

THE LAW OF EASEMENTS

FOR THE

ARIZONA CONDEMNATION SUMMIT

PRESENTED BY:
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PRESENTER BIO:

THOMAS M. PARSONS is a partner with the law firm of Stubbs & Schubart, P.C. in Tucson, Arizona where he practices in the areas of eminent domain, land use, and real estate development. He earned his B.S. (1984) and his J.D. (1987) degrees from the University of Arizona. Mr. Parsons is designated in Best Lawyers-US News & World Report, holds an AV Preeminent rating by Martindale-Hubbell, and is listed in "Arizona's Finest Lawyers©." Mr. Parsons is an Eagle Scout and Rotary District 5500 Officer. Mr. Parsons is occasionally pleasant and useful.

Condemnation or Creation of Easements¹

- A. Easement Defined (Black's Law Dictionary)
- B. Easements in Gross / Appurtenant Distinguished
- C. Key Statutes:
 - A.R.S. § 12-1113(1) & (2) - Taking easements authorized (for most uses)
 - A.R.S. § 12-1136(5) - Public uses defined (Proposition 207)
 - A.R.S. § 12-1111 - Uses (purposes) authorized
 - A.R.S. § 12-1115(A) - greatest public good / least private injury
 - A.R.S. § 28-7214 - extinguishment of easements
 - A.R.S. § 28-7210 - reservation of easements
- D. Key Cases and Authorities:
 - *Selective Resources v. Superior Court*, 145 Ariz. 141, 700 P.2d 849 (App. 1984)
 - *State ex rel. Herman v. Cardon*, 112 Ariz. 548, 544 P.2d 657 (1976)
 - *State ex rel. Herman v. Schaffer*, 105 Ariz. 478, 467 P.2d 66 (1970);
 - *State ex rel. Herman v. Schaffer*, 110 Ariz. 91, 515 P.2d 593 (1973)
 - *Phoenix Title & Trust Co. v. Arizona Public Service Co.*, 8 Ariz. App. 221, 445 P.2d 169 (1968) (Estate described controls stated plans)
 - *Town of Paradise Valley v. Laughlin*, 174 Ariz. 484, 851 P.2d 109 (Ariz. App. 1992)
 - *Orsett/Columbia L.P. v. Superior Court ex rel. Maricopa County*, 207 Ariz. 130, 83 P.3d 608 (2004)
 - *Pinkerton v. Pritchard*, 71 Ariz. 117, 223 P.2d 933 (1950) (Burden of dominant estate established at time of easement creation)
 - EMINENT DOMAIN IN ARIZONA, § 10.7, *Kerrick, Cranson & Gross*, (3d Ed., 2013)
 - 28A C.J.S. EASEMENTS § 161
 - RESTATEMENT OF PROPERTY (SERVITUDES)
- E. Rules of Construction:
 - Easement is construed generally in favor of the grantee
 - The extent or scope of the easement is fixed at creation (there are exceptions)

¹ The taking of existing private easements from private easement holders is dealt with here only tangentially. See *Orsett* discussion of *In re Forsstrom*.

F. Case studies:

- Federal Road Easement (Declaration of Taking) and Judgment
 - i. Excerpts from Declaration of Taking: Schedule B - Public Use and Schedule E - Estate Taken
 - ii. Exhibits to Stipulated Judgment
- Metropolitan Water Email with Map
- Borowec Easement; Procedures to approve servient use

G. Practice Pointers:

- Not all parts of a taking, nor all estates taken, satisfy the Constitution and Statutory requirements
- Title & Lending Issues (Easements must be easily insurable by title companies, lendable, and useful (understandable, enforceable without resort to court) to both the servient and dominant holders decades from now)
- Valuation: 0% - 100%, start at 75%, then offer 100%, indeterminate time period issues *Phoenix Title & Trust Co. v. Arizona Public Service Co.*, 8 Ariz. App. 221, 445 P.2d 169 (1968)
- Discover and study the history of alternative alignments (A.R.S. § 12-1115)
- TCEs - *de minimis non curat lex*; or are TCE's incredibly important?
- Write clearly, balance client future needs without violating *Schaffer* (change of plans), *Phoenix Title*, and *Laughlin* (increased damage exposure during condemnation) and *McCullough*

H. Legacy Piggybacks - Easements / Franchises

THE FUTURE:

There shall be an increase in conflict among dominant estates, conflict of competing public uses all based on existing documents, and those forms we create or revise today.

Easement challenges and compensation will increase.

EASEMENT:

- An interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose (such as to cross it for access to a public road).
- The land benefitting from an easement is called the *dominant estate*; the land burdened by an easement is called the *servient estate*. Unlike a lease or license, an easement may last forever, but it does not give the holder the right to possess, take from, improve, or sell the land. The primary recognized easements are (1) a right-of-way, (2) a right of entry for any purpose relating to the dominant estate, (3) a right to the support of land and buildings, (4) a right of light and air, (5) a right to water, (6) a right to do some act that would otherwise amount to a nuisance, and (7) a right to place or keep something on the servient estate.

Black's Law Dictionary (8th ed., 2004).

A.R.S. § 12-1113 - ESTATES IN LAND SUBJECT TO CONDEMNATION

* * *

1. A fee simple, when taken for public buildings or grounds or for permanent buildings, for use in connection with a right-of-way or for an outlet for the flow or a place for the deposit of tailings or refuse from a mine or for irrigating ditches. A leasehold interest in a building may be taken only if the underlying property is taken in fee title or easement.
2. An easement when taken for any use other than those set forth in paragraph 1.

A.R.S. § 12-1136 - DEFINITIONS

* * *

5. "Public use":

(a) Means any of the following:

- (i) The possession, occupation, and enjoyment of the land by the general public, or by public agencies;
- (ii) The use of land for the creation or functioning of utilities;
- (iii) The acquisition of property to eliminate a direct threat to public health or safety caused by the property in its current condition, including the removal of a structure that is beyond repair or unfit for human habitation or use; or
- (iv) The acquisition of abandoned property.

(b) Does not include the public benefits of economic development, including an increase in tax base, tax revenues, employment or general economic health.

A.R.S. § 12-1111 - PURPOSES FOR WHICH EMINENT DOMAIN MAY BE EXERCISED

Subject to the provisions of this title, the right of eminent domain may be exercised by the state, a county, city, town, village, or political subdivision, or by a person, for the following uses:

1. All public uses authorized by the government of the United States.
2. Buildings and grounds for any public use of the state and all other public uses authorized by the legislature.
3. Buildings and grounds for the use of a county, city, town or school district.
4. Canals, aqueducts, flumes, ditches or pipes, for conducting water for the use of the inhabitants or for drainage of a county, city, town or village.
5. Raising the banks of streams, removing obstructions therefrom, or widening, deepening or straightening their channels.
6. Roads, streets and alleys, and all other public uses for the benefit of a county, city, town or village, or the inhabitants thereof, which is authorized by the legislature. The method of apportioning and collecting the costs of the improvements authorized by paragraphs 3, 4, 5 and 6 shall be as provided in the law by which they are authorized.
7. Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads and highways.

8. Steam, horse, mule, electric and cable railroads or railways.
9. Telegraph and telephone lines and conduits for public communication.
10. Electric light and power transmission lines, pipe lines used for supplying gas, and all transportation, transmission and intercommunication facilities of public service agencies.
11. Aviation fields.
12. Reservoirs, canals, ditches, flumes, aqueducts and pipes, for the use of a county, city, town or village, or its inhabitants, or for public transportation for supplying mines and other industrial enterprises, farms and farm neighborhoods with water for irrigation, domestic and other needful purposes, and for generating electricity.
13. Draining and reclaiming lands, and for floating logs and lumber on nonnavigable streams.
14. Roads, tunnels, ditches, flumes, pipes and dumping places for working mines, and outlets, natural or otherwise, for the flow, deposit or conduct of tailings or refuse matter from mines, and an occupancy in common by the owners or possessors of different mines, or any place for the flow, deposit or conduct of tailings or refuse matter from their several mines.
15. Byroads leading from highways to residences and farms.
16. Private canals, ditches, flumes, aqueducts and pipes for conducting water from natural water courses or bodies or from public sources where the lands to be irrigated are not directly reached by such natural water course or public sources.
17. Pipe lines to carry petroleum, petroleum products or any other liquid.
18. Rights of way, station grounds, pits, yards, sidetracks and other necessary facilities for railways.

A.R.S. § 12-1115 - RIGHT OF STATE TO ENTER AND SURVEY PROPERTY FOR PUBLIC USE

A. Where land is required for public use, the state, or its agents in charge of such use, may survey and locate the land, but it shall be located in the manner which will be most compatible with the greatest public good and the least private injury.

A.R.S. § 28-7214 EXTINGUISHMENT OF EASEMENTS

If this state or a city, town or county does not own title to a roadway but holds right-of-way easements, the easements may be extinguished by the governing body's resolution.

A.R.S. § 28-7210 RESERVATION OF EASEMENTS

Rights-of-way or easements for the following continue as they existed before the disposal or abandonment of the rights-of-way or easements:

1. Existing sewer, gas, water or similar pipelines and appurtenances.
2. Canals, laterals or ditches and appurtenances.
3. Electric, telephone and similar lines and appurtenances.

Damages are based on the legal estate acquired, not just condemnation plans.

In *Phoenix Title & Trust Co. v. Arizona Public Service Co.*, 8 Ariz. App. 221, 445 P.2d 169 (1968), the condemnor took an easement for a power line. There, the court adopted the following rule, originally set forth in *State ex rel. Poulson Logging Co. v. Superior Court*, 11 Wash. 2d 545, 119 P.2d 694 (1941):

'The damages occasioned by the taking are estimated as of the time of the taking. In the absence of agreement between the parties, the condemnor must take the rights which he seeks to appropriate absolutely and unconditionally, and he must pay full compensation for what he takes. . . . When property is acquired by virtue of the power of eminent domain, the compensation of the owner is to be estimated by the actual legal rights acquired by the condemnor and not by the use that he may make of the right.' *State ex rel. Polson Logging Co. v. Superior Court*, 11 Wash.2d 545, 119 P.2d 694 (1941).

See also *Little et al. v. Loup River Public Power District*, 150 Neb. 864, 36 N.W.2d 261, 7 A.L.R.2d 355 (1949) and *Coos Bay Logging Company v. Barclay*, 159 Or. 272, 79 P.2d 672 (1938). To hold otherwise would place the company and the landowner eternally in the courtroom. *United States v. 9.94 Acres of Land*, (D.C.S.C.) 51 F.Supp. 478 (1943).

Phoenix Title & Trust Co. v. Arizona Public Service Co., 8 Ariz. App. at 226, 445 P.2d at 174 (1968).

For just compensation and due process purposes, we must look at what has in reality been taken from the property owner. Certainly Laughlin could make no physical use of whatever was left him by the city. There was no "joint" use of the property. It would be sheer speculation to say he could use it in the event he elected to develop the property in conjunction with a future zoning application to comply with a Town Cluster Plan or Hillside Development ordinance, as suggested by the Town. This "phantom" servient estate would appear to have no monetary value to a third party. We can only conclude that after the "taking," Laughlin was left with little or nothing of consequence or value.

* * *

We find the trial court erred by allowing the Town to present evidence that the damages for Laughlin should be less because only an easement

was taken and that Laughlin could still utilize the 2.39 acres in complying with zoning requirements.

Town of Paradise Valley v. Laughlin, 851 P.2d 109, 114, 174 Ariz. 484, 489 (Ariz. App. 1992)

KEY CASES AND AUTHORITIES:

While the word “highway” is a generic term for all kinds of public ways and the phrase “public highway” is a tautological expression since all highways are public, *Sexton v. State*, 239 Ala. 662, 196 So. 746 (1940), in Arizona “public highways” are limited to those established in the manner provided by law and to no others.

State ex rel. Herman v. Cardon, 112 Ariz. 548, 549, 544 P.2d 657, 658 (1976).

An easement is a right which one person has to use the property of another for a specific purpose.

An owner whose property is condemned for an easement must be compensated for the easement taken and for severance damages using the same measures of compensation as apply to the taking of a fee.

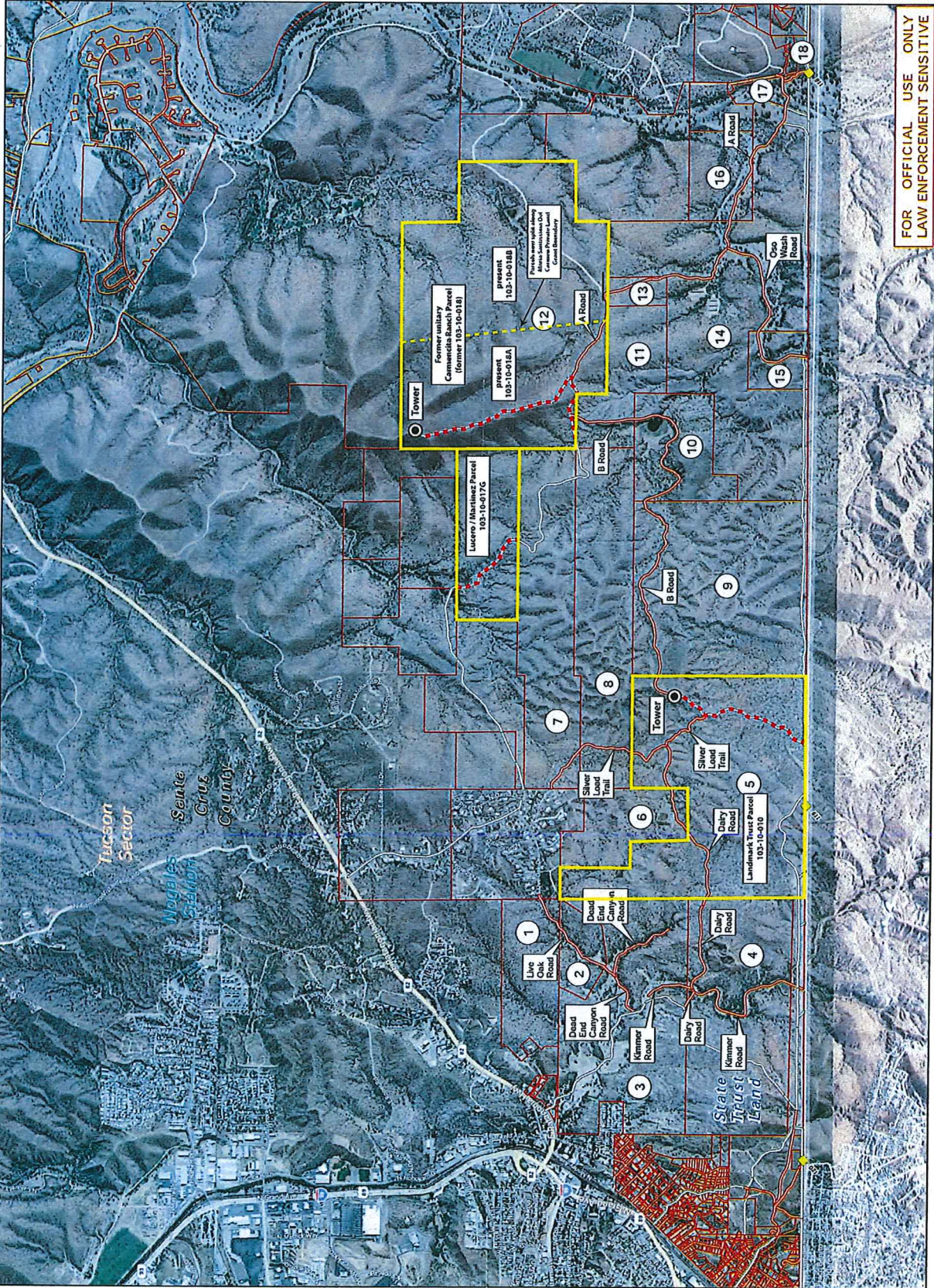
Selective resources v. Superior Court, 145 Ariz. 151, 700 P.2d 849 (App. 1984).²

An easement is extinguished by a taking by eminent domain of the servient tenement, or of an interest therein, to the extent to which the taking permits a use inconsistent with the continuance of the use authorized by the easement.

RESTATEMENT (FIRST) OF PROPERTY § 507 (1944).

² Quoted from EMINENT DOMAIN IN ARIZONA, § 10.7, *Kerrick, Cranson & Gross*, (3d Ed., 2013).

NOGALES STATION TIMR REQUIREMENTS



**FOR OFFICIAL USE ONLY
LAW ENFORCEMENT SENSITIVE**

- Client Parcels
- Road Access Easements
- Towers

US Army Corps of Engineers
Sacramento District

Baker

Legend

- Road of Interest
- Client Parcels

APN

1 - 103-10-010B - Landmark Title Assurance Agency LLC

2 - 103-10-024B - Kananahka Properties LP

3 - 103-10-017D - Delta Properties LLP

4 - 103-10-025 - State of Arizona

5 - 103-10-024A - Kananahka Properties LP

6 - 103-10-010A - Landmark Title Assurance Agency LLC

7 - 103-10-017A - Kenneth Orms

8 - 103-10-017C - Luero / Marinier Parcel

9 - 103-10-018 - Former military Camanche Ranch Parcel (former 103-10-018)

10 - 103-10-018A - present 103-10-018A

11 - 103-10-018B - present 103-10-018B

12 - 103-10-018B - present 103-10-018B

13 - 103-10-018B - present 103-10-018B

14 - 103-10-018B - present 103-10-018B

15 - 103-10-018B - present 103-10-018B

16 - 103-10-018B - present 103-10-018B

17 - 103-10-018B - present 103-10-018B

18 - 103-10-018B - present 103-10-018B

U.S. ARMY CORPS OF ENGINEERS

SACRAMENTO DISTRICT

NOGALES STATION

EAST NOGALES, ARIZONA

Project No.: 1-25,000

Scale: 1:25,000

Project ID: 08/1/13

Checked by: JPD

DCP Date: 08/1/13

APR Date: 08/1/13

Revised: 08/1/13

SHEET 11 OF 14

U.S. Department of State

Diplomacy in Action

Merida Initiative

The Merida Initiative is an unprecedented partnership between the United States and Mexico to fight organized crime and associated violence while furthering respect for human rights and the rule of law. Based on principles of common and shared responsibility, mutual trust, and respect for sovereign independence, the two countries' efforts have built confidence that is transforming the bilateral relationship.

Enhancing Citizen Security

Under the Merida Initiative, the United States has a partnership with the Government of Mexico to disrupt organized criminal groups, institutionalize reforms to sustain the rule of law and support for human rights, create a 21st century border, and build strong and resilient communities. Bilateral efforts expand assistance to state level law enforcement and justice sector personnel; support democratic institutions, especially police, justice systems, and civil society organizations; expand our border focus beyond interdiction of contraband to include facilitating legitimate trade and travel; and build stable communities able to withstand the pressures of crime and violence.

Merida Programs and Activities

The U.S. Congress has appropriated \$2.5 billion since the Merida Initiative began in Fiscal Year 2008. Some of the activities under the partnership include:

Mexico's implementation of comprehensive justice sector reforms is supported through training justice sector personnel, including: police, investigators, prosecutors, and defense counsel; correction systems development; judicial exchanges; and support to Mexican law schools –in support of Mexico's on-going transition to a new accusatory criminal justice system.

Police capacity building courses for Mexican law enforcement including crime investigation, criminal intelligence, professionalization, tactics and firearms, forensics, strategic analysis, and specialized training for anti-corruption, anti-gang, anti-trafficking in persons, anti-money laundering, and anti-kidnapping units.

The establishment of anti-corruption programs that include vetting of police personnel, establishment of citizen-observer booths to inform and advise crime victims of their rights, and the creation of trained internal affairs units.

Ongoing engagement with the Government of Mexico and civil society to promote the rule of law and build strong and resilient communities to increase the knowledge of, and respect for, human rights; to strengthen social networks and community cohesion; to address the needs of vulnerable populations (youth and victims of crime); and to increase community and government cooperation.

Air mobility of Mexican police forces through the delivery of specialized aircraft and training for pilots and technicians to enable the Government of Mexico to confront criminal organizations that try to leverage difficult terrain.

Training and equipment to enhance the Mexican government's ability to detect illicit goods at internal checkpoints and ports of entry.

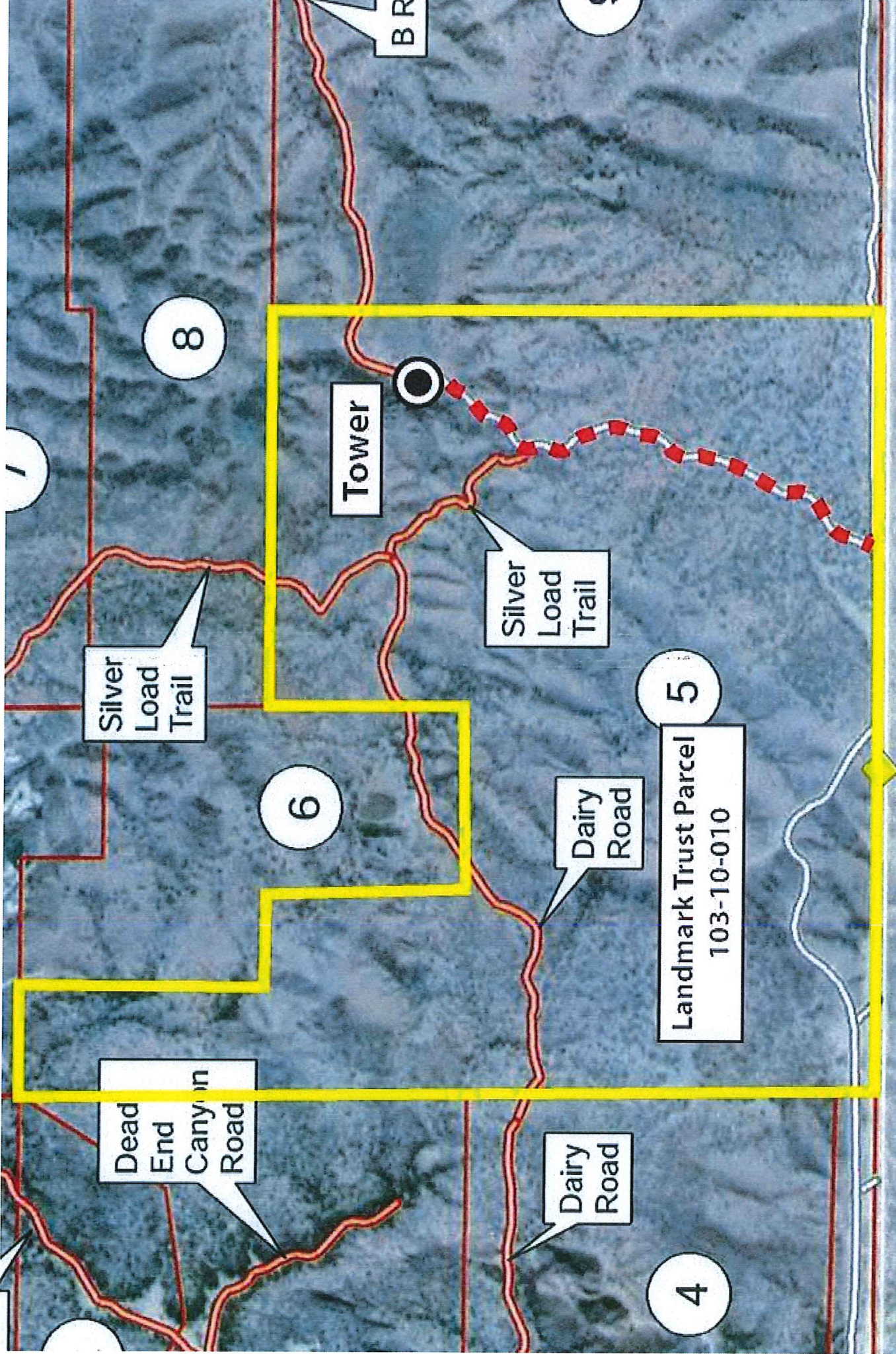
Delivery of over 400 canines trained in the detection of narcotics, weapons, explosives, ammunition, currency, and human remains to Mexican federal agencies, including the Federal Police, the Office of the Attorney General, and Customs.

Establishment of a secure, cross-border telecommunications system between ten U.S. and Mexican border sister cities to provide public security forces on both sides of the border with the capability to request and exchange information on active criminal investigations.

Interagency task forces incorporating trained personnel from municipal and state police and state attorney general offices in key Mexican states to better share information, develop actionable intelligence, and foster greater coordination in law enforcement operations.

Support for efforts by Mexican prisons working to achieve independent accreditation from the American Correctional Association (ACA). To date, 42 Mexican facilities are accredited by ACA.

The establishment of Drug Treatment Courts across five Mexican states. These highly-specialized courts approach addiction as a public health issue and provide a viable alternative to incarceration for drug abusers.



BR

8

Tower

Silver Load Trail

Silver Load Trail

5

Dairy Road

6

Landmark Trust Parcel
103-10-010

Dead End Canyon Road

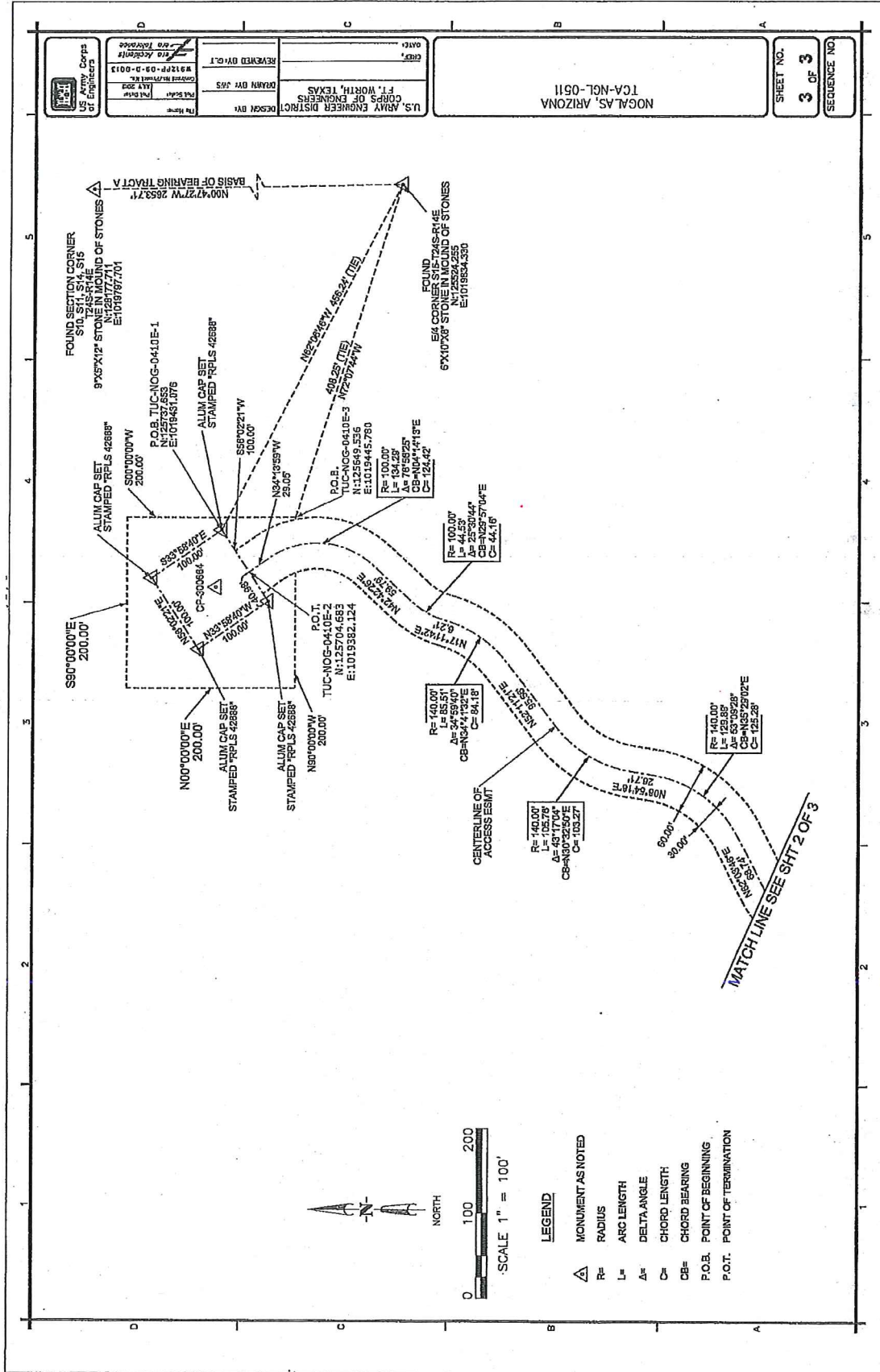
Dairy Road

4

SCHEDULE "B"
PUBLIC PURPOSE

The public purpose for which said property is taken is to construct, install, operate, and maintain a border security tower, along with all necessary and related structures and roads, designed to help secure the United States border within the State of Arizona.

SCHEDULE D
 TUC-NOG-0410E-1 (0.23 ACRES), TUC-NOG-0410E-2 (4.79 ACRES), TUC-NOG-0410E-3 (0.60 ACRES)



U.S. Army Corps of Engineers
 DISTRICT OFFICE
 1115 FORT WORTH AVENUE
 FORT WORTH, TEXAS 76102

DESIGN BY: [Blank]
 CHECKED BY: [Blank]
 DRAWN BY: JMS
 DATE: [Blank]

U.S. ARMY ENGINEER DISTRICT
 F.T. WORTH, TEXAS
 PROJECT NO. TUC-NOG-0410E-1, 2, 3

NOGALAS, ARIZONA
 TCA-NGL-0511

SHEET NO. 3 OF 3
 SEQUENCE NO.

SCHEDULE D - PAGE 3

SCHEDULE "E"
ESTATE TAKEN

PERPETUAL TOWER SITE EASEMENT TUC-NOG-0410E-1

A perpetual, exclusive and assignable easement and right-of-way in, on, over, under and across the land described in Schedule "C", and as shown on Schedule "D". The easement shall include:

- (1) the right to enter and to locate, construct, operate, maintain, alter, upgrade, reconstruct, remove, and repair a border security tower, associated facilities, and appurtenances thereto;
- (2) the present and future right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions and other vegetation, structures, or obstacles within the limits of the right-of-way;
- (3) the present and future right to clear the easement area and to keep it clear of any and all structures, above and below ground improvements or infrastructures;

The easement is subject to:

- (1) the rights of the public in and to all public roads and highways;
- (2) all interests in water distribution and drainage systems including the continued use and maintenance of pipes and conduits, irrigation and drainage lines, ditches and canals, and public utility lines;
- (3) the exercise of existing easements and licenses, including public utilities, railroads, and pipelines;
- (4) the exercise of existing mineral, coal, oil, gas and geothermal rights.

SCHEDULE "E"
ESTATE TAKEN

PERPETUAL ROAD EASEMENT TUC-NOG-0410E-2

A perpetual, non-exclusive and assignable easement and right-of-way in, on, over, under and across the land described in Schedule "C", and as shown on Schedule "D". The easement shall include:

- (1) the right to enter and to locate, construct, operate, maintain, alter, upgrade, reconstruct, and repair a road and appurtenances thereto;
- (2) the present and future right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions and other vegetation, structures, or obstacles that interfere with the right-of-way;
- (3) the present and future right to clear the easement area and to keep it clear of any and all structures, above and below ground improvements or infrastructures;

The easement is subject to:

- (1) the rights of the public in and to all public roads and highways;
- (2) all interests in water distribution and drainage systems including the continued use and maintenance of pipes and conduits, irrigation and drainage lines, ditches and canals, and public utility lines;
- (3) the exercise of existing easements and licenses, including public utilities, railroads, and pipelines;
- (4) the exercise of existing mineral, coal, oil, gas and geothermal rights.

The owners, their heirs, successors and assigns are reserved the right to use the surface of such land as access to their adjoining land for any other use consistent with its use as a road.

SCHEDULE "E"
ESTATE TAKEN

PERPETUAL UTILITY EASEMENT TUC-NOG-0410E-2

A perpetual, non-exclusive and assignable easement and right-of-way in, on, over, under and across the land described in Schedule "C", and as shown on Schedule "D". The easement shall include:

- (1) the right to enter and to locate, construct, operate, maintain, alter, upgrade, reconstruct, remove, and repair overhead and underground utilities and appurtenances thereto;
- (2) the present and future right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions and other vegetation, structures, or obstacles that interfere with the right-of-way;
- (3) the present and future right to clear the easement area and to keep it clear of any and all structures, above and below ground improvements or infrastructures;

The easement is subject to:

- (1) the rights of the public in and to all public roads and highways;
- (2) all interests in water distribution and drainage systems including the continued use and maintenance of pipes and conduits, irrigation and drainage lines, ditches and canals, and public utility lines;
- (3) the exercise of existing easements and licenses, including public utilities, railroads, and pipelines;
- (4) the exercise of existing mineral, coal, oil, gas and geothermal rights.

The owners, their heirs, successors and assigns are reserved the right to use the surface of such land as access to their adjoining land for any other use consistent with its use as a road.

SCHEDULE "E"
ESTATE TAKEN

TEMPORARY CONSTRUCTION EASEMENT TUC-NOG-0410E-3

A temporary, exclusive easement and right-of-way in, on, over and across the land described in Schedule "C", and as shown on Schedule "D" for a period not to exceed one (1) year beginning with the date possession of the land is granted to the United States, for use by the United States, its representatives, agents, and contractors as a work area. The easement shall include:

- (1) the right to move, store and remove equipment and supplies;
- (2) the right to locate, construct, operate, maintain, alter, upgrade, reconstruct, remove, and repair temporary structures on the land and to perform any other work necessary and incident to the construction of the road, tower and appurtenances thereto;
- (3) the present and future right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions and other vegetation, structures, or obstacles within the limits of the right-of-way;
- (4) the present and future right to clear the easement area and to keep it clear of any and all structures, above and below ground improvements or infrastructures;

The easement is subject to:

- (1) the rights of the public in and to all public roads and highways;
- (2) all interests in water distribution and drainage systems including the continued use and maintenance of pipes and conduits, irrigation and drainage lines, ditches and canals, and public utility lines;
- (3) the exercise of existing easements and licenses, including public utilities, railroads, and pipelines;
- (4) the exercise of existing mineral, coal, oil, gas and geothermal rights.

The owners, their heirs, successors and assigns are reserved all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired.

UNDERGROUND UTILITY ACKNOWLEDGMENT

WHEREAS, the United States of America is the holder of Road Easements (the "Road Easements") the scope of which is set forth within Schedule E to those Complaints:

United States of America v. 5.62 Acres (Landmark),
Cause No. CV-13-00198-TUC-DCB;
TUC-NOG-0410E-2;
United States of America v. 2.83 Acres (Carmencita Ranch, L.L.C.),
Cause No. CV-13-443-TUC-DCB,
TUC-NOG-0417E-2;
United States of America v. 0.96 Acres (Lucero / Martinez),
Cause No. CV-13-00441-TUC-DCB,
TUC-NOG-0413E;
United States of America v. 0.41 Acres (Hanna),
Cause No. CV-13-00480-TUC-DCB,
TUC-NOG-0416E

Filed in the United States District Court, District of Arizona and;

WHEREAS, current and future owners and utility companies may require to cross beneath the Road Easements with utilities such as sewer, water, electric, and gas.

NOW THEREFORE, the United States of America acknowledges, under said Schedule "E," the underlying fee owner's right to pass future utilities beneath the surface of the Road Easements so long as such installation and operation of utilities does not impede Custom and Border Protection's use of the road or access to tower sites.

United States of America
By: JEFFREY H. WOOD
Acting Assistant Attorney General
Environment and Natural Resources Division
KRISTIN R. MUENZEN
DANIEL W. KASTNER
Trial Attorneys
United States Department of Justice
Environment & Natural
Resources Division

/s/ Kristin R. Muenzen

Date: March 10, 2017

EXHIBIT A TO STIPULATED FINAL JUDGMENT

CONDITIONS OF ASSIGNMENT

WHEREAS, the United States of America is the holder of Road Easements (the "Road Easements") set forth within Schedules "C," "D" and "E" to those Complaints:

United States of America v. 5.62 Acres (Landmark),
Cause No. CV-13-00198-TUC-DCB;
TUC-NOG-0410E-2;

United States of America v. 2.83 Acres (Carmencita Ranch, L.L.C.),
Cause No. CV-13-443-TUC-DCB,
TUC-NOG-0417E-2;

United States of America v. 0.96 Acres (Lucero / Martinez),
Cause No. CV-13-00441-TUC-DCB,
TUC-NOG-0413E;

United States of America v. 0.41 Acres (Hanna),
Cause No. CV-13-00480-TUC-DCB,
TUC-NOG-0416E

Filed in the United States District Court, District of Arizona and;

WHEREAS, the Road Easements are assignable.

NOW THEREFORE, upon construction of Alternative Roads of equal or superior quality and utility to the Road Easements and a tender of a Grant of Easement ("Grant") over such Alternative Roads serving the same purposes as the Road Easements, and provided the United States of America is satisfied with and accepts such Alternative Roads and Grant, rendering the Road Easements, or portions thereof unneeded, then the United States of America shall, upon proper application and compliance with the law, assign or release the unneeded Road Easements, or portions thereof, to the underlying fee owner.

These Conditions of Assignment shall have no applicability to those perpetual tower site easements referenced in the Complaint.

United States of America
By: JEFFREY H. WOOD
Acting Assistant Attorney General
Environment and Natural Resources Division
KRISTIN R. MUENZEN
DANIEL W. KASTNER
Trial Attorneys
United States Department of Justice
Environment & Natural
Resources Division

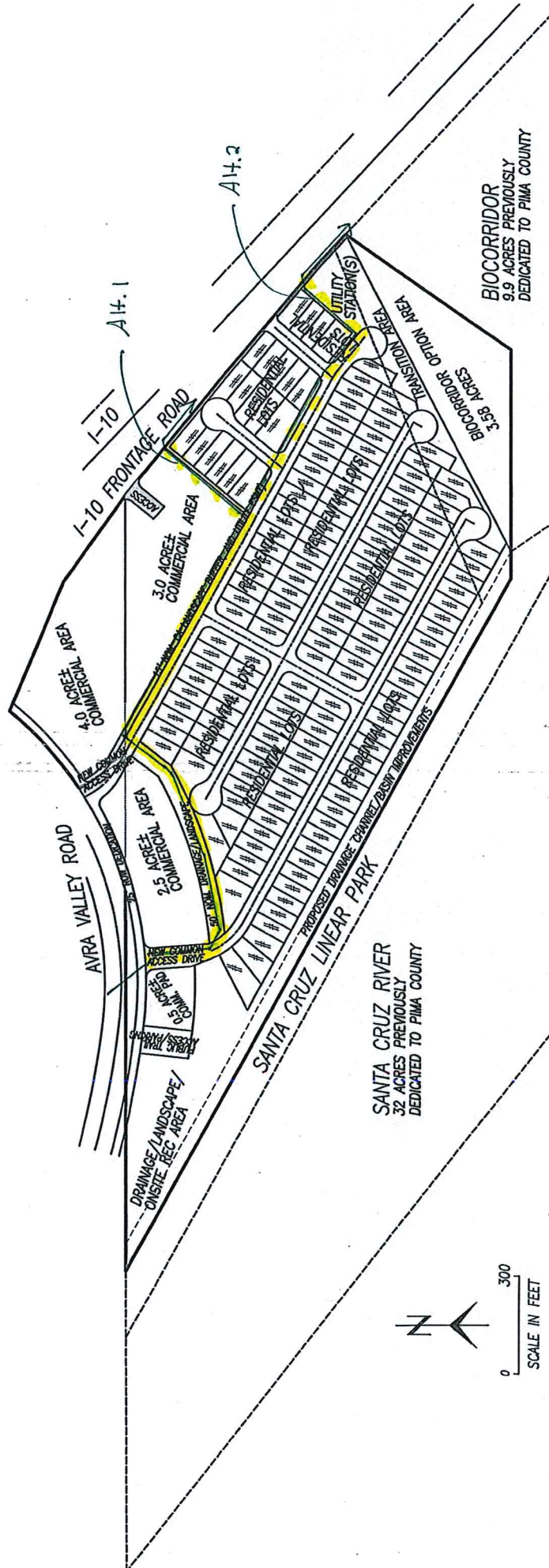
/s/ Kristin R. Muenzen

Date: March 10, 2017

EXHIBIT B TO STIPULATED FINAL JUDGMENT

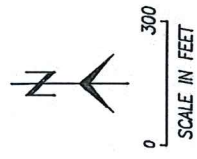
Metropolitan Water

Due to the size (36" diameter) and depth (~8', depending upon final grade fill), we would be looking for a 15' wide waterline easement exclusive of any other parallel utilities, with provision for perpendicular crossing of other utilities with adequate vertical clearance. In addition, to the exclusive easement, a minimum 15' non exclusive easement, common area, or right-of-way would be required adjacent to the waterline easement, for access, construction and maintenance of the waterline. It appears that the proposed alignments could potentially meet these requirements. Landscape over the exclusive easement area would need to be limited to ground cover, shrubbery, cacti, and other small vegetation to facilitate future repairs and prevent root intrusion damage to the pipeline.



Lot layout Alternate
AVRA VALLEY GATEWAY LAND USE PLAN
 170± (45'x120') RESIDENTIAL LOTS &
 10 ACRES COMMERCIAL AREA

Baker & Associates Engineering, Inc.
 8551 E. Santa Rita Drive, Suite #225 Tucson, Arizona 85718 (520) 418-1660 Fax (520) 318-1800
 2/15/18
 BAE/2302BASBILL.DWG





"Oh, look. Better put me down, honey."