



March 12, 2020

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**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,

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<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> 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

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<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

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<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>

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<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.

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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

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<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

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<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

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<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,



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<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).

Letter to Forest Service re: Reject Stilo-Tusayan Special Use Proposal  
March 12, 2020

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