



ZONE CHANGE
EXTRA-TERRITORIAL ZONING COMMISSION

DOÑA ANA COUNTY COMMUNITY DEVELOPMENT DEPARTMENT
Doña Ana County Government Complex • 845 N. Motel Blvd.
Las Cruces, New Mexico 88007 • Office: (575) 647-7250

MEETING DATE: April 21, 2011

CASE #: Z11-001

REQUEST: A Zone Change from EC 1 to EC 2 to establish and operate a dance hall/event center

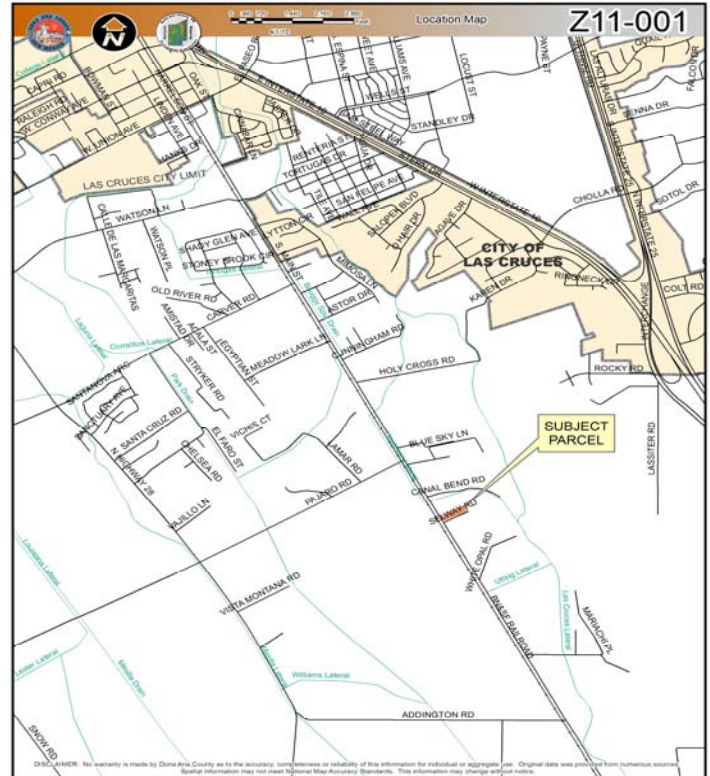
APPLICANT: Casa Mexicana Tile, Martha Orta, Agent

LOCATION: 5585 S. Main St.

PROPERTY SIZE: 2.5-acres

RECOMMENDATION: DENIAL

STAFF CONTACT: Steve Meadows, Planner



SUMMARY: The applicant, Casa Mexicana Tile, Martha Orta, Agent, is requesting a Zone Change from EC1 (Neighborhood Commercial, 5-acre maximum lot size) to EC2 (Community Commercial, 5,000 sq. ft. minimum lot size) as required by Article 3, Section 3.1.K. to establish a commercial Dance Hall / Event Center. Special Use Permit Request Case # SU11-001 is being sought in conjunction with this Zone Change Request. The applicant seeks to operate a Dance Hall / Event Center (Bella Ballroom) within a 7,200 sq. ft. existing structure. The 2.5-acre parcel is located south of the City of Las Cruces and is addressed as 5585 S. Main St., and is currently zoned EC1 (Neighborhood Commercial, 5-acre max lot size). The property is located within Section 4, Township 24 South, Range 2 East, is described as Part of Lot 2, U.S.R.S. Tract 13-30E1, Replat No. 1 as recorded in the office of the Doña Ana County Clerk on August 1, 2001, in Book 19, Page 696, and can be further identified by Map Code # 4-009-139-185-487.

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 USE

SITE	ZONING	LAND USE
North	EI1 Light Industrial District, 5,000 sq. ft. min. new lot size.	Light Industrial uses
South	ER3M Residential District, 1-acre min. new lot size, single family site built and mobile homes.	Commercial, residential and agricultural uses.
East	ER3M Residential District, 1-acre min. new lot size, single family site built and mobile homes.	Residential and agricultural uses
West	Transportation Corridor	NM Hwy 478 (S. Main St.) and Railroad Right of Way

BACKGROUND:

The request:

Case # Z11-001/Casa Mexicana Tile: The applicant is requesting approval of a Zone Change from EC1(Neighborhood Commercial, 5-acre maximum new lot size) to EC2 (Community Commercial, 5,000 sq. ft. minimum new lot size). The applicant is also seeking a Special Use Permit (Case #SU11-001) to establish and operate a Dance Hall / Event Center (Bella Ballroom) on a 2.5-acre parcel as required by Article 3, Section 3.1.K.4 of the ETZ Ordinance. This Zone Change request and the Special Use Permit request were brought forward by a complaint on the subject property of an unregistered business. The Codes Enforcement Division directed the applicant to the Planning Staff to resolve the issues brought forth in the complaint.

Existing Conditions and Zoning:

The 2.5-acre parcel is a level, rectangular shaped property containing a 7,200 sq. ft. structure, to be utilized as the Dance Hall / Event Center, and an approximate 20,000 sq. ft. storage building. A water well, pump house and a 750 gallon capacity septic system provide service to the property. The parcel is bounded on the west by S. Main St. (Hwy 478), considered a principal arterial by the Las Cruces MPO, and on the south by Selway Rd., a paved private road.

The subject parcel lies within an EC1 (Neighborhood Commercial, 5-acre maximum new lot size) Zoning District that was approved with Zone Change Case # Z2000-003 / McDonald on December 20, 2000 from ER3M to EC1. Case # Z11-001 is being sought by the applicant to rezone the subject property to EC2 (Community Commercial, 5,000 sq. ft. minimum new lot size) for the proposed dance hall / event center as required by Article 3, Section 3.1.K

APPLICABLE REGULATIONS:

The following articles within the Las Cruces Extra-territorial Zoning Ordinance 88-02, as amended, and the ETZ Comprehensive Plan 2000-2020 provide the policies, ordinance regulations and criteria that are applicable for approval of Case #Z11-001/Casa Mexicana Tile in order to ensure and create orderly, harmonious and economically sound development and promote the health, safety, convenience and general welfare of the citizens of the Extra-territorial Zone.

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

Section 1.6 Definitions

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

2.1.B Zoning District Changes: Rezoning

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

2.1.D Evaluation Criteria

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

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

- 2.1.D.1 Determination of potential number of homes, population and population demographics.
- 2.1.D.2 Determination of potential traffic flows (average daily traffic) and where they will impact the transportation system.
- 2.1.D.3 Determination of need for new commercial activity.
- 2.1.D.4 Determination of potential water and sewage needs.
- 2.1.D.5 Evaluation of existing infrastructure capacities and an analysis of the ability of the existing system to accommodate the new development.
- 2.1.D.6 The difference between capacity and impact should be stated. Those areas which are appropriate for the developer to underwrite should be negotiated between local government and developer.
- 2.1.D.7 The ETZ should reserve the right to place appropriate zoning categories on environmentally sensitive areas, areas of historical significance or areas which contain endangered or rare species of animal or plant life.

- 2.1.D.8 Any analysis required should be undertaken and paid for by the developer and verified by the ETZ Commission.
- 2.1.D.9 Determination of impact of a proposed zone change on surrounding properties.

Proposed Zoning District:

Section 3.1.K EC2 COMMUNITY COMMERCIAL DISTRICT

3.1.K.1 PURPOSE

The purpose of the EC2 district is to provide sufficient space in appropriate locations for retail and personal service uses and some commercial recreational uses, generally serving an area of several neighborhoods in a given community.

3.1.K.2 DEVELOPMENT REQUIREMENTS

Minimum lot area	5,000 square feet
Minimum lot width	60 feet
Minimum lot depth	70 feet
Minimum front setback	25 feet
Minimum side setback	7 feet
Minimum rear setback	15 feet
Maximum building height	45 feet

Residences in the EC2 district shall comply with the development requirements for the ER5 district as outlined in Section 3.1.F.1 of this Article.

3.1.K.3 PERMITTED USES IN EC2 DISTRICT

The following uses are permitted by right in the EC2 district.

3.1.K.3.a PERMITTED USES - NO CONDITIONS

1. All uses permitted under Section 3.1.J.3.a of this Article	17. Lawn and garden equipment sales, rentals and service
2. Ambulance services	18. Locksmith services
3. Apparel shops	19. Medical outpatient clinics
4. Automobile service stations	20. Miniature golf courses
5. Billiard or pool halls	21. Mortuaries
6. Bowling alleys	22. Motion picture theaters
7. Burglar alarm services	23. Musical instrument supplies, sales, rental and service
8. Data processing centers	24. Newspaper establishments, including distribution offices
9. Department stores	25. Pawn shops
10. Electrical shops	26. Painting equipment and supplies, sales and rentals
11. Frozen food lockers	27. Residences
12. Glass cutting and finishing shops	28. Retail sales of accessories, antiques, art, art supplies, jewelry, music records and tapes, sporting goods and similar stores and shops
13. Hospital equipment and supplies,	29. Second-hand goods - retail sales

sales, rentals and service	
14. Hotels and motels	30. Taxicab stands
15. Household appliances sales and service	31. Upholstery shops
16. Juke box and coin machine sales, rentals and service	32. Weight reduction salons

3.1.K.3.b PERMITTED USES - WITH CONDITIONS

The following uses are permitted in EC2 in accordance with stated conditions:

1. All permitted uses with conditions allowed under Section 3.1.J.3.b of this Article
2. Amusement parks or enterprises
Temporary amusement enterprises are prohibited within three hundred (300) feet of any residential zoning district. Permanent amusement enterprises are prohibited within five hundred (500) feet of any residential zoning district. Go-cart tracks and other similar facilities must be located at least one thousand (1000) feet from any residence and at least one hundred (100) feet from any public way. The spectator areas shall be protected from the vehicular area by suitable fencing, bumpers or other protective devices.
3. Auction yard, structure or flea market
The off-street parking area must be clearly separated from the sales area. A minimum of one (1) off-street parking space is required for each display stand or area and one (1) space for every two hundred (200) square feet designated as an entire display area. Each display stand requires a minimum of twenty (20) square feet and a minimum of one (1) chemical or standard toilet is required for every twenty (20) display stands or fraction thereof.
4. Automobile, mobile home, trailer or truck sales, rentals and storage
The vehicle area must be graded and surfaced with asphalt, concrete or other materials that will provide equivalent protection against potholes, erosion, dust and a solid wall or fence six (6) feet high shall be maintained along any side of such area abutting any residential zone
5. Heavy equipment repair service (accessory use)
Permitted only as an incidental or accessory use to heavy equipment sales or rentals. Floor area for repair shall not exceed three thousand (3000) square feet and not exceed thirty (30) percent of the total gross floor area. Welding is permitted only in conjunction with repairs and shall not be used for the purpose of heavy equipment assembly.
6. Mini storage units
Units shall not be used for commercial sales of products, merchandise, service or repair
7. Welding (accessory use)
Welding shall be permitted only as an incidental or accessory use necessary for the repair of vehicles or equipment. Welding for the purpose of assembly is prohibited. Welding uses shall be approved by the County Codes Compliance Division.

3.1.K.4 EC2 SPECIAL USE PERMITS

The following uses require a public hearing pursuant to Section 2.1.G of this Ordinance and approval by the ETZ Commission:

1. Adult entertainment uses
Uses such as adult bookstores, adult photo studios, adult theaters and adult news racks as defined under Section 1.6 of this Ordinance, shall be permitted provided such use is located a minimum of one thousand (1,000) feet from a property line of any school, church, public park or recreational facility or residential zoning district. There shall be no public display of adult pictures or materials within a grocery store, bookstore or other retail or wholesale outlet and the pictures and materials must be concealed from public view at all time.
2. Mobile homes on a temporary basis during construction period for the purpose of housing security guards, pursuant to Section 3.1. of this Article. Conditions shall be attached regarding unobtrusive sitting and screening.

3. All uses requiring a Special Use Permit under Section 3.1.J.3.c of this Ordinance	13. Drive-in theaters
4. Airport and heliports	14. Major facilities for generation of energy
5. Animal hospitals and clinics	15. Nursing or convalescent homes
6. Auditorium or assembly halls	16. Racetracks
7. Bus passenger terminals	17. Recreational vehicle parks
8. Cemeteries and crematoriums	18. Recycling purchase centers
9. Commercial kennels	19. Skating rink: roller or ice skating
10. Commercial parking garages	20. Stadiums or athletic fields: baseball, football, soccer, track or similar sports
11. Convention or exhibition halls	21. Mobile home units for security guards on temporary basis during construction period only
12. Dance halls	

Existing Zoning District:

Section 3.1.J EC1 NEIGHBORHOOD COMMERCIAL DISTRICT

3.1.J.1 PURPOSE

The EC1 district is intended to accommodate limited retail and service establishments as a convenience to nearby residential neighborhoods. This zone is designed to be compatible and consistent with the needs and character of a residential neighborhood. Uses such as the sale of vehicles, engines, mobile homes; body shops, pet shops and similar uses are not permitted in the EC1 district. No uses which exceed ten thousand (10,000) square feet of gross floor area per business are permitted in order to avoid creation of undue traffic congestion, noise or other problems that would be detrimental to the residential character of the neighborhood.

3.1.J.2 DEVELOPMENT REQUIREMENTS

- Maximum lot area 5 acres
- Minimum lot width 60 feet
- Minimum lot depth 70 feet
- Minimum front setback 25 feet
- Minimum side setback 7 feet

Minimum rear setback	15 feet
Maximum building height	35 feet

Total district area shall not exceed five (5) acres.

Residences in the EC1 district shall comply with the development requirements for the ER5 district as outlined in Section 3.1.F.1 of this Article.

Landscape buffering may be required between residential uses.

3.1.J.3 PERMITTED USES IN EC1 DISTRICT

The following uses are permitted by right in an EC1 district provided the gross floor area of each business does not exceed ten thousand (10,000) square feet.

3.1.J.3.a PERMITTED USES - NO CONDITIONS

1. Arts and crafts studios	23. Jewelry stores
2. Banks and other similar financial institutions with no drive-up services	24. Knitting and yarn shops
3. Barber shops	25. Libraries
4. Beauty parlors	26. meat and seafood markets
5. Bicycle (non-motorized) sales and service	27. Messenger and telegraph services
6. Bookstores, newsstands and stationary shops	28. Office equipment sales and service
7. Cigarette and cigar shops	29. package liquor stores
8. Coffee shops and snack bars	30. Photography studios
9. Community buildings (publicly or privately owned)	31. Photostatic copying services
10. Dealers in coins, stamps or similar collectors' items	32. Post offices
11. Delicatessens	33. Private clubs and lodges
12. Dental and medical laboratories	34. Professional and business offices
13. Dressmaking shops	35. Public parks, playgrounds and other similar recreational facilities
14. Drug stores	36. Real estate offices
15. Dry goods or notion stores	37. Restaurants without drive-in service
16. Florist shops	38. Schools for teaching art, dance, music and other similar activities
17. Furniture stores	39. Self service Laundromats
18. Gift shops	40. Shoe and boot repair shops
19. Grocery stores	41. Small appliance sales and service
20. Hardware stores	42. Tailor shops
21. Health gymnasiums	43. Theaters, excluding open air or drive in theaters
22. Hobby shops	44. Private towers

3.1.J.3.b PERMITTED USES - WITH CONDITIONS

The following uses are permitted in EC1 in accordance with stated conditions:

1. Automotive accessories, parts and supplies
There shall be no installation, repair, rebuilding, modification or outside storage of parts on the premises
2. Automotive, truck, motorcycle and motor bicycles (mopeds) repair service
Repair work shall be done within a completely enclosed building at least twenty (20) feet from any residential zone. Storage of not more than five (5) vehicles awaiting repair shall be permitted, provided that the outdoor area in which such

- vehicles are stored shall be enclosed by a solid wall or fence at least six (6) feet high.
3. Bakeries
All products produced on the premises shall be sold at retail on the premises
 4. Child care centers, nurseries or similar uses
Play area shall be in accordance with state licensing requirements and enclosed by a solid wall or fence five (5) feet high. A stacking lane for access shall be provided at least twenty-seven (27) feet long and fifteen (15) feet wide for each ten (10) children served.
 5. Christmas tree sales
Temporary, not prior to 15 NOV and provided that lots are removed by 31 DEC
 6. Churches
Permitted when on a site of two (2) acres or larger
 7. Construction yard or building (temporary use)
Permitted only during construction, provided the use or building is removed upon the completion of construction or within three (3) years from the date of the building permit, whichever is sooner. Construction yards and buildings shall be enclosed by a solid fence for a minimum of five (5) feet in height, however, there shall be no fence or wall more than three (3) feet in total height above street-curb level within thirty (30) feet of an intersection.
 8. Drive-up banks and other similar financial institutions
Must have at least one (1) stacking lane the (10) feet in width and one hundred twenty (120) feet in length for each drive-up window that is designed to ensure no business traffic backs onto the street giving access.
 9. Drive-in restaurant
Must have at least one (1) stacking land ten (10) feet in width and two hundred (200) feet in length for each drive-in window that is designed to ensure no business traffic backs on the street giving access.
 10. Dry cleaning, commercial laundry and clothes pressing services
Permitted, provided only non-flammable or non-combustible materials are used in the cleaning process, the number of employees does not exceed five (5) and the portion of the structure in which any cleaning process is done is at least fifty (50) feet from a residential district.
 11. Feed stores for retail sales
All outside storage must be enclosed by a solid wall or fence six (6) feet high on all sides abutting residential districts
 12. Firewood sales
A maximum of twenty (20) cords per business can be stored on site
 - (a) must be enclosed by a six (6) foot opaque fence on all sides abutting residential districts
 - (b) wood may not be stacked above the fence
 - (c) no wood may be stored closer than ten (10) feet to any property line or within ten (10) feet of any structure
 - (d) ingress/egress and fire lanes within the lot area must be maintained and unobstructed to a width of fifteen (15) feet
 - (e) cutting of firewood is prohibited
 13. Mini storage units
Units shall not be used for commercial sales of products, merchandise, service or repair. Buildings shall be separated by a twenty-five (25) foot aisle.
 14. Nursery or greenhouse
All outside storage, other than plant material, shall be enclosed by a six (6) foot high solid wall or fence on all sides
 15. Pet shops for retail sales of animals, including grooming services

- All workrooms and cages must be maintained within a completely enclosed soundproof building and the shop must be operated in such a way as to provide no objectionable noise or odors
16. Public utility installation, substations and water wells
Sites shall be developed and maintained in conformance with the general character and appearance of the zoning district and shall include landscaping and suitable screening in the form of a solid wall, fence or compact shrubbery around the perimeter of the lot or tract
 17. Storage - incidental to primary use
Storage shall be permitted only from merchandise incidental to the primary use of the business. Such storage shall be totally enclosed within the building of primary use and at least ten (10) percent of the gross floor area shall be used for retail sales or service.
 18. Swimming pools
Permitted only when a protective fence six (6) feet in height is provided around the yard, lot or pool area. The pool shall be no closer than six (6) feet from any property line and approval from all utilities is required to ensure overhead safety
 19. Trailer rentals
There shall be no outside storage of automobiles or parts and no body or fender work, painting or upholstery work done on the site
 20. Veterinary clinic for small animals
There shall be no boarding of animals and no overnight confinement facilities. Clinic treatment shall be limited to five (5) animals.
 21. Commercial tower uses
Refer to Section 4.2.E.2 of this Ordinance for conditions

3.1.J.3.c EC1 SPECIAL USE PERMITS

The following uses require a public hearing pursuant to Section 2.1.G of this Ordinance and approval by the ETZ Commission:

1. Auto and truck washing services
2. Bars and lounges
3. Gasoline pumps (accessory to grocery stores)
4. Golf courses and country clubs
5. Halfway houses and quasi-institutional uses
6. Hospitals and overnight health clinics
7. Institutions- public, educational, religious and philanthropic
8. Satellite parking areas
9. Service stations
10. Mobile homes on a temporary basis during construction for the purpose of housing security guards, pursuant to Section 3.1 of this Article. Conditions shall be attached regarding unobtrusive sitting and screening.

2. ETZ Comprehensive Plan 2000-2020

The proposed Zone Change **meets** the following objective of the Comprehensive Plan:

Goal 8, Objective 8.2: Support, maintain, and assist growth and expansion of the region's existing business, industrial, and agricultural base.

3. Miller Criteria

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

AGENCY COMMENTS:

DAC Engineering: 1.) No evaluation criteria was submitted. 2.) Adhere to all regulatory agency comments. Some agencies may require certain licenses or permits to be obtained. 3.) Provide a STA.

2nd Review: STA provided by applicant and evaluated by the DAC Engineering Dept. **New Comments:** 1.) Refer to previous comments except comment #3. 2.) Does it meet fireflow?

DAC Flood Commission: **General Comments:** 1.) The subject property found to not be within a FEMA Special Flood Hazard Area and can be further identified on FIRM No. 35013C0650 E. 2.) Please be aware that the property is still susceptible to localized flooding despite not being identified within a FEMA Special Flood Hazard area. **Applicant’s Responsibility:** 1.) Proposed additions/improvements to the facility will entail submitting a grading and drainage plan with the County Building Permit. Grading and drainage plans need to be prepared by a licensed professional engineer within the State of New Mexico.

DAC Environmental Codes: No violations.

DAC Zoning Codes: Case No. 10-0100 - Outstanding violations: 1.) Business Registration 2.) Improper zoning.

DAC Fire Marshal: The fire protection plans shall be submitted along with the final plat and shall be stamped by a registered engineer indicating the fire plans meet the specifications of 1,500 GPM for a duration of 2 hours at 20 PSI. A letter from the local water district shall be submitted with the plans indicating the water supplies and fire hydrants shall be maintained by the district with required fire flow as listed above. 903.2.1.2 Group A-2. An automatic sprinkler system shall be provided for Group A-2 occupancies where one of the following conditions exists: 1.) The fire area exceeds 5,000 sq. ft. (465 m²), 2.) The fire area has an occupant load of 100 or more.

DAC Building Services: A building permit is required if there is going to be any interior remodeling done and must meet all County, State, and code requirements. A permit has not been applied for.

DAC Rural Addressing Coordinator: No comments.

NMED: **Food Program** – If food service is to be provided by the Event Center/Dance Hall, the appropriate food handling permit must be obtained from the NMED. **Wastewater Treatment and Disposal** – The Event Center and Dance Hall will need to ensure the liquid waste permit/system is amended/modified to reflect the usage of the facility. The usage of the facility must meet the lot size requirements under 20.7.3.301. **Water Supply/Water**

Quality – No comment. **Solid Waste Disposal** – No comment. **Surface Drainage/Land Clearing/Dust Control** – No comment.

NMDOT: How will this zone change affect the number of traffic generated now w/what they proposed? Is this dance hall/event center only on weekends or also during regular working hours. The driveway on Selway Dr. needs to be better defined, so people know exactly where the driveway is.

2nd Review: STA provided by applicant and evaluated by NMDOT. **New Comments**: No significant impact to state's highway system.

CLC MPO: South Main is a principal arterial.

CLC Planning Dept: There are no outstanding issues w/existing ETZ Subdivision; however, the records indicate there are two deeds represented by the tax assessor's map for lot 2. Please refer to the attachment (U.S.R.S. Tract 13-3051, Replat No. 1: 1. Existing subdivision 2. Existing ownership.)

NM State Engineer's Office: The existing structure on the subject parcel is expected to have existing water service for essential drinking and sanitary purposes which should satisfy the water needs for the proposed change. Accordingly, the State Engineer has no comment concerning the proposed zone change and Special Use Permit as long as the applicant understands that water use at the existing structure is not expected to change.

EBID: No objections.

PUBLIC NOTICE / NOTIFICATION:

19 letters of notification were sent out.

Legal Notification was posted in the Las Cruces Sun News on Sunday, April 3, 2011.

Signs were posted on the property.

Agenda was posted on County Web Site.

Support correspondence: None received.

Opposition correspondence: None received.

STAFF ANALYSIS:

The Extra-territorial Zoning Commission ("the Commission") shall recommend approval of the Zone Change to the Extra-territorial Zoning Authority if it finds that a sufficient change in conditions has occurred, is in the public interest, is in conformance with the policies and goals of the ETZ Ordinance and the Comprehensive Plan and is consistent with the character of the surrounding area. The Commission shall evaluate the application and site plan and make a recommendation based on the Applicable Ordinances, Plans, Policies and Criteria listed within this analysis.

A Zone Change from EC1 to EC2 is required to allow dance halls / event centers to be operated within the ETZ. A Special Use Permit is also required within an EC2 Zoning District per Article 3, Section 3.1.K.4 of the ETZ Ordinance 88-02, as amended to operate the dance hall/event center. The applicant is seeking this zone change in conjunction with Special Use Permit request Case # SU11-001.

Staff review of the application indicates that the proposed Zone Change request is in conformance with the ETZ Comprehensive Plan Goal #8, Policy 8.2. A change in zoning would promote business growth and expansion that is compatible with the existing businesses located in the vicinity of the proposed request.

The traffic impact due to the proposed use is described by the applicant as approximately 20-50 vehicles per event. Immediately adjacent to the subject parcel is the Casa Mexicana Tile business that is open 6 days per week from 8 am to 5 pm except Saturdays when they close at 3 pm. The applicant also stated that events for the proposed Bella Ballroom will begin at 6 pm Friday thru Sunday so there would be no overlapping of customers and the parking would be adequate. A Site Threshold Assessment (STA) was requested by DAC Engineering (See *Page 10*) and was submitted on March 7 for evaluation by staff and outside agencies. Those comments are included in this analysis.

The 750 gallon capacity septic system on the subject property (Permit # 45556) is being evaluated by the NMED and the applicant. Any modifications necessary to keep the system in compliance as requested by NMED (See *Page 10*) will be undertaken by the applicant to satisfy the requirements. The property also contains a permitted water well (No. LRG-8054-A-S-2 (See *Pages 20-21*) issued 9/17/1992 by the Office of the State Engineer.

The applicant states that the infrastructure and parking are adequate, and there are no known environmentally sensitive areas, areas of historical significance or endangered or rare species on the property. They also state that all fees will be paid by the applicant.

The calculation for the number of parking spaces for the 7,200 sq. ft. structure per Article 6, Section 6.2.F.2 Off-Street Parking – Restaurants and Entertainment Establishments, is seventy-two (72) (one space per 100 sq. ft. gross floor area) plus eight (8) additional spaces for peak time staff (one (1) per each employee at maximum shift) equaling eighty (80) total parking spaces. The site plan (See *Page 17*) indicates a total of sixty-seven parking spaces, which is deficient by thirteen (13) spaces.

The DAC Fire Marshal's office submitted comments (See *Page 10*) requiring fire flow information, a sprinkler system installation and a letter from the water provider indicating adequate fire hydrants and water supplies in the area would need to be submitted for their review and approval. These requirements have not been met by the applicant at the time of this analysis.

The applicant stated in the 2.1.D Evaluation Criteria, that the noise impact will be minimal due to events being held indoors, and that a positive financial impact will be realized by the community as they will employ 5-8 wait staff as well as security staff, caterers and vendors. The subject parcel is surrounded by farmland to the east and north, a commercial business and residence to the south and the west boundary abuts the NM Hwy. 478 R-O-W. The impact to the surrounding neighborhood would be minimal because of the ongoing land uses surrounding the subject property.

A Zone Change shall also meet the Miller Criteria as affirmed in the Supreme Court of New Mexico, Miller versus Albuquerque, September 9, 1976, case. Zone Change Case # Z2000-003/McDonald in December of 2000 was approved by the ETA for a change from ER3M to EC1 on the subject property. Several different businesses have been located on the parcel over the years (See *Page 18*).

The applicant has not presented any evidence that the proposed zone change was due to a change in conditions in the area, or to correct a mistake or error in the original zoning, or a need to protect the public in direct contradiction to the Miller Criteria.

FINDINGS

1. The request of this application is consistent with the requirements of the Las Cruces Extra-territorial Zoning Ordinance Article II, Section 2.1.C/Application Procedures and Section 2.1.G/Public Hearing and Notice Requirements.
2. The subject property is located outside the corporate limits of the City of Las Cruces, but within the five-mile Extra-territorial Zone (ETZ) as set forth by 3-19-5(1), NMSA 1978 and the Joint Powers Agreement between Doña Ana County and the City of Las Cruces. Therefore, the Las Cruces ETZ Commission (ETZC) has jurisdiction to review this case.
3. The property is located within an EC1 (Neighborhood Commercial) Zoning District.
4. A Zone Change to EC2 Community Commercial Zoning District and a Special Use Permit are required to operate a Dance Hall/Event Center as per Article III, Section 3.1.K.4 of the ETZ Ordinance 88-02, as amended.
5. Zone Change Case # 2000-003/McDonald was approved by the ETA on December 20, 2000, changing the zoning on the subject parcel from ER3M to EC1.
6. The submitted site plan does not include the proper amount of parking as required in the Ordinance.
7. The DAC Fire Marshal has denied the Zone Change request because the proposal has not satisfied the requirements in the Fire Code.
8. The Supreme Court of New Mexico, Miller versus Albuquerque, September 9, 1976, stated: *“The fundamental justification for an amendatory or repealing zoning ordinance is a change of conditions making the amendment or repeal reasonably necessary to protect the public interest. Also, a zoning amendment may cover and perfect previous defective ordinances or correct mistakes or injustices therein.”*
9. The proposed Zone Change Request does meet the following Goal, Policy, and Objective of the ETZ Comprehensive Plan 2000-2020: *Goal 8, Objective 8.2: Support, maintain, and assist growth and expansion of the region’s existing business, industrial, and agricultural base.*

DETERMINATION CRITERIA:

The ETZ Commission may recommend a Zone Change to the ETA as specified by the Extra-territorial Zoning Ordinance Article II, Section 2.1.B/Zoning District Changes: Rezoning and by using the criteria defined by the Extra-territorial Zoning Ordinance Article II, Section 2.1.D/Evaluation Criteria: *(applicant’s answers in italics)*

2.1.D.1 Determination of the number of homes, population, and population demographics. N/A

2.1.D.2 Determination of potential traffic flows (average daily traffic) and where they will impact the transportation system. *There would be minimal impact if any on the traffic flow in this area. Casa Mexicana Tile is opened Mon-Fri 8am-5pm and Sat. 8am-3pm, Sunday-closed. Most of the events held at the Bella Ballroom usually begin after 6pm starting Friday night through Sunday, with an average of 20-50 vehicles per event.*

2.1.D.3 Determination of need for new commercial activity. *We have held various businesses in the past at this location. Due to economic and personal reasons we were forced to close the last one in March of 2008. Being that it was a bridal store before, it was suggested that having bridal events would be a good idea. We had the parking space, we had the capacity inside the building, and we had a good contact with an event planner. Many of the events planned in hotels were not giving the option to cater your own food. We do, and by doing this, we do not limit it to just one caterer but open it to many of the Las Cruces Caterers to increase their business. So this is a win-win situation for Las Cruces.*

2.1.D.4 Determination of potential water and sewage needs. *Currently we have our own well and septic tank with adequate capacity for the business we had for the past 33 years. The current septic tank has a minimum of 750 gallon capacity. Our water well capacity is for 11.48 acres.*

2.1.D.5 Evaluation of existing infrastructure capacities and an analysis of the ability of the existing system to accommodate the new development. *The existing infrastructure capacities are the same.*

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. *There is not much impact and is negligible.*

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. *We are not aware of any environmentally sensitive areas, historical significance, or endangered or rare species of animal or plant life.*

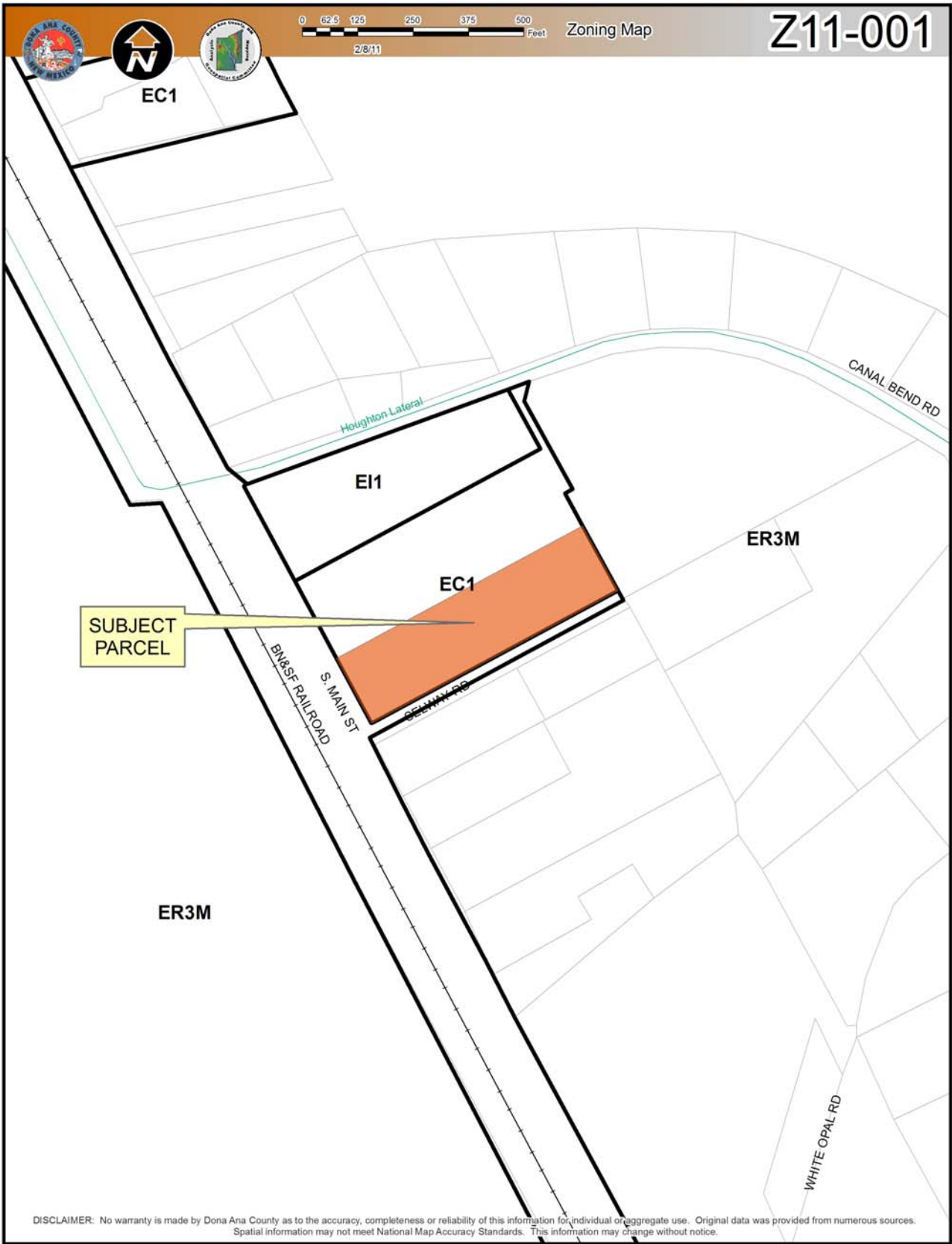
2.1.D.8 Any analysis required should be undertaken and paid for by the developer and verified by the ETZ Commission. *We will pay all permit fees.*

2.1.D.9 Determination of impact of a proposed zone change on surrounding properties. *We are located 4 miles south of Mesilla Park and there is very little impact on surrounding residences. The events are held indoors and because the noise is almost obsolete. The events usually employ 5-8 in wait staff. We hire local security guards, caterer, and party vendors creating a positive impact financially. We create minimal traffic because of our parking capacity.*

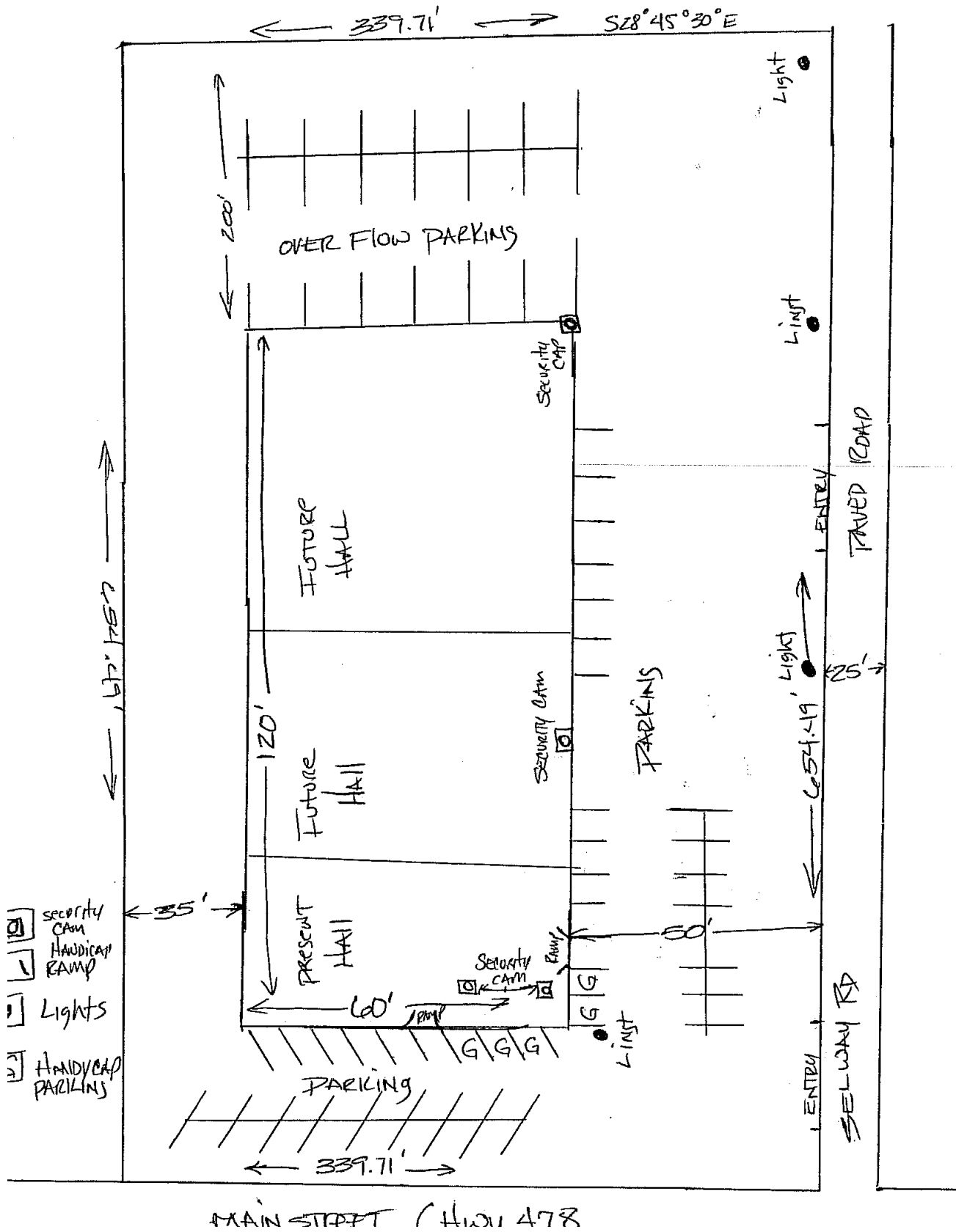
STAFF RECOMMENDATION

Based on the applicants' failure to meet the appropriate requirements of the ETZ Ordinance, the Evaluation Criteria of Section 2.1.D, and conformance to the principals of the Miller Criteria, staff recommends **DENIAL** of Zone Change Request Case # Z11-001/Cass Mexicana Tile.





Site Plan



Applicants Narrative

December 20, 2010

After 33 years of operating a small business, our family has sacrificed much. No one knows this more than my parents Isidro and Bertha Pena. As one of their four children, I learned this early on and I have always taken pride in it. The many businesses we have tried at our 5585 South Main location have been quite diverse. We previously operated a wholesale plant nursery, a fiberglass repair facility, and finally a bridal store, which was closed in March 2008.

Over a year ago, we were approached by an experienced event planner with an idea for an event hall. We believed there existed a need for reasonably priced special event space and we quickly moved on making it possible. I called the Dona Ana County Building Codes Inspector and asked what was necessary to bring the building up to code. Given that we had invested 3 years earlier to have a local builder, Soledad Canyon Earth Builders remodel our building for the bridal storefront, and not much was required. I was told the building needed to have push bar doors and more emergency exits. Once this was accomplished, I was given a Certificate of Occupancy for 285 people.

Two months ago, I was made aware that our building was not properly zoned. Never did I think that I was operating incorrectly. As soon as I found out, we took all the actions necessary to make sure we complied with the law. This is why we stand before you. We want to assure the authority that we expect to operate in compliance of all regulations, just as we have strived to do for the past 33 years. As a family, we take pride and dignity in everything we do, especially the way we run our businesses. We feel we offer something that the community needs. Bella Ballroom offers competitive prices, at a beautiful location, first class designs, and the ability to select your own caterer. We believe we provide a service that the community can take advantage of.

We thank you for your consideration and ask you take into account our reputation as a business but most of all as a family and member of our community.

2.1 D Evaluation Criteria

Extra-Territorial Zoning Ordinance Ordinance No. 88-02

2.1. D Evaluation Criteria

- 2.1. D.1** N/A
- 2.1. D.2** There would be minimal impact if any on the traffic flow in this area. Casa Mexicana Tile is opened Monday-Friday 8am-5pm and Saturday 8am-3pm Sunday -Closed. Most of the events held at the Bella Ballroom usually begin after 6pm starting on Friday Night thru Sunday, with an average of 20-50 vehicles per event.
- 2.1.D.3** We have held various businesses in the past at this location. Due to economic and personal reasons we were forced to close the last one in March of 2008. Being that it was a bridal store before, it was suggested that having bridal events would be a good idea. We had the parking space, we had the capacity inside the building, and we had a good contact with an event planner. Many of the events planned in hotels were not giving the option to cater your own food. We do, and by doing this, we do not limit it to just one caterer but open it many of the Las Cruces Caterers to increase their business. So this is a win-win situation for Las Cruces.
- 2.1. D.4** Currently we have our own well and septic tank with adequate capacity for the business we have had for the past 33 years. The current Septic Tank has a minimum of 750 gallon capacity. Our water well capacity is for 11.48 acres.
- 2.1. D.5** The existing infrastructure capacities are the same.
- 2.1. D.6** There is not much impact and is negligible.
- 2.1. D.7** We are not aware of any environmentally sensitive areas, historical significance, or endangered or rare species of animal or plant life.
- 2.1. D.8** We will pay all permit fees.
- 2.1. D.9** We are located 4 miles South of Mesilla Park and there is very little impact on surrounding residences. The events are held indoors and because the noise is almost obsolete. The events usually employ 5-8 in wait staff. We hire local security guards, caterer, and party vendors creating a positive impact financially. We create minimal traffic because of our parking capacity.

Water Well Permit

157602LC \$25.00

Revised August 1967

IMPORTANT-READ INSTRUCTIONS ON BACK BEFORE FILLING OUT THIS FORM

ORN 154377

SUPPLEMENTAL APPLICATION FOR PERMIT

To Appropriates the Underground Waters of the State of New Mexico

- Date Received July 22, 1992 File No. LRG-8054-A-S-2
- Name of applicant Isidro M. Pena dba Fruit Land
Mailing address P. O. Box 1327
City and State Mesilla Park, NM 88047
 - Source of water supply shallow water aquifer, located in Lower Rio Grande
(artesian or shallow water aquifer) (name of underground basin)
 - The well is to be located in the 1/4 SE 1/4 SW 1/4 Section 4 Township 24 South
Range 2 East N.M.P.M., or Tract No. 30E1 Map No. 13 of the USRS/EBID District,
on land owned by Applicant (under sales contract)
 - Description of well: name of driller drilled under permit LRG-8051;
Outside Diameter of casing 6-5/8 inches; Approximate depth to be drilled 350 feet;
 - Quantity of water to be appropriated and beneficially used 68.88 acre feet,
(consumptive use, diversion)
for irrigation purposes.
 - Acres to be irrigated or place of use 11.48 acres.

Subdivision	Section	Township	Range	Acres	Owner
Pt. SE 1/4 SW 1/4	4	24S	2E	6.98	Glenn McDonald
Also described as Tract 30E1(TR1) of USRS/EBID Map No. 13					
Pt. SW 1/4 SE 1/4 SW 1/4 & Pt. SE 1/4 SE 1/4 SW 1/4	4	24S	2E	2.50	Glenn McDonald c/o Isidro M. Pena
Also described as Tract 30E1(TR2) of USRS/EBID Map No. 13					
Pt. SW 1/4 SE 1/4 SW 1/4 & Pt. SE 1/4 SE 1/4 SW 1/4	4	24S	2E	2.0	Isidro M. Pena
Also described as Tract 30E5 of USRS/EBID Map No. 13					

- Additional statements or explanations Well to be used is being drilled under Permit LRG-8051 for drinking and sanitary purposes. Well will supplement existing well LRG-8054 owned by Glenn McDonald for portions of the described acreage as they are purchased by the applicant. Well LRG-8054 also irrigates other acreage.

All of the 11.48 acres have Elephant Butte Irrigation District surface water rights.

- Isidro M. Pena, affirm that the foregoing statements are true to the best of my knowledge and belief and that development shall not commence until approval of the permit has been obtained.

Isidro M. Pena, Permittee,

By: _____

Subscribed and sworn to before me this 22 day of July, A.D., 19 92

My commission expires 8-4-92

Margi C. Morales
Notary Public

92 SEP 21 AM 10 18
STATE ENGINEER OFFICE
SANTA FE, NEW MEXICO

Water Well Permit (cont.)

ATTACHMENT

APPLICATION FOR SUPPLEMENTAL
WELL PERMIT NO. LRG-8054-A-S-2

1. This application is approved to use well drilled under permit LRG-8051, renumbered LRG-8054-A-S-2, as a supplemental well for the irrigation of up to 11.48 acres described in the application and by this action the State Engineer does not accept or reject the amount of water claimed diverted from well LRG-8054 for irrigation purposes in Declaration No. LRG-8054-A filed on July 22, 1992.
2. The amount of water diverted under this permit from combined sources for irrigation purposes shall be limited to that quantity of water required for beneficial use for the irrigation of said 11.48 acres.
3. The appropriation of ground water under this permit from Well LRG-8054, LRG-8054-A-S and LRG-8054-A-S-2 for the irrigation of 11.48 acres of land shall be supplemental to the surface water delivered by the Elephant Butte Irrigation District; in the event of transfer or abandonment of any part of the surface water right on said land, the appropriation of ground water for that part shall cease.
4. The conditions of approval of this permit shall apply only to use of the described wells on acreage owned or under purchase contract by the applicant. These conditions shall apply to additional portions of the described acreage as it is acquired.
5. Proof of Completion of Well shall be filed on or before September 30, 1994.

Date: 9/17/92

J. B. Nixon
J. B. Nixon, Supervisor, District 4

Notification List

CODE	MAP_CODE	NAME	ADDRESS1	CITY	STATE	ZIP
1	4-009-139-185-487	PENA ISIDRO M & BERTHA E M	PO BOX 87	MESILLA PARK	NM	88047-0087
2	4-009-139-233-410	MATANCILLAS OSCAR J & ERNESTINA J	285 CANAL BEND RD	MESILLA PARK	NM	88047
3	4-009-139-164-454	ENRIQUEZ ALBINO L & REBECCA	PO BOX 1026	LAS CRUCES	NM	88004-1026
4	4-009-139-177-471	PENA BERTHA	RR BOX 9	MESILLA PARK	NM	88047
5	4-009-139-215-405	HERNANDEZ ALFREDO & ALMA A	STAR RT BOX 53C	MESILLA PARK	NM	88047
6	4-009-139-141-428	SAPIEN CLAUDE & ELIZABETH	4141 STRYKER RD	LAS CRUCES	NM	88005
7	4-008-140-415-013	BIAD FARMS LLC	PO BOX 66	MESILLA	NM	88046
8	4-009-139-192-406	GONZALEZ DIMAS & MARIA P	PO BOX 2026	MESILLA PARK	NM	88047
9	4-009-139-162-432	SAPIEN CLAUDE L & ELIZABETH	414 STRYKER RD	LAS CRUCES	NM	88005
10	4-009-139-178-428	CALDERON ISIDRO B	RR1 BOX 10 1/2	MESILLA PARK	NM	88047
11	4-009-139-155-417	RUIZ MAURICIO & ELENA	PO BOX 1905	MESILLA PARK	NM	88047
12	4-009-139-172-413	RAMIREZ RUBEN P & BERNADINA	191 CANAL BEND RD	MESILLA PARK	NM	88047
13	4-009-139-231-441	THOMAS JAMES L ET UX	PO BOX 878	MESILLA PARK	NM	88047-0878
14	4-009-139-209-496	PENA BERTHA	RR BOX 9	MESILLA PARK	NM	88047
15	4-009-139-180-510	PENA BERTHA	STAR RT BOX 9	MESILLA PARK	NM	88047
16	4-009-139-215-506	PENA ISIDRO	PO BOX 1327	MESILLA PARK	NM	88047
17	4-009-139-247-482	THEROUX ROBERT & LA NATTE	HC 30 BOX 9-A	MESILLA PARK	NM	88047-9701
18	4-009-139-265-477	PENA ISIDRO	PO BOX 1327	MESILLA PARK	NM	88047
19	4-009-139-186-522	BUSTOS DAVID & ELEANOR	2424 W UNION AVE	LAS CRUCES	NM	88005
20	4-009-139-220-520	PENA ISIDRO	PO BOX 1327	MESILLA PARK	NM	88047
21	4-009-140-220-015	PENA ISIDRO	PO BOX 1327	MESILLA PARK	NM	88047
22		BNSF RR	3001 LOU MENK	FORT WORTH	TX	76131
23		NM STATE HWY. DEPT.	8070 BATAAN MEMOR	LAS CRUCES	NM	88001
24		EBID	530 S. MELENDRES	LAS CRUCES	NM	88001