

# 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, 2016

**CASE #:** SU16-010

**REQUEST:** Special Use Permit & Variance

**PURPOSE:** Permit an existing 1,195 sq. ft. accessory dwelling and a variance to side yard setback.

**PROPERTY OWNER/APPLICANT:** James & Gaylene Balcom

**LOCATION:** 4504 Sells Place  
Las Cruces, NM 88012

**LEGAL DESCRIPTION:** Lot 8 of the Mountain View Estates, as recorded February 12, 1968, with Instrument #6814197.

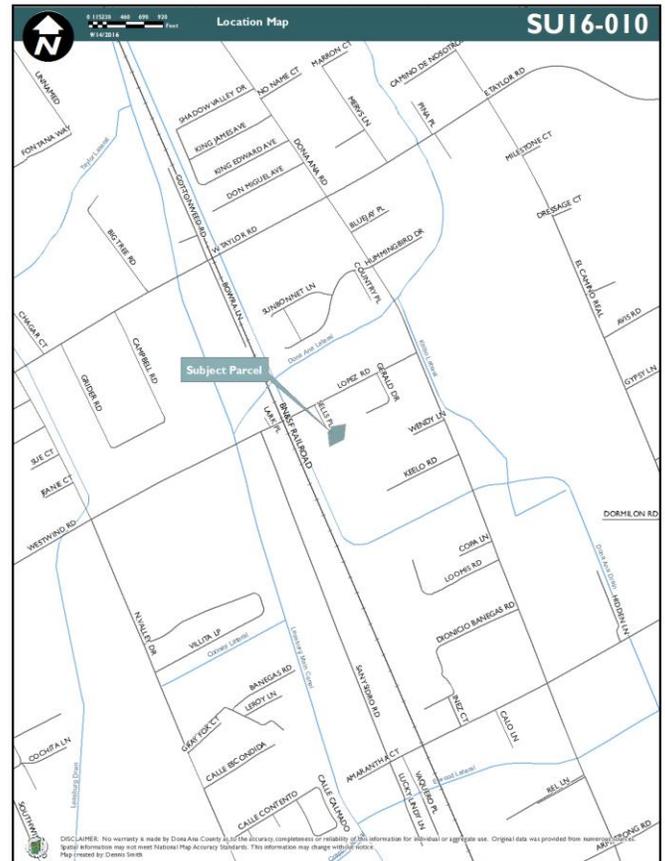
**EXISTING ZONING:** ER3

**PROPERTY SIZE:** 1.07-acre

**MAP CODE:** 03-04676

**RECOMMENDATION:** Conditional Approval

**CASE MANAGER:** Steve Meadows



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

## Surrounding Zoning and Land Uses

SITE	ZONING	LAND USE
North	ER4M Residential, 1/2 acre minimum new lot size, single family site-built and mobile homes	Residential uses
South	ER7 Residential, 5,000 sq. ft. minimum new lot size, Single-family, duplex, or apartments	Residential uses
East	ER2M Residential, 2 acre minimum new lot size, single family site-built and mobile homes	Agriculture and residential uses
West	ER2 Residential, 2 acre minimum new lot size, single family site-built homes	Agriculture and residential uses

### BACKGROUND:

#### **Existing Conditions/Zoning**

The 1.07-acre subject property is a residentially developed parcel containing a 3,425 sq. ft. site built home with a 576 sq. ft. attached garage constructed in 1972, and an unpermitted 1,195 sq. ft. accessory dwelling constructed in 2000. The subject property is located within an ER3 (Residential, 1.0-acre minimum new lot size, single family site built homes) Zoning District. Doña Ana Mutual Domestic Water Consumers Association provides water to the property. Two existing, approved septic systems (#026440 & DA130416) provide wastewater disposal for the existing residence and accessory dwelling. The parcel is accessed by Sells Place, an unpaved, private road classified as a local road by the Mesilla Valley MPO. A ten foot (10') utility easement is located along the southern property line. ***This case was postponed to date certain (Dec. 15) at the November 17, 2016, ETZ Commission hearing.***

#### **The Request:**

The applicant is requesting a Special Use Permit to permit an existing 1,195 sq. ft. accessory dwelling and a Variance from fifteen feet (15') to three feet eleven inches (3' 11") to the side yard setback.

### 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.

### 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 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.

### 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 3.1 GENERAL DISTRICTS: PURPOSES AND USES**

General districts are the residential, commercial and industrial zoning districts. This Article outlines the intended purpose of each general district and states the permitted use and special uses for each district. Refer to the Official Zoning Map and to Section 1.5 for interpretation and conflict guidelines elsewhere in this Ordinance.

#### **PERMITTED USE DEFINED**

A permitted use is a use which is listed as permitted by right in a zoning district. Non-specified uses which are similar to those specified are also permitted by right except as otherwise restricted within this Ordinance.

#### **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.

### **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. **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
<b>Minimum side setback</b>	<b>15 feet</b>
Minimum rear setback	25 feet
Maximum building height	35 feet

### **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.

## **Section 4.2 EXCEPTIONS AND MODIFICATIONS**

### **4.2.A YARD REQUIREMENTS AND EXCEPTIONS: RESIDENTIAL DISTRICTS**

The following provisions shall apply to all developments in residential zoning district.

#### **4.2.A.1 SETBACK EXCEPTIONS**

- a.** A fifteen (15) foot street setback shall be permitted on one (1) front yard of corner lots and double frontage lots and on two (2) front yards of triple frontage lots (see Appendix A for illustrations).
- b.** New dwellings may be erected as close to a front property line as the average distance established by the existing dwellings, provided the lots on the same side of the block are at least forty (40) percent developed (see Appendix A for illustrations).
- c.** An addition to a main dwelling, no larger than twenty (20) percent of the floor area of the main dwelling, shall be permitted as an extension of existing building lines which have non-conforming setbacks. Setbacks for such an addition shall be at least equal to the main dwelling setback (see Appendix A for illustrations).
- d.** On platted lots of record, a minimum setback of five (5) feet shall be permitted on the side yard of lots having a front lot line width of less than fifty-one (51) feet.
- e.** There shall be a minimum setback of one (1) foot for each foot in height of any building, other than one-family/two-family structures, abutting a residential zone.
- f.** **Setbacks for odd-shaped lots shall be determined by the Planning Director or his/her designee in accordance with Appendix A. (Pg. 21)**

#### **4.2.A.5 EASEMENT ENCROACHMENTS**

**There shall be no permanent structures located on easements without written approval of the County Planning Division.**

## **Section 7.2 DEFINITION: ACCESSORY LIVING QUARTERS**

A subordinate structure used or capable of being used as living quarter which is incidental to but located on the same lot or parcel as the primary structure and not used for the conduct of business or commercial sheltering of individuals. Accessory dwellings may be permitted by an administrative Special Use Permit provided that all requirements of Section 2.6.C of the Ordinance are met.

Accessory dwellings such as maid's quarters, guest houses and other types of accessory dwellings that do not meet the requirements of Section 2.6.C of this Ordinance shall meet the requirements of this Section.

**7.2.A** All height, size and setback requirements listed in Section 7.1 shall apply except that accessory living quarters shall be limited to one thousand six hundred (1,600) square feet in size or less.

**7.2.B** All requirements set forth by the Uniform Building Code shall be met except in residential zones that allow mobile homes, a mobile home may be allowed as accessory living quarters, provided all other provisions of this Ordinance are met.

**7.2.C** All standards and requirements of the New Mexico Environmental Improvement Division shall be met for liquid waste disposal.

**7.2.D** Accessory living quarters shall not be used for the conduct of business or commercial sheltering of individuals.

**7.2.E** Accessory living quarters are limited to one (1) per primary dwelling unit.

**7.2.F** Accessory living quarters shall require a Special Use Permit application submitted to the Planning Division for administrative approval by the Planning Director. If the Planning Division receives any written or electronic correspondence in opposition to a Special Use Permit application by the deadline specified on the public notice, then the case shall go to a public hearing before the ETZ Commission, per Section 2.1.G of the Ordinance.

## **AGENCY COMMENTS**

**DAC Engineering:** No comment.

**DAC Flood Commission:** 1) Pursuant to FEMA Flood Insurance Rate Map (FIRM) No. 35013C1080G & 35013C1081G, the property is not located within a FEMA Special Flood Zone Area. The parcel is located in FEMA "Other Areas" Zone "X", "Areas outside the 500-year floodplain", the property is located within a FEMA Special Flood Hazard Area and can be found in Flood Zone X (Areas determined to be outside the 500-yr floodplain). 2) Additional reviews may warrant additional comments. ***Additional comments:*** Runoff from the roof of the additional structure shall not drain onto the neighboring property to the south. Rain gutters or other methods of conveyance may be necessary if runoff is being drained to the neighboring property.

**DAC Fire Marshal:** Special Use Permit approved.

**ACO Codes:** No codes violations. 9/19/16

**DAC Building Services:** This is an unpermitted structure. This will require a triple fee permit and inspection of building, plumbing, mechanical and electrical, if approved.

**DAC Addressing Coordinator:** No comments.

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

**NMED:** *Waste Treatment and Disposal:* The applicant has 2 liquid waste permits for this property (DA130416 & 026440) for the property. Permit DA130416 is for a 1-bdrm guesthouse (casita) and 026440 is for a 3-bdrm house. *Water Supply/Water Quality:* NMED-DWB has no concerns about this project. *Solid Waste Disposal:* The Solid Waste Bureau has no comment nor concern regarding solid waste matters. *Surface Water Bureau:* No comment received.

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

**Mesilla Valley MPO:** Sells Place is a local road.

**CLC Planning Dept:** No issues, if property annexed it would need to come into compliance with current code, etc. (zone change, non-compliant certificate) for SUP. If property is acquired by the City, property would need to be re-platted and rezoned to REM in order to come into compliance.

**EBID:** EBID has no objections to case #SU16-010. Parcel has 0 water righted acres.

**State Eng. Office:** No water rights issues.

### **PUBLIC NOTICE / NOTIFICATION**

Twenty (20) letters for notice of a public hearing mailed on November 1, 2016 to property owners within the area of notification.

Agenda posted in the Las Cruces Sun-News on October 30, 2016.

Signs were posted on the property in a timely manner.

One letter in support (*Pg 22*) of the request was received Nov. 14, from Lynn Eichelberger (*#9, #14, & #16 on List*).

No other correspondence in opposition or support was received.

**Case was postponed to date certain (Dec. 15) on November 17, therefore, notification consisted of agenda posted in the Las Cruces Sun-News on November 27.**

No correspondence received for Dec. 15, 2016, hearing.

### **STAFF ANALYSIS**

Request #SU16-010 was originally submitted by the owner of the property, Ms. Paulette Tillman, on September 14, 2016. The property was in the process of being sold to Mr. & Mrs. Balcom at that time. The Balcom's took possession of the property on October 3, 2016, and the Special Use Permit case was transferred to them.

The status of the accessory dwelling was brought to the attention of DAC staff when the prior owner contacted staff to get approval for the accessory dwelling after the title company alerted her to the problem. Staff discussed the issues with Ms. Tillman and she submitted the application for the Special Use Permit. Staff research and a close inspection of the submitted site plan (*Pg. 13*) revealed the accessory dwelling encroaching on the fifteen foot (15') side yard setback, sitting three feet eleven inches (3' 11") from the property line, so a Variance request was added to the application.

Additionally, the accessory dwelling is encroaching upon a utility easement (*Pg. 13*). Section 4.2.A.5 (*Pg. 6*) requires approval of any easement encroachments. Staff contacted Ms. Tillman

and a letter of approval for the encroachment from El Paso Electric Co. (Pgs. 16-19) was submitted.

Section 2.1.D Evaluation Criteria and Section 7.2 Accessory Living Quarters of the ETZ Ordinance shall be evaluated by staff for a recommendation to the ETZ Commission for a decision.

## **Section 2.1.D Evaluation Criteria**

*Applicants responses page 15 (Staff's analysis in bold)*

2.1.D.1 Determination of the number of homes, population, and population demographics. **Applicant is requesting the Special Use Permit to permit the existing 1,195 sq. ft., 1 bedroom, accessory dwelling for guests and family members.**

2.1.D.2 Determination of potential traffic flows (average daily traffic) and where they will impact the transportation system. **Occasional guests will impact Sells Place and Lopez Rd. No negative comments from DAC Engineering or NMDOT received.**

2.1.D.3 Determination of need for new commercial activity. **No commercial activity is being proposed.**

2.1.D.4 Determination of potential water and sewage needs. **Water provided by Doña Ana MDWCA and two NMED approved septic permits (#026440 & DA130416).**

2.1.D.5 Evaluation of existing infrastructure capacities and an analysis of the ability of the existing system to accommodate the new development. **Septic systems and water are adequate on the property.**

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 water & wastewater infrastructure in place is permitted and has sufficient capacity for the accessory dwelling. Private unpaved (graveled) road is adequate for anticipated occasional traffic increase.**

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 evidence submitted to staff that demonstrates any rare or endangered species, or areas of historical significance at this residential site. DAC Flood Commission comments made no reference to any environmentally sensitive areas or flood zones associated with the property.**

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

2.1.D.9 Determination of impact of a proposed zone change on surrounding properties. **N/A. Minimal additional residential impact anticipated as parcel has adequate infrastructure to accommodate accessory dwelling and anticipated additional vehicle traffic. There should be no impact to surrounding properties as the accessory dwelling is existing and has been in place since approximately 2000.**

Staff has determined that the applicant's submittal meets the requirements of Section 2.1.D Evaluation Criteria of the ETZ Ordinance.

## Section 7.2 Accessory Living Quarters

Section 7.2 Accessory Living Quarters (Pgs. 6-7) must be met to approve accessory dwellings in the ETZ. The existing accessory dwelling is 1,195 sq. ft. meeting the 7.2.A requirement of less than 1,600 sq. ft. The accessory dwelling is also required to meet the current Building Code and pass all inspections on the structure to satisfy Section 7.2.B. Accessory structures must meet NMED requirements for waste water disposal and NMED has approved two septic permits (Permit #026440 & #DA130416) for the property meeting Section 7.2.C. Accessory dwellings cannot be used for the commercial sheltering of individuals per section 7.2.D, and the applicant has been made aware of this regulation. Section 7.2.E stipulates that only one accessory dwelling is allowed on a property and this existing structure is the only accessory dwelling on the property. Section 7.2.F does not apply as this is not an Administrative SUP due to the requested Variance associated with it.

Staff has determined that the applicant's request meets the requirements of Section 7.2 Accessory Living Quarters of the ETZ Ordinance.

## Variance Request

Per Section 3.3.B.4 (Pg. 5) "*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.*" The Variance from fifteen feet (15') to three feet eleven inches (3' 11") to the side yard setback for the 1,195 sq. ft. accessory dwelling was discovered by staff upon inspection of the submitted site plan. Section 4.2.A.1.f (Pg. 6 & Pg. 21) allows staff to determine setbacks for odd shaped parcels. The subject parcel is similar in shape to a pentagon, and staff determined that the encroachment was on the side yard setback due to the placement of the accessory dwelling and the location of the back yard of the residence (Pgs 13 & 23). The structure is located three feet eleven inches (3' 11") from the property boundary and the requirement in the ER3 Zoning District is fifteen feet (15').

## Section 2.3.C; Required Findings

To grant a Variance the ETA must find that: **(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. Staff located two approved Variances (V00-008/Barney and V09-004/Johnson) for setbacks within the same ER3 Zoning District (Pg. 20) as the subject property. This demonstrates that approval of the variance would not be considered a special privilege inconsistent with other properties in the area or within the same zoning district.**

**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. DAC Building Services notes (Page 7) that the accessory dwelling was constructed without a Building Permit and paying a triple fee will be required according to Section 179-19 of DAC Ordinances and the structure must pass all inspections by DAC Building Services. No other**

negative comments were received from the reviewing agencies. By obtaining approval of the Variance, approval of a Building Permit and passing all inspections, the public health, safety and welfare will be ensured.

**C): Strict or literal interpretation and enforcement of the specified performance standard or regulation will result in unnecessary physical hardship inconsistent with the purposes of this code. The accessory dwelling was built without the benefit of a Special Use Permit or a Building Permit by a prior owner. Denial of the Variance request associated with the Special Use Permit would create an unnecessary physical hardship because the applicants would be required to remove the accessory dwelling. Denial would not uphold the spirit of the Code as the applicants did not create the problem and have shown due diligence in continuing to pursue the application and have pledged to adhere to any requirements/conditions placed on the requested Variance and SUP.**

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.
2. The 1.07-acre subject property is Lot 8, Mountain View Acres Subdivision, recorded on February 12, 1968, in Book 10, Page 24.
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. The current applicant purchased the property on October 3, 2016, from the original applicant, Ms. Paulette Tillman.
5. The existing accessory dwelling was built prior to the purchase of the property by Ms. Tillman.
6. The existing 3,425 sq. ft. primary dwelling was constructed in 1972.
7. The existing 1,195 sq. ft. accessory dwelling was constructed in 2000 without a permit from DAC Building Services.
8. Water is provided to the property by Doña Ana Mutual Domestic Water Consumers Association.
9. NMED has approved two (2) septic permits to provide waste water disposal for the existing primary and accessory dwellings with Permit #026440 & #DA130416.
10. Section 7.2.F grants the authority to approve Administrative Special Use Permits to the Doña Ana County Community Development Director.
11. Twenty (20) Notices for Public Input were mailed on November 1, 2016, to the properties identified within the Area of Notification.
12. El Paso Electric submitted documentation approving the utility encroachment by the accessory dwelling.
13. Case #SU16-010 was postponed to date certain (Dec. 15, 2016) at the ETZ Commission meeting of November 17, 2016.
14. The request meets the requirements of Section 7.2 Accessory Living Quarters of the ETZ Ordinance.
15. The request meets the Evaluation Criteria of Section 2.1.D for a Special Use Permit.
16. The request meets all three requirements of Section 2.3.C Required Findings for approval of a Variance.

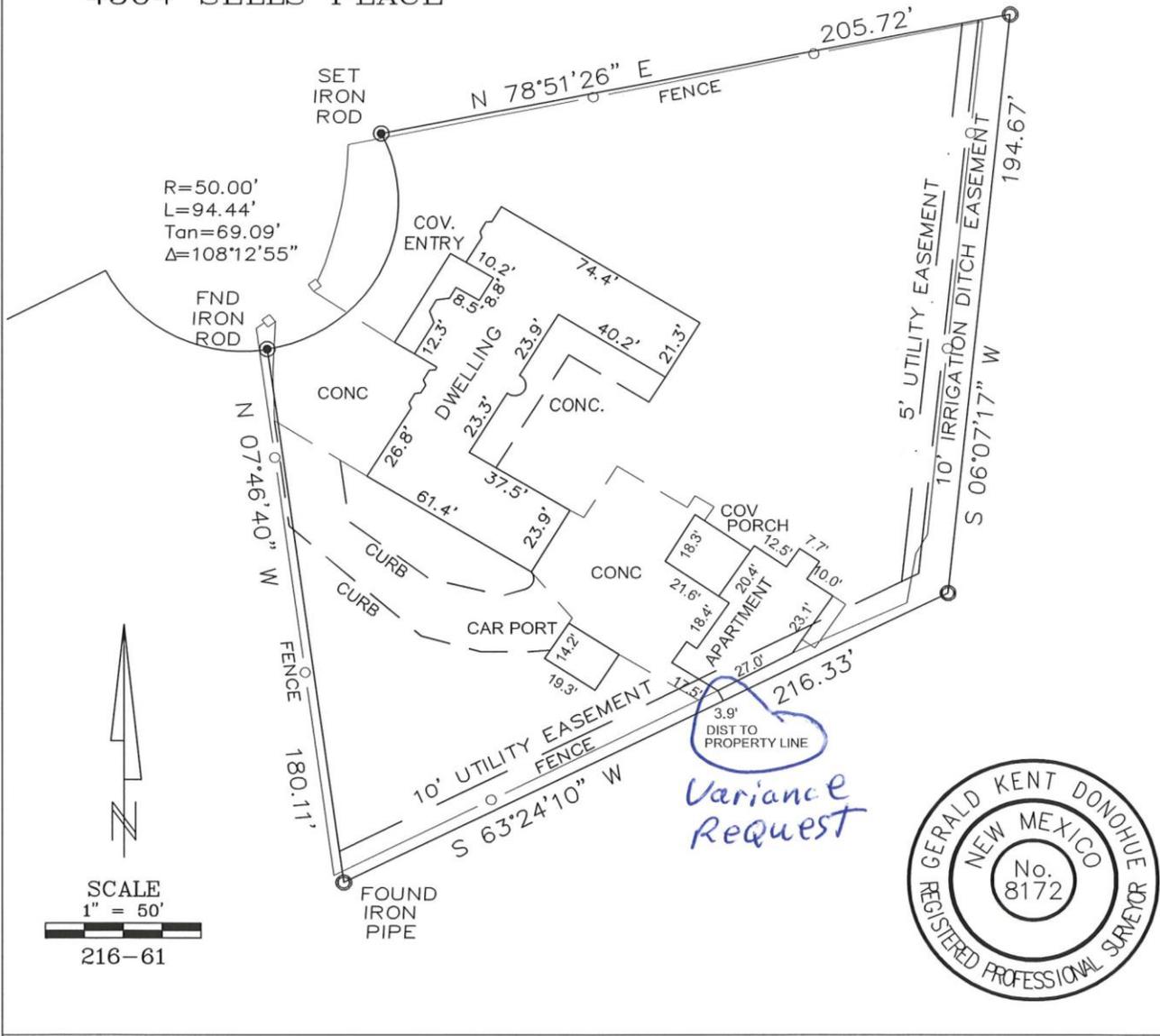
## **STAFF RECOMMENDATION**

Based on the Staff Findings above, staff analysis, and the application meeting Section 2.1.D and Section 7.2 of the ETZ Ordinance, staff recommends **Conditional Approval** of Special Use Permit Request Case # SU16-010/Balcom to permit an existing 1,195 sq. ft. accessory dwelling and grant a Variance from fifteen feet (15') to three feet eleven inches (3' 11") on the side yard setback with the following conditions:

- 1) *Applicant must obtain a Building Permit for the accessory dwelling, pass all inspections, and pay a triple fee.*
- 2) *Applicant shall ensure that water runoff from the accessory dwelling is contained within the subject parcel.*
- 3) *The commercial sheltering of individuals in the accessory dwelling is prohibited.*

# Site Plan

4504 SELLS PLACE



# Narrative

## 3. Variance Application Supplement - Question #3

4504 Sells Place Las Cruces, NM 88007 side lot setback encroachment

### Background on Property Purchase

1. In April 2010, I purchased 4504 Sells Place which included a 1050 sq. ft. casita from seller FNMA using Garland and Steinborn Realtors. It was a cash purchase and no survey was required. The real estate listing indicated the home and casita was built in approximately 2005-06 and had been occupied by the previous owner/builder.
2. Prior to purchase, I investigated county records to ascertain legality of the casita and discovered it was listed as a legal accessory unit and taxed by the Assessor.
3. I had the home and casita inspected by a qualified home inspector and it passed all inspections.

With that information, I closed on the property.

### Recent Discoveries

1. Survey availability: I listed the property last fall and it sold in June. The sales contract indicated that a survey would be ordered three days prior to closing date of August 22, 2016. The encroachment was brought to my attention for the first time by the title company when I received the survey three days prior to closing.

2. Utility Easement Encroachments: The structure sits slightly within a community ditch easement and EBID has stated the property does not encroach on their facilities. The structure encroaches into a utility easement. On August 25, El Paso Electric provided a Letter of Non-Objection. No other utility providers use the easement.

3. Community Impact: The encroachment does not block access to the ditch or obstruct the downstream flow of water to neighbors and actually terminates at the end of my property. It is apparent that the setback encroachment has no negative impact on neighbors or the community at large.

### Unnecessary Physical Hardship

The potential removal of the encroaching portion of the structure would involve removal of entire back wall and roof, bathroom, laundry room, AC, furnace and associated plumbing and electrical. In effect, the entire structure would need to be rebuilt. This constitutes an extreme physical hardship.

## 2.1.D Responses

### EXTRA-TERRITORIAL ZONING ORDINANCE ORDINANCE NO. 88-02

#### 2.1.D EVALUATION CRITERIA

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

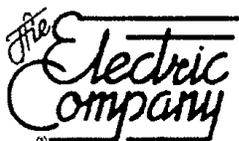
Unless additional justification is presented, the fact that there is an existing legal nonconforming use shall not be considered sufficient grounds for a zone change in order to bring that use into conformity.

- 2.1.D.1 Determination of potential number of homes, population and population demographics.  
*SUBJECT PROPERTY ONE OF 6 ONE-ACRE HOMES ON CUL-DE-SAC.*
- 2.1.D.2 Determination of potential traffic flows (average daily traffic) and where they will impact the transportation system.  
*DAILY TRAFFIC FLOW ON STREET CONSISTS OF 6 RES ENTERING AND LEAVING THEIR HOMES USING AUTOMOBILES*
- 2.1.D.3 Determination of need for new commercial activity.  
*NA*
- 2.1.D.4 Determination of potential water and sewage needs.  
*NO POTENTIAL CHANGES TO CURRENT USAGE*
- 2.1.D.5 Evaluation of existing infrastructure capacities and an analysis of the ability of the existing system to accommodate the new development.  
*NO CHANGES TO CURRENT USAGE OF ROADS*
- 2.1.D.6 The difference between capacity and impact should be stated. Those areas which are appropriate for a developer to underwrite should be negotiated between local government and developer.  
*NO DIFFERENCE BETWEEN CAPACITY AND IMPACT*
- 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.  
*NO ENVIRONMENTAL IMPACT*
- 2.1.D.8 Any analysis required should be undertaken and paid for by the developer and verified by the ETZ Commission.  
*PAID WITH VARIANCE FEE REQUEST*
- 2.1.D.9 Determination of impact of a proposed zone change on surrounding properties.  
*NO IMPACT - NO REQUEST FOR ZONE CHANGE*

#### 2.1.E SPECIAL USE PERMITS, VARIANCES AND SUBDIVISIONS

Special Use Permits, Variances, Conditional Uses and Subdivisions shall not be considered a zoning district change.

# El Paso Electric Letter (Pg 1 of 4)



El Paso Electric

P.O. Box 982  
El Paso, Texas  
79960-0982  
(915) 543-5711

August 25, 2016

Paulette Kay Tillman  
Paulette Kay Tillman Living Trust  
4504 Sells Place  
Las Cruces, New Mexico 88007

Dear Ms. Tillman:

**4504 SELLS PLACE,  
DONA ANA COUNTY, NEW MEXICO**

Your recent request for a Letter of Non-Objection for encroachment located on a dedicated utility easement, on the land described as a portion of Lot 8 of Mountain View Acres, Dona Ana County, New Mexico **has been approved.**

At present, this particular encroachment does not interfere with our use of the easement. In consideration for our allowance of the encroachment, El Paso Electric Company must be held harmless from any claims or demands, which may result from the existence of the encroachment on the easement. It is, and will be, the property owner's responsibility to see that no part of the improvements or any equipment on the improvements violates any safety clearances.

**To activate the Letter of Non-Objection the owner(s) must sign and notarize the attached Encroachment Agreement, including the print, and return the original set to El Paso Electric for execution.**

Sincerely;

A handwritten signature in black ink, appearing to read "Arthur Sanchez", written over a horizontal line.

Arthur Sanchez  
Land Management Representative

Enclosures

# El Paso Electric Letter (Pg 2 of 4)

## ENCROACHMENT AGREEMENT

STATE OF NEW MEXICO                   §  
COUNTY OF DONA ANA                 §

THIS ENCROACHMENT AGREEMENT (the "Agreement") is entered into as of the 25 day of August, 2016, between Paulette Kay Tillman Living Trust, Paulette Kay Tillman - Trustee ("Owner"), and El Paso Electric Company ("EPE") on the term and for the consideration set forth herein.

### RECITALS

Whereas, the Owner owns that certain real property in Las Cruces, Dona Ana County, New Mexico, described as:

*Lot 8 of Mountain View Acres, and known locally as 4504 Sells Place, Las Cruces, New Mexico* (the "Property");

Whereas, the Property is subject to a certain easement(s) recorded at Book 10, Page 24 in the property records of Dona Ana County, New Mexico, (the "Easement") which encumber a portion of the Property and are for the use and benefit of EPE;

Whereas, a certain structure(s), including Apartment, currently encroach upon the Easement as shown on exhibit "A" (the "Encroachment");

Whereas, Owner seeks a letter of non-objection for the Encroachment to facilitate the transfer of the Property; and

Whereas, EPE is willing to grant such relief under the terms and conditions set forth below.

### AGREEMENTS

In exchange for the mutual covenants herein, and other good and valuable consideration, the receipt of which is acknowledged, Owner and EPE acknowledge and agree as follows:

1. The Easement encumbers a portion of the Property for the benefit of EPE and its successors and assigns.
2. EPE consents to the Encroachment subject to the following terms of this Agreement.
3. Owners shall not expand or relocate the Encroachment on the Easement or construct, place, or locate other structures or improvements on the Easement.
4. Owner shall not use or authorize or permit the use of the Encroachment to impair, or use or authorize or permit the use of any equipment, tool, or apparatus on or about the Encroachment that would impair, the safety clearances between the Encroachment and EPE electric facilities as required by applicable laws, codes, or standards.
5. In the event that EPE requires direct access to any portion of the Property covered by the Easement and such access is prohibited or restricted by the Encroachment, the Owner at its expense, upon request from EPE, will remove or alter so much of the Encroachment as is deemed necessary by EPE for the use and enjoyment of the Easement and to access and maintain the Easement and electric facilities thereon. In the event of emergency requiring immediate access, EPE may remove or alter the Encroachment and provide notice to Owner as soon as reasonably practicable. In the event the Encroachment is removed or altered by EPE, Owner will reimburse EPE for all costs and expenses incurred by EPE.
6. **INDEMNIFICATION AND RELEASE:** IN CONSIDERATION FOR THE ENCROACHMENT, OWNER SHALL RELEASE, INDEMNIFY, AND HOLD HARMLESS EPE, ITS DIRECTORS, OFFICERS, AND EMPLOYEES (THE "RELEASED AND INDEMNIFIED PARTIES") FOR, AGAINST, AND FROM ANY AND ALL CLAIMS, LIABILITIES, AND DAMAGES OF EVERY KIND AND NATURE, INCLUDING WITHOUT LIMITATION, PERSONAL INJURY (INCLUDING

# El Paso Electric Letter (Pg 3 of 4)

MENTAL ANGUISH), DEATH, OR DAMAGE TO PROPERTY OF OWNER, EPE, OR ANY THIRD PERSON OR ENTITY ARISING FROM OR IN CONNECTION WITH THE ENCROACHMENT (THE "RELEASED AND INDEMNIFIED CLAIMS"). THE FOREGOING RELEASE AND INDEMNITY SHALL BE VALID AND ENFORCEABLE EVEN IF AND REGARDLESS OF WHETHER THE RELEASED AND INDEMNIFIED CLAIMS ARE CAUSED BY OR RESULT FROM, IN WHOLE OR IN PART, THE ACTS OR OMISSIONS OF THE RELEASED AND INDEMNIFIED PARTIES (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR STRICT LIABILITY IN TORT) OF ONE OR MORE OF THE RELEASED AND INDEMNIFIED PARTIES.

7. It is intended that this Agreement shall run with the land and shall bind every person having any fee, leasehold, or other interest in the Property and shall inure to the benefit of EPE and its successors and assigns.

Executed as of the 25<sup>th</sup> day of August, 2016.  
*Jst*

OWNER  
*Paulette Kay Tillman*  
Name: Paulette Kay Tillman - Trustee

EL PASO ELECTRIC COMPANY  
By: *[Signature]*  
Ryan Paulk  
Manager - Land Management

APPROVED AS TO FORM  
OFFICE OF THE GENERAL COUNSEL *JF*

STATE OF Colorado §  
COUNTY OF Summit §

This instrument was acknowledged before me on this 25<sup>th</sup> day of August, 2016, by Paulette Kay Tillman, Trustee of the Paulette Kay Tillman Living Trust, who stated that she executed same for the purpose and consideration therein expressed and in the capacity therein stated.

*[Signature]*  
Notary Public in and for  
the State of Colorado

Commission Expires:  
12/24/2019

AMANDA DOEBLER  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20144048443  
MY COMMISSION EXPIRES DECEMBER 24, 2018

STATE OF TEXAS §  
COUNTY OF EL PASO §

This instrument was acknowledged before me on this 29<sup>th</sup> day of August, 2016, by Ryan Paulk, Manager - Land Management of El Paso Electric Company who stated that he executed same for the purpose and consideration therein expressed and in the capacity therein stated.

**JAZMINE M AVILA**  
NOTARY PUBLIC  
NOTARY ID#: 13053587-3  
In and for the State of Texas  
My commission expires  
FEBRUARY 12, 2020

Commission Expires:  
2/12/20

*[Signature]*  
Notary Public in and for  
the State of Texas

# El Paso Electric Letter (Pg 4 of 4)



COUNTY OF DONA ANA ) ENCROACHMENT AGREEMENT  
 STATE OF NEW MEXICO ) ss PAGES: 4

Exhibit A

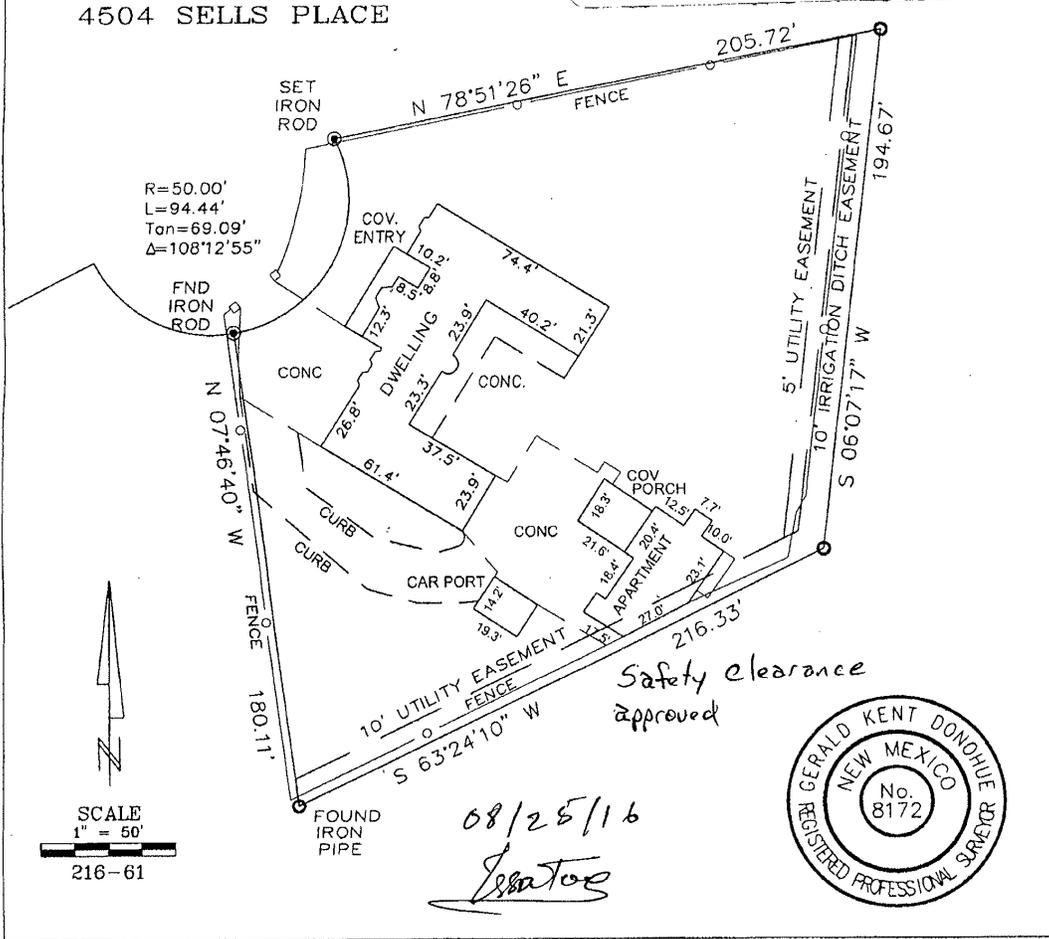
I Hereby Certify That This Instrument Was Filed for  
 Record On AUG 29, 2016 10:53:50 AM  
 And Was Duly Recorded as Instrument # 1619737  
 Of The Records Of Dona Ana County



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

Deputy Laiza Rodriguez

4504 SELLS PLACE



SCALE  
 1" = 50'  
 216-61



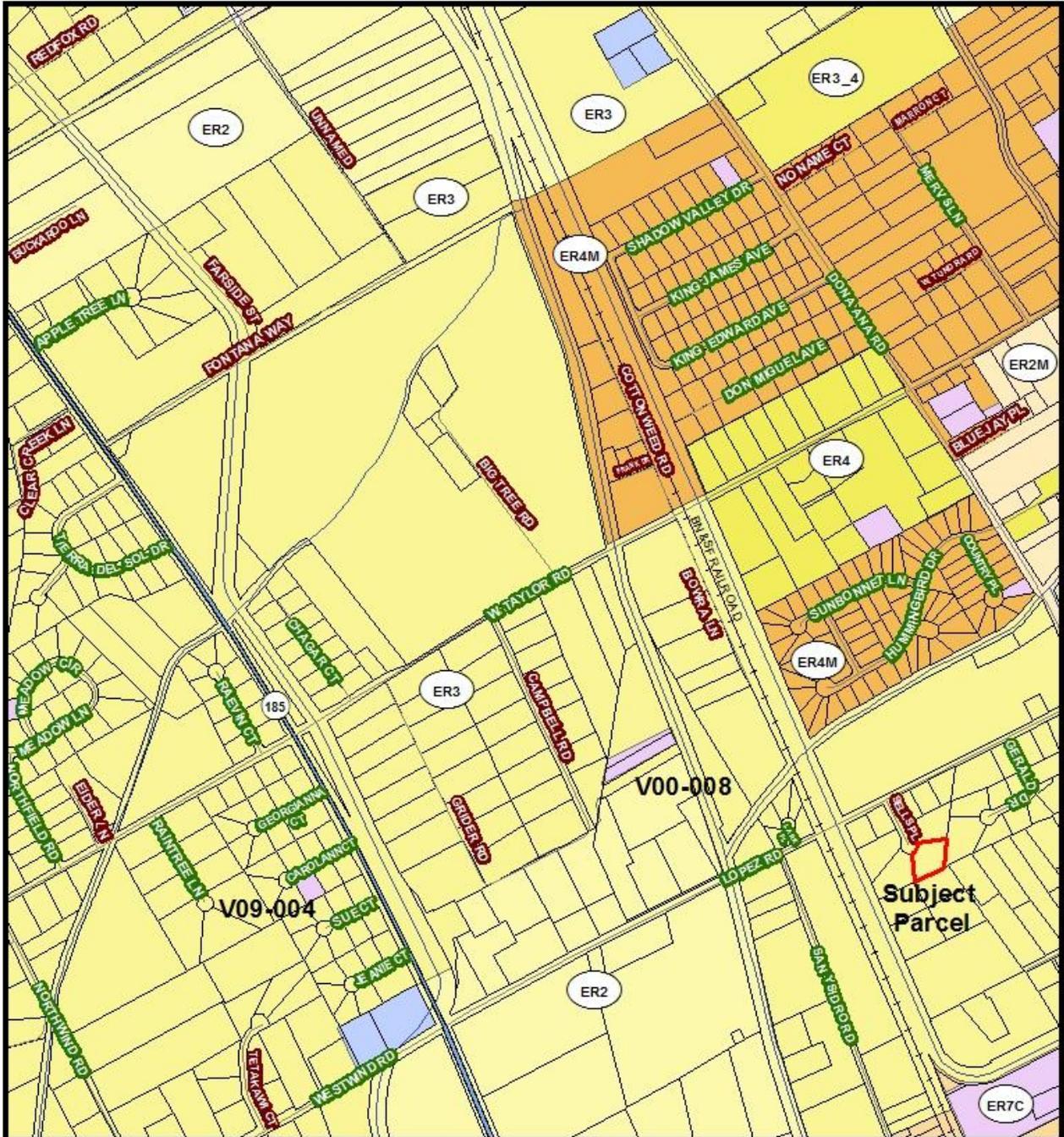
PLAT OF SURVEY OF LOT 8,  
 MOUNTAIN VIEW ACRES

Not For Construction Purposes  
 Filed 2/12/1968 in Bk. 10 Pg. 24.  
 City of Las Cruces, Dona Ana County,  
 New Mexico. Date of Survey 8/18/2016.

I certify, as a licensed surveyor in  
 the State of New Mexico, that this  
 plat meets or exceeds the standards  
 for land surveys in New Mexico.  
*Gerald K. Donohue*  
 GERALD K. DONOHUE P.L.S. 8172

DONOHUE LAND SURVEYS  
 100 WYATT DRIVE  
 SUITE A  
 LAS CRUCES, NM 88005  
 1-575-523-1114

# Approved Variances Within ER3



**CASE # SU16-010 / Balcom**



0 650 1,300 2,600 Feet

*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



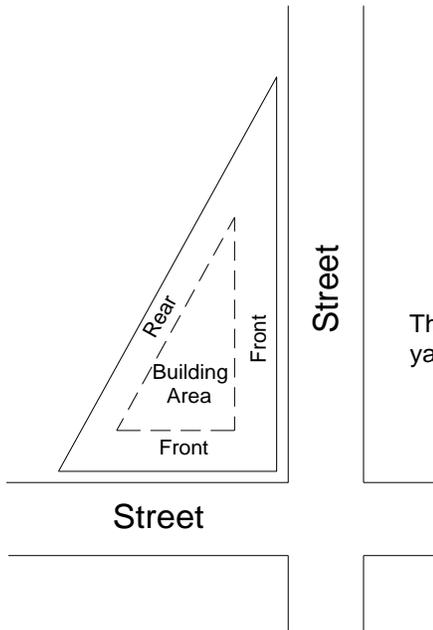
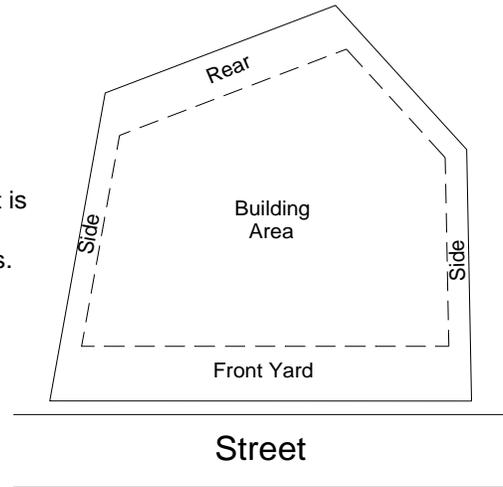
# Setback Exceptions (Appendix A-2)

APPENDIX A-2

## YARD REQUIREMENTS FOR ODD SHAPED LOTS

### PENTAGONAL LOT

On odd shaped lots the rear yard is determined by the rear line that is most parallel to the front yard. This pentagonal shaped lot would require one (1) front yard, one (1) rear yard and three (3) side yards.

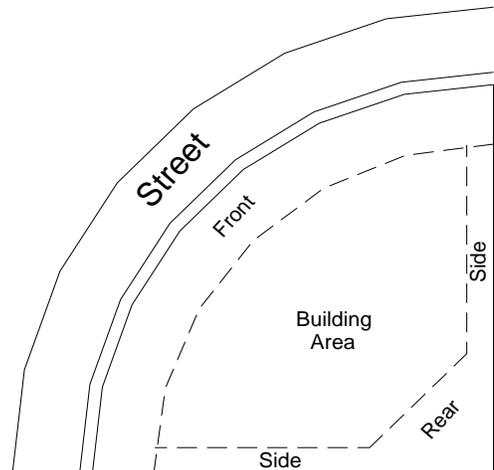


### TRIANGULAR LOT

This triangular lot would require two (2) front yards and one (1) rear yard.

### PIE-SHAPED LOT

This pie-shaped lot requires calculation of the rear yard at a line measured from the corner a distance of the required rear yard, mid-point between the two side property lines.



# Eichelberger Letter

Office: 575.526.8483  
4558 Gerald Dr.  
Las Cruces, NM 88007  
www.le-electric.com



NM License #27220  
TX TECL29548 - AZ 294580  
CES# 2013-027 914-296 LEE  
CES# 2013-027 914-228 LEE

November 7, 2016



Dear Steve Meadows,

We have received your letter concerning the ETZ Special Use Permit CASE #SU16-010/Balcom.

We find Balcom's request acceptable as it does not directly concern our property lines. Please let us know if there is anything else you need from us, or if we are required to attend the scheduled meeting on November 17<sup>th</sup>.

Respectfully,

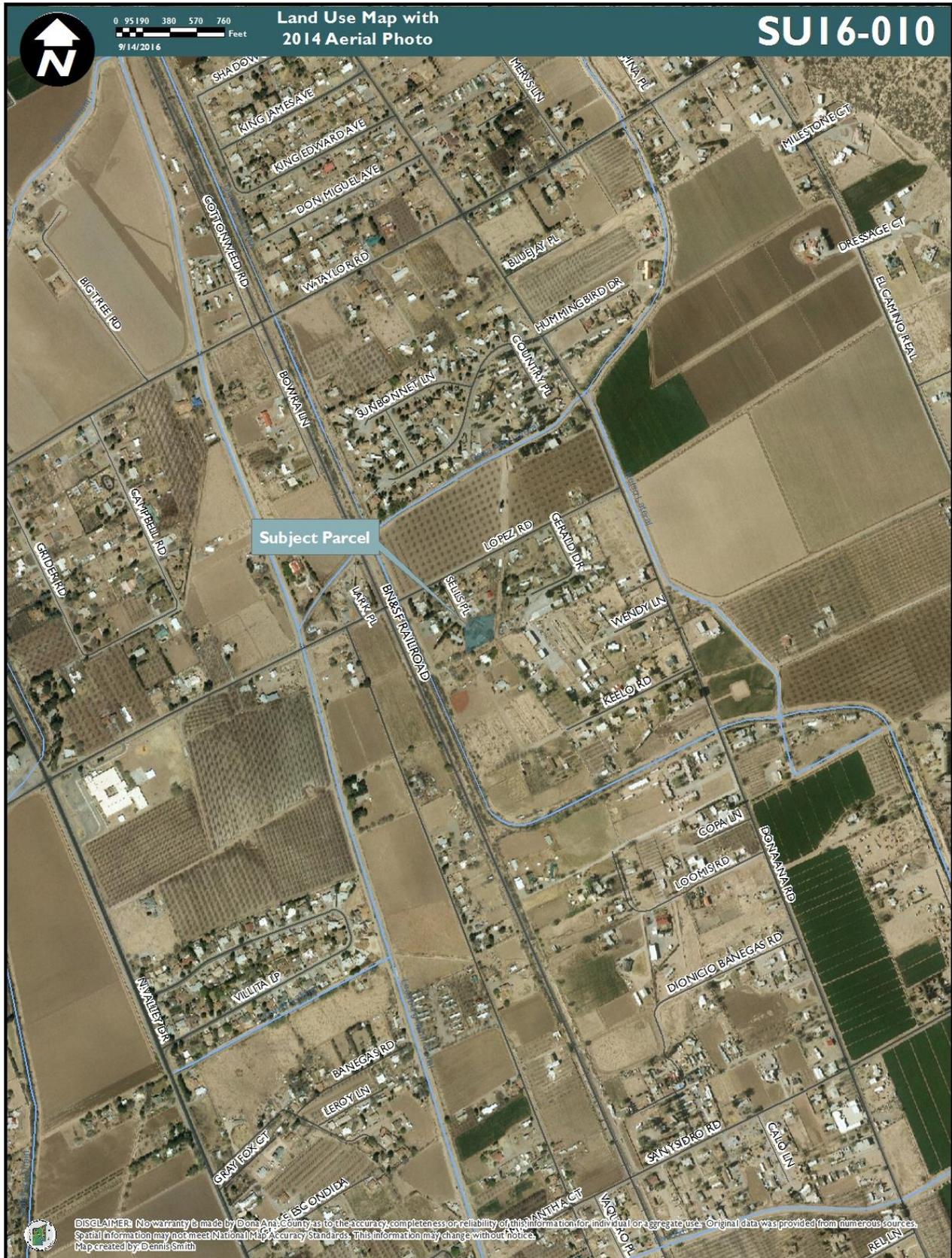
Lynn Eichelberger, Pres.  
[lyn@le-electric.com](mailto:lyn@le-electric.com)

A handwritten note circled in black, containing the text: "#9, #14 &amp; #16 on list".

# Close-up Aerial



# Area Land Use Aerial

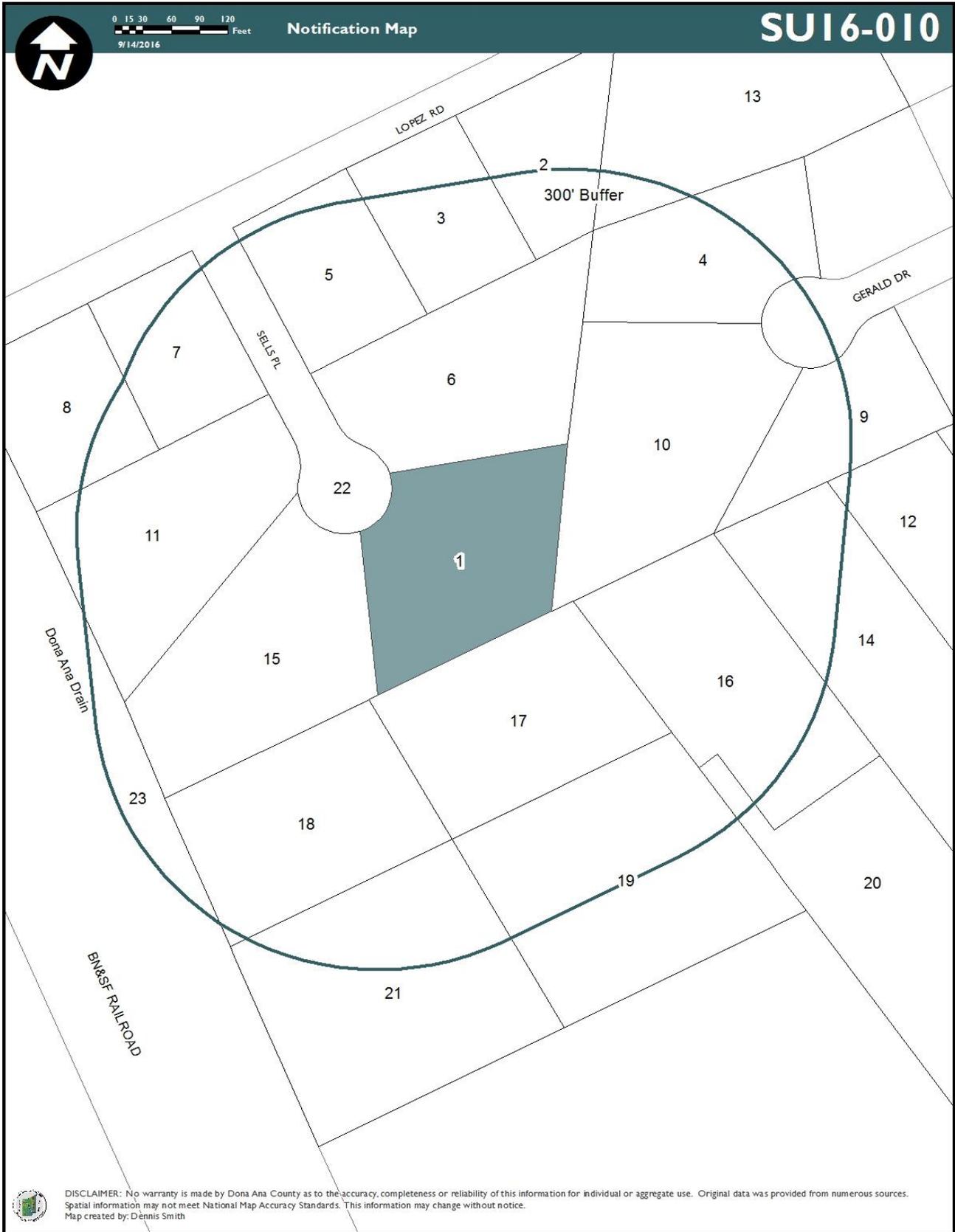




# Area of Notification Aerial



# Area of Notification Map



DISCLAIMER: No warranty is made by Donora County as to the accuracy, completeness or reliability of this information for individual or aggregate use. Original data was provided from numerous sources. Spatial information may not meet National Map Accuracy Standards. This information may change without notice. Map created by: Dennis Smith

# Area of Notification List

CODE	MAP_CODE	NAME	ADDRESS I	CITY	STATE	ZIP
1	4-005-131-227-431	TILLMAN PAULETTE KAY TRUSTEE	4504 SELLS PL	LAS CRUCES	NM	88007
2	4-005-131-236-393	MILLER JIMMY D & MARY A	695 LOPEZ RD	LAS CRUCES	NM	88007
3	4-005-131-225-398	KUEHL DORA & SHIRLEY CO TRUSTEES	705 LOPEZ RD	LAS CRUCES	NM	88007
4	4-005-131-252-400	MOORE DEBBIE & WARREN	142 CAMINO DE NOSOTROS	LAS CRUCES	NM	88007
5	4-005-131-211-402	CASTETTER RICHARD C	4520 SELLS PL	LAS CRUCES	NM	88007
6	4-005-131-228-412	FEDERAL NATIONAL MORTGAGE ASSOC	14221 DALLAS PKWY STE 11201	DALLAS	TX	75254-2916
7	4-005-131-196-410	FORTIN RICHARD D & JANET M	725 LOPEZ RD	LAS CRUCES	NM	88007
8	4-005-131-183-416	RICHARDS VIRGINIA F	729 LOPEZ RD	LAS CRUCES	NM	88007
9	4-005-131-266-418	EICHELBERGER LYNN & GLORIA	4558 GERALD DR	LAS CRUCES	NM	88007
10	4-005-131-248-421	ATENCIO LOUIE & YOLANDA	735 HOMESTEAD CIR	LAS CRUCES	NM	88011-9042
11	4-005-131-196-429	CONNER THOMAS F & JUDY K	4515 SELLS PL	LAS CRUCES	NM	88007
12	4-005-131-285-443	JONASSON DENNIS & CYNTHIA A	11000 BATAAN MEMORIAL E	LAS CRUCES	NM	88011-6035
13	4-005-131-257-381	SCHADLER SHARON	665 LOPEZ	LAS CRUCES	NM	88007-5314
14	4-005-131-272-446	EICHELBERGER LYNN & GLORIA	4558 GERALD DR	LAS CRUCES	NM	88007
15	4-005-131-206-445	VANCE SARAH	4505 SELLS PL	LAS CRUCES	NM	88007
16	4-005-131-251-452	EICHELBERGER LYNN & GLORIA	652 KEELO RD	LAS CRUCES	NM	88007
17	4-005-131-234-450	QUINTANA ANTHONY D & SUZANNE M	882 KEELO RD	LAS CRUCES	NM	88007
18	4-005-131-215-463	DURAN RUBEN H & JANET M	735 LOPEZ RD	LAS CRUCES	NM	88007
19	4-005-131-245-468	BENAVIDEZ JOSEPH L	870 KEELO RD	LAS CRUCES	NM	88007
20	4-005-131-275-485	BROWN MARK A & MICHELLE M	664 KEELO RD	LAS CRUCES	NM	88007
21	4-005-131-220-479	DURAN RUBEN H & JANET M	735 LOPEZ RD	LAS CRUCES	NM	88007
22		DAC ROAD DEPT.	2025 E. GRIGGS	LAS CRUCES	NM	88001
23		BNSF RR	3001 LOU MENK DR	FORT WORTH	TX	76131