

THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY

ORDINANCE NO. 2014 - 8

AN EMERGENCY INTERIM DEVELOPMENT ORDINANCE IMPOSING A TWELVE  
MONTH MORATORIUM ON DEVELOPMENT APPROVALS OR THE ISSUANCE OF  
DEVELOPMENT PERMITS FOR SPECIFIED DEVELOPMENTS OF COUNTYWIDE  
IMPACT

BE IT ENACTED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE  
COUNTY:

**Section 1. Short Title.** This Ordinance shall be known as the “DCI Moratorium Ordinance.”

**Section 2. Definitions.** As used in the DCI Moratorium Ordinance, the following terms have the following meanings:

- 2.1. “Board” means the Board of County Commissioners of Santa Fe County.
- 2.2. “County” means Santa Fe County.
- 2.3. “DCIs” means Developments of Countywide Impact.
- 2.4. “DCI Regulations” means the regulations to be adopted by the Board and codified in Section 11.3 of the SLDC.
- 2.5. “Development”, “Development Approval”, “Development Order”, and “Development Permit” have the same meaning as is given those terms in the Land Development Code and SLDC, as applicable. In addition, “Development Permit” expressly includes master plan approvals, development plan approvals, zoning or rezoning approvals, and approvals of mining zones pursuant to Article XI of the Land Development Code.
- 2.6. “Junkyard” means a place where scrap materials, including automobile bodies and parts, construction debris or metal, are stored or stockpiled for reuse, parts salvage or destruction, and generally, but not always, associated with a junk or scrap business.
- 2.7. “Landfill” means an area of land upon which solid waste is disposed of in accordance with standards, rules, or orders established by the State of New Mexico.
- 2.8. “Sand and gravel extraction” means mineral extraction activity for construction materials, including but not limited to, stone, sand, gravel, aggregate, or similar naturally occurring construction materials.
- 2.9. “SGMP” means the Santa Fe County Sustainable Growth Management Plan, adopted by the Board by Resolution Nos. 2010-210 and 2010-225.
- 2.10. “SLDC” means the Sustainable Land Development Code, adopted by the Board by Ordinance No. 2013-6.

SEC. CLERK RECORDED 09/18/2014

### **Section 3. Findings.**

**3.1.** The Board has previously found in Section 11.1 of the SLDC, and hereby confirms, that DCIs have potential for far reaching effects on the community. DCIs are developments that would place major demands on public facilities, the County's capital improvement plan and budget, and/or have the potential to affect the environment and public health, safety, and welfare beyond the impacts on immediately neighboring properties. DCIs have the potential to create serious adverse noise, light, odor and vibration; explosive hazards; traffic congestion; and burdens on County emergency response services. Therefore, special regulation of DCIs is necessary:

**3.1.1.** to protect the health, safety and welfare of the citizens, residents, and businesses of the County from the potentially harmful or hazardous impacts of DCIs;

**3.1.2.** to ensure short and long-term compatibility (both on-site and off-site) of DCIs and the County at large;

**3.1.3.** to preserve the quality and sustainability of life, the economy, infrastructure, environment, natural and cultural resources, and natural landscapes; and

**3.1.4.** to protect the degradation of air, surface water and groundwater, soils, environmentally sensitive lands and visual and scenic qualities.

**3.2.** Existing regulations in the Land Development Code for the DCIs identified in Section 4 of the DCI Moratorium Ordinance are either non-existent or inadequate to meet the special regulatory needs identified in Section 3.1.

**3.3.** Development of the DCI Regulations for the DCIs identified in Section 4 will require:

**3.3.1.** the identification of monetary and other resources;

**3.3.2.** the engagement of planning, fiscal, economic, water, environmental and engineering consultants, or attorneys; and

**3.3.3.** extensive hearings and workshops to solicit public input, evaluation, and recommendations.

**3.4.** A twelve month moratorium on Development Approvals or Development Permits for DCIs identified in Section 4 is necessary, essential, and reasonable:

**3.4.1.** to avoid a race of diligence, whereby landowners file and submit DCI development applications during the formulation and public discussion of the DCI Regulations;

**3.4.2.** to avoid the establishment of non-conforming uses or the need to respond in an ad hoc fashion to specific problems;

**3.4.3.** to eliminate the need for hasty adoption of permanent controls;

**3.4.4.** to allow the planning and implementation process to run its full and natural course with widespread citizen input and involvement, public debate, and full consideration of all issues and points of view; and

**3.4.5.** to allow for the creation of legally and scientifically sound plans, policies and regulations.

SEC. CLERK RECORDED 09/16/2014

3.5. This DCI Moratorium Ordinance constitutes a valid exercise of the County's express and implied zoning authority and police power, consistent with NMSA 1978, § 3-21-1 (granting counties zoning authority, including the power to "regulate and restrict within its jurisdiction" . . . the "location and use of buildings, structures and land for trade, industry, residence or other purposes") and NMSA 1978, § 4-37-1 (granting counties, among other powers, "those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of any county or its inhabitants"). *Brazos Land, Inc. v. Board of County Commissioners of Rio Arriba County*, 1993-NMCA-013, ¶ 30, 115 N.M. 168 (N.M. Ct. App. 1993) ("Where the Board [of County Commissioners] enacted a moratorium for the purpose of, inter alia, promulgating more stringent waste disposal requirements for subdivisions, and where such requirements and restrictions reasonably advanced a legitimate state interest in the safety and health of the inhabitants of Rio Arriba County, we hold that the Board's moratorium was a valid exercise of its police power and its express and implied authority.").

**Section 4. DCIs Subject to Moratorium.** The following DCIs are subject to the moratorium imposed by Section 6:

- 4.1. landfills;
- 4.2. junkyards; and
- 4.3. sand and gravel extraction activity requiring blasting.

**Section 5. DCIs Exempt from Moratorium.** The following DCIs are exempt from the moratorium imposed by Section 6 either because the Board has determined that existing regulations are acceptable to serve the special regulatory needs of DCIs until the adoption of new DCI Regulations or because the Board has not yet defined the scope of activity requiring regulation as a DCI:

- 5.1. oil and gas drilling and production;
- 5.2. mining and resource extraction (other than sand and gravel extraction);
- 5.3. substantial land alterations;
- 5.4. large-scale feedlots and factory farms; and
- 5.5. sand and gravel extraction that does not require blasting.

As land uses and impacts are further defined, the Board may amend the DCI Moratorium Ordinance to make other DCIs subject to the moratorium imposed by Section 6.

**Section 6. Moratorium.** During the effective period of the DCI Moratorium Ordinance and except as provided in Section 7:

- 6.1. no new applications for Development Approval or a Development Permit related to a DCI identified in Section 4 shall be accepted by the County;
- 6.2. no existing and filed application for Development Approval or a Development Permit related to a DCI identified in Section 4 shall be further processed or acted upon by the Board or other County committee, commission, department, or official; and
- 6.3. no Development Approval or Development Permit related to a DCI identified in Section 4 shall be issued.

**Section 7. DCIs with Vested Rights are Exempt from Moratorium.**

7.1. Section 6 shall not apply to Development Permits necessary to implement DCIs identified in Section 4 with vested rights as of the effective date of the DCI Moratorium Ordinance, as determined by the County Land Use Administrator in accordance with New Mexico law. To have vested rights, generally (i) there must be prior approval by the County for use of buildings or land for the DCI and (ii) there must be a substantial change in position in reliance on the approval.

7.2. Any person aggrieved by the Land Use Administrator's decision with respect to whether a DCI identified in Section 4 has vested rights may appeal that decision in accordance with the appeal provisions of the Land Development Code or SLDC, as applicable. Any person aggrieved by the Board's decision on appeal may appeal the Board's decision to District Court, pursuant to NMSA 1978, § 3-21-9 and § 39-3-1.1.

**Section 8. Prioritization of DCI Regulations for DCIs Identified in Section 4.**

The County Manager is directed to require County staff to immediately begin the process to engage the professionals necessary to develop the DCI Regulations for the DCIs identified in Section 4 and to take such other action as is necessary to expeditiously develop such regulations, any other necessary amendments to the SLDC or SGMP, and any other ordinances or documents necessary to implement the DCI Regulations for the DCIs identified in Section 4 or carry out the purposes of this DCI Moratorium Ordinance.

**Section 9. Repeal of Inconsistent Ordinances.** All ordinances or parts of any ordinances that irreconcilably conflict with this DCI Moratorium Ordinance are hereby repealed to the extent of such conflict.

**Section 10. Severability.** If a provision of the DCI Moratorium Ordinance or its application to any person or circumstance is held by a court of competent jurisdiction to be invalid, the invalidity does not affect other provisions or applications of the DCI Moratorium Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of the DCI Moratorium Ordinance are severable.

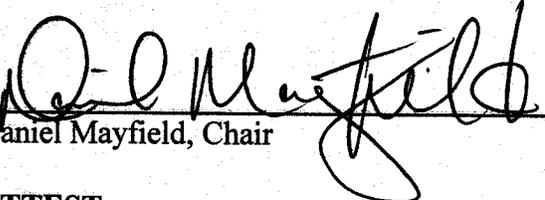
**Section 11. Effective Period.**

11.1. Due to the emergency declared in Section 3.2, it is necessary for the protection of the public health and safety of the County that this DCI Moratorium Ordinance take effect immediately upon recordation. Should a court of competent jurisdiction determine that it has the authority to question the Board's declaration of emergency and that emergency conditions did not exist justifying the immediate efficacy of the DCI Moratorium Ordinance, the DCI Moratorium Ordinance shall take effect on the first date otherwise allowed by law.

11.2. The DCI Moratorium Ordinance is repealed on September 16, 2015; provided that the Board may extend the effective period for additional reasonable periods of time if, in its legislative discretion, such extension is warranted.

SEC. CLERK RECORDED 09/16/2014

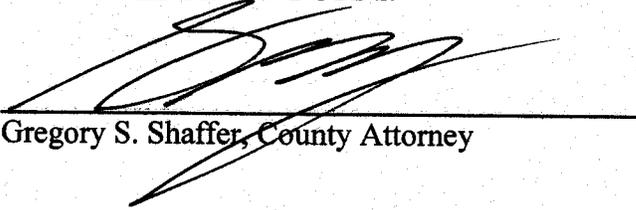
PASSED, APPROVED AND ADOPTED THIS 16<sup>TH</sup> DAY OF SEPTEMBER, 2014.  
THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY

  
Daniel Mayfield, Chair

ATTEST:

  
Geraldine Salazar, County Clerk 9-16-2014

APPROVED AS TO FORM:

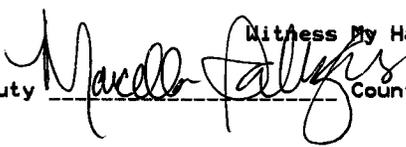
  
Gregory S. Shaffer, County Attorney



RECORDED 9/16/2014

COUNTY OF SANTA FE ) BCC ORDINANCE  
STATE OF NEW MEXICO ) ss PAGES: 5

I Hereby Certify That This Instrument Was Filed for  
Record On The 16TH Day Of September, 2014 at 02:12:02 PM  
And Was Duly Recorded as Instrument # 1746151  
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office  
Geraldine Salazar  
Deputy  County Clerk, Santa Fe, NM

