

EXHIBIT 10

TO COMPLAINT FOR SPECIAL ACTION

FRANTI III HOLDINGS, LLC, ET AL V. CITY OF TUCSON



Zoning Examiner

ZONING EXAMINER DECISION

February 21, 2025

Steven Eddy, Director of Public Affairs
TUCSON ELECTRIC POWER
3950 East Irvington Road
Tucson AZ 85714

SUBJECT: TP-ENT-1024-00022 TEP Perpendicular Crossing—Oracle & Grant Intersection, C-2 (Ward 3) Zoning Examiner Special Exception Procedure

Public Hearing Date: February 13, 2025

Dear Mr. Eddy,

Pursuant to the City of Tucson's Unified Development Code (UDC) and the Zoning Examiner's Rules of Procedure (Resolution No. 9428), this letter constitutes written notification of the Zoning Examiner's findings and decision for the special exception case TP-ENT-1024-00022 TEP Perpendicular Crossing—Oracle and Grant Intersection, C-2 (Ward 3).

BACKGROUND

This is a special exception request by Tucson Electric Power (TEP), to allow an above ground perpendicular crossing of electric transmission lines, as permitted by special exception in the *Unified Development Code* (UDC). The project site area is zoned C-2 (Commercial) and is located within the Oracle and Grant intersection (see Location Map).

The Applicant's special exception request seeks to allow new above-ground TEP electric transmission lines that will perpendicularly cross (east to west) the Oracle Road Gateway Corridor Zone at the Oracle and Grant intersection. This is a segment of a new TEP electric transmission power line route along the south side of Grant Road.

UDC section 5.5.4.B.1 requires new electric transmission lines to be underground within a Gateway Corridor Zone unless relief is granted by variance or through the Zoning Examiner special exception procedure under UDC 3.4.5 and 4.9.11.A.13. This special exception request is specific to the perpendicular crossing of the Oracle Road Gateway Corridor Zone, and does not include the other components (alignment, route, or site selection) of the Midtown Reliability Project.

TP-ENT-1024-00022 TEP Perpendicular Crossing—Oracle & Grant Intersection



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FEBRUARY 13, 2025 ZONING EXAMINER HEARING

The Zoning Examiner held a public hearing on this case on February 13, 2025. The Applicant's representative, Steven Eddy, made a presentation in support of the special exception request, and described the proposed perpendicular crossing.

Three members of the public spoke in opposition to the special exception request.

The specific positions and arguments of the Applicant, speakers, and written public comments are discussed below.

Planning and Development Services Department Staff reported that one approval and 36 protests were received as of the public hearing time and date.

FINDINGS

Background Information

In July 2024, the Arizona Corporation Commission voted to approve a Certificate of Environmental Compatibility (CEC) authorizing TEP's Midtown Reliability Project. The CEC was issued by the Arizona Power Plant and Transmission Line Siting Committee. The Applicant's Special Exception Land Use Permit Application dated January 23, 2025 states in part (at page 32):

The Midtown Reliability Project will upgrade Midtown Tucson's antiquated and overloaded 46 kV sub-transmission system to a much more flexible and robust 138 kV system. This upgrade is urgently needed to replace older, lower-voltage equipment that cannot keep pace with the increasing energy use in central Tucson because the aged and outdated Midtown system is at or near capacity. Peak power demand in the area has nearly reached the capacity of the current system, which reduces reliability of the electric grid and requires significant patchwork expenditures to compensate for the system's age. The existing Midtown 46 kV system has little to no contingency reserve, creating circumstances that challenge TEP's ability to serve customers in the area reliably and adversely impact the future growth potential of Midtown.

The proposed 8.5-mile 138 kV line will interconnect with 473 miles of existing 138 kV overhead lines that provide reliable service to TEP's customers. The existing 138 kV system includes the recently completed Irvington-to-Kino line. The Midtown Reliability Project is simply a continuation of that line north from the Kino Substation to the DeMoss Petrie Substation – tying Midtown into a looped system with access to regional generation and transmission resources.



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The proposed perpendicular crossing will set the transmission structures a minimum of 150-feet away from the Gateway Corridor Zone curblane to satisfy the special exception requirement at UDC Section 4.9.11.A.13.d. There will be two new poles set on opposite side of the Oracle and Grant intersection with pole distance at 151 feet from curb, and pole height of 90-feet. The finish surfaces treatment of the 90-foot height electrical transmission poles will be Mojave sage, weathered, and galvanized.

Existing Land Use: The existing area is comprised of roadways, turn lanes, access drives, sidewalks, bus shelters, right-of-way and several above and underground utility installations.

Roadway Classifications: Oracle Road is classified as a gateway arterial road and Grant Road is classified as an arterial road on the City of Tucson Major Streets and Routes map.

Existing Zoning Description: Commercial Zone (C-2): This zone provides for general commercial uses that serve the community and region. Residential and select other agriculture, civic, recreational, and utility uses may also be permitted that provide reasonable compatibility with adjoining residential uses.

Surrounding Zoning and Land Uses:

Northwest: C-2 (Commercial Zone); Retail

Northeast: C-2 (Commercial Zone); Automotive Service

Southwest: C-2 (Commercial Zone); Automotive Sales

Southeast: C-2 (Commercial Zone); Gas and Convenience Store

Previous Cases on the Property: Grant Road Urban Overlay District (C9-18-13).

Related Cases: None

Planning Considerations

Land use policy direction for this area is provided by *Plan Tucson* and the *Unit 6 Plan*.

Plan Tucson: The *Plan Tucson* Future Growth Scenario Map illustrates different building blocks within the city that have specific policies to promote future growth opportunities. The proposed utility crossing lies within the Mixed-Use Corridors building block of the Future Growth Scenario Map. Mixed-use Corridors provide a higher intensity mix of jobs, services, and housing along major streets. The businesses and residences within these corridors will be served by a mix of high-frequency transit options, as well as pedestrian and bicycle facilities.

Relevant Policies:

LT1 Integrate land use, transportation, and urban design to achieve an urban form that supports more effective use of resources, mobility options, more aesthetically-pleasing and



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active public spaces, and sensitivity to historic and natural resources and neighborhood character.

LT27 Using existing neighborhood, area, and other specific plans as the starting point, undertake an inclusive public process to explore the concept of developing and implementing planning and service areas to coordinate and enhance land use planning, infrastructure improvements, and public service delivery.

PI7 Coordinate with utility companies and other public service providers for the planning of infrastructure, facilities, and services, making sure infrastructure and facility construction is sensitive in design and location to environmental and historic resources.

LT28.1.1 Utilize solutions and strategies included in the Design Guidelines Manual to provide an improved level of community design.

LT28.1.2 Require telecommunications facilities be located, installed, and maintained to minimize visual impact and preserve views. Cabling and fiber optics should be installed underground where possible, and the visual impact of cellular towers should be a prime consideration in the City's acceptance and approval.

LT28.1.3 Improve the appearance of above-ground utilities and structures and extend access to high-tech wireless communications facilities throughout the city.

LT28.2.12 Support environmentally sensitive design that protects the integrity of existing neighborhoods, complements adjacent land uses, and enhances the overall function and visual quality of the street, adjacent properties, and the community.

LT28.2.14 Protect established residential neighborhoods by supporting compatible development, which may include other residential, mixed-use infill and appropriate nonresidential uses.

Unit 6 Plan: The Oracle and Grant intersection is located at the northeast edge of the *Unit 6 Neighborhood Land Use & Circulation Plan* (the "*Unit 6 Plan*"), adopted by the Mayor and Council on January 10, 1977. The *Unit 6 Plan*'s primary objective is to stabilize the balance of residential, commercial and industrial uses and remove some of the circulation conflicts experienced by area residents.

The southwest corner of Grant and Oracle (identified as Miracle Mile in the *Unit 6 Plan* "Land Use Plan" map) is identified as Low Medium Intensity Commercial in the *Unit 6 Plan*. The *Unit 6 Plan* does not discuss undergrounding of utilities, and only minimally mentions esthetics.

Applicable UDC Findings and Criteria

This special exception request is subject to UDC Section 3.4.5 and UDC Section 4.9.11.A.13.



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UDC Section 3.4.5 authorizes the Zoning Examiner to grant a special exception only after finding that the requested special exception:

1. Meets the standard expressly applied by all adopted by all codes and regulations for that type of land use or for the land use class applicable to the proposed use;
2. Does not adversely affect adjacent land uses or the surrounding neighborhood or that such adverse effects can be substantially mitigated through the use of additional conditions as provided in Section 3.4.6;
3. Provides for adequate and efficient vehicular and pedestrian access and circulation and vehicular parking;
4. Can be adequately and efficiently served by public facilities and services, such as water, storm water drainage, fire and police protection, and solid and liquid waste disposal and/or collection as may be required by the various public and private agencies; and,
5. Complies with the General Plan and any applicable sub-regional, area, or neighborhood plan.

UDC Section 4.9.11 (“Utilities Use Group”), paragraph A (“Distribution System”), subparagraph 13 provides:

13. Transmission lines may be relieved of their requirement to be underground per UDC section 5.3, Scenic Corridor Zone (SCZ) or section 5.5, Gateway Corridor Zone (GCZ) in accordance with UDC section 3.4.3 Zoning Examiner Special Exception Procedure.

In considering any request for a special exception, the Zoning Examiner shall take into consideration the impact of providing such an exception in historic areas (as defined by or listed in the National Register of Historic Places, properties or districts, City of Tucson Historic Preservation Zones, City of Tucson Historic Landmarks, or Neighborhood Preservation Zones), located within the specific Gateway Corridor Zone or Scenic Corridor Zone in which the special exception is being requested.

A special exception request to relieve the requirement to underground transmission lines must meet the required findings of UDC section 3.4.5. Additionally, the effects that can be expected from permitting relief from the undergrounding requirements based on any of the criteria listed herein or any combination of those criteria when added together must remain consistent with the overall purpose and integrity of the Gateway/Scenic route, unless it is



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technologically impossible and/or clearly financially cost prohibitive. If relief is approved under this section, any new above-ground transmission line that is permitted must be designed, constructed, and maintained to be as unobtrusive as possible.

A special exception request to relieve the requirement to underground transmission lines that meets the findings established by UDC section 3.4.5, *Findings* and which also meets criteria a, d, or f of this subsection may only require one criterion for approval when no other criteria apply to the project. Otherwise, in addition to the required findings of UDC section 3.4.5, the special exception request must meet more than one criterion listed in subsections (a) through (h) below.

a. The proposed overhead transmission lines are contextually sensitive to adjacent and surrounding zoning and land uses. Examples of this may include a proposed location that is industrially zoned or a proposal that results in a less adverse aesthetic impact or less adverse impact on viewsheds for surrounding properties.

b. Requiring underground construction would cause a significant increase in ground disturbance when compared to overhead construction in sensitive areas such as Environmental Resource Zone (ERZ) or Watercourse Amenities, Safety and Habitat (WASH) wash crossings or environmentally and archeologically sensitive areas.

c. The proposed overhead transmission line will have minimal impact on residential areas.

d. The proposed overhead transmission lines are located on non-Gateway or non-Scenic corridor routes, and the relief is requested for a segment that perpendicularly crosses a Gateway Corridor Zone or Scenic Corridor Zone, and the placement of poles is set back at least 150 feet from the curbline of the designated Gateway or Scenic Corridor.

e. The proposed overhead transmission lines are for a repair or upgrade of existing facilities and the proposed facilities are similar in size and scale to the existing facilities being repaired or replaced. Replacement facilities may not be any larger than 10% [of] the height or width of existing facilities being replaced.

f. The transmission lines are proposed in an area where there is an existing presence of railroad, highway and/or bridge crossings, or in an area where underground installation would interfere with other existing undergrounded utilities, and curing that interference is technologically impossible or financially cost prohibitive.



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g. The proposed transmission lines will provide electrical service to critical customers where overhead lines are strongly recommended for specialized operations; examples include but are not limited to: provision of electricity to Davis Monthan AFB or other installations necessary to the national defense.

h. The proposed project is in an area where costs to install underground would have a disparate impact on low-income residents.

The ZE findings shall identify each specific criterion that relates to the application/ project, and which are met. Approval of a Zoning Examiner special exception shall not preclude any other necessary regulatory relief process such as a variance.

Applicant's Contentions

The Applicant's Special Exception Land Use Permit Application dated January 23, 2025 for the crossing at Oracle and Grant (the "TEP Application") acknowledges (at pages 6 and 336) that the Zoning Examiner may grant a special exception only after making meet the findings in UDC Section 3.4.5, but the TEP Application does not specifically address those findings. Instead, it focuses on the eight criteria for considering a request for special exception for relief of the undergrounding requirement under UDC Section 4.9.11.A.13.

The Applicant contends (TEP Application page 6) that the proposed overhead transmission lines are contextually sensitive to adjacent and surrounding zoning and land uses as required by UDC Section 4.9.11.A.13.a:

Installing the line underground at the intersection requires an underground riser structure to be installed on the east and west side of the intersection. These riser structures are larger and more visually invasive than an overhead transmission pole. Therefore, the overhead transmission structures are more contextually sensitive to the intersection than an underground solution.

The Applicant points out (TEP Application page 6) that UDC Section 4.9.11.A.13.b, pertaining to relative ground disturbance in sensitive areas, is inapplicable because the proposed transmission line crossing at the Oracle and Grant intersection "is not within an ERZ, WASH crossing, environmentally sensitive area, or an archaeological sensitivity zone."

The Applicant states (TEP Application page 6) that UDC Section 4.9.11.A.13.c, requiring that the overhead transmission line "have minimal impact on residential areas," does not apply because the proposed crossing is in a commercial zone and "[n]o residences are impacted (physically or aesthetically) by the new transmission line."



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UDC Section 4.9.11.A.13.d requires poles to be set back at least 150 feet from the curblineline of the designated Gateway or Scenic Corridor. Applicant points out (TEP Application page 7) that the poles “will be set back a minimum of 150’ away from Oracle Road’s curblineline.”

The Applicant points out (TEP Application page 7) that UDC Section 4.9.11.A.13.e, which applies to “repair or upgrade of existing facilities,” does not apply to this application, which is for a new transmission line.

The Applicant points out (TEP Application page 7) that UDC Section 4.9.11.A.13.f, which applies “where there is an existing presence of railroad, highway and/or bridge crossings,” does not apply because “there are no railroads, highways, and/or bridge crossings at the [Oracle and Grant] intersection.”

UDC Section 4.9.11.A.13.g provides, in relevant part: “The proposed transmission lines will provide electrical service to critical customers where overhead lines are strongly recommended for specialized operations....” The Applicant (TEP Application page 7) explains that the proposed 138 kV overhead transmission line will provide more reliable power to the University of Arizona and Banner – University Medical Center. Nothing in the TEP Application addresses the relative reliability or useability of underground crossings, or explains whether or how “overhead lines are strongly recommended....”

UDC Section 4.9.11.A.13.h provides: “The proposed project is in an area where costs to install underground would have a disparate impact on low-income residents.” The Applicant (TEP Application page 8) points out that the three census tracts that overlap at Oracle and Grant have a median income lower than the overall Ward 3 median income and Pima County’s median income, and argues that the costs of this construction, which will be passed on to all TEP customers, will be higher initially and over time with underground facilities than with overhead lines. The TEP Application does not attempt to quantify the relative costs.

In general, the thrust of the Applicant’s argument (TEP Application page 8) is that “an overhead transmission line is less intrusive than an underground line with risers.”

Contentions in Public Comments

The South Park Neighborhood Association submitted a written comment in favor of this and the other two concurrent TEP applications, stating that granting the special exceptions “will allow TEP to improve reliability and increase capacity in midtown Tucson by allowing construction of TEP’s Midtown Reliability Project” and that “[c]ompletion of that project would also allow decommissioning of the existing 46kV system.”

Underground Arizona, Tucson—Pima County Historical Commission, Feldman’s Neighborhood Association, Sam Hughes Neighborhood Association, West University Neighborhood Association, and members of the public spoke and/or submitted written comments in opposition



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to this and the other two concurrent TEP applications. They made a variety of observations and arguments, including:

- Burying power lines improves the appearance of the community and is the will of the people as reflected in the adopted ordinances and regulations.
- TEP has failed and refused to install power lines underground when utility companies elsewhere in Arizona have been installing power lines underground for many years.
- Overhead power lines cause and contribute to wildfires. The TEP Application fails to factor in the private property losses and costs attributable to power line fires.
- Public hazards from overhead power lines are recognized by insurers, some of whom have adopted higher insurance rates for overhead electric lines than for underground lines.
- The appearance, sag, and sway of overhead lines interfere with the amount and quality of development near and within sight of the overhead lines.
- TEP's representatives have acknowledged in Arizona Corporation Commission testimony and elsewhere that these transmission lines are physically and technologically capable of being installed underground.
- The TEP Application directly conflicts with the required findings and criteria for relief from the underground installation requirement, and conflicts with policies requiring facilities to be installed underground or with minimum visual impact.
- TEP failed to provide neighborhood notice as required by UDC Section 3.2.2.C.1.a, which requires notice of the neighborhood meeting to be sent to property owners within 400 feet and neighborhood associations within one mile of the proposal.
- Traffic impacts of constructing underground electric transmission facilities is equivalent to traffic impacts of constructing overhead electric transmission facilities.
- This crossing is an integral part of a larger threat posed by the Midtown Reliability Project on legal protections provided by City ordinances to National Register Historic Districts, Neighborhood Preservation Zones, Historic Preservation Zones, and Gateway Routes.
- The service lifespan of Midtown Reliability Project poles is 100 years, so the future impacts are impossible to calculate.
- Overhead utility poles endanger bird populations.
- Whether electrical fields from high powered lines are safe is an unsettled question.



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PDSD Recommendation

PDSD's January 28 memorandum for this case concludes that this proposed special exception "is consistent with *Plan Tucson, Unit 6 Neighborhood Plan*, and in compliance with applicable criteria of UDC Sections 3.4.5, and 4.9.11.A.13. a-h" and states that approval of the special exception land use is appropriate, subject to compliance with the PSDS-proposed preliminary conditions.

PDSD's January 28 memorandum does not include a staff analysis of each of the required findings in UDC Section 3.4.5 and of the criteria in UDC Section 4.9.11.A.13. It includes, verbatim, the Applicant's position with respect to each of the criteria, as found in the TEP Application.

DECISION

To grant the special exception, UDC Section 3.4.5 requires the Zoning Examiner to make five specific findings. The Acting Zoning Examiner is unable to make three of the five findings for this application:

1. The proposed overhead crossing is in the Oracle Road Gateway Corridor Zone, established to give "[a] favorable visual impression of Tucson to tourists and visitors at entry points to the City and on routes leading to major recreation attractions." UDC 5.5.1.A. This visual impression will be marred by power lines crossing the gateway. Recognizing this, the UDC only allows an exception in limited circumstances (see UDC 5.5.4.B.1.a and 4.9.11.A.13). For the reasons explained in detail below, this requested special exception does not meet the criteria for an exception. As a result, the Zoning Examiner cannot make the finding required by UDC Section 3.4.5.A.1.

2. The Acting Zoning Examiner disagrees with the Applicant's contention that the risers required for the undergrounding are more visually invasive than the overhead facilities, and disagrees that the adverse effects of the overhead facilities are limited to esthetics. The Acting Zoning Examiner finds that the absence of overhead transmission lines provides a substantially more favorable visual impression in the Gateway Corridor Zone, despite the need for the risers. The Acting Zoning Examiner also finds that other adverse impacts of overhead lines, including their constrictions on surrounding private and public development and their safety hazards, are significantly reduced or even eliminated by being underground. These adverse effects cannot be substantially mitigated through the use of conditions if the lines are permitted to be installed overhead. Consequently, the Zoning Examiner cannot make the finding required by UDC Section 3.4.5.A.2. In the Zoning Examiner's opinion, the proposed overhead transmission lines are not "contextually sensitive" to adjacent and surrounding zoning and land uses.



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5. *Plan Tucson* seeks to maintain and improve the appearance of the City of Tucson. Policy LT1 seeks to achieve more esthetically pleasing public spaces. Although specifically addressed to telecommunications facilities and not electric transmission facilities, Guideline LT28.1.2 requires cabling to be installed underground where possible. Guideline LT28.2.12 supports “environmentally sensitive design that ... enhances the overall function and visual quality of the street, adjacent properties, and the community.” As a result, the Zoning Examiner cannot make the finding required by UDC Section 3.4.5.A.5 because this request conflicts with specific language in the General Plan.

When considering a request for relief from the requirement to underground facilities in a Gateway Corridor Zone, the Zoning Examiner is also required to consider the criteria in UDC Section 4.9.11.A.13. An overarching requirement found in the introductory paragraphs prior to the list of specific criteria is that the special exception “must remain consistent with the overall purpose and integrity of the Gateway/Scenic route, *unless it is technologically impossible and/or clearly financially cost prohibitive.*” (Italics added.)

The record presented to the Zoning Examiner includes testimony of TEP representatives before the Arizona Corporation Commission, acknowledging that installing facilities underground is not technologically impossible. While the Applicant has argued in this case that the cost of underground facilities will be higher than the cost of aboveground installation, the Applicant has not quantified the cost differential sufficiently to meet the required showing that it is “financially cost prohibitive.” As a result, this application fails to satisfy this overarching requirement.

In the Zoning Examiner’s opinion, this special exception request also does not meet the criteria found at UDC Section 4.9.11.A.13 subparagraphs a, g, and h. The Applicant contends that subparagraph a is met because, from Applicant’s perspective, the ugliness of the required risers negates the benefits of the crossing being underground. In the Zoning Examiner’s opinion, the absence of overhead lines in the Oracle and Grant intersection provides a significantly more attractive appearance, as evidenced by the photo simulations in the TEP Application. In addition, the traffic and fire hazard elements of overhead lines are eliminated in this important intersection, and public and private land uses at and near the intersection will not be constricted by power line views and setbacks.

The Applicant contends that subparagraph g is met because of the benefits of a more robust and reliable 138 kV power source for the University of Arizona and Banner – University Medical Center. But subparagraph g requires a showing that “overhead lines are strongly recommended for specialized operations...,” and nothing in the TEP Application suggests that the benefits of the new 138 kV system will be lost by having this segment underground.

Subparagraph h considers whether “[t]he proposed project is in an area where costs to install underground would have a disparate impact on low-income residents.” Applicant contends that residents near the Oracle and Grant intersection will receive a disparate impact because they have



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a median income lower than the overall Ward 3 median income and Pima County's median income. Following this argument to its logical conclusion would mean that underground installation can occur only in areas where the median income of nearby residents is higher than the region's median income. This argument is belied by Applicant's admission that any extra costs of underground installation will be passed on to *all* customers, and not just those customers who reside near the underground installation. Applicant would apparently contend that the City of Tucson's policy of underground installation must be overruled because Applicant will pass the costs on to customers, and higher utility costs have a disparate impact on lower income customers. The Zoning Examiner rejects this position. To do otherwise would allow subparagraph h to negate the policy of underground installation.

The Zoning Examiner agrees with the Applicant that the criteria found at UDC Section 4.9.11.A.13 subparagraphs b, e, and f are inapplicable to this application. These criteria involve construction in sensitive areas, repair or upgrade of existing facilities, and transmission lines proposed near railroad, highway, and/or bridge crossings. The Oracle and Grant intersection includes none of these elements.

UDC Section 4.9.11.A.13 subparagraph c states: "The proposed overhead transmission line will have minimal impact on residential areas." The nearest residences appear to be more than 400 feet from this installation, and the nearest residential zone is farther yet. The Zoning Examiner agrees with the Applicant that this criterion is met for this application.

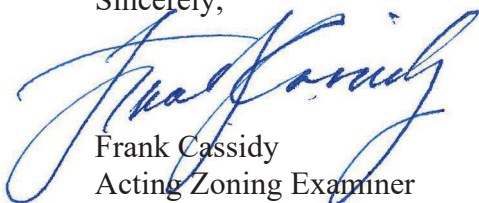
For the foregoing reasons, and based on the findings set forth above, the undersigned Acting Zoning Examiner denies special exception request TP-ENT-1024-00022 TEP Perpendicular Crossing—Oracle & Grant Intersection.

APPEAL

This Decision may be appealed to the Mayor and Council pursuant to *UDC* Section 3.4.3.I. A notice of intent to appeal this Decision must be filed with the City Clerk, 255 West Alameda, Tucson, Arizona 85701 by a party of record in accordance with *UDC* Section 3.9.2 within fourteen days of the effective date of this Decision, with a copy delivered to PDSD.

The complete appeal materials must be filed with the City Clerk within 30 days of the effective date of this Decision.

Sincerely,



Frank Cassidy
Acting Zoning Examiner

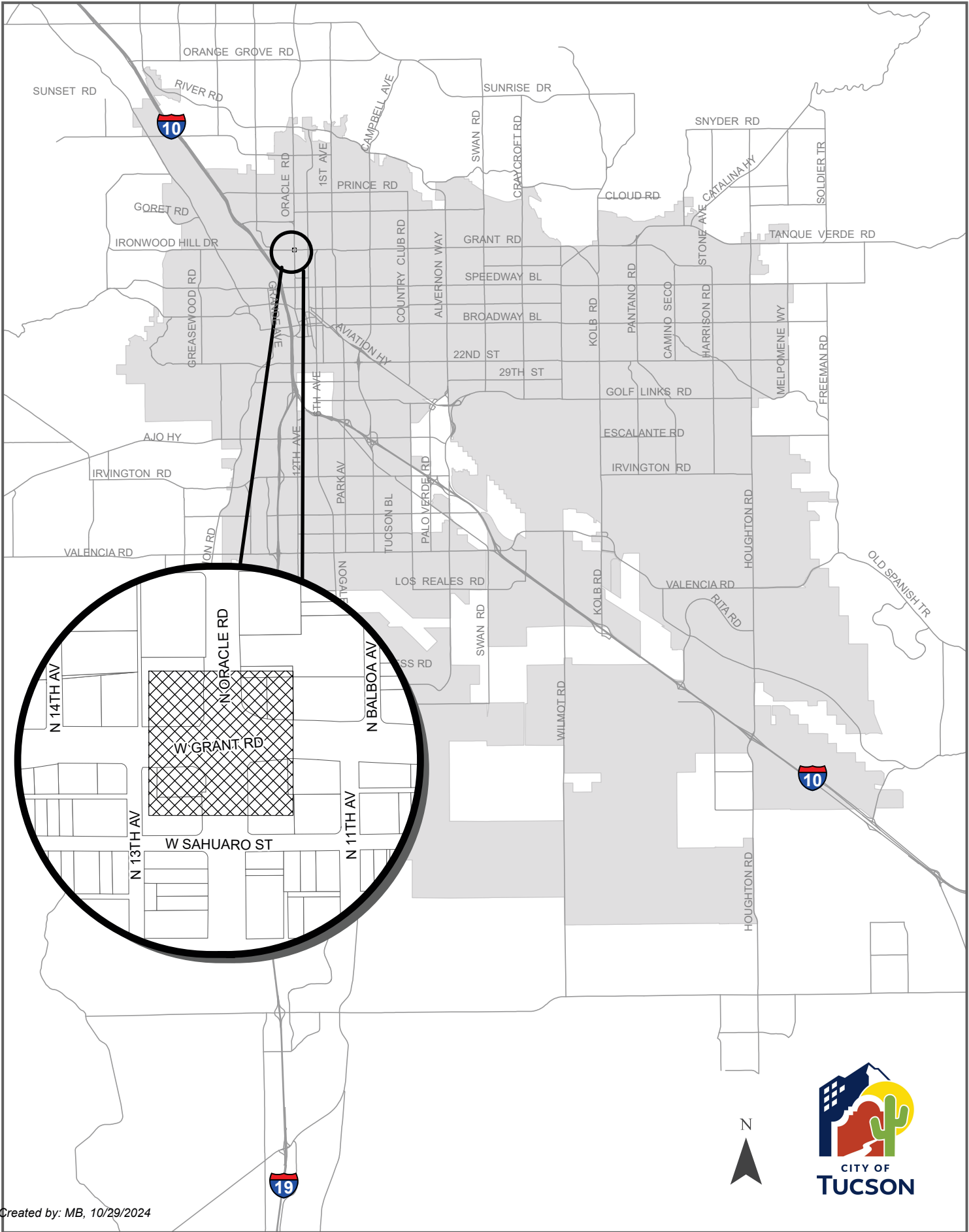


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ATTACHMENTS:

Case Location Map
Special Exception Case Map

Cc: Mayor and Council





Address:
Base Maps: Twp. 13S Range 13E Sec. 35
Ward: 3



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