



October 31, 2016

Ms. Heather Provencio, Supervisor
Kaibab National Forest
800 South 6th Street
Williams, AZ 86046
Via Email: hprovencio@fs.fed.us

Re: The Forest Service Must Determine Whether the Town of Tusayan’s Proposed Road Maintenance Agreement that Will Facilitate Housing Development Near Grand Canyon National Park Is In the Public Interest and Must Provide Robust Public Notice, Public Involvement, and NEPA Analysis

Dear Supervisor Provencio:

On behalf of the National Parks Conservation Association, Grand Canyon Trust, Sierra Club, Center for Biological Diversity, and Maricopa Audubon Society, we request that the Forest Service ensure that the Town of Tusayan’s forthcoming application for a snow removal road maintenance agreement to enable the construction of a housing development — the first step in Stilo Development Group USA’s massive commercial and residential complex on the doorstep of the Grand Canyon — is in the public interest before accepting the application. As you are aware, the Town’s development of the TenX Ranch parcel is contractually linked to Stilo’s larger development and to the development of Town housing on the Kotzin Ranch parcel. We continue to believe that any Forest Service action that will facilitate Stilo’s development at the TenX or Kotzin Ranch parcels is not in the public interest and should be denied, as the Forest Service concluded when Tusayan previously sought easements to these parcels.

If the Forest Service accepts Tusayan’s forthcoming road maintenance agreement application, we request that the Forest Service engage in a thorough National Environmental Policy Act (NEPA) review. Forest Service guidance and regulations require public notice, an opportunity for public comment, and preparation of at least an environmental assessment before the agency can approve Tusayan’s application.

I. Tusayan Proposes to Develop the TenX Ranch Property.

We understand that in the near future, the Town of Tusayan intends to submit to the Forest Service a request for a road maintenance agreement to enable to town to plow snow from Forest Road (FR) 302 to provide winter access from State Route (SR) 64 to the TenX Ranch parcel. The Town seeks this agreement to permit winter access to, and construction and year-round occupation of, 10 to 20 off-the-grid homes that Tusayan plans to construct at TenX.¹ Stilo

¹ See L. Yerian, *Commercial development moves forward in Tusayan*, GRAND CANYON NEWS (June 7, 2016) (“Under the new agreement, the town will begin construction on 20 homes on the Ten X property east of Tusayan . . .”), <http://www.grandcanyonnews.com/news/2016/jun/07/commercial-development-moves-forward-in-tusayan/>, attached as Ex. 1.

agreed to transfer to Tusayan fee simple ownership of 20 acres of the TenX Ranch “for the purpose of providing housing and employment opportunities within the Town.”² Stilo’s agreement with Tusayan recites that the property transfer was necessary to “induce the Town” to take other actions to enable Stilo to build a massive commercial and residential development on the doorstep of Grand Canyon National Park.³ Tusayan’s planned residential development (and requested snow removal to cause those dwellings to be accessible and habitable in winter) thus appears to be an attempt to begin piecemeal development of the TenX parcel to enable Stilo to complete its massive development. The Forest Service must consider these ultimate environmental consequences of enabling winter access before granting the snow removal permit.

II. The Forest Service Must Determine Whether the Proposed Road Maintenance Agreement Is In the Public Interest.

The Forest Service previously returned the Town of Tusayan’s application for rights-of-way to facilitate Stilo’s development on the TenX and Kotzin parcels because of significant uncertain environmental impacts and substantial public interest concerns. We request that the Forest Service engage in a similar inquiry before accepting Tusayan’s request for a road maintenance agreement. As the Forest Service has acknowledged, “FLPMA and other special use authorities provide permissive authorities that may be used to accommodate the needs of individuals, groups and industries *only* when they are in, or at least compatible with[,] the public interest.”⁴ The Forest Service must reject any special use proposal if it is not in the public interest. 36 C.F.R. § 251.54(e)(5)(ii).

We are unaware of any information Tusayan has provided to the Forest Service or the public about the nature and extent of the subdivision development, other than the final plat and surveys for cultural resources and existing environmental contamination. Absent additional information — such as plans for additional development related to the housing, sewage treatment, water supply, source of electricity and other utilities, home sizes, and the connection between the housing development and Stilo’s larger development plans — the Forest Service cannot meaningfully evaluate whether it is in the public interest to grant the requested road maintenance agreement, which is necessary for the housing development’s viability. In addition, the Town has not demonstrated an imminent need for the road agreement, given that it is unclear that the mechanism that it has chosen to pay for the housing development has, or will soon obtain, funds necessary to construct the housing. It is imperative that Tusayan provide the necessary

² Second Amendment to Pre-Annexation and Development Agreement, Agreement No. 2011-11-02, Between the Town of Tusayan, an Arizona municipal corporation, and Stilo Development Group USA, LP, at 3 (¶ 4(a)(ii)) (June 1, 2016), excerpt attached as Ex. 2; *see also* Special Warranty Deed with Reverter ¶ 2 (Second Town Housing Parcel – TenX), Exhibit B to the Escrow Instructions, attached to Agenda, Town of Tusayan Regular Meeting (Aug. 17, 2016), Deed attached as Ex. 3.

³ Second Amendment to Pre-Annexation and Development Agreement, at 3 (¶ 4(a)(ii)) (Ex. 2).

⁴ 44 Fed. Reg. 29,107, 29,110 (May 18, 1979) (emphasis added) (proposed rule revising regulations governing the authorization of the occupancy of land and conduct of activities on National Forest System lands).

information on its development plans to the Forest Service and to the public before the agency processes Tusayan’s application. And then the Forest Service may process the application only if it determines, based on that additional information, that the road maintenance agreement is in the public interest. 36 C.F.R. § 251.54(e)(5)(ii).

III. If the Forest Service Accepts the Application, It Must Evaluate Environmental Effects in an EA or an EIS and Must Provide a Robust Opportunity for Public Participation.

Tusayan’s proposed road maintenance agreement likely will have significant environmental effects that must be thoroughly analyzed as part of a robust public process. Tusayan’s new subdivision apparently cannot be occupied without the road maintenance agreement permitting snow removal. Facilitating traffic on the route year-round will itself have impacts, including increasing traffic in the area, which will result in increased noise and light pollution, disturbance of wildlife at a time when many species need to conserve energy, potential for road kill, etc. The housing development likely will require vegetation clearing as well additional groundwater pumping to service the occupants. The Town apparently intends to build a small sewage treatment plant near or in a floodplain on TenX Ranch that also will have environmental impacts. The subdivision’s environmental impacts — including threats to sensitive species, Grand Canyon National Park, floodplains, and Native American and other cultural resources — therefore would be caused by snow removal; so they must be thoroughly analyzed in either an environmental assessment (EA) or environmental impact statement (EIS).

Moreover, providing winter access and enabling Tusayan to construct a new subdivision increases the burden on the Town to ensure that it will seek the necessary easements to enable Stilo to construct its planned development on the TenX and Kotzin Ranch parcels. At the very least, providing winter access to the TenX parcel substantially increases the likelihood that Stilo will fully develop that parcel in a piecemeal fashion. The environmental impacts of Stilo’s larger development also must be analyzed as effects of the snow removal permit in an EA or an EIS.

If the Forest Service instead concludes that it should apply a NEPA categorical exclusion to the road maintenance agreement, the agency should provide an opportunity for substantial public participation in the NEPA scoping process — as required by NEPA regulations — before making a decision, given the extremely controversial nature of Stilo’s and Tusayan’s attempt to turn these undeveloped parcels into highly developed tourist destinations.

A. Extraordinary Circumstances Preclude the Forest Service’s Use of a Categorical Exclusion.

NEPA requires “that agencies take a “hard look” at environmental consequences” of their actions. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (quoting *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976)). This generally demands that an agency prepare an EIS or an EA before committing resources to an action. *California v. Norton*, 311 F.3d 1162, 1175 (9th Cir. 2002). However, an agency may adopt a “categorical exclusion” for “a category of actions which do not individually or cumulatively have a significant effect on the human environment.” 40 C.F.R. § 1508.4. When actions fit within the definition of a categorical exclusion, an agency need not prepare an EA or an EIS, but only if there are no

“extraordinary circumstances in which a normally excluded action may have a significant environmental effect.” *Id.*; *see also Norton*, 311 F.3d at 1168. If such extraordinary circumstances exist, “a categorically excluded action would nevertheless trigger preparation of an EIS or an EA.” *Norton*, 311 F.3d at 1168. Importantly, “the fact that [extraordinary circumstances] *may* apply is all that is required to prohibit use of the categorical exclusion.” *Id.* at 1177 (emphasis added).

Forest Service regulations require the agency to consider potential effects of the proposed action on various “resource conditions . . . in determining whether extraordinary circumstances related to a proposed action warrant further analysis and documentation in an EA or an EIS.” 36 C.F.R. § 220.6(b)(1). Relevant resource conditions include:

- (i) Federally listed threatened or endangered species . . . or Forest Service sensitive species;
- (ii) Flood plains, wetlands, or municipal watersheds;
- (iii) Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas; . . .
- (vi) American Indians[?] . . . religious or cultural sites; and
- (vii) Archaeological sites, or historic properties or areas.

Id. If a “cause-effect relationship” exists “between the proposed action and the potential effect on these resource conditions,” the Forest Service must determine whether “the degree of the potential effect” may be significant. *Id.* § 220.6(b)(2).

If the responsible official determines, based on scoping,^[5] that it is uncertain whether the proposed action may have a significant effect on the environment, [she must] prepare an EA. If the responsible official determines, based on scoping that the proposed action may have a significant environmental effect, [she must] prepare an EIS.

Id. § 220.6(c).

We understand that the Service is considering applying a categorical exclusion to exclude the proposed road maintenance agreement for snow removal from further environmental analysis and public review.⁶ However, extraordinary circumstances likely (or at least may) apply in this case, prohibiting the use of the categorical exclusion. The increased road use, and construction, occupation, and use of the subdivision enabled and caused by the proposed action may

⁵ As described in Section III.B below, the Forest Service must engage in the NEPA scoping process before applying a categorical exclusion. 36 C.F.R. § 220.4(e).

⁶ We assume the Service would apply the categorical exclusion for “[r]epair and maintenance of roads, trails, and landline boundaries” found in 36 C.F.R. § 220.6(d)(4).

significantly affect sensitive species, floodplains, a municipal watershed, a Congressionally designated area (Grand Canyon National Park), and American Indian religious or cultural sites. And Stilo's proposed development that would be made more likely by snow removal would have even greater, more widespread effects on these and other resources. Accordingly, we respectfully request that the Service prepare an EIS, or at least an EA, to analyze the environmental effects of the proposed snow removal permit. We further request that the Forest Service consider requiring the Town of Tusayan to post a bond to make the Forest Service whole in the event that snow removal, road use, or other related action damages Forest Service resources. *See* 36 C.F.R. § 251.56(e).

1. The Proposed Road Maintenance Agreement Will Enable a Subdivision that May Cause Significant Environmental Effects.

The apparent purpose of the requested road maintenance agreement is to provide winter motorized access to off-the-grid homes the Town plans to construct on a 20-acre parcel within the larger TenX Ranch parcel. The plat for "Ten X Ranch Phase I" contains ten plotted tracts, indicating that ten homes will be constructed in this phase.⁷ Based on discussions during Town Council meetings, a sewage treatment facility apparently will be constructed on the tract adjacent to and at the northeast corner of the housing tract (identified as "Tract B" on the plat map).⁸

The requested road maintenance agreement for snow removal is necessary for these homes to be erected and occupied. Without the permit, Tusayan would not construct the subdivision: units would not be occupied — and sewage treatment facilities would not be built — because homeowners could not be sure they could reach their property in winter. The requested permit therefore is a proximate cause of the subdivision. Because there is a "cause-effect relationship between the proposed action and the potential effect" of the subdivision, the Forest Service must consider the subdivision's environmental effects in determining whether extraordinary circumstances preclude the application of a categorical exclusion. 36 C.F.R. § 220.6(b)(2).

As stated above, important information necessary to assess the subdivision's environmental effects is lacking. The Forest Service should forego processing Tusayan's application until the agency has adequate information to analyze these effects. At the very least, the lack of information makes it "uncertain whether the proposed action may have a significant effect on the environment," thereby requiring the Service to prepare an EA. *Id.* § 220.6(c).

Regardless, any level of development on the TenX parcel likely would present extraordinary circumstances precluding the application of a categorical exclusion. The parcel's development likely would alter a floodplain and may affect special status species, Tusayan's municipal watershed, Grand Canyon National Park, and Native American religious or cultural sites. The Forest Service therefore may not apply a categorical exclusion to Tusayan's request for snow removal and must engage in a comprehensive NEPA analysis.

⁷ Final Plat for Ten X Ranch Phase I (Oct. 5, 2016), attached as Ex. 4.

⁸ *See id.*

a. Special status species

The ecosystem encompassing the proposed subdivision is home to at least one federally listed endangered species and a number of Forest Service sensitive species that may be significantly affected by enabling winter access to the proposed subdivision.⁹ The endangered California condor (*Gymnogyps californianus*) is found in the area.¹⁰ Several other raptors on the Forest Service's sensitive species list also are present in or near the project area, including northern goshawks (*Accipiter gentilis*), peregrine falcons (*Falco peregrinus anatum*), and bald eagles (*Haliaeetus leucocephalus*).¹¹ The area is home to at least three sensitive bat species: Pale Townsend's big-eared bat (*Corynorhinus townsendii pallescens*), spotted bat (*Euderma maculatum*), and Allen's lappet-browed bat (*Idionycteris phyllotis*).¹² Two special status plants — clustered leather flower (*Clematis hirsutissima*) and Tusayan flameflower (*Phemeranthus validulus*) — were found on and near the TenX Ranch parcel during previous surveys.¹³ Other plants of special concern, such as Tusayan Rabbitbrush (*Chrysothamnus molestus*), Fickeisen pincushion cactus (*Pediocactus peeblesianus var. fickeiseniae*), and endangered sentry milkvetch (*Astragalus cremnophylax var. cremnophylax*), also may occur in the area.¹⁴ Development of the proposed subdivision, and the increased motor vehicle use, noise, and lights caused by the road maintenance agreement, may significantly affect one or more of these special status species.¹⁵ Extraordinary circumstances thus may exist, thereby precluding application of a categorical exclusion.

⁹ See Comments of National Parks Conservation Association, Grand Canyon Trust, Sierra Club, and Center for Biological Diversity on the Town of Tusayan Proposed Roadway Easements (Project #46776), at 53–55 (June 1, 2015) [hereinafter Scoping Comments], attached as Ex. 5.

¹⁰ *Id.*

¹¹ U.S. Forest Serv. Region 3, Regional Forester's Sensitive Species: Animals (2013), http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsbdev3_021328.pdf. The Kaibab National Forest plan includes specific protections for northern goshawks, peregrine falcons, and golden eagles (*Aquila chrysaetos*). U.S. Forest Serv., Land and Resource Management Plan for the Kaibab National Forest 49–52 (2014).

¹² Regional Forester's Sensitive Species: Animals.

¹³ U.S. Forest Service, Final EIS for Tusayan Growth 207–08, 327 (PDF pages 275–76, 400) (Aug. 6, 1999), attached as Ex. 6.

¹⁴ See U.S. Forest Serv. Region 3, Regional Forester's Sensitive Species: Plants (2013), http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsbdev3_021246.pdf.

¹⁵ The TenX parcel also provides important habitat to Arizona Species of Economic and Recreation Importance. Elk and pronghorn calving areas have been identified on the southern portion of the TenX parcel, and a deer fawning area has been identified adjacent to the parcel. Tusayan Growth EIS, at 197, 201–04 (PDF pages 266–71) (Ex. 6). The subdivision's direct and indirect impacts on these habitats likely would negatively affect these species.

b. Floodplains and municipal watersheds

Forest Road 302 appears to cross drainages and floodplains between SR 64 and the TenX Ranch parcel.¹⁶ Moreover, most of the TenX parcel the Town plans to develop sits in the bottomlands of Coconino Wash, a Zone A floodplain.¹⁷ At least parts of TenX Ranch are designated as special flood hazard areas.¹⁸ The proposed TenX Ranch subdivision also sits within Tusayan's municipal watershed.¹⁹ The Town is proposing to build a wastewater treatment plant of some kind near the development, which could affect waters and waterbodies.

The proposed subdivision, especially the roads necessary to access the homes, may require filling washes or other intermittent water bodies, or bridge construction in waters of the United States. In addition, the development could increase flooding in the area and alter floodplain hydrology.²⁰ The development caused by the proposed road maintenance agreement for snow removal therefore may significantly affect floodplains, wetlands, and a municipal watershed, precluding application of a categorical exclusion.

c. Grand Canyon National Park

The proposed subdivision may have environmental effects that extend into nearby Grand Canyon National Park. For example, the development and increased motor vehicle use in the area may affect wildlife moving to or from the Park, or runoff into the Park.²¹ Housing development also may cause increased drawdown of aquifers in the Park. This is especially so because the Town has yet to identify a water source for the homes. The increased population and water use may require additional well pumping, thereby placing greater stress on aquifers that feed springs in Grand Canyon. The potential significant effects on Grand Canyon National Park present extraordinary circumstances that bar application of a categorical exclusion.

¹⁶ See U.S. Forest Serv., TenX Ranch Access (May 2015), attached as Ex. 7.

¹⁷ EnviroSystems Mgmt., Inc., Cultural Resources Inventory of a 20-Acre TenX Ranch Parcel for the Town of Tusayan, Coconino County, Arizona, at 1 (July 29, 2016) [hereinafter Cultural Resources Inventory], attached as Ex. 8.

¹⁸ Stilo Dev. Group USA, LP, TenX Ranch, Applicant's Narrative Report, Planned Community District Zoning Submittal to Town of Tusayan Arizona, at 27 (as resubmitted Sept. 26, 2011), attached as Ex. 9.

¹⁹ See Grand Canyon National Park, Issues and Concerns Regarding Proposed Groundwater Developments Near the South Rim, Grand Canyon National Park, at 9, App. A (June 6, 2012), attached as Ex. 10.

²⁰ Flooding has been an ongoing issue in Tusayan. The Forest Service recently stated that "in the absence of development of a comprehensive stormwater management plan and appropriate stormwater management facilities in town, nuisance flooding will likely remain problematic in Tusayan." Kaibab National Forest, Decision Notice and Finding of No Significant Impact, Tusayan Flood Reduction Project, Tusayan Ranger District, at 4 (Sep. 7, 2013), attached as Ex. 11.

²¹ See generally Scoping Comments (Ex. 5).

d. Native American cultural resources

The area in and near the proposed subdivision falls within the traditional use areas of the Southern Paiute, Hualapai, Havasupai, Hopi, Navajo, Yavapai, and Pueblo of Zuni.²²

“Traditional territories themselves are not simply areas on a map, but ‘homelands’ with intrinsic connections between the landscape, culture, and history.”²³ Navajo Cultural Landscape, American Indian Trails, and traditional use areas and seasonal camps have been located in the parcel’s vicinity.²⁴ A cultural resources survey paid for by the Town to assess the potential impact of the housing development stated:

Tusayan Ruin, also within the boundary of Grand Canyon National Park and not far north of TenX Ranch, is a solid indicator of later Puebloan groups occupying the region (Reid and Whittlesey 1997). It seems certain that the protohistoric/historic Hopi and Havasupai tribal groups also recognized the area as part of their ancestral homelands, using it as a resource exploitation zone and for seasonal agricultural development (Reid and Whittlesey 1997; ASU 2010).²⁵

The report does not indicate that its preparers sought to contact tribes who have ancestral ties to the area. The proposed development may impact Indians’ use of traditional cultural and religious sites, presenting extraordinary circumstances that preclude application of a categorical exclusion.

2. *The Proposed Road Maintenance Agreement Increases the Likelihood that Stilo Will Construct a Massive Residential and Commercial Development that May Cause Significant Environmental Effects.*

Tusayan’s proposed 10-house subdivision appears to be a precursor for larger development on the TenX parcel. For one, rather than providing direct access from FR 302 to the subdivision, the Town apparently will build a grid of at least three roads around the subdivision.²⁶ This road alignment seems to suggest that the grid is being built in anticipation of providing access to additional development on the parcel. In fact, the deed that Stilo will convey to Tusayan for the Town’s portion of the TenX parcel allows the Town to construct up to 20 homes on the parcel.²⁷

²² See Bureau of Land Mgmt., Northern Arizona Proposed Withdrawal, Final Environmental Impact Statement 3-214 (2011), attached as Ex. 12; see also Cultural Resources Inventory, at 5 (Ex. 8).

²³ SWCA Environmental Consultants, Class I Cultural Resources Overview for the Northern Arizona Proposed Withdrawal on the Bureau of Land Management Arizona Strip District and the Kaibab National Forest, Arizona 138 (Feb. 2011), attached as Ex. 13.

²⁴ *Id.* at 138–40.

²⁵ Cultural Resources Inventory, at 5, (Ex. 8).

²⁶ See Final Plat (Ex. 4).

²⁷ Special Warranty Deed with Reverter ¶ 2 (Ex 3).

In addition, there are indications that the Town intends to apply to the Forest Service for utility easements to service the houses once they are built, perhaps by claiming hardship if utilities are not provided.²⁸ A utility easement would enable Stilo to construct its much larger residential and commercial development on the TenX parcel, bringing with it the substantial environmental effects raised in our NEPA Scoping Comments on Tusayan’s previous easement application. Indeed, the Forest Service rejected Tusayan’s application for rights-of-way for internet and other utilities in large part because they were likely to lead to Stilo’s massive commercial and residential development of the TenX and Kotzin parcels. Tusayan’s proposed 10-home subdivision and request for winter access thus appears to be the camel’s nose under the tent to leverage access necessary for the massive Stilo development.

Indeed, the Pre-Annexation and Development Agreement between Tusayan and Stilo requires the Town to seek easements from the Service and “use reasonable efforts to expedite U.S. Forest Service review” in exchange for land on which to construct Town housing.²⁹ And the deed to the Town for its portion of the TenX parcel prohibits the Town from constructing more than 20 homes until it has obtained easements from the Forest Service for Stilo’s larger development, giving the Town extra incentive to seek the easements.³⁰ Therefore, the larger Stilo development on both the TenX and Kotzin properties necessarily is connected to Tusayan’s development of the subdivision. Enabling the subdivision construction by granting a road maintenance agreement for snow removal increases the Town’s burden to obtain easements for Stilo’s development, thereby making that larger development more likely. The Forest Service must consider this effect when determining whether extraordinary circumstances preclude application of a categorical exclusion. *See Ctr. for Biological Diversity v. Salazar*, 791 F. Supp. 2d 687, 703 (D. Ariz. 2011) (requiring agency to consider cumulative effects of action before applying categorical exclusion), *aff’d*, 706 F.3d 1085 (9th Cir. 2013).

Stilo’s massive residential and commercial development likely will have many of the same types of effects on resource conditions as Tusayan’s smaller subdivision, but with significantly larger

²⁸ *See* Tusayan’s Future, Comment to Tusayan’s Future, Find out why Tusayan is continuing the fight for housing, jobs and opportunity., FACEBOOK (June 1, 2016), <https://www.facebook.com/tusayansfuture/>, attached as Ex. 14; L. Yerian, *Commercial development moves forward in Tusayan* (Ex. 1) (quoting Forest Service spokesperson: “Town representatives have talked to the Kaibab National Forest about the possibility of a fiber optic line for enhanced internet and road maintenance agreements for access to private parcels”).

²⁹ First Amendment to Pre-Annexation and Development Agreement, Agreement No. 2011-11-02, Between the Town of Tusayan, an Arizona municipal corporation, and Stilo Development Group USA, LP, at 3 (Jan. 22, 2014), excerpt attached as Ex. 15. The most recent amendment to the agreement requires the Town to “seek judicial review” if the Forest Service rejects the easement application, as the Service did on March 4, 2016. Second Amendment to Pre-Annexation and Development Agreement, at 2 (Ex. 2).

³⁰ Special Warranty Deed with Reverter ¶ 2 (Ex. 14). Tusayan’s deed to its portion of the Kotzin Ranch parcel for Town housing requires the Town to have obtained the broader easements before it may construct *any* housing on that parcel. Kotzin Special Warranty Deed with Reverter ¶ 2, recorded March 11, 2014, attached as Ex. 16.

magnitudes. Stilo's development may also have many additional substantial effects on the area's resources, as described in our earlier Scoping Comments. In addition, the development's environmental effects cannot be adequately analyzed without more information. The Forest Service should either decline Tusayan's road maintenance agreement proposal until Stilo provides more information about its development, or, at least, prepare an EA or an EIS to assess the potential impacts of development.³¹ Ultimately, we believe any Forest Service action which seeks to facilitate Stilo's massive development threatens a variety of resources, including and especially those of Grand Canyon National Park, and is therefore not in the public interest and should be denied.

B. The Service Must Provide an Opportunity for Substantial Public Participation Before Applying a Categorical Exclusion.

If the Forest Service decides to process Tusayan's road maintenance agreement without preparing an EA or an EIS, it nevertheless must provide an opportunity for substantial public participation prior to applying a categorical exclusion, in accordance with NEPA regulations. The Service's regulations state that "[s]coping is required for all Forest Service proposed actions, including those that would appear to be categorically excluded." 36 C.F.R. § 220.4(e)(1). "Scoping shall be carried out in accordance with the requirements of 40 CFR 1501.7." *Id.* § 220.4(e)(2). That provision requires the Service to "[i]nvite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds)." 40 C.F.R. § 1501.7. The Service must use the scoping process to determine whether an EA or an EIS must be prepared because extraordinary circumstances are uncertain or are possible. 36 C.F.R. § 220.6(c).

The undersigned are "interested persons" and accordingly request that the Forest Service invite the undersigned groups to participate in the NEPA scoping process for Tusayan's requested road maintenance agreement. We request to be provided with notice when the Forest Service commences the NEPA process, and with copies of Tusayan's application, any supporting documentation, and any relevant NEPA documents. *See* 40 C.F.R. § 1506.6(b)(1). We also request that the public be given at least 30 days to submit comments to the Forest Service on the proposal, the proposal's environmental effects, and the propriety of applying a categorical exclusion.

In addition, we urge the Forest Service to notify and invite the participation of all those individuals and organizations who provided comments on the Town of Tusayan's previously proposed road easements, for which scoping occurred in the spring of 2015. Given that the road maintenance agreement proposal and housing development would occur in the same area as, is contractually interrelated with, and will make more likely Stilo's massive commercial and residential development, those who commented on the road easements already have expressed an interest in this area and in similar impacts to the region. The Hopi, Havasupai, and other American Indian tribes should be identified as interested parties, as should Grand Canyon

³¹ *See* Scoping Comments, at 17–20 (Ex. 5).

National Park, the Environmental Protection Agency, and state and local water quality and quantity regulators.

We further urge the Forest Service to notify the public of the opportunity to comment on any proposed categorical excluded for this project by issuing a press release, posting the release conspicuously on the Kaibab National Forest's website, providing the release to area and state-wide media, and including the proposal on its "Schedule of Proposed Actions" on the Forest's website. Such measures will ensure broad public notice and public involvement.

Thank you for your attention to this matter. We look forward to your reply. If you have any questions about this issue, please call Chris Eaton at (303) 996-9616.

Sincerely,



Christopher D. Eaton, Associate Attorney
Edward B. Zukoski, Staff Attorney

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cc: The Hon. Rex Tilousi, Chairman, Havasupai Tribe
The Hon. Ann Kirkpatrick, U.S. House of Representatives
The Hon. Sally Jewell, Secretary, Department of the Interior
Mr. Michael Bean, Principal Ass't Sect'y for Fish, Wildlife and Parks, Dep't of the Interior
Mr. Jonathan Jarvis, Director, National Park Service
Ms. Sue Masica, Regional Director, Intermountain Region, National Park Service
Ms. Christine Lehnertz, Superintendent, Grand Canyon National Park
Mr. Robert Bonnie, Under Secretary for Natural Resources & Environment, U.S. Dep't of Agriculture
Mr. Tom Tidwell, Chief, U.S. Forest Service
Mr. Cal Joyner, Regional Forester, Southwest Region, U.S. Forest Service
Mr. Art Babbott, Coconino County Board of Supervisors
Mr. Craig Sanderson, Mayor, Town of Tusayan
Ms. Margaret J. Vick, General Counsel, Havasupai Tribe

TABLE OF EXHIBITS

Exhibit #	Description
1	L. Yerian, Commercial development moves forward in Tusayan, Grand Canyon News (June 7, 2016)
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4	Final Plat for Ten X Ranch Phase I (Oct. 5, 2016)
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6	U.S. Forest Service, Final EIS for Tusayan Growth (Aug. 6, 1999)
7	U.S. Forest Serv., TenX Ranch Access (May 2015)
8	EnviroSystems Mgmt., Inc., Cultural Resources Inventory of a 20-Acre TenX Ranch Parcel for the Town of Tusayan, Coconino County, Arizona (July 29, 2016)
9	Stilo Dev. Group USA, LP, TenX Ranch, Applicant’s Narrative Report, Planned Community District Zoning Submittal to Town of Tusayan Arizona (as resubmitted Sept. 26, 2011)
10	Grand Canyon National Park, Issues and Concerns Regarding Proposed Groundwater Developments Near the South Rim, Grand Canyon National Park (June 6, 2012)
11	Kaibab National Forest, Decision Notice and Finding of No Significant Impact, Tusayan Flood Reduction Project, Tusayan Ranger District (Sep. 7, 2013)
12	Bureau of Land Mgmt., Northern Arizona Proposed Withdrawal, Final Environmental Impact Statement (2011)
13	SWCA Environmental Consultants, Class I Cultural Resources Overview for the Northern Arizona Proposed Withdrawal on the Bureau of Land Management Arizona Strip District and the Kaibab National Forest, Arizona (Feb. 2011)
14	Tusayan’s Future, Comment to Tusayan’s Future, Find out why Tusayan is continuing the fight for housing, jobs and opportunity., FACEBOOK (June 1, 2016)
15	Except from First Amendment to Pre-Annexation and Development Agreement, Agreement No. 2011-11-02, Between the Town of Tusayan, an Arizona municipal corporation, and Stilo Development Group USA, LP (Jan. 22, 2014)
16	Kotzin Special Warranty Deed with Reverter, recorded March 11, 2014