



# United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

JAN 24 2023

The Honorable Ned Norris, Jr.  
Chairman, Tohono O'odham Nation  
P.O. Box 830  
Sells, Arizona 83634

Dear Chairman Norris:

On March 14, 2022, the Tohono o'odham Nation (Nation) submitted a request to the Department of the Interior (Department) for the acquisition in trust of approximately 110.34 acres of land located in Maricopa County, Arizona, known as the Far West Valley Parcel (Far West Valley Site or Site) for gaming and other purposes.<sup>1</sup> The Far West Valley Site is held in fee by the Nation.<sup>2</sup> By memorandum dated July 7, 2022, the Regional Director, Western Region Office transmitted to the Assistant Secretary - Indian Affairs his findings on the Nation's Application.<sup>3</sup>

The Nation's application was filed pursuant to the Gila Bend Indian Reservation Lands Replacement Act,<sup>4</sup> (the Gila Bend Act or Act), which requires the Department to acquire land in trust for the Nation if certain conditions are met. Under the Gila Bend Act, any land that the Secretary of the Interior (Secretary) holds in trust pursuant to the Act will be deemed to be a Federal Indian Reservation for all purposes.<sup>5</sup>

We have completed our review of the Nation's request, the Regional Director's Findings, and the documentation in the record. As discussed below, we determine that the Far West Valley Site will be acquired in trust for the benefit of the Nation pursuant to the Gila Bend Act. Once acquired in trust, the Nation may conduct gaming on the Site because it meets all the requirements of Section 2719 of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719(b)(1)(B)(i).

## **Description of the Property**

The Far West Valley Site consists of approximately 110.34 acres of land located at the southeast corner of Northern Parkway and the Loop 303 Freeway in an unincorporated

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<sup>1</sup> *Fee-to-Trust Application for Far West Valley Property*, Tohono O'Odham Nation, (Mar. 14, 2022), at 5 (hereafter Nation's Application).

<sup>2</sup> See Memorandum, *Proposed Mandatory Off-reservation Fee-to-Trust Acquisition of 110+/- Acres for the Tohono O'odham Nation of Arizona* at 6 (Jul. 7, 2022) (Regional Director's Findings); Nation's Application at Tab 2, Epps Group ALTA/NSPS Land Title Survey at 1 (Mar. 3, 2022) (showing owner of the Site as the Tohono O'odham Nation); Nation's Application at Tab 11, recorded warranty deed conveying the Site from Saguaro Land Properties, LLC, to Tohono O'odham Nation of Arizona (Mar. 3, 2021).

<sup>3</sup> See Regional Director's Findings.

<sup>4</sup> Pub. L. 99-503, 100 Stat. 1798 (1986), Gila Bend Indian Reservation Lands Replacement Act.

<sup>5</sup> *Id.* section 6(d).

area of Maricopa County, Arizona.<sup>6</sup> The Site is owned in fee simple by the Nation.<sup>7</sup> The legal description for the Far West Valley Site is included as Attachment I.<sup>8</sup> The Map at Figure 1 below, shows the approximate location of the Site. Figure 2 below shows a closer aerial view of the Far West Valley Site.

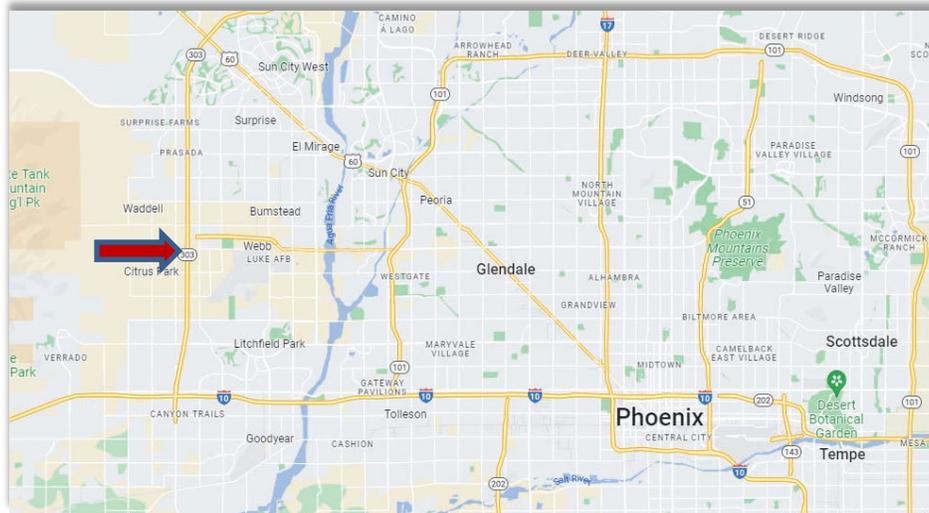


Figure 1 Approximate Location of Far West Valley Site

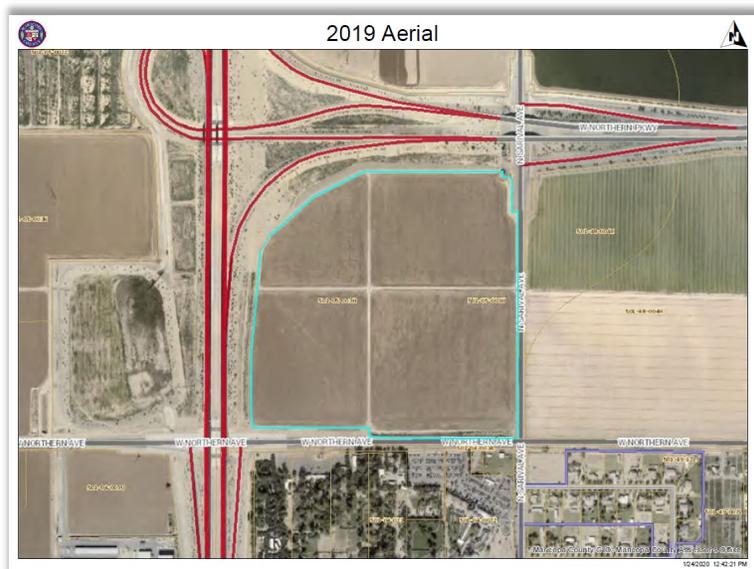


Figure 2 Figure Closeup Aerial View Far West Valley Site

<sup>6</sup> See Nations Application at 4, and Tab 11.

<sup>7</sup> See ALTA Commitment for Title Insurance issued by First American Title Insurance Company (Feb. 14, 2022) in Nation’s Application, Tab 13.

<sup>8</sup> Regional Director’s Findings at 1-2; Exhibit A, ALTA Commitment for Title Insurance issued by First American Title Insurance Company (Feb. 14, 2022) in Nation’s Application, Tab 13.

## **BACKGROUND**

The Gila Bend Indian Reservation (Reservation) consisted of 22,400 acres and was created by Executive Order on December 12, 1882. A subsequent Executive Order reduced the Reservation to 10,297 acres on June 17, 1909.<sup>9</sup>

In 1960, the United States built the Painted Rock Dam on the Gila River, ten miles below the Nation's Reservation pursuant to an Act of Congress passed on May 17, 1950.<sup>10</sup> In 1964, the United States obtained by condemnation a flowage easement over 7,723 acres of the Reservation, which gave the United States the perpetual right to flood the land and prohibited use of the land for human habitation. For that flowage easement, the Nation received \$130,000 in compensation.<sup>11</sup> In 1964, Congress provided for the relocation and reestablishment of the Nation's village of Sil Murk, which was located within the floodplain created by the construction of the Painted Rock Dam.<sup>12</sup> The displaced members of the Nation and residents of the village of Sil Murk were relocated to a 40-acre tract known as San Lucy Village, adjacent to the Town of Gila Bend, Arizona.<sup>13</sup>

Major flooding events of the Reservation occurred in 1978-79, 1981, 1983, and 1984. Each flood resulted in the creation of a large standing body of water on the Reservation. Most of the 10,297-acre Reservation was eventually rendered unsuitable for agriculture or any other use by the flooding, prompting the Nation to petition Congress for a new reservation.<sup>14</sup> Congress first included a provision in the Southern Arizona Water Rights Settlement Act of 1982 directing the Secretary to analyze the impact of the Painted Rock Dam on the Gila Bend Reservation and if necessary exchange the Nation's flooded land for other public lands.<sup>15</sup> The Secretary's study revealed approximately 9,880 acres of the Nation's Reservation was flooded, and that there were no suitable public lands within 100 miles, prompting Congress to enact the Gila Bend Act.

### **THE GILA BEND INDIAN RESERVATION LANDS REPLACEMENT ACT (GILA BEND ACT)**

Congress found the lack of an appropriate land base severely impeded the economic self-sufficiency of the Nation, resulting in chronic high costs for federal services.<sup>16</sup> The Gila Bend Act provided the Nation \$30 million in compensation for its flooded land.<sup>17</sup> The Gila Bend Act also directed the Secretary to accept up to 9,880 acres of land into trust for the Nation as a replacement for the Nation's flooded land, and declared such land would be a "Federal Indian Reservation for all purposes."<sup>18</sup>

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<sup>9</sup> *Tohono O'odham Nation v. City of Glendale*, 804 F.3d 1292, 1294 (9th Cir. 2015).

<sup>10</sup> Pub. L. No. 81-516, 64 Stat. 163.

<sup>11</sup> Regional Director's Findings at 3.

<sup>12</sup> Pub. L. No. 88-462, 78 Stat. 559.

<sup>13</sup> Regional Director's Findings at 3.

<sup>14</sup> *Id.*

<sup>15</sup> Pub. L. No. 97-293, 96 Stat. 1261 (1982).

<sup>16</sup> Pub. L. No. 99-503, 100 Stat. 1798 (1986), Section 2(2).

<sup>17</sup> *Id.* at Section 4.

<sup>18</sup> *Id.* at Section 6.

Section 6 of the Gila Bend Act requires that the Nation's replacement land be located in the State of Arizona, within Maricopa, Pinal, and Pina counties, and not within the corporate limits of any city or town. Section 6 further limited the replacement lands to no more than three separate areas one of which must be contiguous to the San Lucy Village, but authorized the Secretary to waive this provision. In 2000, the Department granted the Nation's request for a waiver of this provision and expanded the total number of contiguous areas from three to five.<sup>19</sup> The Department further waived the requirement that one of the areas be contiguous to the San Lucy Village explaining that the owners of that property were unwilling to sell.<sup>20</sup>

### **Compliance with Gila Bend Act Restrictions**

The Gila Bend Act's text and legislative history demonstrate that Congress aimed to promote the Nation's economic development efforts and self-sufficiency by mandating that the Department take land in trust for the Nation that meets the restrictions set forth in section 6(c)-(d) of the Act. The Gila Bend Act's restrictions concern location by county, municipal jurisdiction, acreage, and number of trust areas under the Act. The Department has long understood the Gila Bend Act as a mandatory trust acquisition statute, which has been upheld by the Ninth Circuit Court of Appeals.<sup>21</sup> Further, because this is a mandatory acquisition, the Department's regulations at 25 C.F.R. Part 151 do not apply. Therefore, at the request of the Nation, provided the requirements of the Gila Bend Act have been satisfied, the Secretary must accept the property in trust. The Secretary's authority to act on this mandatory acquisition is triggered when the Act's requirements are met. These requirements for the Far West Valley Site have been fulfilled as follows:

#### *County Location*

Section 6(d) requires the Nation's replacement land be located in Arizona within the counties of Maricopa, Pinal, and Pina. The Far West Valley Site is in within Maricopa County, Arizona, and satisfies this requirement of the Gila Bend Act.<sup>22</sup>

#### *Municipal Corporate Limits*

Section 6(d) also requires the Nation's replacement land be not located within the corporate limits of any city or town. The 2010 West Valley Reservation decision addressed the Gila Bend Act's requirement that the replacement land not be within the corporate limits of any city or town and utilized a 'jurisdiction' test rather than a geographic test to determine if land was not within the corporate limits of any city or town.<sup>23</sup> The Ninth Circuit Court of Appeals found this

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<sup>19</sup> Letter from Acting Regional Director, Barry W. Welch to Chairman, Tohono O'odham Nation, Edward D. Manuel (May 31, 2000). Enclosure III.

<sup>20</sup> *Id.*

<sup>21</sup> *Tohono O'odham Nation v. City of Glendale*, 804 F.3d 1292, 1299 (9th Cir. 2015) (concluding that the Secretary's taking of eligible land in trust is mandatory, not permissive, once the Act's requirements for land are met).

<sup>22</sup> See Nation's Application at Tab 2 (EPS Group's Land Title Survey) and Tab 7 (Maricopa County Assessor's Office's Tax Parcel Information).

<sup>23</sup> See Letter from Larry Echo Hawk, Assistant Secretary – Indian Affairs, to Ned Norris, Jr., Chairman Tohono O'odham Nation, , at 6, note 4. (July 23, 2010).

requirement ambiguous and remanded the issue to the Department for further analysis.<sup>24</sup> On remand, the Department, consistent with the Ninth Circuit’s order, again determined a jurisdictional test rather than a geographic test was appropriate and this requirement of the Gila Bend Act was satisfied if the land was not incorporated by a municipality.<sup>25</sup>

The Tribe presented evidence that the Far West Valley Site is not located within the corporate limits of any city or town. The County Assessor’s Office and Planning Department both show the Site is not under a city or town’s jurisdiction.<sup>26</sup> Additionally, the City of Glendale, which borders the Site to the north and east provided a letter confirming the Site is not within the corporate limits of the City.<sup>27</sup> Therefore, we conclude the Far West Valley Site is not located within the corporate limits of any city or town and satisfies this requirement of the Gila Bend Act.

#### *Number of Parcels Acquired*

Section 6(d) further required that acquisitions pursuant to the Gila Bend Act meet the requirements of the Act only if they “constitute not more than three separate areas consisting of contiguous tracts, at least one of which areas shall be contiguous to San Lucy Village.” Section 6(d) goes on, however, to allow the Secretary to “waive the requirements set for the preceding sentence if he determines that additional areas are appropriate.” In 2000, the Department determined that two additional areas for a total of five were appropriate and that none of those areas needed to be contiguous to the San Lucy Village.<sup>28</sup>

The Nation has utilized the Gila Bend Act to acquire two areas of land in trust prior to its application for trust acquisition of the Far West Valley Site. The first was the San Lucy Farm Property. The second was the West Valley Reservation. The Department’s acquisition of the Far West Valley Site in trust will constitute the third area acquired under the Gila Bend Act. On February 17, 2022, the Nation separately submitted a fee-to-trust application for the Painted Rock Property. If the Department acquires the Painted Rock Property, that acquisition would constitute the fourth area.

Therefore, we conclude, the Far West Valley Site, is the third area to be acquired under the Gila Bend Act, and satisfies this requirement of the Gila Bend Act, as amended through Secretarial waiver in 2000.

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<sup>24</sup> *Gila River Indian Cmty. v. United States*, 729 F.3d. 1139 (9<sup>th</sup> Cir. 2013) (holding the Department erroneously concluded that the phrase “within the corporate limits” held plain meaning under the Gila River Bend Act).

<sup>25</sup> See Letter from Kevin K. Washburn, Assistant Secretary – Indian Affairs to Ned Norris, Jr., Chairman Tohono O’odham Nation (July 3, 2014) (interpreting the “within corporate limits” restriction to prohibit acquisition of lands that are part of a municipality’s incorporated lands”)

<sup>26</sup> Nation’s Application at Tab 7.

<sup>27</sup> Nation’s Application at Tab 8.

<sup>28</sup> Letter from Acting Regional Director, Barry W. Welch to Chairman, Tohono O’odham Nation, Edward D. Manuel (May 31, 2000).

## *Acreage*

Section 6(c) of the Gila Bend Act limits the total acreage acquired under the Act to 9,880 acres. To date, the Department has accepted two properties into trust pursuant to the Gila Bend Act: (1) the San Lucy Farm Property, consisting of 3,200.53 acres; and (2) the West Valley Reservation, consisting of 134.88 acres.<sup>29</sup> The San Lucy Farm and the West Valley Reservation total approximately 3,335.41 acres of the Gila Bend Act's 9,880 acre limit. The Far West Valley Site will bring the Nation's total acreage under the Gila Bend Act to approximately 3,445.75.<sup>30</sup> The Nation's pending application for the Painted Rock Property consists of approximately 3790.36 acres of contiguous tracts.<sup>31</sup> If the Painted Rock Property is placed into trust, the total acreage of trust land acquired under the Gila Bend Act including the Far West Valley Property would be approximately 7,236.11 acres. Thus, the total current acreage including pending applications acquired under the Gila Bend Act, is less than the 9,880-acre cap imposed by the Gila Bend Act.<sup>32</sup>

Therefore, we conclude the trust acquisition of the Far West Valley Site does not exceed the Gila Bend Act's 9,880-acre limit.

The Regional Director found, and we concur, that the Far West Valley Site meets the requirements of the Gila Bend Act: (1) the total acreage does not exceed the 9,880 acres specified in the Gila Bend Act; (2) the Site is located within Maricopa County; (3) the Site is not within the corporate limits of any city or town; and (4) the acquisition constitutes not more than five separate areas. We therefore conclude that the Far West Valley Site must be acquired in trust under the terms of the Gila Bend Act.

## **THE INDIAN GAMING REGULATORY ACT**

Congress through IGRA recognized Tribes' inherent and exclusive right to regulate and conduct gaming activity on Indian lands<sup>33</sup>, which are defined, in pertinent part, as "all lands within the limits of any Indian reservation."<sup>34</sup> This definition includes all lands within the boundaries of a Tribe's reservation, including lands owned in fee simple.<sup>35</sup> Section 2719 of IGRA prohibits gaming on lands that are acquired in trust for the benefit of an Indian tribe after October 17, 1988, unless the lands meet one of the exemptions or exceptions in Section 2719.<sup>36</sup> One of the

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<sup>29</sup> The Department accepted the 134.88 West Valley Reservation in trust in two separate decisions; 53.54 acres were acquired in 2010. *See* 75 Fed. Reg. 52550 (Aug. 26, 2010). 81.34 acres were later acquired in 2018. *See* 83 Fed. Reg. 45958 (Sept. 11, 2018).

<sup>30</sup> *See* Letter from Ned Norris Jr., Chairman Tohono O'odham Nation to Bryan Bowker, Director, Western Region, Bureau of Indian Affairs (Mar. 14, 2022).

<sup>31</sup> Regional Director's Findings at 11 n.34 (explaining the Nation submitted an application to acquire in trust the property known as the Painted Rock Property but has asked the Department to hold that acquisition in abeyance until the Far West Valley Site is acquired in trust).

<sup>32</sup> Nation's Application at 3.

<sup>33</sup> *See* 25 U.S.C. § 2701(5).

<sup>34</sup> 25 U.S.C. § 2703(4)(A).

<sup>35</sup> *See e.g.*, Letter from Roger W. Thomas, Office of the Solicitor, to Mr. Donald C. Kittson, Tribal Attorney, Blackfeet Tribe, dated December 3, 1990 (on file with the Office of Indian Gaming).

<sup>36</sup> 25 U.S.C. § 2719.

exceptions permits a tribe to conduct gaming on lands acquired in trust after October 17, 1988, when the “lands are taken into trust as part of – (i) a settlement of a land claim” commonly referred to as “the settlement of a land claim exception”.<sup>37</sup>

In 2016, the Ninth Circuit, addressed the Nation’s authority to conduct gaming on the West Valley Reservation which was taken into trust under the Gila Bend Act and determined that property meets the requirements of the settlement of a land claim exception.<sup>38</sup> The Ninth Circuit explained the Gila Bend Act was undoubtedly a settlement of the Nation’s land claims and satisfied the exception.<sup>39</sup> The Far West Valley Site is being acquired in trust for the Nation through the Gila Bend Act under similar circumstances as the West Valley Reservation. Once acquired in trust, the Far West Valley Site will meet the requirements of Section 2719 of IGRA because, as the Ninth Circuit held, the Gila Bend Act was a settlement of the Nation’s land claims.

Because the Far West Valley Site satisfies the requirements in IGRA’s settlement of a land claim exception in Section 2719, we conclude the Nation may conduct gaming pursuant to IGRA when the land is acquired in trust. Additionally, when acquired in trust, the Site shall be deemed to be a Federal Indian Reservation for all purposes pursuant to the Gila Bend Act.<sup>40</sup>

#### **ENVIRONMENTAL DUE DILIGENCE**

It is well established that the environmental review requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, *et seq.*, are not applicable to mandatory acquisitions.<sup>41</sup> The due diligence requirements of 602 DM 2 (Real Property Pre-Acquisition Environmental Site Assessments) are also not applicable to mandatory acquisitions.<sup>42</sup> Instead, the Department’s policies and procedures applicable to mandatory acquisitions require the Department to perform due diligence by conducting an initial site inspection and documenting the results as articulated in Section 3.1.3 of the *Fee-to-Trust Handbook*. These steps are not, however, a precondition to completing the mandatory acquisition process. The Bureau of Indian Affairs conducted an initial site inspection on May 12, 2022, and documented the results.<sup>43</sup> Additionally, the Nation has provided a Phase I Environmental Site Assessment of the property, dated January 29, 2020,

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<sup>37</sup> 25 U.S.C. § 2719 (b)(1)(B)(i).

<sup>38</sup> *Arizona v. Tohono O’odham Nation*, 818 F.3d 549, 557-558 (9th Cir. 2016).

<sup>39</sup> *Id.*

<sup>40</sup> 25 C.F.R. § 292.4 (a). The Department’s regulations at 25 C.F.R. § 292.2 define “reservation” as “[l]and set aside by the United States by final ratified treaty, agreement, Executive Order, Proclamation, Secretarial Order or Federal statute for the tribe, notwithstanding the issuance of any patent.”

<sup>41</sup> DIV. OF REAL ESTATE SERVS., BUREAU OF INDIAN AFFAIRS, ACQUISITION OF TITLE TO LAND HELD IN FEE OR RESTRICTED FEE STATUS (Ver. IV, rev. 1) p. 5, Sec. 4.1 (June 28, 2016) (citing *Sierra Club v. Babbitt*, 65 F.3d 1502, 1512 (9th Cir. 1995)); *see also Sac & Fox Nation v. Norton*, 240 F.3d 1250, 1262-63 (10th Cir. 2001).

<sup>42</sup> LAND ACQUISITION AND EXCHANGE REAL PROPERTY PRE-ACQUISITION ASSESSMENTS: ENVIRONMENTAL DUE DILIGENCE, 602 DM 2, SEC. 2.2 (OCT. 12, 2016).

<sup>43</sup> Regional Director’s Finding of Fact, Attachment D.

indicating that there are not recognized environmental conditions associated with the Far West Valley Property.<sup>44</sup>

## CONCLUSION

Our evaluation of the Nation's request indicates that the legal requirements of the Gila Bend Act for acquiring the Far West Valley Site in trust have been satisfied. Therefore the Gila Bend Act requires the Department to accept the Far West Valley Site in trust for the Nation. Furthermore, I have determined the Nation may conduct gaming on the Far West Valley Site pursuant to Section 2719 of IGRA, 25 U.S.C. § 2719(b)(1)(B)(i). Consistent with applicable law and the Departmental requirements, the Regional Director shall immediately accept the land in trust. This decision constitutes a final agency action pursuant to 5 U.S.C. § 704.

Sincerely,



Bryan Newland  
Assistant Secretary – Indian Affairs

## Enclosures:

- I. Legal Description
- II. Maps
- III. Letter from Acting Regional Director, Barry W. Welch to Chairman, Tohono O'odham Nation, Edward D. Manuel (May 31, 2000)

cc: Regional Director, Western Region

<sup>44</sup> Regional Director's Findings at 6; Nation's Application at Tab 15, *Phase I Environmental Site Assessment Agricultural Land Southeast Corner 303 Freeway & Northern Parkway Maricopa County, Arizona, Certified Environmental Services* (Jan. 29, 2020).

# **ATTACHMENT I**

## **LEGAL DESCRIPTION**



*First American*

Exhibit A

ISSUED BY

**First American Title Insurance Company**

File No: NCS-1113987-PHX1

File No.: NCS-1113987-PHX1

The Land referred to herein below is situated in the County of Maricopa, State of Arizona, and is described as follows:

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 3 NORTH, RANGE 2 WEST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 36, BEING MARKED, AS WITNESSED, BY A 3" ARIZONA DEPARTMENT OF TRANSPORTATION BRASS CAP IN HANDHOLE, NORTH 89 DEGREES 48 MINUTES 26 SECONDS WEST, 15.00 FEET FROM THE CALCULATED POSITION, FROM WHICH THE SOUTHEAST CORNER OF SAID SECTION 36, BEING MARKED BY A 3" MARICOPA COUNTY BRASS CAP IN HANDHOLE, BEARS SOUTH 89 DEGREES 56 MINUTES 32 SECONDS EAST, 2632.60 FEET;

THENCE ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER, SOUTH 89 DEGREES 56 MINUTES 32 SECONDS EAST, 1601.49 FEET;

THENCE NORTH 0 DEGREES 03 MINUTES 28 SECONDS EAST, 33.00 FEET TO THE POINT OF BEGINNING;

THENCE ALONG THE EASTERLY RIGHT-OF-WAY OF STATE ROUTE 303, AS DEDICATED BY DOCUMENT 2014-0611509 OF MARICOPA COUNTY RECORDS, THE FOLLOWING COURSES:

THENCE NORTH 85 DEGREES 37 MINUTES 53 SECONDS WEST, 286.30 FEET;

THENCE NORTH 0 DEGREES 03 MINUTES 28 SECONDS EAST, 75.64 FEET;

THENCE NORTH 89 DEGREES 56 MINUTES 32 SECONDS WEST, 996.07 FEET;

THENCE NORTH 10 DEGREES 50 MINUTES 52 SECONDS WEST, 101.01 FEET;

THENCE NORTH 0 DEGREES 15 MINUTES 47 SECONDS EAST, 504.14 FEET;

THENCE NORTH 5 DEGREES 21 MINUTES 18 SECONDS EAST, 916.34 FEET;

THENCE NORTH 32 DEGREES 20 MINUTES 04 SECONDS EAST, 159.39 FEET;

THENCE NORTH 48 DEGREES 30 MINUTES 08 SECONDS EAST, 493.37 FEET;

THENCE NORTH 63 DEGREES 51 MINUTES 13 SECONDS EAST, 481.52 FEET;

THENCE SOUTH 89 DEGREES 48 MINUTES 01 SECONDS EAST, 1207.87 FEET;

THENCE ALONG THE SOUTHERLY RIGHT-OF-WAY OF WEST NORTHERN PARKWAY, AS DEDICATED BY DOCUMENT 2017-0799438 OF MARICOPA COUNTY RECORDS, THE FOLLOWING COURSES:

THENCE SOUTH 0 DEGREES 15 MINUTES 32 SECONDS WEST, 52.65 FEET;

*This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions.*

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THENCE SOUTH 89 DEGREES 44 MINUTES 28 SECONDS EAST, 54.46 FEET;

THENCE SOUTH 44 DEGREES 44 MINUTES 22 SECONDS EAST, 35.13 FEET;

THENCE ALONG A LINE 80.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID SOUTHEAST QUARTER, SOUTH 0 DEGREES 15 MINUTES 32 SECONDS WEST, 275.17 FEET;

THENCE SOUTH 89 DEGREES 44 MINUTES 28 SECONDS EAST, 47.00 FEET;

THENCE DEPARTING SAID SOUTHERLY RIGHT-OF-WAY, ALONG A LINE 33.00 FEET WEST OF AND PARALLEL WITH SAID EAST LINE, SOUTH 0 DEGREES 15 MINUTES 32 SECONDS WEST, 1931.50 FEET;

THENCE ALONG A LINE 33.00 FEET NORTH OF AND PARALLEL WITH SAID SOUTH LINE, NORTH 89 DEGREES 56 MINUTES 32 SECONDS WEST, 998.23 FEET TO THE POINT OF BEGINNING.

*This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions.*

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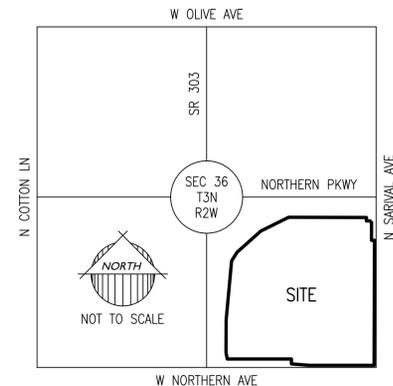
# **ATTACHMENT II**

## **MAPS**

# ALTA/NSPS LAND TITLE SURVEY

## SR 303 & NORTHERN PKWY

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 3 NORTH, RANGE 2 WEST,  
OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA



### SCHEDULE B EXCEPTIONS

- TAXES FOR THE FULL YEAR OF 2022. (THE FIRST HALF IS DUE OCTOBER 1, 2022 AND IS DELINQUENT NOVEMBER 1, 2022. THE SECOND HALF IS DUE MARCH 1, 2023 AND IS DELINQUENT MAY 1, 2023.)  
**(NOT A SURVEY MATTER)**
- ANY CHARGE UPON SAID LAND BY REASON OF ITS INCLUSION IN MARICOPA COUNTY MUNICIPAL WATER CONSERVATION DISTRICT NO. 1. (ALL ASSESSMENTS DUE AND PAYABLE ARE PAID.)  
**(NOT A SURVEY MATTER)**
- RESERVATIONS OR EXCEPTIONS IN PATENTS, OR IN ACTS AUTHORIZING THE ISSUANCE THEREOF.  
**(NO DOCUMENTS PROVIDED)**
- A PLAT RECORDED IN BOOK 6, PAGE 27 OF ROAD MAPS, PURPORTING TO SHOW A COUNTY ROADWAY.  
**(DOES NOT AFFECT SUBJECT PROPERTY, LIES OUTSIDE)**
- A PLAT RECORDED IN BOOK 19, PAGE 16 OF ROAD MAPS, PURPORTING TO SHOW A COUNTY ROADWAY. RESOLUTION RECORDED AS DOCKET 8068, PAGE 639.  
**(DOES NOT AFFECT SUBJECT PROPERTY, LIES OUTSIDE)**
- AN EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES IN THE DOCUMENT RECORDED AS BOOK 86 OF MISCELLANEOUS, PAGE 47.  
**(DOES NOT AFFECT SUBJECT PROPERTY, LIES OUTSIDE)**
- ALL MATTERS AS SET FORTH IN SPECIAL WARRANTY DEED, RECORDED APRIL 24, 1990 AS 90-180767 OF OFFICIAL RECORDS.  
**(DOES NOT AFFECT SUBJECT PROPERTY, LIES OUTSIDE)**
- THE TERMS AND PROVISIONS CONTAINED IN THE DOCUMENT ENTITLED "AGREEMENT FOR RIGHT OF ENTRY" RECORDED AUGUST 17, 2001 AS 2001-0759201 OF OFFICIAL RECORDS.  
**(DOES NOT AFFECT SUBJECT PROPERTY, LIES OUTSIDE)**
- THE RIGHT OF THE STATE OF ARIZONA TO PROHIBIT, LIMIT AND CONTROL ACCESS TO THE LIMITED ACCESS HIGHWAY AS SET FORTH IN INSTRUMENT RECORDED IN NOVEMBER 24, 2009 AS 2009-1080507 OF OFFICIAL RECORDS  
**(DOCUMENT CONTAINS NO PLOTTABLE COURSES)**
- ALL MATTERS AS SET FORTH IN ROAD DECLARED (ROAD FILE A-433) (C-91-10-205-M-00), RECORDED AUGUST 24, 2010 AS 2010-0725352 OF OFFICIAL RECORDS.  
**(DOCUMENT CONTAINS NO PLOTTABLE COURSES)**
- THE RIGHT OF THE STATE OF ARIZONA TO PROHIBIT, LIMIT AND CONTROL ACCESS TO THE LIMITED ACCESS HIGHWAY AS SET FORTH IN INSTRUMENT RECORDED IN JUNE 03, 2011 AS 2011-0468335 OF OFFICIAL RECORDS AND AMENDED JULY 27, 2012 AS 2012-0663954 OF OFFICIAL RECORDS  
**(DOCUMENT CONTAINS NO PLOTTABLE COURSES)**
- THIS ITEM HAS BEEN INTENTIONALLY DELETED
- THE TERMS AND PROVISIONS CONTAINED IN THE DOCUMENT ENTITLED "PHASE I UTILITY GROUP CONTRIBUTION AGREEMENT" RECORDED NOVEMBER 01, 2012 AS 2012-0996584 OF OFFICIAL RECORDS.  
**(AFFECTS SUBJECT PROPERTY, BLANKET IN NATURE)**
- THE TERMS AND PROVISIONS CONTAINED IN THE DOCUMENT ENTITLED "WASTEWATER FACILITIES MAIN EXTENSION AGREEMENT" RECORDED FEBRUARY 06, 2013 AS 2013-0118414 OF OFFICIAL RECORDS AND MEMORANDUM OF ASSIGNMENT RECORDED OCTOBER 29, 2013 AS 2013-0946742 OF OFFICIAL RECORDS.  
**(AFFECTS SUBJECT PROPERTY, BLANKET IN NATURE)**
- THE RIGHT OF THE STATE OF ARIZONA TO PROHIBIT, LIMIT AND CONTROL ACCESS TO THE LIMITED ACCESS HIGHWAY AS SET FORTH IN INSTRUMENT RECORDED IN SEPTEMBER 16, 2014 AS 2014-0611509 OF OFFICIAL RECORDS..  
**(DOES NOT AFFECT SUBJECT PROPERTY, LIES OUTSIDE)**
- THE RIGHT OF THE STATE OF ARIZONA TO PROHIBIT, LIMIT AND CONTROL ACCESS TO THE LIMITED ACCESS HIGHWAY AS SET FORTH IN INSTRUMENT RECORDED IN OCTOBER 27, 2017 AS 2017-0799438 OF OFFICIAL RECORDS  
**(DOES NOT AFFECT SUBJECT PROPERTY, LIES OUTSIDE)**
- THIS ITEM HAS BEEN INTENTIONALLY DELETED
- THE TERMS AND PROVISIONS CONTAINED IN THE DOCUMENT ENTITLED "JOINT DEVELOPMENT AGREEMENT" RECORDED JULY 17, 2020 AS 2020-0642708 OF OFFICIAL RECORDS AND AMENDED AND RESTATED JOINT DEVELOPMENT AGREEMENT RECORDED JULY 20, 2021 AS 2021-0788237 OF OFFICIAL RECORDS.  
**(AFFECTS SUBJECT PROPERTY, NOT A SURVEY MATTER)**
- (19)** SURVEY PREPARED BY EPS GROUP, DATED FEBRUARY 3, 2020, UNDER JOB NO. 20-0056, SHOWS THE FOLLOWING:  
A) VARIOUS DIRT ROADS AND DITCHES TRAVERSING THE LAND AS DELINEATED ON THE SURVEY.  
**(AFFECTS SUBJECT PROPERTY, DEPICTED HEREON)**
- THIS ITEM HAS BEEN INTENTIONALLY DELETED
- ANY FACTS, RIGHTS, INTERESTS OR CLAIMS THAT MAY EXIST OR ARISE BY REASON OF THE FOLLOWING MATTERS DISCLOSED BY AN ALTA/NSPS SURVEY MADE BY \_\_\_\_\_ ON \_\_\_\_\_, DESIGNATED JOB NUMBER \_\_\_\_\_:  
**(NO DOCUMENTS PROVIDED)**
- THE RIGHTS OF PARTIES IN POSSESSION BY REASON OF ANY UNRECORDED LEASE OR LEASES OR MONTH TO MONTH TENANCIES AFFECTING ANY PORTION OF THE WITHIN DESCRIBED PROPERTY.  
NOTE: THIS MATTER WILL BE MORE FULLY SET FORTH OR DELETED UPON COMPLIANCE WITH THE APPLICABLE REQUIREMENT(S) SET FORTH HEREIN.  
**(NO DOCUMENTS PROVIDED)**
- WATER RIGHTS, CLAIMS OR TITLE TO WATER, WHETHER OR NOT SHOWN BY THE PUBLIC RECORDS.  
**(NO DOCUMENTS PROVIDED)**

### LEGAL DESCRIPTION

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 3 NORTH, RANGE 2 WEST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 36, BEING MARKED, AS WITNESSED, BY A 3" ARIZONA DEPARTMENT OF TRANSPORTATION BRASS CAP IN HANDHOLE, NORTH 89 DEGREES 48 MINUTES 26 SECONDS WEST, 15.00 FEET FROM THE CALCULATED POSITION, FROM WHICH THE SOUTHEAST CORNER OF SAID SECTION 36, BEING MARKED BY A 3" MARICOPA COUNTY BRASS CAP IN HANDHOLE, BEARS SOUTH 89 DEGREES 56 MINUTES 32 SECONDS EAST, 2632.60 FEET;

THENCE ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER, SOUTH 89 DEGREES 56 MINUTES 32 SECONDS EAST, 1601.49 FEET;

THENCE NORTH 0 DEGREES 03 MINUTES 28 SECONDS EAST, 33.00 FEET TO THE POINT OF BEGINNING;

THENCE ALONG THE EASTERLY RIGHT-OF-WAY OF STATE ROUTE 303, AS DEDICATED BY DOCUMENT 2014-0611509 OF MARICOPA COUNTY RECORDS, THE FOLLOWING COURSES:

THENCE NORTH 85 DEGREES 37 MINUTES 53 SECONDS WEST, 286.30 FEET;

THENCE NORTH 0 DEGREES 03 MINUTES 28 SECONDS EAST, 75.64 FEET;

THENCE NORTH 89 DEGREES 56 MINUTES 32 SECONDS WEST, 996.07 FEET;

THENCE NORTH 10 DEGREES 50 MINUTES 52 SECONDS WEST, 101.01 FEET;

THENCE NORTH 0 DEGREES 15 MINUTES 47 SECONDS EAST, 504.14 FEET;

THENCE NORTH 5 DEGREES 21 MINUTES 18 SECONDS EAST, 916.34 FEET;

THENCE NORTH 32 DEGREES 20 MINUTES 04 SECONDS EAST, 159.39 FEET;

THENCE NORTH 48 DEGREES 30 MINUTES 08 SECONDS EAST, 493.37 FEET;

THENCE NORTH 63 DEGREES 51 MINUTES 13 SECONDS EAST, 481.52 FEET;

THENCE SOUTH 89 DEGREES 48 MINUTES 01 SECONDS EAST, 1207.87 FEET;

THENCE ALONG THE SOUTHERLY RIGHT-OF-WAY OF WEST NORTHERN PARKWAY, AS DEDICATED BY DOCUMENT 2017-0799438 OF MARICOPA COUNTY RECORDS, THE FOLLOWING COURSES:

THENCE SOUTH 0 DEGREES 15 MINUTES 32 SECONDS WEST, 52.65 FEET;

THENCE SOUTH 89 DEGREES 44 MINUTES 28 SECONDS EAST, 54.46 FEET;

THENCE SOUTH 44 DEGREES 44 MINUTES 22 SECONDS EAST, 35.13 FEET;

THENCE ALONG A LINE 80.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID SOUTHEAST QUARTER, SOUTH 0 DEGREES 15 MINUTES 32 SECONDS WEST, 275.17 FEET;

THENCE SOUTH 89 DEGREES 44 MINUTES 28 SECONDS EAST, 47.00 FEET;

THENCE DEPARTING SAID SOUTHERLY RIGHT-OF-WAY, ALONG A LINE 33.00 FEET WEST OF AND PARALLEL WITH SAID EAST LINE, SOUTH 0 DEGREES 15 MINUTES 32 SECONDS WEST, 1931.50 FEET;

THENCE ALONG A LINE 33.00 FEET NORTH OF AND PARALLEL WITH SAID SOUTH LINE, NORTH 89 DEGREES 56 MINUTES 32 SECONDS WEST, 998.23 FEET TO THE POINT OF BEGINNING.

LEGAL DESCRIPTION PER FIRST AMERICAN TITLE INSURANCE COMPANY COMMITMENT FOR TITLE INSURANCE WITH FILE NO. NCS-1113987-PHX1, HAVING AN EFFECTIVE DATE OF FEBRUARY 14, 2022, AT 8:00 AM, REVISION 1

### BASIS OF BEARING

THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 3 NORTH, RANGE 2 WEST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, AS MEASURED AND RECORDED IN THAT RECORD OF SURVEY, RECORDED IN BOOK 1259, PAGE 31, MARICOPA COUNTY RECORDS

BEARING: NORTH 00°15'32" EAST

### REFERENCE DOCUMENTS

- RECORD OF SURVEY, BOOK 1259, PAGE 31, MCR
- RESULTS OF SURVEY (UNRECORDED) ADOT PROJECT 303L MA 005 H6811 01R, DATED 01/20/09

### SIGNIFICANT OBSERVATIONS

- |    |  |
|----|--|
| A. | PERIMETER FENCE LIES INSIDE P/L IN CERTAIN LOCATIONS. DIMENSIONS AS SHOWN.   |
| B. | IRRIGATION DITCH LIES OUTSIDE P/L IN CERTAIN LOCATIONS. DIMENSIONS AS SHOWN. |
| C. | DIRT ROAD LIES OUTSIDE P/L IN CERTAIN LOCATIONS. DIMENSIONS AS SHOWN.        |

### OWNER

TOHONO O'ODHAM NATION OF ARIZONA  
C/O LAW OFFICES OF KEVIN G. HUNTER PLLC  
14114 N. 88TH AVENUE  
PEORIA, ARIZONA 85381

### NOTES

- PURSUANT TO TABLE A, ITEM NUMBER 1, MONUMENTS HAVE BEEN OR WILL BE PLACED (OR A REFERENCE MONUMENT OR WITNESS TO THE CORNER) AT ALL MAJOR CORNERS OF THE BOUNDARY OF THE PROPERTY, UNLESS ALREADY MARKED OR REFERENCED BY EXISTING MONUMENTS OR WITNESSES IN CLOSE PROXIMITY TO THE CORNER.
- PURSUANT TO TABLE A, ITEM NUMBER 2, THE ADDRESS OF THE SUBJECT PROPERTY IS UNKNOWN.
- PURSUANT TO TABLE A, ITEM NUMBER 3, THE FLOOD ZONE CLASSIFICATION OF THE SUBJECT PROPERTY IS DESIGNATED AS ZONE X, OTHER FLOOD AREAS, PER FLOOD INSURANCE RATE MAP NUMBER 04013C1670L, DATED OCTOBER 16, 2013.
- PURSUANT TO TABLE A, ITEM NUMBER 4, THE GROSS LAND AREA OF THE SUBJECT PROPERTY IS 4,806,640 SQUARE FEET OR 110.3453 ACRES, MORE OR LESS.
- PURSUANT TO TABLE A, ITEM NUMBER 8, SUBSTANTIAL FEATURES OBSERVED IN THE PROCESS OF CONDUCTING THE FIELDWORK, INCLUDING, BUT NOT LIMITED TO, PARKING LOTS, BILLBOARDS, SIGNS, SWIMMING POOLS, LANDSCAPED AREAS AND SUBSTANTIAL AREAS OF REFUSE ARE DEPICTED HEREON.
- PURSUANT TO TABLE A, ITEM NUMBER 13, THE NAMES OF ADJOINING OWNERS ARE DEPICTED HEREON.
- PURSUANT TO TABLE A, ITEM NUMBER 14, THE DISTANCE TO THE NEAREST INTERSECTING STREET AS SPECIFIED BY THE CLIENT IS DEPICTED HEREON.
- PURSUANT TO TABLE A, ITEM NUMBER 16, NO EVIDENCE OF RECENT EARTHMOVING WORK, BUILDING CONSTRUCTION OR BUILDING ADDITIONS WAS OBSERVED IN THE PROCESS OF CONDUCTING THE FIELDWORK.
- PURSUANT TO TABLE A, ITEM NUMBER 17, SURVEYOR WAS NOT MADE AWARE OF ANY PROPOSED CHANGES IN STREET RIGHT-OF-WAY LINES AND NO EVIDENCE OF RECENT STREET OR SIDEWALK CONSTRUCTION WAS OBSERVED IN THE PROCESS OF CONDUCTING THE FIELDWORK.
- SURVEYOR MAKES NO GUARANTEE FOR ANY RIGHT-OF-WAY OR EASEMENTS AFFECTING THE SUBJECT PROPERTY NOT DISCLOSED IN SCHEDULE B OF FIRST AMERICAN TITLE INSURANCE COMPANY COMMITMENT FOR TITLE INSURANCE WITH FILE NO. NCS-1113987-PHX1, HAVING AN EFFECTIVE DATE OF FEBRUARY 14, 2022, AT 8:00 AM, REVISION 1.
- ALL BEARINGS AND DISTANCES DEPICTED HEREON ARE RECORD AND MEASURED UNLESS NOTED OTHERWISE.

### CERTIFICATION

TO: TOHONO O'ODHAM NATION OF ARIZONA, A FEDERALLY RECOGNIZED INDIAN TRIBE  
LAW OFFICES OF KEVIN G. HUNTER PLLC, AN ARIZONA PROFESSIONAL LIMITED LIABILITY COMPANY  
FIRST AMERICAN TITLE INSURANCE COMPANY

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2021 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 1, 2, 3, 4, 8, 13, 14, 16, 17 AND 20 OF TABLE A THEREOF. THE FIELDWORK WAS COMPLETED ON FEBRUARY 28, 2022.

DATE OF MAP: MARCH 3, 2022

RAYMOND S. MUNOZ                      REGISTRATION NO. 53160  
EPS GROUP INC.  
1130 N. ALMA SCHOOL RD.  
SUITE 120  
MESA, AZ 85201  
480-503-2250

NOTE:  
A.R.S. 32-151 STATES THAT THE USE OF THE WORD "CERTIFY" OR "CERTIFICATION" BY A PERSON OR FIRM THAT IS REGISTERED OR CERTIFIED BY THE BOARD IS AN EXPRESSION OF PROFESSIONAL OPINION REGARDING FACTS OR FINDINGS THAT ARE SUBJECT OF THE CERTIFICATION AND DOES NOT CONSTITUTE AN EXPRESS OR IMPLIED WARRANTY OR GUARANTEE.

Mar. 03, 2022 10:16am S:\Projects\2022\22-0197\Land Survey\dwgs\22-0197\_A501.dwg c:\imenez

Mesa, AZ 85201



Revisions:



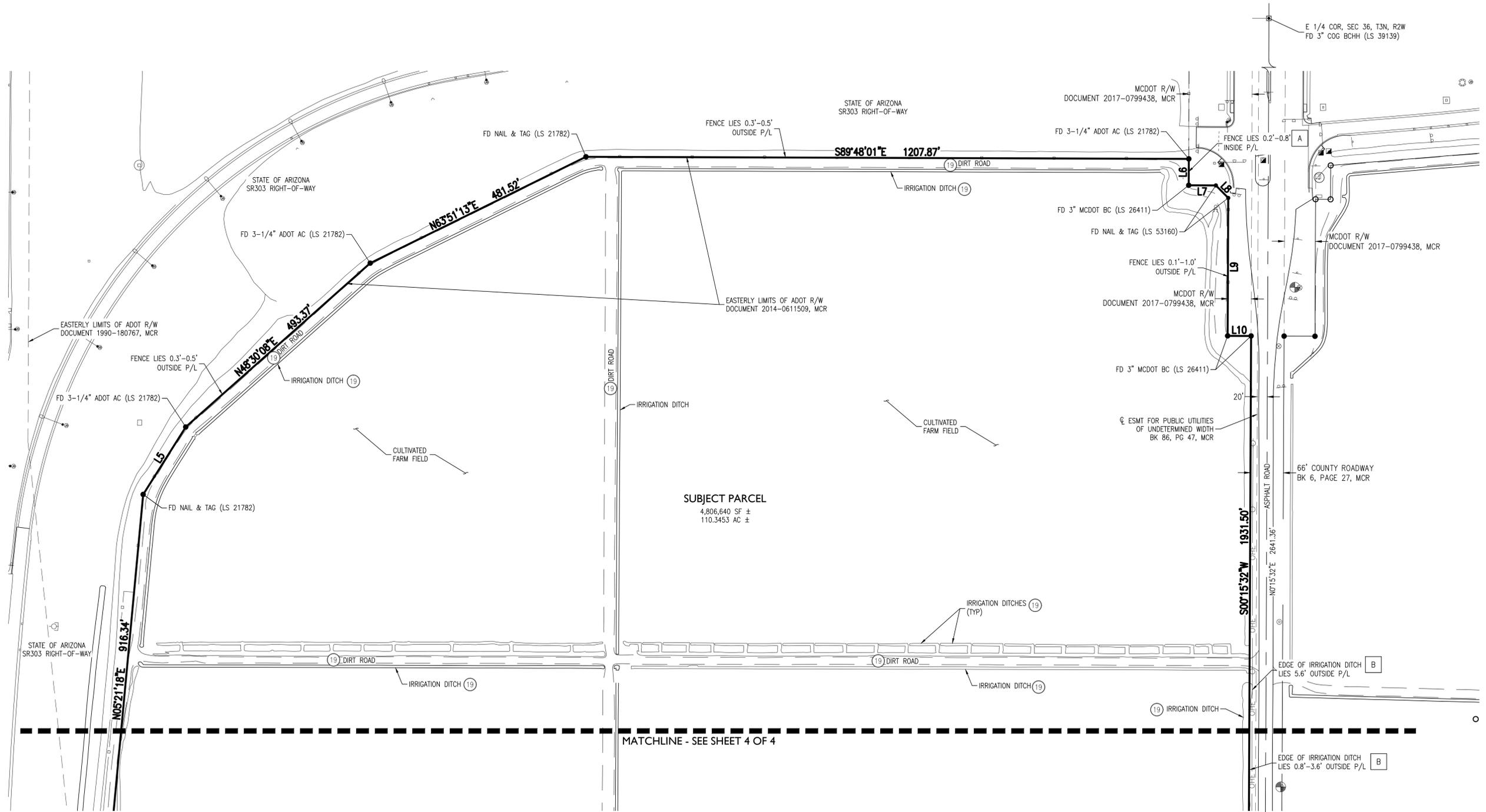
Designer:  
Drawn by:



22-0197

1  
of 4

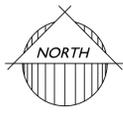




**LEGEND**

ACHH	ALUMINUM CAP IN HANDHOLE	○	STREET LIGHT
ADOT	ARIZONA DEPARTMENT OF TRANSPORTATION	—	SIGN
BCF	BRASS CAP FLUSH	○	POST/BOLLARD
BCHH	BRASS CAP IN HANDHOLE	○	UTILITY POLE
COG	CITY OF GLENDALE	○	DOWN GUY
FD	FOUND	□	TV PEDESTAL
MCDOT	MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION	□	TV PULLBOX
MCR	MARICOPA COUNTY RECORDS	□	TELEPHONE PEDESTAL
P/L	PROPERTY LINE	○	IRRIGATION MANHOLE
R/W	RIGHT-OF-WAY	○	IRRIGATION VALVE
●	FOUND SECTION CORNER AS NOTED	○	TRAFFIC SIGNAL MAST
●	FOUND BOUNDARY CORNER AS NOTED	○	BOUNDARY LINE
⊕	FIRE HYDRANT	○	SECTION LINE
⊗	WATER VALVE	○	EASEMENT LINE
⊕	WATER METER	○	OHE
⊕	ELECTRIC TRANSFORMER	○	OHE
⊕	TELEPHONE PEDESTAL	○	OVERHEAD ELECTRIC LINE
⊕	BACK FLOW PREVENTER	○	FENCE LINE
⊕	LIGHT POLE	○	
⊕	JUNCTION BOX	○	

MATCHLINE - SEE SHEET 4 OF 4



Revisions:

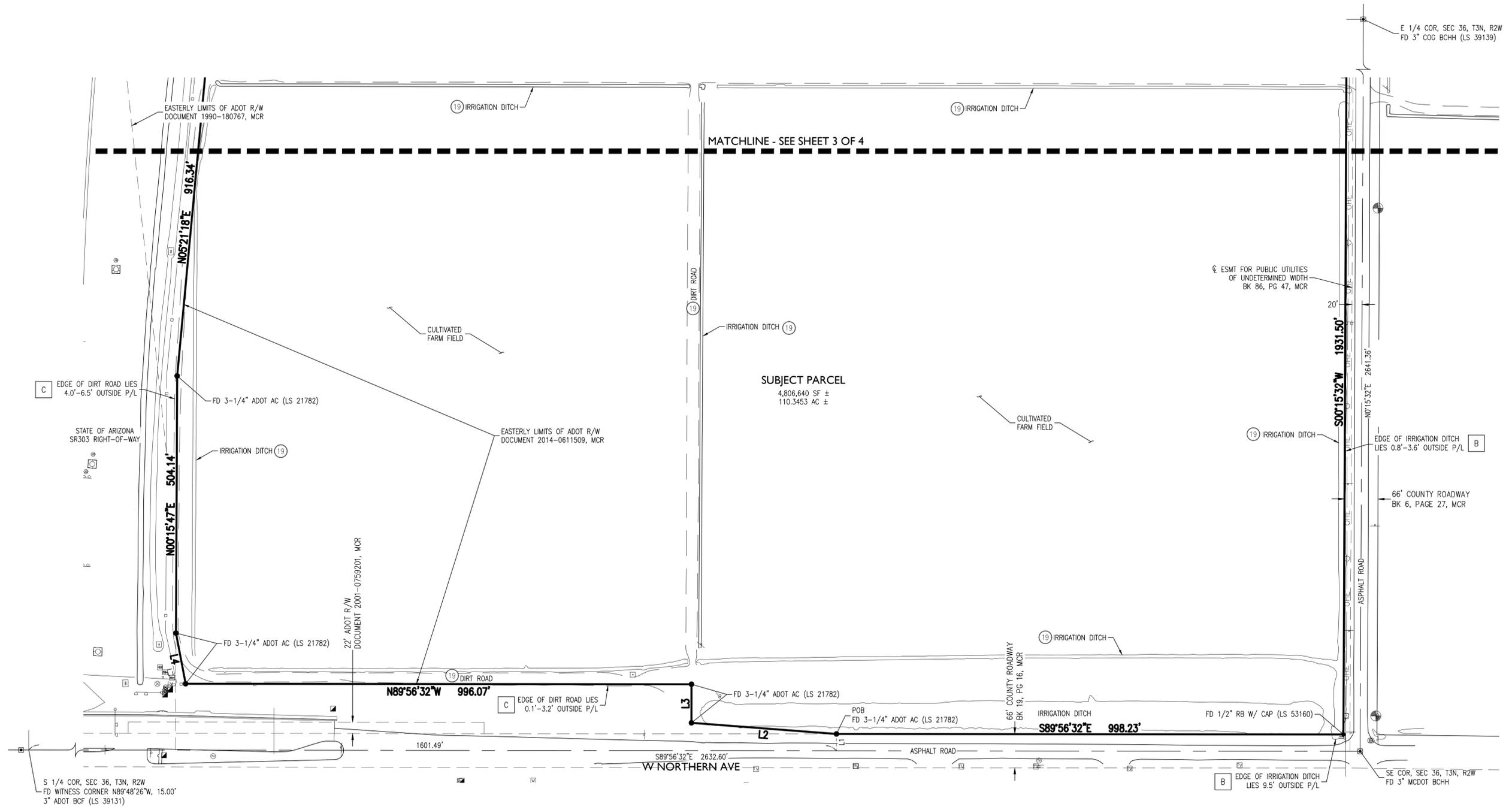



Designer:  
Drawn by:



22-0197

Mar. 03, 2022 10:16am S:\Projects\2022-0197\Land Survey\dwgs\22-0197-AS01.dwg



**LEGEND**

ACHH	ALUMINUM CAP IN HANDHOLE		STREET LIGHT SIGN
ADOT	ARIZONA DEPARTMENT OF TRANSPORTATION		POST/BOLLARD
BCF	BRASS CAP FLUSH		UTILITY POLE
BCHH	BRASS CAP IN HANDHOLE		DOWN GUY
COG	CITY OF GLENDALE		TV PEDESTAL
FD	FOUND		TV PULLBOX
MCDOT	MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION		TELEPHONE PEDESTAL
MCR	MARICOPA COUNTY RECORDS		IRRIGATION MANHOLE
P/L	PROPERTY LINE		IRRIGATION VALVE
R/W	RIGHT-OF-WAY		TRAFFIC SIGNAL MAST
	FOUND SECTION CORNER AS NOTED		BOUNDARY LINE
	FOUND BOUNDARY CORNER AS NOTED		SECTION LINE
	FIRE HYDRANT		EASEMENT LINE
	WATER VALVE		OHE OVERHEAD ELECTRIC LINE
	WATER METER		FENCE LINE
	ELECTRIC TRANSFORMER		
	TELEPHONE PEDESTAL		
	BACK FLOW PREVENTER		
	LIGHT POLE		
	JUNCTION BOX		



Revisions:




Designer:  
 Drawn by:



22-0197

# **ATTACHMENT III**

## **LETTER FROM REGIONAL DIRECTOR**

Branch of Real Estate Services  
(602) 379-6781

MAY 31 2000

Honorable Edward D. Manuel  
Chairman, Tohono O'odham Nation  
P.O. Box 837  
Sells, Arizona 85634

Dear Chairman Manuel:

On January 26, 2000, a meeting was held with you, a delegation of the Tohono O'odham Nation (Nation), and the San Lucy District (District), regarding the Nation's request for a waiver of the contiguity requirement of § 6(d) of the Gila Bend Indian Reservation Lands Replacement Act of October 20, 1986, Public Law 99-503, 100 Stat. 1798. At the meeting, the Nation provided us with a copy of its letter dated January 25, 2000, to Secretary Babbitt and a binder containing documents for supporting a waiver of § 6(d) of the Act. The substance of our discussions at the meeting was reduced to writing in our letter of February 1, 2000, to Ms. Dawn Farrison, legal counsel for the San Lucy District. The following week, a Nation and District delegation met with Assistant Secretary Gover on the waiver request.

At the January 26, 2000, meeting, we advised you that because this office has the delegated authority to accept and approve trust acquisitions under the Act, it was our opinion that this office also has the authority to issue the waiver. However, we advised that we would seek the concurrence of the Assistant Secretary-Indian Affairs on this issue.

#### **Delegation of the Waiver Authority**

By memorandum dated April 4, 2000, copy enclosed, Assistant Secretary Gover advised that he had met with the Nation's delegation to discuss the Nation's difficulty in acquiring lands that meet the requirements of § 6(d) of the Act, and on exercising the waiver of the contiguity requirement authorized by the Act. He stated that the Act provides that the Secretary may waive the statutory limitation on the acquisitions if he determines that additional areas are appropriate. He further stated that, unless expressly prohibited by statute from being re-delegated, all authority conferred on the Secretary by Congress is delegated to program managers within the Department of the Interior for implementation. Since this office already has jurisdiction over the Tohono O'odham Reservation and delegated general program authority pursuant to 3 IAM 4.4, Assistant Secretary Gover concurred

(2)

that we have authority to review the circumstances and based on the administrative record to make the determination authorized by § 6(d) of the Replacement Act and waive the contiguity requirement.

We have completed our review of the Nation's January 28, 2000, request and supporting documents. Based on the circumstances and material in our possession, we have concluded that a waiver of § 6(d) of the Act is warranted. The circumstances and justification for the waiver are discussed in detail as follows:

### **Background of the Gila Bend Indian Reservation - San Lucy District**

The Gila Bend Indian Reservation is part of the Tohono O'odham Nation (Nation). By Executive Order dated December 12, 1882, President Chester A. Arthur created the 22,400-acre Gila Bend Indian Reservation. By Executive Order of June 17, 1909, President William Howard Taft decreased the size of the Gila Bend Indian Reservation to approximately 10,299 acres. The reservation is divided by the Gila River. The Gila Bend Indian Reservation is the historical residence of the Tohono O'odham people of the San Lucy District, a political subdivision of the Nation. Extensive ruins on the lands date back to about 500 A.D. Other sources have dated the Nation's occupancy of the Gila Bend Indian Reservation to 900 A.D.

Due to the flooding caused by the operation of the Painted Rock Dam, completed in 1960 pursuant to the Act of May 17, 1950, 64 Stat. 163, virtually all of the 10,299-acre Gila Bend Indian Reservation was destroyed. In 1964, the United States obtained through condemnation a flowage easement for 7723.82 acres of the reservation (75 per cent of the total acreage), which gave the United States the perpetual right to flood the land and prohibited use of the land for human habitation. The Nation received \$130,000 in compensation. The San Lucy District, also known as the San Lucy Village, is located on 40 acres adjacent to Gila Bend, Arizona. Pursuant to the Act of August 20, 1964, Public Law 88-462, 78 Stat. 559, the members of the Gila Bend Indian Reservation living in the village of Sil Murk, which was located within the flood plain created by the construction of the Painted Rock Dam, were relocated to the San Lucy Village.

Major flooding of the reservation occurred in 1978-79, 1981, 1983 and 1984, each time resulting in a large standing body of water. The flooding, which was far greater than expected, destroyed a 750-acre tribal farm and precluded any economic use of reservation lands. In 1981, the Nation petitioned the United States for a new reservation suitable for agricultural development. In 1982, Congress authorized and directed the Secretary of the Interior to exchange lands in the public domain for the reservation lands determined to be unsuitable for agriculture. Southern Arizona Water Rights Settlement Act, P. L. 97-293, 97 Stat. 1274. A subsequent study determined that all of the arable land on the reservation had been made unsuitable for agriculture or for grazing livestock. The Secretary then contracted with the Tribe for a study to identify federal lands within a 100-mile radius of the reservation suitable for agriculture and for exchange. None of the sites were found to be

(3)

suitable in terms of land and water resources. The initial results of the federal study indicated that the costs of land and water acquisition, construction of a water delivery system, and operation and maintenance of the system would exceed \$30,000,000. H.R. Rep. No. 851, 99<sup>th</sup> Cong., 2d Sess. at 6-7.

As a result of this flooding, the Gila Bend Indian Reservation was decreased from its original size of 22,400 acres to the 40 acres at the San Lucy Village and approximately 400 acres of tribal trust land retained for cultural purposes and scattered throughout the original Gila Bend Indian Reservation.

### **Gila Bend Indian Reservation Lands Replacement Act of 1986**

The Gila Bend Indian Reservation Lands Replacement Act of October 20, 1986, Public Law 99-503, 100 Stat. 1798, was enacted to provide lands suitable for sustained economic and community development to replace 9,880 acres of damaged land located within the Gila Bend Indian Reservation. In Section 2 of the Act, Congress found that Southern Arizona Water Rights Settlement Act had authorized the Secretary to exchange the reservation lands for public lands suitable for farming; that public lands within a 100-mile radius of the reservation suitable for farming would require substantial federal outlays for construction of irrigation systems, roads, education and health facilities; and that the lack of an appropriate land base severely retarded the economic self-sufficiency of the Nation and resulted in chronic high costs for federal services and transfer payments. Section 2(4) provides:

This Act will facilitate replacement of reservation lands with lands suitable for sustained economic use which is not principally farming and do not require Federal outlays for construction, and promote the economic self-sufficiency of the O'odham Indian people.

Section 4 of the Act provide that if the Nation assigned to the United States all right, title and interest in 9,880 acres of land within the Gila Bend Indian Reservation, the Secretary would pay the Nation \$30,000,000, payable in three annual installments of \$10,000,000, together with interest. Section 6(a) of the Act provides that the Nation may spend the principal and interest on behalf of the San Lucy District for land and water rights acquisition, economic and community development and relocation costs. Section 6(b) provides that the Secretary is not responsible for the review or approval of the expenditure of the fund "nor shall the Secretary be subject to liability for any claim or cause of action arising from the Tribe's use and expenditure of such moneys." Section 6(c) authorizes the Nation to purchase private lands not to exceed 9,880 acres in the aggregate. Section 6(d) provides:

The Secretary, at the request of the Tribe, shall hold in trust for the benefit of the Tribe any land which the Tribe acquires pursuant to subsection (c) which meets the

(4)

requirements of this subsection. Any land which the Secretary holds in trust shall be deemed to be a Federal Indian Reservation for all purposes. Land does not meet the requirements of this subsection if it is outside of the counties of Maricopa, Pinal, and Pima, Arizona, or within the corporate limits of any city or town. Land meets the requirements of this subsection only if it constitutes not more than three separate areas consisting of contiguous tracts, at least one of which areas shall be contiguous to San Lucy Village. The Secretary may waive the requirements set forth in the preceding sentence if he determines that additional areas are appropriate. (Underlining added.)

Section 7 of the Act provides that “with respect to any private land acquired by the Nation under § 6 and held in trust by the Secretary, the Secretary shall make payments to the State of Arizona and its political subdivisions in lieu of real property taxes.”

By agreement dated October 15, 1987, the Tohono O’odham Nation assigned all its right, title and interest to the 9,880 acres and waived and released any claims for water rights or injuries to land or water rights with respect to the Gila Bend Indian Reservation, to take effect upon payment of the \$30,000,000 to the Nation. (As indicated above, the Act provided for the payment of \$10 million in fiscal year 1988, \$10 million in fiscal year 1989 and \$10 million in fiscal year 1990, along with interest accrued. According to our records, the Nation was paid \$10,700,00 for fiscal year 1988, \$11,300,000 for fiscal year 1989, and \$12,700,000 for fiscal year 1990)

#### **Nation’s Proposed Acquisition of 1,181-acre Tract Contiguous to Sand Lucy Village**

San Lucy Village currently consists of about eighty (80) families, or approximately 788 individuals, on the forty (40) acre parcel. There are 1,314 members enrolled in the District. Many other district members would live at the Village if there were additional land available. A task force created by the District surveyed District members and determined that the majority would prefer to stay in the Gila Bend area, close to their ancestral home, while a minority would prefer land near Phoenix, Tucson or Casa Grande, Arizona, to take advantage of the employment opportunities that would be available to them. The task force recommended to the District Council the purchase of approximately 1,181 acres of undeveloped desert land located west of and adjacent to the current 40 acre San Lucy Village. The land is currently owned by the Gila Bend Investment Group, Ltd. (Group). A map showing the location of San Lucy Village in relationship to the lands owned by the Group and showing the incorporated township of Gila Bend is attached as Exhibit 1. As of the date of the Nation’s waiver request, all property which bounds San Lucy Village to the north, south and west is owned by the Group. The land to the east of San Lucy Village is within the corporate limits of the town of Gila Bend and, therefore, cannot be purchased and placed in trust because of the restrictions in § 6(d) of the Act.

(5)

The San Lucy District and the Group have been discussing the price of the subject property for many years. It has been the position of the Group in its dealings with the Nation/San Lucy District to over value the subject property at \$3,000 per acre or higher. This is reflected in its letter of October 5, 1991, to the District from Howard O'Brien, President and General Partner of the Group. In that letter Mr. O'Brien stated that he "would take the same amount per acre that San Lucy received on their land." The Group erroneously believes that under the Replacement Act, the Nation was compensated approximately \$3,000 per acre for the 9,880 acres taken by the Painted Rock Dam, and that the Nation should pay approximately \$3,000 per acre for the undeveloped desert land that the Group has for sale. However, as indicated above, the money was appropriated by Congress not only for land acquisition, but also for water rights acquisition, for economic and community development, and for relocation costs. Appraisals by the District indicate the value of the property to be between \$850 and \$1,000 per acre. Since 1991, the District and Group have had numerous discussions about the purchase of the 1,181 acres. These discussions have been to no avail and it now appears some or all of the land is no longer available since the Group is in active discussions with another potential purchaser. As a consequence, the Nation and the District are of the belief that it is highly unlikely that any agreement can be reached with the Group for the acquisition of any property contiguous to the San Lucy Village.

**Nation's Justification for Waiver of § 6(d)**

Resolution No. 99-623 authorized the Nation to make a formal offer to the Group to purchase the 1,181 acres, but also provided the following provisions for the waiver of the two provisions of § 6(d) of the Replacement Act:

"...WHEREAS, San Lucy District determined that, other than the above referenced Property, there are no other lands which are contiguous to San Lucy Village that are available for purchase at this time. Further, San Lucy District, through its task force and with the assistance of the Nation's land specialist, determined that the parcels of lands available for purchase in Maricopa, Pima or Pinal County are not large enough in acreage to accomplish the purchase of replacement land of up to 9,800 acres through three (3) separate areas of contiguous tracts as provided for under section 6(d) of the Replacement Act. As a result, San Lucy District determined that in order to acquire replacement lands up to 9,880 acres, it is necessary to request the Secretary of the Interior to waive the requirement that one of the areas be contiguous to San Lucy Village and waive the limitation that the parcels consist of three (3) separate areas consisting of contiguous tracts and modify the provision to provide for the purchase of up to five (5) separate areas consisting of contiguous tracts; and

WHEREAS, San Lucy District determined that if, as anticipated for reasons set forth in Resolution No. S.L. 10-96-99, a copy of which is attached hereto as Exhibit 'B'

(6)

and incorporated herein by reference, Gila Bend Investment Group, Ltd. rejects the Nation's offer to purchase the Property, then it is not in San Lucy District's best interests to delay the request for a waiver from the Secretary of the Interior; and by Resolution No. S.L. 10-96-99, San Lucy District requested, pursuant to the Replacement Act, that in the event that the Nation's offer to purchase the Property is rejected by the Gila Bend Investment Group, Ltd., that the Nation promptly request a waiver from the Secretary of the Interior of those provisions of section 6(d) of the Replacement Act that require that one of the areas of replacement lands be located contiguous to San Lucy Village and waive the limitation that the parcels consist of three (3) separate areas consisting of contiguous tracts and modify the latter provision to provide for the purchase of up to five (5) separate areas consisting of contiguous tracts;

WHEREAS, it is in the best interest of San Lucy District and the Nation to have the current Administration of the United States Executive Branch, including the current Secretary of the Interior, consider any waiver request; and....”

As discussed above, § 6(d) of the Replacement Act requires at least one tract of acquired land to be contiguous to San Lucy Village. As discussed above, the only land of substantial size that is contiguous to San Lucy Village and is available for purchase is the approximately 1,181 acres owned by the Group. (Now reduced to 400 available acres, because of other pending sales.) Pursuant to the Replacement Act, the Nation, on behalf of the San Lucy District, in 1988 purchased approximately 3,200 acres of land formerly known as the Schramm Ranch and now known as the San Lucy Farm. If the Nation was successful in purchasing the 1,181 acres, combined with the 3,200-acre San Lucy Farm, the total acquisition would be 4,381 acres. Thus, the Nation would have only one other area in which to purchase the remaining 5,500 acres of replacement lands.

San Lucy District has determined through its task force, with the assistance of the Nation's land specialist, that the parcels of land available for purchase in Maricopa, Pima or Pinal Counties are not large enough in acreage or offered at a price that will enable the acquisition of 9,880 acres of replacement lands in only three (3) tracts as provided for under § 6(d) of the Act. For example, large acreage parcels of undeveloped land located in close proximity to existing communities are being held for subdivision development and are being offered at very high prices. Other large parcels of land, while offered at a less expensive asking price, are irrigated farming lands within the boundaries of groundwater active management areas and are controlled by non-Indian irrigation districts. Experience with the purchase of the aforementioned San Lucy Farm and the delay in placing the Farm property in trust as mandated under § 6(d) of the Replacement Act leaves the Nation and San Lucy wary of purchasing large tracts of farming lands. The task force has determined that most, if not all, farming lands located in Maricopa, Pima and Pinal counties are within the boundaries of non-Indian irrigation district.

(7)

For the reasons set forth above, the Nation requests waiver of the following two provisions of § 6(d) of the Replacement Act:

1. Waiver of the provision that requires that one of the parcel of replacement land be located contiguous to San Lucy Village; and
2. Waiver of the requirement that the replacement lands consist of three separate areas of contiguous tracts. The Nation requests that this provision be modified to provide for the purchase of up to five separate areas of contiguous tracts.

**Evaluation of the Nation's Request for Waiver of § 6(d)**

As discussed above, one tract of land to be acquired must be contiguous to the San Lucy Village in order to comply with the requirement of § 6(d) of the Replacement Act. The only land available is land owned by the Gila Bend Investment Group, Ltd., which bounds the Village to the north, south and west. The land east of the Village is within the corporate limits of the town of Gila Bend and cannot be purchased and placed in trust because of the restrictions in § 6(d) of the Act. Throughout the past almost ten years, the Nation/District have been negotiating with the Group to purchase its land. As indicated above, it has been the position of the Group in its dealings to over value the subject property at \$3,000 or higher per acre. For that reason, the Nation has advised that it seriously doubts that an agreement will be reached with the Group for an amount which accurately reflects the fair market value of such property unless the contiguity requirement is lifted. The circumstances that the Nation is confronted with--the asking price for the land contiguous to San Lucy Village is over valued by the current owner and the remaining contiguous land is within the corporate limits of the town of Gila Bend--justifies the need to waive the contiguity requirement of § 6(d).

In addition, the San Lucy District has determined through its task force and with the assistance of the Nation's land specialist, that the parcels of lands available for purchase in Maricopa, Pima and Pinal Counties are not large enough in acreage so that 9,880 acres of replacement lands can be purchased in only three (3) contiguous tracts as provided for under § 6(d) of the Act. The Nation has advised that large parcels of undeveloped land located in close proximity to existing communities are being held for subdivision development and are being offered at very high prices. The Nation further advises that other large parcels of land, while offered at a less expensive asking price, are irrigated farming lands within the boundaries of groundwater active management areas and are controlled by non-Indian irrigation districts. Thus, the Nation has demonstrated the need to modify the three tracts requirement and that it should be allowed to purchase up to five (5) separate areas of contiguous tracts.

(8)

Accordingly, I find that the Nation has demonstrated a rational basis for its request for a waiver and hereby grant the waiver as authorized by § 6(d) of the Gila Bend Indian Reservation Lands Replacement Act.

Sincerely,

**/s/ BARRY W. WELCH**

**Barry W. Welch** Regional Director

Enclosures

cc: Kevin Gover, Assistant Secretary-Indian Affairs  
Director, Office of Trust Responsibilities  
Superintendent, Papago Agency  
Phoenix Field Solicitor, Attention: Dan Jackson  
Chairwoman Ernestine G. Marquez, San Lucy District  
Jonathan L. Jantzen, Assistant Attorney General, Tohono O'odham Nation  
Marco Rivera, Land Specialist, Executive Office, Tohono O'odham Nation  
Dawn Farrison, Esq., Legal Counsel for San Lucy District