable letter of credit for the cost of required improvements.
    b. The amount of the performance bond, funds in escrow, or irrevocable letter of credit shall be determined from the subdivider's cost estimates, and based upon the following schedule:

        i. Up to twelve (12) months, 110% of the engineer's estimate.
        ii. From thirteen (13) to eighteen (18) months, 115% of the engineer's estimate.
        iii. From nineteen (19) to twenty-four (24) months, 125% of the engineer's estimate.
        iv. Any acceptable financial assurance shall not exceed twenty-four (24) months.
        v. In the event the required improvements are not complete prior to the expiration date, the financial assurances shall be evaluated to determine if an increase in the amount and extension of time are necessary.

    c. The Board of Supervisors shall require the subdivider to post a bond for maintenance and/or repair of improvements damaged in the course of construction. Said

improvements shall include those improvements completed for development of the subdivision and improvements existing prior to subdivision development. Necessary maintenance and/or repairs, as determined by the County Engineering Department, due to negligence of the subdivider, intentional or accidental, will be performed after completion of subdivision improvements and County acceptance of said improvements. Such required repairs might include, but shall not be limited to, the following:

i. Damage to roads and highways, including all items related thereto, caused by transporting heavy construction equipment over them.
ii. Cutting and breaking street improvements to provide additional utility connections.

15. Improvement Standards

a. This section shall specify the minimum acceptable improvements that are required in a subdivision.
b. Street Improvements

i. All subdivisions with public streets shall have adequate dedicated public access and all subdivisions with private streets shall have adequate legal access as required by these and all other applicable County Standards.
ii. All streets within or adjacent to a subdivision or development, whether public or private, shall be improved in accordance with the latest edition of the Maricopa Association of Governments (MAG) "Uniform Standard Specifications for Public Works Construction" and "Uniform Standard Construction Details for Public Works Construction," – including all Gila County supplements thereto including these regulations, the Gila County Roadway Design Standards Manual, and the Gila County Drainage and Grading Ordinance.
iii. At least two (2) improved access points (public or private) shall be provided from an existing public street to land being subdivided. Such access shall be adequate to satisfy the purposes of these Subdivision Regulations. Such accesses shall be a condition of approval of the preliminary plat of said subdivision. At least one such access will be an all weather access.
iv. All service lines under the proposed pavement must be installed prior to placement of the final course of pavement or installed without open cutting of the pavement. Pavement on a county roadway which is newer than four (4) years cannot be cut for the installation of underground facilities.
v. The developer is required to install one (1) county approved street name sign for each intersection within the limits of and along the perimeter of the subdivision in accordance with the latest revision of the Uniform Traffic Control Manual. Stop signs and other traffic regulatory signs will also be required, as specified in the improvement plans.
vi. Subdivision roads will be accepted for maintenance by the County only when they meet all of the requirements of the Roadway Design Standards Manual and all other applicable regulations.

c. Drainage Retention/Detention of Storm Water

i. All necessary facilities, as determined by the County Engineering Department, including underground pipe, inlets, catch basins, open drainage conveyance systems, detention or retention facilities shall be installed to provide for adequate retention/detention and disposal of storm water and other surface water in order to maintain any natural drainage course. See Section 18-12.D.3.
ii. Where a subdivision is traversed by or abuts a stream, water course or drainageway, a drainage easement shall be provided. This easement shall be of sufficient size to contain flows of at least a one hundred (100) year flood event and shall not be obstructed.
iii. A right-of-way or public utility easement shall not be used as a retention/detention facility. A right-of-way may be used for flow through drainage with prior written approval by the County.
iv. All hydraulic and hydrologic studies and drainage requirements shall be in accordance to the Gila County Drainage and Grading Ordinance, Floodplain Management Ordinance, and Roadway Design Standards Manual.

d. Drainage and Grading Plans

i. Drainage and grading plans shall comply with the Gila County Drainage and Grading Ordinance and be approved by the County Engineering Department. Plan approval is conditioned upon the approval of the drainage and geotechnical studies prepared for the subdivision and receipt of a permit application and adopted fees.
ii. A preliminary drainage and grading plan submittal may be required with the preliminary plat if the site has any unusual topographic features or is a hillside development. The County Engineering Department will determine if a preliminary drainage and grading plan is required during the pre-application meeting. A final drainage and grading plan will be submitted with the improvement plans.

e. Utilities

i. Utilities required to service all lots must be provided within each subdivision. The County shall require the developer to locate utility lines underground, except by special permission from the County. The developer shall be required to post satisfactory assurances with the County to insure installation of electrical service and telephone service to all lots, and natural gas and cable television service, where applicable, to all lots.
ii. The rules and regulations of the Gila County Health Department and ADEQ are applicable to subdivision design and platting; improvements shall be in conformance with these regulations. Such rules and regulations shall be deemed minimum standards. Written approval by these agencies shall be required prior to final plat approval by the Board of Supervisors.
iii. A subdivision is required to receive an adequate supply of potable water from a water system operated by a certified water company or municipality operating under the rules and regulations of the ADWR or the laws of the State of Arizona. The existence of such a water company or municipality at or adjacent to the

development in itself shall not be considered an adequate basis for approval. The Board of Supervisors shall require the developer to provide acceptable guarantees for providing a water system.

iv. Subdivisions shall be provided with a complete water distribution system (and treatment, if required), which will adequately and safely serve the area platted. This applies to all subdivisions with lots of five (5) acre or less in size.

v. The developer shall be required to post satisfactory financial assurance with the County Engineer as part of the aforesaid guarantee that connection to such a water system will be made available to each lot at the street or alley abutting each lot when building construction commences (or when the building is ready for occupancy), and that fire hydrants have been installed at approved locations.

vi. All subdivisions with lot sizes less than one (1) acre (43,560 s.f.) in area or the unit density equivalent thereof (i.e. 50-acres/50+ units) shall be required to provide to each lot or unit a connection to a Gila County and ADEQ approved wastewater collection, treatment and disposal system. The subdivider shall be required to have designed and construct the facility within or near proximity of the proposed subdivision, or the subdivider shall be responsible for all costs related to connecting to an existing facility that can reasonably serve the proposed subdivision. The cost of connecting to an existing facility may include but is not limited to cost sharing fees, connection fees, design and construction of additional capacity that may be required, off-site sewer lines from subdivision to connection point, and permitting fees. The system shall be subject to all regulations and requirements of Gila County and ADEQ. A "Certificate of Approval to Construct" issued by ADEQ must accompany the final plat submittal to the Board of Supervisors.

vii. In areas where future wastewater treatment and collection systems are planned to be installed that would provide service to the area of the proposed subdivision, and the proposed subdivision has lots one (1) acre or larger in size, the Board of Supervisors may require the subdivider to install a "dry sewer" system within the subdivision for future connection to the wastewater treatment and collection system. Individual systems are required to be abandoned and connections made to the "dry sewers" at the time the treatment and collection system is on line. The subdivider shall be responsible for all costs of design, construction and permitting fees necessary to construct off-site sewer lines required to connect the subdivision to the system. The County will require assurances from the subdivider for connection to the system.

viii. The subdivider shall arrange solid waste disposal with an independent collection and disposal company.

16. Minimum Standards for Subdivision Road Paving

a. Roads: Improvement Security

All roads as required by these regulations shall be improved in accordance with the Gila County Roadway Design Standards Manual and approved by the County Engineering Department prior to the public sale of any land or lots appurtenant to said roads. In lieu of the installation of improvements by the subdivider, and in order to insure the proper

installation of said improvements, the subdivider shall provide financial security in a form sufficient to satisfy the Board of Supervisors, County Attorney, and the County Engineering Department.

i. A letter of intent shall be submitted to the Board of Supervisors indicating the method of improvement security. The letter shall be notarized for accurate content and signatures.
ii. The appropriate approved security shall be submitted to the Board of Supervisors for acceptance prior to the recording of the final plat by said Board.

16. Guarantees of Performance

Before recording of a plat or acceptance of a development plan by the Board of Supervisors, the subdivider shall have designed all roads and alleys in the proposed land development project to all acceptable County Standards.

F. Violations and Penalties

Whoever being the owner, or agent of the owner, of any land located within a proposed subdivision, transfers or sells, or agrees to sell, any land , by reference to, or exhibition of, or by use of a plat of, a subdivision, before such final plat has been approved by the Board of Supervisors and recorded or filed in the office of the County Clerk and Recorder, shall forfeit and pay a penalty of one thousand ($1,000) dollars for each lot or parcel so transferred or sold or agreed or negotiated to be sold; and the description of such lot or parcel by metes and bounds in the instrument of transfer, shall not exempt the transaction from such penalty, or from the remedies herein provided. Gila County may enjoin such transfer or sale or agreement by action for injunction brought in any Court of Equity Jurisdiction, or may recover the said penalty by civil action in any court of competent jurisdiction.

G. Amendments

1. Amendments

The Planning Commission and the Board of Supervisors may amend these Regulations after giving public notice of any such proposed amendment and after holding a hearing thereon.

2. Subdivision Regulations

No changes, erasures, modifications or revisions shall be made in the final plat after approval of the plat has been given by the Board of Supervisors.

H. Enforcement and Effectuation

1. Acceptance

No final plat of a subdivision shall be approved by the Planning Commission and accepted by

the Board of Supervisors unless it conforms to all of the provisions of these regulations.

2. Interpretation

   a. In the interpretation and application of the provisions of these regulations, the regulations shall be regarded as the minimum requirements for the protection of the public health, safety, comfort, morals, convenience, prosperity and welfare.
   b. These regulations shall not abrogate or annul any permits issued before the effective date of these regulations, nor shall they abrogate or annul any easement, covenant, or any other private agreement.

3. Separability

   a. If any article, section, subsection, sentence, clause, or phrase of these regulations is for any reason held to be unconstitutional or invalid by a decision of any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions. The Planning Commission hereby declares that it would have adopted these regulations and each article, section , subsection, sentence, clause and phrase thereof separately and irrespective of the fact that if any one or more of the articles, sections, subsections, sentences, clauses, or phrases be deemed unconstitutional or invalid.
   b. If the application of any provisions of these regulations to any tract of land is declared to be invalid by a decision of any court of competent jurisdiction, it is hereby declared to be the intent that the effect of such decision shall be limited to that tract of land immediately involved. Such a decision shall not affect, impair, or nullify these regulations as a whole or in any part in its application to any other tract of land.

4. Repeals

   All regulations or codes of the County of Gila inconsistent herewith, to the extent of such inconsistency and no further, are hereby repealed. The repeal of any of the above-mentioned regulations or codes does not revive any other regulation or code. Such repeals shall not affect nor prevent the prosecution or punishment of any person for the violation of any regulation or code repealed hereby, for an offense committed prior to the repeal.

ARTICLE 19
WASTEWATER SYSTEMS

SECTION 19-10
APPLICATION

Article 19 establishes the minimum qualification for persons performing soil classifications, percolation tests, site assessments, on-site wastewater treatment facility design; and prohibiting performance of such services by persons with a documented history of reporting inaccurate results, producing inadequate designs, or other potentially unethical or unacceptable behavior;

Also included is the notice of intent to discharge, design and installation requirements; repair of existing on-site wastewater treatment facilities; penalties; appeals process

SECTION 19-11
QUALIFICATIONS REQUIRED

Soil analysis, percolation tests, site investigation, on-site wastewater treatment facility design; persons authorized to perform; additional notice of intent to discharge, design, and installation requirements, repair of existing on-site wastewater treatment facilities.

A. All site investigations, percolation testing, soil analyses, system selection, and design of on-site wastewater treatment facilities shall be conducted in accordance with Arizona Administrative Code Title 19, Chapter 9, Articles 1 and 3.

B. The services referenced in Section 19-11.A shall be performed only by the following persons:

   1. Professional Engineers or Geologists licensed by the Arizona Board of Technical Registration pursuant to A.R.S. §32-121 *et seq*, with knowledge of and competence with the preparation of the design documents and submittals for such systems, unless exempted under ARS §32-144(A) (6).

   2. Sanitarians registered with the Arizona Sanitarians Council pursuant to A.R.S. §36-136.01, with knowledge of and competence with the preparation of the design documents and submittals for such systems.

   3. Persons who have demonstrated proficiency in site investigations and the selection and design of on-site wastewater systems, and who have met all the following requirements:

      a. ~~Successful completion of one or more classes presented by the Gila County Wastewater Department within the past two years and after January 1, 2001, regarding the tasks specified in Section 1(A). Those persons who successfully completed the "Implementing ADEQ's Aquifer Permit Program Regulations for On-Site Wastewater Treatment Facilities, Effective January 1, 2001" training presented by the Gila County Wastewater Department in March 2001 shall be considered qualified to perform the tasks specified~~

~~in Section 1(A). The Gila County Wastewater Department shall expressly state whether or not any classes it presents to the regulated community after the effective date of this ordinance will qualify the prospective attendees to perform the services referenced in Section 1(A) under this section.~~

b. Successful completion of "Gila County Listing Course" and/or other specified classes presented by Gila County Community Development along with their associated pre-requisite courses. Those persons who have successfully completed the "Gila County Listing Course" presented by Gila County Community Division or have within the two years following their most recent listing, successfully completed a specified "Re-Listing Course" and its associated pre-requisites if any, shall be considered qualified to perform the tasks specified in Section 19-11.A. Gila County Community Development Division shall expressly state whether or not any classes it presents, along with the associated pre-requsite courses if any, to the regulated community after the effective date of this ordinance will qualify the prospective attendees to perform the services referenced in Section 19-11.A under this section.

c. Maintained a satisfactory history of producing accurate results, and adequate designs.

4. ~~The~~ Gila County ~~Health Department~~ Community Development reserves the right to not accept results from persons or firms with a documented history of reporting inaccurate results, producing inadequate designs, or other actions that may result in violations of the provisions of Arizona Administrative Code Title 19, Chapter 9, Article 1 and 3. A "documented history" is defined as three written notices of reporting inaccurate results producing inadequate designs, or other actions that resulted in violations of the provisions of Arizona Administrative Code Title 18, Chapter 9, Articles 1 and 3 issued to the person or firm over the cumulative time of listing of that person or entity.

SECTION 19-12
SITE INVESTIGATIONS

A. All site investigations, percolation testing, and soil classifications pertaining to on-site wastewater treatment facilities shall be witnessed by a member of the Gila County Community Development staff to be valid. Any results of such activities, which are performed without being witnessed by Gila County Community Development Staff, may be considered invalid.

B. ~~The~~ Gila County ~~Health Department~~ Community Development Division may require percolation testing to resolve disputes in those instances where the site investigator and the Gila County Community Development Staff are unable to reach an agreement on the soil's ability to absorb water as determined by soil classification methods.

C. ~~The~~ Gila County ~~Health Department~~ Community Development Division may require percolation testing when the soil type and structure are such that soil classification methods are difficult to apply properly. Such soil types and structures include, but are not limited to, decomposed granite, fractured shale, fractured sandstone, etc.

SECTION 19-13
WASTEWATER TREATMENT FACILITY DESIGN

A. Conventional on-site wastewater treatment facilities regulated under Arizona Administrative Code R18-9-E302 (General Permit 4.02) may be designed by any person qualified under Section 19-11.B of this Ordinance.

B. Alternative on-site wastewater treatment facilities regulated under Arizona Administrative Codes R18-9-E303 through R18-9-E322 (General Permits 4.03 through 4.22) shall be designed by Professional Engineers licensed by the Arizona Board of Technical Registration pursuant to A.R.S. §32-121 *et seq,* with knowledge of and competence with such systems.

C. Surveying performed for the purposes of establishing property boundaries, corners, and bench mark elevations shall be performed by or under the direct supervision of a professional land surveyor registered by the Arizona Board of Technical Registration pursuant to A.R.S. §32-121 *et seq.* Any other surveying for the purpose of establishing surface slopes or topographical grades shall be performed by or under the direct supervision of a person qualified to perform the tasks specified in section 19-11.A.

D. A Gila County Septic Compliance Report and a Gila County Floodplain Status Report shall accompany each on-site wastewater treatment facility Notice of Intent to Discharge form submitted to the Gila County ~~Health Department~~ Community Development.

E. Where the daily design flow for a residence as calculated by fixture count does not agree with the daily design flow as calculated by bedroom count, the designer shall base the design on the larger of the two values.

F. ~~The~~ Gila County ~~Health Department~~ Community Development may deny requests made for an alternative feature of design, installation, or operational feature under Arizona Administrative Code R18-9-A312(G) when the applicant is unable to demonstrate that the proposed alternative feature satisfies both of the following criteria specified in Code R18-9-A312(G):

   1. The proposed alternative feature addresses site or system conditions more satisfactorily than the general permit requirement, and;

   2. The proposed alternative feature achieves equal or better performance compared with general permit requirement.

G. ~~The~~ Gila County ~~Health Department~~ Community Development may expressly require a person requesting an alternative feature of design, installation, or operational feature under Arizona Administrative Code R18-9-A312(G) to submit written documentation prepared by a professional engineer (other than the original designer of the on-site wastewater treatment facility), a registered geologist with a strong background in hydrology, registered by the Arizona Board of Technical Registration pursuant to A.R.S. §32-121 *et seq,* or other qualified professional as necessary to demonstrate conformance with Arizona Administrative Code Title 18, Chapter 9, Articles 1 and 3.

SECTION 19-14
WASTEWATER TREATMENT FACILITY INSTALLATION

A. A property owner or applicant may not install an alternative on-site wastewater treatment facility regulated under Arizona Administrative Codes R18-9-E303 through R18-9-E322 (General Permits 4.03 through 4.22) for his or her own use, unless the property owner or applicant possesses a valid license issued by the Arizona Registrar of Contractors which would allow the homeowner or applicant to contract to install an on-site wastewater treatment facilities.

B. No person shall repair or replace an existing on-site wastewater treatment facility, unless they have met all of the following requirements:

1. They meet one or more of the qualification requirements given in Section 19-11.B.

2. They obtain an on-site wastewater treatment facility repair permit from ~~the~~ Gila County ~~Health Department~~ Community Development before beginning the repair or replacement.

3. The repair and/or replacement conforms to Arizona Administrative Code Title 18, Chapter 9, Articles 1 and 3 to the maximum extent practicable.

SECTION 19-15
VIOLATIONS/PUBLIC NUISANCE

~~Penalties~~ Violations/Public Nuisances Dangerous to the Public Health;
Abatement of Public Nuisance Dangerous to the Public Health

~~A. Any individual violating Section 1 of this Ordinance shall be guilty of a class one (1) misdemeanor, pursuant to A.R.S. §11-251.05(A)(2).~~

~~B. In addition, the Gila County Attorney may file a civil action to enjoin the individual from performing such services and/or recover all fees earned by the violator for return to the person who has paid for the performance of these services.~~

A. The following conditions constitutes a public nuisance dangerous to the public health:

1. All sewage, human excreta, wastewater, garbage or other organic wastes deposited, stored, discharge, or exposed so as to be a potential instrument or medium in the transmission of disease to or between any person or persons.

2. Any vehicle or container used in the transportation of human excreta ~~that~~ which is defective and allows leakage or spillage of contents.

3. The maintenance of any overflowing septic tank or cesspool, the contents of which may be accessible to flies**, and other insects and rodents.**

4. The use of the contents of privies, cesspools or septic tanks or the use of sewage or sewage

plant effluents for fertilizing or irrigation purposes for crops or gardens except by specific approval of ADEQ.

5. The pollution or contamination of any domestic waters that is direct result of the conditions listed above.

B. Abatement of Public Nuisance Dangerous to the Public Health

1. If a Public Nuisance Dangerous to the Public Health exists on private property, Gila County Community Development may order the owner or occupant to remove the nuisance within 24 (twenty four) hours at the expense of the owner or occupant. This order will be in the form of a notice of violation served as required by law and delivered to the owner and/or occupant of the property. If the owner or occupant fails or refuses to comply with the order, Gila County Community Development may take any or all of the following actions:

2. Remove or have the nuisance removed using the methods and procedures prescribed in Gila County Ordinance #08-02, the Clean and Lien Ordinance (See Section 16-14.

3. Order or authorize the water utility serving the property to turn off the water to the property to prevent the danger to public health from increasing.

4. Where water to the property is provided by a private well with a pump supplied with power furnished by a utility company, order or authorize the utility company to disconnect power to the property to prevent the danger to the public health from increasing.

5. Charge the owner or occupant who caused the nuisance with a violation of this ordinance as prescribed in

SECTION 19-16
ADMINISTRATION AND ENFORCEMENT

~~A) An applicant may appeal any final decision made by the Gila County Health Department regarding the issuance or denial of a license to install and/or discharge from an on-site wastewater treatment facility, pursuant to the Pre-Hearing and Hearing Procedures for on-site wastewater system licensing Appeals adopted by the Gila County Board of Supervisors.~~

A. It shall be the duty of the Gila County Community Development Wastewater Department Manager to administer and enforce this Ordinance. In accordance with the prescribed procedures of this jurisdiction and with the concurrence of the appointing authority, the Director of Community Development shall have the authority to appoint the related technicians, sanitarians, inspectors and other employees as necessary to assist the Wastewater Department Manager. Such employees shall have the powers as delegated by the Board of Supervisors through the Director of Community Development. All County law enforcement officials and agencies shall, whenever requested by the Wastewater Department Manager, enforce this Ordinance to the extent that they are lawfully authorized to do so, subject to the will of the Gila County Board of Supervisors.

SECTION 19-17
PENALTIES; REMEDIES

A. Criminal Penalties: Any person, firm or corporation, whether as principal, applicant, agent, tenant, employee or otherwise, who violates any provision of this ordinance or violates or fails to comply with any order or regulation made hereunder is guilty of a Class 1 Misdemeanor. Each and every day during which the illegal activity, use or violation continues is a separate offense.

B. Civil Penalties: Any person, firm or corporation, whether as principal, owner, applicant, agent, tenant, employee or otherwise, who violates any provisions of this ordinance shall be subject to a civil penalty. Each day of a continuing violation is a separate violation for the purpose of imposing a separate penalty. The civil penalty for violations of this ordinance shall be pursuant to Gila County Ordinance No.05-01, titled Gila County Hearing Officer Rules of Procedures. An alleged violator shall be entitled to an administrative hearing on his liability, and review by the Board of Supervisors as provided in the Ordinance No.05-01.

C. Remedies: An alleged violator who is served with the Notice of Violation subject to civil penalty shall not be subject to a criminal prosecution for the same factual situation. However, all other remedies provided for herein shall be cumulative and not exclusive. The conviction and punishment of any person hereunder shall not relieve such person from the responsibility to correct prohibited conditions or improvements nor prevent the enforcement, correction or removal thereof. In addition to the other remedies provided in the article, the Board of Supervisors, the County Attorney, the Inspector, or any adjacent or neighboring property owner who shall be damaged by the violation of any provision of this ordinance, may institute, in addition to the other remedies provided by law, injection, mandamus, abatement or any other appropriate action, proceeding or proceedings to prevent or abate or remove such unlawful erection, construction, reconstruction, alteration, maintenance or use.

SECTION 19-18
APPEALS

Nothing in this Ordinance precluded any individual, company or corporation from seeking redress through the courts concerning any portion of this Ordinance or any ruling made by Gila County Community Development. The method of appealing a Civil Penalty imposed by the Gila County Hearing Officer is outlined in Article 16 of this code. The method of appealing verdicts of a Criminal Penalty is outlined in the State of Arizona Rules of Criminal Procedure.

ARTICLE 20
GRADING AND DRAINAGE

SECTION 20-10
STATUTORY AUTHORIZATION, FINDING OF FACT, PURPOSE, AND OBJECTIVES

A. STATUTORY AUTHORIZATION

The Legislature of the State of Arizona has in A.R.S. 11-251(30), (31), and (36) and A.R.S. 11-251.05 authorized the Board of Supervisors to "Do and perform all other acts and things necessary to the full discharge of its duties as the legislative authority of the county government." And to "adopt and enforce standards for excavation, landfill and grading to prevent unnecessary loss from erosion, flooding and landslides." And to "adopt, amend and repeal all ordinances necessary or proper to carry out the duties, responsibilities and functions of the County."

B. FINDINGS OF FACT

Grading and development can increase runoff from undisturbed lands. As more land is developed more runoff can occur. An increase in runoff affects surrounding property as well as downstream properties. As property develops, the capacity of natural channels may be exceeded.

C. STATEMENT OF PURPOSE

It is the purpose of this ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses by regulating grading and drainage of all land within the unincorporated area of Gila County, Arizona.

D. TITLE

The ordinance may be cited as the "Gila County Grading and Drainage Ordinance" and shall be referred to herein as the "Ordinance".

SECTION 20-11
DEFINITIONS

"Acre, net" means 43,560 square feet not including Rights-of-Way, roadway easement or ingress and egress easements.

"Acre, commercial" means thirty six thousand (36,000) square feet of land area, exclusive of streets and alleys and other non-developable square footage.

"Appeal" means a request for review of the Public Works Director or his designee's interpretation or application of the provisions of this Regulation.

"Approval" shall mean that the proposed work or completed work conforms to this ordinance in the opinion of the Public Works Director or his designee as evidenced by the issuance of a "Grading and Drainage Compliance Form"

"A.R.S." means Arizona Revised Statutes.

"As-Graded" is the extent of surface conditions on completion of grading.

"Bedrock" is in-place solid rock.

"Bench" is a relatively level step excavated into earth material on which fill is to be placed.

"Borrow" is earth material acquired from an off-site location for use in grading on a site.

"Building Official" means the functional title of the Director of the Community Development Division, or the Director's duly authorized representative, charged with the administration and enforcement of the Gila County Building Code.

"Building Site" means the area extending laterally a minimum distance of 5 feet beyond the foundation or support of a structure, which is constructed or placed on the site.

"Civil Engineer" is a professional engineer registered by the State of Arizona to practice in the field of civil works, in accordance with A.R.S. Title 32, Chapter 1.

"Compaction" is the densification of a fill by mechanical means.

"Design Flow" means the peak flow and peak volume of rainfall resulting from the design storm generated within a defined area.

"Design Storm" means a rainfall event having a one-percent probability of occurrence in any given year, also referred to as the "100-year storm".

"Design Storm Duration" means the length of time over which the design storm occurs.

"Design Standards" means criteria for design of grading and drainage facilities, and criteria for preparation of Drainage and Grading Report/plan, as determined and published by the Public Works Director or his designee.

"Detention System" a system, which detains runoff in controlled manner through the use of storage facilities. Stored runoff is metered out at specified rate to accomplish the detention design objectives.

"Development" means any man-made change to property, including but not limited to, buildings or other structures, mining, dredging, filling, grading, landscaping, paving, excavation or drilling operations.

"Drainage" means runoff, which flows overland as a result of precipitation. This shall include sheet flow and flows which may concentrate in local drainage systems with or without defined channels.

“Public Works Director or his designee” means the individual or position as appointed by the Board of Supervisors of Gila County, who is responsible for the administration of this Ordinance.

“Drainage Easement” means a legal right or privilege to use an area defined and established to receive or convey runoff.

“Drainage and Grading Report/Plan” means the report and drawings detailing a proposed development and supporting calculations. The Drainage and Grading Report/Plan must be prepared under the direct responsible charge of a Professional Engineer registered in the State of Arizona per ARS 32-101 (et. seq.), who shall seal the work per ARS 32-125.

“Drainage System” means a system of lakes, rivers, creeks, streams, washes, arroyos, channels, closed conduits, or other topographic features on, through, or over which storm water flow at least periodically.

“Dry well” means a hole, usually rock-filled, covered and designed to allow drainage water to seep into the ground.

"Earth Material" is any rock, natural soil or fill or any combination thereof.

"Engineering Geologist" is a geologist experienced and knowledgeable in engineering geology.

"Engineering Geology" is the application of geologic knowledge and principles in the investigation and evaluation of naturally occurring rock and soil for use in the design of civil works.

“Engineered Grading” means grading as defined by Appendix Chapter 33 of the 1997 Uniform Building Code or latest revision.

“Erosion” means the transportation of sediment and changing the ground surface as a result of the movement of wind, water, ice and other geologic agents.

"Excavation" is the mechanical removal of earth material.

"Fill" is a deposit of earth material placed by artificial means.

“Floodplain Administrator” is the individual or position appointed to administer the Gila County Floodplain Management Ordinance, in accordance with the provisions of that ordinance.

"Geotechnical Engineer." See "Soils Engineer."

"Grade" is the vertical location of the ground surface.

Existing Grade is the grade prior to grading.
Finish Grade is the final grade of the site that conforms to the approved plan.
Rough Grade is the stage at which the grade approximately conforms to the approved plan.

"Grading" is any excavating or filling or combination thereof.

"Grading and Drainage Compliance Form" means a document issued by the Public Works Director or his designee when the Public Works Director or his designee has determined the site was developed in accordance with the approved plan.

"Grading and Drainage Permit" means a document indicating the approval by the Public Works Director or his designee of a grading and drainage report/plan to develop a site.

"Key" is a designed compacted fill placed in a trench excavated in earth material beneath the toe of a proposed fill slope.

"Off-site Runoff" means runoff produced from precipitation which falls outside the limits of the parcel(s) on which development is proposed, and which drains through that(those) parcel(s).

"On-site Runoff" means runoff produced from precipitation which falls within the limits of a development or the parcel on which development is proposed, including easements and dedicated rights-or-way.

"Person" means an individual, developer or the developer's agent, firm, partnership, association, corporation, municipality or agent of the aforementioned groups/individual or its agencies or political subdivisions.

"Parcel" means a plot of real estate described by a duly recorded legal description.

"Professional Inspection" is the inspection required by this ordinance to be performed by the civil engineer, soils engineer or engineering geologist. Such inspections include that performed by persons supervised by such engineers or geologists and shall be sufficient to form an opinion relating to the conduct of the work.

"Rainfall Event" means precipitation falling in a specified temporal distribution.

"Reach" means a specific section of a stream or watercourse.

"Retention System" means a system, which retains runoff in a controlled manner through the use of storage facilities. Stored runoff is evacuated by percolation and evaporation.

"Road or Roadway" means that area, whether public or private, between right-of-way or easements lines, dedicated, reserved or provided for purposes of vehicular and pedestrian traffic and other uses not inconsistent therewith.

"Site" is any lot or parcel of land or contiguous combination thereof, under the same ownership, where grading is performed or permitted.

"Slope" is an inclined ground surface the inclination of which is expressed as a ratio of horizontal to vertical distance.

"Soil" is naturally occurring superficial deposits overlying bedrock.

"Soils Engineer (Geotechnical Engineer)" is a professional engineer experienced and knowledgeable in the practice of soils engineering (geotechnical engineering).

"Soils Engineering (Geotechnical Engineering)" is the application of the principles of soil mechanics in the investigation, evaluation and design of civil works involving the use of earth materials and the inspection or testing of the construction thereof.

"State Standard" means publications of the Arizona Department of Water Resources developed to set minimum standards for drainage.

"Substantial Improvement" means any repair, reconstruction, rehabilitation, addition or improvement of structure, the cost of which equals or exceeds 50 percent (50%) of the market value of the structure either (1) before the improvement or repair is started, or (2) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of a wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or (2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

"Temporal Distribution" means a specified distribution of rainfall over time.

"Terrace" is a relatively level step constructed in the face of a graded slope surface for drainage or maintenance purposes.

"Variance" means a grant of relief from the requirements of this ordinance which permits construction or other uses of property in a manner that would otherwise be prohibited or restricted by this ordinance.

SECTION 20-12
GENERAL PROVISIONS

A. LANDS TO WHICH THIS ORDINANCE APPLIES

This ordinance shall apply to all land within the unincorporated area of Gila County, Arizona, excluding lands under federal and tribal jurisdiction unless requested by tribal state or federal official or mandated by state or federal regulation.

B. COMPLIANCE

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations.

C. ABROGATION AND GREATER RESTRICTIONS

1. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

2. Nothing contained in this Ordinance shall be construed to limit or repeal other ordinances adopted and/or powers granted to Gila County, the Flood Control District of Gila County, or statutes adopted by the State of Arizona or the United States of America.

3. That portion of a development that is within a designated special flood hazard area shall comply with Gila County Floodplain Management Ordinance. Development within a delineated floodplain is not exempt from the requirements of this ordinance.

4. Further, this Ordinance shall not be construed to legalize existing conditions or uses, which are in violation of other statutes, ordinances or regulations.

D. INTERPRETATION

1. Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application. When not inconsistent with the context, words used in the present tense include the future; words in the singular include the plural; words in the plural include the singular. The word “shall” is mandatory and the word “may” is permissive.

2. In the interpretation and application of this ordinance, all provisions shall be: (1) considered as minimum requirements, (2) liberally construed in favor of the governing body, and (3) deemed neither to limit nor repeal any other powers granted under State Statutes.

3. Specific projects may warrant additional requirements. The Public Works Director or his designee has the authority to establish standards and/or policies as necessary to carry out the provisions of this title.

E. WARNING AND DISCLAIMER OF LIABILITY.

The degree of protection from flooding due to storm water runoff required by this ordinance is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Compliance with this Ordinance does not insure complete protection from flooding and is not to be taken as a warranty. Greater storms may occur or man-made obstructions or diversions may increase the water damage hazard. Better scientific methodology or improved data available at some future time may also result in modified flood hazard estimates. Compliance with this Ordinance does not imply that land will be free from flooding or flood damage. This Ordinance shall not create liability on the part of Gila County, the Flood Control District of Gila County, or any officer or employee thereof for any flood

damages that may result from reliance on this ordinance or any administrative decision based upon this ordinance.

F. RESTRICTION ON ORDINANCE

Nothing in this ordinance shall:

1. Affect Existing uses of property or the right to its continued use or the reasonable repair or alteration thereof for the purposes existing at the time this ordinance takes effect, provided that the effect of such repair or alteration upon drainage would not be considered a "substantial improvement" or constitute an increased hazard to that or other properties.

2. Prevent, restrict or otherwise regulate the use or occupation of land or improvements for railroad, mining, metallurgical, grazing or general agricultural purposes, if the tract concerned is five or more contiguous commercial acres. This restriction on regulation shall be construed to conform with the requirements of A.R.S. 11-830 as written or as subsequently amended.

3. Require a property owner to submit plans for or install or change a drainage system on property already developed at the time this ordinance becomes effective.

4. Require submission of a drainage report and plan in connection with the repair or alteration of property as it was developed at the time this ordinance became effective so long as the effect of such repair or alteration upon drainage would not be considered a "substantial improvement" or constitute an increased hazard to that or other properties.

5. Diminish or otherwise alter the enforcement of the Gila County Floodplain Management Ordinance.

6. Apply to property specifically exempted by other ordinance, statute or law.

7. Preclude any person in compliance with this ordinance from liability if that person's actions increase flood hazards or result in property damage or injury to any other person or property.

G. SEVERABILITY

This ordinance and the various parts thereof are hereby declared to be severable. Should any section of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole or any portion thereof other than the section so declared to be unconstitutional or invalid.

SECTION 20-13
ADMINISTRATION

A. DESIGNATION OF THE PUBLIC WORKS DIRECTOR OR HIS DESIGNEE

The Public Works Director or his designee shall be the individual or position as defined in section 20-11 "DEFINITIONS" in this ordinance. This article sets forth the duties and powers of the Public Works Director or his designee. The Public Works Director or his designee may delegate to others the duties and authority necessary to carry out these duties as outlined in Sections 20-13.B and 20-13.C.

B. MANDATORY DUTIES AND RESPONSIBILITIES OF THE PUBLIC WORKS DIRECTOR OR HIS DESIGNEE

1. Review drainage reports and plans for all developments of land covered by this ordinance and issue a Grading and Drainage Permit approving such plans when the requirements of this Ordinance are met.

2. Investigate complaints of non-compliance with this ordinance.

3. Keep copies of all documents or other submissions made pursuant to the requirements of this ordinance.

C. DISCRETIONARY POWERS OF THE PUBLIC WORKS DIRECTOR OR HIS DESIGNEE

1. Inspect properties for which approval of drainage and grading reports and plans have been requested.

2. Inspect properties in response to complaints; and if violations are found, require compliance with the provision of this ordinance.
3. Upon determination that development of land subject to this ordinance has proceeded without a Grading and Drainage Permit or was developed not in accordance with the approved Grading and Drainage Permit, take action necessary to attempt compliance with this ordinance.

4. Upon determination that all reasonable means to gain voluntary compliance have been exhausted, a notice of non-compliance or disclaimer may be recorded with the Gila County Recorder in a manner so that it appears in the chain of Title of the affected parcel of land.

5. Issue notices of violation.

6. Require additional information necessary to make a determination concerning violations and compliance with the provisions of this ordinance.

7. Establish and adopt drainage design standards, guidelines, administrative rules, procedures and policies to implement and effectuate the purposes of this ordinance.

8. Require appropriate financial assurances for any drainage and or grading infrastructure projects.

9. Maintain or require maintenance of all public and private drainage, retention and detention easements and Rights-of-Way.

SECTION 20-14
FEES

A. AUTHORITY FOR FEE SCHEDULE

The Board of Supervisors may adopt a fee schedule to cover expenses for grading and drainage matters.

B. NAME OF FEE SCHEDULE

Such fee schedule will be identified as the Grading and Drainage Fee Schedule, and shall be updated from time to time to cover costs of administering this ordinance.

C. WAIVER OF FEE

Fees may be waived on property owned by Federal, State, County, Municipal or School Districts governments when said property is used by them in carrying out their governmental operations.

D. REVISION OF FEES

The Board may revise the fee schedule as needed to cover expenses for review, inspection services and administration of this ordinance. The adoption or revision of a fee schedule shall not effect any change in the ordinance itself.

SECTION 20-15
PENALTIES

A. Civil Penalties: Any person, firm or corporation, whether as principal, owner, agent, tenant, employee or otherwise, who violates any provisions of this Ordinance shall be subject to a civil penalty. Each day of a continuing violation is a separate violation for the purpose of imposing a separate penalty.

B. Remedies: All remedies provided for herein shall be cumulative and not exclusive. The conviction and punishment of any person hereunder shall not relieve such person from the responsibility to correct prohibited conditions or improvements nor prevent the enforcement, correction or removal thereof. In addition to the other remedies provided in this article, the Board of Supervisors, the County Attorney, the Inspector, or any adjacent or neighboring property owner who is damaged by the violation of any provision of this Ordinance, may institute, in addition to the other remedies provided by law, injunction, mandamus, abatement or any other appropriate action, proceeding or proceedings to prevent or abate or remove such unlawful erection, construction, reconstruction, alteration, maintenance or use.

C. Schedule of Civil Penalties for violation of the Gila County Grading and Drainage Ordinance:

The Board establishes the amounts of civil penalties for violations and authorizes the hearing officer to impose civil penalties for grading violations in the following amounts:

1. **First Violation**

   For an individual person: Not more than $700 per day of continuing violation.
   For an enterprise: Not more than $10,000 per day of continuing violation.

2. **Subsequent Violations of the Same Provision:**

   For an individual person: Not less than $100.00 nor more than $700.00 per day of continuing violation. For an enterprise: Not less than $200.00 nor more than $10,000.00 per day of continuing violation.

SECTION 20-16
GENERAL REQUIREMENTS

This article sets forth the general requirements for Drainage and Grading Permit, Drainage and Grading Clearance, and Drainage and Grading Report/Plan.

A. GRADING AND DRAINAGE PERMIT

1. A Grading and Drainage Permit shall be required for any development or substantial improvement, if such development or substantial improvement will divert, retard, obstruct, or otherwise affect existing drainage. The Public Works Director or his designee may extend the Grading and Drainage Permit in one-year increments. The extensions may be repeated as approved by the Public Works Director or his designee. During construction, the owner must take all means necessary to avoid detrimental effects from interior grading.

2. No person shall perform any grading not exempted by this ordinance without first having obtained a grading permit from the Public Works Director or his designee.

3. Written application for a Grading and Drainage Permit shall be submitted to the Public Works Director or his designee on forms provided by Gila County.

4. If an application is submitted to extend a permit for additional grading, an engineered grading plan and drainage report/plan (per Section 20-16.B) shall be required then the cumulative grading would exceed 5,000 yards. Multiple applications for grading small quantities at a time shall not be used to avoid the engineered grading plan and drainage report/plan requirements.

5. An exemption from requirements for zoning clearance, building permit, Health Department clearance, floodplain use permit or other permits does not constitute an exemption from this ordinance, except as set forth A.R.S. 11-830.

6. Before issuance of the Drainage and Grading Permit, financial assurances may be required

by the Public Works Director or his designee to ensure construction, completion and/or maintenance of approved drainage facilities. Assurances shall be released upon verification of compliance with approved plans and all provisions of this ordinance.

7. The Public Works Director or his designee may require completion of a master drainage plan and or a Drainage and Grading plan/report for a development(s) to determine the need for area drainage facilities resulting from a proposed development. The plan shall set forth the amounts of land required for construction of area drainage facilities. The total required amount of land for detention/retention is to be determined by approximate engineering methods in the State Standards or by a detailed engineering analysis. The Public Works Director or his designee shall evaluate each request for a Grading and Drainage Permit or variance and determine if the applicant has proposed sufficient facilities and reserved sufficient land area to be able to mitigate any increased runoff resulting from the proposed development.

8. A copy of the Drainage and Grading Permit shall be kept on the site for which the permit was issued, and available for public inspection for the duration of the construction work.
9. Exempted Work. A Grading and Drainage Permit is not required for the following:

   i. An excavation below finished grade for basements and footings of a building, retaining wall or other structure authorized by a valid building permit. This shall not exempt any fill made with the material from such excavation or exempt any excavation having an unsupported height greater than 5 feet (1524 mm) after the completion of the structure.
   ii. Cemetery Graves.
   iii. Refuse disposal sites controlled by other regulations.
   iv. Excavations for wells or tunnels or utilities.
   v. Mining, quarrying, processing or stockpiling of rock, sand, gravel, aggregate or clay where established and provided for by law, provided such operations do not affect the lateral support or increase the stresses in or pressure upon any adjacent or contiguous property, or modify drainage patterns.
   vi. Exploratory excavations under the direction of soil engineers or engineering geologists.

10. Exemption from the permit requirements of this ordinance shall not be deemed to grant authorization for any work to be done in any manner of the provisions of this ordinance or any other laws or ordinances.

B. DRAINAGE REPORT/PLAN

1. A Drainage Report/Plan shall be required for all (1) manufactured home parks, (2) recreational vehicle parks, (3) industrial parks, (3) commercial development, (4) single or multi-family residential subdivisions, (5) apartment sites, and (6) other development that in the opinion of Public Works Director or his designee.

2. All Drainage and Grading Reports/Plans shall be prepared and sealed by a Registered Professional Civil Engineer (and or Geotechnical Engineer for Soil/Grading), registered in the

State of Arizona per A.R.S. 32-101(et. seq.). The Drainage and Grading Report/Plan shall be based on minimum criteria established by the State Standard, unless Gila County adopts more restrictive Drainage and Grading Design Standards.

3. Biennial report updates shall be submitted for any undeveloped or partially developed portions of an approved plan if in the opinion of the Public Works Director or his designee the unfinished work creates drainage problems for downstream or surrounding properties. The report shall address interim existing drainage conditions as compared to drainage conditions at the time of plan approval. Based upon the conclusions of the report and or field inspection, reasonable modifications to the approved plan and/or construction of facilities to mitigate interim hazards may be required by the Public Works Director or his designee. The provisions of Section 20-16.C shall govern submittals for a single family residential development. All Drainage and Grading Reports/Plans shall be prepared and sealed by a Registered Professional Civil Engineer (and or Geotechnical Engineer for Soil/Grading), registered in the State of Arizona per A.R.S. 32-101(et. seq.). The Drainage and Grading Report/Plan shall be based on minimum criteria established by the State Standard, unless Gila County adopts more restrictive Drainage and Grading Design Standards. Storm water detention may be required where necessary to mitigate downstream impacts resulting from the proposed development. Storm water retention is allowed only with special permission.

4. The Drainage and Grading Report/Plan and any revised or updated Drainage and Grading Report/Plan include but are not limited to the following information:

    a. Grading
    b. The entrance and exit points and continuity of all natural drainage ways on a development hillside site, and their preservation shall be provided for in the plan.
    c. All engineered Drainage and Grading plans with any cutting or filling of slopes shall meet the provisions of section 20-16.F of this Ordinance.
    d. Subsurface drainage for cuts and fill slopes must maintain the stability integrity of the cut or slope.
    e. Drainage facilities designed to convey runoff to the nearest approved drainage way or detention facility. Erosion of the ground in the area of discharge shall be prevented by installation of non-erosive cutoff walls, aprons or other approved devices.
    f. Cut and fill slopes must be protected against erosion by suitable plantings, check dams, riprap or other approved methods. If steeper than 2 horizontal to 1 vertical, slope stability shall be certified by a Registered Professional Engineer.
    g. Finished Floor Elevation(s) for all buildings.
    h. Any additional requirements per Drainage and Grading Design Standards which may be adopted by Gila County.

C. SITE PLAN (SITE)

For all permitted structures within areas affected by drainage not deemed to pose a risk to life or property, or adequately protected by up-slope drainage control structures, a Drainage and Grading Report/Plan is not required, unless the Public Works Director or his designee deems it

necessary for other reasons. However, a site plan will be required with the following minimum information unless waived by the Public Works Director or his designee.

1. A site plan of the property indicating:
2. North arrow and a bar scale for the drawing;
3. Property lines with dimensions, including easements;
4. Legal description, property address (if assigned), assessor number, and distance and direction to the nearest street intersection;
5. Location and description of types of existing and proposed structures including fences;
6. Location and size of any existing or proposed drainage easements;
7. An on-site temporary elevation bench mark for verification purposes;
8. Drainage arrows and topography with maximum five foot contour interval or sufficient spot elevations to determine building pad elevation in relation to the parcel and adjacent land;
9. Appropriate floor elevation criterion;
10. Retention/detention system location and size required.
11. Location and dimensions of any existing or proposed and drainage structures;
12. Location(s) where offsite drainage enters and exits the parcel for existing and proposed conditions.
13. Any supporting information which the Public Works Director or his designee deems necessary to evaluate the Drainage Clearance.

D. For those sites located in or partially in all flood hazard areas as defined by Gila County Floodplain Management Ordinance the information as required by State Standard 6-05 or the latest revision shall also be included.

E. For areas where the slope is steeper 2 horizontal to 1 vertical, the requirements of Section 20-16.B shall also apply.

F. DESIGN PARAMETERS

1. The latest revision of all of the State Standards or other more stringent standards specified in a civil engineer's sealed document shall be the governing requirements for drainage design.
2. If any conflict exists within this Ordinance, the stricter of the two requirements shall prevail.
3. All drainage design shall be based on the "design flow" as defined in this ordinance.
4. Grading shall be designed to drain storm water away from all buildings and into (public or private) drainage easements, Rights-of-Way, on-site detention, or streets. Drainage into streets is only allowed if it is shown by Engineering analysis that the street has adequate capacity within the Right-of-Way. No modification on existing drainage patterns to adjacent lots is permitted unless written approval, easement or Right-of-Way is given by all affected property owners and noted in writing on the Drainage and Grading Permit. All approvals by affected property owners shall be notarized, signed by all who hold title to the land (or by one authorized to act for the title owner(s) along with proof of such agency) and shall apply to their successors and be recorded prior to issuance of the Drainage and Grading Permit.

5. Sites shall be graded to slope away from all structures at a minimum slope of 2%. This 2% slope shall be maintained for at least 10 feet on all sides, where lot size permits. Lowest floor elevations shall be in accordance with Section 20-16.Z.7.
6. Testing Standards. The standards listed below are recognized testing standards.

    a. ASTM D 1557, Moisture-Density Relations of Soils and Soil Aggregate Mixtures.
    b. ASTM D 1556, In-Place Density of Soils by the Sand-Cone Method.
    c. ASTM D 2167, In-Place Density of Soils by the Rubber-Balloon Method.
    d. ASTM D 2937, In-Place Density of Soils by the Drive-Cylinder Method.
    e. ASTM D 2922 and D 3017, In-Place Moisture Contact and Density of Soils by Nuclear Methods.

G. Hazards. Whenever the Public Works Director or his designee determines that any existing excavation or embankment fill on private property has become a hazard to life and limb, or endangers property, or adversely affects the safety, use or stability of a public way or drainage channel, the owner of the property upon which the excavation or fill is located, or other person or agent in control of said property, upon receipt of notice in writing from the Public Works Director or his designee, shall within the period specified therein repair or eliminate such excavation or embankment to eliminate the hazard and to be in conformance with the requirements of this ordinance.

H. Regular Grading Requirements. Each application for a grading permit shall be accompanied by a plan in sufficient clarity to indicate the nature and extent of the work. The plans shall give the location of the work, the name of the owner and the name of the person who prepared the plan. The plan shall include the following information:

    1. General vicinity of the proposed site.

    2. Limiting dimensions and depth of cut and fill.

    3. Location of any buildings of structures where work is to be performed, and the location of any buildings or structures within 15 feet (4572 mm) of the proposed grading.

I. Issuance. The Public Works Director or his designee may require that grading operations and Project designs be modified if delays occur which incur weather-generated problems not considered at the time the permit was issued.

J. The Public Works Director or his designee may require professional inspection and testing by a soils engineer. When the Public Works Director or his designee has cause to believe that geologic factors may be involved, the grading will be required to conform to engineered grading.

K. Permits Required. Except as exempted in Section 20-16.A.9 of this ordinance, no person shall do any grading without first obtaining a grading and drainage permit from the Public Works Director or his designee. A separate permit shall be obtained for each site, and may

cover both excavations and fills.

L. Application.The application shall state the estimated quantities of work involved.

M. Grading Designation. Grading in excess of 5,000 cubic yards (3825m³) shall be performed in accordance with the approved drainage and grading plan prepared by a civil engineer, and shall be designated as "engineered grading." Grading involving less than 5,000 cubic yards (3825m³) shall be designated "regular grading" unless the permitee chooses to have the grading performed as engineered grading, or the Public Works Director or his designee determines that special conditions or unusual hazards exist, in which case grading shall conform to the requirements for engineered grading.

N. Engineered Grading Requirements. Application for a Grading and Drainage Permit shall be accompanied by two sets of plans and specifications, and supporting data consisting of a soils engineering report and engineering geology report. The plans and specifications shall be prepared and signed by an individual licensed by the state to prepare such plans of specifications when required by the Public Works Director or his designee.

1. Specifications shall contain information covering construction and material requirements.

2. Plans shall be drawn to scale upon substantial paper and shall be of sufficient clarity to indicate the nature and extent of the work proposed and show in detail that they will conform to the provisions of this ordinance and all other relevant laws, ordinances, rules and regulations. The first sheet of each set of plans shall give location of the work, the name and address of the owner, and the person by whom they were prepared.

   a. The plans shall include the following information:

      i. General vicinity of the proposed site.
      ii. Property limits and accurate contours of existing ground and details of terrain and area drainage.
      iii. Limiting dimensions, elevations or finish contours to be achieved by the grading, and proposed drainage channels and related construction.
      iv. Detailed plans of all surface and subsurface drainage devices, walls, cribbing, dams and other protective devices to be constructed with, or as a part of, the proposed work, together with a map showing the drainage area and the estimated runoff of the area served by any drains.
      v. Location of any buildings or structures on the property where the work is to be performed and the location of any buildings or structures on land of adjacent owners that are within 15 feet (4572 mm) of the property or that may be affected by the proposed grading operations.
      vi. Recommendations included in the soils engineering report and the engineering geology report shall be incorporated in the grading and drainage plans or

specifications. When approved by the Public Works Administrator or his designee specific recommendations contained in the soils engineering report and the engineering geology report, which are applicable to grading, may be included by reference.

vii. The dates of the soils engineering and engineering geology reports together with the names, addresses and phone numbers of the firms or individuals who prepared the reports.

O. Soils Engineering Report. The soils engineering report (for Engineered grading) required by Section 20-16.N shall include data regarding the nature, distribution and strength of existing soils, conclusions and recommendations for grading procedures and design criteria for corrective measures, including buttress fills, when necessary, and opinion on adequacy for the intended use of sites to be developed by the proposed grading as affected by soils engineering factors, including the stability of slopes. If soils indicate potential problems, an Engineering Geology Report (if required) and/or Liquefaction Study may be necessary.

P. Engineering Geology Report. The engineering geology report required by Section 20-16.N shall include an adequate description of the geology of the site, conclusions and recommendations regarding the effect of geologic conditions on the proposed development, and opinion on the adequacy for the intended use of sites to be developed by the proposed grading, as affected by geologic factors.

Q. Liquefaction Study. The Public Works Director or his designee may require a geotechnical investigation when, during the course of an investigation, all of the following conditions are discovered, and the report shall address the potential for liquefaction:

1. Shallow ground water, 50 feet (15 240 mm) or less.

2. Unconsolidated sandy alluvium.

3. Seismic zones 3 and 4.

R. Bonds. The Public Works Director or his designee may require bonds in such forms and amounts as may be deemed necessary to ensure that the work, if not completed in accordance with the approved plans and specifications, will be corrected to eliminate hazardous conditions.

1. In lieu of a surety bond the applicant may file a cash bond or instrument of credit with the building official in an amount equal to that which would be required in the surety bond.

S. CUTS

1. General. Unless otherwise recommended in the approved soils engineering or

engineering geology report, cuts shall conform to the provisions of this section. In the absence of an approved soils engineering report, these provisions may be waived for minor cuts not intended to support structures, the failure of which will not also affect other properties.

2. Slope. The slope of cut surfaces shall be not steeper than is safe for the intended use and shall be not steeper than 1 unit vertical in 2 units horizontal (50% slope) unless the permitee furnishes a soils engineering or an engineering geology report, or both, stating that the site has been investigated and giving an opinion that a cut at a steeper slope will be stable and not create a hazard to public or private property.

T. FILLS

1. General. Unless otherwise recommended in the approved soils engineering report, fills shall conform to the provisions of this section.

2. In the absence of an approved soils engineering report, these provisions may be waived for minor fills (less than 3' depth and less than 3 cubic yards) not intended to support structures.

3. Preparation of Ground. Fill slopes shall not be constructed on natural slopes steeper than 1 unit vertical in 2 units horizontal (50% slope). The ground surface shall be prepared to receive fill by removing vegetation, non-complying fill, topsoil and other unsuitable materials scarifying to provide a bond with the new fill and, where slopes are steeper than 1 unit vertical in 5 units horizontal (20% slope) and the height is greater than 5 feet (1524 mm), by benching into sound bedrock or other competent material as determined by the soils engineer. The bench under the toe of a fill on a slope steeper than 1 unit vertical in 5 units horizontal (20% slope) shall be at least 10 feet (3048 mm) wide. The area beyond the toe of fill shall be sloped for sheet overflow or a paved drain shall be provided. When fill is to be placed over a cut, the bench under the toe of fill shall be at least 10 feet (3048 mm) wide but the cut shall be made before placing the fill and acceptance by the soils engineer or engineering geologist or both as a suitable foundation for fill.

4. Fill Material. Detrimental amounts of organic material shall not be permitted in fills. Except as permitted by the Public Works Director or his designee, no rock or similar irreducible material with a maximum dimension greater than 12 inches (305 mm) shall be buried or placed in fills.

   EXCEPTION: The Public Works Director or his designee may permit placement of larger rock when the soils engineer properly devises a method of placement, and continuously inspects its placement nd approves the fill stability. The following conditions shall also apply:

1. Prior to issuance of the grading permit, potential rock disposal areas shall be delineated on the grading plan.
2. Rock sizes greater than 12 inches (305 mm) in maximum dimension shall be 10 feet (3048 mm) or more below grade, measured vertically.
3. Rocks shall be placed so as to assure filling of all voids with well-graded soil.

5. Compaction. All fills shall be compacted to a minimum of 95 percent of maximum density.

6. Slope. The slope of fill surfaces shall be not steeper than is safe for the intended use. Fill slopes shall be no steeper than 1 unit vertical in 2 units horizontal (50% slope).

U. SETBACKS

1. General. Cut and fill slopes shall be set back from site boundaries in accordance with this section. Setback dimensions shall be horizontal distances measured perpendicular to the site boundary. Setback dimensions shall be shown in Figure 70-1.

2. Top of Cut Slope. The top of cut slopes shall not be made nearer to the site boundary line than one fifth of the vertical height of cut with minimum of 2 feet (610 mm) and a maximum of 10 feet (6096 mm). The setback may need to be increased for any required interceptor drains.

3. Toe of Fill Slope. The toe of fill slope shall be made not nearer to the site boundary line than one half of the height of the slope with a minimum of 2 feet and a maximum of 20 feet. Where a fill slope is to be located near the site boundary and the adjacent off-site property is developed, special precautions shall be incorporated in the work as the building official deems necessary to protect the adjoining property from damage as a result of such grading. These precautions may include but are not limited to:

   a. Additional setbacks.
   b. Provision for retaining or slough walls.
   c. Mechanical or chemical treatment of the fill slope surface to minimize erosion.
   d. Provisions for the control of surface waters.

4. Modification of Slope Location. The Public Works Director or his designee may approve alternate setbacks. The Public Works Director or his designee may require an investigation and recommendation by a qualified engineer or engineering geologist to demonstrate that the intent of this section has been satisfied

V. DRAINAGE AND TERRACING

1. General. Unless otherwise indicated on the approved grading plan, drainage facilities and terracing shall conform to the provisions of this section for cut or fill slopes steeper than 1 unit vertical in 3 units horizontal (33.3% slope).

2. Terrace. Terraces at least 6 feet (1829 mm) in width shall be established at not more than 30-foot (9144 mm) vertical intervals on all cut or fill slopes to control surface drainage and debris except that where only one terrace is required, it shall be at mid-height. For cut or fill slopes greater than 60 feet (18,288 mm) and up to 120 feet (36,576 mm) in vertical height, one terrace at approximately mid-height shall be 12 feet (3658 mm) in width. Terrace widths and spacing for cut and fill slopes greater than 120 feet (36,576 mm) in height shall be designed by the civil engineer and approved by the building official. Suitable access shall be provided to permit proper cleaning and maintenance.

    a. Swales or ditches on terraces shall have a minimum gradient of 5 percent and must be paved with reinforced concrete not less than 3 inches (76 mm) in thickness or an approved equal paving. They shall have a minimum depth at the deepest point of 1 foot (305 mm) and a minimum paved width of 5 feet (1524 mm).
    b. A single run of swale or ditch shall not collect runoff from a tributary area exceeding 13,500 square feet (1254.m²) (projected) without discharging into a down drain.

3. Subsurface Drainage. Cut and fill slopes shall be provided with subsurface drainage as necessary for stability

4. Disposal. All drainage facilities shall be designed to carry waters to the nearest practicable drainage way approved by the Public Works Director or his designee or other appropriate jurisdiction as a safe place to deposit such waters. Erosion of ground in the area of discharge shall be prevented by installation of non-erosive down-drains or other devices.

   Building pads shall have a drainage gradient of 2 percent toward approved drainage facilities, unless waived by the Public Works Director or his designee.

   EXCEPTION: The gradient from the building pad may be 1 percent if all of the following conditions exist throughout the permit area:

    a. No proposed fills are greater than 10 feet (3048 mm) in maximum depth.
    b. No proposed finish cut or fill slope faces have a vertical height in excess of 10 feet (3048 mm).
    c. No existing slope faces steeper than 1 unit vertical in 10 units horizontal (10% slope) have a vertical height in excess of 10 feet (3048 mm).

5. Interceptor Drains. Paved interceptor drains shall be installed along the top of all cut slopes where the tributary drainage area above slopes toward the cut and has a drainage path greater than 40 feet (12 192 mm) measured horizontally. Interceptor drains shall be paved with a minimum of 3 inches (76 mm) of concrete or gunite and reinforced. They shall have a minimum depth of 12 inches (305 mm) and a minimum paved width of 30 inches (762 mm) measured horizontally across the drain. The slope of drain shall be approved by the Public Works Director or his designee.

W. EROSION CONTROL

1. The faces of cut and fill slopes may be prepared and maintained to control against erosion. This control may consist of effective planting, and irrigation facilities as needed to ensure continued growth, or other suitable erosion control approved by the Public Works Director or his designee. The protection for the slopes shall be installed as soon as practicable and prior to calling for the final approval. Where cut slopes are not subject to erosion due to the erosion-resistant character of the materials, such protection may be omitted.

2. Other Devices. Where necessary, check dams, cribbing, riprap or other devices or methods shall be employed to control erosion and provide safety.

3. In areas where there is a flood-related erosion potential from watercourses having an upstream drainage area greater than or equal to 160 acres, an erosion setback will apply, as determined by the Public Works Director or his designee. A minimum erosion setback of twenty (20) feet from the nearest top of bank shall apply, unless adequately engineered, constructed and maintained erosion protection measures are in place or are to be installed as part of the development, or unless a lesser setback is justified by appropriate engineering analysis.

X. GRADING INSPECTION

General. Grading operations for which a permit is required shall be subject to inspection by the Public Works Director or his designee. Professional inspection of grading operations shall be provided by the civil engineer, soils engineer and the engineering geologist retained to provide such services in accordance with Section 20-16.X.1 for engineered grading. The professional inspections and reports shall be at the expense of the permitee. The Public Works Director or his designee may require that the permitee retain professional inspection for regular grading, if unusual circumstances justify the need. Copies of all inspection reports shall be given to the Public Works Director or his designee in a timely manner.

1. Inspection. The Public Works Director or his designee shall provide professional inspection within such engineer's area of technical specialty, which shall consist of observation and review as to the establishment of line, grade and surface drainage of the development area.

2. Soils Engineer. The soils engineer shall provide professional inspection within such engineer's area of technical specialty, which shall include observation during grading and testing for required compaction. The soils engineer shall provide sufficient observation during the preparation of the natural ground and placement and compaction of the fill to verify that such work is being performed in accordance with the conditions of the approved plan and the appropriate requirements of this chapter. Revised recommendations relating to conditions differing from the approved soils engineering and engineering geology reports shall be submitted to the permitee, the Public Works Director or his designee.

3. Permitee. The permitee shall be responsible for the work to be performed in accordance with the approved plans and specifications and in conformance with the provisions of this

code, and the permitee shall engage consultants, if required, to provide professional inspections on a timely basis. The permitee shall act as a coordinator between the consultants, the contractor and the Public Works Director or his designee. In the event of changed conditions, the permitee shall be responsible for informing the Public Works Director or his designee of such change and shall provide revised plans for approval.

4. The Public Works Director or his designee or his designee shall inspect the project at the various stages of work requiring approval to determine that adequate control is being exercised by the professional consultants.

5. Notification of Noncompliance. If, in the course of fulfilling their respective duties under this chapter, the Public Works Director or his designee finds that the work is not being done in conformance with this chapter or the approved grading plans, the discrepancies shall be reported immediately in writing to the Hearing Officer.

6. Transfer of Responsibility. It shall be the duty of the permitee to notify the Public Works Director or his designee in writing of such change prior to the recommencement of such grading.

Y. COMPLETION OF WORK

1. Final Reports. Upon completion of the rough grading work and at the final completion of the work, the following reports and drawings and supplements thereto are required for engineered grading or when professional inspection is performed for regular grading, as applicable.

   a. An as-built grading plan prepared by the civil engineer retained to provide such services in accordance with Section 20-16.X.4 showing original ground surface elevations, as-graded ground surface elevations, lot drainage patterns, and the locations and elevations of surface drainage facilities and of the outlets of subsurface drains. As-constructed locations, elevations and details of subsurface drains shall be shown as reported by the soils engineer. When work is completed in accordance with the approved plan, civil engineers shall state that to the best of their knowledge the work within their area of responsibility was done in accordance with the final approved grading plan.
   b. A report prepared by the soils engineer retained to provide such services in accordance with Section 20-16.X.2, including locations and elevations of field density tests, summaries of field and laboratory tests, other substantiating data, and comments on any changes made during grading and their effect on the recommendations made in the approved soils engineering investigation report. Soils engineers shall submit a statement that, to the best of their knowledge, the work within their area of responsibilities is in accordance with the approved soils engineering report and applicable provisions of this chapter.
   c. A report prepared by the engineering geologist retained to provide such services in accordance with Section 20-16.X.4, including a final description of the geology of the site and any new information disclosed during the grading and the effect of same on

recommendations incorporated in the approved grading plan. When work is completed in accordance with the approved plan, engineering geologists shall submit a statement that, to the best of their knowledge, the work within their area of responsibility is in accordance with the approved engineering geologist report and applicable provisions of this chapter.

d. The grading contractor shall submit in a form prescribed by the Public Works Director or his designee a statement of conformance to said as-built plan and the specifications.
e. Notification of Completion. The permitee shall notify the Public Works Director or his designee when the grading operation is ready for final inspection. Final approval shall not be given until all work, including installation of all drainage facilities and their protective devices, and all erosion-control measures have been completed in accordance with the final approved grading plan, and the required reports have been submitted.

Z. STORMWATER DETENTION / RETENTION

1. Detention or retention of storm water is to be used only to solve site-specific problems which cannot be feasibly solved by other onsite or offsite improvements. Detention may be used to mitigate increased storm water peak flow rate and volume impacts to neighboring and/or downstream properties where it is not feasible to convey the increased runoff to a major drainage facility with adequate capacity. It may also be used where downstream flooding problems exist on a major watercourse where increased peak flows could worsen the situation, and detention can be shown to make a significant difference. Retention may be used ONLY with special permission within the Salt and Verde River watersheds because of potential detrimental effects to the volume of water in reservoirs located lower in the watersheds (See ARS 48-3625). Detention or retention designed to criteria in ADWR State Standard 8-99 etseq.

2. GENERAL WAIVERS OF STORMWATER DETENTION/RETENTION

a. The following do not need a Drainage and Grading report/plan nor is storm water detention required. However, the design parameters in Section 20-16.F still apply, and the provisions of the Gila County Floodplain Management Ordinance may still apply

i. Improvements, which do not increase the impervious cover of the parcel, impede the natural flow onto the parcel, change the location of flow from the parcel or concentrate flow leaving the parcel.
ii. Development for which the Public Works Director or his designee deems it unnecessary.
iii. An individual lot within a developed residential subdivision with a lot area greater than or equal to one acre net.
iv. An individual lot within a recorded subdivision, which was recorded before the effective date of this ordinance.
v. A new single-family residence not in a recorded subdivision, on a parcel of land greater than two acres.

vi. Walls, fences, decorative borders, berms and other similar structures or features less than 1 foot in height above grade, provided they do not have an adverse effect on adjacent land or obstruct, retard or divert any drainage way or other drainage feature.

b. The following need a Drainage and Grading Permit and a drainage report/plan but storm water detention/retention is not required.

i. Projects smaller than 160 acres, which drain directly into a watercourse intercepting a drainage area greater than or equal to one hundred square miles.
ii. Residential subdivisions with average lot areas greater than or equal one net acre.
iii. New Single family residential homes on parcels created before the effective date of this ordinance.
iv. The above waivers do not authorize the development to adversely affect surrounding properties or downstream properties.

3. DISPOSAL OF DETAINED / RETAINED STORM WATER

On-site runoff that has been detained or retained shall be disposed of within 36 hours either by percolation, dry wells or draining into an approved drainage way. Flows from basins shall comply with Section 20-16.F above.

4. RETENTION/DETENTION OF STORM DRAINAGE

In addition to the requirements of the above referenced State Standard 8-99 (et. seq.) the following requirements apply to Retention/Detention basins.

a. On-site retention/detention facilities may include natural depressions or man-made basins.
b. Individual lot retention/detention is permitted on parcel(s) not in residential subdivisions.
c. Individual lot retention/detention shall not be permitted in single family residential development with a lot size less than one net acre.
d. Lot retention/detention allowed per Sections 20-16.Z.4.b and 20-16.Z.4.c above shall be allowed in the zoning front and rear building setback areas.
e. Retention/detention basins shall not be located within twenty-five feet of septic system facilities, including leach fields.
f. Retention/detention basins shall not be located within ten feet of buildings (i.e. the building site) or five feet of block fences or property lines.
g. Utility lines and structures shall not be located within drainage facilities unless approved by the utility company and the Public Works Director or his designee.
h. A public right-of-way or public utility easement shall not be designated for drainage or retention without prior written approval of the appropriate agency and affected utilities.

5. DRYWELL DESIGN

   a. If drywells are to be utilized for storm water disposal, certifications shall be required indicating that the drywells meet the provisions of the Arizona Department of Environmental Quality and of this Ordinance.
   b. Drywells shall be used only for storm water disposal and not for disposal or deposit of wastes or other contaminants.
   c. Proof of drywell registration with the Arizona State Department of Environmental Quality shall be required prior to issuance on certificate of occupancy, release of financial assurances or any final approvals.

6. ROAD DESIGN

   a. To facilitate drainage, the design of roadways, which may be in or are proposed for future inclusion into the Gila County Highway Maintenance System, shall conform to Gila County Standards for Roadways and the following:
   b. Adequate drainage ways shall be constructed to convey the street design flow if that flow is designed to leave the public right-of-way. Such drainage ways shall be platted as drainage easements or as separate tracts with maintenance provisions designated.
   c. The Public Works Director or his designee may require construction of a culvert or bridge where a road crosses a natural drainage way. The size of the culvert or bridge shall conform to Gila County Standards for roadways.
   d. If roads are designed to convey runoff, the amount conveyed shall not exceed design standards. Additional flow shall be conveyed in drainage ways or storm sewer systems if the design standards are exceeded or the flow depth along roadways is greater than 8 inches for the 100-year runoff event.
   e. To prevent back and head cutting, dip sections and culvert crossings of rights-of-way shall have adequate cutoff walls or aprons constructed of non-erodible material extending below the scour depth. The minimum depth of the cutoff wall shall not be less than four feet.
   f. Each site shall have at least one all-weather road access with a maximum flow of 12 inches in depth and a maximum velocity of 5 feet per second over the roadway or overflow section for brief intervals during the 100-year peak flow event. The 25-year event shall be conveyed under the crossing.
   g. Culverts installed in private driveways adjoining or located within public Right-of-Way shall not increase the 100-year flow depth on the roadway, or on adjacent properties. The culvert shall also not adversely impact any habitable structures.

7. LOWEST FLOOR ELEVATION

   Finished floors of a building shall be elevated a minimum of one foot above the highest grade within ten feet of the foundation of the building. In no case shall the lowest floor elevation be less than the regulatory flood elevation defined per the Gila County Floodplain Management Ordinance for sites under the jurisdiction of the Gila County Floodplain Management Ordinance. For such cases, lowest floor elevations and elevations of all machinery and/or equipment servicing the building may be required to be elevated above

and referenced to a known benchmark, and certified on the FEMA Elevation Certificate form.

a. In cases where there is a known flood hazard potential, the Public Works Director or his designee shall advise the applicant, in writing, of the flood hazard potential.
b. For buildings adjacent to watercourses having a contributing drainage area equal to or exceeding 160 acres (1/4 square mile), and less than 640 acres (l square mile), the Public Works Director or his designee MAY Require that the lowest floor elevation of the building, or the bottom of the lowest structural member in the case of a manufactured home, be elevated up to one foot above the 100-year flood elevation, if deemed necessary to protect life and property.
c. For buildings adjacent to watercourses having a contributing drainage area equal to or exceeding 640 acres (1 square mile), the Public Works Director or his designee SHALL require that the lowest floor elevation of the building, or the bottom of the lowest structural member in the case of a manufactured home, be elevated up to one foot above the 100-year flood elevation, if deemed necessary to protect life and property.
d. The Public Works Director or his designee may require that the applicant provide the 100-year flood elevation and certify that the constructed building meets the elevation criteria. The 100-year flood elevation may be estimated using procedures in State Standard 2-96, "Requirement for Floodplain and Floodway Delineation in Riverine Environments," et. seq., State Standard 9-05, "State Standard for Floodplain Hydraulic Modeling," et. seq., any FEMA-accepted floodplain delineation methodologies, or other applicable federal, state, or county criteria for determining 100-year flood elevations.

8. DRAINAGE AND GRADING COMPLIANCE FORM

A drainage inspection may be required prior to the issuance of a Grading and Drainage Compliance Form.

a. The Public Works Director or his designee shall make written notice to the applicant of any deficiency noted if a drainage inspection(s) is performed. The deficiencies shall be corrected within 90 days unless the Public Works Director or his designee approves another schedule.
b. A Certificate of Occupancy for permits issued to construct commercial, industrial, educational, and residential units regulated by this ordinance shall not be issued prior to the issuance of the Grading and Drainage Compliance Form.

SECTION 20-17
VARIANCE AND APPEAL PROCEDURES

A. VARIANCES AND APPEALS

1. The Board of Supervisors shall hear all written requests for variances to this ordinance and appeals from interpretations made by the Public Works Director or his designee in accordance with the rules of this section.

2. Any person aggrieved by a decision of the Public Works Director or his designee may, within 30 days of such decision, appeal to the Board of Supervisors by filing a written notice of appeal with the Clerk of the board of Supervisors on a form provided by the Public Works Director or his designee. Said notice of appeal shall specify the grounds of appeal. The Board of Supervisors shall conduct the appeal under such rules of procedure, as they shall adopt. The decision of the Board of Supervisors shall be a final decision.

3. During the pendency of an appeal all matters regarding the proceeding shall be stayed unless the Public Works Director or his designee certifies to the Board of Supervisors that by reason of facts surrounding the appeal the stay would, in the Public Works Director or his designee opinion, cause imminent peril to life or property. In such cases the other matters shall not be stayed.

B. ADMINISTRATIVE DRAINAGE VARIANCE

Conditions for the issuance of a variance:

1. The Board of Supervisors, or the Public Works Director, or his designee as the case may be, shall hear and decide requests for variance from the requirements of the Regulation.

2. Before granting a variance the Board of Supervisors shall find that each of the following criteria are met:

3. The grant will not result in an increase in the 100-year peak discharge or velocity; and

4. By reason of special physical circumstances, location or surroundings of the property, strict application of the Regulation would deprive the property of privileges enjoyed by similar property; and

5. The variance would not constitute a grant of special privilege inconsistent with the limitations on similar property; and

6. The variance request is the minimum necessary, considering the flood hazard, to afford relief; and

7. There is a showing of good and sufficient cause; and

8. Failure to grant the variance would result in exceptional hardship to the applicant; and

9. Granting the variance will not result in additional threats to public safety, health, welfare, or extraordinary public expense, create a nuisance, the victimization of or fraud on the public and that the variance does not conflict with existing local laws or ordinances.

10. The Board of Supervisors or the Public Works Director or his designee may attach such conditions or restrictions to the granting of a variance as it determines necessary to reduce or eliminate potential threats to public safety, health, welfare or to public or private

property resulting from the granting of the variance. The applicant among other things may be required to post bonds, assurances or other security to guarantee compliance with the conditions and restrictions imposed.

11. The administrative drainage variance shall be in writing, signed and dated by the Public Works Director, and a copy shall be kept in perpetuity and referenced by Assessor's parcel number in the office of the Public Works Division. The variance approval shall be recorded in the Gila County Recorder's Office so that it appears in the chain of title.

SECTION 20-18
COMPLIANCE, ENFORCEMENT AND PENALTIES

A. DEED RESTRICTIONS

Recording of deed restrictions, which include drainage easements, tracts, channels or common areas used for drainage, purposes to be maintained by the property owner may be required. Recordation of such deed restrictions shall be noted on the final plat.

B. PERFORMANCE ASSURANCES

Financial assurances may be required by the Public Works Director or his designee to ensure construction, completion or maintenance of approved drainage facilities. Assurances shall be released upon verification of compliance with approved plans and all provisions of this ordinance.

C. REGULATION VIOLATION

It is a violation of this Ordinance:

1. To develop, construct, alter, use, repair, improve, fill, divert, retard, remove or commence the creation construction, alteration, repair, improvement, filling, diversion, obstruction or removal of any wash, culvert, easement, channel, ditch, berm, retention basin, wall fence, other structure or use which will divert, retard, obstruct, or otherwise affect any natural drainage or improved drainage design or drainage system without obtaining a Grading and Drainage Permit from the Public Works Director or his designee, except as provided in ARS 48-3613 and ARS 48-3625;

2. For any person to place or knowingly allow to be placed any fill material, rubbish, trash, weeds, filth, or debris which obstructs, retards or diverts any natural or improved drainage system upon any private or public property located in the unincorporated areas of Gila County;

3. To fail to maintain any natural drainage system or any drainage easement, tract, channel or common area created pursuant to this Regulation;

4. To fail to obtain the required Grading and Drainage Permit and Grading and Drainage Clearance Form prior to obtaining a final Certificate of Occupancy for permits issued to construct commercial, industrial, educational, institutional, residential and such dwelling units as condominiums and apartments, or prior to physical occupancy of such structures;

5. For any owner (builder/developer) to fail to correct any deficiencies noted by the Public Works Director or his designee within ninety (90) days of the date of notice of such deficiencies or upon a date stated by the Public Works Director or his designee, whichever is the longer period;
6. For any person to modify drainage to have an adverse impact on the ability of other users to enjoy existing water rights.

D. CIVIL REMEDIES

1. The County Attorney or any person who may be or has been damaged by the violation of any provision of this ordinance may institute legal action to enforce the provisions of this ordinance or seek damages and attorney fees for violations of this ordinance.

2. Remedies for Unauthorized Diversion, Retardation, or Obstruction of a Watercourse.

   a. A person who may be damaged or has been damaged as a result of the unauthorized diversion, retardation or obstruction of a watercourse has the right to commence, maintain and prosecute any appropriate action or pursue any remedy to enjoin, abate or otherwise prevent any person from violating or continuing to violate this section.
   b. For watercourses with contributing drainage areas less than one square mile, which are outside the jurisdiction of the Gila County Floodplain Management Ordinance, drainage issues shall be resolved between affected private parties, rather than through the enforcement provisions of Article VIII of this ordinance. The provisions in Article VIII of this ordinance are applicable only when 1) the Gila County Board of Supervisors determines that a specific drainage modification action constitutes a threat to life or public safety, and 2) when the Board directs the Public Works Director and/or the County Attorney to take action.
   c. Drainage issues involving watercourses with contributing drainage areas of one square mile and greater, the enforcement provisions in Article VIII of this ordinance are applicable. The enforcement of the provisions of Article VIII of this ordinance do not preclude enforcement actions under the Gila County Floodplain Management Ordinance, if also applicable.
   d. Nothing in this ordinance shall limit the applicability of ARS 48-3614 through 48-3615.

E. DECLARATION OF PUBLIC NUISANCE

Violation of the requirements of this ordinance is a public nuisance, per se, and subject to all remedies as provided by law.

F. VIOLATION REMOVAL

1. If the property owner fails to remove fill material, rubbish, trash, filth, debris or any obstruction that is classified as a violation under Section 20-18.C of this ordinance or that which the Public Works Director or his designee determines obstructs, retards or diverts a natural or improved drainage system, after 30 days written notice from the Public Works Director or his designee to remove or abate the condition, the Public Works Director or his designee may, remove or cause the removal of the fill material, rubbish, trash, filth or debris upon the Public Works Director or his designee determination that failure to remove or abate the condition constitutes a threat to the public health, safety or welfare.

2. The charge for the removal shall be billed to the property owner and collected by the County Attorney by use of all appropriate legal remedies, including but not limited to a lien against the property for the costs of removal plus attorney fees and costs of collection.

3. The determination that a condition constitutes a hazard to the public health, safety or welfare may be appealed in the same manner as appeals from decisions of the Public Works Director or his designee as set forth in Article VII above and such appeal shall be filed within 30 days of receipt of the written notice from the Public Works Director or his designee.

4. The Public Works Director or his designee shall be under no affirmative duty pursuant to this section to either identify violations or undertake their removal. Removal pursuant to this section is discretionary with the Public Works Director or his designee.

5. The property owner shall be liable for any damages caused by failure to remove or abate the condition.

D. CRIMINAL PENALTIES

Any person, firm or corporation found guilty violating this ordinance, or any part thereof, is guilty of a class 1 misdemeanor, which is punishable by fine, imprisonment, or both. Each and every day during which the violation continues to exist is a separate offense. The County Attorney shall be responsible for prosecuting all violator if requested by the Public Works Director or his designee or the Gila County Board of Supervisors.

SECTION 20-19
AMENDMENTS

A. ORDINANCE MAY BE AMENDED, ETC.

The provisions of this ordinance may, from time to time, be amended, supplemented, changed, modified, or repealed at the initiation of the Gila County Board of Supervisors by said Board following a public hearing at which parties in interest and other citizens have an opportunity to be heard.

B. HEARING BEFORE THE GILA COUNTY BOARD OF SUPERVISORS PROVISIONS THEREFORE.

1. Upon initiation of a hearing to adopt, the Board of Supervisors shall set a date, time and place and cause notice of same to be published in a newspaper of general circulation in the County at least thirty (30) days prior to the date of said hearing.

2. Full test of any proposed amendments to the Ordinance shall be available for inspection by the public at the office of the Clerk of the Board of Supervisors at least thirty (30) days prior to the amendment hearing.

3. Full text of any proposed amendments to the Ordinance shall be available for inspection by the public at the office of the Clerk of the Board of Supervisors at least thirty (30) days prior to the amendment hearing.

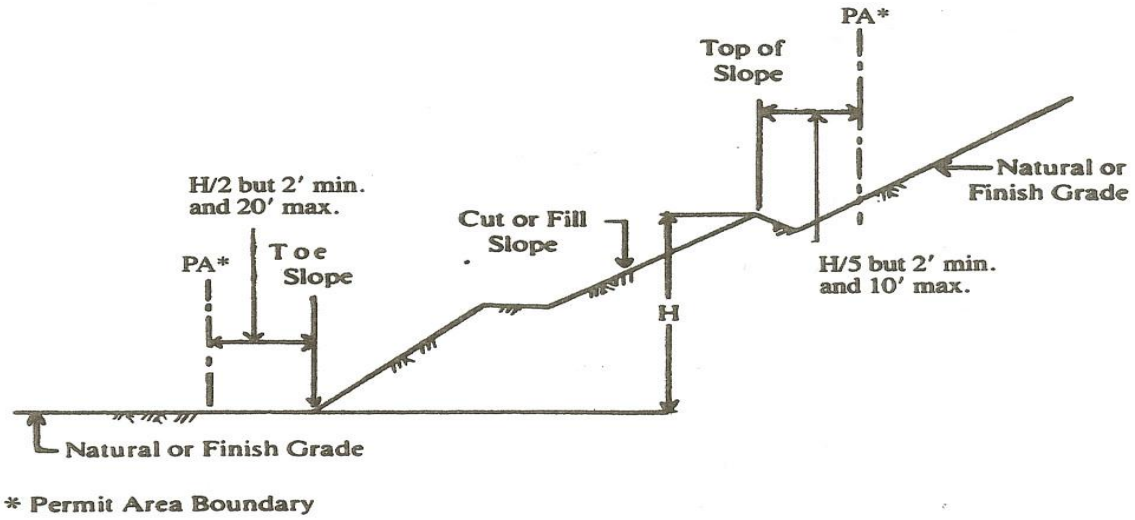


Figure No. 70-1

ARTICLE 21
OUTDOOR LIGHTING

SECTION 21-10
ADMINISTRATION

A. Purpose

This ordinance is intended to restrict the permitted use of outdoor artificial illuminating devices emitting undesirable rays into the night sky which have a detrimental effect on astronomical observations.

B. Conformance with Applicable Codes

1. All outdoor artificial illuminating devices shall be installed in conformance with the provisions of the Ordinance, the Zoning regulations, and any building ordinances which may hereafter be enacted, as applicable.

2. Where any provisions of any of the Arizona State Statutes, or any of the Federal law, or any companion ordinance comparatively conflicts with the requirements of this outdoor light control ordinance the most restrictive shall govern.

C. Approved Material and Methods of Installation

1. The provisions of this ordinance are not intended to prevent the use of any material or method of installation not specifically prescribed by this Ordinance provided any such alternate has been approved. The Planning Director may approve any such alternative provided he finds that the proposed design, material or method:

   a. provides approximate equivalence to those specific requirements of this ordinance or;
   b. is otherwise satisfactory and complies with the intent of the Ordinance.

SECTION 21-11
GENERAL REQUIREMENTS

A. Shielding
All exterior illuminating devices, except those exempt from this Ordinance and those regulated by Section 21-12.C shall be fully shielded as required in Section 21-11.C.

B. Filtration
Those outdoor light fixtures requiring a filter in Section 21.11.C shall have glass, acrylic or translucent enclosures. (Quartz glass does not meet this requirement.)

C. Requirements for Shielding and Filtering
The requirements for shielding and filtering light emissions from outdoor light fixtures shall be as set forth in the following table:

TABLE 1
REQUIREMENT FOR SHIELDING AND FILTERING

FIXTURE LAMP TYPE	SHIELDED	FILTERED [d]
Low Pressure Sodium[a]	None	None
High Pressure Sodium	Fully	None
Metal Halide[f]	Fully	Yes
Fluorescent	Fully[e]	Yes[b]
Quartz[c]	Fully	None
Incandescent Greater than 160W	Fully	None
Incandescent 160W or Less	None	None
Mercury Vapor	**Prohibited**	**Prohibited**
Fossil Fuel	None	None
Glass Tubes Filled with Neon, Argon, Krypton	None	None
Other Sources	AS APPROVED BY THE PLANNING DIRECTOR	

Footnotes:

a) This is the preferred light source to minimize undesirable light into the night sky affecting astronomical observations.
b) Warm white and natural lamps are preferred to minimize detrimental effects.
c) For the purposes of this Ordinance, quartz lamps shall not be considered an incandescent light source.
d) Most glass , acrylic, or translucent enclosures satisfy these filter requirements.
e) Outdoor advertising signs of the type constructed of translucent materials and wholly illuminated from within do not require shielding.
f) Metal halide lamps shall be in enclosed luminaries.
g) Recommended for existing fixtures. The installation of mercury vapor fixtures is prohibited effective 90 days after the date of adoption of this Ordinance.

SECTION 21-12
PROHIBITIONS

A. Searchlights
The operation of searchlights for advertising purposes is prohibited

B. Recreational Facility
No outdoor recreational facility, public or private, shall be illuminated after 11PM except to conclude a specific recreations or sporting event or any other activity conducted at a ball park, outdoor amphitheater, arena, or similar facility in progress prior to 11PM.

C. Outdoor Building or Landscaping Illumination
The unshielded outdoor illumination of any building, landscaping, signing or other purpose is prohibited except with incandescent fixtures less than 160 watts.

D. Mercury Vapor

The installation of mercury vapor fixtures is prohibited effective 90 days after the date of adoption of this Ordinance.

SECTION 21-13
PERMANENT EXEMPTIONS

A. Nonconforming Fixtures
All outdoor light fixtures existing and fully installed prior to the effective date of the Ordinance may remain "nonconforming" indefinitely; provided, however, that no change in use, replacement, structural alteration, or restoration after abandonment of outdoor light fixtures shall be made unless it thereafter conforms to the provisions of these regulations.

B. Fossil Fuel Light
Produced directly or indirectly by the combustion of natural gas or other utility-type fossil fuels.

C. Federal and State Facilities
Those facilities and lands owned, operated or protected by the U.S. Federal Government of the State of Arizona are exempted by law from all requirements of this Ordinance. Voluntary compliance with the intent of this Ordinance at those facilities is encouraged.

D. Special Exemption
The Planning Director may grant a special exemption to the requirements of Section 21-11.C only upon a written finding that there are extreme geographic or geometric conditions warranting the exemption and that there are no conforming fixtures that would suffice.

SECTION 21-14
PROCEDURES FOR ORDINANCE COMPLIANCE

A. Applications

1. Any individual applying for a building or use permit under the Zoning Regulations intending to install outdoor lighting fixtures shall as a part of said application submit evidence that the proposed work will comply with this Ordinance.

2. All other individuals intending to install outdoor lighting fixtures shall submit an application to the Planning Director providing evidence that the proposed work will comply with this ordinance.

3. Utility companies entering into a duly approved contract with the County in which they agree to comply with the provisions of these regulations, shall be exempt from applying for an obtaining a permit for the installation of outdoor light fixtures, including residential security lighting.

B. Contents of Application or Submission

The submission shall contain but shall not necessarily be limited to the following, all or part of which may be part of or in addition to the information required elsewhere in the Gila County Zoning Regulations upon application for the required permit:

1. Plans indicating the location on the premises, and the type of illuminating devices, fixtures, lamps, supports, other devices, etc.

2. Description of the illuminating devices, fixtures, lamps, supports and other devises, etc. This description may include but is not limited to, manufacturers catalog cuts, and drawings (including sections where required).

3. The above required plans and descriptions shall be sufficiently complete to enable the Gila County Planning Director to readily determine whether compliance with the requirements of this Ordinance will be secured. If such plans and descriptions cannot enable this ready determination, by reason of the nature of configuration of the devices, fixtures or lamps proposed, the applicant shall submit evidence of compliance by certified test reports as performed by a recognized testing lab.

C. Upon compliance with the requirements of this Ordinance, the Planning Director shall issue a permit for installation of the outdoor lighting fixtures, to be installed as in the approved application. In the event the application is part of the building permit application under the zoning regulations, the issuance of the building permit will be made if the applicant is in compliance with this Ordinance as well as the other requirements for issuance under the zoning regulations. Appeal procedures of the zoning regulations for decision of the Planning Director shall apply.

D. Amendment to Permit
Should the applicant desire to substitute outdoor light fixtures of lamps after a permit has been issued, the applicant must submit all changes to the Planning Director for approval with adequate information to assure compliance with this Ordinance.

SECTION 21-15
TEMPORARY EXEMPTIONS

A. Request for Temporary Exemptions

1. Any individual as defined herein may submit a written request on a form prepared by the Planning and Zoning Department to the Planning Director for a 'Temporary Exemption' to the requirements of this Ordinance, such Exemption to be valid for 30 days, renewable at the discretion of the Planning Director.

2. The request for Temporary Exemption shall contain minimally the following listed information:
    a. Specific exemptions requested
    b. Type and use of exterior light involved
    c. Duration of time for requested exemption
    d. Type of lamp and calculated lumens
    e. Total wattage of lamp or lamps
    f. Proposed location of exterior light
    g. Previous temporary exemptions, if any

h. Physical size of exterior light and type of shielding provided

3. In addition to the above data, the Planning Director may request any additional information which would enable him to make a reasonable evaluation of the Request for Temporary Exemption.

B. Appeal for Temporary Exemption
The Planning Director, within five days from the date of the properly completed Request for Temporary Exemption, shall approve or reject in writing the Request. If rejected, the individual making the Request shall have the right of appeal to the appropriate Board of Adjustment for review pursuant to the procedures applicable to any other appeal of a decision of the Planning Director.

SECTION 21-16
PENALTIES

Any person, firm, or corporation violating any of the provisions of this Ordinance shall be deemed guilty of a Class II misdemeanor, and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which a violation of any of the provisions of this Ordinance is committed, continued or permitted and upon conviction of any such violation such person, firm, or corporation shall be punished as prescribed by the Arizona Revised Statutes.

ARTICLE 23
DEFINITIONS

DEFINITIONS

For the purpose of this ordinance, certain terms and words are herein defined (words used in the present tense include the future; words in the singular number include the plural; and words in the plural include the singular); the word "shall" is mandatory and not permissive; the word "person" includes individuals, partnerships, corporations, clubs, or associations; the word "structure" includes the word "building." The following words or terms, when applied in this ordinance, shall carry full force when used interchangeably: lot, plot, parcel, or premises; used, arranged, occupied or maintained; sold or dispensed; construct, reconstruct, erect, alter (structurally or otherwise), but not the term "maintain" or any other form thereof. The following additional words and phrases shall for the purpose of this ordinance have the following meanings:

ABUT: To physically touch or border upon; or to share a common property line.

ACCESS STREET OR SERVICE ROAD: A street or road which is parallel to and adjacent to an arterial road and provides a means of direct ingress and egress to abutting property with the intent of avoiding driveway accesses to the arterial road.

~~**ACCESSORY BUILDING:** (See BUILDING, ACCESSORY)~~

ACCESSORY USE OR STRUCTURE: A use or structure that is clearly and customarily incidental and subordinate to the primary use or structure and is located on the same lot or may be under certain circumstances on an adjoining lot.

ACRE: An area of land forth three thousand, five hundred sixty square feet (43,560)

ACRE, NET: An area comprising forty-three thousand five hundred sixty (43,560) square feet of land excluding rights-of-way, roadway easements and ingress and egress easements

ADJACENT: Nearby, but not necessarily touching.

ADJOINING LOT OR LAND: A lot or parcel of land which shares all or part of a common lot line with another lot or parcel of land.

AGRICULTURE: Shall mean the tilling of the soil, raising of crops, horticulture, viticulture, silviculture, apiculture, aquaculture, small livestock raising, and/or pasture and range livestock production; including all uses incidental thereto, but not including commercial dairies, stockyards, feedlots, slaughterhouses, fertilizer yards, or plans for the reduction of animal matter or any other related industrial use which is similarly objectionable because of noise, odor, smoke, dust or fumes; nor including the concentrated single use operation of the raising of hogs, turkeys, chickens or fur bearing animals.

ALL-WEATHER ACCESS: Each commercial and/or public facilities site and each subdivision having six (6) or more lots shall have at least one primary all-weather access road constructed in such a way that water no more than 12 inches in depth with a maximum velocity of 5 feet per second shall pass across the roadway or crossing section during the 100-year event. The all-weather access shall be consistent with Gila County roadway and drainage requirements. The 25-year event shall be conveyed under the crossing.

ALLEGED VIOLATOR means the Property Owner(s), tenant or any other entities that are responsible for meeting the Gila County Development Codes.

~~**ALLEY:** A public passageway, affording a secondary means of access to abutting property.~~

ALLEY: A public thoroughfare that affords a secondary means of access to abutting property, and not intended for general traffic circulation.

ANIMAL UNITS: An animal unit shall represent the unit of measurement utilized as the basis for determining the number of domestic farm animals permitted on non-agricultural parcels and shall consist of one large animal, or three medium animals, or ten small animals.

ANTIQUE: A product that is sold or exchanged because of value derived or because of oldness as respects the present age, and not simply because same is not a new product.

APARTMENT: An attached dwelling unit.

APARTMENT HOUSE: A building containing apartments.

APPROVAL, CONDITIONAL: An affirmative action by the Planning Commission or the Board of Supervisors indicating that approval will be forthcoming upon satisfaction of certain specified stipulations.

APPROVAL, FINAL PLAT: Approval of the final plat by the Board of Supervisors, as evidenced by certification on said plat by the Clerk of the Board of Supervisors.

APPROVAL, PRELIMINARY PLAT: Approval of the preliminary plat by the Planning Commission.

ARCHITECTURAL ELEMENTS: Elements indicative of local heritage; embellishments to windows, doors, etc.

ARTERIAL: A highway used or intended to be used for heavy traffic flow, usually a section line or mid-section line road.

ARTERIAL ROAD: A street or road with the principal function of serving as a part of a major network for the through traffic flow (separate from local traffic) to and from areas of principal traffic generation – of adequate design, capacity and construction to provide for the safe and rapid distribution and collection of through traffic, and to provide limited ingress and egress to and from collector and local streets.

ARTIST: One who practices an art in which imagination and taste presides over execution. This is not deemed to include the business of teaching the mechanics of the art.

ATTACHED BUILDING: (See BUILDING, ATTACHED)

AUTOMOBILE SERVICE STATION: A place of business having pumps and/or storage tanks from which fuel and/or lubricants are dispensed at retail directly into the motor vehicle. Service, inspection and minor repairs are considered accessory to the sale of such fuel and lubricants.

BED AND BREAKFAST ESTABLISHMENT: A type of home occupation involving a portion of a single family dwelling in which from one to five bedrooms are completely furnished guest rooms occupied on a nightly basis for compensation, and ordinarily involving the serving of a morning meal prepared on the premises.

BERM: An earthen mound designed to provide visual interest, screen undesirable views and/or decrease noise.

BILLBOARDS: See Sign, Off-Site

BLOCK: That property fronting on one side of a street and so bounded by other streets, canals, railroad right-of-way, unsubdivided acreage or other barriers, except alleys, of sufficient magnitude as to interrupt the continuity of development on both sides thereof.

BOARD: The Board of Supervisors (except Section 106, Boards of Adjustment).

BOARD OF DIRECTORS: Means the Board of the Gila County Flood Control District.

BOARDING HOUSE: A limited commercial activity in which up to five rooms in a dwelling are occupied as completely furnished guest rooms occupied on a weekly or monthly basis for compensation, and in which food prepared on the premises may be served to the occupants in a common dining room.

BUFFER: Thought of as a "transitional space," a buffer consists of horizontal space (land) and vertical elements (plants, berms, fences or walls). Its purpose is to physically separate and visually screen adjacent land uses that are not fully compatible.

BUILDING: A structure having a roof supported by columns or walls.

BUILDING, ACCESSORY: A subordinate building, either attached or detached from the main building, containing an accessory use.

BUILDING AREA: The total areas, taken on a horizontal plane at the mean grade level, of the principal buildings and all accessory buildings exclusive of uncovered porches, terraces and steps.

BUILDING, ATTACHED: A building which has at least a part of a wall in common with another building, or which is connected to another building by a roof which exceeds 6 feet between opposite open ends.

BUILDING, CLOSED: A building completely enclosed by a roof, walls and doors.

BUILDING, COMMUNITY: A public or quasi-public building used for community activities of an educational, recreational, or public service nature.

BUILDING, DETACHED: A building which is separated from another building or buildings on the same lot. Buildings connected only with a roof not more than 6 feet wide between opposite open ends shall be deemed detached.

BUILDING HEIGHTS: The vertical distance measured from the grade level to the highest level of the roof surface of flat roofs, to the deck line of mansard roofs, or to the mean height between eaves and ridge for gable or gambrel or hip roofs. Except where specifically provided in this ordinance, building height does not apply to portions of buildings extending above the general roof line and comprising an aggregate area not greater than 25% of the total roof area, or to structures other than buildings.

BUILDING, MAIN: A building or buildings in which is conducted the principal use of the lot on which it is situated. In any residential district, any dwelling shall be deemed to be the main building of the lot on which the same is situated.

BUILDING, PUBLIC: (See PUBLIC BUILDING OR USE)

BUILDING SCALE The relationship between the mass of a building and its surrounding, including the width of the street, open space, and mass of surrounding buildings. Mass is determined by the three dimensional bulk of a structure; height, width and depth.

BUILDING SETBACK LINE: A line that separates the development envelope area and the area in which no building or structure, or portion thereof shall be erected, constructed or established.

CARPORT: An open porch used solely for the parking of motor vehicles and containing no enclosing walls, screen, lattice or other material other than the wall or walls of the building to which it is attached, or other than a storage room.

CAMPING TRAILER: (See RECREATIONAL VEHICLE)

CIRCULATION PLAN: Part of the comprehensive plan adopted by the Planning Commission designating and defining the physical street system.

COLLECTOR ROAD: A street or road that serves local traffic movements within an area, and traffic between major arterials and local streets; provides a means of ingress and egress to local streets and abutting property; serves to connect adjacent neighborhoods; and includes the principal entrance streets into residential neighborhoods. There also may be provisions for parking and loading or unloading on collector streets.

COLOR BOARD: The Historic Colors of America color chart put out by Spectra-Tone Paint

COMMERCIAL ACRE: Thirty Six Thousand (36,000) square feet of land area, exclusive of streets and alleys and other non-developable square footage.

COMMISSION: Planning and Zoning Commission.

COMMUNITY BUILDING: (See BUILDING, COMMUNITY)

COMPREHENSIVE PLAN: A plan adopted by the County providing a program to guide the orderly growth of the County.

COMMON OPEN SPACE: squares, greens neighborhood parks, public parks, and linear environmental corridors owned and maintained by the County.

COMPLAINT: Means a formal notification of a civil violation of any referenced ordinance filed with the Hearing Officer.

CONDITIONAL USE: A use which, although not specifically permitted in a given zoning district, would become harmonious or compatible with neighboring uses through the application and maintenance of qualifying conditions.

CONDITIONAL USE PERMIT: A permit issued in conjunction with the establishment of a Conditional Use setting forth by incorporation or reference all qualifying conditions governing the use of the property.

CONDOMINIUM: Real Estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the separate portions. Real Estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

CONFORM TO (COMPLY WITH) ZONING REGULATIONS: Means conformance with all applicable requirements of the zoning ordinance including, but not limited to, minimum lot size, lot configuration such as lot width and lot depth, setbacks, distances between buildings, performance standards and property development standards.

CONGREGATE RESIDENCE: Any building or portion thereof which contains facilities for living, sleeping and sanitation, and may include facilities for eating and cooking, for occupancy by other than a family. A congregate residence may be a shelter, convent, monastery, dormitory, fraternity or sorority house, but does not include jails, hospitals, nursing homes, hotels, or boarding houses.

CONTIGUOUS: In actual contact.

COTTAGE INDUSTRY: A limited manufacturing activity carried on by the occupant of a dwelling as a secondary use in connection with which there is no outdoor display of stock-in-trade or unenclosed storage of raw materials or products; not more than three non-residents of the premises may be employed; may be conducted within the main dwelling or an accessory building, provided that not more than fifty percent of the combined floor area may be devoted to the cottage industry; adequate on-site parking will be provided for all permitted activities, but there shall be no more than five parking spaces;

the permitted use will not generate vibration, smoke, dust, glare, heat, excessive noise or electrical interference with the reception of radio and television reception.

COVENANTS, CONDITIONS AND RESTRICTIONS (CC&Rs): Shall mean a privately prepared recorded document designed to govern the use of parcels within a subdivision.

COUNSEL: Means an attorney licensed to practice law in the State of Arizona.

COUNTY: Shall mean the County of Gila, Arizona, and shall include the Planning Commission and the County Board of Supervisors.

COUNTY BOARD: Means the Gila County Board of Supervisors.

COUNTY OFFICER: Means a county zoning inspector/code compliance officer, deputies or assistants.

PARTY: Means the defendant or the County.

CODE COMPLIANCE SUPERVISOR: Means the Code Compliance Supervisor or his/her designate.

COUNTY SUPERVISORS: Shall mean the Board of Supervisors of Gila County, Arizona.

COURT: Any space other than a yard on the same lot with a building or group of buildings and which is unobstructed and open to the sky from above the floor level of any room having a window or door opening on such court. The width of a court shall be its least horizontal dimension.

CUL-DE-SAC STREET: A local street having one end permanently terminated in a vehicular turnaround, or equally convenient form of vehicular maneuvering area as may be required by the County Engineering Department.

CUSTOM: Pertaining to work, service or assembly done to order for individual customers for their own use or convenience.

DAY NURSERY: (See SCHOOL, NURSERY)

DEAD-END STREET: A street having a traffic outlet on one end only and terminated at the other end by undeveloped property with temporary provisions for the turning around of vehicular traffic as may be required by the County Engineering Department. The provisions for turning shall be removed and right-of-way required for the turning shall be abandoned at the time access is provided to abutting property.

DEFENDANT: Means the alleged violator of the Gila County Development Codes.

DESIGNATED REPRESENTATIVE: Means a person over eighteen (18) years of age, other than an attorney, authorized in writing by the defendant to represent the defendant in proceedings before the Hearing Officer. The written authorization shall state the name of the person authorized to act on defendant's behalf; that the defendant understands and agrees to be bound by actions taken by the

designated representative in proceedings before the Hearing Officer; and shall be signed by the defendant before a notary public.

DETACHED BUILDING: (See BUILDING, DETACHED)

DEVELOPER: See "Subdivider"

DEVELOPMENT CODE: Means the Codes and Ordinances necessary to and utilized in Land Use Development in Gila County. The development code includes the following statutes, codes, and ordinances as enumerated.

1. The Gila County Floodplain Management Ordinance, and subsequent revisions: A.R.S. 48-3601 through 3628, and subsequent revisions; 44 CFR Parts 59 and 60 and subsequent revisions.

2. Wastewater Codes:

   a. Aquifer Protection Permit Program, Title 18 Environmental Quality, Arizona administrative Codes Chapter 9, Articles 1 & 3 (Parts A and E), Article 7 (701), (708.A) and (711) as specified in Appendix A of the Gila County Delegation Agreement #06-0020 with ADEQ.

   b. A.R.S. 49-141(A)(3), (4), and (5) Unhealthy Conditions Causing Environmental Nuisance as specified in Appendix B of the Gila County Delegation Agreement #06-0020 with ADEQ.

3. Gila County, Arizona Unified Development Code Ordinance

4. The Building Code Ordinance of the County of Gila including all adopted amendments and revisions

DEVELOPMENT ENVELOPE: The delineated boundary inside the property limits within which all development and disturbance of ground must be contained. No disturbance of any kind for any purpose is allowed outside of the development envelope except for driveway access and utility service lines to the structure.

DIRECTOR: Shall be the duly appointed Director of the Community Development Department of Gila County or his designee.

DISTRICT: Refers to Zoning District (either Use District or Density District).

DOMESTIC FARM ANIMALS: Animals, other than household pets, that are kept and maintained for commercial production and sale and/or family food production, education or recreation. Domestic farm animals are identified by the following categories: A- Large Animals include horses, donkeys, mules,

cattle and other bovine animals. B - Medium Animals include sheep and goats. C- Small Animals include rabbits, chinchillas, chickens, turkeys, ducks, geese and pigeons.

DOUBLE FRONTAGE LOT: A lot having street frontage on both the front and rear property lines.

DRIVE-IN RESTAURANT: Any establishment where food or beverages are dispensed for consumption on the premises, but not within a closed building.

DRIVE-IN THEATER: An open-air theater where the performance is viewed by all or part of the audience from motor vehicles.

DRIVEWAY: A private road which allows vehicular ingress and/or egress access from a public road.

DWELLING: A building containing one or more dwelling units.

DWELLING, CONVENTIONAL: Shall mean a dwelling constructed on the site by craftsmen utilizing basic materials delivered to the site. Said building shall consist of footings and foundations poured in place and solidly attached to the walls, which shall be constructed in place. Roofing materials, interior and exterior finishes shall be applied on the site.

DWELLING, MOBILE HOME: A structure, transportable in one or more sections, which is at least 8 feet wide and 32 feet in length, which is built on a permanent chassis and designed to be used as a dwelling unit, with or without a permanent foundation, when connected to the required utilities.
DWELLING, MODULAR: A dwelling unit delivered to the site in one or more factory-assembled modules consisting of multiple building systems. Modules shall be such that they may not be towed on their own chassis. Modular dwelling unit shall be permanently affixed to a permanent foundation system.

DWELLING, MULTIPLE: A building containing two or more dwelling units.

DWELLING, PREFABRICATED: A dwelling unit delivered to the site in a combination of sized individual building components and partially assembled building modules comprising primarily a portion of a single building system (i.e., floor, wall). Such dwelling shall be capable of site assembly by relatively unskilled crews and shall be permanently affixed to a permanent foundation system.

DWELLING, PRECUT: A dwelling unit delivered to the site as individually sized building components with little, if any, factory assembly of building subsystems. The parts and components of said precut building shall be assembled on the site and permanently affixed to a permanent foundation system.

DWELLING UNIT: Any building or portion thereof containing one or more habitable rooms, designed, occupied, or intended for occupancy as separate living quarters with cooking, sleeping, and sanitary facilities provided within the dwelling unit for the exclusive use of a single household.

DWELLING UNIT, PERMANENT: A dwelling unit of any type occupied, or suitable for occupation, for a period exceeding 180 days.

EASEMENT: A grant by the owner for the use of specified land by the public, a corporation, or persons, for specific uses and purposes and so designated and recorded in the County Recorder's office.

ERECT: The incorporation of materials into a building or structure.

FAÇADE: The front of a building or any side facing a public way or area.

FAMILY: An individual or two or more persons related by blood, marriage or adoption, or a group not to exceed six unrelated persons living together as a single housekeeping unit.

FINAL PLAT: The final map of a property being subdivided as prepared by an Arizona registered land surveyor for recording and approval by the Planning Commission and the Board of Supervisors and prepared in accordance with Section 18-12.C.3 of these regulations.

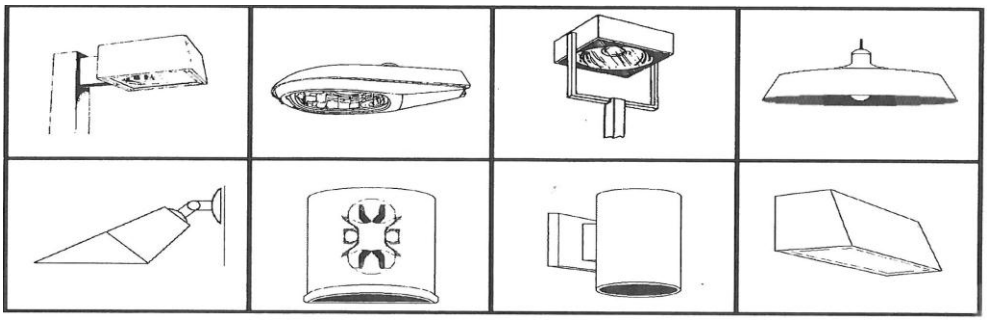
FIRE AND/OR EXPLOSION HAZARD: Any structure, material or use operated or maintained in a manner likely to result in a sudden or immediate fire and/or explosion as determined by the Fire Marshal having jurisdiction.

FREIGHT STATION: A facility for loading, unloading and warehousing of freight.

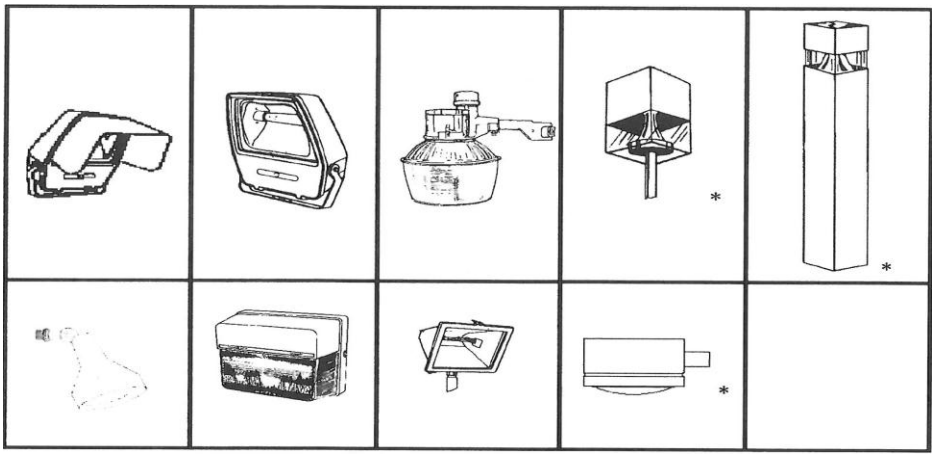
FREIGHT TERMINAL: A facility for loading and unloading of freight for current distribution and not warehousing.

FULLY SHIELDED FIXTURE: Means a light fixture or luminous tube constructed and mounted such that all light rays emitted by the fixture or tube, either directly from the lamp, tube, or a diffusing element, or indirectly by reflection or refraction from any part of the luminaire, are projected below a horizontal plane running through the lowest point on the fixture where light is emitted.

> **A practical working way to determine if a fixture or tube is fully shielded: if the lamp or tube, any reflective surface, or lens cover (clear or prismatic) is visible when viewed from above or directly from the side, from any angle around the fixture or tube, the fixture or tube *is not* fully shielded.**
>
> **Examples of fixtures that *are* Fully Shielded (Note: to be fully shielded these fixtures must be closed on top and mounted such that the bottom opening is horizontal):**



Examples of fixtures that are NOT Fully Shielded:



***Note: even though the lamp in these fixtures is shielded from direct view when viewed from the side or above, reflective surfaces and/or lens covers *are* directly visible from the side.**

Note for Luminous (neon) tubes: when such lighting is installed under or behind a roof overhang, if the roof-line or eave is not horizontal the tubing may be visible from above when viewed from the side and therefore be unshielded.

GARAGE, PRIVATE: An accessory building occupied primarily by the passenger motor vehicle of the family's resident on the same lot. This may include one commercial vehicle under five-ton capacity. Non-commercial vehicles of persons not resident on the lot may occupy up to one-half the capacity of such garage.

GARAGE, PUBLIC: Any building, other than that herein defined as a private garage, used for the storage or care of motor vehicles, or where any such vehicles are equipped for operation, repaired, or kept for remuneration, hire or sale.

GOVERNMENTAL AGENCY: The City of Globe, Town of Miami and/or Gila County Government that has jurisdiction over the area of concern.

GRAZING: The feeding of livestock on open range or fenced pasture for commercial purposes, and uses customarily incidental thereto, including facilities for the temporary assemblage of livestock prior to shipping, but not including commercial dairies, slaughterhouses, feedlots, fertilizer yards, bone yards or plants for the reduction of animal matter.

GROUND COVER: Vegetative groundcovers that serve to keep soil from eroding or moving as a result of natural forces.

GUEST HOUSE: A detached or semi-detached secondary conventional dwelling unit having not more than 800 square feet of gross floor area and containing not more than two habitable rooms along with sanitary facilities and an optional kitchenette, occupied by relatives, servants or the non-paying guests of the occupant of the main dwelling.

GUEST ROOM: A room having no cooking facilities intended for occupancy by one or more persons not members of the family.

HABITABLE ROOM: A room within a structure for eating or sleeping. Bathrooms, toilet compartments, closets, halls, storage and utility spaces are not considered habitable rooms.

HALF-STREET: A street having only one-half of its required right-of-way width dedicated for public use, and when required by the County, improved to one half of full improvements.

HARDSCAPE: Hardscape, or "hardscaping" refers to inanimate elements of landscaping. Anything used in landscaping that is not part of the living component of the landscape (i.e. plants) can be considered a hardscape element (i.e. water fountains, stone walls, concrete or brick patios, tile paths, wooden decks and wooden arbors).

HEARING OFFICER: means an individual appointed by the Board of Supervisors to hear and adjudicate alleged violations of the referenced Gila County Development Codes.

HEIGHT OF BUILDING: (See BUILDING HEIGHT)

HELP-SELF LAUNDRY: (See LAUNDRY, SELF-HELP)

HOME OCCUPATION: A limited commercial activity carried on by the occupant of a dwelling as a secondary use, including professional and semi-professional offices, when conducted and entered from within the dwelling, in connection with which there is no outdoor display of stock-in-trade; not more than one non-resident of the premises is employed; not more than one-fourth of the floor area of one story of the main dwelling or a detached home workshop not more than 200 square feet in area is to be used for such home occupation; and provided the residential character of the main dwelling is not changed by said use; and, said use does not cause any sustained or unpleasant or unusual noises or vibrations or noxious fumes or odors, or cause any parking or traffic congestion in the immediate neighborhood.

HOSPITAL: A place for the treatment or care of human ailments; and, unless otherwise specified, the term shall include sanitarium, preventorium, clinic, maternity home, rest home, and convalescent home.

HOTEL: A building other than a boarding house as defined herein, which building contains more than five guest rooms, and where entrance to the sleeping rooms or apartments is from a common entrance or lobby.

HOTEL, APARTMENT: (See APARTMENT HOTEL)

HOUSEHOLD: See “Family”.

HOUSEHOLD PETS: Small domestic animals such as dogs, cats and certain birds, reptiles, fish, rodents and furbearing animals, but not including swine of any breed, which may, under normal circumstances, be kept within the confines of a dwelling unit, either caged or uncaged, and which are not kept, bred, raised or exchanged for commercial purposes.

INDIVIDUAL: Shall mean any private individual, tenant, lessee, owner, or any commercial entity including but not limited to companies, partnerships, joint ventures or corporations.

INORGANIC GROUNDCOVERS: River rock, artificial turf, artificial plant material, gravel, concrete, asphalt paving or other similar non-living material.

INSPECTOR: Zoning Inspector or any of his Deputy Inspectors.

INSTALLED: Shall mean the initial installation of outdoor light fixtures defined herein, following the effective date of this Ordinance but shall not apply to those outdoor light fixtures installed prior to such date.

INTERIOR LOT: (See LOT, INTERIOR)

JUNK: Any scrap, waste, reclaimable material, or debris, whether or not stored or used in conjunction with dismantling, processing, salvage, storage, baling, disposal, or other use or disposition, including but not limited to inoperable and unregistered motor vehicles, tires, vehicle parts, equipment, paper, rags, metal, glass, building materials, household appliances, brush, wood and lumber.

JUNK YARD: The use, either commercially or otherwise, of a lot, parcel, or portions thereof, for the storage, collection, processing, purchase, sale or abandonment of waste paper, rags, scrap metal, or other scrap or discarded goods, materials or machinery, or two or more unregistered, inoperable motor vehicles, or other type of junk.

KENNEL, COMMERCIAL: Any kennel maintained for the purpose of boarding, raising or training dogs or cats over the age of four months for a fee or for exchange or sale.

KENNEL, NON-COMMERCIAL: Any property where five or more dogs and/or cats over the age of four months are kept or maintained for use and enjoyment of the occupant for non-commercial purposes.

KEY LOT: (See LOT, KEY)

KINDERGARTEN: Same as Nursery School, except when operated in conjunction with a school of general instruction and having accredited instruction.

LANDHOLDINGS: Land held by the subdivider, applicant, developer, or agent by actual title of ownership, or option to lease, or option to buy.

LANDSCAPING: The combination of landscape elements in a designed, specific application that meets the purposes of this ordinance. Landscape elements may include vegetation, such as trees, cacti, shrubs and groundcovers and other elements such as walls, earth berms, planters, and other architectural or structural elements.

LAUNDRY, SELF-HELP: A building in which domestic type washing machines and/or dryers are provided on a rental basis for use by individuals doing their own laundry.

LAWN: An area of grass maintained for decorative or recreational use.

LEGAL ACCESS: A way or means of approach to provide physical entrance to a property which shall consist of a public street, federal, state or county road, or a private recorded easement for ingress and egress connecting with any of the above. Any internal easement for ingress or egress created as a result of a minor land division shall be a minimum of twenty –four (24) feet in width**.**

LIVESTOCK: All animals otherwise classified as Domestic Farm Animals, but also including swine.

LIVING UNIT: (See DWELLING UNIT)

LOT: A parcel of land, or two or more parcels to be used as a unit, and having its principal frontage on a dedicated street or street easement. Where a half-street has been dedicated from such parcel, such shall be qualification for street frontage.
LOT: A parcel or portion of land separated from other parcels or portions by description as on a subdivision plat for the purpose of sale, lease, building development or other separate use.

LOT, CORNER: A lot abutting on two or more intersecting or intercepting streets, where the angle of intersection does not exceed 135 degrees. A corner lot shall be considered to be in that block in which the lot fronts.

LOT DEPTH: The shortest distance between the mid-point of each the front and rear line.

LOT, INTERIOR: Lots having no sides abutting on a street.

LOT, KEY: An interior lot having one side (at least) contiguous to the rear line of a corner lot.

LOT LINE, FRONT: That part abutting a street. The front line of a corner lot shall be the shorter of the two street lines as originally platted or, if such are equal, the most obvious front by reason of usage by adjacent lots. The front line of a through lot shall be that line which is obviously the front by reason of usage by adjacent lots. Such a lot exceeding 188 feet in depth may be considered as having two front lines.

LOT LINE, REAR: That lot line opposite the front line. Where the side lines of the lot meet in a point, the rear line shall be considered parallel to the front line of a tangent of the mid-point of a curved front line and lying 10 feet within the lot.

LOT LINE, SIDE: Those property lines connecting the front and rear property lines.

LOT, THROUGH: A lot in which the front and rear lines abut on a street.

LOW PROFILE SIGN: A sign that does not exceed a height of five feet from finished grade

MAIN BUILDING: (See BUILDING, MAIN)

MAINTAIN: The replacing of a part or parts of a building which have been made unusable by ordinary wear or tear or by the weather.

MARQUEE SIGN: A permanent or portable illuminated freestanding sign that employees flashing or moving elements.

MEDICAL MARIJUANA DESIGNATED CAREGIVER CULTIVATION LOCATION: An enclosed, locked facility such as a closet, room, greenhouse or other building that complies with all Department of Health Services regulations for the cultivation of medical marijuana. The establishment of a cultivation location by a designated caregiver must be in compliance with all regulations adopted by the Arizona Department of Health Services and State Statutes applicable to the use of medical marijuana.

MEDICAL MARIJUANA DISPENSARY: An entity defined in A.R.S. §36-2801(11) that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, supplies, sells or dispenses marijuana or related supplies and educational materials. Must be authorized by Department of Health Services.

MEDICAL MARIJUANA DISPENSARY OFFSITE CULTIVATION LOCATION: The additional location where marijuana is cultivated by a Medical Marijuana Dispensary as referenced in A.R.S. §36-2804(B)(1)(b)(ii). Must be in compliance with all Department of Health Services regulations for Medical Marijuana cultivation.

MEDICAL MARIJUANA INFUSION (*OR MANUFACTURING*) FACILITY: A facility that incorporates medical marijuana (cannabis) by the means of cooking, blending, or incorporation into consumable/edible goods.

MEDICAL MARIJUANA QUALIFYING PATIENT CULTIVATION LOCATION: An enclosed, locked facility such as a closet, room, greenhouse or other building with a Conditional Use Permit issued by Gila County where a patient who is qualified to cultivate marijuana pursuant to A.R.S. §36-2801 cultivates marijuana The establishment of a cultivation location by a qualified patient must be in compliance with all regulations adopted by the Arizona Department of Health Services and State Statutes applicable to the use of medical marijuana.

MINOR LAND DIVISION: The dividing of one parcel of land into five for fewer separate parcels, lots or fractional interests, any of which is ten (10) acres or smaller in size. A minor land division does not include:

a. The division of land into lots or parcels each of which is, or will be, thirty-six (36) acres or more in area including to the center line of dedicated roads or easements, if any, contiguous to the lot or parcel.
b. Adjustment of the boundary line between two abutting parcels or lots or transfer of land between two owners of abutting parcels or lots which does not result in the creation of any additional parcel or lots.

MOBILE HOME: (See DWELLING, MOBILE HOME)

MOBILE HOME DEVELOPMENT: Any lot, tract, or parcel of land used or offered for use in whole or in part, with or without charge, for the parking of more than two mobile homes, travel trailers, or recreation vehicles.

MOBILE HOME PARK: A site with required improvements and utilities for the long-term parking of mobile homes, which may include services and facilities for the residents.

MODULAR HOME: (See DWELLING, MODULAR)

MOTEL: A building or group of buildings containing guest rooms or apartments, each of which maintains a separate outside entrance, used primarily for the accommodation of automobile travelers, and providing automobile parking space on the premises.

MOTOR HOME: (See RECREATIONAL VEHICLE)

MULTIPLE DWELLING: (See DWELLING, MULTIPLE)

NATURAL BUFFER: A buffer that is composed of undisturbed areas in which disturbance is prohibited except to enhance small areas by planting the same plant material and density as undisturbed areas endemic to the site area.

NATURAL OPEN SPACE: Undisturbed, native vegetation

NEWSPAPER OF GENERAL CIRCULATION: Shall be deemed to mean a daily newspaper, if one is published in the County Seat; if no daily newspaper is published, a weekly newspaper may be used.

NON-RESIDENTIAL SUBDIVISION: The division of a tract of land into parcels for occupancy by non-residential uses and/or structures, whether for sale or for building development for leasing and/or renting.

NUISANCE: Any act, action, or condition relating to the use of property which endangers the health, safety or property of others, or which interferes with the enjoyment or use of property.

NURSERY SCHOOL: (See SCHOOL, NURSERY)

OPEN PORCH: (See PORCH, OPEN)

OUTDOOR LIGHT FIXTURES: Outdoor artificial illuminating devices, outdoor fixtures, lamps and other devices, permanent or portable, used for illumination or advertisement. Such devices shall include, but are not limited to search, spot, or flood lights for:

buildings and structures
recreational areas
parking lot lighting
landscape lighting
billboards and other signage (advertising or other)
street lighting

OVERHEAD PROTECTION STRUCTURE: Overhead protection structures are devices installed on a building façade or freestanding devices intended to provide shade and protection to pedestrian areas

and display windows. These may include porches, colonnades, trellises, pergolas, canopies, awnings and recessed doorways.

PARTY: Means the defendant or the County.

PERMIT: A document issued by Gila County, Arizona, granting permission to perform an act or service which is regulated by the County.

PLANNING COMMISSION: Shall mean the Planning and Zoning Commission of Gila County, Arizona.

PORCH, OPEN: A porch in which any portion extending into a front or side yard shall have no enclosure by walls, screens, lattice or other material higher than 54 inches above the natural grade line adjacent thereto, which porch is to be used solely for ingress and egress, and not for occupancy as a sleeping porch or wash room.

PRE-FABRICATED HOME: (See DWELLING, PRE-FABRICATED)

PRELIMINARY PLAT: That portion of a preliminary plan or any separate drawing of a parcel of land intended for subdivision and approval of the Planning Commission, that conforms with the requirements of the subdivision regulations and is prepared in accordance with Section 18-12.C.1 and Section 18-12.C.2 of these regulations.

PRIVATE GARAGE: (See GARAGE, PRIVATE)

PRIVATE STREET: A roadway that is in private ownership and that is used for vehicular travel by the owner and those persons who have expressed or implied permission from the owner but not by other persons.

PRIVATE USE: (See USE, PRIVATE)

PROFESSIONAL USE: (See USE, PROFESSIONAL)

PROPERTY LINES: Those lines outlining the boundaries of properties or lots for the purpose of description in sale, lease, building development, or other separate use of property.

PUBLIC GARAGE: (See GARAGE, PUBLIC)

RADIAL: A line forming right angles with the tangent of any given arc.

RECREATIONAL VEHICLE:

A. A vehicular type unit which is; A portable camping trailer mounted on wheels and constructed with collapsible partial sidewalls which fold for towing by another vehicle and unfold for camping. A motor home designed to provide temporary living quarters for recreational, camping or travel use and built on or permanently attached to a self-propelled motor vehicle chassis cab or van that is an integral part of the completed vehicle.

B. A park trailer (park model) built on a single chassis, mounted on wheels and designed to be connected to utilities necessary for operation of installed fixtures and appliances and has a gross trailer area of not less than three hundred twenty square feet and not more than four hundred square feet when it is set up, except that it does not include fifth wheel trailers.
C. A travel trailer mounted on wheels, designed to provide temporary living quarters for recreational, camping or travel use, of a size or weight that may or may not require special highway movement permits when towed by a motorized vehicle and has a trailer area of less than three hundred twenty square feet. This subdivision includes fifth wheel trailers.
D. If a unit requires a size or weight permit, it shall be manufactured to the standards for park trailers in A 199.5 of the American National Standards Institute Code. A portable truck camper constructed to provide temporary living quarters for recreational, travel or camping use and consisting of a roof, Floor and sides designed to be loaded onto and unloaded from the bed of a pickup truck.

RECREATIONAL VEHICLE PARK: A plot of ground upon which two or more spaces with the required utilities and improvements are located and maintained for occupancy by recreational vehicles as temporary living quarters for recreational and vacation purposes.

RESIDENTIAL USE: (See USE, RESIDENTIAL)

RESTAURANT: An establishment other than a boarding house, where meals which are prepared therein may be procured by the public.

REST HOME: Same as Hospital.

RIGHT-OF –WAY: Any land which by deed, conveyance, dedication, process of law or other means is dedicated to Gila County for street, highway, alley public utility, or pedestrian walkway purposes.

ROAD, ROADWAY, OR STREET: That area, whether public or private, between right-of-way or easement lines, dedicated, reserved, or provided for purposes of vehicular and pedestrian traffic and other uses consistent therewith.

SCHOOL: A place of general instruction having accredited instruction acceptable to the educational authorities.

SCHOOL, NURSERY: An institution for the day time care of children of pre-school age. Even though some instruction may be offered in connection with such care, the institution shall not be considered a "school" within the meaning of this ordinance.

SCREENING ELEMENT: Any landscaping or structure used to conceal or reduce the negative visual and/or audio impacts of certain land uses or activities from streets or adjacent development. The height of a screening device is measured from the highest finished grade abutting the element to be screened.

SELF-HELP LAUNDRY: (See LAUNDRY, SELF-HELP)

SEXUALLY ORIENTED BUSINESS DEFINITIONS

For the purpose of this section, the following definitions apply unless the context clearly indicates otherwise.

1. **Adult Arcade** means any place to which the public is permitted or invited and in which coin-operated or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image producing devices are regularly maintained to show images that are characterized by the depiction or description of specific sexual activities or specific anatomical areas to persons in booths or viewing rooms.

2. **Adult Bookstore** or **Adult Video Store** or **Adult Novelty Store** means a commercial establishment that offers for sale or rent or for any form of consideration any one or more of the following:

    a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes, compact discs, video reproductions or slides or other visual representations that depict or describe specific sexual activities or specific anatomical areas; or
    b. Instruments, devices or paraphernalia that are designed for use in connection with specific sexual activities.

3. **Adult Cabaret** includes any nightclub, bar, restaurant or other similar commercial establishment, whether or not alcoholic beverages are served, that features:

    a. Persons who appear in a state of nudity or who are seminude.
    b. Live performances that are characterized by the exposure of specific anatomical areas or specific sexual activities.
    c. Films, motion pictures, videocassettes, slides or other photographic reproductions that are characterized by the depiction or description of specific sexual activities or specific anatomical areas.

    NOTE: Nothing in the definition of Adult Cabaret shall be construed to apply to the presentation, showing, or performance of any play, drama, or ballet in any theater, concert hall, fine arts academy, school, institution of higher education, or other similar establishment as a form of expression of opinion or communication of ideas or information, as differentiated from the promotion or exploitation of nudity for the purpose of advancing the economic welfare of a commercial or business enterprise.

4. **Adult Live Entertainment Establishment** means an establishment that features:

    a. Persons who appear in a state of nudity or semi-nudity; or
    b. Live performances that are characterized by the exposure of specific anatomical areas or specific sexual activities.

5. **Adult Motel** means a hotel, motel or similar commercial establishment that:

a. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and advertises the availability of this adult type of photographic reproductions; or
b. Offers a sleeping room for rent for a period of time that is less than ten hours; or
c. Allows a tenant or occupant of a sleeping room to sub rent the room for a period of time that is less than ten hours.

6. **Adult Motion Picture Theater** means a commercial establishment in which for any form of consideration films, computer simulations, motion pictures, videocassettes, slides or other similar photographic reproductions that are characterized by the depiction or description of specific sexual activities or specific anatomical areas are regularly shown.

   NOTE: Nothing in the definition of Adult Motion Picture Theater shall be construed to apply to the presentation, showing or performance of any play, drama or ballet in any theater, concert hall, fine arts academy, school, institution of higher learning or other similar establishment as a form of expression of opinion or communication of ideas or information, as differentiated from the promotion or exploitation of nudity for the purposes of advancing the economic welfare of a commercial or business enterprise.

7. **Adult Service** means dancing, serving food or beverages, modeling, posing, wrestling, singing, reading, talking, listening or other performances or activities conducted for any consideration in a Sexually Oriented Business by a person who is nude or seminude during all or part of the time that the person is providing the service.

8. **Adult Service Provider** or **Erotic Entertainer** means any person who provides an adult service.

9. **Adult Theater** means a theater, concert hall, auditorium or similar commercial establishment that regularly features persons who appear in a state of nudity or semi-nudity who engage in live performances that are characterized by the exposure of specific anatomical areas or specific sexual activities.

10. **Adult Video Facility** means a commercial establishment where, for any consideration, films, motion pictures, video cassette projections, slides or other visual media characterized by depiction of specific sexual activities or specific anatomical areas are shown in the regular course of business as a principal business purpose of the establishment. Adult Video Facility does not include a theater where all viewing occurs in a common area with seating for fifty or more persons. This definition does include Adult Arcades.

11. **Discernibly Turgid State** means the state of being visibly swollen, bloated, inflated or distended.

12. **Director** means director of Gila County Community Development or the Director's designee.

13. **Dual Purpose Business** means a commercial establishment that devotes at least ten percent (10%) of its interior sales or display space to the sale or rental, for any form of consideration, of any one or more of the following:

    a. Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the exhibition or description of specified sexual activities or specific anatomical areas;
    b. Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others; and which does not meet the definition of Adult Bookstore, Adult Novelty Store or Adult Video Store set forth above. Floor space shall be measured by dividing the floor space where patrons or customers of the establishment are permitted where the primary sales or displays are of materials described above by the total floor space where patrons or customers of the establishment are permitted regardless of the materials.

14. **Employee** means a person who works or performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an Employee, independent contractor, agent, or otherwise, and whether or not the person is paid a salary, wage or other compensation by the operator of the business. This does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises, nor an attorney, accountant or other person whose primary function is to provide professional advice and assistance to the licensee.

15. **Enterprise** means a corporation, association, labor union or other legal entity, as provided in A.R.S. 13-105.

16. **Escort** means a person who for consideration agrees or offers to act as a companion, guide or date for another person or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

17. **Escort Agency** means a person or business association that furnishes, offers to furnish or advertises the furnishing of escorts as one of its primary business purposes for any fee, tip or other consideration.

18. **Establish or Establishment** means and includes any of the following:

    a. The opening or commencement of any sexually oriented business as a new business; or
    b. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or
    c. The addition of any sexually oriented business to any other existing sexually oriented business.

19. **Exotic Dancer** means a male or female dancer that performs seminude or nude for compensation.

20. **Exotic Dance Service** means any business or person who provides Exotic Dancers to perform at a private residence, business, or other location (other than an Adult Cabaret).

21. **Explicit Sexual Material** means any drawing, photograph, film negative, motion picture, figure, object , novelty device, recording, transcription or any book, leaflet, pamphlet, magazine, booklet or other item, the cover or contents of which depicts human genitalia or depicts or verbally describes nudity, sexual activity, sexual conduct, sexual excitement or sadomasochistic abuse in a way which is harmful to minors. Explicit sexual material does not include any depiction or description which, taken in context, possesses serious educational value for minors or which possesses serious literary, artistic, political or scientific value.

22. **Licensee** means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In case of an employee, it shall mean the person in whose name the sexually oriented business employee license has been issued.

23. **Massage Establishment** means an establishment in which a person, firm, association or corporation engages in or permits massage activities, including any method of pressure on, friction against, stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating of external soft parts of the body with the hands or with the aid of any mechanical apparatus or electrical apparatus or appliance. This paragraph does not apply to:

    a. Persons authorized by the laws of this state to practice medicine, osteopathy, chiropractic, podiatry, or naturopathy;
    b. Registered nurses, licensed practical nurses or technicians when acting under the supervision of a licensed physician or osteopath;
    c. Persons employed or acting as trainers for any bona fide amateur, semi-professional or athlete or athletic team;
    d. Persons authorized by the laws of this state as barbers or cosmetologists, provided their activity is limited to the head, face, or neck.

24. **Nude Model Studio** means a place where a person who appears seminude, in a state of nudity, or who displays specific anatomical areas and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by the State of Arizona or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:

    a. that has no sign visible from the exterior of the structure and no other advertising that indicates a nude or seminude person is available for viewing; and

b. where in order to participate in a class a student must enroll at least three days in advance of the class; and
c. where no more than one nude or seminude model is on the premises at any one time.

25. **Nude, Nudity or State of Nudity** means any of the following:

    a. The appearance of a human anus, genitals or female breast below a point immediately above the top of the areola; or
    b. A state of dress that fails to opaquely cover a human anus, genitals or female breast below a point immediately above the top of the areola or the showing of the covered male genitals in a discernibly turgid state.

26. **Operate or Cause to Operate** means to cause to function or to put or keep in a state of doing business. Operator means any persons on the premises of a sexually oriented business who is authorized to exercise operational control of the business or who causes to function or who puts or keeps in operation the business. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

27. **Patron** means a person invited or permitted to enter and remain upon the premises of a sexually oriented business, whether or not for consideration.

28. **Person** means an individual, firm, organization, business trust, limited liability company, joint venture company, proprietorship, partnership, corporation, association, or other legal entity.

29. **Public Display** means the placing of material on or in a billboard, viewing screen, theater marquee, newsstand, display rack, vending machine, window, showcase, display case or similar place so that material within the definition of Explicit Sexual Material is easily visible or readily accessible from a public thoroughfare, from the property of others, or in any place where minors are invited as part of the general public.

30. **Regularly Features or Regularly Shown** means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business.

31. **Seminude or Semi-Nudity or In a Seminude State** means a state of dress in which opaque clothing covers no more than the genitals, pubic region and female breast below a point immediately above the top of the areola, as well as portions of the body that are covered by supporting straps or devices.

32. **Sexual Encounter Center** means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration the following:

a. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
b. Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or is seminude.

32. **Sexually Oriented Business** means an Adult Arcade, Adult Bookstore, Adult Video Store, Adult Novelty Store, Adult Cabaret, Adult Live Entertainment Establishment, Adult Motel, Adult Motion Picture Theater, Adult Theater, Adult Video Facility, Dual Purpose Business, Escort Agency, Exotic Dance Service, Massage Establishment that offers or provides Adult Service, Nude Model Studio, Sexual Encounter Center or any business or facility that offers or provides an Adult Service.

    NOTE: A commercial establishment may have other business purposes that do not meet the definition of a Sexually Oriented Business but such other business purposes will not serve to exempt such commercial establishment from being categorized as a Sexually Oriented Business so long as one of its principal business purposes qualifies as such.

33. **Specific Anatomical Areas** means any of the following:

    a. A human anus, genitals, pubic region or a female breast below a point immediately above the top of the areola that is less than completely and opaquely covered.
    b. Male genitals in a discernibly turgid state, even if completely and opaquely covered.

34. **Specific Sexual Activities** means and includes any of the following:

    a. Fondling or other erotic touching of the human genitals, pubic region, buttocks, anus or female breast.
    b. Sex acts, normal or perverted, actual or simulated, including acts of human masturbation, sexual intercourse, oral copulation or sodomy.
    c. Urinary or excretory functions as part of or in connection with any of the activities set forth in (a) or (b) above.

35. **Video** includes image reproduction and display by videotape or any other medium, such as digital video disk or compact disk that produces moving or still images on a screen, wall, or other similar display.

36. **Viewing Room** means the room, booth, or area where a patron of sexually oriented business would ordinarily be positioned while watching a film, videocassette, or other video or visual production or reproduction.

SIDEWALK: That paved portion of the right-of-way designed and intended for the movement of and use of pedestrian traffic, which lies between the curb lines or lateral lines of the road bed and the boundary line of said right-of-way.

SIGN: A display for the purpose of making anything known and visible beyond the boundaries of the property on which same is located.

SIGN, OFF-SITE: A sign advertising a business, place, activity, goods, services or products on a different property than where the sign is located.

SIGN, ON-SITE: A sign advertising a business, place, activity, goods, services or products on the same property which the sign is located.

SLEEPING ROOM: A room other than a guest room, in which cooking facilities are provided.

STORM SEWER: A constructed conduit necessary, useful, or convenient for the collection and conveyance of surface waters to a drainage course.

STORY: That portion of a building included between the surface of any floor and the surface of the next floor above it, or, if there is no floor above it, then the space between the floor and the ceiling next above it. A basement, the ceiling of which is less than 4'6" above the grade level shall not be considered a floor. A mezzanine floor shall be considered a story if it exceeds an area of 40% of the area of the floor next below it.

STREET: A public passageway which affords a principal means of access to abutting property.

STRUCTURE: Anything built or installed by arranging parts together, such as buildings, tanks, fences, signs, pools, towers, etc.

SUBDIVIDER: Any individual, firm, association, syndicate, co-partnership, corporation, trust or any other legal entity commencing proceedings under these regulations, to effect a subdivision of land hereunder.

SUBDIVISION: Means a subdivision as defined in Sec. 32-2101, subparagraph 54 of Arizona Revised Statutes.

SUMMONS: Is a legal notice requiring an individual to appear at a designated place, time and date.

TIME SHARE PROJECT: A project in which a purchaser receives the right in perpetuity, for life or for a term of years to the recurrent, exclusive use of occupancy of a lot, parcel, unit or segment of real property, annually or on some other periodic basis, for a period to time that has been or will be allotted from the use or occupancy periods into which the project has been divided.

TOURIST COURT: (See MOTEL)

TOWNHOUSE DEVELOPMENT: A subdivision consisting of single dwellings constructed as part of a series of dwellings, all of which are either attached to the adjacent dwelling or dwellings by party walls, or are located immediately adjacent thereto with no visible separation between walls or roofs

TRADITIONAL NEIGHBORHOOD: a compact, mixed use neighborhood where residential, commercial, office and civic buildings are within close proximity to each other.

TRAILER: A structure standing on wheels, towed or hauled by another vehicle and used for short-term human occupancy, carrying materials, goods or objects, or as a temporary office.

TRAILER PARK: (See MOBILE HOME DEVELOPMENT, MOBILE HOME PARK, RECREATIONAL VEHICLE PARK)

TRAVEL TRAILER: (See RECREATIONAL VEHICLE)
USE: The purpose for which a building or lot is arranged, designed, occupied or maintained.

USE, ACCESSORY: A use incidental to the principal use on the same lot.

USE, NONCONFORMING: A use or activity which was lawful prior to adoption, revision or amendment of the Zoning Ordinance, but which fails, by reason of such adoption, revision or amendment, to conform to the present requirements of the zoning district.

USE PERMIT: Shall be a permit issued by the Planning Director for the development or use of any property which is subject to a Use Permit. Such permit shall set forth by incorporation or reference all stipulations and limitations of the use of said property, as well as the time period for which such permit shall be issued. (THIS IS NOT A CONDITIONAL USE PERMIT)

USE, PERMITTED: A use in a District which is allowed therein by reason of being listed among the "Permitted Uses" in the District.

USE, PRIVATE: A use restricted to the occupants of a lot or building, together with their guests, where compensation is not received, and where no commercial activity is associated with the same.

USE, PROFESSIONAL: The rendering of services of a professional nature by: (1) members of the professions licensed by competent authority; (2) teachers in a school of general instruction; (3) artists practicing the fine arts; (4) consultants recognized by organizations of licensed professions.

USE, PUBLIC: A use which is open to all, generally not for compensation, and which is not restricted to those dwellings on the same lot with the public use or public building.

USE, RESIDENTIAL: Shall be deemed to include single and multiple dwellings, hotels, motels and trailer parks.

UTILITY EQUIPMENT: Hardscape devices which are installed vertically into/onto the property and visible from the corridor for the purpose of power transmission, lighting, or communication.

WILD OR EXOTIC ANIMALS: Animals other than Household Pets or Domestic Farm Animals not commonly domesticated and normally requiring confinement or special handling to avoid injury to human beings.

WRECKING YARD: (See JUNK YARD)

XERISCAPE: A water-efficient landscaping technique, utilizing unthirsty native or drought tolerant exotic plants

YARD: An area of uniform width behind which the exterior walls of any main building must be established. Such yard is measured as the minimum horizontal distance from a lot line or an existing or projected right-of-way line. A yard shall be unobstructed by structures, except where otherwise permitted under the terms of this ordinance.

YARD, FRONT: A yard abutting the front lot line.

YARD, REAR: A yard abutting the rear lot line.

YARD, SIDE: A yard abutting that portion of a side lot line lying between the front and rear yards.

ZONING DISTRICT: A zoned area in which the same zoning regulations apply throughout.

ZONING REGULATIONS: Shall mean the Planning and Zoning Regulations, Gila County, Arizona.

Residential Use Table

Current

PROPERTY USE	USE DISTRICTS										
	GR	SR	RR	SFR	R1L	R1	GU	R2	R3	R4	TR
Agriculture											
Apartment House											
Animal hospital/vet clinic											
Antique shops											
Arts/Crafts galleries/sales											
Avaries											
Bakeries, specialty											
Beauty & Barber shops											
Bed & Breakfast 3 rooms 1 entry											
Bed & Breakfast 4 or 5 rooms											
Bee Keeping (apiaries)											
Billboards											
Boarding House											
Borrow pits											
Building/plumbing/electrical supply stores											
Cell towers											
Churches											
Cleaner pick-up											
Clock, radio, tv, musical instrument repair											
Clubs											
Colleges & Universities											
Commercial animal operations											
Contracting--general & specialty											
Convents											
Correctional Facilities											
Cottage Industries											
Custom furniture/cabinetry											
Dairies											
Dairy Sales											
Day Care Centers											
Domestic Farm Animals		5		5							
Domestic Pets											
Eating & Confectionary											
Elementary Schools											
Factory Built Buildings											
Farming											
Feed stores											
Fences 6' high & less											
Fences more than 6' w/ private											
Fences more than 6' w/ USFS											
Financial institutions											
Fine Art Galleries											
Firewood storage/sales											
Florist shops											
Flower propagation											
Foster Homes											

Permitted

Uses allowed when zoning and building standards are met

Use Permit

Uses allowed with an approved Use Permit

Conditional Use Permit

Uses allowed with approved Conditional Use Permit

Not Permitted

Uses which are not allowed

Residential Use Table

Current

PROPERTY USE	USE DISTRICTS										
	GR	SR	RR	SFR	R1L	R1	GU	R2	R3	R4	TR
Fraternities											
General Retail											
Golf Courses											
Group Home											
Guest Home											
Gun Smithing											
Halfway Homes											
Hand binding/tooling											
Health clubs											
High Schools											
Home gardens											
Home Occupations											
Homeowners Association											
Horticulture											
Hospice Home											
Hospitals											
Hotels											
Kennels Commercial											
Kennels Non-Commercial											
Key making											
Libraries											
Livestock		5		5							
Lodges											
Manufactured Home											
Manufactured Home Park[2]											
Massage parlors											
Medical/Dental services											
Mineral extraction											
Model Homes											
Monestary											
Motels											
Multiple Family Dwelling Units less than 5 units per building											
Multiple Family Greater than 5 units per building											
Museums											
Neighborhood Services[4]											
Non-commercial motor vehicle/parts storage											
Non-commericial storage of household/building materials											
Nursery School											
Nursing Home											
Optical											
Photographic/art											
Planing mills											
Playgrounds/fields											
Produce sales											

Permitted
Uses allowed when zoning and building standards are met

Use Permit
Uses allowed with an approved Use Permit

Conditional Use Permit
Uses allowed with approved

Not Permitted
Uses which are not allowed

Residential Use Table

Current

PROPERTY USE	USE DISTRICTS										
	GR	SR	RR	SFR	R1L	R1	GU	R2	R3	R4	TR
Professional Offices											
Public parks/recreational facilities											
Radio & transmitter stations											
Radio Towers to 60' private											
Ranching											
Real Estate brokerage											
Revival tents & buildings											
Recreational Vehicle Park[1]											
Residential Care											
Riding Academies											
Rodeo/roping arenas											
RV / Trailer as Caretaker											
Sand & gravel extraction/classification											
Saw sharpening											
Secondary Schools											
Sexually Oriented Businesses[3]											
Site Built Home											
Small Appliance/engine repair											
Sororities											
Subdivision Sales Office											
Swim clubs											
Tailoring/hand cleaning											
Teaching--fine arts											
Temporary Construction Shed											
Temporary Dwelling Unit											
Temporary Storage of Equipment											
Temporary Storage of Materials											
Tennis clubs											
Utility & Emergency Substations											
Utility Centers											
Vocational Schools											
Water Storage Tanks											
Water wells											
Wild & Exotic Animals											
Yard Sales											

Permitted
Uses allowed when zoning and building standards are met

Use Permit
Uses allowed with an approved Use Permit

Conditional Use Permit
Uses allowed with approved Conditional Use Permit

Not Permitted
Uses which are not allowed

1--For Recreational Vehicle Park uses see the Transportable Dwelling (TD) District in Section 192

Manufactured Home Subdivision (MHS)
District in Section 181

3--For Sexually Oriented Business uses see Section 560

4--Neighborhood Services are retail goods and personal services provided within fully enclosed buildings, including: convenience markets, cafes, restaurants, laundries, hotels, motels, barber shops, beauty salons, gift shops and similar uses as determined by the Community Development Director

5 - See specific animals & uses in Sections 133 & 135 (SR & SFR Districts)

Commercial/Industrial/Special Zoning Districts Permitted Uses

*All uses require Development Plan	USE DISTRICTS							
	C1	C2	C3	M1	M2	M3	GU	TR
PROPERTY USE								
Agriculture	1	1	1	1	1	1	1	1
Air conditioning, heating & plumbing services	4	4						
Alcoholic beverages	3	3						
Amusement & Recreation Services except Motion Pictures								
Antique stores								
Apartments			4					
Apparel & Accessory Stores								
Appliance stores								
Athletic fields								
Auto body work		4	2					
Auto Dismantling			4					
Auto/boat/truck parts sales								
Aviaries & apiaries								
Banks, credit unions & personal finance companies								
Beauty & Barber Shops								
Bed & Breakfast 3 rooms 1 entry								
Bed & Breakfast 4 or 5 rooms								
Boarding House								
Books, magazines, stationary & related products								
Borrow pits	1	1	1	1	1	1	1	1
Botanical & Zoological Gardens								
Bowling alley								
Building Material/Hardware Dealers								
Car wash	2							
Churches								
Clinics								
Clock/radio repair								
Colleges & Universities								
Commercial kennels								
Commercial Parking Lot/Garage								
Commercial stables								
Commercial animal uses								
Convenience goods	4							
Convents								
Cottage industries								
Custom upholstery & furniture repair								
Dairies	1	1	1	1	1	1	1	1

Permitted
Uses allowed when zoning and building standards are met

Use Permit
Uses allowed with an approved Use Permit

Conditional Use Permit
Uses allowed with approved Conditional Use Permit

Not Permitted
Uses which are not allowed

[1] permitted on any lot of 5 or more acres

[2] entirely within an enclosed building

[3] off-site consumption only

[4] see stipulations

Commercial/Industrial/Special Zoning Districts Permitted Uses

*All uses require Development Plan	USE DISTRICTS							
	C1	C2	C3	M1	M2	M3	GU	TR
PROPERTY USE								
Dance studios								
Day Care Centers								
Design & sales offices								
Dinner Theater								
Dormitories								
Drive-in Restaurant		4						
Drive-in Theater		4						
Drugs & Pharmaceutical								
Dry Goods								
Education Services								
Electrical fixtures & service	4	4						
Electronics & Computer stores								
Elementary Schools								
Entertainment/Dancing								
Equipment sales/storage								
Equipment rental (heavy & other)								
Establishments serving food or beverages indoors or outdoors, excluding drive-in & carry-out services								
executive/administrative offices								
Fabrication								
Farming	1	1	1	1	1	1	1	1
Fast Food Restaurants								
Feed stores								
Financial Institutions								
Firewood storage & sales								
Florist shops								
Food locker								
Fraternities								
Funeral Service & Crematories								
Furniture/Home Furnishing Stores								
Garden Supply/ Sales								
Gas Stations	2	4						
Glazing								
Golf Course								4
Golf driving range								
Government office building								
Group Home								
Gun smithing								
Halfway house								

Permitted
Uses allowed when zoning and building standards are met

Use Permit
Uses allowed with an approved Use Permit

Conditional Use Permit
Uses allowed with approved Conditional Use Permit

Not Permitted
Uses which are not allowed

[1] permitted on any lot of 5 or more acres

[2] entirely within an enclosed building

[3] off-site consumption only

[4] see stipulations

Commercial/Industrial/Special Zoning Districts Permitted Uses

*All uses require Development Plan	USE DISTRICTS							
	C1	C2	C3	M1	M2	M3	GU	TR
PROPERTY USE								
Health Services								
High Schools								
Hobby & craft supplies								
Horticulture	1	1	1	1	1	1	1	1
Hospitals								
Hotels		4						
Incidental construction facilities								
Janitorial & Secretarial Services								
Jewelry								
Junk Sales								
Key making								
Laundromats								
Legal Services								
Library								
Liquid Petroleum Sales			4					
Machining/manufacturing								
Medical & dental offices								
Medical marijuana								
Metallurgical	1	1	1	1	1	1	1	1
Mineral extraction	1	1	1	1	1	1	1	1
Miniature golf								
Minor repair & service of motor vehicles	2	2						
Miscellaneous Repair Services								
Mixing/baking								
Mobile Home Dealers								
Monestary								
Motels		4						
Motion picture production								
Movie theater								
Multiple Family Dwelling Units			4					4
Museums, Art Galleries								
Music Production								
Music, records & related products								
Nightclubs								
Non-domestic animal uses								
Non-commercial kennels								
Nursery School								
Nursing homes/homes for the aged								
Off-site signs/billboards			4					
On-Site Signs								

Permitted
Uses allowed when zoning and building standards are met

Use Permit
Uses allowed with an approved use permit

Conditional Use Permit
Uses allowed with approved Conditional Use Permit

Not Permitted
Uses which are not allowed

[1]permitted on any lot of 5 or more acres

[2] entirely within an enclosed building

[3] off-site consumption only

[4]see stipulations

Commercial/Industrial/Special Zoning Districts Permitted Uses

*All uses require Development Plan	USE DISTRICTS							
	C1	C2	C3	M1	M2	M3	GU	TR
PROPERTY USE								
Orphanages								
Outdoor Sales								
Outdoor Storage	4	4	4	4				4
Paints, wallpaper & glass								
Pest Control								
Photocopying & Duplicating								
Photofinishing Labs								
Planing mills								
Playgrounds/parks								
Portrait Studio								
Printing & publishing								
Processing/assembly								
Professional & accounting offices								
Pubilc utility facilities								
Pubilc utility service offices								
Publicly owned buildings								
Race tracks								
Radio & television studios								
Radio/transmitter stations/towers								
Railroads	1	1	1	1	1	1	1	1
Ranching	1	1	1	1	1	1	1	1
Real estate offices/insurance agency								
Repair & Construction Services								
Repair shops (jewelry, welding, etc)	4							
Research & testing labs								
Research offices								
Restaurants								
Revival tents								
Riding academies								
Rodeo arenas								
Sale of used auto parts								
Sales of lumber/lawn furniture		4						
Sales of nursery stock & home gardening suppplies & equipment		4						
Sales or rental of new & used autos, trucks, boats, mobile homes, trailers, ag implements		4						
Sand & gravel operations	1	1	1	1	1	1	1	1
Secondary Schools								
Sewing & tailoring								
Sexually Oriented Businesses			4					

Permitted
Uses allowed when zoning and building standards are met

Use Permit
Uses allowed with an approved Use Permit

Conditional Use Permit
Uses allowed with approved Conditional Use Permit

Not Permitted
Uses which are not allowed

[1]permitted on any lot of 5 or more acres

[2] entirely within an enclosed building

Commercial/Industrial/Special Zoning Districts Permitted Uses

*All uses require Development Plan	USE DISTRICTS							
	C1	C2	C3	M1	M2	M3	GU	TR
PROPERTY USE								
Shopping Center	4	4	4	4				
Sign painting								
Small appliance repair								
Small markets								
Social Services								
Sororities								
Specialty bakeries								
Sporting goods store								
Storage of food, household goods								
Storage of vehicles/parts			4					
Swimming pools								
Tennis, swim or health clubs/private clubs								
Tire changing & repair	2	2	2					
Tire retreading		4						
Tool sharpening		4						
Toy store								
Variety store goods								
Veterinary clinics								
Vocational Schools								
Warehouses/Indoor Storage								

Permitted

Uses allowed when zoning and building standards are met

Use Permit

Uses allowed with an approved use permit

Conditional Use Permit

Uses allowed with approved Conditional Use Permit

Not Permitted

Uses which are not allowed

[1] permitted on any lot of 5 or more acres

[2] entirely within an enclosed building

[3] off-site consumption only

[4] see stipulations

[3] off-site consumption only

[4] see stipulations

ARF-888 **4**

Special Meeting

Meeting Date: 10/11/2011

Submitted For: Jacque Griffin

Submitted By: Jacque Griffin, Asst County Manager/Library District

Department: Asst County Manager/Library District

Presenter's Name: Jacque Griffin

Information

Request/Subject

Provide comment regarding US Fish and Wildlife Service proposed rule regarding Southwestern Willow Flycatcher Habitat

Background Information

The Board of Supervisors received a press release dated August 15, 2011, from the US Fish and Wildlife Service announcing their proposal to revise critical habitat for the southwestern willow flycatcher under the Endangered Species Act, and providing the opportunity to comment on the proposed rule. Comments are due by October 14, 2011.

Evaluation

The US Fish and Wildlife Service (USFWS) propose to revise critical habitat for the southwestern willow flycatcher. In total, approximately 2,090 miles of streams are proposed for designation in six states (California, Nevada, Utah, Colorado, New Mexico and Arizona) including portions of the Verde River, the Gila River, San Carlos Lake, Tonto Creek from Gisela to the confluence of the Salt River, Salt River from the confluence of Cherry Creek to the confluence of Tonto Creek and a portion of Pinal Creek from the water treatment plant in Wheatfields to the confluence of the Salt River, as well as Roosevelt Lake in Gila County. The proposed rule also states that because of the Roosevelt Habitat Conservation Plan, the conservation space of Roosevelt Lake will be considered for exclusion under section 4(b)(2) of the Endangered Species Act. Additionally, the proposed rule states that the portion of the Gila River where it occurs within San Carlos Apache Tribal Land and the San Carlos Lakebed will be considered for exclusion.

According to the proposed rule, the section of Pinal Creek from the water treatment plant to the Salt River is considered and essential segment because it, "currently supports nesting flycatchers and was determined to be essential for flycatcher conservation in order to help meet recovery goals in this Management Unit" (Roosevelt Management Unit).

Effects of Critical Habitat Designation - condensed from pages

Section 7 of the Endanger Species Act (ESA) requires federal agencies to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species, or result in the destruction or adverse modification of designated critical habitat. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of the critical habitat. These activities include but are not limited to removing, thinning, or destroying riparian vegetation,habitat fragmentation from recreation activities, grazing, draining, ditching, stream channelization due to roads, construction of bridges, dikes, levees and others. Actions that result in alteration of flycatcher habitat from improper livestock or ungulate management, including unrestricted access and use of riparian vegetation, excessive use of riparian vegetation during the non-growing season, overuse of riparian habitat and upland vegetation, and improper herding, water development or other livestock management actions.

Conclusion

The Designation of Revised Critical Habitat for Southwestern Willow Flycatcher increases the total stream miles from 730 miles in the 2005 designation to up to 2090 miles of streams, with approximately 779 miles being considered for exclusion due to those stream miles already being managed under Habitat Conservation Plans. In Gila County, this rule proposes to add:
Tonto Creek Critical Habitat- in 2005 it began at the confluence of Rye Creek and Tonto Creek, and the 2011 proposal moves this to the beginning of the Gisela Valley.
Pinal Creek Critical Habitat - not included in 2005, from the water treatment plant in Wheatfields to the Salt River.
Gila River- in 2005, the portions of the Gila River and San Carlos Lake located on the San Carlos Apache Reservation were not included, and in the 2011 proposed rule, both are included as critical habitat.
There is no breakdown of the number of miles of these additions.
The 2005 rule estimated the economic impact of the rule at a total of $32.7 - 38 million, with the Gila County portion estimated at approximately $2.5 million including the additional cost to managing Roosevelt Lake.
The 2011 rule does not appear to include the estimated economic costs. The USFWS is particularly seeking public comments concerning; (1) the reasons why they should or should not designate habitat as "critical habitat", (2) specific information on the amount and distribution of habitat, areas that should be included, special management considerations, stream segments, (3) land use designations and current or planned activities and their impact on proposed critical habitat, (4) potential climate change impacts, (5) any probably economic, national security, environmental, cultural or other relevant impacts; in particular any impacts on small entities and the benefits of including or excluding areas that exhibit these impacts, (6) whether any specific areas should be considered for exclusion under section 4(b)(2), and (7) whether they could improve or modify their approach to designating critical habitat to provide for greater public participation and understanding.
Official comments will be considered part of the public record and will be included in the final project record.

Recommendation

Staff recommends that the Board of Supervisors consider issuing official comments to this proposed rule.

Suggested Motion

Information/Discussion/Action to consider issuing official comments from the Board of Supervisors to the U.S. Fish and Wildlife Service as to their proposal regarding designation of revised critical habitat for the southwestern willow flycatcher. **(Jacque Griffin)**

Attachments

Proposed comment letter to USFWS

Summary of Critical Habitat Rule

USFS News Release Willow Flycatcher

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October 11, 2011

Public Comments Processing
Attn: FWS-R2-ES-2011-053
Division of Policy and Directives Management
US Fish and Wildlife Service
4401 N. Fairfax Drive
MS 2042-PDM
Arlington, VA 22203

The Gila County Board of Supervisors would like to offer comments on the "Designation of Revised Critical Habitat for Southwestern Willow Flycatcher; Proposed Rule, (FWS-R2-ES-2011-053)" published in the August 15, 2011 Federal Register. Our comments relate to the areas within and adjacent to Gila County that are addressed in this proposed rule.

Gila County is a rural county, comprised largely of federally managed land, a considerable area of Native American Reservation lands, and a mere 4% of the land in Gila County privately owned. Our local economies depend both on resource based industries and recreation opportunities provided to our visitors and our residents. With a 12% unemployment rate county-wide and 21% of our residents living at or below 200% of the federal poverty level, we are keenly aware of the detrimental effect that is caused by restricting business and recreational opportunities.

We do not feel that the impact on local economies has been adequately examined. The small communities of Tonto Basin and Roosevelt in particular, have small locally owned businesses that employ local residents, serve the local area, and depend heavily upon recreation visitors to Roosevelt Lake and the surrounding area as their sole source of income. The larger communities of Globe, Payson, and San Carlos also realize economic benefit from campers, hikers, fishermen and hunters who travel through those communities (and buy supplies, food, gas and lodging) to access the more remote locations. Designating large amounts of traditional recreation areas as critical habitat will and has had a considerable negative impact on local economies. Since we are a rural, less affluent county, the relative impact is much greater than on more populated counties.

We strongly support the proposed exclusions of the Roosevelt Lakebed and the San Carlos Lakebed. We would like for you to provide more detailed maps that allow the opportunity to more clearly see what specific areas within those two recreation areas are being proposed for exclusion. From the maps included in the proposal, it is impossible to determine exactly how many, if any, of the existing campgrounds, both developed as well as lake shorelines are being considered for

exclusion, or if they are considered part of the critical habitat designation. Nor could we find in the text of the proposed rule, these types of sites and their proposed designation were identified or explained.

We would like to strongly suggest that the historical and developed recreation sites located along the banks of these two lakes be added to the exclusion area if they are not already contained in the proposed exclusions.

With regard to the established and proposed stream segments along the Verde River, Tonto Creek, Salt River, Pinal Creek and the Gila River both above and below Coolidge Dam, at the very least we request that you additionally exclude from critical habitat designation, all recognized stream crossings that currently exist for vehicles as well as the known game and livestock trails within these designated stream segments. This would allow for ample critical habitat, while minimizing the adverse impacts on local recreationists, local livestock producers, local federal land managers, and our already struggling local economy.

Given that the population of the Southwestern Willow Flycatcher in Gila County is a stable population with abundant breeding sites occurring over a relatively broad geographic range, as evidenced by statements contained within the proposed rule as well as statements contained within the literature cited, it is unclear to us why the areas in Gila County are included in the proposed critical habitat designation.

The Gila County Board of Supervisors believe that once again, this proposed rule is evidence of species management by litigation, rather than a more holistic, evidence based management objective grounded in the health, functionality and productivity of the ecosystem as a whole.

The Gila County Board of Supervisors thanks you for the opportunity to comment and requests to be kept informed and included in the process as this analysis continues and as the US Fish and Wildlife Service evaluates, reviews and reaches a decision regarding this proposed rule.

Tommie C. Martin, District I Supervisor	Michael A. Pastor District II Supervisor	Shirley L. Dawson District III Supervisor

Phone (928) 425-3231 **Fax (928) 425-0319** **T.D.D. (928) 425-0839**

Summary of Rule – September 30, 2011
USFWS 2011 Designation of Revised Critical Habitat for Southwestern Willow Flycatcher
http://www.fws.gov/southwest/es/Arizona/SWWF_pCH_2011.htm

On page 5 (50545) of the rule –
http://www.fws.gov/southwest/es/Arizona/Documents/SpeciesDocs/SWWF/pCH2011/SWWF_pCH_2011_FR.pdf

Twice the amount of suitable habitat is needed to support the numerical territory goals, because the long-term persistence of flycatcher populations cannot be assured by protecting only those habitats in which flycatchers currently breed (Service 2002, p. 80).

Specifically in Gila County, they are proposing -page 18 (50558)

Summary of Changes Between Flycatcher Critical Habitat Proposals

Gila Recovery Unit—Arizona

 Roosevelt Management Unit, AZ: Pinto Creek.

(6) The following stream segments were not proposed as flycatcher critical habitat in 2004 but are now being proposed as flycatcher critical habitat. These areas are now identified as flycatcher critical habitat primarily due to the change in our criteria and consideration of the recovery goals (see items 1–4 above).

Pg 19/89 (50559)

Proposed Critical Habitat Designation

We are proposing stream segments in 29 Management Units found in six Recovery Units as critical habitat for the flycatcher. These stream segments occur in California, Nevada, Utah, Colorado, Arizona and New Mexico and include a total of approximately 3,364 km (2,090 mi) of streams.

Pg 21/89 (50561)

Gila
Verde
Verde River ..... Yes ..... Yes.
Roosevelt
Tonto Creek ..... Yes ..... Yes.
Salt River ..... Yes ..... Yes.
Pinal Creek ..... No ..... Yes.

On Page 32 (50572)

Many breeding sites have small numbers of territories within the Gila Recovery Unit, but along sections of the upper and middle Gila River, lower San Pedro River, lower Tonto Creek, and the Tonto Creek and Salt River confluence within the water conservation space of Roosevelt Lake, abundant breeding sites

occur over a relatively broad geographic range that together comprise many flycatcher territories.

On pg 33/89 (50573)

Roosevelt Management Unit, AZ

The Recovery Plan describes a goal of 50 flycatcher territories in the Roosevelt Management Unit (Service 2002, p. 85). We identified a large flycatcher nesting population surrounding the Roosevelt Lake area in Gila and Pinal Counties, Arizona. Flycatchers were first detected nesting on Tonto Creek and the Salt River within the conservation space of Roosevelt Lake in 1993 (Sogge and Durst 2008).

Because of the anticipated water level fluctuations at Roosevelt Lake, which inundates many flycatcher territories and limits the number of territories that can be sustained over time, this is the only Management Unit within the flycatcher's range where the recovery goal was smaller than the known number of territories at the time of the Recovery Plan completion. As a result, river segments and the lakebed together provide habitat that allow flycatcher territories to persist over time due to dynamic river and lake flooding events. For example, a high of 196 flycatcher territories occurred in 2004 (mostly within the conservation space of Roosevelt Lake), but in the following years after the lake level was raised, the known number of territories declined to 75 in 2007 (Sogge and Durst 2008). Since the raising of the water level in Roosevelt Lake, flycatchers have expanded their known distribution throughout adjacent areas along Tonto Creek, Salt River, and Pinal Creek (Sogge and Durst 2008).

We are proposing as critical habitat segments of Tonto Creek, the Salt River, the confluence of these two streams that comprise Roosevelt Lake, and Pinal Creek. The proposed lower 49.1-km (30.5-mi) segment of Tonto Creek extends from near the Town of Gisela downstream to the western high-watermark side of the conservation space of Roosevelt Lake. On the eastern side of Roosevelt Lake, we are proposing a 39.0-km (24.2-mi) portion of the Salt River from the confluence with Cherry Creek to the high water mark of the conservation space of Roosevelt Lake. Joining these Tonto Creek and Salt River segments, we are proposing as critical habitat the 29.1-km (18.1-mi) lakebed at

Roosevelt Lake (comprised of the Tonto Creek and Salt River confluence). These three areas were known to be occupied by flycatchers at the time of listing, and contain the physical or biological features essential to the conservation of the species which may require special management considerations or protection, as described above. Additionally, we are proposing a separate 5.7-km (3.5-mi) essential segment of Pinal Creek that occurs downstream of the water treatment plant north of the Town of Globe. This segment was not known to be occupied at the time of listing, but it currently supports nesting flycatchers and was determined to be essential for flycatcher conservation in order to help meet recovery goals in this Management Unit. The segments of Tonto Creek, the Salt River, and their confluence that makes up Roosevelt Lake were identified as having substantial recovery value in the Recovery Plan (Service 2002, p. 91). Together, these segments, along with the essential Pinal Creek segment, are anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.
The conservation space of Roosevelt Lake, due to the Roosevelt HCP, will be considered for exclusion under section 4(b)(2) of the Act (see Exclusions)

Page 34 (50574)

We are proposing as proposed critical habitat three segments of the Gila River that occur between the Turkey Creek confluence on the Gila National Forest, New Mexico, and Coolidge Dam (creating San Carlos Lake) on San Carlos Apache Tribal land.

We will consider the Gila River (including the lakebed of San Carlos Lake), where it occurs within San Carlos Apache Tribal land in Arizona, and the U–Bar Ranch in the Cliff-Gila Valley, New Mexico, for exclusion due to Management Plans under section 4(b)(2) of the Act (see Exclusions).

Roosevelt Management Unit
Habitat Conservation Plans
Roosevelt Lake HCP
An HCP for Salt River Project (SRP) was completed for the operation of Roosevelt Dam in Gila and Maricopa Counties, Arizona, which included as the action area the perimeter of Roosevelt Lake's high water mark (ERO 2002). The Record of Decision for the HCP was dated February 27, 2003. The land within the Roosevelt Lake perimeter is Federal land withdrawn by the U.S. Bureau of Reclamation and managed by the Forest Service.
The flycatcher population at Roosevelt Lake, depending on the year, can be the largest population of nesting flycatchers across the subspecies' range (approximately 150 territories, plus an unknown number of unmated, nonbreeding flycatchers and fledglings). The confluence of Tonto Creek and the Salt River, which comprise the Roosevelt Lake water storage area, is proposed as flycatcher critical habitat. Operation of Roosevelt Dam during low water years can yield as much as 506 ha (1,250 ac) of occupied flycatcher habitat within the perimeter of the high water mark. Annually, the total available habitat varies as reservoir levels fluctuate depending on annual precipitation with dry years yielding proportionally more habitat.
Flycatcher habitat at Roosevelt Lake varies depending on how and when the lake recedes as a result of water in-flow and subsequent storage capacity and delivery needs. As the lake recedes, flat gradient, fine moist soils are exposed which provide seed beds for riparian vegetation. However, even in the expected high-water years, we determined that some flycatcher habitat would persist at Roosevelt Lake.
The HCP covers Roosevelt Dam operations for 50 years and involves the conservation of a minimum of 607 ha (1,500 ac) of flycatcher habitat off-site, outside of the Roosevelt Management Unit, on the San Pedro, Verde, and Gila Rivers, and possibly other streams in Arizona, and implementation of conservation measures to protect up to an additional 304 ha (750 ac) of flycatcher habitat. Measures in the HCP to protect habitat at Roosevelt Lake include having the Forest Service hire a Forest Service employee to patrol and

improve protection of flycatcher habitat in the Roosevelt lakebed from adverse activities such as fire ignition from human neglect, improper vehicle use, *etc.*, and to develop habitat at the offsite Rock House Farm Site.
We will consider excluding the water storage area of Roosevelt Lake from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Page 53 (50593)

San Carlos Apache Tribe
San Carlos Apache Tribe land contain proposed flycatcher critical habitat within the conservation space of San Carlos Lake and the Gila River upstream from San Carlos Lake, all within the Upper Gila Management Unit in Gila County, Arizona. The San Carlos Apache Tribe has finalized a Southwestern Willow Flycatcher Management Plan (SWFMP). Implementation of the San Carlos Apache Tribe's SWFMP will protect all known flycatcher habitat on San Carlos Tribal Land and assure no net habitat loss or permanent modification will result. All habitat restoration activities (whether to rehabilitate or restore native plants) will be conducted under reasonable coordination with the Service. All reasonable measures will be taken to ensure that recreational activities do not result in a net habitat loss or permanent modification. All reasonable measures will be taken to conduct livestock grazing activities under the guidelines established in the Recovery Plan. Within funding limitations and under confidentiality guidelines established by the Tribe, the Tribe will cooperate with the Service to monitor and survey habitat for breeding and migrating flycatchers, conduct research, and perform habitat restoration, cowbird trapping, or other beneficial flycatcher management activities.
We will consider excluding San Carlos Apache Tribal land from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

FEDERAL REGISTER

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Revised Critical Habitat for Southwestern Willow Flycatcher; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2011–0053; MO 92210–0–0009]

RIN 1018–AX43

Endangered and Threatened Wildlife and Plants; Designation of Revised Critical Habitat for Southwestern Willow Flycatcher

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise critical habitat for the southwestern willow flycatcher (*Empidonax traillii extimus*) (flycatcher) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 3,364 km stream kilometers (2,090 stream miles) are being proposed for designation as critical habitat. These areas are being proposed as stream segments, with the lateral extent including the riparian areas and streams that occur within the 100-year floodplain or flood-prone areas. The proposed critical habitat is located on a combination of Federal, State, Tribal, and private lands in Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, Santa Barbara, San Bernardino, San Diego, and Ventura Counties in California; Clark, Lincoln, and Nye Counties in southern Nevada; Kane, San Juan, and Washington Counties in southern Utah; Alamosa, Conejos, Costilla, La Plata, and Rio Grande Counties in southern Colorado; Apache, Cochise, Gila, Graham, Greenlee, La Paz, Maricopa, Mohave, Pima, Pinal, Santa Cruz, Yavapai, and Yuma Counties in Arizona; and Catron, Cibola, Dona Ana, Grant, Hidalgo, McKinley, Mora, Rio Arriba, Santa Fe, San Juan, Sierra, Soccoro, Taos, and Valencia Counties in New Mexico.

DATES: We will accept comments received or postmarked on or before October 14, 2011. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by September 29, 2011.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Enter Keyword or ID box, enter Docket No. FWS–R2–ES–2011–0053, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2011–053; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Office, 2321 West Royal Palm Rd., Suite 103, Phoenix, AZ 85021; telephone 602–242–0210; facsimile 602–242–2513. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) The amount and distribution of southwestern willow flycatcher habitat;

(b) What areas that were occupied at the time of listing that contain features essential to the conservation of the species should be included in the designation and why;

(c) What areas not occupied at the time of listing that meet our criteria for being essential to the conservation of the species should be included in the designation and why;

(d) Special management considerations or protection that may be needed for the physical or biological features essential to the conservation of the species in the critical habitat areas we are proposing, including managing for the potential effects of climate change;

(e) Stream segments, many of which are highlighted in the Southwestern Willow Flycatcher Recovery Plan (Recovery Plan) (Service 2002) and included in this proposed rule, that are not now known to have flycatcher nesting territories or known to only have few nesting flycatchers that may be capable of being improved for flycatcher recovery purposes. We specifically seek information about streams within the Amargosa, Salton, Mohave, Powell, San Juan, Santa Cruz, and Hassayampa and Agua Fria Management Units. Please provide information on flycatcher distribution and abundance, habitat quality, habitat locations, habitat improvement projects, management actions needed to improve habitat, habitat quality limitations, habitat recovery potential, and any other flycatcher or flycatcher-habitat-specific information, and;

(f) Flycatcher habitat suitability in specific areas within the Santa Ana and San Diego Management Units in southern California. Please provide information on flycatcher habitat suitability for recovery at the following areas: (1) Entirety of Temescal Wash including Alberhill Creek in Riverside County; (2) entirety of Murrieta Creek in Riverside County; (3) Potrero Creek near the city of Beaumont in Riverside County; (4) Cajon Creek from Lone Pine Canyon to California State Highway 138 in San Bernardino County; and (5) Tijuana River from Dairy Mart Road to the Tijuana River Estuary in San Diego County.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on the flycatcher, the features essential to its conservation and the areas proposed as critical habitat.

(5) Any probable economic, national security, environmental, cultural, or other relevant impacts of designating any area that may be included in the final designation; in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts.

(6) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act, in particular.

(a) For specific lands that we should consider for exclusion under section 4(b)(2) of the Act, please provide us management plans, conservation easements, agreements, Habitat Conservation Plans (HCP), or other appropriate information, which describe the commitment and assurances of protection of the physical or biological features of flycatcher critical habitat; property boundaries; flycatcher status, distribution, and abundance; and management actions to protect the physical or biological features of flycatcher habitat.

(b) For lands we evaluated and excluded from critical habitat under section 4(b)(2) of the Act during the 2005 flycatcher critical habitat designation and those who wish to seek exclusion for this re-designation, please resubmit your request. In addition to your request, please include any updated information that pertains to the commitment and assurances of protection of flycatcher habitat; the physical or biological features of flycatcher critical habitat; property boundaries; flycatcher status, distribution, and abundance; and management actions to protect the physical or biological features of flycatcher habitat. Include the specific results of implementing these management plans since our 2005 flycatcher critical habitat designation.

(c) Information concerning the benefits of excluding or retaining lands we identify in this proposed critical habitat rule under consideration for exclusion under section 4(b)(2) of the Act. We specifically seek information about the possible exclusion of Elephant Butte Reservoir; areas within the operating pool of the reservoir may be subject to exclusion under 4(b)(2) of the Act if we determine that the benefits of excluding the area due to potential impacts to water operations outweigh the benefits to the subspecies of including the area as critical habitat.

(7) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* You may request at the top of your document that we withhold personal information such as your street address, phone number, or e-mail address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arizona Ecological Services Office in Phoenix, Arizona (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to include only those topics directly relevant to the designation of critical habitat for the southwestern willow flycatcher (flycatcher) in this proposed rule. Background information on the flycatcher can be found in the final flycatcher critical habitat rule published in the **Federal Register** on October 19, 2005 (70 FR 60886); our October 12, 2004, proposed critical habitat rule (69 FR 60706); the Southwestern Willow Flycatcher Recovery Plan (Recovery Plan) (Service 2002); our first flycatcher critical habitat designation, published July 22, 1997 (62 FR 39129), and August 20, 1997 (62 FR 44228); the final flycatcher listing rule (60 FR 10694; February 27, 1995); the 10-year flycatcher study in central Arizona (Paxton *et al.* 2007a); the 2007 rangewide status report (Durst *et al.* 2008); and flycatcher survey protocol and natural history summary (Sogge *et al.* 2010). Other reports can be retrieved from the U.S. Geological Survey's (USGS) flycatcher site at *http://sbsc.wr.usgs.gov/cprs/research/projects/swwf.* The current 2005 critical habitat rule remains in effect while this rulemaking process proceeds.

The flycatcher is a small, insect-eating, neotropical migrant bird, from the taxonomic order Passeriformes. It grows to about 15 centimeters (5.8 inches) in length. The flycatcher is one of four subspecies of the willow flycatcher currently recognized (Hubbard 1987, pp. 3–6; Unitt 1987, pp. 137–144), although Browning (1993, p. 248) suggests a possible fifth subspecies (*Empidonax traillii campestris*) in the central and midwestern United States. As an insect-eating generalist (Service 2002, p. 26), the flycatcher eats a wide range of invertebrate prey including flying, and ground- and vegetation-dwelling, insect species of terrestrial and aquatic origins (Drost *et al.* 2003, pp. 96–102). The flycatcher spends the winter in locations such as southern Mexico, Central America, and probably South America (Ridgely and Gwynne 1989, p. 303; Stiles and Skutch 1989, pp. 321–322; Howell and Webb 1995, pp. 496–497; Unitt 1997, pp. 70–73; Koronkiewicz *et al.* 1998, p. 12; Unitt 1999, p. 14).

All willow flycatcher subspecies spend time migrating and breeding in the United States from April to September. Use of riparian habitats along major drainages in the Southwest during migration has been documented (Sogge *et al.* 1997, pp. 3–4; Yong and Finch 1997, p. 253; Johnson and O'Brien 1998, p. 2; McKernan and Braden 1999, p. 17; Koronkiewicz *et al.* 2004, pp. 9–11). Many of the willow flycatchers found migrating are detected in riparian habitats or patches (small areas of riparian vegetation) that would be unsuitable for nest placement (the vegetation structure is too short or sparse, or the patch of vegetation is too small). In these drainages migrating flycatchers may use a variety of riparian habitats, including ones dominated by native or exotic plant species, or mixtures of both (Service 2002, p. E–3). Willow flycatchers, like most small, migratory, insect-eating birds, require food-rich stopover areas in order to replenish energy reserves and continue their northward or southward migration (Finch *et al.* 2000, pp. 71, 78, and 79; Service 2002, pp. E–3 and 42). Migration stopover areas are likely critically important for flycatcher productivity and survival (Sogge *et al.* 1997, p. 13; Yong and Finch 1997, p. 253; Service 2002, pp. E–3,19).

The historical breeding range of the flycatcher includes southern California, southern Nevada, southern Utah, Arizona, New Mexico, western Texas, southwestern Colorado, and extreme northwestern Mexico. The flycatcher's current range is similar to the historical range, but the quantity of suitable habitat within that range is reduced from historical levels (Service 2002, pp. 7–10).

The known geographical area historically occupied by this flycatcher subspecies was once larger (Service 2002, pp. 7–10). Historical records described nesting birds in southern California, Nevada, Utah; Arizona and New Mexico; western Texas; southwestern Colorado; and extreme northwestern Mexico (Hubbard 1987, pp. 6–10; Unitt 1987, pp. 144–152; Browning 1993, pp. 248, 250). At the time of listing in February 1995 (60 FR 10694), the distribution and abundance of nesting flycatchers, their natural history, and areas occupied by nonbreeding, migrating, and dispersing flycatchers were not well known. In February 1995, 359 territories were

known only from California, Arizona, and New Mexico. Unitt (1987, p. 156) estimated the entire population was, ''well under 1,000 pairs, more likely 500,'' and 230 to 500 territories were estimated to exist in the July 23, 1993, flycatcher listing proposal (58 FR 39495, p. 39498).

At the time of listing, breeding sites in California, Nevada, Utah, and Colorado described by Unitt (1987, pp. 149–152) were adopted as the subspecies' northern boundary. However, the collection and analysis of genetic material across this part of the bird's range has since refined this boundary (Paxton 2000, pp. 3, 18–20), and reduced the extent of the northern boundary of this southwestern subspecies in Utah and Colorado (Service 2002, Figure 3). Territories once believed to be held by southwestern willow flycatchers in Utah and Colorado are now more accurately known to be occupied by a different, non-listed willow flycatcher subspecies. As a result, the southwestern subspecies' range only occurs in the southernmost portions of Utah and Colorado. This genetic work also confirmed the identity of southwestern willow flycatcher subspecies throughout the rest of its range.

The USGS has continued to collect genetic information to help refine the northern boundary of the subspecies' range in Utah, Colorado, and New Mexico (Paxton *et al.* 2007b). They reconfirmed the genetic markers that identify differences among flycatcher subspecies, with breeding sites clustering into two groups separated approximately along the currently recognized boundary; however, they noted a distinct genetic boundary line between the subspecies does not exist (Paxton *et al.* 2007b, p. 17). Instead of a distinct boundary, they suggested that the boundary should be thought of as a ''region of genetic overlap'' (Paxton *et al.* 2007b, p. 17). They also described that this genetic overlap region will likely widen and contract over time based upon habitat changes (Paxton *et al.* 2007b, p. 17). An additional complication in refining the subspecies' northern boundary is that this region is sparsely populated with breeding flycatchers, and therefore only minimal information is available that would help narrow down the location of a boundary (Paxton *et al.* 2007b, p. 16). We continue to seek out territories and collect genetic samples to further our understanding of this area, but we currently recognize the northern geographic boundary of the flycatcher as described in the Recovery Plan (Service 2002, Figures 3, 4).

The flycatcher currently breeds in areas from near sea level to over 2,600 meters (m) (8,500 feet [ft]) (Durst *et al.* 2008, p. 14) in vegetation alongside rivers, streams, or other wetlands (riparian habitat). It establishes nesting territories, builds nests, and forages where mosaics of relatively dense and expansive growths of trees and shrubs are established, near or adjacent to surface water or underlain by saturated soil (Sogge *et al.* 2010, p. 4). Habitat characteristics such as dominant plant species, size and shape of habitat patch, tree canopy structure, vegetation height, and vegetation density vary widely among breeding sites. Nests are typically placed in trees where the plant growth is most dense, where trees and shrubs have vegetation near ground level, and where there is a low-density canopy. Some of the more common tree and shrub species currently known to comprise nesting habitat include Goodings willow (*Salix gooddingii*), coyote willow (*Salix exigua*), Geyers willow (*Salix geyerana*), arroyo willow (*Salix lasiolepis*), red willow (*Salix laevigata*), yewleaf willow (*Salix taxifolia*), boxelder (*Acer negundo*), tamarisk (also known as saltcedar, *Tamarix ramosissima*), and Russian olive (*Eleagnus angustifolia*) (Service 2002, p. D–2). While there are exceptions, generally flycatchers are not found nesting in areas without willows, tamarisk, or both.

A breeding site is simply an area along the river that has been described while surveying for flycatcher territories (Service 2002, p. C–4; Sogge *et al.* 2010, p. 34). A breeding site can contain none, only one, or many territories. However, within this proposed rule, we refer to breeding sites as areas where flycatcher territories were detected. A territory is defined as a discrete area defended by a resident single flycatcher or pair of flycatchers within a single breeding season (Sogge *et al.* 2010, p. 34). This is usually evidenced by the presence of a singing male, and possibly one or more mates (Sogge *et al.* 2010, p. 34).

At the end of 2007, 1,299 flycatcher breeding territories were estimated to occur throughout southern California, southern Nevada, southern Utah, southern Colorado, Arizona, and New Mexico (Durst *et al.* 2008, p. 4). Some of the flycatcher breeding sites having the highest number of territories are found along the middle Rio Grande and upper Gila River in New Mexico, and Roosevelt Lake and the San Pedro and Gila River confluence area in central Arizona.

Flycatchers are believed to exist and interact as groups of metapopulations (Service 2002, p. 72). A metapopulation is a group of geographically separate flycatcher breeding populations connected to each other by immigration and emigration (Service 2002, p. 72). Flycatcher populations are most stable where many connected sites or large populations exist (Service 2002, p. 72). Metapopulation persistence or stability is more likely to improve by adding more breeding sites than with the addition of territories to existing sites (Service 2002, p. 72). This would distribute birds across a greater geographical range, minimize risk of simultaneous catastrophic population loss, and avoid genetic isolation (Service 2002, p. 72).

Flycatchers have higher site fidelity (to a local area) than nest fidelity (to a specific nest location) and can move among sites within stream drainages and between drainages (Kenwood and Paxton 2001, pp. 29–31). Within-drainage movements are more common than between-drainage movements (Kenwood and Paxton 2001, p. 18). Juvenile flycatchers were the group of flycatchers that moved (dispersed) the farthest to new and distant breeding sites from the area where they hatched (Paxton *et al.* 2007a, p. 74). The USGS's 10-year flycatcher study in central Arizona (Paxton *et al.* 2007a) is the key movement study that has generated these conclusions, augmented by other flycatcher banding and re-sighting studies (Sedgwick 2004, p. 1103; McLeod *et al.* 2008, p. 110).

The difference in flycatcher dispersal distance among different study areas and regions reflects the varying spatial arrangement of breeding habitat, illustrating how dispersal tendencies are influenced by the geographic distribution of habitat at the stream segment, drainage, and landscape scales (Paxton *et al.* 2007a, p. 75). While USGS' study focused its effort in central Arizona at two of the largest breeding sites, it also included multiple auxiliary sites (up to 444 km or 275 mi away), along with other researchers and surveyors across the flycatcher's range paying attention to whether flycatchers were banded or not. As a result, the broad scope of the study of flycatcher movement extends broadly beyond a localized, regional area, where habitat configuration dominates the results.

Banded flycatchers from season-to-season (and sometimes within season) were recorded moving from 50 m (150 feet) to 444 km (275 mi) to try and nest. Some long-distance season-to-season movement records captured flycatchers moving from the Basin and Mohave Recovery Unit to the Lower Colorado Recovery Unit and from the Lower

Colorado Recovery Unit to the Gila Recovery Unit.

The USGS assimilated all of the flycatcher movement information and concluded that rapid colonization and increased metapopulation stability could be accomplished by establishing breeding sites within 30 to 40 km (18 to 25 mi) of each other (Paxton *et al.* 2007a, p. 4). Flycatchers at breeding sites configured in this way would be able to regularly disperse to new breeding sites or move between known breeding sites within the same year or from year-to-year. This proximity of sites would increase the connectivity and stability of the metapopulation and smaller, more distant breeding sites.

Because the breeding range of the flycatcher encompasses a broad geographic area with much site variation, management of recovery is approached in the Recovery Plan by dividing the flycatcher's range into 6 Recovery Units, each of which are further subdivided into 4 to 7 Management Units (for a total of 32 Management Units) (Service, pp. 61–63). This provides an organizational strategy to ''characterize flycatcher populations, structure recovery goals, and facilitate effective recovery actions that should closely parallel the physical, biological, and logistical realities on the ground'' (Service 2002, p. 61). Recovery goals are recommended for 29 of the 32 Management Units (see Methodology Overview section). Recovery Units are defined based on large watershed and hydrologic units. Within each Recovery Unit, Management Units are based on watershed or major drainage boundaries at the Hydrologic Unit Code Cataloging Unit level (standard watershed boundaries which have already been defined for other purposes). The ''outer'' boundaries of some Recovery Units and Management Units were defined by the flycatcher's range boundaries. This proposed designation of critical habitat is organized geographically within these Recovery Units and Management Units (see ''Methodology Overview'' section below).

The Recovery Plan (Service 2002) provides reasonable actions recommended to recover the flycatcher and provides two criteria, either of which can be met, in order to consider downlisting the species to threatened (Service 2002, pp. 77–78). The first alternative for downlisting requires reaching a total population of 1,500 flycatcher territories geographically distributed among all Recovery Units and maintained for 3 years with habitat protections (Service 2002, pp. 77–78). Habitat protections include a variety of options such as HCPs, conservation easements, or safe harbor agreements. The second alternative approach for downlisting calls for reaching a population of 1,950 territories also strategically distributed among all Recovery and Management Units for 5 years without additional habitat protection (Service 2002, pp. 77–78).

In order to delist this flycatcher subspecies (to remove it from the List of Endangered and Threatened Wildlife and Plants), the Recovery Plan recommends that a minimum of 1,950 territories are geographically distributed among all Recovery and Management Units, and that twice the amount of habitat is provided to maintain these territories over time. Second, these habitats must be protected from threats to assure maintenance of these populations and habitat for the foreseeable future through development and implementation of conservation management agreements (Service 2002, pp. 79–80). Third, all of these delisting criteria must be accomplished and their effectiveness demonstrated for a period of 5 years (Service 2002, pp. 79–80). This critical habitat proposal is structured to allow the Service to work toward achieving the numerical, geographical, and habitat-related recovery goals.

Twice the amount of suitable habitat is needed to support the numerical territory goals, because the long-term persistence of flycatcher populations cannot be assured by protecting only those habitats in which flycatchers currently breed (Service 2002, p. 80). It is important to recognize that most flycatcher breeding habitats are susceptible to future changes in site hydrology (natural or human-related), human impacts such as development or fire, and natural catastrophic events such as flood or drought (Service 2002, p. 80). Furthermore, as the vegetation at sites matures, it can lose the structural characteristics that make it suitable for breeding flycatchers (Service 2002, p. 80). These and other factors can destroy or degrade breeding sites, such that one cannot expect any given breeding site to remain suitable in perpetuity (Service 2002, p. 80). Thus, it is necessary to have additional suitable habitat available to which flycatchers, displaced by such habitat loss or change, can readily move (Service 2002, p. 80).

Previous Federal Actions

The flycatcher was listed as endangered on February 27, 1995 (60 FR 10694). On July 22, 1997, we published a final critical habitat designation for the flycatcher along 964 river km (599 river mi) in Arizona, California, and New Mexico (62 FR 39129). We published a correction notice on August 20, 1997, on the lateral extent of critical habitat (62 FR 44228).

As a result of a 1998 lawsuit from the New Mexico Cattlegrower's Association, on October 19, 2005 (70 FR 60886), we published a revised final flycatcher critical habitat rule for portions of Arizona, California, New Mexico, Nevada, and Utah, totaling approximately 48,896 ha (120,824 ac) or 1,186 km (737 mi). River segments were designated as critical habitat in 15 of the 32 Management Units described in the Recovery Plan (Service 2002, p. 63).

We were sued by the Center for Biological Diversity over our 2005 critical habitat rule, and on July 13, 2010, we agreed to redesignate critical habitat. The resulting settlement left the existing critical habitat designation from 2005 in effect, and required that we deliver a proposed rule for new revised critical habitat to the **Federal Register** by July 31, 2011, and a final rule by July 31, 2012.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features:

(a) Essential to the conservation of the species; and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the

requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time it was listed must contain physical or biological features which are essential to the conservation of the species and which may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat), focusing on the principal biological or physical constituent elements (primary constituent elements) within an area that are essential to the conservation of the species (such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type). Primary constituent elements are the elements of physical or biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

Under the Act, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species. When the best available scientific data do not demonstrate that the conservation needs of the species require such additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species. An area currently occupied by the species but that was not occupied at the time of listing may, however, be essential to the conservation of the species and may be included in the critical habitat designation.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we determine which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, HCPs, or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species (in this case a subspecies) at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the flycatcher and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical or biological features required for the flycatcher from studies of this subspecies' habitat, ecology, and life history as described below. The most comprehensive, current, and thorough documents are the Recovery Plan (Service 2002, Appendix D), Survey Protocol and Natural History Summary (Sogge *et al.* 2010), and 10-year central Arizona ecology study (Paxton *et al.* 2007a).

In general, the areas proposed for designation as critical habitat are designed to provide sufficient riparian habitat for breeding, non-breeding, territorial, dispersing, and migrating flycatchers in order to reach the

geographic distribution, abundance, and habitat-related recovery goals described in the Recovery Plan (Service 2002, pp. 77–85). We are not proposing any areas as critical habitat solely because they serve as a migration habitat. Instead, the areas we are proposing serve a variety of functions, including habitat to be used by migrating flycatchers. The habitat components important for conservation of this subspecies were determined from studies of flycatcher behavior and habitat use throughout the bird's range (see Background section).

In general, the physical or biological features of critical habitat for nesting flycatchers are found in the riparian areas within the 100-year floodplain or flood-prone area. Flycatchers use riparian habitat for feeding, sheltering, and cover while breeding, migrating, and dispersing. It is important to recognize that flycatcher habitat is ephemeral in its presence, and its distribution is dynamic in nature because riparian vegetation is prone to periodic disturbance (such as flooding) (Service 2002, p. 17). Even with the dynamic shifts in habitat conditions, one or more of the primary constituent elements described below are found throughout each of the units that we are proposing as critical habitat.

Flycatcher habitat may become unsuitable for breeding through maturation or disturbance of the riparian vegetation, but it may remain suitable for use during migration or for foraging. This situation may be only temporary, and vegetation may cycle back into suitability as breeding habitat (Service 2002, p. 17). Therefore, it is not practical to assume that any given breeding habitat area will remain suitable over the long term or persist in the same location (Service 2002, p. 17). Over a 5-year period, flycatcher habitat can, in optimum conditions, germinate, be used for migration or foraging, continue to grow, and eventually be used for nesting. Thus, flycatcher habitat that is not currently suitable for nesting at a specific time, but is useful for foraging and migration, can still be important for flycatcher conservation. Feeding sites and migration stopover areas are important components for the flycatcher's survival, productivity, and health, and they can also be areas where new breeding habitat develops as nesting sites are lost or degraded (Service 2002, p. 42). These successional cycles of habitat change are important for long-term persistence of flycatcher habitat.

Based on our current knowledge of the life history and ecology of the flycatcher and the relationship of its life-history functions to its habitat, as summarized in the ''Background'' section above and in more detail in the Recovery Plan (Service 2002, Chapter II), it is important to recognize the interconnected nature of the physical or biological features that provide the primary constituent elements of critical habitat. Specifically, we consider the relationships between river function, hydrology, floodplains, aquifers, and plant growth, which form the environment essential to the conservation of the flycatcher.

The hydrologic regime (stream flow pattern) and supply of (and interaction between) surface and subsurface water is a driving factor in the long-term maintenance, growth, recycling, and regeneration of flycatcher habitat (Service 2002, p. 16). As streams reach the lowlands, their gradients typically flatten and surrounding terrain opens into broader floodplains (Service 2002, p. 32). In these geographic settings, the stream-flow patterns (frequency, magnitude, duration, and timing) will provide the necessary stream-channel conditions (wide configuration, high sediment deposition, periodic inundation, recharged aquifers, lateral channel movement, and elevated groundwater tables throughout the floodplain) that result in the development of flycatcher habitat (Poff *et al.* 1997, pp. 770–772; Service 2002, p. 16). Allowing the river to flow over the width of the floodplain, when overbank flooding occurs, is integral to allow deposition of fine moist soils, water, nutrients, and seeds that provide the essential material for plant germination and growth. An abundance and distribution of fine sediments extending farther laterally across the floodplain and deeper underneath the surface retains much more subsurface water, which in turn supplies water for the development of the vegetation that provides flycatcher habitat and micro-habitat conditions (Service 2002, p. 16). The interconnected interaction between groundwater and surface water contributes to the quality of riparian vegetation community (structure and plant species) and will influence the germination, density, vigor, composition, and the ability of vegetation to regenerate and maintain itself (Arizona Department of Water Resources 1994, pp. 31–32).

In many instances, flycatcher breeding sites occur along streams where human impacts are minimized enough to allow more natural processes to create, recycle, and maintain flycatcher habitat. However, there are also breeding sites that are supported by various types of supplemental water including agricultural and urban run-off, treated water outflow, irrigation or diversion ditches, reservoirs, and dam outflows (Service 2002, p. D–15). Although the waters provided to these habitats might be considered ''artificial,'' they are often important for maintaining the habitat in appropriate condition for breeding flycatchers within the existing environment.

In considering the specific physical or biological features essential for the conservation of the flycatcher, it is also important to consider longer-term processes that may influence habitat changes over time, such as climate change. Climate change is a long-term shift in the statistics of the weather (including its averages). In its *Fourth Assessment Report,* the Intergovernmental Panel on Climate Change (IPCC) defines climate change as, ''a change in the state of the climate that can be identified by changes in the mean and/or variability of its properties and that persists for an extended period, typically decades or longer'' (Solomon *et al.* 2007, p. 943). Changes in climate already are occurring. Examples of observed changes in the physical environment include an increase in global average sea level and declines in mountain glaciers and average snow cover in both the northern and southern hemispheres (IPCC 2007a, p. 30). At continental, regional and ocean basin scales, observed changes in long-term trends of other aspects of climate include: A substantial increase in precipitation in eastern parts of North American and South America, northern Europe, and northern and central Asia; declines in precipitation in the Mediterranean, southern Africa, and parts of southern Asia; and an increase in intense tropical cyclone activity in the North Atlantic since about 1970 (IPCC 2007a, p. 30).

Projections of climate change globally and for broad regions through the 21st century are based on the results of modeling efforts using state-of-the-art Atmosphere-Ocean General Circulation Models and various greenhouse gas emissions scenarios (Meehl *et al.* 2007, p. 753; Randall *et al.* 2007, pp. 596–599). As is the case with all models, there is uncertainty associated with projections due to assumptions used and other features of the models. However, despite differences in assumptions and other parameters used in climate change models, the overall surface air temperature trajectory is one of increased warming in comparison to current conditions (Meehl *et al.* 2007, p. 762; Prinn *et al.* 2011, p. 527). Among the IPCC's projections for the 21st century are the following: (1) It is virtually certain there will be warmer

and more frequent hot days and nights over most of the earth's land areas; (2) it is very likely there will be increased frequency of warm spells and heat waves over most land areas, and the frequency of heavy precipitation events will increase over most areas; and (3) it is likely that increases will occur in the incidence of extreme high sea level (excludes tsunamis), intense tropical cyclone activity, and the area affected by droughts in various regions of the world (IPCC 2007b, p. 8).

Changes in climate can have a variety of direct and indirect ecological impacts on species, and can exacerbate the effects of other threats. Climate-associated environmental changes to the landscape, such as decreased stream flows, increased water temperatures, reduced snowpack, and increased fire frequency, affect species and their habitats. The vulnerability of a species to climate change impacts is a function of the species' sensitivity to those changes, its exposure to those changes, and its capacity to adapt to those changes. The best available science is used to evaluate the species' response to these stressors. We recognize that future climate change may present a particular challenge evaluating habitat conditions for species like the flycatcher because the additional stressors may push species beyond their ability to survive in their present location.

Exactly how climate change will affect precipitation in the specific areas with flycatcher habitat is uncertain. However, consistent with recent observations of regional effects of climate change, the projections presented for the Southwest predict warmer, drier, and more drought-like conditions (Hoerling and Eischeid 2007, p. 19; Seager *et al.* 2007, p. 1181). For example, climate simulations of the Palmer Drought Severity Index (PSDI) (a calculation of the cumulative effects of precipitation and temperature on surface moisture balance) for the Southwest for the periods of 2006 to 2030 and 2035 to 2060 show an increase in drought severity with surface warming. Additionally, drought still increases even during wetter simulations because of the effect of heat-related moisture loss through evaporation and evapotranspiration (Hoerling and Eischeid 2007, p. 19). Annual mean precipitation is likely to decrease in the Southwest, as is the length of snow season and snow depth (IPCC 2007b, p. 887). Most models project a widespread decrease in snow depth in the Rocky Mountains and earlier snowmelt (IPCC 2007b, p. 891). In summary, we expect that climate change will result in a warmer, drier climate, and reduced surface water across the flycatcher's range.

In the recent past, drought has had both negative and positive effects on breeding flycatchers and their habitat, which can provide insight into how climate change may affect flycatchers and flycatcher habitat. For example, the extreme drought of 2002 caused near complete reproductive failure of the 146 flycatcher territories at Roosevelt Lake in central Arizona (Smith *et al.* 2003, pp. 8, 10), and caused a dramatic rise in the prevalence of non-breeding and unpaired flycatchers (Paxton *et al.* 2007a, p. 4). While extreme drought during a single year can generate impacts to breeding success, drought can also have localized short-term benefits in some regulated environments. For instance, at some reservoirs (such as Roosevelt Lake, Arizona, and Lake Isabella, California), drought led to reduced water storage, which increased the exposure of wet soils at the lake's perimeter. Continued drought in those areas allowed the exposed areas to grow vegetation and become new flycatcher nesting habitat (Ellis *et al.* 2008, p. 44). These short-term and localized habitat increases are not likely sustainable with persistent drought or long-term predictions of a drier environment, because of the overall importance of the presence of surface water and elevated groundwater needed to grow dense riparian forests for flycatcher habitat. As a result, we expect long-term climate trends associated with a drier climate to have an overall negative effect on the available rangewide habitat for flycatchers.

Considering these issues and other information regarding the biology and ecology of the species, we have determined that the flycatcher requires the essential physical or biological features described below.

Space for Individual and Population Growth and for Normal Behavior

Streams of lower gradient and more open valleys with a wide and broad floodplain are the geological settings that are known to support flycatcher breeding habitat from near sea level to about 2,600 m (8,500 ft) in elevation in southern California, southern Nevada, southern Utah, southern Colorado, Arizona, and New Mexico (Service 2002, p. 7). Lands with moist conditions that support riparian plant communities are areas that provide flycatcher habitat. Conditions like these typically develop in lower elevation floodplains as well as where streams enter impoundments, either natural (such as beaver ponds) or human-made (reservoirs). Low-gradient stream conditions may also occur at high elevations, as in the marshy mountain meadows supporting flycatchers in the headwaters of the Little Colorado River near Greer, Arizona, or the flat-gradient portions of the upper Rio Grande in south-central Colorado and northern New Mexico (Service 2002, p. 32). Sometimes, the low-gradient wider floodplain exists only at the habitat patch itself within a stream that is otherwise steeper in gradient (Service 2002, p. D–12).

Relatively steep, confined streams can also support flycatcher breeding habitat (Service 2002, p. D–13). For instance, a portion of the San Luis Rey River in California supports a substantial flycatcher population and stands out among flycatcher habitats as having a relatively high gradient and being confined in a fairly narrow, steep-sided valley (Service 2002, p. D–13). Even a steep, confined canyon or mountain stream may present local conditions where just a small area less than a hectare (acre) in size of flycatcher breeding habitat may develop (Service 2002, p. D–13). Such sites are important individually and in aggregate to contribute to metapopulation stability, site connectivity, and gene flow (Service 2002, p. D–13). Flycatchers can occupy very small, isolated habitat patches and may occur in fairly high densities within those small patches.

Many willow flycatchers are found along streams using riparian habitat during migration (Yong and Finch 1997, p. 253; Service 2002, p. E–3). Migration stopover areas can be similar to breeding habitat or riparian habitats with less vegetation density and abundance compared to areas for nest placement (the vegetation structure is too short or sparse or the patch is too small) (Service 2002, p. E–3). For example, many locations where migrant flycatchers were detected on the lower Colorado River (Koronkiewicz *et al.* 2004, pp. 9–11) and throughout Arizona in 2004 (Munzer *et al.* 2005, Appendix C) were areas surveyed for nesting birds, but no breeding was detected. Such migration stopover areas, even though not used for breeding, are critically important resources affecting productivity and survival (Service 2002, p. E–3). The variety of riparian habitat occupied by migrant flycatchers ranges from small patches with shorter and sparser vegetation to larger more complex breeding habitats.

Therefore, based on the information above, we identify streams of lower gradient and more open valleys with a wide or broad floodplain an essential physical or biological feature of flycatcher habitat. In some instances,

streams in relatively steep, confined area can also support flycatcher breeding habitat (Service 2002, p. D–13). These areas support the abundance of riparian vegetation used for flycatcher nesting, foraging, dispersal, and migration.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Food

The flycatcher is somewhat of an insect generalist (Service 2002, p. 26), taking a wide range of invertebrate prey including flying, and ground- and vegetation-dwelling species of terrestrial and aquatic origins (Drost *et al.* 2003, pp. 96–102). Wasps and bees (Hymenoptera) are common food items, as are flies (Diptera), beetles (Coleoptera), butterflies, moths and caterpillars (Lepidoptera), and spittlebugs (Homoptera) (Beal 1912, pp. 60–63; McCabe 1991, pp. 119–120). Plant foods such as small fruits have also been reported (Beal 1912, pp. 60–63; Roberts 1932, p. 20; Imhof 1962, p. 268), but are not a significant food during the breeding season (McCabe 1991, pp. 119–120). Diet studies of adult flycatchers (Drost *et al.* 1998, p. 1; DeLay *et al.* 1999, p. 216) found a wide range of prey taken. Major prey items were small (flying ants) (Hymenoptera) to large (dragonflies) (Odonata) flying insects, with Diptera and Hemiptera (true bugs) comprising half of the prey items. Willow flycatchers also took non-flying species, particularly Lepidoptera larvae. From an analysis of the flycatcher diet along the South Fork of the Kern River, California (Drost *et al.* 2003, p. 98), flycatchers consumed a variety of prey from 12 different insect groups. Flycatchers have been identified targeting seasonal hatchings of aquatic insects along the Salt River arm of Roosevelt Lake, Arizona (Paxton *et al.* 2007a, p. 75).

Flycatcher food availability may be largely influenced by the density and species of vegetation, proximity to and presence of water, saturated soil levels, and microclimate features such as temperature and humidity (Service 2002, pp. 18, D–12). Flycatchers forage within and above the tree canopy, along the patch edge, in openings within the territory, over water, and from tall trees as well as herbaceous ground cover (Bent 1960, pp. 209–210; McCabe 1991, p. 124). Flycatchers employ a ''sit and wait'' foraging tactic, with foraging bouts interspersed with longer periods of perching (Prescott and Middleton 1988, p. 25).

Therefore, based on the information above, we identify the presence of a wide range of invertebrate prey, including flying and ground- and vegetation-dwelling species of terrestrial and aquatic origins to be an essential physical or biological feature of flycatcher habitat.

Water

Flycatcher nesting habitat is largely associated with perennial (persistent) stream flow that can support the expanse of vegetation characteristics needed by breeding flycatchers, but there are exceptions. Flycatcher nesting habitat can persist on intermittent (ephemeral) streams that retain local conditions favorable to riparian vegetation (Service 2002, p. D–12). The range and variety of stream flow conditions (frequency, magnitude, duration, and timing) (Poff *et al.* 1997, pp. 770–772) that will establish and maintain flycatcher habitat can arise in different types of both regulated and unregulated flow regimes throughout its range (Service 2002, p. D–12). Also, flow conditions that will establish and maintain flycatcher habitat can be achieved in regulated streams, depending on scale of operation and the interaction of the primary physical characteristics of the landscape (Service 2002, p. D–12).

In the Southwest, hydrological conditions at a flycatcher breeding site can vary remarkably within a season and between years (Service 2002, p. D–12). At some locations, particularly during drier years, water or saturated soil is only present early in the breeding season (May and part of June) (Service 2002, p. D–12). At other sites, vegetation may be immersed in standing water during a wet year, but be hundreds of meters from surface water in dry years (Service 2002, p. D–12). This is particularly true of reservoir sites such as the Kern River at Lake Isabella, California; Roosevelt Lake, Arizona; and Elephant Butte Reservoir, New Mexico (Service 2002, p. D–12). Similarly, where a river channel has changed naturally, there may be a total absence of water or visibly saturated soil for several years. In such cases, the riparian vegetation and any flycatchers breeding within it may persist for several years (Service 2002, p. D–12).

In some areas, natural or managed hydrologic cycles can create temporary flycatcher habitat, but may not be able to support it for an extended amount of time, or may support varying amounts of habitat at different points in the cycle. Some dam operations create varied situations that allow different plant species to thrive when water is released below a dam, held in a lake, or removed from a lakebed, and consequently, varying degrees of flycatcher habitat are available as a result of dam operations (Service 2002, p. 33). The riparian vegetation that constitutes flycatcher breeding habitat requires substantial water (Service 2002, p. D–12). Because flycatcher breeding habitat is often where there is slow-moving or still water, these slow and still water conditions may also be important in influencing the production of insect prey base for flycatcher food (Service 2002, p. D–12). These slow-moving water situations can also be managed or mimicked through manipulated supplemental water originating from sources such as agricultural return flows or irrigation canals (Service 2002, p. D–15).

Therefore, based on the information above, we identify flowing streams with a wide range of stream flow conditions that support expansive riparian vegetation as an essential physical or biological feature of flycatcher habitat. The most common stream flow conditions are largely perennial (persistent) stream flow with a natural hydrologic regime (frequency, magnitude, duration, and timing). However, in the Southwest, hydrological conditions can vary, causing some flows to be intermittent, but the floodplain can retain surface moisture conditions favorable to expansive and flourishing riparian vegetation. These appropriate conditions can be supported by managed water sources and hydrological cycles that mimic key components of the natural hydrologic cycle.

Sites for Germination or Seed Dispersal

Subsurface hydrologic conditions may in some places (particularly at the more arid locations of the Southwest) be equally important to surface water conditions in determining riparian vegetation patterns (Lichivar and Wakely 2004, p. 92). Where groundwater levels are elevated to the point that riparian forest plants can directly access those waters, it can be an area for breeding, non-breeding, territorial, dispersing, foraging, and migrating flycatchers. Elevated groundwater helps create moist soil conditions believed to be important for nesting conditions and prey populations (Service 2002, pp. 11, 18), as further discussed below.

Depth to groundwater plays an important part in the distribution of riparian vegetation (Arizona Department of Water Resources 1994, p. 31) and consequently, flycatcher habitat. The

greater the depth to groundwater below the land surface, the less abundant the riparian vegetation (Arizona Department of Water Resources 1994, p. 31). Localized, perched aquifers (a saturated area that sits above the main water table) can and do support some riparian habitat, but these systems are not extensive (Arizona Department of Water Resources 1994, p. 31).

The abundance and distribution of fine sediment deposited on floodplains is critical for the development, abundance, distribution, maintenance, and germination of the plants that grow into flycatcher habitat (Service 2002, p. 16). Fine sediments provide seed beds to facilitate the growth of riparian vegetation for flycatcher habitat. In almost all cases, moist or saturated soil is present at or near breeding sites during wet and non-drought years (Service 2002, p. 11). The saturated soil and adjacent surface water may be present early in the breeding season, but only damp soil is present by late June or early July (Service 2002, p. D–3). Microclimate features (temperature and humidity) facilitated by moist or saturated soil, are believed to play an important role where flycatchers are detected and nest, their breeding success, and availability and abundance of food resources (Service 2002, pp. 18, D–12).

Therefore, based on the information above, we identify elevated subsurface groundwater tables and appropriate floodplain fine sediments as essential physical or biological features of flycatcher habitat. These features provide water and seedbeds for the germination, growth, and maintenance of expansive growth of riparian vegetation needed by the flycatcher.

Cover or Shelter

Riparian vegetation (described more in detail within the *Sites for Breeding or Rearing (or Development) of Offspring* section) also provides the flycatcher cover and shelter while migrating and nesting. Placing nests in dense vegetation provides cover and shelter from predators or nest parasites that would seek out flycatcher adults, nestlings, or eggs. Similarly, using riparian vegetation for cover and shelter during migration provides food-rich stopover areas, a place to rest, and shelter or cover along migratory flights (Service 2002, pp. D–14, F–16). Riparian vegetation used by migrating flycatchers can sometimes be less dense and abundant than areas used for nesting (Service 2002, p. D–19). However, migration stopover areas, even though not used for breeding, may be critically important resources affecting local and regional flycatcher productivity and survival (Service 2002, p. D–19).

Therefore, based on the information above, we identify riparian tree and shrub species (described in more detail below) that provide cover and shelter for nesting, breeding, foraging, dispersing, and migrating flycatchers as essential physical or biological features of flycatcher habitat.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Reproduction and Rearing of Offspring

Riparian habitat characteristics such as dominant plant species, size and shape of habitat patches, tree canopy structure, vegetation height, and vegetation density are important parameters of flycatcher breeding habitat, although they may vary widely at different sites (Service 2002, p. D–1). The accumulating knowledge of flycatcher breeding sites reveals important areas of similarity, which constitute the basic concept of what is suitable breeding habitat (Service 2002, p. D–2). These habitat features are generally discussed below.

Flycatchers nest in thickets of trees and shrubs ranging in height from 2 m to 30 m (6 to 98 ft) (Service 2002, p. D–3). Lower-stature thickets (2–4 m or 6–13 ft tall) tend to be found at higher elevation sites, with tall-stature habitats at middle- and lower-elevation riparian forests (Service 2002, p. D–2). Nest sites typically have dense foliage at least from the ground level up to approximately 4 m (13 ft) above ground, although dense foliage may exist only at the shrub level, or as a low, dense tree canopy (Service 2002, p. D–3).

Regardless of the plant species' composition or height, breeding sites usually consist of dense vegetation in the patch interior, or an aggregate of dense patches interspersed with openings creating a mosaic that is not uniformly dense (Service 2002, p. 11). Common tree and shrub species currently known to comprise nesting habitat include Goodings willow, coyote willow, Geyers willow, arroyo willow, red willow, yewleaf willow, pacific willow (*Salix lasiandra*), boxelder, tamarisk, and Russian olive (Service 2002, pp. D–2, D–11). Other plant species used for nesting have been buttonbush (*Cephalanthus occidentalis*), cottonwood, stinging nettle (*Urtica dioica*), alder (*Alnus rhombifolia, Alnus oblongifolia, Alnus tenuifolia*), velvet ash (*Fraxinus velutina*), poison hemlock (*Conium maculatum*), blackberry (*Rubus ursinus*), seep willow (*Baccharis salicifolia, Baccharis glutinosa*), oak (*Quercus agrifolia, Quercus chrysolepis*), rose (*Rosa californica, Rosa arizonica, Rosa multiflora*), sycamore (*Platinus wrightii*), giant reed (*Arundo donax*), false indigo (*Amorpha californica*), Pacific poison ivy (*Toxicodendron diversilobum*), grape (*Vitus arizonica*), Virginia creeper (*Parthenocissus quinquefolia*), Siberian elm (*Ulmus pumila*), and walnut (*Juglans hindsii*) (Service 2002, pp. D–3, D–5, D–9). Other species used by nesting flycatchers may become known over time as more studies and surveys occur.

Canopy density (the amount of cover provided by tree and shrub branches measured from the ground) at various nest sites ranged from 50 to 100 percent (Service 2002, p. D–3). Flycatcher breeding habitat can be generally organized into three broad habitat types—those dominated by native vegetation (typically willow), by exotic (nonnative) vegetation (typically salt cedar), and those with mixed native and those dominated by exotic plants (typically salt cedar and willow).

These broad habitat descriptors reflect the fact that flycatchers inhabit riparian habitats dominated by both native and nonnative plant species. Salt cedar and Russian olive are two exotic plant species used by flycatchers for nest placement and also foraging and shelter (Service 2002, p. D–4). The riparian patches used by breeding flycatchers vary in size and shape (Service 2002, p. D–2). They may be relatively dense, linear, contiguous stands or irregularly-shaped mosaics of dense vegetation with open areas (Service 2002, pp. D–2–D–11).

Flycatchers use tamarisk (or salt cedar) and Russian olive for nest placement, foraging, roosting, cover, migration, and dispersal. Fewer than half (44 percent) of the known flycatcher territories occur in habitat patches that are greater than 90 percent native vegetation in composition (Durst *et al.* 2008, p. 15). About 50 percent of all known flycatcher territories are located at breeding sites that include mixtures of native and exotic plant species (mostly tamarisk) (Durst *et al.* 2008, p. 15). In many of these areas, exotic plant species are significant contributors to the habitat structure by providing the dense lower strata vegetation that flycatchers prefer (Durst *et al.* 2008, p. 15). A USGS comparative study (Sogge *et al.* 2005, p. 1) found no difference in flycatcher physiology, immunology, site fidelity, productivity, or survivorship between flycatchers nesting in tamarisk-dominated habitat versus native-dominated habitats. Tamarisk habitats vary with respect to

suitability for breeding flycatchers across their range, just as do native habitats (Sogge *et al.* 2005, p.1). While the literature refutes or questions the negative environmental impacts of tamarisk (Glenn and Nagler 2005, pp. 1–2, USGS 2010, pp. vi–xviii), many riparian vegetation improvement projects focus on the eradication or control of tamarisk. The implementation of these projects requires careful evaluation (see Special Management Considerations or Protections below) and success can rely on the improvement of the physical or biological features included in this proposal associated with river flow and groundwater (Service 2002, Appendices H and K).

Flycatchers have been recorded nesting in patches as small as 0.1 ha (0.25 ac) along the Rio Grande, and as large as 70 ha (175 ac) in the upper Gila River, New Mexico (Service 2002, p. 17). The mean reported size of flycatcher breeding patches was 8.6 ha (21.2 ac), with the majority of sites toward the smaller end, as evidenced by a median patch size of 1.8 ha (4.4 ac) (Service 2002, p. 17). Mean patch size of breeding sites supporting 10 or more flycatcher territories was 24.9 ha (62.2 ac). Aggregations of occupied breeding patches within a breeding site may create a riparian mosaic as large as 200 ha (494 ac), such as areas like the Kern River (Whitfield 2002, p. 2), Alamo Lake, Roosevelt Lake (Paradzick *et al.* 1999, pp. 6–7), and Lake Mead (McKernan 1997, p. 13).

Flycatchers can cluster their territories into small portions of riparian sites (Whitfield and Enos 1996, p. 2; Sogge *et al.* 1997, p. 24), and major portions of the site may only be used briefly or not at all in any given year. Habitat modeling based on remote sensing and GIS data has found that breeding site occupancy at reservoir sites in Arizona is influenced by vegetation characteristics of habitat adjacent to the actual nesting areas (Hatten and Paradzick 2003, pp. 774, 782); therefore, areas adjacent to nest sites can be an important component of a breeding site. How size and shape of riparian patches relate to factors such as flycatcher nest-site selection and fidelity, reproductive success, predation, and brood parasitism is unknown (Service 2002, p. D–11).

With only some exceptions, flycatchers are generally not found nesting in confined floodplains (typically those bound within a narrow canyon) (Hatten and Paradzick 2003, p. 780) or where only a single narrow strip of riparian vegetation less than approximately 10 m (33 ft) wide develops (Service 2002, p. D–11). While riparian vegetation too mature, too immature, or of lesser quality in abundance and breadth may not be used for nesting, it can be used by breeding flycatchers for foraging (especially if it extends out from larger patches) or during migration for foraging, cover, and shelter (Sogge and Tibbitts 1994, p. 16; Sogge and Marshall 2000, p. 53).

Therefore, based on the information above, we identify a variety of riparian tree and shrub species as essential physical or biological features of flycatcher habitat. Typically, dense expansive riparian forests provide habitat to place nests. Riparian vegetation of broader quality, with a mosaic of open spaces, typically surround locations to place nests or along river segments and provide vegetation for foraging, perching, dispersal, and migration, and habitat that can develop into nesting areas through time.

Primary Constituent Elements for Southwestern Willow Flycatcher

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the flycatcher in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the elements of physical or biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the following elements are the primary constituent elements specific to the flycatcher:

(1) Primary Constituent Element 1—*Riparian vegetation.* Riparian habitat in a dynamic river or lakeside, natural or manmade successional environment (for nesting, foraging, migration, dispersal, and shelter) that is comprised of trees and shrubs (that can include Gooddings willow, coyote willow, Geyers willow, arroyo willow, red willow, yewleaf willow, pacific willow, boxelder, tamarisk, Russian olive, buttonbush, cottonwood, stinging nettle, alder, velvet ash, poison hemlock, blackberry, seep willow, oak, rose, sycamore, false indigo, Pacific poison ivy, grape, Virginia creeper, Siberian elm, and walnut) and some combination of:

(a) Dense riparian vegetation with thickets of trees and shrubs that can range in height from about 2 m to 30 m (about 6 to 98 ft). Lower-stature thickets (2 to 4 m or 6 to 13 ft tall) are found at higher elevation riparian forests and tall-stature thickets are found at middle- and lower-elevation riparian forests; and/or

(b) Areas of dense riparian foliage at least from the ground level up to approximately 4 m (13 ft) above ground or dense foliage only at the shrub or tree level as a low, dense canopy; and/or

(c) Sites for nesting that contain a dense (about 50 percent to 100 percent) tree or shrub (or both) canopy (the amount of cover provided by tree and shrub branches measured from the ground); and/or

(d) Dense patches of riparian forests that are interspersed with small openings of open water or marsh or areas with shorter and sparser vegetation that creates a variety of habitat that is not uniformly dense. Patch size may be as small as 0.1 ha (0.25 ac) or as large as 70 ha (175 ac); and

(2) Primary Constituent Element 2—*Insect prey populations.* A variety of insect prey populations found within or adjacent to riparian floodplains or moist environments, which can include: flying ants, wasps, and bees (Hymenoptera); dragonflies (Odonata); flies (Diptera); true bugs (Hemiptera); beetles (Coleoptera); butterflies, moths, and caterpillars (Lepidoptera); and spittlebugs (Homoptera).

With this proposed designation of critical habitat, we intend to identify the physical or biological features essential to the conservation of the species, through the identification of the appropriate quantity and spatial arrangement of the primary constituent elements sufficient to support the life-history processes of the species.

Physical or Biological Features and Primary Constituent Elements Summary

The discussion above outlines those physical or biological features essential to the conservation of the flycatcher and presents our rationale as to why those features are being proposed. The primary constituent elements described above are results of the dynamic river or lakeside environment that germinates, develops, maintains, and regenerates the riparian forest and provides food for breeding, non-breeding, dispersing, territorial, and migrating flycatchers.

Anthropogenic factors such as dams, irrigation ditches, or agricultural field return flow can assist in providing or mimic the conditions that support flycatcher habitat. In regulated environments, riparian vegetation improvement projects associated with

planting, irrigation, and cultivation may also require manual manipulation to maintain suitability over the long term.

Because the flycatcher exists in disjunct breeding populations across a wide geographic and elevation range and its habitat is subject to dynamic events, the quantity and spatial arrangement of critical habitat river segments described below are essential for the flycatcher to maintain metapopulation stability, connectivity, and gene flow, and to protect against catastrophic loss. All river segments proposed as flycatcher critical habitat are either: (1) Within the known range of the subspecies, representing areas known to be occupied at the time of listing; or (2) essential areas for the conservation of the species not known to be occupied by the flycatcher at the time of listing, but now may or may not be known to have flycatchers present. These areas contain at least one of the primary constituent elements of the physical or biological features essential for the conservation of the subspecies. It is important to recognize that the primary constituent elements such as riparian vegetation with trees and shrubs of a certain type and insect prey populations are present throughout the river segments selected, but the specific quality of riparian habitat for nesting (which involve elements such as specific configuration of riparian foliage, sites for nesting, and interspersion of small openings), migration, foraging, and shelter will not remain constant in condition or location over time due to succession (plant germination and growth) and the dynamic environment in which they exist.

In order to reach the goal of conserving the subspecies by recovering an adequate geographical and ecological distribution of the flycatcher population, the distribution and abundance of flycatcher habitat and breeding populations must improve across the 29 Management Units (see Background section). The recovery goal is 1,950 flycatcher territories geographically and numerically distributed in the appropriate Management Units along with twice the habitat needed to maintain these territories (see Background section). Also, these areas must hold these populations for a number of years and be protected through conservation agreements or other means. The most recent rangewide flycatcher assessment estimated that there were about 1,300 flycatcher territories (Durst *et al.* 2008, p. 13). The Lower Colorado, Upper Colorado, and Basin and Range Recovery Units need the most growth in known territories and habitat to reach recovery goals. While there is still great variance in the known number of territories within the Coastal California, Gila, and Rio Grande Recovery Units, these areas are closer in number of territories and amount of habitat to the established recovery goals. The numeric territory goals established per Management Unit are in denominations of 25. The goal for some Management Units may be as few as 25 territories or as many as 325.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection.

As mentioned briefly or referenced in this proposed rule, the flycatcher and its habitat are threatened by a multitude of factors occurring at once. Threats to those features that define critical habitat (elements of physical or biological features) are caused by various factors. We believe the essential features within the areas proposed as critical habitat will require some level of management or protection (or both) to address the current and future threats and maintain the quality, quantity, and arrangement of the elements of physical or biological features essential to flycatcher conservation.

Essential features in need of special management occur not only at the immediate locations where the flycatcher may be present, but at additional areas needed to reach recovery goals and areas that can provide for normal population fluctuations and habitat succession that may occur in response to natural and unpredictable events. The flycatcher may be dependent upon habitat components beyond the immediate areas where individuals of the species occur if they are important in maintaining ecological processes such as hydrologic regimes; plant germination, growth, maintenance, and regeneration (succession); sedimentation; groundwater elevations; plant health and vigor; or maintenance of prey populations.

The designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of the flycatcher. Federal activities outside of critical habitat are still subject to review under section 7 of the Act if they may affect the flycatcher or its critical habitat (such as groundwater pumping, developments, watershed condition). Prohibitions of section 9 of the Act also continue to apply both inside and outside of designated critical habitat.

A detailed discussion of threats to the flycatcher and its habitat can be found in the final listing rule (60 FR 10694, February 27, 1995), the previous critical habitat designations (62 FR 39129, July 22, 1997; 70 FR 60886, October 19, 2005), and the final Recovery Plan (Service 2002, pp. 33–42, Appendix F). Some of the special management actions that may be needed for essential features of flycatcher habitat are briefly summarized below.

(1) Restore adequate water-related elements to improve and expand the quality, quantity, and distribution of riparian habitat. Special management may: increase efficiency of groundwater management; use urban water outfall and irrigation delivery and tail waters for vegetation improvement; maintain, improve, provide, or reestablish instream flows to expand the quality, distribution, and abundance of riparian vegetation; increase the width between levees to expand the active channel during overbank flooding; and manage regulated river flows to more closely resemble the natural hydrologic regime.

(2) Retain riparian vegetation in the floodplain. Special management may include the following actions: avoid clearing channels for flood flow conveyance or plowing of flood plains; and implement projects to minimize clearing of vegetation (including exotic vegetation) to help ensure that desired native species and exotic vegetation persist until an effective riparian vegetation improvement plan can be implemented.

(3) Manage biotic elements and processes. Special management may include the following actions: manage livestock grazing to increase flycatcher habitat quality and quantity by determining appropriate areas, seasons, and use consistent within the natural historical norm and tolerances; reconfigure grazing units, improve fencing, and improve monitoring and documentation of grazing practices; manage wild and feral hoofed-mammals (ungulates) (*e.g.*, elk, horses, burros) to increase flycatcher habitat quality and quantity; and manage keystone species such as beaver to restore desired processes to increase habitat quality and quantity.

(4) Protect riparian areas from recreational impacts. Special management may include actions such as managing trails, campsites, off-road vehicles, and fires to prevent habitat

development and degradation in flycatcher habitat.

(5) Manage exotic plant species, such as tamarisk or Russian olive, by reducing conditions that allow exotics to be successful, and restoring or reestablishing conditions that allow native plants to thrive. Throughout the range of the flycatcher, the success of exotic plants within river floodplains is largely a symptom of land and water management (for example, groundwater withdrawal, surface water diversion, dam operation, and unmanaged grazing) that has created conditions favorable to exotic plants over native plants. Special management may include the following actions: eliminate or reduce dewatering stressors such as surface water diversion and groundwater pumping to increase stream flow and groundwater elevations; reduce salinity levels by modifying agricultural practices and restoring natural hydrologic regimes and flushing flood flows; in regulated streams, restore more natural hydrologic regimes that favor germination and growth of native plant species. Improve timing of water draw down in lake bottoms to coincide with the seed dispersal and germination of native species; and restore ungulate herbivory to intensities and levels under which native riparian species are more competitive.

(6) Manage fire to maintain and enhance habitat quality and quantity. Special management may include the following actions: suppress fires that occur; reduce risk of fire by restoring elevated groundwater levels, base flows, flooding, and natural hydrologic regimes in order to prevent drying of riparian areas and more flammable exotic plant species from developing; and reduce risk of recreational fires.

(7) Evaluate and conduct exotic plant species removal and native plant species restoration on a site-by-site basis. If habitat assessments reveal a sustained increase in exotic plant abundance, conduct an evaluation of the underlying causes and conduct vegetation improvement under measures described in the Recovery Plan (Service 2002, Appendices H and K). Remove exotics only if: underlying causes for dominance have been addressed; there is evidence that exotic species will be replaced by vegetation of higher functional value; and the action is part of an overall vegetation improvement plan. Native riparian vegetation improvement plans should include: a staggered approach to create mosaics of different aged successional tree and shrub stands; consideration of whether the sites are presently occupied by nesting flycatchers; and management of stressors that can improve the germination, growth, and maintenance of preferred vegetation.

(8) Manage or reduce the occurrence, spread, and effects of biocontrol agents on flycatcher habitat. Exotic biocontrol tamarisk leaf beetle insects (leaf beetles) were brought into and released in many locations throughout the western United States. This specific U.S. Department of Agriculture program was terminated in 2010, largely because these insects are moving farther and thriving in the southwestern United States (within the flycatcher's breeding range) where it was initially believed they would not persist (APHIS 2010, p. 2). However, leaf beetles still exist within the United States, and specifically within the northern range of the flycatcher in Nevada, Arizona, and New Mexico. It is unknown to what extent these leaf beetles will continue to move throughout the Southwest. Their overall impact or benefit to the flycatcher, flycatcher habitat, and other wildlife species is also unknown, but there are predictions that the beetles could occur throughout the western United States and into northern Mexico (Tracy *et al.* 2008, pp. 1–3). There is concern about effects to the flycatcher in places throughout much of its range where the landscape does not support healthy native riparian vegetation (even in the absence of tamarisk). Along the Virgin River in southwestern Utah, flycatcher breeding attempts have failed concurrent with leaf beetle impacts to the vegetation (Paxton *et al.* 2010, p. 1). Rangewide, tamarisk is a habitat component of over half of all known flycatcher territories (Durst *et al.* 2007, p. 15). Therefore, it would be beneficial to prevent purposeful or accidental intra- or interstate transport of leaf beetles to locations that would increase the likelihood of beetles dispersing to flycatcher habitat. Similarly, because insects can travel or be moved large distances, prevent the additional release of leaf beetles (in all their varieties) into the environment where they can eventually occur within flycatcher habitat. Where leaf beetle-related impacts may occur or are happening, consider the previous items in this list and the Recovery Plan for strategies to help improve the germination and growth of native plants (Service 2002, p. Appendix K).

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available to designate critical habitat. We review available information pertaining to the habitat requirements of the species (or in this instance, a willow flycatcher subspecies). In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we consider whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of this flycatcher subspecies. We are proposing to designate critical habitat in areas within the geographical area known to be occupied by nesting flycatchers at the time of listing in 1995. We also are proposing to designate specific areas outside the geographical area occupied by nesting flycatchers at the time of listing (but that are within its known historical breeding distribution), because such areas are essential for the conservation of the species as supported by the geographical and numerical flycatcher territory and habitat-related recovery goals established in the Recovery Plan (Service 2002, pp. 84–85).

Stream Segments as Critical Habitat

We are proposing to use ''stream segments'' as the descriptor for the designated area of flycatcher critical habitat (which, in some areas also includes exposed reservoir bottoms). Stream segments are appropriate for delineating critical habitat because in addition to providing stream-side vegetation for flycatchers to place nests, stream segments satisfy other various flycatcher life needs adjacent to or between nesting sites (foraging habitat, stream, elevated groundwater tables, moist soils, flying insects, and other alluvial floodplain habitats) (see *Physical or Biological Features* section). Also, the dynamic processes of riparian vegetation succession (loss and regrowth) and river hydrology allow for stream segments to provide both current and future areas for flycatcher habitat to grow. Riparian vegetation in these segments is expected to naturally expand and contract from flooding, inundation, drought, and the resulting changes in the extent and location of floodplains and river channels (Service 2002, pp. 18, D–13–D–15). Therefore, while one or more of the physical or biological features are currently present, over time these habitat features will fluctuate in quality or location throughout these stream segments. Management of stream flows and other anthropogenic (manmade) factors, such as agricultural practices, can also influence the location and quality of the riparian vegetation in many of these stream segments. The lateral extent of each river segment occurs within the 100-year floodplain (see *Physical or*

Biological Features section) and is further described below (see Lateral Extent section). Therefore, designating stream segments as critical habitat will provide for the variety of flycatcher uses and allow for ever-changing streamside vegetation habitat quality (in location and abundance).

Occupancy at the Time of Listing

We identified areas occupied at the time of listing in 1995 as those streams where flycatchers were found nesting in any one season from surveys conducted from 1991 to 1994 (Sogge and Durst 2008). The flycatcher rangewide database (Sogge and Durst 2008) is the authoritative source for determining nesting areas because our 1995 flycatcher listing rule did not list all known data regarding flycatcher distribution and abundance. We considered a broader area to be occupied than just the specific site where a nest was located because flycatchers are a neotropical migrant traveling between Central America (and possibly northern South America) and the United States, and they are known to move to different nest areas from year-to-year.

Because flycatchers are neotropical migrants that occupy riparian areas along rivers while traveling between wintering and breeding grounds, we expect that abundant small areas along long stretches of stream can be irregularly occupied by migrant flycatchers from year-to-year. North- and south-bound migrating flycatchers are frequently found occupying stopover areas along streams upstream of, downstream of, and between known breeding sites (Yong and Finch 1997, pp. 265–266; Service 2002, pp. E2–E3; Koronkiewicz *et al.* 2004, pp. 9–11). In Arizona, migrant flycatchers were detected at 204 sites Statewide along 15 of 19 river drainages surveyed for nesting flycatchers over a 10-year period (Ellis *et al.* 2008, p. 26). Over 600 migrant willow flycatchers (subspecies not known) were detected along the length of the lower Colorado River in 2004 (Ellis *et al.* 2008, p. 26), where only a relatively few known breeding sites exist.

Similarly, flycatchers are known to have fidelity to a larger area along stream drainages (rather than specific nest site fidelity), and can regularly move their nesting locations about 30 to 40 km (18 to 25 mi) from year-to-year (Paxton *et al.* 2007a, p. 4). And sometimes, flycatchers can even move to a very distant location, dispersing as far as 444 km (275 mi) from a previous year's nesting area (Paxton *et al.* 2007a, p. 2). These year-to-year movements are facilitated by the dynamic nature of flycatcher habitat, changing in quality and location over time. More dramatic changes in habitat quality caused by events such as flooding or inundation can force flycatchers to move their breeding location, thus causing them to use broader locations and habitat quality.

Therefore, for this wide-ranging bird, it is difficult to precisely determine known occupied areas due to the following considerations: (1) The flycatcher's neotropical migratory habits of occupying stopover areas along streams upstream of, downstream of, and between breeding sites; and (2) the season-to-season variation in habitat quality and subsequent lack of specific nest-site fidelity. As a result, for the purpose of this proposed critical habitat designation, we believe it is most conservative and reasonable to conclude that any stream segment along a stream where flycatchers were found nesting from 1991 to 1994 also be considered occupied at the time of listing. Those stream segments considered occupied at the time of listing and those considered not occupied at the time of listing that we are proposing as revised critical habitat are organized by Recovery and Management Units listed in Table 1 and described briefly in the unit descriptions below. All of the stream segments occupied at the time of listing contain one or more of the elements of physical or biological features which may require special management considerations or protection as described above. We also include whether flycatcher territories were detected on proposed stream segments not known to be occupied at the time of listing (but are essential for the conservation of the flycatcher).

Recovery Plan Guidance

We relied heavily on the Recovery Plan (Service 2002) to help us identify the areas that we are proposing as revised critical habitat because the Recovery Plan represents a compilation of the best scientific data available to us. We particularly used the information from the Recovery Plan, such as distribution and abundance of flycatchers, flycatcher natural history and habitat needs, and stream segments with substantial recovery value, to help identify stream segments that should be proposed as critical habitat because they are essential to flycatcher conservation.

The Recovery Plan's strategy, rationale, and science for conservation of the flycatcher guided our efforts to identify the quantity and spatial arrangement of features and areas of critical habitat (Service 2002, pp. 61–95). Because of the wide distribution of this bird and the dynamic nature of its habitat, it was important to propose critical habitat in areas throughout all of the breeding range of the flycatcher that have stated recovery goals. This widespread distribution of habitat is intended to allow flycatchers to function as a group of metapopulations, realize gene flow throughout its range, provide ecological connectivity among disjunct populations, allow for breeding site colonization potential, and prevent catastrophic population losses.

The Recovery Plan (Service 2002, pp. 74–76) identifies important factors to consider in minimizing the likelihood of extinction. These factors were also considered in our approach to proposing areas for critical habitat designation: (1) The territory is the appropriate unit of measure for numerical flycatcher recovery goals; (2) populations should be distributed throughout the bird's range; (3) populations should be distributed close enough to each other to allow for movement among them; (4) large populations contribute most to metapopulation stability, while smaller populations can contribute to metapopulation stability when arrayed in a matrix with high connectivity; (5) as the population of a site increases, the potential to disperse and colonize increases; (6) increase and decrease in one population affects other populations; (7) some Recovery and Management units have stable metapopulations, but others do not; (8) maintaining or augmenting (or both) existing populations is a greater priority than establishing new populations; and (9) establishing habitat close to existing breeding sites increases the chance of colonization.

Methodology Overview

Our goal is to propose stream segments as critical habitat within 29 of the 32 Management Units (which are geographic areas clustered within 6 Recovery Units) in order to meet the specific numerical flycatcher territory and habitat-related recovery goals (Service 2002, pp. 84–85), which are the same criteria that we are using to identify physical or biological features and designate areas that are essential to flycatcher conservation. Three of the 32 Management Units (Lower Gila, Pecos, and Texas) do not have any goals identified in the Recovery Plan because of either the lack of habitat, the inability for habitat to recover, or the determination that meaningful populations could not be established and persist. Therefore, no critical habitat is proposed for these three

Management Units. Numerical flycatcher territory recovery goals for each of the 29 Management Unit vary throughout the flycatcher's range from as few as 25 territories to as many as 325 (Service 2002, pp. 84–85).

In relying on these recovery goals and strategies, we used a methodology with two basic strategies to identify areas and, subsequently, river segments within those areas to propose as critical habitat. First, we identified areas based upon the presence of large breeding populations and areas with multiple small breeding populations that when found in proximity, form a large population. Once these areas were established, we identified the specific end points of the stream segments of flycatcher habitat. Second, for those Management Units with a specific number of territories required to meet recovery goals, but no, or very few, known flycatcher territories, we used information from the Recovery Plan (Service 2002, pp. 86–92) and other relevant sources to identify river segments with flycatcher habitat. The results of this strategy were the identification of streams that: (1) Were known to be occupied by flycatchers at the time of listing with the physical or biological features; (2) the identification of essential areas that were not known to be occupied by flycatchers at the time of listing but that also include elements of the physical or biological features of critical habitat; and (3) the identification of areas for critical habitat that have never been known to be occupied by flycatchers but are essential for the conservation of the flycatcher in order to meet recovery goals.

Areas With Large Populations

To identify the areas with flycatcher habitat in each Management Unit, we first considered specific areas that are known since 1991 to have had large populations of nesting flycatchers. Since the time of listing in 1995, the known distribution and abundance of flycatcher territories has increased primarily due to increased survey effort (Durst *et al.* 2008, p. 4). Population increases have also been detected at specific areas where habitat quality and quantity improved. As a result of more extensive surveys and research, and in particular re-establishing known occupancy of breeding sites in Nevada, Utah, and Colorado, the extent of streams known to be used by migrating, non-breeding, and dispersing flycatchers has also expanded. Following the most recent rangewide estimate in 2007, 1,299 territories were described occurring in California, Nevada, Utah, Colorado, Arizona, and New Mexico (Durst *et al.* 2008, p. 4). Additional sites have been detected in the following years, but an updated rangewide estimate has not yet been compiled.

The locations of breeding sites were generated from standardized flycatcher surveys conducted from 1991 to 2010. There has been a standardized survey protocol since the 1995 listing of the flycatcher that biologists have used to confirm the presence of flycatcher territories that has produced reliable and accurate information (Tibbitts *et al.* 1994, p. 1; Sogge *et al.* 1997, p. 1; Sogge *et al.* 2010, p. 1). To help ensure the protocol is being used properly, the Service and our partners provide annual training on protocol implementation and flycatcher status, identification, and natural history.

A variety of sources were used to determine breeding site location and information from 1991 to 2010. The Recovery Plan (Service 2002), the U.S. Geological Survey flycatcher rangewide database (Sogge and Durst 2008), the 2007 flycatcher rangewide report (Durst *et al.* 2008), and recent survey information for the 2008, 2009, and 2010 breeding seasons were all used as authoritative sources of information on breeding flycatcher distribution and abundance. The flycatcher rangewide database developed and maintained by USGS (Sogge and Durst 2008) compiles the results of surveys conducted throughout the bird's range since 1991. We also examined 2008 to 2010 data that the Service in Arizona, Nevada, Utah, and Colorado compiled and entered into separate databases and spreadsheets. The USGS and U.S. Bureau of Reclamation provided the post-2007 Statewide database results for California and New Mexico, respectively. However, these post-2007 flycatcher data were difficult to comprehensively incorporate into this proposed rule because they have not yet been analyzed and synthesized into the overall rangewide database. Therefore, much of our compiled rangewide information ends following the 2007 breeding season. A summary of known historical breeding records can be found in the Recovery Plan (Service 2002, pp. 8–10). We also evaluated data in reports submitted during section 7 consultations and by biologists holding section 10(a)(1)(A) recovery permits; research published in peer-reviewed articles, agency reports, and databases; and regional Geographic Information System (GIS) coverages and habitat models.

In order to identify areas with large flycatcher populations, we first considered and defined a ''large'' population. We defined a large population as a single breeding site or collection of smaller connected breeding sites that support 10 or more territories in a single year. We selected 10 or more territories to identify a large population because the flycatcher population viability analysis indicates a breeding site exhibits greatest long-term stability with at least 10 territories (Service 2002, p. 72). Large populations persist longer than small ones, and produce more dispersers capable of emigrating to other populations or colonizing new areas (Service 2002, p. 74). In addition, smaller populations with high connectivity to other small populations can provide as much or more stability than a single isolated larger population with the same number of territories because of the potential to disperse colonizers throughout the network of breeding sites (Service 2002, p. 75).

Once the distribution and abundance of flycatcher breeding sites were identified and mapped, we considered the degree of connectivity to assign smaller separate flycatcher breeding sites and the distance from large populations to evaluate these areas as proposed critical habitat. In other words, how much area around breeding sites should be considered as proposed critical habitat? To determine these distances, we examined the known between-year movements of banded adult and juvenile flycatchers. The USGS's 10-year flycatcher study in central Arizona is the key movement study that has generated these conclusions (Paxton *et al.* 2007a, pp. 59–80), augmented by other flycatcher banding and re-sighting studies (Sedgwick 2004, p. 1103; McLeod *et al.* 2008, pp. 93–112). These studies found that flycatchers have higher site fidelity than nest fidelity and can move among breeding sites within drainages and between drainages (Kenwood and Paxton 2001, pp. 30–31). Within-drainage movements are more common than between-drainage movements (Paxton *et al.* 2007a, p. 77). Juveniles disperse the farthest and were the only group of flycatchers to connect very distant populations (Paxton *et al.* 2007a, p. 74). Banded flycatchers from season-to-season were recorded moving across a wide area from 50 m (150 feet) to 444 km (275 mi) (Paxton *et al.* 2007a, p. 2).

Because of the broad range of flycatcher movements, it is a challenge to apply a single distance to characterize the degree of connectivity of separated flycatcher breeding sites. However, USGS (Paxton *et al.* 2007a, pp. 4, 76, 84, 139, 140) assimilated all of the movement information and concluded that rapid colonization of flycatcher

breeding sites and increased metapopulation stability could be accomplished by establishing breeding sites within 30 to 40 km (18 to 25 mi) of each other. Flycatchers at these breeding sites would regularly disperse or move between sites within the same year or from year-to-year. This proximity of these sites would increase the connectivity and stability of the metapopulation and smaller, more distant breeding sites.

As a result of USGS's conclusion, we decided to use 35 km (22 mi), the average of the reported range, as a radius to identify an area surrounding known large flycatcher breeding sites and the distance to connect smaller populations to identify a large population. Because there was no distinction by USGS of a distance within this 30 to 40 km (18 to 25 mi) range that was more valuable to flycatchers, we believe the average is the best representation. After a large population area was established, we determined whether other breeding sites in proximity occurred. If so, this would add to our large population area, generate an additional 35-km (22-mi) radius and extend our area, and so on. We also used this 35-km (22-mi) radius to identify those highly connected breeding sites with a small number of territories that together equaled a large flycatcher population.

Following the identification of these areas that surround large flycatcher populations, we determined where flycatcher habitat occurred on streams and where to establish end points for proposed critical habitat. We used the Recovery Plan and other literature sources and local knowledge to identify stream segments. In combination with these areas of flycatcher habitat, we then considered the numerical and habitat-related recovery goals, and current and previous number of known territories. We also considered site-specific knowledge of these streams, aerial photography, agency reports, and input from other resource managers. The proximity and connectivity of segments to known populations and metapopulation stability were also key aspects of the flycatcher's natural history we considered in delineating river segment end points.

Our methods were unable to distinguish a more specific area, in contrast to other Management Units, within the San Diego and Santa Ana Management Units in the Coastal California Recovery Unit. Instead, because of the wide distribution and proximity of occupied streams segments, nearly these entire Management Units were identified as a large population area.

Also, our methodology discussed above was unable to distinguish areas within some Management Units where neither large populations nor small populations with high connectivity were known to occur. For example, in the Amargosa, Santa Cruz, San Francisco, Hassayampa and Agua Fria, San Juan, Powell, and Lower Rio Grande Management Units, there are no known breeding sites with 10 or more flycatcher territories, nor are any known territories in high connectivity that create a large population. Similarly, in some Management Units a large population and surrounding area was identified, but that area was found not to be of adequate size to include enough river segments needed to support the number of territories called for in the recovery goals. This situation occurred in the Little Colorado, Santa Ynez, and Santa Clara Management Units. In all of these cases, we used the guidance from the Recovery Plan, local knowledge about habitat, and other information available to identify additional stream segments to propose as critical habitat to meet recovery goals.

When generating the river segments in the situations where there were few territories to help guide us, we relied heavily upon recommendations and strategies provided in the Recovery Plan and local knowledge of habitat conditions, maps, and flycatcher natural history. The Recovery Plan identified portions of streams for each Management Unit that would contribute significantly toward recovery (Service 2002, pp. 86–92). These streams were not listed for the purpose of proposing critical habitat nor were they intended to be the only streams that were important for recovery, but they did identify streams of substantial recovery value. Also, we have generated additional information since the Recovery Plan was completed about river segments and whether they have or do not have substantial recovery value. Still, the list of stream segments described in the Recovery Plan (Service 2002, pp. 86–92) provides important guidance, especially for Management Units where there are few known flycatcher sites, to guide our critical habitat proposal. Site-specific knowledge of these streams, aerial photography, agency reports, and input from other resource managers were also considered. The proximity and connectivity of segments to known populations and metapopulation stability were also key aspects of the flycatcher's natural history we considered in delineating these areas.

The streams included as proposed critical habitat for the flycatcher are described below. Those streams included in this proposal that were not occupied at the time of listing were determined to be essential for the conservation of the flycatcher.

Migratory Habitat

Habitat for migrating flycatchers is captured in this proposal by our approach to propose critical habitat as ''river segments'' and distributing segments across 29 Management Units throughout the southwestern United States. We are currently unable to distinguish the value of specific locations along particular streams for flycatcher migration because stopover areas contain broad habitat quality in wide-ranging locations, are only for short-term use, and have uncertain occurrence from year-to-year (Finch *et al.* 2000, pp. 73, 76–77). Additionally, southwestern willow flycatchers are difficult to distinguish from other flycatcher species and subspecies during migration (Finch *et al.* 2000, pp. 71–72). Migrant flycatchers can sometimes be found in unusual locations away from riparian areas (Finch *et al.* 2000, p. 76), but many, if not most, are detected while searching for nesting flycatchers (McLeod *et al.* 2005, pp. 9–11; Ellis *et al.* 2008, pp. 26–27). An extensive look at flycatcher use along the Lower Colorado River (from Lake Mead to Mexico) and some of its major tributaries in Arizona and southern Nevada and Utah found migrating flycatchers in consecutive years occurring in nearly all of their study areas and over half of their survey sites (McLeod *et al.* 2005, pp. 9–11; Koronkiewicz *et al.* 2006, pp. 11–13). Similarly, regular migratory movement of flycatchers was detected along the Middle Rio Grande (Yong and Finch 1997, p. 255). As a result of these factors, we expect similar flycatcher migration behavior for the other major drainages where flycatchers breed throughout its range and where these locations are included within this designation. Therefore, flycatcher migration habitat is captured within our methods for designating critical habitat to reach recovery goals, because: (1) We are designating areas as broader river segments; (2) our areas will be geographically located across a broad area of the Southwest encompassing most of the range of the flycatcher; and (3) we are proposing areas surrounding nesting sites where migrant flycatchers are most often detected.

Lateral Extent

For the lateral extent of flycatcher proposed critical habitat stream segments, we considered the variety of purposes riparian habitat serves the flycatcher; the dynamic nature of rivers and riparian habitat; the relationship between the location of rivers, flooding, and riparian habitat; and the expected boundaries, over time, of these habitats. Flycatchers use riparian habitat in a variety of conditions for breeding, feeding, sheltering, cover, dispersal, and migration stopover areas. Riparian habitat is dependent on the location of river channels, floodplain soils, subsurface water, and floodplain shape, and is driven by the wide variety of high, medium, and low flow events. In addition, manmade factors such as diversion ditches or return flows can also influence riparian vegetation distribution. Rivers can and do move from one side of the floodplain to the other. Flooding occurs at periodic frequencies that recharge aquifers and that deposit and moisten fine floodplain soils which create seedbeds for riparian vegetation germination and growth within these boundaries.

In this proposal, we consider the riparian zone to be the area surrounding the select river segment that is directly influenced by river functions. The present boundaries, for mapping purposes, of the lateral extent or riparian zone (in other words, the surrogate for the delineation of the lateral boundaries of critical habitat within proposed stream segments) were derived by one of two methods. The area was either captured from existing digital data sources (listed below) or created through expert visual interpretation of remotely sensed data (aerial photographs and satellite imagery—also listed below). Geographic Information System technology was utilized throughout the lateral extent determination. ESRI, Inc. ArcInfo 8.3 was used to perform all mapping functions and image interpretation. Pre-existing data sources used to assist in the process of delineating the lateral extent of the riparian zones for this designation included: (1) National Wetlands Inventory (NWI) digital data from the mid 1980s, 2001, and 2002; (2) Federal Emergency Management Agency (FEMA) 1995, Q3 100 year flood data; (3) U.S. Census Bureau Topologically Integrated Geographic Encoding and Referencing (TIGER); and (4) 2000 digital data. The riparian zone is anticipated to occur within the 100-year floodplain.

Where pre-existing data may not have been available to readily define riparian zones, visual interpretation of remotely sensed data was used to define the lateral extent. Data sources used in this included: (1) Terraserver online Digital Orthophoto Quarter Quads (DOQQs), black and white, 1990s era and 2001; (2) USGS DOQQs 1997; (3) USGS aerial photographs, 1 meter, color-balanced, and true color, 2002; (4) Landsat 5 and Landsat 7 Thematic Mapper, bands 4, 2, 3, 1990–2000; (5) Emerge Corp, 1 meter, true color imagery, 2001; (6) Local Agency Partnership, 2 foot, true color, 2000; and (7) National Wetlands Inventory aerial photographs, 2001–2002.

We refined all lateral extents for this proposed designation by creating electronic maps of the lateral extent and attributing them according to the following riparian sub-classifications. Riparian developed areas, as defined below, are not included in our proposed critical habitat designation since these areas do not contain the primary constituent elements (see *Primary Constituent Elements for the Southwestern Willow Flycatcher* section above), are not considered essential to the conservation of the flycatcher and, therefore, do not meet the definition of critical habitat. We separated riparian areas into the following two categories: (1) Riparian Vegetated: This class is used to describe areas still in natural unvegetated wetlands, water bodies, and any undeveloped or unmanaged lands within the approximate riparian zone. (2) Riparian Developed: This class is used to describe all developed areas, such as urban and suburban development, agriculture, utilities, mining, and extraction.

Mapping

When determining proposed critical habitat boundaries, we made efforts to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features for the flycatcher. These types of developments are not often found adjacent to rivers within floodplains, and may not be found on recent maps. Also, the scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the removal of such developed lands. Any such developed lands left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the prohibition of adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat. Similarly, where there are long stretches of canyons or other portions of rivers that we know lack the physical or biological features within a river segment, we attempted to remove those areas from our proposed river segments.

Summary

Our initial steps and approach in proposing areas for flycatcher critical habitat were to identify areas: (1) Known to be within the specific geographic area occupied by the flycatcher at the time of listing (from surveys occurring from 1991 to 1994) that contain the essential physical or biological features which may require special management; and (2) that are essential to the conservation of the flycatcher based on the Recovery Plan goals.

Following the evaluation of the two factors above, our goal was to incorporate the conservation strategies described in the Recovery Plan. These strategies describe the importance of flycatcher habitat to support stable and growing breeding populations, to provide migration stopover areas, to protect against simultaneous catastrophic loss, to maintain gene flow, to prevent isolation and extirpation, and to provide colonizers to use new areas. Also, the Recovery Plan describes the importance of habitat that supports large breeding populations of flycatchers and small populations that, when in proximity, equal a large population. To achieve these goals, the Recovery Plan describes a recovery strategy of distributing flycatcher habitat that could hold a specific minimum number of breeding territories across 29 different Management Units in portions of California, Nevada, Utah, Colorado, Arizona, and New Mexico.

We therefore created criteria and methodology to identify areas surrounding large populations and small populations, in proximity, that equaled a large population. We used a 35-km (22-mi) distance as a radius to identify areas around large flycatcher populations (those with at least 10 territories) and small populations in high connectivity that together equal a large population.

We chose to generate critical habitat in ''river segments'' to account for the dynamic aspects of flycatcher riparian habitat, the changing locations of flycatcher habitat due to these dynamic conditions, population growth, and the variety of other life-history needs such

as nest placement, foraging, dispersing, cover, shelter, and migration habitat.

Once these broad areas were established, we identified stream segments with flycatcher habitat that we believe will support the numerical territory and habitat-related recovery goals for the 29 Management Units described in the Recovery Plan.

Some Management Units with recovery goals do not have large populations or small populations that equal a large population in high connectivity. Also, in some Management Units an area may not contain enough habitat to reach the number of territories stated in the Recovery Plan. In these instances, we relied heavily upon the Recovery Plan guidance (recovery strategy, stream identification, and habitat descriptions), flycatcher detections, and local expertise in habitat quality to identify river segments considered essential for the conservation of the species.

The lateral extent of river segments proposed as critical habitat represent the riparian zone, which is an area that is most directly influenced by river functions and is anticipated to occur within the 100-year floodplain. We created these boundaries from existing digital sources and visual interpretation.

Overall, these proposed stream segments represent flycatcher habitat known to be occupied at the time of listing and essential areas that have high value for recovery. The proposed areas support stable and growing breeding populations, provide migration stopover areas, protect against simultaneous catastrophic loss, maintain gene flow, prevent isolation and extirpation, and encourage colonizers to use new areas. All proposed stream segments provide habitat for a wide distribution of breeding flycatchers, including areas for population growth to meet numerical and habitat-related recovery goals. The proposed areas also support other important flycatcher needs such as migration, dispersal, foraging, and shelter to reach the geographic distribution and habitat-related recovery goals established within the Recovery Plan's 29 Management Units with recovery goals.

Summary of Changes Between Flycatcher Critical Habitat Proposals

Our improved knowledge about the flycatcher's distribution and abundance, development of a Recovery Plan (Service 2002), and our approach to determining essential habitat led to differences between the 1997 final flycatcher critical habitat designation (62 FR 39129) and our approach in the 2004 flycatcher critical habitat proposal (69 FR 60706). Our 1997 designation of flycatcher critical habitat was completed without extensive current knowledge about flycatcher distribution and abundance and prior to the finalization of the Recovery Plan (Service 2002). Subsequently, in our 2004 flycatcher critical habitat proposal, we had more information about flycatcher distribution and abundance; population dynamics; year-to-year movements; and defined conservation objectives, strategies, and recovery criteria. In 2004, our approach to determining essential flycatcher habitat was protecting large populations and those smaller populations that, in proximity, equaled a large population.

For this 2011 proposal, we have refined our definition of what areas are considered to be essential for the conservation of the species (see discussion below), and we continued to improve our knowledge about flycatcher habitat, distribution, and abundance. Because we will be re-analyzing potential exclusions, we present below the differences between our 2004 flycatcher proposed critical habitat rule and this 2011 flycatcher proposed critical habitat rule. We are comparing this proposal to the 2004 proposal instead of the final 2005 flycatcher critical habitat designation because that final designation had a number of areas excluded under section 4(b)(2) of the Act. Our approach to conservation of the flycatcher and definition of essential habitat are the primary differences between the two proposals. We summarize the changes below.

(1) For this 2011 proposal, we define the critical habitat that is not occupied at the time of listing, but that is essential for the conservation of the species, as areas needed to support the distribution and abundance of territories and habitat-related recovery goals described in the Recovery Plan (Service 2002, pp. 77–85). In contrast, in 2004, we determined essential habitat was based on only those areas that supported large flycatcher populations (69 FR 60715–60716).

(2) For this 2011 proposal, we are proposing stream segments in all 29 Management Units where there are flycatcher territories and habitat-related recovery goals stated in the Recovery Plan, in contrast to our 2004 proposal where we proposed stream segments in only 21 Management Units.

(3) In this proposed rule we are using 35 km (22 mi) as the radius to guide our critical habitat areas surrounding large populations (equal or greater than 10 territories) and proximity of sites with smaller numbers that could equal a large population. This is the average distance between breeding sites that USGS described (30 to 40 km, 18 to 25 mi) as being highly connected. In our 2004 proposal, we used 30 km (18 mi) as the radius. Because USGS did not describe a value within this 30 to 40 km range (18 to 25 mi) that is more or less beneficial for the flycatcher, we believe using the average accurately reflects the range of distance between highly connected breeding sites.

(4) To assist in generating critical habitat in Management Units where there are recovery goals, but there are no known large flycatcher population or collection of small populations in proximity that equaled a large population, we are using Recovery Plan guidance in this proposed rule to propose stream segments with substantial recovery value (Service 2002, pp. 86–92), known breeding sites (Durst *et al.* 2008; Sogge and Durst 2008), and other literature, reports, and local knowledge about flycatcher population dynamics and habitat. In contrast, in 2004, we did not attempt to propose critical habitat in these areas because our definition of essential habitat was focused on the presence of large populations (69 FR 60715–60716).

(5) In 2004 we identified the following stream segments as essential to the conservation of the flycatcher and proposed them as critical habitat. These segments are not included in this proposal because of further evaluation of habitat quality, additional information about flycatcher territories, and our revised definition of essential habitat.

Coastal California Recovery Unit

- Santa Ana Management Unit, CA: Yucaipa Creek and Wilson Creek.
- San Diego Management Unit, CA: Cuyamaca Reservoir and Agua Hedionda Lagoon.

Lower Colorado Recovery Unit—Nevada, California and Arizona Border, Arizona, New Mexico

- Little Colorado Management Unit, AZ: East and South Forks Little Colorado River.

Gila Recovery Unit—Arizona

- Roosevelt Management Unit, AZ: Pinto Creek.

(6) The following stream segments were not proposed as flycatcher critical habitat in 2004 but are now being proposed as flycatcher critical habitat. These areas are now identified as flycatcher critical habitat primarily due to the change in our criteria and consideration of the recovery goals (see items 1–4 above).

Coastal California Recovery Unit

- Santa Ynez Management Unit: Mono Creek.
- At Vandenberg Air Force Base, a portion of the Santa Ynez River is exempted under section 4(a)(3) of the Act.
- Santa Clara Management Unit: Santa Clara River, Ventura River, Piru Creek, Castaic Creek, Big Tujunga Canyon, Little Tujunga Canyon, and San Gabriel River.
- Santa Ana Management Unit: Bautista Creek.
- San Diego Management Unit: Canada Gobernadora Creek, Fallbrook Creek, Sweetwater River (near Sweetwater Reservoir).
- At Marine Corps Base, Camp Pendleton, portions of Cristianitos, San Mateo, San Onofre, Las Flores, Las Pulgas, and DeLuz Creeks and Santa Margarita River are exempted from critical habitat under section 4(a)(3) of the Act.
- At Naval Weapons Station Seal Beach Detachment Fallbrook, portions of Pilgrim Creek and Santa Margarita River are exempted from critical habitat under section 4(a)(3) of the Act.

Basin and Mohave Recovery Unit—California and Nevada

- Kern Management Unit: Canebrake Creek, CA.
- Mohave Management Unit: West Fork Mohave River, CA.
- Amargosa Management Unit: Willow Creek, CA; Amargosa River CA, NV; and unnamed riparian areas and Carson Slough within Ash Meadows National Wildlife Refuge, NV.

Lower Colorado Recovery Unit—Nevada, California and Arizona Border, Arizona, Utah, and New Mexico

- Little Colorado Management Unit: Rio Nutria and Zuni River, NM.

Upper Colorado Recovery Unit—Arizona, Utah, Colorado, and New Mexico

- San Juan Management Unit: Los Pinos River, CO; San Juan River, NM, UT.
- Powell Management Unit: Paria River, UT.

Gila Recovery Unit—Arizona and New Mexico

- Roosevelt Management Unit: Pinal Creek, AZ.
- Santa Cruz Management Unit: Santa Cruz River and Cienega Creek, AZ.
- San Francisco Management Unit: San Francisco River, AZ, NM.
- Hassayampa and Agua Fria Management Unit: Hassayampa River and Gila River, AZ.

Rio Grande Recovery Unit—New Mexico and Colorado

- Upper Rio Grande Management Unit: Rio Fernando, NM.
- Lower Rio Grande Management Unit: Rio Grande, NM.

(7) We are exempting, under section 4(a)(3) of the Act, areas that meet the definition of flycatcher critical habitat found on three military installations in the Coastal California Recovery Unit: Vandenberg Air Force Base; Naval Weapons Station Seal Beach Detachment Fallbrook; and Marine Corps Base, Camp Pendleton based on these military installations having Service approved Integrated Natural Resources Management Plans (INRMP) which are being implemented to conserve flycatchers and their habitat (see Exemptions).

(8) The end points of similar stream segments we proposed in 2004 have changed in many instances within this 2011 proposal, making some segments longer and others shorter. This is primarily due to: our goal of proposing stream segments that could reach recovery goals; changing the distance used to identify critical habitat and connect more distant populations (increased from 30 km [18 mi] to 35 km [22 mi]); and continuing to improve and document our knowledge about flycatcher distribution, abundance, and habitat. Please see the maps included at the end of this proposal for the specific stream segment end points and also in the supplementary documents associated with this proposed rule found at *http://www.regulations.gov.*

(9) The length and area of some stream segments may be different in this 2011 proposal, even when the same end points occur under both the 2004 and 2011 proposals. When the end points are the same, the newer Geographic Information System (GIS) software used in 2011 was more accurate in calculating the bends and turns of streams resulting in larger calculations of stream length for some critical habitat stream segments. We also used updated information to generate the lateral extent of stream segments.

(10) We are also proposing to correct the information in the historic range column for the flycatcher in the table at 50 CFR 17.11(h). The historic range for the flycatcher should include Nevada.

Proposed Critical Habitat Designation

We are proposing stream segments in 29 Management Units found in six Recovery Units as critical habitat for the flycatcher. These stream segments occur in California, Nevada, Utah, Colorado, Arizona and New Mexico and include a total of approximately 3,364 km (2,090 mi) of streams. Table 1 lists all the streams included in this proposal and whether they are considered occupied at the time of listing and whether they are currently considered occupied. Approximate land ownership in each State where the proposed critical habitat occurs is provided in Table 2. The critical habitat areas described below constitute our best assessment of areas that meet the definition of flycatcher critical habitat. In order to help further understand the location of these proposed stream segments, please see the associated maps found within this proposed rule. Maps in GIS format that include the lateral extent areas being proposed for designation can be found in the supplementary materials associated with this proposed rule at *http://www.regulations.gov.*

Coastal California Recovery Unit in California

(1) Santa Ynez Management Unit—Santa Ynez River and Mono Creek. Portions of Santa Ynez River within Vandenberg Air Force Base are exempted (see Exemptions).

(2) Santa Clara Management Unit—Santa Clara River, Ventura River, Piru Creek, Castaic Creek, Big Tujunga Canyon, Little Tujunga Canyon, and San Gabriel River.

(3) Santa Ana Management Unit—Bear Creek, Mill Creek, Oak Glen Creek, San Timoteo Creek, Santa Ana River, Waterman Creek, and Bautista Creek.

(4) San Diego Management Unit—Canada Gobernadora Creek, Cristianitos Creek, Las Flores Creek, Las Pulgas Creek, San Mateo Creek, San Onofre Creek, Santa Margarita River, Fallbrook Creek, DeLuz Creek, San Luis Rey River, Pilgrim Creek, Agua Hedionda Creek, San Dieguito River, Santa Ysabel Creek, Temescal Creek, Temecula Creek, Sweetwater River, and San Diego River. Entire segments of San Mateo, San Onofre, Cristianitos, Las Flores, Las Pulgas, and Fallbrook Creeks are exempted, and portions of Santa Margarita River and DeLuz and Pilgrim Creeks that occur within Marine Corps Base Camp Pendleton and Naval Weapons Station Seal Beach Detachment Fallbrook are exempted (see Exemptions).

Basin and Mohave Recovery Unit in California and Nevada

(5) Owens Management Unit—Owens River, CA.

(6) Kern Management Unit—South Fork Kern River (including upper Lake Isabella) and Canebrake Creek, CA.

(7) Mohave Management Unit—Deep Creek, Holcomb Creek, Mohave River, and West Fork Mohave River, CA.

(8) Salton Management Unit—San Felipe Creek and Mill Creek, CA.

(9) Amargosa Management Unit—Willow Creek, CA; Amargosa River CA and NV; Carson Slough and unnamed riparian areas within Ash Meadows National Wildlife Refuge, NV.

Lower Colorado Recovery Unit in Nevada, California and Arizona border, Arizona, Utah, and New Mexico

(10) Little Colorado Management Unit—Little Colorado River and West Fork Little Colorado River, AZ; Rio Nutria and Zuni River, NM.

(11) Virgin Management Unit—Virgin River, NV, AZ, and UT.

(12) Middle Colorado Management Unit—Colorado River, AZ.

(13) Pahranagat Management Unit—Pahranagat River and Muddy River, NV.

(14) Bill Williams Management Unit—Big Sandy River, Bill Williams River, Santa Maria River (including upper Alamo Lake), AZ.

(15) Hoover to Parker Dam Management Unit— Bill Williams River, AZ; Colorado River, CA and AZ.

(16) Parker Dam to Southerly International Border Management Unit—Colorado River, CA and AZ.

Upper Colorado Recovery Unit in Arizona, Utah, Colorado, and New Mexico

(17) San Juan Management Unit—Los Pinos River, CO; San Juan River, NM and UT.

(18) Powell Management Unit—Paria River, UT.

Gila Recovery Unit in Arizona and New Mexico

(19) Verde Management Unit—Verde River (including Horseshoe Lake), AZ.

(20) Roosevelt Management Unit—Salt River, Tonto Creek (including Roosevelt Lake), and Pinal Creek, AZ.

(21) Middle Gila and San Pedro Management Unit—Gila River and San Pedro River, AZ.

(22) Upper Gila Management Unit—Gila River in AZ and NM.

(23) Santa Cruz Management Unit—Santa Cruz River and Cienega Creek, AZ.

(24) San Francisco Management Unit—San Francisco River, AZ and NM.

(25) Hassayampa and Agua Fria Management Unit—Hassayampa River and Gila River, AZ.

Rio Grande Recovery Unit in New Mexico and Colorado

(26) San Luis Valley Management Unit—Conejos River and Rio Grande, CO.

(27) Upper Rio Grande Management Unit—Coyote Creek, Rio Grande, Rio Grande del Rancho, and Rio Fernando, NM.

(28) Middle Rio Grande Management Unit—Rio Grande, NM.

(29) Lower Rio Grande Management Unit—Rio Grande, NM.

TABLE 1—STREAMS PROPOSED FOR FLYCATCHER CRITICAL HABITAT (1) OCCUPIED AT TIME OF LISTING BASED UPON OUR CRITERIA (1991–1994) AND (2) TERRITORIES DETECTED (1991–2010)

Recovery unit	Management unit	Stream	Known to be occupied at time of listing (1991–1994)	Territories detected (1991–2010)
Coastal California	Santa Ynez	Mono Creek	No	No.
		Santa Ynez River (portion exempted)	Yes	Yes.
	Santa Clara	Big Tujunga Canyon	No	No.
		Castaic Creek	No	No.
		Little Tujunga Canyon	No	No.
		Piru Creek	No	Yes.
		San Gabriel River	No	Yes.
		Santa Clara River	Yes	Yes.
		Ventura River	No	No.
	Santa Ana	Bear Creek	No	Yes.
		Mill Creek	No	Yes.
		Oak Glen Creek	No	Yes.
		San Timoteo Creek	No	Yes.
		Santa Ana River	No	Yes.
		Waterman Creek	No	Yes.
		Bautista Creek	No	Yes.
	San Diego	Agua Hedionda Creek	No	Yes.
		Canada Gobernadora Creek	No	Yes.
		Cristianitos Creek (exempted)	No	No.
		DeLuz Creek (portion exempted)	No	Yes.
		Fallbrook Creek (exempted)	No	Yes.
		Las Flores Creek (exempted)	No	Yes.
		Las Pulgas Creek (exempted)	No	No.
		Pilgrim Creek (portion exempted)	Yes	Yes.
		San Dieguito River	No	Yes.
		San Diego River	No	Yes.
		San Luis Rey River	Yes	Yes.
		San Mateo Creek (exempted)	No	Yes.
		San Onofre Creek (exempted)	No	No.
		Santa Margarita River (portion exempted).	No	Yes.
		Santa Ysabel Creek	No	Yes.
		Sweetwater River	No	Yes.
		Temecula Creek	No	Yes.
		Temescal Creek	No	No.
Basin and Mohave	Owens	Owens River	Yes	Yes.
	Kern	Canebrake Creek	No	Yes.

TABLE 1—STREAMS PROPOSED FOR FLYCATCHER CRITICAL HABITAT (1) OCCUPIED AT TIME OF LISTING BASED UPON OUR CRITERIA (1991–1994) AND (2) TERRITORIES DETECTED (1991–2010)—Continued

Recovery unit	Management unit	Stream	Known to be occupied at time of listing (1991–1994)	Territories detected (1991–2010)
		South Fork Kern River	Yes	Yes.
	Mohave	Deep Creek	No	No.
		West Fork Mohave River	No	No.
		Holcomb Creek	No	Yes.
		Mohave River	No	Yes.
	Salton	San Felipe Creek	No	Yes.
		Mill Creek	No	Yes.
	Amargosa	Amargosa River	No	Yes.
		Willow Creek	No	No.
		Ash Meadows Riparian Areas	No	Yes.
		Carson Slough	No	Yes.
Lower Colorado	Little Colorado	Little Colorado River	Yes	Yes.
		Rio Nutria	Yes	Yes.
		West Fork Little Colorado River	No	No.
		Zuni River	Yes	Yes.
	Virgin	Virgin River	No	Yes.
	Middle Colorado	Colorado River	Yes	Yes.
	Pahranagat	Muddy River	No	Yes.
		Pahranagat River	No	Yes.
	Bill Williams	Big Sandy River	Yes	Yes.
		Bill Williams River	Yes	Yes.
		Santa Maria River	Yes	Yes.
	Hoover to Parker Dam	Colorado River	Yes	Yes.
		Bill Williams River	Yes	Yes.
	Parker Dam to Southerly International Border.	Colorado River	Yes	Yes.
Upper Colorado	San Juan	San Juan River	No	Yes.
		Los Pinos River	No	Yes.
	Powell	Paria River	No	No.
Gila	Verde	Verde River	Yes	Yes.
	Roosevelt	Tonto Creek	Yes	Yes.
		Salt River	Yes	Yes.
		Pinal Creek	No	Yes.
	Middle Gila and San Pedro.	San Pedro River	Yes	Yes.
		Gila River	Yes	Yes.
	Upper Gila	Gila River	Yes	Yes.
	Santa Cruz	Santa Cruz	No	No.
		Cienega Creek	No	Yes.
	San Francisco	San Francisco River	Yes	Yes.
	Hassayampa and Agua Fria.	Hassayampa River	No	Yes.
		Gila River	Yes	Yes.
Rio Grande	San Luis Valley	Rio Grande	Yes	Yes.
		Conejos River	No	Yes.
	Upper Rio Grande	Coyote Creek	Yes	Yes.
		Rio Fernando	No	Yes.
		Rio Grande	Yes	Yes.
		Rio Grande Del Rancho	Yes	Yes.
	Middle Rio Grande	Rio Grande	Yes	Yes.
	Lower Rio Grande	Rio Grande	Yes	Yes.

Note: Recovery Units and Management Units are from the 2002 Recovery Plan.

TABLE 2—LAND OWNERSHIP, BY STATE, OF PROPOSED CRITICAL HABITAT AREAS FOR SOUTHWESTERN WILLOW FLYCATCHER, LISTED AS APPROXIMATE STREAM LENGTHS IN KM (MI)

State	Federal	State	Tribal	Private	Other/ unclassified
AZ	478 (297)	53 (33)	112 (69)	378 (235)	0 (0)
CA	188 (117)	14 (9)	24 (15)	0 (0)	656 (407)
CA/AZ	190 (118)	19 (12)	110 (68)	45 (28)	12 (7)
CO	29 (18)	0 (0)	26 (16)	210 (131)	9 (6)
NV	120 (75)	14 (8)	0 (0)	22 (13)	0 (0)
NM	127 (79)	64 (40)	122 (76)	330 (205)	0 (0)
UT	68 (42)	0 (0)	52 (32)	42 (26)	0 (0)

TABLE 2—LAND OWNERSHIP, BY STATE, OF PROPOSED CRITICAL HABITAT AREAS FOR SOUTHWESTERN WILLOW FLYCATCHER, LISTED AS APPROXIMATE STREAM LENGTHS IN KM (MI)—Continued

State	Federal	State	Tribal	Private	Other/ unclassified
Total	1199 (745)	164 (102)	445 (277)	1027 (638)	525 (326)

Notes: Totals do not sum because some stream segments have different ownership on each side of the bank resulting in those segments being counted twice. CA/AZ includes the stream segments along the Colorado River where California is on one stream bank and Arizona is on the other. Other/Unclassified includes some local government ownership and unclassified segments (where land ownership was not available).

We present brief descriptions below of all proposed critical habitat units, and reasons why they meet the definition of critical habitat for the flycatcher. The units are organized by Recovery Unit and then Management Unit. For each Recovery Unit we provide a broad overview of the recent distribution and abundance of flycatcher territories. Based upon our criteria, we also specifically list those streams we will propose as critical habitat within that Recovery Unit that were known to be occupied by flycatchers at the time of listing, and possess the physical or biological features that may require special management considerations or protection. Detailed site and territory summary information used for Recovery and Management Units are primarily generated from the USGS Rangewide Database (Sogge and Durst 2008) and Flycatcher Rangewide Report (Durst *et al.* 2008).

Because of the abundance of information presented in each Management Unit description, we are providing a brief overview of the information presented in each description. For each Management Unit, we begin by stating the numerical territory goal described in the Recovery Plan, and in many instances, a brief note about flycatcher territory distribution. We next explain whether the Management Unit supported a large flycatcher nesting population (as defined in the *Criteria Used To Identify Critical Habitat,* Areas with Large Populations section) in order to establish the areas where we initially focused our selection of stream segments to propose as critical habitat. For Management Units where there was a large population, we provide more specific information about the occurrence of flycatcher territories within that large population area. If there was no known large flycatcher nesting population, we provide information about known flycatcher distribution and abundance with that Management Unit. We next present those stream segments we are proposing as critical habitat and appropriate location and length descriptions. Any stream segments we propose that were not known to be occupied at the time of listing, we described as an ''essential'' segment for flycatcher conservation in order to reach the stated recovery goals for this Management Unit. We reiterate the description of those proposed segments that were known to be occupied by flycatchers at the time of listing. Finally, we explain how the proposed designation of stream segments supports the science and conservation goals established in the Recovery Plan, and for those streams not occupied at the time of listing, we offer information supporting why they are considered essential for the conservation of the flycatcher.

For each stream segment being proposed as critical habitat, we identify the State and County where it occurs and list the length rounded up to the nearest tenth of a kilometer or mile. The specific beginning and ending points of each proposed stream segment can be found below in the combination of textual descriptions and associated maps for each proposed critical habitat unit in the Proposed Regulation Promulgation section of this document. In addition, GIS data for all proposed stream segments, which include more specific lateral extent critical habitat information, may be downloaded online at *http://www.fws.gov/southwest/es/arizona/southwes.htm.* We also note in our descriptions which stream segments are being exempted under section 4(a)(3) under the Act or are being considered for possible exclusion from critical habitat under section 4(b)(2) of the Act. For more explanation of why any stream is being exempted or considered for exclusion, see the discussions under the Exemptions and Exclusions sections below.

All of the proposed stream segments provide flycatcher habitat for breeding, feeding, sheltering, and migration, and subsequently provide metapopulation stability, gene flow of the subspecies, protection against catastrophic population losses, and connectivity between neighboring Management Units and Recovery Units (Service 2002, pp. 74, 75, 86–92). They also provide habitat to help meet the numerical and habitat-related goals identified in the Recovery Plan (Service 2002, pp. 77–92). Most of the proposed segments are a subset of those identified in the Recovery Plan as areas that provide substantial recovery value (Service 2002, pp. D–12—D–15). Since completion of the Recovery Plan, additional segments of substantial recovery value have been identified through continued survey, analysis, and habitat evaluation, and are included in this proposal when needed to reach recovery goals. The distribution and abundance of territories and habitat within each proposed segment are expected to shift over time as a result of natural disturbance events such as flooding that reshape floodplains, river channels, and riparian habitat (Service 2002, pp. 18, D–11–D—13, D–15).

Coastal California Recovery Unit

This Recovery Unit stretches along the coast of southern California from just north of Point Conception south to the Mexico border. In 2002, 167 flycatcher territories were estimated to occur in this Recovery Unit (14 percent of the rangewide total) (Sogge *et al.* 2003); however the most recent 2007 rangewide assessment estimated that the number of territories has declined to 120 (9 percent of rangewide total) (Durst *et al.* 2008, p. 12). Since the completion of the Recovery Plan, territories have been distributed along 15 relatively small watersheds, mostly in the southern third of the Recovery Unit (Service 2002, p. 64; Durst and Sogge 2008). Unlike most other Recovery Units, the Coastal California Unit possesses many streams in proximity to one another. However, most breeding sites are small (fewer than five territories); the largest populations occur along the San Luis Rey, Santa Margarita, and Santa Ynez Rivers (Service 2002, p. 64). In 2001, all territories occurred in habitats dominated by native plants, and over 60 percent were on government-managed lands (Federal, State, and local) (Service 2002, p. 64). This Recovery Unit contains the Santa Ynez, Santa Clara, Santa Ana, and San Diego Management Units. The stream segments proposed as

critical habitat are described below under their appropriate Management Units.

Based upon our occupancy criteria (see above), within the Coastal California Recovery Unit, the Santa Ynez (1991), Santa Clara (1994), and San Luis Rey (1993) Rivers, and Pilgrim Creek (1994) are streams that were known to be occupied at the time of listing (1991–1994) (Sogge and Durst 2008) where we are proposing critical habitat segments. Below we identify that each listed item described in our *Special Management Considerations or Protection* section (see above) applies to the streams described in each Management Unit within the Coastal California Recovery Unit.

Santa Ynez Management Unit

The Recovery Plan describes a goal of 75 flycatcher territories in the Santa Ynez Management Unit (Service 2002, p. 84). The Santa Ynez River is the only stream in this Management Unit known to have flycatcher territories (Sogge and Durst 2008).

We identified a large flycatcher nesting population surrounding the lowest portion of the Santa Ynez River in Santa Barbara County, California. Flycatcher territories were detected on the Santa Ynez River in 1991 (Sogge and Durst 2008). A total of four breeding sites are known to occur within our large population area. A high of 26 flycatcher territories was detected on the lower Santa Ynez River in 1996, but the known number of territories has fluctuated greatly from year-to-year (from 1 to 26) (Sogge and Durst 2008). As a result, more critical habitat than just the large population area is being proposed to meet the Recovery Plan goal of 75 territories.

To help reach the Recovery Plan goals, we identified two additional areas of flycatcher habitat on the upper Santa Ynez River that are considered occupied at the time of listing and a short segment of Mono Creek farther upstream outside of our large population area (near Gibraltar Reservoir) that was not occupied at the time of listing. As a result, we are proposing three Santa Ynez River segments and a segment of Mono Creek as flycatcher critical habitat. The lower 27.6-km (17.2-mi) Santa Ynez River segment occurs immediately upstream from Vandenberg AFB. The upper 6.1-km (3.8-mi) and 7.6-km (4.7-mi) segments of the Santa Ynez River occur near Gibraltar Reservoir. We are also proposing the lowest 2.6 km (1.6 mi) of Mono Creek, also in Santa Barbara County.

The stream segments along the Santa Ynez River were occupied by flycatchers at the time of listing and contain the physical or biological features essential to the conservation of the species which may require special management considerations or protection, for the reasons described above. The proposed area of Mono Creek was not occupied at the time of listing, but is an essential area for flycatcher conservation in order to help meet recovery goals (see below).

The Santa Ynez River and unnamed tributaries (including Mono Creek) were described as having substantial recovery value in the Recovery Plan (Service 2002, p. 86). These proposed Santa Ynez River and Mono Creek segments are anticipated to provide habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

Although a 14.7-km (9.1-mi) portion of the lower Santa Ynez River segment was occupied at the time of listing, it occurs within the boundaries of Vandenberg Air Force Base (AFB). We are exempting this portion of the river from designation as critical habitat, under section 4(a)(3) of the Act, based on their INRMP which provides a benefit to the flycatcher (see Exemptions).

Santa Clara Management Unit

The Recovery Plan describes a goal of 25 flycatcher territories in the Santa Clara Management Unit (Service 2002, p. 84). Flycatcher territories have been detected in small numbers and sporadically over a broad area in this Management Unit.

There are no large flycatcher nesting populations in the Santa Clara Management Unit to help guide us toward a critical habitat area. As a result, we sought known flycatcher territories and breeding sites, guidance from the Recovery Plan, and knowledge about stream habitat to determine critical habitat segments that may be known to be occupied at the time of listing and others essential for flycatcher conservation (see below). Flycatcher territories have been detected in small numbers in the Santa Clara Management Unit, ranging from 0 to 7 territories annually between 1995 and 2001 (Sogge and Durst 2008). Three breeding sites have been detected on the Santa Clara River and two breeding sites each on Piru Creek and the San Gabriel River (Sogge and Durst 2008).

We are proposing as critical habitat a segment (79.6 km, 49.4 mi) of the Santa Clara River in Ventura and Los Angeles Counties. This segment was known to be occupied by flycatchers at the time of listing (Sogge and Durst 2008) and has the physical or biological features essential to the conservation of the species which may require special management consideration or protection, for the reasons described above. We are also proposing as flycatcher critical habitat segments of the Ventura River (27.5 km, 17.1 mi) in Ventura County; and segments of Piru Creek (41.8 km, 26.0 mi), Castaic Creek (4.8 km, 3.0 mi), Little Tujunga (2.2 km, 1.4 mi) and Big Tujunga (4.9 km, 3.0 mi) Canyons, and the San Gabriel River (14.2 km, 8.8 mi) in Los Angeles County. These segments were not occupied at the time of listing, but are essential for flycatcher conservation in order to help meet recovery goals, as explained below.

The Santa Clara, Ventura, and San Gabriel Rivers, Piru Creek and Big Tujunga Canyon, were identified in the Recovery Plan as having substantial recovery value in the Santa Clara Management Unit (Service 2002, p. 86). Together with the Little Tujunga Canyon and Castaic Creeks, these seven stream segments are essential to flycatcher conservation because they are anticipated to provide habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

Santa Ana Management Unit

The Recovery Plan describes a goal of 50 flycatcher territories in the Santa Ana Management Unit (Service 2002, p. 84). Flycatcher territories have been detected from the headwaters and tributaries of the Santa Ana River in the San Bernardino Mountains in San Bernardino County, California, down to breeding sites in Riverside County at Prado Basin and other nearby separate streams.

We identified a large flycatcher nesting population that surrounds the Santa Ana River and its tributaries in San Bernardino and Riverside Counties. Because of the wide distribution and close proximity of flycatcher territories,

nearly all the streams within the Santa Ana Management Unit were included in the large population area. Flycatcher territories have been detected along the Santa Ana River drainage at about 20 known breeding sites. Since 1995, flycatcher territories have been detected along the Santa Ana River, and tributaries such as Bear Creek, Mill Creek, Oak Glen Creek, Waterman Creek, San Timoteo Creek, and Bautista Creek (Sogge and Durst 2008). While breeding sites are numerous, the number of territories detected at each site was typically less than five (Sogge and Durst 2008). Throughout the entire Management Unit, a high of 49 territories was detected in 2001 (Sogge and Durst 2008), but limited on-the-ground surveys only detected one territory in 2007 (Sogge and Durst 2008). In 2007, Durst *et al.* (2008, p. 12) estimated that 28 territories occurred in this Management Unit.

We are proposing as critical habitat segments of the Santa Ana River and tributaries and other nearby streams. None of these areas was known to be occupied at the time of listing, but are essential for flycatcher conservation in order to meet recovery goals, as explained below. On the Santa Ana River, we are proposing an upper 42.3-km (26.3-mi) segment and a lower 47.8-km (29.7-mi) segment that occur in San Bernardino and Riverside Counties. Also occurring in both San Bernardino and Riverside Counties, we are proposing a 25.6-km (15.9-mi) segment of San Timoteo Creek. We are also proposing segments of the following Santa Ana River tributaries in San Bernardino County: a 14.8-km (9.2-mi) segment of Bear Creek; a 19.2-km (11.9-mi) segment of Mill Creek; a 4.6-km (2.9-mi) segment of Oak Glen Creek; and a 5.2-km (3.2-mi) segment of Waterman Creek (including small portions of the left and right forks). In Riverside County, we are proposing a 23.0-km (14.3-mi) segment of Bautista Creek.

This diverse and widely distributed group of seven streams (eight stream segments) was identified in the Recovery Plan (although Oak Glen Creek was not specifically named as a tributary to the Santa Ana River) as areas of substantial recovery value (Service 2002, p. 86). Together, these eight stream segments are essential to flycatcher conservation because they are anticipated to provide habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

We will consider excluding portions of the Santa Ana River, San Timoteo Creek, Bautista Creek and Temecula Creek (including Vail Lake) within the planning area boundary for the Western Riverside MSHCP from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act. We intend to exclude critical habitat from areas covered by the Western Riverside MSHCP based on the protections described below (see Exclusions) and per the provisions laid out in the MSHCP's implementing agreement, to the extent consistent with the requirements of 4(b)(2) of the Act.

Also, a portion of Bautista Creek occurs on Tribal lands managed by the Ramona Band of Cahuilla, California. We will also consider our partnership with this Tribe and evaluate the conservation planning and management that occurs for potential exclusion under section 4(b)(2) of the Act (see Exclusions).

San Diego Management Unit

The Recovery Plan describes a goal of 125 flycatcher territories in the San Diego Management Unit (Service 2002, p. 84). Flycatcher territories have been detected throughout this Management Unit primarily along the rivers and tributaries of the largest river drainages in the area, such as the San Luis Rey, Santa Margarita, and San Diego Rivers.

We identified a large flycatcher nesting population that includes nearly all of the streams within the San Diego Management Unit. Within the San Diego Management Unit, about 24 breeding sites are known to occur (Durst *et al.* 2008, p. 12). A high of 86 flycatcher territories were detected in 2001 (Sogge and Durst 2008), and an estimated 77 territories occurred in 2007 (Durst *et al.* 2008, p. 12).

Within this large population area, we identified flycatcher habitat on 18 different streams within the San Diego Management Unit that occur in San Diego, Riverside, and Orange Counties, California. The streams we identified in San Diego County are: San Mateo Creek, Cristianitos Creek, San Onofre Creek, Las Flores Creek, Las Pulgas Creek, Fallbrook Creek, Santa Margarita River, DeLuz Creek, San Luis Rey River (2 segments), Pilgrim Creek, Agua Hedionda Creek, San Dieguito River, Santa Ysabel Creek, San Diego River (2 segments), Temescal Creek, and Sweetwater River. A segment of Temecula Creek travels across San Diego and Riverside Counties and a Canada Goberandora Creek segment occurs in Orange County.

The San Luis Rey River and Pilgrim Creek were the only streams in this management unit known to be occupied by flycatchers at the time of listing. The remaining proposed critical habitat stream segments will help reach flycatcher recovery goals within the San Diego Management Unit.

Because of the large number of proposed stream segments within this Management Unit, unlike other Management Unit descriptions within this proposed rule, the descriptions of proposed critical habitat segments within the San Diego Management Unit are separated into smaller groups. We will describe the length and general location of each proposed stream segment, the status of flycatcher territories, and whether a portion is exempted under section 4(a)(3) of the Act or identified for possible exclusion under section 4(b)(2) of the Act.

San Luis Rey River

Flycatcher territories were first detected on San Luis Rey River, in San Diego County, California, in 1993. In 2001, a high of 62 territories were detected at the 7 known breeding sites found on this river. A single site on the upper San Luis Rey River typically represents a large proportion of all territories known to occur. For example, total of 53 flycatcher territories were detected at this site in 2001.

We are proposing as critical habitat two river segments of the San Luis Rey River in San Diego County, California. The upper San Luis Rey River segment (28.6 km, 17.8 mi) extends from Lake Henshaw to Wilson Way, while the lower segment (52.3 km, 32.5 mi) extends from near the downstream end of the Pauma Country Club to near Interstate 5. These segments are known to be occupied at the time of listing, and contain the physical or biological features essential for the conservation of the species which may require special management considerations or protection, as described above.

The Rincon and La Jolla Bands of Luiseno Indians have developed Management Plans that we will consider for possible exclusion under section 4(b)(2) of the Act (see Exclusions). The Pala Band of Luiseno Mission Indians also have Tribal lands on the San Luis Rey River, therefore we will consider our partnership with this Tribe and evaluate conservation planning and management that occurs for potential exclusion under section 4(b)(2) of the Act (see Exclusions).

Santa Margarita River and Pilgrim, De Luz, Las Flores, Las Pulgas, and Fallbrook Creeks

With the exception of Las Pulgas Creek, single flycatcher breeding sites have been detected on each of these stream segments. Small numbers of flycatcher territories at a single known breeding site have been detected annually on Pilgrim Creek (0–4 territories), Las Flores Creek (0–3 territories), De Luz Creek (0–1 territories), and Fallbrook Creek (0–2 territories) (Sogge and Durst 2008). In contrast, the lone known flycatcher breeding site on the Santa Margarita River had as many as 23 flycatcher territories in 2003 (Sogge and Durst 2008).

We are proposing as critical habitat an 18.5-km (11.5-mi) segment along Pilgrim Creek (including portions of its left and right forks). This segment is known to be occupied at the time of listing, and contains the physical or biological features essential for the conservation of the species which may require special management considerations or protection, as described above.

We are also proposing segments of flycatcher habitat along the Santa Margarita River (41.3 km, 25.6 mi), Fallbrook Creek (5.3 km, 3.3 mi), De Luz Creek (11.1 km, 6.9 mi), and a continuous Las Flores Creek-Las Pulgas Creek segment (9.6 km, 6.0 mi) in San Diego County, California. These segments were not known to be occupied at the time of listing, but are essential for flycatcher conservation in order to help meet recovery goals in this Management Unit.

The portions of the Santa Margarita River (31.8 km, 19.8 mi), De Luz Creek (7.8 km, 4.8 mi), Fallbrook Creek (5.3 km, 3.3 mi), Las Flores Creek-Las Pulgas Creek (9.6 km, 6.0 mi), and Pilgrim Creek (including its left and right forks) (13.5 km, 8.4 mi) that fall within the boundaries of Marine Corps Base Camp Pendleton and Naval Weapons Station Seal Beach Detachment Fallbrook will be exempted from this critical habitat designation under section 4(a)(3) of the Act because Camp Pendleton and Fallbrook's INRMPs provide benefits to the flycatcher (see Exemptions).

Because all the flycatcher habitat of Las Flores, Las Pulgas, and Fallbrook Creeks occurs entirely within the boundaries of Marine Corps Base Camp Pendleton and Naval Weapons Station Seal Beach Detachment Fallbrook, no portions of these three streams are proposed as flycatcher critical habitat. However, there are remaining upstream segments of the Santa Margarita River, and DeLuz and Pilgrim Creeks that we are proposing as flycatcher critical habitat. The remaining proposed flycatcher critical habitat includes a 9.4-km (5.8-mi) Santa Margarita River segment, a 3.3-km (2.1-mi) De Luz Creek segment, and a 5.0-km (3.1-mi) Pilgrim Creek segment.

Canada Gobernadora Creek

Canada Gobernadora Creek has had one to two territories detected annually between 1999 and 2003 (Sogge and Durst 2008). We are proposing as flycatcher critical habitat a 5.9-km (3.6-mi) segment of Canada Gobernadora Creek in Orange County, California. This segment was not known to be occupied at the time of listing, but is essential for flycatcher conservation in order to help meet recovery goals.

We will consider excluding a portion of Canada Gobernadora Creek within the planning area boundary for the Orange County Southern Subregion HCP from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act. We intend to exclude critical habitat from areas covered by the Orange County Southern Subregion HCP based on the protections described below (see Exclusions) and per the provisions laid out in the HCP's implementing agreement, to the extent consistent with the requirements of 4(b)(2) of the Act. We encourage any public comment in relation to this consideration.

San Mateo, Cristianitos, and San Onofre Creeks

We identified segments of flycatcher habitat along San Mateo Creek (8.4 km, 5.2 mi), Cristianitos Creek (3.9 km, 2.4 mi), and San Onofre Creek (6.6 km, 4.1 mi) in San Diego County, California. A single breeding site was detected on San Mateo Creek, with a lone territory detected in 1995, 1997, and 2007 (Sogge and Durst 2008). No flycatcher territories have been detected on Cristianitos and San Onofre Creeks.

Because these segments of Cristianitos, San Mateo, and San Onofre Creeks occur entirely within the boundaries of Marine Corps Base Camp Pendleton, these stream segments will be exempted from this critical habitat proposal under section 4(a)(3) of the Act because Camp Pendleton's INRMP provides benefits to the flycatcher (see Exemptions). Therefore, no portions of San Mateo, Cristianitos, or San Onofre Creeks are proposed as flycatcher critical habitat.

Agua Hedionda Creek

A single site and flycatcher territory was detected on Agua Hedionda Creek in 1998 and 1999 (Sogge and Durst 2008). We are proposing two separate segments of Agua Hedionda Creek. The upstream segment of Agua Hedionda Creek includes small portions of the north (1.0 km, 0.6 mi) and south forks (0.4 km, 0.2 mi). The upstream segment extends from La Miranda Drive (south fork) and Sycamore Avenue (north fork) and extends along the mainstem Agua Hedionda Creek for 5.9 km (3.7 mi) downstream to just east of the Rancho Carlsbad Golf Course. The downstream segment of Agua Hedionda Creek extends from Cannon Road for 2.1 km (1.3 mi) to Agua Hedionda Lagoon. These segments were not known to be occupied at the time of listing, but are essential for flycatcher conservation because they will help meet recovery goals in this Management Unit.

We will consider excluding portions of Agua Hedionda Creek within the Carlsbad HMP from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act. We intend to exclude critical habitat from areas covered by the Carlsbad HMP based on the protections described below (see Exclusions) and per the provisions laid out in the HCP's implementing agreement, to the extent consistent with the requirements of 4(b)(2) of the Act. We encourage any public comment in relation to this consideration.

San Diego, San Dieguito, and Sweetwater Rivers and Santa Ysabel and Temescal Creeks

We identified and are proposing as flycatcher critical habitat segments of the San Diego River, San Dieguito River, Santa Ysabel Creek, Temescal Creek, and Sweetwater River that occur within San Diego County, California.

Three flycatcher breeding sites are known on the San Dieguito River and Santa Ysabel and Temescal Creeks within San Diego County, California. Flycatcher territories were first detected there in 1996 (and annually between 1996 and 2003), with a high of 5 territories in 1997 (Sogge and Durst 2008). We are proposing a continuous 10.3 km (6.3 mi) segment of that extends along Santa Ysabel Creek from Ysabel Creek Road downstream (1.1 km, 0.7 mi) to the San Dieguito River and continues downstream (9.2 km, 5.7 mi) until it terminates at Interstate 15 and Lake Hodges in San Diego County, California. At the headwaters of the San Dieguito River, we are proposing connected segments of Santa Ysabel Creek (9.8 km, 6.1 mi) and Temescal Creek (7.6 km, 4.7 mi). These segments were not known to be occupied at the time of listing, but are essential for flycatcher conservation

because they will help meet recovery goals.

A lone breeding site was detected on the San Diego River in 2001, with 2 territories (Sogge and Durst 2008). We are proposing two essential segments of the San Diego River that are separated by El Capitan Reservoir and a long stretch of stream downstream from El Capitan Reservoir in San Diego County, California. The upper 7.0-km (4.3-mi) San Diego River segment extends from just north of the Cedar Creek confluence down to El Capitan Reservoir. The lower 9.5-km (5.9-mi) San Diego River segment begins at Magnolia Avenue and ends at Mission Trails Regional Park. These segments were not known to be occupied at the time of listing, but are essential for the flycatcher conservation because they will help meet recovery goals.

A single site and flycatcher territory were detected on the Sweetwater River (located south of the San Diego River) from 1997 to 1999 (Sogge and Durst 2008). We are proposing as critical habitat a 6.6-km (4.1-mi) segment of the Sweetwater River in San Diego County, California, from the Rancho San Diego Golf Course downstream to Sweetwater Reservoir.

We will consider excluding portions of the San Dieguito, San Diego, and Sweetwater Rivers and Santa Ysabel Creek within the planning area boundary for the San Diego MSCP and HCP from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act. We intend to exclude critical habitat from areas covered by the San Diego MSHCP and HCP based on the protections described below (see Exclusions) and per the provisions laid out in the HCP's implementing agreement, to the extent consistent with the requirements of 4(b)(2) of the Act. We encourage any public comment in relation to this consideration.

Also, a portion of the San Diego River occurs within the land of the Capitan Grande Band of Diegueno Mission Indians of California (jointly managed by the Barona Group of Capitan Grande Band of Mission Indians and the Viejas [Baron Long] Group of Capitan Grande Band of Mission Indians). We will also consider our partnership with this Tribe and evaluate the conservation planning and management that occurs for potential exclusion under section 4(b)(2) of the Act (see Exclusions).

Temecula Creek

A total of two breeding sites, holding one flycatcher territory each in 1997 and 1998, are known from Temecula Creek (Sogge and Durst 2008). We have identified and are proposing as critical habitat a 23.9-km (14.8-mi) segment of Temecula Creek in Riverside and San Diego Counties, California, from Vail Lake (including Vail Lake) to Chihuahua Creek. This segment was not known to be occupied at the time of listing, but is essential for the flycatcher conservation because it will help meet recovery goals.

Where Temecula Creek occurs within the Western Riverside MSHCP, it will be considered for exclusion under section 4(b)(2) of the Act (see Exclusions).

San Diego Management Unit Summary

The Santa Margarita River, DeLuz Creek, San Luis Rey River, Pilgrim Creek, Agua Hedionda Creek, San Dieguito River, San Diego River, Sweetwater River, Temecula Creek, and Canada Gobernadora Creek were identified in the Recovery Plan as having substantial recovery value (Service 2002, p. 87). The Temescal and Santa Ysabel Creeks were also found to have substantial recovery value. Together these segments are anticipated to provide habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these 12 river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

Basin and Mohave Recovery Unit

The Basin and Mohave Recovery Unit is comprised of a broad geographic area including the arid interior lands of southern California and a small portion of extreme southwestern Nevada. In 2002, there were a total of 69 known flycatcher territories estimated to occur (7 percent of the rangewide total), but have declined to an estimated 51 territories in 2007 (Durst *et al.* 2008. p. 12). With the exception of breeding sites on the Owens and Kern Rivers, all known breeding sites have fewer than five territories (Service 2002, p. 64). As of 2002, all flycatcher territories were in riparian habitats dominated by native plants, and approximately 70 percent are on privately owned lands (Service 2002, p. 64). Because there has been little change in the amount of known flycatcher breeding sites since completion of the Recovery Plan and the number of estimated territories has declined, flycatcher habitat use and land ownership are likely similar today. The Recovery Unit contains the Owens, Kern, Mohave, Salton, and Amargosa Management Units. The stream segments proposed as critical habitat are described below in their appropriate Management Units.

Based upon our occupancy criteria (see above), within the Basin and Mohave Recovery Unit, the South Fork Kern (1993) and Owens Rivers (1993) are streams that were known to be occupied at the time of listing (1991–1994) (Sogge and Durst 2008) where we are proposing critical habitat segments. Below we identify that each listed item described in our *Special Management Considerations or Protection* section (see above) applied to the streams described in each Management Unit within the Basin and Mohave Recovery Unit.

Owens Management Unit, CA

The Recovery Plan describes a goal of 50 flycatcher territories in the Owens Management Unit (Service 2002, p. 84). The Owens River is the only stream in the Management Unit known to have flycatcher territories and is the most northern in the Basin and Mohave Recovery Unit.

We identified a large flycatcher nesting population along the Owens River within Mono and Inyo Counties, California. Nesting flycatchers have been detected at four sites within this area, with a high of 29 territories detected in 1999 (Sogge and Durst 2008). Within this large population area, we are proposing as critical habitat a 128.5-km (79.9-mi) continuous segment of the Owens River (from Long Lake Dam to just north of Tinemaha Reservoir) within Inyo and Mono Counties, California.

The segment of the Owens River proposed as critical habitat is known to be occupied by flycatchers at the time of listing, and contains the physical or biological features essential to the conservation of the species which may require special management considerations or protection, for the reasons described above.

The Owens River is the only stream identified in the Recovery Plan as having substantial recovery value within the Owens Management Unit (Service 2002, p. 88). The Owens River segment we are proposing is anticipated to provide habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, this river segment and associated flycatcher habitat is anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

This entire Owens River segment occurs within the boundaries of land owned and managed by the Los Angeles Department of Water and Power that we are considering for exclusion under section 4(b)(2) of the Act (see Exclusions).

Kern Management Unit, CA

The Recovery Plan describes a goal of 75 flycatcher territories in the Kern Management Unit (Service 2002, p. 84). The South Fork Kern River and Canebrake Creek within Kern County, California, are the only streams known to have flycatcher territories within this Management Unit.

We identified a large flycatcher nesting population along the lower portion of the South Fork Kern River. Flycatchers were first detected nesting on the South Fork Kern River in 1993 and have been detected annually through at least 2007 (Sogge and Durst 2008). A high of 38 territories were detected in 1997 within this Management Unit (Sogge and Durst 2008). The South Fork Kern River is known to be occupied by flycatchers at the time of listing, and contains the physical or biological features essential to the conservation of the species which may require special management considerations or protection, as described above.

Because of the need to increase the abundance of flycatcher territories to reach recovery goals in the Kern Management Unit, we also identified a small portion of Canebrake Creek in Kern County within our large population areas as being essential to flycatcher conservation (see below). Canebrake Creek (a tributary to the South Fork Kern River) was not known to be occupied at the time of listing, but territories were detected in 1998 (Sogge and Durst 2008).

We are proposing as critical habitat a 23.8-km (14.8-mi) portion of the South Fork Kern River (including the upper 1.0-km, 0.6-mi, of Lake Isabella) and a 1.7-km (1.0-mi) segment of Canebrake Creek in Kern County, California.

The South Fork Kern River segment was the lone segment identified within this Management Unit as having substantial recovery value in the Recovery Plan (Service 2002, p. 88). This South Fork Kern River segment and the additional Canebrake Creek segment are essential to flycatcher conservation because they are anticipated to provide habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

Because the South Fork Kern River is located within the South Fork Kern River Wildlife Area (which includes the upper portion of Lake Isabella), Haffenfeld Ranch, and Sprague Ranch, this segment will be considered for exclusion under section 4(b)(2) of the Act (see Exclusions).

Mohave Management Unit, CA

The Recovery Plan describes a goal of 25 territories in the Mohave Management Unit (Service 2002, p. 84). The Mohave River and Holcomb Creek are the only streams known to have flycatcher territories within the Mohave Management Unit (Sogge and Durst 2008).

There are no large flycatcher nesting populations in the Mohave Management Unit to help guide us toward a critical habitat area, and no areas were known to be occupied at the time of listing. Therefore, to identify the areas that would contribute to meeting recovery goals for this Management Unit, we used information based on currently known flycatcher territories and breeding sites, guidance from the Recovery Plan, and knowledge about stream habitat to determine areas essential for flycatcher conservation (see below).

Flycatchers were first detected nesting on the Mohave River in 1995 and Holcomb Creek in 1999. A total of five breeding sites occur along the Mohave River and one site at Holcomb Creek (Sogge and Durst 2008). A high of 12 territories were detected at these breeding sites in 2001 (Sogge and Durst 2008). In addition, we found additional areas that would contribute to meeting recovery goals in the West Fork Mohave River and Deep Creek.

We are proposing as critical habitat a 35.7-km (22.2-mi) segment of the Mojave River, an 11.2-km (6.9-mi) segment of the West Fork Mohave River, a 19.6-km (12.2-mi) segment of Holcomb Creek, and a 20.0-km (12.5-mi) segment of Deep Creek (including Mohave River Forks Reservoir) in San Bernardino County, California, near the Town of Victorville. Deep Creek connects Holcomb Creek with the Mohave Forks Reservoir. All of these segments were not known to be occupied at the time of listing, but are essential for flycatcher conservation because they will help meet recovery goals.

Three of these streams (Mohave River, West Fork Mohave River, and Deep Creek) were identified as having substantial recovery value in the Recovery Plan (Service 2002, p. 88). Holcomb Creek was not specifically identified in the Recovery plan, but since flycatcher territories have been detected there we find it also important to meet recovery goals. Together, these four proposed critical habitat segments are essential to flycatcher conservation because they are anticipated to provide habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

Salton Management Unit, CA

The Recovery Plan describes a goal of 25 flycatcher territories in the Salton Management Unit (Service 2002, p. 84). A single known flycatcher breeding site occurs along San Felipe Creek in this Management Unit.

There are no large flycatcher nesting populations solely in the Salton Management Unit, and no areas were known to be occupied at the time of listing. However, portions of the Salton Management Unit were part of a large population area because of the proximity of flycatcher territories in the adjacent San Diego and Santa Ana Management Units. Therefore, to identify the areas that would contribute to meeting recovery goals for this Management Unit, we used information based on currently known flycatcher territories and breeding sites, guidance from the Recovery Plan, and knowledge about stream habitat to determine areas essential for flycatcher conservation (see below). From 1998 to 2002, flycatcher territories were detected in small numbers (2 to 4 territories) at single breeding site on San Felipe Creek within this Management Unit (Sogge and Durst 2008).

We are proposing as critical habitat a 21.2-km (13.2-mi) segment of San Felipe Creek and a short 1.0-km (0.6 mi) segment of Mill Creek in San Diego County, California. This short portion of Mill Creek is connected to the proposed Mill Creek segment within the Santa Ana Management Unit. We find that both of the segments are essential for flycatcher conservation because they will help meet recovery goals.

Although the San Felipe Creek segment proposed as critical habitat was the only river segment identified in the Recovery Plan as having substantial recovery value (Service 2002, p. 88), the additional Mill Creek segment was identified within the Santa Ana Management Unit as having substantial recovery value (Service 2002, p. 88). As a result, the San Felipe and Mill Creek segments, along with the other populations and river segments in proximity within the adjacent San Diego and Santa Ana Management Units are essential to flycatcher conservation because they are anticipated to provide habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

Part of San Felipe Creek occurs within the Iipay Nation of Santa Ysabel, California (formerly the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation), so we will consider our Tribal partnership and evaluate the conservation and management of the area for exclusion under section 4(b)(2) of the Act (see Exclusions).

Amargosa Management Unit, CA and NV

The Recovery Plan describes a goal of 25 flycatcher territories in the Amargosa Management Unit (Service 2002, p. 84). Flycatcher territories have been detected in small numbers within this Management Unit.

There are no large flycatcher nesting populations in the Amargosa Management Unit to help guide us toward a critical habitat area, and no areas were known to be occupied at the time of listing. Therefore, to identify the areas that would contribute to meeting recovery goals for this Management Unit, we used information based on currently known flycatcher territories and breeding sites, guidance from the Recovery Plan, and knowledge about stream habitat to determine areas essential for flycatcher conservation (see below).

Within the Amargosa Management Unit, one breeding site has been detected on the Amargosa River and two breeding sites are known within the Ash Meadows National Wildlife Refuge (Sogge and Durst 2008). From 1998 to 2007, one to seven territories were detected at these breeding sites within this Management Unit (Sogge and Durst 2008). Therefore, we sought additional areas for critical habitat that could contribute to recovery goals in this Management Unit.

We are proposing, as flycatcher critical habitat, segments of the Amargosa River (12.3 km, 7.7 mi) and Willow Creek (3.5 km, 2.2 mi) in Inyo and San Bernardino Counties, California. We are also proposing approximately 5.7 km (3.5 mi) of Carson Slough and 100.1 km (62.2 mi) of associated unnamed riparian areas that occur within the Ash Meadows National Wildlife Refuge in Nye County, Nevada. No known breeding sites have yet to be detected on the Amargosa River and Willow Creek segments in California. None of the proposed segments were known to be occupied at the time of listing.

Carson Slough and the unnamed riparian areas within the Ash Meadows National Wildlife Refuge, and the Amargosa River in California, were described in the Recovery Plan as having substantial recovery value (Service 2002, p. 88). Willow Creek was also determined to be essential in order to reach recovery goals in this Management Unit. Together, these four proposed critical habitat segments are essential to flycatcher conservation because they are anticipated to provide habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

Lower Colorado Recovery Unit

This is a geographically large and ecologically diverse Recovery Unit, encompassing the Colorado River and its major tributaries (such as the Virgin, Pahranagat, Muddy, and Little Colorado Rivers) from the high-elevation streams in White Mountains of East-Central Arizona and Central Western New Mexico to the mainstem Colorado River through the Grand Canyon downstream through the arid lands along the lower Colorado River to the Mexico border (Service 2002, p. 64).

In 2002, despite its size, the Lower Colorado Recovery Unit had only 127 known flycatcher territories (11 percent of the rangewide total), most of which occur away from the mainstem Colorado River (Sogge *et al.* 2003). In 2007, 150 territories were estimated to occur within this Recovery Unit (also 11 percent of the rangewide total) (Durst *et al.* 2008, p. 12). Most sites included fewer than 5 territories; the largest populations (most of which are fewer than 10 territories) are found on the Bill Williams, Virgin, and Pahranagat Rivers (Service 2002, p. 64). Approximately 69 percent of territories are found on government-managed lands and 8 percent are on Tribal lands (Service 2002, p. 64). Habitat characteristics range from purely native (including high-elevation and low-elevation willow) to exotic (primarily tamarisk)-dominated stands (Service 2002, p. 64). Because of the similarity in abundance and distribution of territories since 2002, these land ownership and habitat-use statistics are likely similar today. This Recovery Unit contains the Little Colorado, Middle Colorado, Virgin, Pahranagat, Bill Williams, Hoover to Parker Dam, and Parker Dam to Southerly International Border Management Units.

Based upon our occupancy criteria (see above), within the Lower Colorado Recovery Unit, the Colorado (1993), Little Colorado (1993), Bill Williams (1994), Big Sandy (1994), Santa Maria (1994), and Zuni (1993) Rivers, and Rio Nutria (1993) are streams that were known to be occupied at the time of listing (1991–1994) (Sogge and Durst 2008) where we are proposing critical habitat segments. At the time of listing only specific sites on the Colorado River within the Middle Colorado Management Unit were known to be specifically occupied by nesting birds, but based upon our criteria and the wide-ranging nature of this bird as a neotropical migrant and its use of migration stop-over habitat, we also consider the Colorado River within the Hoover to Parker Dam and Parker Dam to Southerly International Border Management Units occupied at the time of listing. Below we identify that each listed item described in our *Special Management Considerations or Protection* section (see above) applies to the streams described in each Management Unit within the Lower Colorado Recovery Unit.

Little Colorado Management Unit, AZ and NM

The Recovery Plan describes a goal of 50 flycatcher territories in the Little Colorado Management Unit (Service 2002, p. 84). Flycatcher territories have been detected on the Little Colorado and Zuni Rivers and Rio Nutria within this large area along the New Mexico and Arizona border (Sogge and Durst 2008).

We identified a large flycatcher nesting population surrounding the Little Colorado River, near the Town of Greer in Apache County, Arizona. Flycatcher territories have been detected along the Little Colorado River, Zuni River, and Rio Nutria since 1993. A high of 16 territories were detected on these river segments in 1996, but known territories have declined, with only 2 and 6 territories detected in 2005 and 2006, respectively (Sogge and Durst 2008). Because of the need to increase the abundance of flycatcher territories to reach recovery goals, we also identified the Zuni River and Rio Nutria in McKinley County, New Mexico, and the West Fork Little Colorado River, in Apache County, Arizona (see below). No flycatcher territories are known from the West Fork Little Colorado River.

We are proposing as critical habitat a contiguous 8.8-km (5.5-mi) segment of the West Fork Little Colorado River and a 17.6-km (10.9-mi) segment of the Little Colorado River. This West Fork and Little Colorado River segment begins where U.S. Forest Service (Forest Service) Road 113 crosses the West Fork and extends downstream to its confluence with the Little Colorado River, through the Town of Greer, and ends at the Diversion Ditch. The Little Colorado River was known to be occupied at the time of listing, and contains the physical or biological features essential to the conservation of the species which may require special management considerations or protection, as described above. The West Fork Little Colorado River was not known to be occupied at the time of listing, but is essential to flycatcher conservation of the flycatcher in order to meet recovery goals, as described above.

We are also proposing as critical habitat a contiguous segment of the Rio Nutria (35.8 km, 22.2 mi) and the Zuni River (55.4 km, 34.4 mi) in McKinley County, New Mexico. The Rio Nutria segment begins at the Nutria Diversion Dam, extends to the Zuni River, and continues along the Zuni River to the Arizona and New Mexico State Line. Both of these segments were known to be occupied at the time of listing, and contain the physical or biological features essential to the conservation of the species which may require special management considerations or protection, as described above.

The Little Colorado River, Rio Nutria, and Zuni River, and the West Fork Little Colorado River segments were all identified in the Recovery Plan as areas with substantial recovery value (Service 2002, p. 89). These four stream segments that we are proposing as critical habitat within the Little Colorado Management Unit are anticipated to provide habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

We will consider our partnership and evaluate the conservation and management of the Zuni River and Rio Nutria where they occur within the Navajo Nation and the Zuni Pueblo for exclusion under section 4(b)(2) of the Act (see Exclusions).

Virgin Management Unit, UT, AZ, and NV

The Recovery Plan describes a goal of 100 flycatcher territories in the Virgin Management Unit (Service 2002, p. 84). Flycatcher territories have been detected along a broad area of the Virgin River within this Management Unit through the States of Utah, Arizona, and Nevada (Sogge and Durst 2008).

We identified a large flycatcher nesting population along an essential segment of the Virgin River where it occurs through Washington County, Utah; Mohave County, Arizona; and Clark County, Nevada. Flycatchers were first detected nesting on this portion of the Virgin River in 1995. A total of seven breeding sites have been detected within this large population area through 2007 (Durst *et al.* 2008, p. 12). Also, a high of 43 territories were estimated to occur within this Management Unit in 2007 (Durst *et al.* 2008, p. 12), most occurring within the State of Nevada, although territories are also known along the Virgin River in Utah and Arizona.

We are proposing as critical habitat a 152.0-km (94.4-mi) segment (total length) of the Virgin River that begins at Berry Springs in Washington County, Utah, continues 47.5 km (29.5 mi) through the State of Utah, then extends 56.0 km (34.8 mi) through the Town of Littlefield and the State of Arizona, and then 48.4 km (30.0 mi) through the State of Nevada until it ends at Colorado River Mile 280 at the upper end of Lake Mead, Clark County, Nevada. This segment was not known to be occupied at the time of listing, but is being proposed as critical habitat because it is essential for the conservation of the flycatcher in the Virgin River Management Unit in order to meet recovery goals.

The Virgin River was identified as having substantial recovery value in the Recovery Plan (Service 2002, p. 89). This essential segment of the Virgin River we are proposing as critical habitat within the Virgin River Management Unit is anticipated to provide habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, this river segment and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

Where the Virgin River occurs through the planning area of the Clark County Multiple Species HCP and the Overton State Wildlife Area, we will consider those segments for exclusion under section 4(b)(2) of the Act (see Exclusions).

Middle Colorado Management Unit, AZ

The Recovery Plan describes a goal of 25 flycatcher territories in the Middle Colorado Management Unit (Service 2002, p. 84).

We identified a large flycatcher nesting population along the lower portion of the Colorado River within the Grand Canyon (including upper Lake Mead) in Mohave County, Arizona. Flycatchers were first detected nesting along the Colorado River within the Middle Colorado Management Unit in 1993. A total of 16 breeding sites have been detected in our selected segment through 2007. Also, a high of 16 territories was detected within this Management Unit in 1998 (Sogge and Durst 2008), but has declined to an estimated 4 territories in 2007 (Durst *et al.* 2008, p. 12).

We are proposing as critical habitat a 74.1-km (46.0-mi) segment of the Colorado River that extends from the middle of Lake Mead upstream to Colorado River Mile 243. This entire segment is within the full pool elevation of Lake Mead. The Colorado River in Mohave County, Arizona, is known to be occupied by flycatchers at the time of listing, and contains the physical or biological features essential to the conservation of the species which may require special management considerations or protection, as described above.

This Middle Colorado River segment was identified as having substantial recovery value in the Recovery Plan (Service 2002, p. 89). The portion of the Colorado River we are proposing as critical habitat within the Middle

Colorado Management Unit is anticipated to provide habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, this river segment and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

Where the Colorado River occurs within the planning area of the Lower Colorado River Multi-Species Conservation Plan (LCR MSCP) (due to the completed HCP) and Hualapai Indian Tribal land (due to their Management Plan), it will be considered for exclusion under section 4(b)(2) of the Act (see Exclusions).

Pahranagat Management Unit, NV

The Recovery Plan describes a goal of 50 flycatcher territories in the Pahranagat Management Unit (Service 2002, p. 84).

We identified a large flycatcher nesting population along the Pahranagat River and the Muddy River. Flycatchers were first detected nesting on these portions of the Pahranagat and Muddy Rivers in 1997. Through 2007, a total of three breeding sites were know to occur within these segments, with a high of 38 territories detected in 2006 (Durst and Sogge 2008).

We are proposing as critical habitat a 6.3-km (3.9-mi) river segment of the Pahranagat River through the Key Pittman Wildlife Area in Lincoln County, Nevada, and a 17.3-km (10.8-mi) segment of the Pahranagat River through the Pahranagat National Wildlife Refuge in Clark County, Nevada. We are also proposing as critical habitat a 3.1-km (1.9 mi) segment of the Muddy River within the Overton Wildlife Area in Clark County, Nevada. These segments were not known to be occupied at the time of listing, but are being proposed as critical habitat because they are essential for flycatcher conservation in order to meet recovery goals in the Pahranagat Management Unit.

The Pahranagat and Muddy River segments were identified as having substantial recovery value in the Recovery Plan (Service 2002, pp. 89–90). These essential river segments we are proposing as critical habitat within the Pahranagat Management Unit are anticipated to provide habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

We will consider excluding the Pahranagat River where it occurs within the Key Pittman State Wildlife Area and the Muddy River within the Overton State Wildlife Area as result of completed Management Plans under section 4(b)(2) of the Act (see Exclusions).

Bill Williams Management Unit, AZ

The Recovery Plan describes a goal of 100 flycatcher territories in the Bill Williams Management Unit (Service 2002, p. 84). Flycatcher territories are distributed across a broad area of this Management Unit.

We identified a large flycatcher nesting population in this Management Unit. It encompasses areas along the Big Sandy River near the Town of Wikieup in Mohave County; the Big Sandy, Santa Maria, and Bill Williams Rivers at the upper end of Alamo Lake in La Paz County; and along the Bill Williams River between Alamo Dam and the Colorado River in La Paz and Mohave Counties. Flycatchers were first detected nesting on the Big Sandy, Santa Maria, and Bill Williams Rivers in 1994 (Sogge and Durst 2008). Through 2007, a total of 9 breeding sites occurred within these segments with a high of 61 territories detected in 2004 (Durst and Sogge 2008). Since 2007, an additional breeding site was discovered on the upper Big Sandy River and an additional two sites discovered along the Bill Williams River.

We are proposing as critical habitat a 35.3-km (21.9-mi) segment of the upper Big Sandy River from the Town of Wikieup to Groom Peak Wash in La Paz County, Arizona. At upper Alamo Lake where the Big Sandy, Santa Maria, and Bill Williams Rivers converge, we are proposing, collectively, a 23.4-km (14.5-mi) portion of these three streams in La Paz County. Between Alamo Dam and the Colorado River, we are proposing as critical habitat a 17.8-km (11.0-mi) segment of the Bill Williams River near Lincoln Ranch in La Paz and Mohave Counties, Arizona. Also below Alamo Dam, we are proposing as critical habitat the last 21.3 km (13.2 mi) of the Bill Williams River before it reaches the Colorado River at Lake Havasu, from Planet Ranch through the Bill Williams National Wildlife Refuge. All of these areas are known to be occupied by flycatchers at the time of listing, and contain the physical or biological features essential for the conservation of the species which may require special management considerations or protection, as described above.

The Big Sandy, Santa Maria, and Bill Williams Rivers were all identified as having substantial recovery value in the Recovery Plan (Service 2002, p. 90). These river segments we are proposing within the Bill Williams Management Unit are anticipated to provide habitat for: Metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat is anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

We will consider excluding the Bill Williams, Santa Maria, and Big Sandy Rivers at the upper end of Alamo Lake within the Alamo Lake Wildlife Area due to a completed Management Plan and the Bill Williams River where it occurs within the planning area of the Lower Colorado River MSCP under section 4(b)(2) of the Act (see Exclusions).

Hoover to Parker Dam Management Unit, AZ and CA

The Recovery Plan describes a goal of 50 flycatcher territories in the Hoover to Parker Dam Management Unit (Service 2002, p. 84).

We identified a large flycatcher nesting population along the Colorado River within Mohave and La Paz Counties, Arizona, and San Bernardino County, California. Flycatchers were first detected nesting on this portion of the Colorado River in 1995 (Sogge and Durst 2008). Through 2007, a total of 6 breeding sites occurred within this segment (Durst 2008, p. 12) with a high of 34 territories detected in 2004 (Durst and Sogge 2008).

We are proposing as critical habitat a 106.9-km (66.4-mi) river segment of the Colorado River from near Davis Dam downstream through Lake Havasu to Parker Dam. We are also proposing a small 1.7-km, (1.0-mi) portion of the Bill Williams River immediately adjacent to the Colorado River. Both of these segments are known to be occupied by flycatchers at the time of listing, and contain the physical or biological features essential to the conservation of the species which may require special management considerations or protection, as described above.

These segments of the Colorado River and Bill Williams River were identified as having substantial recovery value in the Recovery Plan (Service 2002, p. 90). These river segments are anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

We will consider excluding portions of the Colorado and Bill Williams Rivers in this segment that occur within the planning area of the LCR MSCP and those portions of the Colorado River that occur on Fort Mohave and Chemehuevi Tribal lands as a result of their Management Plans under section 4(b)(2) of the Act (see Exclusions).

Parker Dam to Southerly International Border Management Unit, AZ and CA

The Recovery Plan describes a goal of 150 flycatcher territories in the Parker Dam to Southerly International Border Management Unit (Service 2002, p. 84).

We identified a large flycatcher nesting population along the Colorado River within La Paz and Yuma Counties, Arizona, and San Bernardino, Riverside, and Imperial Counties, California. Flycatcher territories were first detected nesting on this portion of the Colorado River in 1995 (Sogge and Durst 2008). Through 2007, a total of 16 breeding sites occurred within this Management Unit (Durst 2008, p.12), with a high of 15 territories detected in 1996 (Durst and Sogge 2008). In 2007, it was estimated that only one territory occurred within these two river segments (Durst and Sogge 2008).

We are proposing as critical habitat two Colorado River segments: (1) A 65.0-km (40.4-mi) river segment from Parker Dam downstream past Highway 62, (2) a more southern 148.0-km (92.0-mi) segment from near Highway 10 downstream to near the Town of Yuma. The Colorado River is known to be occupied by flycatchers at the time of listing, and contains the physical or biological features essential to flycatcher conservation which may require special management considerations or protection, as described above.

These segments of the Colorado River were identified as having substantial recovery value in the Recovery Plan (Service 2002, p. 90). These river segments are anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

We will consider excluding portions of the Colorado River that occur within the planning area of the LCR MSCP and that occur on Colorado Indian and Quechan (Fort Yuma) Tribal lands as result of their Management Plans under section 4(b)(2) of the Act (see Exclusions).

Upper Colorado Recovery Unit

The Upper Colorado Recovery Unit is comprised of a broad geographic area covering much of the Four Corners area of southeastern Utah and southwestern Colorado, with smaller portions of northwestern Arizona and northeastern New Mexico. Ecologically, this area may be an intergradation area between the southwestern willow flycatcher subspecies and the Great Basin willow flycatcher subspecies (Service 2002, p. 64). Flycatchers are only known to breed at five breeding sites across this broad Recovery Unit, representing an estimated high of 10 territories occurring in 2007 (Durst *et al.* 2008, p. 13). However, this low number of breeding sites and territories (less than 1 percent of the rangewide total) is probably a function of relatively low survey effort rather than an accurate reflection of the bird's actual numbers and distribution (Service 2002, p. 64). Much willow riparian habitat occurs along drainages within this Recovery Unit and remains to be surveyed (Service 2002, p. 64). The Upper Colorado Recovery Unit contains the Powell and San Juan Management Units. The stream segments proposed as critical habitat are described below in their appropriate Management Units.

Based upon our occupancy criteria (see above), within the Upper Colorado Recovery Unit, no streams were known to be occupied at the time of listing (1991–1994) (Sogge and Durst 2008). Below we identify that each listed item described in our *Special Management Considerations or Protection* section (see above) applies to the streams described in each Management Unit within the Upper Colorado Recovery Unit.

San Juan Management Unit, CO, NM, AZ, and UT

The Recovery Plan describes a goal of 25 flycatcher territories in the San Juan Management Unit (Service 2002, p. 84). Flycatcher territories have been detected in small numbers over a broad area of the southwestern Colorado and northwestern New Mexico within the Management Unit.

There were no large flycatcher nesting populations in the San Juan Management Unit to help guide us toward a critical habitat area, and no areas were known to be occupied at the time of listing. Therefore, to identify the areas that would contribute to meeting recovery goals for this Management Unit, we used information based on known flycatcher territories and breeding sites, guidance from the Recovery Plan, and knowledge about stream habitat to determine critical habitat segments that may be essential for flycatcher conservation (see below). In 2007, 10 territories were estimated to occur (within a total of 3 breeding sites) along the Los Pinos River in southwestern Colorado in La Plata County, Colorado, and along the San Juan River in San Juan County, New Mexico (Durst *et al.* 2008, p. 13). Through 2007, no known breeding sites have yet to be detected in the Utah portion of this Management Unit (Sogge and Durst 2008).

We are proposing as critical habitat a segment of the Los Pinos River in La Plata County, Colorado (46.0 km, 28.6 mi); a segment of the San Juan River in San Juan County, New Mexico (3.5 km, 2.2 mi); and a segment of the San Juan River in San Juan County, Utah (51.7 km, 32.1 mi). The Los Pinos River segment begins near County Road 501 and occurs through the Town of Bayfield and ends near the Colorado and New Mexico State Line. The San Juan River segment in New Mexico occurs in northwestern New Mexico, just upstream and downstream of Malpais Arroyo near the Town of Shiprock. The San Juan River, Utah, segment occurs from upstream of the State Route 262 Bridge downstream to Chinle Creek. These segments were not known to be occupied at the time of listing, but are essential for flycatcher conservation in order to help meet recovery goals in this Management Unit.

These segments of the San Juan and Los Pinos Rivers were identified as having substantial recovery value in the Recovery Plan (Service 2002, p. 88). These essential river segments are anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the

flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

We will consider our partnership and evaluate the conservation and management of the Los Pinos River in Colorado, where it occurs within the Southern Ute Tribal Land, and the San Juan River where it occurs on the Navajo Nation for exclusion under section 4(b)(2) of the Act (see Exclusions).

Powell Management Unit, UT and AZ

The Recovery Plan describes a goal of 25 flycatcher territories in the Powell Management Unit (Service 2002, p. 84). No flycatcher territories have been detected in this Management Unit (Sogge and Durst 2008).

There were no large flycatcher nesting populations in the Powell Management Unit to help guide us toward a critical habitat area, and no areas were known to be occupied at the time of listing. Therefore, to identify the areas that would contribute to meeting recovery goals for this Management Unit, we used information based on guidance from the Recovery Plan and available information about stream habitats to determine critical habitat segments that may be essential for flycatcher conservation (see below).

We are proposing as critical habitat a segment of the Paria River in Kane County, Utah (19.0 km, 11.8 mi). This Paria River segment occurs from its confluence with Cottonwood Wash and ends at Highway 89. This segment was not known to be occupied by flycatchers at the time of listing. This river segment may be able develop and sustain flycatcher habitat and territories and therefore is essential to flycatcher conservation in order to help meet recovery goals in this Management Unit. As noted earlier in this proposed rule (see Public Comments), we are specifically seeking information about this proposed Paria River segment, as well as information about other flycatcher habitat, management, and detections in the Powell Management Unit.

This segment of the Paria River was identified as having substantial recovery value in the Recovery Plan (Service 2002, p. 88). This essential river segment is anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, this river segment and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

Gila Recovery Unit

The Gila Recovery Unit includes the Gila River watershed, from its headwaters in southwestern New Mexico downstream across the State of Arizona toward the confluence with the Colorado River, in southwest Arizona (Service 2002, p. 65). In 2002, 588 flycatcher territories (51 percent of the estimated rangewide total) were estimated to occur, distributed primarily on the Gila and lower San Pedro Rivers (Sogge *et al.* 2003, pp. 10–11). From the latest rangewide estimate, the number of known territories grew to 659 within this Recovery Unit (50 percent of the estimated rangewide total) (Durst *et al.* 2008, p. 12).

Many breeding sites have small numbers of territories within the Gila Recovery Unit, but along sections of the upper and middle Gila River, lower San Pedro River, lower Tonto Creek, and the Tonto Creek and Salt River confluence within the water conservation space of Roosevelt Lake, abundant breeding sites occur over a relatively broad geographic range that together comprise many flycatcher territories. The Upper Gila, Middle Gila and San Pedro, and Roosevelt Management Units had, following the 2007 rangewide estimate (Durst *et al.* 2008, p. 12), surpassed numerical recovery goals. Within the Gila Recovery Unit, there are concentrations of flycatcher territories in the Cliff-Gila Valley, New Mexico, and at Roosevelt Lake, Arizona, that can be some of the largest across its range.

Flycatcher territories in the Gila Recovery Unit occurred primarily on lands managed by private and Federal land managers and in a variety of habitat types dominated by both native and exotic plants. In 2001, private lands hosted 50 percent of the territories (mostly on the San Pedro River and Gila River), including one of the largest known flycatcher populations, in the Cliff-Gila Valley, New Mexico (Service 2002, p. 65). Almost the remaining 50 percent of the territories were on government-managed lands (Service 2002, p. 65). While in 2001 (Service 2002, p. 65), 58 percent of territories were in habitats dominated by native plants, flycatchers in this Recovery Unit also make extensive use of exotic (77 territories) or exotic-dominated (108 territories) vegetation (primarily tamarisk). Because the current distribution of breeding sites in this Recovery Unit is similar, we believe these statistics are mostly accurate today. This Recovery Unit contains the Verde, Hassayampa and Agua Fria, Roosevelt, San Francisco, Upper Gila, Middle Gila and San Pedro, and Santa Cruz Management Units.

Based upon our occupancy criteria (see above), within the Gila Recovery Unit, the Gila (1993), San Pedro (1993), San Francisco (1993), Verde (1993), and Salt (1993) Rivers, and Tonto Creek (1993) are streams that were known to be occupied at the time of listing (1991–1994) (Sogge and Durst 2008) where we are proposing critical habitat segments. At the time of listing, only specific sites on the Gila River within the Middle Gila and San Pedro and Upper Gila Management Units were known to be specifically occupied by nesting birds, but based upon our criteria and the wide-ranging nature of this neotropical migrant, the Gila River within the Hassayampa and Agua Fria Management Unit is also considered occupied at the time of listing. Below we identify that each listed item described in our *Special Management Considerations or Protection* section (see above) applies to the streams described in each Management Unit within the Gila Recovery Unit.

Verde Management Unit, AZ

The Recovery Plan describes a goal of 50 flycatcher territories in the Verde Management Unit (Service 2002, p. 85).

We identified a large flycatcher nesting population along the Verde River within Yavapai, Gila, and Maricopa Counties, Arizona. Flycatchers were first detected nesting on the Verde River in 1993; a total of six breeding sites are known and are spread out from the Verde Valley near the towns of Clarkdale and Camp Verde and downstream near Horseshoe Lake (Sogge and Durst 2008). A high of 23 territories were detected within this Management Unit in 2005 (Sogge and Durst 2008).

We are proposing as critical habitat two segments of the Verde River. We are proposing an upper 74.0-km (46.0-mi) segment of the Verde River that occurs in the Verde Valley in Yavapai County from above Tuzigoot National Monument near the Town of Clarkdale, downstream through the towns of Cottonwood and Camp Verde to Beasley Flat. We are also proposing a 62.7-km (38.9-mi) segment in the middle Verde River that extends from the East Verde River confluence down through

Horseshoe Lake and a short distance along the river below Horseshoe Dam to the USGS gauging station and cable crossing. These segments of the Verde River are known to be occupied by flycatchers at the time of listing, and contain the physical or biological features essential to the conservation of the species which may require special management considerations or protection, as described above.

The Verde River was the lone river identified within this Management Unit as having substantial recovery value in the Recovery Plan (Service 2002, p. 91). These river segments are anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

We will consider excluding the water conservation space of the Verde River within Horseshoe Lake due to the conservation included in the Horseshoe and Bartlett Dam HCP and those portions of the Verde River that occur on Yavapai Apache Tribal land as result of their Management Plan under section 4(b)(2) of the Act (see Exclusions).

Roosevelt Management Unit, AZ

The Recovery Plan describes a goal of 50 flycatcher territories in the Roosevelt Management Unit (Service 2002, p. 85).

We identified a large flycatcher nesting population surrounding the Roosevelt Lake area in Gila and Pinal Counties, Arizona. Flycatchers were first detected nesting on Tonto Creek and the Salt River within the conservation space of Roosevelt Lake in 1993 (Sogge and Durst 2008).

Because of the anticipated water level fluctuations at Roosevelt Lake, which inundates many flycatcher territories and limits the number of territories that can be sustained over time, this is the only Management Unit within the flycatcher's range where the recovery goal was smaller than the known number of territories at the time of the Recovery Plan completion. As a result, river segments and the lakebed together provide habitat that allow flycatcher territories to persist over time due to dynamic river and lake flooding events. For example, a high of 196 flycatcher territories occurred in 2004 (mostly within the conservation space of Roosevelt Lake), but in the following years after the lake level was raised, the known number of territories declined to 75 in 2007 (Sogge and Durst 2008). Since the raising of the water level in Roosevelt Lake, flycatchers have expanded their known distribution throughout adjacent areas along Tonto Creek, Salt River, and Pinal Creek (Sogge and Durst 2008).

We are proposing as critical habitat segments of Tonto Creek, the Salt River, the confluence of these two streams that comprise Roosevelt Lake, and Pinal Creek. The proposed lower 49.1-km (30.5-mi) segment of Tonto Creek extends from near the Town of Gisela downstream to the western high-water-mark side of the conservation space of Roosevelt Lake. On the eastern side of Roosevelt Lake, we are proposing a 39.0-km (24.2-mi) portion of the Salt River from the confluence with Cherry Creek to the high water mark of the conservation space of Roosevelt Lake. Joining these Tonto Creek and Salt River segments, we are proposing as critical habitat the 29.1-km (18.1-mi) lakebed at Roosevelt Lake (comprised of the Tonto Creek and Salt River confluence). These three areas were known to be occupied by flycatchers at the time of listing, and contain the physical or biological features essential to the conservation of the species which may require special management considerations or protection, as described above.

Additionally, we are proposing a separate 5.7-km (3.5-mi) essential segment of Pinal Creek that occurs downstream of the water treatment plant north of the Town of Globe. This segment was not known to be occupied at the time of listing, but it currently supports nesting flycatchers and was determined to be essential for flycatcher conservation in order to help meet recovery goals in this Management Unit.

The segments of Tonto Creek, the Salt River, and their confluence that makes up Roosevelt Lake were identified as having substantial recovery value in the Recovery Plan (Service 2002, p. 91). Together, these segments, along with the essential Pinal Creek segment, are anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

The conservation space of Roosevelt Lake, due to the Roosevelt HCP, will be considered for exclusion under section 4(b)(2) of the Act (see Exclusions).

Middle Gila and San Pedro Management Unit, AZ

The Recovery Plan describes a goal of 150 flycatcher territories in the Middle Gila and San Pedro Management Unit (Service 2002, p. 85).

We identified a large flycatcher nesting population surrounding the Gila and San Pedro River confluence area within Cochise, Pima, Pinal, and Gila Counties, Arizona. Flycatchers were first detected nesting in this Management Unit in 1993, with abundant breeding sites occurring throughout this Management Unit. A high of 195 territories was detected in 2005 (Sogge and Durst 2008).

We are proposing as critical habitat the lowest 127.2-km (79.0-mi) segment of the middle and lower San Pedro River across portions of Cochise, Pima, and Pinal Counties, Arizona, and a 80.6-km (50.1-mi) Gila River segment that extends from near Dripping Springs Wash downstream past the San Pedro and Gila River confluence to the Ashehurst Hayden Diversion Dam in Gila and Pinal Counties, Arizona. The Gila and San Pedro Rivers are known to be occupied by flycatchers at the time of listing, and contain the physical or biological features essential to the conservation of the species which may require special management considerations or protection, as described above.

The San Pedro and Gila Rivers were the only two rivers identified within this Management Unit as having substantial recovery value in the Recovery Plan (Service 2002, p. 91). These river segments are anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

Upper Gila Management Unit, AZ and NM

The Recovery Plan describes a goal of 325 flycatcher territories in the Upper Gila Management Unit (Service 2002, p. 85). Flycatcher territories are known throughout the Gila River in New Mexico and Arizona within this Management Unit.

Based upon our methodology, we identified a large flycatcher nesting population across a broad area of the upper Gila River occurring within Gila, Pinal, Graham, and Greenlee Counties, Arizona, and Grant and Hildalgo Counties, New Mexico. Flycatchers were first detected nesting in this Management Unit in 1993 (Sogge and Durst 2008). Flycatcher territories at 22 breeding sites occur throughout three separate river segments of the Gila River, with a high of 329 territories estimated following the 2007 breeding season (Durst *et al.* 2008, p. 12). A single breeding site along the most upstream segment in the Cliff-Gila Valley in Grant County, New Mexico, has held over 200 flycatcher territories in a single season (Sogge and Durst 2008).

We are proposing as proposed critical habitat three segments of the Gila River that occur between the Turkey Creek confluence on the Gila National Forest, New Mexico, and Coolidge Dam (creating San Carlos Lake) on San Carlos Apache Tribal land. The most upstream 49.3-km (30.6-mi) Gila River segment extends from Turkey Creek through the Cliff-Gila Valley to the upstream entrance of the middle Gila Box Canyon on the Gila National Forest. The second 62.2-km (38.7-mi) Gila River segment occurs from the downstream end of the Middle Gila Box Canyon near the Town of Red Rock and extends downstream across the Arizona State line through the Town of Duncan, Arizona (this segment spans Grant and Hidalgo Counties, New Mexico, and Greenlee County, Arizona). The third 134.5-km (83.5-mi) Gila River segment occurs from the upper end of Earven Flat, near the Bonita Creek confluence, above the Town of Safford, Arizona, and extends through the Town of Safford and San Carlos Apache Land until it ends at Coolidge Dam. The Gila River is known to be occupied by flycatchers at the time of listing, and contains the physical or biological features essential to the conservation of the species which may require special management considerations or protection, as described above.

The Gila River segments were identified in the Recovery Plan as areas with substantial recovery value (Service 2002, p. 91). These three Gila River segments are anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

We will consider the Gila River (including the lakebed of San Carlos Lake), where it occurs within San Carlos Apache Tribal land in Arizona, and the U–Bar Ranch in the Cliff-Gila Valley, New Mexico, for exclusion due to Management Plans under section 4(b)(2) of the Act (see Exclusions).

Santa Cruz Management Unit, AZ

The Recovery Plan describes a goal of 25 flycatcher territories in the Santa Cruz Management Unit (Service 2002, p. 84).

There were no large flycatcher nesting populations in the Santa Cruz Management Unit to help guide us toward a critical habitat area, and no areas were known to be occupied at the time of listing. Therefore, to identify the areas that would contribute to meeting recovery goals for this Management Unit, we used information based on known flycatcher territories and breeding sites, guidance from the Recovery Plan, and knowledge about stream habitat to determine critical habitat segments that may be essential for flycatcher conservation (see below). A single flycatcher territory was detected on Cienega Creek in 2001 (Sogge and Durst 2008). No flycatcher territories have been detected on the Santa Cruz River.

We are proposing as critical habitat a 7.0-km (4.4-mi) segment of Cienega Creek (including part of Las Cienegas National Conservation Area) in Pima County, Arizona, and a 26.7-km (16.6-mi) segment of the Santa Cruz River (Nogales Waste Water Treatment Plant to Chavez Siding Road) in Santa Cruz County, Arizona. These segments were not known to be occupied at the time of listing; however, they are essential to flycatcher conservation because they may be able to develop and sustain flycatcher habitat and territories to help meet recovery goals in this Management Unit. As noted earlier in this proposed rule (see Public Comments), we are specifically seeking information about these proposed Santa Cruz and Cienega Creek segments, as well as information about other flycatcher habitat, management, and detections in the Santa Cruz Management Unit.

The Santa Cruz River and Cienega Creek segments were identified in the Recovery Plan as areas with substantial recovery value (Service 2002, p. 91). These two segments are anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

San Francisco Management Unit, AZ and NM

The Recovery Plan describes a goal of 25 flycatcher territories in the San Francisco Management Unit (Service 2002, p. 84). Small numbers of flycatcher territories are known to occur along the San Francisco River in this Management Unit in both Arizona and New Mexico.

There were no known large flycatcher nesting populations in the San Francisco Management Unit to help guide us toward a critical habitat area. Therefore, to identify the areas that would contribute to meeting recovery goals for this Management Unit, we used information based on known flycatcher territories and breeding sites, guidance from the Recovery Plan, and knowledge about stream habitat to determine critical habitat segments for flycatcher conservation (see below). Four flycatcher breeding sites have been detected on these river segments, with the first territories found in 1993 (Sogge and Durst 2008). The number of territories detected has fluctuated annually between one and seven from 1993 to 2007 (Sogge and Durst 2008).

We are proposing as critical habitat three segments of the San Francisco River in Arizona and New Mexico. We are proposing a 42.6-km (26.5-mi) segment on the San Francisco River that extends from near the Town of Alpine, Arizona, to Centerfire Creek in Catron County, New Mexico; a second 36.4-km (22.6-mi) segment that extends from the Deep Creek confluence to San Francisco Hot Springs, in Catron County, New Mexico; and a third 36.9-km (22.9-mi) segment from the Arizona and New Mexico border to the western boundary of the Apache-Sitgreaves National Forest, in Apache County, Arizona. The San Francisco River is known to be occupied by flycatchers at the time of listing, and contains the physical or biological features essential for the conservation of the species which may require special management considerations or protection, as described above.

These three San Francisco River segments were identified in the Recovery Plan as having substantial recovery value (Service 2002, pp. 90–91). These three San Francisco River

segments are anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

Hassayampa and Agua Fria Management Unit, AZ

The Recovery Plan describes a goal of 25 flycatcher territories in the Hassayampa and Agua Fria Management Unit (Service 2002, p. 84).

There were no large flycatcher nesting populations in the Hassayampa and Agua Fria Management Unit to help guide us toward a critical habitat area. Therefore, to identify the areas that would contribute to meeting recovery goals for this Management Unit, we used information based on known flycatcher territories and breeding sites, guidance from the Recovery Plan, and knowledge about stream habitat to determine critical habitat segments that may be essential for flycatcher conservation (see below). A single breeding site has been detected on the Gila River and Hassayampa River in this Management Unit, with the first territories found in 1997 (Sogge and Durst 2008). The number of territories detected has ranged from one and three from 1997 to 2007 (Sogge and Durst 2008).

We are proposing as critical habitat an 8.7-km (5.4-mi) segment of the Gila River, downstream from its confluence with the Salt River from 107th Avenue to Bullard Avenue in Maricopa County, Arizona. The Gila River is known to be occupied by flycatchers at the time of listing, and contains the physical or biological features essential for the conservation of the species which may require special management considerations or protection, as described above.

We are also proposing as critical habitat a 7.4-km (4.6 mi) segment of the Hassayampa River that occurs south of the Town of Wickenburg and Highway 60 Bridge in Maricopa County, Arizona. This segment was not known to be occupied at the time of listing; however, it is essential for flycatcher conservation because it will help meet recovery goals in this Management Unit.

These segments of the Gila River and Hassayampa Rivers were both identified in the Recovery Plan as having substantial recovery value (Service 2002, p. 91). These two river segments are anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

The Gila River segment within the Tres Rios Safe Harbor Agreement Area will be considered for exclusion under section 4(b)(2) of the Act (see Exclusions).

Rio Grande Recovery Unit

This Recovery Unit primarily includes the Rio Grande watershed from its headwaters in southern Colorado downstream to the Pecos River confluence in Texas. Other areas and drainages that occur within this Recovery Unit include the Rio Grande in Texas and Pecos watershed in New Mexico and Texas. No recovery goals were established for Management Units in those areas, so no critical habitat is being proposed in those areas.

There have been large increases in the number of estimated and known territories within the Rio Grande Recovery Unit, primarily due to increasing population numbers within the Middle Rio Grande Management Unit. In 2002, a total of 197 territories (17 percent of the rangewide total) were estimated to occur within the Recovery Unit, primarily occurring along the mainstem Rio Grande (Sogge *et al.* 2003). At the end of the 2007 breeding season, the Recovery Unit had increased to an estimated 230 territories (17 percent of the rangewide total), primarily due to territory increases in the Middle Rio Grande (Durst *et al.* 2008, p.13). In the subsequent years, the number of known territories has continued to increase within the Middle Rio Grande Management Unit with approximately 350 territories detected in 2009, with most territories detected within the San Marcial reach near Elephant Butte Reservoir (Moore and Ahlers 2010, p. 1).

Both the San Luis Valley Management Unit in southern Colorado and Middle Rio Grande Management Unit in New Mexico have surpassed their numerical territory goals. A total of 50 territories are needed in the San Luis Valley Management Unit and 56 territories were estimated to occur in 2007 (Durst *et al.* 2008, p. 13). In the Middle Rio Grande Management Unit, the numerical goal of 100 territories has been surpassed with about 350 territories detected in 2009 (Moore and Ahlers 2010, p.1).

Most sites are in habitats dominated by native plants, while habitat dominated by exotic plants include primarily tamarisk or Russian olive (Service 2002, p. 65). In 2001, 43 of the 56 nests (77 percent) that were described in the middle and lower Rio Grande in New Mexico, used tamarisk as the nest substrate (Service 2002, p. 65). In 2001, government-managed lands accounted for 63 percent of the territories in this unit; Tribal lands supported an additional 23 percent (Service 2002). While the number of territories has increased, the known distribution of sites is similar. As a result, we expect a larger proportion of territories to occur on government-managed lands in the Middle Rio Grande Management Unit.

This Recovery Unit contains the San Luis Valley, Upper Rio Grande, Middle Rio Grande, and Lower Rio Grande Management Units.

Based upon our occupancy criteria (see above), within the Rio Grande Recovery Unit, the Rio Grande (1993), Rio Grande del Rancho (1993), and Coyote Creek (1993) are streams that were known to be occupied at the time of listing (1991–1994) (Sogge and Durst 2008) where we are proposing critical habitat segments. These streams have the physical or biological features of critical habitat that may require special management considerations or protection.

At the time of listing, only specific sites on the Rio Grande within the Upper, Middle, and Lower Rio Grande Management Units were known to be specifically occupied by nesting birds, but based upon our criteria and the wide-ranging nature of this neotropical migrant, the Rio Grande within the San Luis Valley Management Unit is also considered occupied at the time of listing. Below we identify that each listed item described in our *Special Management Considerations or Protection* section (see above) applies to the streams described in each Management Unit within the Rio Grande Recovery Unit.

San Luis Valley Management Unit, CO

The Recovery Plan describes a goal of 50 flycatcher territories in the San Luis Valley Management Unit (Service 2002, p. 85).

We identified a large flycatcher nesting population in the San Luis Valley in Costilla, Conejos, Alamosa, and Rio Grande Counties, Colorado. Flycatchers were first detected nesting

in this Management Unit in 1997, and a high of 71 territories were detected along the Rio Grande and Conejos River in 2003 (Sogge and Durst 2008).

We are proposing as critical habitat a segment of the Rio Grande and a segment of the Conejos River within the San Luis Valley. The 159.4-km (99.0-mi) upper Rio Grande segment extends from the Hanna Lane County Road 17 Bridge downstream through the Alamosa National Wildlife Refuge to the County Road G Bridge. The Rio Grande is known to be occupied by flycatchers at the time of listing, and contains the physical or biological features essential for the conservation of the species which may require special management considerations or protection, as described above.

We are also proposing as critical habitat a 69.8-km (43.4-mi) segment of the Conejos River from near where the D5 Road crosses the Conejos River (just downstream from Fox Creek) and extends down to its confluence with the Rio Grande. This segment was not known to be occupied at the time of listing; however, it is essential for flycatcher conservation because it will help meet recovery goals in this Management Unit.

The Rio Grande and the Conejos River segments were identified within this Management Unit as having substantial recovery value in the Recovery Plan (Service 2002, p. 92). These two river segments are anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

Both the Rio Grande and Conejos River occur within the conservation planning area established by the San Luis Valley Partnership and within their developing HCP; as a result, we will consider the Conejos River and Rio Grande within this conservation and planning area for exclusion under section 4(b)(2) of the Act (see Exclusions).

Upper Rio Grande Management Unit, NM

The Recovery Plan describes a goal of 75 flycatcher territories in the Upper Rio Grande Management Unit (Service 2002, p. 85).

We identified a large flycatcher nesting population on the upper Rio Grande in Taos, Santa Fe, and Mora Counties, New Mexico. Flycatchers were first detected nesting in this Management Unit in 1993, and a high of 39 territories were detected in 2000 along the Rio Grande, Rio Grande Del Rancho, and Coyote Creek (Sogge and Durst 2008). Flycatcher territories were recently detected on the Rio Fernando, which occurs within our large population area.

We are proposing as critical habitat a 75.1-km (46.7-mi) segment of the Rio Grande that extends from the Taos Junction Bridge (State Route 520) downstream to the Otowi Bridge (State Route 502). We are proposing as critical habitat an 11.9-km (7.4-mi) segment of the Rio Grande del Rancho from Sarco Canyon downstream to the Arroyo Miranda confluence. We are also proposing as critical habitat a 10.7-km (6.6-mi) segment of Coyote Creek from above Coyote Creek State Park downstream to the second bridge on State Route 518, upstream from Los Cocas. These segments are known to be occupied by flycatchers at the time of listing, and contain the physical or biological features essential for the conservation of the species which may require special management considerations or protection, as described above.

We are also proposing as critical habitat a 0.4-km (0.2-mi) segment of the Rio Fernando that is about 3.2 km (2.0 mi) upstream from the Rio Lucero confluence. This segment was not known to be occupied at the time of listing; however, it is essential for flycatcher conservation because it will help meet recovery goals in this Management Unit.

Rio Grande, Rio Grande del Rancho, and Coyote Creek were identified within this Management Unit as having substantial recovery value in the Recovery Plan (Service 2002, p. 92). These three segments, along with the essential Rio Fernando segment, are anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

Due to the our partnership with the Santa Clara, San Juan, and San Ildefonso Pueblos and their conservation and planning efforts on the Rio Grande, we will consider these Pueblos for exclusion under section 4(b)(2) of the Act (see Exclusions).

Middle Rio Grande Management Unit, NM

The Recovery Plan describes a goal of 100 flycatcher territories in the Middle Rio Grande Management Unit (Service 2002, p. 85).

We identified a large flycatcher nesting population on the middle Rio Grande in Valencia, Soccorro, and Sierra Counties, New Mexico. Flycatcher territories were first detected in this Management Unit in 1993. In 2007, a high of 230 territories were detected (Sogge and Durst 2008), and since then the population has grown to about 350 territories (Moore and Ahlers 2010, p. 1).

We are proposing as critical habitat a 211.8-km (131.6 mi) segment of the Rio Grande that extends from below the Bernalillo and Valencia County line downstream past Bosque del Apache and Sevilleta National Wildlife Refuges and through Elephant Butte Reservoir in Valencia, Soccorro, and Sierra Counties, New Mexico. The Rio Grande is known to be occupied by flycatchers at the time of listing, and contains the physical or biological features essential for the conservation of the species which may require special management considerations or protection, as described above.

This Rio Grande segment was identified as having substantial recovery value in the Recovery Plan (Service 2002, p. 92). This segment of the Rio Grande is anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, this river segment and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals. The population of flycatchers in this segment is currently the largest population of flycatchers in their range, with a total of 221 pairs and 291 nests documented within the Elephant Butte Reservoir conservation pool, according to a 2009 study (Moore and Ahlers 2010, p. 43).

Based on an initial evaluation of potential impacts on water operations of the Elephant Butte Dam and Reservoir, we will consider excluding the portion of this segment that occurs within the reservoir pool of Elephant Butte Reservoir from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act (see Exclusions).

Lower Rio Grande Management Unit, NM

The Recovery Plan describes a goal of 25 flycatcher territories in the Lower Rio Grande Management Unit (Service 2002, p. 84).

There were no large flycatcher nesting populations in the lower Rio Grande Management Unit to help guide us toward a critical habitat area. Therefore, to identify the areas that would contribute to meeting recovery goals for this Management Unit, we used information based on known flycatcher territories and breeding sites, guidance from the Recovery Plan, and knowledge about stream habitat to determine critical habitat segments that may be essential for flycatcher conservation (see below). Three breeding sites have been detected along the Rio Grande, with the first territories found in 1993 (Sogge and Durst 2008). The number of flycatcher territories detected annually has fluctuated between zero and eight from 1993 to 2007 (Sogge and Durst 2008).

We are proposing as critical habitat a 74.2-km (46.1-mi) segment of the Rio Grande in Sierra and Dona Ana Counties, New Mexico, from Caballo Dam to Leasburg Dam. The Rio Grande is known to be occupied by flycatchers at the time of listing, and contains the physical or biological features essential for the conservation of the species which may require special management considerations or protection, as described above.

This Rio Grande segment was identified as having substantial recovery value in the Recovery Plan (Service 2002, p. 92). This Rio Grande segment is anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, this river segment and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not Federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, or are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for the flycatcher. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities

involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the flycatcher. These activities include, but are not limited to:

(1) Actions that would remove, thin, or destroy riparian flycatcher habitat, without implementation of an effective riparian restoration plan resulting in the development of riparian vegetation of equal or better flycatcher quality in abundance and extent. Such activities could include, but are not limited to removing, thinning, or destroying riparian vegetation by mechanical, chemical (herbicides or burning), or biological (grazing, biocontrol agents) means. These activities could reduce the amount or extent of riparian habitat needed by flycatchers for sheltering, feeding, breeding, and migrating.

(2) Actions that would appreciably diminish habitat value or quality through direct or indirect effects. Such activities could include, but are not limited to, degradation of watershed and soil characteristics; diminishing river surface and subsurface flow; negatively altering river flow regimes; introduction of exotic plants, animals, or insects; or habitat fragmentation from recreation activities. These activities could reduce or fragment the amount or extent of riparian habitat needed by flycatchers for sheltering, feeding, breeding, and migrating.

(3) Actions that would negatively alter the surface or subsurface river flow. Such activities could include, but are not limited to, water diversion or impoundment, groundwater pumping, dam construction and operation, or any other activity which negatively changes the frequency, magnitude, duration, timing, or abundance of surface flow (and also subsurface groundwater elevation). These activities could permanently eliminate available riparian habitat and food availability or degrade the general suitability, quality, structure, abundance, longevity, and vigor of riparian vegetation and microhabitat components necessary for nesting, migrating, food, cover, and shelter.

(4) Actions that permanently destroy or alter flycatcher habitat. Such activities could include, but are not limited to, discharge of fill material, draining, ditching, tiling, pond construction, and stream channelization (due to roads, construction of bridges, impoundments, discharge pipes, stormwater detention basins, dikes, levees, and others). These activities could permanently eliminate available riparian habitat and food availability or degrade the general suitability, quality, structure, abundance, longevity, and vigor of riparian vegetation and microhabitat components necessary for nesting, migrating, food, cover, and shelter.

(5) Actions that result in alteration of flycatcher habitat from improper livestock or ungulate management. Such activities could include, but are not limited to, unrestricted ungulate access and use of riparian vegetation; excessive ungulate use of riparian vegetation during the non-growing season (*i.e.,* leaf drop to bud break); overuse of riparian habitat and upland vegetation due to insufficient herbaceous vegetation available to ungulates; and improper herding, water development, or other livestock management actions. These activities can reduce the volume and composition of riparian vegetation, prevent regeneration of riparian plant species, physically disturb nests, alter floodplain dynamics, facilitate brood parasitism by brown-headed cowbirds, alter watershed and soil characteristics, alter stream morphology, and facilitate the growth of flammable exotic plant species.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete an INRMP. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyzed INRMPs developed by military installations located within the range of the proposed critical habitat designation for the flycatcher to determine if they are exempt under section 4(a)(3) of the Act. The following areas in southern California (Table 3) are Department of Defense lands with completed, Service-approved INRMPs within the proposed critical habitat designation.

TABLE 3—AREAS EXEMPTED FROM CRITICAL HABITAT UNDER SECTION 4(B)(3) OF THE ACT BY CRITICAL HABITAT UNIT

Management unit	Specific area	Areas meeting the definition of critical habitat in km (mi)	Areas exempted in km (mi)
Santa Ynez	Vandenberg AFB INRMP	14.7 km (9.1 mi)	14.7 km (9.1 mi).
San Diego	Camp Pendleton INRMP	76.1 km (47.3 mi)	76.1 km (47.3 mi).
San Diego	Camp Pendleton INRMP/Fallbrook Naval Base INRMP shared boundary.	7.5 km (4.7 mi)	7.5 km (4.7 mi).
San Diego	Fallbrook Naval Base INRMP	3.2 km (2.0 mi)	3.2 km (2.0 mi).

Approved INRMPs

Vandenberg Air Force Base (VAFB)—Santa Ynez Management Unit, CA

Vandenberg Air Force Base has an approved INRMP. The U.S. Air Force is committed to working closely with the Service and California Department of Fish and Game to continually refine the existing INRMP as part of the Sikes Act's INRMP review process. Based on our review of the INRMP for this military installation, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the portion of the Santa Ynez River within this installation, identified as meeting the definition of critical habitat, is subject to the INRMP, and that conservation efforts identified in this INRMP will provide a benefit to the flycatcher. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3)(B) of the Act. We are not including approximately 14.7 km (9.1 mi) of riparian habitat on VAFB in this proposed revised critical habitat designation because of this exemption.

VAFB completed an INRMP in 2011, which includes benefits for flycatchers through: (1) Avoidance of flycatchers and their habitat, whenever possible, in project planning; (2) scheduling of activities that may affect flycatchers outside of the peak breeding period; (3) measures for protection of riparian zones (see Wetlands and Riparian Habitats Management Plan Section in INRMP); (4) removal of exotic plant species; and (5) implementation of brown-headed cowbird management. Further, VAFB's environmental staff reviews projects and enforces existing regulations and orders that, through their implementation, avoid and minimize impacts to natural resources, including flycatchers and their habitat. In addition, VAFB's INRMP provides protection to riparian habitats for flycatchers by excluding cattle from wetlands and riparian areas through the installation and maintenance of fencing. VAFB's INRMP specifies periodic monitoring of the distribution and abundance of flycatcher populations on the base.

Habitat features essential to the conservation of the flycatcher exist on VAFB; however, designating critical habitat on this military installation may impact its mission of launching and tracking of satellites and testing and evaluating missile systems, and therefore affect the nation's military readiness. Activities occurring on VAFB are currently being conducted in a manner that minimizes impacts to flycatchers. This military installation has an approved INRMP that provides a benefit to the flycatcher, and VAFB has committed to work closely with the Service and the State wildlife agency to continually refine their existing INRMP as part of the Sikes Act's INRMP review process.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the 2011 INRMP for VAFB provide a benefit to the flycatcher and its habitat. Therefore, lands subject to the INRMP for VAFB, which includes the lands leased from the Department of Defense by other parties, are exempt from critical habitat designation under section 4(a)(3) of the Act, and we are not including approximately 14.7 km (9.1 mi) of the Santa Ynez River in this proposed revised critical habitat designation because of this exemption.

Marine Corps Base Camp Pendleton (MCB Camp Pendleton)—San Diego Management Unit, CA

The primary mission of Marine Corps Base Camp Pendleton (MCB Camp Pendleton) is military training. It is the Marine Corps' premier amphibious training installation and its only west coast amphibious assault training center. The installation has been conducting air, sea, and ground assault training since World War II. MCB Camp Pendleton occupies over 50,586 ha (125,000 ac) of coastal southern California in the northwest corner of San Diego County. Aside from nearly 4,047 ha (10,000 ac) that is developed, most of the installation is largely undeveloped land that is used for training. MCB Camp Pendleton is situated between two major metropolitan areas: Los Angeles, 132 km (82 mi) to the north; and San Diego, 61 km (38 mi) to the south. Nearby urban areas include the City of Oceanside to the south, the unincorporated community of Fallbrook to the east, and the City of San Clemente to the northwest. Aside from a portion of the MCB Camp Pendleton's border that is shared with the San Mateo Canyon Wilderness Area on the Cleveland National Forest and the Naval Weapons Station Seal Beach—Detachment Fallbrook (Fallbrook Naval Weapons Station), surrounding land use is urban development, rural residential development, and agricultural farming and ranching. In addition to military training and associated activities and infrastructure to support training, portions of MCB Camp Pendleton are leased to private and public entities and agencies. The largest single leaseholder on the installation is California State Parks, which includes a 50-year real estate lease granted on September 1, 1971, for 809 ha (2,000 ac) that encompasses San Onofre State Beach. Requirements to the lessees are to manage natural resources on leased lands in support of objectives and consistent with the philosophies of MCB Camp Pendleton's INRMP (USMC 2007, pp. 2–29).

The MCB Camp Pendleton INRMP was prepared to assist installation staff and users in their efforts to rehabilitate and conserve natural resources while maintaining consistency with the use of MCB Camp Pendleton to train Marines, and sets the agenda for managing natural resources on MCB Camp Pendleton (USMC 2007, p. ES–1). The INRMP also provides ecosystem-based management to preserve, improve, and enhance ecosystem integrity on the installation (USMC 2007, pp. 1–13). MCB Camp Pendleton completed its INRMP in 2001, followed by a revised and updated version in 2007 (USMC 2007), to address conservation and management recommendations within the scope of the installation's military mission, including conservation measures for flycatchers (USMC 2007, Appendix F, Section F.1, pp. F1–F5). Additionally, Marine Corps Air Station Camp Pendleton (MCAS Camp Pendleton) is fully encompassed within MCB Camp Pendleton and recognizes itself as a separate installation with its own INRMP that also provides a benefit to the flycatcher and its habitat. MCAS Camp Pendleton and its INRMP is assumed part of this discussion within the remainder of this exemption discussion for flycatcher due to its overlapping and close association with MCB Camp Pendleton and its INRMP, and both reference and inclusion of conservation described in MCB Camp Pendleton's riparian biological opinion (1–6–95–F–02; see USMC 2006, pp. 2–4 and discussion below).

The MCB Camp Pendleton INRMP incorporates measures outlined in a riparian biological opinion (Biological Opinion for Programmatic Activities and Conservation Plans in Riparian, Estuarine, and Beach Ecosystems on Marine Corps Base, Camp Pendleton (also known as ''Riparian BO''; (1–6–95–F–02)), which includes addressing the installation's Riparian Ecosystem Conservation Plan (USMC 2007, Appendix C). The Riparian Ecosystem Conservation Plan was designed to maintain and enhance the biological diversity of the riparian ecosystem on MCB Camp Pendleton, including habitat areas used by flycatchers. The conceptual approach behind this conservation plan is to sustain and

restore riparian ecosystem dynamics so that natural plant and animal communities on MCB Camp Pendleton are sufficiently resilient to coexist with current and future military training activities (Service 1995, Appendix 1, p. 44). Under the reasonable and prudent measures of the Riparian BO, implementation of the Riparian Ecosystem Conservation Plan by the Marine Corps is nondiscretionary (Service 1995, p. 31; USMC 2007, Appendix L; USMC 2006, Appendix E, pp. 63–64). Areas or habitat containing features essential to the conservation of flycatchers addressed by the conservation plan, the Riparian BO, or MCB Camp Pendleton's INRMP include the Santa Margarita River and portions of the following creeks: Cristianitos, San Mateo, San Onofre, Los Flores, Las Pulgas, Fallbrook, Pilgrim, and DeLuz (70 FR 60920; October 19, 2005).

As described in Appendix F of the MCB Camp Pendleton INRMP (USMC 2007, pp. F–58—F–67), the following management practices and conservation measures provide an indirect or direct benefit for the flycatcher:

(1) Annual monitoring of population levels and distributions of the flycatcher;

(2) Incorporating survey data into the GIS species distribution database to update the Environmental Operations Maps and utilize in conservation awareness and education programs;

(3) Exotic vegetation control including *Arundo donax* and *Tamarix* spp. removal and control;

(4) Exotic animal control (annual cowbird control activities);

(5) Programmatic instructions that limit impacts to flycatcher and its habitat; and

(6) Monitoring groundwater levels and basin withdrawals managed to avoid degradation and loss of habitat quality.

These measures are established or ongoing aspects of existing programs, Base directives (such as the Riparian Ecosystem Conservation Plan), or measures that are being implemented as a result of previous consultations. MCB Camp Pendleton implements installation directives to avoid and minimize adverse effects to the flycatcher, such as:

(1) Assuring that aircraft operations shall not be conducted lower than an altitude of 300 ft (91 m) over occupied riparian areas, to the maximum extent practical;

(2) Limiting vehicle operations to existing roads in riparian areas;

(3) Requiring helicopters to operate in excess of 200 ft (61 m) above ground level over riparian areas except during take-off or landing, from March 15 to August 31;

(4) Restricting ground troops movement in riparian areas to existing crossings, trails, and roads; and

(5) Prohibiting bivouacking in riparian areas.

Current environmental regulations and restrictions apply to all endangered and threatened species on the installation (including flycatcher) and are provided to all users of ranges and training areas to guide activities and protect the species and its habitat. First, specific conservation measures are applied to flycatcher and its habitat (as outlined above). Second, MCB Camp Pendleton's environmental security staff reviews projects and enforces existing regulations and orders that, through their implementation, avoid and minimize impacts to natural resources, including the flycatcher and its habitat. Third, MCB Camp Pendleton provides training to personnel on environmental awareness for sensitive resources on the base, including the flycatcher and its habitat. As a result of these regulations and restrictions, activities occurring on MCB Camp Pendleton are currently conducted in a manner that minimizes impacts to flycatcher habitat.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the 2007 INRMP for MCB Camp Pendleton (and MCAS Camp Pendleton INRMP as outlined above) will provide a benefit to the flycatcher and riparian habitat on MCB Camp Pendleton. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 76.1 km (47.3 mi) of habitat on MCB Camp Pendleton and an additional 7.5 km (4.7 mi) area shared with the adjacent Naval Weapons Station Seal Beach—Detachment Fallbrook (Fallbrook Naval Weapons Station) in this proposed revised critical habitat designation because of this exemption.

Naval Weapons Station Seal Beach—Detachment Fallbrook (Fallbrook Naval Weapons Station)—San Diego Management Unit, CA

Fallbrook Naval Weapons is the primary west coast supply point of ordnance for the U.S. Marine Corps and the large deck amphibious assault ships of the Pacific Fleet. Fallbrook Naval Weapons Station also has the only west coast maintenance facility for air-launched missiles for the Pacific Fleet. The installation encompasses approximately 3,582 ha (8,852 ac) and is located within the southern foothills of the Santa Ana Mountains of northern San Diego County, adjacent to the unincorporated community of Fallbrook, California. It is bounded to the north, west, and much of the south by MCB Camp Pendleton, with the Santa Margarita River forming the common border on the north between the two properties. Other than training lands on MCB Camp Pendleton, surrounding land use includes semi-rural agricultural lands that include plant nurseries, avocado and citrus groves, vineyards, and limited urban development.

In the previous final critical habitat designation for flycatcher, we exempted Fallbrook Naval Weapons Station from the designation under section 4(a)(3)(B) of the Act because it was subject to an INRMP prepared under section 101 of the Sikes Act (16 U.S.C. 670a) that we determined to provide a benefit to the flycatcher (70 FR 60927; October 19, 2005). The INRMP was prepared to assist installation staff and users in their efforts to support mission operations and accommodate increased military mission requirements for national security and emergency homeland security, while meeting all environmental compliance responsibilities. The INRMP also provides ecosystem-based management to preserve, protect, and enhance natural resources on the installation, and provides the organizational support and communication links necessary for effective planning, implementation, and administration of the installation's natural resources. The Fallbrook Naval Weapons Station completed its INRMP in 2006 (which was updated from an INRMP developed by the Naval Ordnance Center Pacific Division in 1996) to address conservation and management of its natural resources, including conservation measures for the flycatcher (Navy 2006, Chapter 3, pp. 110–112). Areas or habitat containing features essential to the conservation of flycatchers within the boundaries of Fallbrook Naval Weapons Station occur along portions of Pilgrim Creek and the Santa Margarita River.

The flycatcher primarily receives protection from activities at Fallbrook Naval Weapons Station because no training occurs on the installation. The INRMP's management and conservation measures for the flycatcher consist of avoidance and minimization measures, applied to infrastructure development and maintenance to protect the flycatcher, that are part of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) approval process (Navy 2006, Chapter 3, pp. 110–112). The

flycatcher also receives indirect protection through management and conservation measures for the least Bell's vireo such as: (1) Protection of flycatcher habitat through protection of a subset of least Bell's vireo priority management areas; (2) fencing that protects priority areas from cattle grazing; (3) a Fire Management Plan that provides a higher priority protection for riparian habitat, due to the limited amount of riparian habitat on Fallbrook Naval Weapons Station, such as core areas of least Bell's vireo and flycatcher habitat; (4) consideration of prescribed burns and livestock grazing as tools for the establishment of a buffer area between riparian habitat and shrublands; (5) timing and location protections associated with prescribed burns; (6) assessment and mapping of riparian habitat to determine suitability for least Bell's vireo occupation; and (7) implementation of nonnative vegetation control measures, including removal of *Arundo donax* (giant reed) (Navy 2006, pp. 3–118).

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the 2006 INRMP for Fallbrook Naval Weapons Station provide a benefit to the flycatcher and riparian habitat on the installation. Therefore, lands subject to the INRMP for the Fallbrook Naval Weapons Station are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 3.2 km (2.0 mi) of habitat on Pilgrim Creek and portions of the Santa Margarita River that lie within the boundaries of the Fallbrook Naval Weapons Station in this proposed revised critical habitat designation because of this exemption.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping critical habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide.

In the case of the flycatcher, the benefits of critical habitat include public awareness of flycatcher presence and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection for the flycatcher due to the protection from adverse modification or destruction of critical habitat. In practice, a Federal nexus exists primarily on Federal lands or for projects undertaken by Federal agencies. Since the flycatcher was listed in 1995, we have had some projects on privately owned lands that had a Federal nexus to trigger consultation under section 7 of the Act. On Federal lands, we have been consulting with Federal agencies on their effects to the flycatcher since the subspecies was listed. These consultations have, in some instances, resulted in comprehensive conservation planning for specific areas across its range (*i.e.,* Sprague Ranch in Kern Management Unit). These plans can provide sufficient flycatcher habitat protection for recovery of the species.

When we evaluate the existence of a conservation plan when considering the benefits of exclusion, we consider a variety of factors, including but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments we receive, we will evaluate whether certain lands in the proposed critical habitat designation (Table 4) are appropriate for exclusion from the final designation under section 4(b)(2) of the Act. The mapped location of these lands we are considering for exclusion can be viewed in the supplementary documents associated with this proposed rule found at *http://www.regulations.gov.* If the analysis indicates that the benefits of excluding lands from the final designation outweigh the benefits of designating those lands as critical habitat, then the Secretary may exercise his discretion to exclude the lands from the final designation.

TABLE 4—PLAN TYPE, STREAM SEGMENTS, AND APPROXIMATE STREAM LENGTH BEING CONSIDERED FOR EXCLUSION FROM FLYCATCHER CRITICAL HABITAT UNDER SECTION 4(B)(2) OF THE ACT BY MANAGEMENT UNIT

Basis for possible exclusion	Streams segments considered for exclusion	Approximate stream length considered for exclusion in km (mi)
Santa Ana Management Unit		
Western Riverside County Multiple Species HCP.	Santa Ana River	34.1 km (21.2 mi).
	San Timoteo Creek	21.4 km (13.3 mi).
	Bautista Creek	22.6 km (14.0 mi).
	Temecula Creek (see San Diego Management Unit).	
Ramona Band of Cahuilla	Bautista Creek	0.44 km (0.27 mi).
San Diego Management Unit		
San Diego County Multiple Species HCP.	San Dieguito River	9.2 km (5.7 mi).
	San Diego River	9.5 km (5.9 mi).
	Santa Ysabel Creek (upper)	2.4 km (1.5 mi).
	Santa Ysabel Creek (lower)	1.0 km (0.6 mi).
	Sweetwater River	6.6 km (4.1 mi).
Western Riverside County Multiple Species HCP.	Temecula Creek (including Vail Lake)	18.7 km (11.6 mi).
Orange County Southern Subregional HCP.	Canada Gobernadora Creek	5.9 km (3.7 mi).
City of Carlsbad Habitat Management Plan.	Agua Hedionda Creek (upper)	3.4 km (2.1 mi).
	Agua Hedionda Creek (lower)	2.1 km (1.3 mi).
La Jolla Band of Luiseno Indians Management Plan.	San Luis Rey River	11.5 km (7.2 mi).
Rincon Band of Luiseno Mission Indians Management Plan.	San Luis Rey River	2.4 km (1.5 mi).
Pala Band of Luiseno Mission Indians	San Luis Rey River	3.7 km (2.3 mi).
The Barona and Viejas Groups of Capitan Grande Band of Diegueno Mission Indians.	San Diego River	4.7 km (2.9 mi).
Owens Management Unit		
Los Angeles Department of Water and Power Management Plan.	Owens River	128.5 km (79.9 mi).
Kern Management Unit		
Sprague Ranch Management Plan	South Fork Kern River (north side)	4.0 km (2.5 mi).
Haffenfeld Ranch Management Plan	South Fork Kern River (south side)	0.80 km (0.50 mi).
South Fork Kern River Wildlife Area Management Plan.	South Fork Kern River	2.5 km (1.5 mi).
	South Fork Kern River (Lake Isabella)	0.29 km (0.18 mi).
Salton Management Unit		
Iipay Nation of Santa Ysabel	San Felipe Creek	1.6 km (0.98 mi).
Little Colorado Management Unit		
Zuni Pueblo	Rio Nutria	35.8 km (22.2 mi).
	Zuni River	39.9 km (24.8 mi).
Navajo Nation	Zuni River	15.5 km (9.6 mi).
Virgin River Management Unit		
Clark County MSHCP	Virgin River	42.0 km (26.1 mi).
Overton State Wildlife Area Management Plan.	Virgin River	6.5 km (4.0 mi).
Middle Colorado Management Unit		
Lower Colorado River MSCP	Colorado River (Lake Mead)	24.1 km (15.0 mi).
Hualapai Tribe Management Plan	Colorado River	50.0 km (31.0 mi).

TABLE 4—PLAN TYPE, STREAM SEGMENTS, AND APPROXIMATE STREAM LENGTH BEING CONSIDERED FOR EXCLUSION FROM FLYCATCHER CRITICAL HABITAT UNDER SECTION 4(B)(2) OF THE ACT BY MANAGEMENT UNIT—Continued

Basis for possible exclusion	Streams segments considered for exclusion	Approximate stream length considered for exclusion in km (mi)
Pahranagat Management Unit		
Key Pittman State Wildlife Area Management Plan.	Pahranagat River	4.0 km (2.5 mi).
Overton State Wildlife Area Management Plan.	Muddy River	3.1 km (1.9 mi).
Bill Williams Management Unit		
Alamo Lake State Wildlife Area Management Plan.	Bill Williams River (Alamo Lake)	5.4 km (3.3 mi).
	Santa Maria River (Alamo Lake)	8.4 km (5.2 mi).
	Big Sandy River (Alamo Lake)	9.6 km (6.0 mi).
Lower Colorado River MSCP	Bill Williams River	0.7 km (0.5 mi).
Hoover to Parker Dam Management Unit		
Lower Colorado River MSCP	Colorado River (two segments)	24.7 km (15.3 mi).
Fort Mohave Tribe Management Plan	Colorado River	17.0 km (10.6 mi).
Chemehuevi Tribe Management Plan	Colorado River	21.9 km (13.6 mi).
Lower Colorado River MSCP	Bill Williams River	1.7 km (1.0 mi).
Parker Dam to Southerly International Border Management Unit		
Lower Colorado River MSCP	Colorado River (two segments)	70.5 km (43.8 mi).
Colorado River Indian Tribes Management Plan.	Colorado River	47.7 km (29.7 mi).
Quechan (Fort Yuma) Indian Tribe Management Plan.	Colorado River	23.0 km (14.3 mi).
San Juan Management Unit		
Navajo Nation	San Juan River (New Mexico)	3.5 km (2.2 mi).
	San Juan River (Utah)	51.7 km (32.1 mi).
Southern Ute Tribe	Los Pinos River	25.9 km (16.1 mi).
Verde Management Unit		
Salt River Project Horseshoe and Bartlett Dams HCP.	Verde River (Horseshoe Lake)	9.6 km (6.0 mi).
Yavapai Apache Tribal Management Plan.	Verde River	2.7 km (1.7 mi).
Roosevelt Management Unit		
Salt River Project Roosevelt Lake HCP	Tonto Creek (Roosevelt Lake)	12.8 km (7.9 mi).
	Salt River (Roosevelt Lake)	16.3 km (10.1 mi).
Upper Gila Management Unit		
U–Bar Ranch Management Plan	Gila River	14.0 km (8.7 mi).
San Carlos Apache Tribal Management Plan.	Gila River	31.3 km (19.5 mi).
	Gila River (San Carlos Lake)	26.8 km (16.6 mi).
Hassayampa and Agua Fria Management Unit		
Tres Rios Safe Harbor Agreement	Gila River	8.7 km (5.4 mi).
San Luis Valley Management Unit		
San Luis Valley Partnership	Rio Grande	159.4 km (99.0 mi).
	Conejos River	69.8 km (43.4 mi).
Upper Rio Grande Management Unit		
San Ildefonso Pueblo Partnership	Rio Grande	7.7 km (4.8 mi).
Santa Clara Pueblo Partnership	Rio Grande	10.3 km (6.4 mi).
San Juan Pueblo (Ohkay Owingue) Partnership.	Rio Grande	9.3 km (5.8 mi).

TABLE 4—PLAN TYPE, STREAM SEGMENTS, AND APPROXIMATE STREAM LENGTH BEING CONSIDERED FOR EXCLUSION FROM FLYCATCHER CRITICAL HABITAT UNDER SECTION 4(B)(2) OF THE ACT BY MANAGEMENT UNIT—Continued

Basis for possible exclusion	Streams segments considered for exclusion	Approximate stream length considered for exclusion in km (mi)
Middle Rio Grande Management Unit		
Elephant Butte Reservoir	Rio Grande	45.7 km (28.4 mi).
Total		1,254.3 km (779.4 mi).

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors.

We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov,* or by contacting the Arizona Ecological Services Office directly (see **FOR FURTHER INFORMATION CONTACT** section). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. In preparing this proposal, we have exempted from the designation of critical habitat those Department of Defense lands with completed INRMPs determined to provide a benefit to the southwestern willow flycatcher. We have also determined that the remaining lands within the proposed designation of critical habitat for the species are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary does not propose to exert his discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at Tribal management in recognition of their capability to appropriately manage their own resources, and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social impacts that might occur because of the designation.

Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships

We consider a current land management or conservation plan (HCPs as well as other types) to provide adequate management or protection if it meets the following criteria:

(1) The plan is complete and provides the same or better level of protection from adverse modification or destruction than that provided through a consultation under section 7 of the Act;

(2) There is a reasonable expectation that the conservation management strategies and actions will be implemented for the foreseeable future, based on past practices, written guidance, or regulations; and

(3) The plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology.

We believe that the following HCPs, Plans, Partnerships, and Agreements may fulfill the above criteria, and will consider the exclusion of these Federal and non-Federal lands covered by these plans that provide for the conservation of the flycatcher.

We are requesting comments on the benefit to flycatcher from these following HCPs, Plans, Partnerships, and Agreements; however, at this time, we are not proposing the exclusion of any areas in this proposed revised critical habitat designation for the flycatcher. However, we specifically solicit comments on the inclusion or exclusion of such areas.

In the paragraphs below, organized by Recovery Unit and Management Unit, we identify lands we are considering for exclusion under section 4(b)(2) of the Act.

Coastal California Recovery Unit

Santa Ana Management Unit

Habitat Conservation Plans

Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP)

The Western Riverside County MSHCP is a regional, multi-jurisdictional HCP encompassing approximately 1.26 million ac (510,000 ha) of land in western Riverside County. The Western Riverside County MSHCP addresses 146 listed and unlisted ''covered species,'' including the southwestern willow flycatcher. The Western Riverside County MSHCP is a multispecies conservation program designed to minimize and mitigate the expected loss of habitat and associated incidental take of covered species resulting from covered development activities in the Plan area. On June 22, 2004, the Service issued a single incidental take permit under section 10(a)(1)(B) of the Act to 22 permittees under the Western Riverside County MSHCP to be in effect for a period of 75 years (Service 2004). The Service anticipates the proposed actions will affect the southwestern willow flycatcher, including the loss of up to 23 percent of the modeled habitat for this species in the plan area (Service 2004, p. 227). Within the Plan, and through implementation of the Riparian/Riverine Areas and Vernal Pools policy, we anticipate no loss of occupied southwest willow flycatcher habitats or areas otherwise determined to have long-term conservation value for the species (Service 2004, p. 227). We concluded in our biological opinion

(Service 2004b, p. 227) that implementation of the Plan, as proposed, was not likely to jeopardize the continued existence of the southwestern willow flycatcher. Our determination was based on our conclusion that based on the low level of impact anticipated to individuals of this species and because the impacts associated with loss of the southwestern willow flycatcher's modeled habitat, when viewed in conjunction with the protection and management of the MSHCP Conservation Area, are not anticipated to result in an appreciable reduction in the numbers, reproduction, or distribution of this subspecies throughout its range (Service 2004, p. 227).

Species-specific conservation objectives are included in the Western Riverside County MSHCP for southwestern willow flycatcher. The MSHCP Conservation Area will include at least 4,282 ha (10,580 ac) of flycatcher habitat (breeding and migration habitat) including six core areas of high-quality habitat and interconnecting linkages, including essential segments of the Santa Ana River, San Timoteo Creek, and Temecula Creek (including Vail Lake). The plan aims to conserve 100 percent of breeding habitat for the flycatcher, including buffer areas 100 m (328 ft) adjacent to breeding areas. In addition, the Western Riverside County MSHCP requires compliance with a Riparian and Riverine Areas and Vernal Pool policy that contains provisions requiring 100 percent avoidance and long-term management and protection of breeding habitat not included in the conservation areas, unless a Biologically Equivalent or Superior Preservation Determination can demonstrate that a proposed alternative will provide equal or greater conservation benefits than avoidance.

We completed an internal consultation on the effects of the plan on the flycatcher and its habitat that is found within the plan boundaries, and determined that implementation of the plan provides for the conservation of the species because it provides for the conservation of breeding and migration flycatcher habitat, the conservation of dispersal habitat and adjacent upland areas, surveys for undiscovered populations, and the maintenance and potential restoration of suitable habitat areas within the conservation area.

We will consider excluding portions of the Santa Ana River, San Timoteo Creek, Bautista Creek, and Temecula Creek (including Vail Lake) within the planning area boundary for the Western Riverside County MSHCP from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act. We intend to exclude critical habitat from areas covered by the Western Riverside County MSHCP based on the protections outlined above and per the provisions laid out in the HCP's implementing agreement, to the extent consistent with the requirements of 4(b)(2) of the Act. We encourage any public comment in relation to this consideration.

Tribal Management Plans and Partnerships

Ramona Band of Cahuilla, California

The Ramona Band of Cahuilla, California, occurs within the Santa Ana Management Unit, California. A proposed essential segment of Bautista Creek occurs on lands managed by the Ramona Band of Cahuilla. We will coordinate with the Ramona Band of Cahuilla and examine what flycatcher conservation actions, management plans, and commitments and assurances occur on these lands for potential exclusion from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

San Diego Management Unit

Habitat Conservation Plans

San Diego County MSCP

In southwestern San Diego County, the San Diego MSCP and HCP encompasses more than 236,000 ha (582,000 ac) and involves the participation of the County of San Diego and 11 cities, including the City of San Diego. This regional HCP is also a regional subarea plan under the NCCP program and has been developed in cooperation with California Department of Fish and Game. The MSCP provides for the establishment of approximately 69,573 ha (171,000 ac) of preserve areas to provide conservation benefits for 85 Federally listed and sensitive species, including the flycatcher, over the life of the permit (50 years).

Portions of lands within the boundaries of the San Diego MSCP and HCP contain essential areas for the conservation of the flycatcher, including stream segments along the San Dieguito, San Diego, and Sweetwater Rivers. These particular areas lie within the boundaries of the approved subarea plans.

Conservation measures specific to the flycatcher within the San Diego MSCP and HCP include the preservation and management of 3,845 ha (9,500 ac) (81 percent) of the riparian habitat within the planning area, as well as eight of the nine known breeding locations at the time of the plan's development. Surveys are required for projects potentially affecting this species, and breeding habitat will be identified and avoided. Specific management directives include measures to provide appropriate flycatcher habitat, upland buffers for all known flycatcher populations, cowbird control, specific measures to protect against detrimental edge effects, and monitoring.

We will consider excluding portions of the San Dieguito, San Diego, Santa Ysabel, and Sweetwater Rivers within the San Diego MSCP and HCP from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act. We intend to exclude critical habitat from areas covered by the San Diego MSCP and HCP based on the protections outlined above and per the provisions laid out in the HCP's implementing agreement, to the extent consistent with the requirements of 4(b)(2) of the Act. We encourage any public comment in relation to this consideration.

Orange County Southern Subregional HCP

The Orange County Southern Subregional HCP was issued permits based on the plan by the Service on January 10, 2007, that covers a 75-year period. The Orange County Southern Subregion HCP encompasses approximately 34,811 ha (86,021 ac) in southern Orange County. The Southern Subregional HCP was developed in support of applications for incidental take permits for 32 covered species, including the flycatcher, by the Orange County, Rancho Mission Viejo, and the Santa Margarita Water District in connection with proposed residential development and related actions in southern Orange County.

The Orange County Southern Subregional HCP provides for the conservation of covered species, including southwestern willow flycatcher, through the establishment of an approximately 12,313 ha (30,426 ac) habitat reserve and 1,803 ha (4,456 ac) of supplemental open space areas (Service 2007, pp 10, 19). The Southern Subregional HCP is expected to conserve the flycatcher through implementing the following conservation measures: (1) Conservation of 57 percent of nesting and foraging habitat within the Habitat Reserve and adaptively managed on Rancho Mission Viejo lands; (2) inclusion in the Habitat Reserve of 100 percent of flycatcher locations in the Lower Canada Gobernadora ''important'' population in a ''key'' location; (3) creation of 2 ha (6 ac) of willow riparian habitat within a Supplemental Open Space area on the Prima Deshecha Landfill; (4) management of nonnative invasive plant

species (*Tamarisk ramosissima* (tamarisk), *Arundo donax* (arundo), and *Ricinus communis* (castor bean)); (5) assessment of effects from and trapping of nonnative animal species (cowbird); (6) and managing livestock grazing (Service 2007, pp. 120–123).

We will consider excluding a portion of Canada Gobernadora Creek within the Orange County Southern Subregional HCP from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act. We intend to exclude critical habitat from areas covered by the Orange County Southern Subregional HCP based on the protections outlined above and per the provisions laid out in the HCP's implementing agreement, to the extent consistent with the requirements of 4(b)(2) of the Act. We encourage any public comment in relation to this consideration.

City of Carlsbad Habitat Management Plan (HMP)

The City of Carlsbad's HMP was approved October 15, 2004. This plan is one of seven subarea plans being developed under the umbrella of the North County Multiple Habitat Conservation Plan (MHCP) in northern San Diego County. Participants in this regional conservation planning effort include the cities of Carlsbad, Encinitas, Escondido, Oceanside, San Marcos, Solana Beach, and Vista. The subarea plans in development are also proposed as subregional plans under the State's Natural Community Conservation Planning program and are being developed in cooperation with the California Department of Fish and Game (CDFG). We have determined that portions of lands within the boundaries of the HMP contain lands with features essential to the conservation of the flycatcher, including portions of Agua Hedionda Creek.

Approximately 9,943 ha (24,570 ac) of land are within the Carlsbad HMP planning area, with about 3,561 ha (8,800 ac) remaining as natural habitat for species covered under the plan. Of this remaining habitat, the Carlsbad HMP proposes to establish a preserve system for approximately 2,746 ha (6,786 ac). Conservation measures specific to the flycatcher within the Carlsbad HMP include the conservation of 200 ha (494 ac) (86 percent) of the riparian vegetation in the city and 10 ha (25 ac) (86 percent) of oak woodland. Preserved lands include the four highest quality habitat areas for flycatchers identified within the plan area, including lands along Agua Hedionda Creek. For proposed projects in or adjacent to suitable habitat outside of preserve areas, mandatory surveys will be conducted, with impacts to breeding flycatchers completely avoided or reduced, as described in the paragraph below. Flycatcher habitat will be managed to restrict activities that cause degradation, including livestock grazing, human disturbance clearing or alteration of riparian vegetation, brown-headed cowbird parasitism, and insufficient water levels leading to loss of riparian habitat and surface water.

Area-specific management directives shall include measures to provide appropriate flycatcher habitat, cowbird control, specific measures to protect against detrimental edge effects, and removal of invasive, exotic species (*Arundo donax*). Human access to flycatcher-occupied breeding habitat will be restricted during the breeding season (May 1 to September 15), except for qualified researchers or land managers performing essential preserve management, monitoring, or research functions. Projects that cannot be conducted without placing equipment or personnel in or adjacent to sensitive habitats shall be timed to ensure that exotic vegetation habitat (*Arundo donax*) is removed prior to the initiation of the breeding season.

Projects having direct or indirect impacts to the flycatcher shall adhere to the following measures to avoid or reduce impacts: (1) The removal of native vegetation and habitat shall be avoided and minimized to the maximum extent practicable; (2) For temporary impacts, the work site shall be returned to pre-existing contours and revegetated with appropriate native species; (3) Revegetation specifications shall ensure creation and restoration of riparian woodland vegetation to a quality that eventually is expected to support nesting flycatchers, recognizing that it may take many years (depending on type of activity and timing of flood events, *etc.*) to achieve this state; (4) Construction noise levels at the riparian canopy edge shall be kept below 60 dBA Leq (measured as Equivalent Sound Level) from 5 a.m. to 11 a.m. during the peak nesting period of March 15 to July 15. For the balance of the day or season, the noise levels shall not exceed 60 decibels, averaged over a 1-hour period on an A-weighted decibel (dBA) (*i.e.,* 1 hour Leq/dBA); (5) Brown-headed cowbirds and other exotic species that impact the flycatcher shall be removed from the site; (6) For new developments adjacent to preserve areas that create conditions attractive to brown-headed cowbirds, jurisdictions shall require monitoring and control of cowbirds; (7) Biological buffers of at least 30 m (100 ft) shall be maintained adjacent to breeding flycatcher habitat, measured from the outer edge of riparian vegetation. Within this 30-m (100-ft) buffer, no new development shall be allowed, and the area shall be managed for natural biological values as part of the preserve system; (8) Suitable unoccupied breeding habitat preserved within the protected areas shall be managed to maintain or mimic effects of natural stream or river processes (*e.g.,* periodic substrate scouring and depositions); and (9) Natural riparian connections with upstream riparian habitat shall be maintained to ensure linkage to suitable occupied and unoccupied breeding habitat.

We will consider excluding portions of Agua Hedionda Creek within the Carlsbad HMP from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act. We intend to exclude critical habitat from areas covered by the Carlsbad HMP based on the protections outlined above and per the provisions laid out in the HCP's implementing agreement, to the extent consistent with the requirements of 4(b)(2) of the Act. We encourage any public comment in relation to this consideration.

Tribal Management Plans and Partnerships

La Jolla Band of Luiseno Indians

The La Jolla Band of Luiseno Indians have a segment of proposed flycatcher critical habitat along the San Luis Rey River within the San Diego Management Unit, in northern San Diego County, California. The La Jolla Tribe has developed a Southwestern Willow Flycatcher Management Plan (SWFMP).

The La Jolla Band of Luiseno Indian's SWFMP described a collection of measures, protections, and efforts they are and will be undertaking to protect flycatchers and their riparian habitat. To address environmental issues, the La Jolla Band of Luiseno Indians maintains permanent staff, which includes a professional biologist. The Tribe will work to maintain open space along the river, with a particular emphasis on the western 2-km (3.5-mi) stretch of the San Luis Rey River. The La Jolla Band of Luiseno Indians are working to establish this piece of river as a reserve for environmental and cultural purposes. Management of native riparian vegetation and removal of exotic vegetation is occurring that could improve the quality and abundance of native plants, and decrease the risk of wildfire. They will actively reduce the impact of recreation in riparian areas by continuing to educate Tribal Members through outreach programs and

newsletters. Additionally, they are working to discourage use of off-road vehicles in riparian areas through education, movement of roads, closures, and development of ordinances. The La Jolla Band of Luiseno Indians will explore future opportunities for research to determine how to best manage for flycatchers.

We will consider excluding The La Jolla Band of Luiseno Indian's land from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Rincon Band of Luiseno Mission Indians of the Rincon Reservation

The Rincon Band of Luiseno Mission Indians land contains a proposed segment of flycatcher critical habitat along the San Luis Rey River within the San Diego Management Unit, in northern San Diego County, California. The Rincon Band of Luiseno Mission Indians have developed a SWFMP.

The Rincon Band of Luiseno Mission Indian's SWFMP addresses implementation of a variety of protective flycatcher habitat measures. The Rincon Band of Luiseno Mission Indians will monitor and remove introduced exotic plants that could reduce the quality and abundance of native species, and increase the risk of wildfire. They will exclude activities in the floodplain that could remove or reduce riparian habitat quality such as mining and livestock grazing. The Rincon Band of Luiseno Mission Indians will exclude unauthorized recreational uses and off-road vehicle use. Signs, boundaries, and other measures will be taken to educate the public and prevent unauthorized recreational use. The Rincon Band of Luiseno Mission Indians will dedicate funding to this effort, report progress, and coordinate with the Service on SWMP updates.

We will consider excluding The Rincon Band of Luiseno Mission Indian's land from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Pala Band of Luiseno Mission Indians and the Capitan Grande Band of Diegueno Mission Indians of California

The Pala Band of Luiseno Mission Indians and the Capitan Grande Band of Diegueno Mission Indians of California occur within the San Diego Management Unit, San Diego County, California. The Pala Band of Luiseno Mission Indian's Tribal Land occurs along a segment of proposed flycatcher critical habitat on the San Luis Rey River. A proposed essential segment of the San Diego River occurs on the land of the Capitan Grande Band of Diegueno Mission Indians of California (jointly managed by the Barona Group of Capitan Grande Band of Mission Indians and the Viejas [Baron Long] Group of Capitan Grande Band of Mission Indians).

We will coordinate with these Tribes and examine what flycatcher conservation actions, management plans, and commitments and assurances occur on these lands for potential exclusion from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Basin and Mohave Recovery Unit, CA and NV

Owens Management Unit

Partnerships, Conservation Plans, or Conservation Easements on Private Lands

Los Angeles Department of Water and Power (LADWP) Conservation Strategy

The LADWP owns and manages a proposed segment of flycatcher critical habitat along the Owens River within the Owens Management Unit, in Inyo County, California. It is believed that LADWP owns and manages the entire extent of flycatcher habitat within this Management Unit needed to reach recovery goals.

The Service and the LADWP signed a memorandum of understanding in 2005 to implement a flycatcher conservation strategy designed to proactively manage flycatchers in the Owens Management Unit. The conservation strategy addresses three elements, livestock grazing, recreational activities, and wildfires that have the potential to adversely affect flycatcher habitat. The conservation strategy provides specific measures that: (1) Are designed to create suitable breeding habitat for the flycatcher; and (2) avoid and minimize potential adverse effects, such as the degradation or loss of habitat that may be associated with grazing activities, recreational activities, and wild land fires. The document also states the LADWP will implement the aforementioned measures with the goal of promoting the establishment of 50 flycatcher territories, which is the number of territories needed to reach recovery goals identified in the Recovery Plan.

We will consider excluding LADWP lands from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Kern Management Unit

Partnerships, Conservation Plans, or Conservation Easements on Private Lands

Haffenfeld Ranch Conservation Easement

The Haffenfeld Ranch owns and manages a segment of proposed flycatcher critical habitat along the South Fork Kern River within the Kern River Management Unit, in Kern County, California.

The Haffenfeld Ranch has developed a Conservation Easement and Plan with the Natural Resources Conservation Service that provides management and protections for flycatcher habitat. The Haffenfeld Parcel completes a continuous corridor of willow-cottonwood riparian habitat along the South Fork of the Kern River that connects the east and west segments of the Audubon Society's Kern River Preserve. The Conservation Easement and Plan establishes that these lands are managed for the benefit of the flycatcher by restoring, improving, and protecting its habitat. Management activities include: (1) Limiting public access to the site, (2) winter-only grazing practices (outside of the flycatcher nesting season), (3) protection of the site from development or encroachment, (4) maintenance of the site as permanent open space that has been left predominantly in its natural vegetative state, and (5) the spreading of flood waters to promote the moisture regime and wetland and riparian vegetation for the conservation of the flycatcher. Other prohibitions of the easement that would benefit the conservation of the flycatcher include: (1) Haying, mowing, or seed harvesting; (2) altering the grassland, woodland, wildlife habitat, or other natural features; (3) dumping refuse, wastes, sewage, or other debris; (4) harvesting wood products; (5) draining, dredging, channeling, filling, leveling, pumping, diking, or impounding water features or altering the existing surface water drainage or flows naturally occurring within the easement area; and (6) building or placing structures on the easement.

We will consider excluding Haffenfeld Ranch lands from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Federal Wildlife Conservation Areas

Sprague Ranch

The Sprague Ranch is an approximately 1,003-ha (2,479-ac) parcel, which includes approximately 395 ha (975 ac) of flycatcher floodplain habitat located along the South Fork of

the Kern River in Kern County, California. The Sprague Ranch was purchased by the U.S. Army Corps of Engineers (Corps) as a result of biological opinions for the long-term operation of Lake Isabella Dam and Reservoir (Service File Nos. 1–1–96–F–27; 1–1–99–F–216; and 1–1–05–F–0067) specifically to provide habitat and conservation for the flycatcher. During the periods of time flycatcher habitat is not available as a result of short-term inundation from Isabella Dam operations, the Sprague Ranch is expected to provide habitat for the flycatcher.

As a result of the expertise of the National Audubon Society (Audubon) and the California Department of Fish and Game (CDFG) in management of flycatcher habitat on adjacent and nearby properties along the Kern River, management of the Sprague Ranch is a joint venture between these two parties and the Corps. The Sprague Ranch is important flycatcher habitat and is located immediately north and adjacent to the Kern River Preserve (KRP), which is owned and operated by Audubon, and shares a common border with the KRP of over 4.8 km (3 mi). The Sprague Ranch contains existing riparian forest that can support and maintain nesting territories and migrating and dispersing flycatchers. But other portions of the Ranch are believed to require restoration and management in order become nesting flycatcher habitat. Activities such as cowbird trapping, exotic vegetation control, and native tree plantings are other management activities expected to occur. Sprague Ranch is currently being managed in accordance with the terms and conditions of the biological opinions specifically for the flycatcher.

We will consider excluding the South Fork Kern River on the Sprague Ranch from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

South Fork Kern River Wildlife Area (SFWA)

The SFWA is an approximately 514-ha (1,270-ac) parcel of mature willow-cottonwood, riparian flycatcher habitat located along the South Fork of the Kern River, Kern County, California, west of historic Patterson Lane, including a portion of upper Lake Isabella. The SFWA is jointly managed by the Corps and the Forest Service. Isabella Dam and flycatcher habitat in the SFWA is managed as a result of long-term biological opinions for Corps operation of Lake Isabella Dam and Reservoir (Service File Nos. 1–1–96–F–27; 1–1–96–F–150; 1–1–99–F–216; and 1–1–05–F–0067) and on-the-ground management by the Forest Service. These opinions resulted in the long-term management of Lake Isabella Dam that maintains the dynamic processes to establish flycatcher habitat over the long term and resulted in the acquisition of the Sprague Ranch (immediately upstream of the SFWA) to compensate for short-term losses in habitat, and management of SFWA for flycatchers.

Lake Isabella Dam operations that periodically inundate and create conditions for flycatcher habitat establishment are managed by the Corps in accordance with the terms and conditions of the biological opinions. These terms and conditions require conservation actions for flycatchers, including long-term studies of flycatcher habitat and demographics; implementation and monitoring of a cowbird trapping program; a nest-moving protocol to prevent inundation of nests during high water events; measures to control watercraft in coordination with the Forest Service; and the acquisition of 465 ha (1,150 ac) of land to compensate for incidental take resulting from the periodic inundation of the SFWA. Funding for the implementation of these measures is provided by the Corps in accordance with terms and conditions of the biological opinions.

The SFWA is managed by the Forest Service within Lake Isabella (after the water recedes) and along the Kern River immediately upstream. Through consultation with the Forest Service, measures for the conservation of flycatchers have been implemented, including: restricting the speed of watercraft to 8 km per hour (5 mi per hour) within 30.5 m (100 ft) of the SFWA; and prohibition of overnight camping, motorized vehicles, and campfires in the South Fork Wildlife Area. The SFWA is fenced, and the fencing is maintained to enforce the exclusion of unauthorized uses, including cattle grazing.

We will consider excluding the South Fork Kern River and upper end of Lake Isabella within the SFWA from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Salton Management Unit

Tribal Management Plans and Partnerships

Iipay Nation of Santa Ysabel

The Iipay Nation of Santa Ysabel, California (formerly the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation), occurs along an essential segment of proposed flycatcher critical habitat on San Felipe Creek in the Salton Management Unit, San Diego County, California.

We will coordinate with The Iipay Nation and examine what flycatcher conservation actions, management plans, and commitments and assurances occur on these lands for potential exclusion from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Lower Colorado Recovery Unit, NV, AZ, CA, UT, and NM

Little Colorado River Management Unit

Tribal Management Plans and Partnerships

Navajo Nation and Zuni Pueblo

The Navajo Nation and Zuni Pueblo contain segments of the Rio Nutria and Zuni River proposed as flycatcher critical habitat in McKinley County, New Mexico. Both river segments occur within the Little Colorado River Management Unit.

We will coordinate with these Tribes and examine what flycatcher conservation actions, management plans, and commitments and assurances occur on these lands for potential exclusion from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Virgin Management Unit

Habitat Conservation Plans

Clark County Multiple Species Habitat Conservation Plan

The Clark County Multiple Species Habitat Conservation Plan (MSHCP) was completed in November 2000, and the incidental take permit was issued on January 9, 2001. The flycatcher, as well as five additional riparian obligate species, was included in the MSHCP and permit application. The permit issued for the MSHCP covered the County, the Cities of Clark County, and Nevada Department of Transportation (permittees) for take of the covered species on all non-Federal Land with the County, up to a maximum loss of 58,681 ha (145,000 ac) of habitat within a 30-year period.

Due to the relatively large percentage of riparian habitat that occurs on non-Federal lands, the permit obligated the County to fulfill certain conditions prior to authorization of take of the avian riparian obligate species. These conditions include: (1) The development of conservation management plans that identify the management and monitoring actions needed for desert riparian habitats along the Muddy River, Virgin River, and Meadow Valley Wash; and (2) the acquisition of private lands in desert

riparian habitats along the Muddy River, Virgin River, and Meadow Valley Wash, with the total number and location of hectares (acres) within each watershed to be identified in the conservation management plans.

In 2005, these two conditions were not yet fulfilled during our previous designation of flycatcher critical habitat; therefore, the permittees were not authorized for incidental take of the flycatcher, and were subsequently short of meeting the criteria for exclusion under section 4(b)(2) of the Act. Clark County is currently in the process of amending their MSHCP, but the plan is under development and decisions regarding the conservation strategy for riparian birds will not be made until the amendment to the plan and the permit are approved. Habitat conservation planning has been initiated for the Virgin River as part of the development of the Virgin River Habitat Conservation and Recovery Program, but, similar to the Clark County MSHCP amendment, the Program has not yet been approved and permitted. We will re-evaluate flycatcher conservation planning and implementation progress along the Virgin River within these two planning efforts during this critical habitat designation process.

State Wildlife Areas

Overton State Wildlife Area

The Overton State Wildlife Area contains segments of both the Virgin River (Virgin Management Unit) and Muddy River (Pahranagat Management Unit). Please see our description of this area in the Pahranagat Management Unit.

Middle Colorado Management Unit

Tribal Management Plans and Partnerships

Hualapai Tribe

Hualapai Tribal land contains a proposed flycatcher critical habitat segment of the Colorado River on the south side of the channel in the Middle Colorado Management Unit above Lake Mead in Mohave County, Arizona. The Hualapai Tribe has finalized a SWFMP that was adopted by the Hualapai Tribal Council.

The Hualapai Tribe's SWFMP's objectives are to manage riparian vegetation to maximize continued presence of native plant species suitable for use by flycatchers, ensure that existing land uses (which presently include recreational activities) will not result in net loss or reduction in quality of flycatcher habitat, and continue their Department of Natural Resources partnership in the management of the lower Colorado River, including those associated with the LCR MSCP (see Hoover to Parker Dam Management Unit section describing potential *Habitat Conservation Plan* exclusions).

We will consider excluding the Colorado River alongside Hualapai Tribal land from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Pahranagat Management Unit

State Wildlife Areas

Key Pittman State Wildlife Area

The Key Pittman State Wildlife Area is located in Lincoln County, Nevada, and contains a wide diversity of habitats within its 539 ha (1,332 ac). Essential flycatcher habitat occurs along the Pahranagat River as it travels through a portion of the Key Pittman State Wildlife Area, including Nesbitt Lake, an impounded area along the river. The State of Nevada's Department of Wildlife owns and manages this property. The Nevada Fish and Game Commission purchased portions of the area in 1962 and 1966, primarily for waterfowl hunting, and as a secondary goal, habitat for other wetland species. A draft management plan was completed in November 2003, and provided the framework for the next 10 years. The plan went through stakeholder meetings and public review.

The State of Nevada fences the known flycatcher habitat in order to protect it from livestock grazing, manages water to maintain habitat, monitors the status of flycatchers, and is actively planting riparian plants to improve the distribution of riparian habitat. The area has been under management for wildlife since the 1960s, with conservation efforts targeted toward waterfowl, wetland species, and specifically the flycatcher.

Within the Key Pittman Wildlife Area, we will consider excluding the Pahranagat River from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Overton State Wildlife Area

The Overton State Wildlife Area is located in Clark County, Nevada, and contains a wide diversity of habitats within its 7,146 ha (17,657 ac). The Muddy River and Virgin River (in the Virgin Management Unit) travel through a small portion of the State Wildlife Management Area near Lake Mead. The State of Nevada's Department of Wildlife owns and manages this property. A management plan was completed in December 2000, and provides the framework for the next 10 years. The plan went through stakeholder meetings and public review.

We determined that essential segments of the Muddy and Virgin Rivers (located within both the Pahranagat and Virgin Management Units) for the conservation of the flycatcher occur through the boundaries of the Overton State Wildlife Area. A minimum of a quarter-acre willow patch and varying amount of cottonwood, mesquite, and hackberry will be planted annually in locations able to support native riparian trees, and water is being managed to improve and maintain riparian habitat. Riparian habitat is protected from livestock grazing, because no grazing occurs in the Wildlife Area. This Wildlife Area was developed primarily for wetland habitat and waterfowl activities (including hunting).

Within the Overton Wildlife Area, we will consider excluding the Virgin and Muddy Rivers from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Bill Williams Management Unit

State Wildlife Areas

Alamo Lake State Wildlife Area (AWA)

The Alamo Lake State Wildlife Area (AWA) in La Paz and Mohave Counties, Arizona, was created under provisions of the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), Public Land Order 492 (PLO 492), and the General Plan agreement between the Secretary of the Army, Secretary of the Interior, and Director of Arizona Game and Fish, signed January 19, 1968 (Arizona Game and Fish Department—Arizona State Parks 1997). A lease agreement between the Arizona Game and Fish Department Commission and the U.S. Army Corps of Engineers was signed in 1970, establishing the AWA for fish and wildlife conservation and management purposes (Arizona Game and Fish Department—Arizona State Parks 1997). The present lease area encompasses approximately 9,140 ha (22,586 ac). Public input was solicited and addressed in development of the AWA Management Plan through scoping and the NEPA (Arizona Game and Fish Department—Arizona State Parks 1997). Proposed flycatcher critical habitat occurs along the Big Sandy, Santa Maria, and Bill Williams Rivers, which make up the upper portion of Alamo Lake.

The AWA Management Plan describes the unique riparian, wetland, and aquatic aspects of the area for a variety of species, specifically identifying the flycatcher. As a result, two of the specific resources that management

emphasizes are directed toward the habitat needs of the flycatcher: (1) Maintain and enhance aquatic and riparian habitats to benefit wildlife; and (2) restore, manage, and enhance habitats for wildlife of special concern. In order to accomplish this goal, no cattle grazing is allowed in the riparian areas on the upper end of Alamo Lake and the lower portions of the Santa Maria and Big Sandy Rivers. Also, management of recreation (*i.e.,* off-road vehicles) is identified as an important management objective.

We will consider excluding the Bill Williams, Santa Maria, and Big Sandy Rivers within the Alamo Lake State Wildlife Area from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Habitat Conservation Plans

Lower Colorado River MSCP

A portion of the Bill Williams River at the Colorado River confluence occur within the planning area of the Lower Colorado River MSCP. Please see the Hoover to Parker Dam Management Unit below for a description of the LCR MSCP.

Hoover to Parker Dam Management Unit

Habitat Conservation Plans

Lower Colorado River MSCP

The LCR MSCP was developed for areas along the lower Colorado River along the borders of Arizona, California, and Nevada from the conservation space of Lake Mead to Mexico, in the Counties of La Paz, Mohave, and Yuma in Arizona; Imperial, Riverside, and San Bernardino Counties in California; and Clark County in Nevada. The LCR MSCP primarily covers activities associated with water storage, delivery, diversion, and hydroelectric production. The Record of Decision was signed by the Secretary of the Interior on April 2, 2005. Discussions began on the development of this HCP in 1994, but an important catalyst was a 1997 jeopardy biological opinion for the flycatcher issued to the Bureau of Reclamation for lower Colorado River operations.

The Federal agencies involved in the LCR MSCP include the Bureau of Reclamation, Bureau of Indian Affairs, National Park Service, Bureau of Land Management, Western Area Power Administration, and U.S. Fish and Wildlife Service. The permittees covered in Arizona are: The Arizona Department of Water Resources; Arizona Electric Power Cooperative, Inc.; Arizona Game and Fish Department; Arizona Power Authority; Central Arizona Water Conservation District; Cibola Valley Irrigation and Drainage District; City of Bullhead City; City of Lake Havasu City; City of Mesa; City of Somerton; City of Yuma; Electrical District No. 3, Pinal County, Arizona; Golden Shores Water Conservation District; Mohave County Water Authority; Mohave Valley Irrigation and Drainage District; Mohave Water Conservation District, North Gila Valley Irrigation and Drainage District; Salt River Project Agricultural Improvement and Power District; Town of Fredonia; Town of Thatcher; Town of Wickenburg; Unit ''B'' Irrigation and Drainage District; Wellton-Mohawk Irrigation and Drainage District; Yuma County Water Users' Association; Yuma Irrigation District; and Yuma Mesa Irrigation and Drainage District. The permittees covered in California are: The City of Needles, the Coachella Valley Water District, the Colorado River Board of California, the Imperial Irrigation District, the Los Angeles Department of Water and Power, the Palo Verde Irrigation District, the San Diego County Water Authority, the Southern California Edison Company, the Southern California Public Power Authority, Bard Water District, and The Metropolitan Water District of Southern California. The permittees covered in Nevada are: The Colorado River Commission of Nevada, the Nevada Department of Wildlife, Basic Water Company, and the Southern Nevada Water Authority.

The LCR MSCP primarily surrounds proposed flycatcher critical habitat along the Colorado River within the Hoover to Parker Dam and Parker Dam to Southerly International Border Management Units. Streams in the Middle Colorado (Colorado River and Lake Mead), Virgin (Virgin River), and Pahranagat (Muddy River) Management Units in Arizona, Utah, and Nevada, are briefly represented where they surround Lake Mead (including the conservation space of Lake Mead which extends up the Colorado River to Separation Canyon). Also, a portion of the Bill Williams River at the Colorado River confluence at Lake Havasu (Bill Williams Management Unit) occurs within the LCR MSCP planning area.

The flycatcher is a key species in the LCR MSCP, where the permittees will create and maintain 1,639 ha (4,050 ac) of flycatcher habitat over the 50-year life of the permit (2005 to 2055). Additional research, management, monitoring, and protection of flycatchers and flycatcher habitat from fire, nest predators, and brood parasites will occur. The development of flycatcher habitat will occur specifically throughout the Hoover to Parker Dam and Parker Dam to Southerly International Border Management Units, and is expected to meet conservation goals of the flycatcher identified in the Recovery Plan by increasing numbers of territories in appropriate Management Units. Portions of tributaries to the Colorado River, such as the Virgin and Muddy Rivers, may occur within the LCR MSCP planning area. Management and tasks associated with the HCP will result in improving and maintaining important migration stopover habitat, improving metapopulation stability, and reducing the risk of catastrophic losses due to fire. In addition to creation and subsequent management of flycatcher habitats, provision is made in the LCR MSCP to provide funds to ensure the maintenance of existing flycatcher habitats within the Management Units. Flycatcher management associated with the LCR MSCP works in conjunction with management occurring on the National Wildlife Refuges (Bill Williams, Havasu, Cibola, and Imperial) and Tribal lands (Hualapai, Fort Mohave, Chemehuevi, Colorado River, and Quechan Tribes) along the LCR.

We will consider excluding portions of the Colorado River from the uppermost storage space of Lake Mead (in the Middle Colorado River Management Unit) downstream through the Hoover to Parker Dam Management Unit to the Southerly International Border and portions of tributaries (Virgin, Muddy, and Bill Williams Rivers) to the Colorado River that may occur within the LCR MSCP planning area that are located in other Management Units (Virgin, Pahranagat, and Bill Williams) from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Tribal Management Plans and Partnerships

Fort Mojave Tribe

Fort Mojave Tribal land contains a proposed Colorado River segment of flycatcher critical habitat in the Hoover to Parker Dam Management Unit above Lake Havasu in Mohave County, Arizona. The Fort Mojave Tribe has finalized a SWFMP.

The Fort Mojave Tribe's SWFMP describes that within the Tribe's budgetary constraints, they commit management to sustain the current value of saltcedar, willow, and cottonwood vegetation that meets moist soil conditions necessary to maintain flycatcher habitat; to carry out monitoring to determine flycatcher presence and vegetation status in cooperation with the Service; and to

continue to provide wildfire response and law enforcement to protect flycatcher habitats. In addition, flycatcher management on Tribal Land may work in conjunction with additional flycatcher management associated with the LCR MSCP (see the Hoover to Parker Dam Management Unit above for a description).

We will consider excluding the Colorado River within Fort Mojave Tribal land from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Chemehuevi Tribe

Chemehuevi Tribal land contains a proposed Colorado River segment of flycatcher critical habitat along the on the west side of the channel in the Hoover to Parker Dam Management Unit adjacent to the Colorado River and Lake Havasu in Mohave County, Arizona. The Chemehuevi Tribe has finalized a SWFMP.

The Chemehuevi Tribe's SWFMP describes that within funding limits, they will commit to conduct a variety of flycatcher and flycatcher habitat management actions. The management actions include wildfire control, improvement of native riparian plants through vegetation improvement projects, minimization of impacts associated with recreational or other use along the river and lake shorelines, and collaboration with the Service to improve conditions for the flycatcher by discussing and implementing projects to reduce burro damage. The SWFMP identifies the management of riparian saltcedar and native willow, cottonwood, and mesquite to maximize native plant presence. Management will be done in cooperative work effort with the Service to identify restoration sites and provide early control response to wildfires that would result in no net loss or permanent modification detrimental to the flycatcher or its habitat as specified by the Recovery Plan. Any river or lakeshore land use changes, such as recreational or other developments, will take flycatcher habitat needs into account and will be done in mutual consultation with the Service to minimize detrimental impacts to flycatcher habitat. The SWFMP identifies continued cooperation between the Tribe and Service to ensure continued management of or improvement to flycatcher habitat. In addition, flycatcher management on Tribal Land may work in conjunction with additional flycatcher management associated with the LCR MSCP (see the Hoover to Parker Dam Management Unit above for a description).

We will consider excluding the Colorado River within Chemehuevi Tribal land from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Parker Dam to Southerly International Border Management Unit

Tribal Management Plans and Partnerships

Colorado River Indian Tribes (CRIT)

The CRIT contains a proposed Colorado River segment of flycatcher habitat in the Parker Dam to Southerly International Border Management Unit in La Paz County, Arizona. The Colorado River Indian Tribes have finalized a SWFMP.

The CRIT's SWFMP describes a commitment to conduct a variety of flycatcher and flycatcher habitat management actions. The SWFMP identifies schedules for breeding habitat surveys and monitoring flycatcher nesting activity. The SWFMP also identifies the assessment, identification, and protection of flycatcher migration habitat. The SWFMP identifies protecting breeding habitat with the Ahakhav Tribal Preserve and in any areas established for flycatchers with the LCR MSCP. Seasonal closures of occupied flycatcher habitat during the breeding season may be necessary and established by the CRIT. Protection of flycatcher habitat from fire is established in the SWFMP, as well as protections from other possible stressors such as overgrazing, recreation, and development. In addition, flycatcher management on Tribal Land may work in conjunction with additional flycatcher management associated with the LCR MSCP (see the Hoover to Parker Dam Management Unit above for a description).

We will consider excluding the Colorado River within CRIT land from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Quechan (Fort Yuma) Indian Tribe

Quechan Tribal land contains a proposed Colorado River segment of flycatcher critical habitat in the Parker Dam to Southerly International Border Management Unit near the City of Yuma in Yuma County, Arizona. The Quechan Tribe has completed a SWFMP.

The Quechan Tribe's SWFMP describes a commitment to conduct a variety of flycatcher and flycatcher habitat management actions. The Tribe will manage riparian saltcedar that is intermixed with cottonwood, willow, mesquite, and arrowweed to maximize potential value for nesting flycatchers. Any permanent land use changes for recreation or other reasons will consider and support flycatcher needs, as long as consistent with Tribal cultural and economic needs. The Tribe will consult with the Service to develop and design plans that minimize impacts to flycatcher habitat. The Tribe will establish collaborative relationships with the Service to benefit the flycatcher, including monitoring for flycatcher presence and habitat condition, all within the constraints of available funds to the Tribe. In addition, flycatcher management on Tribal Land may work in conjunction with additional flycatcher management associated with the LCR MSCP (see the Hoover to Parker Dam Management Unit above for a description).

We will consider excluding the Colorado River within Quechan Tribal land from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Upper Colorado Recovery Unit, AZ, UT, CO, and NM

San Juan Management Unit

Tribal Management Plans and Partnerships

Navajo Nation and Southern Ute Tribe

The Navajo Nation contains two different essential segments of the San Juan River in San Juan County, Utah, and San Juan County, New Mexico. Additionally, the Southern Ute Tribe contains an essential segment of the Los Pinos River in La Plata County, Colorado. All three of these river segments occur within the San Juan Management Unit.

We will coordinate with these Tribes and examine what flycatcher conservation actions, management plans, and commitments and assurances occur on these lands for potential exclusion from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Gila Recovery Unit, AZ and NM

Verde Management Unit

Habitat Conservation Plans

Horseshoe and Bartlett Dam HCP

Salt River Project (SRP) developed the 50-year Horseshoe and Bartlett Dam HCP to provide habitat conservation for Federally listed, candidate, and other species of concern that inhabit Horseshoe and Bartlett lakes and the Verde River above and below the two dams in Gila and Maricopa Counties, while allowing the continued operation of the two reservoirs. The Record of Decision was signed by the Service's

Region 2 Director on June 13, 2008. SRP provides water from Horseshoe and Bartlett directly to various beneficiaries of these storage facilities for irrigation and other uses. Water from Horseshoe, Bartlett, and SRP's other reservoirs is provided directly by SRP to shareholder lands for irrigation and other uses, and is delivered to the cities of Avondale, Chandler, Gilbert, Glendale, Mesa, Peoria, Phoenix, Scottsdale, Tempe, and Tolleson for municipal use on shareholder lands. Water deliveries are also made under specific water rights in Horseshoe and Bartlett held by the City of Phoenix, Salt River Pima Maricopa Indian Community, and Fort McDowell Yavapai Nation. In addition, water is delivered from the SRP reservoir system to the cities, Gila River Indian Community, Buckeye Irrigation Company, RWCD, and others in satisfaction of their independent water rights. Finally, exchange agreements between a number of entities and SRP pursuant to State and Federal law are facilitated by stored water from Horseshoe and Bartlett.

The Verde Management Unit, and specifically the water storage space within Horseshoe Reservoir, is the primary area where impacts to the flycatcher are anticipated to occur through periodic inundation and drying of flycatcher habitat. Water storage and periodic inundation of an annual average of up to 200 acres of flycatcher habitat would likely result in delayed or lost breeding attempts, decreased productivity and survivorship of dispersing adults in search of suitable breeding habitat, and decreased productivity of adults that attempt to breed at Horseshoe Lake.

The conservation goals of the HCP for the flycatcher would be accomplished by a number of minimization and mitigation measures, including maintaining and managing riparian habitat within Horseshoe Lake, minimizing water storage impacts, and mitigating water storage impacts by acquiring and managing flycatcher habitat along the Verde River, Gila River, or elsewhere in central Arizona to provide a diversity of geographic locations. Impacts within the lake's water storage space will be minimized by modifying reservoir operations to make riparian habitat available earlier in the nesting season and also to maintain riparian vegetation at higher elevations in the reservoir, which are farther away from inundation impacts.

We will consider excluding the water storage area of Horseshoe Lake from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Tribal Management Plans and Partnerships

Yavapai Apache Nation

The Yavapai Apache Nation contains Verde River segments of proposed flycatcher critical habitat in the Verde Management Unit in Yavapai County, Arizona. The Yavapai Apache Nation has completed a SWFMP.

The Yavapai Apache Nation's SWFMP addresses and presents assurances for flycatcher habitat conservation. The Nation will, through zoning, Tribal ordinances and code requirements, and measures identified in the Recovery Plan, take all practicable steps to protect known flycatcher habitat located along the Verde River. The Nation will take all reasonable measures to assure that no net habitat loss or permanent modification of flycatcher habitat will result from recreational and road construction activities, or habitat restoration activities, and will take all reasonable steps to coordinate with the Service so that flycatcher habitat is protected. Within funding limitations and under confidentiality guidelines established by the Tribe, the Tribe will cooperate with the Service to monitor and survey habitat for breeding and migrating flycatchers, conduct research, and perform habitat restoration, cowbird trapping, or other beneficial flycatcher management activities.

We will consider excluding the Verde River segments within Yavapai Apache Nation from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Roosevelt Management Unit

Habitat Conservation Plans

Roosevelt Lake HCP

An HCP for Salt River Project (SRP) was completed for the operation of Roosevelt Dam in Gila and Maricopa Counties, Arizona, which included as the action area the perimeter of Roosevelt Lake's high water mark (ERO 2002). The Record of Decision for the HCP was dated February 27, 2003. The land within the Roosevelt Lake perimeter is Federal land withdrawn by the U.S. Bureau of Reclamation and managed by the Forest Service.

The flycatcher population at Roosevelt Lake, depending on the year, can be the largest population of nesting flycatchers across the subspecies' range (approximately 150 territories, plus an unknown number of unmated, nonbreeding flycatchers and fledglings). The confluence of Tonto Creek and the Salt River, which comprise the Roosevelt Lake water storage area, is proposed as flycatcher critical habitat. Operation of Roosevelt Dam during low water years can yield as much as 506 ha (1,250 ac) of occupied flycatcher habitat within the perimeter of the high water mark. Annually, the total available habitat varies as reservoir levels fluctuate depending on annual precipitation with dry years yielding proportionally more habitat.

Flycatcher habitat at Roosevelt Lake varies depending on how and when the lake recedes as a result of water in-flow and subsequent storage capacity and delivery needs. As the lake recedes, flat gradient, fine moist soils are exposed which provide seed beds for riparian vegetation. However, even in the expected high-water years, we determined that some flycatcher habitat would persist at Roosevelt Lake.

The HCP covers Roosevelt Dam operations for 50 years and involves the conservation of a minimum of 607 ha (1,500 ac) of flycatcher habitat off-site, outside of the Roosevelt Management Unit, on the San Pedro, Verde, and Gila Rivers, and possibly other streams in Arizona, and implementation of conservation measures to protect up to an additional 304 ha (750 ac) of flycatcher habitat. Measures in the HCP to protect habitat at Roosevelt Lake include having the Forest Service hire a Forest Service employee to patrol and improve protection of flycatcher habitat in the Roosevelt lakebed from adverse activities such as fire ignition from human neglect, improper vehicle use, *etc.,* and to develop habitat at the off-site Rock House Farm Site.

We will consider excluding the water storage area of Roosevelt Lake from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Upper Gila Management Unit

Partnerships, Conservation Plans, or Conservation Easements on Private Lands

U-Bar Ranch

Pacific Western Land Company (PWLC), a Freeport McMorran (formerly Phelps Dodge) subsidiary, owns and manages the U-Bar Ranch (Ranch) near Cliff, in Grant County, New Mexico, where a proposed segment of flycatcher critical habitat occurs along the Gila River within the Upper Gila Management Area.

The U-Bar Ranch has developed a plan that provides measures to conserve, protect, and manage one of the largest known nesting flycatcher populations. Many of the flycatcher territories on the Ranch are found outside of the flood-prone area, off-channel in a unique situation, where

flycatchers nest in the canopy of mature box elder trees along irrigation ditches. Through the efforts of PWLC and its long-time lessee, Mr. David Ogilvie, Freeport McMorran has demonstrated a commitment to management practices on the Ranch that have conserved and benefited flycatcher populations in that area for over a decade. In addition, privately funded scientific research at and in the vicinity of the Ranch has developed data that have contributed to the understanding of flycatcher habitat selection, distribution, prey base, and threats. Some specific management practices, varying in different grazing pastures, which relate to the flycatcher and its habitat are: (1) Grazing is limited to November through April to avoid negative impacts during migration and nesting season; (2) animal units are adjusted to protect and maintain the riparian vegetation needed by the flycatcher; (3) the irrigation ditches are maintained, along with the vegetation, to benefit flycatcher habitat; (4) restoration efforts follow flood events that destroy habitat; and (5) herbicide and pesticides are only used in rare circumstances and are not used near occupied territories during breeding season.

We will consider excluding U-Bar Ranch lands from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Tribal Management Plans and Partnerships

San Carlos Apache Tribe

San Carlos Apache Tribe land contain proposed flycatcher critical habitat within the conservation space of San Carlos Lake and the Gila River upstream from San Carlos Lake, all within the Upper Gila Management Unit in Gila County, Arizona. The San Carlos Apache Tribe has finalized a Southwestern Willow Flycatcher Management Plan (SWFMP).

Implementation of the San Carlos Apache Tribe's SWFMP will protect all known flycatcher habitat on San Carlos Tribal Land and assure no net habitat loss or permanent modification will result. All habitat restoration activities (whether to rehabilitate or restore native plants) will be conducted under reasonable coordination with the Service. All reasonable measures will be taken to ensure that recreational activities do not result in a net habitat loss or permanent modification. All reasonable measures will be taken to conduct livestock grazing activities under the guidelines established in the Recovery Plan. Within funding limitations and under confidentiality guidelines established by the Tribe, the Tribe will cooperate with the Service to monitor and survey habitat for breeding and migrating flycatchers, conduct research, and perform habitat restoration, cowbird trapping, or other beneficial flycatcher management activities.

We will consider excluding San Carlos Apache Tribal land from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Hassayampa and Agua Fria Management Unit

Partnerships, Conservation Plans, or Conservation Easements on Private Lands

Tres Rios Safe Harbor Agreement

The City of Phoenix is in the process of developing a programmatic Safe Harbor Agreement with the Service for a continuous section (about 11 km, 7 mi) of the Gila River immediately downstream from its confluence with the Salt River (Tres Rios). This area would encompass a segment of proposed flycatcher critical habitat along the Gila River in the Hassayampa and Agua Fria Management Unit in Maricopa County, Arizona.

The draft Tres Rios Safe Harbor Agreement currently describes that the City of Phoenix will enhance or maintain (or both) approximately 927 acres of City of Phoenix-owned land, and seek to enroll another 150 acres owned by the State of Arizona through a certificate of inclusion for a period of 50 years. The Permittee would agree to enhance and maintain Sonoran Desert and riparian biotic communities, which would include, but are not necessarily limited to, planting and maintaining native riparian vegetation. The flycatcher would be one of the primary targets of this agreement.

The enrolled lands are owned by the Permittee and are being managed for the purposes of riparian habitat recovery, flood protection, and passive recreation. Improvements include installing several types of wetland and riparian biotic communities, including mesquite bosque, cottonwood and willow forest, freshwater marsh, floodplain terrace, open water, and aquatic strand. Prior to the Permittee's conservation efforts, most areas of the enrolled lands were agricultural or contained mostly nonnative species with minimal wildlife habitat value. After the conservation measures are implemented, the lands will be managed with the primary goal of habitat conservation.

We will consider excluding Tres Rios lands along the Gila River from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Rio Grande Recovery Unit, CO and NM

San Luis Valley Management Unit

Partnerships, Conservation Plans, and Conservation Easements on Private Lands

San Luis Valley Partnership

The San Luis Valley in south-central Colorado surrounds all proposed flycatcher critical habitat along the Rio Grande and Conejos Rivers within the San Luis Valley Management Unit.

A partnership within the San Luis Valley has been formed between a collection of south-central Colorado cities, counties, communities, and the State of Colorado toward conservation. This partnership is developing an HCP in the San Luis Valley. The State of Colorado received a $384,000 HCP Section 6 Planning Grant on behalf of the Rio Grande Water Conservation District in 2004 to develop the HCP for five counties, two cities, the State of Colorado, and 14 other smaller communities. In September 2005 and April 2009, the State received Section 6 grants of $120,000 each to draft NEPA documents and finalize the HCP. Preliminary drafts of the San Luis Valley Regional HCP have been developed and submitted to the Service for review. The HCP as proposed would cover nearly 809,000 ha (2 million ac) and 241 km (150 mi) of habitat for the flycatcher and yellow-billed cuckoo. The acreage covered by the HCP encompasses the entire Colorado portion of the San Luis Valley Management Unit, as described in the Recovery Plan, and extends well beyond the two stream segments along the Rio Grande and Conejos Rivers that we have proposed as flycatcher critical habitat.

We will consider excluding San Luis Valley lands from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Upper Rio Grande Management Unit

Tribal Management Plans and Partnerships

San Ildefonso Pueblo

The San Ildefonso Pueblo contains proposed flycatcher habitat along the Rio Grande within the Upper Rio Grande Management Unit in Santa Fe County, New Mexico.

The San Ildefonso Pueblo has conducted a variety of voluntary measures, restoration projects, and management actions to conserve the flycatcher and its habitat on their lands. Multiple-use practices of the river and riparian habitat resources are an

important component of Tribal activities and culture, and as a result, the Pueblo has taken steps to manage all the components of the riparian habitat. The Pueblo has implemented vegetation management actions to reduce flammable exotic vegetation within the floodplain and replace it with native riparian trees and shrubs. The Pueblo's long-term management objectives include efforts to reestablish and maintain sustainable native plant communities in the Rio Grande floodplain and improve habitat, including wetland restoration, for culturally important plant and wildlife species, including the flycatcher.

We will consider excluding San Ildefonso Pueblo land from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Santa Clara Pueblo

The Santa Clara Pueblo contains proposed flycatcher critical habitat along the Rio Grande within the Upper Rio Grande Management Unit in Rio Arriba County, New Mexico.

The Santa Clara Pueblo has conducted a variety of voluntary measures, restoration projects, and management actions to conserve the flycatcher and its habitat on their lands. Santa Clara Pueblo made a commitment to develop an integrated resources management plan to address multi-use, enhancement, and management of their natural resources. The Pueblo has implemented fuel reduction of flammable exotic riparian vegetation and native tree restoration projects in the riparian area since 2001, carefully progressing in incremental stages to reduce the overall effects to wildlife.

We will consider excluding Santa Clara Pueblo lands from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

San Juan Pueblo (Ohkay Owingue)

The San Juan Pueblo contains proposed flycatcher critical habitat along the Rio Grande within the Upper Rio Grande Management Unit in Rio Arriba County, New Mexico.

The San Juan Pueblo has conducted a variety of voluntary measures, restoration projects, and management actions to conserve the flycatcher and its habitat on their lands. The Pueblo has engaged in riparian vegetation and wetland improvement projects, while managing to reduce the occurrence of wildfire due to the abundance of exotic flammable riparian vegetation. Project implementation included conservation, monitoring, and management for the flycatcher. The long-term goal of the Pueblo's riparian management is to increase habitat for breeding flycatchers, as well as implement innovative restoration techniques, decrease fire hazards by restoring native vegetation, share information with other restoration practitioners, utilize restoration projects in the education of the Tribal community and surrounding community, and provide a working and training environment for the people of the Pueblo.

We will consider excluding San Juan Pueblo (Ohkay Owingue) lands from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Middle Rio Grande Management Unit

Federal Land Management

Elephant Butte Reservoir

The Middle Rio Grande Management Unit includes Elephant Butte Reservoir, a reservoir on the Rio Grande in New Mexico, 5 miles (8.0 km) north of Truth or Consequences. It is impounded by Elephant Butte Dam, owned and operated by the U.S. Bureau of Reclamation, and is the largest reservoir in New Mexico. The reservoir is part of the Rio Grande Project, a project to provide power and water for irrigation to south-central New Mexico and west Texas. It can hold 2,065,010 acre-feet (2,547,152,330 m^3) of water from a drainage of 28,900 square miles (74,850 km^2), and provides irrigation to 178,000 acres (720 km^2) of land.

The gradual recession of Elephant Butte Reservoir during the late 1990s exposed an additional 32 km of lake bottom in this unit. Riparian habitat developed alongside the Rio Grande within the exposed conservation space. Since 1999, this riparian vegetation has developed into flycatcher nesting habitat and the number of flycatcher territories dramatically increased. The area within the conservation space of Elephant Butte Reservoir is currently the largest known flycatcher population in their range; in 2009, a total of 221 pairs and 291 nests were documented (Moore and Ahlers 2010, p. 43). The Bureau of Reclamation develops plans for the operation of the reservoir, the most recent being *Elephant Butte Reservoir Five-Year Operational Plan: Biological Assessment* (Reclamation 2009), which includes an assessment of the recent flycatcher population numbers within Elephant Butte Reservoir and the near reach of the Rio Grande.

Based on an initial evaluation of potential impacts on water operations of the Elephant Butte Dam and Reservoir, we will consider excluding the water storage area of Elephant Butte Reservoir from the final designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will invite these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed designation of critical habitat.

We will consider all comments and information we receive during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this proposed rule under Executive Order 12866 (Regulatory Planning and Review). OMB bases its determination upon the following four criteria:

(1) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a

substantial number of small entities. SBREFA amended RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, we lack the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, we defer the RFA finding until completion of the revised draft economic analysis prepared under section 4(b)(2) of the Act and Executive Order 12866. We previously conducted an economic analysis in 2005 for the 2004 proposed critical habitat for flycatchers, which included an analysis of the effects on small entities. We will revise the draft economic analysis for this proposed rule to provide the required factual basis for the RFA finding for this revised critical habitat proposal. Upon completion of the revised draft economic analysis, we will announce availability of the draft economic analysis of the proposed designation in the **Federal Register** and reopen the public comment period for the proposed designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination.

Energy Supply, Distribution, or Use—Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate revised critical habitat for the flycatcher is not expected to significantly affect energy supplies, distribution, or use because there are no pipelines, distribution facilities, power grid stations, *etc.,* within the boundaries of proposed revised critical habitat. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required. We will, however, further evaluate this issue as we conduct our economic analysis and, as appropriate, review and revise this assessment as warranted.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) Based in part on an analysis conducted for the previous designation of flycatcher critical habitat (70 FR 60886, October 19, 2005) and extrapolated to this designation, we do not expect this rule to significantly or uniquely affect small governments. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. Therefore, a Small Government Agency Plan is not required. However, we will further evaluate these issues as we conduct our economic analysis, and review and revise this assessment as warranted.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), this rule is not anticipated to have significant takings implications. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Due to current public knowledge of the species protections and the prohibition against take of the species both within and outside of the proposed areas, we do not anticipate that property values would be affected by this revised critical habitat designation. However, we have not yet completed the economic analysis for this proposed rule. Once the revised economic analysis is available, we will review and revise this preliminary assessment as warranted, and prepare a Takings Implication Assessment.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Arizona,

Utah, Nevada, California, New Mexico, and Colorado. The designation of critical habitat in areas currently occupied by the flycatcher may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what Federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the elements of physical or biological features essential to the conservation of the flycatcher within the designated areas to assist the public in understanding the habitat needs of the species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, when the range of the species includes States within the Tenth Circuit, such as that of flycatcher, under the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we will undertake a NEPA analysis for critical habitat designation and notify the public of the availability of the draft environmental assessment for this proposal when it is finished.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, *etc.*

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

There are Tribal lands in California, Utah, Arizona, Colorado, and New Mexico included in this proposed designation of critical habitat. At the end of the 2007 flycatcher breeding season, 5 percent of all known breeding sites were administered by Native American Tribes (Durst *et al.* 2007, p. 17). Using the criteria found in the *Criteria Used To Identify Critical Habitat* section, we have determined that all of the areas proposed for designation on Tribal lands are essential to the conservation of the species. We will seek government-to-government consultation with these Tribes throughout the proposal and development of the final designation of flycatcher critical habitat. We will consider these areas for exclusion from final critical habitat designation to the extent consistent with the requirements of 4(b)(2) of the Act. We recently informed Tribes of how we are evaluating section 4(b)(2) of the Act and of our interest in consulting with them on a government-to-government basis.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Arizona Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise the entry for ''Flycatcher, southwestern willow'' under ''BIRDS'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
BIRDS							
*	*	*	*	*	*		*
Flycatcher, southwestern willow.	*Empidonax traillii extimus*.	U.S.A. (AZ, CA, CO, NM, NV, TX, UT), Mexico.	Entire	E	577	17.95(b)	NA
*	*	*	*	*	*		*

3. In § 17.95, amend paragraph (b) by revising the entry for ''Southwestern Willow Flycatcher (*Empidonax traillii extimus*),'' in the same alphabetical order that the species appears in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Southwestern Willow Flycatcher (*Empidonax traillii extimus*)

(1) Critical habitat units are depicted for Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, Santa Barbara, San Bernardino, San Diego, and Ventura Counties in California; Clark, Lincoln, and Nye Counties in Nevada; Kane, San Juan, and Washington Counties in Utah; Alamosa, Conejos, Costilla, La Plata, and Rio Grande Counties in Colorado; Apache, Cochise, Gila, Graham, Greenlee, La Paz, Maricopa, Mohave, Pima, Pinal, Santa Cruz, Yavapai, and Yuma Counties in Arizona; and Catron, Cibola, Dona Ana, Grant, Hidalgo, McKinley, Mora, Rio Arriba, Santa Fe, San Juan, Sierra, Soccoro, Taos, and Valencia Counties in New Mexico on the maps and as described below.

(2) Within these areas, the primary constituent elements of the physical and biological features essential to the conservation of the southwestern willow flycatcher consist of two components:

(i) Primary Constituent Element 1—*Riparian vegetation.* Riparian habitat in a dynamic river or lakeside, natural or manmade successional environment (for nesting, foraging, migration, dispersal, and shelter) that is comprised of trees and shrubs (that can include Gooddings willow, coyote willow, Geyers willow, arroyo willow, red willow, yewleaf willow, pacific willow, boxelder, tamarisk, Russian olive, buttonbush, cottonwood, stinging nettle, alder, velvet ash, poison hemlock, blackberry, seep willow, oak, rose, sycamore, false indigo, Pacific poison ivy, grape, Virginia creeper, Siberian elm, and walnut) and some combination of:

(A) Dense riparian vegetation with thickets of trees and shrubs that can range in height from about 2 m to 30 m (about 6 to 98 ft). Lower-stature thickets (2 to 4 m or 6 to 13 ft tall) are found at higher elevation riparian forests and tall-stature thickets are found at middle- and lower-elevation riparian forests; and/or

(B) Areas of dense riparian foliage at least from the ground level up to approximately 4 m (13 ft) above ground or dense foliage only at the shrub or tree level as a low, dense canopy; and/or

(C) Sites for nesting that contain a dense (about 50 percent to 100 percent) tree or shrub (or both) canopy (the amount of cover provided by tree and shrub branches measured from the ground); and/or

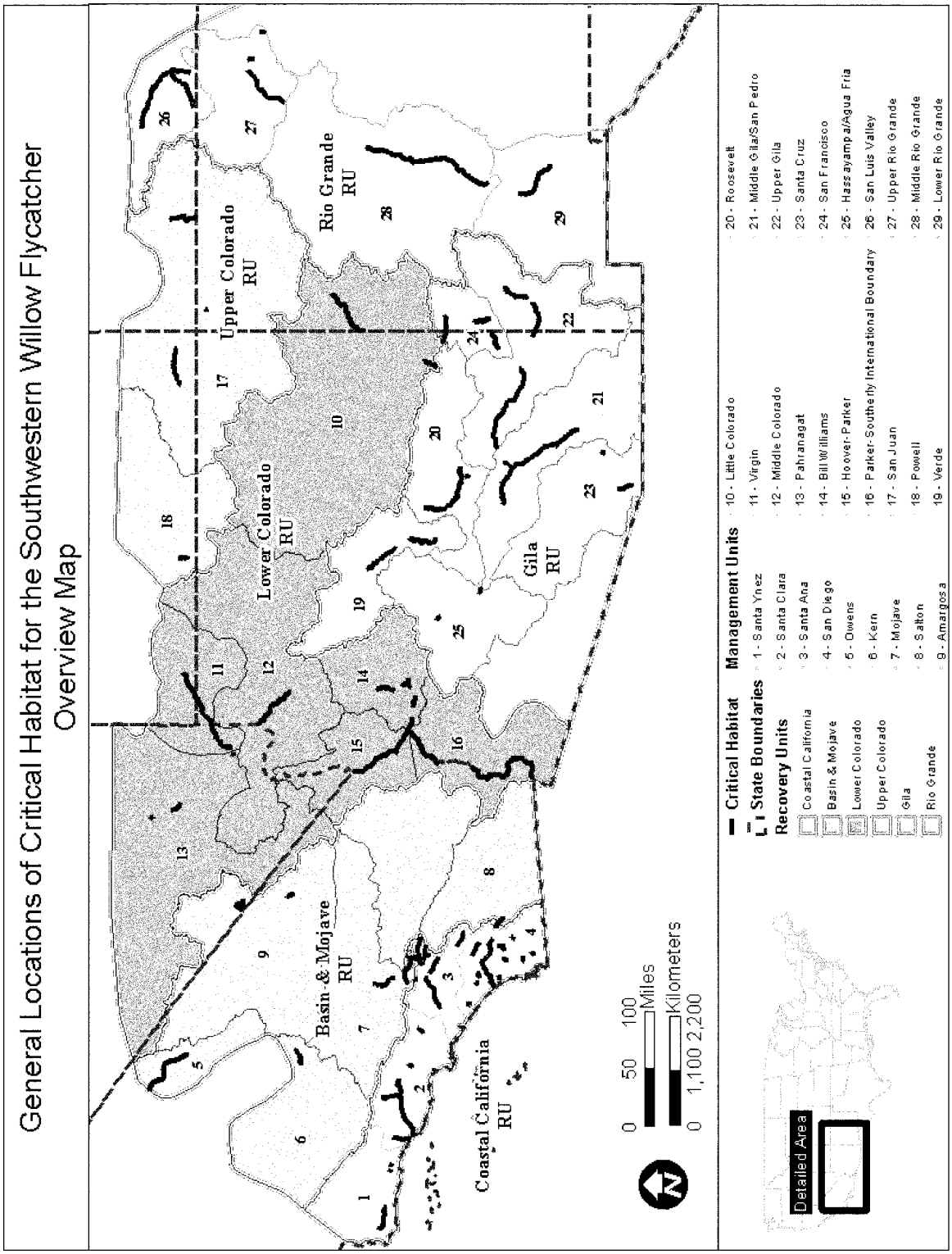
(D) Dense patches of riparian forests that are interspersed with small openings of open water or marsh or areas with shorter and sparser vegetation that creates a variety of habitat that is not uniformly dense. Patch size may be as small as 0.1 ha (0.25 ac) or as large as 70 ha (175 ac); and

(ii) Primary Constituent Element 2—*Insect prey populations.* A variety of insect prey populations found within or adjacent to riparian floodplains or moist environments, which can include: flying ants, wasps, and bees (Hymenoptera); dragonflies (Odonata); flies (Diptera); true bugs (Hemiptera); beetles (Coleoptera); butterflies, moths, and caterpillars (Lepidoptera); and spittlebugs (Homoptera).

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created in two steps. First, the linear segments were mapped from the National Hydrologic Dataset using USA Contiguous Equidistant Conic (North American Datum 1983) coordinates. Next, the lateral extents were digitized over the most recent available aerial photography using Albers Equal Area Conic (North American Datum 1983) coordinates. The textual description for each critical habitat unit below includes the Universal Transverse Mercator (UTM) zone and UTM easting (E) and northing (N) coordinate pairs for the starting and ending points.

Note: (5) Index map of southwestern willow flycatcher critical habitat units follows:



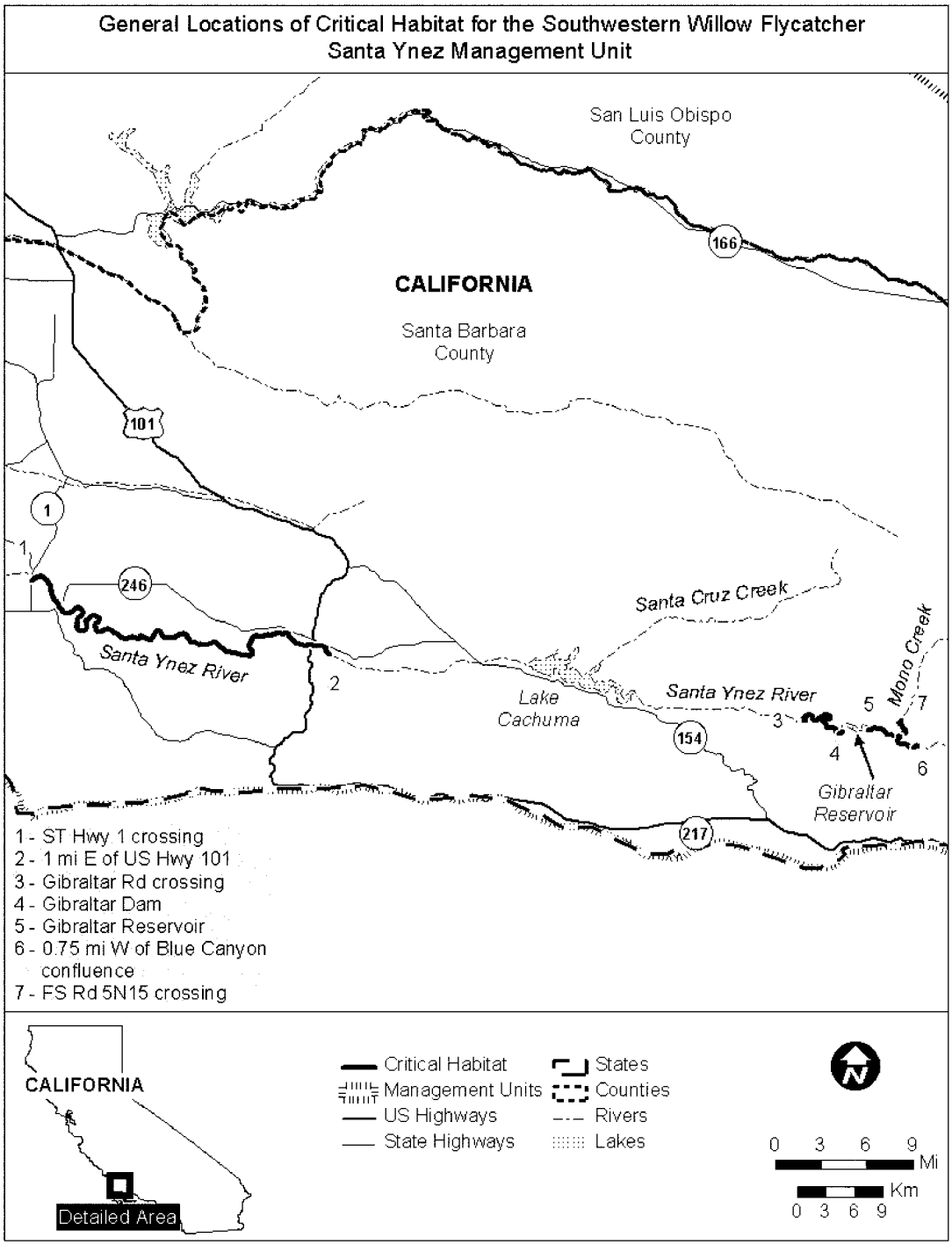
(6) Santa Ynez Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Santa Ynez River (upper)	11, 259890, 3821926	11, 255550, 3823716
Santa Ynez River (middle)	11, 253343, 3823606	11, 249967, 3824847
Santa Ynez River (lower)	10, 759116, 3832075	10, 732972, 3839168

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Mono Creek	11, 258529, 3824766	11, 258310, 3822974

(ii) **Note:** Map of Santa Ynez Management Unit follows:



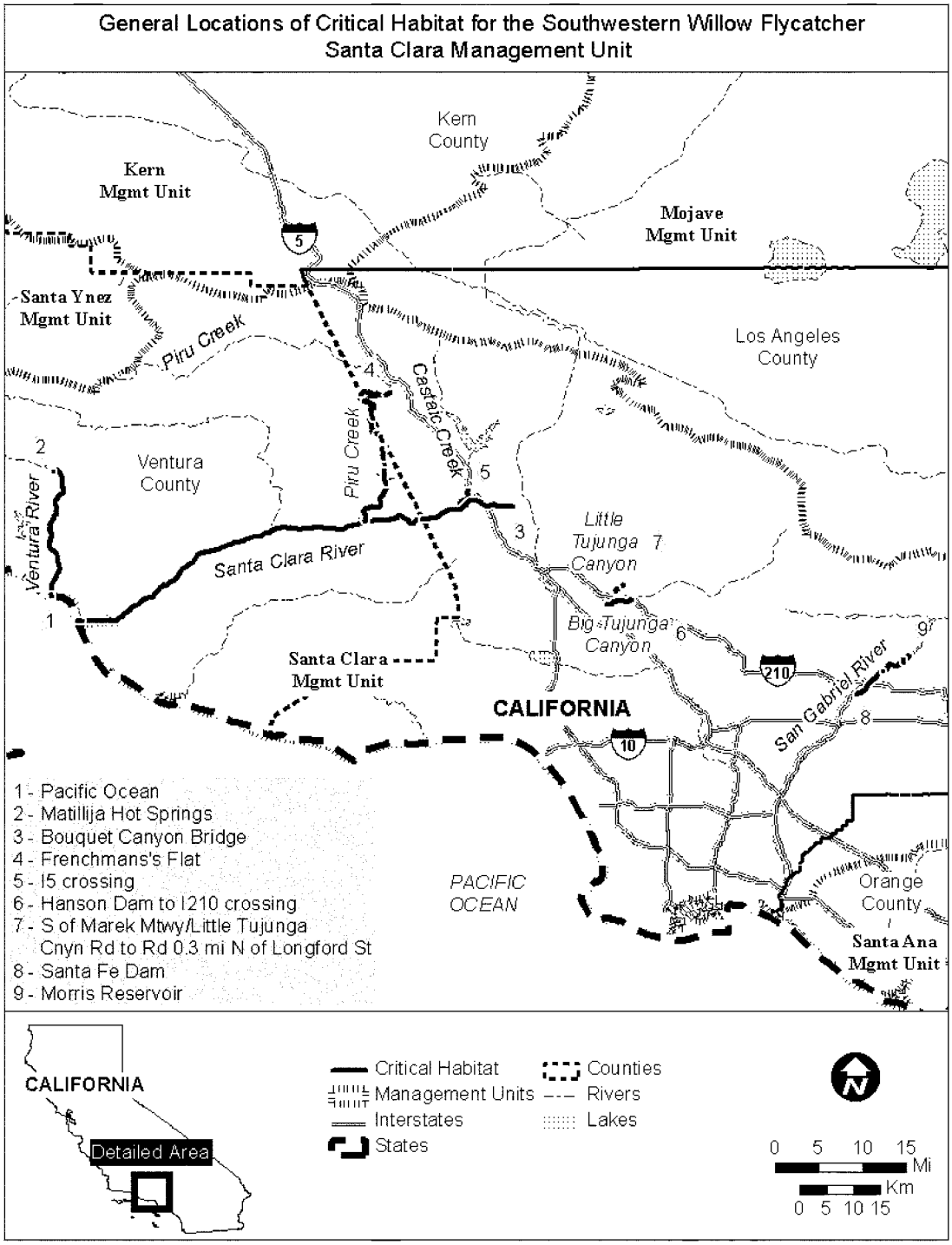
(7) Santa Clara Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Ventura River	11, 287996, 3818329	11, 287559, 3794961
Santa Clara River	11, 358481, 3810219	11, 291354, 3790556

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Piru Creek	11, 339998, 3831805	11, 335776, 3807951
Castaic Creek	11, 351629, 3813373	11, 350055, 3809756
Big Tujunga Canyon Creek	11, 376326, 3792941	11, 372432, 3792049
Little Tujunga Canyon Creek	11, 375223, 3795681	11, 373846, 3794336
San Gabriel River	11, 418737, 3781999	11, 410558, 3775011

(ii) **Note:** Map of Santa Clara Management Unit follows:

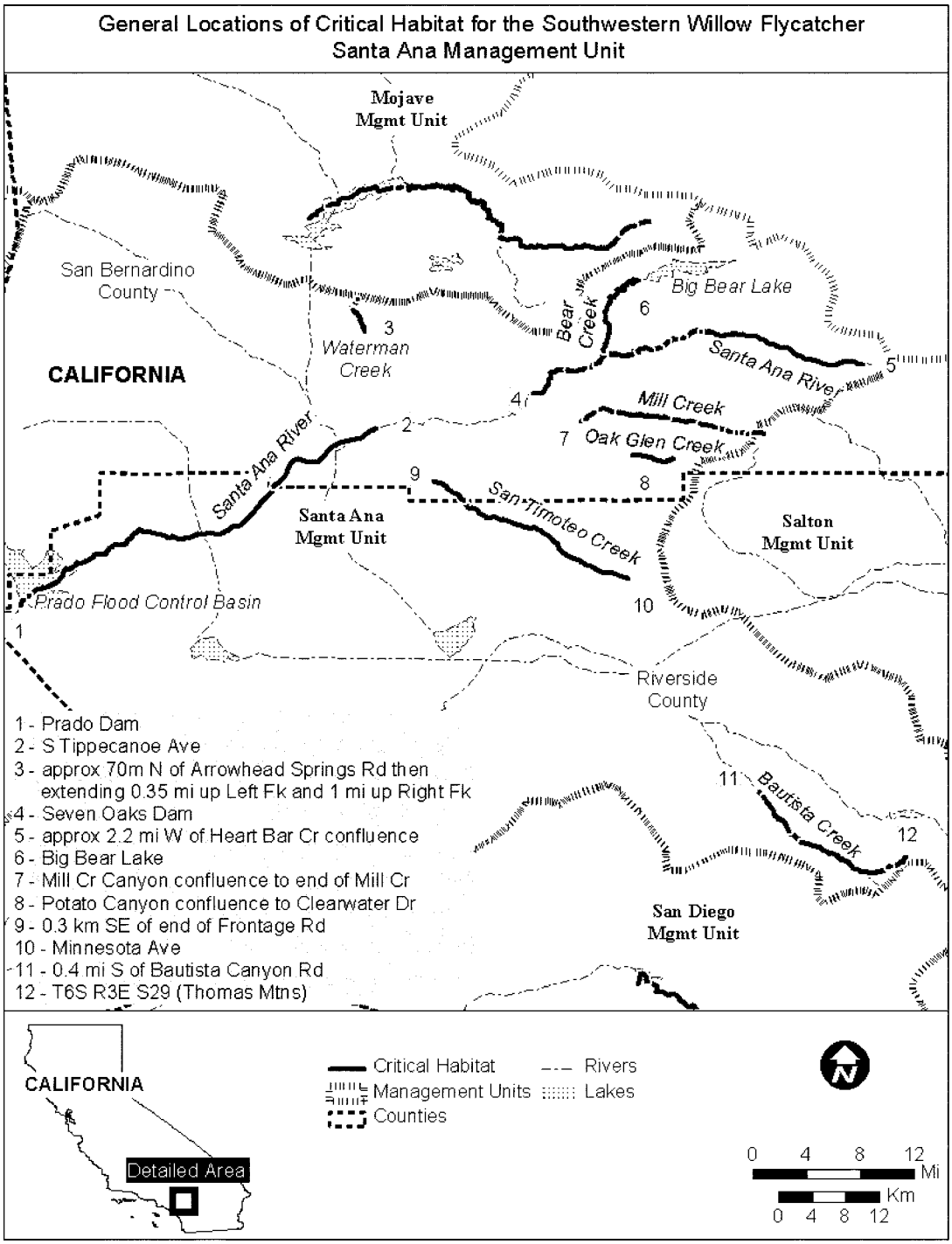


(8) Santa Ana Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Santa Ana River (upper)	11, 524293, 3778965	11, 491603, 3775416
Santa Ana River (lower)	11, 476054, 3771257	11, 440482, 3750310
Waterman Creek	11, 474905, 3782822	11, 473755, 3785448
Waterman Creek (left fork)	11, 473453, 3785826	11, 473755, 3785448
Waterman Creek (right fork)	11, 474240, 3786803	11, 473755, 3785448
Bear Creek	11, 502121, 3788996	11, 498606, 3779948
Mill Creek	11, 514496, 3770619	11, 496356, 3772092
Oak Glen Creek	11, 505534, 3767595	11, 501351, 3768018
San Timoteo Creek	11, 501075, 3753255	11, 481625, 3764986
Bautista Creek	11, 528791, 3720143	11, 514049, 3727872

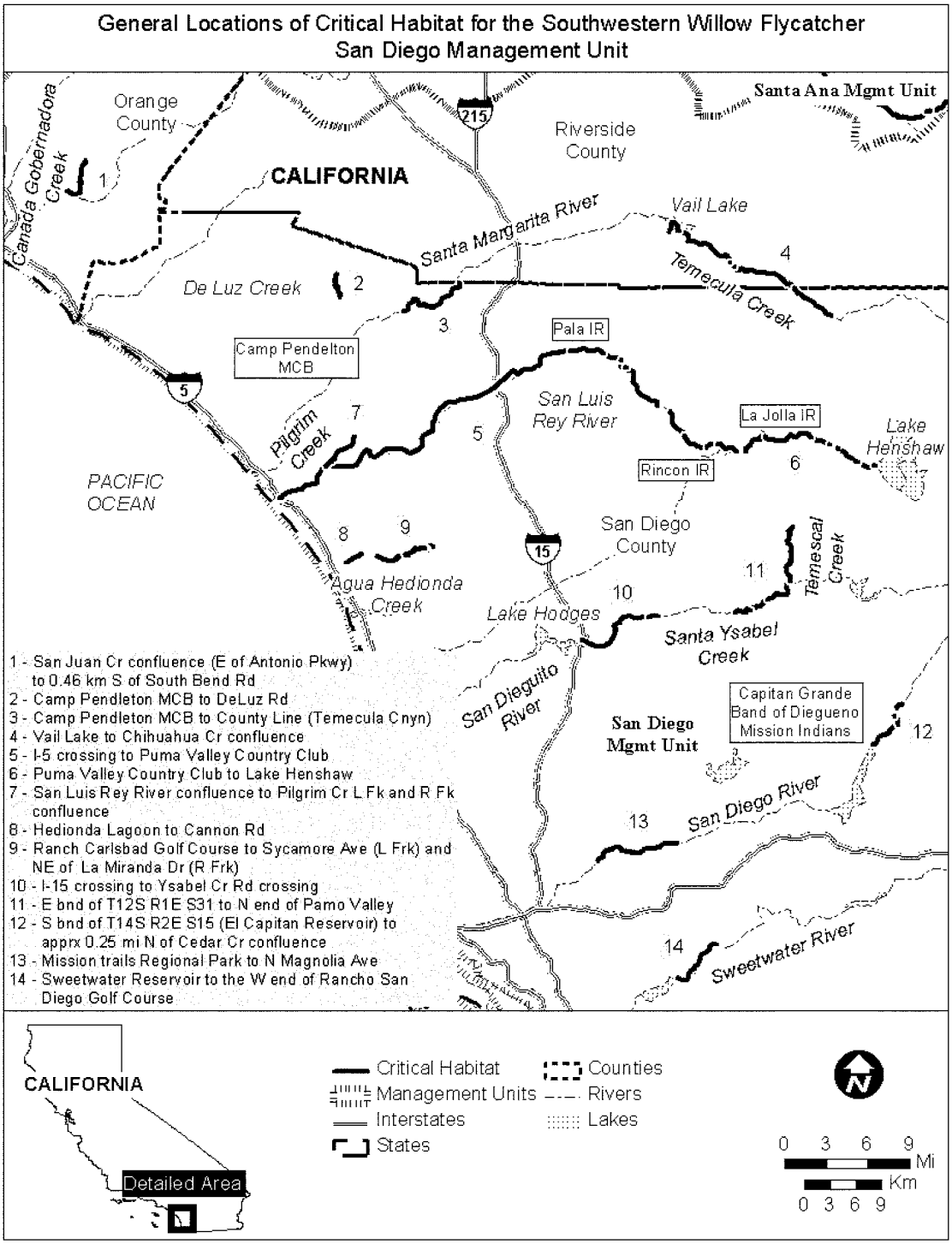
(ii) **Note:** Map of Santa Ana Management Unit follows:



(9) San Diego Management Unit.
(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Canada Gobernadora Creek	11, 443758, 3709886	11, 445478, 3713561
DeLuz Creek	11, 469888, 3700258	11, 470085, 3697512
Santa Margarita River	11, 481662, 3699235	11, 476206, 3695949
Temecula Creek	11, 517749, 3695379	11, 502050, 3704986
Pilgrim Creek	11, 471495, 3681452	11, 468703, 3677979
San Luis Rey (upper)	11, 522199, 3678133	11, 502102, 3684334
San Luis Rey (lower)	11, 500948, 3684975	11, 464169, 3674286
Agua Hedionda Creek (upper)	11, 473644, 3667656	11, 478368, 3668540
Agua Hedionda Creek (lower)	11, 470613, 3666848	11, 472211, 3667859
Agua Hedionda Creek (right fork)	11, 478544, 3668255	11, 478368, 3668540
Agua Hedionda Creek (left fork)	11, 479102, 3668675	11, 478368, 3668540
Temescal Creek	11, 514095, 3671020	11, 513763, 3664632
Santa Ysabel River (upper)	11, 508395, 3661105	11, 513763, 3664632
San Dieguito River/Santa Ysabel River (lower)	11, 500998, 3660643	11, 493522, 3657877
San Diego River (upper)	11, 524742, 3650609	11, 521804, 3645772
San Diego River (lower)	11, 495073, 3632262	11, 502847, 3634390
Sweetwater River	11, 506745, 3622685	11, 502808, 3618825

(ii) **Note:** Map of San Diego Management Unit follows:

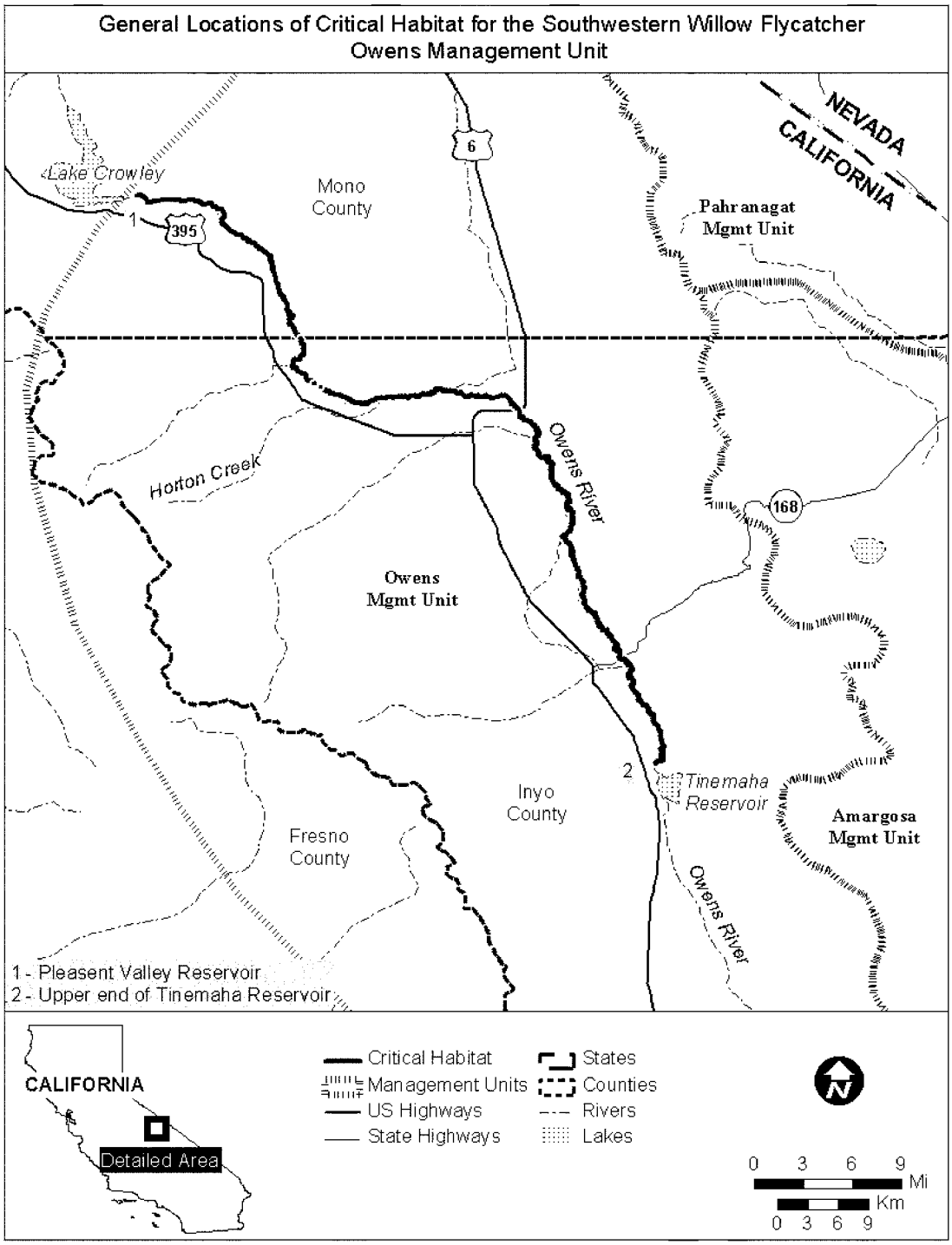


(10) Owens Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Owens River	11, 350379, 4161519	11, 765571, 4009492

(ii) **Note:** Map of Owens Management Unit follows:

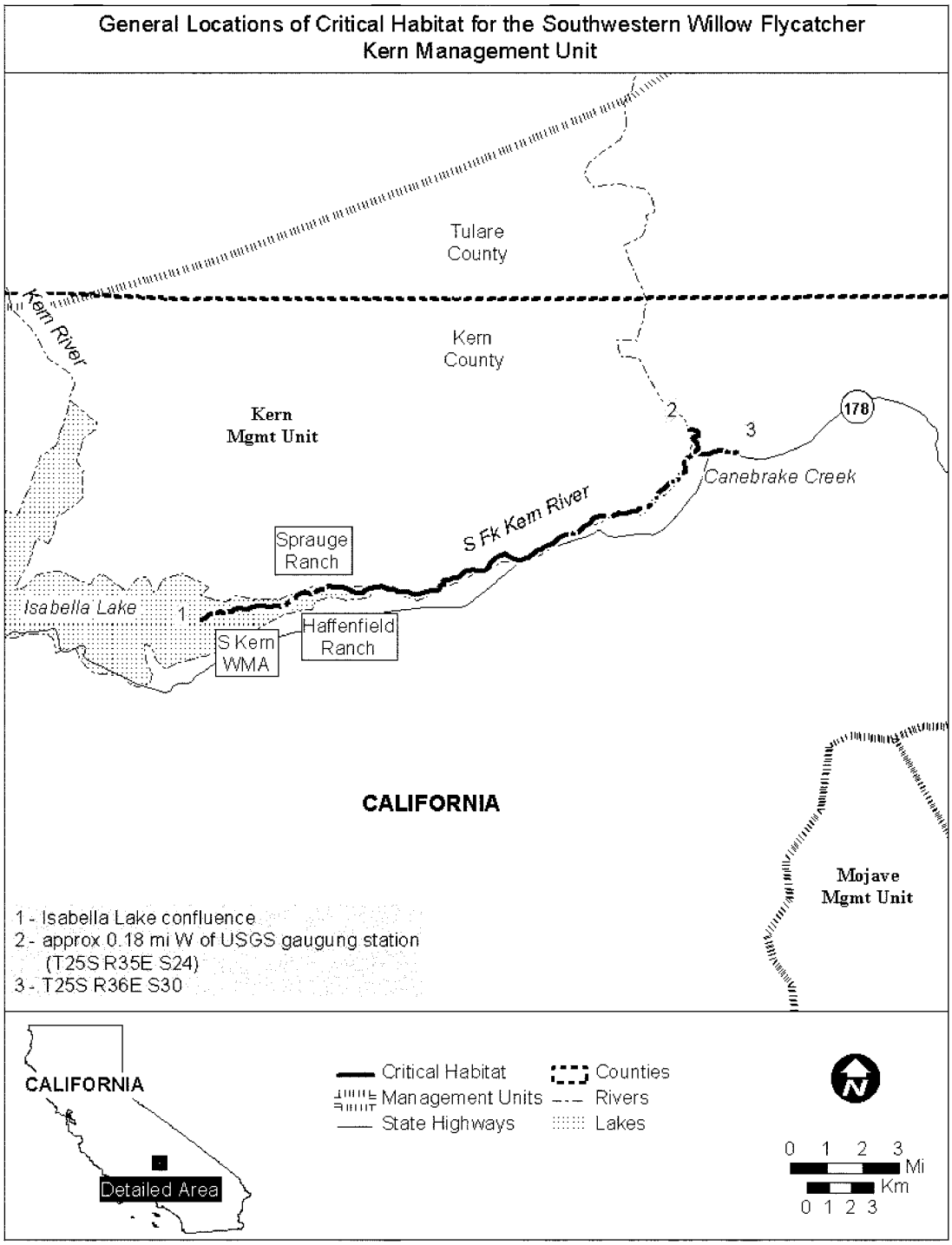


(11) Kern Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
South Fork Kern River	11, 393579, 3955510	11, 375779, 3947268
Canebrake Creek	11, 395263, 3954472	11, 393671, 3954409

(ii) **Note:** Map of Kern Management Unit follows:

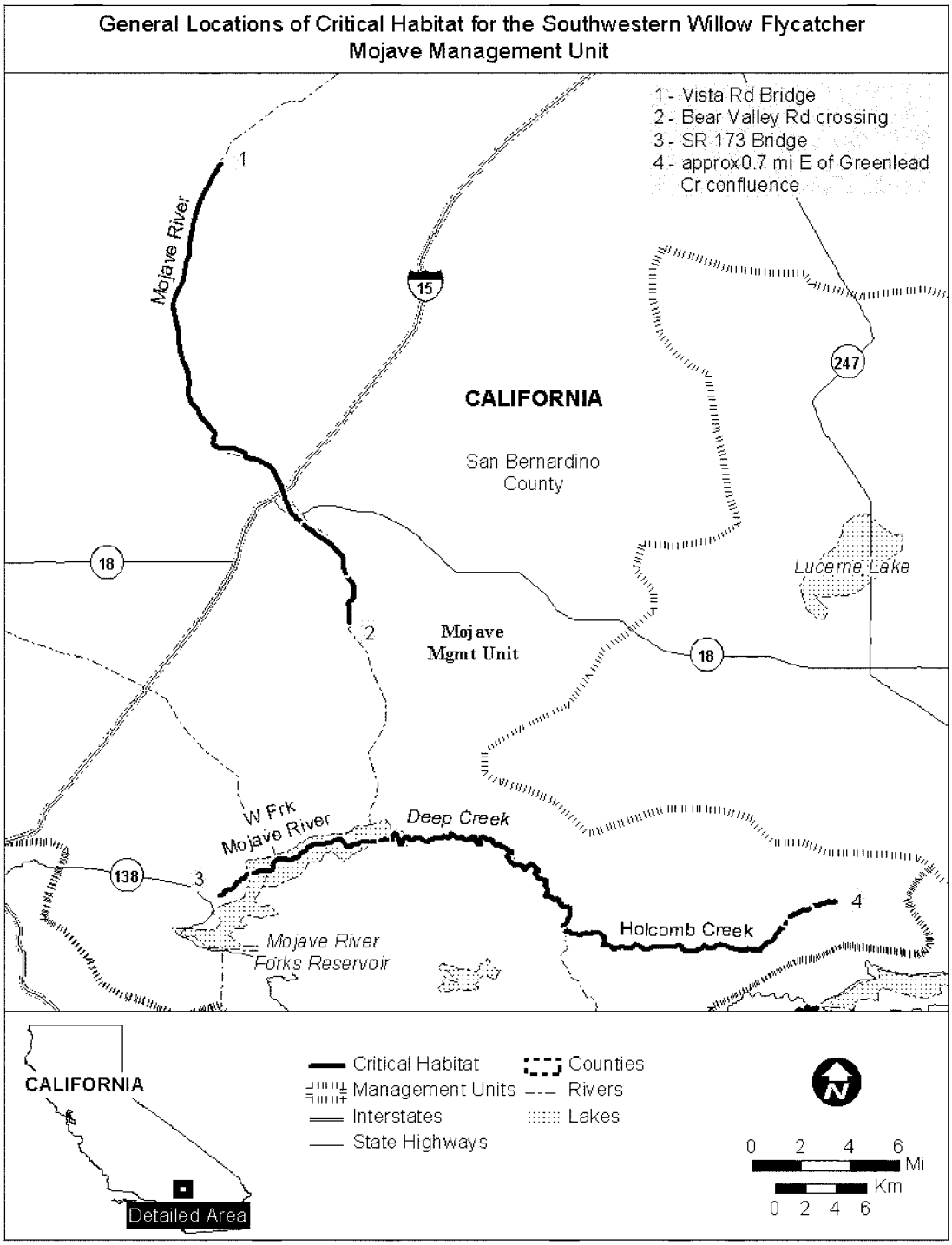


(12) Mojave Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Mojave River	11, 469646, 3844680	11, 476583, 3814381
West Fork Mojave River	11, 469339, 3796375	11, 478190, 3800025
Deep Creek	11, 478190, 3800025	11, 488326, 3794046
Holcomb Creek	11, 503127, 3796007	11, 488326, 3794046

(ii) **Note:** Map of Mojave Management Unit follows:

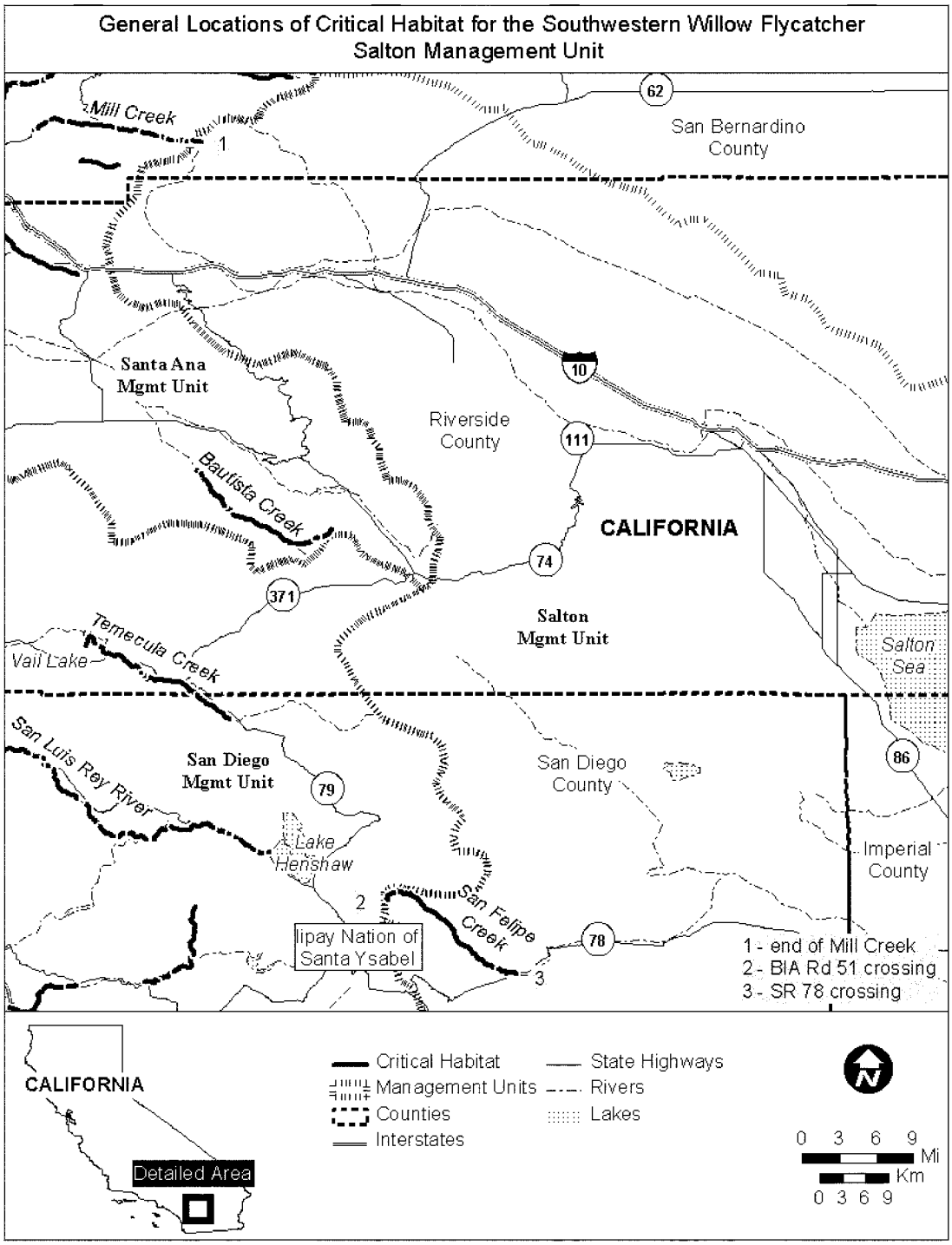


(13) Salton Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
San Felipe Creek	11, 535067, 3671838	11, 549258, 3662280
Mill Creek	11, 514496, 3770619	11, 496356, 3772092

(ii) **Note:** Map of Salton Management Unit follows:



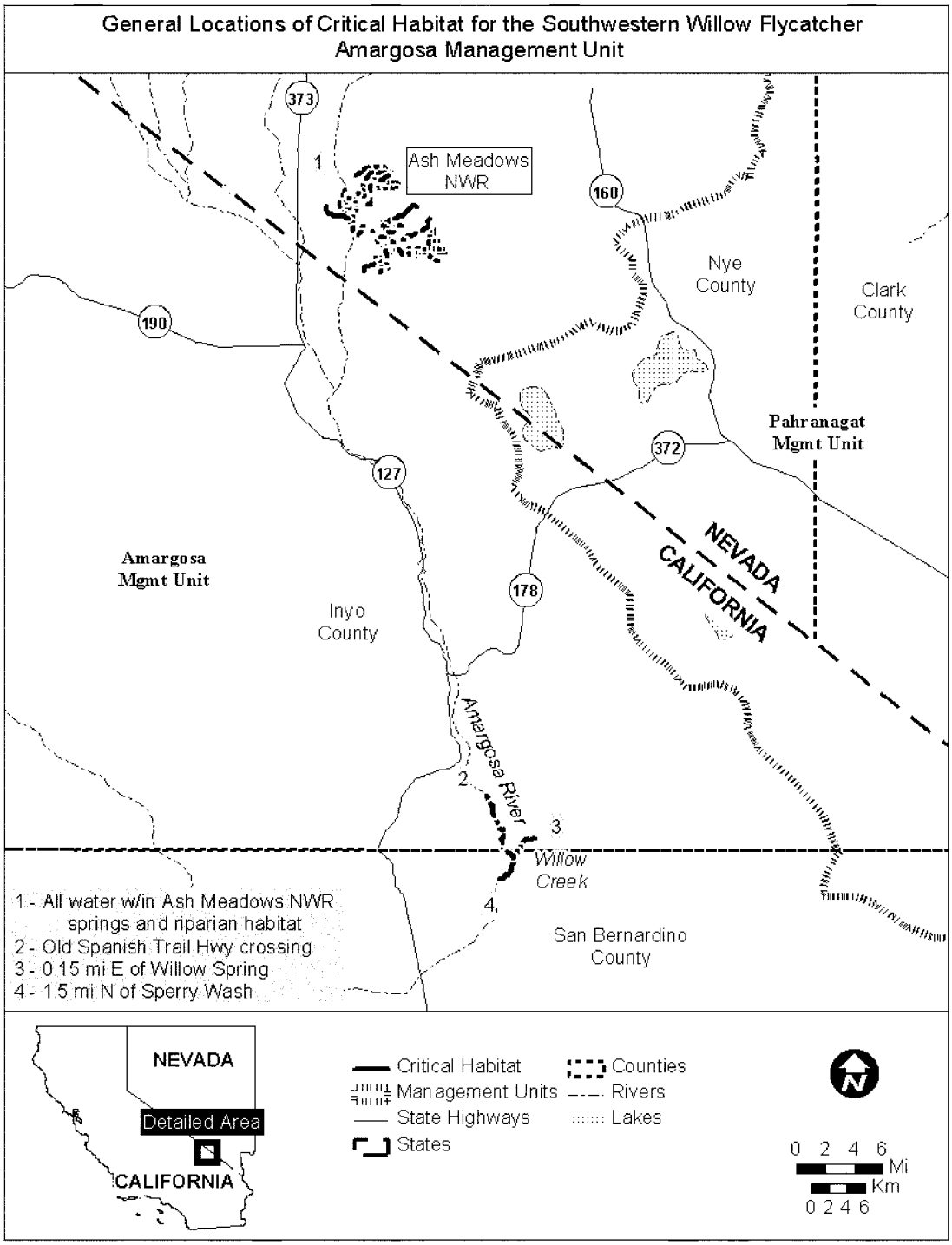
(14) Amargosa Management Unit.
(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Amargosa River	11, 569473, 3967513	11, 570730, 3958035
Willow Creek	11, 574000, 3962736	11, 572077, 3960419

(ii) Ash Meadows Riparian Areas and Carson Slough (UTM zone 11, E, N): 559058.51, 4038462.72; 559169.18, 4038088.61; 559257.50, 4037821.45; 559388.34, 4037661.69; 559778.65, 4037503.73; 560038.12, 4037505.53;

559928.15, 4037772.53; 560533.55, 4037776.76; 560493.50, 4037321.28; 560571.70, 4035420.70; 560182.40, 4035417.98; 559813.81, 4035549.30; 559773.33, 4035147.38; 558519.07, 4035112.01; 558573.22, 4033505.81; 559395.43, 4033484.65; 559465.49, 4032735.40; 560244.32, 032740.79; 560271.74, 4031910.92; 560986.12, 4031862.37; 561078.15, 4031086.51; 561424.94, 4031008.64; 561397.41, 4031838.51; 561873.41, 4031841.90; 561890.65, 4029432.17; 562691.62, 4029411.15; 562704.34, 4030642.95; 564305.88, 4030627.93; 564333.69, 4029798.07; 564658.52, 4029773.72; 564738.26, 4027792.87; 561469.58, 4027769.05; 561442.43, 4028545.36; 561052.25, 4028622.93; 560229.19, 4028697.49; 560263.14, 4026930.51; 559895.10, 4026927.96; 559857.36, 4026124.42; 559055.73, 4026199.25; 558941.05, 4030321.96; 558616.44, 4030319.75; 558621.57, 4032756.41; 558232.15, 4032753.78; 558180.93, 4030718.45; 557791.43, 4030715.84; 557767.10, 4031117.32; 556641.56, 4031163.43; 556566.66, 4032689.17; 555701.11, 4032710.32; 555755.65, 4034317.23; 556166.45, 4034346.67; 556120.93, 4034694.46; 556964.48, 4034699.98; 556891.48, 4035931.20; 557323.83, 4035960.84; 557319.38, 4036630.21; 557687.18, 4036605.88; 557638.92, 4037355.30; 558417.16, 4037387.30; 558393.18, 4037735.23; 558760.75, 4037737.73; 558755.83, 4038460.66; 559058.51, 4038462.72.

(iii) **Note:** Map of Amargosa Management Unit follows:

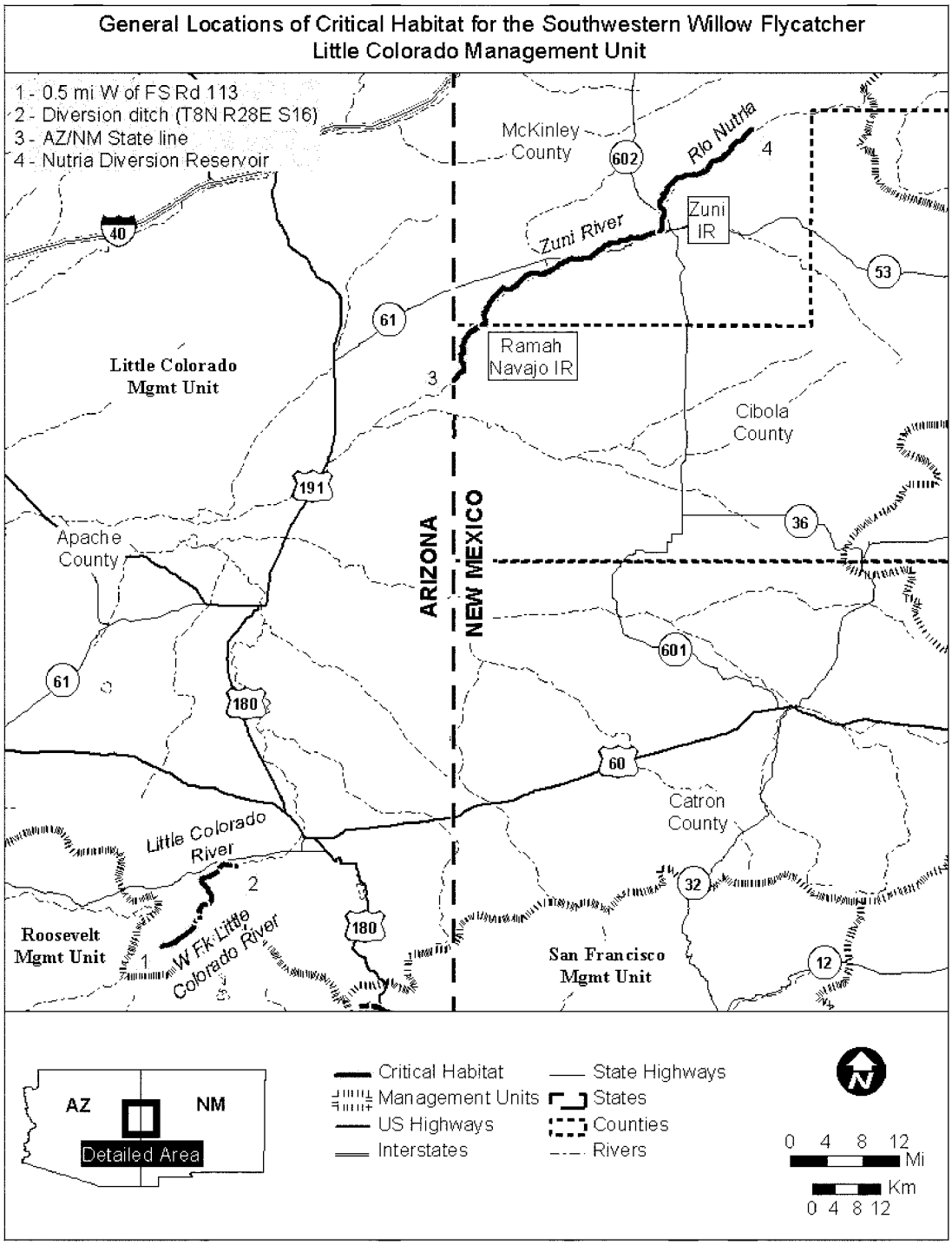


(15) Little Colorado Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Little Colorado River	12, 647842, 3773009	12, 642537, 3763668
West Fork Little Colorado River	12, 636971, 3758442	12, 642537, 3763668
Zuni River	12, 678602, 3860436	12, 708162, 3887682
Rio Nutria	12, 721505, 3906369	12, 708162, 3887682

(ii) **Note:** Map of Little Colorado Management Unit follows:

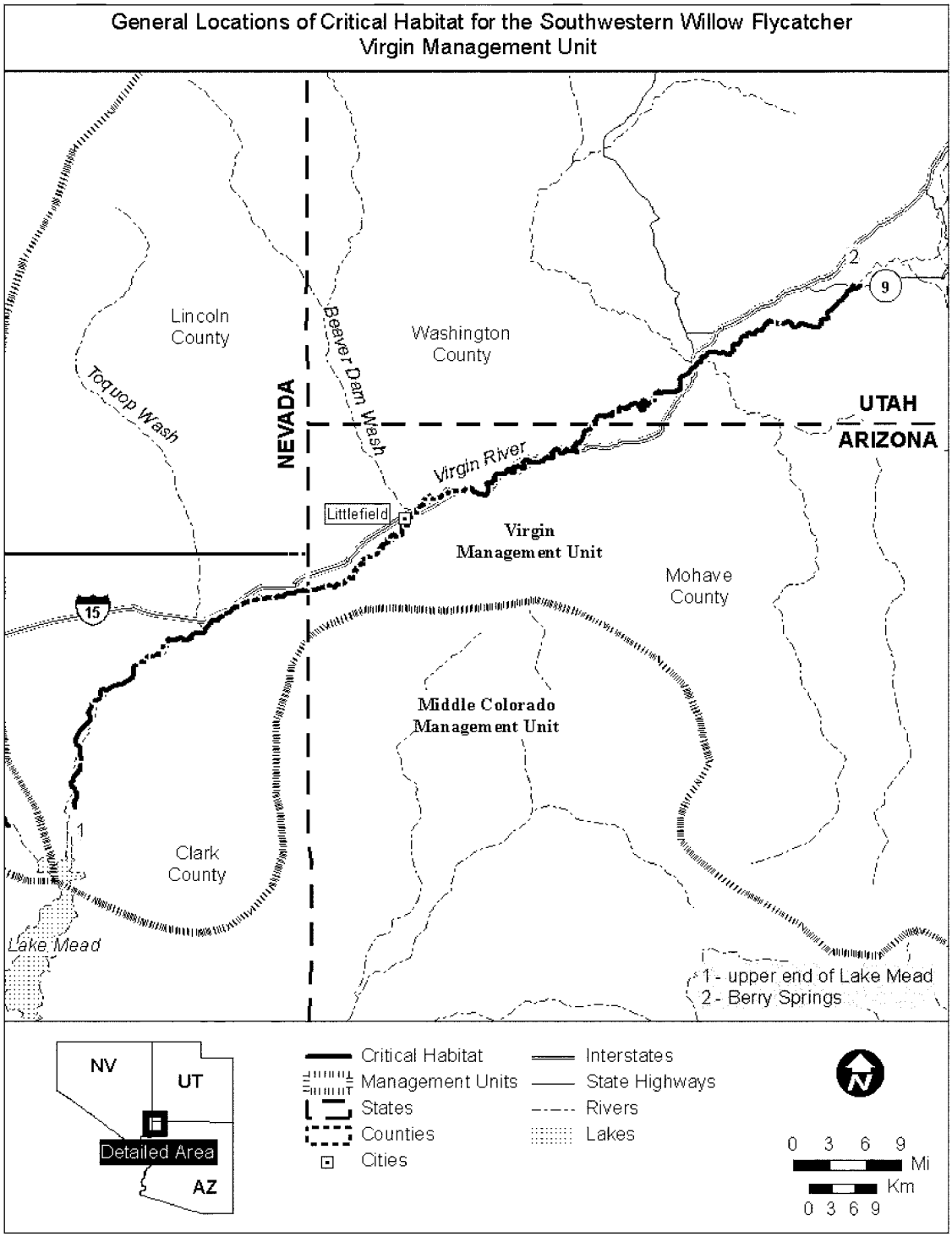


(16) Virgin Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Virgin River	12, 288341, 4116050	11, 738928, 4046898

(ii) **Note:** Map of Virgin Management Unit follows:

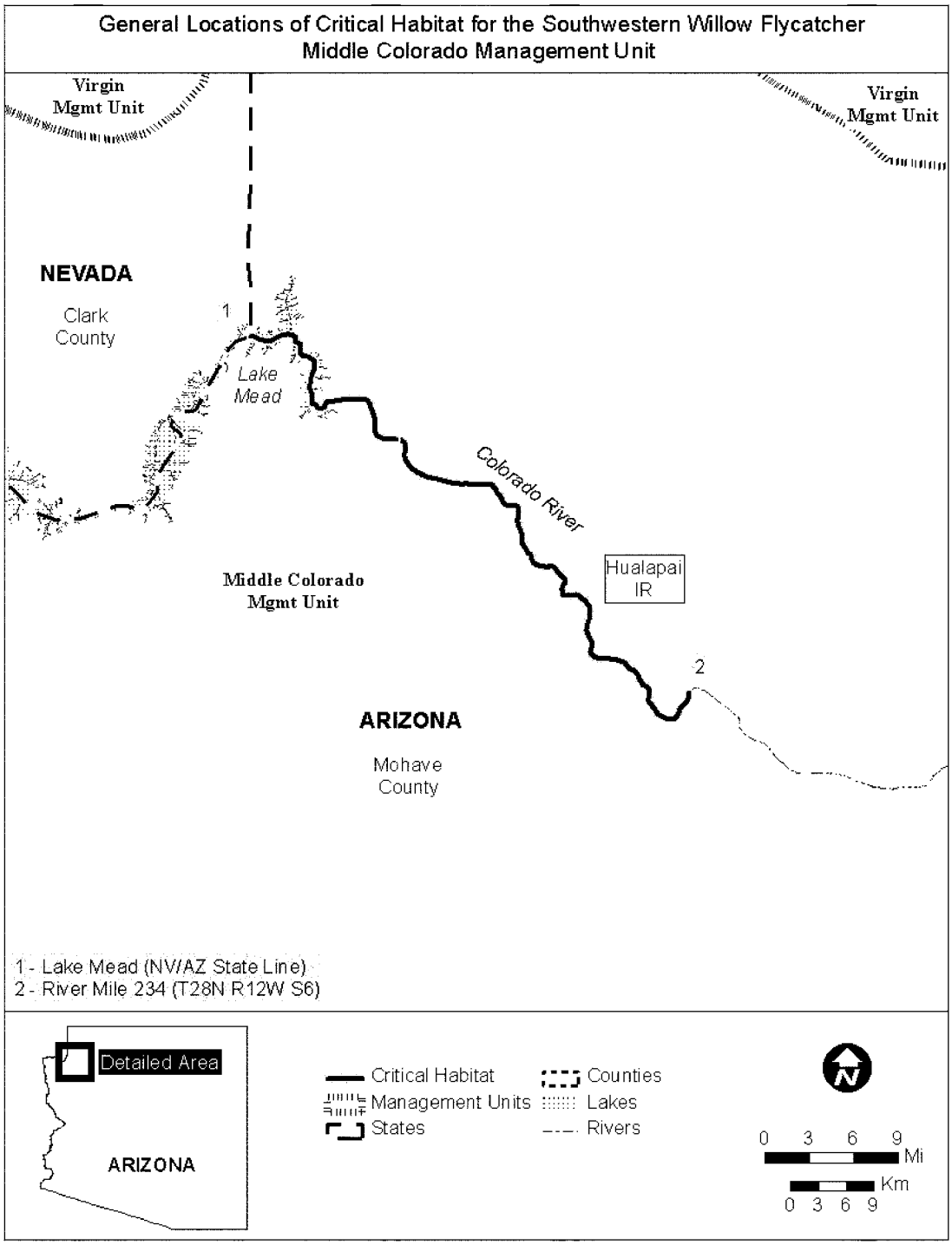


(17) Middle Colorado Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Colorado River	12, 263719, 3969968	11, 765571, 4009492

(ii) **Note:** Map of Middle Colorado Management Unit follows:

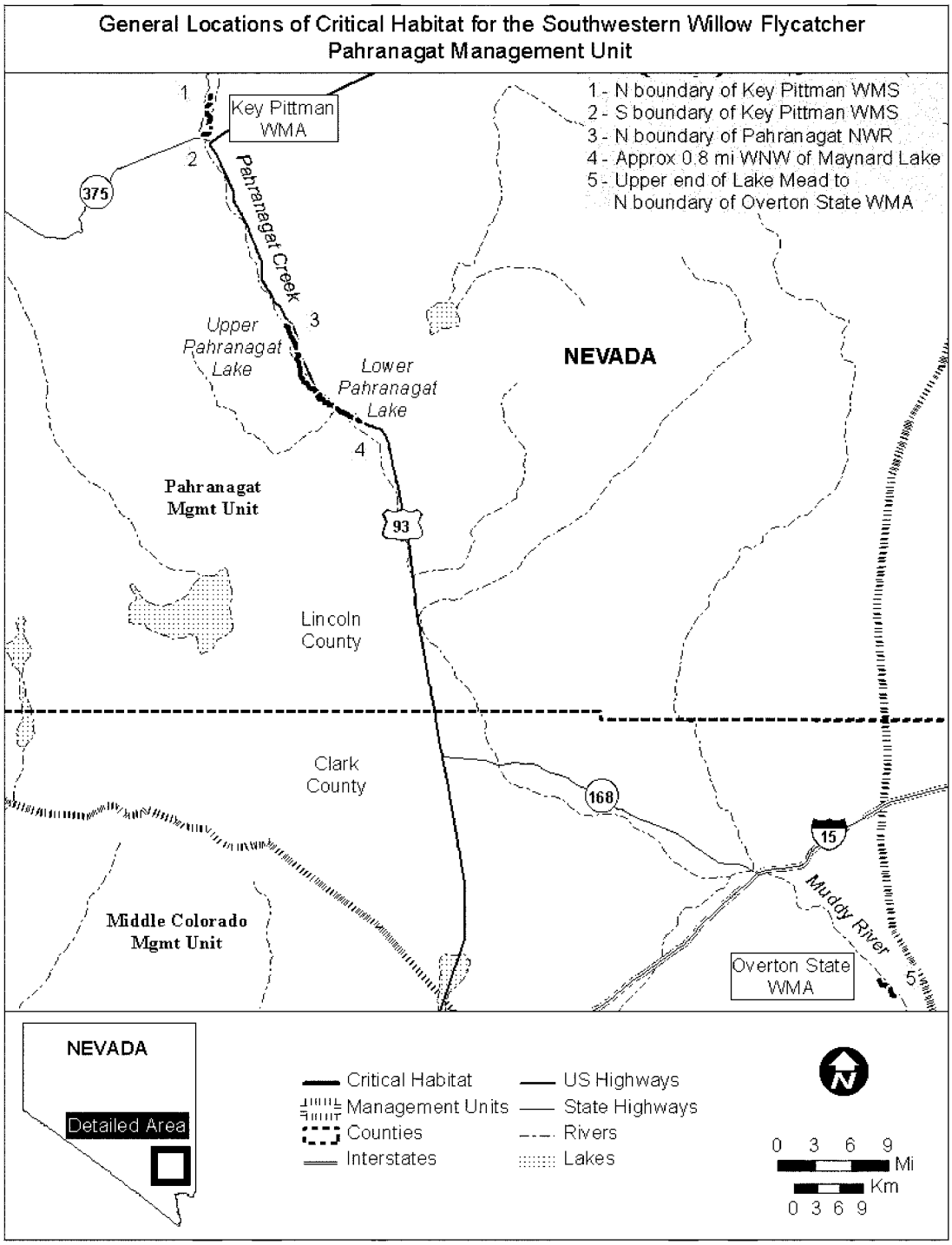


(18) Pahranagat Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Pahranagat River (upper)	11, 657017, 4161188	11, 656269, 4155884
Pahranagat River (lower)	11, 673597, 4118506	11, 665370, 4131144
Muddy River	11, 730143, 4046415	11, 731860, 4044267

(ii) **Note:** Map of Pahranagat Management Unit follows:

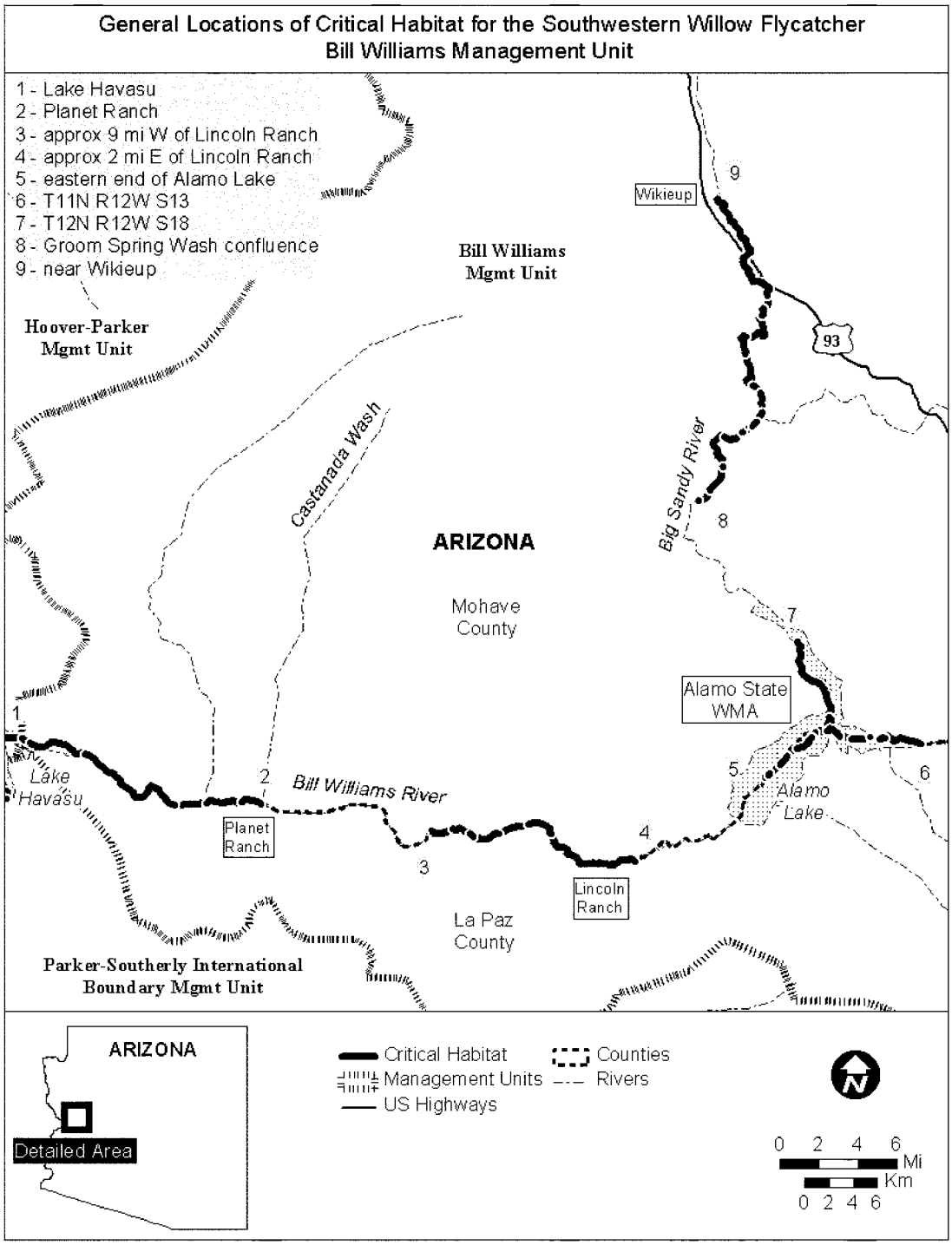


(19) Bill Williams Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Big Sandy River	12, 261621, 3843406	12, 259631, 3818574
Big Sandy River (Alamo Lake)	12, 266124, 3806764	12, 267166, 3799203
Santa Maria River (Alamo Lake)	12, 274410, 3798130	12, 267166, 3799203
Bill Williams River (Alamo Lake)	12, 263610, 3795533	12, 267166, 3799203
Bill Williams River (middle)	12, 254565, 3788878	12, 240599, 3791815
Bill Williams River (lower)	12, 229050, 3794316	11, 769317, 3798440

(ii) **Note:** Map of Bill Williams Management Unit follows:

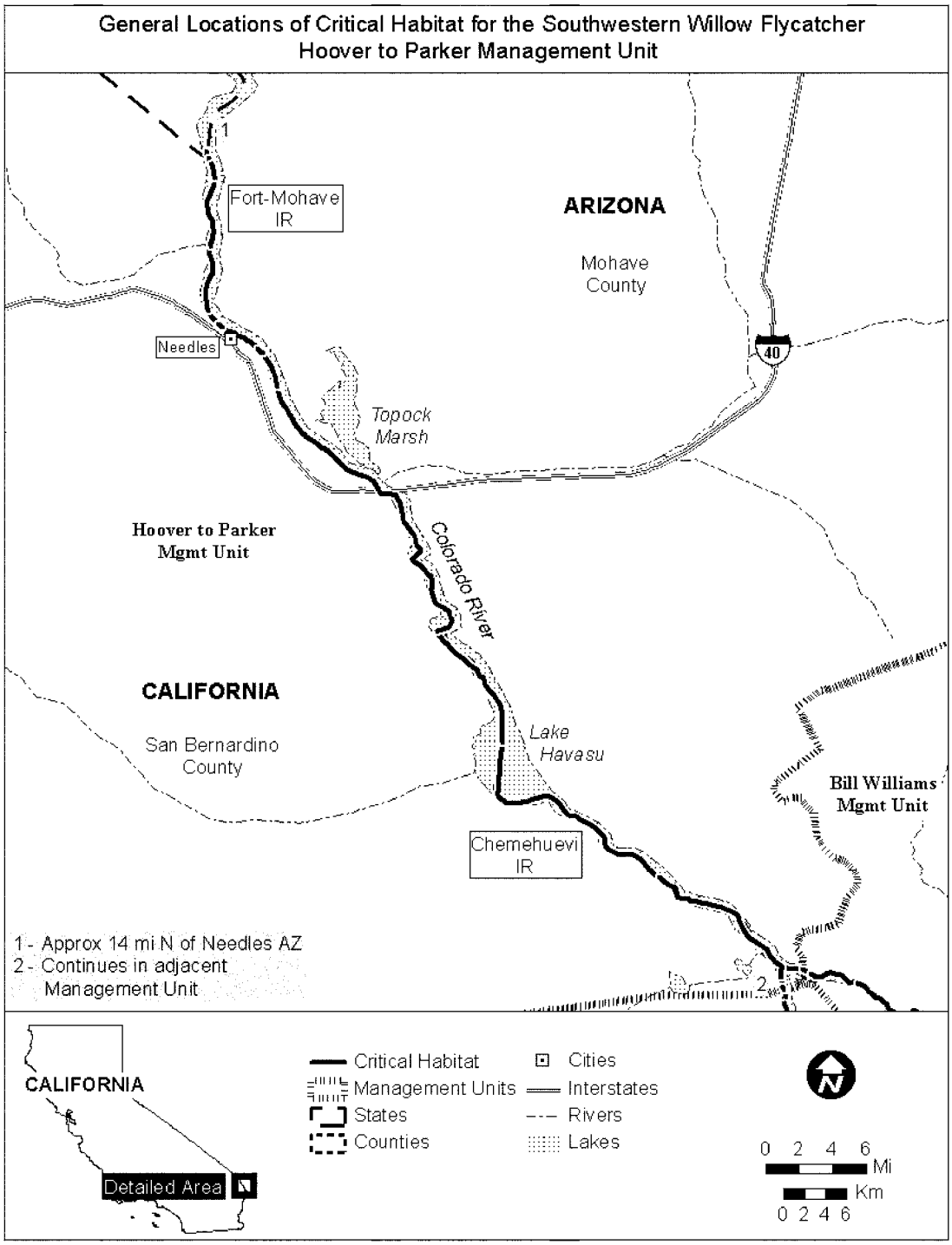


(20) Hoover to Parker Dam Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Colorado River	11, 715649, 3876762	11, 727771, 3757030
Bill Williams River	11, 769317, 3798440	11, 769317, 3798440

(ii) **Note:** Map of Hoover to Parker Dam Management Unit, follows:

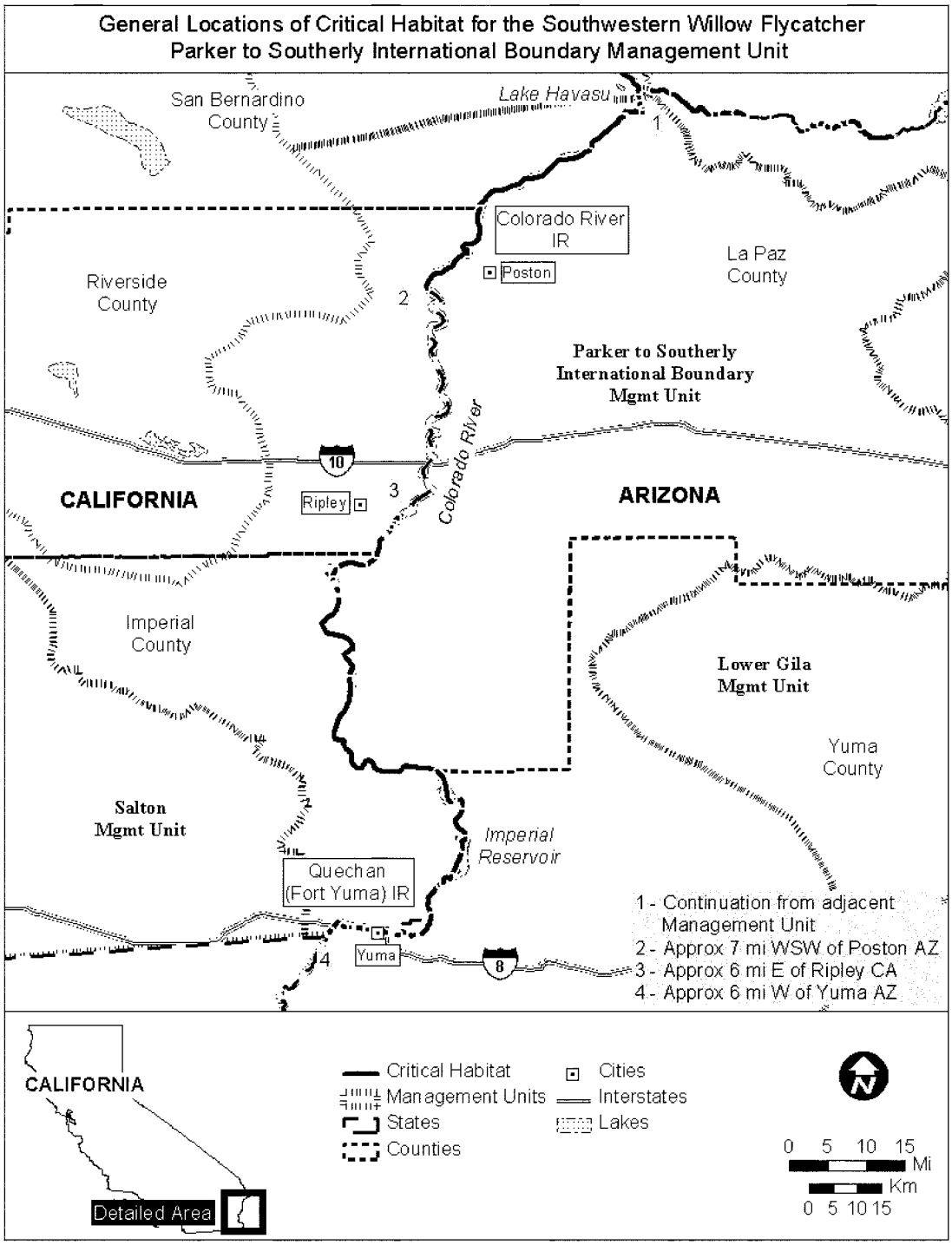


(21) Parker Dam to Southerly International Border Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Colorado River (upper)	11, 727771, 3757030	11, 724019, 3709582
Colorado River (lower)	11, 724019, 3709582	11, 713921, 3622846

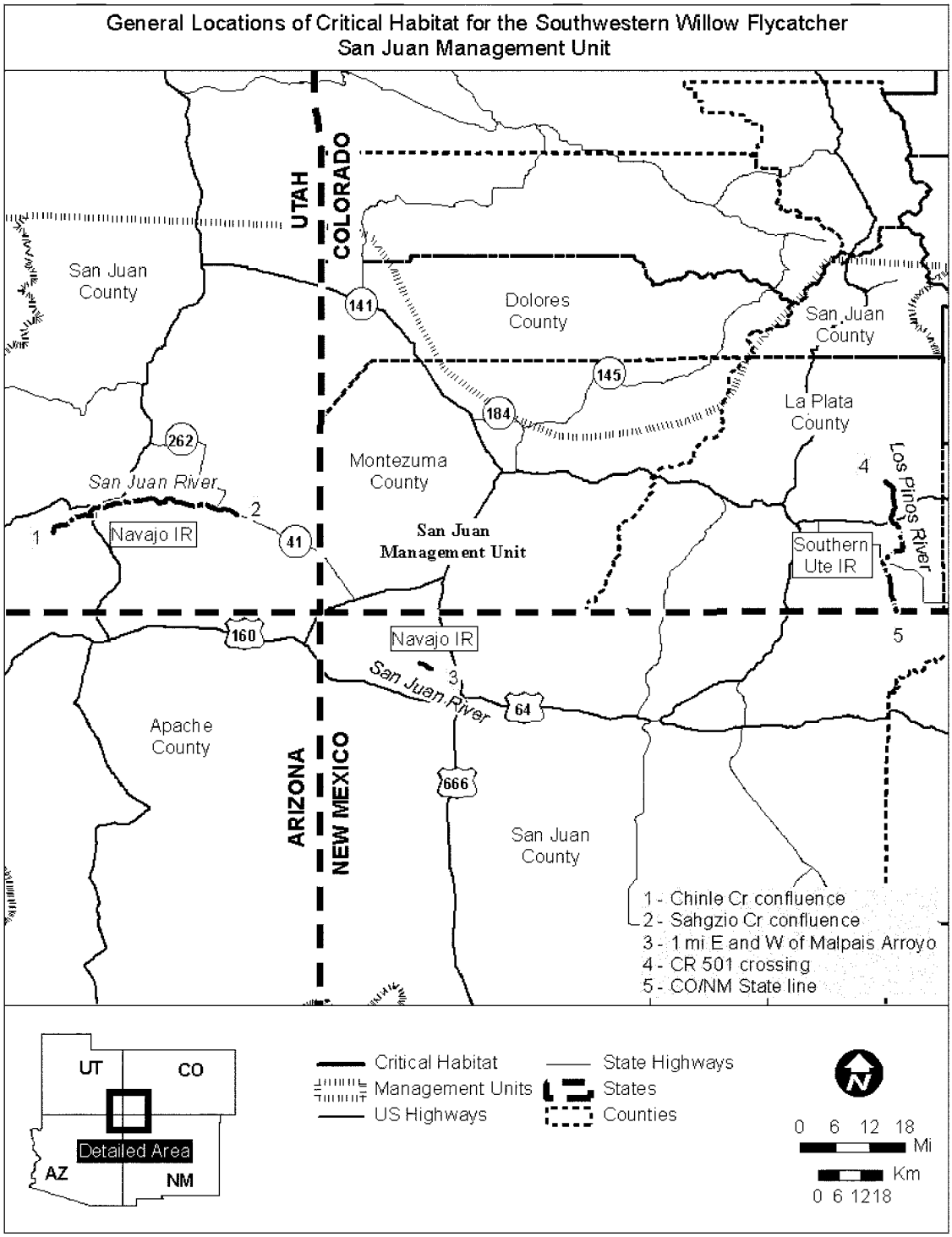
(ii) **Note:** Map of Parker Dam to Southerly International Border Management Unit follows:



(22) San Juan Management Unit.
(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Los Pinos River	13, 267242, 4134582	13, 268541, 4098153
San Juan River (New Mexico)	12, 699204, 4081392	12, 696480, 4082859
San Juan River (Utah)	12, 654810, 4123395	12, 613885, 4117721

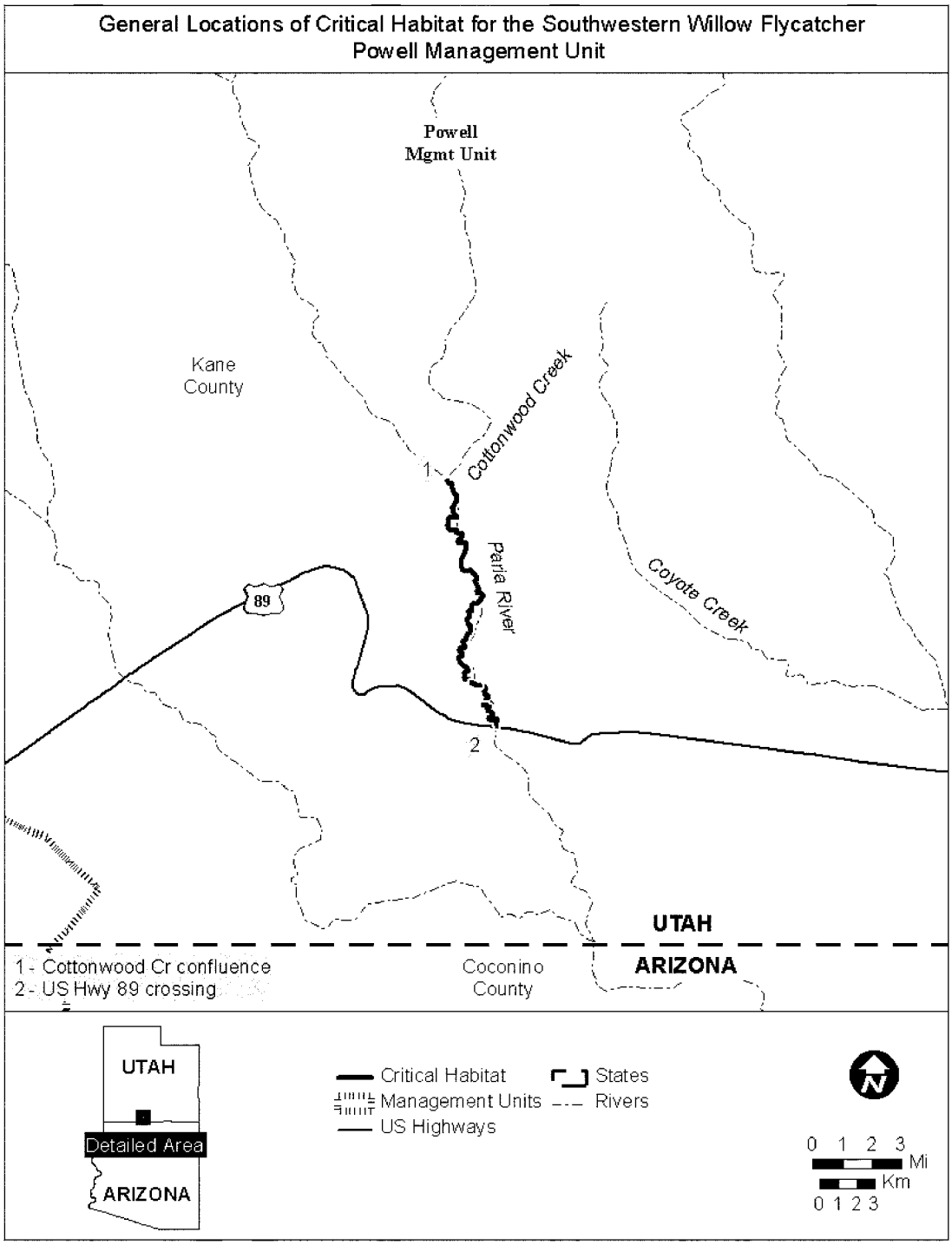
(ii) **Note:** Map of San Juan Management Unit follows:



(23) Powell Management Unit.
(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Paria River	12, 417429, 4120619	12, 419459, 4107235

(ii) **Note:** Map of Powell Management Unit follows:

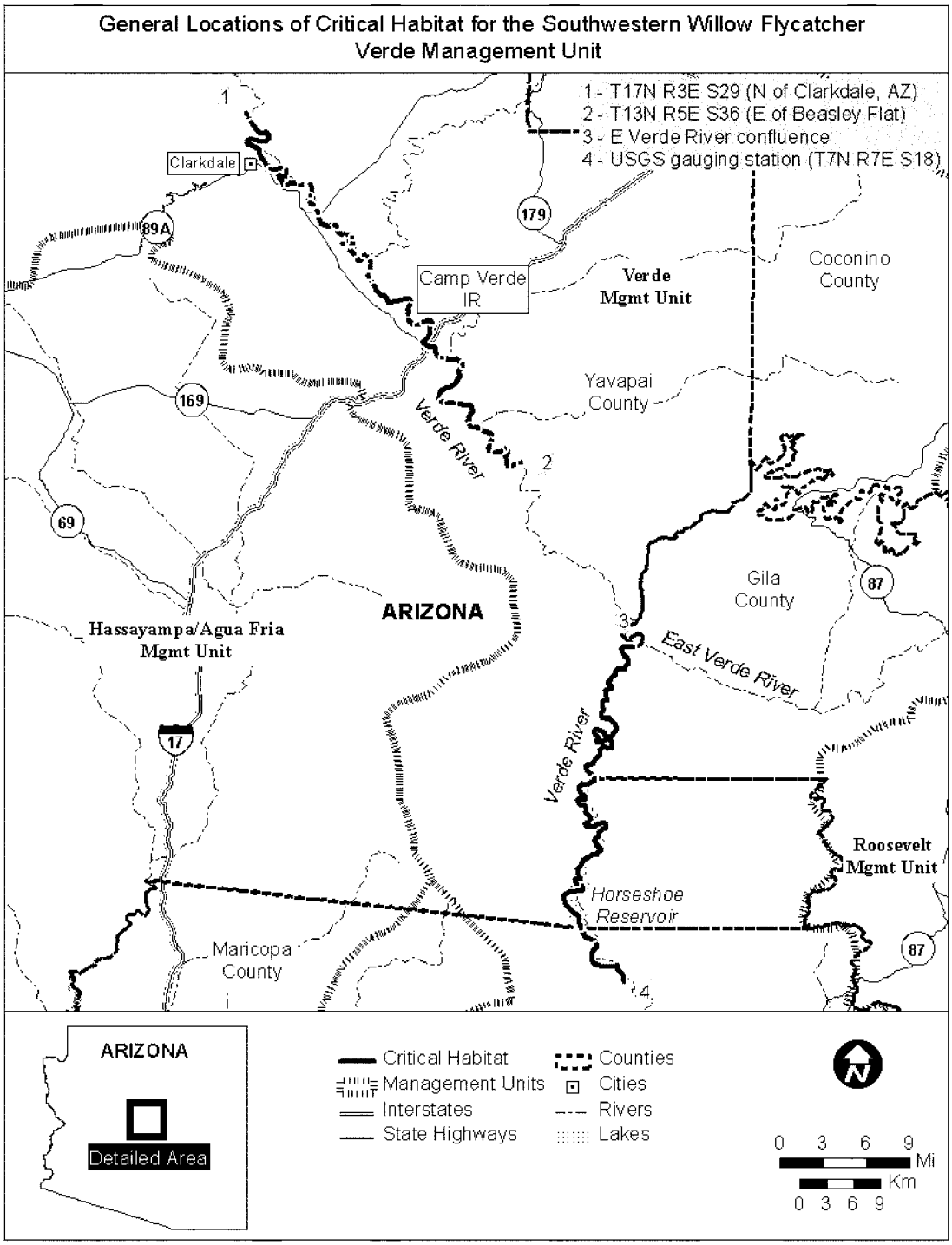


(24) Verde Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Verde River (upper)	12, 402583, 3854022	12, 428120, 3814335
Verde River (lower)	12, 438102, 3793821	12, 436961, 3756352

(ii) **Note:** Map of Verde Management Unit follows:

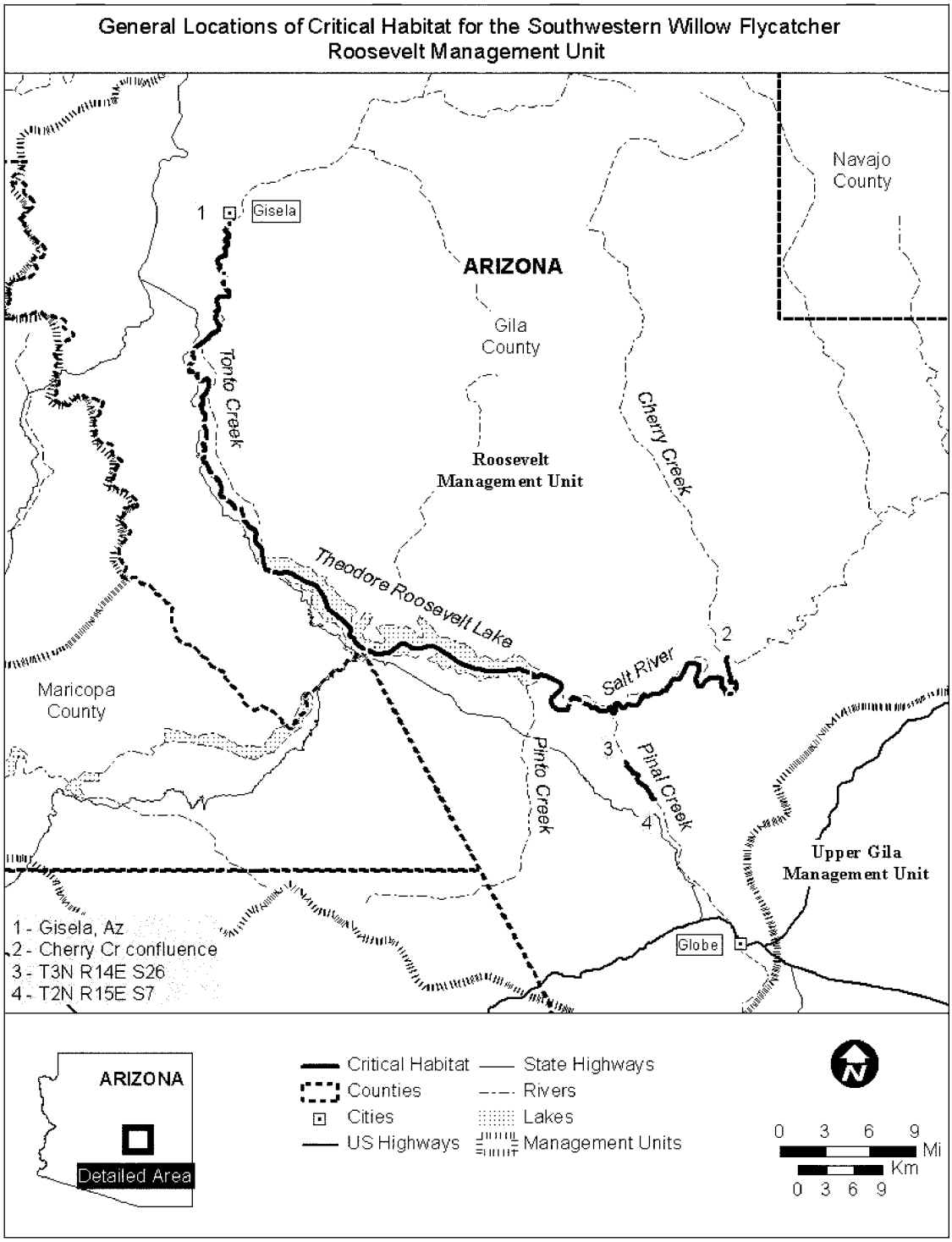


(25) Roosevelt Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Tonto Creek	12, 474349, 3773074	12, 477856, 3734906
Roosevelt Lake	12, 477856, 3734906	12, 500594, 3724174
Salt River	12, 518565, 3725825	12, 500594, 3724174
Pinal Creek	12, 511992, 3710574	12, 509313, 3714692

(ii) **Note:** Map of Roosevelt Management Unit follows:

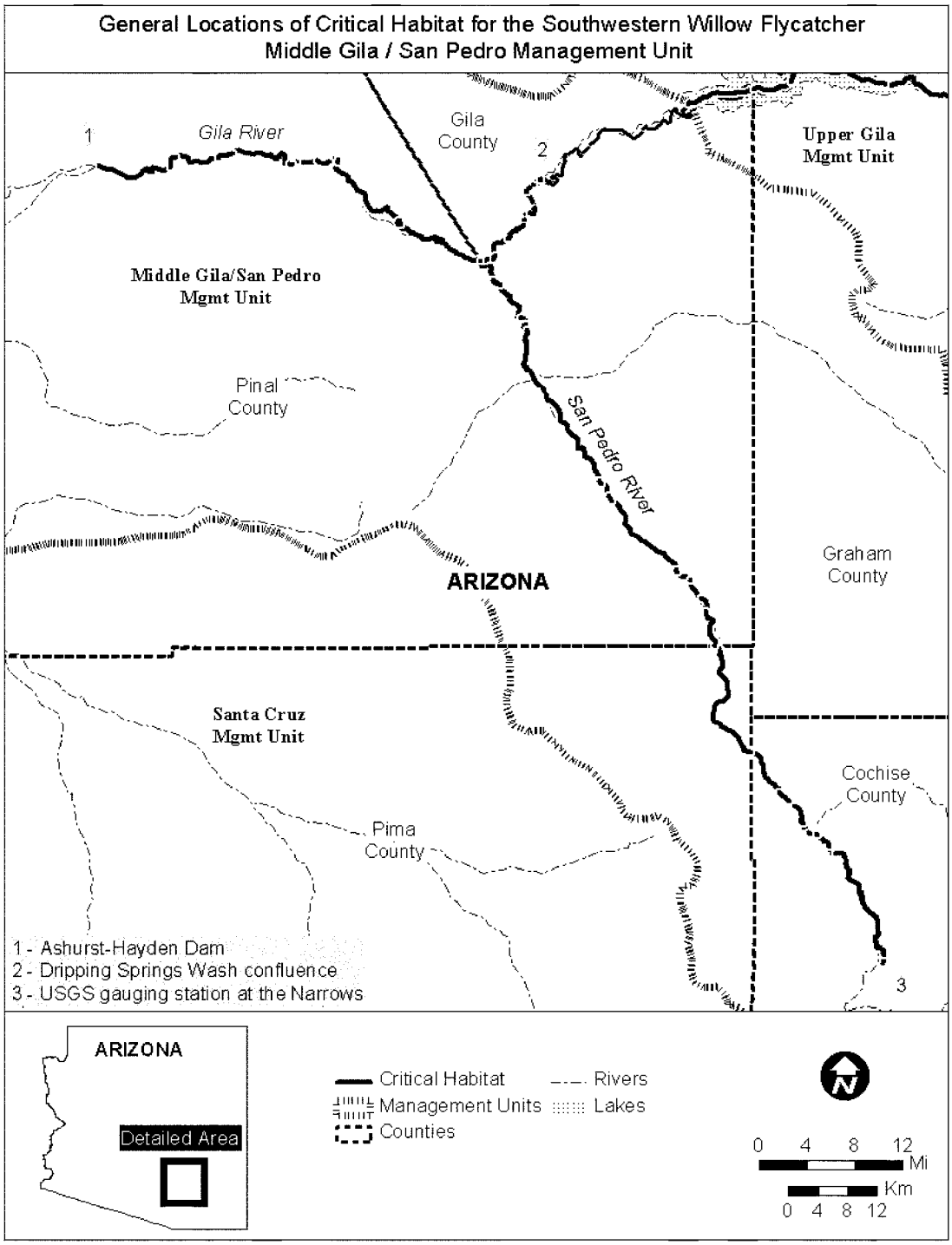


(26) Middle Gila and San Pedro Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Gila River	12, 527193, 3660545	12, 476979, 3662407
San Pedro River	12, 566945, 3554766	12, 520287, 3649594

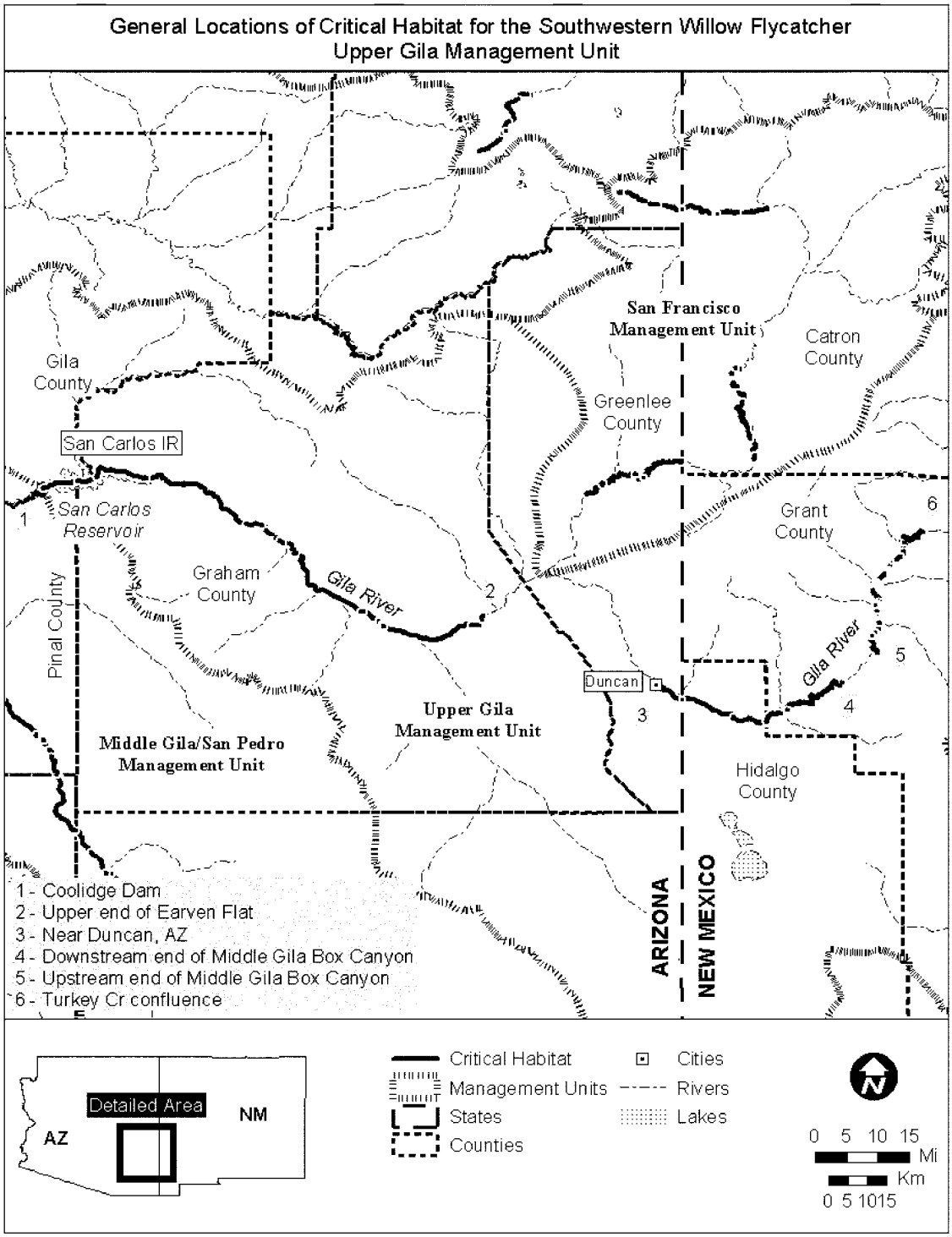
(ii) **Note:** Map of Middle Gila San Pedro Management Unit follows:



(27) Upper Gila Management Unit.
(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Gila River (upper)	12, 734274, 3662473	12, 724979, 3631107
Gila River (middle)	12, 639563, 3639230	12, 544025, 3670779
Gila River (lower)	12, 717951, 3623479	12, 677635, 3622749

(ii) **Note:** Map of Upper Gila Management Unit follows:

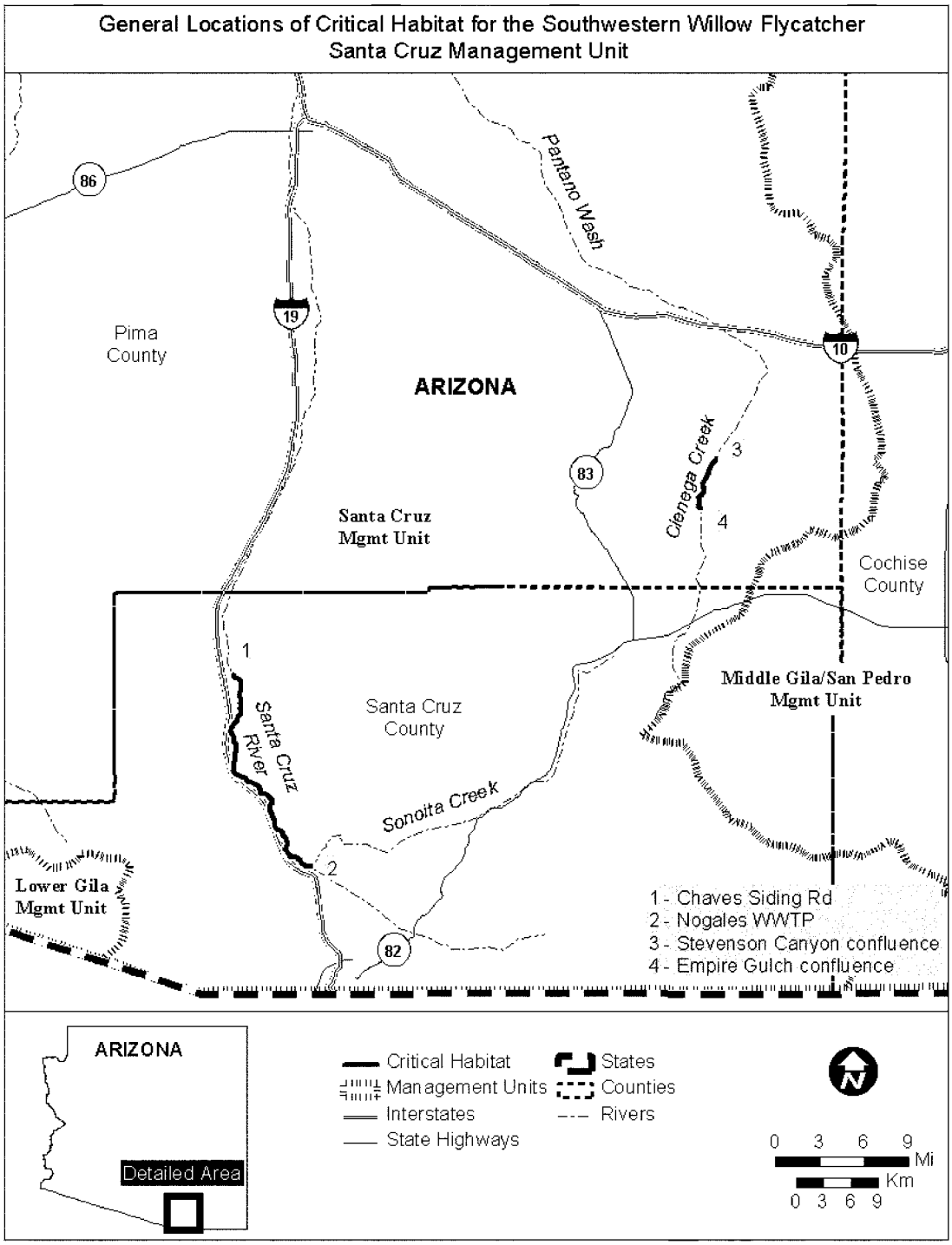


(28) Santa Cruz Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Santa Cruz River	12, 502742, 3480432	12, 502742, 3480432
Cienega Creek	12, 538826, 3519337	12, 540238, 3524746

(ii) **Note:** Map of Santa Cruz Management Unit follows:

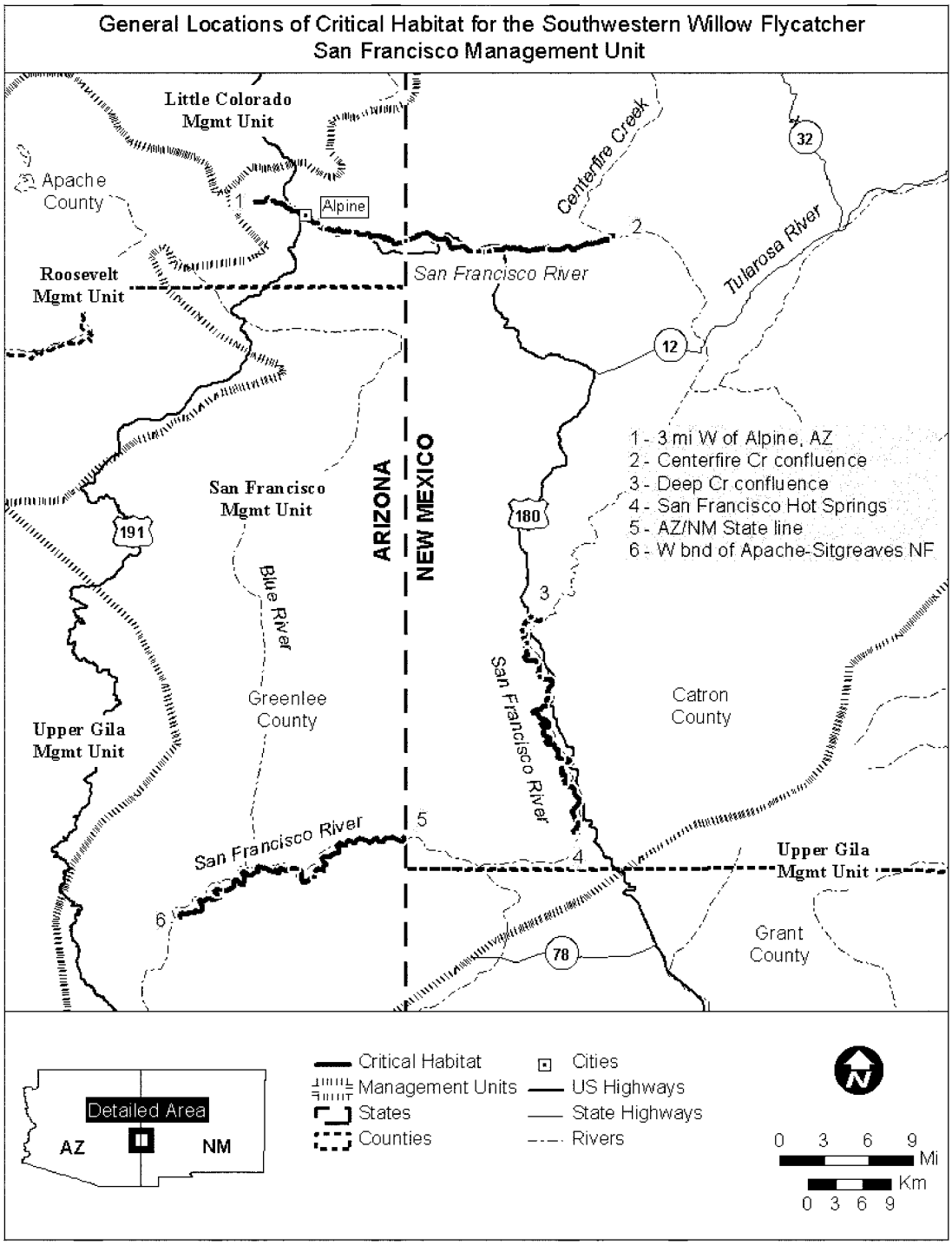


(29) San Francisco Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM Zone, E, N
San Francisco River (upper)	12, 681827, 3679571	12, 661571, 3670502
San Francisco River (middle)	12, 693857, 3703486	12, 697331, 3680357
San Francisco River (lower)	12, 666982, 3748335	12, 699562, 3745269

(ii) **Note:** Map of San Francisco Management Unit follows:

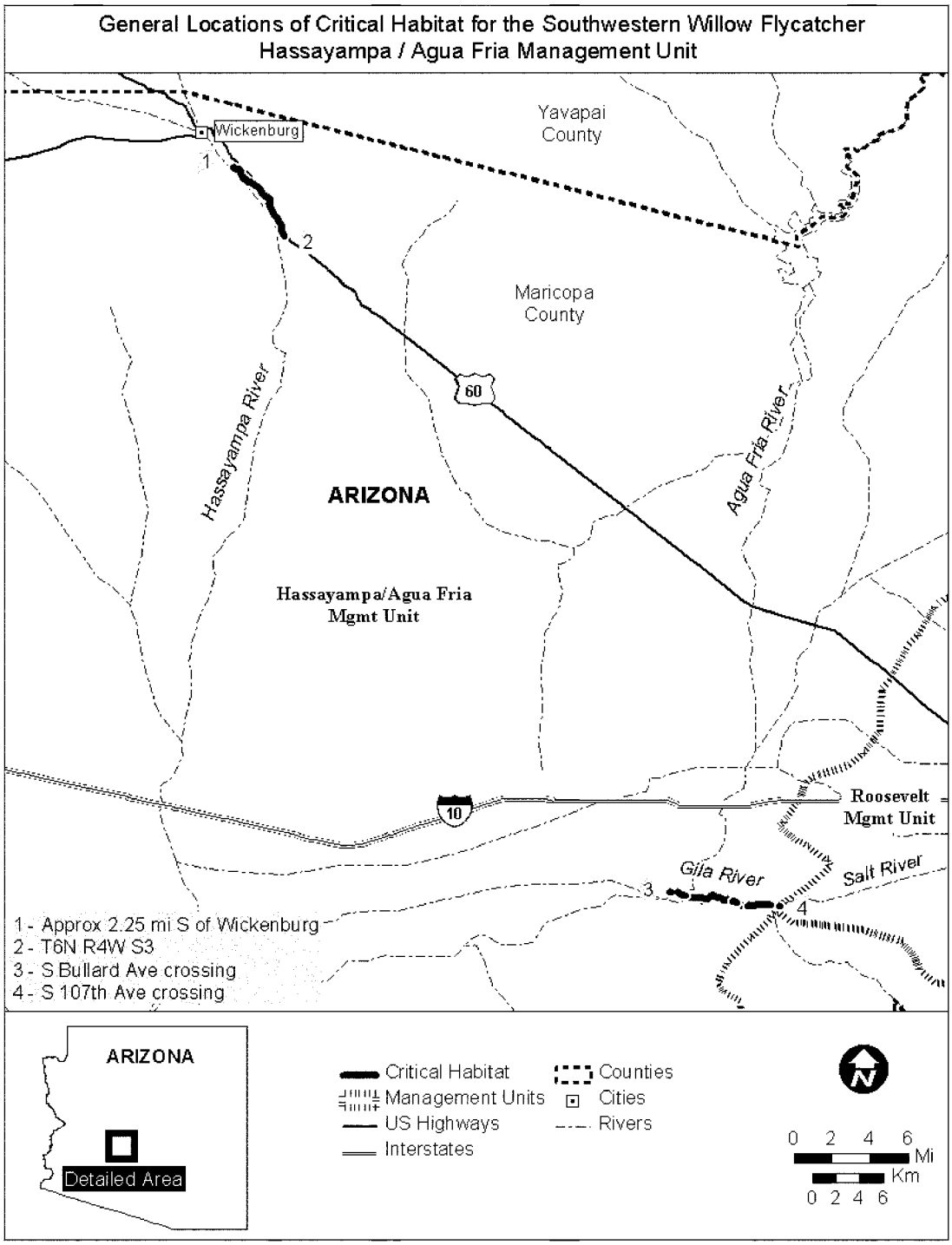


(30) Hassayamapa and Agua Fria Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Hassayampa River	12, 342308, 3757092	12, 345848, 3751261
Gila River	12, 379985, 3694255	12, 372194, 3695509

(ii) **Note:** Map of Hassayamapa and Agua Fria Management Unit follows:

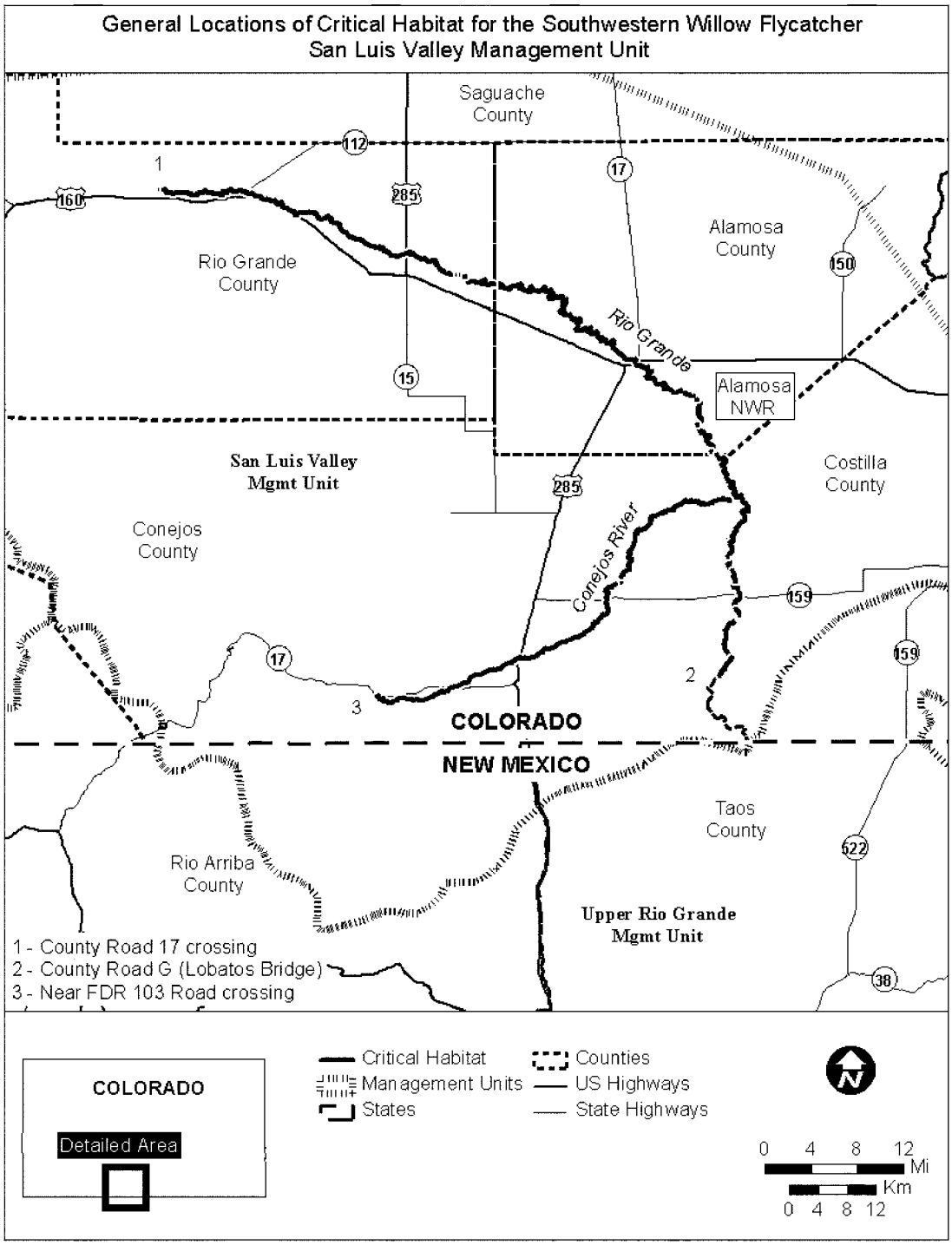


(31) San Luis Valley Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Conejos River	13, 394419, 4101506	13, 434790, 4128834
Rio Grande	13, 371291, 4172297	13, 432747, 4103848

(ii) **Note:** Map of San Luis Valley Management Unit follows:

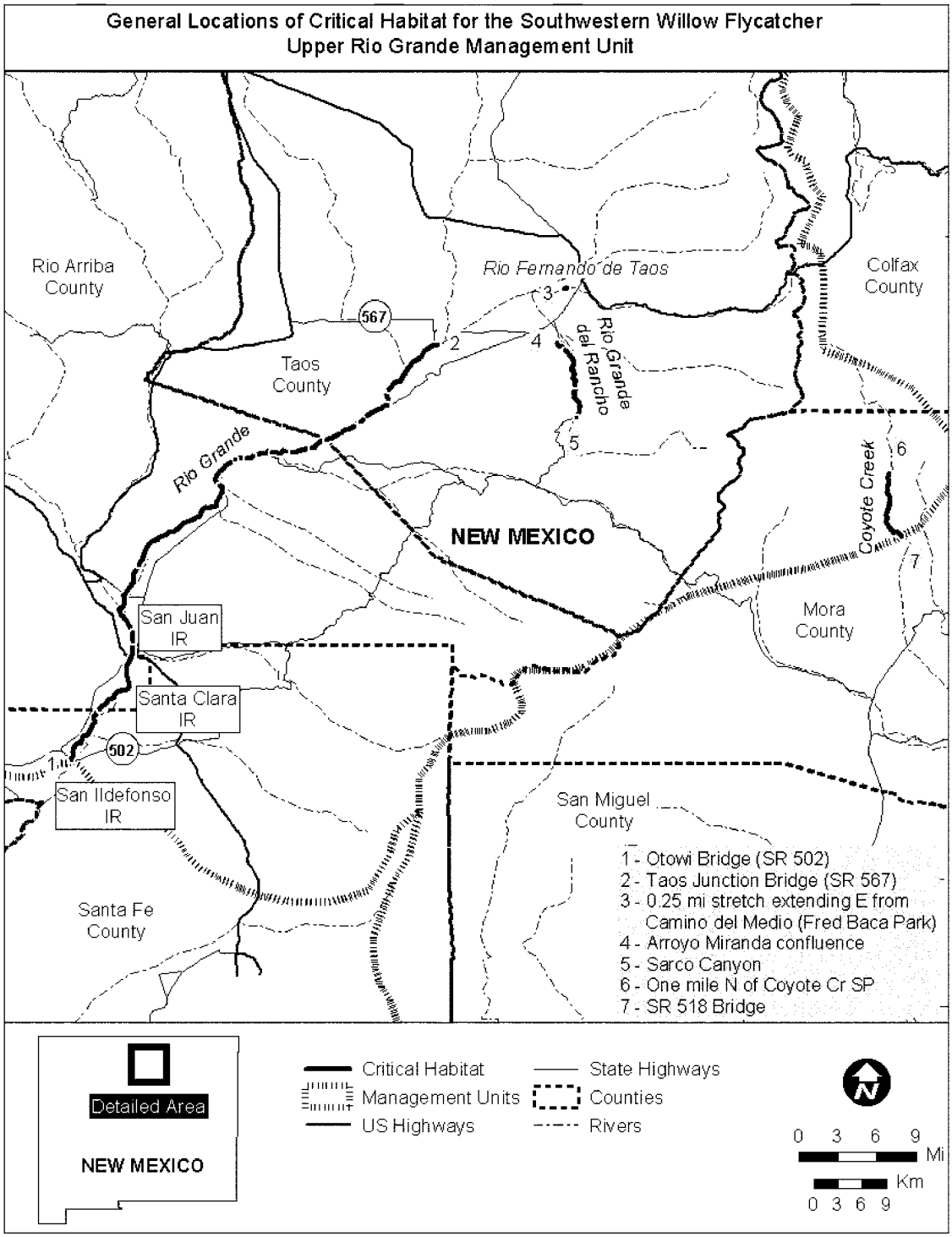


(32) Upper Rio Grande Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Rio Grande	13, 434154, 4021496	13, 396993, 3970707
Coyote Creek	13, 479246, 4005468	13, 480419, 3997620
Rio Grande del Rancho	13, 447971, 4012369	13, 446044, 4021640
Rio Fernando	13, 447152, 4028423	13, 446856, 4028320

(ii) **Note:** Map of Upper Rio Grande Management Unit follows:

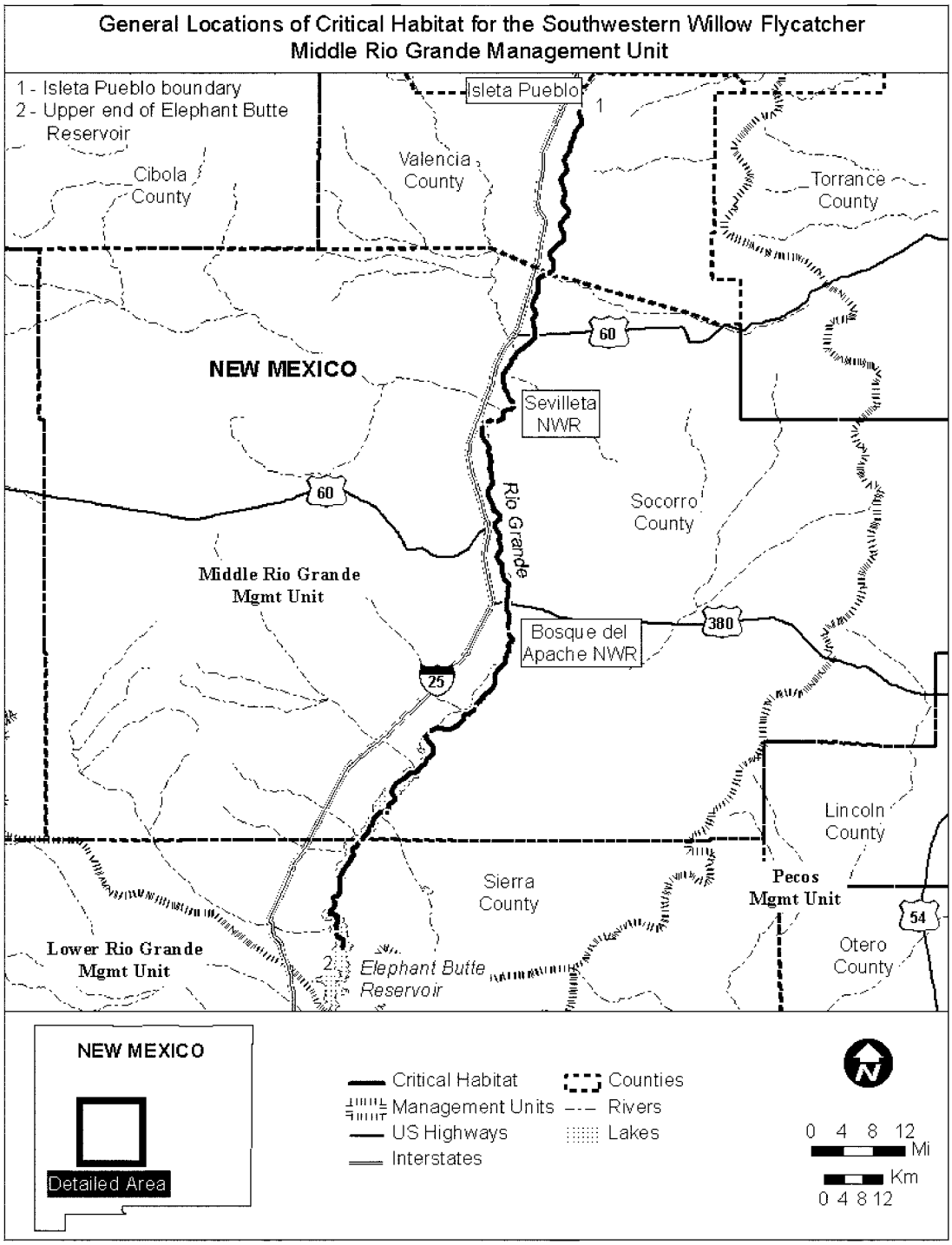


(33) Middle Rio Grande Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Rio Grande	13, 343067, 3856213	13, 298922, 3683834

(ii) **Note:** Map of Middle Rio Grande Management Unit follows:

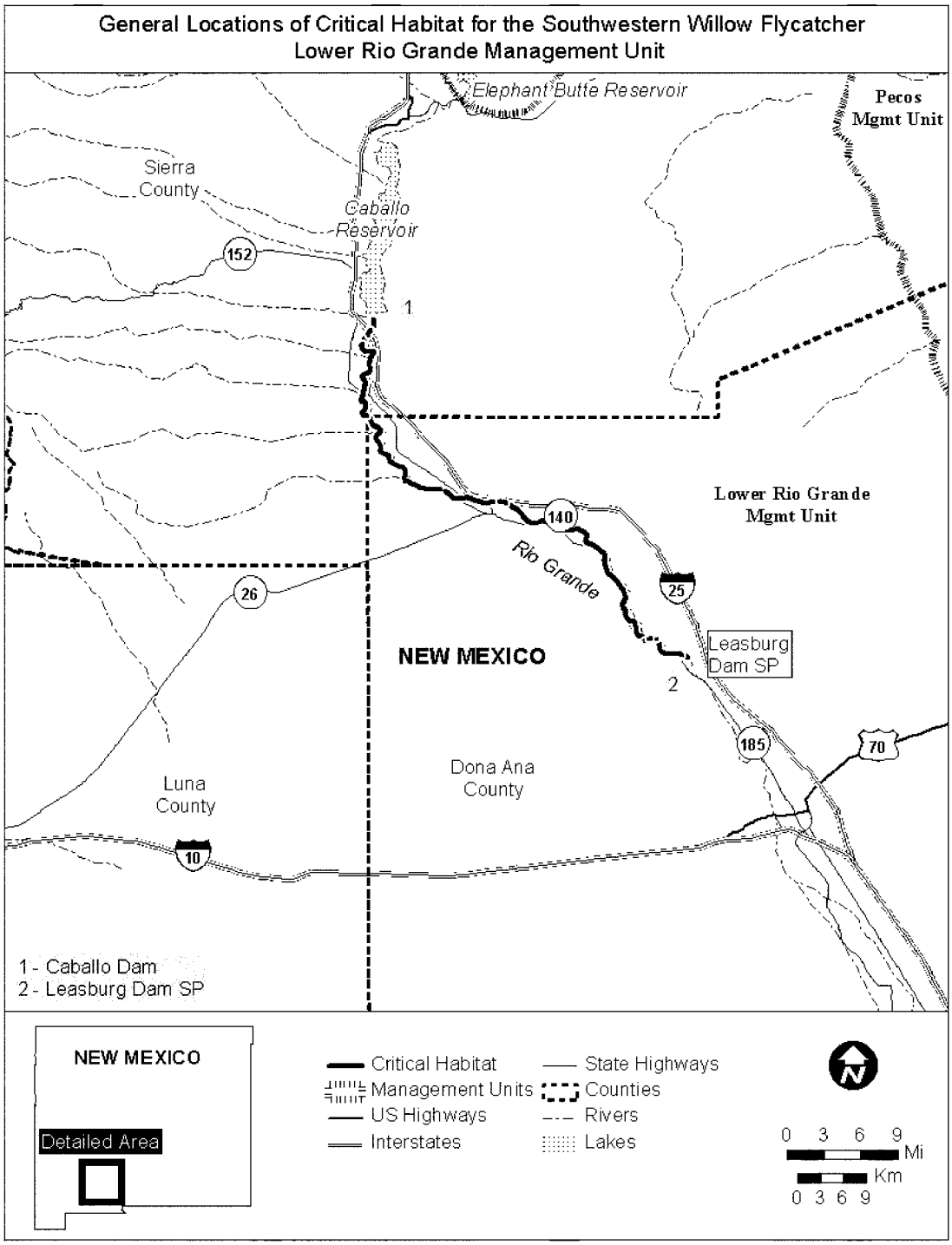


(34) Lower Rio Grande Management Unit.

(i)

Stream segment	Start: UTM zone, E, N	End: UTM zone, E, N
Rio Grande	13, 285590, 3642144	13, 319325, 3597154

(ii) **Note:** Map of Lower Rio Grande Management Unit follows:



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Dated: July 22, 2011.

Rachel Jacobsen,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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