



EXTRA-TERRITORIAL ZONING AUTHORITY

**DOÑA ANA COUNTY COMMUNITY DEVELOPMENT DEPARTMENT
Doña Ana County Government Complex • 845 North Motel Blvd.
Las Cruces, New Mexico 88007 • Office: 575-647-7230**

MEETING DATE: September 21, 2016

CASE #: APP16-004

REQUEST: An appeal of the June 16, 2016, ETZ Commission approval of Case #SU16-005/Daviet

PURPOSE: Special Use Permit to construct and operate a 75' telecommunications tower facility.

APPELLANT: Peter Niles & Donna Wagner

LOCATION: 2116 Apodaca Rd.

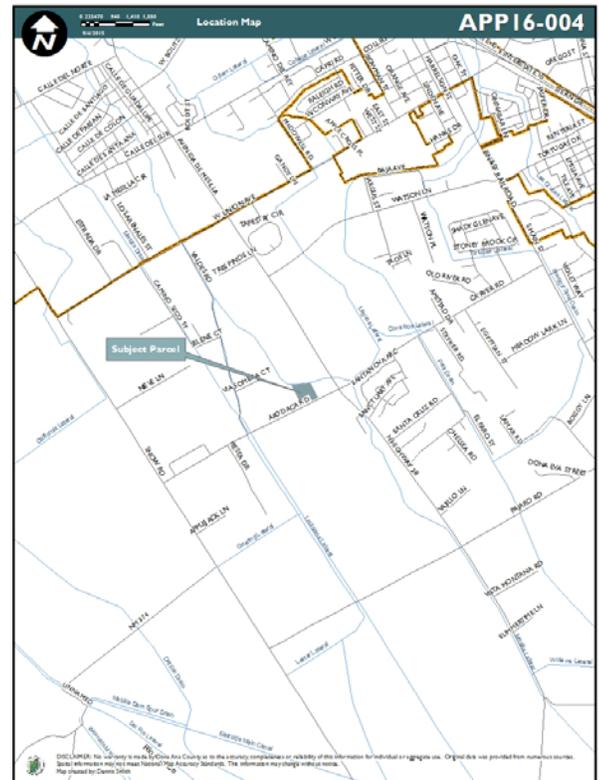
LEGAL DESCRIPTION Lot 2 of Triple "L" Acres No. 1 as recorded in the Doña Ana County Clerk's Office on 12/30/15, with Inst. #1527726

PROPERTY SIZE: 5.0-ac. (20' X 30' lease area)

CURRENT ZONING: ER3

ETZ COMMISSION DECISION: APPROVAL (7-0-0 vote)

CASE MANAGER: Steve Meadows, Planner



REPORT CONTENTS: (1) Cover Sheet, (2) Applicable Policies and Ordinances, (3) Staff Analysis, (4) Appellant's Attachment A, (5) ETZ Commission Hearing Staff Analysis, (6) Staff's ETZ Commission Hearing PowerPoint Presentation, (7) Applicant's ETZ Commission Hearing PowerPoint Presentation, (8) Meeting Minutes 6/16/2016, (9), Attachment 1-Verizon Site Analysis, (10) Attachment 2- Verizon Coverage & Capacity Analysis, (11) Attachment 3- Verizon Photo Simulations, (12) Attachment 4- Verizon Coverage & Capacity Narrative & Data

SURROUNDING ZONING AND LAND USE

SITE	ZONING	LAND USE
North	ER3 - Residential, 1.0-acre minimum new lot size, single family site-built homes.	Agricultural and residential uses
South	ER3M - Residential, 1.0-acre minimum new lot size, single family site-built & mobile homes.	Agricultural uses
East	ER4 - Residential, 1/2-acre minimum new lot size, single family site-built homes.	Agricultural and residential uses
West	ER3 - Residential, 1.0-acre minimum new lot size, single family site-built homes.	Agricultural and residential uses

BACKGROUND:

Existing Conditions and Zoning:

The subject property is an irregularly shaped 5.0-acre parcel within an ER3 (Residential, 1.0-acre minimum new lot size, single family site-built homes) Zoning District. Access to the property is from Apodaca Rd., a paved county maintained road, considered a minor arterial road by the Mesilla Valley MPO requiring 100' of R-O-W. The property is bounded on the north by the Mesilla Lateral, approximately 40' in width at the property line. A 1,604 sq. ft. site built home with an attached carport was constructed in 1965 and is located near the center of the subject parcel. An approximate 4,300 sq. ft. agricultural structure is located north of the residence near the telecommunications tower and facility site and an approximate 300 sq. ft. water well building is east of the residence.

Request:

CASE # APP16-004/NILES-WAGNER: Peter Niles & Donna Wagner (*#3 on List*) are **Appealing** the June 16, 2016, ETZ Commission decision to approve, by a vote of 7-0-0, **CASE #SU16-005** to construct and operate a 75' telecommunication tower facility within an ER3 (Residential, 1.0 acre minimum new lot size, single-family site-built homes) Zoning District on a 20' X 30' lease area of a 5.0 acre parcel. The applicants are requesting that the Extra-territorial Zoning Authority (ETA) **reverse** the ETZ Commission decision to **Approve** the Special Use Permit and **Deny** the original Special Use Permit request.

APPLICABLE PLANS, POLICIES, CRITERIA AND CASE LAW FOR APPROVAL

Las Cruces Extra-territorial Zoning Ordinance No. 88-02, as amended.

2.1.D EVALUATION CRITERIA

The Planning Director and the ETZ Commission may use the following general criteria when reviewing **Special Use Permits** and Zoning applications. The ETZ Commission shall have the authority to require additional specific information on any of the following criteria.

Unless additional justification is presented, the fact that there is an existing legal nonconforming use shall not be considered sufficient grounds for a zone change in order to bring that use into conformity.

2.1.D.1 Determination of potential number of homes, population and population demographics.

2.1.D.2 Determination of potential traffic flows (average daily traffic) and where they will impact the transportation system.

2.1.D.3 Determination of need for new commercial activity.

2.1.D.4 Determination of potential water and sewage needs.

2.1.D.5 Evaluation of existing infrastructure capacities and an analysis of the ability of the existing system to accommodate the new development.

2.1.D.6 The difference between capacity and impact should be stated. Those areas which are appropriate for the developer to underwrite should be negotiated between local government and developer.

2.1.D.7 The ETZ should reserve the right to place appropriate zoning categories on environmentally sensitive areas, areas of historical significance or areas which contain endangered or rare species of animal or plant life.

2.1.D.8 Any analysis required should be undertaken and paid for by the developer and verified by the ETZ Commission.

2.1.D.9 Determination of impact of a proposed zone change/special use permit on surrounding properties.

2.1.I EXTRA-TERRITORIAL AUTHORITY VOTING REQUIREMENTS ON APPEALS OF EXTRA-TERRITORIAL ZONING COMMISSION DECISIONS

The Extra-territorial Authority by a majority vote of its total membership may:

1. Reverse any order, requirement, decision or determination of an administrative official, commission or committee
2. Decide in favor of the appellant
3. Make any change in any order, requirement, decision or determination of an administrative official, commission or committee.

Section 2.4 APPEALS PROCEDURE

2.4.A APPEALS

An appeal from any order or decision of the Extra-territorial Zoning Commission may be taken to the Extra-territorial Authority by any person aggrieved. An appeal is taken by filing with the Planning Director and the Extra-territorial Authority written notice stating the nature of the appeal

and specific reasons thereof. A notice of appeal shall be considered filed with the Planning Director and the Extra-territorial Authority when delivered to the County Planning and Zoning Division and the date and time of filing shall be entered on the notice by the County Planning Staff. Within ten (10) days after receiving the notice of appeal the Planning Director shall transmit to the Extra-territorial Authority all the documents constituting the record relating to the action being appealed. In addition the Planning Director may transmit to the Extra-territorial Authority such supplementary report as he may deem necessary to present clearly the facts and circumstances of the case. Upon receipt of the documents the Extra-territorial Authority shall set the matter for hearing and instruct the Planning Director to mail a notice of the time, place and purpose of the hearing to the appellant and to fulfill the public notification requirements set forth in Subsection 2.1.G of this Article.

2.4.B APPEAL PERIOD

An appeal must be filed no later than thirty (30) days after the date the decision or order of the Extra-territorial Zoning Commission was rendered.

2.4.C BURDEN OF PROOF

When an appeal is taken to the Extra-territorial Authority, the Planning Director, on behalf of the Extra-territorial Zoning Commission, shall have the initial burden of presenting to the Extra-territorial Authority sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.

The burden of presenting evidence sufficient to allow the Extra-territorial Authority to reach a conclusion on the appeal, as well as the burden of persuasion on the issues set forth, remains with the appellant.

2.4.D STAY OF PROCEEDINGS

An appeal shall stay all proceedings in furtherance of the action appealed unless the appellant certifies that by reasons therein stated, a stay would cause imminent peril of life and property. Upon certification, the proceedings shall not be stayed except by order of a District Court after a notice is provided to the appellant.

2.4.E ACTION OF EXTRA-TERRITORIAL AUTHORITY

Upon hearing the appeal, the Extra-territorial Authority by a majority vote of the total membership, may reverse or affirm (in whole or part) or may modify the order, requirement or decision or determination that in its opinion ought to be made in the case before it.

4.2.E.2 ANTENNAS AND ANTENNA SUPPORTING STRUCTURES FOR TRANSMISSION OR RECEPTION OF RADIO SIGNALS

4.2.E.2.a Free-Standing or Guyed Commercial Towers- Commercial towers shall be allowed in all commercial and industrial zones except EC1. For EC1, refer to Section 4.2.E.2.b. All towers to be erected shall have a site plan review completed by the Doña Ana County Planning Department.

If the site for the tower is to be leased from another property owner, there shall be a restriction in the lease that neither party may build or place any structure within the required setback.

Allowable height of the tower shall be determined as follows:

1. Tower height shall be limited to that height which is determined by a one-to-one setback plus ten (10) percent from all property lines on the parcel up to a maximum total height of ninety (90) feet.
2. If co-location of two or more communications companies will occur on one tower, an additional 20 feet for each additional company may be added to the total height of the tower to a maximum total height of one hundred thirty (130') feet to allow for added antenna arrays and reduce/eliminate interference. A one-to-one setback plus ten (10) percent is required.

Proof of co-location (shared tower agreement, rental/lease contract or similar) shall be required and must be submitted to Doña Ana County Planning prior to the issuance of a building permit. The required setback may be waived for monopole towers that are located directly adjacent to buildings thirty (30) feet or taller. This waiver must be approved by the County Planning Director.

All structures shall be located out of falling distance of any overhead power lines. Structures shall be constructed to meet the requirements of the Uniform Building Code and shall withstand a ninety (90) mile per hour wind.

An eight (8) foot fence or anti-climb device shall be required for structures which can be freely climbed. Additional height may be allowed by Special Use Permit approval. Conditions may be attached to the SUP. A commercial tower located in any zone shall have landscaping as provided elsewhere in this Ordinance.

Commercial towers that are to be located adjacent to residential zones shall meet a two-to-one setback ratio from all property lines, unless flush mounted on existing structures or mounted on rooftops (refer to Section 4.2.E.2.c for mounting antennae on existing structures).

4.2.E.2.b Commercial Towers in Residential Zones- Any commercial tower to be located in residential zones shall only be allowed in ER1, ER1M, ER2, ER2M, ER3, ER3M, ER3H and EC1 zoning districts through approval of a Special Use Permit. Commercial towers in residential districts and neighborhood commercial districts shall meet the following criteria:

- monopole type only
- height shall be limited to that height which is determined by a two-to-one setback from all property lines up to a maximum total tower height of seventy-five (75) feet
- approval of a site plan by the Doña Ana County Planning Department prior to new construction or modification of an existing structure.

If height in excess of seventy-five (75) feet is required, approval of a Special Use Permit is needed. All other requirements of Section 4.2.E.2.a shall apply to this Section.

4.2.E.2.c Personal (Private), Free Standing or Guyed Towers- Personal towers shall be allowed by right in all zones and must meet the following criteria:

- height shall be limited to a maximum total tower height of seventy-five (75) feet
- a site plan must be approved by the Doña Ana County Planning Department prior to new construction or modification of an existing tower. All engineering data for the tower must be submitted at this time.
- Structures shall be constructed to meet the Uniform Building Code and shall withstand an eighty (80) mile per hour wind. If the structure cannot

meet the wind loading requirements, a one-to-one setback will be required.

- A minimum setback of ten (10) feet shall be required.

One tower per parcel is allowed. One additional tower may be allowed by Special Use Permit approval.

4.2.E.2.d Commercial Antennas Mounted to Existing Structures Commercial antennas may be mounted on or attached to any existing structure in commercial and industrial zones, providing that written permission by the owner of the structure is provided. A copy of this permission must be provided and a site plan review must be completed by Doña Ana County Planning prior to issuance of a building permit.

Any additional superstructure that will be added to accommodate any and all antenna arrays, such as top hats, vertical and horizontal mounting standards and the like, must meet Uniform Building Codes. Any height that will be added as a result of this construction that exceeds the height limitations in section 4.2.E.1 must have the approval of a Special Use Permit. Antennas or antenna arrays that are to be added to existing towers must comply with the regulations set forth in Section 4.2.E.2.a.

4.2.E.2.e Private Antennas Mounted to Existing Structures- Private antennas may be mounted to existing buildings in residential, commercial and industrial zones, providing the total tower height meets a one-to-one setback and does not exceed seventy-five (75) feet. Existing buildings shall meet all applicable Uniform Building Codes.

4.2.E.2.f Commercial Tower Density- Each commercial tower site shall have a one (1) mile buffer zone around it. No other commercial tower of the same use may be placed or erected within this buffer zone. On-site business communications are exempt from this clause.

NOTICE / NOTIFICATION

- 22 letters of notification were sent to property owners within the Area of Notification on September 6, 2016.
- Legal Ads were placed in the Las Cruces Sun-News on September 4, 2016.
- Agenda was placed on the DAC Web site and signs placed on the property in a timely manner.
- No correspondence was received in support or in opposition to the case.

STAFF ANALYSIS

The Appeal application was submitted on August 8, 2016, meeting the deadline for filing an appeal per Section 2.4.B (*pg. 3 above*) of the Ordinance. The signed Order from the ETZ Commission was recorded on July 8, 2016 with Instrument #1615301 (*pgs. 20-21 of this report*). Staff recommended **approval** of Zone Change Request Case #SU16-005/Daviet, to the ETZ Commission and on a motion to Approve Case #SU16-005, the ETZ Commission (*See attached minutes of June 16, 2016*) voted seven in favor, zero against, with zero abstentions (7-0-0), thereby approving the case. The ETZ Commission found that:

1. The subject property is located outside the corporate limits of the City of Las Cruces, but within the five-mile Extra-territorial Zone (ETZ) as set forth by 3-19-5(1), NMSA 1978 and the Joint Powers Agreement between Doña Ana County and the City of Las Cruces.

2. The 5.0 acre subject parcel is Lot 2, of the Triple "L" Acres No. 1 Subdivision, recorded December 20, 2015, in the DAC Clerk's Office with Instrument #1527726.
3. The subject property is located within an ER3 (Residential, 1.0-acre minimum new lot size, single family site-built homes) Zoning District.
4. A Special Use Permit is required for all Commercial Towers within ER3 Zoning Districts per Section 4.2.E.2.b.
5. Proposed telecommunications tower will meet all setback and development requirements.
6. One email in opposition was received on June 9 from outside the Area of Notification.
7. The applicant has met the Evaluation Criteria of Section 2.1.D for a Special Use Permit.

Cell tower requests in the ETZ fall under Section 4.2.E.2 of the Las Cruces ETZ Ordinance No. 88-02, as amended, (*pgs. 4-6 above*) and approval of a Special Use Permit within an ER3 Zoning District is required utilizing Section 2.1.D Evaluation Criteria (*pg. 3 above*) to guide the decision. New cell towers also fall under the Telecommunications Act of 1996 "shot clock" provisions requiring 150 days to act on a new tower from time of application acceptance. That timeframe will expire on September 25, 2016 (April 28, 2016 - Application complete).

The appeal discusses five (5) categories (*pgs. 9-18 of this report*) for the ETA to consider in their deliberations of this appeal of Case SU16-005/Daviet and the ETZ Commission's decision to approve a 75-foot cell tower. Those categories are as follows:

- a) *"Verizon has provided absolutely no information on the viability of alternate locations that may provide a better location for the citizens of this County."*
- b) *"The Commission and staff have accepted, at apparently face value, all of the statements and the minimal statistics without any kind of independent review or evaluation."*
- c) *"No investigation has gone into an apparent conflict of interest between the principal of the property owner who has voted on similar applications by Verizon."*
- d) *The Commission conducted no analysis whatsoever as to the aesthetic and visual impact of the 75-foot structure, simply stating that "visual impacts can be mitigated by employing stealth/camouflage techniques."*
- e) *"The proposed coverage improvement area will primarily benefit only many acres of pecan trees but few residents of the affected area as shown on the Verizon boilerplate document."*

In items (a) and (d) above, the appellant references the County Comprehensive Plan for elements within those subsections and staff notes that the Doña Ana County Comprehensive Plan, adopted with Resolution 94-55 by the DAC Board of County Commissioners, does not apply to the Extra-territorial Zone due to the ETZ Comprehensive Plan 2000-2020, adopted by ETA Resolution 2000-005, fulfilling that role. The ETZ Comprehensive Plan does not contain similar language & goals cited by the appellant concerning Highway 28 or protecting residential neighborhoods from major utility transmission lines.

The appellant discusses the lack of information for site selection by Verizon (*Item a*) in the body of the narrative (*pgs. 9-18 of this report*), and also raises the question that no camouflaging of

the tower was required (*also referred to in Item d*) and refers to a different scenario in his Attachment A (SU11-018/Achen) where camouflaging was recommended. During the ETZ Commission hearing of June 16, 2016, oral testimony and a PowerPoint was presented to the Commission by the applicant and Mr. Gutierrez, describing the process of investigating other locations including aerials of other locations investigated. Verizon has provided additional materials and information concerning site selection and the process involved (*See Attachment 1, pgs. 1-8*). The information describes the process of site selection undertaken by Mr. Mark Paiz, Site Acquisition Manager, Q3 Consulting, Inc., and includes a description and the results of the process, a map of the alternate sites investigated in the area, and letters to prospective clients of three (3) of those sites. Verizon has submitted visual renderings (*See Attachment 3, pgs. 1-5*) from three different viewpoints showing the site with a tower camouflaged as a tree to address the visual impacts of the proposed cell tower. Staff notes that camouflaging is not required within the ETZ Ordinance, but has been recommended by staff in certain instances.

The appellant also discusses, in his narrative (*Items b and e*), the lack of analysis and statistics justifying Verizon's need for a new cell tower to fill a coverage gap. Verizon has submitted materials (*See Attachment 2, pgs. 1-9*) containing a narrative with statistics about current and future demands (*pgs. 7-9*) addressing the justification for the tower, and the current and anticipated coverage with the new cell tower and accompanying color graphs. Also submitted by Verizon is a narrative of the data gathering process and the background data (*See Attachment 4, pgs. 1-4*) that the graphs, in the original Special Use Permit Request (*See SU16-005/Daviet, pgs. 17-18*), were derived from.

In regards to Item (c), Verizon Wireless's agent, Les Gutierrez, submitted the application to County staff. Mr. Daviet was not involved and staff did not interact with Mr. Daviet during the process of submittal and analysis except for the actual signing of the application by Mr. Daviet at the Community Development Dept. on April 28, 2016. Mr. Daviet disclosed, at the beginning of his testimony during the June 16, 2016 hearing, that he was currently a member of the Planning & Zoning Commission.

SUMMARY:

Based on the original application analysis, the ETZ Commission Findings of Fact, and the supplemental data provided by Verizon, Staff continues to recommend approval of Case #SU16-005/Daviet.

EXTRA-TERRITORIAL ZONING AUTHORITY OPTIONS:

Per Section 2.1.1 of the ETZ Ordinance, the ETA, by a majority vote of its total membership, may:

1. Reverse any order, requirement, decision or determination of an administrative official, commission or committee.
2. Decide in favor of the appellant.
3. Make any change in any order, requirement, decision or determination of an administrative official, commission or committee.

Appeal Narrative (Pg 1 of 10)

STATE OF NEW MEXICO)
COUNTY OF DONA ANA)
EXTRA TERRITORIAL ZONING)
AUTHORITY)
)
)

ETZ CASE NO. SU16-005

AN APPEAL FROM THE ORDER OF THE
EXTRA TERRITORIAL ZONING COMMISSION
GRANTING A SPECIAL USE PERMIT

Appellant: Peter Niles and Donna Wagner
3750 N. Highway 28
Las Cruces, New Mexico 88005

Background

Appellants Peter Niles and Donna Wagner who reside at 3750 N. Highway 28 received notice of the proposed cell phone tower prior to the ETZ Commission meeting held on June 16, resulting in the Order from the Extra Territorial Zoning Commission Granting a Special Use Permit (ETZ Case No. SU16-005). Both Mr. Niles and Dr. Wagner spoke in opposition to the siting and erection of the proposed tower.

Like most persons who reside in or visit this County, Appellants enjoy the scenic agricultural and natural beauty of the view along north Highway 28. The beauty of the place was the driving force behind their decision to purchase a home in this area.

This appeal however, is not simply about Peter Niles and Donna Wagner. Appellants are a mere sample of the thousands of people who enjoy the beauty of highway 28 in their own way. It simply cannot be argued that the addition of a seventy-five-foot industrial tower, being the tallest structure of any kind for miles, will fail to have a significant impact on the appearance and beauty of this stretch of highway. This is an appeal to the Authority to take a hard look at the

Appeal Narrative (Pg 2 of 10)

simple but heavily laden balance between maintaining the beauty of this place, and placing a tower at this precise location.

What Appellants seek, on behalf of the residents of this County as well as those Los Cruces residents who use Rt. 28 and appreciate the overwhelming beauty of this place, is a thorough and honest evaluation of the elements of this appeal outlined below to the Authority.

This is an appeal of the Order from the Extra Territorial Zoning Commission Granting a Special Use Permit following its regularly scheduled meeting held on June 16, 2016 on application from Daviet Farms, L.L.C., Les Guttierrez, acting as agent for applicant to permit Verizon Wireless to construct a seventy-five-foot cell tower and telecommunications facility within the ER3 Zoning District. The Order of the Commission was filed of record in the office of the clerk of Dona Ana County on July 8, 2016 as instrument number 1615301.

On or about April 3, 2016, Applicant filed its “Application for a Special Permit from Verizon Wireless”. Along with the application were submitted the following items:

1. Special Use Permit Application
2. Evaluation Criteria Support Documents for “LSC_Valdes Site”
3. Property Owner Authorization
4. Warranty Deed
5. \$600 fee
6. Development Plans

ISSUES

There are five major categories of deficiencies regarding the approval of the Special Use Permit in this matter. They are as follows:

Appeal Narrative (Pg 3 of 10)

- a. Verizon has provided absolutely no information on the viability of alternate locations that may provide a better location for the citizens of this County.
- b. The Commission and staff have accepted, at apparently face value, all of the statements and statistics of applicant without any kind of independent review or evaluation.
- c. No investigation has gone into an apparent conflict of interest between the principal of the property owner who has voted on multiple similar applications.
- d. The Commission conducted no analysis whatsoever as to the aesthetic and visual impact of the 75-foot structure, simply stating that “visual impacts can be mitigated by employing stealth/camouflage techniques”.
- e. The proposed coverage improvement area will primarily benefit thousands of acres of pecan trees but few residents of the affected area as shown on the Verizon boilerplate document.

Each of these will be discussed in turn.

a. Verizon has provided absolutely no information on the viability of alternate locations that may provide a better location for the citizens of this County.

The most glaring issue in this matter is found that in spite of the fact that Verizon Wireless has proposed to place its seventy five foot steel industrial structure adjacent to arguably one of the most beautiful drives in this state, is the absence of any real discussion on the obvious option of relocating the tower to a location, any location, other than on property adjacent to what the County Comprehensive Plan deems worthy of “[s]tudy [of] the possible designation of Highway 28 as a Scenic By-way to help preserve the historic nature of rural communities”.

While this case will ultimately be decided by the substantial evidence standard, it seems prudent for the decision makers here to have an informed discussion about the plan to place a

Appeal Narrative (Pg 4 of 10)

seventy-five-foot industrial structure in the middle of a corn field on one of the most scenic sections of Hwy. 28 in the region.

At the very least, the applicant should have been required to demonstrate for the citizens of this County, what the “camouflaged” industrial facility will look like. Camouflaging along with natural buffering of the tower in an orchard ameliorates visual problems. Refer to Section d. of this document and Attachment A for an example of this solution in a 2011 application.

Ultimately, it simply is not too much to ask to require a conversation about the viability of other locations that might benefit the citizenry of Dona Ana County.

b. The Commission and staff have accepted, at apparently face value, all of the statements and the minimal statistics of applicant without any kind of independent review or evaluation.

The authority for a municipal zoning authority to grant zoning variances, or special use permits, is limited by the terms of the relevant zoning ordinance. *Gould v. Santa Fe County*, 131 N.M. 405 (2001). A “use variance” allows a landowner to use existing property in a manner not permitted by the zoning ordinance. In contrast, an “area variance” allows exceptions from restrictions on such matters as setback, height limitation, lot size restrictions, and density requirements. *Id.* Courts have held that the grant of a use variance requires a more stringent standard than that required for an area variance. *Paule v. Santa Fe County Bd. Of Commissioners*, 138 N.M. 82 (2005) *citing Ivancovich v. City of Tucson Bd. Of Adjustment* 529 P.2d 242 (Az.Ct.App. 1974).

Clearly the special use permit here is a “use variance”. The parcel of land upon which applicant proposes to place the tower is located in the ER3 zone of the Extra Territorial Zone. “The purpose of the ER3 zoning district is to establish residential districts of single-family site-built homes on moderate to large size lots, specifically designed to meet the demand for those

Appeal Narrative (Pg 5 of 10)

persons whose lifestyles include raising and keeping of large and small animals in a semi-rural atmosphere”. ETZ Zoning Ordinance, Section 3.1.C.2.a.

In its “Execution Summary”, applicant states that the “primary reason for LSC_Valdes site is the residential and new homes and business in the area of this site. The area is experiencing a healthy amount of growth”. *See* p. 13 of 28. Contrary to this obviously canned statement, the site is situated in a predominantly agricultural area along historic and scenic highway 28, a favorite scenic by-way for the residents and visitors to the County. Additionally, although there has been some small amount of residential development in the area over the past few years, ***there has been absolutely no new business development in the area whatsoever.*** The area has remained primarily residential and agricultural as is its legacy.

Additionally, the Commission has neither required nor received any substantive statistical data to substantiate the claims by Applicant that there is a need in the community for such a cell tower or a deficiency in service under the current infrastructure. At page 12 of the application packet, an extremely simple bar graph is provided which provides almost no relevant information, and that which is provided, contains no data or statistical justification at all.

Of particular concern is the statement contained in the unsigned and anonymous narrative provided by applicant stating that “[u]nfortunately, there are no other liable [sic] solutions other than to add more sites to handle data growth and the desired speeds”. Here, it is clear that the applicant has taken little care to compile the proffered information. In addition to the glaring and careless grammatical error, this bald statement is made without any support. For example, was an inquiry made into the statistical basis of this statement? Was an inquiry made as to other available sites with potentially less aesthetic impact? The record is devoid of any such inquiry or information.

Appeal Narrative (Pg 6 of 10)

Instead, the Commission has voted in favor of placing a 75-foot tower in the middle of an exposed corn field on a residential/agricultural property located directly on what is arguably the most scenic drive in the County.

With these things in mind, Applicant accepts that if proper inquiry were made, along with an acceptable fact gathering process, that perhaps the proposed site would be the best site for a tower if one is in fact needed. In this case however, the Commission has failed to conduct an adequate investigation into the facts submitted by Applicant.

The Commission and their staff acted in a manner which appeared to confuse a “request for special use permit” with a “right” in the zone in which this property exists. It seems that no higher standard of inquiry was involved in either preparation for the hearing or the deliberation on the matter. The Telecommunication Act of 1996 expressly states that local planning and zoning authorities can determine and require different standards for residential zones when considering the placement of these towers, and have specifically held that the aesthetics of the structure are a major factor. *See Helcher v. Dearborn*, 595 F.3d 710 (7th Cir. 2010). *See also Wireless Towers v. City of Jacksonville*, 712 F.Supp. 1294 (M.D. FL, 2010). Although the case law nationwide is developing, this standard has been consistently upheld in courts around the nation since the passage of the Act.

A review of recent decisions regarding the siting of cell towers demonstrates that residents in the ETZ district are at a disadvantage when compared to the planning and zoning commission operating in the City of Las Cruces. ETZ Residents are not afforded the required consideration and protection by those who have the legal authority and *obligation* to protect the integrity of the zoning regulations and the residential neighborhoods they are designed to serve.

Appeal Narrative (Pg 7 of 10)

c. No investigation has gone into an apparent conflict of interest between the principal of the property owner who has voted on similar applications by Verizon

1978 NMSA 10-16-3 (D) states that “[n]o legislator or public officer or employee may request or receive, and no person may offer a legislator or public officer or employee, any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act”. Furthermore, Section 10-16-13.2 (B.) states: “A public officer or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property, directly or indirectly through the public officer’s or employee’s family or a business in which the public officer or employee has a substantial interest, to a person over whom the public officer or employee has regulatory authority.”

The owner of the property upon which application has been made to place the tower is Daviet Farms, L.L.C. One principal of that entity is Gregory Daviet. Mr. Daviet also happens to be an appointed commissioner with the Dona Ana County Planning and Zoning Commission. Upon information and belief, Commissioner Daviet has sat on numerous Dona Ana County Planning and Zoning meetings wherein the current applicant, Verizon Wireless, has submitted applications for cell phone towers in other locations of the County.

Here, we have a parcel of agricultural property purchased by an entity owned by a County Planning and Zoning Commissioner. Moreover, the property was purchased by the entity and the entity formed mere weeks before the submittal of the application involved in this matter.

It therefore appears that an impermissible conflict of interest may exist here with regard to Commissioner Daviet’s involvement, and while it is outside the scope of this appeal to cast

Appeal Narrative (Pg 8 of 10)

unfounded aspersions at Commissioner Daviet, this matter seems to at least warrant some investigation, and the public is entitled to disclosure of the results of the investigation with regard to the transactions involved that have led to the approval of this application under these circumstances.

- d. The Commission conducted no analysis whatsoever as to the aesthetic and visual impact of the 75-foot structure, simply stating that “visual impacts can be mitigated by employing stealth/camouflage techniques”.**

In addressing this issue, we first turn to County Resolution 94-55, Adopting the Comprehensive Plan for Dona Ana County. Under “Primary Goal 2” of that document, which is to “Maintain and Protect the County’s Resources”, the Plan states in relevant part that one action item is to “study the possible designation of NM State Highway 28 as a Scenic By-way to help preserve the historic nature of rural communities”.

Primary Goal 5 of the Plan is to “Adopt and Implement a Land Use Plan”. Under this goal, two of the listed action items are to “discourage changes of zoning or conditional use permits that change the residential character of the neighborhood” and “[p]rotect residential neighborhoods from major utility transmission lines...”.

With these goals in mind, it is troublesome to think that the Commission has approved a 75-foot tall industrial facility, to be located almost adjacent to and within clear sight of what is proposed to be a Scenic By-way, and certainly one of the most beautiful geographic locations in the County. It can hardly be argued that there would be countless other possible locations available to Verizon that would have less impact on the natural beauty of the County.

Appeal Narrative (Pg 9 of 10)

At the very least, some investigation and discussion should be had regarding this issue. It seems highly insufficient to simply permit the erection of this tower without investigating the impact it will have on the Scenic By-way status of Highway 28 or identify more appropriate locations. The location for such an installation should be one that will not interfere with the legacy areas important to the extraterritorial zone.

Appellants refer the Authority members to SU11-018 (see attachment A). On page 7 see staff recommendation 3; “The cell tower shall be camouflaged as a tree.” On page 9 Verizon states “the proposed tower location is surrounded by pecan trees and the pecan trees will lend to a visual barrier by nature.” Mr. Daviet’s family owns hundreds of acres of mature pecan trees which could be suitable for a location site similar to the SU11-018 case.

e. The proposed coverage improvement area will primarily benefit only many acres of pecan trees

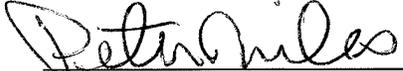
A view of the “Coverage with Proposed Valdes Tower” schematic attached to the Applicant’s packet at page 18 appears to indicate that indoor coverage for the area surrounding the proposed tower will be increased. It also appears that the coverage for outdoor and in vehicle use will also be increased. There is very little development in the proposed coverage area, and in light of the industrial impact that will be created along a possible scenic by-way, perhaps a bit more analysis should be done on this matter as well.

Conclusion

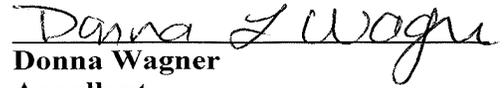
While it is true that the Commission’s decision need only be supported by substantial evidence, for the reasons cited above it seems that the placement of a 75-foot cell phone tower adjacent to the rural and scenic highway 28, and in the midst of an ER3 zone, warrants additional

Appeal Narrative (Pg 10 of 10)

investigation and disclosure on each of the issues outlined above, and appellant, Peter Niles hereby requests the Authority reverse the decision of the Commission for those reasons.



Peter Niles
Appellant



Donna Wagner
Appellant

Prepared with the assistance of:

Watson Smith, L.L.C.
Matthew G. Watson
1100 S. Main, Suite 21
Las Cruces, New Mexico 88005
T (575) 528-0500
F (575) 526-9094

Staff Action Letter

Las Cruces Extra-territorial Zoning Authority Las Cruces Extra-territorial Zoning Commission

City Offices

City Planning Dept.
575 S. Alameda St.
P.O. Drawer CLC
Las Cruces, NM 88005
(575) 528-3222

County Offices

County Planning Dept.
845 N. Motel Blvd.
Room 1-150
Las Cruces, NM 88007
(575) 647-7350

July 11, 2016

Greg Daviet
Daviet Farms, LLC
4020 N. Hwy. 28
Las Cruces, NM 88005

Dear Mr. Daviet,

The Las Cruces Extra-Territorial Zoning Commission (ETZC), at its regularly scheduled meeting on June 16, 2016, **approved**, by a vote of 7-0-0 (seven in favor, zero opposed and zero abstentions), your request for a Special Use Permit, Case # SU16-005, to construct a seventy-five foot (75') cell tower and telecommunications facility. Within an ER3 (Residential, 1.0-acre minimum new lot size, single family site-built homes) Zoning District.

The 5.0-acre subject parcel is located south of the City of Las Cruces, west of NM Hwy 28, within Section 6, Township 24 South, Range 2 East. The property is addressed as 2116 Apodaca Rd., Las Cruces, NM 88005. The subject parcel is described as Lot 2 of Triple "L" Acres No. 1, as filed December 30, 2015, with Instrument #1527726. It can be further identified by Parcel ID #03-24122.

There is a **thirty day (30) appeal period** from the date of the recordation of the signed ETZ Commission Order that must elapse before the decision becomes effective. If no aggrieved party to this decision appeals to the Extra-Territorial Zoning Authority (ETA), within the allotted thirty-day (30) period, the Special Use Permit will go into effect on **Monday, August 8, 2016**.

Please retain a copy of this correspondence and the enclosed certified copy of the signed and recorded Order in the event questions arise from Doña Ana County officials. Please contact me at 575-525-6121 if you have any questions.

Sincerely,



Steve Meadows
Planner

CC: Les Gutierrez
Enclosure

*A Joint City / County Organization for the Las Cruces 5-mile ETZ Area for
Growth Management, Zoning and Subdivision Administration*

Recorded Zone Change Order (pg. 1)

ORDER FROM THE EXTRA-TERRITORIAL ZONING COMMISSION GRANTING A SPECIAL USE PERMIT

ETZ Case No. SU16-005

This matter was heard before the Extra-territorial Zoning Commission (hereinafter, the "Commission") at its regularly scheduled meeting on June 16, 2016 on an application from Daviet Farms, LLC, Les Gutierrez, Agent, for a Special Use Permit to allow Verizon Wireless to construct a seventy-five foot (75') cell tower and telecommunications facility within an ER3 (Residential, 1.0-acre minimum new lot size, single family site-built homes) Zoning District.

The 5.0-acre subject parcel is located south of the City of Las Cruces, west of NM Hwy 28, within Section 6, Township 24 South, Range 2 East. The property is addressed as 2116 Apodaca Rd., Las Cruces, NM 88005. The subject parcel is described as Lot 2 of the Triple "L" Acres No. 1 Subdivision, as filed December 30, 2015, with Instrument #1527726. It can be further identified by Parcel ID #03-24122.

Having considered the staff's analysis, evidence presented in the case record, testimony at the public hearing, and the Ordinance, Article II, Section 2.1.D, Evaluation Criteria for a Special Use Permit, the ETZ Commission hereby **FINDS** by a vote of 7-0-0 (seven in favor, zero opposed, with zero abstentions) that:

1. The subject property is located outside the corporate limits of the City of Las Cruces, but within the five-mile Extra-territorial Zone (ETZ) as set forth by 3-19-5(1), NMSA 1978 and the Joint Powers Agreement between Doña Ana County and the City of Las Cruces.
2. The 5.0 acre subject parcel is Lot 2, of the Triple "L" Acres No. 1 Subdivision, recorded December 20, 2015, in the DAC Clerk's Office with Instrument #1527726.
3. The subject property is located within an ER3 (Residential, 1.0-acre minimum new lot size, single family site-built homes) Zoning District.
4. A Special Use Permit is required for all Commercial Towers within ER3 Zoning Districts per Section 4.2.E.2.b.
5. Proposed telecommunications tower will meet all setback and development requirements.
6. One email in opposition was received on June 9 from outside the Area of Notification.
7. The applicant has met the Evaluation Criteria of Section 2.1.D for a Special Use Permit.



DONA ANA) ORDER/DAC
EW MEXICO) ss PAGES: 2

fy That This Instrument Was Filed for
JUL 8, 2016 02:25:13 PM
y Recorded as Instrument # 1615301
ds Of Dona Ana County



Witness My Hand And Seal Of Office,
Lynn J. Ellins, County Clerk, Dona Ana, NM

Renee Torres

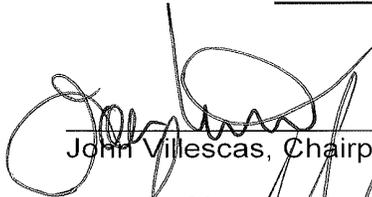
Page 1 of 2

Recorded Zone Change Order (pg. 2)

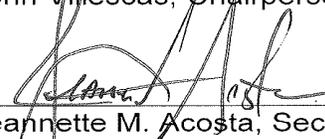
ORDER FROM THE EXTRA-TERRITORIAL ZONING COMMISSION GRANTING A SPECIAL USE PERMIT

Based on the Findings of Fact, staff analysis, and the proposal complying with Section 2.1.D Evaluation Criteria, the Extra-territorial Zoning Commission **Approves** Case #SUP16-005/Daviet Farms, LLC, to construct a 75' telecommunications tower facility.

THE EXTRA-TERRITORIAL ZONING COMMISSION



John Villescas, Chairperson (Aye)



Jeannette M. Acosta, Secretary (Aye)



Robert H. Hearn, Member (Aye)



Mark Best, Member (Aye)



Kenneth Allin, Vice-Chair (Aye)

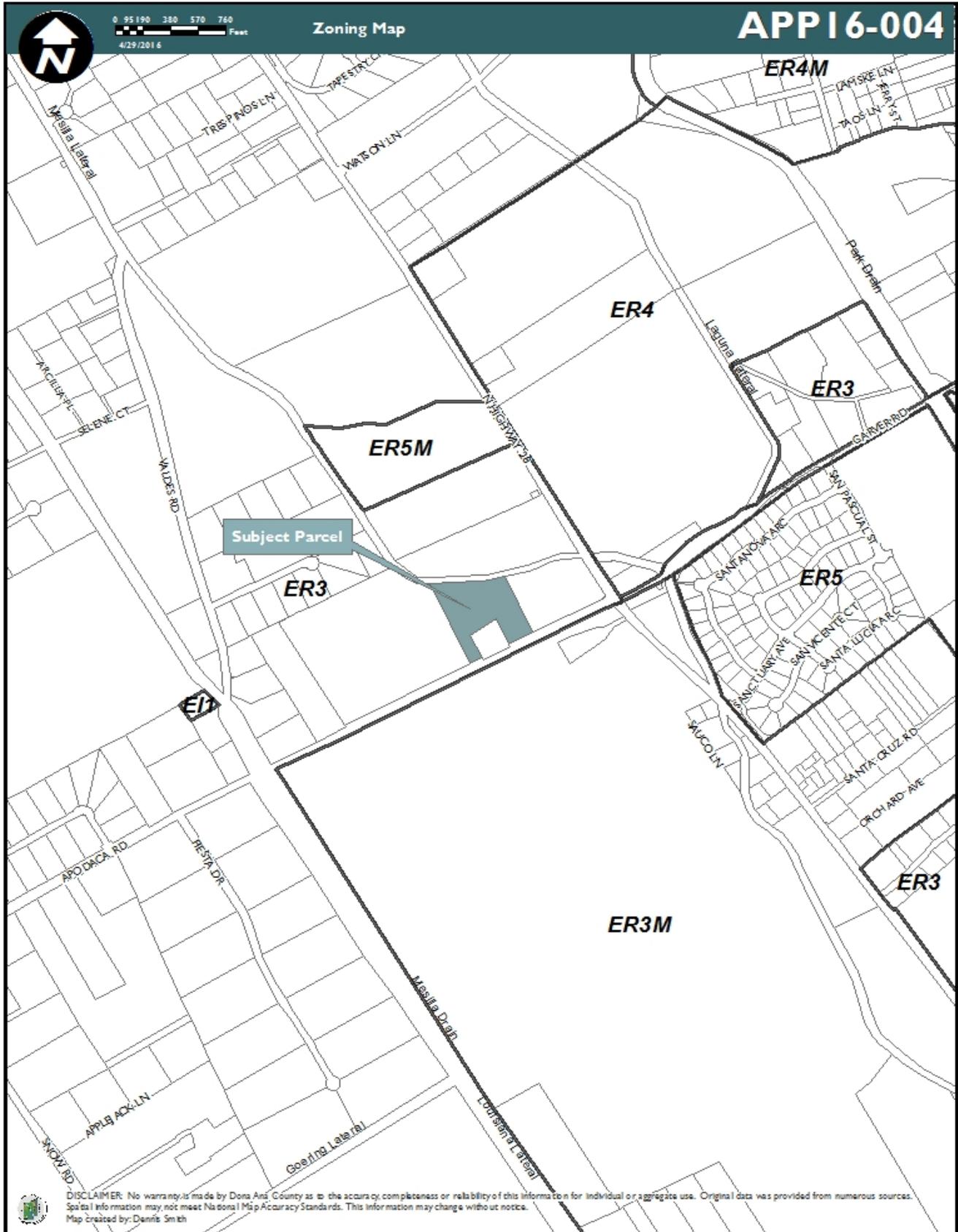


John S. Townsend (Aye)



Tim Sanders, Member (Aye)

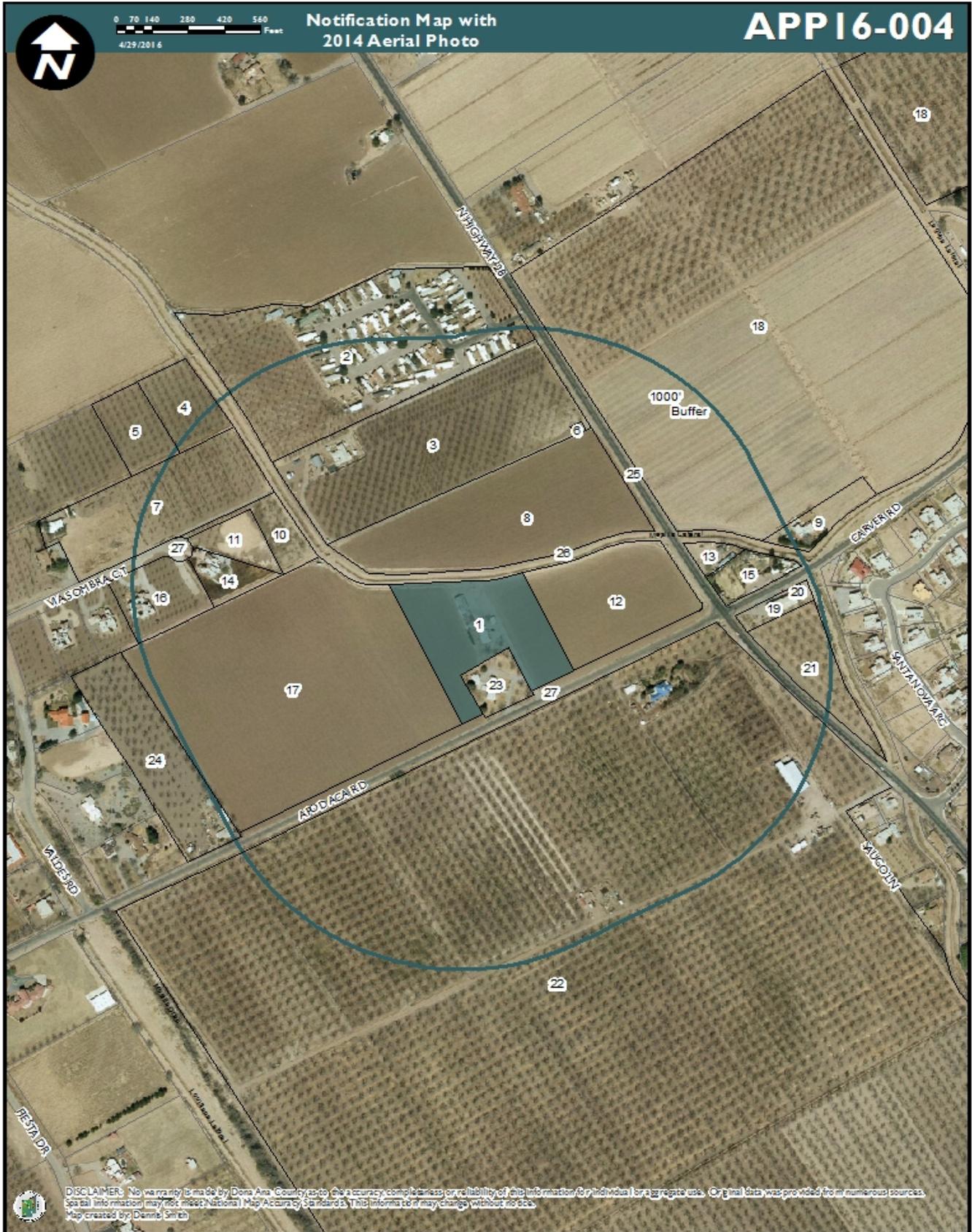
Zoning Map



Land Use Aerial



Notification Aerial Map



Close-up Aerial of Parcel



Notification Area Map



Area of Notification List

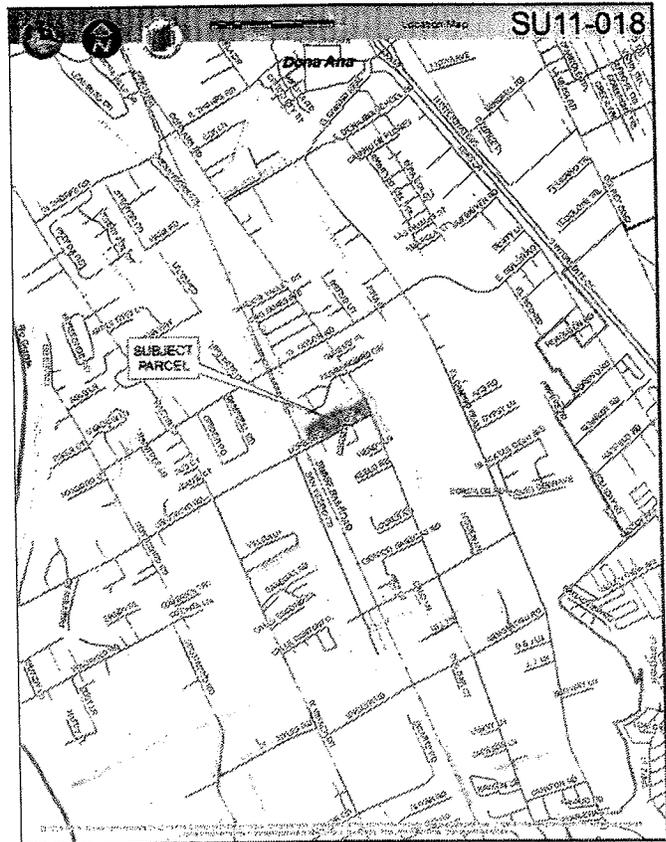
CODE	MAP_CODE	NAME	ADDRESS1	CITY	STATE	ZIP
1	4-007-139-209-205	DAVIET FARMS LLC	4020 N HWY 28	LAS CRUCES	NM	88005
2	4-007-139-165-089	KELLEY RALPH & JEAN	1437 SAN VICENTE CT	LAS CRUCES	NM	88005
3	4-007-139-188-135	WAGNER DONINA L & PETER C NILES	3750 N HWY 28	LAS CRUCES	NM	88005
4	4-007-139-100-115	WALLACE EDWARD H & WANDA	1309 WYOMING	LAS CRUCES	NM	88001-5744
5	4-007-139-085-125	WALLACE ROBERT H & AUDREY L &	1309 WYOMING	LAS CRUCES	NM	88001
6	4-007-139-250-123	JORNADA WATER COMPANY INC	225 E IDAHO #15	LAS CRUCES	NM	88005-3241
7	4-007-139-085-155	ELLIS MICHAEL G & LIZBETH G	202 CAPRI ARC	LAS CRUCES	NM	88005-3727
8	4-007-139-222-157	JOSEPH & REBECCA LUJAN FAMILY LLC	2279 VIA MANZANA	SANTA FE	NM	87507
9	4-007-139-346-158	SALOPEK FRANK & OLETA D TR	4915 SNOW RD	LAS CRUCES	NM	88005-4222
10	4-007-139-138-142	MARGARET A LORING	6555 RIO DORADO DR	LA MESA	NM	88044
11	4-007-139-120-145	BARRERA FRANK & MELISSA	PO BOX 2346	LAS CRUCES	NM	88004
12	4-007-139-263-194	DAVIET FARMS LLC	4020 N HWY 28	LAS CRUCES	NM	88005
13	4-007-139-296-172	GUERRERO CONSUELO	3919 N HIGHWAY 28	LAS CRUCES	NM	88005
14	4-007-139-115-160	GUADERRAMA OSCAR & WENDIE	2285 VIA SOMBRA CT	LAS CRUCES	NM	88005
15	4-007-139-309-179	BILOVESKY JOHN BRYAN	1806 CARVER RD	LAS CRUCES	NM	88005
16	4-007-139-086-191	GOMEZ DOLORES M & JOHN J ANDAZOLA	2365 VIA SOMBRA CT	LAS CRUCES	NM	88005
17	4-007-139-139-231	DAVIET FARMS LLC	4020 N HWY 28	LAS CRUCES	NM	88005
18	4-007-139-306-075	SALOPEK TREE SERVICE LLC	4915 SNOW RD	LAS CRUCES	NM	88005
19	4-007-139-324-195	DONA ANA COUNTY	845 N MOTEL BLVD	LAS CRUCES	NM	88007
20	4-007-139-335-186	CITY OF LAS CRUCES	PO BOX 20000	LAS CRUCES	NM	88004
21	4-007-139-335-209	DAVIET FARMS LLC	4020 N HWY 28	LAS CRUCES	NM	88005
22	4-007-139-307-450	DAVIET FARMS LLC	4020 N HWY 28	LAS CRUCES	NM	88005
23	4-007-139-218-230	DAVIET FARMS LLC	4020 N HWY 28	LAS CRUCES	NM	88005
24	4-007-139-090-255	DIAZ ISAAC SR TRUSTEE	2328 APODACA RD	LAS CRUCES	NM	88005-4233
25		NM HWY DEPT	8070 BATAAN MEMORIAL EAS	LAS CRUCES	NM	88011
26		EBID	530 S. MELENDRES	LAS CRUCES	NM	88001
27		DAC ROAD DEPT.	2025 E. GRIGGS	LAS CRUCES	NM	88001

**SPECIAL USE PERMIT
EXTRA-TERRITORIAL ZONING COMMISSION**



**DOÑA ANA COUNTY
COMMUNITY DEVELOPMENT DEPT.
Doña Ana County Government Complex
845 N. Motel Blvd., Las Cruces, New Mexico 88007
Office: (575) 647-7250**

MEETING DATE: December 15, 2011
CASE #: SU11-018
REQUEST: A Special Use Permit to construct a 75' cell telephone tower
PROPERTY OWNER: Ty and Adie Achen, Denise Cardinal of Verticom (for Verizon Wireless), agent
LOCATION: Lopez Rd., west of of Doña Ana Rd.
EXISTING ZONING: ER 3
PROPERTY SIZE: A 1250 sq. ft. leased space on 18.54-acres
RECOMMENDATION: APPROVAL
CASE MANAGER: Jonathan Kesler



SUMMARY: The applicants, Adie L. and Ty Achen, Denise Cardinal of Verticom (for Verizon Wireless), Agent, are requesting a Special Use Permit to construct a 75' tall cell tower, per Section 4.2.E.2.b of the ETZ Ordinance, on 1250 sq. ft of leased space near the center of an 18.54-acre parcel. The property is located north of the City of Las Cruces, on Lopez Road, immediately west of Doña Ana Road, and is zoned ER 3 (Residential, 1-acre minimum new lot size, single-family site-built homes). It is described as being part of USRS Tract 5-25A within Section 26, Township 22 South, Range 1 East, as recorded in the office of the Doña Ana County Clerk as Instrument No. 0806434 on March 4, 2008. The parcel can be further identified by Map Code # 4-005-131-236-345. This case was postponed from the November 17th meeting.

REPORT CONTENTS: (1) Summary, (2) Applicable Policies and Ordinances, (3) Staff Analysis, (4) Site Plan and Supporting Documents, (5) GIS Information and Maps (6) Public Correspondence

BACKGROUND

Existing Conditions and Zoning:

SITE	ZONING	LAND USE
North	ER 4M	Residential, site-built homes
South	ER 3	Residential, site built and mobile homes
East	ER 2M	Agricultural, residential with site-built and mobile homes
West	ER3M	Agricultural, residential with site-built and mobile homes

The Request:

CASE # SU11-018: This level, 18.54-acre parcel, assessed as agricultural land, is a pecan grove. With the consent of the property owners, James Tyson "Ty" Achen and Adrienne "Adie" L. Achen, Verizon Wireless seeks to improve cell telephone coverage and reception for their customers by building this 75' tall cell telephone tower. Verizon Wireless is currently at capacity at its nearby cell site, LSC_Roadrunner, and the applicant's Coverage Discretion Study indicates that this location (which would be designated LSC_Red Fox if approved) would be best for providing maximum coverage to their customers in the area. The site would be enclosed with a 228 sq. ft. unoccupied equipment shelter, a diesel generator, and a diesel fuel tank, in addition to the tower (see attached site plan).

APPLICABLE REGULATIONS

Las Cruces Extra-territorial Zoning Ordinance, No. 88-02, as amended

2.1.D Evaluation Criteria:

The Planning Director and ETZ Commission may use the following general criteria when reviewing Special Use Permits and Zoning Applications. The ETZ Commission shall have the authority to require additional specific information on any of the following criteria Article II, Section 2.1.D/Evaluation Criteria.

Unless additional justification is presented, the fact that there is an existing legal nonconforming use shall not be considered sufficient grounds for a zone change in order to bring that use into conformity.

- 2.1.D.1** Determination of potential number of homes, population and population demographics.
- 2.1.D.2** Determination of potential traffic flows (average daily traffic) and where they will impact the transportation system.
- 2.1.D.3** Determination of need for new commercial activity.

- 2.1.D.4** Determination of potential water and sewage needs.
- 2.1.D.5** Evaluation of existing infrastructure capacities and an analysis of the ability of the existing system to accommodate the new development.
- 2.1.D.6** The difference between capacity and impact should be stated. Those areas which are appropriate for the developer to underwrite should be negotiated between local government and developer.
- 2.1.D.7** The ETZ should reserve the right to place appropriate zoning categories on environmentally sensitive areas, areas of historical significance or areas which contain endangered or rare species of animal or plant life.
- 2.1.D.8** Any analysis required should be undertaken and paid for by the developer and verified by the ETZ Commission.
- 2.1.D.9** Determination of impact of a proposed zone change on surrounding properties.

Section 3.3.B SPECIAL USE PERMITS (SUP's)

3.3.B.1 GENERAL PROVISIONS AND PROCEDURES

A special use is a use which is not permitted by right in a zoning district. A special use requires review and approval by the ETZ Commission to determine impacts on the surrounding area. The procedures for such approval are as follows:

3.3.B.2 APPLICATION PROCEDURE

Applications for a Special Use Permit shall be obtained from the Doña Ana County Planning Division. There shall be a comprehensive statement included with each application indicating, in detail, the reason for the request, the purpose and use of the property, all improvements to be made and a site plan including the following:

- a. location of existing and proposed structures, including dimensions and setbacks
- b. existing and proposed vehicular circulation systems, including parking area, storage areas, service areas, loading areas and major points of access, including street pavement width and right-of-way
- c. location and treatment of open spaces including landscaping plan and schedule
- d. lighting
- e. signs

A drainage facilities plan or environmental impact statement may be required by the ETZ Commission.

3.3.B.3 PUBLIC HEARING AND NOTICE PROCEDURE

A public hearing shall be held by the ETZ Commission for all Special Use Permits in accordance with the provisions of Section 2.1.G of this Ordinance.

3.3.B.4 REVIEW AND APPROVAL PROCEDURE

The ETZ Commission may deny such SUP's or may grant final approval in accordance with certain conditions, with right of appeal to the ETZ Authority in accordance with the provisions of Section 3.1. Approval may also be granted with additional conditions

imposed which are deemed necessary to insure that the purpose and intent of this Ordinance is met and to protect and provide safeguards for persons and property in the vicinity. Variances in the dimensional requirements for a special use may be granted by the ETZ Commission in accordance with the criteria in Section 2.3.B of this Ordinance.

3.3.B.5 TIME LIMITATIONS, REVOCATIONS AND DEVELOPMENT STANDARDS

In addition to the imposition of conditions, the ETZ Commission may impose a time limitation on the SUP. If a special use is discontinued for a period of one (1) year, said permit shall automatically expire. All improvements shall be in accord with the development standards within the district, except as otherwise authorized by the SUP. There shall be no major revisions in the site plan of the original approved special use except as approved by the ETZ Commission. Minor revisions to a site plan, following final approval, may be subsequently approved by the planning staff without a public hearing. Major revisions to the plan are subject to a regular public hearing with the same requirements as an original application.

3.3.B.5.a Major revisions shall include, but are not limited to, the following:

1. any change in land use or intensity
2. modifications of vehicular traffic volumes or circulation
3. increase in size of property or change in location or configuration of structures

3.3.B.5.b Minor changes that planning staff may approve are as follows:

1. provision of additional parking or landscaping
2. minor adjustment to parking, landscaping, lighting or signs
3. superficial changes to structures or slight variations in dimensions

Special Use Permits shall be eligible for renewal when limitations expire.

3.3.B.6 RECORDING OF THE SPECIAL USE PERMIT

After approval, the Special Use Permit shall be issued by the Planning Director or his/her designee and shall include all information, conditions, reference to site plans and other provisions of the special use. The special uses, as granted, shall be shown on a Special Use Permit map indicating its location with a designation of 'SU' and the year of expiration. Special uses shall not be considered a zone change.

4.2.E HEIGHT EXCEPTIONS

4.2.E.2 ANTENNAS AND ANTENNA SUPPORTING STRUCTURES FOR TRANSMISSION OR RECEPTION OF RADIO SIGNALS

4.2.E.2.b Commercial Towers in Residential Zones- Any commercial tower to be located in residential zones shall only be allowed in ER1, ER1M, ER2, ER2M, ER3, ER3M, ER3H and EC1 zoning districts through approval of a Special Use Permit. Commercial towers in residential districts and neighborhood commercial districts shall meet the following criteria:

1. Monopole type only
2. Height shall be limited to that height which is determined by a two-to-one setback from all property lines up to a maximum total tower height of seventy-five (75) feet

3. Approval of a site plan by the Dona Ana County Planning Department prior to new construction or modification of an existing structure.

2.1.D CRITERIA AND RESPONSES

The Planning Director and ETZ Commission may use the following general criteria when reviewing Special Use Permits and Zoning Applications. The ETZ Commission shall have the authority to require additional specific information on any of the following criteria Article II, Section 2.1.D/Evaluation Criteria (answers provided in the attached letter, and below):

2.1.D.1 Determination of the number of homes, population, and population demographics.

There will be no change in number of homes, population or population demographics with this SUP request. The SUP request is for a non-manned commercial telecommunication tower.

2.1.D.2 Determination of potential traffic flows (average daily traffic) and where they will impact the transportation system. *The proposed SUP is for a non-manned commercial telecommunication tower and will not have daily traffic. Once the tower is construction complete, the traffic to the tower will be for maintenance only. The average number of trips after construction will be once each 4-5 weeks. The proposed tower will have very little impact on the transportation system.*

2.1.D.3 Determination of need for new commercial activity. *The proposed tower is a non-manned, non-public use so will not create physical commercial activity in the area. The commercial use of the proposed tower is receiving/transmitting wireless services. Verizon Wireless is currently at capacity on an existing cell site in Dona Ana County referred to as LSC_Roadrunner. Las Cruces is out of spectrum and Verizon Wireless needs to add a telecommunication facility at the proposed location to offload capacity at the Del Rio site location. Verizon Wireless would like to continue the level of service quality provided as well as providing enhanced service to the community of Dona Ana County. Las Cruces is experiencing growth in the ETZ areas and there is a need to provide quality services in these areas that are compatible with the growth and needs for wireless services in these areas. The providing of wireless emergency calls plays a very important role in the way we communicate today and many lives have been saved by the availability of wireless services. I have included a map showing coverage the proposed tower will provide.*

2.1.D.4 Determination of potential water and sewage needs. *This Criterion is not applicable as the proposed tower will have no need for water or sewage.*

2.1.D.5 Evaluation of existing infrastructure capacities and an analysis of the ability of the existing system to accommodate the new development. *There is sufficient power and Telco in this area for Verizon to bring utilities to the proposed tower location. Verizon will set a meter for power at the tower location and will also have a backup generator on site in the event of emergency situations that arise from power outages. The current use of the property is agricultural in nature and the property will continue to be used in the same capacity. The proposed tower will have no negative impact on existing infrastructure or the ability of the existing system to accommodate future development.*

2.1.D.6 The difference between capacity and impact should be stated. Those areas that are appropriate for the developer to underwrite should be negotiated between local government and developer. *The proposed tower will be located on a parcel that is 18+ acres and will be*

contained within a 1250 sq. ft. lease area with accommodation for access and utilities. The proposed tower will be serviced by a very small percentage of the overall parcel, leaving 99% of the parcel for continued agricultural use. There is sufficient access and the overall land usage of the proposed tower will have very little impact on the parent parcel.

2.1.D.7 The ETZ should reserve the right to place appropriate zoning categories on environmentally sensitive areas, areas of historical significance, or areas on which contain endangered or rare species of animal or plant life. There are no known environmentally sensitive areas of historical significance or areas which contain endangered or rare species of animal or plant life in the immediate vicinity of the proposed tower location. Verizon has ordered NEPA and SHPO documents to evaluate this Criterion further, as this is a requirement by the Federal Communication Commission.

2.1.D.8 Any analysis required should be undertaken and paid for by the developer and verified by the ETZ Commission. Applicant will undertake and pay for additional analysis as required by ETZ Commission.

2.1.D.9 Determination of impact of a proposed zone change on surrounding properties. This Criterion is not applicable as the proposed tower does not require a zone change. The application is for a Special Use Permit.

AGENCY COMMENTS

DAC Engineering: 1) Once approved, a building permit may be required and review comments specific to that permit may be provided, 2) Adhere to any FCC requirements. Flashing beacons may be required.

DAC Flood Commission: 1) The subject property found not to be within a FEMA Special Flood Hazard Area, and can be further identified on FIRM No. 35013C0631 E. 2) Please be aware that the property is still susceptible to localized flooding despite NOT being identified within a FEMA Special Flood Hazard Area.

DAC Codes: Approved, no violations. 10/20/11

DAC Fire Marshal: Approved. No issues with the Fire Code.

DASO Codes: No codes violations on this property.

DAC Building Services: A building permit is required and must meet all County, State, and code requirements. The permit has not been applied for.

NMED: No comments.

NMDOT: No significant impact to state's highway system.

CLC MPO: Lopez Rd. is a collector.

CLC Planning Dept: No ETZ subdivisions exist for this property.

EBID: No objections, outside EBID facilities.

OSE: No comment.

PUBLIC NOTICE / NOTIFICATION

Sixty-eight (68) letters of notification were sent out to surrounding property owners. No correspondence in support and one email in opposition (attached) were received by November 9, 2011.

Legal Notification was posted in the Las Cruces Sun News on Sunday, October 30, 2011.

Signs were posted on the property in a timely manner.

Agenda was posted on County Web Site.

STAFF ANALYSIS

The agent of the applicants is requesting a Special Use Permit on a 18.54-acre parcel zoned ER 3M (Residential, 1-acre minimum new lot size, single family site built and mobile homes) for "Commercial Towers in Residential Zones" per Article IV, Section 4.2.E.2.b of the ETZ Ordinance.

The agent, Verizon Wireless, seeks to better serve its customers in Southern New Mexico, by expanding its infrastructure. This is one of a series of cell towers that Verizon has erected recently or will seek to build in both the ETZ and county in the coming months. Smart Phones have strained the system, as well as population increases in Doña Ana County. Previous towers have been approved. Other towers are currently in the application process in both the ETZ and county.

The applicant has supplied a narrative addressing the elements of the 2.1.D Evaluation Criteria. There will be no significant impact to the surrounding properties; no increase in population, traffic, traffic flows, no water or sewage needs, no impact on environmentally sensitive areas or historic properties, and the existing infrastructure can accommodate the proposal.

FINDINGS

1. The request of this application is consistent with the requirements of the Las Cruces Extra-territorial Zoning Ordinance Article II, Section 2.1.C/Application Procedures and Section 2.1.G/Public Hearing and Notice Requirements.
2. The subject property is located outside the corporate limits of the City of Las Cruces, but within the five-mile Extra-territorial Zone (ETZ) as set forth by 3-19-5(1), NMSA 1978 and the Joint Powers Agreement between Doña Ana County and the City of Las Cruces. Therefore, the Las Cruces ETZ Commission (ETZC) has jurisdiction to review this case.
3. A Special Use Permit is required within the ER 3M Zoning District for "Commercial Towers in Residential Zones" per Article IV, Section 4.2.E.2.b of the ETZ Ordinance 88-02, as amended.
4. The use requested is low impact in nature.

STAFF RECOMMENDATION

The applicants' proposal meets the requirements of the ETZ Ordinance Section 2.1.D Evaluation Criteria and the applicable sections of the Ordinance outlined in the Findings section below and staff recommends **APPROVAL** of Special Use Permit Request Case # SU11-018/Achen with the following conditions:

1. A six foot (6') tall rock wall shall be placed around the tower. The landscaping per "Buffer B" of Section 4.2.C of the Ordinance has been met, since the site will be surrounding by existing landscaping (pecan trees).
2. The cell tower shall have a light on top to alert low-flying aircraft.
3. The cell tower shall be camouflaged as a tree.

**COMPREHENSIVE STATEMENT
FOR SPECIAL USE PERMIT REQUESTED BY VERIZON WIRELESS IN
DONA ANA ETZ JURISDICTION**

Aerial Map indicating proposed tower location north of Lopez Road and east of San Ysidro Road. Proposed parcel for tower location is 03-20578 and consists of three tracts. Access and utilities will come from Lopez Road north to proposed lease area. Proposed lease area is marked below and further shown on drawing included herein.



**Submitted by VERTICOM-Denise Cardinal
1829 E Levee Street; St 100
Dallas, TX 75207
Mobile: 405-820-2919
Dcardinal1@cox.net**

Reason for Request

Verizon Wireless is currently at capacity on an existing cell site in Dona Ana County referred to as LSC_Roadrunner. Las Cruces is out of spectrum and Verizon Wireless needs to add a telecommunication facility at the proposed location to offload capacity at the Roadrunner site location. Verizon Wireless would like to continue the level of service quality provided as well as providing enhanced service to the community of Dona Ana County. Las Cruces is experiencing growth in the ETZ areas and there is a need to provide quality services that are compatible with the growth and needs for wireless services. The provision of wireless emergency calls plays a very important role in the way we communicate today and many lives have been saved by availability of wireless services. Included herein is a map showing coverage the proposed tower will provide.

Purpose and Use of Property

Subject site is located on an agricultural parcel of land comprising approximately 18.54 acres as shown on the Dona Ana County appraisal website and also in the title report. Adjacent parcels comprise a mix of residential and agricultural property. The proposed tower location is in compliance with the setback requirement for Dona Ana County ETZ Ordinance. The proposed tower location is surrounded by pecan trees and the pecan trees will lend to a visual barrier by nature. Due to the surrounding pecan trees, Verizon Wireless is requesting a waiver of landscape around proposed 6' CMU Block Wall. It is the intent of the property owner and Verizon to alleviate the need for removal of pecan trees.

Proposed Wireless Facility Improvements

Verizon Wireless is proposing to lease a twenty five by fifty (25' x 50') area consisting of 1,250 sq. ft. as depicted in the drawings included herein. Proposed construction is a 75' monopole, an approximate 228 sq. ft. unmanned equipment shelter, diesel generator and diesel fuel tank, together with access and utilities to service the tower. The generator would be used in case of power outages for emergency situations. The provision of wireless services during power outages is very important for health and safety issues that arise during emergency situations. Verizon Wireless is proposing to install nine (9) antennas with reservations to add three (3) for future capacity needs as they arise. Verizon Wireless is proposing to install two (2) microwave dishes and will determine exact height of placement once the microwave design is complete. Proposed fencing is 6' CMU Block Wall as depicted on attached drawings. Due to the nature of the parcel on which the tower is proposed, Verizon Wireless is requesting a waiver of landscape around proposed 6' CMU Block Wall. It is the intent of the property owner and Verizon to alleviate the need for removal of pecan trees. Parking area is depicted on page Z2 of drawings included herein. There are no existing structures available that will meet the coverage objectives for this area. Proposed tower meets setback requirements and height restrictions as stated in ETZ ordinance.

Site Access

Legal access will come from Lopez Road north to proposed lease area. Legal access is described and depicted on drawings included herein.

Area of coverage



**EVALUATION CRITERIA
FOR SPECIAL USE PERMIT REQUESTED BY VERIZON WIRELESS IN
DONA ANA ETZ JURISDICTION**

Aerial Map indicating proposed tower location north of Lopez Road and east of San Ysidro Road. Proposed parcel for tower location is 03-20578 and consists of three tracts. Access and utilities will come from Lopez Road north to proposed lease area. Proposed lease area is marked below and further shown on drawing included herein.



**Submitted by VERTICOM-Denise Cardinal
1829 E Levee Street; St 100
Dallas, TX 75207
Mobile: 405-820-2919
Dcardinal1@cox.net**

2.1.D.1- Determination of potential number of homes, population and population demographics.

There will be no change in number of homes, population or population demographics with this SUP request. The SUP request is for a non-manned commercial telecommunication tower.

2.1.D.2- Determination of potential traffic flows (average daily traffic) and where they will impact the transportation system.

The proposed SUP is for a non-manned commercial telecommunication tower and will not have daily traffic. Once the tower is construction complete, the traffic to the tower will be for maintenance only. The average number of trips after construction will be once each 4-5 weeks. The proposed tower will have very little impact on the transportation system.

2.1.D.3- Determination of need for new commercial activity

The proposed tower is a non-manned, non-public use so will not create physical commercial activity in the area. The commercial use of the proposed tower is receiving/transmitting wireless services. Verizon Wireless is currently at capacity on an existing cell site in Dona Ana County referred to as LSC_Roadrunner. Las Cruces is out of spectrum and Verizon Wireless needs to add a telecommunication facility at the proposed location to offload capacity at the Roadrunner site location. Verizon Wireless would like to continue the level of service quality provided as well as provide enhanced service to the community of Dona Ana County. Las Cruces is experiencing growth in the ETZ areas and there is a need to provide quality services that are compatible with the growth and needs for wireless services. The provision of wireless emergency calls plays a very important role in the way we communicate today and many lives have been saved by availability of wireless services. Included herein is a map showing coverage the proposed tower will provide.

2.1.D.4- Determination of potential water and sewage needs

This Criteria is not applicable as the proposed tower will have no need for water or sewage.

2.1.D.5- Evaluation of existing infrastructure capacities and an analysis of the ability of the existing system to accommodate the new development.

There is sufficient power and telco in this area for Verizon to bring utilities to the proposed tower location. Verizon will set a meter for power at the tower location and will also have a backup generator on site in the event of emergency situations that arise from power outages. The current use of the property is agricultural in nature and the property will continue to be used in the same capacity. The proposed tower will have no negative impact on existing infrastructure or the ability of the existing system to accommodate future development.

2.1.D.6- The difference between capacity and impact should be stated. Those areas which are appropriate for the developer to underwrite should be negotiated between local government and developer.

The proposed tower will be located on a parcel that is 18+ acres and will be contained within an area consisting of 1,250 sq. ft. lease area with accommodation for access and utilities. The proposed tower will be serviced by a very small percentage of the overall parcel, leaving over 99% of the parent parcel for continued agricultural use. There is sufficient access and the overall land usage of the proposed tower will have very little impact on the parent parcel.

2.1.D.7- The ETZ should reserve the right to place appropriate zoning categories on environmentally sensitive areas of historical significance or areas which contain endangered or rare species of animal or plant life.

There are no known environmentally sensitive areas of historical significance or areas which contain endangered or rare species of animal or plant life in the immediate vicinity of the proposed tower location. Verizon has ordered NEPA and SHPO documents to evaluate this Criteria further, as this is a requirement by the Federal Communication Commission.

2.1.D.8- Any analysis required should be undertaken and paid for by the developer and verified by the ETZ Commission

Applicant will undertake and pay for additional analysis as required by ETZ Commission.

2.1.D.9-Determination of impact of a proposed zone change on surrounding properties.

This Criteria is not applicable as the proposed tower does not require a zone change. The application is for a Special Use Permit.

PREPARED FOR:



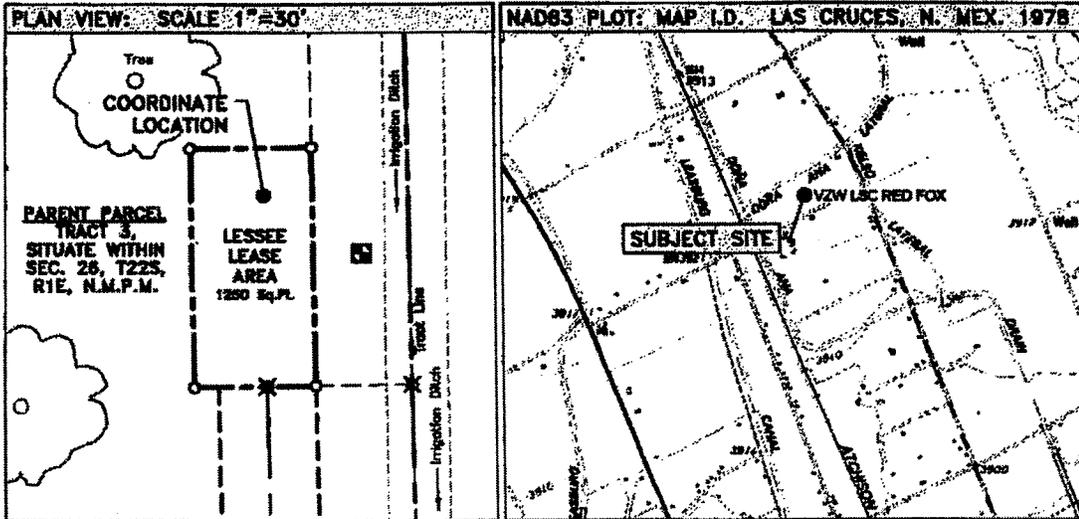
VERIZON WIRELESS
4821 E. ELBANK STREET NE
ALBUQUERQUE, NM 87111

1A CERTIFICATION LETTER

FOR
VERIZON WIRELESS
FACILITY KNOWN AS:
LSC RED FOX

DONA ANA COUNTY, NEW MEXICO.

<p>ELEVATION REPORT:</p> <p>GROUND ELEVATION: 3915.4' [ELEVATION: 1193.42 (M)] (PROPOSED) STRUCTURE HEIGHT AGL: 75.0' (PROPOSED) PLUS (+) APPURTENANCE: 00.0' OVERALL STRUCTURE ELEVATION: 3990.4'</p>	<p>LEGAL DESCRIPTION:</p> <p>SITUATE WITHIN SECTION 26, TOWNSHIP 22 SOUTH, RANGE 1 EAST, N.M.P.M. & BEING PART OF THE U.S.R.S. TRACT 5-25A, DONA ANA COUNTY, NEW MEXICO.</p>	<p>SITE LOCATION:</p> <p>SITE IS LOCATED NORTH OF LAS CRUCES NEW MEXICO, NORTH OF LOPEZ RD, BETWEEN DONA ANA ROAD AND THE DONA ANA DRAIN, DONA ANA COUNTY, NEW MEXICO.</p>
---	---	---



<p>BASIS OF GEODETIC COORDINATES:</p> <p>(1) HORIZONTAL DATUM: NORTH AMERICAN DATUM OF 1983 (NAD83) [PRIMARY] & NORTH AMERICAN DATUM OF 1927 (NAD27) [SECONDARY] EXPRESSED IN DEGREES (°) MINUTES (') AND SECONDS (") AND CARRIED TO THE 1,000TH OF A SECOND, AND ALSO EXPRESSED IN DEGREES AND DECIMAL DEGREES.</p> <p>(2) VERTICAL DATUM: NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88) & NATIONAL GEODETIC VERTICAL DATUM OF 1989 (NGVD89) EXPRESSED IN U.S. SURVEY FEET, AND METERS (METER EQUIVALENT TO 39.37 INCHES).</p> <p>(3) NAD83 GEODETIC DATA SHOWN HEREON WAS DERIVED FROM AND IS TIED TO THE NATIONAL GEODETIC SURVEY, NATIONAL C.O.R.S. VIA THE O.P.U.S. UTILITY AND OR TRIMBLE GEOMARCS SOFTWARE.</p> <p>(4) NAD 27 AND NGVD29 DATA SHOWN HEREON WAS DERIVED FROM THE NATIONAL GEODETIC SURVEY, CORPUSCON UTILITY.</p>	<p>PROPOSED TOWER COORDINATES:</p> <p>NAD 83: 32°21'51.228" 106°48'43.761"</p> <p>DECIMAL DEGREES: 32.36423N 106.81216W</p> <p>NAD 27: 32°21'50.897" 106°48'41.740"</p> <p>NAVD88: 3915.4' NGVD 29: 3913.6'</p>
---	--

SURVEYOR'S CERTIFICATION:

I HEREBY CERTIFY THAT THE GEODETIC COORDINATES REPORTED HEREON ARE ACCURATE AND MEET FAA/FCC REPORTING REQUIREMENTS OF 1A: FIFTEEN FEET (15') HORIZONTALLY AND THREE FEET (3') VERTICALLY.

DATE OF SURV.: 07/28/11

DAVID C. CLAUSEN
NEW MEXICO
6547
PROFESSIONAL LAND SURVEYOR

DAVID C. CLAUSEN NM P.L.S. # 8547 AUG. 15, 2011

THESE DRAWINGS AND SURVEYS ARE COPYRIGHT PROTECTED AND THE SOLE PROPERTY OF TOWERCOM TECHNOLOGIES, LLC AND PRODUCED FOR THE USE OF OUR CLIENT. ANY REPRODUCTION OR USE OF THE INFORMATION CONTAINED WITHIN SAID DOCUMENTS IS PROHIBITED WITHOUT THE WRITTEN CONSENT BY TOWERCOM TECHNOLOGIES, LLC.

PREPARED BY:

TowerCom TECHNOLOGIES

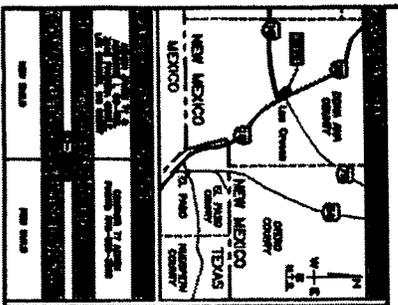
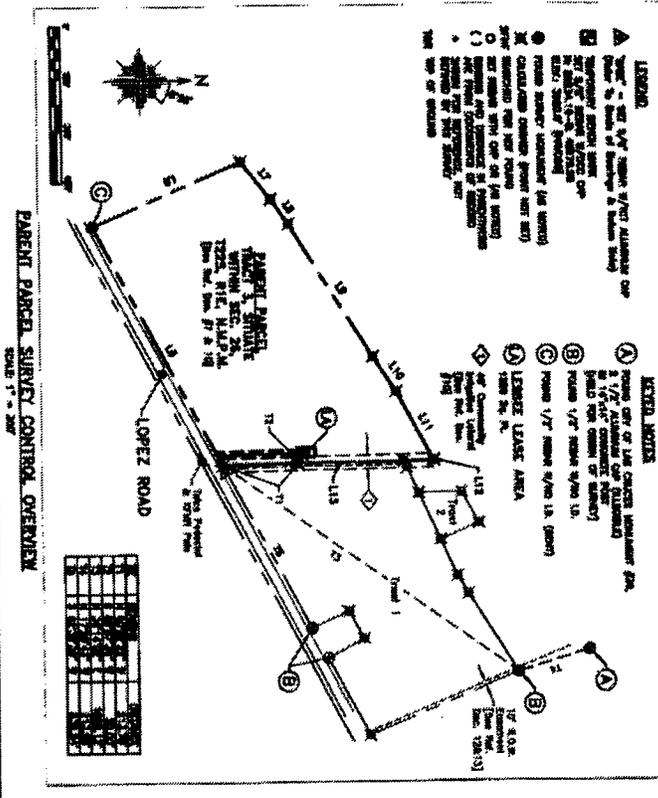
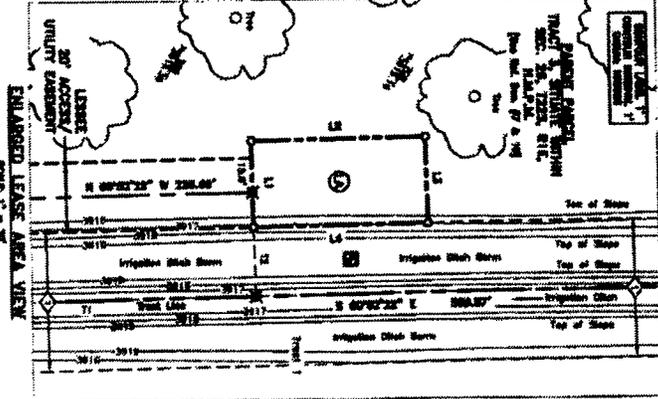
ALBUQUERQUE / STAR / EL PASO / LAS VEGAS / DENVER
NEW MEXICO / IDAHO / TEXAS / NEVADA / COLORADO

LEASE AREA SURVEY
 GENERAL LEASE, RESERVATION OF INTEREST, PARTIAL
 SURFACE WITHIN SECTION 28, TOWNSHIP 22
 SOUTH, RANGE 1 EAST, N.M.P.M. & BEING
 PART OF THE U.S.S. TRACT 5-25A,
 DONA ANA COUNTY, NEW MEXICO.

THIS IS TO CERTIFY THAT THE FOREGOING LEASE IS THE TRUE AND CORRECT COPY OF THE ORIGINAL AS FILED IN THE PUBLIC RECORDS OF DONA ANA COUNTY, NEW MEXICO, ON THIS 15th DAY OF SEPTEMBER, 2011.

THE TERMS AND CONDITIONS OF THE FOREGOING LEASE ARE SET FORTH IN THE ORIGINAL AS FILED IN THE PUBLIC RECORDS OF DONA ANA COUNTY, NEW MEXICO, ON THIS 15th DAY OF SEPTEMBER, 2011.

ACRES	1.0000
FEET	132.00
INCHES	15.00
MILLIMETERS	381.00



NAD 83:	32°21'51.228"
DECI-MAL	32.36423N
NAD 27:	32°21'50.887"
DECI-MAL	32.36423N
NAD 83:	106°48'43.761"
DECI-MAL	106.81218W
NAD 27:	106°48'41.740"
DECI-MAL	106.81218W

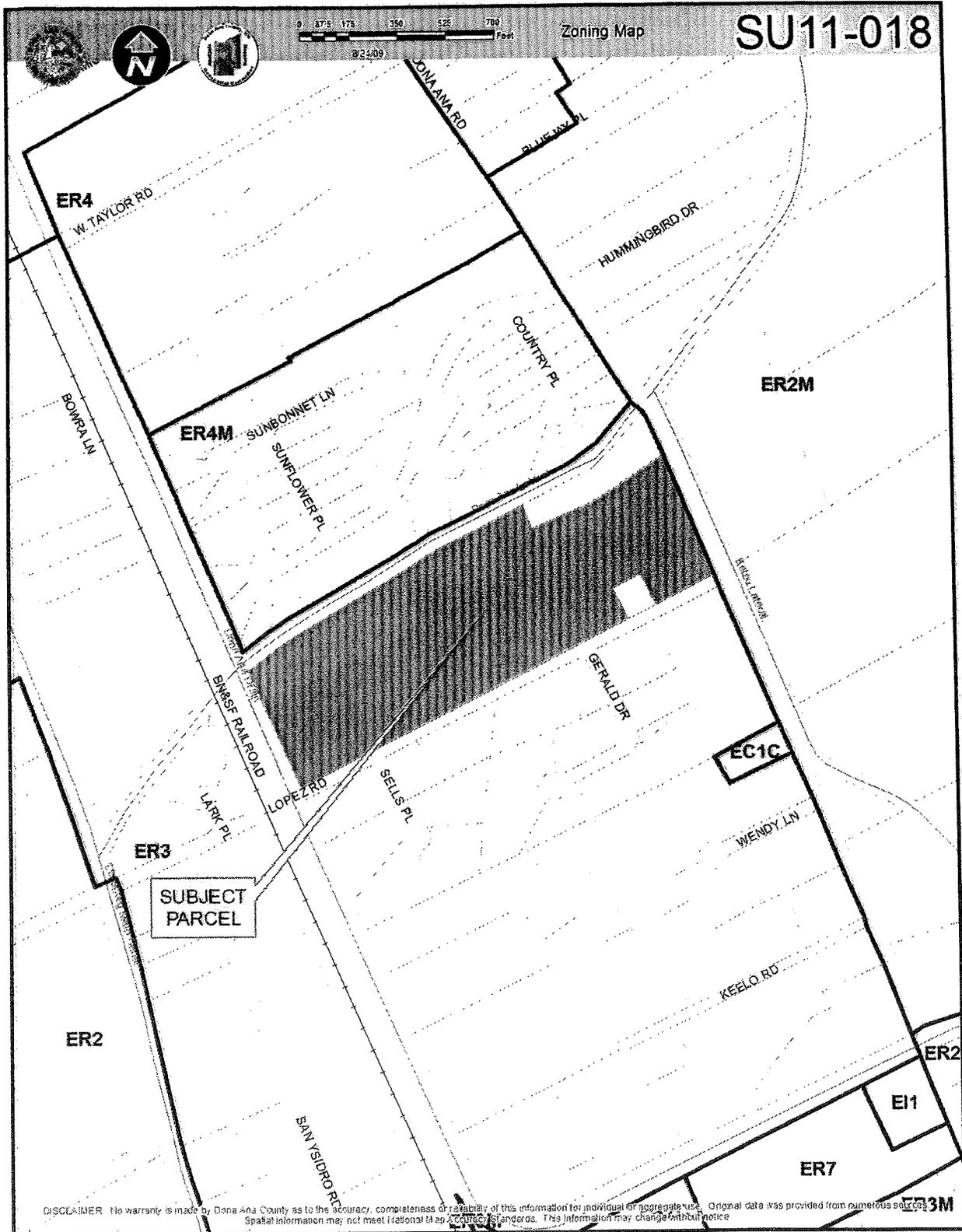
VERIZON WIRELESS LSC RED FOX
 700 BLOCK OF LOPEZ ROAD, DONA ANA COUNTY, NEW MEXICO.
 07/26/11

Verizon Wireless
 4001 Eastman NE
 Albuquerque, New Mexico 87111

Verizon Wireless
 SURVEY NOTES & REFERENCE
 SURVEY CONTROL OVERVIEW
 ENLARGED LEASE AREA VIEW

NEW LSC RED FOX
 SU1





LINE #	MAP_CODE	NAME	ADDRESS1	CITY	STATE	ZIP
13	4-005-131-159-316	DELGADO LEONOR	830 HUMMINGBIRD	LAS CRUCES	NM	88007
14	4-005-131-159-348	MANESS STEVEN D & JENNIFER M	849 HUMMINGBIRD DR	LAS CRUCES	NM	88007
15	4-005-131-163-488	HEINE CORINE L	4504 SAN YSIDRO RD	LAS CRUCES	NM	88007
16	4-005-131-169-311	LOPEZ HEIDI H	4773 SUNFLOWER PL	LAS CRUCES	NM	88005
17	4-005-131-173-343	OHARA JAMES B & FELICIA	839 HUMMINGBIRD DR	LAS CRUCES	NM	88007-7355
18	4-005-131-175-320	DAVIS TIMOTHY W	820 HUMMINGBIRD	LAS CRUCES	NM	88007
19	4-005-131-181-338	HARRIS LESLIE A & NANCY M	829 HUMMINGBIRD DR	LAS CRUCES	NM	88007
20	4-005-131-183-416	RICHARDS VIRGINIA F	729 LOPEZ RD	LAS CRUCES	NM	88007
21	4-005-131-189-302	GONZALEZ EDMUNDO & LORENA	4772 SUNFLOWER PL	LAS CRUCES	NM	88007
22	4-005-131-189-333	GOODIN BILLIE	PO BOX 759	DONA ANA	NM	88032
23	4-005-131-193-218	TELLEZ JUANITA D	1950 ROSEDALE DR	LAS CRUCES	NM	88005-1654
24	4-005-131-196-410	FORTIN RICHARD D	725 LOPEZ DR	LAS CRUCES	NM	88005-5374
25	4-005-131-196-429	CONNER THOMAS F & JUDY K	4515 SELLS PL	LAS CRUCES	NM	88007
26	4-005-131-197-327	GREEN FOREST & DENISE	809 HUMMINGBIRD DR	LAS CRUCES	NM	88007
27	4-005-131-201-297	LOPEZ PETER M	1111 S ESPINA ST	LAS CRUCES	NM	88005
28	4-005-131-205-322	SMITH BILLY JOE & LANETTE	799 HUMMINGBIRD DR	LAS CRUCES	NM	88007
29	4-005-131-206-495	GOODRICH JULIE A	4505 SELLS PL	LAS CRUCES	NM	88007-5351
30	4-005-131-207-290	LEMONDS JANICE M & KRISTI LEMONDS	780 HUMMINGBIRD	LAS CRUCES	NM	88007
31	4-005-131-211-402	CASTETTER RICHARD C	4520 SELLS PL	LAS CRUCES	NM	88007
32	4-005-131-213-280	GODDIN RAY	770 HUMMINGBIRD DR	LAS CRUCES	NM	88007
33	4-005-131-213-315	MYERS RALPH E & MARY ANN MARSH	789 HUMMINGBIRD	LAS CRUCES	NM	88007
34	4-005-131-220-307	TOM GALLAGHER & BETTY	779 HUMMINGBIRD DR	LAS CRUCES	NM	88007
35	4-005-131-225-398	KUEHL DORA M & SHIRLEY F TERRY	705 LOPEZ RD	LAS CRUCES	NM	88007
36	4-005-131-227-304	WOOLMER RICHARD D & ALBERTA R	769 HUMMINGBIRD DR	LAS CRUCES	NM	88007
37	4-005-131-227-431	TILLMAN FAULETTE K & MODELL L	4504 SELLS PL	LAS CRUCES	NM	88007
38	4-005-131-228-275	RELIFORD WILLIAM T & RENATE S	709 HUMMINGBIRD DR	LAS CRUCES	NM	88007
39	4-005-131-228-412	FEDERAL NATIONAL MORTGAGE ASSOC	14221 DALLAS PKWY STE 11301	DALLAS	TX	75254-2918
40	4-005-131-236-275	HERNANDEZ GEORGE & ELVIA M	719 HUMMINGBIRD RD	LAS CRUCES	NM	88007
41	4-005-131-236-304	FISHER NORMA JEAN	763 HUMMINGBIRD DR	LAS CRUCES	NM	88007
42	4-005-131-242-421	ATENCIO LOUIE & YOLANDA	4500 GERALD DR	LAS CRUCES	NM	88007
43	4-005-131-236-393	MILLER JIMMY D & MARY A	695 LOPEZ RD	LAS CRUCES	NM	88007
44	4-005-131-241-280	DIZMANG MICHAEL	729 HUMMINGBIRD	LAS CRUCES	NM	88011
45	4-005-131-246-287	ORTEGA CECELIA TRIBBEY	739 HUMMINGBIRD DR	LAS CRUCES	NM	88007
46	4-005-131-246-298	KELLEY GREGORY M & ELYSE M	749 HUMMINGBIRD DR	LAS CRUCES	NM	88007-7352
47	4-005-131-252-400	MOORE DEBBIE & WARREN	4503 GERALD DR	LAS CRUCES	NM	88007
48	4-005-131-255-266	GARCIA EUGENE V	4791 COUNTRY PL	LAS CRUCES	NM	88007
49	4-005-131-258-272	AFFANTRANGER VIRGINIA A	4771 COUNTRY PL	LAS CRUCES	NM	88007
50	4-005-131-260-283	COREY D SHIRLEY TRUSTEE	4761 COUNTRY PL	LAS CRUCES	NM	88007
51	4-005-131-267-287	PACHECO GILBERT B & IRENE T	4751 COUNTRY PL	LAS CRUCES	NM	88007
52	4-005-131-270-308	KINGSLEY WILLIAM H & GLADYS J	4645 DONA ANA RD	LAS CRUCES	NM	88007
53	4-005-131-272-371	ESQUIBEL JOE	1219 W MC FIE ST	LAS CRUCES	NM	88005-2404
54	4-005-131-273-390	NILS B OTTERSAND & SARAH M	4537 GERALD DR	LAS CRUCES	NM	88007
55	4-005-131-273-392	INMAN HOYT L & PHYLLIS J	1041 BANEGAS RD	LAS CRUCES	NM	88007
56	4-005-131-278-262	DENNEY DAVID A & SHANNON	4770 COUNTRY PL	LAS CRUCES	NM	88007
57	4-005-131-278-284	GUTIERREZ JOSEPH D & MONICA R ORTIZ	4740 COUNTRY PLACE	LAS CRUCES	NM	88007
58	4-005-131-284-267	TOME JIMMY & EMILIA	4760 COUNTRY PL	LAS CRUCES	NM	88007
59	4-005-131-285-275	MULGREW EDWARD J	4750 COUNTRY PL	LAS CRUCES	NM	88007
60	4-005-131-287-365	GARCIA WILLIE & MARTHA & DENISE B	639 LOPEZ RD	LAS CRUCES	NM	88007
61	4-005-131-295-293	KINGSLEY WILLIAM H & GLADYS J	4645 DONA ANA RD	LAS CRUCES	NM	88007
62	4-005-131-295-339	ZARGES WILLIAM J & CLAIR M	638 LOPEZ	LAS CRUCES	NM	88007
63	4-005-131-298-359	DERYCKE LESTER H & PATRICIA A	635 LOPEZ RD	LAS CRUCES	NM	88007
64	4-005-131-299-377	G SANDOVAL CONSTRUCTION INC	2000 E LOHMAN STE C	LAS CRUCES	NM	88001
65	4-005-131-328-290	LOPEZ STEPHEN C & STEPHANIE J TR	41933 N GOLF CREST RD	ANTHEM	AZ	85088
66	4-005-131-426-315	JOE NAKAYAMA INC	4725 EL CAMINO REAL	LAS CRUCES	NM	88005-5367
67	4-005-131-293-240	PALOMARES ANTONIO JR & ERIKA	1365 MYRTLE AVE	LAS CRUCES	NM	88001
68	4-005-131-323-367	PACHECO HECTOR ELOY	706 S ALMENDRA	LAS CRUCES	NM	88001
69		EBID	530 S. MELENDRES	LAS CRUCES	NM	88001
70		BNSF RAILROAD	3001 LOU MENK DR	FORT WORTH	TX	76131
71		D&C ROAD DEPT.	2025 E. GRIGGS	LAS CRUCES	NM	88001

ETZ HEARING

EXTRA-TERRITORIAL ZONING COMMISSION



DOÑA ANA COUNTY
COMMUNITY DEVELOPMENT DEPT.
Doña Ana County Government Complex
845 N. Motel Blvd., Las Cruces, New Mexico 88007
Office: (575) 647-7250

MEETING DATE: June 16, 2016

CASE #: SU16-005

REQUEST: Special Use Permit

PURPOSE: To erect a 75 ft. commercial cell tower

**PROPERTY OWNER/
APPLICANT/AGENT:** Daviet Farms, LLC, Les Gutierrez, Verizon Wireless, Agent

LOCATION: 2116 Apodaca Rd.

LEGAL DESCRIPTION: Lot 2, Triple "L" Acres, recorded in DAC Clerk's Office on 12/30/15, with Instrument #1527726

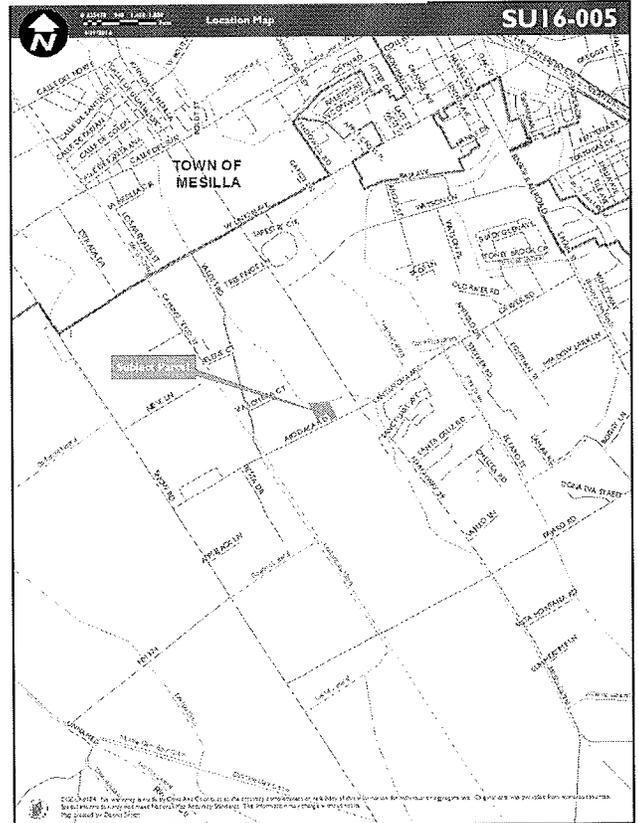
EXISTING ZONING: ER3

PROPERTY SIZE: 5.0-acres (20' X 30' lease area)

PARCEL ID#: 03-24122

RECOMMENDATION: Approval

CASE MANAGER: Steve Meadows



REPORT CONTENTS: (1) Cover Page, (2) Applicable Policies and Ordinances, (3) Staff Analysis, (4) Site Plan and Supporting Documents, (5) GIS Information & Maps (6) Public Notification

Surrounding Zoning and Land Uses

SITE	ZONING	LAND USE
North	ER3 - Residential, 1.0-acre minimum new lot size, single family site-built homes.	Agricultural and residential uses
South	ER3M - Residential, 1-acre minimum new lot size, single family site-built & mobile homes.	Agricultural uses
East	ER4 – Residential, 1/2-acre minimum new lot size, single family site-built homes	Agricultural and residential uses
West	ER3 - Residential, 1.0-acre minimum new lot size, single family site-built homes.	Residential and agricultural uses

BACKGROUND:

Existing Conditions/Zoning

The subject property is an irregularly shaped 5.0-acre parcel within an ER3 (Residential, 1.0-acre minimum new lot size, single family site-built homes) Zoning District. Access to the property is from Apodaca Rd., a paved county maintained road, considered a minor arterial road by the Mesilla Valley MPO requiring 100’ of R-O-W. The property is bounded on the north by the Mesilla Lateral, approximately 40’ in width at the property line. A 1,604 sq. ft. site built home with an attached carport was constructed in 1965 and is located near the center of the subject parcel. An approximate 4,300 sq. ft. agricultural structure is located north of the residence near the proposed cell tower site and an approximate 300 sq. ft. water well building is east of the residence.

The Request:

The applicant is requesting a Special Use Permit to construct a seventy-five foot (75’) monopole wireless communication cell tower (a.k.a., Valdes location). A 20’ X 30’ lease area is being proposed (*Page 14*) to contain the tower, equipment cabinet and an emergency generator surrounded by a 7’ CMU block wall. A twenty foot (20’) wide access and utility easement from the southern property line (Apodaca Rd.) is being proposed (*Page 14*).

APPLICABLE PLANS, POLICIES, AND CRITERIA FOR APPROVAL

- 1. Las Cruces Extra-territorial Zoning Ordinance, No. 88-02, as Amended**

2.1.D EVALUATION CRITERIA

The Planning Director and ETZ Commission may use the following general criteria when reviewing Special Use Permits and Zoning Applications. The ETZ Commission shall have the authority to require additional specific information on any of the following criteria of Article II, Section 2.1.D/Evaluation Criteria.

- 2.1.D.1 Determination of potential number of homes, population and population demographics.
- 2.1.D.2 Determination of potential traffic flows (average daily traffic) and where they will impact the transportation system.
- 2.1.D.3 Determination of need for new commercial activity.
- 2.1.D.4 Determination of potential water and sewage needs.
- 2.1.D.5 Evaluation of existing infrastructure capacities and an analysis of the ability of the existing system to accommodate the new development.
- 2.1.D.6 The difference between capacity and impact should be stated. Those areas which are appropriate for the developer to underwrite should be negotiated between local government and developer.
- 2.1.D.7 The ETZ should reserve the right to place appropriate zoning categories on environmentally sensitive areas, areas of historical significance or areas which contain endangered or rare species of animal or plant life.
- 2.1.D.8 Any analysis required should be undertaken and paid for by the developer and verified by the ETZ Commission.
- 2.1.D.9 Determination of impact of a proposed zone change on surrounding properties.

SPECIAL USE DEFINED

A special use is a use which is of an unusual or unique character and which may be offensive or incompatible in some cases within a zoning district. A special use requires review and approval by the ETZ Commission to determine impacts of the use on the surrounding area. Special Use Permits for accessory dwellings shall follow Article 7, Section 7.2 of this Ordinance.

Current Zoning District:

Section 3.1.C.2 ER3 RESIDENTIAL DISTRICT

3.1.C.2.a PURPOSE

The purpose of the ER3 zoning district is to establish residential districts of single-family site-built homes on moderate to large size lots, specifically designed to meet the demand for those persons whose lifestyles include raising and keeping of large and small animals in a semi-rural atmosphere.

3.1.C.2.b DEVELOPMENT REQUIREMENTS

The development requirements set for the ER3M district as outlined in Section 3.1.C.1.b (below) of this Article are applicable to the ER3 district.

3.1.C.2.c ER3 PERMITTED USES

The permitted uses set for the ER3M district as outlined in Section 3.1.C.1.c (below) of this Article are applicable to the ER3 district, EXCEPT that mobile homes are not allowed in the ER3 district.

3.1.C.2.d ER3 SPECIAL USE PERMITS

The Special Use Permit uses and conditions set for the ER3M district as outlined in Section 3.1.C.1.d (below) of this Article are applicable to the ER3 district.

Section 3.1.C.1 ER3M RESIDENTIAL DISTRICT

3.1.C.1.a PURPOSE

The purpose of the ER3M zoning district is to establish residential district is to establish residential districts of single-family site-built homes and mobile homes on moderate to large size lots, specifically designed to meet the demand for those persons whose lifestyles include raising and keeping of large and small animals in a semi-rural atmosphere.

3.1.C.1.b DEVELOPMENT REQUIREMENTS

Minimum lot size	1 acre (except cluster development)
Minimum lot width	100 feet
Minimum lot depth	100 feet
Minimum front setback	25 feet
Minimum side setback	15 feet
Minimum rear setback	25 feet
Maximum building height	35 feet

3.1.C.1.c ER3M PERMITTED USES

The following uses are permitted by right in the ER3M district:

1. All types of agriculture.
2. Barbed wire fences.
3. Barns and other structures normally used in connection with farming and ranching.
4. Christmas tree farms.
5. Cluster developments in accordance with Subdivision Regulations adopted by the ETZ Authority.
6. Detached single-family site-built homes and mobile homes.
7. Garage and yard sales or similar uses, limited to three (3) sales in a one (1) year period at a single address, and each sale shall be limited to three (3) consecutive days.
8. Greenhouses (non-commercial) garden and tool sheds. If detached from the main dwelling, the structures are subject to the provisions of Accessory Buildings under Article VII of the Ordinance.
9. Home Occupations subject to Section 3.4 of this Article.
10. Private swimming pools provided the provisions of Article 5 of this ordinance for fencing are met. The pool shall be no closer than five (5) feet from any property line and approval from all utilities is obtained to ensure overhead safety.
11. Raising large and small animals in accordance with Article VIII of the Ordinance.

12. Recreational vehicles such as boats, trailers or similar uses, limited to a maximum of one (1) per dwelling unit in the front and side yard, and no limitations for the rear yard, provided there is at least a distance of five (5) feet from any property line.
13. Residential type satellite dishes, television or receiving antenna, roof mounted, and not exceeding twenty (20) feet in height at the highest point of the roof.
14. Septic tanks in accordance with the regulations of the New Mexico Environmental Improvement Division (EID) and Section 3.02 of this Article.
15. Temporary real estate offices, when used in conjunction with a residential subdivision, provided such use is discontinued upon the completion of the development or within three (3) years from the date the building permit was issued, whichever is sooner.
16. The sale of agricultural and farm products such as nursery stock, poultry, rabbits, chinchillas, fish, frogs, earthworms and bees, if produced or raised on the premises.
17. Windmills built to withstand a 75 MPH wind and meet the Uniform Building Code.
18. Agriculture uses and agriculture related uses not specifically listed under Sections 3.1.A.1.c and 3.1.A.1.d of this Article are permitted by right in the ER3M district.

3.1.C.1.d ER3M SPECIAL USE PERMITS

The following uses require a public hearing pursuant to Section 2.1.G of this Ordinance and approval by the ETZ Commission:

1. Boarding houses and rest homes
2. Cemeteries
3. Commercial stable and riding academies
4. Commercial kennels
5. Community and publicly owned recreational centers, clubhouses and similar buildings and structures open to the public
6. Day care center or child care center for seven (7) or more children
7. Guest ranches
8. Parks, golf courses, churches, schools and other public or semi-public and open recreational uses
9. Public utility installations, substations and water wells
10. Keeping of wild or exotic animals or fowl
11. Time-rental riding facilities
12. Veterinary clinics and treatment centers
13. Wineries and/or wine tasting rooms

Section 3.3.B SPECIAL USE PERMITS (SUP's)

3.3.B.1 GENERAL PROVISIONS AND PROCEDURES

A special use is a use which is not permitted by right in a zoning district. A special use requires review and approval by the ETZ Commission to determine impacts on the surrounding area. The procedures for such approval are as follows:

3.3.B.2 APPLICATION PROCEDURE

Applications for a Special Use Permit shall be obtained from the Doña Ana County Planning Division. There shall be a comprehensive statement included with each application indicating, in detail, the reason for the request, the purpose and use of the property, all improvements to be made and a site plan including the following:

- a. location of existing and proposed structures, including dimensions and setbacks
- b. existing and proposed vehicular circulation systems, including parking area, storage areas, service areas, loading areas and major points of access, including street pavement width and right-of-way
- c. location and treatment of open spaces including landscaping plan and schedule
- d. lighting
- e. signs

A drainage facilities plan or environmental impact statement may be required by the ETZ Commission.

3.3.B.3 PUBLIC HEARING AND NOTICE PROCEDURE

A public hearing shall be held by the ETZ Commission for all Special Use Permits in accordance with the provisions of Section 2.1.G of this Ordinance.

3.3.B.4 REVIEW AND APPROVAL PROCEDURE

The ETZ Commission may deny such SUP's or may grant final approval in accordance with certain conditions, with right of appeal to the ETZ Authority in accordance with the provisions of Section 3.1. Approval may also be granted with additional conditions imposed which are deemed necessary to insure that the purpose and intent of this Ordinance is met and to protect and provide safeguards for persons and property in the vicinity. Variances in the dimensional requirements for a special use may be granted by the ETZ Commission in accordance with the criteria in Section 2.3.B of this Ordinance.

3.3.B.5 TIME LIMITATIONS, REVOCATIONS AND DEVELOPMENT STANDARDS

In addition to the imposition of conditions, the ETZ Commission may impose a time limitation on the SUP. If a special use is discontinued for a period of one (1) year, said permit shall automatically expire. All improvements shall be in accord with the development standards within the district, except as otherwise authorized by the SUP. There shall be no major revisions in the site plan of the original approved special use except as approved by the ETZ Commission. Minor revisions to a site plan, following final approval, may be subsequently approved by the planning staff without a public hearing. Major revisions to the plan are subject to a regular public hearing with the same requirements as an original application.

3.3.B.5.a Major revisions shall include, but are not limited to, the following:

1. any change in land use or intensity

2. modifications of vehicular traffic volumes or circulation
3. increase in size of property or change in location or configuration of structures

3.3.B.5.b Minor changes that planning staff may approve are as follows:

1. provision of additional parking or landscaping
2. minor adjustment to parking, landscaping, lighting or signs
3. superficial changes to structures or slight variations in dimensions

Special Use Permits shall be eligible for renewal when limitations expire.

3.3.B.6 RECORDING OF THE SPECIAL USE PERMIT

After approval, the Special Use Permit shall be issued by the Planning Director or his/her designee and shall include all information, conditions, reference to site plans and other provisions of the special use. The special uses, as granted, shall be shown on a Special Use Permit map indicating its location with a designation of 'SU' and the year of expiration. Special uses shall not be considered a zone change.

4.2.E.2.b Commercial Towers in Residential Zones

Any commercial tower to be located in residential zones shall only be allowed in ER1, ER1M, ER2, ER2M, **ER3**, ER3M, ER3H and EC1 zoning districts through approval of a Special Use Permit. Commercial towers in residential districts and neighborhood commercial districts shall meet the following criteria:

- monopole type only
- height shall be limited to that height which is determined by a two-to-one setback from all property lines up to a maximum total tower height of seventy-five (75) feet
- approval of a site plan by the Doña Ana County Planning Department prior to new construction or modification of an existing structure.

4.2.E.2.f Commercial Tower Density-

Each commercial tower site shall have a one (1) mile buffer zone around it. No other commercial tower of the same use may be placed or erected within this buffer zone. On-site business communications are exempt from this clause.

AGENCY COMMENTS

DAC Engineering: 1) All stormwater runoff from all impervious areas must be contained within lot. Pond must contain 125% of required volume. 2) Non-dedicated streets or private drives within lot, tract, or parcel shall be minimum 25' width for two way and 18' for one way. 3) Provide recorded information and/or description for access easement by Building Permit issuance. 4) DAC Driveway Permit will be required. 5) A SWPPP may be required if total acres of disturbance is greater than 5,000 sq. ft. 6) Adhere to all regulatory agency comments. Some agencies may require certain permits or licenses to be obtained. 7) When submitting for other permits other comments may arise.

DAC Flood Commission: Pursuant to FEMA Flood Insurance Rate Map (FIRM) No. 35013C0633 E, the property is located within a FEMA Flood Zone Area, "Other Flood Areas"

and can be found in Flood Zone "X" (Areas of 500-yr flood). Additional reviews may warrant additional comments.

DAC Fire Marshal: Any future structures will be required to meet all fire code requirements.

DAC Codes: No violations. 5/16/16

DAC Building Services: NM licensed contractor will be required to obtain permit for installation of cell tower.

DAC Addressing Coordinator: No comments.

DAC Zoning Codes: No open case.

NMED: *Wastewater Treatment and Disposal:* No comment. *Water Supply/Water Quality:* No comment- provided. *Solid Waste Disposal:* the Solid Waste Bureau has no comment regarding solid waste matters. *Surface Water Bureau:* No comments provided.

NMDOT: No comments received.

Mesilla Valley MPO: Apodaca Rd. is a minor arterial requiring 100' R-O-W.

CLC Planning Dept: No issues. However, if the property is annexed into the City Limits, the property may require a Zone change or may need to meet building requirements for the city of Las Cruces zoning code in order to come into compliance.

EBID: No comments received.

State Eng. Office: No water rights issue with the installation of the tower.

PUBLIC NOTICE / NOTIFICATION

Twenty-two (22) letters of notification mailed to area of notification on May 31, 2016.

Agenda was posted in the Las Cruces Sun-News on May 29, 2016.

Signs were posted on the property in a timely manner.

One email was received on June 9 (*Pgs 19-22*) from Mr. Bill Webber (*outside area of list*) voicing his concerns about site selection process, no demonstrated need for this site, possible safety issues with area crop dusting, possible flashing lights, proximity to existing house and barn and potential safety issues, and potential negative impact on property values. No other correspondence or phone calls were received by staff in opposition or support of the proposal.

STAFF ANALYSIS

Special Use Permit:

The Special Use Permit (SUP) application request to construct a cell tower seventy-five-feet (75') in height on a 5.0-acre parcel located within an ER3 (Residential, 1.0-acre minimum new lot size, single family site built homes) Zoning District was received on April 28, 2016. Special Use Permits are required for all Cell Towers located within ER3 Zoning Districts per

Section 4.2.E.2.b Commercial Towers in Residential Zones (*Page 7*). Special Use Permits must meet Section 2.1.D Evaluation Criteria for approval.

Below is a brief recap of the 2.1.D Evaluation Criteria: Due to the nature of the request (a cell tower), no homes are being proposed and traffic from the project and facility will peak during construction with minimal traffic during day to day operations. Access from Apodaca Rd., a minor arterial, will be adequate for the increase in traffic during construction and for the subsequent minimal traffic involved during the operation of the facility. Verizon's Engineering justification (*Pages 11-13*) and maps (*Pages 17-18*) indicate a gap in coverage and also shows this Valdes location as a preferred location to serve those customers. Existing road, water, and utility infrastructure are adequate. No additional infrastructure requirements were received from reviewing agencies. No known areas of historical significance, environmentally sensitive areas, or any endangered species have been found on this property. Impacts to the neighborhood will increase slightly during construction phase of the project but long term impacts will be minimal. Increased voice and data capacity will positively impact the surrounding neighborhoods. Design of the facility will allow collocation of other providers' equipment and visual impacts can be mitigated by employing stealth/camouflage techniques.

2.1.D CRITERIA Evaluation Criteria

Staff analysis in bold.

2.1.D.1 Determination of the number of homes, population, and population demographics.

No homes being proposed.

2.1.D.2 Determination of potential traffic flows (average daily traffic) and where they will impact the transportation system. **Access will be from Apodaca Rd., classified as a minor arterial (100' R-O-W) to a proposed 20 foot (20') one-way access/utility easement to the telecommunications facility (*Page 14*). Construction phase traffic will be heavier than the traffic during operations which will drop to minimal levels for maintenance.**

2.1.D.3 Determination of need for new commercial activity. **Increase in number of customers and the demand for voice and data bandwidth requires a cell tower in this area according to documents submitted by applicant (*Pages 11-13*).**

2.1.D.4 Determination of potential water and sewage needs. **No water or sewer needed for the operation of cell tower. Temporary sanitation facilities and water provided by contractor during construction phase.**

2.1.D.5 Evaluation of existing infrastructure capacities and an analysis of the ability of the existing system to accommodate the new development. **Water and sewer are not required except during construction and shall be provided by contractor. Existing road, Apodaca Rd., and proposed twenty foot (20') access/utility easement (*Page 14*) will be adequate for construction and operations on the site.**

2.1.D.6 The difference between capacity and impact should be stated. Those areas that are appropriate for the developer to underwrite should be negotiated between local government and developer. **Infrastructure is adequate and no additional infrastructure facilities are being requested by any of the reviewing agencies.**

2.1.D.7 The ETZ should reserve the right to place appropriate zoning categories on environmentally sensitive areas, areas of historical significance, or areas on which contain endangered or rare species of animal or plant life. **No known areas of historical significance or any endangered species have been discovered on this parcel. No evidence submitted to staff that demonstrates any environmentally sensitive areas at this site.**

2.1.D.8 Any analysis required should be undertaken and paid for by the developer and verified by the ETZ Commission. **Applicant shall pay any fees or analysis for the project. No additional analysis or fees required at this time.**

2.1.D.9 Determination of impact of a proposed Special Use Permit on surrounding properties. **Proposed site is located in an area dominated by agricultural uses with some residential dwellings. Visual impacts can be mitigated by employing stealth/camouflage techniques. Impacts during construction will be temporary and will include additional traffic and noise, but the impact will be minimal during the lifespan of the cell tower with occasional maintenance by crews. All development requirements are met by the proposal and no variances to setbacks are being requested. The proposed telecommunications facility will positively impact the surrounding neighborhoods by providing additional capacity for voice and data requirements, enhancing emergency response to the area, and reduce the total number of towers in the area as it is designed to allow collocation of other providers' equipment (Page 12).**

Staff's analysis of the 2.1.D Evaluation Criteria indicates that the request complies with the ETZ Ordinance.

STAFF FINDINGS:

1. The subject property is located outside the corporate limits of the City of Las Cruces, but within the five-mile Extra-territorial Zone (ETZ) as set forth by 3-19-5(1), NMSA 1978 and the Joint Powers Agreement between Doña Ana County and the City of Las Cruces.
2. The 5.0 acre subject parcel is Lot 2, of the Triple "L" Acres No. 1, recorded December 20, 2015, in the DAC Clerk's Office with Instrument #1527726.
3. The subject property is located within an ER3 (Residential, 1.0-acre minimum new lot size, single family site-built homes) Zoning District.
4. A Special Use Permit is required for all Commercial Towers within ER3 Zoning Districts per Section 4.2.E.2.b.
5. Proposed telecommunications tower will meet all setback and development requirements.
6. One email in opposition was received on June 9 from outside the Area of Notification.
7. The applicant has met the Evaluation Criteria of Section 2.1.D for a Special Use Permit.

STAFF RECOMMENDATION:

Based on the Findings of Fact, staff analysis, and the proposal complying with Section 2.1.D, staff recommends **Approval** of SUP16-005/Daviet Farms, LLC, to construct and operate a 75' telecommunications facility.

Narrative



Verizon Wireless
126 W. Gemini Dr.
Tempe, Arizona 8528

April 3, 2016

Mr. Steve Meadows, Senior Planner
Community Planning Development
845 Motel Blvd
Las Cruces, NM 88007

RE: Verizon LSC LSC VALDES (2116 Apodaca Road)

Dear Mr. Meadows:

Please accept this Application for a Special Permit from Verizon Wireless. The request is for a new telecom facility to be located 2116 Apodaca Road. Las Cruces has one off the highest demands for 4G LTE wireless data and we are making every effort to provide the data speed required for all of its customers.

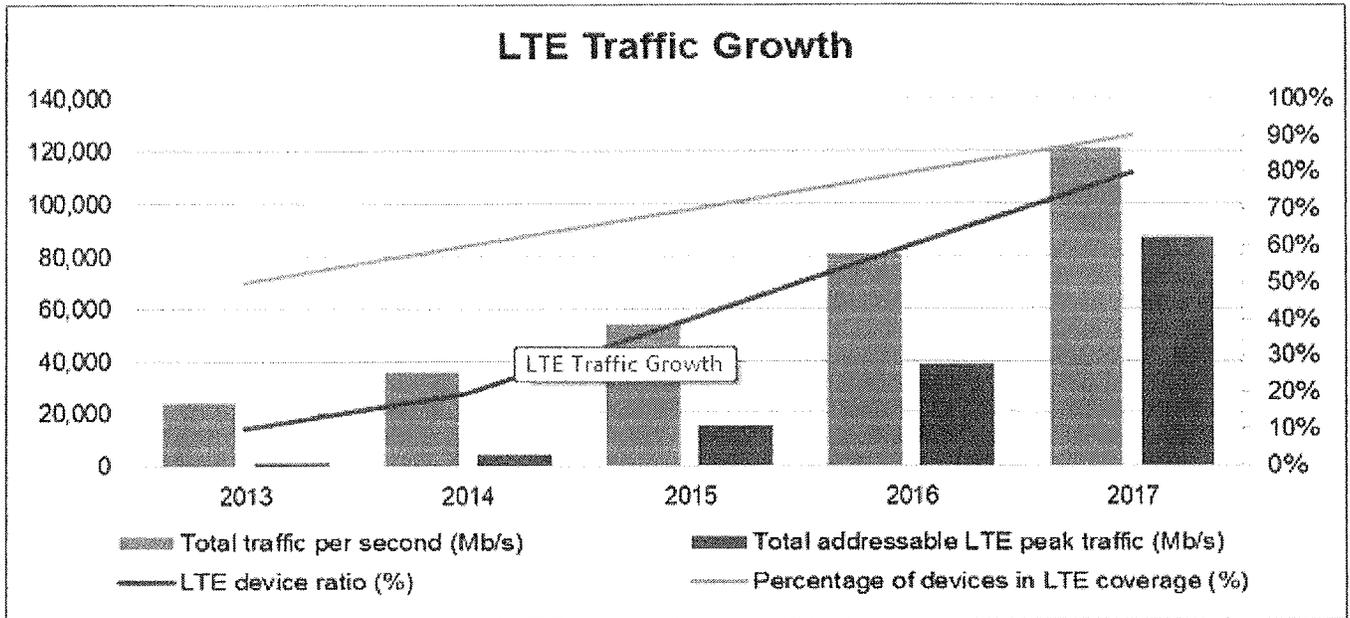
Attached are the following documents for this application:

1. Completed SUP Application.
2. Section 2.1 D Evaluation Criteria for LSC VALDES.
3. Property Owner Letter of Authorization.
4. Warranty Deed.
5. \$600 Fee for request.
6. Full set of development plans, stamped by a professional engineer.

Currently the traffic and surrounding homes are experiencing huge demand for capacity through the campus and residences in this area. Data usage is on the rise at a much more rapid rate than our current network there can sustain. This rise is primarily due to the increased numbers of smart devices such as Android and Apple phones, laptops and tablets all supporting applications (Netflix, Social Media, web browsing) that require high speed connections.

In summary, the majority of new sites will be LTE high speed data sites. As more and more devices and different applications are added to the network, more and more resources are needed to support this network. Unfortunately, there are no other liable solutions other than to add more sites to handle data growth and the desired speeds.

Narrative & Projected Growth Graph (Pg 2)



The proposed 75' monopole will provide Verizon with the necessary capacity to serve our customer base as well as emergency 911 users. The monopole will be designed to accommodate additional users. We respectfully ask that you grant our request our zoning approval request for this site.

Sincerely,

Les F. Gutierrez

Les F. Gutierrez, Agent for Verizon Wireless

LesGutierrez35@gmail.com

505-710-2079

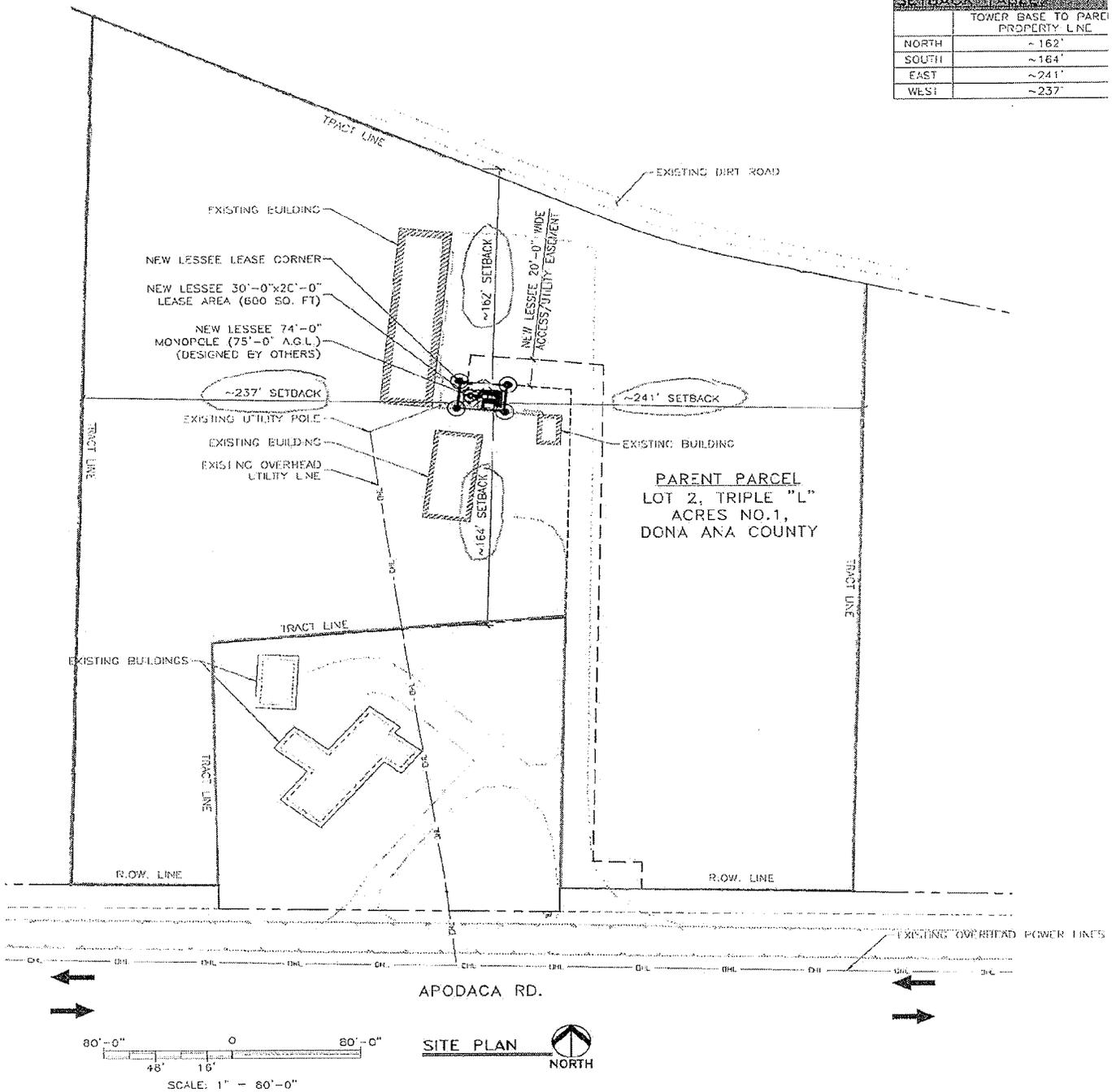
Summary

Execution summary

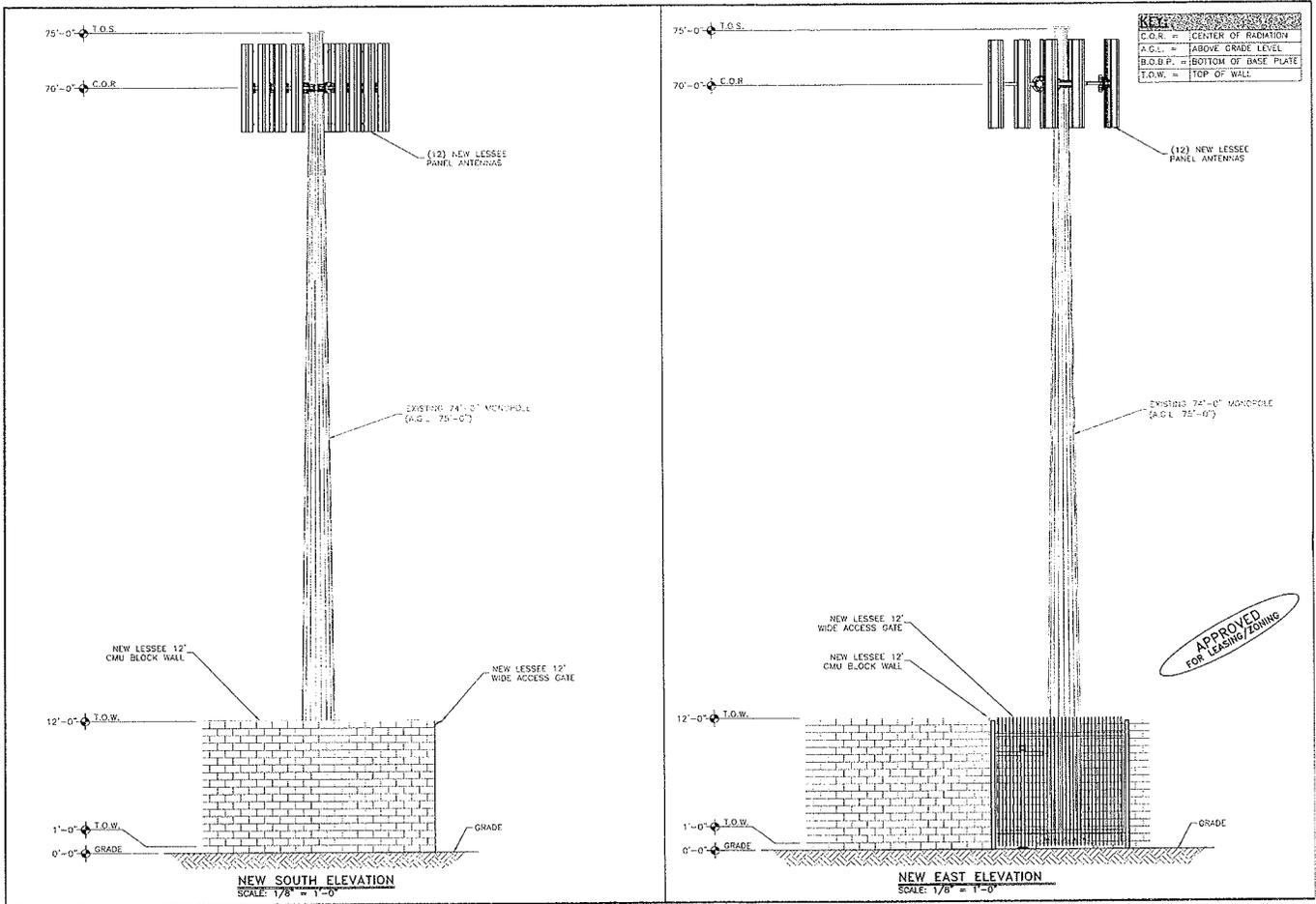
- Primary reason for LSC_Valdes site is the residential and new homes and business in the area of this site. The area is experiencing a healthy amount of growth.
- Based on capacity prediction all the existing sector of the existing sites covering this area will exhaust in the future
- We are very limited with providing additional capacity other than adding new sites since all available carriers are active to day in Las Cruces NM

Site Plan

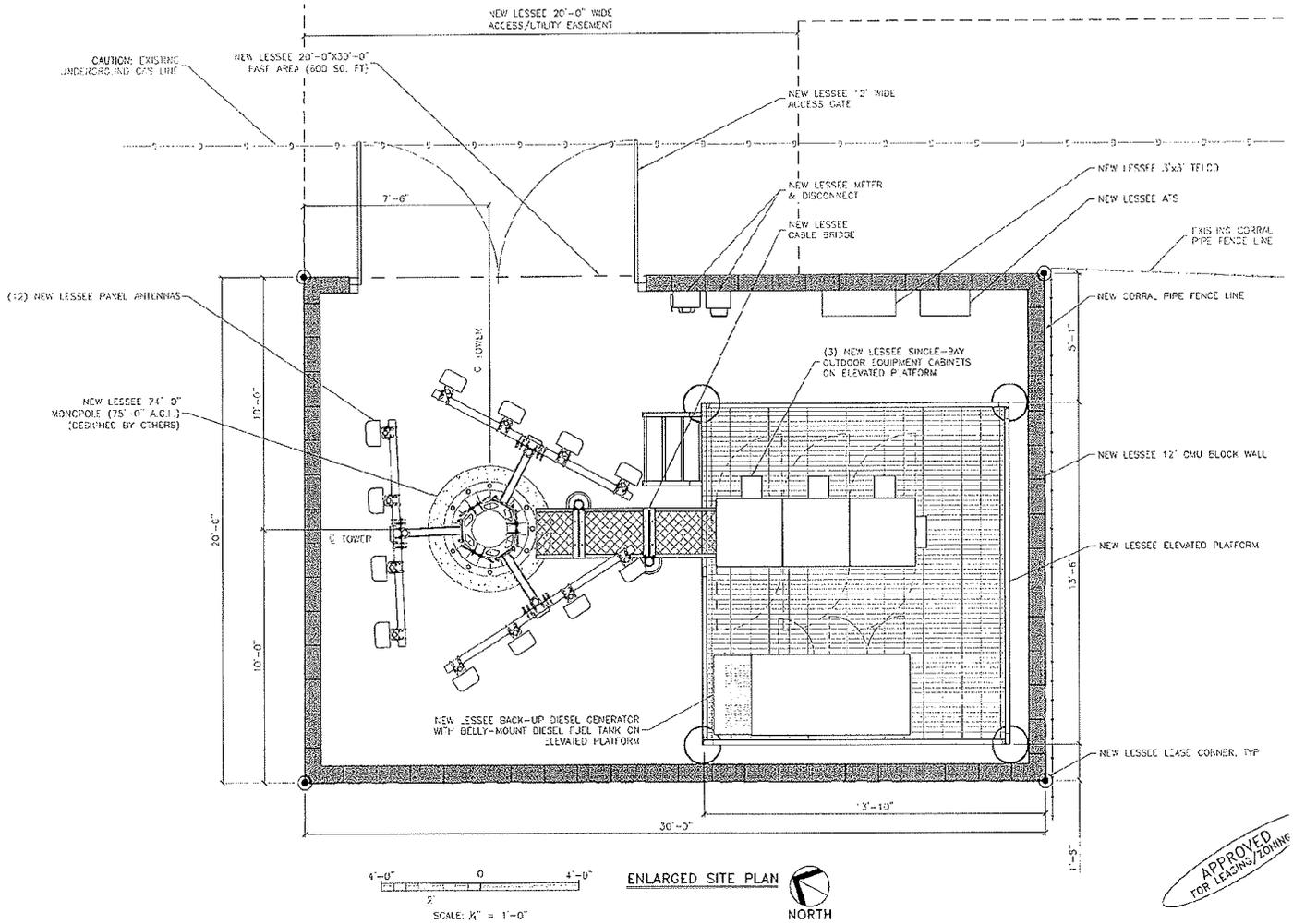
SETBACK TABLE	
	TOWER BASE TO PARENT PROPERTY LINE
NORTH	~162'
SOUTH	~164'
EAST	~241'
WEST	~237'



Depiction of a Typical Cell Tower

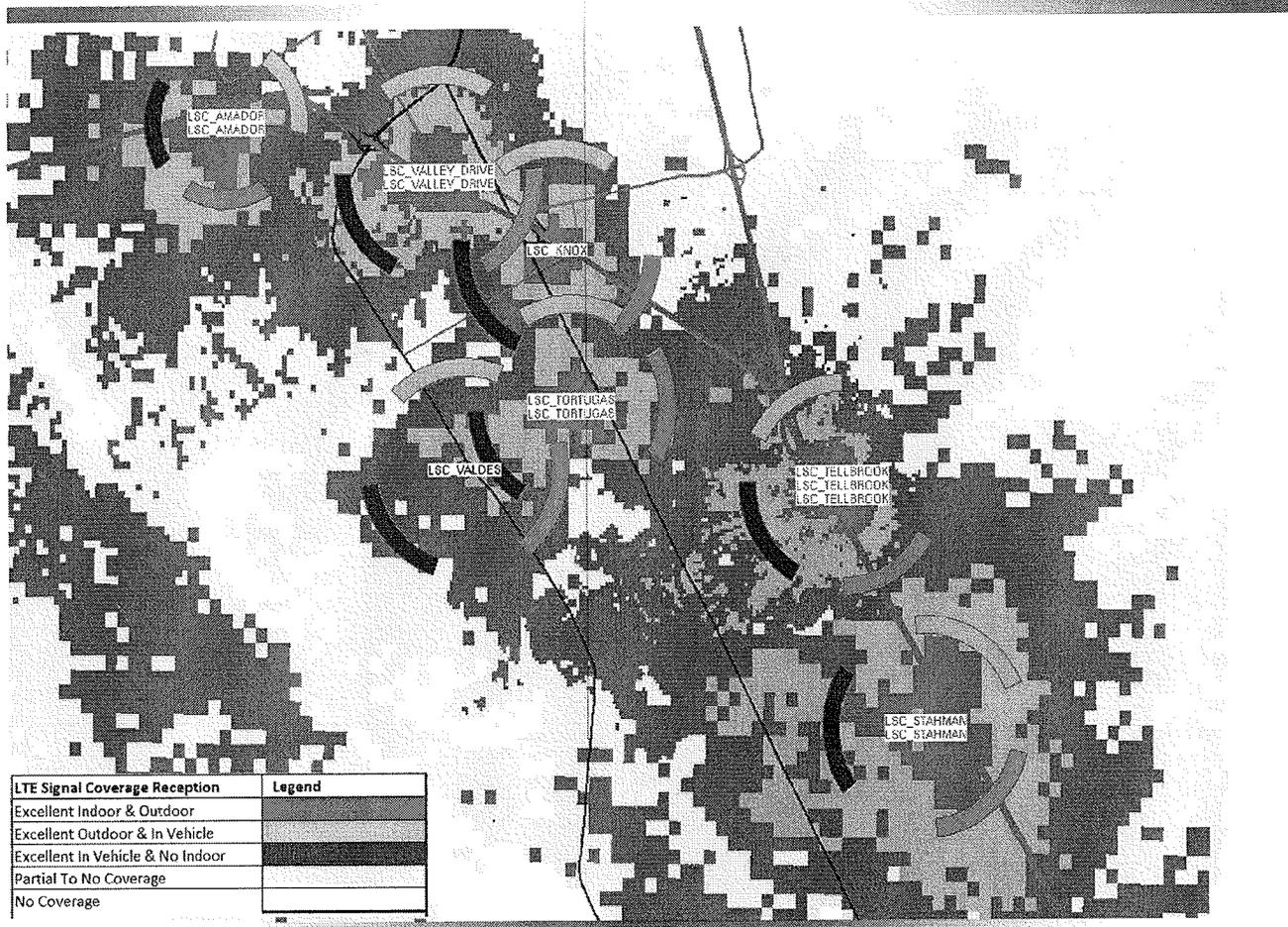


Enlarged Facility Site Plan



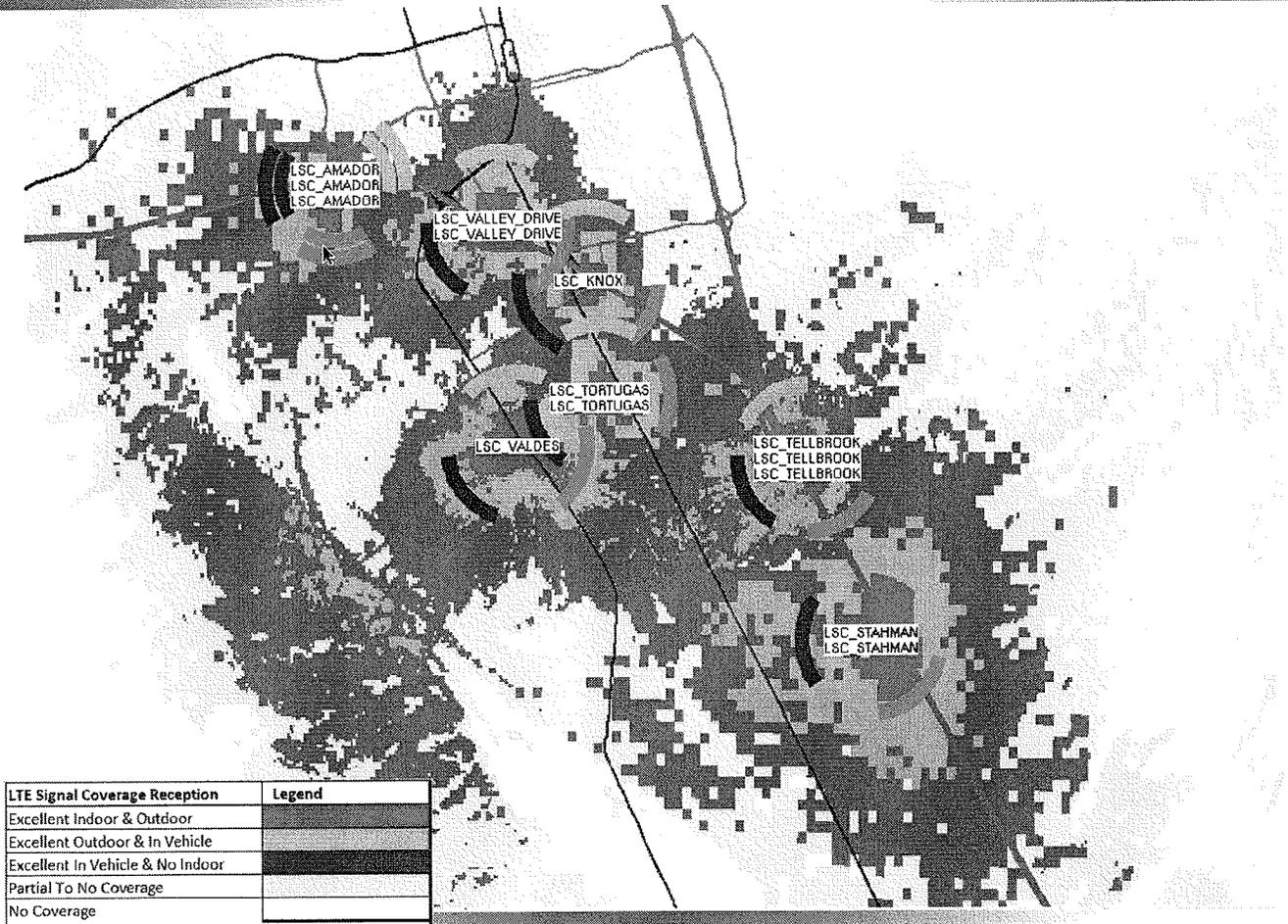
Existing Area Towers and Coverage

Existing LTE coverage in the area



Coverage with Proposed Valdes Tower

Existing LTE coverage in the area plus LSC_Valdes



Webber Email (Pg 1 of 4)

Steve Meadows

From: Bill Webber <bwebber@zianet.com>
Sent: Thursday, June 09, 2016 5:07 PM
To: Steve Meadows
Cc: Bill Webber
Subject: Case #SU16-005: Letter of protest for Commissioner's packets.



Mr. Steve Meadows, Senior Planner
Community Planning Development
845 Motel Blvd.
Las Cruces, NM 88007

Re: Case #SU16-005: Daviet Farms, LLC/Verizon: Request for Special Use Permit to erect a 75 foot cell tower within an ER3 Zoning District at 2116 Apodaca

Dr. Mr. Meadows, ETZ Commissioners, Mr. Daviet, and Verizon Agent Mr. Guitierrez,

Mr. Meadows, thank you for going over the application file with my wife and I. Commisioners, Mr. Daviet, and Mr. Guitierrez, thank you in advance for your attention to this letter. Please add this to the Commissioner's packets for next Thursday's meeting and hearing.

My wife and I have lived on Valdes Road since 1998. The purpose of this letter is to voice our opposition to the 75 foot cell tower proposed to be placed in the middle of a 100 acre field near the corner of Highway 28 and Apodaca Road. We would be grateful if this is not treated as "just" another "not in my backyard" protests—that being the characterization that some have given to people who are not fond of tall communications towers in neighborhoods. Our concern is much wider than the proposed tower being a visual "sore thumb." This looks more like planting a 75 foot flagpole in the middle of a huge field without any attempt to demonstrate a coverage need and without any evidence that other less intrusive sites were even considered. We recognize the need for cell towers and we recognize the need that such towers have to go *somewhere*. In fact, there are over a dozen within a few miles of this site. But none of them stick out like sore flagpoles. The closest site (Four Corners Gin is built in the midst of a lot of pre-existing heavy industrial infrastructure and/or agricultural equipment infrastructure. In other words, the towers are additional heavy metal to a lot of already aggregated heavy metal. Warehousing and heavy equipment storage—and 75 foot cell towers--certainly do have to go somewhere. We question and oppose putting them, not in our backyard, but in the middle of a huge open space field in our neck of the woods. Especially since the capacity problem that is being "fixed" is a problem that comes from over by NMSU. This is a problem that needs to be fixed over by NMSU. The Application fails to apprise anyone of what is really going on—unless one already "gets" it.

The Application Demonstrates No Need for a Tower in This Location.

If a Special Use Permit is to be granted in a semi-residential, semi-agricultural, zoned area where cell towers are not a permissive use, it seems like the applicant should address how the proposed use benefits people in the zone, if at all, and how intrusive or detrimentally impactful the use would be on nearby properties and to the comprehensive plan in general.

The application and supporting materials do not even claim that there is any kind of significant cell phone coverage gap in this neck of the woods. In fact, the coverage maps supplied with the application show no significant "no coverage" areas would be eliminated. There might be a couple of places back in a couple of pecan orchards, but if there is a single person who has coverage issues who would get coverage, no such person or residence is identified. A couple of "little to no" coverage areas are improved, but the maps don't assist one to identify a "coverage" gap—and, indeed, Verizon's supporting documentation indicates that this proposed tower may be going in primarily, if not exclusively, in order to address a future capacity problem—that exists in another part of town.

Webber Email (Pg 2 of 4)

In fact, the handwritten application says that “The new telecommunication facility will provide needed voice/data to Interstate 10 traffic and to nearby homes.” (emphasis added). Likewise, the Verizon cover letter to Mr. Meadows notes that “the traffic and surrounding areas are experiencing huge demand for capacity through the campus and residences in the area.” (emphasis added). It looks for all the world that the main reason for this proposed tower is not to help coverage in this neck of the woods, but to dump, or download, data from another part of town in order to plan for future growth. Also related to this is the claim that putting this 75 foot tower in the middle of this huge field will improve emergency services. Please correct me if I'm wrong, but my understanding was that emergency services (as well as military and perhaps other forms of cellular traffic) take priority over general traffic when there is a capacity congestion problem—that is the other calls get dumped. The claim of improving emergency response is a conclusion without any underlying foundation. Certainly emergency services would be improved with a 75 foot tower in each and every open field in the county, but that doesn't mean that there is a need. There is no identified factual problem or one identified person who has suffered from a lack of cell phone coverage in an emergency—but the application is about a future capacity problem over by NMSU and not a present coverage problem over here on this side of town.

In sum, there is no apparent need for this proposed tower to be put in a middle of a field just south of Mesilla to address a future problem in another part of town. (Not to mention enabling increasing cell phone traffic by people behind the wheel on I-10).

Did Verizon Employ Its Own Site Selection Process “Find” this Piece of Farmland West of Highway 28 Since It Appears to Be Primarily or Exclusively for the Purpose of Offloading Data from I 10/NMSU?

One of the recent special use permit applications two or three miles east of the present proposed site was for 4790 Stern Drive. (That's where there has been a vacant convenience store for a number of years). In an appeal document by Verizon, it was indicated that Verizon has an “extensive site-selection process” that begins with “in-depth technical and engineering analysis.” “Once capacity/coverage issues are identified in an area, Verizon reviews the existing sites and possible areas in between them to install a new network enhancing site. First it locates the small area in which such a sit can be located based upon detailed FR analysis (the “Site Ring”).

We need to see the ring or rings involved in selecting this site two miles south of Mesilla. Looks to me like there's a whole other map going on besides the zoning map and a whole other plan going on besides the Comprehensive Plan. Staff and the should demand full disclosure and submission of the “big picture” of what's going on here.

Why Is There No Substantive Discussion of Impacts on the Surrounding Area And How Can This Application be Legally Approved Without Any Evidentiary Basis for Review by The ETZ Commission?

If there is a genuine need for this kind of tower in this kind of zoning in this part of town, it's not readily and factually apparent from the application materials. To the contrary, it appears to be designed to download near capacity data from the busiest data traffic zone in town (NMSU, I-10, near I-25). In fact, the application material doesn't mention a *coverage* gap at all. If Verizon looked for a less intrusive site than the middle of a 100 acre cornfield, it's not easily found in the application materials. I cannot verify the veracity of this, but it needs to be addressed, resolved, or eliminated. One of the people close to the site said that the “owner” sent out a letter to “neighbors” (I guess we didn't qualify) that said “he” was applying for the permit because he was having trouble with his cell phone coverage and that he was planning on putting in a pecan orchard on the rest of the land. If this isn't true, it needs to be denied and be done with. If it's true but misstated in the details, that too needs to be corrects. But the problem remains: the applicant is speaking to a “coverage” gap right in our neck of the woods but Verizon is a addressing a data capacity gap over by the University. The problem is compounded if the owner/applicant's organizer sits on the Dona Ana County P&Z himself. We all need what's being advertised being the same thing being talked about by the neighbors.

But the most glaring and perhaps fatal defect in the application materials is the complete absence of a single word in the application that seems to acknowledge that there are negatives that come with putting 75 foot radiating telecommunication towers in the middle of corn fields. At least, Verizon seemed to realize that the centerpiece of the process is that “A special use requires review and approval by the ETZ Commission to determine impacts on the surrounding area.” ETZ Code, Section 3.3.B.2.

But then it ignores any and all negatives completely and simply claims that 911 emergency, fire, and police services will be improved,” and that the tower will fill a “void” in the form of “a gap incapacity in this area.” It seems like

Webber Email (Pg 3 of 4)

a stretch to call planting data from NMSU in a cornfield just south of Mesilla “this area.” But it is more than a stretch to simply ignore downsides that simply exist—and ought to be addressed. I’ll return to the combination of diminished property values and quality of desired life in a moment, but there are other issues that ought to be addressed, resolved, or eliminated. That field is has a pecan orchard across the street that may be owned by the organizer and registered agent of the Landowner applicant. Is a 75 foot tower in the middle of a field a peaceful co-existent with the frequent crop dusting that goes on just next to this tower? Are flashing lights in order? Does the tower need reflective visual enhancements to make it even more visible to low-flying aircraft. Is this a really optimal location for what some might believe to be an attractive nuisance. Is the existing house and barn going to be razed? Is it safe and permissive to even live literally in the shadow of a potentially life-crushing 75 foot tower. Can children live there even if their parents think its ok? I don’t know the answer to these questions, and maybe they are some or all non-issues upon discussion. But non-discussion doesn’t give a basis to evaluate impacts. If Mr. Daviet or someone really does put in fields of pecans, just how long until those trees are 25 feet surrounded by their 75 foot tall mother tree. Is this tree going to be disguised as a tree—and is anyone going to be fooled.

What is not a non-issue are the impacts on both property values and quality of desired life.

The “area” I now describe, for purposes of discussion, might be that bounded by Union and I-28, going West to Snow, then going South on Snow to Apodaca and East (past the subject property) to Highway 28, and then to Union. I’m not excluding other magnificent parts of the “close to Mesilla” environment—like around Calle del Norte/Snow/Glass Rd. I just pick this “area” because it’s by the proposed tower field. Since 1998, when we moved to Apodaca, there hasn’t been a whole lot of growth. Like a lot of people who find a place like this, we would love it there was no growth. And we feared when it came. I would be surprised if there are 100 new homes built in that square in the last 18 years. But our fears were not only unfounded, but quite the opposite has happened. The modest number of people who came in with new homes built really nice, upscale homes. The “horse guys” are *great* horse guys. Younger people, and older too, have come in and bought old properties—and fixed them up just fine. This is truly one of the great success stories on the South side of Mesilla—just as there are success stories on other sides of Mesilla. And there are failures. Heading West on Apodaca from Highway 28 is an advertisement as to why an outdoorsy person would want to live in this neck of the woods.

Other than literally “in my own back yard,” I can’t think of a single location in the square I described that could be more strategically located to “plant a flag” entering that stretch of land from Highway 28 onto Apodaca. We wouldn’t need a billboard to advertise our lifestyle. That tower can do all the advertising that a realtor would ever need—to sell “Price Reduced.” We have nearby prize bulls, prize horses, prize roses, and we are surrounded on three sides by magnificent pecan orchards—including, I understand, some belonging to the organizer of the applicant, Greg Daviet. I just learned he might have prize chickens too! This area is along one of the most popular sets of bicycling and jogging sections of this whole part of the valley. Lots of people walk lots of miles lots of days. And, if anyone says that these kinds of towers don’t diminish property values, please check out www.realtor.org/field-guides/field-guide-to-cell-phone-towers. If the rest of that cornfield needs a use besides agricultural, it’s going to require the most modest of development standards—the economics won’t sustain the high-end homes that have been going up, slowly but surely, for the past 20 years. Single acres in this neck of the woods go for \$60,000 to \$90,000. This flag in a field is the last think we need around here to help Verizon out with its University problem.

We ask Mr. Meadows and his Staff to consider our thoughts, we ask the Commissioners to reject the application, and we ask Mr. Daviet to pursuing the Tower. If I understand it right, and perhaps I don’t, I understand that the Applicant’s Organizer is Greg Daviet and that he sits on the County Planning & Zoning Commission. I understand that this particular “lot” was created in the middle of the field in recent months as was the applicant, Daviet Farms, LLC. I trust that Mr. Daviet himself will insist that Verizon be the very model of transparency and disclosure both to him, to his neighbors, and such as my wife and myself and all of us fortunate to live on one of God’s Little Acres—walking distance to Mesilla.

At the very, very least, we ask that this application be given further consideration and that the applicant provide a comprehensive factual basis for the need and desirability of this tower in a field. If this “capacity problem” comes from the University, why should it be exported to over here? Don’t they have any poles, towers, antennas, open

Webber Email (Pg 4 of 4)

desert over there? What are we flood plain people going to give the University folks in exchange for all that overflow data? All our leftover water?

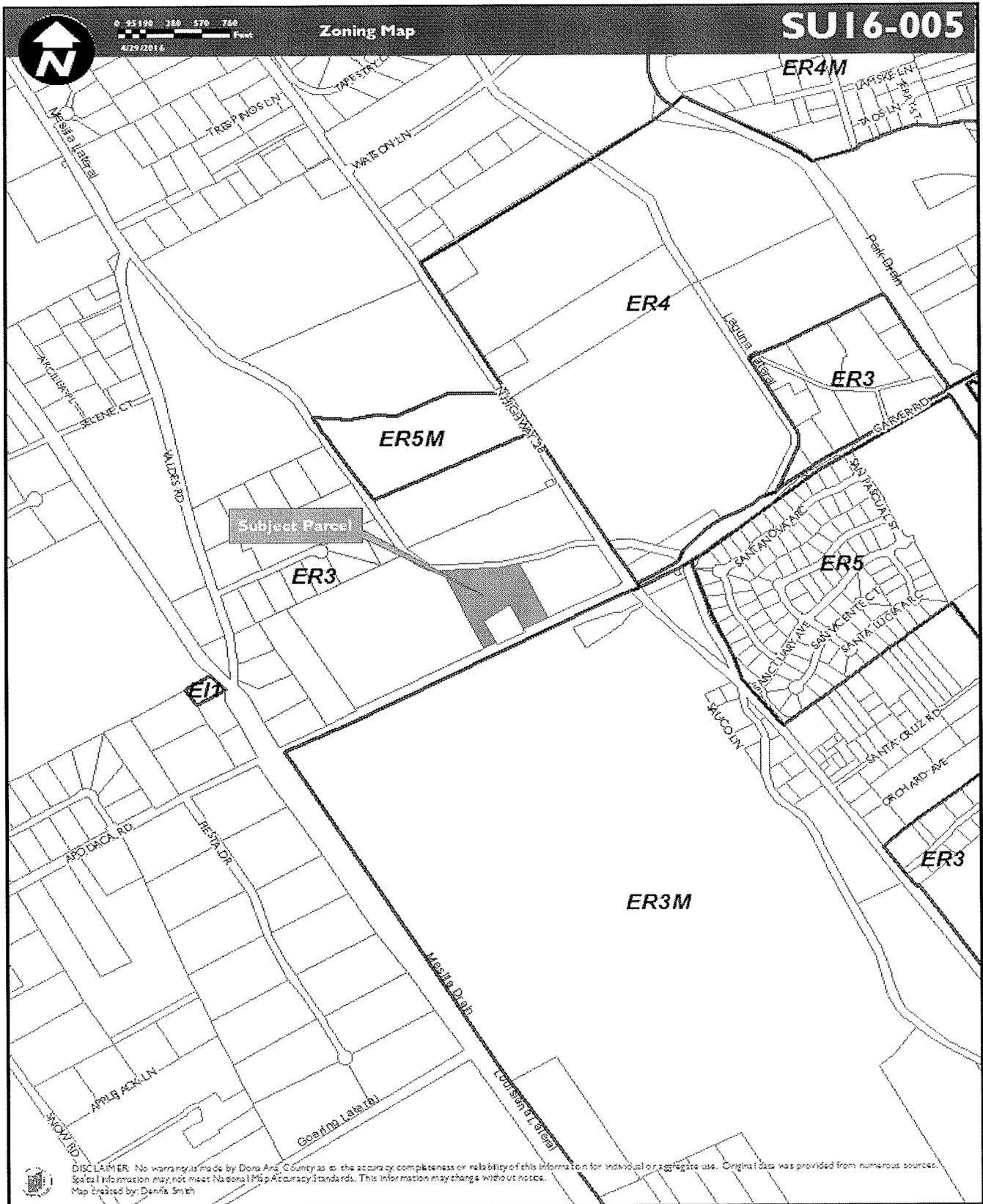
Thank you all in advance, including Mr. Daviet and Mr. Guetierrez, who I trust will have the opportunity of review this letter along with the Commissioners' other packet materials. I also thank again, especially, Mr. Meadows for his continuing and appreciated courtesies.

Bill Webber

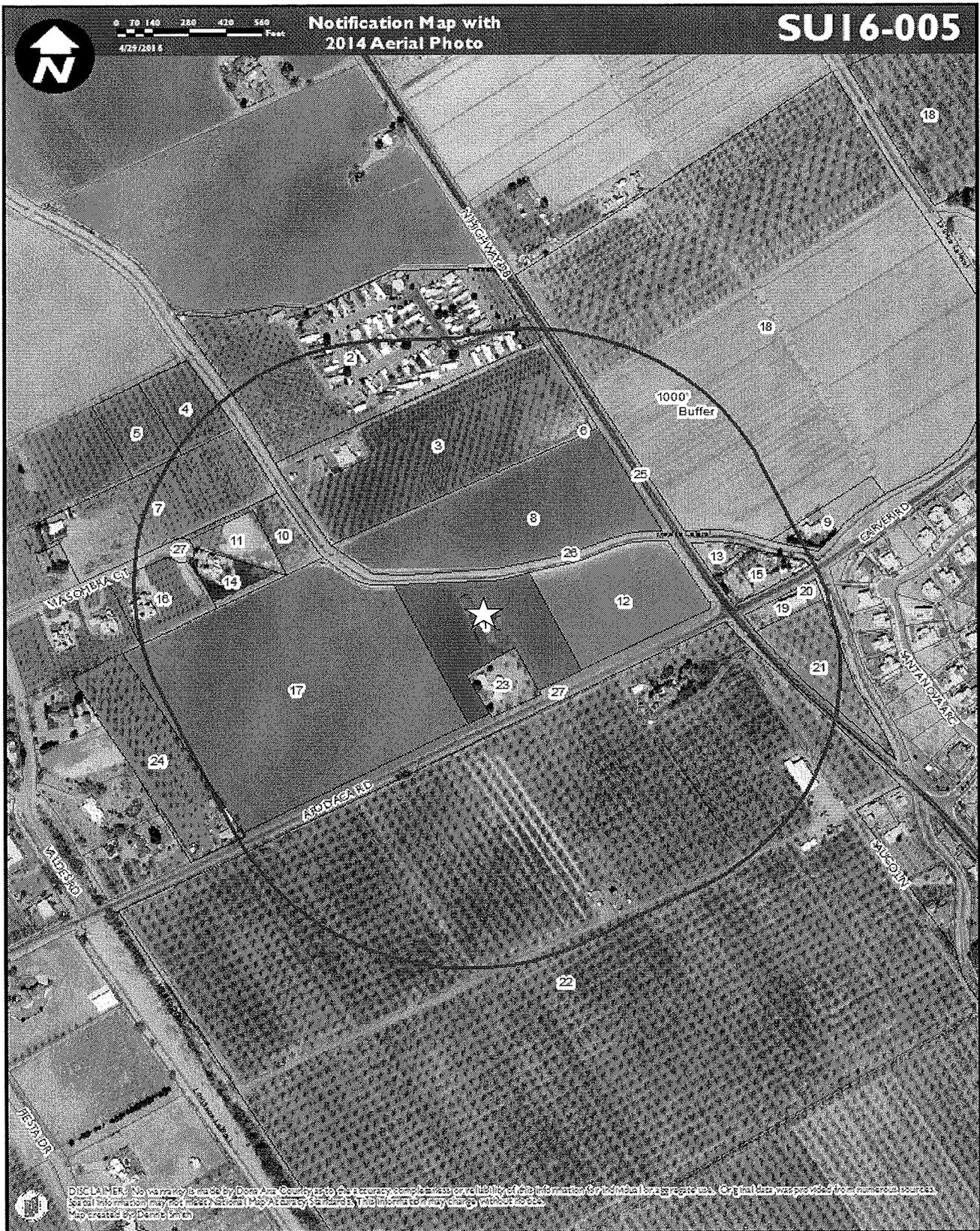
Parcel Aerial Close-up



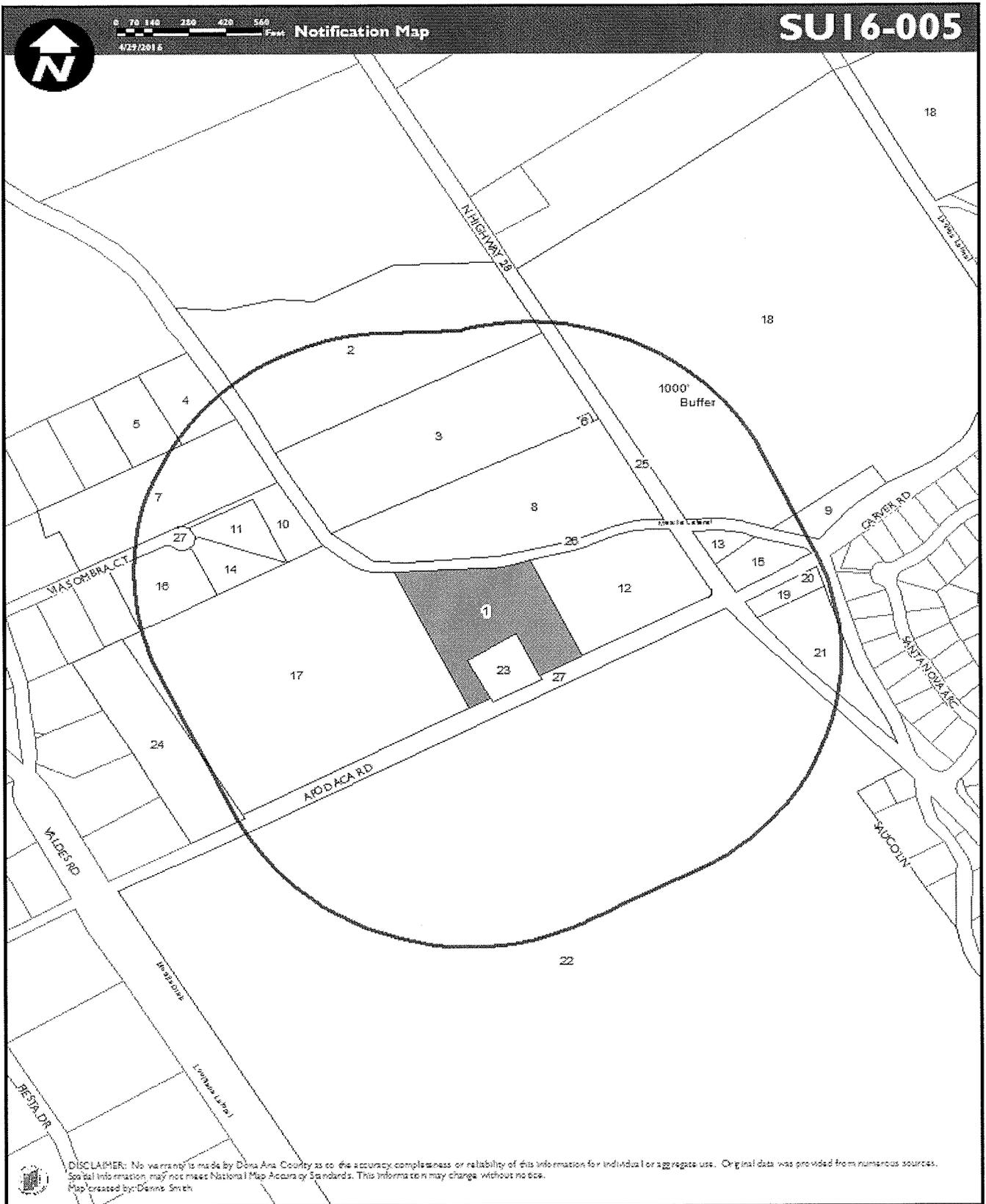
Zoning Map



Area of Notification Aerial



Area of Notification Map



Area of Notification List

CODE	MAP_CODE	NAME	ADDRESS1	CITY	STATE	ZIP	C
1	4-007-139-209-205	DAVIET FARMS LLC	4020 N HWY 28	LAS CRUCES	NM	88005	
2	4-007-139-145-089	KELLEY RALPH & JEAN	1437 SAN VICENTE CT	LAS CRUCES	NM	88005	
3	4-007-139-188-135	WAGNER DONNA L & PETER C NILES	3750 N HWY 28	LAS CRUCES	NM	88005	
4	4-007-139-100-115	WALLACE EDWARD H & WANDA	1309 WYOMING	LAS CRUCES	NM	88001-5744	
5	4-007-139-085-125	WALLACE ROBERT H & AUDREY L &	1309 WYOMING	LAS CRUCES	NM	88001	
6	4-007-139-250-123	JORNADA WATER COMPANY INC	225 E IDAHO #15	LAS CRUCES	NM	88005-3241	
7	4-007-139-085-155	ELLIS MICHAEL G & LIZBETH G	202 CAPRI ARC	LAS CRUCES	NM	88005-3727	
8	4-007-139-222-157	JOSEPH & REBECCA LUJAN FAMILY LLC	2279 VIA MANZANA	SANTA FE	NM	87507	
9	4-007-139-346-158	SALOPEK FRANK & OLETA D TR	4915 SNOW RD	LAS CRUCES	NM	88005-4222	
10	4-007-139-138-142	MARGARET A LORING	6555 RIO DORADO DR	LA MESA	NM	88044	
11	4-007-139-120-145	BARRERA FRANK & MELISSA	PO BOX 2346	LAS CRUCES	NM	88004	
12	4-007-139-263-194	DAVIET FARMS LLC	4020 N HWY 28	LAS CRUCES	NM	88005	
13	4-007-139-296-172	GUERRERO CONSUELO	3919 N HIGHWAY 28	LAS CRUCES	NM	88005	
14	4-007-139-115-160	GUADERRAMA OSCAR & WENDIE	2265 VIA SOMBRA CT	LAS CRUCES	NM	88005	
15	4-007-139-309-179	BILOVESKY JOHN BRYAN	1806 CARVER RD	LAS CRUCES	NM	88005	
16	4-007-139-086-191	GOMEZ DOLORES M & JOHN J ANDAZOLA	2365 VIA SOMBRA CT	LAS CRUCES	NM	88005	
17	4-007-139-139-231	DAVIET FARMS LLC	4020 N HWY 28	LAS CRUCES	NM	88005	
18	4-007-139-306-075	SALOPEK TREE SERVICE LLC	4915 SNOW RD	LAS CRUCES	NM	88005	
19	4-007-139-324-195	DONA ANA COUNTY	845 N MOTEL BLVD	LAS CRUCES	NM	88007	
20	4-007-139-335-186	CITY OF LAS CRUCES	PO BOX 20000	LAS CRUCES	NM	88004	
21	4-007-139-335-209	DAVIET FARMS LLC	4020 N HWY 28	LAS CRUCES	NM	88005	
22	4-007-139-307-450	DAVIET FARMS LLC	4020 N HWY 28	LAS CRUCES	NM	88005	
23	4-007-139-218-230	DAVIET FARMS LLC	4020 N HWY 28	LAS CRUCES	NM	88005	
24	4-007-139-090-255	DIAZ ISAAC SR TRUSTEE	2328 APODACA RD	LAS CRUCES	NM	88005-4233	
25		NM STATE HWY DEPT.	8070 BATAAN MEMORIAL EAST	LAS CRUCES	NM	88012	
26		EBID	530 S MELENDRES	LAS CRUCES	NM	88001	
27		DAC ROAD DEPT.	2025 E. GRIGGS	LAS CRUCES	NM	88001	

Extra-Territorial Zoning Commission

Thursday, June 16, 2016 - 6:00 pm - County Commission Chambers

Community Development
Desarrollo Comunitario

Agenda Item #8 SU16-005

Steve Meadows Presenter-Planner

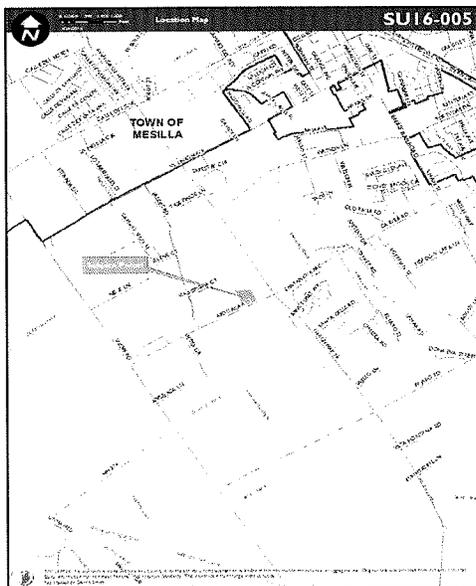
Community Development
Desarrollo Comunitario

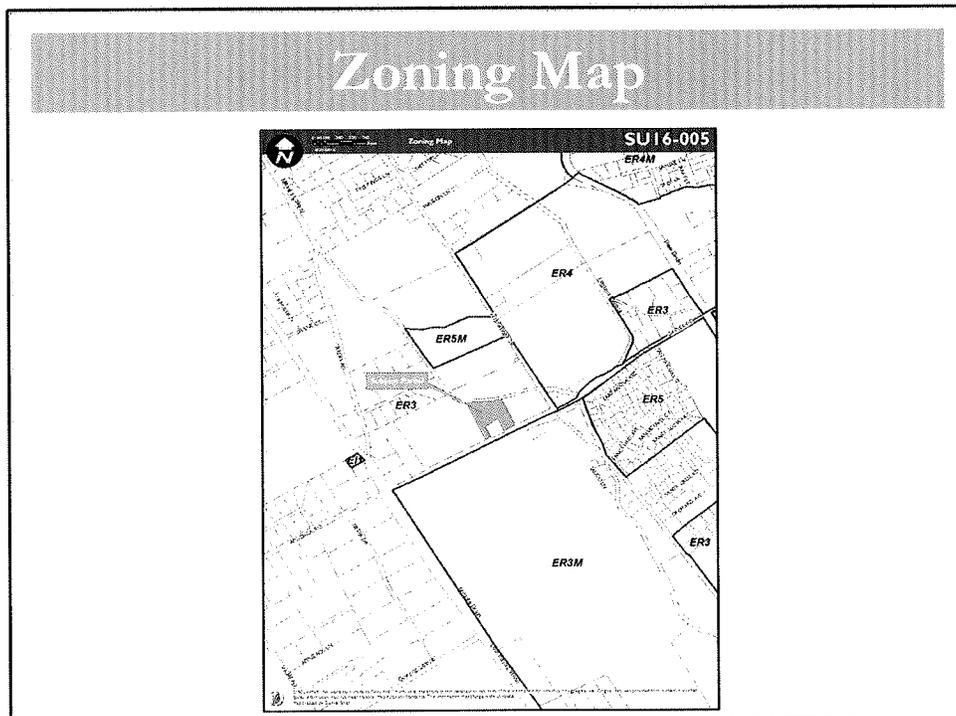
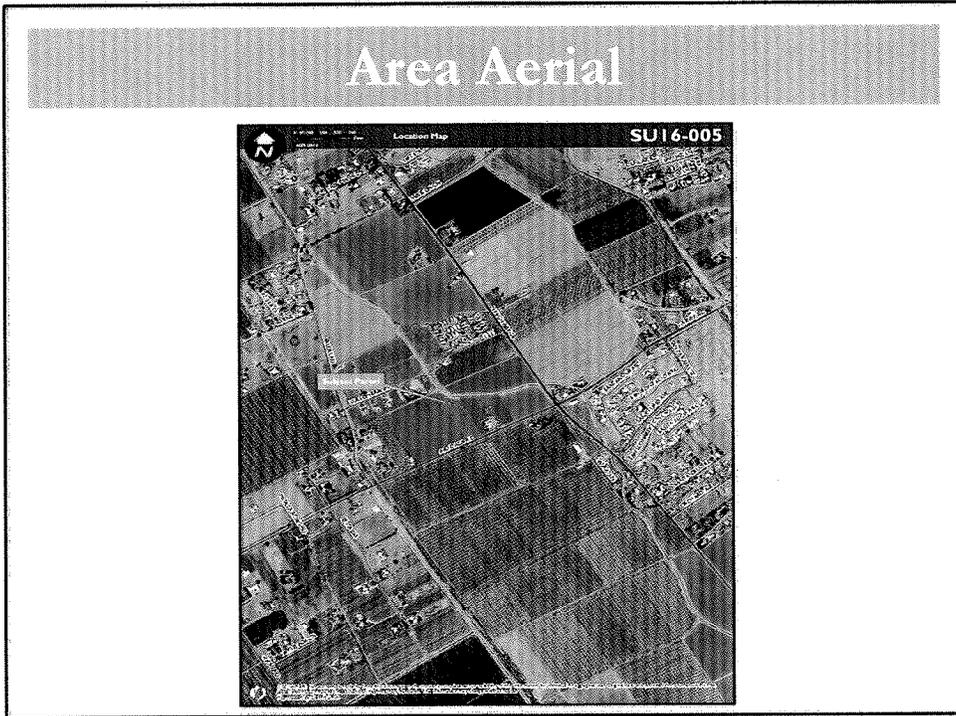
Synopsis

- **Owner/Applicant/Agent:** Daviet Farms, LLC / Verizon Wireless, Les Gutierrez, Agent
- **Location:** 2116 Apodaca Rd.
- **Zoning:** ER3 (Residential, 1-acre minimum lot size, single family site-built homes)
- **Request:** Special Use Permit
- **Purpose:** To construct a seventy-five foot (75') telecommunications tower on a 5.0 acre parcel. (20' X 30' lease area)

Community Development
Desarrollo Comunitario

Location Map

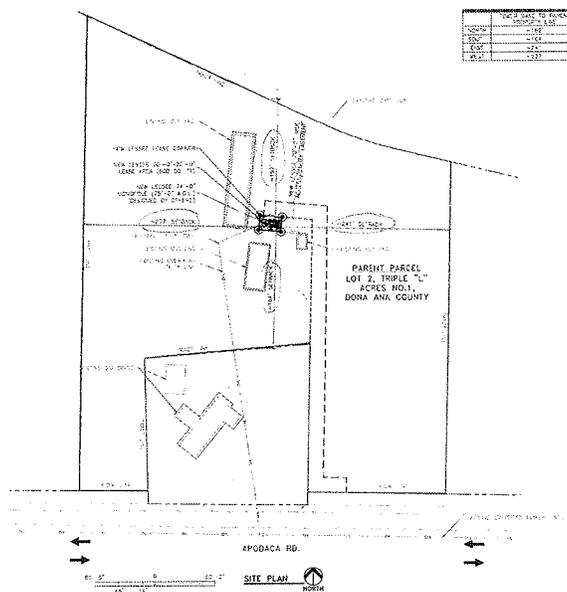


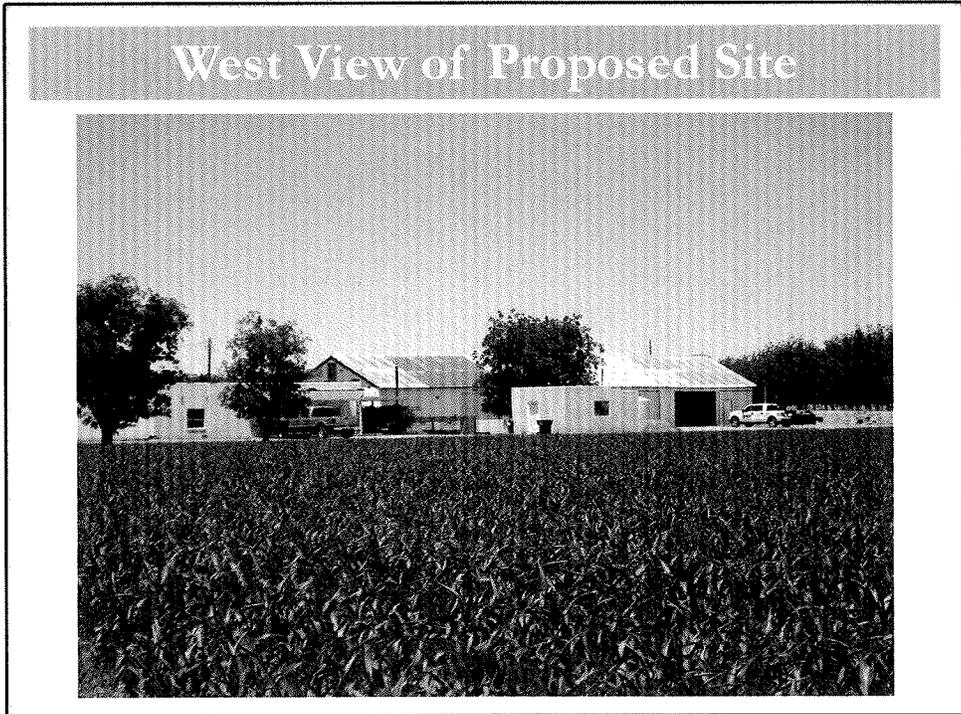
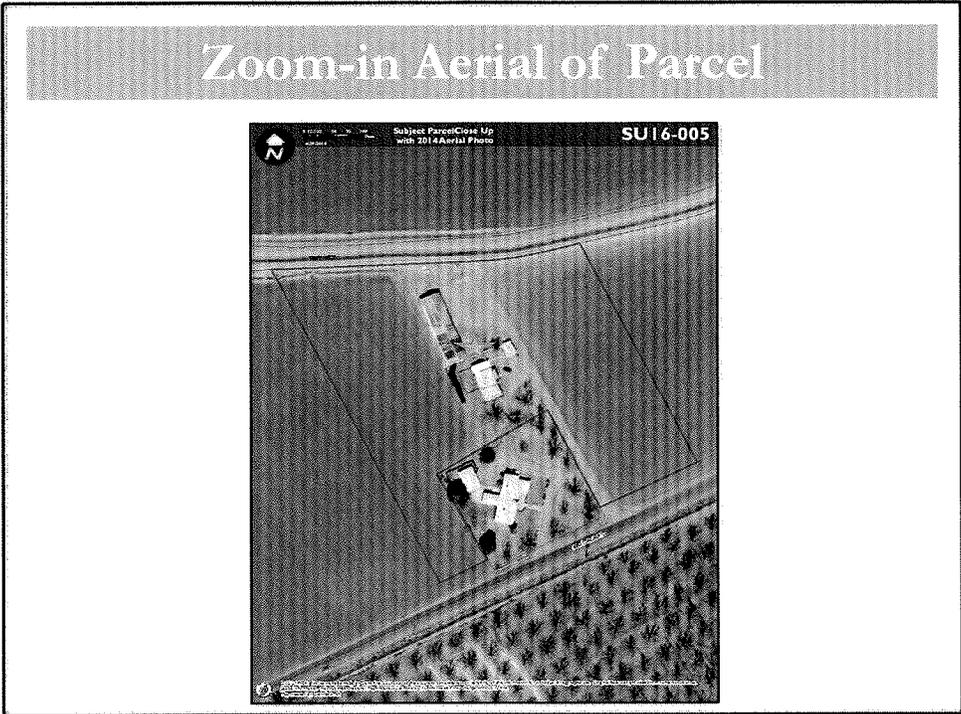


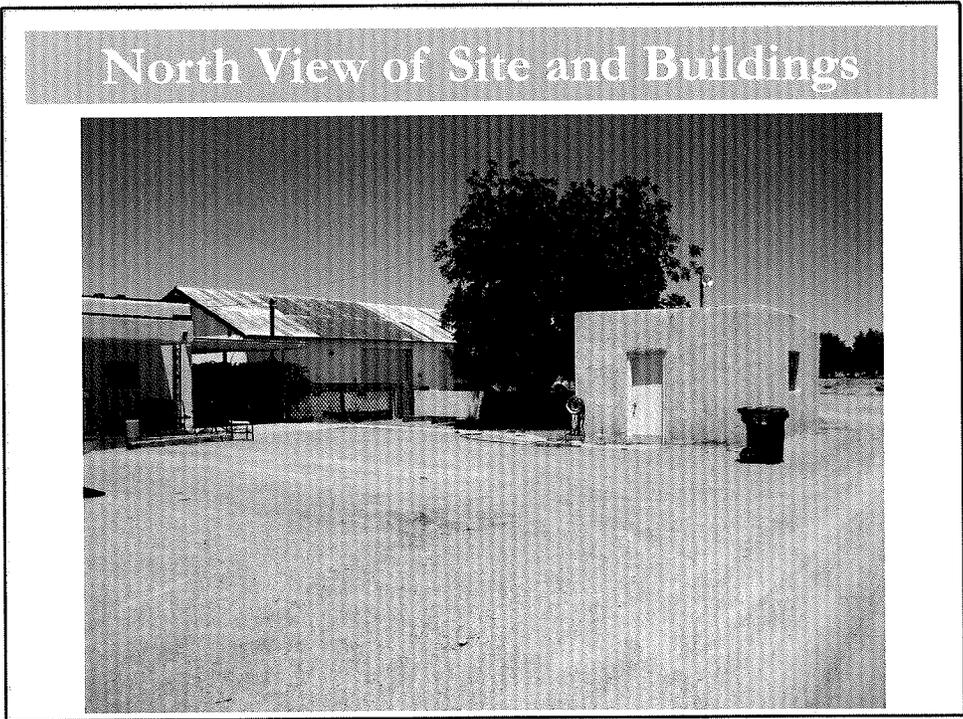
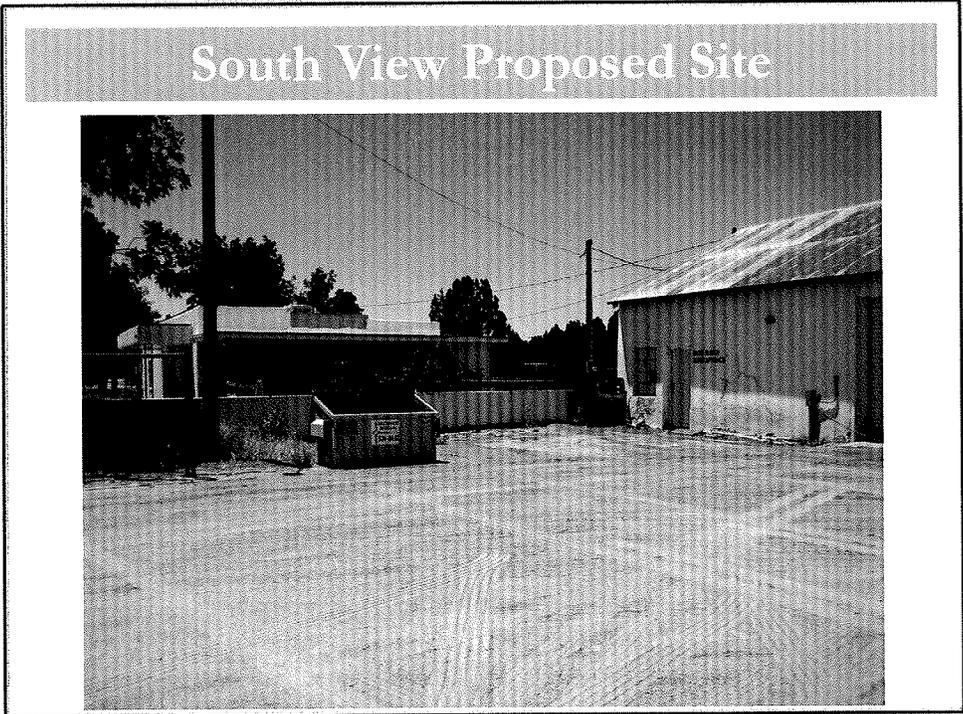
Description of Property

- 5.0-acre parcel; Lot 2, Triple "L" Acres #1 Subdivision.
- The property contains a 1,604 sq. ft. site-built dwelling and attached carport, an approximate 4,300 sq. ft. agriculture structure (barn), and a 300 sq. ft. structure.
- Access to property from Apodaca Rd., a paved, county maintained road classified as a minor arterial.
- The 40' wide EBID Mesilla Lateral is located along the northern border of the subject parcel.

Site Plan







Public Notice/Notification

- Twenty-two (22) letters of notification mailed to area of notification on May 31, 2016.
- Agenda was posted in the Las Cruces Sun-News on May 29, 2016.
- Signs were posted on the property in a timely manner.
- One email received on June 9 (Pgs 19-22) from Mr. Bill Webber (*outside area of list*) voicing concerns about the site selection process, no demonstrated need for this site, possible safety issues with area crop dusting, possible flashing lights, proximity to existing house and barn and potential safety issues, and negative impact on property values.

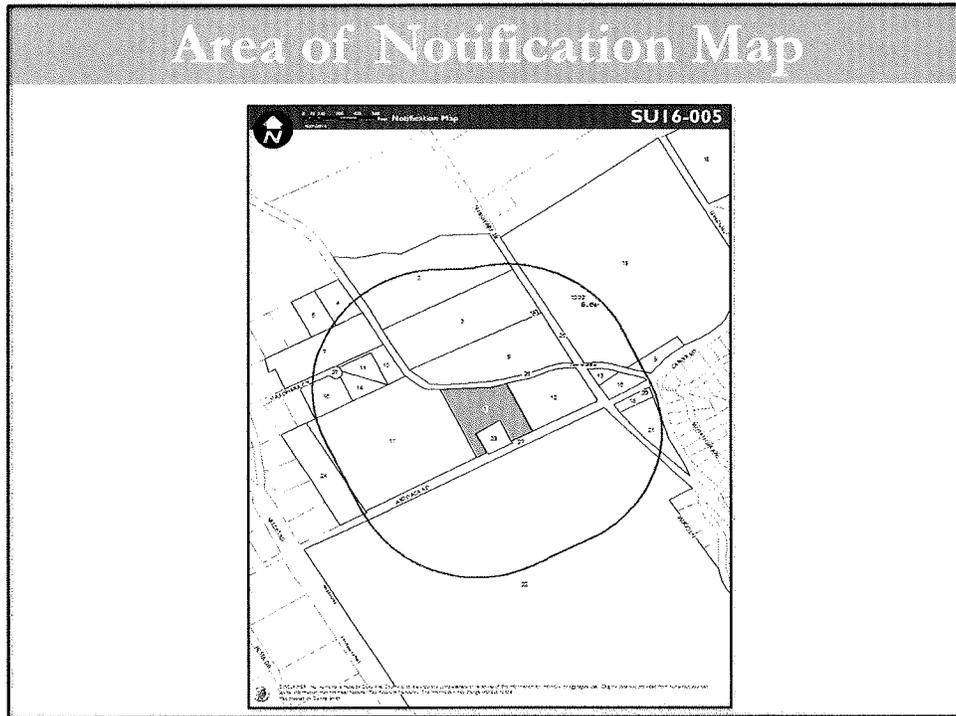
Location of Opposing Email



CASE # SU16-005 / Daviet

0 269 520 1040 Feet

This map was created by the Bernalillo County, N.M., in reliance on the information of best available data. Bernalillo County, N.M., and the Bernalillo County Geographic Information System, Inc. make no warranty for the information contained in this map. Please verify critical information and measurements for yourself. All Group, 607 4th Street NE, Albuquerque, NM 87102. B.A.G. Geographic Information Systems, Inc. 800 N. Market Street, Las Cruces, NM 88009. (505) 645-7337



Area of Notification Aerial View



Staff Analysis

Special Use Permit Evaluation Requirements:

- ETZ Ordinance 88-02
- Section 2.1.D Evaluation Criteria

Staff Analysis

ETZ Ordinance 88-02

- Section 4.2.E.2.b; Any commercial tower to be located in residential zones shall only be allowed in ER1, ER1M, ER2, ER2M, **ER3**, ER3M, ER3H and EC1 zoning districts through approval of a Special Use Permit. Commercial towers in residential districts and neighborhood commercial districts shall meet the following criteria:
 - Height shall be limited to that height which is determined by a two-to-one setback from all property lines up to a maximum total tower height of seventy-five (75) feet.

Staff Analysis

Section 2.1.D Evaluation Criteria

1. No homes proposed.
2. Access from Apodaca Rd., by a proposed twenty foot (20') one-way access/utility easement to the proposed facility. Construction phase traffic will be heavier than the traffic during operations which will be at minimal maintenance traffic levels.
3. Increase in number of customers and demand for voice and data bandwidth requires a cell tower in this area according to documents submitted by applicant.
4. No water/sewer needed except during construction phase, temporary sanitation facilities and water would be provided by contractor during construction phase.







**MINUTES OF THE
EXTRA-TERRITORIAL ZONING COMMISSION (ETZ) MEETING**

June 16, 2016

1. CALL TO ORDER

6:08:32

Chairman Villescascas called the regular meeting of the Extra-Territorial Zoning Commission to order at 6:08 p.m. Thursday, June 16, 2016 in the Doña Ana County Government Center, 845 N. Motel Blvd., Las Cruces, NM.

2. ROLL CALL

6:11:11

Led by: Janet Acosta, Secretary

<i>Kenneth Allin, Vice-Chairman</i>	Here
<i>Mark Best, Commissioner</i>	Here
<i>John Townsend, Commissioner</i>	Here
<i>Janet Acosta, Secretary</i>	Here
<i>Tim Sanders, Commissioner</i>	Here
<i>Robert Hearn, Commissioner</i>	Here
<i>John Villescascas, Chairman</i>	Here

3. ANNOUNCEMENTS

6:11:28

None.

4. APPROVAL OF MINUTES

6:11:30

Motion to approve the May 19, 2016 Meeting Minutes.

Motion: John Townsend

Second: Robert Hearn

<i>Kenneth Allin</i>	Yes
<i>Mark Best</i>	Yes
<i>John Townsend</i>	Yes
<i>Janet Acosta</i>	Yes
<i>Tim Sanders</i>	Yes
<i>Robert Hearn</i>	Yes
<i>John Villescascas</i>	Yes

Passed.

5. CHANGES TO THE AGENDA

6:12:02

None.

**OLD BUSINESS
REVIEW / DISCUSSION / ACTION**

6. CASE #Z16-002/PECAN BREWERY

6:12:15

Motion to approve a zone change on a 3.86-acre parcel from E11 to E13 to establish and operate a brewery and tap room. Steve Meadows, Planner, Community Development, will discuss.

Motion: Tim Sanders

Second: John Townsend

The motion to approve a zone change was made with the following conditions: 1) a Special Use Permit shall be approved by the ETZ Commission, and 2) access to the property shall be limited to W. Picacho Avenue.

An amendment was proposed that if the property ceased to be used for a brewery with a special use permit, the E13 zoning would revert to the original zoning of E11.

Motion: Robert Hearn

Second: Mark Best

A vote was taken on the amendment:

<i>Kenneth Allin</i>	Yes
<i>Mark Best</i>	Yes
<i>John Townsend</i>	No
<i>Janet Acosta</i>	No
<i>Tim Sanders</i>	No
<i>Robert Hearn</i>	Yes
<i>John Villescas</i>	Yes

Passed.

A vote was taken on the main motion that included the approved amendment as the third condition as follows: 1) a Special Use Permit shall be approved by the ETZ Commission, 2) access to the property shall be limited to W. Picacho Avenue, and 3) if the property ceases to be used for a brewery, the zoning will revert to the original E11 zoning.

<i>Kenneth Allin</i>	Yes
<i>Mark Best</i>	Yes
<i>John Townsend</i>	Yes
<i>Janet Acosta</i>	Yes
<i>Tim Sanders</i>	Yes
<i>Robert Hearn</i>	Yes
<i>John Villescas</i>	Yes

Passed.

Chair Villescas called for a short recess at 8:04 p.m. and reconvened the meeting at 8:14 p.m.

**NEW BUSINESS
REVIEW / DISCUSSION / ACTION**

**7. CASE #SU16-004/MARTIN
8:14:29**

Motion to approve a special use permit to erect a 75 foot cell tower on a 12.9-acre parcel within an ER3M Zoning District. Steve Meadows, Planner, Community Development, will discuss.

Motion: John Townsend

Second: Robert Hearn

The motion to approve the special use permit was made based on findings of fact, staff analysis, and the approval complying with Section 2.1.D.

<i>Kenneth Allin</i>	Yes
<i>Mark Best</i>	Yes
<i>John Townsend</i>	Yes
<i>Janet Acosta</i>	Yes
<i>Tim Sanders</i>	Yes
<i>Robert Hearn</i>	Yes
<i>John Villescas</i>	Yes

Passed.

**8. CASE #SU16-005/DAVIET FARMS, LLC
9:03:12**

Motion to approve a special use permit to erect a 75 ft. telecommunications tower on a 5.0-acre parcel within an ER3 Zoning District. Steve Meadows, Planner, Community Development, will discuss.

Motion: Janet Acosta

Second: John Townsend

Motion to approve a special use permit for Case #SU16-005 in order to erect a 75 foot telecommunications tower on the subject parcel.

<i>Kenneth Allin</i>	Yes
<i>Mark Best</i>	Yes
<i>John Townsend</i>	Yes
<i>Janet Acosta</i>	Yes
<i>Tim Sanders</i>	Yes
<i>Robert Hearn</i>	Yes

John Villescas

Yes

Passed.

9. ADMINISTRATIVE APPROVALS

10:04:23

Steve Meadows reported on Administrative Approvals for the month of May.

10. PUBLIC INPUT

10:08:50

None.

11. STAFF INPUT

10:09:00

Commissioner Hearn discussed the need for better information citing the traffic analysis on the first case as well as a site threshold analyses that was filled out incompletely in pencil at the last minute and wasn't signed.

Janine Divyak gave an update on the status of the UDC.

Steve Meadows discussed that in the traffic information analysis, the peak a.m. and p.m. hours show trips during a specific one-hour timeframe, not the total of trips for the entire day. Commissioner Hearn said that method of analysis is totally unrepresentative of what will happen in that area.

Commissioner Townsend asked about postponing cases and if a motion failed. Steve Meadows said that Legal responded it's a motion to postpone or not and if you say "no, we're going to hear it," you are going to hear it.

12. COMMISSION INPUT

10:_____

None.

13. ADJOURNMENT

10:16:00

Motion for adjournment at 10:16 p.m.

Motion: John Townsend

Second: Mark Best

The motion was passed by a vote of all ayes from the Commissioners present.

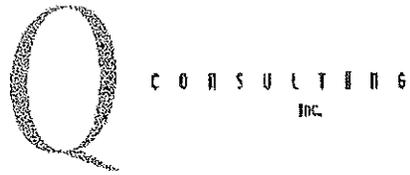
Officer: Extra-Territorial Zoning Commission

Attachment 1

From Mr. Mark Paiz, Site Acquisition Manager, Q3 Consulting, Inc.
LSC VALDES SEARCH AREA.

- 1801 Carver Road. The Firehouse property was sent a letter with no response, also the property would require a Variance due to the size of the lot and the set-backs that are required.
- I left message for the house, and lot just north of the Fire House 1802 Carver with no response, same situation here it would require a Variance for the pole here.
- I also received a lot of interest but NO Right of Entry for Salopek Tree Service LLC Not sure of the man's name he only told me he received my offer letter and was the owner. But he owns the parcel on the entire N/E side of the ring that would work for us. His Corporate Headquarters is 4915 Snow Road, Las Cruces, NM 88005.
- Nothing on the south half of the ring, due to the tree farms and the issue we would have for construction and flooding.
- And the entire N/W side of the ring is owned by Daviet, our LL.
- I also attached is a map of my search with the areas labeled with what I did and who I contacted, along with the RF search area Map.

Purposely left Blank



May 5, 2015

Leslie L Daviet
PO Box 579
Laveen, Arizona 85339

**RE: Verizon Wireless Proposal for Telecommunications Facility at 4150 Sauco Lane or
2116 Apodaca Road
(Verizon Wireless Project Name: LSC Valdez)**

Dear Leslie L Daviet,

My firm is a real estate consultant to Verizon Wireless (VAW) LLC, d/b/a Verizon Wireless ("Verizon Wireless") and related entities and partnerships. Verizon Wireless would like to explore the possibility of locating a communications facility on your property.

The proposed facility would consist of a communications tower with a height between 50' and 75' within a 35' x 35' lease area. A 12' x 26' equipment shelter will also be located within the proposed lease area for the ground based equipment and back-up power generator. Verizon Wireless requires 24-hour access to the ground based portion of the equipment facility in the event of an emergency, but the site is normally visited only one to two times per month for routine maintenance. Verizon Wireless will arrange and pay for required electric and telephone service. No water or sewage system is required for the facility. My client also offers free tower space for your communications use, if you so desire.

Verizon Wireless is willing to ~~██████████~~ per month for a facility of this type with a standard lease agreement with no major changes. The standard lease term is twenty-five years (an initial five-year term, with four consecutive five-year renewal options). Rent will increase by 5% percent per term. A long-term lease is required because (1) once the facility is operative, it becomes an integral part of Verizon Wireless' service network; and (2) the capital investment to construct the facility is substantial. Other essential provisions in the lease include:

The Lessee's right to assign the lease; terminations rights; indemnification; insurance; interference provisions; and quiet enjoyment.

It will be necessary for Verizon Wireless consultants and employees to visit the property to conduct environmental inspections, prepare a survey of the property, and possibly a radio frequency test to accurately determine the antenna height required, if your ownership is interested. My client will require the attached Right of Entry form to be completed. Please feel free to comment or denote things like "24 prior notification for any site visit; etc." on this Right of Entry form.

May 5, 2015

Page 2

If you are chosen as the selected candidate we will arrange a convenient time with you to visit the property within the next several weeks. I will be present along with Verizon Wireless engineers, architects, etc. We will work with you to determine an appropriate location for the facility and provide additional information concerning the site design, access requirements, etc. If you have a survey or the title insurance policy on the property, it would be helpful if you would have copies available at that visit. In the interim, feel free to contact me if you have questions concerning this proposal.

Direct 303.915.3428

E-mail address: Mark@q3consulting.com

Mailing Address:

Q3 Consulting

Attn: Mark Paiz

13845 West Atlantic Ave.

Lakewood, Colorado 80228

Respectfully,

Mark Paiz



May 5, 2015

Chief of the South Valley Fire Department
845 N Motel Blvd.
Las Cruces, NM 88007

**RE: Verizon Wireless Proposal for Telecommunications Facility at 1801 Carver Road
(Verizon Wireless Project Name: LSC Valdez)**

Dear Chief,

My firm is a real estate consultant to Verizon Wireless (VAW) LLC, d/b/a Verizon Wireless ("Verizon Wireless") and related entities and partnerships. Verizon Wireless would like to explore the possibility of locating a communications facility on your property.

The proposed facility would consist of a communications tower with a height between 50' and 75' within a 35' x 35' lease area. A 12' x 26' equipment shelter will also be located within the proposed lease area for the ground based equipment and back-up power generator. Verizon Wireless requires 24-hour access to the ground based portion of the equipment facility in the event of an emergency, but the site is normally visited only one to two times per month for routine maintenance. Verizon Wireless will arrange and pay for required electric and telephone service. No water or sewage system is required for the facility. My client also offers free tower space for your communications use, if you so desire.

Verizon Wireless is willing to [REDACTED] per month for a facility of this type with a standard lease agreement with no major changes. The standard lease term is twenty-five years (an initial five-year term, with four consecutive five-year renewal options). Rent will increase by 5% percent per term. A long-term lease is required because (1) once the facility is operative, it becomes an integral part of Verizon Wireless' service network; and (2) the capital investment to construct the facility is substantial. Other essential provisions in the lease include:

The Lessee's right to assign the lease; terminations rights; indemnification; insurance; interference provisions; and quiet enjoyment.

It will be necessary for Verizon Wireless consultants and employees to visit the property to conduct environmental inspections, prepare a survey of the property, and possibly a radio frequency test to accurately determine the antenna height required, if your ownership is interested. My client will require the attached Right of Entry form to be completed. Please feel free to comment or denote things like "24 prior notification for any site visit; etc." on this Right of Entry form.

May 5, 2015
Page 2

If you are chosen as the selected candidate we will arrange a convenient time with you to visit the property within the next several weeks. I will be present along with Verizon Wireless engineers, architects, etc. We will work with you to determine an appropriate location for the facility and provide additional information concerning the site design, access requirements, etc. If you have a survey or the title insurance policy on the property, it would be helpful if you would have copies available at that visit. In the interim, feel free to contact me if you have questions concerning this proposal.

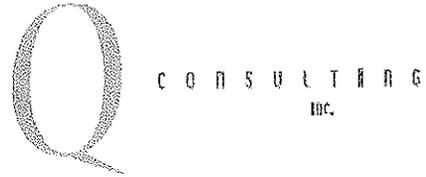
Direct 303.915.3428
E-mail address: Mark@q3consulting.com
Mailing Address:
Q3 Consulting
Attn: Mark Paiz
13845 West Atlantic Ave.
Lakewood, Colorado 80228

Respectfully,

Mark Paiz



5



May 5, 2015

Salopek Tree Service LLC / Owner or Manager
4915 Snow Road
Las Cruces, NM 88005

**RE: Verizon Wireless Proposal for Telecommunications Facility at 3935 Hwy 28
(Verizon Wireless Project Name: LSC Valdez)**

To whom it may concern,

My firm is a real estate consultant to Verizon Wireless (VAW) LLC, d/b/a Verizon Wireless ("Verizon Wireless") and related entities and partnerships. Verizon Wireless would like to explore the possibility of locating a communications facility on your property.

The proposed facility would consist of a communications tower with a height between 50' and 75' within a 35' x 35' lease area. A 12' x 26' equipment shelter will also be located within the proposed lease area for the ground based equipment and back-up power generator. Verizon Wireless requires 24-hour access to the ground based portion of the equipment facility in the event of an emergency, but the site is normally visited only one to two times per month for routine maintenance. Verizon Wireless will arrange and pay for required electric and telephone service. No water or sewage system is required for the facility. My client also offers free tower space for your communications use, if you so desire.

Verizon Wireless is willing to [REDACTED] per month for a facility of this type with a standard lease agreement with no major changes. The standard lease term is twenty-five years (an initial five-year term, with four consecutive five-year renewal options). Rent will increase by 5% percent per term. A long-term lease is required because (1) once the facility is operative, it becomes an integral part of Verizon Wireless' service network; and (2) the capital investment to construct the facility is substantial. Other essential provisions in the lease include:

The Lessee's right to assign the lease; terminations rights; indemnification; insurance; interference provisions; and quiet enjoyment.

It will be necessary for Verizon Wireless consultants and employees to visit the property to conduct environmental inspections, prepare a survey of the property, and possibly a radio frequency test to accurately determine the antenna height required, if your ownership is interested. My client will require the attached Right of Entry form to be completed. Please feel free to comment or denote things like "24 prior notification for any site visit; etc." on this Right of Entry form.

May 5, 2015
Page 2

If you are chosen as the selected candidate we will arrange a convenient time with you to visit the property within the next several weeks. I will be present along with Verizon Wireless engineers, architects, etc. We will work with you to determine an appropriate location for the facility and provide additional information concerning the site design, access requirements, etc. If you have a survey or the title insurance policy on the property, it would be helpful if you would have copies available at that visit. In the interim, feel free to contact me if you have questions concerning this proposal.

Direct 303.915.3428
E-mail address: Mark@q3consulting.com
Mailing Address:
Q3 Consulting
Attn: Mark Paiz
13845 West Atlantic Ave.
Lakewood, Colorado 80228

Respectfully,

Mark Paiz





Salopek Tree Service 4915 Snow Road is the main office number but they own this lot.

This is All David Farms, our LI.

ESC Vadez All RF Selected Candidate

Knocked on this door twice.

Fire House

These are Almond tree farms and not constructible due to the watering and the flooding

San Pablo

© 1996

© 2016 Google
© 2018 INEGI

Map data © 2024 Google, Imagery © 2024 Google, PANORAMIC

Google earth





LSC_Valdes coverage and capacity analysis

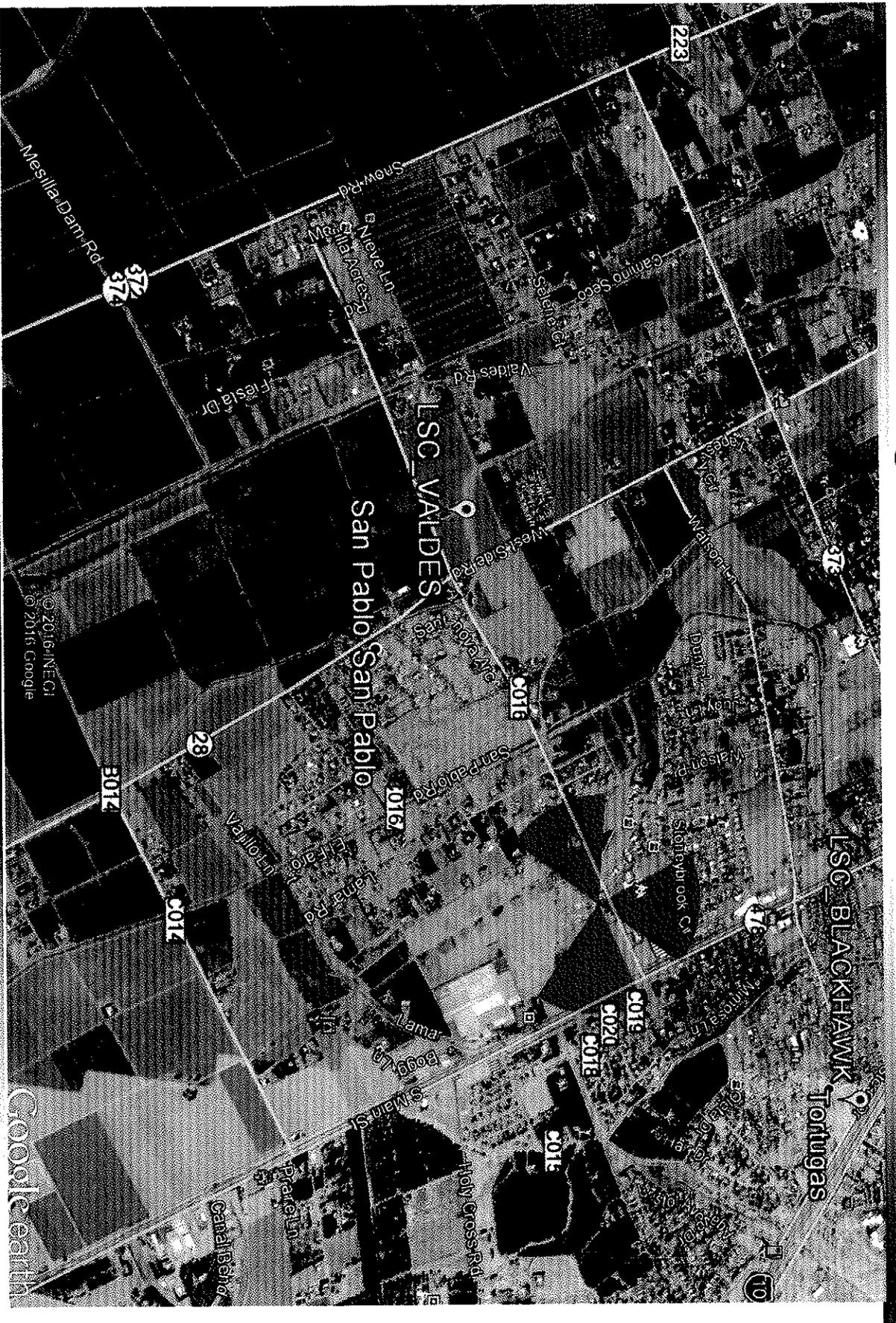
Attachment 2

Hamdi Alaaldin

RF Design

September 2016

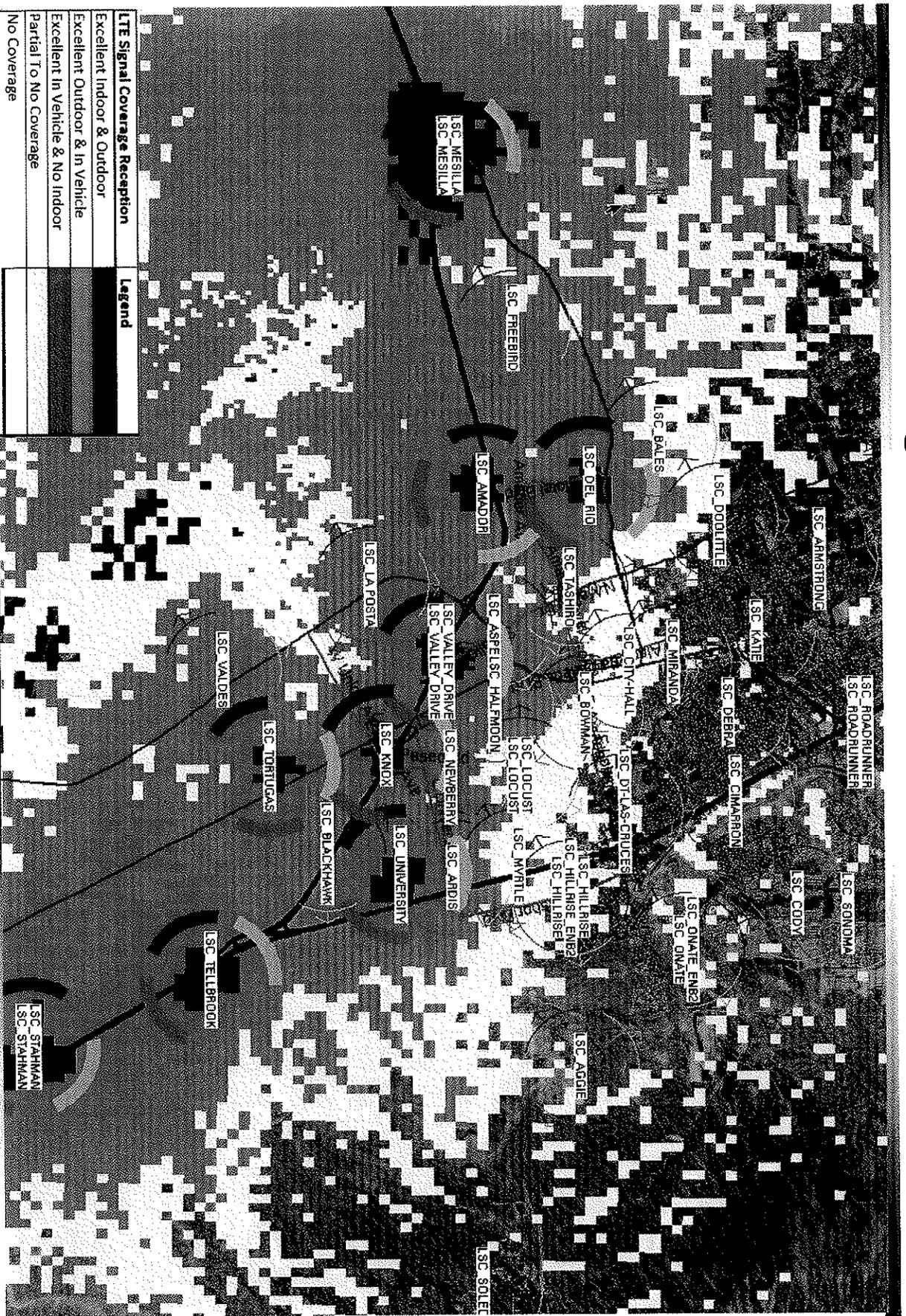
Google map of the area



Existing LTE coverage in the area



Existing LTE coverage in the area



Existing LTE coverage in the area plus LSC_Valdes



Voice & Data Usage Today

- On average, voice and data usage is growing exponentially based on the amount of devices being used today. Below are current statistics that are driven by the demand for additional data services from all commercial carrier customers and public agencies.
 - The demand for wireless data services is expected to grow 650% between 2013 and 2018 (CTIA, June 2015)
 - 70% of 9-1-1 calls originate from a cellular phone (FCC, March 2015)
 - 39% of households are wireless only (CTIA, June 2015), and that number is only increasing
 - More than 75% of prospective home buyers prefer strong wireless communications (RootMetrics, June 2015)

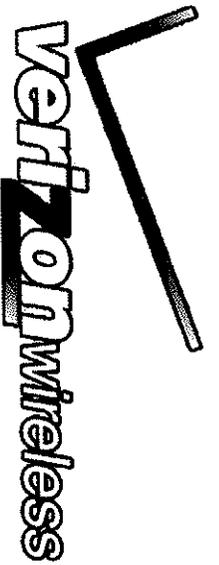
Area of low speed (map)

- Per design predictions the area of low speed has the LTE signal strength of -95 to -90 (yellow coverage on the map). Please note that 3dB is half of total power.
- Signal strength difference from outdoor to indoor is estimated to be -12dBm difference
- This area will have an estimated signal strength of -80 dBm for indoor or in buildings structures (concrete structure will be worth)
- Web browsing and data streaming (educational application) will be extremely slow or impassible in this RF (radio frequency) environment
- 4 G technology requires much more cell density than 3 G did. This fact is due to type of services running on 4G carries such as data streaming (Netflix and other streaming websites). Another reason is due to 4Gs inability to use more than one site at the same time. Users on 3 G technology had an ability to use up to 3 sites at the same time. This was accomplished by users device by adding all the powers from each site (know as soft handoff) . This gave advantage to 3G technology in areas with high capacity or low coverage. 4 G is only able to use one site at a time.

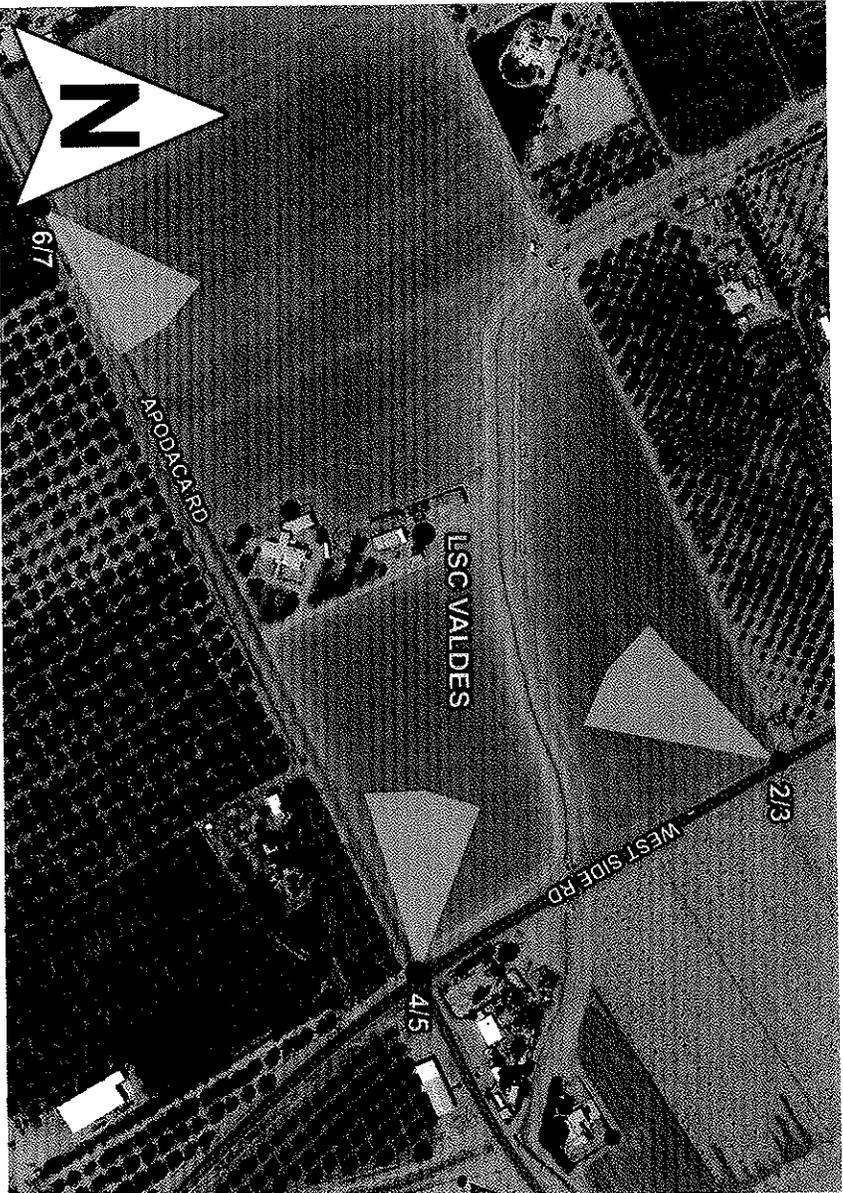
Executive Summary

- There is a significant gap for capacity and coverage in the area. Coverage gap comes from simply not having a 4 G site in the area. The capacity gap is from cell sites that are faraway that are serving this area. This would have been a non issue with 3 G technology but with 4 G sites have to be much closer to the service devices.
- Primary reason for LSC_Valdes site is the residential and new homes and business in the area of this site. The area is experiencing a healthy amount of growth.
- Based on capacity prediction all the existing sector of the existing sites covering this area will exhaust in the future
- We are very limited with providing additional capacity other then adding new sites since all available carriers are active to day in Las Cruces NM
- There are no sites in this area. The nearest site in the area is 1.17 miles away from the proposed location for this site

Attachment 3



LSC VALDES
PHOTO SIMULATION
SEPTEMBER 07, 2016



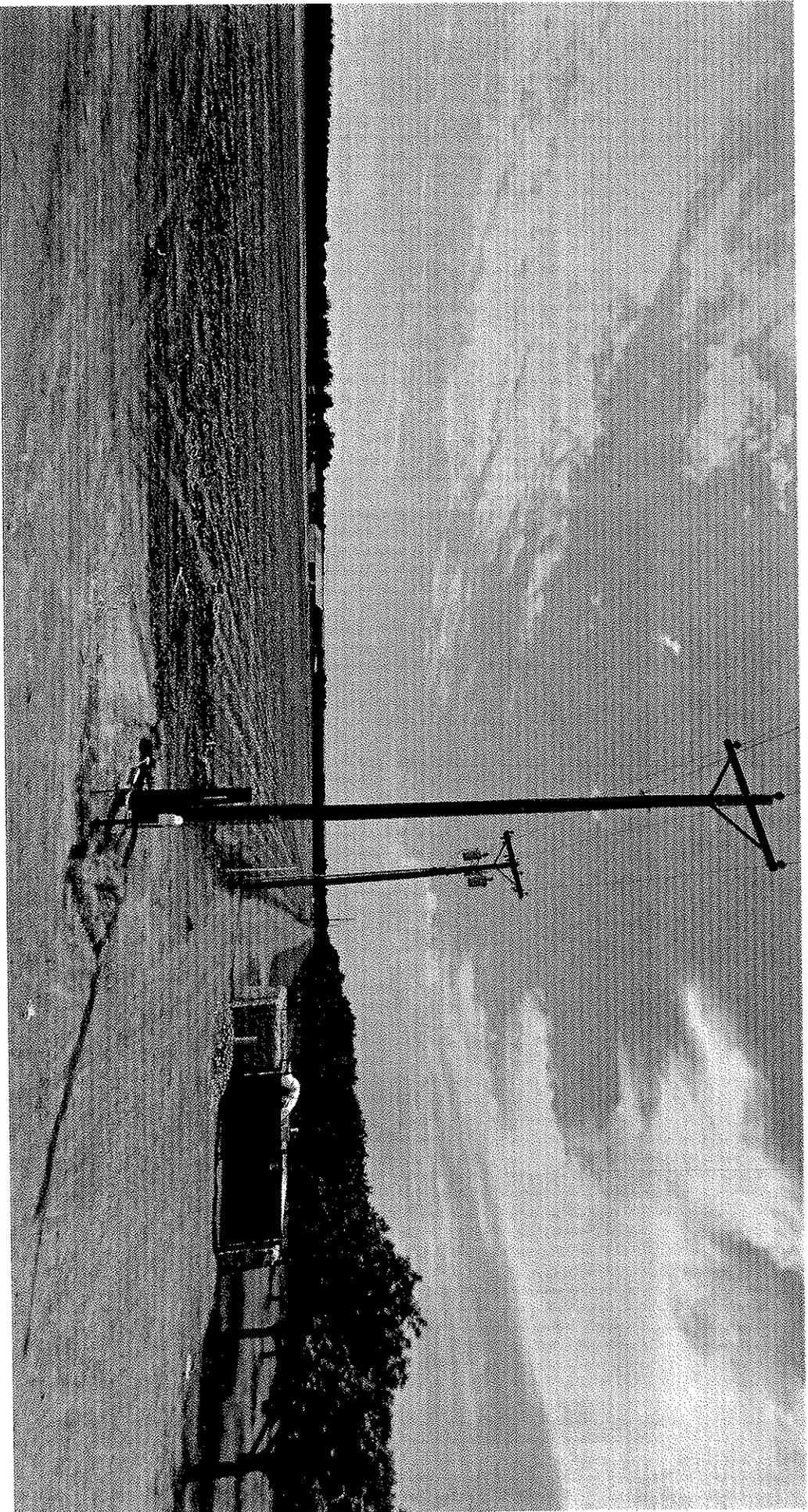
SITE ADDRESS:
2116 APODACA RD
LAS CRUCES, NM 88005
DONA ANA COUNTY

COORDINATES:
LAT: 32°15'07.699"N
LONG: 106°46'44.345"W

- CONTENTS:**
- 1: COVER
 - 2: EXISTING NORTH ELEVATION
 - 3: NORTH ELEVATION SIMULATION
 - 4: EXISTING EAST ELEVATION
 - 5: EAST ELEVATION SIMULATION
 - 6: EXISTING SOUTHWEST ELEVATION
 - 7: SOUTHWEST ELEVATION SIMULATION

REV-1

TOWERCOM TECHNOLOGIES, LLC
767 N Star Road Star, ID 83669 (208) 286-0266
Albuquerque, NM • Star, ID • El Paso, TX • Las Vegas, NV • Denver, CO • Irvine, CA • Tempe, AZ • West Valley, UT

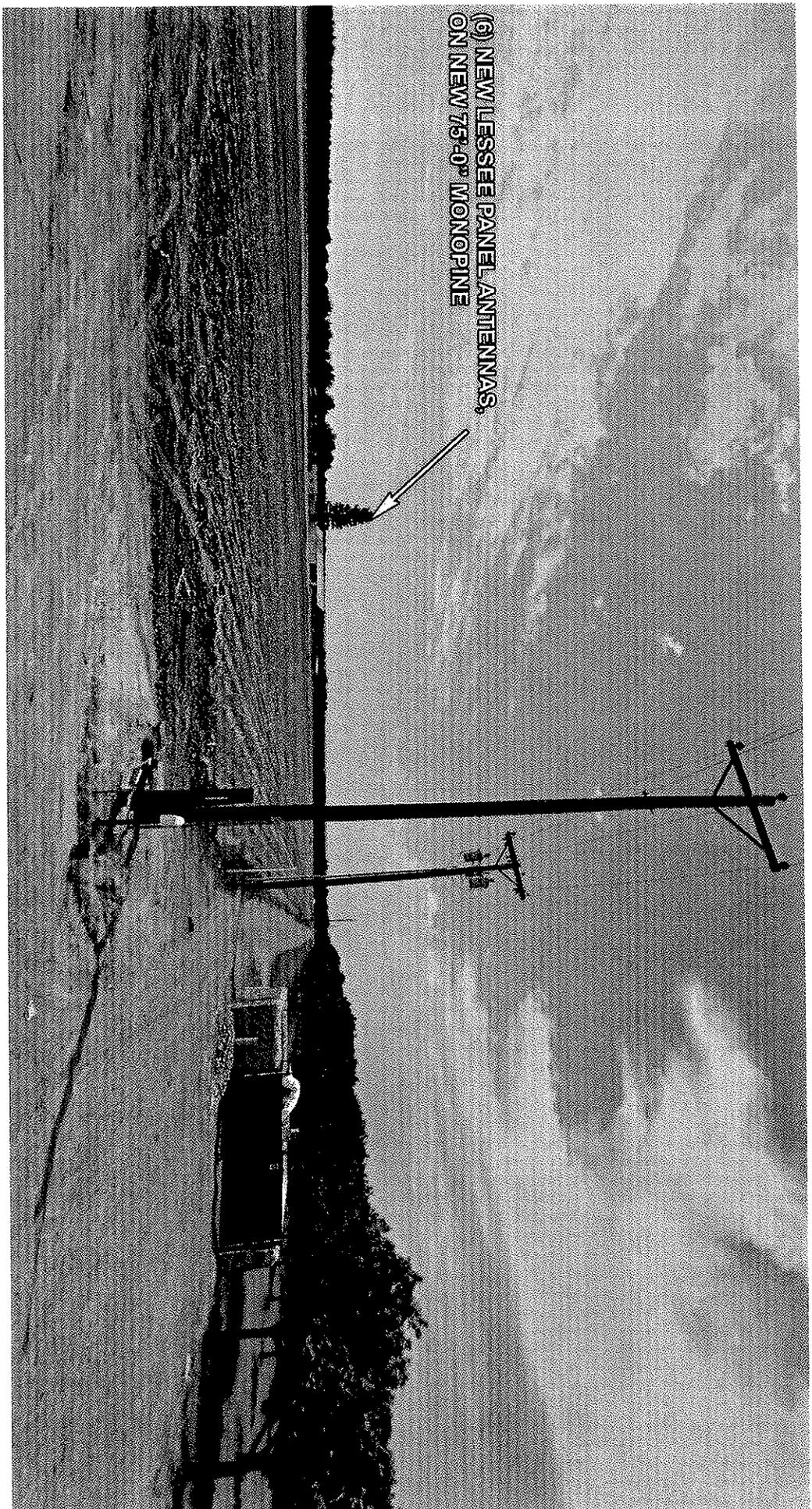


**LSC VALDES
SITE PHOTO
EXISTING NORTH ELEVATION
SEPTEMBER 07, 2016**



REV-1

TOWERCOM TECHNOLOGIES, LLC
767 N Star Road Star, ID 83669 (208) 286-0266
Albuquerque, NM • Star, ID • El Paso, TX • Las Vegas, NV • Denver, CO • Irvine, CA • Tempe, AZ • West Valley, UT



(6) NEW LESSEE PANEL ANTENNAS,
ON NEW 75-0' MONOPINE

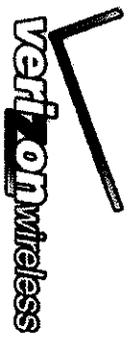
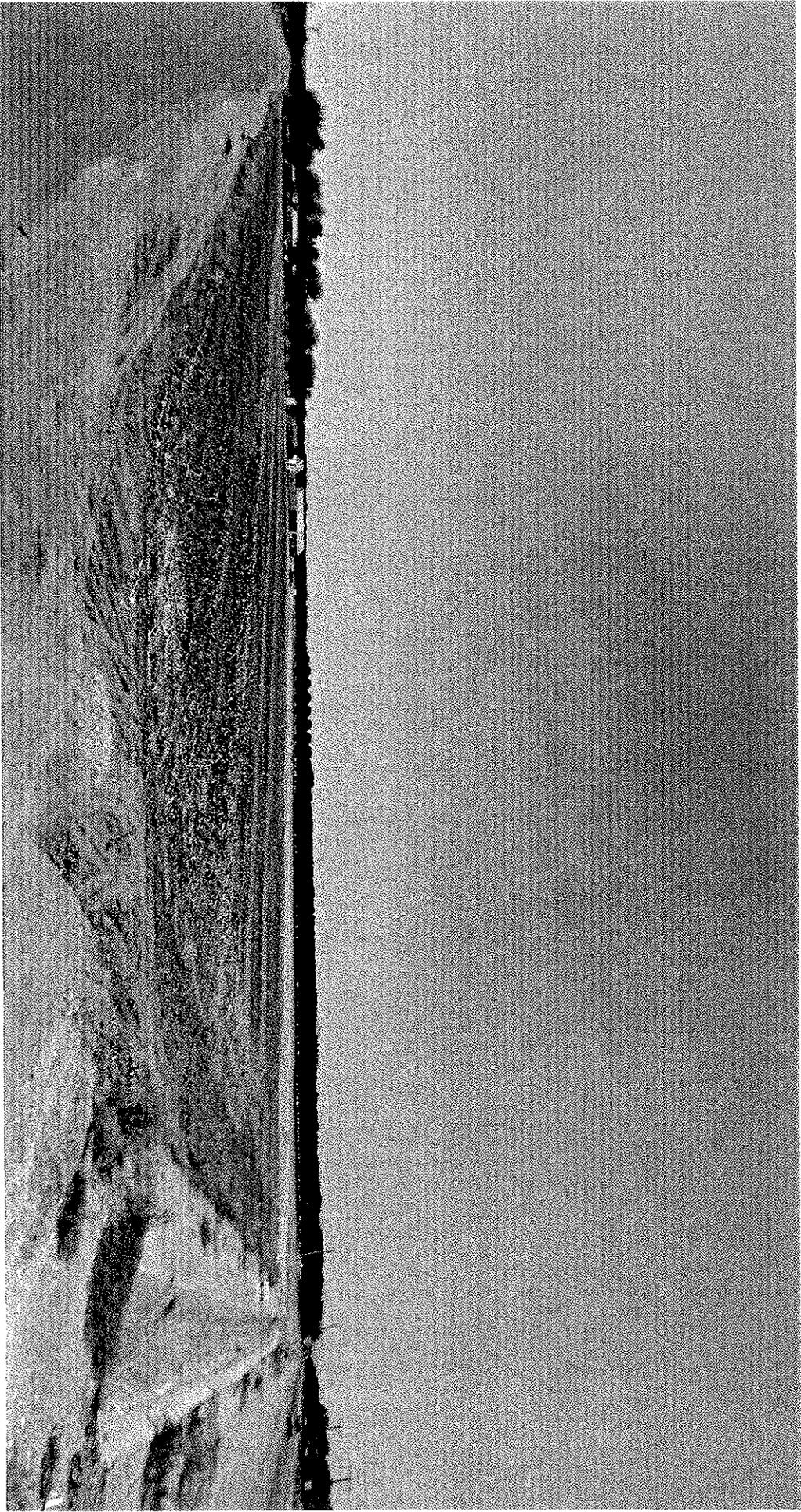


**LSC VALDES
SITE PHOTO
NORTH ELEVATION SIMULATION
SEPTEMBER 07, 2016**



REV-1

TOWERCOM TECHNOLOGIES, LLC
767 N Star Road Star, ID 83669 (208) 286-0266
Albuquerque, NM • Star, ID • El Paso, TX • Las Vegas, NV • Denver, CO • Irvine, CA • Tempe, AZ • West Valley, UT



**LSC VALDES
SITE PHOTO
EXISTING EAST ELEVATION
SEPTEMBER 07, 2016**



REV-1

TOWERCOM TECHNOLOGIES, LLC
767 N Star Road Star, ID 83669 (208) 286-0266
Albuquerque, NM • Star, ID • El Paso, TX • Las Vegas, NV • Denver, CO • Irvine, CA • Tempe, AZ • West Valley, UT

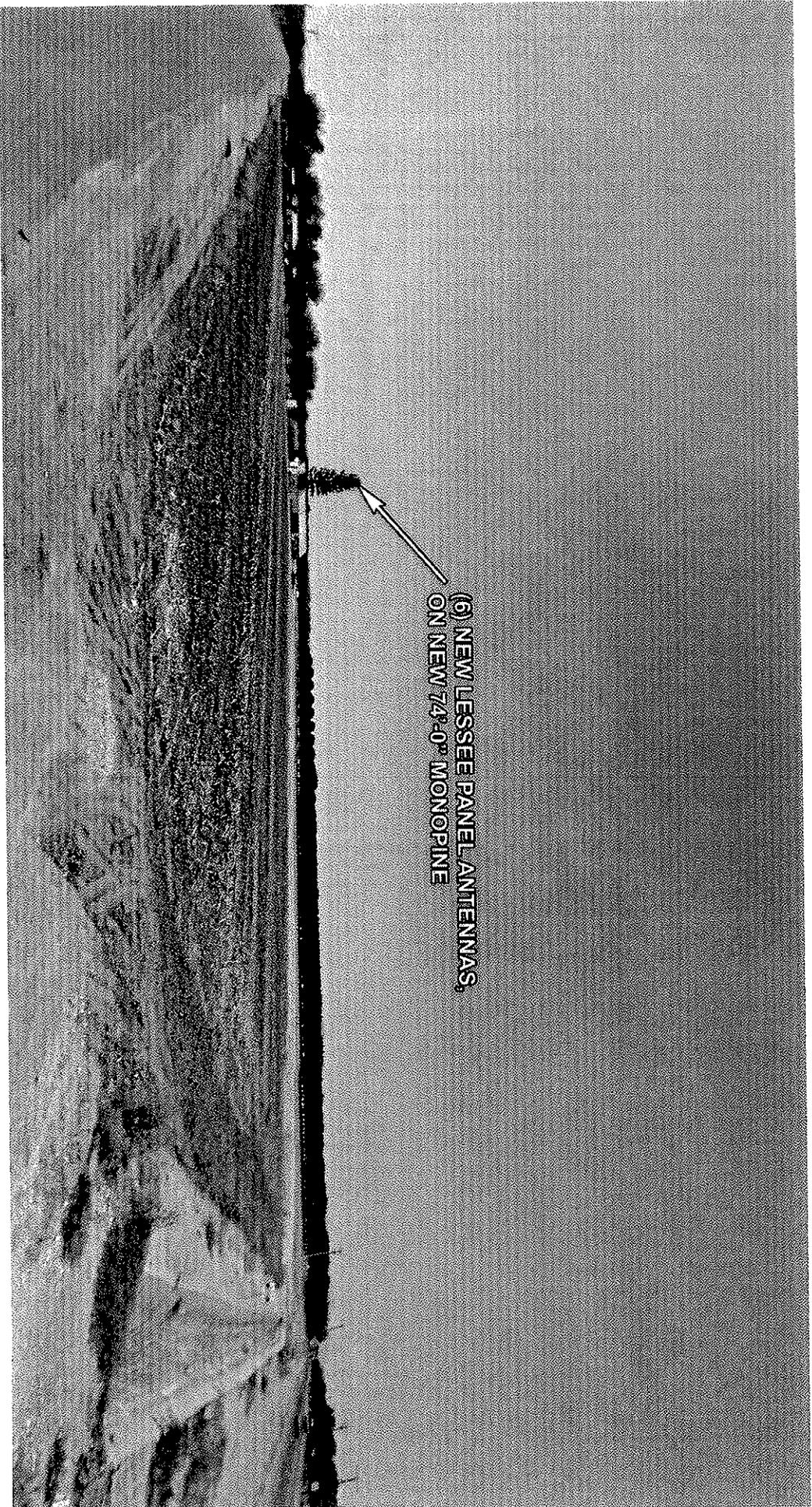


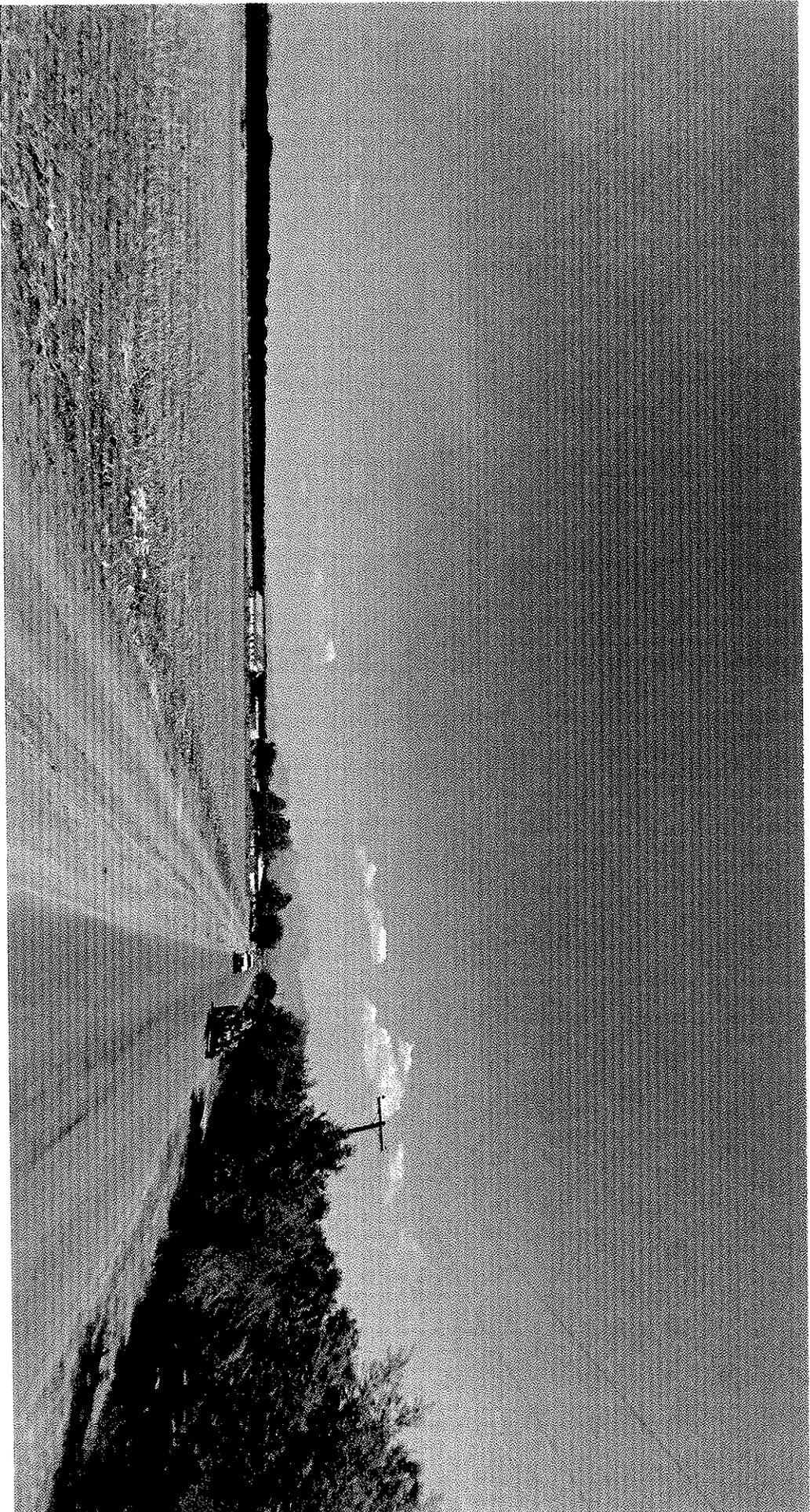
REV-1

Albuquerque, NM • Star, ID • El Paso, TX • Las Vegas, NV • Denver, CO • Irvine, CA • Tempe, AZ • West Valley, UT

TOWERCOM TECHNOLOGIES, LLC
767 N Star Road Star, ID 83669 (208) 286-0266

**LSC VALDES
SITE PHOTO
EAST ELEVATION SIMULATION
SEPTEMBER 07, 2016**



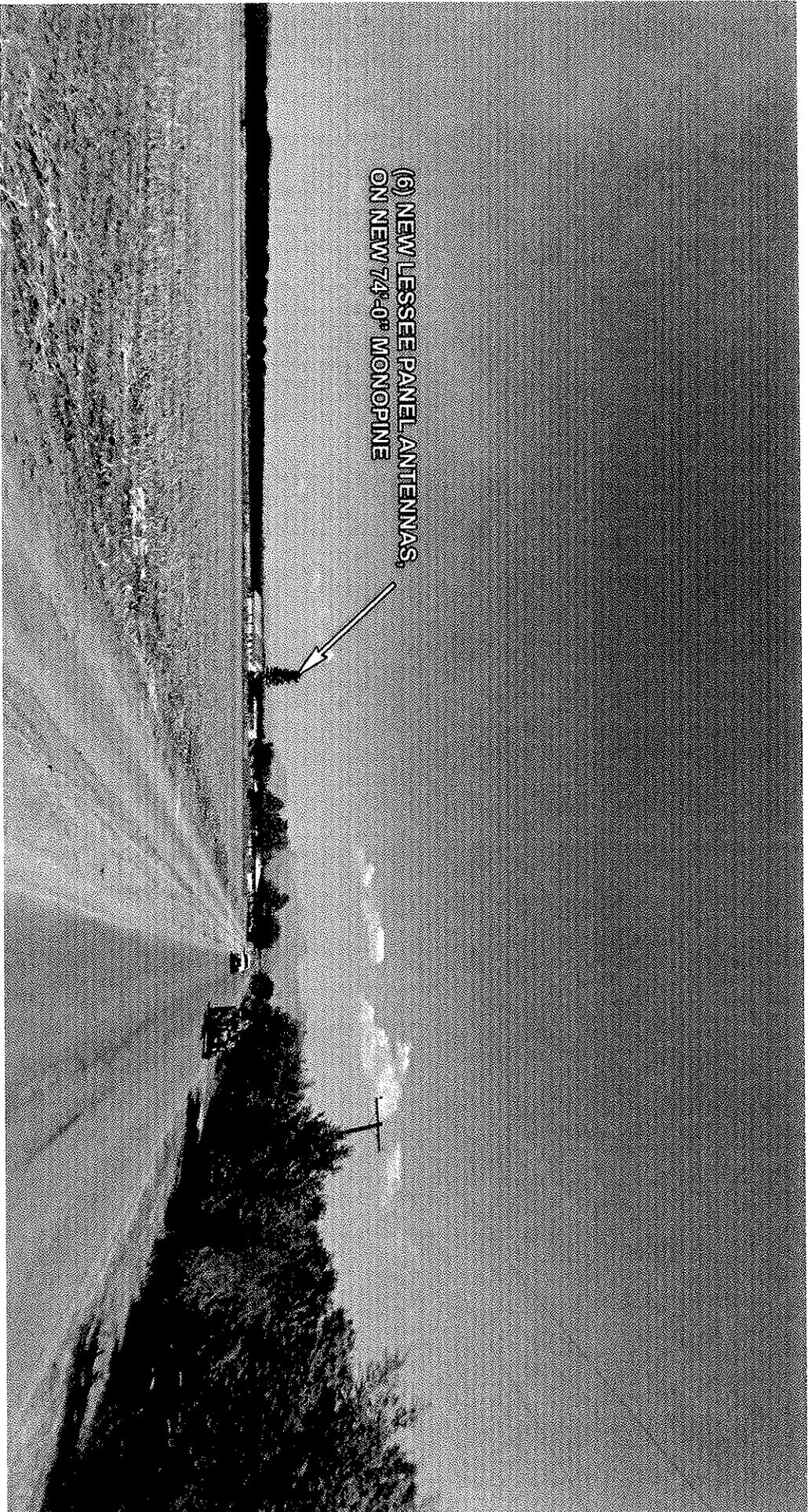


**LSC VALDES
SITE PHOTO
EXISTING SOUTHWEST ELEVATION
SEPTEMBER 07, 2016**



REV-1

TOWERCOM TECHNOLOGIES, LLC
767 N Star Road Star, ID 83669 (208) 286-0266
Albuquerque, NM • Star, ID • El Paso, TX • Las Vegas, NV • Denver, CO • Irvine, CA • Tempe, AZ • West Valley, UT



**LSC VALDES
SITE PHOTO
SOUTHWEST ELEVATION SIMULATION
SEPTEMBER 07, 2016**



REV-1

TOWERCOM TECHNOLOGIES, LLC
767 N Star Road Star, ID 83689 (208) 286-0266
Albuquerque, NM • Star, ID • El Paso, TX • Las Vegas, NV • Denver, CO • Irvine, CA • Tempe, AZ • West Valley, UT

LSC VALDES RF ENGINEERING BACKGROUND FOR RF PROPOGATION MAPS

FROM: Hamdi Alaaldin, Senior RF Engineer.

September 15, 2016

Verizon Wireless hires a 3rd party consulting firm to go to all the cities and do a measurement for us.

The 3rd party company will identify 3 different locations that can be the best the representation for that market. For example, in the city of Las Cruces we select 3 sites that represent the clutter (trees, buildings, obstacles) and the topology of that market. After the selection they broadcast a CW (continuous wave) from these locations and record the data for every 5 to 15 meters on all the major and some minor roads in the area.

After the data collection is completed, the 3rd party then uses this data to create a clutter model for that market.

This model is created for different frequencies that VZW owns in that market.

After the model is selected for a specific technology and specific frequency we, at Verizon Engineering, input the following data in our software modeling tool.

Using:

Antenna models (antenna manufacture provide antenna patterns for each antenna at a different electrical tilt which gets imported in to the tool, see below)

Centerline of the antennas on the tower (Where the antennas will be mounted/height)

Latitude and longitude of the site (from 1A)

Ground elevation (from 1A)

Mechanical and electrical tilt of the antennas

Power for each sector

Continued page 2.

Cable type and loss

Azimuth for each sector

Carrier frequency

The software tool then creates the RF Propagation study to show coverage and capacity.

Sincerely,

Hamdi Alaaldin

Hamdi Alaaldin, Senior RF Engineer.

	01 LTE1	02 LTE1	03 LTE1
Sector	01	02	03
Location Name	LSC VALDES	LSC VALDES	LSC VALDES
Upper 700 MHz Antenna Cen	70.0	70.0	70.0
Upper 700 MHz Antenna Moc	QS8658-2_M45	QS8658-2_M45	QS8658-2_M45
Upper 700 MHz Azimuth (deg)	250	110	230
Upper 700 MHz Mechanical T	6.0	0.0	0.0
Upper 700 MHz Total Tx Loss	2.00	2.00	2.00
Upper 700 MHz Tx Loss Con			
Upper 700 MHz Total Rx Loss	2.00	2.00	2.00
Upper 700 MHz Rx Loss Con			
Upper 700 MHz Rx Diversity	3	3	3
System Noise Temperature	777.1	777.1	777.1
Carrier	LTE1	LTE1	LTE1
Carrier Band Channel	7-5230	7-5230	7-5230
LTE Total Pwr (Watts)	40.00	40.00	40.00
Upper 700 MHz Regulatory L	47.76	47.76	47.76
RS Tx Bona (dB)	0.24	0.24	0.24
reference Signal Power (dBm)	18.00	18.00	18.00
RSRT Tx Power (dBm)	18.00	18.00	18.00
PCI	132	139	140
physical-layer Cell identity	0	1	2
physical-layer Cell identity grou	46	46	46
MCC	311	311	311

Antenna Reference

Manufacturer	QUINTEL USA II
Antenna Model	QS8658-3-2100
Date Measured	07-01-2014
Freq. (MHz)	2100
Description	8ft. multi-band an
Antenna Type	Panel
Polarization	Cross-Polarity (-4
Calc. Max Gain (dB)	15.01
Calc. F/B (dB)	35.4
Calc. H-BW (deg)	68.0
Calc. E-BW (deg)	5.2
Azimuth Display Off	0.0
Electrical Tilt (deg)	2.0
Lower Freq (MHz)	1680
Upper Freq (MHz)	2400
Height (in)	95.98
Width (in)	12.00
Depth (in)	9.00

Horizontal		Vertical	
Angle	Gain (dBd)	Angle	Gain (dBd)
0.0	14.90	179.0	14.05
1.0	14.94	178.0	14.05
2.0	14.95	177.0	14.06
3.0	14.98	176.0	12.96
4.0	14.98	175.0	13.59
5.0	14.99	174.0	14.83
6.0	14.99	173.0	16.48
7.0	15.01	172.0	18.17
8.0	15.01	171.0	20.26
9.0	14.99	170.0	22.97
10.0	14.98	169.0	24.76
11.0	14.94	168.0	23.99
12.0	14.91	167.0	23.69
13.0	14.87	166.0	25.80
14.0	14.83	165.0	32.63
15.0	14.78	164.0	36.20

