



**ZONE CHANGE**  
**EXTRA-TERRITORIAL ZONING COMMISSION**

**DOÑA ANA COUNTY COMMUNITY DEVELOPMENT DEPARTMENT**  
**Doña Ana County Government Complex • 845 N. Motel Blvd.**  
**Las Cruces, New Mexico 88007 • Office: (575) 647-7350**

**MEETING DATE:** January 21, 2016

**CASE #:** Z15-005 / Thurston

**REQUEST:** Zone Change

**PURPOSE:** Zone Change from ER5 to ER6 for a multi-density ETZ subdivision development.

**PROPERTY OWNER/ APPLICANT/AGENT:** Taylor Road Development, LLC  
Kent Thurston, Agent

**LOCATION:** SE of intersection of El Camino Real and Taylor Rd.

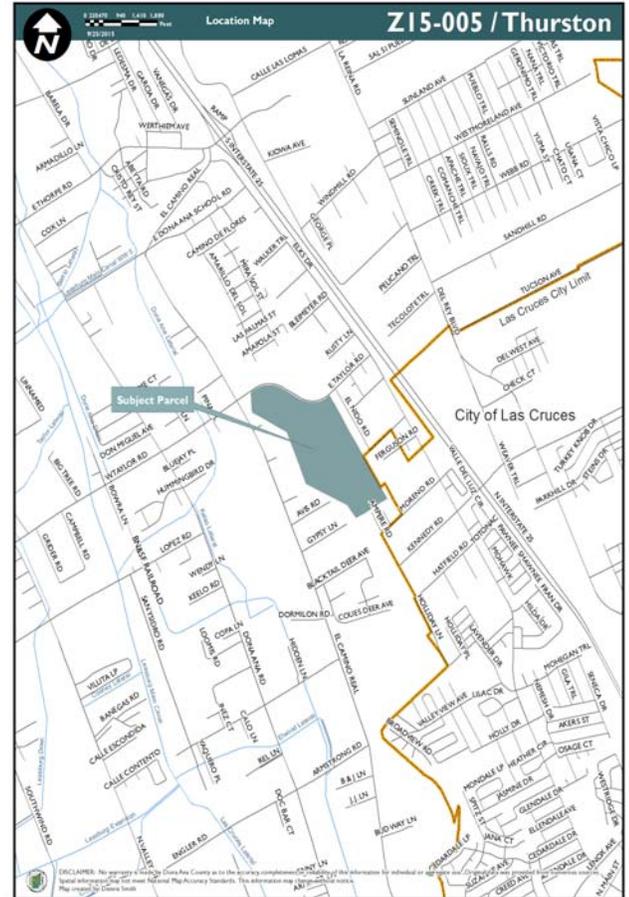
**LEGAL DESCRIPTION:** Part of a tract of land in DAC, 1 mile south of Doña Ana, in the Doña Ana Bend Colony Grant, Sections 23, 24, 25, 26, Twp 22 S, Rge 1 E of the U.S.R.S Surveys as recorded in the Doña Ana County Clerks Office on 8/10/04, with Inst. #0426120.

**PROPERTY SIZE:** 72.8 acres of 111.5 acre parent parcel

**PARCEL ID NO.:** 03-05802

**RECOMMENDATION:** Conditional Approval

**CASE MANAGER:** Steve Meadows, Planner



**REPORT CONTENTS:** (1) Cover Page (2) Case Analysis and Staff Recommendation, (3) GIS Information & Maps (4) Application and Supporting Documents (5) Public Notification

## **SURROUNDING ZONING AND LAND USE**

<b>SITE</b>	<b>ZONING</b>	<b>LAND USE</b>
North	ER5 - Residential, 1/3-acre minimum new lot size, single family site-built homes.	Residential uses
South	ER4M - Residential, 1/2-acre minimum new lot size, single family site-built & mobile homes	Residential uses
East	ER5 - Residential, 1/3-acre minimum new lot size, single family site-built homes.	Residential uses
West	ER2M - Residential, 2-acre minimum new lot size, single family site-built & mobile homes.	Residential and agricultural uses

## **BACKGROUND**

### **Existing Conditions and Zoning:**

The requested Zone Change is on 72.8-acres of a larger 111.5-acre irregularly shaped parent parcel located within an ER5 Zoning District. Access to the property will be from Taylor Rd., designated as a minor arterial, and Lopez Rd., designated as a collector by the Mesilla Valley MPO. A fifty foot (50') electric transmission easement traverses the parcel from north to south on the eastern portion of the parcel.

**The Request:** The applicant is requesting a Zone Change from an ER5 (Residential, 1/3-acre minimum new lot size, single family site built homes) Zoning District to an ER6 (Residential, 5,000 sq. ft. minimum new lot size, single family site built homes) Zoning District as part of a 158-acre mixed density residential subdivision.

## **APPLICABLE PLANS, POLICIES, AND CRITERIA FOR APPROVAL**

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

#### **Section 1.6 Definitions**

Spot Zoning: An amendment to a zoning ordinance that is not compatible with a comprehensive scheme of zoning, whether one lot, several lots or a large area. Spot zoning can also be created through variances, which are granted without regard for impact on the surrounding area.

#### **Section 2.1.B Zoning District Changes: Rezoning**

A zoning district change or rezoning is a change in classification of the zoning district map and shall be recorded and shown on the Official Zoning District Map. Zoning district changes shall not include initial zoning whenever ETZ boundaries are realigned.

### **Conditional Zoning**

- 2.1.B.1 Conditional Zoning may be initiated by the Planning Director, the Zoning Commission or by the applicant and shall limit and/or restrict those uses within the zoning district which would otherwise be permitted by right. A rezoning subject to condition is appropriate to allow certain uses that are compatible with the surrounding uses and environment.
- 2.1.B.2 A condition attached to a zoning district may:
  - a. limit the use of property affected so that one or more of the uses which would otherwise be permitted in the district being adopted shall not be permitted in the specific district as conditioned.
  - b. require traditional design standards, time limitations relating to the construction of buildings, landscaping, streets, roadways, pathways, utilities, drainage ways and other site design features as may be necessary to protect the community or the environment from the impact of development.
- 2.1.B.3 It shall be unlawful to utilize, sell or lease property rezoned with conditions without first providing to any prospective buyer or lessee a disclosure statement stipulating the conditions of the rezone, and without filing a copy of said disclosure with the County Planning Division.
- 2.1.B.4 A conditional zoning shall be revoked and revert to the previous zoning district if the property within said district is not used or developed in accordance with the new district regulations within two (2) years from the date of the ETZ Authority.
- 2.1.B.5 Any use or structure allowed by a Special Use Permit under the specified zoning district shall not be permitted by Conditional Zoning.
- 2.1.B.6 Zone change procedures prescribed by this Code shall be applicable to Conditional Zoning.
- 2.1.B.7 Amendments to the Official Zoning Map shall be reflected by the lowercase 'c' following the zone designation.

### **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 on surrounding properties.

**Current Zoning District:**

**Section 3.1.F.1 ER5M RESIDENTIAL DISTRICT**

**3.1.F.1.a PURPOSE**

The purpose of the ER5M district is to provide for single-family site-built and mobile homes in moderately low densities together with such recreational facilities, public uses and accessory uses as may be necessary or are normally compatible with residential surroundings.

**3.1.F.1.b DEVELOPMENT REQUIREMENTS**

Minimum lot size	1/3 acre (except cluster development)
Minimum lot width	80 feet
Minimum lot depth	80 feet
Minimum front setback	20 feet
Minimum side setback	10 feet
Minimum rear setback	25 feet
Maximum building height	35 feet

**3.1.F.1.c ER5M PERMITTED USES**

The following uses are permitted by right in the ER5M district:

1. Cluster developments in accordance with the Subdivision Regulations adopted by the ETZ Authority.
2. Detached single-family site-built homes and mobile homes.
3. 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.
4. 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 this Ordinance.

5. Home occupations subject to Section 3.4 of this Article.
6. 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.
7. Recreational vehicles such as boats, trailers or similar uses, limited to a maximum of one (1) per dwelling unit in the front or side yard, and no limitations for the rear yard, provided there is at least a distance of five (5) feet from any property line.
8. Residential type satellite dishes, television or receiving antenna, roof mounted, and not exceeding twenty (20) feet in height at the highest point on the roof.
9. 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 is issued, whichever is sooner.
10. Keeping small animals subject to Article VIII of this Ordinance.

#### **3.1.F.1.d ER5M 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. All types of agriculture
2. Boarding houses and rest homes
3. Cemeteries
4. Community and publicly owned recreational centers, clubhouses and similarly used buildings and structures open to the public
5. Day care center or child care center for seven (7) or more children
6. Parks, golf courses, churches, schools and other public or semi-public and open recreational uses
7. Public utility installations, substations and water wells
8. Keeping small, wild or exotic animals and fowl on lots of less than one (1) acre in size
9. Sale of farm produce provided it is raised on the premises
10. Veterinary facilities
11. Wineries and/or wine tasting rooms

## **Section 3.1.F.2 ER5 RESIDENTIAL DISTRICT**

### **3.1.F.2.a PURPOSE**

The purpose of the ER5 district is to provide for single-family site-built homes in moderately low densities together with such recreational facilities, public uses and accessory uses as may be necessary or are normally compatible with residential surroundings.

### **3.1.F.2.b DEVELOPMENT REQUIREMENTS**

The development requirements set for the ER5M district as outlined in **Section 3.1.F.1.b** of this Article are applicable to the ER5 district.

### **3.1.F.2.c ER5 PERMITTED USES**

The permitted uses set for the ER5M district as outlined in **Section 3.1.F.1.c** of this Article are applicable to the ER5 district, EXCEPT that mobile homes are not allowed in the ER5 district.

### **3.1.F.2.d ER5 SPECIAL USE PERMITS**

The Special Use Permit uses and conditions set for the ER5M district as outlined in **Section 3.1.F.1.d** of this Article are applicable to the ER5 district.

## **Proposed Zoning District:**

## **Section 3.1.G.1 ER6 RESIDENTIAL DISTRICT**

### **3.1.G.1.a PURPOSE**

The purpose of the ER6 district is to provide for single-family site-built homes within a medium density residential environment that is protected and maintained.

### **3.1.G.1.b DEVELOPMENT REQUIREMENTS**

Minimum lot size	5,000 sq. ft.
Minimum lot width	60 feet
Minimum lot depth	70 feet
Minimum front setback	20 feet
Minimum side setback	7 feet
Minimum rear setback	25 feet
Maximum building height	35 feet

### **3.1.G.1.c ER6 PERMITTED USES**

The following uses are permitted by right in the ER6 district:

1. Detached single-family site-built homes.
2. 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.
3. 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 this Ordinance.

4. Homes for handicapped, disabled, retarded or retired persons, subject to the requirements of the New Mexico Municipal Code, Section 3-21-1, Para. C, as amended. There shall be no more than five (5) persons in one (1) home and a minimum of three (3) parking spaces must be provided.
5. Home occupations subject to Section 3.4 of this Article.
6. 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.
7. Public parks, playgrounds or ball fields.
8. Recreational vehicles such as boats, trailers or similar uses, limited to a maximum of one (1) per dwelling unit in the front or side yard, and no limitations for the rear yard, provided there is at least a distance of five (5) feet from any property line.
9. Residential type satellite dishes, television or receiving antenna, roof mounted, and not exceeding twenty (20) feet in height at the highest point on the roof.
10. 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 is issued, whichever is sooner.
11. Keeping small animals subject to Article VIII of this Ordinance.

### **3.1.G.1.d ER6 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. Community and publicly owned recreational centers, clubhouses and similarly used buildings and structures open to the public
4. Day care center or child care center for seven (7) or more children
5. Parks, golf courses, churches, schools and other public or semi-public and open recreational uses
6. Public utility installations, substations and water wells
7. Keeping small, wild or exotic animals and fowl
8. Sale of farm produce provided it is raised on the premises
9. Veterinary facilities

10. Nursing homes, provided there are no more than ten (10) person in one (1) home and a minimum of two (2) parking spaces must be provided in addition to one (1) space for each five (5) persons
11. Wineries and/or wine tasting rooms

## 2. ETZ Comprehensive Plan 2000-2020

The proposed Zone Change Request **does** meet the Goals, Policies, and Objectives of the ETZ Comprehensive Plan 2000-2020:

## 3. Miller Criteria

The Supreme Court of New Mexico, Miller versus Albuquerque, September 9, 1976, stated: *“The fundamental justification for an amendatory or repealing zoning ordinance is a change of conditions making the amendment or repeal reasonably necessary to protect the public interest. Also, a zoning amendment may cover and perfect previous defective ordinances or correct mistakes or injustices therein.”*

## 4. Spot Zone

Spot Zoning (*Bennett v. City Council For City of Las Cruces, 1999-NMCA-15, 126 N.M. 619*) is determined on an ad hoc basis, considering:

- 1) the disharmony with the surrounding area;
- 2) the size of the area rezoned; and
- 3) the benefit of the rezoning to the community or the owner of the parcel.

## **AGENCY COMMENTS**

**DAC Engineering:** Approved

**DAC Flood Commission:** 1) Pursuant to FIRM No. 35013C0516 E, the subject property is currently located within Flood Zone X. areas determined to be outside the 500-year floodplain. There is a neighboring Special Flood Hazard Area Zone “AH” & “AO” directly southwest of the lot. Please be aware that the lot is susceptible to flooding despite not being located directly in a Special Flood Hazard Area. 2) Any new addition to impervious area will require runoff to be maintained on site via on-lot ponding.

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

**DAC Building Services:** All permits shall be obtained prior to construction.

**DAC Rural Addressing Coordinator:** No comments.

**DAC Zoning Codes:** No open case.

**ACO Codes:** Lots of trash dumped out in this area.

**NMED: Wastewater Treatment and Disposal**-All future development must meet the requirements of lot size requirement under 20.7.3.301. **Water Supply/Water Quality. Solid Waste Disposal** – No comment. **Surface Water Bureau:** No comments received at this time.

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

**Mesilla Valley MPO:** Taylor Rd. is a minor Arterial requiring 100' R-O-W.

**CLC Planning Dept:** City Community Development Dept. supports this request with the understanding that the density and development follows the applicants Sketch Plan/Master Plan

**EBID:** No comments received.

**Office of the State Engineer:** No water rights issue, as there are no water rights associated with this land. Assuming water for subdivision will be coming from the City or local water company. Not sure if this goes through OSE subdivision review process; they may have their own opinions.

## **NOTICE / NOTIFICATION**

- 55 letters of notification were sent on December 30, 2015, to the Area of Notification.
- Legal Ad was placed in the Las Cruces Sun-News on January 3, 2016.
- Signs placed on the property in a timely manner.
- Agenda placed on the DAC Web site.
- One letter in opposition (*Pages 21-22*) received January 13, from Lane Hauser (#24 on List) concerned about overall density and drainage issues.

## **STAFF ANALYSIS**

The applicant is requesting a Zone Change on 72.8-acres of a larger 111.5-acre parcel from an ER5 (Residential, 1/3-acre minimum new lot size, single family site built homes) Zoning District to an ER6 (Residential, 5,000 sq. ft. minimum new lot size, single family site built homes) Zoning District as part of a 158-acre mixed density residential subdivision.

### **1) 2.1.D Evaluation Criteria and Analysis** (Applicant's response in *italics* - Page 18), **Staff analysis in bold.**

**2.1.D.1: Determination of the number of homes, population, and population demographics.**—  
*a) 225 homes. b) Estimated population for 225 lots would be 630 persons based 2.8 persons per dwelling. c) Demographics: this development will bring in multiple demographics due to the desire to have a mixed density of housing and lot sizes. **225 homes with approximately 630 persons.***

**2.1.D.2: Determination of potential traffic flows (average daily traffic) and where they will impact the transportation system.** *The potential traffic flows will go into Taylor Road and also Lopez Road when Lopez Road is constructed. With the construction of the subdivision it is expected to help alleviate Columbia Elementary and Vista Middle School rush hour traffic.*  
**Agency comments (Page 8-9) from DAC Engineering and NMDOT indicates that there**

are no traffic issues associated with this request, however the Mesilla Valley MPO has designated Taylor Rd. as a minor arterial requiring 100' of R-O-W. The request documentation shows Taylor Road at 60' wide.

2.1.D.3: Determination of need for new commercial activity. Due to the development being solely residential this is not applicable. **No commercial activity is proposed for this location.**

2.1.D.4: Determination of potential water and sewage needs. Water and sewage needs have been discussed with the City of Las Cruces and Doña Ana MDWCA. They have come to a conclusion that the needs can be and will be met. **Water and sewer infrastructure is in the immediate vicinity, however there is no official agreement submitted between the applicant, Doña Ana MDWCA, and the City of Las Cruces at this time.**

2.1.D.5: Evaluation of existing infrastructure capacities and an analysis of the ability of the existing system to accommodate the new development. Sewer, water, gas, and electric are available on this property. **Infrastructure appears to be within the area to serve the proposed subdivision but, no official agreement has submitted between the applicant, Doña Ana MDWCA, and the City of Las Cruces.**

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 capacity and impact of a new zone change should stay the same due to the developer's self restrictions of the zone change. The density of the area to be rezoned will stay the same. **Infrastructure capacity in the area is available. Density of the area will remain the same as the original ER5 zoning densities due to the inclusion of open space, parks and walkways, etc. occupying some of the acreage. The Sketch Plan (Page 20) approved by the ETZ Commission requires the density to remain the same as the original ER5 Zoning District. An official agreement must be submitted between the applicant, Doña Ana MDWCA, and the City of Las Cruces certifying the capacity is adequate and can be provided.**

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. Not applicable due to the zone change not changing the density of the site. In addition, the zone change will add open space which is expected to enhance the environmental quality of the area. **There has been no evidence submitted of any areas of historical significance, or areas containing endangered species. DAC Flood Commission comments (Page 8) indicate areas of concern that are outside the boundaries of the proposed zone change and subdivision. At time of construction if any new drainage issues associated with the development are discovered they will have to be addressed before any permits are issued.**

2.1.D.8: Any analysis required should be undertaken and paid for by the developer and verified by the ETZ Commission. **OK. All fees and analysis shall be paid by applicant.**

2.1.D.9: Determination of impact of a proposed zone change on surrounding properties. No change due to the zone change not changing the density of the site. However, due to a zone change it allows the developer to add parks and open space which is expected to enhance the surrounding properties. **Impact to the surrounding properties will be minimized as the**

proposed zone change will not increase the density and the developer would be required to address any traffic or drainage issues that may be discovered before construction permits are issued. The inclusion of parks and open space will enhance the quality of life of the residents and the expected increase in traffic shall be adequately addressed by the developers by providing any improvements as required by DAC Engineering at the time of construction plan review.

In staff's opinion, impacts to the surrounding neighborhoods are adequately addressed by the developer. All of the 2.1.D Decisional Criteria would be met with a submitted agreement between the applicant, Doña Ana MDWCA, and the City of Las Cruces therefore, conditional approval would be staff's recommendation.

## 2) ETZ Comprehensive Plan 2000-2020

Comparing the proposed ER4 to ER2 Zone Change request with the Goals, Policies and objectives of the ETZ Comprehensive Plan 2000-2020, reveals the following that are met by this request:

The proposed Zone Change Request **does** meet the following Goals, Policies, and Objectives of the ETZ Comprehensive Plan 2000-2020:

- Policy 2.2.1: Encourage development only where it can be supported by existing or planned expansions to infrastructure, without having a negative impact on the level of services available in the developed portion of the ETZ area. **Requested Zone Change is within an area that could be served by the existing infrastructure (sewer, water and transportation).**
- Goal 6: Provide for the housing needs of citizens residing in the ETZ: Allow for a variety of residential densities and housing types; Promote housing availability and affordability. **Proposed zone change would have a variety of lot sizes and prices providing varied housing affordability for different socioeconomic groups.**
- Policy 6.3.3: Locate site-built homes, manufactured housing types and urban subdivisions within existing or planned wastewater service areas. **A City of Las Cruces 10" sewer line passes through the subject parcel that could serve the development with its mix of densities with smaller lots (1/2-acre down to 6,000 sq. ft. lots) that require sewer services.**
- Objective 6.4: Promote the provision of fair, decent, safe, affordable housing for rental or purchase that meets the needs of present and future ETZ residents. **With the proposed mixed densities ranging from 1-acre to 6,000 sq. ft. lot sizes the ETZ residents will have multiple choices for housing based on their needs and economic and family situation.**
- Policy 7.1: Where appropriate, consider allowing development consistent with the urban character generally found in close proximity to the corporate limits of the City of Las Cruces, or within the two-mile area adjacent to the City of Las Cruces, that is suitable for urban development: **The subject parcel is adjacent to the corporate limits of the City of Las Cruces that includes different densities of housing developments and 2 schools served by the City's sewer system.**
- Objective 10.1.2: Urban development will be encouraged in areas where services and infrastructure exist or are likely to be developed. **A City of Las**

***Cruces 10” sewer line passes through the subject parcel that could serve the development.***

- Program 10.2.1.2: Ensure that the quality of the design of a proposed development enhances efficiency, infrastructure and services, and promotes a higher quality of life for its citizens. ***The proposed subdivision associated with the requested Zone Change includes open spaces, parks and walkways to enhance the quality of life and would be served by City of Las Cruces sewer system.***

### **3) “Miller” Criteria**

In New Mexico, the primary justification for a zone change is spelled out in the Miller vs. City of Albuquerque ruling of 1976 which says the *“The fundamental justification for an amendatory or repealing zoning ordinance is a change of conditions making the amendment or repeal reasonably necessary to protect the public interest. Also, a zoning amendment may cover and perfect previous defective ordinances or correct mistakes or injustices therein.”* This is commonly known as the “change or mistake” rule which is widely interpreted as there has been a change in the conditions in the area of the subject property sufficient to warrant a need to protect the public, or that there was a mistake in the original zoning.

The applicant is proposing to rezone a 72.8-acre portion of a 111.5 acre lot. Although the density of the proposed ER6 rezoned area will remain the same as the current ER5 density (3 lots per acre) any lot below the 0.75-acre NMED standard must be served by a sewer system or an approved package plant. The applicant states that an 8” sewer line (operated by the City of Las Cruces) is available and passes through the subject property (*Page 17*) providing service to two nearby LCPS schools to the east. The City of Las Cruces documentation references a 10” line (*Page 19*) sewer system line passing through the subject parcel. This sewer infrastructure is now available and could provide adequate capacity for the proposed development. This constitutes a “change of conditions” to the area that allows development to occur at the densities proposed by the applicant which would fulfill the “Miller” Criteria and bolster the justification for approval of the requested Zone Change. However, no agreement between the applicant, Doña Ana MDWCA, and the City of Las Cruces has been submitted to staff at this time.

The applicant has overcome the presumption that the current zoning is the most appropriate, as these “change in conditions” (i.e., potential sewer availability) signify the ability to serve the proposed small lots within the development and particularly the ER6 mandated, minimum 5,000 sq. ft. parcels. Any development under the current ER5 zoning or the proposed ER6 zoning could occur only if adequate sewer or an approved package plant were in place to serve the development. With the submittal of an official agreement between the applicant, Doña Ana MDWCA, and the City of Las Cruces, conditional approval of the Zone Change Request would be appropriate.

### **4) Spot Zone**

The applicants request for ER6 Zoning would be in harmony with the ER5 residentially zoned properties surrounding the subject parcel due to the stipulation by the ETZ Commission approval of Vista Rancho Subdivision Sketch Plan (*Page 20*) requiring the overall density of the development to match the density of the surrounding ER5 Zoning. The requested Zone Change of 72.8-acres is a large enough area to not constitute a spot zone.

The proposed Zone Change request and subsequent subdivision will include amenities such as parks, open spaces and walkways which will enhance the quality of life to the residents and surrounding neighborhoods. The mixed residential densities will be more beneficial to residents of the County by giving them more choices in the size of lots, and the price of housing.

These findings provide the basis to conclude that the proposed Zone Change would not be considered a “spot zone” per the 1999 Bennett ruling.

## **STAFF FINDINGS**

**If the Extra-territorial Zoning Commission wishes to follow staff’s recommendation of Approval of Case # Z15-005 / Thurston, staff recommends the following 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 (ETZ-C) has jurisdiction to review this case.
3. The proposed Zone Change Request **does** meet Policy 2.2.1, Goal 6, Policy 6.3.3, Objective 6.4, Policy 7.1, Objective 10.1.2, and Program 10.2.1.2 of the Goals, Policies, and Objectives of the ETZ Comprehensive Plan 2000-2020.
4. The Zone Change request **does** satisfy the 2.1.D Evaluation Criteria of the ETZ Ordinance.
5. The subject parcel and subsequent development density would be in harmony with the surrounding ER5 Zoning District.
6. The Zone Change would benefit the public as this proposed use will include open space, parks and walkways to the area and offer a variety of lot sizes and prices for residential housing.
7. The 72.8-acre parcel is large enough of an area, abuts an ER5 Residential Zoning District, and would be developed at the ER5 density, so it would not be considered a spot zone.
8. Per the “Miller Criteria,” the ER6 Zone Change request **does** meet the change of conditions criteria, as the availability of sewer to the area would allow development at the ER5 and ER6 density requirements, however, there is no formal agreement between the applicant, Doña Ana MDWCA, and the City of Las Cruces to provide sewer service to the subject parcel and proposed development.
9. The applicant has overcome the presumption that the existing zoning is the most appropriate and the Zone Change is necessary to protect the public.

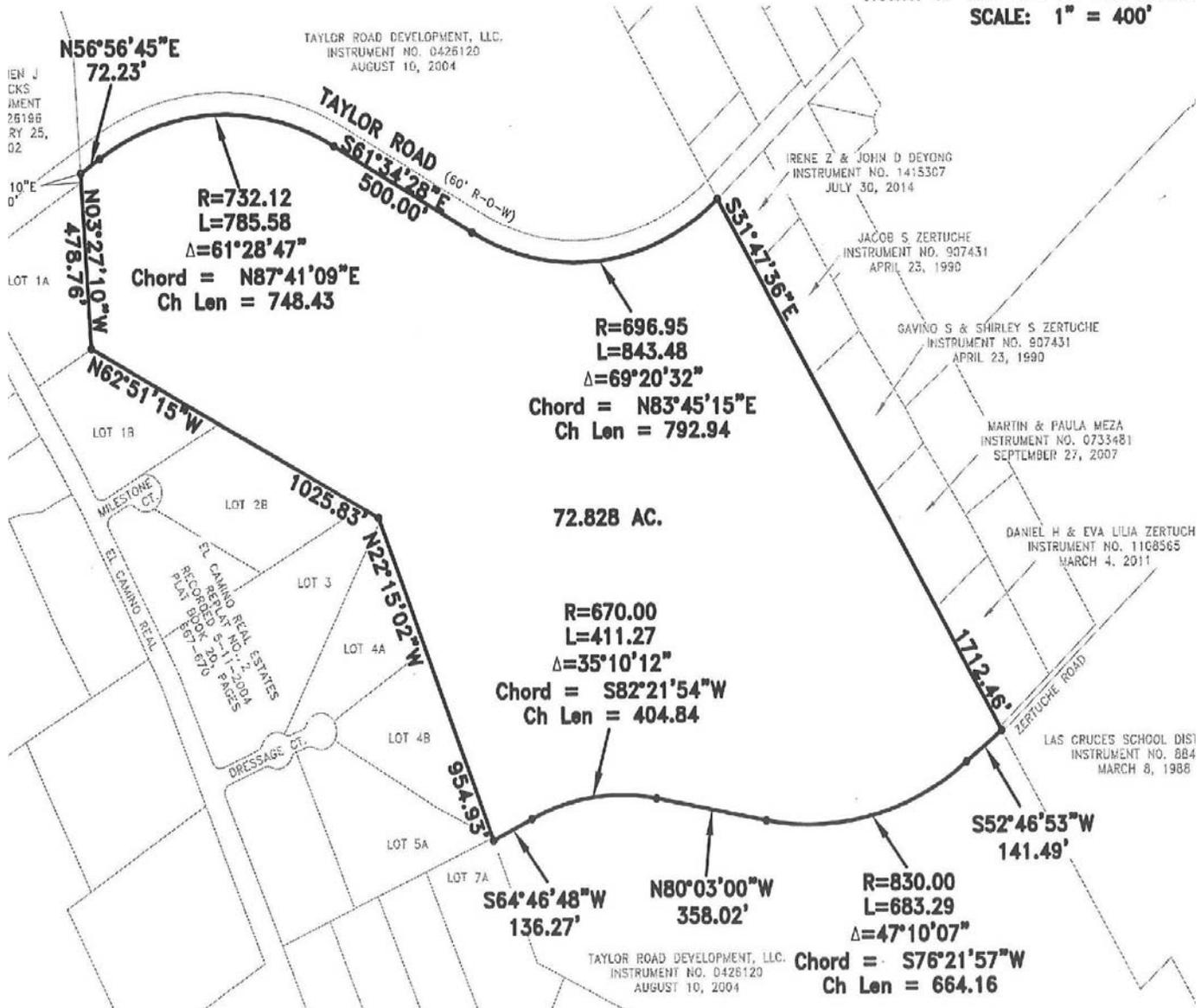
## **STAFF RECOMMENDATION**

Based on staff analysis and findings, the request meeting the “Miller” criteria, the 2.1.D Evaluation Criteria, several Goals, Policies and Objectives of the Comprehensive Plan 2000-2020, and not being considered a spot zone, staff recommends **Conditional Approval** of Zone Change request Case # Z15-005 / Thurston to ER6c with the following conditions:

- 1) *Maintain overall ER5 density within the entire 158-acre subdivision as approved by the ETZ Commission and shown on Sketch Plan.*
- 2) *Provide documentation of the agreement between the applicant and the sewer provider (Doña Ana MDWCA or the City of Las Cruces) for sewer service to the development.*

# Survey of Rezone Area

A 72.828 ACRE  
 LOCATED WITHIN SECTIONS 23  
 N.M.P.M. OF THE  
 NORTH OF THE CITY OF LAS CRUCES  
 SCALE: 1" = 400'



# Narrative (Pg 1 of 2)

ETZ Zone Change Request Vista Ranch Development

October 9, 2015

## Overall Summary

As per the recommendation of the ETZ board, county staff, and city staff we are requesting a partial zone change from ER5 to ER6 on a centrally located 72.8 +/- acre tract that is located within the 158 acre Vista Rancho Project area. During the ETZ meeting dated August 6<sup>th</sup>, 2015 we received approval of the sketch plan for the Vista Rancho Subdivision. However, to meet the intent of the sketch plan it was recommended and requested by the ETZ Board and County Staff that a partial rezone of an approximate 72.8 acre parcel of land within the boundary of the entire planning area should take place.

The area to be rezoned is a 72.8 +/- acre tract which is surrounded by existing ER5 Residential Zoning and the change to an ER6 Zoning continues in harmony of the surrounding area. The benefits of the rezone are mutually shared by the developer and the community. By changing the zone it allows the developer to build a portion of the property with smaller lots (providing a lower cost home to citizens) and allows the community to have more open space and parks in the immediate area. The site layout is proposed to be very similar as shown in the sketch plan that was previously approved.

## Lot Densities and Population

In the current zoning of ER 5 we are able to achieve 358 lots in the entire Vista Rancho Subdivision with the existing minimum lot size of one third acre per dwelling unit. The estimated population increase due to the development at 2.8 persons/dwelling unit (average value) is 1,002 persons. We would like to note that with the partial zone change from ER5 to ER6, the Vista Rancho Subdivision is not requesting an increase in the number of total lots in the project area. We are requesting to be able to have flexibility of the lot sizes in order that we may be able to add parks and open spaces to the project as amenities for the area. Due to net the overall density of the subdivision staying the same as exists, the traffic will not be adversely affected with a zone change.

## Utilities

During the construction process of Columbia Elementary School an 8" (Gravity) City of Las Cruces sewer line was constructed through the property of the proposed Vista Rancho Development. The existing line will be sufficient to accommodate the number of dwelling units proposed for the development. Previous discussions with Dona Ana Mutual Water Association and the City of Las Cruces have reaffirmed the commitment that the water and sewer needs of this project with the requested zone change can be provided.

Page 1 (continued)

# Narrative (Pg 2 of 2)

ETZ Zone Change Request Vista Ranch Development

October 9, 2015

## Community Planning Goals

According to the current community planning goals this rezone will be in agreement with the goals set out by the planning department criteria.

Goal 3 is to provide community facilities and services:

Parks and Recreation is one the main objectives listed within goal three. By allowing a zone change we will be able to provide a park and open space within the Vista Rancho development. This will help enhance the quality of life for those in and around the development.

Goal 6: Encourage affordable housing and a variety of housing types:

The Vista Rancho Subdivision is a mixed density subdivision. We will have 1 acre,  $\frac{3}{4}$  acre,  $\frac{1}{2}$  acre,  $\frac{1}{3}$  acre and ER6 (6,000 SF minimum lot area) properties. Lots smaller than  $\frac{1}{3}$  acres will provide properties for the affordable housing market. This subdivision concept can reach out to most social economic groups due to the price differentiation. With the zone change we can accomplish the goals set out to encourage affordable housing and a variety of housing types.

Page 2

# Applicants' 2.1.D Responses

## Ordinance Criteria for zone change

1. Potential number of homes, population, demographics
  - a. 225 homes.
  - b. Estimated Population for 225 lots would be 630 person based on a 2.8 persons per dueling.
  - c. Demographics: this development will bring in multiple demographics due to the desire to have a mixed density of housing and lot sizes.
2. Potential traffic flows and where they will impact
  - a. The potential traffic flows will go onto Taylor road and also Lopez road when Lopez road is constructed. With the construction of the subdivision it is expected to help alleviate Columbia Elementary and Vista middle school rush hour traffic.
3. Need for new commercial activity
  - a. Due to the development being solely residential this is not applicable.
4. Potential water and sewage needs
  - a. Water and sewage needs have been discussed with City of Las Cruces and Dona Ana Mutual Domestic Association. They have come to a conclusion that the needs can be and will be met.
5. Existing infrastructure capacities and ability of existing system to accommodate new development.
  - a. Sewer, water, gas, and electrical are available on this property.
6. Difference between capacity and impact should be stated
  - a. The capacity and impact of a new zone change should stay the same due to the developer's self-restrictions of the zone change. The density of the area to be rezoned will stay the same.
7. Appropriate zoning on environmentally sensitive areas
  - a. Not applicable due to the zone change not changing the density of the site. In addition the zone change will add open space which is expected to enhance the environmental quality of the surrounding area
8. Analysis should be undertaken and paid for by developer
  - a. okay
9. Determination of the impact of a proposed zone change on surrounding properties
  - a. No change due to the zone change not changing the density of the site. However due to a zone change it allows the developer to add parks and open space which is expected to enhance the surrounding properties.

# City of Las Cruces Utility Review

**Department: Utility Engineering**

Reviewer: Meei Montoya

Phone: 575-528-3525

Status: N/A

**Plan Review Comments:**

REVIEW 2 - Meei Montoya 6/4/2015

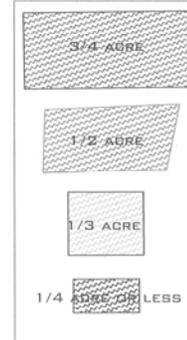
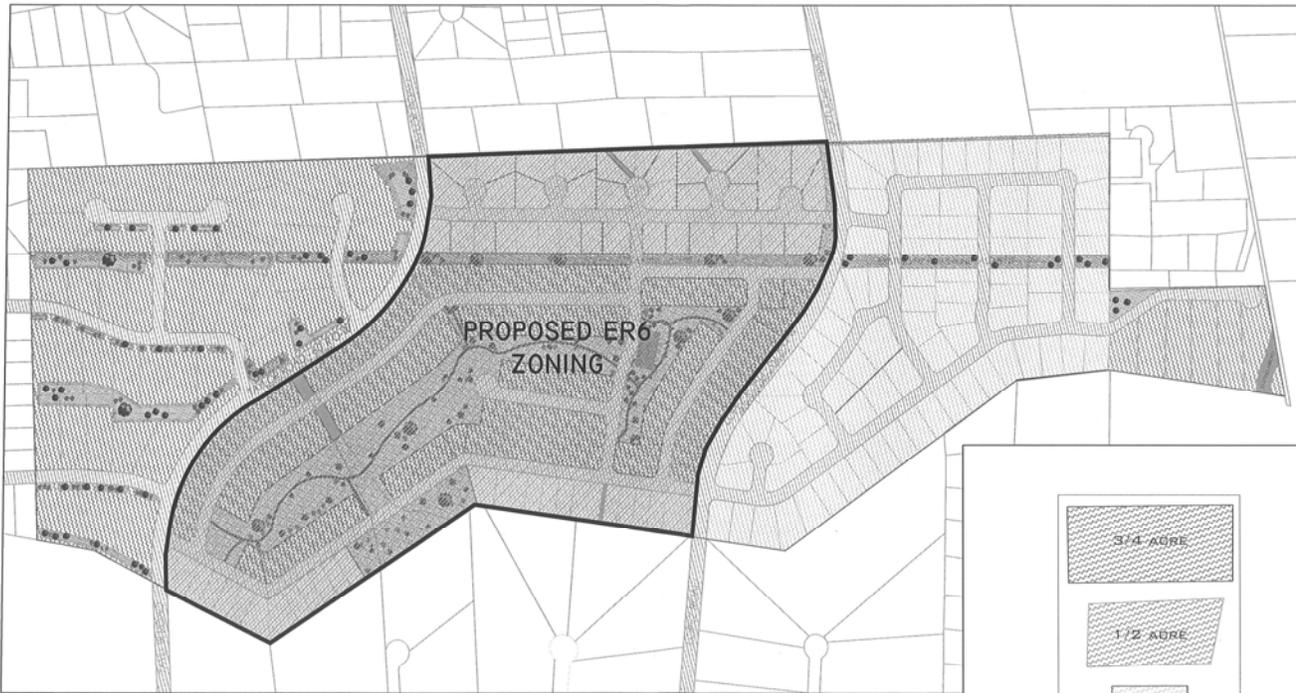
1. This is an out of City Limits sewer service request and will require Las Cruces Utilities Board and City Council approval for sewer service. Upon next submittal, the developer needs to submit a sewer service request to the Utilities Director and layout the proposed sewer service plan and connection point to the existing LCU sewer line.
  2. The existing sewer lines that will be relocated are 10" instead of 8" as currently shown on the plan.
  3. A sewer line re-routing/reconnection plan needs to be included on the Utility Schematic Plan. If the new lines will not be installed under public ROW, an easement will be needed.
-

# Vista Rancho Sketch (Concept) Plan

## VISTA RANCHO - CONCEPT A - ZONE CHANGE

A 158.4 ACRE TRACT OF LAND SOUTH OF DONA ANA NEW MEXICO  
NOV. 17, 2015

PROPOSAL TO CHANGE EXISTING ZONING FROM ER5 TO ER6  
THE PROPOSED SUBDIVISION WILL BE CONTAIN 358  
± OR LESS, 3/4 AND 1/2 ± ACRE PROPERTIES WITH COMMON OPEN SPACE



REV. NO.	DATE	DESCRIPTION

VISTA RANCHO DEVELOPMENT  
 SKETCH PLAN - ZONE CHANGE

SHEET NO. **1**

# Hauser Letter (Pg 1 of 2)



Reference: Case Z15-005/THURSTON

Subject: Taylor Road Development, LLC, Kent Thurston, Agent are requesting a Zone Change on 72.8- acres of a 111.5 acre lot from an ER5 (Residential, 1/3-acre minimum new lot size, single family site built homes) Zoning District to an ER6 (Residential, 5,000 sq. ft. minimum new lot size, single family site-built homes) Zoning District. The applicant is requesting the zone change as part of a proposed multi-density residential subdivision. Subject property is located northwest of the City of Las Cruces, ease of El Camino Real, is undeveloped, therefor, does not currently have an address. The parcel is described as a tract of land situated in Dona Ana County, about 1 mile south of the old town of Dona Ana, in the Dona Ana Bend Colony Grant and in Sections 23, 24, 25, 26, Township 22 south, Range 1 East, of the U.S.R.S Surveys as recorded August 10, 2004, with Instrument #0426120, in the Office of the Dona Ana County Clerk's office, Parcel ID #03-05802.

Date January 12, 2016

Dear Steve Meadows and ETZ Commissioners,

I have concern with the proposed zoning change and lack of detail as it relates to runoff plan and infrastructure from the above state property. The proposed increase in density from ER5 to ER6 is quite significant. As a resident of 150 Milestone Ct, for over ten years now I have witnessed the runoff from the above stated parcel of property onto the lower lying occupied lots on El Camino Real and Taylor, Lots on Milestone Ct, Dressage Ct, Eventing Ct. and Gypsy Ln. Mild to moderate storms render runoff from the currently undeveloped property. High intensity short duration storms render significant amounts of runoff in addition to sediment loading onto lower lying properties and ponding areas that must be removed. Many of you may recall the flooding that occurred at Columbia Elementary when it first opened, that runoff originates east of Interstate 25, runs through the subject property and eventually is deposited on lower lying developed properties east of El Camino Real. Runoff is also significant on Taylor Road originating at Elks and terminating at El Camino Real. As a main traffic arterial to the proposed subdivision it is highly suggested that planners take this into consideration for safety and health of those dwellings and people living below the subject property.

The proposed increase in lots from ER5 to ER6 is concerning. Zoning and long range planning was vented through the Extra-Territorial Zoning Authority and Commission years ago providing a basis for current and future residents as our community grows and prospers. The proposed zoning change from ER5 to ER6 is not consistent with any adjacent zoning around the area. **I recommend the applicant and the Commission considers no net increase in the number of lots / dwellings on the 111.5 acre parcel.** If the zone change from ER5 to ER6 is being considered I would like to recommend to the commissioners that the ER6 be located within close proximity to Columbia or Vista and larger lots phased in along the boundary with ER2M to the west, again with no net increase in the number of lots / dwellings.

Page 1 of 2

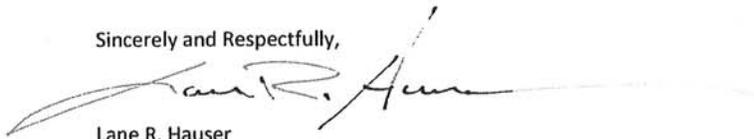
## Hauser Letter (Pg 2 of 2)

I applaud the owner / applicant regarding Case Z15-005-Thurston for their initiative and desire to subdivide and make available to the community of Dona Ana and Las Cruces increased opportunities for housing, economic, and county development. This type of entrepreneurial drive is what has made America such a great country, fostering growth and development which we must never lose sight of.

However, with the influx of new families, this proposed growth must be managed wisely, as the fathers of the ETZ envisioned; current commissioners must weigh proposals, community input, and environmental considerations, and make the best informed decision for the "Community" **not** for the applicant. In this case I believe some middle ground can be achieved.

If now is not the appropriate time to discuss and address drainage issues and concerns I request to be notified of the appropriate process and time.

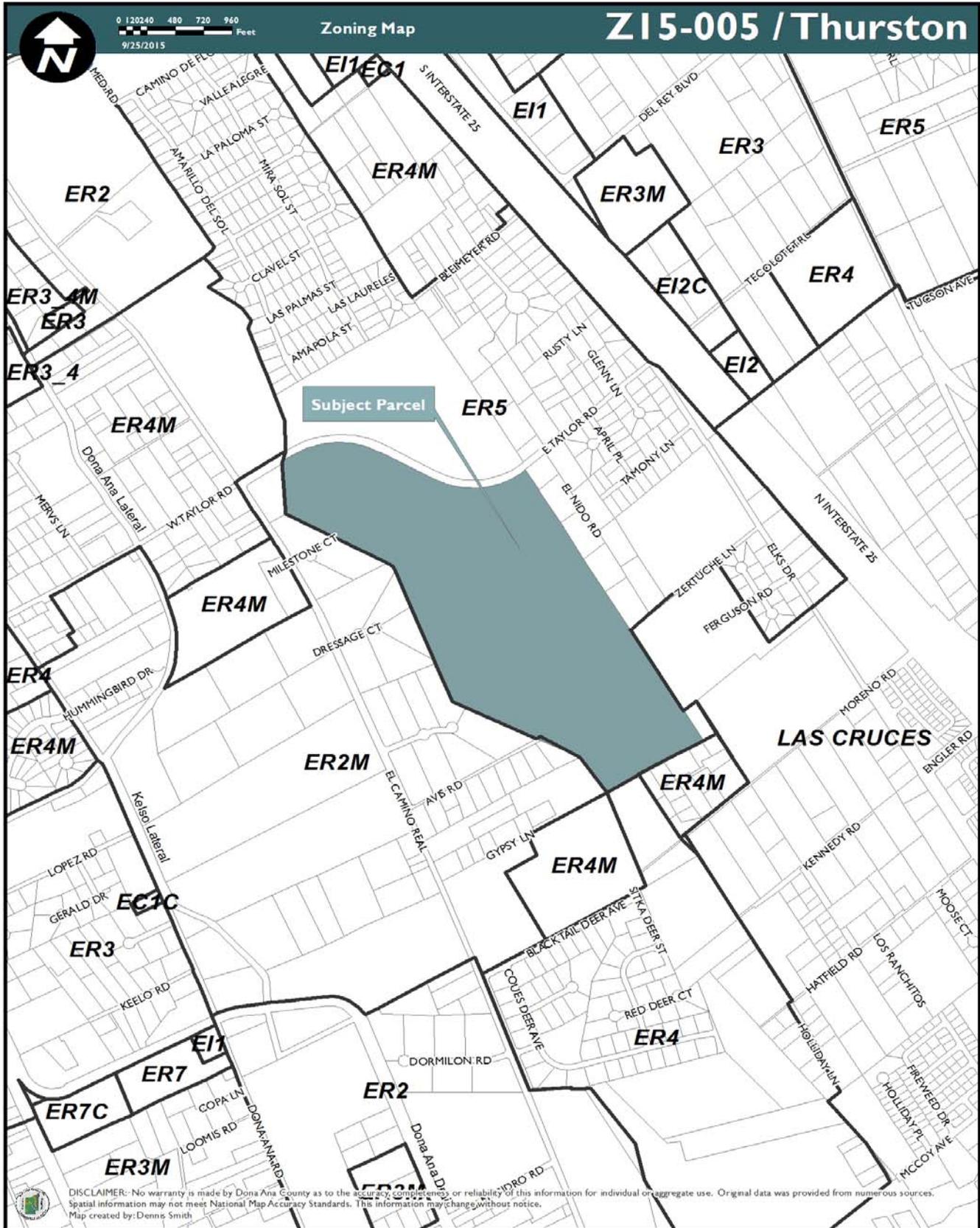
Sincerely and Respectfully,

A handwritten signature in black ink, appearing to read "Lane R. Hauser", with a long horizontal flourish extending to the right.

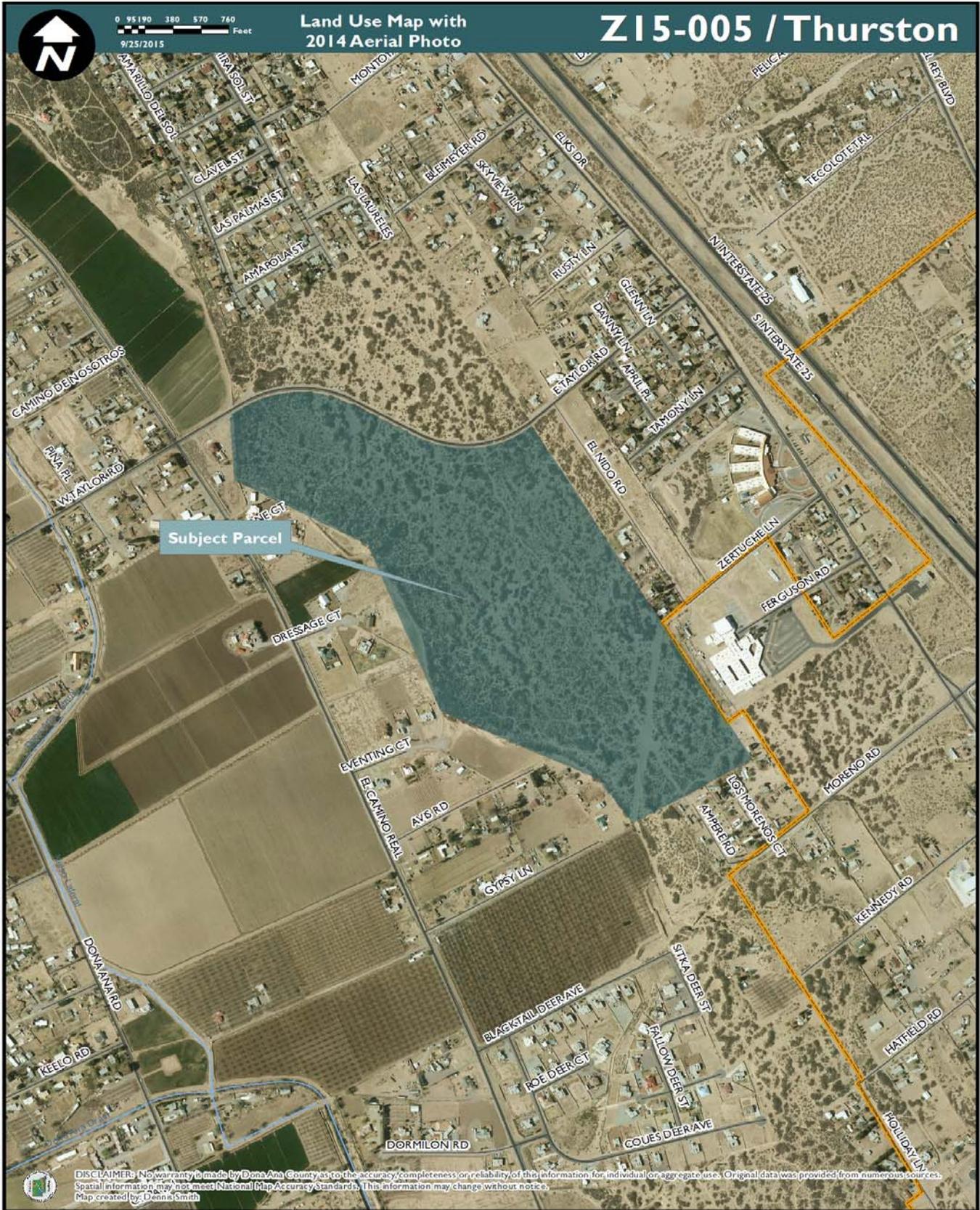
Lane R. Hauser

#24 on  
Notification list

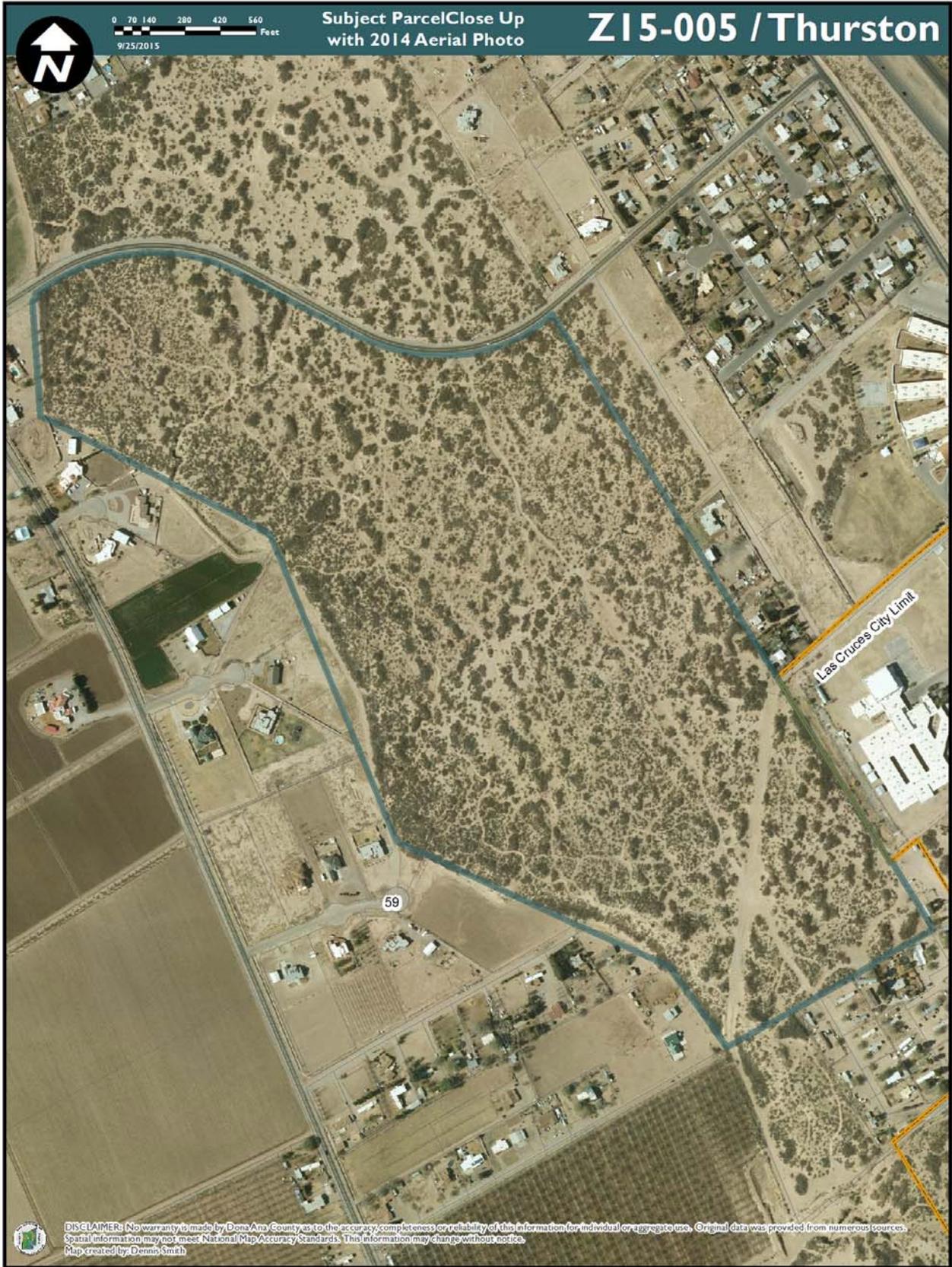
# Zoning Map



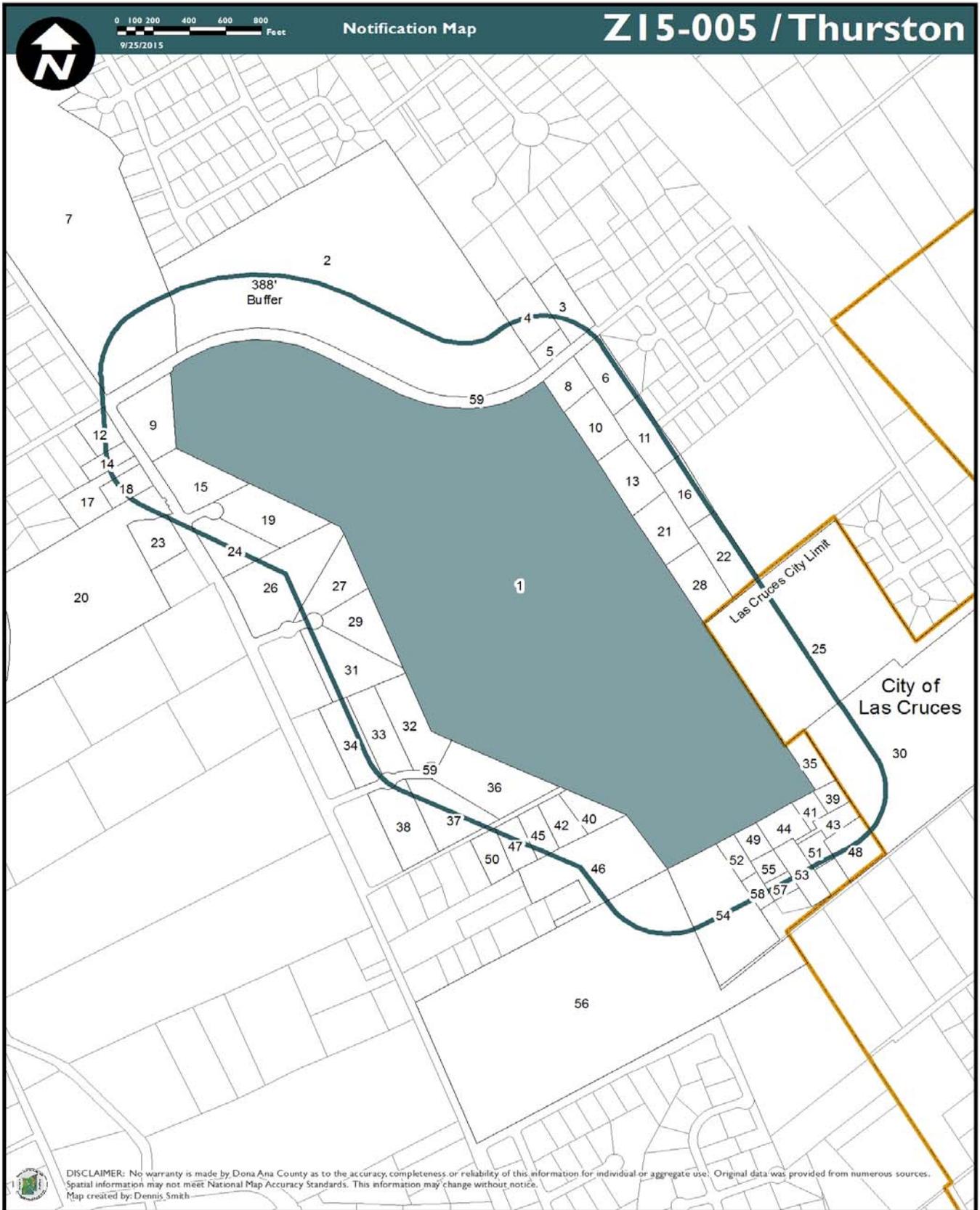
# Area Land Use Aerial



# Close-up Aerial of Parcel



# Area of Notification Map



# Area of Notification Aerial



# Area of Notification List

CODE	MAP_CODE	NAME	ADDRESS1	CITY	STATE	ZIP
1	4-006-131-075-029	TAYLOR ROAD DEVELOPMENT LLC	1880 E LOHMAN AVE	LAS CRUCES	NM	88001
2	4-005-130-498-470	TAYLOR ROAD DEVELOPMENT LLC	1880 E LOHMAN AVE	LAS CRUCES	NM	88001
3	4-006-130-162-490	HERNANDEZ RUDY Z & EILEEN	1095 E TAYLOR RD	LAS CRUCES	NM	88007-6904
4	4-006-130-143-497	WEISS DAVID Z & CAROL R	23 ROCLARE LN	ST LOUIS	MO	63131
5	4-006-130-155-515	RIVERA JAMES M	1075 E TAYLOR RD	LAS CRUCES	NM	88005
6	4-006-131-187-003	DESIREE N JUAREZ & TERESA CALDERON	4093 MOJAVE DR	LAS CRUCES	NM	88005
7	4-005-130-417-493	ISAACKS STEPHEN J	5514 CAMINO REAL	LAS CRUCES	NM	88005
8	4-006-131-168-008	DEYOUNG IRENE Z & JOHN D DEYONG	815 AMBERSTONE LN	SAN RAMON	CA	94582
9	4-005-131-475-003	DEMARTINO STACY	100 W TAYLOR RD	LAS CRUCES	NM	88007-5327
10	4-006-131-184-037	ZERTUCHE JACOB S ET AL	2130 GARDEN CREST DR	ROCKWALL	TX	75087
11	4-006-131-210-040	D J ALVAREZ JR & LARRY V ALVAREZ &	4626 EL NIDO TRL	LAS CRUCES	NM	88005-6974
12	4-005-131-407-041	SHAYDAK MARK MICHEL	701 TURNER AVE	LAS CRUCES	NM	88005-1326
13	4-006-131-203-065	ZERTUCHE GAVINO S & SHIRLEY S	925 E PICACHO	LAS CRUCES	NM	88001-2303
14	4-005-131-407-057	MARTINEZ LUPE A	4873 EL CAMINO REAL	LAS CRUCES	NM	88007
15	4-005-131-499-041	DECKER TIMOTHY H & ELIZABETH L	151 MILESTONE CT	LAS CRUCES	NM	88007
16	4-006-131-233-077	NEVAREZ DELFINA Z & JUAN B &	157 N ESTRELLA	EL PASO	TX	79905-1129
17	4-005-131-399-083	TARAZON GLORIA F	2716 CHEYENNE DR	LAS CRUCES	NM	88011-9096
18	4-005-131-416-073	ANDERSON JERRY L & MARY F	4807 EL CAMINO REAL	LAS CRUCES	NM	88007
19	4-005-131-517-044	JENSEN STEPHEN & AMBER	180 MILESTONE CT	LAS CRUCES	NM	88007
20	4-005-131-393-130	WEST MESA RENTALS LLC	4400 S CLAY ST	ENGLEWOOD	CO	80110
21	4-006-131-222-094	MEZA MARTIN & PAULA	4565 EL NIDO RD	LAS CRUCES	NM	88007
22	4-006-131-255-111	ORTEGA PAUL Z & GILBERT Z ORTEGA	1700 S CHAPARRO	LAS CRUCES	NM	88001
23	4-005-131-438-068	NAKAYAMA JOE H (ESTATE OF)	4725 EL CAMINO REAL	LAS CRUCES	NM	88005-5367
24	4-005-131-497-061	HAUSER LANE R & JIMMIE K	150 MILESTONE CT	LAS CRUCES	NM	88007
25	4-006-131-310-153	LAS CRUCES SCHOOL DISTRICT #2	505 S MAIN STE #249	LAS CRUCES	NM	88001
26	4-005-131-514-068	NEW JASON S & TINA MARIE	2513 MAYFIELD LN	LAS CRUCES	NM	88005
27	4-005-131-524-131	COSTA-GUERRA BORIS J & L A DORAME &	427 MCARTHUR DR	LAS CRUCES	NM	88001
28	4-006-131-243-124	DANIEL H ZERTUCHE & EVA L	1105 ZERTUCHE RD	LAS CRUCES	NM	88007
29	4-006-131-008-154	BOWEN ANDREW P & AMANDA K	PO BOX 1734	MESILLA PARK	NM	88047
30	4-006-131-375-210	TIERRA DEL SOL HOUSING CORP	PO BOX 2626	ANTHONY	NM	88021
31	4-006-131-012-165	CAMACHO ISMAEL & RENEE L	180 DRESSAGE CT	LAS CRUCES	NM	88007
32	4-006-131-048-223	BACA CEDRIC M & HILDA E	201 EVENTING CT	LAS CRUCES	NM	88007
33	4-006-131-026-219	GOMEZ DANIEL R & CYNTHIA A	4106 PAPAGO CT	LAS CRUCES	NM	88005
34	4-006-131-015-222	JOSE A LIMON & GRACIELA	PO BOX 179	FAIRACRES	NM	88033
35	4-006-131-302-226	SMITH CHRIS	1010 MAPLE DR	LAS CRUCES	NM	88001
36	4-006-131-098-248	BARELA GILBERT & OLIVIA	PO BOX 590	DONA ANA	NM	88032
37	4-006-131-067-267	LIND DAVID & TAMERA	190 EVENTING CT	LAS CRUCES	NM	88007-7377
38	4-006-131-043-275	BOSCH DANINY E & CORNEAL W	160 EVENTING CT	LAS CRUCES	NM	88007
39	4-006-131-317-250	MORENO CHRISTOPHER &	PO BOX 306	LAS CRUCES	NM	88004-0306
40	4-006-131-148-260	BUKLEY MARY MARGARET	460 AVIS RD	LAS CRUCES	NM	88007-7381
41	4-006-131-305-260	MORENO TERESA & CHRISTOPHER MORENO	PO BOX 306	LAS CRUCES	NM	88004
42	4-006-131-134-265	REL REYMUNDO C	PO BOX 86	FAIRACRES	NM	88033-0086
43	4-006-131-322-265	MORENO CHRISTOPHER & TERESA MORENO	PO BOX 306	LAS CRUCES	NM	88004
44	4-006-131-291-275	MORENO BOBBY C & SOLEDAD	4585 LOS MORENOS CT	LAS CRUCES	NM	88007
45	4-006-131-120-256	APODACA WASH G	4338 EL CAMINO REAL	LAS CRUCES	NM	88005-5364
46	4-006-131-114-319	CISNEROS NELLIE L	5273 ENTERPRISE AVE	LAS CRUCES	NM	88012
47	4-006-131-105-250	ZAPIEN ERNEST & DOLORES	350 AVIS RD	LAS CRUCES	NM	88007
48	4-006-131-333-284	ESTRADA CARMEN M & RAYMOND CARDENAS	1010 MAPLE ST	LAS CRUCES	NM	88001
49	4-006-131-275-281	ZAMORA ARMANDO	4592 AMPERE RD	LAS CRUCES	NM	88007
50	4-006-131-090-291	MYERS JEANINE M	1835 CAMINO DEL REX	LAS CRUCES	NM	88001
51	4-006-131-310-285	RODRIGO ESTRADA & MIRIAM	PO BOX 16167	LAS CRUCES	NM	88004
52	4-006-131-265-290	PRIETO MANUEL & MARIA	PO BOX 101	FAIRACRES	NM	88033
53	4-006-131-295-285	RGM PLATINUM LLC	3290 DONA ANA RD	LAS CRUCES	NM	88007
54	4-006-131-260-309	TAYLOR ROAD DEVELOPMENT LLC	1880 E LOHMAN AVE	LAS CRUCES	NM	88001
55	4-006-131-285-296	MORENO OSCAR L	4568 AMPERE RD	LAS CRUCES	NM	88007
56	4-006-131-180-363	MCMILLAN ARNOLD D	416 BASON	LAS CRUCES	NM	88005-3717
57	4-006-131-273-294	DUBOIS YVONNE R & ROBERT E SR	PO BOX 112	LAS CRUCES	NM	88004
58	4-006-131-277-310	GUERRERO TEODORE & ROSEMARY	1072 MADERO	LAS CRUCES	NM	88004
59		DAC ROAD DEPT.	2025 E. GRIGGS	LAS CRUCES	NM	88001