

EASEMENT BETWEEN

**THE UNITED STATES OF AMERICA
ACTING BY AND THROUGH
THE DEPARTMENT OF ENERGY
NATIONAL NUCLEAR SECURITY ADMINISTRATION**

AND

THE INCORPORATED COUNTY OF LOS ALAMOS

FOR

**THE LOS ALAMOS COUNTY TRAIL EXTENSION PROJECT
AT
CANYON RIM TRAIL**

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**DEPARTMENT OF ENERGY
NATIONAL NUCLEAR SECURITY ADMINISTRATION
EASEMENT FOR RIGHT-OF-WAY**

The **UNITED STATES OF AMERICA**, acting by and through the **U.S. DEPARTMENT OF ENERGY/NATIONAL NUCLEAR SECURITY ADMINISTRATION (DOE/NNSA)**, hereby known as the **“Grantor”**, under and by virtue of the authority granted under Title 40 United States Code 1314, having determined that the granting of this instrument on the terms and conditions herein stated is not adverse to the interests of the Government, subject to reservations, exceptions, limitations, benefits, burdens, terms, or conditions, hereby grants to **THE INCORPORATED COUNTY OF LOS ALAMOS**, its successors and assigns, hereby known as the **“Grantee”**, an Easement for the construction, operation, and maintenance of a recreational trail.

THIS EASEMENT is granted subject to the following terms and conditions:

1. PROJECT

The Project is a portion of the third phase of the Canyon Rim Trail Project from Knecht Street to 20th Street, and proposed to link to Trinity Drive via the 20th Street extension. It is agreed that the Grantee shall fund and construct the Project which consists of the following:

- a. ten foot (10') wide multiuse hard surface trail;
- b. retaining walls;
- c. drainage improvements; and
- d. potential parking areas.

2. PREMISES

The Premises contains approximately 0.317 acres over and across Government-owned lands and is further depicted in Exhibit A, “D.O.E. Estimated Right-of-Way Needs Canyon Rim Trail - Knecht St. to 20th St.” dated December 2017, attached hereto and made a part hereof. The Grantor grants to Grantee the Premises as further delineated as follows:

- a. A non-exclusive **“Temporary Construction Permit”**, together with ingress and egress, for use in the initial construction and installation of the improvements and other construction purposes reasonably related to the initial construction of the Project.
- b. A non-exclusive **“Trail Easement”**, together with ingress and egress, for the purposes of operation, maintenance and repair of the Project.

3. TERM/TERMINATION RIGHTS

- a. The Temporary Construction Permit shall commence on the effective date of this Easement and shall automatically terminate and expire fourteen (14) months after the completion date of the initial construction of the Project. Upon the expiration of the term of this Temporary Construction Permit, all of the rights and benefits of Grantee in, to, and under this Easement with

respect to the Temporary Construction Permit only shall automatically terminate and be of no further force and effect.

b. The Trail Easement shall be effective upon execution by the Grantor and shall be granted in perpetuity.

c. This Easement in its entirety may be terminated by the Grantor at any time by giving ninety (90) days written notice if the Grantor determines that the right-of-way granted interferes with the interests of the United States, use or disposal of a portion or all of the Premises by the Grantor, or it may be terminated by the Grantor for failure, neglect, or refusal by the Grantee to fully and promptly comply with any and all of the conditions of this Easement, or for nonuse for a two-year period, or for abandonment.

4. CONSIDERATION

The consideration for this Easement is the construction, operation and maintenance of the Premises by the Grantee for the benefit of the United States and the general public in accordance with the conditions set forth herein.

5. AUTHORIZED REPRESENTATIVES

The Grantor's Representative shall be the Real Estate Contracting Officer. The Grantor's local representative shall be the Utilities and Sustainability Program Manager, Los Alamos Field Office. The Grantee's representative shall be the County Manager. Any changes in the designated representatives or in their respective addresses shall be given in writing to the other.

6. NOTICE

No notice, order, direction, determination, requirement, consent, or approval under this Easement shall be of any effect, within the restriction of this Easement, unless provided in writing. Any notice given by the Grantee to the Grantor shall be addressed to the Real Estate Contracting Officer, National Nuclear Security Administration Office of Infrastructure Planning & Analysis (NA-521), P.O. Box 5400, Albuquerque, New Mexico 87185, sarah.watts@nnsa.doe.gov; with a copy to the Utilities and Sustainability Program Manager, Los Alamos Field Office, 3747 West Jemez Road, Los Alamos, New Mexico 87544, cassandra.begay@nnsa.doe.gov. Any notice given by the Grantor to the Grantee shall be addressed by the Real Estate Contracting Officer to County's Public Works Director, 1000 Central Avenue, Suite 160, Los Alamos, New Mexico 87544.

7. OPERATION AND MAINTENANCE

The operation and maintenance of the Premises shall be accomplished without cost or expense to the Grantor under the general supervision and subject to the approval of the representative having immediate jurisdiction over the property, designated as the Utilities and Sustainability Program Manager, Los Alamos Field Office. The said work shall be accomplished in such a manner as not to conflict with the rights of the Grantor nor to endanger personnel or property of the Grantor on Government-owned land.

8. PROTECTION OF PROPERTY

The Premises shall at all times be protected and maintained in good order and condition by and at the sole expense of the Grantee. Any property of the Grantor damaged or destroyed by the Grantee incident to the use and occupation of the Premises shall be promptly repaired or replaced by the Grantee to the satisfaction of the Grantor. Or in lieu of such repair or replacement, the Grantee shall, if so required by the Grantor, pay to the Grantor money in an amount sufficient to compensate for the loss sustained by the Grantor by reason of damages to or destruction of the Grantor's property.

9. ENVIRONMENT

a. The Grantee shall not unlawfully pollute the air, ground or water or create a public nuisance. The Grantee shall use all reasonable means available to protect the environment and natural resources from damage arising from this Easement or activities incident to it and, where damage nonetheless occurs, the Grantee shall be liable to repair the damaged resources.

b. The Grantee shall not create, use, store, treat, or dispose of any toxic or hazardous material on the Premises without the Grantor's prior written approval. For the purpose of this Paragraph, hazardous materials shall include but not be limited to substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9061 et seq.; Hazardous Materials Transport Act, 49 U.S.C. Sec. 1802; and Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq. and in the regulations adopted and publications promulgated pursuant to said laws.

c. This Project is subject to National Pollution Discharge Elimination System (NPDES) Construction General Permit coverage and as such, storm water discharges from the Project areas will require management to predevelopment levels. The Grantee is responsible for Best Management Practices (BMPs) installations to control erosion of soil and sediment from the site. The Grantee shall use appropriate BMPs to protect watercourses and drainages from the Project work to maintain compliance with the Institutional Permit. The Project work should not result in increased sediment/contaminant loading at downstream Site Monitoring Areas. The Grantee shall report to New Mexico Environment Department (NMED) any discharges on the Premises per 20.6.2.1203 New Mexico Administrative Code (NMAC).

d. The Grantee shall coordinate with the Grantor if fill material will be removed and/or disposed offsite before it is released to a commercial landfill or recycling facility. The Grantor recommends the Grantee reuse excavated soil/material as fill material within the scope of the Project.

e. The Grantee shall, at no cost to the Grantor, promptly comply with present and future Federal, State, and local laws, ordinances, regulations, or instructions controlling the quality of the environment. This does not affect the Grantee's right to contest their validity or enjoin their applicability. The Grantee shall not be responsible for pollution caused by others. If the Grantee

discovers contamination on the Premises, the Grantee shall immediately cease all activities and notify the Grantor.

10. CULTURAL ITEMS

a. Cultural sites are on the Premises; the Grantee must coordinate with the Grantor prior to commencement of construction activities of the Project to ensure sites are identified and cordoned off. Grantor's cultural resource compliance personnel shall provide a pre-job briefing to alert all construction personnel to cultural resource concerns.

b. The Grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural, or other cultural artifacts, relics, vestiges, remains or objects of antiquity. In the event such items are discovered on the Premises or if the aforementioned sites are disturbed by the Grantee, the Grantee shall immediately notify the Grantor and protect the site and the material from further disturbance until the Grantor gives clearance to proceed.

c. All storm water routing and erosional controls must meet Grantor's storm water requirements. Storm water may follow natural erosional channels present already in proximity of the aforementioned cultural sites, but water cannot be channeled in any direct matter within the cultural sites boundaries.

11. WETLANDS AND FLOODPLAINS

All activity within any flood plain or jurisdictional wetlands must comply with applicable Federal, State and local laws, rules or ordinances governing land use in flood plains or wetlands.

12. TIMBER

a. The Grantee shall notify and obtain written approval from the Grantor prior to cutting any trees within the Premises, and will remove and dispose of any trees that it cuts on the Premises. Tree and shrub removal must not occur between May 15 and July 31 to protect nesting birds under the Migratory Bird Treaty Act.

b. The Grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any active nests, eggs or nestlings in trees, shrubs, under eaves or within man-made structures. In the event such items are discovered on the Premises, the Grantee shall immediately notify the Grantor and protect the site and the material from further disturbance until the Grantor gives clearance to proceed.

13. BOUNDARY OR SURVEY MONUMENTATION

The Grantee shall not disturb, obliterate or destroy any land boundary (including fencing) or survey monument on the Premises without prior approval from the Grantor.

14. LAWS, ORDINANCES, REGULATIONS

The Grantee shall comply with all applicable laws, ordinances, and regulations of the State, county and municipality wherein the Premises are located with regard to construction, sanitation,

licenses or permits to do business, and all other matters affecting the Premises. Grantor agrees that the Grantee is subject to laws of the Incorporated County of Los Alamos and State of New Mexico, as applicable, and such laws shall govern.

15. GRANTEE RESPONSIBILITY

The Grantee shall supervise the Premises, inspect it at reasonable intervals and shall use reasonable efforts to immediately repair any damage found as a result of the inspection or when requested by the Grantor to repair any defects. Upon completion of the installation and/or repairs to the Project, the Grantee, at the Grantee's own expense shall remove construction debris, re-vegetate for erosion control, and grade to the original contour of the land. Grantee shall comply with such rules and regulations regarding Government security, ingress, egress, safety, sanitation, etc. as may be prescribed from time to time by the Grantor. The Grantee shall not remove, relocate or damage any existing utilities and/or associated facilities belonging to Grantor. Grantee shall be liable for any damages or repair or replacement of existing utilities.

16. GRANTOR RESERVATIONS

The Grantor reserves to itself the right to construct, use, and maintain across, over and/or under the right-of-way granted any necessary electric transmission, telephone, telegraph, water, gas, gasoline, oil, sewer lines, and other infrastructure in such manner as not to create any unreasonable interference with the use of the right-of-way granted within this Easement.

17. ACCESS TO SITE

The Grantee understands and agrees that access to the Premises is subject to Grantor's security regulations. Grantee agrees to comply and to have its awardee comply with any and all applicable Grantor security regulations including, but not limited to, requirements for obtaining access authorization for personnel working at the Premises. All Grantee personnel requiring access to the Premises shall acquire and wear at all times, badges authorized through the security badging process at the Grantor's badging office, and shall stay within the boundaries of the said Premises with the exception of access to and from the Premises. Access may be denied at times due to programmatic security requirements, but arrangements will be made to escort the Grantee personnel to and from the Premises within a reasonable amount of time.

18. THIRD-PARTY RESERVATIONS

a. This Easement is effective only insofar as the rights of the United States in the Premises are concerned; and the Grantee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this Easement does not eliminate the necessity of obtaining any other agreement for performance of the Project.

b. This Easement is granted subject to such other rights that may be outstanding to third-parties in, on, over, and/or across the Premises.

c. The Grantee shall obtain an excavation permit no less than three weeks before beginning work, and shall do so by contacting Grantor's Utilities Representative, Harold Salazar, at (505)

665-1051. The Grantee shall also contact Grantor's Utilities Representative seventy-two (72) hours before beginning work.

19. HOLD HARMLESS AND INDEMNITY

a. The Grantor shall not be responsible for damages or property or injuries to persons which may arise from or be incident to the use and occupation of the Premises nor shall it be responsible for damages to the property or injuries to the persons of the Grantee, its agents, employees, or representative or others who may be on the Premises at their invitation, arising from Grantee activities.

b. The Grantor shall be solely responsible for the claims or damages arising from injury to persons or property caused by the action of the Grantor, its employees, agents, or contractors during its activities on the Premises or arising from any neglect or fault of the Grantor or the agents and the employees of the Grantor in using the Premises, or arising from the failure of the Grantor to comply and conform with all Federal and State Laws.

c. The Grantee agrees that to the extent authorized by the New Mexico Tort Claims Act ("Act"), NMSA 1978, Sections 41-4-1 through 41-4-27, the Grantee will be responsible for related claims and damages arising from injury to persons or property caused solely by the actions of the Grantee, its employees, agents, or contractors during its operation on the Premises. Grantor recognizes that the Act prohibits Grantee from indemnifying Grantor.

d. The Grantee does not assume any liability or responsibility for environmental remediation, impacts and damage caused by the Grantor's use of toxic or hazardous waste, substances or materials on any portion of the Premises. Grantee has no obligation under this Easement to undertake the defense of any such claim or action, whether in existence now or brought in the future, alleging environmental impacts and damage arising out of the use of or release of any toxic or hazardous waste, substance, or materials caused by Grantor. The Grantor shall retain liability for damages for exposure and responsibility for remediation which is caused by or arises from the presence of any hazardous waste in, on or under the Premises on or prior to time Grantee first began operations on the property.

20. GRANTOR CLOSURE/REGULATION RIGHTS

The Grantor reserves the right, after consultation with the Grantee, to close the Premises whenever the Grantor deems such actions necessary in the interest of public health, safety, and national security and defense, and that such right is exercisable in times of perceived, threatened, or actual emergency, and that such right does not extend to the routine day-to-day operation, regulation, and control of traffic over the Premises, such being the right of the Grantee.

21. GRANTEE'S PLANS AND SPECIFICATIONS

The Grantee shall submit plans and specifications to the Local Representative for approval before beginning installation, and shall comply with the approved plans. Grantee shall submit any changes to the approved plans for approval before undertaking any changes.

22. REMOVAL/RELOCATION OF FACILITIES

In the event any portion or all of the Premises shall be needed by the Grantor, the Grantee shall remove the appurtenant improvements, upon notice to do so, to such other location(s) on the Premises as may be reasonably designated by the Grantor. In the event the improvements shall not be removed or relocated within ninety (90) days after the Grantor's notice, the Grantor may cause the same to be done at the expense of the Grantee, provided in lieu of taking such action, the Grantee may wholly remove its improvements from the lands of the Grantor. In this event, the rights set out within this Easement shall cease but the restoration obligation set out in Paragraph 23 shall remain.

23. RESTORATION

Upon expiration or termination of any portion of this Easement, the Grantee shall, without expense to the Grantor and within such time as the Grantor may reasonably indicate, restore the Premises to a condition reasonably satisfactory to the Grantor. In the event the Grantee shall fail, neglect, or refuse to restore the Premises, the Grantor shall have the option either to take over the improvements as the property of the Grantor, without compensation therefore, or to remove the improvements and perform the restoration work at the expense of the Grantee. In no event shall the Grantee have any claim for damages against the Grantor or its officers or agents on account of the taking over of the improvements or on account of its abandonment or removal.

24. GRANTEE PERFORMANCE

The failure of the Grantor to insist in any one or more instances upon strict performance of any of the terms, covenants, or conditions of this Easement shall not be construed as a waiver or relinquishment of the Grantor's right to the future performance of any such terms, covenants, or conditions and the Grantee's obligations with respect to any such future performance shall continue in full force and effect.

25. GRANTOR'S LIMITATIONS TO GRANT

It is understood that this instrument is effective only insofar as the rights of the Grantor in the Premises are concerned and that the Grantee shall obtain such permission as may be necessary on account of any other existing rights.

26. AMENDMENT

This Easement contains the entire agreement between the parties hereto, and no modification of this Easement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative.

27. TRANSFER/ASSIGNMENTS

The conditions of this Easement shall extend to and be binding upon and shall inure to the heirs, representatives, successors, and assigns of the Grantee. The Grantee shall neither transfer nor assign this Easement or any property on the Premises, nor sublet the Premises or any part of the Premises, nor grant any interest, privilege, or license whatsoever in connection with this Easement without the express and prior written permission of the Grantor.

28. OFFICIALS NOT TO BENEFIT

No member of or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this Easement or to any benefit arising from it. However, nothing contained within this Easement shall be construed to extend to any incorporated company if the Easement be for the corporation's general benefit.

29. NON-DISCRIMINATION

Usage of the Premises will be operated in a nondiscriminatory manner to the end that no person shall, on the ground of race, color, religion, sex, age, handicap, or national origin, be excluded from using the Premises under this Easement.

30. COVENANT AGAINST CONTINGENT FEES

The Grantee warrants that no person or selling agency has been employed or retained to solicit or secure this Easement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Grantee for the purpose of securing business. For breach or violation of this warranty the Grantor shall have the right to annul this Easement without liability or, in its discretion, to require the Grantee to pay the full amount of such commission, percentage, brokerage, or contingent fee. Licensed Real Estate agents or brokers having listings on property for rent, in accordance with general business practices and who have not obtained such licenses for the sole purpose of effecting this Easement, may be considered as bona fide employees or agencies with the exception contained in this Paragraph.

31. ELECTRONIC SIGNATURES

Pursuant to the Uniform Electronic Transactions Act and the federal E-SIGN Act, the undersigned Signatory agrees that any and all signatures required on this Easement required or permitted to be given hereunder may be in electronic form ("Electronic Signature"). Any Electronic Signature submitted shall constitute a representation by the Signatory that (i) his/her signature is authentic, (ii) the Signatory has the authority to execute such record, and (iii) the Electronic Signature is binding on the Signatory.

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, all parties accept the terms and conditions of this Easement and cause this Easement to be signed on their behalf by their duly authorized representatives.

GRANTEE: INCORPORATED COUNTY OF LOS ALAMOS

By: _____ Date: _____
Harry Burgess
County Manager

ACKNOWLEDGEMENT:

State of NEW MEXICO
County of LOS ALAMOS

On this _____ day of _____, 20____, before me the undersigned Notary Public, personally appeared _____, Incorporated County of Los Alamos, known to me to be the person described in the foregoing instrument, who acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

GRANTOR: UNITED STATES OF AMERICA

BY: Department of Energy/National Nuclear Security Administration (DOE/NNSA)

By: _____ Date: _____

Joelle Altamirano
Real Estate Contracting Officer
National Nuclear Security Administration

ACKNOWLEDGEMENT:

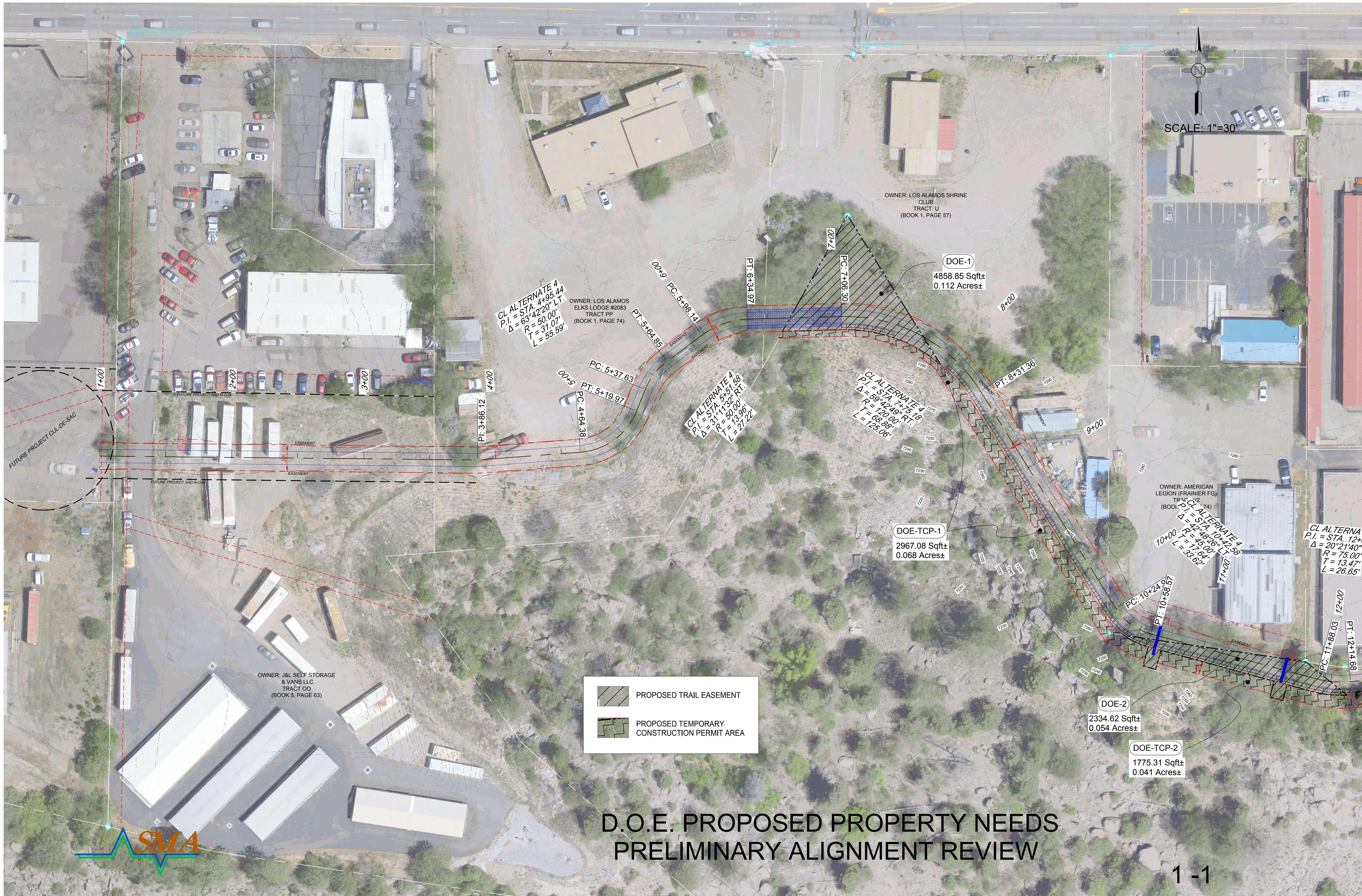
State of NEW MEXICO
County of BERNALLILO

On this _____ day of _____, 20____, before me the undersigned Notary Public, personally appeared Joelle Altamirano, Real Estate Contracting Officer, Department of Energy/National Nuclear Security Administration (DOE/NNSA), known to me to be the person described in the foregoing instrument, who acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

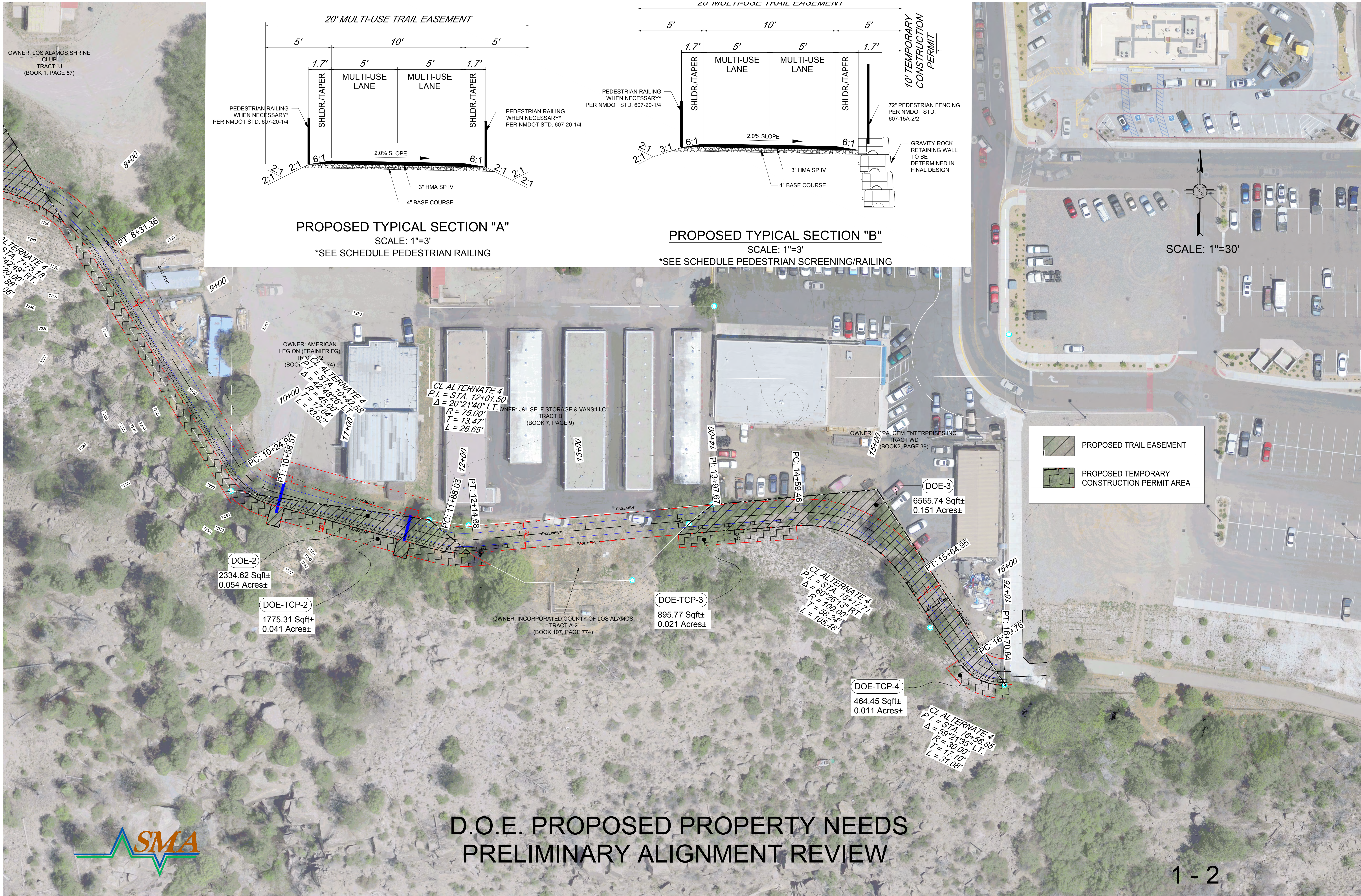
Notary Public

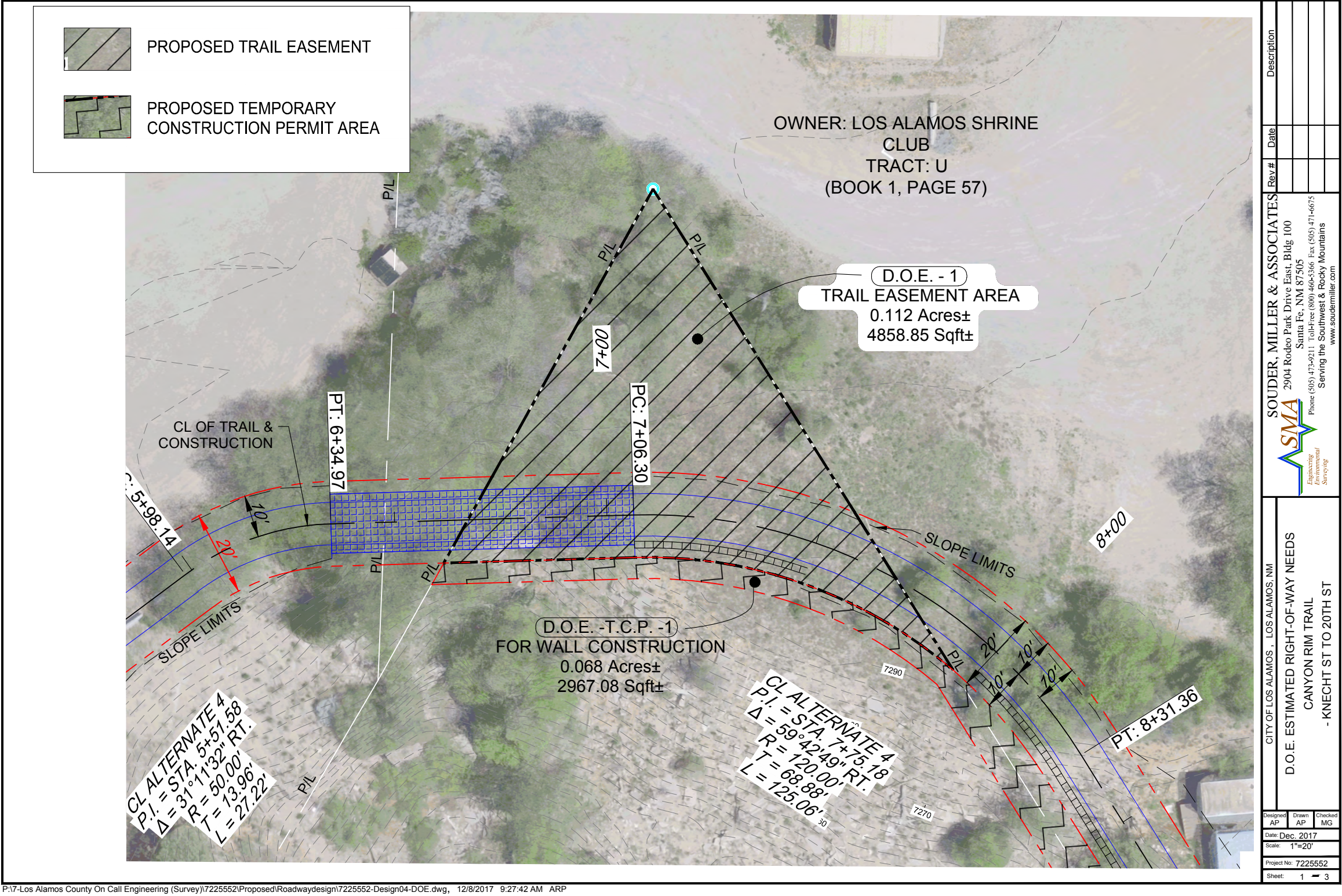
My Commission Expires: _____



D.O.E. PROPOSED PROPERTY NEEDS
PRELIMINARY ALIGNMENT REVIEW







P:\7-Los Alamos County On Call Engineering (Survey)\7225552\ProposedRoadwaydesign\7225552-Design04-DOE.dwg, 12/8/2017 9:27:42 AM ARP

Description		
Rev #	Date	Description
SOUDE, MILLER & ASSOCIATES		
2904 Rodeo Park Drive East, Bldg 100		
Santa Fe, NM 87505		
Phone (505) 473-0211 Toll-Free (800) 468-5366 Fax (505) 471-6675		
Serving the Southwest & Rocky Mountains		
www.soudemiller.com		
CITY OF LOS ALAMOS, LOS ALAMOS, NM		
D.O.E. ESTIMATED RIGHT-OF-WAY NEEDS		
CANYON RIM TRAIL		
- KNECHT ST TO 20TH ST		
Designed	Drawn	Checked
AP	AP	MG
Date: Dec. 2017		
Scale: 1"=20'		
Project No: 7225552		
Sheet: 1 of 3		

Exhibit A, Easement No.
Canyon Rim Trail
Los Alamos, New Mexico

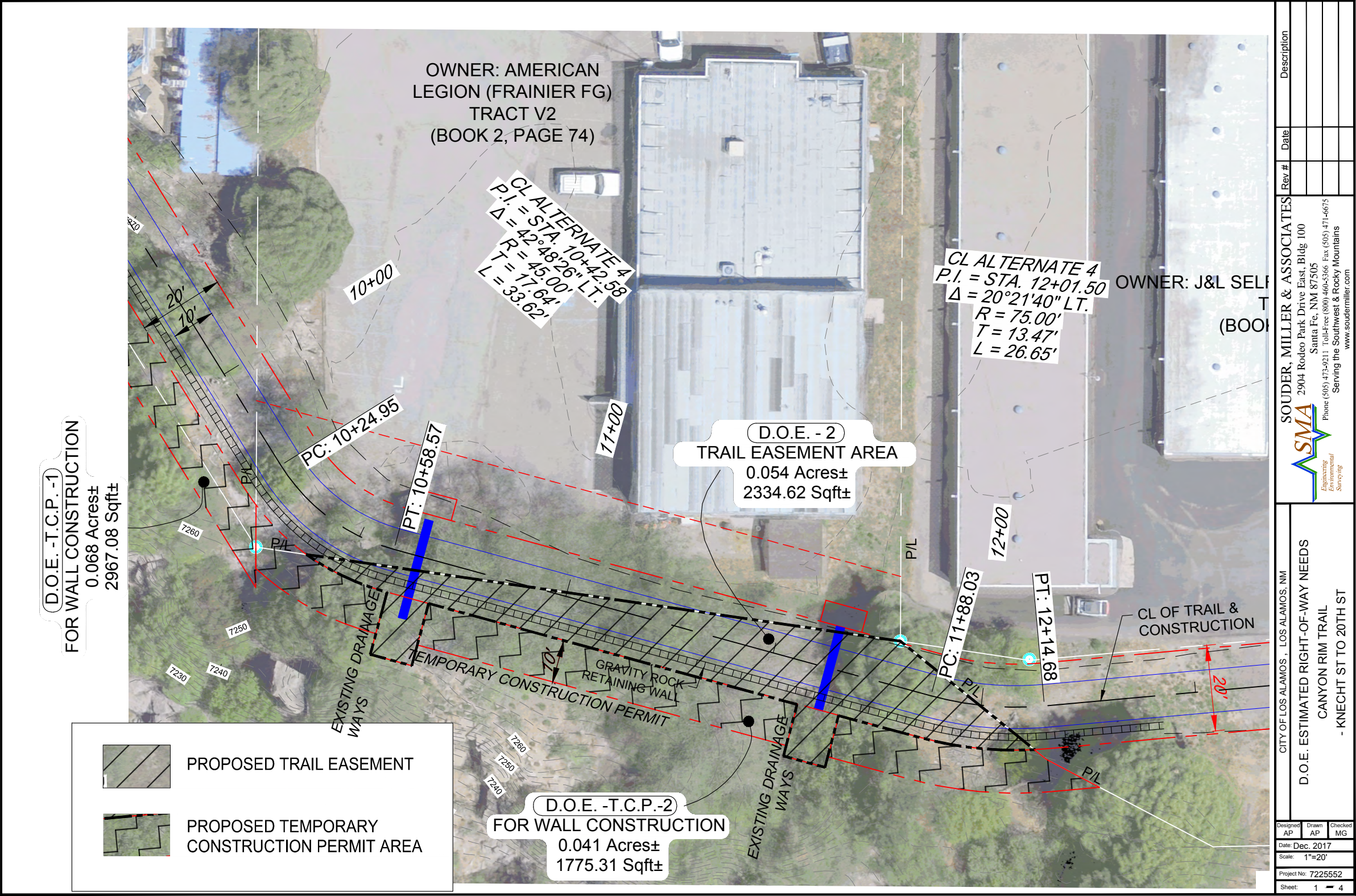
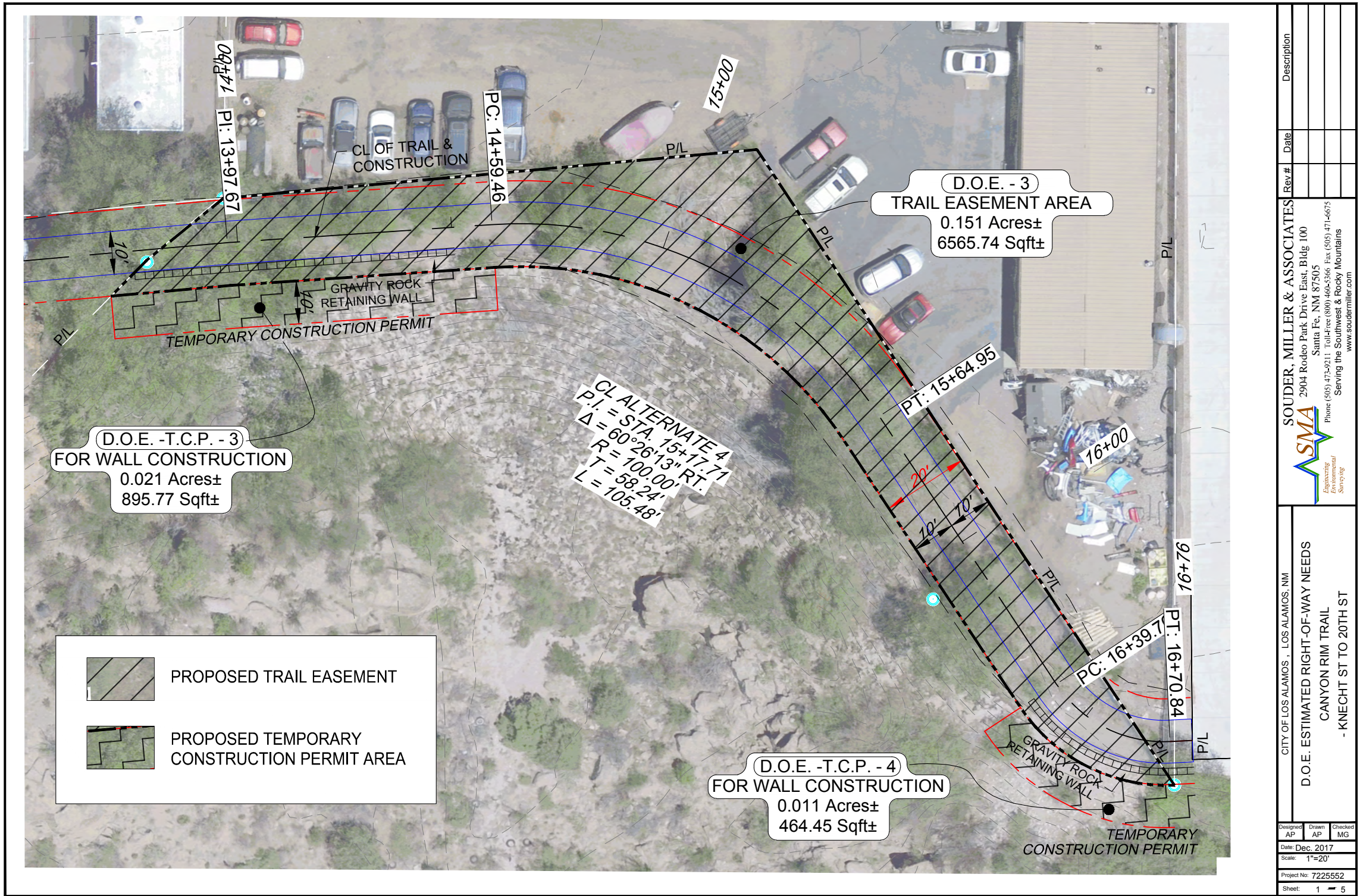


Exhibit A, Easement No.
Canyon Rim Trail
Los Alamos, New Mexico



CITY OF LOS ALAMOS, LOS ALAMOS, NM		SMA Engineering Environmental Surveying		SOUDE, MILLER & ASSOCIATES		Rev #	Date	Description
D.O.E. ESTIMATED RIGHT-OF-WAY NEEDS		2904 Rodeo Park Drive East, Bldg 100 Santa Fe, NM 87505						
CANYON RIM TRAIL		Phone (505) 473-9211 Toll-Free (800) 466-5366 Fax (505) 471-6675						
- KNECHT ST TO 20TH ST		Serving the Southwest & Rocky Mountains						
		www.soudemiller.com						
Designed AP	Drawn AP	Checked MG						
Date: Dec. 2017								
Scale: 1"=20'								
Project No: 7225552								
Sheet: 1		5						

Exhibit A, Easement No.
Canyon Rim Trail
Los Alamos, New Mexico