

# Board of Supervisors

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Director

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Clerk

**AGENDA FOR FLOOD CONTROL DISTRICT MEETING**  
**Tuesday, August 14, 2012 at 10:00 a.m.**  
BOARD OF SUPERVISORS HEARING ROOM  
1415 MELODY LANE, BUILDING G, BISBEE, AZ 85603

**ANY ITEM ON THIS AGENDA IS OPEN FOR DISCUSSION AND POSSIBLE ACTION**

**ROLL CALL**

*Members of the Cochise County Board of Supervisors will attend either in person or by telephone, video or internet conferencing.*

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**CALL TO THE PUBLIC**

*This is the time for the public to comment. Members of the Board may not discuss items that are not specifically identified on the agenda.*

**ACTION**

**Community Development**

1. Adopt Resolution FCD 12-01 authorizing the acquisition of lands above appraised value for a Flood Control Project in the Willow Lakes area as described therein.

Pursuant to the Americans with Disabilities Act (ADA), Cochise County does not, by reason of a disability, exclude from participation in or deny benefits or services, programs or activities or discriminate against any qualified person with a disability. Inquiries regarding compliance with ADA provisions, accessibility or accommodations can be directed to Chris Mullinax, Safety/Loss Control Analyst at (520) 432-9720, FAX (520) 432-9716, TDD (520) 432-8360, 1415 Melody Lane, Building F, Bisbee, Arizona 85603.

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**Cochise County - 1415 Melody Lane, Building G - Bisbee, Arizona 85603**  
**(520) 432-9200 - Fax (520) 432-5016 - Email: [board@cochise.az.gov](mailto:board@cochise.az.gov)**  
**[www.cochise.az.gov](http://www.cochise.az.gov)**

**"PUBLIC PROGRAMS, PERSONAL SERVICE"**

**Flood Control District Meeting**

**Community Development**

**Meeting Date:** 08/14/2012

Authorize acquisition above appraised value for Willow Lakes Flood Control Project.

**Submitted By:** Terry Couchenour, Community Development

<b>Department:</b>	Community Development	<b>Division:</b>	Right of Way
<b>Presentation:</b>	PowerPoint	<b>Recommendation:</b>	Approve
<b>Document Signatures:</b>	BOS Signature Required	<b># of ORIGINALS Submitted for Signature:</b>	1
<b>NAME of PRESENTER:</b>	Karen Riggs	<b>TITLE of PRESENTER:</b>	Director
<b>Mandated Function?:</b>	Federal or State Mandate	<b>Source of Mandate or Basis for Support?:</b>	ARS 48-3603

**Docket Number (If applicable):**

**Information**

**Agenda Item Text:**

Adopt Resolution FCD 12-01 authorizing the acquisition of lands above appraised value for a Flood Control Project in the Willow Lakes area as described therein.

**Background:**

Willow Lakes Unit One is a subdivision created in 1971 and located north of Benson. The subdivision is located within the Pacheco Wash watershed and due to the lack of infrastructure, which today would have been addressed by the developer, this area is prone to flooding.

In 2011 the Board adopted Resolution FCD 11-02 authorizing the acquisition of rights-of-way in order to create a drainage ditch around the subdivision. This location is optimal due to the lack of existing right-of-way within the subdivision and due to the location of existing culverts under Ocotillo Road.

The project would affect four different properties. Rights-of-way have been acquired across one property, staff is working with a realtor regarding a second property, and staff has received counters to the proposed offer from the Lopez family regarding the final two properties.

The Lopez family owns the final two properties which are located on the east side of Willow Lakes. The proposed rights-of-way traversing properties owned by Joanne and Ernesto were appraised at \$4,000 (0.80 acres) and \$2,600 (0.97 acres) respectively. The difference in the per acre value for these family members was due to the differences in existing development and utilities servicing these two adjoining parcels. The Lopez family is not willing to convey rights-of-way for the project at the appraised value based on the following:

- Their family has owned the land for several generations and they do not want to lose the land especially the mature mesquite trees along the west boundary of their properties.
- They had a previous experience in the 1990's where the County took land for Ocotillo Road and the drainage ditch to the north of the road. They were forced to go through court to receive compensation for the previous right-of-way interaction with the County.
- Entities from Willow Lakes have cut down and stolen wood from their properties. They have dumped trash and vandalized an older manufactured home on their property. Then the Willow Lakes group reported the trash and vandalized home to Planning and Zoning. The Lopez family underwent stress from the damage, threat of P&Z fines, and considerable expense that Joanne is still paying for in order to have the property cleaned up and restored.

- The project does not benefit the Lopez's properties as their property is higher. The existing ditch has cut into their property and compromised their fence.

The Lopez family values their property especially the trees which provide a barrier from the residents at Willow Lakes. They would be agreeable to convey an easement under the following conditions:

- Value the properties the same at \$10,000 per acre.
- Apply the per acre value at 100% of the property conveyed, not 90% of value based upon easement rights.
- The rights for ditch will only be an easement for future building setback purposes and they realize that they cannot build within the easement.
- They want the wood from their trees that will be cut. Further they want the wood placed on their property in a location they choose.
- The County needs to maintain the fence that will be relocated as part of the project, excepting for any damage that they cause.
- They want it on record that they do not want the County to take any more of their property.

In working with the Lopez family staff was able to reduce right-of-way required, minimize the trees and property which would be affected, and minimize the overall costs of a proposed acquisition. As part of the project crews will be able to meet their request for the cut wood and replace the fence. Further staff can enter into the department's standard fencing agreement to maintain the fence except for damage caused by the Lopez's. Staff has informed the Lopez family that it cannot guarantee any future public need on their property. The family understood but wanted their request put on record.

Regarding the acquisition cost, \$10,000 per acre at a reduced right-of-way would equate to \$6,000 for Joanne and \$5,000 for Ernesto. This is an increase of \$2,000 and \$2,400 respectively over the County's initial offer. Right-of-way for the project was budgeted for approximately \$30,000. Including the costs already incurred plus anticipated future costs the remaining amount within the project right-of-way budget is approximately \$9,000. The project right-of-way budget will be increased by \$2,000 out of the FCD Right-of-way Acquisition fund to cover anticipated costs.

**Department's Next Steps (if approved):**

If approved staff will contact the property owners and title company and acquire the necessary rights-of-way.

**Impact of NOT Approving/Alternatives:**

If not approved the Board has the option to proceed to condemnation or not acquire the rights-of-way. If rights-of-way are not obtained, the project cannot proceed to properly minimize flows around the Willow Lakes subdivision. If the Board chooses to proceed to condemnation there are required additional costs for revised title and appraisal. At a minimum this initial cost is slightly less than the increase that the Lopez's have requested. However the minimum cost will increase depending on appraiser involvement in court. Staff does not recommend condemnation as the anticipated cost to condemn will likely exceed the cost of meeting the Lopez's requests.

**To BOS Staff: Document Disposition/Follow-Up:**

Please return a copy of the recorded document(s) to H&F, attn: right-of-way div.

**Fiscal Impact**

<b>Fiscal Year:</b>	12/13
<b>One-time Fixed Costs? (\$\$\$):</b>	\$13,200
<b>Ongoing Costs? (\$\$\$):</b>	
<b>County Match Required? (\$\$\$):</b>	
<b>A-87 Overhead Amt? (Co. Cost Allocation \$\$\$):</b>	

**Source of Funding?:**

FCD Right-of-way Acquisition

**Fiscal Impact & Funding Sources (if known):**

The anticipated cost is \$11,000 plus approximately \$2,200 for title costs. Adequate funds are available in FCD Right-of-way Acquisition fund to cover this expense

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**Attachments**

[Executive Summary for Willow Lakes](#)

[General Location Map for Willow Lakes](#)

[Map for Executive Summary for Willow Lakes](#)

[Resolution for Willow Lakes](#)

[Statement from property owners for Willow Lakes](#)

[PowerPoint presentation for Willow Lakes](#)



# COCHISE COUNTY

## HIGHWAY AND FLOODPLAIN DEPARTMENT

### MEMORANDUM



MAKING IT BETTER

Your County Questions answered:  
[www.cochise.az.gov](http://www.cochise.az.gov)

**DATE:** August 2, 2012

**TO:** Flood Control District Board

**THRU:** Karen Riggs, Director

**FROM:** Terry Couchenour, Right-of-way Agent II

**SUBJECT:** **Resolution FCD 12-\_\_, Authorizing the acquisition of right-of-way for construction of Flood Control Structures in the Willow Lakes area**

**Recommendation:** This department recommends adoption of the accompanying resolution to accept the counter acquisition proposed by Joanne Lopez and Ernesto Lopez for the Willow Lakes Flood Control project.

**Background (Brief):** Willow Lakes Unit One is a subdivision created in 1971 and located north of Benson. The subdivision is located within the Pacheco Wash watershed and due to the lack of infrastructure, which today would have been addressed by the developer, this area is prone to flooding. In 2011 the Board adopted Resolution FCD 11-02 authorizing the acquisition of rights-of-way in order to create a drainage ditch around the subdivision. This location is optimal due to the lack of existing right-of-way within the subdivision and due to the location of existing culverts under Ocotillo Road.

The project would affect four different properties. Rights-of-way have been acquired across one property, staff is working with a realtor regarding a second property, and staff has received counters to the proposed offer from the Lopez family regarding the final two properties.

The Lopez family owns the final two properties which are located on the east side of Willow Lakes. The proposed rights-of-way traversing properties owned by Joanne and Ernesto were appraised at \$4,000 (0.80 acres) and \$2,600 (0.97 acres) respectively. The difference in the per acre value for these family members was due to the differences in existing development and utilities servicing these two adjoining parcels. The Lopez family is not willing to convey rights-of-way for the project at the appraised value based on the following:

- Their family has owned the land for several generations and they do not want to lose the land especially the mature mesquite trees along the west boundary of their properties.
- They had a previous experience in the 1990's where the County took land for Ocotillo Road and the drainage ditch to the north of the road. They were forced to go through court to receive compensation for the previous right-of-way interaction with the County.
- Entities from Willow Lakes have cut down and stolen wood from their properties. They have dumped trash and vandalized an older manufactured home on their property. Then the Willow Lakes group reported the trash and vandalized home to Planning and Zoning. The Lopez family underwent stress from the damage, threat of P&Z fines, and considerable expense that Joanne is still paying for in order to have the property cleaned up and restored.
- The project does not benefit the Lopez's properties as their property is higher. The existing ditch has cut into their property and compromised their fence.

The Lopez family values their property especially the trees which provide a barrier from the residents at Willow Lakes. They would be agreeable to convey an easement under the following conditions:

- Value the properties the same at \$10,000 per acre.
- Apply the per acre value at 100% of the property conveyed, not 90% of value based upon easement rights.
- The rights for ditch will only be an easement for future building setback purposes and they realize that they cannot build within the easement.
- They want the wood from their trees that will be cut. Further they want the wood placed on their property in a location they choose.
- The County needs to maintain the fence that will be relocated as part of the project, excepting for any damage that they cause.
- They want it on record that they do not want the County to take any more of their property.

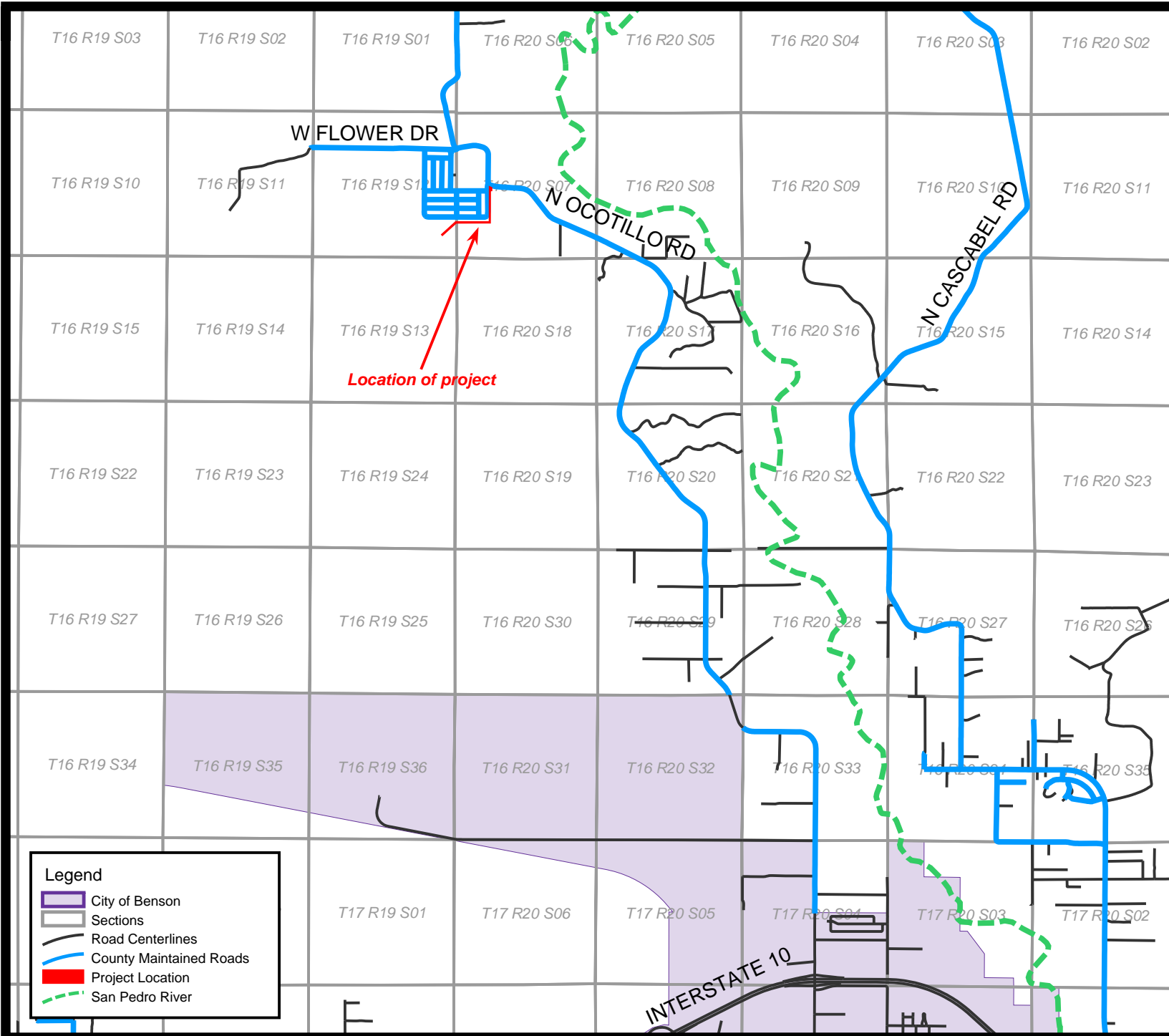
In working with the Lopez family staff was able to reduce right-of-way required, minimize the trees and property which would be affected, and minimize the overall costs of a proposed acquisition. As part of the project crews will be able to meet their request for the cut wood and replace the fence. Further staff can enter into the department's standard fencing agreement to maintain the fence except for damage caused by the Lopez's. Staff has informed the Lopez family that it cannot guarantee any future public need on their property. The family understood but wanted their request put on record.

Regarding the acquisition cost, \$10,000 per acre at a reduced right-of-way would equate to \$6,000 for Joanne and \$5,000 for Ernesto. This is an increase of \$2,000 and \$2,400 respectively over the County's initial offer. Right-of-way for the project was budgeted for approximately \$30,000. Including the costs already incurred plus anticipated future costs the remaining amount within the project right-of-way budget is approximately \$9,000. The project right-of-way budget will be increased by \$2,000 out of the FCD Right-of-way Acquisition fund to cover anticipated costs.

**Fiscal Impact & Funding Sources:** The anticipated cost is approximately \$11,000 plus \$2,200 for title costs. Adequate funds are available in FCD Right-of-way Acquisition fund to cover this expense.

**Next Steps/Action Items/Follow-up:** If approved staff will contact the property owners and title company and acquire the necessary rights-of-way.

**Impact of Not Approving:** If not approved the Board has the option to proceed to condemnation or not acquire the rights-of-way. If rights-of-way are not obtained, the project cannot proceed to properly minimize flows around the Willow Lakes subdivision. If the Board chooses to proceed to condemnation there are required additional costs for revised title and appraisal. At a minimum this initial cost is slightly less than the increase that the Lopez's have requested. However the minimum cost will increase depending on appraiser involvement in court. Staff does not recommend condemnation as the anticipated cost to condemn will likely exceed the cost of meeting the Lopez's requests.



**LOCATION MAP**

Proposed acquisition of right-of-way for Willow Lakes Flood Control Structures

Located within Section 7 Township 16 South Range 20 East G.&S.R.M.

**Legend**

- City of Benson
- Sections
- Road Centerlines
- County Maintained Roads
- Project Location
- San Pedro River

This map is a product of the GIS



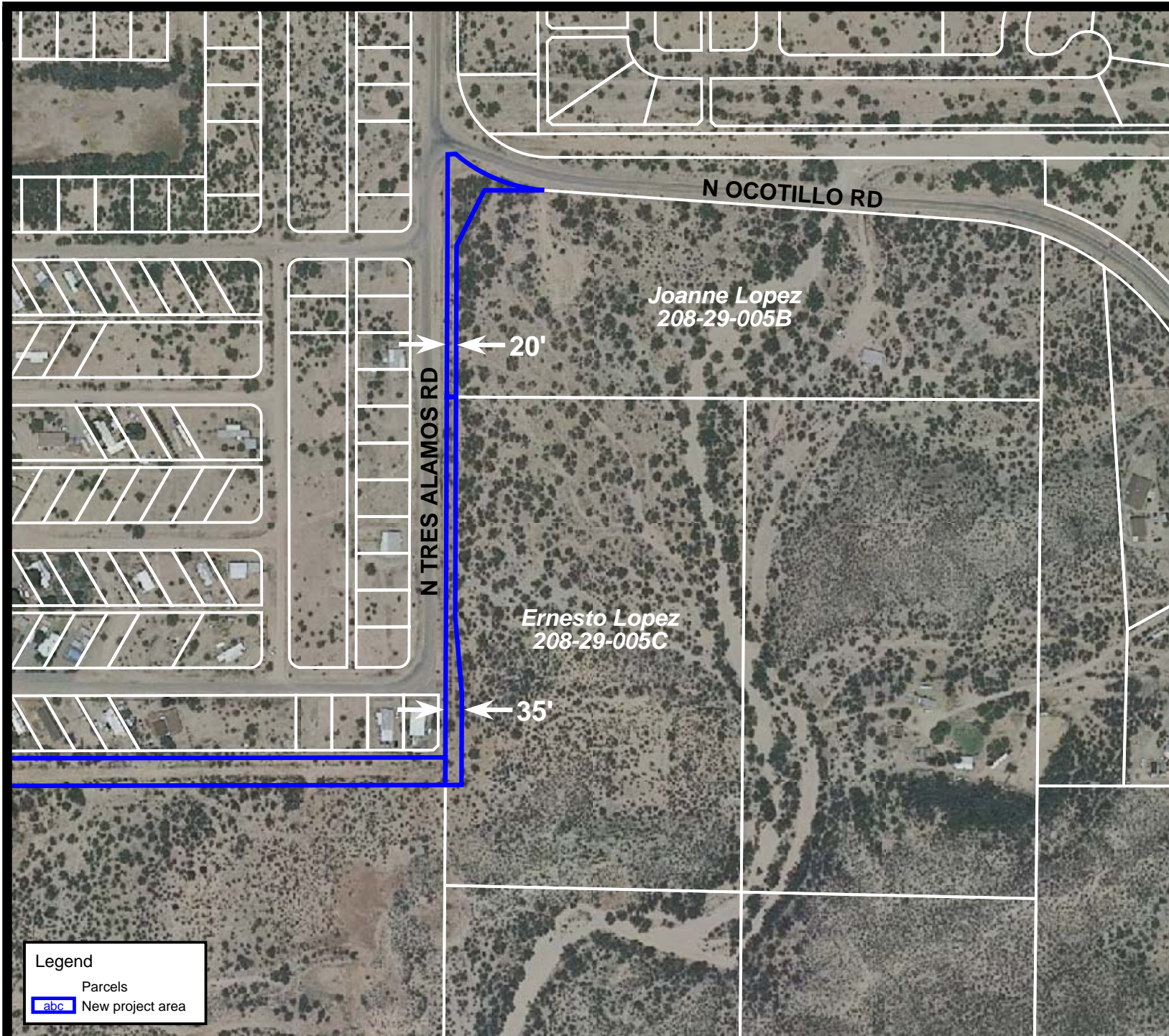


### Map for Executive Summary

Proposed  
acquisition of  
right-of-way for  
Willow Lakes  
Flood Control  
Structures

Located within  
Section 7  
Township 16 South  
Range 20 East  
G.&S.R.M.

This map is a product of the  
Cochise County GIS



**Legend**

- Parcels
- abc New project area

**RESOLUTION FCD 12 - \_\_**

**AUTHORIZING THE ACQUISITION OF RIGHT-OF-WAY FOR  
THE WILLOW LAKES FLOOD CONTROL STRUCTURES,  
TRAVERSING ASSESSOR PARCEL NUMBERS 208-29-005B AND  
208-29-005C, AND LOCATED NORTH OF BENSON**

**WHEREAS**, the Flood Control District Board of Cochise County, Arizona is authorized to acquire rights-of-way for drainage purposes to manage and transport storm runoff pursuant to A.R.S. § 48-3603; and

**WHEREAS**, it is necessary to establish flood control structures to carry storm waters from the Pacheco Wash watershed to the San Pedro River and around Willow Lakes Unit One; and

**WHEREAS**, on July 12, 2011, the Board adopted Resolution FCD 11-02 which authorized the acquisition of rights-of-way, at appraised value, for those portions which traverse APN 208-29-005B and 208-29-005C; and

**WHEREAS**, a counter to the appraised value offer has been proposed by Joanne Lopez, owner of APN 208-29-005B, and Ernesto Lopez, owner of APN 208-29-005C who are requesting that the respective rights-of-way be acquired for \$6,000.00 and \$5,000.00 rather than at the appraised value of \$4,000.00 and \$2,600.00; and

**WHEREAS**, it will be mutually beneficial to the Flood Control District and to the Lopez's to acquire these rights-of-way, within budgeted funds as described above,

**NOW, THEREFORE, BE IT RESOLVED** that acquisition of these rights-of-way are in the public interest, and such action as may be necessary to acquire these rights-of-way is hereby authorized.

**BE IT FINALLY RESOLVED**, that the Director of the Highway and Floodplain Department, or his designee, is authorized to act on behalf of the County to accept the offer proposed by Joanne Lopez and Ernesto Lopez to acquire the rights-of-way for \$6,000.00 and \$5,000.00, respectively.

**RESOLUTION FCD 12-\_\_**

**Re: Authorizing the Acquisition of Right-of-Way for the Willow Lakes Flood Control Structures, Traversing Assessor Parcel Numbers 208-29-005B and 208-29-005C, and Located North of Benson**

**Page 2**

**PASSED AND ADOPTED** by the Flood Control District Board of Cochise County, Arizona, this \_\_\_\_\_ day of \_\_\_\_\_, 2012

\_\_\_\_\_  
Richard R. Searle, Chairman  
Cochise County Flood Control District Board

**ATTEST:**

\_\_\_\_\_  
Katie A. Howard,  
Clerk of the Board

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
David C. Fifer,  
Civil Deputy County Attorney

July 2, 2012

Terry Couchenour  
Cochise County Highway and Floodplain  
1415 W. Melody Lane  
Bisbee, AZ 85603

RE: Willow Lakes



Mr. Couchenour,

We do not accept the County's 2011 offer to take my family's property. We understand that our land to be taken for the project is for the benefit of the Willow Lakes subdivision. However there are many issues which prevent us from accepting that offer to take our land for the benefit of our neighbors.

First, this is our family's land passed down through the generations, our family worked hard for this land and the thought of it being taken from us does not settle well, especially the thought of losing our mature mesquite trees.

Second, in the 1990's the County took our land for Ocotillo Road and the drainage ditch to the north. During that process we were forced to go to court in order to receive compensation for what the County took. That previous experience was horrible.

Third, Willow Lakes has been less than neighborly to us. They have cut down and stolen wood from us. They have used our land as a trash dumping site and vandalized our older manufactured home. Then they reported us to Planning and Zoning for the trash and destroyed home. Planning and Zoning's threat of fines only added to the stress of the situation. It was a considerable expense to clean up after our neighbors and have the destroyed home removed.

Fourth, I see no benefit to us for the ditch. In fact the existing ditch has only damaged our property. Our property is higher than Willow Lakes and the existing ditch is cutting into our property damaging or otherwise compromising our fence.

Terry we appreciate you listening to our concerns. We would be willing to convey an easement to the County under the following conditions:

- Value the property at \$10,000 per acre.
- Value the property at 100%, not 90% of value based on an easement.
- Take this as an easement so that we can continue to build on our property as measured from the existing property lines. We realize we won't be able to build within the proposed easement.
- We want the wood from our trees that will be cut. We want the wood placed on our property in a location that we choose.
- The County needs to maintain the fence along the ditch, excepting of course for any damage that we cause.
- Finally we want it on record that we do not want the County to take any more of our property.

Respectfully,

*Joanne Lopez* 7-11-12

Ernesto Lopez

Joanne Lopez

June 7, 2012

Terry Couchenour  
Cochise County Highway and Floodplain  
1415 W. Melody Lane  
Bisbee, AZ 85603

RE: Willow Lakes

Mr. Couchenour,

We do not accept the County's 2011 offer to take my family's property. We understand that our land to be taken for the project is for the benefit of the Willow Lakes subdivision. However there are many issues which prevent us from accepting that offer to take our land for the benefit of our neighbors.

First, this is our family's land passed down through the generations, our family worked hard for this land and the thought of it being taken from us does not settle well, especially the thought of losing our mature mesquite trees.

Second, in the 1990's the County took our land for Ocotillo Road and the drainage ditch to the north. During that process we were forced to go to court in order to receive compensation for what the County took. That previous experience was horrible.

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Fourth, I see no benefit to us for the ditch. In fact the existing ditch has only damaged our property. Our property is higher than Willow Lakes and the existing ditch is cutting into our property damaging or otherwise compromising our fence.

Terry we appreciate you listening to our concerns. We would be willing to sell our land to the County under the following conditions:

- Value the property at \$10,000 per acre.
- Value the property at 100%, not 90% of value based on an easement, regardless of whether the County takes the property as easement or deed.
- For any property being taken that will qualify to be included in our site area calculation, such as the area currently being used along Ocotillo Road, take the property with a deed to remove this from Joanne's taxes.
- We want the wood from our trees that will be cut. We want the wood placed on our property in a location that we choose.
- The County needs to maintain the fence along the ditch, excepting of course for any damage that we cause.
- Finally we want it on record that we do not want the County to take any more of our property.

Respectfully,

Ernesto Lopez

*Ernesto R. Lopez*

Joanne Lopez





# **Authorize acquisition for Willow Lakes Flood Control Project**

**August 14, 2012**



### LOCATION MAP

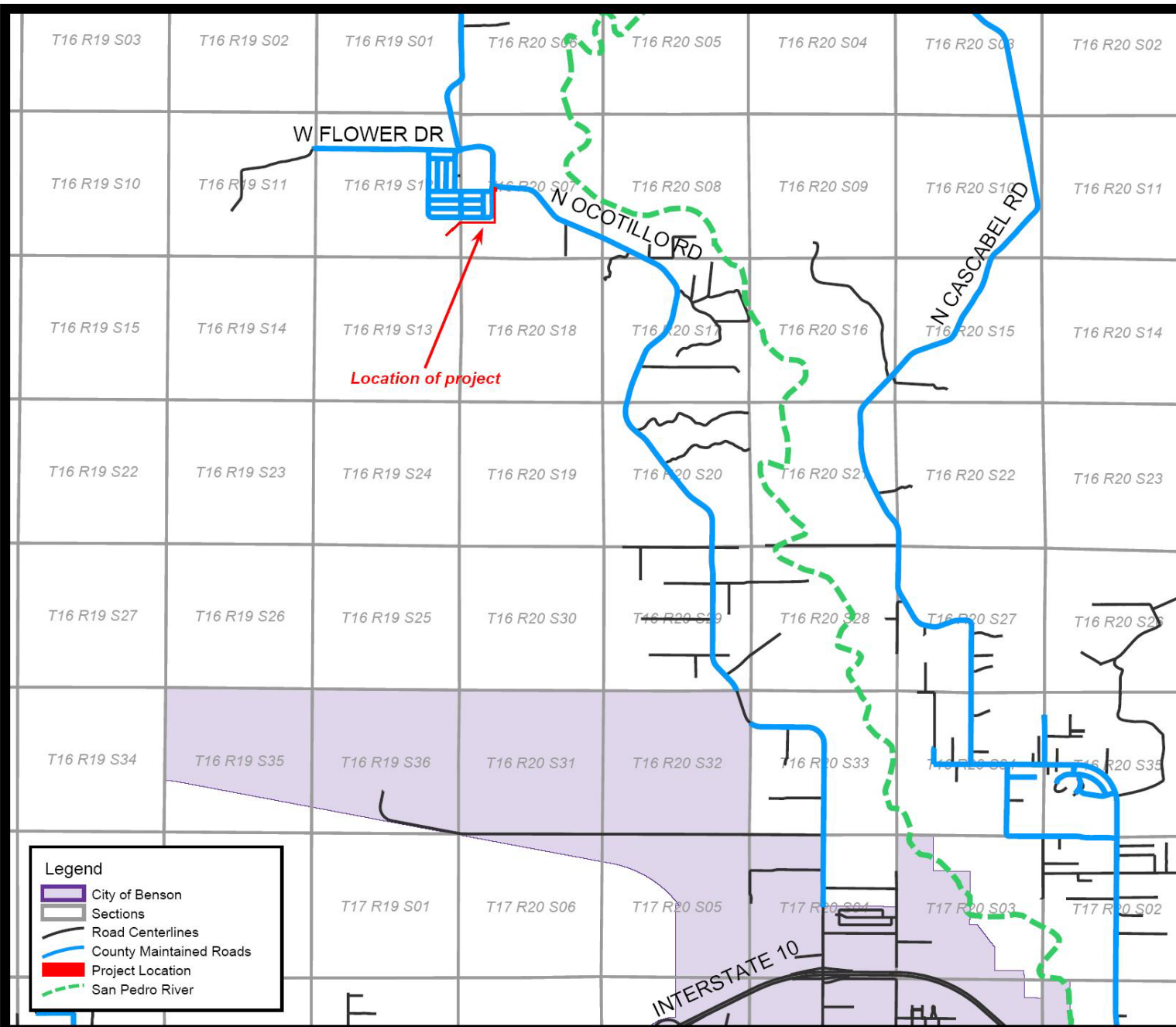
Proposed acquisition of right-of-way for Willow Lakes Flood Control Structures

Located within Section 7 Township 16 South Range 20 East G.&S.R.M.

This map is a product of the GIS

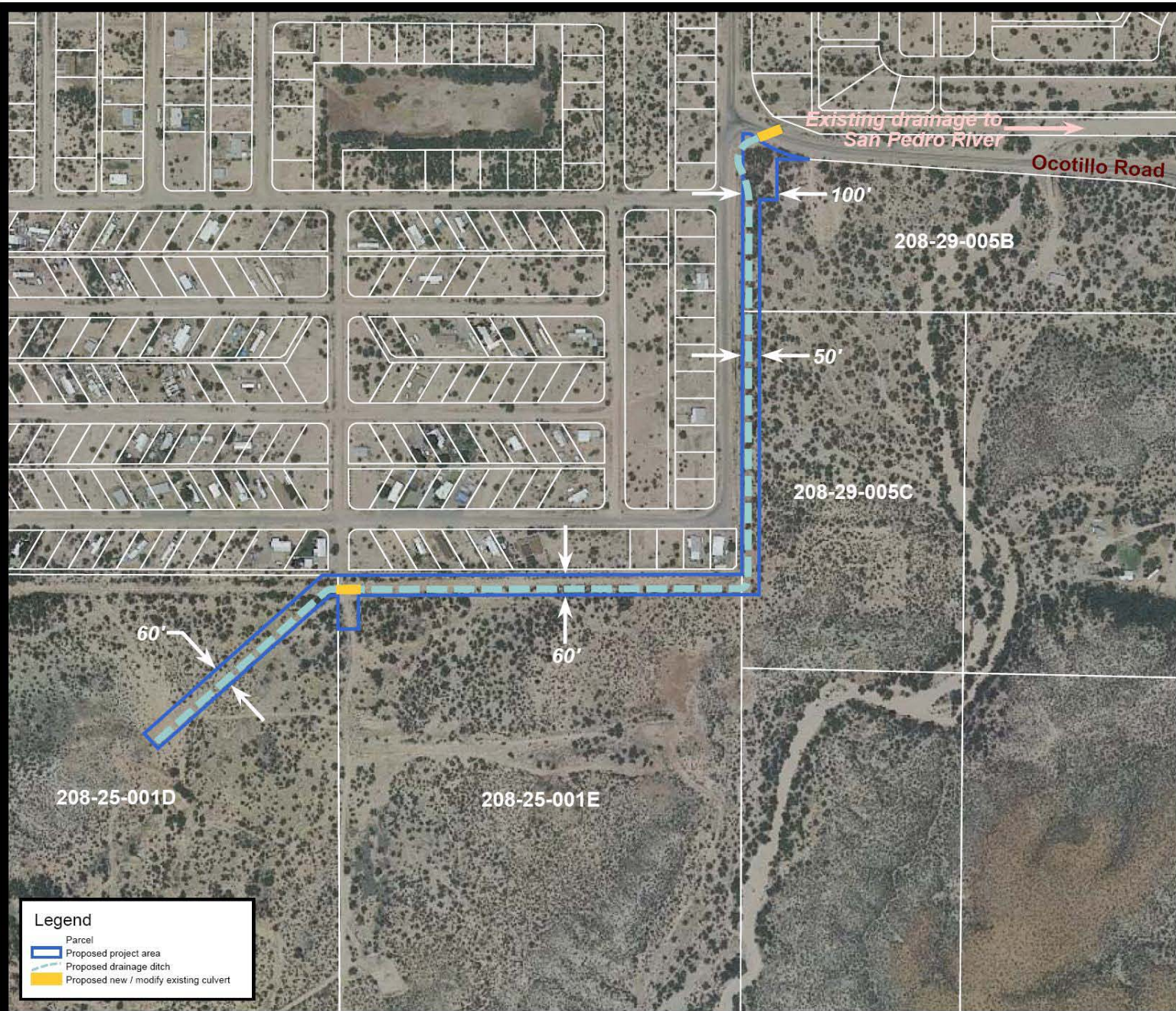


0' 1" = 5000'



**Legend**

- City of Benson
- Sections
- Road Centerlines
- County Maintained Roads
- Project Location
- San Pedro River



Willow Lakes

**Legend**

- Parcel
- Proposed project area
- Proposed drainage ditch
- Proposed new / modify existing culvert

This map is a product of the Cochise County GIS



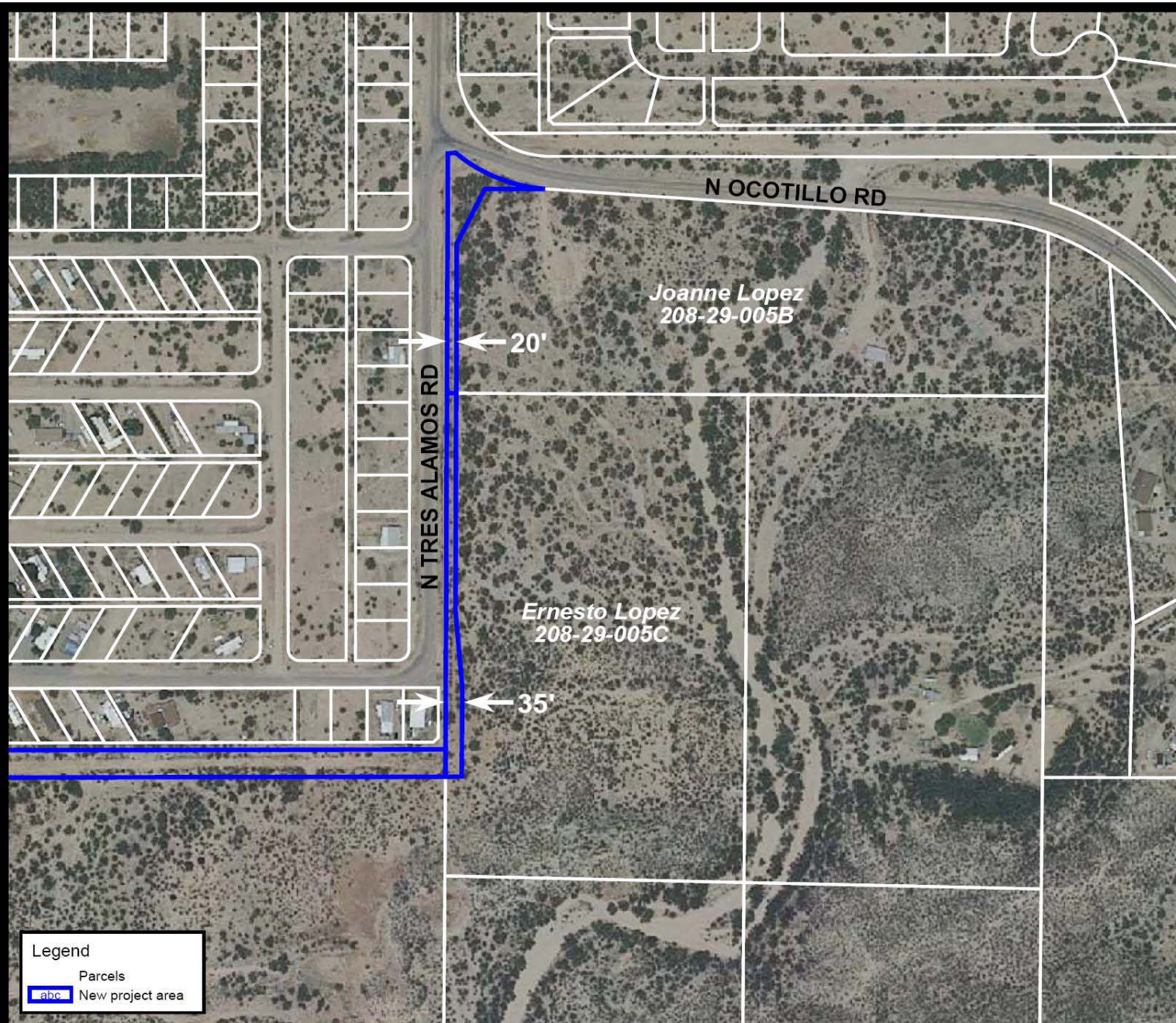


### Map for Executive Summary

Proposed acquisition of right-of-way for Willow Lakes Flood Control Structures

Located within Section 7 Township 16 South Range 20 East G.&S.R.M.

This map is a product of the Cochise County GIS



#### Legend

- Parcels
- abc New project area

Near intersection of Ocotillo Road and Tres Alamos Road looking South



**Proposed area  
of acquisition**