

Lucinda Andreani
Director
Deputy County Manager

July 12, 2021

Eslir Musta
Deputy Director

RE: Grading Project at 7525 S. Snowbowl Road in Fort Valley
(Southwest corner of US Highway 180 and Snowbowl Road)

Jay Smith
Forest Restoration
Director

Dear Fort Valley Resident,

Christopher Tressler
PE, CFM
County Engineer

Several residents have contacted Coconino County about the subject grading project. This letter serves to address several questions the community has raised about the berms constructed at the corner of South Snowbowl Road and Hwy. 180.

Nick Hall
Interim
Road Maintenance
Division Manager

Question 1 – Is this work permitted and can it be regulated by the County?

Dave Caskey
Interim Fleet Services
Manager

Overall Regulatory Framework

The County does not have any specific regulatory requirements for construction of berms at this time (see below for plan to modify the County Engineering Design & Construction Manual (EDCM) as well as the Zoning Ordinance to provide authority to more effectively regulate the design and construction of earthen berms). During the history of permitting involved with the berms being constructed at this location the County did adopt a new EDCM, which provided for the County's ability to require that a registered professional engineer had to seal the design of any features like berms that may impact drainage.

Jeremy Floyd, MPA
Administrative Services
Division Manager

Viviana Reyes
Culture, Engagement &
Communications
Manager

Regulatory Framework & Permit History

Ron Hollamon
Solid Waste Manager

The permit history for this project extends back to 2018, and since that time the Board of Supervisors adopted an updated Engineering Design and Construction Manual (EDCM). However, the Zoning Code and EDCM does NOT regulate berms, except to the extent a berm impacts drainage. Berms constructed for the purpose of diminishing the impact of headlights, which is the purpose of these berms is not regulated at this time.

Marc Della Rocca
Community Relations
Manager

Earthwork without a Permit – July 2018

A County resident advised the County about grading activities in Fort Valley. The County advised the applicant that a grading permit was required.

Original Permit – August 2018

The work was originally permitted via grading permit EN-18-0104 on August 14, 2018, per the now [outdated Engineering Design and Construction Manual \(EDCM\)](#). This permit expired in February of 2019. The permit allowed for constructing a triangular berm approximately 10 feet tall, 750 feet long. The estimated earthwork was 3,750 cubic yards. The applicant was required to preserve the flow paths established in the [Fort Valley Initial Engineering Assessment \(IEA\)](#). Further, the applicant was warned that grading activities could not cause a negative drainage impact on adjacent property owners.

In September 2018, the County Board of Supervisors adopted the [current EDCM](#). The current EDCM includes a requirement that grading plans used to secure grading permits, except under certain conditions, must be sealed by a Professional Engineer.

Additional Activity Permitted on October 6, 2020

The additional activity was permitted by grading permit EN-19-0088 on October 6, 2020, through the [current EDCM](#). The County advised the applicant that if Engineered Plans were not submitted by April 4, 2021, the permit would expire. The applicant met this deadline, and the permit expiration was extended to December 7, 2021. An engineered plan was not required because the project started before that requirement was effective.

Actions Since April 2021

As of June 2021, the applicant provided two Engineered Construction Plan submittals. The County provided comments and is waiting for the applicant to revise the construction plans. Given the scale of the work and the extended timeline requested by the permit holder, the County has stopped project work until the County approves the engineered construction plans.

The County will not approve a design that changes the location and nature of water that enters or leaves the property. The County is also requiring that the side slopes of the berms be sloped no steeper than 3:1 and revegetated with native grass species.

The County is working with an independent professional engineering consultant to support the review of the permit application, including the engineered design and to ensure the proposed plan will have no downstream adverse impacts. A licensed Land Surveyor has also surveyed the site. If the property owner cannot develop a County approved engineered design, then the County will not allow the project to move forward and will require all fill material to be hauled off and the site restored to the pre-project condition.

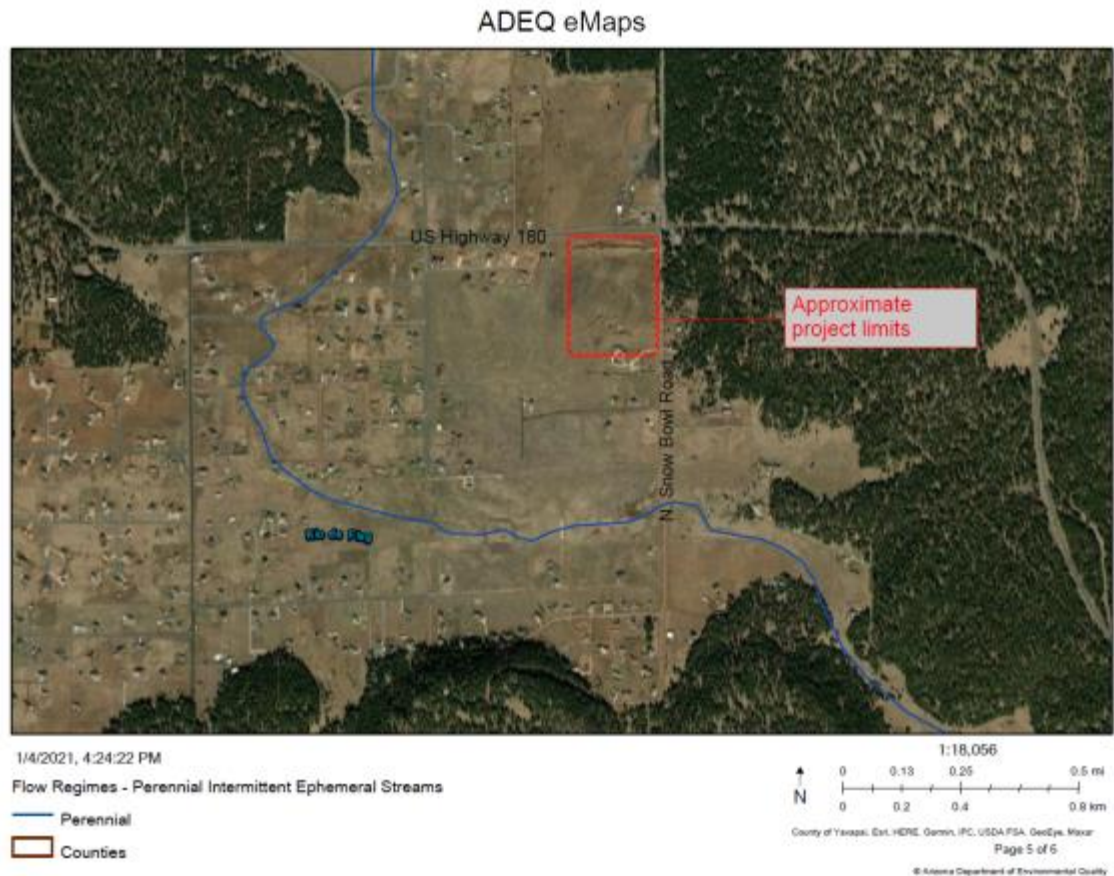
If the project moves forward, then an as-built survey will be required at the end of the construction period to ensure the project is constructed per the approved plan.

The County is imposing the following timeline upon this project. The engineered design shall be submitted to the Community Development Department and approved on or before July 20, 2021. Conducted within the scope of an approved engineered design and within the scope of a County issued grading permit, construction activities shall be completed on or before September 20, 2021. Failure to comply with the above deadlines and any work conducted outside of a County issued permit, will lead to formal code enforcement action with all associated fines and penalties of up to \$10,000 per day per violation. Furthermore, the earthwork will have to be removed and the area returned to pre-permit condition if construction is not completed by September 20, 2021.

Question 2 – Did the County mandate that the applicant obtain a permit required by Section 404 of the Clean Water Act (“404 Permit”)?

No. The map provided below was created using the Arizona Department of Environmental Quality [online tool](#) to determine if a project impacts a Waters of the U.S and therefore would require a Section 404 permit. The map shows that the project does not affect an ephemeral wash; therefore, a 404 Permit was not required.

When the applicant first applied for a Grading Permit in 2018, the U.S. Army Corps of Engineers' Navigable Waters Protection Rule considered ephemeral washes as Waters of the United States (WOTUS). However, a new definition for a WOTUS in the Navigable Waters Protection Rule became effective on June 22, 2020. The change means that ephemeral drainages and some rivers, streams, lakes, and ponds are no longer explicitly protected under the Clean Water Act as they will no longer be considered a WOTUS. Under both the historic rule and the current rule, the project does NOT require a Section 404 permit.

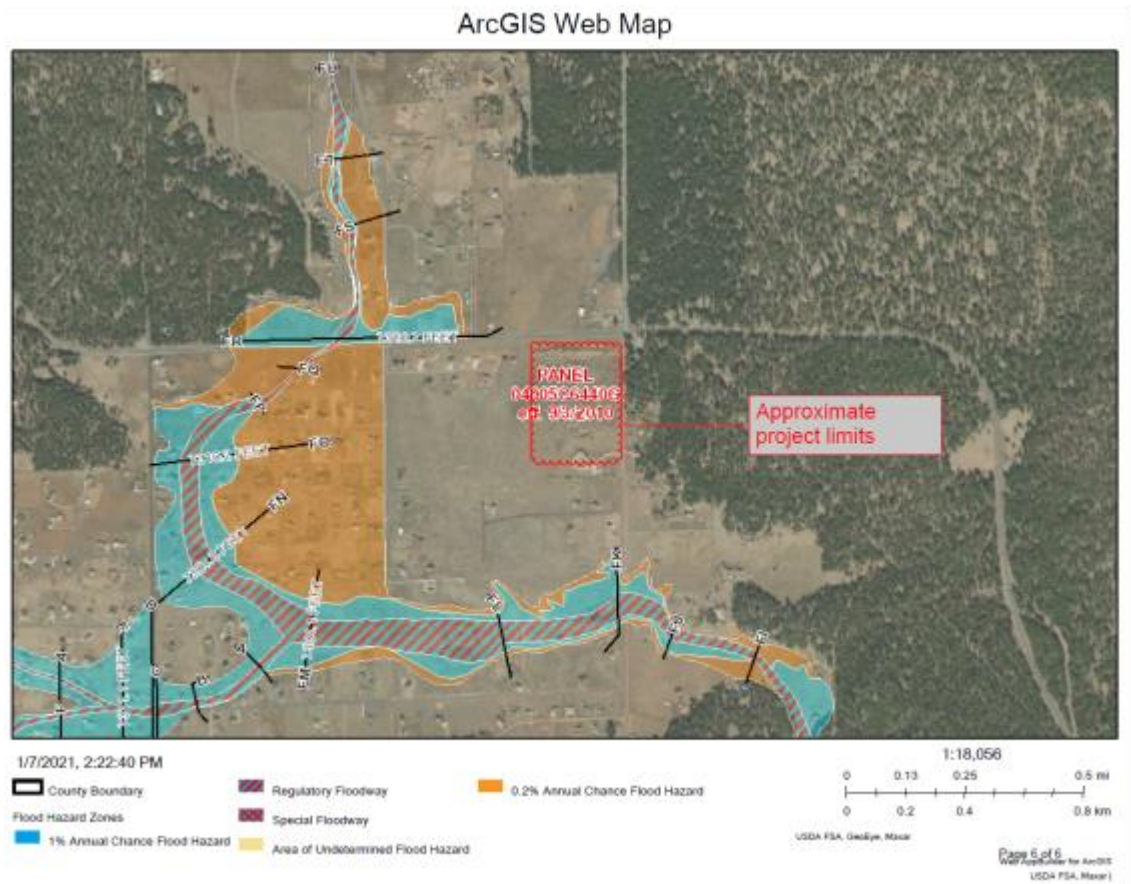


Question 3 – Did the applicant secure a Notice of Intent to discharge stormwater permit with ADEQ?

Yes.

Question 4 – Did the applicant obtain a floodplain permit?

The project is not located in a FEMA Special Flood Hazard Area; therefore, a floodplain permit is not required (see map below).



Question 5 – The Fort Valley Initial Engineering Assessment (IEA) included inundation areas greater than 0.2 foot resulting from the 100-year rainfall event. Why was the developer allowed to grade over these ponding areas?

The County advised the applicant that the inundation areas must be preserved to ensure that the project does not cause negative drainage impacts on adjacent property owners. Furthermore, the berms cannot change the velocity or location of the water where it enters and leaves the subject property.

Question 6 – My view of the San Francisco Peaks is impacted by the berms. Is the applicant allowed to block my view?

Section 3.18 of the Coconino County Zoning Ordinance addresses viewsheds for Campgrounds and Recreational Vehicle Parks. The subject property is zoned Rural Residential, for which the Zoning Ordinance does not address viewsheds.

Question 7 – Are there County regulations addressing berm heights or the amount of fill?

No. Neither the [Coconino County Zoning Ordinance](#) nor the [Engineering Design and Construction Manual \(EDCM\)](#) limit fill heights or fill volume. The only basis on which the County can currently regulate berms is based on impacts to drainage.

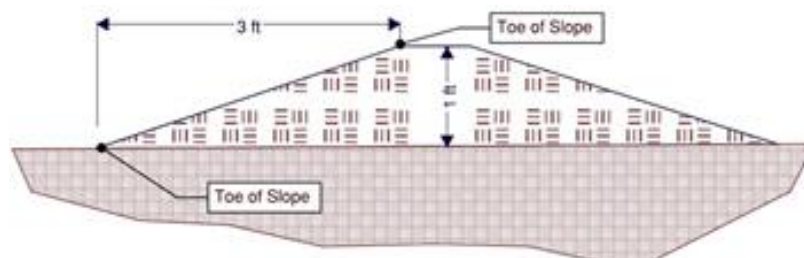
Question 8 – Are there restrictions for fence heights in properties zoned Rural Residential?

[Section 4.6 of the Coconino County Zoning Ordinance](#) limits fence heights in all zones to 6' at the property line; however, there are no guidelines regarding berm heights.

Question 9 – These berms are steep and pose a safety hazard.

Grading Permit EN-19-0088 required that the grading plan be prepared by a Professional Engineer, which in fact it was and was approved on October 6, 2020. The permit stipulates that the maximum slope is no greater than 3:1 (3 units horizontal to one unit vertical). See the example below of a 1-foot-tall berm. The minimum horizontal distance from the toe of the slope to the slope's top is 3 feet.

The survey conducted and reviewed by the applicant's Professional Engineer identified that the berms do not meet the 3:1 slope requirement and thus will have to be modified to meet this requirement. In addition, the applicant's revised plan, if submitted, must demonstrate no impact to the drainage.



Question 10 – Does the County require a landscape plan or weed abatement?

[Section 3.4.1 of the EDCM](#) addresses grading permit requirements. The County may require re-vegetation; however, there are no requirements for a landscape plan addressing noxious weeds and invasive plants. However, the project is required to seed berms and all disturbed areas with native grass seed.

Question 11 – Is this project considered a public nuisance under state law or any County ordinances?

No. The Coconino County Attorney's office determined that this project does not constitute a public nuisance.

Question 12 – I'm concerned about drainage from the project site. We cannot risk flooding and erosion of our mound system, especially since it is close to our well and the aquifer. What is the County doing to ensure the project will not negatively impact adjacent properties?

The County advised the applicant that the project must be constructed in compliance with Arizona Revised Statutes § Sections [48-3615 \(A\)](#), [48-3601 \(12\)](#), and [48-3613](#), which stipulate the following:

1. The location(s) where offsite stormwater flows enter the property remains substantially unchanged from the "pre-developed grading condition" to the "Interim grading condition" to the "post-developed/final grading condition."
2. The location(s) where stormwater flows exit the property remains substantially unchanged from the "pre-developed grading condition" to the "Interim grading condition" to the "post-developed/final grading condition."
3. The flow regime(s), where offsite stormwater flows enter the property, remains substantially unchanged from the "pre-developed grading condition" to the "Interim grading condition" to the "post-developed/final grading condition."
4. The flow regime(s), where stormwater flows exit the property, remains substantially unchanged from the "pre-developed grading condition" to the "Interim grading condition" to the "post-developed/final grading condition."

Question 13 – Last year, snow sledders left broken sleds and other trash all along the dirt piles' north side. How is the County addressing this problem?

The applicant installed "No Trespassing" signs to discourage sledding on this property. We encourage residents to contact the Sheriff's Office if anyone is seen trespassing on the property. In addition, please report to the County when the trash is observed. Please report illegal dumping or discharges into streets, storm drains or washes by calling (928) 679-8886, then press 1 at any time to record your message. You may remain anonymous.

Next Steps

Requirement for Issuing a New Permit

The County has reviewed initial submittals of an engineered design and provided comments back to the applicant for revisions. The County will not approve a design that changes the location and nature of water that enters or leaves the property. The applicant is expected to submit an acceptable engineered design to the Community Development Department with enough time to review and approve the submittal on or before July 20, 2021. Once the submittal is approved, the applicant will have until September 20, 2021, to complete the project and submit an as-built survey of the work. Failure to comply with the above deadlines and any work conducted outside of a County issued permit, will lead to formal code enforcement action with all associated fines and penalties of up to \$10,000 per day per violation. If the property owner cannot develop a County approved engineered design, then the County will not allow the project to move forward and will require all fill material to be hauled off and the site restored to the pre-project condition.

Modifications to the Engineering Design & Construction Manual

Public Works and Community Development are currently modifying the EDCM to include the regulation of design and construction of berms to be consistent with fencing, which means that berms cannot exceed the 6' height limit without a conditional use permit. In addition, requirements for landscaping and noxious weed abatement will be enhanced.

The staff proposed modifications to the EDCM were reviewed with the Board of Supervisors on June 8, 2021. The Board provided direction to staff to proceed with the changes, which means that they will return to the Board for final approval in August. We encourage property owners to provide comments to the Board at that time.

Modifications to the Zoning Ordinance

In addition to the modifications to the EDCM, Community Development is preparing modifications to the Zoning Ordinance that could provide greater regulatory authority over the design and construction of berms. This process requires a greater timeframe given this changes the regulatory framework and will also have to undergo a public review and comment period prior to any potential approval by the Board of Supervisors.

Sincerely,



Lucinda Andreani
Deputy County Manager

CC:
Patrice Horstman, Supervisor District 1
Christopher Tressler, County Engineer