



EXTRA-TERRITORIAL ZONING AUTHORITY

DOÑA ANA COUNTY COMMUNITY DEVELOPMENT DEPARTMENT
Doña Ana County Government Complex • 845 North Motel Boulevard
Las Cruces, New Mexico 88007 • Office: (575) 647-7237

MEETING DATE: May 18, 2016

CASE #: V16-001

REQUEST: Variances to front, rear, and side yard setbacks

PURPOSE: To facilitate an ETZ subdivision

**PROPERTY OWNER/
APPLICANT/AGENT:** Jennie Limon, Moy Surveying,
Agent

LOCATION: 4777-1,2,3 Hwy 28
Las Cruces, NM 88005

LEGAL DESCRIPTION: U.S.R.S. Tract 13-22C,
recorded Oct. 30, 2012, in the
DAC Clerk's Office with
Instrument #1226901.

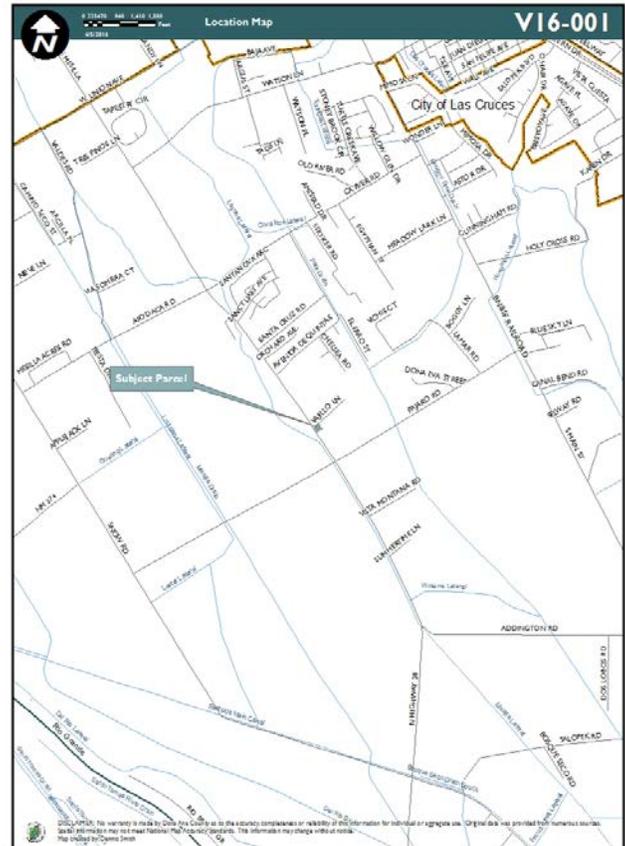
EXISTING ZONING: ER6

PROPERTY SIZE: 0.55-acres

PARCEL ID #: 03-29465

RECOMMENDATION: Conditional Approval

CASE MANAGER: Steve Meadows, Planner



Report Contents: (1) Cover Page (2) Applicable Policies and Ordinances (3) Staff Analysis (4) Site Plan and Supporting Documents (5) GIS Information and Maps (6) Public Notification.

SURROUNDING ZONING AND LAND USES

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

BACKGROUND

Existing Conditions & Land Use/Zoning:

The subject parcel is a 0.55-acre rectangular shaped residential parcel. It is located within an ER6 (Residential, 5,000 sq. ft. minimum new lot size, single family, site-built homes) Zoning District. Three residences are located on the property. Two were constructed in 1946 and the third in 1973. Water and wastewater services are provided by San Pablo Domestic Water Consumers Association. Two five foot (5') utility easements are located near the northern portion and near the rear (south) property line that traverses the property from east to west. Access is from NM Highway 28, classified as a principal arterial by the Mesilla Valley MPO. The property was the subject of a Zone Change from ER3 to ER6 approved by the ETA in 2011 (Case #Z11-003).

The Request:

The Variance request has been submitted in connection with an ETZ Subdivision (Romero Tracts Subdivision, *Page 10*) of the subject property (a lot split) for an estate settlement for heirs. The property contains three existing residences (2 constructed in 1946 and 1 constructed in 1973) and the proposed lot split creates two setback issues along with three existing setback issues on the property (See as built Survey - *Page 11*).

The applicant is requesting Variances from:

1) Front yard setback:

- Twenty feet (20') to eighteen feet nine and six-tenths inches (18' 9.6")
- Twenty feet (20') to four feet nine and six-tenths inches (4' 9.6")

2) Rear yard setback:

- Twenty-five feet (25') to one foot nine and six-tenths inches (1' 9.6")
- Twenty-five feet (25') to sixteen feet eleven and three-quarters inches (16' 11.75")

3) Side yard setback:

- Seven feet (7') to two feet three and one-tenth inches (2' 3.1")

APPLICABLE PLANS, POLICIES AND CRITERIA FOR APPROVAL

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

Section 2.3 Granting Variances

Section 2.3.A Application

An application for a variance shall be submitted to the Extra-territorial Zoning Authority by filing a copy of the application with the Doña Ana County Planning Director. Application shall be processed in accordance with Subsection 2.1.C of this Article (see 2.6.D, Administrative Variances).

Section 2.3.B Granting Variances

A variance may be granted by the Extra-territorial Authority if it concludes that strict enforcement of the Ordinance would result in practical difficulties or unnecessary physical hardships for the applicant resulting from the size, shape or existing structures thereon, or from topographic or physical conditions on the site or in the immediate vicinity, and that by granting the variance, the spirit of this Code will be observed, public safety and welfare secured and substantial justice done. Cost and inconvenience to the applicant of strict or literal compliance with the regulation may be given consideration, but shall not be the sole reason for granting a variance. Variances will be considered in the following cases:

1. Height, yard, **setback**, lot area, site coverage and gross floor area requirements of this Code;
2. Parking and loading requirements of this Code;
3. Sign and fence requirements of this Code;
4. Limitations stated for minimum distances permitted;
5. Strict application of the terms of this Code relating to the use, construction or alteration of buildings and/or signs.

Section 2.3.C Required Findings

Before recommending or granting a variance, the ETZ Authority shall make the following findings:

1. Granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties with three hundred fifty (350) feet and also in the same land use district.
2. Granting of the variance will not be detrimental to the public health, safety, welfare or be materially injurious to properties or improvements in the vicinity.

3. Strict or literal interpretation and enforcement of the specified performance standard or regulation would result in unnecessary physical hardship inconsistent with the purposes of this Code.

Section 2.3.D Surrounding Properties

In granting variances, the Extra-territorial Authority may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable and will not adversely affect surrounding properties.

Section 2.3.E Duration of Variance

A variance may be issued for an indefinite duration or for a specified duration only.

Section 2.3.F Nature of Variances Specified

The nature of the variance and any conditions attached to it shall be entered on the face of the zoning permit or the zoning permit may simply note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirements of the Code.

Section 2.3.G Hearing Variance Requests

The Extra-territorial Authority shall hear and decide all variance requests as expeditiously as possible. Public notification of the proposed action should be accomplished in accordance with Subsection 2.1.G of this Article.

Section 2.3.H Voting of Variance Requests

Decisions on any requests for variances of this Code shall be approved by simple majority of the total membership of the Extra-territorial Authority.

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	5000 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 five (5) 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) persons 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.

AGENCY COMMENTS

DAC Engineering: 1) All stormwater runoff from all impervious areas must be contained within lot. Provide ponding calculations. Pond must contain 125% of required volume. 2) Eave to eave setbacks between buildings must be 10' apart. 3) When submitting other permits may arise.

DAC Flood Commission: 1) The subject property found not to be located within a FEMA Special Flood Hazard Area and can be further identified on FIRM No. 35013C0650 E. The flood zone description of the subject property is known as Flood Zone X (Areas determined to be outside the 500-year floodplain). 2) Please be aware that the subject property is still susceptible to localized flooding despite not being identified within a FEMA Special Flood Hazard Area. 3) Additional reviews may warrant additional comments.

DAC Fire Marshal: Variances approved only, any future structures will be required to meet all fire code requirements.

DAC Building Services: The proposed subdivision of the property reduces the building setbacks from the property line for two of the three structures. Structures that are located less than 5' from the property line are subject to more stringent requirements of the building code; specifically to fire resistive construction. Any future construction to those structures may require them to come into compliance with these fire resistive requirements.

DAC Rural Addressing Coordinator: No comments.

DAC Zoning Codes: No open case.

DAC Codes: No violations. 4-15-16

NMED: *Wastewater Treatment and Disposal: Water Supply/Water Quality, Solid Waste Disposal, Surface Water Bureau:* No comments received. **(Staff note: Waste water disposal from San Pablo Mutual Domestic Water Consumers Association.)**

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

Mesilla Valley MPO: NM 28 is a principal arterial.

CLC Planning Dept: No comments, however if annexed into the City, any modifications or changes to the existing structures will need to meet current standards.

EBID: No comments received.

NM State Engineer's Office: No water right issues as a result of this request.

NOTICE / NOTIFICATION

- 22 letters of notification mailed out on April 29, 2016.
- Legal Notification was posted in the Las Cruces Sun-News on Sunday, May 1, 2016.
- Signs were posted on the property in a timely manner.

- Agenda was posted on County Web Site.
- No correspondence in support or opposition was received by staff.

STAFF ANALYSIS

Variance request V16-001/Limon was submitted on March 31, 2016. The requested Variances are:

1) Front yard setback:

- Twenty feet (20') to eighteen feet nine and six-tenths inches (18' 9.6")
- Twenty feet (20') to four feet nine and six-tenths inches (4' 9.6")

2) Rear yard setback:

- Twenty-five feet (25') to one foot nine and six-tenths inches (1' 9.6")
- Twenty-five feet (25') to sixteen feet eleven and three-quarters inches (16' 11.75")

3) Side yard setback:

- Seven feet (7') to two feet two feet three and one-tenth inches (2' 3.1")

The applicant is requesting these Variances as a result of a proposed lot split of a 0.55 acre parcel into two lots pursuant to an estate settlement.

Two of the existing residences were constructed in 1946 and the other residence was constructed in 1973. There are three existing setback encroachments due to the original placement of the existing structures and two encroachments (*Page 11*) are a result of the proposed subdivision. The 0.55-acre subject parcel is located within an ER6 (Residential, 1.0 acre minimum new lot size, single-family site-built homes) Zoning District (*Page 15*). In order to approve the ETZ Subdivision, the City of Las Cruces staff requires the setback encroachments to be approved via a Variance Request.

There are no approved Variances for setbacks within the ER6 Zoning District as it is a one lot Zoning District comprised of the subject parcel (Zone Change Case #Z11-003/Limon). However, aerial views of the adjacent parcels and other parcels within the immediate vicinity (*Page 12*) indicate that the historic development pattern of the area includes several existing structures with setback issues with existing structures. Therefore, approval of the Variance request would not be considered a special privilege as the area was developed prior to the establishment of the ETZ with setbacks that do not conform to current standards.

Section 2.3.C; Required Findings

To grant a Variance the ETA must find that (*Applicant's response in italics. Staff analysis in bold*):

A): Granting the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties within three hundred fifty (350) feet and also within the same land use district. *The surrounding property has been divided into several lots throughout the years. They range in size as well as zoning. The zoning on this parcel was change to accommodate the three homes built on this tract. The homes have been in existence for more than forty years. The residences in the adjoining parcels and immediate neighborhood (Page 12) were*

developed, prior to the establishment of the ETZ, on small lots and many of the structures do not meet the current setback requirements.

B): Granting the Variance will not be detrimental to the public health, safety, welfare or be materially injurious to properties or improvements in the vicinity. *No, all property improvements are existing and no improvements are proposed. There will not be any change to the density thus no change in traffic or any other issue exists.* **The distance between the two northern dwellings is approximately six feet six inches (6' 6") and the proposed lot line does not split that distance, however, it is sufficient to ensure adequate fire protection to not require additional fireproofing of the two structures (See DAC Fire Marshal comments – Page 6). Any subsequent additions or alterations to either structure will require increased scrutiny of those fire protections which will ensure the public health, safety, and welfare is protected. No evidence was received alleging the approval of a variance would be materially injurious to any properties or improvements in the area.**

C): Strict or literal interpretation and enforcement of the specified performance standard or regulation will not result in unnecessary physical hardship inconsistent with the purposes of this code. *If this request is not granted then the ownership of the 3 homes will get further complicated as the land pass on to each of the sibling heirs, it is requested that each sibling be granted their portion of the property as original proposed by the siblings' parents.* **Due to the size of the property, the locations of the existing residential structures including existing setback encroachments and the historic development pattern of the neighboring parcels, denial of the requested Variances would be an unnecessary physical hardship and would not uphold the spirit of the Code as it would prevent the family from fulfilling the wishes of the siblings' parents to distribute the various properties to the immediate family members.**

In staff's opinion, the request has met the Section 2.3.C Required Findings and by approving the Variance Request the spirit of the code will be upheld and substantial justice done.

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. Therefore, the Las Cruces ETZ Authority (ETA) has jurisdiction to review this case.
2. The subject property is described as a tract of land south of the Town of Mesilla, N.M.P.M. of the U.S.R.S. Surveys being Tract 13-22C, as recorded in the Office of the Doña Ana County Clerk on Oct., 30, 2012 with Instrument #1226901.
3. The subject property was the subject of Zone Change Z11-003/Limon approved September 21, 2011, for a change from ER3 to ER6 to facilitate the Subdivision application.
4. Water and wastewater services are provided to the property by San Pablo Mutual Domestic Water Consumers Association.
5. The subject property is the subject of ETZ Subdivision Romero Tracts Subdivision, a proposed lot split as part of an estate settlement of a Transfer on Death Deed.

6. ER6 Zoning Districts require front, rear and side yard setbacks of twenty feet (20'), twenty-five feet (25'), and seven feet (7'), respectively per Section 3.1.G.1.b.
7. The historic development pattern in the surrounding neighborhood includes several structures, which were in place prior to the establishment of the ETZ, encroaching on current setback requirements.
8. The Variance request meets all three of the Required Findings of Section 2.3.C.

STAFF RECOMMENDATION

Based on staff's findings, staff analysis and the applicants' request meeting all three requirements of Section 2.3.C Required Findings, staff recommends **Conditional Approval of Variance Request Case # V16-001/Limon** and allow Variances from:

1) Front yard setback:

- Twenty feet (20') to eighteen feet nine and six-tenths inches (18' 9.6")
- Twenty feet (20') to four feet nine and six-tenths inches (4' 9.6")

2) Rear yard setback:

- Twenty-five feet (25') to one foot nine and six-tenths inches (1' 9.6")
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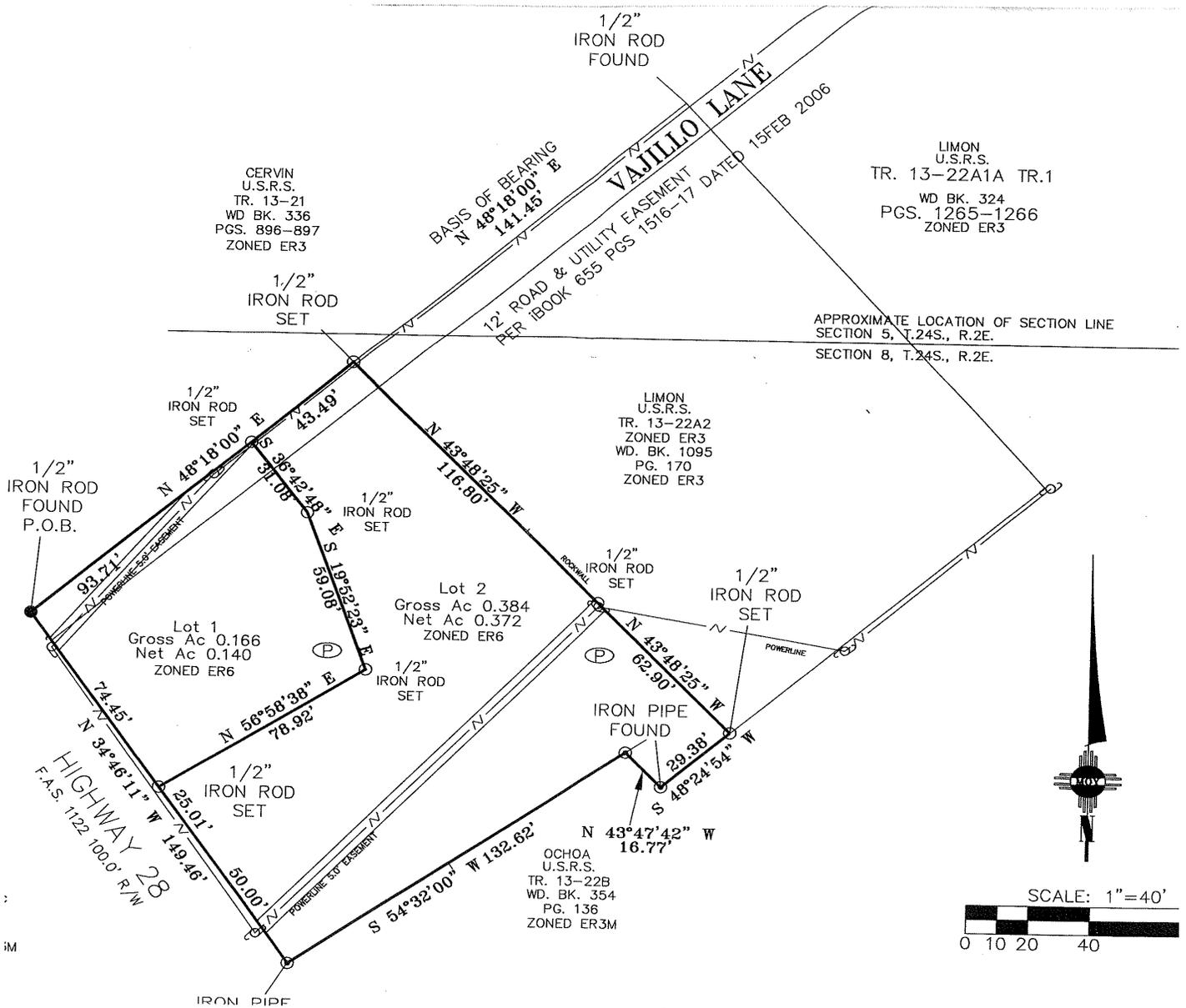
3) Side yard setback:

- Seven feet (7') to two feet three and one-tenth inches (2' 3.1")

Staff proposes the following condition for approval of the Variance request:

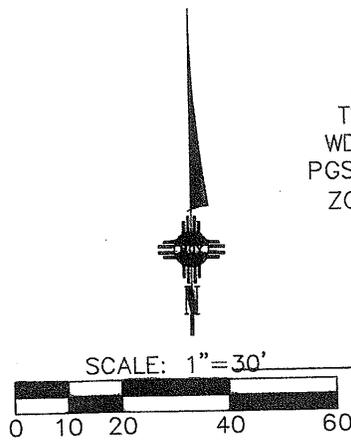
- 1) *Any new Building Permit applications for the two northern dwellings on the original subject parcel shall meet all development and fire code requirements.*

Romero Tracts Subdivision Plat



Locations of Requested Variances

1" = 40'



CERVIN
U.S.R.S.
TR. 13-21
WD BK. 336
PGS. 896-897
ZONED ER3

BASIS OF BEARING
N 48°18'00" E
141.45'

VAJILLO LANE
12' ROAD & UTILITY EASEMENT
PER BOOK 655 PGS 1516-17 DATED 15FEB 2006

APPROXIMATE LOCATION OF
SECTION 5, T.24S., R.2E.
SECTION 8, T.24S., R.2E.

LIMON
U.S.R.S.
TR. 13-22A2
ZONED ER3
WD. BK. 1095
PG. 170
ZONED ER3

1/2" IRON ROD FOUND P.O.B.

1/2" IRON ROD SET

Lot 1
Gross Ac 0.166
Net Ac 0.140
ZONED ER6

Lot 2
Gross Ac 0.384
Net Ac 0.372
ZONED ER6

1/2" IRON ROD SET

IRON PIPE FOUND

N 43°47'42" W
16.77'

OCHOA
U.S.R.S.
TR. 13-22B
WD. BK. 354
PG. 136
ZONED ER3M

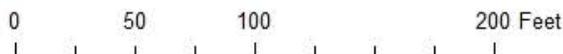
HIGHWAY 28
F.A.S. 112 100.0' R/W

JJAN
S.R.S.
13-22C
35 AC.
DEL I.D.
22704
D ER3M

Neighborhood Setback Pattern



CASE #V16-001 / Limon Neighborhood Development Pattern



This map was created by the Doña Ana County G.I.S. to assist in the administration of local regulations. Neither the County of Doña Ana or the Doña Ana County Geographic Information System assumes any legal responsibilities for the information contained in this map. Users noting errors or omissions are encouraged to contact the County of Doña Ana at (505) 647-7237.

D.A.C. Geographic Information Systems
845 N. Motel Blvd.
Las Cruces, NM 88007
(505) 647-7237



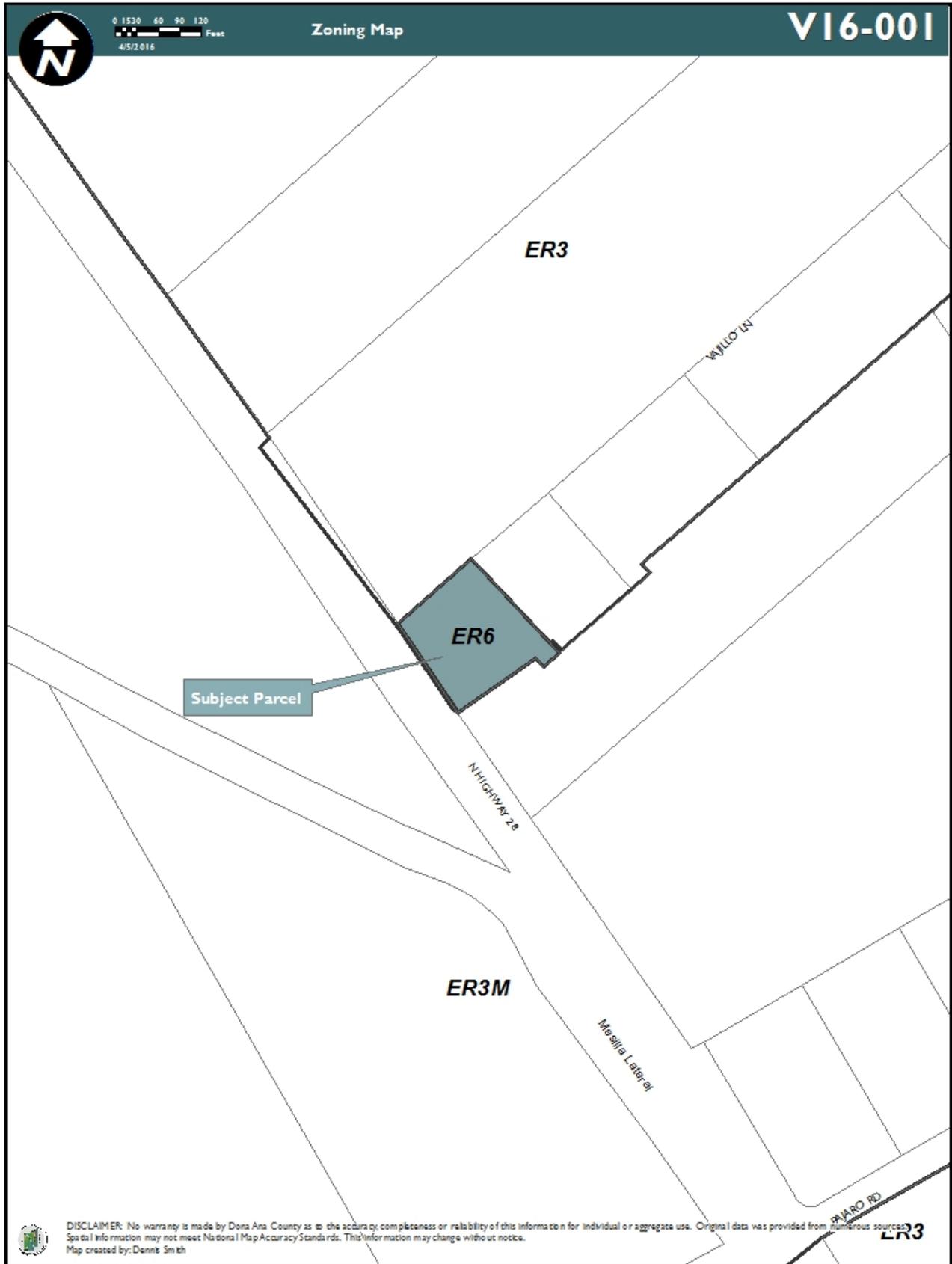
Close-up Aerial of Subject Property



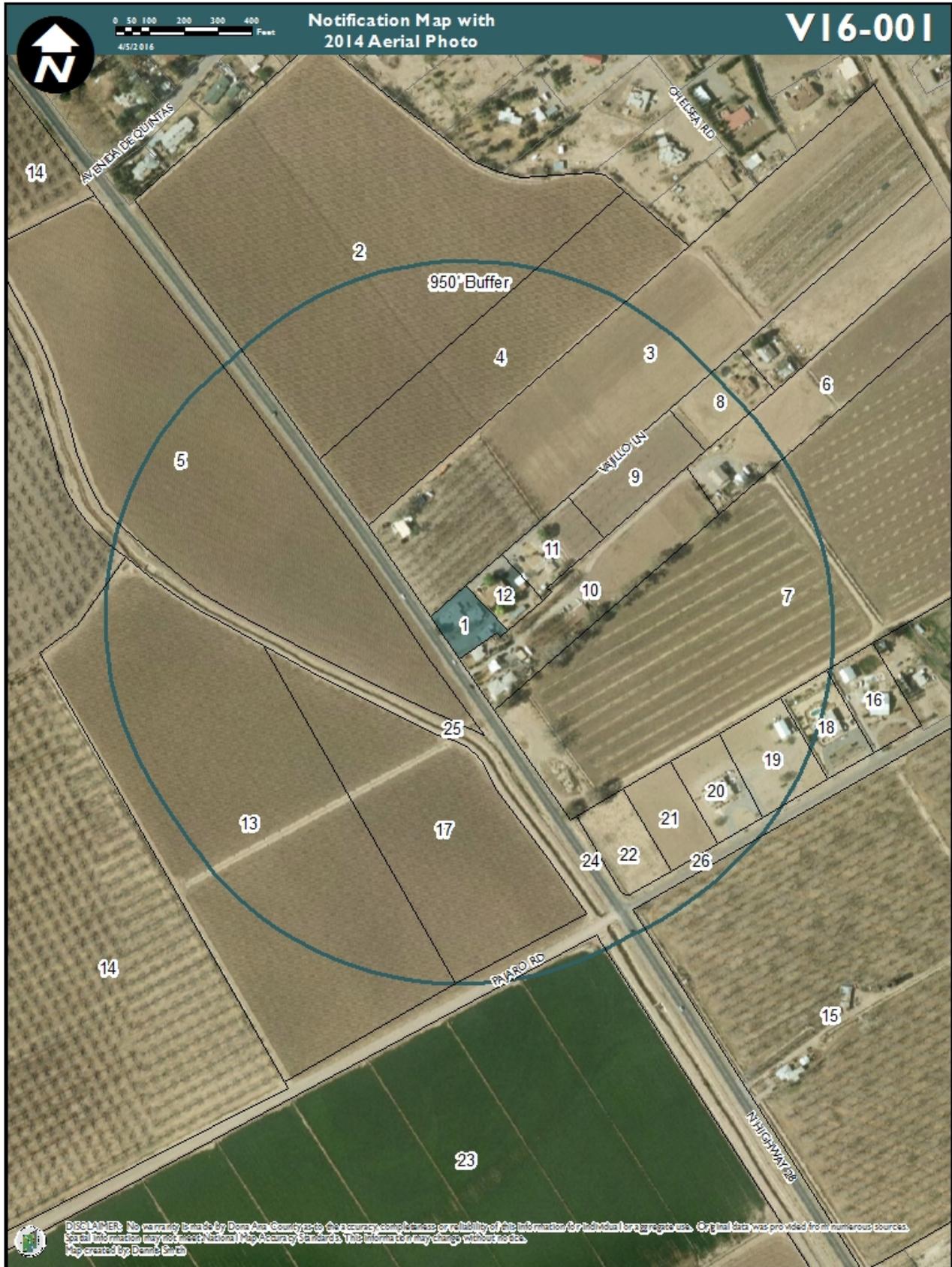
Land Use Aerial



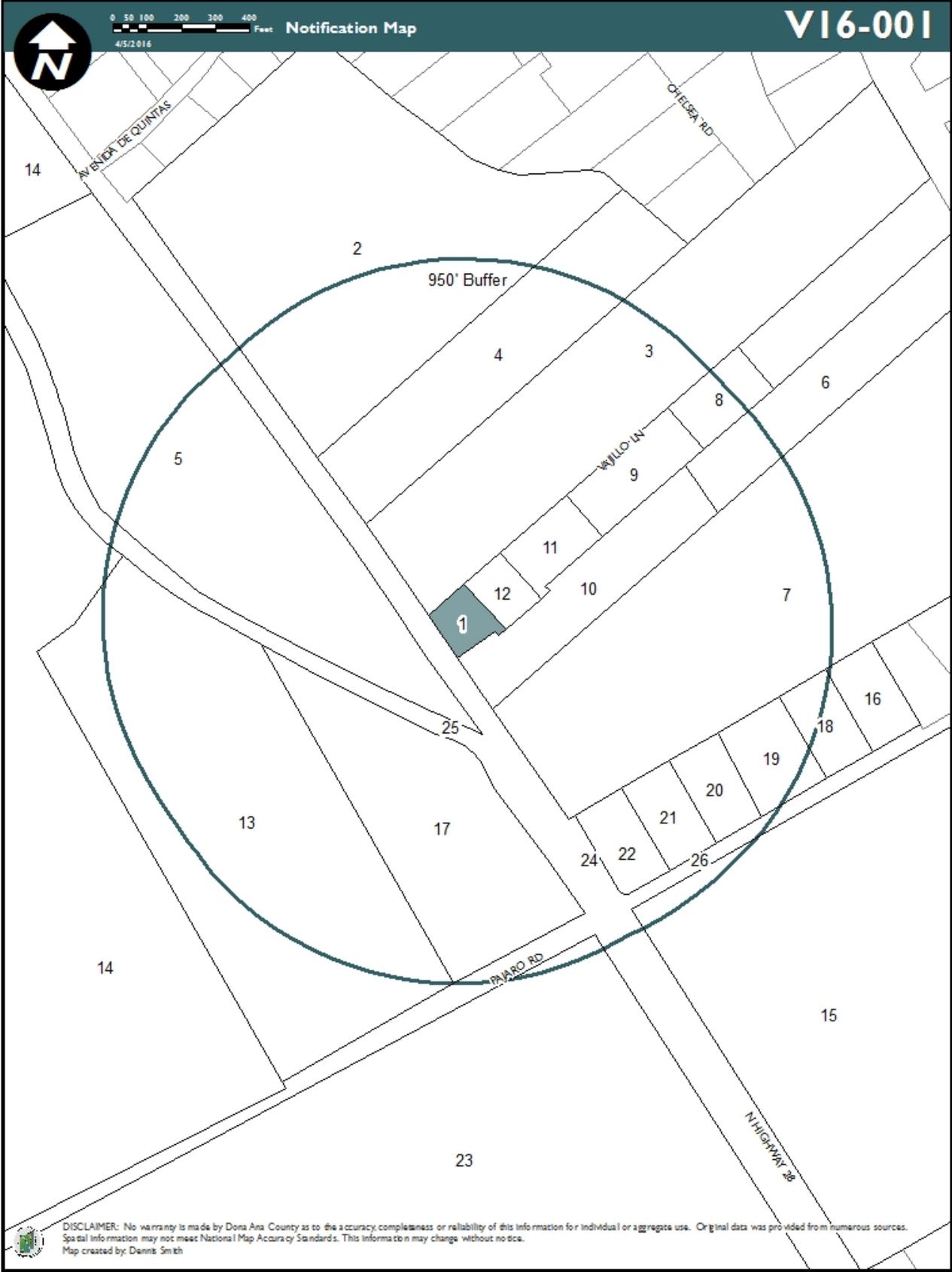
Zoning Map



Aerial of Area of Notification



Area of Notification Map



Area of Notification List

CODE	MAP_CODE	NAME	ADDRESS I	CITY	STATE	ZIP
1	4-008-139-067-485	LIMON JENNIE R	DRAWER E	MESILLA	NM	88046
2	4-008-139-042-432	JOSEPH & REBECCA LUJAN FAMILY LLC	2279 VIA MANZANA	SANTA FE	NM	87507
3	4-008-139-115-467	CERVIN GRACE H	PO BOX 553	SANTA TERESA	NM	88008
4	4-008-139-083-459	JOSEPH & REBECCA LUJAN FAMILY LLC	15 MUIR	IRVINE	CA	92620
5	4-008-140-020-018	JOSEPH & REBECCA LUJAN FAMILY LLC	2279 VIA MANZANA	SANTA FE	NM	87507
6	4-008-139-178-465	SALAZAR CARL E & BONNIE E	4811 S HWY 28	LAS CRUCES	NM	88005
7	4-008-139-180-516	BUCHANAN MARY LOU TRUSTEE	5667 N HWY 28	LAS CRUCES	NM	88005-6202
8	4-008-139-145-475	APODACA RENNETTE	1535 VAJILLO LANE	LAS CRUCES	NM	88005-3576
9	4-008-139-118-496	LIMON JOSHUA & RANDY	4777 S HWY 28	LAS CRUCES	NM	88005
10	4-008-139-111-525	OCHOA SANDRA E	4885 HWY 28 S	LAS CRUCES	NM	88005-3525
11	4-008-139-096-512	LIMON RANDALL R	4777 S HIGHWAY 28	LAS CRUCES	NM	88005
12	4-008-139-084-526	LIMON GILBERT G & JENNIE E &	PO BOX E	MESILLA	NM	88046
13	4-008-140-010-085	DAVIET FARMS LLC	4020 N HWY 28	LAS CRUCES	NM	88005
14	4-007-139-307-450	DAVIET FARMS LLC	4020 N HWY 28	LAS CRUCES	NM	88005
15	4-008-140-230-105	GOSE FARMS LLC	PO BOX 128	MESILLA PARK	NM	88047-0128
16	4-008-140-190-034	ZEPEDA JOSHUA	1704 PAJARO RD	LAS CRUCES	NM	88005
17	4-008-140-063-079	DAVIET FARMS LLC	4020 N HWY 28	LAS CRUCES	NM	88005
18	4-008-140-176-040	BALDERRAMA FRANCISCO JR & VERONICA	1708 PAJARO RD	LAS CRUCES	NM	88005-3536
19	4-008-140-159-050	MONTOYA JAVIER & ELIZABETH	1716 PAJARO RD	LAS CRUCES	NM	88005
20	4-008-140-142-058	MONTOYA JAVIER & ELIZABETH	1716 PAJARO RD	LAS CRUCES	NM	88005
21	4-008-140-128-067	DE LEON JOSE L & DELIA P	PO BOX 723	MESILLA PARK	NM	88047
22	4-008-140-116-075	GUTIERREZ DAVID & MANUELA	PO BOX 1067	MESILLA	NM	88046
23	4-008-140-115-341	BIAD PAJARO FARM LLC	PO BOX 66	MESILLA	NM	88046
24		NM STATE HWY DEPT.	8070 BATAAN MEMORIAL EAST	LAS CRUCES	NM	88012
25		EBID	530 S. MELENDRES	LAS CRUCES	NM	88001
26		DAC ROAD DEPT.	2025 E. GRIGGS	LAS CRUCES	NM	88001