



March 12, 2020

Heather Provencio  
Forest Supervisor  
Kaibab National Forest  
800 South 6th Street  
Williams, AZ 86046  
heather.provencio@usda.gov

**Re: Forest Service Should Reject Stilo and Tusayan's Special Use Proposal**

Dear Supervisor Provencio:

We understand that you are currently evaluating Stilo Development Group and the Town of Tusayan's January 23, 2020 revised joint proposal for 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 will have significant adverse impacts on the Grand Canyon, the Kaibab National Forest, and tribal nations. As noted in our previous letter, 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,"<sup>1</sup> and constitutes one of the gravest threats to the Park in its now 100-year history.<sup>2</sup>

The proposed development is largely, perhaps entirely, unchanged since the Forest Service rejected Stilo and Tusayan's similar 2014 special use proposal for failing to satisfy the agency's mandatory initial- and secondary-screening criteria under 36 C.F.R. § 251.54(e). Stilo and Tusayan's January 23, 2020 special use proposal likewise fails to satisfy the mandatory screening criteria, and thus it would be arbitrary and capricious for the Forest Service to now accept the proposal. In fact, regarding the critical issue of groundwater consumption, their revised special use proposal seemingly is *less* protective of groundwater resources—and thus less protective of the Grand Canyon's fragile seeps and springs—than their 2019 draft proposal. Stilo's proposed residential and "large-scale tourist-driven commercial development"<sup>3</sup> on the inholdings 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 Grand Canyon Trust,

---

<sup>1</sup> Letter from David V. Ueberuaga, 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](https://www.eenews.net/assets/2015/04/06/document_gw_02.pdf).

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

<sup>3</sup> Strategy Forty-Eight, Gruppo Stilo, available at <http://www.strategy48.com/portfolio-view/cca/>.

Center for Biological Diversity, National Parks Conservation Association, and Sierra Club therefore urge the Forest Service to again reject the special use proposal.

**I. Stilo and Tusayan’s revised January 23, 2020 special use proposal is largely unchanged from their 2019 draft proposal and 2014 proposal.**

In our October 28, 2019 letter responding to Stilo and Tusayan’s September 5, 2019 proposal for special use authorization—which the applicants considered to be a draft proposal—we urged you to reject the proposal because it failed to satisfy the Forest Service’s mandatory screening criteria for special uses under 36 C.F.R. § 251.54(e).<sup>4</sup> That letter, attached hereto, explained Stilo and Tusayan’s decades-long, tangled history of attempting to build a massive commercial and residential development on two of Stilo’s Kaibab National Forest inholdings, the 160-acre Kotzin Ranch and 194-acre TenX Ranch.<sup>5</sup> It also fleshed out the proposed development’s myriad adverse impacts on Grand Canyon National Park, the Kaibab National Forest, tribal nations, and the public.<sup>6</sup>

On January 23, 2020, Stilo and Tusayan submitted a “revised” special use proposal for the easements that are the linchpin for the company’s development plans on Kotzin and TenX.<sup>7</sup> Without those easements, the proposed development would be impossible.<sup>8</sup> As the company admits, the easements are “vital” to the development, without which the inholdings “won’t be developed.”<sup>9</sup> Only a few details of the proposed easements have changed from the 2019 and 2014 proposals. For instance, the project now proposes to improve and construct one 80-foot-wide, 1.53-mile long primary access roadway and utility corridor to Kotzin, which would include two paved vehicle travel lanes, shoulders, a bike and pedestrian path, and utility lines.<sup>10</sup> Development of this corridor would require razing undisturbed forest between Forest Road 605 and Kotzin Ranch and opening up a currently closed roadway between Forest Road 605M and 605.<sup>11</sup> It would also displace campers from very popular dispersed camping areas along Forest Roads 605M, 328, and 605. The previously proposed northern primary access road and utility corridor to Kotzin would now be a 1.52-mile long, about 30-foot-wide double-lane gravel “emergency access road.”<sup>12</sup> The proposal neglects to define the type of “emergency” that would allow use of the northern access road. And Stilo’s public statement that the northern access road will “primarily” serve as an emergency access corridor begs the question of who will determine the type and frequency of allowable non-emergency uses of the gravel road.<sup>13</sup> The easement to TenX remains the same—an

---

<sup>4</sup> Letter from Grand Canyon Trust (“Trust”) et al. to H. Provencio, U.S. Forest Service (Oct. 28, 2019), attached as **Exhibit 1** (hereafter “Oct. 28, 2019 Trust et al. Ltr. to FS”).

<sup>5</sup> *Id.* at pp. 2–7.

<sup>6</sup> *Id.* at pp. 2–7, 10–16.

<sup>7</sup> Stilo and Tusayan, Proposal for Special Use Authorization (Jan. 23, 2020), attached as **Exhibit 2** (hereafter “2020 Proposal”).

<sup>8</sup> 2020 Proposal, 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.”).

<sup>9</sup> L. Valdez, *Grand Canyon: Two developments pose risks*, AZ Central (May 12, 2015), available at <https://tinyurl.com/y6355bmh>.

<sup>10</sup> 2020 Proposal, at 3.

<sup>11</sup> *Id.* at 3, F-1; Kaibab National Forest Motor Vehicle Use Map, Tusayan Ranger District, available at [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd699196.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd699196.pdf).

<sup>12</sup> *Id.* at 2, 4.

<sup>13</sup> Stilo, Tusayan’s Future, *Tusayan/Stilo Development Group 2020 special use permit proposal overview*, available at <https://tinyurl.com/s3z9yyz> (found at <https://tusayansfuture.com/application-maps/>).

80-foot-wide, 2.82-mile long road and utility corridor.<sup>14</sup> Development of the TenX corridor would also displace dispersed campers from a popular area along Forest Road 302. All told, the footprint of the easements, including a handful of additional utility facilities for Kotzin and TenX, would disturb 49.4 acres of Forest Service land.<sup>15</sup>

As for the scale of Stilo's commercial and residential development on Kotzin and TenX that the easements would make possible, the company apparently made no changes since it submitted the draft special use proposal or since the Forest Service rejected their 2014 special use proposal. "Stilo still has the same purpose envisioned for the two properties,"<sup>16</sup> including about 2,200 new housing units—a more than seven-fold increase from Tusayan's about 300 existing housing units<sup>17</sup> and significantly more units than the nearby town of Williams<sup>18</sup>—a conference center, "edutainment" complex, restaurants, retail shopping malls, entertainment venues, a health spa, possibly a dude ranch, and more.<sup>19</sup> The company also wants to build about 2,500 hotel rooms on the inholdings.<sup>20</sup> That's equal to about 22 average-sized hotels.<sup>21</sup> And that's on top of the nearly 64 acres of residential housing units on Kotzin intended for "shorter-term" visitors—that is, Airbnb-style rentals, no doubt, with their attendant environmental and community impacts more akin to commercial hotel lodging than residential uses.

In an effort to placate vociferous public opposition to Stilo's development plans, the January 23, 2020 special use proposal includes commitments ostensibly limiting both building density and groundwater consumption. As explained in our October 28, 2019 letter, however, Stilo's building density restriction—which states that only after the Forest Service issues the easements will the company agree to reduce the commercial building density on Kotzin and TenX from the zoned maximum of about 2.7 million square feet down 33% to about 1.8 million square feet<sup>22</sup>—may very well be illusory and unenforceable.<sup>23</sup> If buildings are erected, residents move into their new homes, and tourists are sleeping in hotel beds, it would be a 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. And given that the Town granted Stilo irrevocably vested zoning rights to nearly 2.7 million square feet of commercial development on the inholdings, the Town is hamstrung in its ability to impose density reductions.<sup>24</sup> Regardless, even 1.8-million-square-foot 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

---

<sup>14</sup> 2020 Proposal, at 3, Table 2.

<sup>15</sup> *Id.* at 2, Table 2.

<sup>16</sup> E. Ford, *New proposal submitted for development near Grand Canyon*, Grand Canyon News (Sept. 11, 2019), available at <https://tinyurl.com/y2sp29dm>.

<sup>17</sup> U.S. Department of Commerce, Arizona: 2010 Population and Housing Unit Counts, 2010 Census of Population and Housing (July 2012), 11 (counting 289 housing units in Tusayan in 2010, down from 313 in 2000), available at <https://tinyurl.com/tc25qh3>.

<sup>18</sup> United States Census Bureau, Williams City, AZ, available at <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>.

<sup>19</sup> *Id.*; F. Fonseca, *Italian Company Asks to Access Land Near Grand Canyon*, AP (Sept. 8, 2019), available at <https://tinyurl.com/y3q77a5b>.

<sup>20</sup> 2020 Application, at 9.

<sup>21</sup> 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>.

<sup>22</sup> 2020 Proposal, at 9.

<sup>23</sup> Oct. 28, 2019 Trust et al. Ltr. to FS, at 8–9.

<sup>24</sup> *Id.* at 6, 8–9.

largest in the United States<sup>25</sup>—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.

Moreover, the revised special use proposal's groundwater restriction is *less* protective of groundwater resources than their earlier draft proposal. The September 5, 2019 draft proposal stated that Stilo is “willing to agree to a complete prohibition on the use of groundwater” for commercial uses on Kotzin and TenX.<sup>26</sup> Indeed, in the cover letter accompanying their 2019 draft proposal, Stilo and Tusayan noted that in response to the “numerous public comments” vehemently objecting to the proposed development's groundwater consumption, their special use proposal “has been significantly altered” from their 2014 proposal to “prohibit[] the use of groundwater for commercial development” on the inholdings.<sup>27</sup> In the 2020 revised special use proposal currently before the Forest Service, however, Stilo claims it is willing to agree to such a commercial-use prohibition only from “groundwater supplies obtained from within the boundaries of the yellow shaded area within the Coconino Plateau Groundwater Sub-basin,” as depicted on a map on page 10 of the proposal.<sup>28</sup> By its terms, the revised proposal would allow Stilo to supply commercial uses on Kotzin and TenX, so long as the groundwater is pumped from outside the map's yellow-shaded area. Leaving aside questions regarding whether the Forest Service is able or willing to enforce a commercial-use groundwater prohibition, the revised proposal gives the lie to Stilo's current public position that “[t]he new plan . . . commit[s] to using no groundwater for any commercial development.”<sup>29</sup>

The problems with Stilo limiting its commercial-use groundwater prohibition only to the map's yellow-shaded area are threefold. First, a cursory glance at the map reveals that the yellow-shaded area does not include the entirety of the Coconino Plateau groundwater sub-basin, as depicted on the map by a black dashed line. Specifically, the southern reaches of the sub-basin around Williams are not shaded yellow, indicating that Stilo could obtain groundwater from within the sub-basin—which is hydrologically connected to the South Rim's seeps and springs<sup>30</sup>—to supply commercial uses on the inholdings. Stilo's omission of the greater-Williams region from the map's yellow-shaded groundwater-prohibition area is particularly concerning given the company's previous ambiguous comments alluding to its plans to supply the Kotzin and TenX developments with water from Williams.<sup>31</sup> What's more, the Town of Williams itself has faced severe water shortages every year for the past few decades, and any additional groundwater pumping around the town would only exacerbate its water supply woes.<sup>32</sup>

---

<sup>25</sup> Wikipedia, *Scottsdale Fashion Square*, available at [https://en.wikipedia.org/wiki/Scottsdale\\_Fashion\\_Square](https://en.wikipedia.org/wiki/Scottsdale_Fashion_Square).

<sup>26</sup> Stilo and Tusayan, Draft Proposal for Special Use Authorization (Sept. 5, 2019), at 9 (hereafter “2019 Draft Proposal”).

<sup>27</sup> 2019 Draft Proposal, cover letter, available at <https://tinyurl.com/vg4j5v4>.

<sup>28</sup> 2020 Proposal, at 10.

<sup>29</sup> Stilo, Tusayan's Future, available at <https://tusayansfuture.com/> (last visited Feb. 26, 2020).

<sup>30</sup> 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 to Oct. 28, 2019 Trust et al. Ltr. to FS.

<sup>31</sup> I. James, *Developer and town propose roads for hotels and hundreds of homes near Grand Canyon*, AZ Central (Sept. 6, 2019), available at <https://tinyurl.com/txol63r>.

<sup>32</sup> K. Hwang, *Thicker than water: town of Williams confronts drought*, Cronkite News (Mar. 2, 2015), available at <https://tinyurl.com/teayb85>; see also E. Cowan, *Williams digs for water solutions*, Arizona Daily Sun (Feb. 1, 2015),

Second, the map's depiction of the Coconino Plateau groundwater sub-basin is nearly three decades old and vastly underestimates the extent of the sub-basin by up to thousands of square miles. The Arizona Department of Water Resources, the state agency that regulates groundwater, delineates the extent of the sub-basin to include the vast majority of the Grand Canyon's South Rim, significantly larger than the decades-old-map's depiction.<sup>33</sup> Any prohibition on the withdrawal of groundwater within the Coconino Plateau sub-basin that is limited to an area not contiguous with the accurate delineation of the sub-basin will fail to prevent commercial water use on Kotzin and TenX from having significant adverse impacts on the South Rim's water resources.

Third, even if the map's yellow shading is modified to encompass the entire Coconino Plateau groundwater sub-basin, limiting the commercial-use prohibition only to groundwater withdrawn from that sub-basin is insufficient to adequately protect the Grand Canyon. Numerous other groundwater sub-basins likely are hydrologically connected to the Grand Canyon, including the Little Colorado River Plateau, Peach Springs, Meadview, Grand Wash, Shivwits Plateau, Kanab Plateau, and Paria sub-basins.<sup>34</sup> Supplying Stilo's commercial development with water from any of these sub-basins may have significant adverse impacts on the Grand Canyon. And pumping vast quantities of water from other groundwater basins outside the Grand Canyon region would present its own unique adverse impacts.

Nevertheless, even assuming Stilo will not supply its nearly 2-million-square-foot *commercial* development with groundwater, satisfying the *residential* water demand of about 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. As explained in our October 28, 2019 letter, the Kotzin and TenX residential developments, plus Tusayan's existing water use, likely will withdraw anywhere from 466 gallons per minute (gpm) to 1,656 gpm from the local Redwall-Muav aquifer.<sup>35</sup> 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.<sup>36</sup> Importantly, however, because Stilo and Tusayan's special use proposal neglects to specify the number of new housing units planned for Kotzin and TenX, media reports that Stilo plans to build about 2,200 new housing units could significantly underestimate the actual amount of new residential development. In that case, even more consumption of groundwater from the local aquifer to satisfy new residential demand would only increase the adverse impacts on Grand Canyon's seeps and springs.

---

available at <https://tinyurl.com/rt2y2qn>; U.S. Department of the Interior, Bureau of Reclamation, North Central Arizona Water Supply Study (Oct. 2006), available at <https://tinyurl.com/yykq6jja>.

<sup>33</sup> Arizona Department of Water Resources, State of Arizona Groundwater Basins and Sub-basins, available at <https://tinyurl.com/wfye2vf>.

<sup>34</sup> *Id.*

<sup>35</sup> Oct. 28, 2019 Trust et al. Ltr. to FS, at 10–12.

<sup>36</sup> *Id.*; 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).

## **II. The Forest Service should reject Stilo and Tusayan’s revised special use proposal because it fails to satisfy the initial- and secondary-screening requirements.**

Like their 2014 proposal, Stilo and Tusayan’s January 23, 2020 special use proposal 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.<sup>37</sup> As the Forest Service determined regarding the substantially similar 2014 proposal, 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.

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.”<sup>38</sup> 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.<sup>39</sup> And as an added concern since 2014, 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.<sup>40</sup>

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 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—the scope of which is largely, if not entirely, unchanged from the 2014 special use proposal—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.”<sup>41</sup> Supplying thousands of new housing units, and potentially millions of square feet of commercial development, with groundwater from the local aquifer likely will diminish or completely exhaust springs and seeps on the South Rim.<sup>42</sup> That

---

<sup>37</sup> See U.S. Forest Service, Land and Resource Management Plan for the Kaibab National Forest, 6 (2014).

<sup>38</sup> U.S. Forest Service, Letter to Town of Tusayan Rejecting 2014 Special Use Application (Mar. 4, 2016).

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

<sup>40</sup> See Grand Canyon Watchdog, *Tusayan Spending Remaining Cash Reserves* (July 3, 2019), available at <http://www.grandcanyonwatchdog.com/local/index.php?id=1320>.

<sup>41</sup> *Id.*

<sup>42</sup> Oct. 28, 2019 Trust et al. Ltr. to FS, at 10–12.

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.<sup>43</sup> Four years after the Forest Service rejected Stilo and Tusayan's previous special use proposal 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 that the new proposal's only partial commercial-use groundwater prohibition would plainly allow Stilo to supply Kotzin and TenX's commercial development with groundwater.

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.<sup>44</sup> The increased visitation to the Park would degrade visitors' experience and stress the Park's aging infrastructure.<sup>45</sup> Dramatically increased traffic would degrade air quality in the Park and the Kaibab National Forest and negatively affect wildlife.<sup>46</sup> The development on the inholdings and the access and utility corridors would fragment important wildlife habitat and interfere with fawning grounds.<sup>47</sup> 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.<sup>48</sup> 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.<sup>49</sup>

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. In fact, given that Tusayan is forced to contract out for basic public safety services such as law enforcement and emergency medical care, the Forest Service may be burdened to provide some of these services.<sup>50</sup> 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 stridently opposing the special use proposal 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 proposal is "improved access to the in-holdings and the surrounding public lands of the Kaibab National Forest."<sup>51</sup> But access to the parcels already exists. The

---

<sup>43</sup> *Id.* at 10–13.

<sup>44</sup> *Id.* at 14–15.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 15.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 15–16.

<sup>49</sup> *Id.* at 6–7. It should be noted that this was not Tusayan and Stilo's first incident of building in a floodplain despite safety concerns. In 2014, a stop work order was issued after a company hired by Stilo placed manufactured homes in a floodplain in the town's "Camper Village" parcel, foreshadowing the problems that would later emerge at TenX. Grand Canyon Watchdog, *Town Council Approves Camper Village Site Plan Even Though Homes Remain in Floodplain* (Jan. 26, 2014), available at <http://www.grandcanyonwatchdog.com/local/index.php?id=336>. The owner of the company that installed the homes in the floodplain is now a Town Council member.

<sup>50</sup> See, e.g., E. Ford, *Tusayan Law Enforcement Services Cut under Budget Constraints*, Grand Canyon News (Oct. 15, 2019), available at <https://tinyurl.com/y4n8nh55>.

<sup>51</sup> 2020 Proposal, at 6.

“improved access” is only necessary to turn the parcels into a mega-resort. And by cutting off access to popular camping areas, the road and utility corridors will reduce the public’s access, use, and enjoyment of the surrounding public lands.

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, nor has it specified the number of new residential units it plans to construct. 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.<sup>52</sup> 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 pipeline<sup>53</sup>—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.” As explained in our previous letter, Tusayan’s budget for the past several years to provide critical services to a town of only 600 people was about \$21 million.<sup>54</sup> Now, for the foreseeable future, the Town’s budget will be limited to about \$1.4 million.<sup>55</sup> 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. Meanwhile, Tusayan paid \$470,000 to Washington, D.C. lobbyists since mid-2017.<sup>56</sup> 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.<sup>57</sup> Moreover, Tusayan’s illegal and failed 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,”<sup>58</sup> and which has cost more \$700,000 to remediate

---

<sup>52</sup> The special use proposal 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. 2020 Proposal, at 10. 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.

<sup>53</sup> F. Fonseca, *Italian Company Asks to Access Land Near Grand Canyon*, AP (Sept. 8, 2019), available at <https://tinyurl.com/y3q77a5b>.

<sup>54</sup> Oct. 28, 2019 Trust et al. Ltr. to FS, at 7.

<sup>55</sup> *Id.*

<sup>56</sup> I. James, *As a town invests in lobbyists, critics fear it could fast-track Grand Canyon development*, Arizona Republic (Mar. 5, 2020), available at <https://tinyurl.com/spmjngp>.

<sup>57</sup> *Id.*

<sup>58</sup> *Coconino County Flood Control District v. Town of Tusayan*, Verified Complaint, 12 (Dec. 14, 2018), attached as Exhibit 7 to Oct. 28, 2019 Trust et al. Ltr. to FS.

plus \$67,000 a month to idle<sup>59</sup>—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 proposal 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 proposal 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).<sup>60</sup>

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

Sincerely,



Michael Toll  
Staff Attorney  
Grand Canyon Trust  
4404 Alcott Street, Denver, CO 80211  
303-309-2165  
[mtoll@grandcanyontrust.org](mailto:mtoll@grandcanyontrust.org)



Robin Silver, M.D.  
Co-founder and Board Member  
Center for Biological Diversity  
PO Box 1178

---

<sup>59</sup> Grand Canyon Watchdog, *Tusayan Walks Away from Costly Floodplain Battle* (Feb. 15, 2019), available at <http://www.grandcanyonwatchdog.com/local/index.php?id=1254>.

<sup>60</sup> 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 2020 special use proposal 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., 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).

Flagstaff, AZ 86002  
602-799-3275  
rsilver@biologicaldiversity.org



Sandy Bahr  
Chapter Director  
Sierra Club - Grand Canyon Chapter  
514 W Roosevelt St.  
Phoenix, AZ 85003  
602-253-8633  
sandy.bahr@sierraclub.org



Kevin Dahl  
Arizona Senior Program Manager  
National Parks Conservation Association  
520-624-2014  
kdahl@npca.org

cc: Cal Joyner, Regional Forester, Southwest Region, U.S. Forest Service  
Elaine Kohrman, Acting Regional Forester, U.S. Forest Service  
Andrew Kelher, Deputy District Ranger, Tusayan Ranger District, U.S. Forest Service

# Exhibit 1



October 28, 2019

Heather Provencio  
Forest Supervisor  
Kaibab National Forest  
800 South 6th Street  
Williams, AZ 86046  
heather.provencio@usda.gov

**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,"<sup>1</sup> and constitutes one of the gravest threats to the Park in its now 100-year history.<sup>2</sup> 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."<sup>3</sup> 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

---

<sup>1</sup> 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](https://www.eenews.net/assets/2015/04/06/document_gw_02.pdf).

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

<sup>3</sup> 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](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.<sup>4</sup> But Coconino County voters nixed the proposed development by a wide margin in a zoning referendum two decades ago.<sup>5</sup>

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

---

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

<sup>5</sup> *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.<sup>6</sup> After the town voted to incorporate, Stilo became the primary financial backer of all five town council members who were elected in November 2010.<sup>7</sup> 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.<sup>8</sup>

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"<sup>9</sup> 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,<sup>10</sup> on which it planned to erect "extensive retail, dining, and entertainment venues,"<sup>11</sup> a conference center, spa, dude ranch, cultural "edutainment" center, thousands of hotel rooms, and more.<sup>12</sup> Stilo also planned to build about 2,200 new housing units, including detached houses, townhouses, apartments and condominiums.<sup>13</sup> 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.<sup>14</sup> The development would also substantially increase the number of tourists visiting the Grand Canyon and surrounding area.<sup>15</sup>

---

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

<sup>7</sup> *Id.*

<sup>8</sup> 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**.

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

<sup>10</sup> 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.

<sup>11</sup> 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>.

<sup>12</sup> 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>.

<sup>13</sup> 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>.

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

<sup>15</sup> 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.<sup>16</sup> As the company admits, the easements are "vital" to the development, without which the properties "won't be developed."<sup>17</sup>

## **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.<sup>18</sup> 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.<sup>19</sup> Yet when Stilo applied for a CC&N, it did not provide enough information to satisfy the State's legal requirements.<sup>20</sup> The missing information? The source of water.<sup>21</sup> Lacking this crucial piece of information, Stilo repeatedly sought extensions to avoid a denial.<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup> So, to further Stilo's goal of

---

<sup>16</sup> 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).

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

<sup>18</sup> 2011 PADA, at 11.

<sup>19</sup> *Id.*

<sup>20</sup> 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>.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> First Amended PADA, at 15.

<sup>24</sup> *Id.* at 5.

<sup>25</sup> *Id.* at 6.

<sup>26</sup> *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.<sup>27</sup> The First Amended PADA also confirmed that the Town would "fully cooperate" with Stilo's pursuit of the Forest Service easements.<sup>28</sup>

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.<sup>29</sup> 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.<sup>30</sup> 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."<sup>31</sup> 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."<sup>32</sup>

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.<sup>33</sup> Stilo partially agreed, and in 2016, Stilo and Tusayan entered into a Second Amended PADA.<sup>34</sup> In it, Stilo deeded to the Town 20 acres at TenX.<sup>35</sup> But Stilo capped at 20 the number of houses the Town could initially construct on the 20-acre TenX

---

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 2.

<sup>29</sup> 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.

<sup>30</sup> 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**.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

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

<sup>34</sup> 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**.

<sup>35</sup> *Id.* at 3.

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

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.<sup>38</sup> 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.<sup>39</sup> 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.<sup>40</sup>

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.<sup>41</sup> In mid-2018, the Coconino County Flood Control District learned of the Town's construction plans.<sup>42</sup> 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.<sup>43</sup> On that call, however, the Town Manager denied knowing about the development, then proceeded to ignore the Flood District's repeated inquiries.<sup>44</sup> In July 2018, the Town broke ground on the development, without informing the Flood District.<sup>45</sup> Among other things, the Town graded the area, built up the dirt where the homes would sit, and rerouted a wash.<sup>46</sup> Then, in August 2018, the Town Council passed an ordinance attempting to assert jurisdiction over floodplain administration.<sup>47</sup> 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.<sup>48</sup> 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

---

<sup>36</sup> *Id.*, Exhibit B at 15 (PDF p. 27).

<sup>37</sup> *Id.* at 3.

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

<sup>39</sup> 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>.

<sup>40</sup> Second Amended PADA, at 6.

<sup>41</sup> *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.*

<sup>42</sup> *Id.* at 8.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 8-9.

<sup>45</sup> *Id.* at 9.

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

<sup>47</sup> Flood District Verified Complaint, at 9.

<sup>48</sup> *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.<sup>49</sup> 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."<sup>50</sup> After the Flood District filed suit, the Town halted its ongoing construction.<sup>51</sup> 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,<sup>52</sup> plus more than \$67,000 every month for stalled construction costs.<sup>53</sup>

Compounding Tusayan's fiscal woes, residents voted in 2019 not to reauthorize the town's "Home Rule" provision, drastically reducing the town's budget.<sup>54</sup> 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.<sup>55</sup> 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.<sup>56</sup> 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.<sup>57</sup>

### **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

---

<sup>49</sup> 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>.

<sup>50</sup> Flood District Verified Complaint, at 12.

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

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

<sup>53</sup> *Id.*

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

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

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

<sup>57</sup> *Id.*

lines to Kotzin and TenX.<sup>58</sup> 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.<sup>59</sup> The corridors would include two paved vehicle travel lanes, shoulders, a bike and pedestrian path, and utility lines.<sup>60</sup> The utilities would include water transmission and distribution mains, reclaimed water mains, sewer mains, electric lines, natural gas pipelines, and telecommunications lines.<sup>61</sup> 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.<sup>62</sup> About 52 acres of Forest Service land is estimated to be disturbed, of which about 17.5 acres (34 percent) has been previously disturbed.<sup>63</sup>

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

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%).”<sup>68</sup> This apparently would reduce the commercial development from the maximum-zoned 2,688,785 square feet down to 1,792,973 square feet.<sup>69</sup>

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.<sup>70</sup> 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

---

<sup>58</sup> 2019 Application, at 1.

<sup>59</sup> *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.

<sup>60</sup> *Id.* at 2–4.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 2.

<sup>63</sup> *Id.*

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

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

<sup>66</sup> 2019 Application, at 10.

<sup>67</sup> 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>.

<sup>68</sup> 2019 Application, at 9.

<sup>69</sup> *Id.* at 10.

<sup>70</sup> *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 States<sup>71</sup>—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.”<sup>72</sup> 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.<sup>73</sup> 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.

---

<sup>71</sup> Wikipedia, *Scottsdale Fashion Square*, available at [https://en.wikipedia.org/wiki/Scottsdale\\_Fashion\\_Square](https://en.wikipedia.org/wiki/Scottsdale_Fashion_Square).

<sup>72</sup> 2019 Application, at 9.

<sup>73</sup> *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.<sup>74</sup> 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.<sup>75</sup> Many more small seeps and springs likely depend at least in part on R-M aquifer groundwater for their flows.<sup>76</sup> 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.<sup>77</sup> These decreases began before the onset of Arizona's current drought cycle.<sup>78</sup>

Today, there are three wells around Tusayan, two of which are active.<sup>79</sup> 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."<sup>80</sup> 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

---

<sup>74</sup> GCNP Report, at 9.

<sup>75</sup> *Id.* at 12.

<sup>76</sup> *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](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>.

<sup>77</sup> J. Kobor, *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).

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

<sup>79</sup> GCNP Report, at App. A.

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

Park.<sup>81</sup> 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.<sup>82</sup> Most of the flow reductions would occur in the first 50 years of groundwater pumping.<sup>83</sup> 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.<sup>84</sup> 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.<sup>85</sup> 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."<sup>86</sup> Even Stilo acknowledged, "[o]ur hydrologists have convinced us" that "groundwater withdrawal does have an effect on springs in the park."<sup>87</sup>

Tusayan withdrew about 123 gpm of groundwater from the R-M aquifer in 2011.<sup>88</sup> 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.<sup>89</sup> Others estimate the population increasing to 8,000.<sup>90</sup> Tusayan's per capita residential water demand in 2006 was 276 gallons per person per day.<sup>91</sup> Flagstaff residents, in contrast, use 91 gallons per person per day.<sup>92</sup> 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

---

<sup>81</sup> 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**.

<sup>82</sup> *Id.* at 42, 65.

<sup>83</sup> *Id.* at 6.

<sup>84</sup> *Id.* at 49-50.

<sup>85</sup> *Id.* at 70-71.

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

<sup>87</sup> *Id.*

<sup>88</sup> 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.*

<sup>89</sup> GCNP Report, at 8-9.

<sup>90</sup> *Id.*

<sup>91</sup> Bureau of Reclamation, North Central Arizona Water Supply Study, 77 (Oct. 2006), available at <https://tinyurl.com/yykq6ija>.

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

R-M aquifer.<sup>93</sup> 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.<sup>94</sup>

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.<sup>95</sup> 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.<sup>96</sup> And land uses in the area, particularly grazing, have compacted soils, resulting in increased runoff and less infiltration and recharge.<sup>97</sup>

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.<sup>98</sup> The springs and seeps are home to 11% of all the plant species found in Grand Canyon.<sup>99</sup> They provide primary or transient habitat for numerous species of wildlife.<sup>100</sup> 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."<sup>101</sup> A substantial reduction in spring flows would also decrease flows in the Colorado River,<sup>102</sup> 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

---

<sup>93</sup> 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.

<sup>94</sup> 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).

<sup>95</sup> 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).

<sup>96</sup> GCNP Report, at 17.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* at 24.

<sup>99</sup> Nat'l Park Serv., *Animals – Grand Canyon National Park*, available at [www.nps.gov/grca/learn/nature/animals.htm](http://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>.

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

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

<sup>102</sup> 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."<sup>103</sup> 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."<sup>104</sup> 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."<sup>105</sup>

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.<sup>106</sup> 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."<sup>107</sup> 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.<sup>108</sup>

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

---

<sup>103</sup> GCNP Report, at 24.

<sup>104</sup> 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](https://www.eenews.net/assets/2015/04/06/document_gw_02.pdf).

<sup>105</sup> 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).

<sup>106</sup> Bureau of Reclamation, North Central Arizona Water Supply Study, 17 (Oct. 2006), available at <https://tinyurl.com/ykq6jja>; 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.").

<sup>107</sup> *Id.*

<sup>108</sup> 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.<sup>109</sup> 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,<sup>110</sup> degrading the visitor experience from increased crowding and noise.<sup>111</sup> 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.”<sup>112</sup> 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,”<sup>113</sup> 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.<sup>114</sup> In short, the former Superintendent has explained that “the increase in residents and visitation” will have “tremendous negative” impacts on the park infrastructure.”<sup>115</sup> 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.”<sup>116</sup>

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

---

<sup>109</sup> 2019 Application, at 9.

<sup>110</sup> GCNP Report, at 8.

<sup>111</sup> 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>.

<sup>112</sup> *Id.* at 4.

<sup>113</sup> *Id.*

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

<sup>115</sup> 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](https://www.eenews.net/assets/2015/04/06/document_gw_02.pdf).

<sup>116</sup> 2016 USFS Letter Rejecting Application.

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

<sup>118</sup> 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.”<sup>119</sup> 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.”<sup>120</sup> 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.<sup>121</sup> 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.<sup>122</sup> 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.<sup>123</sup> 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.<sup>124</sup>

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,”

---

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

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

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

<sup>122</sup> See *id.* at i.

<sup>123</sup> 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>.

<sup>124</sup> 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.<sup>125</sup> That “would result in irreparable damage to the Tribe’s ability to practice traditional Havasupai beliefs and ways of life.”<sup>126</sup>

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.”<sup>127</sup> 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.”<sup>128</sup> The agency has promulgated rules to regulate public uses of National Forest System lands, including “special uses.”<sup>129</sup>

An easement across National Forest System lands is a “special use” that must be approved by the Forest Service.<sup>130</sup> 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.<sup>131</sup> 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.”<sup>132</sup> 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.”<sup>133</sup> Any proposed use that does not satisfy each and every one of the minimum initial screening requirements “shall not receive further evaluation and processing.”<sup>134</sup>

---

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

<sup>126</sup> *Id.*

<sup>127</sup> 16 U.S.C. § 528.

<sup>128</sup> *Id.* § 551.

<sup>129</sup> *See* 36 C.F.R. §§ 251.54–251.64.

<sup>130</sup> *Id.* §§ 251.50(a), 251.51.

<sup>131</sup> *Id.* §§ 251.54(d)(3), (d)(4).

<sup>132</sup> *Id.* § 251.54(e)(1).

<sup>133</sup> *Id.* §§ 251.54(e)(1)(ii), (iv), (v).

<sup>134</sup> *Id.* § 251.54(e)(2).

If a proposal passes the initial screening, the Service then proceeds to “second-level screening.”<sup>135</sup> At that point, the Service “shall” reject any proposal if, among other things, it “would not be in the public interest,”<sup>136</sup> 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.”<sup>137</sup> 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.<sup>138</sup>

**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.<sup>139</sup> 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.”<sup>140</sup> 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.<sup>141</sup> 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

---

<sup>135</sup> *Id.* § 251.54(e)(5).

<sup>136</sup> *Id.* § 251.54(e)(5)(ii).

<sup>137</sup> *Id.* § 251.54(e)(5)(iv).

<sup>138</sup> *Id.* § 251.54(e)(6).

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

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

<sup>141</sup> *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."<sup>142</sup> 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."<sup>143</sup> But access to the parcels already exists. The "improved access" is only necessary to turn the parcels into a mega-resort.

---

<sup>142</sup> *Id.*

<sup>143</sup> 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 pipeline<sup>144</sup>—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,”<sup>145</sup> 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).<sup>146</sup>

---

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

<sup>145</sup> Flood District Verified Complaint, at 12.

<sup>146</sup> 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](mailto:mtoll@grandcanyontrust.org) if you have any questions or concerns.

Sincerely,



Michael Toll  
Staff Attorney  
Grand Canyon Trust  
4404 Alcott Street, Denver, CO 80211  
303-309-2165  
[mtoll@grandcanyontrust.org](mailto:mtoll@grandcanyontrust.org)



Robin Silver, M.D.  
Co-founder and Board Member  
Center for Biological Diversity



Sandy Bahr  
Chapter Director  
Sierra Club Grand Canyon Chapter



Kevin Dahl  
Arizona Senior Program Manager  
National Parks Conservation Association

cc: Cal Joyner, Regional Forester, Southwest Region, U.S. Forest Service  
Andrew Kelher, Deputy District Ranger, Tusayan Ranger District, U.S. Forest Service

---

*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).

# Exhibit 2

**Proposal for Special Use Authorization**  
**36 CFR 212.6 and 36 CFR Pt. 251, Subpart B**  
**New Application for Transportation and Utility Systems and Facilities on Federal Lands**  
**January 23, 2020**

**I. Co-applicant Information**

Stilo Development Group USA, LP (Stilo)  
Authorized Agent: Thomas De Paolo  
7610 E McDonald Drive, Suite L  
Scottsdale AZ 85250  
(480) 991-7930

Town of Tusayan (Town)  
Authorized Agent: Town Manager  
PO Box 709  
845 Mustang Drive  
Tusayan AZ 86023  
(928) 638-9909

**II. Project Description**

**(a) Type of system or facility;**

The use requested in this application is in support of development of inholdings in the Kaibab National Forest owned by the applicants and pursuant to the *Pre-Annexation and Development Agreement (PADA) No. 2011-11-02* (Appendix A of this application), as amended by the First Amendment to the *PADA No. 2011-11-02* and the Second Amendment to the *PADA No. 2011-11-02* (Appendix B of this application) between the Town and Stilo.

The applicants propose to make improvements to segments of existing forest roads and to construct one (1) new segment of forest road to provide non-exclusive, all weather access and utility service to two inholdings in the Kaibab National Forest (TenX Ranch and Kotzin Ranch). Both Kotzin Ranch and TenX include land owned by Stilo and the Town. The roadway improvements and utility construction would begin at State Route 64 (SR 64) in the Town. As depicted in **Figure 1**, the project land is located within the Tusayan Ranger District of the Kaibab National Forest, and the proposed corridors cross land identified in **Table 1** below. TenX Ranch is identified as the Coconino County Assessor's Parcel Number (APN) 502-14-001(A) and the parcel owned by the Town as 502-14-001(B). Kotzin Ranch has APNs 502-16-006 (owned by Stilo) and 502-16-006B (owned by the Town).

**Table 1**

<b>Proposed Corridor from SR 64 to:</b>	<b>Sections</b>	<b>Township</b>	<b>Range</b>
Kotzin Ranch (2 alignments)	13, 14, 23, 24	T30N	R2E
TenX Ranch (FR 302)	24 19, 29, 30	T30N T30N	R2E R3E

Township and Range of the Gila and Salt River Baseline and Meridian

The locations of the requested non-exclusive use authorizations are depicted in **Figure 2**. Generally, access and utility service to TenX Ranch requires improvements to the existing Forest Road (FR) 302;

the road and utility corridors to Kotzin Ranch would improve segments of existing FR 605M (Long Jim Loop) and FR 605 as well as construction of new road and utility corridor segments. **Table 2** identifies the physical specifications of the requested corridors on a segment-by-segment basis.

### **(b) Related structures and facilities;**

Kotzin Ranch South Access/Utility Corridor: from the requested southern access road and utility corridor to Kotzin Ranch, a sewer line to the existing collection system facilities of the South Grand Canyon Sanitary District (SGCSD) wastewater treatment plant in the Town, as depicted in **Figure 3B**. In addition, an approximately 300-foot long sewer line corridor is necessary parallel to SR 64 from the intersection of FR 302 to the existing developed boundaries of the Town. This corridor facilitates a second tie-in to the SGCSD wastewater collection system to convey flows from TenX Ranch, and is depicted in **Figure 3A**. The two sewer line corridors are estimated to be 25 feet wide; the specific width and location will be dependent on the capacity, location and depth of the existing wastewater collection facilities. The sewer line corridors would consist of temporary ground disturbance for construction, with the exception of manhole covers that would remain at grade.

TenX Ranch Access/Utility Corridor: a wastewater lift station is anticipated to convey wastewater flows to the SGCSD wastewater treatment plant from TenX Ranch. The lift station would be located adjacent to the access and utility corridor along FR 302. Two booster pump stations, one for reclaimed water and one for potable water, would be located approximately 0.3 mile east of SR 64, adjacent to FR 302. Each station would each be approximately 0.2 acre in size, or 100 feet by 100 feet, and would be located adjacent to the access and utility corridor along FR 302. The approximate locations of these stations are depicted in **Figure 3A**.

Utilities would be installed per the applicable local standards. As part of the environmental review and engineering design, existing permitted utility easements would be identified and the proposed utility corridors designed to avoid conflicts. In the event of collection system or wastewater treatment plant capacity constraints, alternative solutions for service, such as an on-site package plant(s), would be identified. Necessary facilities for fire service will also be identified and addressed as appropriate.

### **(c) Physical specifications;**

The project proposes to improve and construct one primary access maintenance level 5 roadway/utility corridor to each of the two in-holdings. As defined in Forest Service Handbook (FSH) 7709.58, 12.3, maintenance level 5 is assigned to roads that provide a high degree of user comfort and convenience; these roads are normally double-lane, paved facilities. The roadway and utility improvements are needed to accommodate the Town approved land use plans as defined in the PADA Exhibit B1 *Kotzin Ranch Land Use Plan and Data Table* and Exhibit B2 *TenX Ranch Land Use Plan and Data Table*. In addition, a secondary emergency road access-only corridor will be nominally improved to a maintenance level 4 roadway. As defined in Forest Service Handbook (FSH) 7709.58, 12.3, maintenance level 4 is assigned to roads that provide a moderate degree of user comfort and convenience at moderate travel speeds; these roads are normally double-lane and aggregate surfaced.

The total area of disturbance on USFS land is estimated to be approximately 49.4 acres, of which 20.1 acres has been previously disturbed, leaving 29.3 acres of total new disturbance.

**Table 2** lists each corridor segment, existing and proposed maintenance levels, the existing recreation opportunity spectrum (ROS), the length of the segment (in feet and miles), the area disturbance (including estimates of new and previously disturbed areas), and the utility lines proposed for each primary access segment.

**Figure 4** depicts the cross section of the proposed primary access corridors to each of the Kotzin and Ten-X parcels, conforms to the requirements specified by the PADA and meets applicable local standards. The primary access corridors would accommodate two, paved travel lanes (14 feet wide each), resulting in 28 feet of surfaced roadway, with aggregate shoulders (2 feet wide each) and a 14-

foot-wide border area/utility corridor adjacent to each shoulder. The primary access corridors would also accommodate an 8-foot-wide bike/pedestrian path on either side of the paved surface. An additional 4 feet would allow for adjustments to grade. In total, an 80-foot-wide corridor is requested to provide all weather access and utility service to the two privately owned in-holding parcels. Note that the dimensions specified above and in **Figure 4**, which comprise the overall 80-foot-wide corridor, represent a typical cross section; the engineering design may vary in locations to accommodate topographic and other site-specific constraints.

### **Corridor to TenX Ranch**

FR 302 would be improved from SR 64 for approximately 2.8 miles, or 14,880 feet, to TenX Ranch. Utilities to be provided within the two, 14-foot-wide border area and utility corridors include a potable water distribution main, a reclaimed water transmission main, a sewer main, a natural gas pipeline, electric, and telecommunications (internet, cable television, telephone, etc.).

### **Corridor to Kotzin Ranch**

#### ***Southern Access***

The southern access roadway and utility corridor would be 1.53 miles (8,096 feet) long and would traverse lands within the Kaibab National Forest, connecting the existing SR 64 at Long Jim Loop to Kotzin Ranch, including the segments listed below. The utilities proposed within the two 14-foot-wide border area and utility corridors vary slightly by segment, but generally include water transmission and distribution mains, a reclaimed water main, and a sewer main. Dry utilities in the corridor also vary by segment, but generally include a natural gas pipeline, electric lines, and telecommunications. Details of the utility lines included in each segments are listed herein and in **Table 2**.

- The existing FR 605M (Long Jim Loop) would be improved from SR 64 west and south approximately 2,333 feet all on USFS lands.
  - Utilities proposed in this segment include water transmission and distribution mains, a natural gas pipeline, and telecommunications.
  - The sewer main from Kotzin Ranch would tie in to the existing 8-inch main paralleling FR 605M (Long Jim Loop) for approximately 2,100 feet to the existing wastewater collection facilities of the SGCSD. A new reclaimed water main would be constructed along FR 605M (Long Jim Loop) from the SGCSD to this point where it would be continue within the utility corridor to Kotzin Ranch described below.
- From FR 605M (Long Jim Loop) the existing unnamed roadway would be improved and a utility corridor would be constructed for approximately 2,766 feet west to the intersection with FR 605, which accommodates the existing Arizona Public Service (APS) easement.
  - Utilities proposed in this segment include water transmission and distribution mains, a reclaimed water main, a sewer force main, a natural gas pipeline, and telecommunications.
- From FR 605 to Kotzin Ranch, a new roadway and utility corridor would be constructed in a generally northwesterly direction along existing trails for approximately 2,997 feet to the west.
  - Utilities proposed in this segment include water transmission and distribution mains, a reclaimed water main, sewer force main, electric lines, a natural gas pipeline, and telecommunications.
  - Electric service would be in this segment of the corridor, connecting to the existing APS power lines that parallel FR 605.

### **Northern Emergency Access**

The northern emergency access roadway would traverse lands within the Kaibab National Forest for approximately 8.057 feet, or 1.53 miles, from the intersection of SR 64 and Moqui Drive (FR 328) west to Kotzin Ranch, including the segments listed below. No wet or dry utilities are proposed in this corridor.

- FR 328 (Mogul Drive) would be improved approximately 3,715 feet from SR 64 west to FR 605F.
- FR 605F would be improved approximately 548 feet west from FR 328 to the intersection with FR 605E.
- FR 605E would be improved for approximately 2,794 west to Kotzin Ranch.

#### **(d) Term of years needed;**

All weather access and utility service is requested in perpetuity. 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, construct and maintain. Per the PADA, the roads would be maintained to the standards of the Forest Service, which are defined in the *Guidelines for Road Maintenance Levels (2005)*. The utilities would be maintained to the standards of the local utility providers.

#### **(e) Time of year of uses or operations;**

All weather access and utility service is requested yearlong.

#### **(f) Volume or amount of product to be transported;**

The volume of traffic and sizes of utilities are undetermined at this time. Preliminary engineering indicates two-lane roadways would adequately accommodate anticipated density of development.

Utility infrastructure for inholdings for which the primary access roadways will provide non-exclusive legal access across Forest Service lands and will be sized based on the anticipated build out of the private parcels. The utility corridors within the primary access roadways are of sufficient size to support all of the utility infrastructure contemplated for the authorized improvements.

#### **(g) Duration and timing of construction;**

Roadway and utility corridor construction would be anticipated to be complete within an approximate 36-month period from commencement, considering the potential for inclement weather.

#### **(h) Temporary work areas needed;**

No temporary work areas for construction are anticipated within the Kaibab National Forest. All temporary construction areas will be on private lands.

#### **(e) State and local government approvals;**

N/A.

#### **(f) Application fee;**

To be separately provided.

**(g) Impact on international waterways or boundaries;**

None.

**(h) Technical and financial capability to construct, operate and maintain and terminate system for which authorization is requested;**

The applicants are technically and financially capable of completing the project described in this application. Any construction contractor must be duly licensed, bonded and insured, and would be selected based on a review of bids submitted in response to a solicitation/design package. Criteria to be considered may include factors such as: project understanding, relevant management and technical experience, staff qualifications, capacity to conduct the work, proposed work plan, past performance on similar work and record of completion, quality plan, cost, and health, safety, and environmental record.

Pursuant to the PADA, Stilo will fund construction and maintenance of the road and utilities, however if the project is not completed in a timely manner, the Town may fund construction and maintenance. The ability to fund will be demonstrated based upon the Kaibab National Forest requirements (i.e., financial records, list of completed projects, etc.). The applicants would agree to completion and maintenance bonding, as appropriate.

**(i) Other reasonable alternative routes and modes considered;**

The properties are inholdings, completely surrounded by federal lands administered by the Kaibab National Forest, with no private lands abutting either property. As such, any access to the properties would require use of National Forest System Lands.

During the zoning process Stilo undertook for development of its inholdings, Stilo retained a qualified engineer to evaluate alternatives for access based on routes that met the following criteria without regard to cost: (i) routes that disturbed the least amount of natural conditions; (ii) followed existing trails, roadways, primitive routes; (iii) utilized existing utility corridors; and (iv) otherwise provided safe, proximate and convenient future access for the enjoyment of the property for its intended use. Eight potential routes were identified and are shown in the PADA (at PADA Exhibits D1 and D2) and are depicted on **Figure 5**.

In sum, alternative alignments for the southern roadway access and utility corridor to Kotzin Ranch may be feasible and could be considered during the environmental review and engineering design process. No other alternatives were considered for the roadway access and utility corridor to TenX Ranch or for the northern corridor to Kotzin Ranch due to the presence of existing forest roads or trails, thus minimizing new surface disturbance.

**(1) Why not selected?**

The routes proposed for access and utilities were selected because, to the extent possible, they utilize areas of prior existing disturbance.

**(2) Why necessary to cross federal land?**

Kotzin Ranch and TenX Ranch are in-holdings in the Kaibab National Forest. Both properties are accessible via existing forest roads, however, these roads are subject to closure at the discretion of the District Ranger during wet weather periods. Improved, all-weather access is necessary to ascertain reasonable use and enjoyment of these privately held lands. Per the PADA, both properties would be developed for current and future visitor needs and local residential purposes and year round use requiring all weather access.

**(j) List authorizations and pending applications filed for similar projects;**

The Town and the Kaibab National Forest have entered into a maintenance agreement for that portion of FR 302 from Highway 64 to the TenX property. The applicant is unaware of any other authorizations or pending applications for similar projects.

**(k) Statement of need for project, including economic feasibility;**

The need for this project is to improve access to facilitate reasonable use and enjoyment of the in-holding properties in a safe and adequate manner. All-weather access is required to the Kotzin Ranch and TenX Ranch in-holdings in accordance with the PADA. Per existing zoning authorizations, both properties will be developed for visitor and local area residential uses requiring higher level of services for vehicle access as well as accommodation for the required utilities. The project is economically feasible and would be privately funded.

**(1) Cost of proposal?**

Preliminary construction costs were provided in the Kotzin Ranch Applicant's Narrative Report, Planned Community District Zoning Submittal, Approved November 2, 2011, Exhibit 5, Primary Infrastructure (see Appendix B of this application) and TenX Ranch Applicant's Narrative Report, Planned Community District Zoning Submittal, Approved November 2, 2011, Exhibit 5, Primary Infrastructure (see Appendix C of this application). If required, revised cost estimates will be provided as the environmental review and engineering design proceed.

**(2) Estimated cost of next best alternative?**

Cost estimates for selected alternatives can be provided as the environmental review and engineering design proceed.

**(3) Expected public benefits?**

Expected public benefits include improved access to the in-holdings and the surrounding public lands of the Kaibab National Forest. The planned land use for the in-holdings is defined in the PADA, Exhibit B1 Kotzin Ranch Land Use Plan and Data Table and Exhibit B2 TenX Ranch Land Use Plan and Data Table, as modified by the environmental protection measures set forth in Section IV below which will facilitate responsible development, needed housing and enhanced visitor services.

**(l) Describe probably effects on population in the area, including social and economic aspects, and the rural lifestyles;**

The in-holdings are surrounded by National Forest System lands administered by the Kaibab National Forest and have no form of access except across National Forest System land. While the proposed access roadways and utility corridors across lands administered by the Kaibab National Forest would not directly result in population growth, the population growth anticipated by the authorized zoning of the in-holdings is a reasonably foreseeable future action that would be considered during the environmental review of this application.

The proposed roadway access and utility corridors would also improve access to lands administered by the Kaibab National Forest with the potential for some increase in utilization of localized areas for recreational purposes. Impacts to rural lifestyles are expected to be localized and minimal in the context of the role of the local community as a gateway to the Grand Canyon National Park. The applicants will work to identify and minimize potential resource conflicts with rural lifestyles with safety in mind.

**(m) Describe likely environmental effects that the proposed project will have on:**

The environmental effects of the proposed project will be analyzed as part of the National Environmental Policy Act process and a brief description of anticipated effects directly related to the proposed action are provided below.

**(1) Air quality**

The proposed project would pave existing gravel and dirt roads within the Tusayan Ranger District, which would reduce sources of fugitive dust in dry weather. There is substantial use of the existing roadways for dispersed camping and an immediate reduction of fugitive dust emissions from this user-group is anticipated with paving of these existing roadways. Additional traffic would be expected to traverse the improved roads, which may increase vehicle emissions.

**(2) Visual impact**

Removal of existing vegetation would be minimized to the extent practical; indigenous plants and trees and/or low-water use plants would be used to revegetate areas of temporary disturbance and in landscaped areas.

**(3) Surface and ground water quality and quantity**

The existing roads are unpaved and therefore subject to erosion during storm events, contributing to sediment generation and transport. The proposed project would pave the primary access roadways, reducing the potential for erosion and sedimentation. Increased runoff generation and the potential for water quality impacts from the impervious roadway surfaces would be managed through engineering controls. Impacts to groundwater would not be anticipated from the roadway access and utility corridors.

**(4) Control of structural change on any stream or other body of water**

The existing FR 302 crosses a tributary to Coconino Wash approximately one half mile east of SR 64. The existing culvert may need to be extended laterally to accommodate the wider roadway. Additional culvert crossings may also be required to accommodate existing drainages and swales. Stormwater conveyance would be maintained, and no control or structural change of any stream or other body of water is anticipated.

**(5) Existing noise levels**

Existing noise on forest roads serving Kotzin Ranch results from occasional vehicles passing through to access lands within the Kaibab National Forest for recreational uses. Existing noise on FR 302 near TenX Ranch also occurs from vehicles accessing lands within the Kaibab National Forest for commercial and non-commercial recreational use; jeep tour operators use FR 302 routinely to access Grandview. FR 302 has a higher operational maintenance level and continues through the Kaibab National Forest, ultimately providing access to Flagstaff. As such, the road has greater existing vehicle volumes than the roads at Kotzin Ranch, with resulting higher noise levels. The proposed roadway and utility corridors may increase noise levels; however, limited receptors exist in the project area.

**(6) Surface of the land, including vegetation, permafrost, soil and soil stability**

Where possible, new disturbance areas are proposed adjacent to existing roadways or other areas of prior disturbance. Impacts to the soil, vegetation, and soil stability would be minimized through the implementation of best management practices, engineering controls, and revegetation as appropriate. No impacts to permafrost would occur.

**(n) Probably effects that the proposed project will have on:**

**(1) Populations of fish, plantlife, wildlife, and marine life, including threatened and endangered species; and**

Direct and indirect effects to plants and wildlife may occur, including lost or degraded habitat and increased vehicle/animal encounters and collisions. A complete analysis of the potential for effects to biological resources will be conducted during the environmental review.

**(2) Marine mammals, including hunting, capturing, collecting or killing these animals.**

The proposed project would not affect marine animals.

**(o) Use of hazardous materials;**

Hazardous materials would not be produced or stored within the proposed corridor or related facilities. While not anticipated, hazardous materials that may be used during construction or transported by others would be in accordance with the Hazardous Materials Transportation Act and other applicable regulations.

**(p) Place of application filing;**

US Department of Agriculture, Forest Service – Kaibab National Forest, Tusayan Ranger District.

**III. Pertinent Background Information and Environmental Protection Measures**

**(a) The PADA**

As stated above, Stilo and the Town of Tusayan are parties to a Pre-Annexation and Development Agreement (PADA) dated November 11, 2011, as amended. The PADA authorizes development of the TenX and Kotzin inholdings at a density and intensity that is described therein.

In general, the 194.6-acre TenX Ranch is zoned as a Planned Community District (PCD) and was approved under Ordinance No. 2011-11-02-06 on November 2, 2011. Subsequent to the zoning, Stilo donated 20 acres of TenX land to the Town of Tusayan for affordable housing development. The concept for the development of the TenX property is primarily to establish a residential neighborhood for the local population along with supportive facilities serving their needs. The very south end of the property is reserved for a possible resort hotel, conference center hotel, spa hotel or dude ranch.

The 160-acre Kotzin parcel is also zoned as a PCD and was approved under Ordinance No. 2011-11-02-05 also on November 2, 2011. Subsequent to the zoning, Stilo donated 20 acres of the property to the Town of Tusayan for its affordable housing development. The Town has the option to retain the property or exchange it to Stilo for an additional 20 acres at the TenX. The concept for the development of the Kotzin property is primarily to establish a pedestrian oriented, visitor-centered campus of lodging, commercial services, educational facilities and shorter-term residential housing along with supportive facilities serving their needs. Facilities and services will cater to visitors desiring a longer-term stay in the area to connect with a more in-depth appreciation and understanding of the regions natural sciences and cultural history. Incentives are contemplated to encourage guests to park their vehicles once and not use it again until they are leaving the region. Shuttles are envisioned to transfer guests to and from the GCNP and other needs are met on campus.

#### IV. Applicant Committed Environmental Protection Measures (EPMs)

Notwithstanding the density and intensity of development authorized by the PADA for Stilo's inholdings, Stilo is voluntarily willing to agree to the following EPMs to address known public concerns with its proposed development which is an indirect effect of the proposed action.

##### (a) Land Use Restriction

Upon 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 Ten-X properties by a combined total of thirty three percent (33%) as shown in the Zoning Summary Analysis chart below.

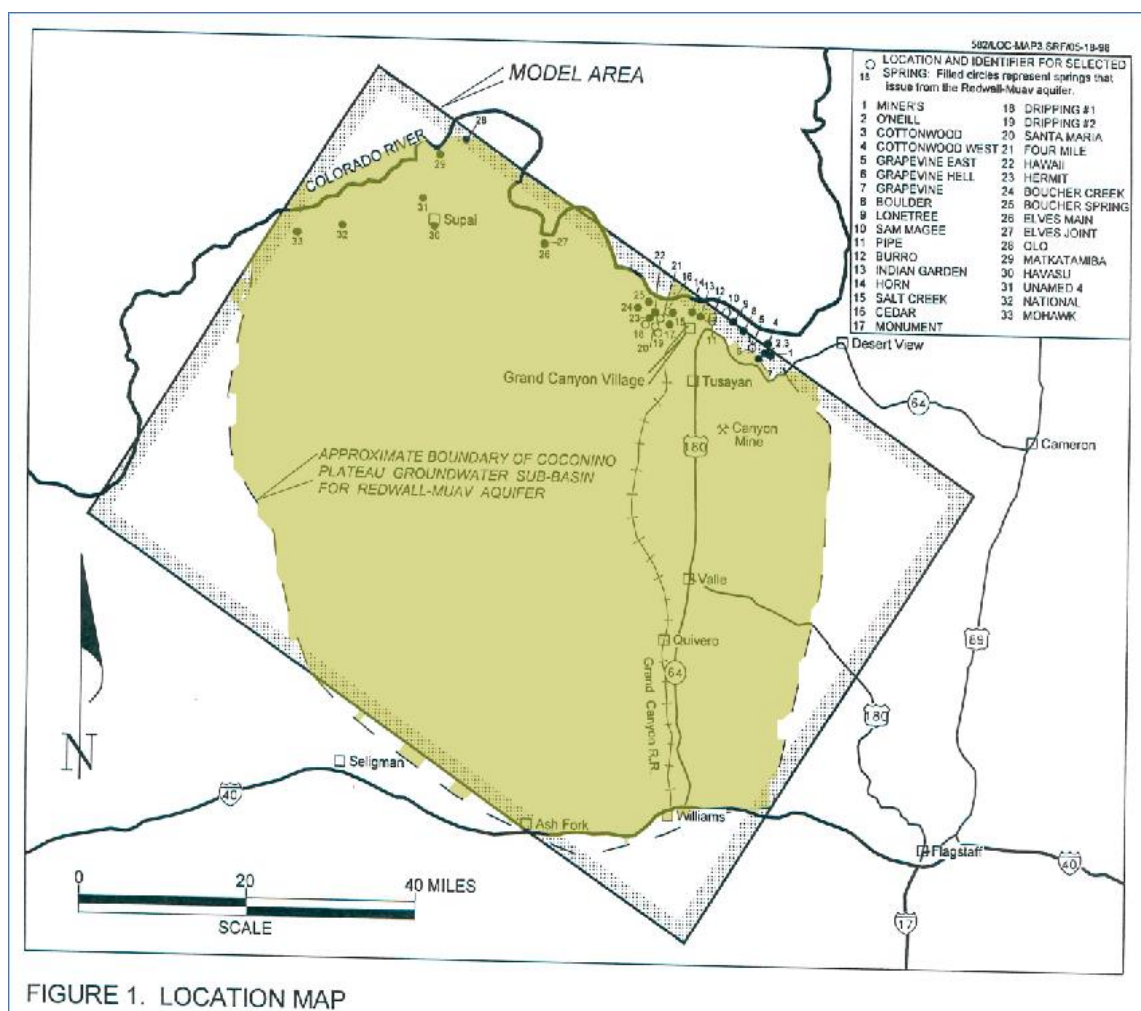
ZONING SUMMARY ANALYSIS												
Town of Tusayan Land Use Zoning Approvals												
33% REDUCTION	PARCEL	ACRES	APPROVED TUSAYAN ZONING FAR	APPROVED TUSAYAN ZONING DENSITIES SF	PROPOSED DENSITY FAR	PROPOSED SF	PROPOSED TUSAYAN SF REDUCTION	PROPOSED TUSAYAN % REDUCTION	% ROOMS DISTRIBUTION	% COMMERCIAL DISTRIBUTION	PROPOSED ROOMS  500 SF PER ROOM	PROPOSED COMMERCIAL SF
<b>TenX</b>												
Neighborhood Commercial	CNV	5.9	0.25	64,251	0.20	51,401	12,850	20%		100%		51,401
Resort Conference	RC	35	0.35	533,610	0.20	304,920	228,690	43%	100%		610	
RV Park (248 spaces)	SRVP	22.2	0.005	4,835	0.01	4,835	0	0%		100%		4,835
Residential	R	130.9										
Open Space (WITHIN USE)	OS	10%										
		194.1		602,696		361,156	241,540	40%			610	56,236
<b>Kotzin</b>												
Neighborhood Commercial	CNV	6.5	0.25	70,785	0.25	70,785	0	0%		100%		70,785
Cultural Park 1	CP 1	27.7	0.45	542,975	0.35	422,314	120,661	22%	60%	40%	507	168,926
Cultural Park 2	CP 2	11	0.15	71,874	0.15	71,874	0	0%		100%		71,874
Lodging & Commercial	LC	41	0.65	1,160,874	0.40	714,384	446,490	38%	75%	25%	1,072	178,596
Resort Conference	RC	10	0.55	239,580	0.35	152,460	87,120	36%	100%		305	
Residential	R	63.8										
Open Space (WITHIN USE)	OS	10%										
		160		2,086,088		1,431,817	654,271	31%			1,883	490,181
<b>Total Kotzin &amp; TenX</b>												
		354.1		2,688,785		1,792,973	895,811	33%			2,493	546,417
<b>ROUNDED</b>											2,500	550,000

##### (b) Water Use Restriction

Stilo is willing to agree to a complete prohibition of the use of groundwater with two exceptions: (i) the current or future provider of water for the Town of Tusayan can serve residential uses at TenX and Kotzin; and (ii) future groundwater use being authorized if as a result of technological breakthroughs resulting in proven zero-impact upon groundwater resources (i.e., recharge and recovery, water harvesting, off season water extraction surpluses, etc.). In addition, Stilo intends to require the utilization of state of the art water conservation measures including, water harvesting, use of reclaim water where feasible which would either meet or exceed existing practices utilized by water service providers and consumers within the Town of Tusayan.

Stilo proposes enforcement of this restriction be through either the recordation of a restrictive covenant or a conservation easement that will run with the land in perpetuity and provide appropriate rights of enforcement.

Commercial water demands are anticipated to be met by importing water via truck hauling and, with an exception for emergencies, those demands will be prohibited from being met by any groundwater supplies obtained from within the boundaries of the yellow shaded area within the Coconino Plateau Groundwater Sub-basin as depicted below.<sup>1</sup> A commercial supply is not specifically identified at this time, but may include private sources or credits available for purchase or other supplies made available as a result of regional delivery solutions. Peak season demand for commercial uses at TenX and Kotzin at full-build out are estimated to be approximately 275,000 gallons per day (based on recent commercial water sales data supplied by Hydro-Resources Inc.). Utilizing 6,000 gallon water trucks for hauling, at peak season, full-build out commercial demand equates to approximately 20 truck deliveries per day. Centralized water storage facilities would be constructed in locations deemed appropriate by the water service provider.



<sup>1</sup> Montgomery, EL., 1993, Projections for decrease in spring flow resulting from proposed groundwater withdrawal near Tusayan, Arizona: Canyon Forest Village Report (Figure 1).

# TABLES

**Table 2. Summary of Project Description**

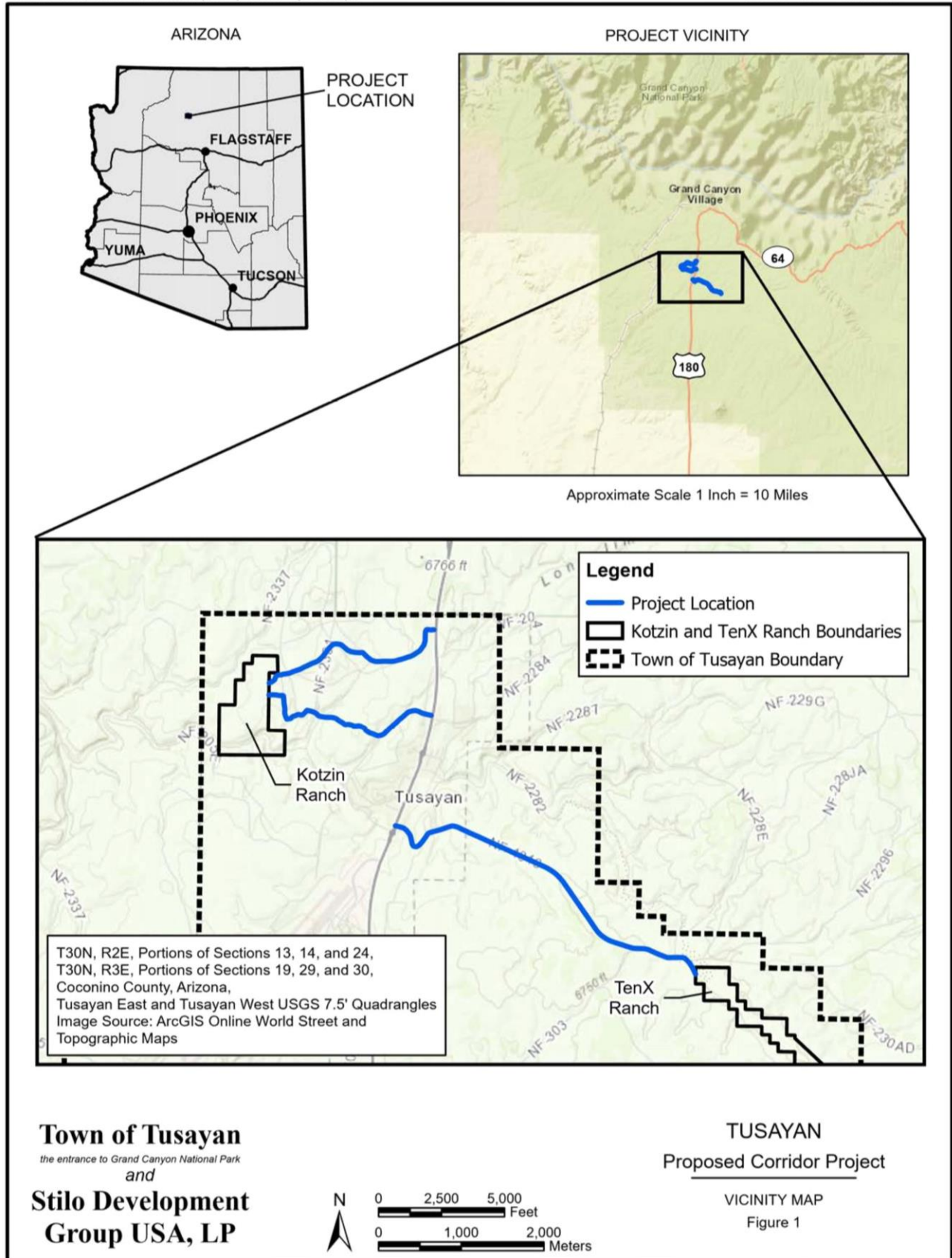
	Route/ Segment	Existing Maintenance Level	Proposed Maintenance Level	Existing Recreation Opportunity Spectrum	USFS LAND						Sewer	Water Transmission	Water Distribution	Reclaimed Water	Electric	Natural Gas	Telecommunications
					Length (approximate) (feet)	Length (approximate) (mile)	Width (feet)	Previously Disturbed Area (acre)	Area of New Disturbance (acre)	Total Disturbance Area (acre)							
TenX Ranch Access/Utility Corridor																	
TenX Ranch Access Road	FR-302	3	5	R/RN	14,880	2.82	80	12.7	14.6	27.3	X		X	X	X	X	X
Subtotals					14,880	2.82		12.7	14.6	27.3							
Kotzin Ranch South Access/Utility Corridor																	
From SR 64 along FR 605M	FR 605M	2	5	R/RN	2,333	0.44	80	1.5	2.9	4.3		X	X		X	X	X
From FR 605M to FR 605	Unnamed	NA	5	RN	2,766	0.52	80	0.8	4.3	5.1	X	X	X	X	X	X	X
FR 605 to Kotzin Ranch	Trail	NA	5	RN	2,997	0.57	80	0.3	4.8	5.1	X	X	X	X	X	X	X
Subtotals					8,096	1.53		2.6	12.0	14.5							
Kotzin Ranch Emergency Access Road																	
Intersection of SR 64 and Moqui Drive (FR 328)	FR 328	3	4	R/RN	3,715	0.70	30	1.7	0.8	2.6							
FR 605F	FR 605F	2	4	RN	1,548	0.29	30	0.4	0.6	1.1							
FR 605E	FR 605E	2	4	RN	2,794	0.53	30	0.7	1.3	1.9							
Subtotals					8,057	1.52		2.8	2.7	5.6							
Related Structures and Facilities																	
Reclaimed water service	FR 605M				2,100	0.40	25	1.2	0.0	1.2				X			
Sewer corridor along SR 64	SR 64				287	0.05	25	0.2	0.0	0.2	X						
Potable water booster pump station (approx. 100 ft X 100 ft)	FR 302							0.2	0.0	0.2			X				
Lift Station (approx. 100ft X 100ft)	FR 302							0.2	0.0	0.2	X						
2128 Reclaimed water booster pump station (approx 100ft x 100ft)	FR 302							0.2	0.0	0.2				X			
Subtotals					2,387	0.45		2.0	0.0	2.0							
TOTALS					33,420	6.32		20.1	29.3	49.4							

Recreation Opportunity Spectrum (ROS): R = Rural; RN = Roaded Natural

(SF-299, page 2)

Table-2

# FIGURES



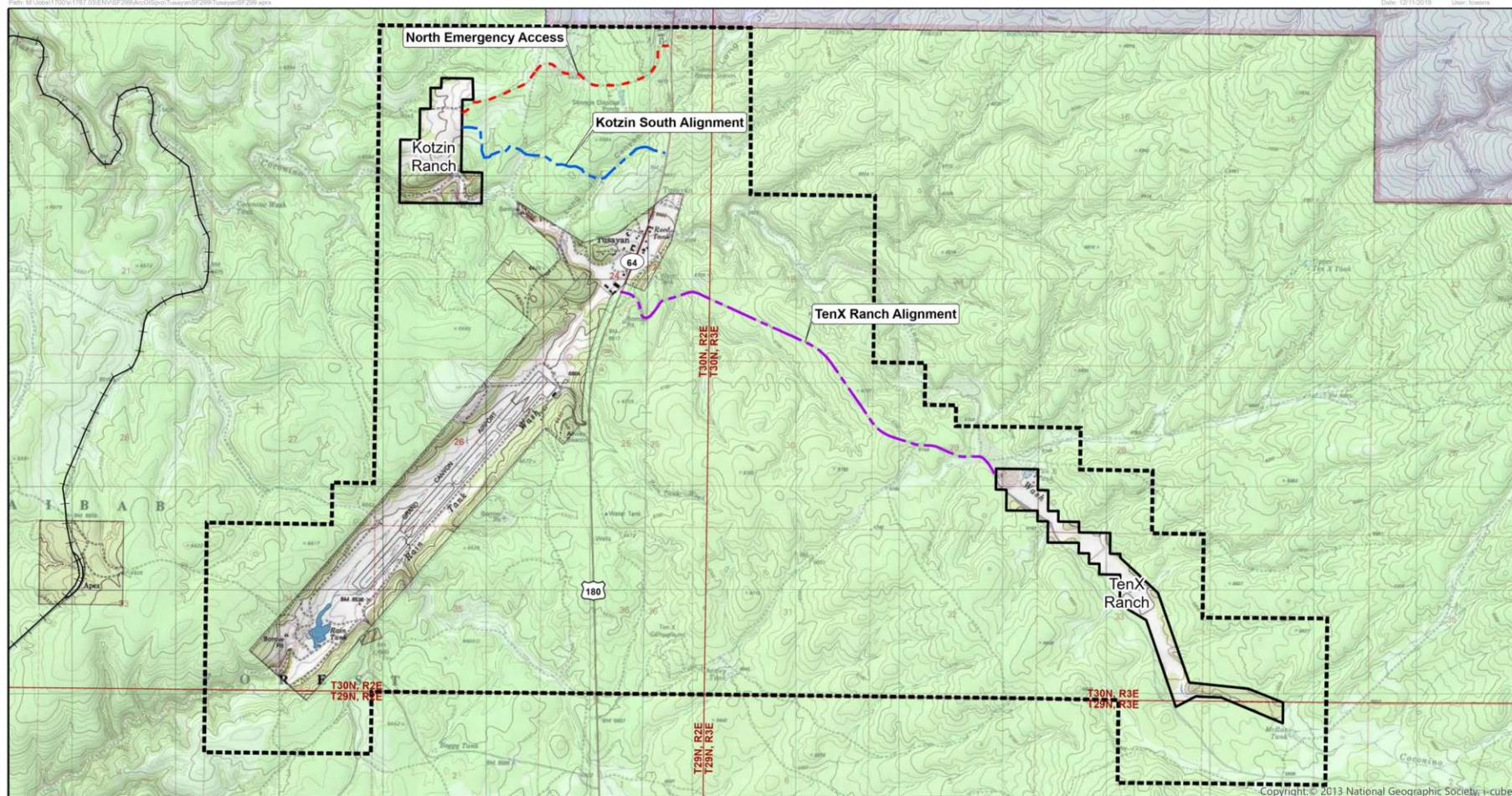
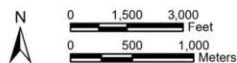


Image Source: ArcGIS Online USA Topo Map

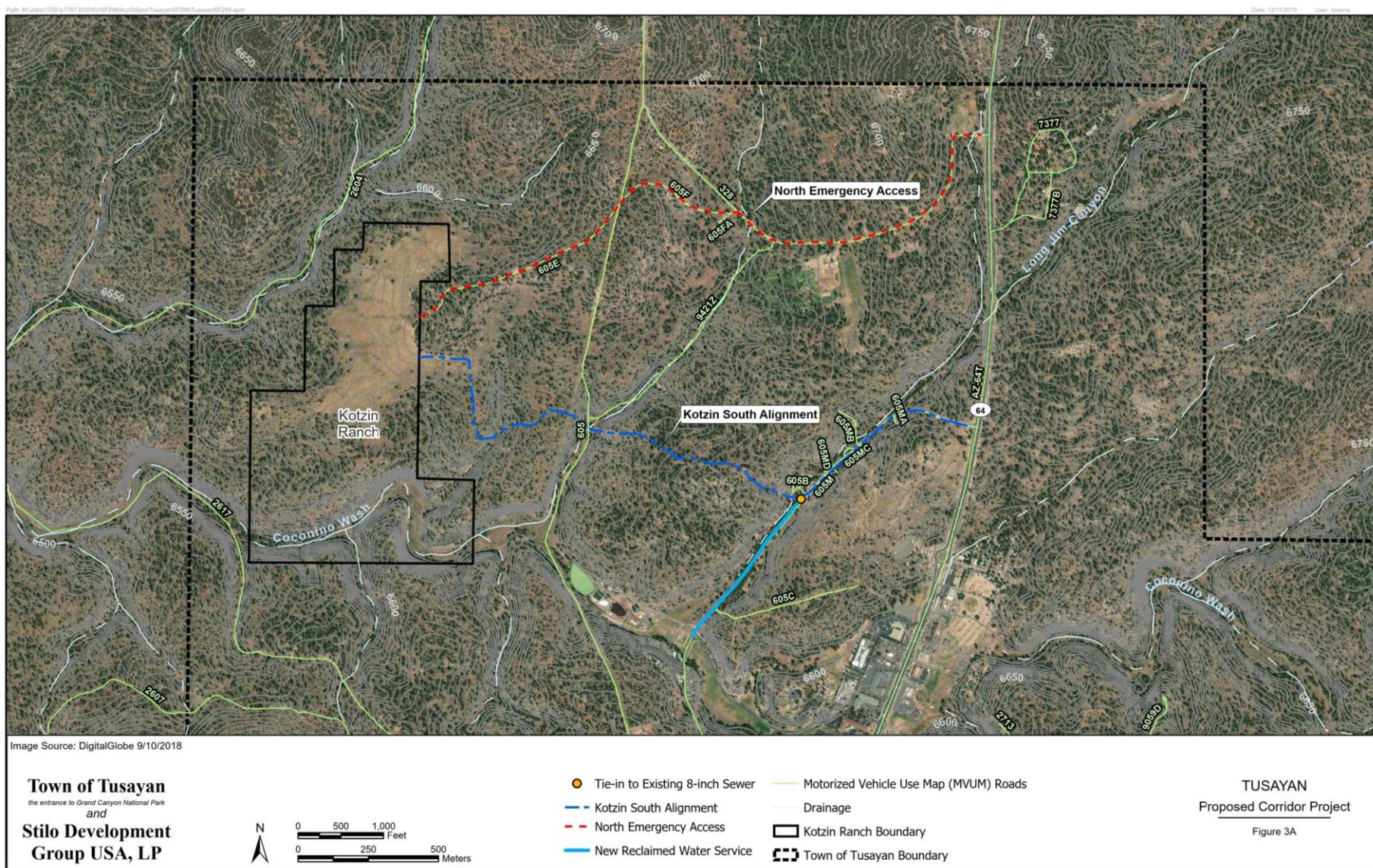
**Town of Tusayan**  
the entrance to Grand Canyon National Park  
and  
**Stilo Development**  
Group USA, LP



- Kotzin South Alignment
- North Emergency Access
- TenX Ranch Alignment
- Grand Canyon Railway
- Kotzin and TenX Ranch Boundaries

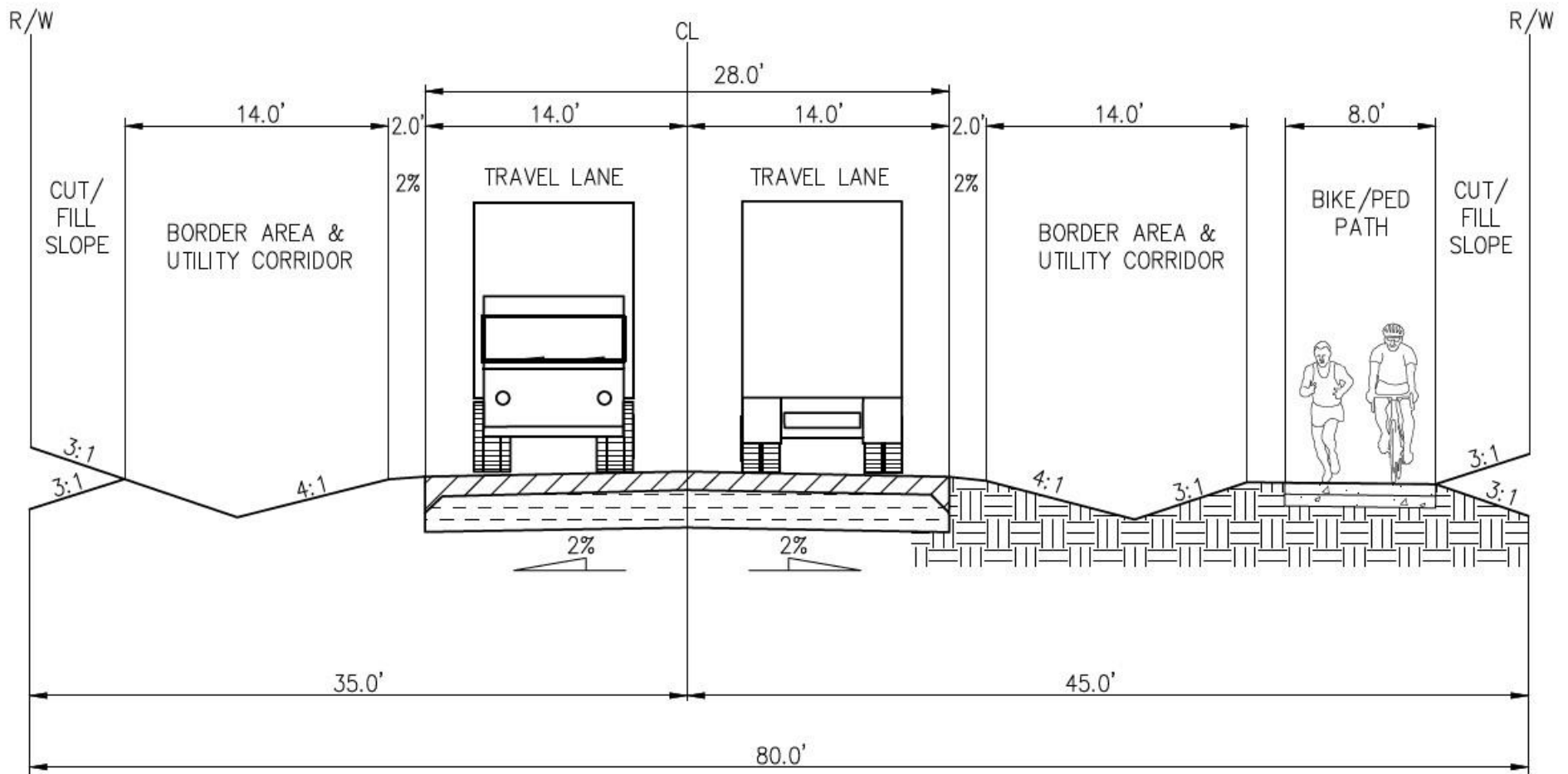
- Town of Tusayan Boundary
- Surface Management (BLM 2019, WRI Modified 2019)**
  - National Park Service (NPS)
  - Private Land (No Color)
  - US Forest Service (USFS)

**TUSAYAN**  
Proposed Corridor Project  
USGS TOPOGRAPHY  
Figure 2





**Figure 4 – Southern Kotzin and Ten-X Primary Access/Utility Schematic**



### Figure 5

