



GRAND CANYON
TRUST



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Heather Provencio
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Re: Forest Service Should Reject Stilo and Tusayan's Special Use Application

Dear Supervisor Provencio:

We understand that you are currently evaluating Stilo Development Group and the Town of Tusayan's joint application for a special use authorization for easements to enable a massive commercial, retail, and residential development on inholdings at the doorstep of Grand Canyon National Park. Stilo's proposed development is largely unchanged since the Forest Service rejected Stilo and Tusayan's similar 2014 special use application. The Forest Service should once again reject Stilo and Tusayan's renewed application because the proposed development is not in the public interest and will have significant adverse impacts on the Grand Canyon, the Kaibab National Forest, and tribal nations.

The National Park Service previously has cautioned that Stilo's proposed development will have "tremendous negative (and possibly irretrievable) impacts on the park infrastructure and resources for which the park was established,"¹ and constitutes one of the gravest threats to the Park in its now 100-year history.² Pumping groundwater from the local aquifer to supply thousands of proposed housing units on the inholdings, and potentially millions of square feet of commercial development, will substantially diminish, or totally dry up, "fragile seeps and springs that represent some of the least altered water resources in the southwest," and which are "extremely important ecologically to the park's plants and animals, and nurture a high percentage of the park's ecological diversity."³ That would spell catastrophe—for Havasu Creek that is the lifeblood for the Havasupai Tribe, for the most diverse ecosystems in the region and some of the most threatened ecosystems on Earth, and potentially for hikers and backpackers. Stilo's development would also degrade visitors' experience of the Park, brighten the Park's strikingly dark skies, dramatically increase traffic-related impacts on air quality and wildlife, fragment important wildlife habitat, and interfere with

¹ Letter from David V. Uberuaga, GCNP Superintendent, to Richard Turner, Tusayan Town Planner, 2 (Feb. 25, 2014), available at https://www.eenews.net/assets/2015/04/06/document_gw_02.pdf.

² D. Roberts, *Who Can Save the Grand Canyon?*, Smithsonian (Mar. 2015), available at <https://tinyurl.com/y6qrped6>.

³ Letter from David V. Uberuaga, GCNP Superintendent, to Richard Turner, Tusayan Town Planner, 2 (Feb. 25, 2014), available at https://www.eenews.net/assets/2015/04/06/document_gw_02.pdf.

fawning grounds. Meanwhile, Stilo and the Town have not shown that they are capable of carrying out their proposal, at the least because Stilo still has not identified a water source for much of its proposed development, and because the Town faces a sharply curtailed budget and has a history of mismanagement and of failing to comply with public safety and environmental laws.

Given these considerations, Stilo and the Town's application for easements to enable their development plans does not satisfy the agency's initial- and secondary-screening requirements for special uses under 36 C.F.R. § 251.54(e). The development would be inconsistent with the Kaibab National Forest Plan, would create a perpetual right of use or occupancy, would unreasonably interfere with the use of Grand Canyon National Park, would not be in the public interest, and Stilo and Tusayan have not demonstrated the technical and economic feasibility of the development or their financial and technical capability to carry it out. The Forest Service rejected Stilo and Tusayan's previous special use application because the proposed development failed to satisfy many of these same mandatory screening criteria. And the scope of Stilo's proposed commercial and residential development may be entirely unchanged. The Grand Canyon Trust, Center for Biological Diversity, National Parks Conservation Association, and Sierra Club therefore urge the Forest Service to again reject the special use application.

Section I of this letter explains Stilo's immense development plans for the inholding properties. Section II describes the tortuous history leading up to the application currently before the Forest Service. Section III then discusses Stilo and Tusayan's September 5, 2019 special use application and the potentially illusory proposal to prohibit the commercial use of groundwater and reduce commercial construction density. Section IV describes the significant adverse effects of Stilo's development plans—even assuming groundwater will be limited to residential uses and commercial-building density will be reduced—on the local aquifer, the people, plants, and wildlife that depend on aquifer-fed springs, and on the many other resources in Grand Canyon National Park and the Kaibab National Forest. Finally, Section V describes why the Forest Service should reject the special use application.

I. Stilo plans a massive commercial and residential development for the inholding properties.

The Stilo Development Group is an Italian real-estate developer known for building and operating high-end European shopping malls, casinos, Ferrari dealerships, and the like. In the 1990s, Stilo bought a dozen inholding properties totaling more than 2,100 acres scattered throughout the Kaibab National Forest. Stilo hoped to exchange those parcels for National Forest land near Tusayan to develop "Canyon Forest Village," a commercial and residential complex with 3,650 hotel rooms and 425,000 square feet of retail space.⁴ But Coconino County voters nixed the proposed development by a wide margin in a zoning referendum two decades ago.⁵

Following that defeat, Stilo hired a Phoenix-based political consulting firm and funded a political campaign to push for a local election on whether to incorporate Tusayan as a town, which would

⁴ P. Taylor, *Iconic Park Battles Massive Development on its Doorstep*, E&E News (Apr. 9, 2015), available at <https://www.eenews.net/stories/1060016498>.

⁵ *Id.*; J. Dougherty, *How Developers and Businessmen Cash in on Grand Canyon Overflights*, High Country News (June 13, 2011), available at <https://tinyurl.com/y5rc7suo>.

vest zoning decisions in a local town council.⁶ After the town voted to incorporate, Stilo became the primary financial backer of all five town council members who were elected in November 2010.⁷ In short, Stilo funded the creation of the Town of Tusayan and its council.

In 2011, the Tusayan Town Council approved a development and rezoning proposal submitted by Stilo for its partially-owned Camper Village parcel, which is located in Tusayan, and two of Stilo's National Forest inholdings, the 160-acre Kotzin Ranch and 194-acre TenX Ranch. In addition to rezoning all three parcels to allow for mixed-use commercial, residential, and retail development, the Town agreed in a 2011 Pre-Annexation and Development Agreement (PADA) to annex the TenX Ranch (Kotzin Ranch was already part of the Town) and Stilo agreed to deed 40 acres of the inholdings to the Town for affordable housing.⁸

Kotzin Ranch, located just northwest of Tusayan, is less than a mile from Grand Canyon National Park and less than two miles from the Park's South Rim entrance. TenX Ranch is southeast of Tusayan and less than three miles from the Park boundary. After Stilo succeeded in rezoning its inholdings in 2011, its plans to bring "large-scale tourist-driven commercial development"⁹ to the Grand Canyon were brought into sharp relief. Stilo could build more than 2.6 million square feet of commercial space on the properties,¹⁰ on which it planned to erect "extensive retail, dining, and entertainment venues,"¹¹ a conference center, spa, dude ranch, cultural "edutainment" center, thousands of hotel rooms, and more.¹² Stilo also planned to build about 2,200 new housing units, including detached houses, townhouses, apartments and condominiums.¹³ In addition to significantly expanding the commercial footprint of Tusayan, which is now less than 150 acres, Stilo has said the development would increase Tusayan's population from about 600 to between 5,500 and 6,000, while others estimate the population increasing to 8,000—a more than ten-fold increase.¹⁴ The development would also substantially increase the number of tourists visiting the Grand Canyon and surrounding area.¹⁵

⁶ J. Dougherty, *How Developers and Businessmen Cash in on Grand Canyon Overflights*, High Country News (June 13, 2011), available at <https://tinyurl.com/y5rc7suo>.

⁷ *Id.*

⁸ Pre-Annexation and Development Agreement Between the Town of Tusayan, an Arizona municipal corporation, and Stilo Development Group USA, LP (Oct. 31, 2011) (hereafter "2011 PADA"), attached as **Exhibit 1**.

⁹ Strategy Forty-Eight, Gruppo Stilo, available at <http://www.strategy48.com/portfolio-view/cca/>.

¹⁰ See Stilo and Tusayan, New Application for Transportation and Utility Systems and Facilities on Federal Lands, 10 (Sept. 5, 2019), attached as **Exhibit 2** (hereafter "2019 Application") (Kotzin and TenX zoned for maximum of 2,688,785 square feet of commercial development); 2011 PADA, Exhibits B1, B2, Kotzin and TenX Land Use Plans and Data Tables.

¹¹ E. Whitman, *Video Showcases Italian Developer Stilo's Ambitions for the Grand Canyon*, Phoenix New Times (June 1, 2019) (video), available at <https://tinyurl.com/y3ro3mj3>.

¹² Grand Canyon National Park, *Issues and Concerns Regarding Proposed Groundwater Developments Near the South Rim* (June 6, 2012) (hereafter "GCNP Report") at 8-9, attached as **Exhibit 3**; see also E. Whitman, *Video Showcases Italian Developer Stilo's Ambitions for the Grand Canyon*, Phoenix New Times (June 1, 2019) (video), available at <https://tinyurl.com/y3ro3mj3>.

¹³ GCNP Report, at 8; J. Cart, *National Park Service calls development plans a threat to Grand Canyon*, Los Angeles Times (July 6, 2014), available at <https://www.latimes.com/nation/la-na-grand-canyon-20140706-story.html>; C. Beard, *Stilo Presents Preliminary Plans for Tusayan's Properties*, Grand Canyon News (Mar. 15, 2011), available at <https://tinyurl.com/y4q25x79>.

¹⁴ GCNP Report, at 8-9; C. Cole, *Tusayan Resort Coming Up Dry*, Arizona Daily Sun (Nov. 11, 2012), available at <https://tinyurl.com/y55crxv5>.

¹⁵ See GCNP Report, at 8-9.

The linchpin for Stilo’s massive development plans for Kotzin and TenX is obtaining special use authorization for easements to build paved roads and run utilities across Forest Service land to the two inholdings. Without those easements, the proposed development would be impossible.¹⁶ As the company admits, the easements are “vital” to the development, without which the properties “won’t be developed.”¹⁷

II. Stilo and Tusayan’s development agreements, prior applications, and tangled history demonstrate poor management and disregard for public safety.

The tangled history of Stilo and Tusayan’s attempts to develop the inholdings sheds light on the screening criteria the Forest Service must consider in evaluating the pending special use application.

The 2011 PADA, in addition to outlining the parameters of Stilo’s development of the inholdings and transfer of 40 acres of land to the Town for affordable housing, also required Stilo to supply water to Kotzin and TenX.¹⁸ Under Arizona law, that obliged Tusayan, as a prospective water supplier, to obtain a Certificate of Convenience and Necessity (CC&N) from the Arizona Corporation Commission (ACC). The PADA required Stilo within thirty days to apply for a CC&N for the water meant to supply millions of square feet of commercial development and thousands of new residential units.¹⁹ Yet when Stilo applied for a CC&N, it did not provide enough information to satisfy the State’s legal requirements.²⁰ The missing information? The source of water.²¹ Lacking this crucial piece of information, Stilo repeatedly sought extensions to avoid a denial.²² Ultimately, because Stilo could not—and still cannot—answer that question, the company negotiated with the Town to amend the PADA in 2014 to indefinitely relax the timing for Stilo to obtain a CC&N.²³ To date, Stilo still has not reapplied for a CC&N and thus cannot legally act as a water provider.

The 2014 First Amended PADA also clarified the scope of Stilo’s development at Kotzin and TenX and the 40-acre transfer to the Town. The company deeded to the town 20 acres at Kotzin Ranch.²⁴ It also agreed to deed 20 additional acres to the town at either Kotzin or TenX, but only after the Town constructed housing on at least 10 of its initial 20 acres at Kotzin.²⁵ But that created a problem. The Town could not begin constructing housing on its initial 20 acres at Kotzin unless the Forest Service granted the town road and utility easements.²⁶ So, to further Stilo’s goal of

¹⁶ 2019 Application, at 2 (“The roadway and utility improvements are needed to accommodate the Town approved land use plans”); *id.* at 5 (“Improved, all-weather access is necessary to ascertain reasonable use and enjoyment of these privately held lands.”); First Amendment to Pre-Annexation and Development Agreement, Agreement No. 2011-11-02, Between the Town of Tusayan and Stilo Development Group, at 2-4 (Jan. 22, 2014) (“First Amended PADA”), attached as **Exhibit 4** (the rights-of-way are “necessary infrastructure” for Stilo’s development of the Kotzin and TenX parcels).

¹⁷ L. Valdez, *Grand Canyon: Two developments pose risks*, AZ Central (May 12, 2015), available at <https://tinyurl.com/y6355bmh>.

¹⁸ 2011 PADA, at 11.

¹⁹ *Id.*

²⁰ M. Scerbo, *Was the Stilo Water Proposal Just a Legal Dodge*, Grand Canyon Watchdog (June 15, 2013), available at <http://www.grandcanyonwatchdog.com/local/index.php?id=269>.

²¹ *Id.*

²² *Id.*

²³ First Amended PADA, at 15.

²⁴ *Id.* at 5.

²⁵ *Id.* at 6.

²⁶ *Id.*, Exhibit C to Exhibit 2, at 2-16 (PDF p. 40).

commercially developing its partially-owned Camper Village parcel in downtown Tusayan, while also satisfying the Town's demand for affordable housing, the First Amended PADA clarified that Stilo was to construct a few dozen temporary housing units on the Camper Village parcel, while also allowing the company to begin limited commercial buildout of Camper Village.²⁷ The First Amended PADA also confirmed that the Town would “fully cooperate” with Stilo's pursuit of the Forest Service easements.²⁸

Later in 2014, Stilo and Tusayan applied for a special use authorization for easements to make improvements to existing forest roads, to construct new segments of road, and to construct utility infrastructure to provide all weather access and utility service to Kotzin and TenX.²⁹ After near unanimous public opposition, the Forest Service rejected the application under the initial-screening criteria of 36 C.F.R. § 251.54(e)(1). Specifically, the agency determined that the unprecedented development on the inholdings—development that could not occur without the easements—could “substantially and adversely affect Tribal lands and the Grand Canyon National Park,” could “create a perpetual right of use or occupancy” without Stilo and Tusayan having addressed the “serious concerns raised by the Tribes, Park and public,” and would “unreasonably interfere” with the use of Grand Canyon National Park and significantly increase Park visitation.³⁰ Moreover, the Forest Service concluded that, even had the proposed use satisfied the initial-screening criteria, the application nonetheless would fail to satisfy the secondary-screening criteria of 36 C.F.R. § 251.54(e)(5) because the easement-enabled build-up of the inholdings was “not in the public interest.”³¹ This was so because it was “deeply controversial, [was] opposed by local and national communities, would stress local and Park infrastructure, and have untold impacts to the surrounding Tribal and National Park lands.”³²

Undeterred, the Town approached Stilo to renegotiate the First Amended PADA. The Town sought title to the other 20-acre parcel (of the 40-acres total it was promised in the PADA and First Amended PADA) and sought Stilo's consent for the Town to begin building houses before obtaining the Forest Service easements.³³ Stilo partially agreed, and in 2016, Stilo and Tusayan entered into a Second Amended PADA.³⁴ In it, Stilo deeded to the Town 20 acres at TenX.³⁵ But Stilo capped at 20 the number of houses the Town could initially construct on the 20-acre TenX

²⁷ *Id.*

²⁸ *Id.* at 2.

²⁹ See Town of Tusayan, Application For Transportation And Utility Systems And Facilities On Federal Lands, 8 (June 5, 2014) (hereafter “2014 Application”). The 2014 application was actually Stilo's second attempt to obtain special use authorization from the Forest Service for easements to the inholdings. In January 2013, Stilo applied to the Forest Service for special use authorization. On April 8, 2013, the Forest Service informed Stilo that because its proposed development would be “drastically different” than the current uses of the inholdings and would include residential subdivisions, agency policies required the Town of Tusayan, not Stilo, to be the easement holder.

³⁰ Forest Service, Letter to Town of Tusayan Rejecting 2014 Application (Mar. 4, 2016) (explaining why the proposed use failed to satisfy 36 C.F.R. §§ 251.54(e)(1)(ii), (iv), and (v)), attached at **Exhibit 5**.

³¹ *Id.*

³² *Id.*

³³ L. Yerian, *Commercial Development Moves Forward in Tusayan*, Grand Canyon News (June 7, 2016), available at <https://tinyurl.com/yx8vpm69>.

³⁴ Second Amendment to Pre-Annexation and Development Agreement, Agreement No. 2011-11-02, Between the Town of Tusayan and Stilo Development Group (Dec. 6, 2016) (“Second Amended PADA”), attached as **Exhibit 6**.

³⁵ *Id.* at 3.

parcel.³⁶ In exchange, the Town agreed to let Stilo immediately begin its commercial buildout of the in-town Camper Village parcel.³⁷

Moving forward with commercial development at Camper Village presented another problem for Stilo: people were already living in the temporary housing Stilo had built on the site, taking up space that Stilo wanted to use for commercial construction. So, the Town and Stilo agreed that the company could move half the Camper Village residents living in the temporary housing units to a different location as far as 30 miles outside of Tusayan.³⁸ After that, Stilo will allow the Town to build 10 additional houses on its 20-acre TenX parcel for every 10 percent of temporary housing Stilo moves out of Camper Village to make room for more commercial space.³⁹ Plus, the Second Amended PADA confirmed that the inholdings' zoning maximums—including densities and maximum allowable commercial and residential development—are “irrevocably vested,” meaning the Town cannot change the zoning of Stilo’s properties without the company’s approval.⁴⁰

With this agreement in hand, Tusayan then began preparing to build the 20 homes—the Stilo-imposed cap—on the Town’s 20-acre TenX parcel. That parcel, however, is located within a floodplain.⁴¹ In mid-2018, the Coconino County Flood Control District learned of the Town’s construction plans.⁴² The Flood District informed the Town’s manager that the proposed development was within a floodplain and that a floodplain use permit was required before breaking ground.⁴³ On that call, however, the Town Manager denied knowing about the development, then proceeded to ignore the Flood District’s repeated inquiries.⁴⁴ In July 2018, the Town broke ground on the development, without informing the Flood District.⁴⁵ Among other things, the Town graded the area, built up the dirt where the homes would sit, and rerouted a wash.⁴⁶ Then, in August 2018, the Town Council passed an ordinance attempting to assert jurisdiction over floodplain administration.⁴⁷ But local opposition to the ordinance based on concerns about the Town’s expertise to safely manage floodplain issues prompted citizens to refer the ordinance to the ballot.⁴⁸ That meant the ordinance never took effect and jurisdiction over floodplain administration remained with the Flood District. At that point, the Town knew that it was unlawful to continue construction

³⁶ *Id.*, Exhibit B at 15 (PDF p. 27).

³⁷ *Id.* at 3.

³⁸ *Id.* at 5; L. Yerian, *Commercial Development Moves Forward in Tusayan*, Grand Canyon News (June 7, 2016), available at <https://tinyurl.com/yx8vpm69>.

³⁹ Second Amended PADA at 5; L. Yerian, *Commercial Development Moves Forward in Tusayan*, Grand Canyon News (June 7, 2016), available at <https://tinyurl.com/yx8vpm69>.

⁴⁰ Second Amended PADA, at 6.

⁴¹ *Coconino County Flood Control District v. Town of Tusayan*, Verified Complaint, 3 (Dec. 14, 2018), attached as **Exhibit 7** (hereafter “Flood District Verified Complaint”). The Town’s 20-acre TenX Parcel is encumbered by a Federal Emergency Management Agency Zone A Special Flood Hazard Area (SFHA) per Flood Insurance Rate Map (FIRM) 04005C3850G. *Id.*

⁴² *Id.* at 8.

⁴³ *Id.*

⁴⁴ *Id.* at 8-9.

⁴⁵ *Id.* at 9.

⁴⁶ *Id.*; AP, *Housing Project in Tusayan Comes to a Halt*, KNAU (Jan. 23, 2019), available at <https://tinyurl.com/yde6a3g3>.

⁴⁷ Flood District Verified Complaint, at 9.

⁴⁸ *Id.*; Grand Canyon Watchdog, *Tusayan Major, Vice Mayor and Town Manager Knew What They Were Doing When They Ignored Flood Plain Issues on TenX*, (Jan 12, 2019), available at <https://tinyurl.com/yy6t2eju>.

without a floodplain permit from the Flood District.⁴⁹ The Town, however, chose not to obtain a permit and continued ground-disturbing activities at its TenX parcel, despite significant public safety risks.

In December 2018, the Flood District filed suit against the Town in Arizona state court seeking a preliminary and permanent injunction. The Flood District explained to the court that the Town's "failure to obtain proper data and perform adequate analysis" of the watercourses at the Town's 20-acre TenX parcel, "or of the impacts of the proposed development activities" within the floodplain, "poses a serious public safety risk."⁵⁰ After the Flood District filed suit, the Town halted its ongoing construction.⁵¹ As a result of Tusayan's rush to develop the houses in a floodplain in violation of public safety laws, the Town had to pay more than \$700,000 to return the site to its original condition,⁵² plus more than \$67,000 every month for stalled construction costs.⁵³

Compounding Tusayan's fiscal woes, residents voted in 2019 not to reauthorize the town's "Home Rule" provision, drastically reducing the town's budget.⁵⁴ Under Arizona law, Home Rule allows a municipality to set its own budget instead of abiding by a state-imposed budget limitation based on a formula that considers estimated fiscal year 1979-80 expenditures, population growth, and inflation. By voting down Tusayan's Home Rule provision, the Town's budget for at least the next two years will be limited to about \$1.4 million, down from \$21 million—a more than 93% reduction.⁵⁵ The effects of this reduction are already being felt. The Town was forced to renegotiate its contract for law enforcement services, which are provided by the Coconino County Sheriff's Department.⁵⁶ As a result, Tusayan no longer has any police officers patrolling the Town, call response times may be delayed, deputies no longer respond to private property accidents or disputes, and they no longer respond to any calls for assistance that are not classified as priority.⁵⁷

III. Stilo and Tusayan's 2019 special use application is substantially similar to their 2014 application.

On September 5, 2019, Stilo and Tusayan submitted another application to the Kaibab National Forest for special use authorization for easements to provide improved vehicle access and run utility

⁴⁹ At a late-2018 Town Council meeting, the Tusayan Town Manager was recorded on a hot mic saying to the Mayor and Vice Mayor that "If push comes to shove, and (inaudible) comes back that says you either have to work through the county or shut down Ten X, I don't want to do that and am of a mindset to just continue what we're doing unless somebody comes and makes a claim on it." Grand Canyon Watchdog, *Tusayan Major, Vice Mayor and Town Manager Knew What They Were Doing When They Ignored Flood Plain Issues on TenX*, (Jan 12, 2019), available at <https://tinyurl.com/yy6t2eju>.

⁵⁰ Flood District Verified Complaint, at 12.

⁵¹ AP, *Housing Project in Tusayan Comes to a Halt*, KNAU (Jan. 23, 2019), available at <https://tinyurl.com/yde6a3g3>.

⁵² Grand Canyon Watchdog, *Tusayan Walks Away from Costly Floodplain Battle* (Feb. 15, 2019), available at <http://www.grandcanyonwatchdog.com/local/index.php?id=1254>.

⁵³ *Id.*

⁵⁴ E. Ford, *Tusayan Budget in Limbo after Home Rule Fails*, Grand Canyon News (June 25, 2019), available at <https://tinyurl.com/yyuxood9>.

⁵⁵ E. Ford, *No Home Rule: Tusayan calls for May budget override*, Grand Canyon News (Mar. 5, 2019), available at <https://tinyurl.com/yy4sgebr>.

⁵⁶ E. Ford, *Tusayan Law Enforcement Services Cut under Budget Constraints*, Grand Canyon News (Oct. 15, 2019), available at <https://tinyurl.com/y4n8nh55>.

⁵⁷ *Id.*

lines to Kotzin and TenX.⁵⁸ Like the 2014 application, Stilo proposes to construct two 80-foot-wide, 2.9-mile long corridors to Kotzin, and a 3-mile long, 80-foot wide corridor to TenX.⁵⁹ The corridors would include two paved vehicle travel lanes, shoulders, a bike and pedestrian path, and utility lines.⁶⁰ The utilities would include water transmission and distribution mains, reclaimed water mains, sewer mains, electric lines, natural gas pipelines, and telecommunications lines.⁶¹ Additionally, Stilo plans to build two 10,000-square-foot wastewater lift stations, one each for Kotzin and TenX, to convey wastewater flows from the inholdings, plus two 10,000-square-foot booster pump stations for TenX, one for potable water and one for reclaimed water.⁶² About 52 acres of Forest Service land is estimated to be disturbed, of which about 17.5 acres (34 percent) has been previously disturbed.⁶³

As for commercial and residential development on Kotzin and TenX, “Stilo still has the same purpose envisioned for the two properties”⁶⁴—about 2,200 new housing units, a conference center, “edutainment” complex, restaurants, retail shopping malls, a health spa, possibly a dude ranch, and more.⁶⁵ The company also wants to build about 2,500 hotel rooms on the inholdings.⁶⁶ That’s equal to about 22 average-sized hotels.⁶⁷

In an effort to placate the public opposition to Stilo’s development plans, the 2019 special use application includes two proposals that Stilo characterizes as changes from 2014. First, Stilo asserts that, “[u]pon approval of the application and issuance of the authorizing instrument for road and utility construction, Stilo will agree to a reduction in the Town of Tusayan approved commercial densities in both the Kotzin Ranch and TenX properties by a combined total of thirty three percent (33%).”⁶⁸ This apparently would reduce the commercial development from the maximum-zoned 2,688,785 square feet down to 1,792,973 square feet.⁶⁹

This reduction, however, may be illusory. Given that Stilo has declined to provide details regarding the square footage of its proposed commercial development, the company may all along have planned to build out about 30 percent less square footage than the zoned maximum. Moreover, Stilo apparently will only agree to a 33 percent commercial density reduction *after* the Forest Service approves and issues the easements.⁷⁰ Yet it is unclear how the Forest Service would enforce this density reduction against Stilo or subsequent purchasers. If buildings are erected, residents move into their new homes, and tourists are sleeping in hotel beds, it would be a

⁵⁸ 2019 Application, at 1.

⁵⁹ *Id.* at 2–4. “Pursuant to the PADA, construction and maintenance funding for the roadway and utilities is the responsibility of Stilo, however, if not completed in a timely manner the Town may fund and construct.” *Id.* at 4.

⁶⁰ *Id.* at 2-4.

⁶¹ *Id.*

⁶² *Id.* at 2.

⁶³ *Id.*

⁶⁴ E. Ford, *New proposal submitted for development near Grand Canyon*, Grand Canyon News (Sept. 11, 2019), available at <https://tinyurl.com/y2sp29dm>.

⁶⁵ *Id.*; F. Fonseca, *Italian Company Asks to Access Land Near Grand Canyon*, AP (Sept. 8, 2019), available at <https://tinyurl.com/y3q77a5b>.

⁶⁶ 2019 Application, at 10.

⁶⁷ As of 2017, according to Smith Travel Research, an average-sized hotel in the United States had 115 rooms. D. Johnson, *If it Aint Broke, Don’t Fix It*, Lodging (July 23, 2018), available at <https://tinyurl.com/y6yw8wxm>.

⁶⁸ 2019 Application, at 9.

⁶⁹ *Id.* at 10.

⁷⁰ *Id.* at 9.

challenge, to the say the least, for the Forest Service to revoke the easements providing utilities and vehicle access to the properties or force Stilo to knock down buildings to comply with the density reduction. Without the density reduction enshrined by a new zoning ordinance, the purported reduction very well may be unenforceable. And given that the Town granted Stilo in the PADA vested zoning rights to the maximum 2,688,785 square feet of commercial development, the Town is hamstrung in its ability to impose density reductions.

Regardless, as explained below, even 1.8-million-square-feet of intensive commercial development on the inholdings—nearly as large as the Scottsdale Fashion Square mall, the largest shopping mall in Arizona and one of the largest in the United States⁷¹—will have significant adverse impacts on Grand Canyon National Park, the Kaibab National Forest, tribal lands, and the public, even if a development a third more dense would have even greater impacts.

Second, Stilo states in the application that it is “willing to agree to complete prohibition on the use of groundwater,” with two conspicuous exceptions: (1) residential uses at TenX and Kotzin, and (2) if “future groundwater use” is “authorized . . . as a result of technological breakthroughs resulting in proven zero-impact upon groundwater resources.”⁷² Like Stilo’s proposal for reducing density, the company’s proposed groundwater restrictions may also prove illusory. It is unclear how the Forest Service could enforce Stilo’s commercial-use groundwater prohibition. And the application provides no details regarding who would determine if a “technological breakthrough[]” results in “proven zero-impact” on groundwater resources sufficient to “authorize[]” commercial use of groundwater. Meanwhile, Stilo still has not identified a water source to supply its nearly 2-million-square-foot commercial development. The application notes only that commercial water demand at Kotzin and TenX is “*anticipated* to be met” by importing water via tanker truck from an as-yet unidentified water source.⁷³ Yet Stilo then provides an inaccurate estimate of running twenty 6,000-gallon tanker truck deliveries per day during peak season to satisfy the estimated commercial water demand of 275,000 gallons per day. That understates by more than half the number of truckloads needed to satisfy daily demand: Dividing the projected daily water demand by the size of each tanker truck shows that more than forty-five round-trip 6,000-gallon truck deliveries per day—about one every thirty minutes—would be required to cross Forest Service land to reach the inholdings. Evidently, the company has not carefully considered how it will supply water to its commercial developments absent groundwater use.

Nevertheless, as explained below, even assuming Stilo’s commercial development will not consume groundwater, satisfying the residential water demand of 2,200 new housing units with groundwater from the local aquifer will have significant adverse effects on Grand Canyon National Park, tribal nations, and the public.

⁷¹ Wikipedia, *Scottsdale Fashion Square*, available at https://en.wikipedia.org/wiki/Scottsdale_Fashion_Square.

⁷² 2019 Application, at 9.

⁷³ *Id.*

IV. Stilo's proposed development poses a significant threat to Grand Canyon National Park, the Kaibab National Forest, and other resources.

Stilo's easement-enabled developments would harm the Grand Canyon, tribal nations, and the public in myriad ways.

A. Stilo's proposed development will harm groundwater and the people, plants, and animals that depend on groundwater-fed springs.

First and foremost, Stilo's proposed development threatens the water that is the lifeblood of springs that nourish wildlife and habitat within Grand Canyon National Park. The primary aquifer in the region is the Redwell-Muav (R-M) aquifer, which supplies flows to the majority of springs and seeps on the Grand Canyon's South Rim.⁷⁴ Ninety-eight percent of South Rim discharge from the R-M aquifer occurs at Havasu Springs, Hermit Creek, and Indian Gardens, with the vast majority occurring at Havasu Springs.⁷⁵ Many more small seeps and springs likely depend at least in part on R-M aquifer groundwater for their flows.⁷⁶ The South Rim's many seeps and springs represent the most diverse ecosystems in the region and are some of the most threatened ecosystems on Earth. These oases are essentially the only water sources for most of the Inner Canyon's flora, fauna, and humans. Groundwater pumping threatens to destroy these ecosystems. Flows at South Rim springs have been declining for some time, likely due in part to groundwater pumping. From 1994 to 2001, researchers observed a 19% decrease in winter discharge from Cottonwood Springs and a 25% decrease in winter discharge from Indian Gardens Springs.⁷⁷ These decreases began before the onset of Arizona's current drought cycle.⁷⁸

Today, there are three wells around Tusayan, two of which are active.⁷⁹ The wells pump groundwater exclusively from the R-M aquifer. In a 2006 evaluation of Tusayan's future water demand, the Bureau of Reclamation assumed Tusayan's existing wells would be retired and no new wells would be drilled "[b]ecause of the suspected adverse impacts associated with the pumping of the Tusayan R-M Aquifer wells on Grand Canyon springs."⁸⁰ Modeling to assess a prior version of Stilo's proposed development projected that 100 years of groundwater pumping in Tusayan at 285 gallons per minute (gpm), factoring in groundwater withdrawals from other existing, planned, and reasonably foreseeable wells in the R-M aquifer, would reduce flows at critical springs in the

⁷⁴ GCNP Report, at 9.

⁷⁵ *Id.* at 12.

⁷⁶ *Id.* at 10; D. Bills et al., U.S. Geol. Survey, Hydrogeology of the Coconino Plateau and Adjacent Areas, Coconino and Yavapai Counties, Arizona, 70 (2016), available at https://pubs.usgs.gov/sir/2005/5222/sir2005-5222_text.pdf. As one example, water chemistry in Cottonwood Springs is similar to that found in Tusayan's wells and in the aquifer below Tusayan. K. Zukosky, *An assessment of the potential to use water chemistry parameters to define groundwater flow pathways at Grand Canyon National Park, Arizona*, UNLV Retrospective Theses & Dissertations, 105 (Jan. 1, 1995), available at <https://tinyurl.com/y4u6a3dj>.

⁷⁷ J. Kobar, *Simulating Water Availability in a Spring-Fed Aquifer with Surface Water/Groundwater Flow Models*, Grand Canyon, Arizona 51 (Aug. 2004) (unpublished M.S. thesis, Northern Arizona University).

⁷⁸ Arizona State Climate Office, "Arizona Drought", available at <https://azclimate.asu.edu/drought/>.

⁷⁹ GCNP Report, at App. A.

⁸⁰ Bureau of Reclamation, *North Central Arizona Water Supply Study*, 80 (Oct. 2006), available at <https://tinyurl.com/yykq6jja>.

Park.⁸¹ Indian Garden Spring flows would decline 31%, Hermit Spring flows would decline 18%, while Havasu Spring would see an annual flow reduction of about 580 gpm, or more than 930 acre-feet per year.⁸² Most of the flow reductions would occur in the first 50 years of groundwater pumping.⁸³ Even groundwater pumping from Tusayan alone, leaving aside other existing and reasonably foreseeable groundwater withdrawals from the R-M aquifer, at a rate of 300 gpm for 50 years would reduce Indian Garden Spring flows by 14%, Hermit Spring flows by 8%, and would reduce annual flows at Havasu Spring by about 275 acre-feet per year.⁸⁴ Tusayan's groundwater pumping would also threaten flows at other springs, particularly those east of Indian Gardens, including Miner's, O'Neill, Cottonwood, Cottonwood West, Grapevine, Boulder, Lonetree, Horn, Salt Creek, and Monument Springs.⁸⁵ As Grand Canyon National Park's hydrologist has said, "[t]he way geology works around the Grand Canyon and Tusayan area, minor increases in groundwater use could end up with pretty major impacts to the small seeps and springs along the South Rim."⁸⁶ Even Stilo acknowledged, "[o]ur hydrologists have convinced us" that "groundwater withdrawal does have an effect on springs in the park."⁸⁷

Tusayan withdrew about 123 gpm of groundwater from the R-M aquifer in 2011.⁸⁸ Close to a decade later, the town today may withdraw even more. Stilo plans to build up to about 2,200 new housing units, which it admits would increase Tusayan's population from around 600 to between 5,500 and 6,000.⁸⁹ Others estimate the population increasing to 8,000.⁹⁰ Tusayan's per capita residential water demand in 2006 was 276 gallons per person per day.⁹¹ Flagstaff residents, in contrast, use 91 gallons per person per day.⁹² Even the most conservative application of these figures—using Stilo's estimate of 5,500 new residents and Flagstaff's 90 or so gallons per person per day—yields a groundwater demand of 495,000 gallons per day, or more than 343 gpm for Stilo's residential developments. On the high end—8,000 new residents each using 276 gallons per day—groundwater demand would be 2,208,000 gallons per day, or more than 1,533 gpm for the inholdings' residential developments. This groundwater withdrawal range of about 343 gpm to 1,533 gpm would be in addition to Tusayan's current groundwater withdrawals from the R-M aquifer of around 123 gpm. All told, the TenX and Kotzin residential developments, plus Tusayan's existing water use, likely will withdraw anywhere from 466 gpm to 1,656 gpm from the

⁸¹ Errol L. Montgomery & Assocs., Supplemental Assessment of Hydrogeologic Conditions and Potential Effects of Proposed Groundwater Withdrawal, Coconino Plateau Groundwater Subbasin, Coconino County, Arizona, 50-65 (1999), excerpts attached as **Exhibit 8**.

⁸² *Id.* at 42, 65.

⁸³ *Id.* at 6.

⁸⁴ *Id.* at 49-50.

⁸⁵ *Id.* at 70-71.

⁸⁶ C. Beard, *Water Deadline Looms for Stilo Group*, Grand Canyon News (Feb. 19, 2013), available at <https://tinyurl.com/y5k8ogn5>.

⁸⁷ *Id.*

⁸⁸ GCNP Report, at App. A. There are three wells in the Tusayan area, two of which are active. The two wells have capacities of about 85 gallons per minute (gpm). As of 2011, Tusayan was utilizing 75% of that capacity—about 123 gpm. *Id.*

⁸⁹ GCNP Report, at 8-9.

⁹⁰ *Id.*

⁹¹ Bureau of Reclamation, North Central Arizona Water Supply Study, 77 (Oct. 2006), available at <https://tinyurl.com/yykq6jja>.

⁹² City of Flagstaff, Water Conservation, available at <https://www.flagstaff.az.gov/31/Water-Conservation>.

R-M aquifer.⁹³ That's anywhere from roughly 63% to 481% more than the 285 gpm that modeling shows will significantly reduce flows at critical springs in the Park and Havasu Spring in the Havasupai Reservation.⁹⁴

This substantially increased depletion of the R-M aquifer would occur while a confluence of forces continues to reduce recharge into the aquifer. Climate change threatens to reduce precipitation in the region while increasing temperatures and evaporation.⁹⁵ A Kaibab National Forest study indicates that tree and shrub area has increased over the past few decades and may continue to increase, resulting in greater evapotranspiration and less aquifer recharge.⁹⁶ And land uses in the area, particularly grazing, have compacted soils, resulting in increased runoff and less infiltration and recharge.⁹⁷

The dramatically decreased spring flows from the South Rim likely to result if Stilo's easement-enabled residential developments proceed will have untold adverse impacts on the environment and human safety. Grand Canyon's seeps and springs possess great ecological importance. Species richness near Grand Canyon's springs is 100 to 500 times greater than in surrounding habitats.⁹⁸ The springs and seeps are home to 11% of all the plant species found in Grand Canyon.⁹⁹ They provide primary or transient habitat for numerous species of wildlife.¹⁰⁰ Many spring-dependent species are rare and endemic. According to the National Park Service, two R-M aquifer-fed springs are home to "the only known white-flowering redbud trees," and other springs "host myriad butterflies previously unknown in Grand Canyon."¹⁰¹ A substantial reduction in spring flows would also decrease flows in the Colorado River,¹⁰² potentially harming the endangered humpback chub and razorback sucker that depend on those flows. The South Rim's springs and seeps also have significant value for the Park's visitors. They provide an aesthetic and visual benefit, creating oases of green in an otherwise arid, rocky landscape. Many visitors cherish the springs and seeps for their habitat values to flora and fauna. The springs also provide critical drinking water sources to hikers

⁹³ Even using a hypothetical per capita water demand of 50 gallons per person per day, with the conservative estimate of 5,500 new residents, yields a groundwater demand of 275,000 gallons per day, or more than 190 gpm for Stilo's residential developments. Added to Tusayan's current groundwater withdrawals from the R-M aquifer of around 123 gpm, that's a more than 313 gpm depletion of the R-M aquifer.

⁹⁴ Errol L. Montgomery & Assocs., Supplemental Assessment of Hydrogeologic Conditions and Potential Effects of Proposed Groundwater Withdrawal, Coconino Plateau Groundwater Subbasin, Coconino County, Arizona, 49-50 (1999).

⁹⁵ See, e.g., U.S. Global Change Research Program, *Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II*, 1101-85 (2018), available at <https://tinyurl.com/y9d26rjl>; G. Garfin, et al., eds., *Assessment of Climate Change in the Southwest United States: A Report Prepared for the National Climate Assessment*, 110-14, 150 (2013).

⁹⁶ GCNP Report, at 17.

⁹⁷ *Id.*

⁹⁸ *Id.* at 24.

⁹⁹ Nat'l Park Serv., *Animals – Grand Canyon National Park*, available at www.nps.gov/grca/learn/nature/animals.htm; Nat'l Park Serv., "Invasive Plants", available at <https://www.nps.gov/grca/learn/nature/cynsk-v24.htm>.

¹⁰⁰ See U.S. Forest Service, Final EIS for Tusayan Growth, 160 (PDF p. 223) (Aug. 6, 1999).

¹⁰¹ Nat'l Park Serv., *A Study of Seeps and Springs – Grand Canyon National Park*, available at <https://tinyurl.com/y6fgnlf5>.

¹⁰² See, e.g., B. Tobin, *Review: The distribution, flow, and quality of Grand Canyon Springs, Arizona (USA)*, *Hydrogeology Journal* (Nov. 2017), available at <https://tinyurl.com/y43ohvu8> (reviews spring flow discharge volumes and discusses trends).

and backpackers in the Inner Canyon, without which many trails, such as the Tonto Trail, could not be safely traversed.

As the Park's Division of Science and Resource Management has summed it up, "[r]educing spring flows can . . . make perennial springs intermittent or seasonal, harming or eliminating spring-obligate species or endemic flora and fauna that do not have the ability to spread across the arid landscape to a more suitable location. Reliable sources of water to backcountry hikers and wildlife may be threatened, creating a hazard to human safety and the health of animal communities."¹⁰³ The former Park Superintendent has expressed alarm that the "increase in residents and visitation" resulting from Stilo's proposed development "will have tremendous negative (and possibly irretrievable) impacts on the . . . resources for which the park was established, including the fragile seeps and springs that represent some of the least altered water resources in the southwest."¹⁰⁴ The Interior Department has echoed the Park's concern: "if the [Stilo] development taps into groundwater sources, it could present irretrievable loss in water resources and attendant biota associated with seeps and springs in the Park."¹⁰⁵

Moreover, because Stilo's development will significantly draw down the R-M aquifer, it also threatens the "life-blood of the . . . the Havasupai"—Havasupai Creek.¹⁰⁶ The reservation's "springs and seeps serve as the municipal and agricultural water supply for the tribe, are of paramount importance for cultural and religious purposes, and are the source of the waterfalls and pools which are the primary draw for tourism and are critical to the recreation-based economy of the tribe."¹⁰⁷ As the Havasupai Tribal Council explained in its September 27, 2019 letter to the Forest Service vehemently opposing Stilo and Tusayan's special use application:

The Town of Tusayan currently draws on the R-[M] Aquifer for its water supply, and its existing demands for water are already jeopardizing flows into Havasupai Creek and, by extension, the Tribe's livelihood. The Stilo proposal threatens to further strain the limited supply of groundwater from the R-[M] Aquifer that the Tribe depends upon for its cultural identity and continued existence. Although the Stilo proposal would prohibit commercial use of groundwater, it nonetheless still proposes to support significant residential developments by pumping groundwater from the Town of Tusayan's existing wells. The Tribe's R-[M] Aquifer water source cannot withstand even more stress from Stilo's proposed residential developments.¹⁰⁸

Lastly, it is important to bear in mind that, as explained above, in addition to the Forest Service potentially being unable to enforce the commercial-use groundwater prohibition, the special use application leaves the door open to supplying Stilo's commercial developments with groundwater if

¹⁰³ GCNP Report, at 24.

¹⁰⁴ Letter from David V. Uberuaga, GCNP Superintendent, to Richard Turner, Tusayan Town Planner, 2 (Feb. 25, 2014), available at https://www.eenews.net/assets/2015/04/06/document_gw_02.pdf.

¹⁰⁵ M. Bean, Principal Deputy Ass. Sec. for Fish, Wildlife and Parks, U.S. Dep't of the Interior to Robert Bonnie, Undersecretary for Natural Resources and Environment, U.S. Dep't of Agriculture, 1 (May 11, 2015).

¹⁰⁶ Bureau of Reclamation, North Central Arizona Water Supply Study, 17 (Oct. 2006), available at <https://tinyurl.com/yykq6jja>; see also U.S. Forest Service, Final EIS for Tusayan Growth, 318 (PDF p. 391) (Aug. 6, 1999) ("The Havasupai and Hopi Tribes have deep cultural ties to certain springs in Grand Canyon. Groundwater withdrawals from well development could impact these springs and result in adverse cultural impacts.").

¹⁰⁷ *Id.*

¹⁰⁸ Havasupai Tribe Ltr. to H. Provencio, U.S. Forest Service (Sept. 27, 2019).

some undefined person, pursuant to undefined standards, determines that a “technological breakthrough[.]” allows “zero-impact” groundwater pumping.¹⁰⁹ Without clarification—or better yet elimination—of this aquifer-sized loophole, Stilo could very well wind up pumping even more groundwater from the R-M aquifer for its planned resort. That would surely spell disaster for the Tribe’s lifeblood and the plants, animals, and people that depend on the aquifer-fed springs in the Grand Canyon. And given that Stilo has provided no details on the source of water for its commercial developments, only that demand is “*anticipated to be met*” by tanker truck, the Forest Service cannot assume that Stilo’s purported mitigation measures will reduce the development’s impacts to the R-M aquifer and aquifer-fed springs.

B. Stilo’s development will damage other resources in Grand Canyon National Park and the Kaibab National Forest.

The easements, and the development they will make possible on the inholdings, are also likely to harm resources beyond Grand Canyon National Park’s water and wildlife. The Park has determined that Stilo’s large resort development just a few miles from Grand Canyon Village likely will “substantially increas[e] the transient population of tourists visiting the Park” and its facilities,¹¹⁰ degrading the visitor experience from increased crowding and noise.¹¹¹ The former Park Superintendent has explained that “[w]ith a large residential community on the boundary of the park, and with increased visitation will come additional operational demands on park infrastructure and staff that provide emergency services, law enforcement, visitor programs, maintenance and other visitor related services such as the visitor transportation system, and on the local clinic and school—both located within the park boundary.”¹¹² The Park was specifically concerned that it would be unable to manage the “large increases in visitation and local populations . . . with limited resources and an aging infrastructure,”¹¹³ problems that have compounded in recent years by drastic budget cuts and ever-growing visitor numbers. In 2016, Grand Canyon National Park received more than six million visitors. And the backlog of needed infrastructure repairs is more \$300 million.¹¹⁴ In short, the former Superintendent has explained that “the increase in residents and visitation” will have “tremendous negative” impacts on the park infrastructure.”¹¹⁵ In rejecting the 2014 special use application, the Forest Service agreed that increased visitation to the Park resulting from Stilo’s development would “stress . . . Park infrastructure.”¹¹⁶

Light pollution from Stilo’s development only a mile from Grand Canyon National Park would also threaten Grand Canyon’s pristine night skies.¹¹⁷ Earlier this year, the International Dark-Sky Association certified the Park as an International Dark Sky Park.¹¹⁸ The North Rim’s dark skies

¹⁰⁹ 2019 Application, at 9.

¹¹⁰ GCNP Report, at 8.

¹¹¹ Remarks by Superintendent David V. Uberuaga, Grand Canyon National Park, presented to the Tusayan Town Council (Oct. 26, 2011) at 3, available at <https://tinyurl.com/y2xoo5xe>.

¹¹² *Id.* at 4.

¹¹³ *Id.*

¹¹⁴ NPS Deferred Maintenance by State and Park, Data as of September 30th, 2018; NPS.

¹¹⁵ Letter from David V. Uberuaga, GCNP Superintendent, to Richard Turner, Tusayan Town Planner, 2 (Feb. 25, 2014), available at https://www.eenews.net/assets/2015/04/06/document_gw_02.pdf.

¹¹⁶ 2016 USFS Letter Rejecting Application.

¹¹⁷ See A. Nagourney, “Where 2 Rivers Meet, Visions for Grand Canyon Clash” (Ex. 8).

¹¹⁸ International Dark Sky Association, *Grand Canyon National Park Officially Certified as an International Dark Sky Park* (June 19, 2019), available at <https://tinyurl.com/y62tklep>.

would be especially degraded, where lights from the lower elevation South Rim-area are highly visible. Additionally, substantially increased vehicle traffic from the up-to-8,000 new permanent residents in Tusayan and scores of additional tourists will also have significant air quality impacts in the Park and the surrounding area. Stilo and Tusayan have not provided an estimate of vehicular traffic that would use the roads—which belies their claim in the special use application that the easements’ design “would adequately accommodate anticipated traffic.”¹¹⁹ But undoubtedly, the three new roads, and all the roads in the surrounding area, will see tens or hundreds of thousands of additional vehicle trips each month by new residents, employees of new commercial businesses, additional visitors to the Park and the millions of square feet of new commercial development, supply trucks, shuttle buses, service vehicles, and so on. That’s in addition to the more than forty-five tanker trucks going back and forth to deliver water each day during peak season to supply the inholdings’ commercial water demand. All that traffic will degrade the area’s air quality, among other harms.

In the Kaibab National Forest, the Kotzin and TenX developments are likely to have many harmful effects on wildlife. The proposed easement routes and inholdings provide important habitat to scores of wildlife species. TenX provides habitat for fawning antelope and is directly adjacent to Forest Service lands that include elk calving grounds, deer and antelope fawning grounds, and an “important wildlife water source.”¹²⁰ The easement routes and inholdings fall within the Coconino Plateau-Kaibab National Forest wildlife linkage, an important corridor for elk, mule deer, mountain lion, northern goshawk, and pronghorn.¹²¹ Construction of the road and utility corridors and the development of the inholdings will result in habitat loss and fragmentation and likely would disrupt these species’ movements.¹²² The substantial increase in vehicle traffic through the Kaibab National Forest likely will result in increased vehicle-wildlife collisions, causing wildlife mortality and costly property damage. Vehicular traffic can also disturb wildlife, causing behavioral changes and imposing a barrier to movement.¹²³ Additionally, the inevitable increase of trash and litter from a massive influx of new tourists and residents can attract omnivores and carnivores, such as coyotes or black bears, to the inholdings. Supplementing animals’ natural diets with anthropogenic food sources can have various adverse effects, such as malnutrition, decreased abilities to obtain natural food, or lost fear of humans.¹²⁴

The Havasupai Tribe and Hopi Tribe have also expressed concerns that Stilo’s proposed development will adversely affect nearby Red Butte, a Traditional Cultural Property and deeply sacred area. Expressing “grave concern,” the Havasupai Tribal Council stressed that “developing permanent housing, extended stay facilities, and related amenities” on the inholdings “is certain to increase the number of people living and staying longer in the Kaibab National Forest, which in turn increases the likelihood of residents and visitors disturbing previously undisturbed resources,”

¹¹⁹ U.S. Forest Service, Letter to Town of Tusayan Rejecting 2014 Special Use Application (Mar. 4, 2016).

¹²⁰ See U.S. Forest Service, Final EIS for Tusayan Growth, 200-03 (Aug. 6, 1999).

¹²¹ Ariz. Wildlife Linkages Workgroup, Arizona’s Wildlife Linkages Assessment, 47, available at <https://tinyurl.com/yyoo9yzo>.

¹²² See *id.* at i.

¹²³ See Gucincki et al., *Forest Roads: A Synthesis of Scientific Information*, Forest Service General Technical Report PNW-GTR-509 (May 2001), available at <https://www.fs.fed.us/pnw/pubs/gtr509.pdf>; I. Spellerberg, *Ecological Effects of Roads and Traffic: A Literature Review*, 7 *Global Ecology and Biogeography Letters* 317 (1998), available at <https://tinyurl.com/yxdactxl>.

¹²⁴ See, e.g., A. Hansen, et al., *Effects of Exurban Development on Biodiversity: Patterns, Mechanisms, and Research Needs*, 15 *Ecological Applications* 1893 (2005).

including Red Butte.¹²⁵ That “would result in irreparable damage to the Tribe’s ability to practice traditional Havasupai beliefs and ways of life.”¹²⁶

All told, Stilo’s massive proposed commercial and residential development on Kotzin and TenX, which would be impossible without the Forest Service’s special use authorization, represents a major threat to the Grand Canyon, the Kaibab National Forest, and the water on which the Havasupai, and countless species of wildlife and plants, rely for their survival.

V. The Forest Service should reject Stilo and Tusayan’s special use application because it fails to satisfy the mandatory screening criteria.

A. The legal framework governing the Forest Service’s screening of special use applications.

The Forest Service’s Organic Act provides for the management, protection, and care of our national forests. It sets forth Congress’s policy that “the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes.”¹²⁷ The Act confers upon the Forest Service the duty to protect the forests from injury and trespass, and the broad authority to “regulate their occupancy and use and to preserve the forests thereon from destruction.”¹²⁸ The agency has promulgated rules to regulate public uses of National Forest System lands, including “special uses.”¹²⁹

An easement across National Forest System lands is a “special use” that must be approved by the Forest Service.¹³⁰ An applicant for a special use authorization must provide to the agency, among other things, “sufficient evidence” that it has “the technical and financial capability to construct, operate, maintain, and terminate the project for which an authorization is requested,” and a description of the project in “sufficient detail” to enable the agency to determine its feasibility, public benefits, and safety.¹³¹ Only then can the agency proceed to the two levels of mandatory screening under 36 C.F.R. § 251.54(e).

The “initial screening” requires the Forest Service to ensure that the proposed use meets certain “minimum requirements.”¹³² Among other things, the Forest Service must find that the proposed use “is consistent or can be made consistent with standards and guidelines in the applicable forest land and resource management plan”; that it will not create a “perpetual right of use or occupancy”; and that it “will not unreasonably conflict or interfere with . . . use of adjacent non-National Forest System lands.”¹³³ Any proposed use that does not satisfy each and every one of the minimum initial screening requirements “shall not receive further evaluation and processing.”¹³⁴

¹²⁵ Havasupai Tribe Ltr. to H. Provencio, U.S. Forest Service (Sept. 27, 2019).

¹²⁶ *Id.*

¹²⁷ 16 U.S.C. § 528.

¹²⁸ *Id.* § 551.

¹²⁹ *See* 36 C.F.R. §§ 251.54–251.64.

¹³⁰ *Id.* §§ 251.50(a), 251.51.

¹³¹ *Id.* §§ 251.54(d)(3), (d)(4).

¹³² *Id.* § 251.54(e)(1).

¹³³ *Id.* §§ 251.54(e)(1)(ii), (iv), (v).

¹³⁴ *Id.* § 251.54(e)(2)

If a proposal passes the initial screening, the Service then proceeds to “second-level screening.”¹³⁵ At that point, the Service “shall” reject any proposal if, among other things, it “would not be in the public interest,”¹³⁶ or the project proponent “does not or cannot demonstrate technical or economic feasibility of the proposed use or the financial or technical capability to undertake the use and to fully comply with the terms and conditions of the authorization.”¹³⁷ The agency need not conduct a National Environmental Policy Act analysis before rejecting an application that fails to satisfy all of the second-level screening criteria.¹³⁸

B. The special use application fails to satisfy the initial- and secondary-screening requirements.

Like their 2014 application, Stilo and Tusayan’s 2019 special use application fails to satisfy several mandatory screening criteria under 36 C.F.R. § 251.54(e). First, the easement-enabled developments on the inholdings are inconsistent with the Land and Resource Management Plan for the Kaibab National Forest, in violation of 36 C.F.R. § 251.54(e)(1)(ii). The Plan’s “all lands” approach specifies strategies to achieve landscape-scale environmental protection by working across boundaries to achieve shared conservation objectives with the Park and the Havasupai.¹³⁹ As explained above, and as the Forest Service determined regarding the 2014 application, Stilo’s massive commercial and residential development on Kotzin and TenX “could substantially and adversely” affect Grand Canyon National Park, the surrounding environment, and the Havasupai Reservation, contrary to the Plan’s “all lands” approach. And the perhaps illusory modifications to the 2014 application do not substantially, if at all, change the scope of the proposed development or its impacts.

Second, the development will create a de facto “perpetual right of use or occupancy,” in violation of 36 C.F.R. § 251.54(e)(1)(iv). Although, as the Service previously noted, the easement authorization would be “temporally limited,” once “road improvements, infrastructure installation, and development of the private parcels take place, that improved level of access will continue even after the authorization expires.”¹⁴⁰ That is particularly concerning because, as was also true in 2014, Stilo and Tusayan have failed to address the “serious concerns” with the proposed development that have been raised by Grand Canyon National Park, tribal nations, and the public.¹⁴¹ And as an added concern with the new application, the essentially perpetual easement would be granted to a town facing an unprecedented budget shortfall, severely limiting its capacity to maintain the roads and utilities.

Third, the easement-enabled development will “unreasonably conflict or interfere” with use of the Park, in violation of 36 C.F.R. § 251.54(e)(1)(v). Stilo’s developments will dramatically increase visitation to, and traffic within, the Park, which will degrade visitors’ experience and stress the Park’s aging infrastructure. And diminished spring flows and other impacts to the Park’s resources

¹³⁵ *Id.* § 251.54(e)(5).

¹³⁶ *Id.* § 251.54(e)(5)(ii).

¹³⁷ *Id.* § 251.54(e)(5)(iv).

¹³⁸ *Id.* § 251.54(e)(6).

¹³⁹ *See* U.S. Forest Service, Land and Resource Management Plan for the Kaibab National Forest, 6 (2014).

¹⁴⁰ U.S. Forest Service, Letter to Town of Tusayan Rejecting 2014 Special Use Application (Mar. 4, 2016).

¹⁴¹ *Id.*

will interfere with visitors' experience of these natural wonders and imperil critical drinking water sources for hikers and backpackers.

Fourth, under 36 C.F.R. § 251.54(e)(5)(ii), the construction of 2,200 housing units and nearly 2 million square feet of shopping malls, hotels, restaurants, a convention center, and other commercial developments is "not in the public interest." Stilo's massive proposed development—which is largely, if not entirely, unchanged from the previous special-use application—remains, as the Forest Service previously found, "deeply controversial, is opposed by local and national communities, would stress local and Park infrastructure, and have untold impacts to the surrounding Tribal and National Park lands."¹⁴² Supplying thousands of new housing units on Kotzin and TenX with groundwater from the R-M aquifer likely will diminish or completely exhaust springs and seeps on the South Rim. That would be catastrophic for the Havasupai's sacred Havasu Creek, for the most diverse ecosystems in the region and some of the most threatened ecosystems on Earth, and potentially for Inner Gorge hikers and backpackers. More than three years after the Forest Service rejected Stilo and Tusayan's previous application in part due to serious concerns about impacts from groundwater use, Stilo remains incapable of identifying a water source for its commercial development. That's particularly concerning given the loopholes and potential unenforceability of Stilo's offer not to use groundwater for its commercial development.

In addition to groundwater-related impacts, the easement-enabled developments would brighten the Park's strikingly dark skies, particularly on the higher-elevation North Rim. The increased visitation to the Park would degrade visitors' experience and stress the Park's aging infrastructure. Dramatically increased traffic would degrade air quality in the Park and the Kaibab National Forest and negatively affect wildlife. The development on the inholdings would fragment important wildlife habitat and interfere with fawning grounds. And, as the Havasupai and Hopi have stressed, the up-to-8,000 new residents and untold numbers of additional tourists could irreparably damage Red Butte and the Tribes' traditional beliefs and way of life. Plus, the Town's recent track record of knowingly violating public safety laws by constructing homes in TenX's floodplain is nothing short of alarming and reflects a disregard for the area's fragile environment.

If the Town cannot ensure public safety and floodplain protection on a 20-home development, it will likely be unable to ensure public safety for thousands of new homes, millions of square feet of commercial development, thousands of new residents, and hundreds of thousands of additional tourists. Stilo and Tusayan's proposed use of the inholdings and easements therefore is manifestly not in the public interest. In addition to opposition from conservation organizations and tribal nations, thousands of people have sent comments expressing vociferous opposition to the new application and the development of the inholdings. Beyond the profit-motivated interests of Stilo and a few Tusayan business owners, it is difficult to locate any voices supporting the massive development that the Forest Service's special use authorization will enable. In fact, the only public benefit Stilo and Tusayan identify in their application is "improved access to the in-holdings, and the surrounding lands of the Kaibab National Forest."¹⁴³ But access to the parcels already exists. The "improved access" is only necessary to turn the parcels into a mega-resort.

¹⁴² *Id.*

¹⁴³ 2019 Application, at 7.

Fifth, under 36 C.F.R. § 251.54(e)(5)(iv), Stilo has not demonstrated the “technical or economic feasibility” of its elaborate plans or its “financial or technical capability” to carry it out. In fact, under 36 C.F.R. § 251.54(d)(3) and (d)(4), Stilo has failed to provide sufficient evidence to allow the Forest Service to even determine the feasibility of the massive proposed development or Stilo’s capability to carry it out. Stilo still has not identified the water source for its nearly 2 million square feet of commercial development. Without this critical information, it is impossible for the company to demonstrate its financial and technical capability or the technical and economic feasibility of its plans. While Stilo “anticipate[s]” meeting commercial water demand with tanker trucks, that plan is of dubious technical and economic feasibility—particularly so, given that Stilo’s calculation of the number of tanker truck trips required per day to satisfy the estimated peak season commercial water demand was off by more than twofold. And other ideas floated by the company to supply the inholdings with water—hauling water by train or transporting Colorado River water through an old coal slurry pipeline¹⁴⁴—are speculative at best.

Nor has Tusayan demonstrated, also under 36 C.F.R. § 251.54(e)(5)(iv), its “financial or technical capability to undertake the use and fully comply with the terms and conditions of the authorization.” Tusayan’s budget for the past several years to provide critical services to a town of only 600 people was about \$21 million. Now, for the foreseeable future, the Town’s budget will be limited to about \$1.4 million. That’s 93% less money, just as the Town would be preparing to deal with a more-than-tenfold increase in population and untold numbers of additional tourists. As of 2015, the Town didn’t have a single snow plow. And the slashed budget has already sharply curtailed the Town’s law enforcement services. Moreover, Tusayan’s disastrous effort to build 20 houses in TenX’s floodplain—which it continued even after Coconino County warned the town of “a serious public safety risk,”¹⁴⁵ and which has cost more \$700,000 to remediate plus \$67,000 a month to idle—illuminates the Town’s technical capability for dealing with an explosion of growth, millions of square feet of new commercial developments, and thousands of new housing units. Developers like Stilo come and go. At the end of the day, the Town, not Stilo, would be obliged to safely and responsibly manage the exponential growth envisioned at the inholdings, a prospect that is outsized compared to its current resources.

Therefore, because Stilo and Tusayan have failed to provide the required information under 36 C.F.R. § 251.54(d)(3) and (d)(4)—most importantly, the water source for its nearly 2 million square feet of commercial development—the Forest Service should return the special use application and request this critical information. The agency has broad discretion under 36 C.F.R. § 251.54(d)(4) to require any information necessary for its analysis of Stilo’s easement-enabled development. Regardless, the Forest Service must reject the special use application because the massive proposed commercial and residential development on the inholdings fails to satisfy several mandatory initial- and second-level screening criteria under 36 C.F.R. § 251.54(e)(2) and (e)(5).¹⁴⁶

¹⁴⁴ F. Fonseca, *Italian Company Asks to Access Land Near Grand Canyon*, AP (Sept. 8, 2019), available at <https://tinyurl.com/y3q77a5b>.

¹⁴⁵ Flood District Verified Complaint, at 12.

¹⁴⁶ Should the Forest Service ultimately accept the special use application, well-established case law would require the Forest Service to provide a detailed justification for its change of course, given that Stilo and Tusayan’s 2019 application is largely, if not entirely, unchanged from the 2014 application rejected by the Forest Service under many of the same screening criteria, and that Stilo’s development plans—even assuming groundwater will be limited to residential uses and commercial-building density will be reduced—will have significant adverse impacts. *See, e.g.,*

Thank you very much for your time. Please contact Michael Toll at 303-309-2165 or mtoll@grandcanyontrust.org if you have any questions or concerns.

Sincerely,



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cc: Cal Joyner, Regional Forester, Southwest Region, U.S. Forest Service
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F.C.C. v. Fox Television Stations, Inc., 556 U.S. 502, 515-16 (2009) (agency must provide a “reasoned explanation . . . for disregarding facts and circumstances that underlay or were engendered by the prior policy”); *Action for Children's Television v. F.C.C.*, 821 F.2d 741, 745 (D.C. Cir. 1987) (“It is axiomatic that an agency choosing to alter its regulatory course must supply a reasoned analysis indicating its prior policies and standards are being deliberately changed, not casually ignored.”); *State v. Bureau of Land Mgmt.*, 286 F. Supp. 3d 1054, 1068 (N.D. Cal. 2018) (BLM’s change of policy without providing the “detailed justifications necessary” to reverse course was arbitrary and capricious).