

**WILLIAM P. RING**  
COCONINO COUNTY ATTORNEY  
110 E. CHERRY AVENUE  
FLAGSTAFF, ARIZONA 86001-4627  
(928) 679-8200

1 **WILLIAM P. RING**  
2 **COCONINO COUNTY ATTORNEY**  
3 Brian Y. Furuya (State Bar No. 025486)  
4 Deputy County Attorney  
5 110 E. Cherry Ave.  
6 Flagstaff, Arizona 86001  
7 T: (928) 679-8200  
8 F: (928) 214-6115  
9 [bfuruya@coconino.az.gov](mailto:bfuruya@coconino.az.gov)  
10 *Attorneys for Coconino County Flood Control District*

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
8 **IN AND FOR THE COUNTY OF COCONINO**

9 COCONINO COUNTY FLOOD  
10 CONTROL DISTRICT, a political  
11 subdivision of the State of Arizona,  
12  
13 Plaintiff,  
14  
15 v.  
16  
17 TOWN OF TUSAYAN, an Arizona  
18 municipal corporation,  
19  
20 Defendant.

Case No. CV2018-00616

**PRELIMINARY INJUNCTION  
ORDER**

(Assigned to Hon. Cathleen Brown Nichols;  
Division 5)

17 **THIS MATTER**, having come before the Court upon the Plaintiff's application, and  
18 after review of the pleadings and the Parties' Stipulation for Entry of Injunctive Orders, and  
19 being advised in the premises, now therefore, based upon the Parties' stipulation and  
20 agreement and for good cause:

21 *////*

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1 **THE COURT FINDS AND CONCLUDES AS FOLLOWS:**

- 2 1. The Court has subject matter jurisdiction over this matter by virtue of A.R.S. §§ 12-  
3 122, 12-123; 12-1801; 48-3613; and 48-3614. The Court has personal jurisdiction  
4 over the Defendant due to their presence in Coconino County at all times relevant to  
5 this matter, and also due to their appearance in this case.
- 6 2. The Defendant, Town of Tusayan (the “Town”), owns that certain parcel of real  
7 property (the “Subject Property”), known generally as Coconino County Assessor’s  
8 Parcel No. 502-14-001B.
- 9 3. The Subject Property is situated approximately 2.5 miles southeast of the Town, and  
10 comprises approximately 20.07 acres of land originally associated with the “Ten X  
11 Ranch,” and which Subject Property was annexed within the corporate boundary  
12 limits of the Town on or about October 18, 2012 by the Town’s Ordinance No.  
13 2011-11-02-01.
- 14 4. The Plaintiff, Coconino County Flood Control District (the “District”), is the entity  
15 with regulatory jurisdiction over those “Watercourses” and “Floodplains” located  
16 within the Subject Property, pursuant to A.R.S. § 48-3603.
- 17 5. The Town’s Ordinance 2018-01 is the subject of an effective referendum petition,  
18 and the Town, therefore, has *not* validly assumed jurisdiction over floodplain  
19 administration, pursuant to A.R.S. § 48-3610.
- 20 6. The Subject Property, by virtue of its location and the topography of the  
21 surrounding area, is upstream from the Town.

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- 1 7. Portions of the Subject Property contain, and are encumbered by, a Federal  
2 Emergency Management Agency (“FEMA”) Zone A Special Flood Hazard Area,  
3 per Flood Insurance Rate Map 04005C3850G.
- 4 8. The boundaries of the Subject Property contain a portion of the so-called “Coconino  
5 Wash” and a portion of at least one tributary to the Coconino Wash, which  
6 Coconino Wash and its tributaries are “Watercourses,” as that term is specifically  
7 defined by A.R.S. § 48-3601(12).
- 8 9. That those areas within the Subject Property that have been designated as Zone A  
9 Special Flood Hazard Area are within a “Floodplain,” as that term is specifically  
10 defined by A.R.S. § 48-3601(6).
- 11 10. The District alleges violation of A.R.S. §§ 48-3613(A) and 48-3615(A), as well as  
12 provisions and requirements of the Coconino County Zoning Ordinance, Section  
13 2.15B: FPM—Floodplain Management Overlay Zone (the “County Floodplain  
14 Regulations”), ¶¶ 2 and 4.
- 15 11. The Town has engaged in development of the Subject Property as workforce  
16 housing that has resulted in modification, excavation, grading, fill, compaction,  
17 construction, and other alteration of the Watercourses and Floodplains situated  
18 within the boundaries of the Subject Property (“Development Work”).
- 19 12. The Town did not, and has not, obtained a valid floodplain use permit or any other  
20 written authorization for any of this said Development Work at the Subject Property  
21 from the District.

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- 1 13. The work already done by the Town at the Subject Property has diverted, retarded,  
2 and/or obstructed the flow of waters within the Watercourses and Floodplain  
3 located within the Subject Property.
- 4 14. Insufficient study and data were provided to the District, via the preliminary reports  
5 for the Town's project at the Subject Property, to properly evaluate the effect of the  
6 Town's work within the Floodplain, and/or to develop proper flood control  
7 measures and/or flood resistant structures.
- 8 15. The failure to provide sufficiently comprehensive and reliable data and analysis  
9 with regard to the Development Work being performed by the Town at the Subject  
10 Property poses a potential public safety risk.
- 11 16. The Town's development activities at the Subject Property are a violation of the  
12 above-referenced provisions of the Arizona Revised Statutes and the County  
13 Floodplain Regulations, and are a public nuisance *per se*.
- 14 17. The safety and welfare of the public require that the Court issue an injunction in this  
15 case under the terms agreed to by the parties.
- 16 18. There is no doubt that there is a likelihood of irreparable harm if Defendant is not  
17 enjoined from its present development activities and Plaintiff will likely succeed on  
18 the merits of its claims.
- 19 Upon due consideration, and based upon the stipulation and agreement of the Parties herein,  
20 and in satisfaction of the requirements and provisions of Rule 65(d)(1) of the Arizona Rules  
21 of Civil Procedure,

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1 **IT IS HEREBY ORDERED:**

- 2 1. The Defendant Town of Tusayan shall cease any and all actions whereby the Town  
3 purports to act as floodplain administrator, until such time as the Town validly and  
4 finally assumes jurisdiction over the Floodplains within its corporate boundaries  
5 pursuant to A.R.S. § 48-3610.
- 6 2. The District shall have continuing jurisdiction to enforce the Arizona Revised  
7 Statutes and County Floodplain Regulations to correct the Town's current violations  
8 thereof at the Subject Property as described in this Injunctive Order and in the  
9 Complaint filed in this action, regardless of the outcome of any future resolution,  
10 action, or referendum by the Town to assume jurisdiction over the Floodplains within  
11 its corporate boundaries.
- 12 3. Within 10 days of the filing of this Order, the Town shall inform the Arizona  
13 Department of Real Estate and the Arizona Department of Water Resources, in  
14 writing, that it acknowledges and accepts that the District is, and shall remain, the  
15 effective Floodplain Administrator, with continuing jurisdiction over any  
16 development or modification of the Watercourses and Floodplain within the Subject  
17 Property to remedy the current violations.
- 18 4. The Town shall design and propose to the District mitigation measures that  
19 effectively restore the conveyance and water storage capacity of the Watercourses  
20 hydraulically connected to Coconino Wash and its tributary within the Subject  
21 Property, and which will, in the sole and exclusive opinion and discretion of the

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1 District (which discretion shall be reasonably exercised), be sufficient to acceptably  
2 minimize flooding danger by reasonably approximating the hydraulic and  
3 hydrological pre-disturbance condition of the Subject Property. Once installed, such  
4 mitigation measures are to remain present, operative, and unchanged until such time  
5 as the Town obtains a Conditional Letter of Map Revision (“CLOMR”) from FEMA,  
6 and a floodplain use permit is issued by the District to the Town for any future work  
7 at the Subject Property. Nothing herein shall be construed as prohibiting work  
8 limited to the purpose of repairing and/or maintaining mitigation structures (as those  
9 mitigation structures are described in this Paragraph 4 and its subparagraphs), which  
10 repairs and/or maintenance must first be authorized by the District. Authorization for  
11 repair and/or maintenance shall be in the sole and exclusive discretion of the District,  
12 which discretion shall be exercised reasonably. The proposal, installation, and  
13 documentation of these mitigation structures shall proceed as follows:

- 14 a. The proposal from the Town must include a map of the work areas within the  
15 site, channel and basin details, typical details, and hydrologic and hydraulic  
16 calculations.
- 17 b. The Town must provide to the District a schedule of construction activities,  
18 and must participate with the District in weekly construction meetings until  
19 the proposed mitigation measures are completed.
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- c. Sufficient detail must be provided in the proposal plans to inform the District and construction contractor of the nature, quantity, and specifications of the work.
- d. Storm water storage (detention) shall be provided on-site at those locations on the Subject Property where stock tanks were situated prior to the Town's alteration of the Subject Property. The storage provided shall, at a minimum, be equal to the volume of storage that was historically available prior to the Town's work at the Subject Property. Impoundment and outlet structures shall be constructed with the integrity needed to ensure sufficient longevity and soundness to persist and properly function during the entire period of submission and review prior to the issuance of both a CLOMR by FEMA, as well as issuance of a floodplain use permit for Development Work to continue at the site by the District.
- e. Off-line (i.e., outside of the flow lines of Coconino Wash and the tributary) storm water storage shall be provided to a level which ensures that no additional runoff and sediment will leave the Subject Property in the current condition, as compared to the pre-developed condition.
- f. The storm water impoundment created by the entrance road recently developed by the Town at the Subject Property shall be eliminated, and the capacity of the restored channel shall be sufficient to pass flows in a nature consistent with the pre-disturbance condition of the Subject Property.

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- 1 g. The District will review and approve or deny these said mitigation proposals  
2 according to its sole and exclusive discretion, which discretion shall be  
3 exercised reasonably.
- 4 h. No preparations, installation, or other construction or work at the Subject  
5 Property will be done prior to the District's approval of the designs of the  
6 Town's proposal.
- 7 i. Once the District approves the Town's proposed mitigation measures, the  
8 Town will within one business day commence installing these proposed  
9 mitigation measures at the Subject Property only according to the approved  
10 designs.
- 11 j. As-built plans must be created and certified by the Town's design engineer  
12 and shall be provided to the District within 15 business days of completion of  
13 the immediate mitigation work.
- 14 k. The safety of the site and on-going maintenance of the Town's "Stormwater  
15 Pollution Prevention Plan" shall remain the responsibility of the Town.
- 16 5. Following complete installation of the above-described mitigation measures, the  
17 Town will halt any and all further Development Work at the Subject Property, until  
18 specified otherwise herein or by further order of this Court. Nothing in this  
19 Paragraph 5 shall be construed as preventing the Town from performing work limited  
20 to the purpose of repairing and/or maintaining mitigation structures, which repairs  
21 and/or maintenance must first be authorized by the District. Authorization for repair



1 and/or maintenance shall be in the sole and exclusive discretion of the District, which  
2 discretion shall be exercised reasonably.

3 6. During the pendency of this action, the District is granted the right to enter the  
4 Subject Property at any time, to perform routine inspections as the mitigation work is  
5 being performed, in order to ensure that work is being accomplished according to  
6 approved plans and schedules, and also to ensure that no unauthorized Development  
7 Work is being performed.

8 7. The Town shall indemnify and defend the District from any and all damages deriving  
9 from, and/or related to, any of the Town's work at the Subject Property except to the  
10 extent such damages result -from the negligent or wrongful acts of the District. In  
11 any third party action against the District related to work on the subject property, the  
12 Town shall bear the cost of defense for the District.

13 8. With regard to its proposed development of the Subject Property, within one (1)  
14 business day following the issuance of this Preliminary Injunction Order, the Town  
15 shall concurrently pursue both a CLOMR from FEMA and a floodplain use permit  
16 from the District. The Town shall not resume or perform any Development Work at  
17 the Subject Property, unless and until the Town has received both of these  
18 authorizations.

19 a. The Town acknowledges, understands, and agrees that it must fully and  
20 completely comply with all requirements imposed by the District as part of its  
21 permit application process as a precondition to issuance of a floodplain use

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1 permit, including but not limited to: conducting, creation, and submission of a  
2 full hydrologic and hydraulic study of the Coconino Wash and the relevant  
3 tributary; completion and submission of all application paperwork; submission  
4 of any and all further studies, calculations, data, analysis, and other materials  
5 requested by District staff as necessary or useful to allow District staff to  
6 adequately assess and review the Town's request; and payment of all  
7 associated fees and costs, including without limitation, the application fee and  
8 all costs and/or fees associated with third-party review of the Town's  
9 applications and proposals referred to herein.

10 b. Nothing in this Paragraph 8 shall be construed as preventing the Town from  
11 performing work limited to the purpose of repairing and/or maintaining  
12 mitigation structures, which repairs and/or maintenance must first be  
13 authorized by the District. Authorization for repair and/or maintenance shall  
14 be in the sole and exclusive discretion of the District, which discretion shall be  
15 exercised reasonably.

16 9. The Court retains continuing jurisdiction over this matter to monitor compliance with  
17 its Orders and to grant other and further relief as necessary.

18 10. Pursuant to Rule 65(d)(2) of the Arizona Rules of Civil Procedure, the Defendant, its  
19 officers, agents, servants, employees, and attorneys, as well as any other person(s)  
20 who are in active concert or participation with any of these, and who receive actual  
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notice of this Preliminary Injunction Order are bound to observe and comply with the foregoing provisions and orders.

11. This Order shall be served upon the Defendant and any person(s) participating with or acting in concert with the Defendant by personal service, or by any other means reasonably calculated to provide such persons with actual notice hereof.

DATED this \_\_\_ day of February, 2019.

**BY THE COURT**

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Hon. Cathleen Brown Nichols  
Superior Court Judge, Div. V

# MITIGATION GRADING PLANS

FOR  
**10X RANCH**  
 LOCATED IN THE S 1/2 OF THE NE 1/4 OF THE SE 1/4 OF SECTION 29  
 TOWNSHIP 30 NORTH, RANGE 03 EAST OF THE GILA & SALT RIVER MERIDIAN  
 COCONINO COUNTY, ARIZONA

**QUANTITIES**

8 MODULAR COBBLE PER MAP ON FILTER FABRIC 1,300 SF

**ESTIMATED EARTHWORK QUANTITIES:**  
 (NOT TO BE USED FOR BIDDING PURPOSES. CONTRACTOR IS RESPONSIBLE FOR HIS OWN CUT & FILL QUANTITIES)

RAW QUANTITIES	Q11(CX1)	115
NET:	13381	

NOTE: THESE ESTIMATED QUANTITIES HAVE NOT BEEN ADJUSTED FOR GROUND LOSS OR SPRAWNAGE.

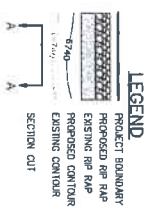
**FEMA FIRM PANEL STATEMENT**

THE TUSANAI DEVELOPMENT SITE IS WITHIN FIRM ZONE X AND A DESIGNATION, ZONE X B DESIGN AS AREAS WITH 0.2% ANNUAL CHANCE OF FLOOD AREAS OF 1% ANNUAL CHANCE OF FLOOD AREAS WITH 0.02% ANNUAL CHANCE OF FLOOD AREAS. THE FLOOD PROTECTION STANDARD FOR AREAS PROTECTED BY LEVEES FROM 1% ANNUAL CHANCE FLOOD ZONE A IS SUBJECT TO MODIFICATION BY THE 1% ANNUAL FLOOD (100-YEAR FLOOD) IN ANY GIVEN YEAR, AS DESCRIBED ON FLOOD INSURANCE RATE MAP 44005C025505 DATED SEPTEMBER 3, 2010 FOR COCONINO COUNTY, AZ.

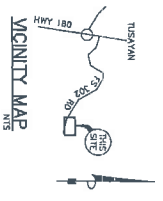
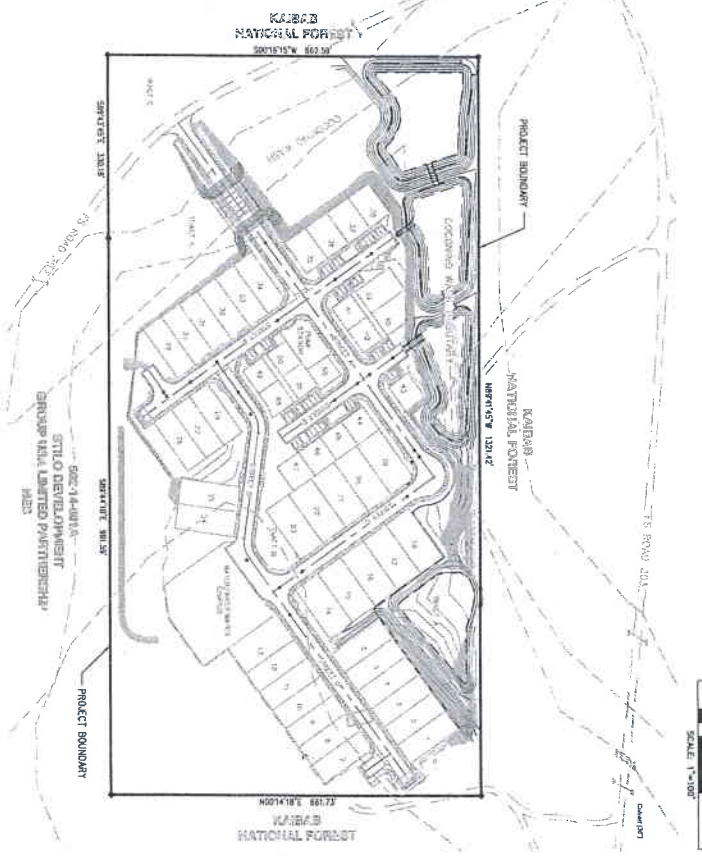
NOTE: THE FLOOD BOUNDARY SHOWN ON THE CURRENT FIRM PANEL DOESN'T ACCURATELY REPRESENT THE EXISTING TERRAIN. A LETTER OF MAP REVISION WILL BE FILED AS A PART OF THIS PROJECT TO UPDATE THE FLOOD PANEL DATA.

**MANUALS AND STANDARDS**

AND STANDARD DETAILS, 2010 (VERSION TO THE 2015 EDITION)



ALL WORK TO BE COMPLETED IN CONFORMANCE WITH THE TOWNSHIP'S WORKS AND THE TOWNSHIP'S ENGINEERING DEPARTMENT'S SPECIFICATIONS FOR THE TOWN OF TUSANAI. THE TOWNSHIP ENGINEERING DEPARTMENT'S SPECIFICATIONS FOR THE TOWN OF TUSANAI ARE AVAILABLE AT THE TOWN ENGINEERING DEPARTMENT, 100 WEST WASHINGTON STREET, TUSANAI, ARIZONA 86045.



**OWNER/DEVELOPER**

TOWN OF TUSANAI  
 PO BOX 704, 815 WESTING DRIVE  
 TUSANAI, AZ 86045  
 (928) 634-4800  
 CONTACT: ERIC D. H. WILLIAMS  
 EMAIL: TUSANAI@TUSANAI.AZ.GOV

**CIVIL**

BOWMAN CONSULTING  
 1225 N. WASHINGTON STREET, SUITE 108  
 TUSANAI, AZ 86045  
 PHONE: (480) 624-8820  
 MATTIEFER & CANEY, P.E.  
 MCMATTEFER@BOWMANCONSULTING.COM  
 EMAIL: TUSANAI@BOWMANCONSULTING.COM

**SHEET INDEX**

C-101	COVER SHEET	APX LAND SURVEY
C-102	SECTION BRANES	APX LAND SURVEY
C-103	SECTIONS	WILLIAMS, AZ BR016

**BENCHMARK**

THE DATUM FOR THIS PROJECT WAS DERIVED FROM AN OPUS SOLUTION (OPUS1169783728M), A SECONDARY ELEVATION CHECK WAS MADE BY LOCATING THE BENCHMARK LONG AN (NO BRANCH), WITH AN ELEVATION DIFFERENCE OF 0.01.

**BASIS OF BEARING**

THE MAGNETICAL CORRECTION DATA USED FOR THIS PROJECT IS ADORDED STATE PLANE COORDINATES, ALSO ESTABLISHED FROM THE OPUS SOLUTION, AND SCALED ABOUT CONTROL POINT NO. 1.

**PROJECT INFORMATION**

PROJECT FRACNEL NUMBER: 502-14-400  
 RES: 20.072 AC  
 GROSS AREA: 32  
 TOTAL NUMBER OF LOTS: 3  
 TOTAL NUMBER OF UNITS: 3

**FIELD SURVEY**

DATE COMPLETED: APRIL 19, 2010

**LEGAL DESCRIPTION**

LOT 1  
 A PART OF LAND SITUATED WITHIN SECTION 29, TOWNSHIP 30 NORTH, RANGE 03 EAST OF THE GILA AND SALT RIVER MERIDIAN, COCONINO COUNTY, ARIZONA, BEGINNING AT THE N-S 1/4 CORNER OF SAID SECTION 29, BEING A BLM BRASS CAP, THENCE ALONG THE NORTH LINE OF THE SOUTH HALF OF THE NEAREST SECTION 29, BEING A BLM BRASS CAP, THENCE S89°44'17.2" E A DISTANCE OF 130.278 FEET TO A BRASS CAP, THENCE S89°44'17.2" E A DISTANCE OF 852.4 FEET TO A BRASS CAP, THENCE S89°44'17.2" E A DISTANCE OF 1241.9 FEET, THENCE N01°13'58.1" E A DISTANCE OF 601.49 FEET, TO THE POINT OF BEGINNING.

**AS-BUILT CERTIFICATION:**  
 I, THE UNDERSIGNED, ENGINEER, HEREBY CERTIFY THAT THE WORK SHOWN HEREON WAS MADE UNDER MY SUPERVISION OR AS NOTED AND ARE CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

REGISTERED ENGINEER/LAND SURVEYOR \_\_\_\_\_ DATE \_\_\_\_\_  
 ORGANIZATION NO. \_\_\_\_\_  
 APPROVED BY: \_\_\_\_\_ DATE \_\_\_\_\_  
 COCONINO COUNTY ENGINEER \_\_\_\_\_ DATE \_\_\_\_\_  
 COCONINO COUNTY DEPARTMENT OF PUBLIC WORKS \_\_\_\_\_  
 APPROVAL EXPIRES: \_\_\_\_\_ DATE \_\_\_\_\_



**REVISIONS**

NO.	BY	DESCRIPTION	APP'D.	DATE

10X RANCH  
 MITIGATION GRADING PLANS  
 COVER SHEET

PLAN DATE: JANUARY 24, 2010  
 PROJECT NUMBER: 050510-01-003  
 SHEET NO.: C-101  
 1 OF 3





