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VALERIE WYANT  
Clerk of the Superior Court

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5 110 E. Cherry Ave.  
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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,

11 Plaintiff,

12 v.

13 TOWN OF TUSAYAN, an Arizona  
14 municipal corporation,

15 Defendant.

Case No. CV 201800016

**VERIFIED COMPLAINT**

**(Injunctive Relief Requested)**

(Assigned to Hon. Cathleen Nichols)

16 Plaintiff Coconino County Flood Control District, a political subdivision of the State  
17 of Arizona, alleges as follows:

18 **Jurisdiction and Venue**

19 1. The Court has jurisdiction to consider Plaintiff's Complaint and grant the  
20 requested relief pursuant to A.R.S. §§ 12-122, 12-123, and 12-1801 et seq.

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1 corporate boundary limits of the Town on or about October 18, 2012 by the Town's  
2 Ordinance No. 2011-11-02-01.

3 7. The Subject Property, by virtue of its location and the topography of the  
4 surrounding area, is upstream from the Town.

5 8. Portions of the Subject Property contains, and is encumbered by, a Federal  
6 Emergency Management Agency ("FEMA") Zone A Special Flood Hazard Area, per Flood  
7 Insurance Rate Map 04005C3850G.

8 9. Upon information and belief, the boundaries of the Subject Property contain a  
9 portion of the so-called "Coconino Wash" and a portion of at least one tributary to the  
10 Coconino Wash.

11 10. The Coconino Wash and its tributaries are "watercourses," as that term is  
12 specifically defined by A.R.S. § 48-3601(12).

13 11. Upon information and belief, those areas within the Subject Property that have  
14 been designated as Zone A Special Flood Hazard Area are within a "floodplain," as that  
15 term is specifically defined by A.R.S. § 48-3601(6).

16 **Statutes & Ordinance Applicable to the Subject Property**  
17 **Arizona State Revised Statutes Governing Floodplain Development**

18 12. As applicable to the Subject Property with regard to any proposed  
19 development within the Floodplain and/or Watercourse delineated therein, Arizona statutes  
20 provide that "a person shall not engage in any development which will divert, retard or  
21 obstruct the flow of waters in any watercourse without securing written authorization from

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1 the board of the district in which the watercourse is located. Where the watercourse is a  
2 delineated floodplain no development shall take place in the floodplain without written  
3 authorization from the board of the district in which the floodplain is located.” A.R.S. § 48-  
4 3613(A).

5 13. A.R.S. § 48-3615(A) further provides that it is unlawful for a person to engage  
6 in any development or to divert, retard or obstruct the flow of waters in a watercourse if it  
7 creates a hazard to life or property without securing the written authorization of a flood  
8 control district board; and where the watercourse is a delineated floodplain it is unlawful to  
9 engage in any development affecting the flow of waters without securing the required  
10 written authorization.

11 14. Further, pursuant to A.R.S. § 48-3613(D), “a political subdivision . . . who  
12 may be damaged . . . as a result of the unauthorized diversion, retardation or obstruction of a  
13 watercourse has the right to commence, maintain and prosecute any appropriate action or  
14 pursue any remedy to enjoin, abate or otherwise prevent any person from violating or  
15 continuing to violate [A.R.S. § 48-3613] or regulations adopted pursuant to [article 1 of  
16 Chapter 21 of Title 48, A.R.S.]”

17 15. Statute also provides that if a person is found to be in violation of A.R.S. § 48-  
18 3613, the court *shall require* the violator to either comply with this section if authorized by  
19 the board, or remove the obstruction and restore the watercourse to its original state. A.R.S.  
20 § 48-3613(D).

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1 prior to the submission of a development or Building Permit application. County Floodplain  
2 Regulations, at ¶ 4(c)(3).

3       26. The County Floodplain Regulations specify that where proposed development  
4 activities are to take place within a Watercourse that is in a delineated Floodplain, “it is  
5 unlawful to excavate or build any Structure affecting the flow of waters without securing  
6 written authorization of the [District’s] Board.” County Floodplain Regulations, at ¶ 2(j).

7       27. “If a person is found to be in violation of [the County Floodplain Regulations],  
8 [a] court shall require the violator to either comply with [the County Floodplain  
9 Regulations] if authorized by the board or remove the obstruction and restore the  
10 watercourse to its original state.” County Floodplain Regulations, at ¶ (2)(g)(4).

11       28. “Every new Structure, Building, fill, excavation or development located or  
12 maintained within any Special Flood Hazard Area after August 8, 1973 in violation of the  
13 [County Floodplain Regulations] is a public nuisance per se and may be abated, prevented  
14 or restrained by action of [the District].” County Floodplain Regulations, at ¶ (2)(h).

15                                   **Town’s Development of the Subject Property**

16       29. Upon information and belief, the Town caused the Subject Property to be  
17 subdivided by its recording of a final plat map for the “Ten X Ranch Phase I” subdivision  
18 on or about January 5, 2017 in the Official Records of Coconino County as Instrument  
19 Number 3773962.















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1 Coconino County Assessor’s Parcel Number 502-16-006A, and/or has assumed, and is  
2 performing, other duties, which are rightfully within the jurisdiction of the District.

3 68. The violations described in Paragraphs 66–67 are unauthorized and constitute  
4 a nuisance *per se*, and may additionally pose a danger to public safety.

5 69. The District, pursuant to A.R.S. § 48-3614 is entitled to injunctive relief to  
6 compel the Defendant to cease acting illegally as a floodplain administrator, while such  
7 jurisdiction remains with the District, and/or to cease all other development undertaken by  
8 the Town, by virtue of any purported authorizations obtained from the Town while acting in  
9 such capacity.

10 **COUNT THREE – Civil Penalties**

11 70. Plaintiff incorporates those allegations contained in Paragraphs 1–69 above as  
12 if fully set forth herein.

13 71. A.R.S. § 48-3615(C) provides for civil monetary penalties to be assessed  
14 against a violator of the Arizona Flood Control District statutes in an amount not to exceed  
15 the fine chargeable for a class 2 misdemeanor per violation per day, with each day that such  
16 violation continues constituting a separate violation.

17 72. Pursuant to A.R.S. § 13-105(17), an “enterprise” “includes any corporation,  
18 association, labor union or other legal entity.”

19 73. Pursuant to A.R.S. § 13-803(A), the maximum fine chargeable for a class 2  
20 misdemeanor for imposition upon an “enterprise” is \$10,000.00 per violation, with a  
21 presumptive imposition of \$5,000.00 per violation.



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Town of Tusayan to cease any and all development of any kind within any Floodplain and/or Watercourse, until the Town obtains a floodplain use permit from the District.

- B. Upon failure of Defendant Town to abide by the injunctive remedies of Paragraph A above within 30 days' time, issue an affirmative injunction authorizing the Plaintiff District to enter the Subject Property (or any other property where a violation of Defendant is extant) and cause all obstructions in the Floodplains and/or Watercourses to be removed and to restore the same to their original condition, as nearly as possible, and to have the costs of abatement and restoration incurred by the Plaintiff be submitted to this Court to become a judgment against Defendant.
- C. For an injunction commanding the Defendant Town of Tusayan to cease any and all actions whereby the Town purports to act as floodplain administrator, until such time as the Town validly and finally assumes jurisdiction over the Floodplains within its corporate boundaries pursuant to A.R.S. § 3610.
- D. That the Court retain continuing jurisdiction over the case, so as to assure that its injunctive orders are obeyed and that the conduct prescribed and proscribed therein by the Court is fulfilled to completion.
- E. For monetary judgment against Defendant Town of Tusayan for civil penalties pursuant to A.R.S. § 48-3615(C), for its violations of A.R.S. § 48-3615(A) that have accrued by reason of its illegal work at the Subject Property, and for violations



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persisting thereafter, in an amount to be calculated at trial, but not less than \$720,000.00.

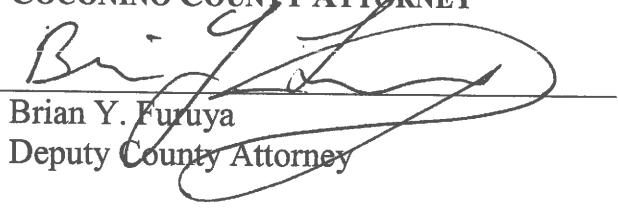
F. For Plaintiff's reasonable attorneys' fees, as authorized by A.R.S. § 48-3613(D) and County Floodplain Regulations, at ¶ (2)(g)(4).

G. For costs pursuant to A.R.S. 12-341.

H. For such other and further orders and relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of December, 2018.

**WILLIAM P. RING**  
**COCONINO COUNTY ATTORNEY**

  
\_\_\_\_\_  
Brian Y. Furuya  
Deputy County Attorney

ORIGINAL of the foregoing filed this 14<sup>th</sup> day of December, 2018 with:

Clerk of the Court  
Coconino County Superior Court  
200 North San Francisco Street  
Flagstaff, Arizona 86001



1 VERIFICATION  
2 (By Declaration pursuant to Rule 80(c), Ariz. R. Civ. P.)

3 STATE OF ARIZONA )  
4 County of Coconino ) ss:  
5 )


6 John Carr, verifies, declares, certifies, and states as follows:

7 I am a Drainage Engineer/Hydrologist for the Community Development Department  
8 of Coconino County, duly authorized to act on behalf of Coconino County Flood Control  
9 District in such capacity regarding the foregoing action.

10 I am acquainted with the facts of this case, and have read the Verified Complaint of  
11 the Plaintiff. The allegations stated therein are true and accurate to the best of my  
12 knowledge, except as to those matters alleged therein upon information and belief, and as to  
13 those matters, I believe them to be true.

14 I declare and verify under penalty of perjury that the foregoing is true and correct.

15 EXECUTED on this 14<sup>th</sup> day of December, 2018.

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17 \_\_\_\_\_  
18 JOHN CARR, PE  
19  
20  
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EXHIBIT A

EXHIBIT A

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EXHIBIT A TO SPECIAL WARRANTY DEED

LEGAL DESCRIPTION

**The South half of the Northeast quarter of the Southeast quarter of Section 29, Township 30 North, Range 3 East, Gila & Salt River Base and Meridian, Coconino County, Arizona, and more particularly described by metes and bounds as follows:**

**BEGINNING at the N-S 1/64 corner of said Section 29, being a BLM Brass cap;**

**THENCE along the North line of the South half of the Northeast quarter of the Southeast quarter of said Section 29, North 89° 41' 51" West, a distance of 1320.78 feet to a brass cap;**

**THENCE South 00° 16' 07" West, a distance of 662.42 feet to a brass cap;**

**THENCE South 89° 44' 17" East, a distance of 1321.19 feet;**

**THENCE North 00° 13' 59" East, a distance of 661.49 feet to the POINT OF BEGINNING.**

# EXHIBIT B

1. The first part of the document is a list of items that are to be included in the exhibit. This list is organized into several categories, each with its own sub-heading. The categories are: (a) General Information, (b) Financial Statements, (c) Tax Returns, (d) Legal Documents, and (e) Other Documents. Each category contains a list of specific items, such as bank statements, tax returns, and legal contracts. The list is intended to provide a comprehensive overview of the documents that will be included in the exhibit.

# EXHIBIT B



*Civil, Water, Wastewater, Drainage, Transportation and  
Electrical/Controls Engineering • Construction Management • Surveying  
California • Arizona*

December 7, 2018

Coconino County Dept. of Public Works  
Attn: Christopher Tressler, PE, County Engineer  
5600 E. Commerce  
Flagstaff, AZ 86004

Sent Via Email: [ctressler@coconino.az.gov](mailto:ctressler@coconino.az.gov)

**Subject:** Tusayan Ten X Ranch Review

Dear Mr. Tressler:

Civiltec Engineering, Inc. (Civiltec) has completed our review of the documents provided by Coconino County regarding floodplain administration for the Ten X Ranch project located in the Town of Tusayan (Town).

## **BACKGROUND AND UNDERSTANDING**

The Town has initiated construction of the Ten X Ranch development. Ten X Ranch is located approximately 2.5 miles southeast of the Town. The project site is approximately 20 acres and is encumbered by a Federal Emergency Management Agency (FEMA) Zone A Special Flood Hazard Area (SFHA) per Flood Insurance Rate Map (FIRM) 04005C3850G. The Zone A SFHA includes Coconino Wash and a tributary to Coconino Wash.

The Town is located downstream of the development. The development will house temporary and seasonal workers from the Grand Canyon Village and includes 52 residential lots, a water and wastewater campus, and a wastewater lift station. To date, the Town has not obtained a Floodplain Use Permit from Coconino County. Coconino County serves as the Floodplain Administrator for the Town.

## **APPLIED STANDARDS AND GUIDELINES**

The Coconino County Zoning Ordinance Section 2.15.B FPM - Floodplain Management Overlay Zone establishes Coconino County's Floodplain Ordinance and the Floodplain Use Permit.

The purpose of the Floodplain Ordinance is to promote public health, safety and general welfare, and to minimize public and private losses due to flooding.



The Floodplain Ordinance applies to all SFHAs within the boundaries of Coconino County except those incorporated cities and towns that have adopted a resolution in accordance with ARS § 48-3610.

SFHAs identified by the Federal Insurance Administration (FIA) of FEMA in the Flood Insurance Study (FIS) for Coconino County, dated September 3, 2010 with accompanying FIRMs, dated September 3, 2010 and all subsequent amendments and/or revisions, are adopted by reference and declared to be a part of the Floodplain Ordinance. The FIS and attendant mapping are the minimum area of applicability of the Floodplain Ordinance and may be supplemented by studies for other areas that allow implementation of the Floodplain Ordinance as recommended to the Floodplain Board by the Floodplain Administrator. The Floodplain Board, within its area of jurisdiction shall delineate (or may by rule require developers of land to delineate) for areas where development is ongoing or imminent, and thereafter as development becomes imminent, floodplains consistent with the criteria developed by the FEMA and the Director of Water Resources.

All development of land, construction of residential, commercial or industrial structures or future development, or uses of any kind conducted on land areas within the Floodplain Management Overlay Zone shall be accomplished in complete conformance with the provisions of the Floodplain Ordinance and other applicable regulations. Proposed actions that may divert, retard or obstruct flood waters or in any way threaten public health, safety or the general welfare must first be reviewed and approved by the County Engineer and may be initiated only after a finding has been made that serious detrimental impacts will not occur.

It is unlawful for any person to engage in any development or to divert, retard or obstruct the flow of waters in any watercourse when it creates a hazard to life or property without securing the written authorization from the Floodplain Board per ARS 48-3613. Where the watercourse is a delineated floodplain, it is unlawful to excavate or build any structure affecting the flow of waters without securing written authorization from the Floodplain Board. Every new structure, building, fill, excavation or development located or maintained within any SFHA after August 8, 1973 in violation of the Floodplain Ordinance is a public nuisance per se and may be abated, prevented or restrained by action of the Floodplain Board.

Per the Floodplain Ordinance, a Floodplain Permit shall be obtained before, grading or placing fill, installation of utilities, construction or development, including the installation of wastewater systems and the placement of manufactured homes begins within any SFHA.

## TEN X RANCH REVIEW COMMENTS

Documents reviewed include the following:

1. Final Plat of Ten X Ranch Phase 1, prepared by Alpha-Omega Engineering & Surveying, (Alpha-Omega) recorded by the Coconino County Recorder on 01/05/2017.





2. Drainage Report for Ten X Ranch, prepared by J2 Engineering and Environmental Design (J2) prepared for the Town of Tusayan in association with Westland Resources (Westland) signed 08/24/2018.
3. Grading Plans for Ten X Ranch, prepared by Westland, plan date 08/24/2018 and 09/13/2018.

#### **Comment 1**

The Alpha-Omega Final Plat for Ten X Ranch Phase 1 has a different lot and street configuration than what is shown in the J2 Drainage Report and Westland Grading Plans. The Alpha-Omega Final Plat, J2 Drainage Report and Westland Grading Plans must all be based on the same lot and street configuration.

#### **Comment 2**

Both the J2 Drainage Report and Westland Grading Plans note that the floodplain, as depicted by the FIRM, does not accurately represent the existing (pre-grading) topography. Furthermore, the Westland Grading Plans state that a Letter of Map Revision (LOMR) will be filed with FEMA as part of the project to modify the floodplain limits and SFHA.

#### **Comment 3**

The J2 Drainage Report does not include any hydrologic calculations for Coconino Wash or the tributary to Coconino Wash, which impacts the property and development. The J2 Drainage Report utilizes a previous drainage study (by John F Olney Civil Engineering revised by CH2M Hill), which could not be obtained and is not included in the J2 Drainage Report. Per J2, the previous drainage study estimates a 100-year peak discharge of 1,240 cubic feet per second (cfs) for Coconino Wash.

The J2 Drainage Report mentions other previous drainage studies (Dubroy Engineering (Dubroy) for Grand Canyon Camper Village in 2009, Jacobs for the Arizona Department of Transportation (ADOT) State Route 64 in 2009 and Peak Engineering for the South Grand Canyon Sanitary District in 2012). The 100-year peak discharges for Coconino Wash vary widely between these studies (from approximately 1,200 to 8,000 cfs). The Jacobs and Peak Engineering studies include hydrologic modeling and produced similar results (approximately 7,000 to 8,000 cfs). The Dubroy study does not include hydrologic modeling. It also references the previous study utilized by J2 in the Ten X Ranch Drainage Report (by John F Olney Civil Engineering revised by CH2M Hill). Dubroy also could not obtain this study, but utilized the 100-year peak discharge of 1,240 cfs for Coconino Wash. The Dubroy study was approved by Coconino County in 2009.

It should be noted that previous studies indicate that standard hydrologic modeling techniques appear to overestimate the peak discharge estimates for Coconino Wash. The evidence for the overestimation is anecdotal primarily based on visual observations from local residents. The overestimation may be caused by deep layers of volcanic cinders and/or fractured limestone with high infiltration rates within the watershed. The J2 Drainage Report also mentions the presence



of stock tanks in the watershed, which stores stormwater runoff as a potential cause for overestimation.

The J2 Drainage Report utilizes area weighted averages to determine the 100-year peak discharge estimates for Coconino Wash and the tributary to Coconino Wash at Ten X Ranch. The discharges used by J2 are 748 cfs and 262 cfs respectively.

#### **Comment 4**

There are two stock tanks located on the Ten X Ranch development site. The Ten X Tank is a larger tank located in the northeast portion of the site. Flows from the tributary to Coconino Wash drain into this tank. As this tank fills, stormwater spills over to a secondary depression just north of the property. Based on the topographic mapping on the Westland Grading Plans, it appears that when full the Ten X Tank and depression have a surface area of approximately 4 acres and a storage volume of 4 acre-feet. Per the Westland Grading Plans, the Ten X Tank and its associated stormwater storage is being removed as part of the Ten X Ranch development.

The second smaller tank is located in the western portion of the site. Flows from Coconino Wash drain into this tank. Based on the topographic mapping on the Westland Grading Plans, it appears that when full the smaller tank has a surface area of approximately 0.3 acres and a storage volume of 0.6 acre-feet. The smaller tank and its associated stormwater storage are not being removed as part of the Ten X Ranch development per the Westland Grading Plans. However, it is located approximately 200-feet downstream from the proposed 6, 10-foot by 3-foot concrete box culvert structure at the entrance road. Given the concentration and increased velocity of stormwater flows exiting the proposed box culvert structure and the proximity of the existing tank to the boxes, it is likely that the smaller tank will breach during a runoff event and its associated stormwater storage will be lost.

Since there is no hydrologic modeling included in the J2 Drainage Report, the effects of removing the two existing stock tanks in terms of the loss of stormwater storage and resulting potential for increased peak flow rates and higher water surface elevations downstream are unknown.

#### **Comment 5**

The J2 Drainage Report includes hydraulic modeling (HEC-RAS) for Coconino Wash and the tributary of Coconino Wash. Both washes are modeled in existing (pre-grading) condition and proposed (post-grading, developed) conditions. The report provides a comparison of water surface elevations and velocities between both conditions. The results of the modeling per the J2 Drainage Report show minor changes in water surface elevation and velocities between existing and proposed conditions. However, as discussed previously, the modeling is based on area weighted 100-year peak discharges from a previous drainage study that has not been provided in the J2 Drainage Report nor reviewed by the engineer authoring the J2 Drainage Report. Additionally, as mentioned the effects of removing the two existing stock tanks in terms of the loss of stormwater storage and resulting potential for increased peak flow rates and higher water surface elevations downstream are unknown.



## CONCLUSION AND RECOMMENDATIONS

Per the Floodplain Ordinance, whenever a watercourse is to be altered or relocated, prior to any alteration of the watercourse the County Engineer is to review and require revision to all plans as necessary for proposed watercourse modifications for compliance with the Floodplain Ordinance. Therefore, we recommend that the County Engineer and Floodplain Administrator require the following.

1. In accordance with Volume 44 Code of Federal Regulations (CFR) Section 65.3, water surface elevations for the 100-year peak discharge (base flood elevations) may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, the Floodplain Administrator shall notify FEMA of the changes by submitting technical or scientific data. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements would be based upon current data.

Therefore, the Floodplain Administrator should require a Conditional Letter of Map Revision (CLOMR) followed by a LOMR. Per 44 CFR Section 65.8, a community, or an individual through the community, may request FEMA's comments on whether a proposed project, if built as proposed, would justify a map revision. In the case of the Ten X Ranch development, a map revision is justified. This is recognized in both the J2 Drainage Report and Westland Grading Plans. FEMA's comments will be issued in the form of a letter, termed a CLOMR, in accordance with 44 CFR Section 72. The data required to support such requests are the same as those required for final revisions (LOMR) under §§ 65.5, 65.6, and 65.7, except as-built certification is not required.

2. For the Zone A floodplain area impacting Ten X Ranch, no peak discharges have been established or accepted by FEMA. Therefore, the CLOMR submittal to the County Engineer, Floodplain Administrator and FEMA must include a hydrology study in compliance with FEMA requirements and guidelines. The results of the hydrology study, to be approved by FEMA, for the 100-year peak discharges for Coconino Wash and the tributary to Coconino Wash, will be used for the hydraulic (floodplain) modeling to determine water surface elevations throughout the project site. Minimum finished floor elevations for the development will be based on the FEMA approved hydrology and floodplain modeling. Construction and occupation of residential structures at Ten X Ranch without a hydrology study and subsequent floodplain delineation poses a risk to property and human life contrary to the purpose of the Floodplain Ordinance and Floodplain Use Permit.
3. In addition to the 100-year storm event, the hydrology study should include modeling of the 2-, 10-, 25- and 50-year storm events. The modeling should also include the impacts of the proposed development including the removal of the two existing stock tanks on-



site in terms of increases in peak discharge exiting the site. It should also include impacts of increases in peak discharge exiting the site to the Town. Since no hydrologic modeling has been included in the J2 Drainage Report, impacts of the development immediately downstream and in the Town are unknown.

4. Increased peak discharges, water surface elevations, velocities and flooding downstream as a result of the development should not be allowed. The developer must demonstrate no adverse impacts downstream, including the Town. Again, failure to provide such analysis poses a risk to property and human life contrary to the purpose of the Floodplain Ordinance and Floodplain Use Permit.

Please let me know if you need any further assistance.

Sincerely,  
CIVILTEC Engineering, Inc.

A handwritten signature in black ink, appearing to read "Chris Dusza", written in a cursive style.

Chris Dusza, PE, CFM  
Vice President, Principal