



COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss

BCC MINUTES  
PAGES: 42

I Hereby Certify That This Instrument Was Filed for  
Record On The 15TH Day Of October, 2014 at 03:14:26 PM  
And Was Duly Recorded as Instrument # **1748406**  
Of The Records Of Santa Fe County

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

**SANTA FE COUNTY**

**BOARD OF COUNTY COMMISSIONERS**

**SPECIAL MEETING**

**September 16, 2014**

Danny Mayfield, Chair - District 1  
Robert Anaya, Vice Chair - District 3 [telephonically]  
Miguel Chavez - District 2  
Kathy Holian - District 4  
Liz Stefanics - District 5

2014 OCT 16 PM 03:14  
COUNTY CLERK  
SANTA FE COUNTY

**SANTA FE COUNTY**

**SPECIAL MEETING**

**BOARD OF COUNTY COMMISSIONERS**

**September 16, 2014**

This special meeting of the Santa Fe Board of County Commissioners was called to order at approximately 1:04 p.m. by Acting Chair Liz Stefanics in the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

**b. Roll Call**

Roll was called by County Clerk Geraldine Salazar and indicated the presence of a quorum as follows:

**Members Present:**

Commissioner Danny Mayfield, Chair  
Commissioner Robert Anaya [telephonically]  
Commissioner, Kathy Holian  
Commissioner Miguel Chavez  
Commissioner Liz Stefanics

**Members Excused:**

**1. F. Approval of Agenda**

Commissioner Holian moved to approve the agenda and Commissioner Stefanics seconded. Commissioner Mayfield joined the meeting.

**The motion passed by unanimous [4-0] voice vote.** [Commissioner Chavez was not present for this action.]

**IV. Public Hearing on a Proposed Ordinance Titled “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” [Exhibit 1: Sustainable Growth Management Plan, Section 2.2.6 and Sustainable Land Development Code, Chapter 11]**

GREG SHAFFER (County Attorney): Mr. Chair, I would just offer the following introductory comments if it pleases the Board, to do with them as you see fit. I think that it's important to emphasize at the beginning that what's in front of the Board

2014 SEP 16 PM 03:03  
SANTA FE COUNTY  
CLERK'S OFFICE  
1000 W. SAN ANTONIO AVE.  
SANTA FE, NM 87501  
TEL: 505/833-7000  
WWW.SANTAFE.NM.GOV

for consideration today is a piece of countywide legislation. It would have countywide applicability. While it would impact pending applications that fall within its scope it is not about any specific pending application, and accordingly, the comments, I would submit, of the public, shouldn't be about any specific application. Rather, the comment should be focused on the basis and advisability of the proposed ordinance as a matter of countywide legislative policy.

Second, I would suggest that the order of proceedings be to allow the Land Use Administrator to present the staff report concerning the proposed ordinance and then allow members of the public to testify in support or opposition to the proposed ordinance. Then I would defer to the chair, obviously, any time limits may be appropriate in this circumstance given the size of the audience. That would be at the discretion of the chair. That would be what I would offer by way of introductory comments.

CHAIR MAYFIELD: Thank you, Mr. Shaffer, for doing that. Also I'd like to thank our audience for being here to comment on this proposed ordinance in front of Santa Fe County this afternoon. If I may, just by a show of hands, just so how I know how to set us up to be a little more productive on time for this afternoon – we do have a meeting tonight also in Pojoaque on a zoning map. Who all would care to comment on this proposed ordinance? Okay, that's not too many.

So with that we're going to go over to staff to begin their presentation, but also when we get to public comment we'll just kind of gauge it of speaking. Again, Mr. Shaffer, I wanted to defer to him just so he could state, by advice or our attorney that we should not be taking any public comment on any existing application in front of Santa Fe County at this time. So if we can just re-note that on your comments to this Commission, that would be very much appreciated. So with that I'll defer to Ms. Ellis-Green.

PENNY ELLIS-GREEN (Growth Management Director): Thank you, Mr. Chair, Commissioners. On August 26<sup>th</sup> the Board of County Commissioners gave authorization to publish title and general summary of this ordinance. The Sustainable Land Development Code, the SLDC, was approved by the BCC on December 10, 2013. It does not go into effect until the zoning map is adopted. This ordinance as proposed would enact a moratorium stopping the County from accepting new or processing existing development applications for certain developments of countywide impact, DCIs, for a 12-month period.

Imposing the moratorium would avoid a rush of applications in advance of new regulations. It would avoid the establishment of non-conforming uses or the need to respond in an ad hoc fashion to specific problems. It would eliminate the need for hasty adoptions of permanent controls, allows 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 allows for the creation of legally and scientifically sound plans, policies and regulations.

Mr. Chair, Commissioners, I have handed out copies of Sections of the SGMP, the Sustainable Growth Management Plan, and the SLDC that relate to DCIs. The Sustainable Growth Management Plan identifies DCIs and states in Section 2.2.6, developments of countywide impact are those that have potential for far-reaching effects on the community. DCIs are developments that would place major demands on adequate public facilities that would have a major impact on the capital improvements, planning

and budget, and/or that have the potential to affect the environment, the public health, safety and welfare beyond impacts on the immediate neighboring properties. Regulation of DCIs are necessary to protect the health, safety and welfare of the citizens, residents and businesses of Santa Fe County from the harmful or hazardous adverse impacts or effects of nuisances resulting from mineral or rock, sand, gravel, limestone, bedrock, landfill mining, quarrying, excavation or fill activities.

DCIs should be regulated in order to protect degradation of air, surface and groundwater, soils, environmentally sensitive lands and visual and scenic qualities. DCIs have the potential to expand greenhouse gas emissions and aggravate global warming and create adverse noise, light, odor and vibration, explosive hazards and adverse traffic congestion. And developments of countywide impact require special regulation and application processes to ensure short- and long-term compatibility, both on and off site through and environmental impact review, an adequate public facilities and services assessment, a fiscal impact analysis, an analysis to ensure preservation of archeological, historical and cultural resources, an analysis to ensure protection of the quality and quantity of surface water, streams, rivers, acequias, aquifers and groundwater, and an analysis geared to preventing nuisances or adverse impacts and effects upon adjacent properties and neighborhoods.

Regulation of DCIs is also important for the protection of scenic vistas of Santa Fe County. The second goes on to state in Section 2.2.6.2, under Mining, sand and gravel mining will be recognized as a DCI and subject to the requirements of the existing mining ordinance and the SLDC. Section 2.2.6.5 of the Growth Management plan states junkyards and automobile graveyards should be regulated as DCIs. At such facilities are collected junk, articles or materials, including junked, wrecked or inoperable vehicles. These vehicles contain hazardous materials such as oils, greases, solvents, gasoline, lead and acid, as well as less hazardous materials like steel, rubber, glass, aluminum, plastics and other materials.

Solid waste facilities should be regulated as DCIs. These facilities include sanitary landfills regulated by the New Mexico Environment Department. Such facilities contain many hazardous or dangerous substances and can in many cases be considered a public nuisance from the perspective of adjoining properties. They feature dust, vapors, odors, methane gas and undesirable traffic. These facilities must be strictly regulated as DCIs to prevent impacts on surrounding property, erosion of property values, creation of public nuisances. Such facilities can also create environmental hazards that must be carefully studies and for which all available information must be developed for good decision making.

In addition, blasting by nature poses an explosive hazard and vibration, noise, air quality hazards, as well as hazards of flying debris and the transportation of explosives.

The Sustainable Land Development Code addresses DCIs in Chapter 11. Under Designation, 11.2, it states, On account of the potential impact on the county as a whole, the following activities are deemed DCIs subject to the requirements of this chapter, and that includes landfills, junkyards and sand and gravel extraction that is of a scope and scale as determined by the subsequent amendment to the SLDC and that merits regulation as a DCI.

Chapter 10 of the SLDC consists of supplemental zoning standards. Section

2014 SEP 16 AM 10:58:10

10.19.1 states the applicability of the sand and gravel section and also states, If the extraction activity requires blasting then this section shall not apply and the operation will be treated as a development of countywide impact under Chapter 11.

The use table of the SLDC also identifies sand and gravel that requires blasting as a DCI in certain zoning districts and it's prohibited in other zoning districts.

Mr. Chair, Commissioners, I'd stand for questions.

[Commissioner Chavez joined the meeting.]

CHAIR MAYFIELD: Thank you, Ms. Ellis-Green. Commissioners, do you have any questions?

COMMISSIONER STEFANICS: Mr. Chair.

CHAIR MAYFIELD: Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you. Penny, if we do move ahead with the moratorium, is it the intent of Land Use to hold some public discourse as this chapter is being developed?

MS. ELLIS-GREEN: Mr. Chair, Commissioner Stefanics, absolutely. As we have done with the SGMP and the SLDC we would include an extensive public process. After we've procured consultants and experts we would go through and we would start the public process prior to drafting.

COMMISSIONER STEFANICS: Thank you very much, Mr. Chair.

CHAIR MAYFIELD: Thank you. Commissioner Anaya, do you have any questions at this time?

COMMISSIONER ANAYA: Not at this time, Mr. Chair.

CHAIR MAYFIELD: Thank you. So, Ms. Ellis-Green, you read – what impact could this potentially have on our dump, Caja del Rio, our landfill?

MS. ELLIS-GREEN: Mr. Chair, Commissioners, the SWMA landfill at Caja del Rio is existing and is in current operation, so they're not a proposed landfill.

CHAIR MAYFIELD: But if they need to expand a cell, if they need to go and ask for expansion – I don't sit on that board anymore. A couple of my colleagues do, but if there's any potential future blasting for permitting. I just don't know where they are with cells right now.

COMMISSIONER CHAVEZ: I don't see it as an issue personally.

MS. ELLIS-GREEN: Mr. Chair, Commissioners, if they are subject to the code then they would fall under this moratorium and any future code that is developed.

CHAIR MAYFIELD: Are they currently subject to the code?

MS. ELLIS-GREEN: Mr. Chair, Commissioners, I'm not able to answer that at this point.

CHAIR MAYFIELD: Mr. Shaffer?

MR. SHAFFER: Mr. Chair, I'd want to evaluate internally what opinions have been previously offered as well as discuss the issue potentially with counsel, both for SWMA as well as for the City before answering that question in the public domain.

CHAIR MAYFIELD: Okay. Commissioners, seeing no other questions at this time, this is a public hearing so we will open this up to the public. I did see by a show of hands, and again, I'll just ask that all of you stand up and be sworn in at once. When you come up to the podium, if you just state your name and address for the record. We will be at this time – if you want to combine your speaking time, that's fine, but just a

2014 SEP 16 PM 4:05  
SANTA FE COUNTY BOARD OF COUNTY COMMISSIONERS  
RECORDED  
2014 SEP 16 PM 4:05

show of hands of who you're speaking for please. We'll limit it to three minutes on the onset and if you need additional time, kind of after we run the process we'll just ask for consideration so everybody can speak in case they have to get anywhere, you can kind of come back up at the end of the line and speak for additional time. So if you all would like to speak, care to stand up at this time and be sworn in.

[Those wishing to speak were administered the oath.]

CHAIR MAYFIELD: Whoever would like to make their way up, please.

[Duly sworn, Roger Taylor testified as follows:]

ROGER TAYLOR: Roger Taylor, 54 Camino Los Angelitos, Galisteo, New Mexico. Mr. Chair, Commissioners, I'm here representing the Galisteo Community Association as well as the Santa Fe Basin Water Association. I support the proposed moratorium. In fact I can recall that almost a year ago I stood here during the SLDC deliberation process and strongly recommended a moratorium on all of the identified DCIs at the time. As we learned through that process, a comprehensive new code needs significant review time, public comment and if we look at the list of identified issues of countywide impact it's a very extensive list and in many of those cases some of them need updating; some of them need rewriting.

I would still prefer that we put a moratorium on all DCIs for the next year while we review and update them. I understand this is a much more focused and limited idea and that's fine. There are other places which have done this, if there's a concern about that. Boulder County in Colorado placed a moratorium on oil and gas development for two years and then just recently extended it until January of 2015 while they formalized their written application and operational procedures. Kenosaw, Ohio enacted a one-year moratorium while officials were working to streamline the city's new development code. Tacoma, Washington also enacted a moratorium, 2011 through 2012 to prevent vesting of permits while they reviewed and updated the policies and goals of the new – what they called the comprehensive plan.

San Diego, California, a much larger municipality enacted a general construction moratorium for two years in 2012 while updating their code. So it's certainly within the purview. Other communities have done it. It has been constructive. These are a few examples. They are significant ones. I feel we should follow their lead. Thank you.

CHAIR MAYFIELD: Thank you, Mr. Taylor.

GERALDINE SALAZAR (County Clerk): Mr. Chair, can I make a statement for the record on protocol? All those who stood up and swore that they would tell the whole truth and nothing but the truth, please state your name, your address and state I am under oath. If anyone should walk in and they have not been sworn in, they will need to be sworn in. Thank you.

CHAIR MAYFIELD: Thank you.

COMMISSIONER STEFANICS: Mr. Chair.

CHAIR MAYFIELD: Commissioner Stefanics.

COMMISSIONER STEFANICS: Mr. Shaffer, for testimony on an ordinance we don't require swearing in, do we? I know this is a little confusing so I'd like to just clarify this. I know we swear people in on speaking on land use cases, but on our other ordinances I don't know that we've done that.

MR. SHAFFER: Mr. Chair, Commissioner Stefanics, under the Board's

adopted rules of order with respect to public input on proposed ordinances, it does state that members of the public will be allowed to testify in favor of and in opposition of a proposed ordinance or other matters requiring a public hearing, and that members of the public shall be sworn and all such testimony shall be under oath and on the record. So that's what the Board's rules of order state with respect to public testimony on ordinances.

COMMISSIONER STEFANICS: Thank you very much.

CHAIR MAYFIELD: Thank you, Mr. Wait.

[Previously sworn, Walter Wait testified as follows:]

WALTER WAIT: Mr. Chair, members of the Commission, my name is Walter Wait, 48 Bonanza Creek Road. I'm here representing the San Marcos Association. We do support the proposed moratorium. However, we believe that the requested moratorium does not change the rules in an ongoing application for mining or any other application, must be administered under it. If this is true then at the end of a year the BCC will still have to evaluate these applications under the old code. And even if new rules have been formulated for DCIs under the 2013 code.

So we would ask the Board to ask the County Legal staff to clearly state that a moratorium would in fact require any ongoing application to be re-evaluated at the end of the moratorium period and conform to the new rules.

Also, unless the oil and gas ordinance and the mining portions of the existing code are conformed to reflect references to chapters in the 2013 code, any future applications for these DCIs that's not under any moratorium will probably also have to be evaluated under provisions of the old code, even if referenced sections of the old code are no longer valid.

Section 8 of the proposed moratorium directs the County Manager to immediately begin the process to develop DCI regulations for only the DCIs identified in Section 4. We believe that Section 8 should also include direction to immediately ensure that language incorporated in both the oil and gas ordinance and the mining sections of the existing code is brought into conformance with the relevant chapters in the 2013 code. Conforming these existing regulations at the same time as the County prepares the DCI regulations for the remainder of the 2013 DCI section will ensure that additional moratoriums will not have to be imposed to the legal interpretations of which code language is valid. It also will ensure the continuity of the DCI section of the code as a whole when it's brought forward.

Now if the Board doesn't wish to direct the County Manager to incorporate this directive within the proposed Section 8, then we suggest that direction be placed in a format of a formal directive to the County Manager to do so. Thank you.

CHAIR MAYFIELD: Thank you, Mr. Wait.

[Previously sworn, Kim Sorvig testified as follows:]

KIM SORVIG: My name is Kim Sorvig, research associate professor of the UNM School of Architecture and Planning. I'm a county resident and I am under oath. Mr. Chair, Commissioners, I'm here today in strong support of this moratorium and the DCI regulations that we intend to develop by using the moratorium. I think it's entirely appropriate and within your purview as the previous speaker put it.

I've looked at the draft; it's well written. It includes the points that I believe are

necessary to make it work. It emphasizes public input and we've heard that that is the intent of the staff. That's critical. And it also recognizes that, to the previous speaker's point, writing individual DCIs requires careful coordination with the rest of the code and the removal of outdated language so that we get a unified result. In my opinion I think Santa Fe County has done pretty well over the 20 years of the past dealing with ordinary land use issues – conflicts between immediate neighbors. But we have also already dealt with DCIs in everything but name at least twice that I know of.

In 2001 we had a big issue with wildfire and the regulation of vegetation and clearance. That was done, it was a committee that had both members of the public and experts and staff on the committee that wrote the ordinance, and that one came out much better than it would have because they were going to boilerplate in something from the east coast that wouldn't even have fitted this region.

In 2008 we used an actual moratorium, as most of you know, for the oil and gas ordinance. The writing of that process heavily involved people with expertise from the public. It wasn't done with a committee but it relied very heavily on what I consider a commendable open-door policy from the staff and from the Commissioners at the time. And as a result many people devoted many hours to getting that right. It's now an ordinance that is used as a model across the country and is actually studied in planning programs and law schools.

So I hope to see some of those methods and results here. Our sustainable plan formally introduced the idea of developments of countywide impact as you've heard and some of the definitions were intentionally left blank. I do strongly urge the County to take advantage of the opportunity that this moratorium would offer and the momentum that has been built up in order to draft and adopt a consistent, coordinated set of DCIs. We need them. DCIs are a forward thinking and well established method of protecting the community the same time as ensuring that beneficial development can occur in the right way in the right place. Please adopt the moratorium and use it well. Thank you.

[Previously sworn, Eric Johnson testified as follows:]

ERIC JOHNSON: My name is Eric Johnson. I represent the Johnson Madrid Gallery, 2843 North Turquoise Trail, and I'm under oath. I'm here to speak in favor of the moratorium, and more than that, to speak in favor of the immediate approval of the moratorium in the action item on the agenda immediately following this open hearing. I'd also like to share a story from something that happened in our gallery about a week ago. A couple of folks came in; they were from Vermont and they said that they had heard that Santa Fe was called the City Different but it seemed to them that it was the City Same as Everywhere Else. And I'm afraid that there are irremediable harms being done right now to our cultural values and our status as a special community, and that only a moratorium could possibly prevent those from continuing at the present time.

That said, however, I'd also like to suggest a small caveat for the moratorium and that is that the Board address the issue of Caja del Rio by making it clear from the discussion from the Board in the action item for approval of the moratorium that items, developments which are currently under the application process from the New Mexico Department, I think it's Environmental Division, NMED, be exempted from the moratorium in so far as the delays caused by the state regulation process may have delayed the process of approval from the County Board as well. Thank you very much.



CHAIR MAYFIELD: Thank you.

[Previously sworn, Trevor Burrowes testified as follows:]

TREVOR BURROWES: My name's Trevor Burrowes and I have been sworn and I live at 2836 State Highway 14. As a layman citizen of the county – oh, first of all, I'd preface this by saying that I am in awe of the people who have already read everything and who know the ordinances and who know the details and who know how things actually proceed. I must apologize in advance that what I have to say is excessively general and vague and broad but I think maybe there's a place for something like this.

Look at it as if someone came down from Mars and just looked at Santa Fe without knowing any of the details of anything. So as a layman citizen of the county I support the moratorium for reasons that include the following: large-scale county development is driven by the expansion of the City of Santa Fe. A moratorium provides time to engage the City and the County in integrated City-County planning. A sprawl type expansion of the city has come at the expense of water supply, animal habitat and rural heritage along with the usually ignored costs of servicing the sprawl, like road maintenance, policing, paving, more schools, runoff, congestion, etc.

New Mexico is one of the states least prone to natural disasters. As disasters like sea level rise increase in other states it is likely that migration to our state will accelerate even beyond the present rate. It's not too farfetched to imagine that the county's population could double in the not too distant future. There are tested ways in which the city could absorb a large influx of new residences while decreasing the current congestion. These include imposition of an urban growth boundary as per Portland, Oregon, massive increase in public transportation, and more sophisticated planning. Thank you.

CHAIR MAYFIELD: Thank you, sir.

PAM BENNETT-CUMMING: Good afternoon. My name is Pam Bennett-Cumming, and I live at 286 Camino Cerro Chato, Cerrillos, New Mexico, and I do need to be sworn.

[Duly sworn, Pam Bennett-Cumming testified as follows:]

MS. BENNETT-CUMMING: First, I want to commend the Commissioners and their staff for their community minded actions in developing the proposed emergency interim ordinance. Your commitment clearly shows you recognize that certain types of development proposed within the county can have a broad and negative impact than simply within the property. In fact the negative impact in some cases can extend even beyond the county itself, and that these proposals should be considered and reviewed accordingly for their impact on the health, welfare and quality of life for the whole county.

I look forward to the crafting of the development of the countywide impact portion of the code and its implementation. I also ask that the County add language that ensures that at the end of the moratorium that these affected developments in process now be reviewed under the new Sustainable Land Development Code, and also that all the language be consistent and brought within the development code as a previous member of the public testified. Thank you again for your interest in seeing that these proposed developments are addressed in this code and will be reviewed in terms of their benefits to

the entire county, rather than solely individual benefit. Thank you.

CHAIR MAYFIELD: Thank you, Ms. Bennett.

[Previously sworn, Chris Furlanetto testified as follows:]

CHRIS FURLANETTO: Mr. Chair, Commissioners, my name's Chris Furlanetto. I live at 6 Redondo Peak, 87508. I am under oath and I'm speaking today on behalf of the League of Women Voters of Santa Fe County. The League supports the proposed 12-month moratorium on decisions involving certain DCIs, including those for sand and gravel extraction requiring blasting, landfills, and junkyards. This moratorium will give the County time to finalize the regulations for such developments and your decision can and will then be based on updated regulations. We urge you to vote for the moratorium today.

We trust that after imposing the proposed 12-month moratorium you'll work to complete and adopted the covered DCI sections by fall 2015 at the latest. And again, this will end current uncertainties about land use regulations and allow you to make sound land use decisions. We look forward to the new DCI sections of the SLDC including strong protections for the health, safety and general welfare of all residents of Santa Fe County. The League does plan to participate in any public hearings you schedule on the content and language of these sections, and we will ask that the language include strong protections for our scarce water resources, for our air, water and soil quality, for environmentally sensitive lands, and for our scenic viewscapes. Thank you.

CHAIR MAYFIELD: Thank you.

[Previously sworn, Marianna Hatten testified as follows:]

MARIANNA HATTEN: Mr. Chair, Commissioners, my name's Marianna Hatten, High Feather Ranch, Cerrillos, New Mexico. I support the moratorium. I applaud you for the work it has taken to get to this point, and urge you to get the vote, get the moratorium in place today. Thank you.

[Duly sworn, Jim Siebert testified as follows:]

JIM SIEBERT: My name is Jim Siebert. My address is 915 Mercer. The applicants on the mineral extraction as previously submitted, both Rockology and Buenavista are opposed to the moratorium. Pete Domenici, Jr. has written a letter regarding the opposition from the applicant. I'm not going to read this because I'm not sure I can pronounce all the cites to the lawsuits.

CHAIR MAYFIELD: Mr. Siebert, I'm going to interrupt one second. Under advice of our Attorney we said we were specifically not talking about any pending applications in front of Santa Fe County. You're mentioning an applicant in general, so should the applicant be stated by name as far as their opinion on this proposed moratorium right now? But we gave instructions again to the audience at large we're not talking about any pending application, Greg, so I'm going to ask for you to chime in on this please.

MR. SHAFFER: Mr. Chair, I do think that we've generally said we're not talking about the merits of specific applications. I don't think it would be inappropriate for the letter to be delivered and made part of the record, but again, I would just caution that the comments should not get to the specifics of the pending application which is not in front of the Board at this time.

CHAIR MAYFIELD: Thank you, Mr. Shaffer. So, please.

THIS DOCUMENT IS A PUBLIC RECORD

MR. SIEBERT: That's fine, Mr. Chair. I'm going to leave a copy with the County Attorney, a copy with Land Use and a copy with the recorder. *[Exhibit 2]* Thank you.

CHAIR MAYFIELD: Thank you, Mr. Siebert. Mr. Siebert, just really quick. In general, if you care to make any general statements about the moratorium you're welcome to come back up after or now if you care to. Thank you. Ma'am.

[Previously sworn, Gail Karr testified as follows:]

GAIL KARR: Yes. My name is Gail Karr and I'm sworn and I live in the county. I just want to say like all long-time residents of the city and the county, it's always an adventure to go driving anywhere because you see the development and the changes that have happened and some of them are compatible and some of them are really appalling and you wonder how they snuck through, how they fit. And I just am in favor of this moratorium because once the cat's out of the bag we can't catch it. We can't put it back in the bag and I think we really need to consider what we want and how the town should look and the county. We really have to consider what we're doing. Everything has a repercussion. Thank you.

CHAIR MAYFIELD: Thank you.

[Previously sworn, Diane Senior testified as follows:]

DIANE SENIOR: My name is Diane Senior. I live at 317B Camino Cerro Chato in Madrid, New Mexico, and I am sworn. Both personally and on behalf of the Rural Conservation Alliance I would like to thank the Commission for its serious consideration and attention to developments of countywide impact. We fully support the proposed moratorium. However, as you have heard already from some comments from the public there are community concerns about whether or not existing applications will be subject to new regulations or be subject to the existing code. I do believe it would be helpful if the Commission could issue a statement and the allay community concerns over that matter.

I would also like to ask that as part of the moratorium process, your commitment to community involvement remain strong and that you bring members of the community to the table to participate in the creation of the DCI regulations rather than simply come in to respond in subsequent community hearings. I believe that in previous development of the actual SLDC I believe that strong community participation in that actually helped craft a very strong plan and a very strong code as it exists and I urge you to do that again in creation of these DCIs. Thank you.

CHAIR MAYFIELD: Thank you, Ms. Senior.

[Previously sworn, Ross Lockridge testified as follows:]

ROSS LOCKRIDGE: My name is Ross Lockridge, P.O. Box 22, Cerrillos, New Mexico and I'm sworn. I'm a member of the RCA and support the moratorium. If this moratorium is adopted I hope the regs will be developed in the good spirit of the Sustainable Growth Management Plan. Thank you.

CHAIR MAYFIELD: Thank you, Mr. Lockridge. Is there anybody else from the public wishing to comment? Please.

ALTHEA REUSTLE: Good afternoon. I will need to be sworn in.

[Duly sworn, Althea Reustle testified as follows:]

MS. REUSTLE: My name is Althea Reustle. I live at 128 Camino Cerro

Chato since 1976. I support the 12-month moratorium. My main concern is that when you are discussing this that you take into account that we are a focus of international mining. Goldfields is still out there but they're not involved in any way at this point. My concern is that you make very such with your legal advisors that the County and its Commissioners cannot be hit by any slap suits. I think everyone knows what that means but it's a lawsuit with the intention of threatening or slowing down the process and wearing people, Commissioners and others, down. So I would like you to include a protection for the County, for the Commissioners, so that they cannot be sued for upholding our own regulations. And also, to avoid the appearance of undue influence if someone does threaten or suggest a lawsuit, either directly or indirectly. I want to make sure that you and the County are protected from anything, any lawsuits that might possibly be considered a slap suit interfering with your obligation to represent and protect us. Thank you.

CHAIR MAYFIELD: Thank you.

[Previously sworn, Don Van Doren testified as follows:]

DON VAN DOREN: My name is Don Van Doren, 317 Camino Cerro Chato in Cerrillos, and I have been sworn. Thank you, Commissioners, thank you, staff, for all your work on this long and involved effort. We really appreciate it. I'd just like to emphasize a couple of points that I think have been brought up here before. I think that it will be very important to have the kind of community involvement that's referenced in 3.4.4 and your strong commitment to that I think is very, very important here.

I would like to emphasize the point though that we make sure that that involvement not take place in terms of reviewing drafts that have been developed but rather involved in the process as it's being developed itself. We in the community, our groups in particular, have a number of experts in land use areas that I think could be extremely helpful in this process. They've been involved before in similar kinds of endeavors and I would really suggest that you look to some of the members of the community and get them involved in this process early on. I think that will really help speed up the process because rather than coming from drafts and having community input at that point, I think this is an opportunity to really have that input channeled through perhaps our community memberships in a way that could be very useful. So I would urge you to consider that.

The other point I think is trying to get clarification on this issue about just a firm statement on what happens to existing applications and existing situations that are out here and how would those be adjudicated in the future once whatever comes out of this moratorium work occurs. That would be very helpful I think for the community to understand. Thank you very much.

CHAIR MAYFIELD: Thank you, sir. Is there anybody else from the public wishing to comment at this time? Seeing none, this portion of our public hearing will now be closed and I'll go to Commissioners. Commissioner Chavez, please.

COMMISSIONER CHAVEZ: Thank you, Mr. Chair. I want to thank everyone for being here this afternoon. I appreciate some of the comments you made regarding staff's role in developing the Sustainable Land Development Code and I know many of you have been working on that even longer than I have. I know staff's been working on it for a number of years now. But I wanted to – I appreciated your comments

in recognizing staff and their willingness to work with the community. You talked a lot about the comment I think that we've demonstrated that we're open to that. You talked about an open-door policy. I believe that we're there. And sometimes we get caught in the crossfire if you will in some of these land use cases when it comes to the ex parte communication and talking with applicants about specific land use cases that are before us or even this Sustainable Land Development Code that's before us. It's hard for us to meet with everyone who's interested in that and keep an open mind and be objective about it and let the public process and staff really work its way through all of the issues.

It's not to say that I don't take my job seriously but I think when the public has an open-door policy with staff I don't need to get in the way. You have the input. You in your communities know better than I do what is going on and what needs to change. And so I want to listen to that. There was one question that came up I think a couple of times and I don't know if now is the right time but I'll ask our legal staff and other staff. It has to do with the statement about existing or pending applications. Can we say anything about that right now? Can we take a position on that? That was one thing that came to mind.

And then there was also the notion of a timeline and that this work would be done – I don't know what the suggestion was but I think timelines are good but I would not want to rush it too much. So those are the two questions that I have. Thank you, Mr. Chair.

CHAIR MAYFIELD: Thank you. Commissioner Holian.

COMMISSIONER HOLIAN: Mr. Chair, I move for approval of the ordinance, and then if there's a second –

COMMISSIONER CHAVEZ: Second.

COMMISSIONER HOLIAN: After further discussion I would like to make a few comments.

COMMISSIONER CHAVEZ: Second.

COMMISSIONER HOLIAN: I also would like to thank all of you who are here today and who've participated in this topic over the years. I think there's a couple of important points to stress about this. First of all, this moratorium applies only to applications for sanitary landfills, junkyards and sand and gravel operations involving blasting. And it's also important to note that the reason for this moratorium is to set County policy for these kinds of developments of countywide impact. In other words, we need to strengthen our existing regulations, and it's very important that we have a process for evaluating applications that come forward to us.

I also want to stress that this has been the intention of the County to regulate DCIs since the adoption of the Sustainable Growth Management Plan, which was about a little over three years ago now. I also want to point out that this is analogous to how the County dealt with oil and gas development and I think a couple of our speakers brought that out. About six years ago there was the possibility of oil and gas development happening in Santa Fe County and there was a moratorium put in place on oil and gas development by the state at that time. And we used that time to develop our oil and gas ordinance. The important things that that ordinance did is it set a process for evaluating applications. That is really, really important to be able to do that, and then there are very strict regulations in that ordinance to ensure that if there is any oil and gas development

that we will protect our water resources, our groundwater resources in particular. It protects historical sites, and also our landscape.

So I really think that it is vital now that we move forward with the regulation of DCIs in our new code. And this moratorium will give us the time to do that before we consider any DCIs that involve the activities that are specified in this emergency moratorium.

I too want to stress public involvement and I think that it's crucial that that happen right from the outset. So I know that our staff will put in place a process where we do have robust public involvement in drafting this DCI section of our new code. So, thank you, Mr. Chair.

CHAIR MAYFIELD: Thank you. For the record, we're not on item V yet; we're still on item IV but we'll go back to item V and let you move the ordinance. But that's okay. Commissioners, is there any other discussion right now on the public hearing or the ordinance? So I just have one and I'll just – as far as the DCI, we have a definition as far as junkyards. I know we had recently a case in front of us regarding a tow truck operator and maybe not all tow trucks tow vehicles that then are becoming unusable or might fit in that definition of a junkyard, but would that have any impact on, say, such applications or future applications if an individual is trying to site a towing facility within anywhere in the county, right now? Would that be a 12-month moratorium on them also?

MR. SHAFFER: Mr. Chair, I think that it would depend upon the nature of the operations. There is a definition within the moratorium ordinance of junkyards and if it is a towing business and we're talking about, again, the storage of their towing vehicles then it may not be in play, but I think it would depend upon the nature of the operations as it relates to the definition in the ordinance.

CHAIR MAYFIELD: And then as far as on page 1 of 5, on definitions, 2.6, construction debris or metal that's stored. So if there's a construction company out there that needs to find a new yard to store construction material, is that just unusable construction material that would fall in that classification of a junkyard? Because then it says it might be permissible for salvage and/or future use. I guess, how would a construction company fall under this if they have construction material? Or left over construction material? Or if they were demolishing a building that had salvageable construction material?

MR. SHAFFER: Mr. Chair, we'd have to evaluate the specific application but the key in the definition relates to scrap materials as opposed to a temporary site that would be used for temporary storage of construction materials.

CHAIR MAYFIELD: Okay. Thank you. That's all I had as far as this ordinance going in front of us today. I'm going to just see if Commissioner Anaya cares to comment?

COMMISSIONER ANAYA: I don't have anything to add right now, Commissioner. Thank you.

CHAIR MAYFIELD: Thank you. Commissioner Chavez, you had a comment?

COMMISSIONER CHAVEZ: Well, I just want to go back to the two questions that I had earlier and see if they're appropriate at this time. I think one is the timeline. I'd like to talk a little bit about the timeline, because I know we're looking at 12

months, and then there's some expectation of what happens after that. And so I want to revisit that and be sure that we're all comfortable with that and not setting expectations that are maybe unrealistic for the public or for staff.

COMMISSIONER STEFANICS: Mr. Chair, on that point.

CHAIR MAYFIELD: Commissioner Stefanics.

COMMISSIONER STEFANICS: Mr. Chair, when I agreed to put the moratorium ahead it was with the intent of 12 months, and the reason is I have seen projects here take much longer than that with activity here at the County shut down. And so it is my personal intent that the moratorium study and language be developed within that 12 months and brought back to us.

COMMISSIONER CHAVEZ: So that's what I want to talk about. What happens after that? What are your expectations once that's done? Because there are going to be another couple of months after that I'm thinking. So is that another six months? Is that another three months for that next step to happen? I want to look at that whole timeline.

COMMISSIONER ANAYA: Mr. Chair, on this point.

CHAIR MAYFIELD: Commissioner Anaya.

COMMISSIONER ANAYA: I concur with Commissioner Stefanics on this point. I too have seen go on and on and on without resolution and so it's not my interest to see this occur with this particular moratorium, so those are my comments on the record. Thanks, Mr. Chair.

COMMISSIONER CHAVEZ: Mr. Chair, my question for asking is not to drag it on. I want to know ahead of time how much time we're going to budget for this and stick to that and not let it drag on beyond that. And that's why I –

COMMISSIONER ANAYA: If I could, Mr. Chair, Commissioner Chavez, I would say we resolve it in the 12-month period. That's my comments on the record. Thanks.

COMMISSIONER CHAVEZ: Okay. Does staff want to chime in on that?

MR. SHAFFER: Mr. Chair, Commissioner Chavez, I think that I would just offer the following observation is that in taking this step if that is ultimately the decision of the Board you are committing the County to prioritize this project and true emphasis on priority in order to develop those regulations. We provided in the FIR that accompanied the ordinance a general estimate of what type of cost might be involved so that there isn't any surprise down the road because there are real resources involved in this process, both internal as well as external in order to develop as the ordinance states legally and scientifically defensible plans. So again, I think by adopting the ordinance that is the commitment that the Board is making and undertaking and the direction that staff will be following in terms of prioritizing things.

I think there is a separate question with respect to pending applications. I think that the ordinance speaks for itself on that score and that in terms of applicability provisions it would be better placed for the actual ordinance or other documents that adopt those regulations where you would specify its applicability to those pending applications or otherwise.

COMMISSIONER STEFANICS: Mr. Chair.

CHAIR MAYFIELD: Commissioner Stefanics.

2014 SEP 16 AM 10:58:10

COMMISSIONER STEFANICS: After Commissioner Chavez.

COMMISSIONER CHAVEZ: No, I think the two questions I asked have been answered. I'm comfortable with that. I think that the timeline and the time on this is time well spent. The fiscal impact is budgeting, allocating money for staff time so there's that investment. So I think all the pieces are in place, the commitment on both sides seems to be there and so I'm ready to move forward. Thank you, Mr. Chair.

CHAIR MAYFIELD: Thank you. Commissioner Stefanics.

COMMISSIONER STEFANICS: Mr. Chair, yes, thank you. It is my intent to vote today for the moratorium. The budget item I see as a totally separate, different vote.

CHAIR MAYFIELD: Thank you. Mr. Shaffer, I think one question was asked in the audience, not specifically citing any current applications but any applications that have been filed under current Santa Fe code, and this moratorium goes in place for 12 months, what happens to that application at the time it was filed? Or applications the time they were filed? Would they fall under the 1998 code or would they fall under the DCIs as approved in the new code that was approved last year? How would they be reviewed?

MR. SHAFFER: Mr. Chair, I think the intent would be to have them regulated under the new regulations or else the DCI moratorium would be written differently to allow them to go forward under existing regulations. So I think the intent is clear to not allow that to occur or else if the direction of the Board is to allow existing applications to go forward, then again, that would be changing the language of the ordinance. But right now I think it's clearly written that they will not go forward and the obvious intent is that they will be subject to the new regulations once they come on line.

CHAIR MAYFIELD: Thank you. Any other questions, Commissioners?

**V. Ordinance No. 2014-8, Consideration and Possible Action on a Proposed Ordinance Titled "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"**

COMMISSIONER HOLIAN: Thank you, Mr. Chair. I move for approval of 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.

CHAIR MAYFIELD: So we have a motion and –

COMMISSIONER CHAVEZ: Second.

CHAIR MAYFIELD: And a second. Any other discussion?

**The motion to approve Ordinance No. 2014-8 passed by unanimous roll call vote as follows:**

<b>Commissioner Mayfield</b>	<b>Aye</b>
<b>Commissioner Anaya</b>	<b>Aye</b>
<b>Commissioner Stefanics</b>	<b>Aye</b>

2014 SEP 16 10:57 AM



<b>Commissioner Holian</b>	<b>Aye</b>
<b>Commissioner Chavez</b>	<b>Aye</b>

**VI. Executive Session**

**A. Threatened or Pending Litigation, as Allowed by Section 10-15-1(H) (7) NMSA 1978**

**1. Threatened of Pending Litigation Regarding Resolution No. 20124-87, a Resolution Proposing a Countywide Advisory Questions for the 2014 General Election Concerning Public Support for Efforts to Decriminalize Possession of One Ounce or Less of Marijuana**

**B. Discussion of the Purchase, Acquisition or Disposal of Real Property or Water Rights, as Allowed by Section 10-15-1(H) (8) NMSA 1978**

**1. Acquisition of Pojoaque Valley Schools Athletic Fields**

CHAIR MAYFIELD: Mr. Shaffer, seeing there's a whole bunch of amendments to our agenda, is there a need for executive session?

MR. SHAFFER: Mr. Chair, that would be my recommendation with respect to the specific items that are identified on the agenda as being topics of conversation in the executive session. So I think any motion should incorporate the statutory basis for the closed session as well as the items that are listed as being specific points of conversation.

COMMISSIONER STEFANICS: Mr. Chair.

CHAIR MAYFIELD: Thank you. Commissioner Stefanics.

COMMISSIONER STEFANICS: I move that we go into executive session for the purposes of threatened or pending litigation, as allowed by Section 10-15-1(H)(7) NMSA 1978, and also the discussion of the purchase, acquisition or disposal of real property or water rights, as allowed by Section 10-15-1(H)(8) NMSA 1978.

COMMISSIONER HOLIAN: Second.

CHAIR MAYFIELD: We have a motion and as second. Roll call please.

**The motion to go into executive session pursuant to NMSA Section 10-15-1-H (7 and 8) to discuss the matters delineated above passed by unanimous roll call vote as follows:**

<b>Commissioner Mayfield</b>	<b>Aye</b>
<b>Commissioner Anaya</b>	<b>Not Present</b>
<b>Commissioner Stefanics</b>	<b>Aye</b>
<b>Commissioner Holian</b>	<b>Aye</b>
<b>Commissioner Chavez</b>	<b>Aye</b>

CHAIR MAYFIELD: We're in executive session. Greg, what do we anticipate? Ten minutes? Twenty minutes? Please don't say an hour.

MR. SHAFFER: I would – I think it depends upon the nature and base of

the conversation. I could see it going anywhere from 30 to 45 minutes.

CHAIR MAYFIELD: Okay. Just for our listening audience and those that are in attendance today, that's not a guarantee but I think we're anticipating at least a half an hour to be in executive session. So with that let's go into executive.

[The Commission met in closed session from 2:05 to 3:05.]

CHAIR MAYFIELD: The Commission did go into executive session on stated reasons which we will most likely restate once we come out. Is there a motion?

COMMISSIONER STEFANICS: Mr. Chair.

CHAIR MAYFIELD: Commissioner Stefanics.

COMMISSIONER STEFANICS: I move that we come out of executive session having discussed threatened or pending litigation and the purchase, acquisition or disposal of real property or water rights. Present were four County Commissioners, Commissioner Chavez, Mayfield, Holian, Stefanics, the County Attorney, one of the Deputy County Attorneys, Willie Brown, and our two Deputy County Managers, Tony Flores and Erik Aaboe.

COMMISSIONER HOLIAN: Second.

CHAIR MAYFIELD: We have a motion and a second.

**The motion passed by unanimous [4-0] voice vote.** [Commissioner Anaya was not present for this action.]

**VII. Action with Respect to Resolution No. 2014-87, a Resolution Proposing a Countywide Advisory Questions for the 2014 General Election Concerning Public Support for Efforts to Decriminalize Possession of One Ounce or Less of Marijuana, Including but not Limited to Possible Litigation**

COMMISSIONER STEFANICS: Mr. Chair.

CHAIR MAYFIELD: Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Mr. Chair. I would like to make a motion to authorize the County Attorney to initiate or defend on behalf of the Board and County Clerk litigation concerning the advisory question containing Resolution No. 2014-87. This specifically includes proceedings before the New Mexico Supreme Court to require the Secretary of State to allow the question to be placed on the 2014 general election ballot, as well as any action that may be brought to remove the question from the ballot or otherwise challenge the legality of the advisory question.

COMMISSIONER HOLIAN: Second.

CHAIR MAYFIELD: Commissioners, we have a motion and a second.

**The motion passed by unanimous [4-0] voice vote.** [Commissioner Anaya was not present for this action.]

### **VIII. Acquisition of Pojoaque Valley Schools Athletic Fields**

CHAIR MAYFIELD: Commissioners, this is in District 1 and I would respectfully request that the Commission ask the County Manager if through staff to proceed with the acquisition of the Pojoaque Valley Schools athletic field.

COMMISSIONER STEFANICS: Second.

CHAIR MAYFIELD: We have a motion and a second.

**The motion passed by unanimous [4-0] voice vote.** [Commissioner Anaya was not present for this action.]

CHAIR MAYFIELD: Commissioners, before we adjourn, just a quick note for our listening audience. Santa Fe Board of County Commissioners has a special meeting this evening. It's at the Pojoaque Valley Schools multi-purpose building which is right off of State Highway 502 and that is tonight at 6:00 pm and just quick – what will be on the agenda is a public meeting on an ordinance amending Ordinance 2013-6, and that is the Sustainable Land Development Code. I believe staff will be suggesting changes that they've made in the past in a recap. Also a public meeting on the zoning map of all land in the unincorporated area of Santa Fe County, to which the Sustainable Land Development Code applies and then a public meeting on the ordinance to establish development permit and review fees for projects in Santa Fe County. Again, that is tonight at 6:00 pm. Hopefully we have a quorum.

2014 SEP 16 PM 05:00

**VIII. CONCLUDING BUSINESS**

- A. Announcements**
- B. Adjournment**

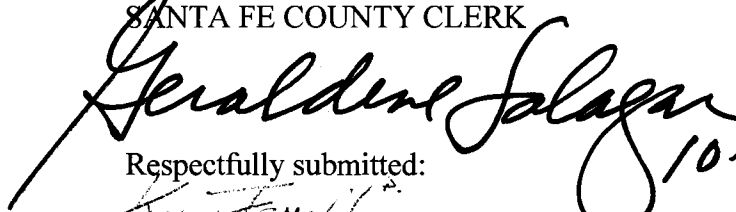
Having completed the agenda and with no further business to come before this body, Chair Mayfield declared this meeting adjourned at 3:05 p.m.

Approved by:

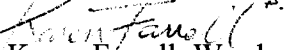
  
Board of County Commissioners  
Daniel W. Mayfield, Chair



GERALDINE SALAZAR  
SANTA FE COUNTY CLERK

  
10-14-2014

Respectfully submitted:

  
Karen Farrell, Wordswork  
453 Cerrillos Road  
Santa Fe, NM 87501

REC'D CLERK RECORDED 10/15/2014

## 2.2.6 DEVELOPMENTS OF COUNTYWIDE IMPACT (“DCI’S”)

Developments of Countywide Impact (DCI’s) are those that have potential for far-reaching effects on the community. DCIs are developments that would place major demands on Adequate Public Facilities; that would have a major impact on the capital improvements planning and budget; and/or that have potential to affect the environment, the public health, safety, and welfare beyond impacts on immediately neighboring properties. Types of developments regulated as DCI’s will be established in the SLDC and may include, but are not limited to:

- oil and gas drilling and associated activities as established in existing Oil and Gas Ordinance;
- mining, quarrying, and excavation of soil or gravel products for commercial use;
- major reshaping of land surfaces;
- feedlots and factory farms
- solar and wind farms.

Regulation of DCI’s are necessary to protect the health, safety and welfare of the citizens, residents and businesses of Santa Fe County from the harmful or hazardous adverse impacts or effects of, or nuisances resulting from, mineral, ore, rock, sand, gravel, limestone, bedrock, landfill, mining, quarrying, excavation or fill activities; regulation of DCIs is also necessary to preserve the quality and sustainability of life, the economy, infrastructure, environment, natural resources and natural landscapes consistent with the SGMP, any Area or Community Plan, the CIP and the Official Map.

DCI’s should be regulated in order to protect degradation of air, surface and groundwater, soils, environmentally sensitive lands and visual and scenic qualities. DCIs have the potential to expand greenhouse gas emissions and aggravate global warming; and create adverse noise, light, odor and vibration; explosive hazards; and adverse traffic congestion.

Developments of Countywide Impact require special regulation and application processes to ensure: short and long-term compatibility both on and off-site through an environmental impact review; an adequate public facilities and services assessment; a fiscal impact analysis; an analysis to ensure preservation of archaeological, historic and cultural resources; an analysis to ensure protection of the quantity and quality of surface water, streams, rivers, acequias, aquifers and groundwater; and an analysis geared to preventing nuisances or adverse impacts and effects upon adjacent properties and neighborhoods.

Regulation of DCI’s is also important for the protection of the scenic vistas of Santa Fe County, its natural landscapes, environment, flora habitats, wildlife corridors and habitats, environmentally sensitive areas, hillsides, wetlands, rivers and streams, flood hazard areas, archaeological, historical and cultural resources. Regulation of DCIs will protect these resources from public nuisances and will protect the long term usefulness of adjacent properties.

DCIs should be regulated generally to: protect the health, safety and welfare of the citizens, residents and businesses of Santa Fe County from the harmful or hazardous adverse impacts or effects of, or nuisances resulting from, mineral, ore, rock, sand, gravel, limestone, bedrock, landfill, mining, quarrying, excavation or fill activities. DCIs should be required to fully mitigate all adverse land use impacts and effects. Regulation is also necessary to preserve the quality and sustainability of life, the economy, infrastructure, environment, natural resources and natural landscapes consistent with the SGMP, any Area, Specific or Community Plan, the CIP and the Official Map.

### 2.2.6.1 OIL AND GAS

The County’s existing Oil and Gas Element is incorporated into the SGMP by reference and will be recognized in the SLDC as a Development of Countywide Impact. The Oil and Gas ordinance will be incorporated into the SLDC without substantial changes, although it is expected that some aspects of the oil and gas ordinance will apply to other types and kinds of development and not just be limited to oil and gas development.

#### 2.2.6.2 MINING

The County's existing mining ordinance will be incorporated into the SLDC and will be recognized as a Development of Countywide Impact. The mining ordinance should be incorporated into the SLDC without substantial changes, although it is expected that some aspects of the oil and gas ordinance may also be made applicable to mining. Sand and gravel is a local material that is used for domestic and commercial construction, road building and landscaping among other uses. Sand and gravel mining of will be recognized as a DCI and subject to the requirements of the existing mining ordinance and SLDC.

#### 2.2.6.3 RESOURCE EXTRACTION.

Resource extraction includes activities designed to mine, extract, quarry or remove minerals, ore, rock, sand, gravel, limestone, bedrock or landfill for commercial purposes; or any excavation activity that utilizes a crusher. Resource Extraction that destroys highly productive soils and valuable crop land should be strictly limited.

#### 2.2.6.4 SUBSTANTIAL LAND ALTERATION ("LAND ALTERATION").

Substantial land alteration removes substantial amounts of primarily earth with mineral, ore, rock, sand, gravel, limestone, or bedrock material.

#### 2.2.6.5 OTHER POTENTIAL DCI'S:

Junkyards and Automobile Graveyards. Junkyards and automobile graveyards should be regulated as DCIs. At such facilities are collected junk, articles, or materials, including junked, wrecked, or inoperable vehicles. These vehicles contains hazardous materials such as oils, greases, solvents, gasoline, lead, and acid, as well as less hazardous materials like steel, rubber, glass, aluminum, plastics and other materials.

Solid Waste Facilities. Solid waste facilities should be regulated as DCIs. These facilities include sanitary landfills regulated by the New Mexico Environment Department, solid waste convenience centers, transfer stations, recycling centers, and the like. Such facilities contain many hazardous or dangerous substances, and can in many cases be considered a public nuisance from the perspective of adjoining properties. They feature dust, vapors, odors, methane gas, and undesirable traffic. These facilities must be strictly regulated as DCIs to prevent deleterious impacts on surrounding property, erosion for property values, and creation of public nuisances. Such facilities can also create environmental hazards that must be carefully studied and for which all available information must be developed for good decision making.

Other potential DCI's may include feedlots and factory farms and large scale solar and wind farms. Potential DCIs may be identified and regulated through the SLDC in order to protect degradation of air, surface and groundwater; soils, environmentally sensitive lands; and visual and scenic qualities.

---

### 2.2.7 MINOR LAND ALTERATION

Minor land alteration is a development activity that removes primarily earth with insignificant amounts of mineral, ore, rock, sand, gravel, limestone, or bedrock material or land disturbing activities removing primarily earth, with only insignificant amounts of mineral, ore, rock, sand, gravel, limestone, or bedrock. Minor land alteration should not be regulated as a DCI.

## **CHAPTER ELEVEN – DEVELOPMENTS OF COUNTYWIDE IMPACT (DCIs)**

**11.1. PURPOSE.** Developments of Countywide Impact (DCIs) are those that 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:

**11.1.1.** 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;

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

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

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

**11.2. DESIGNATION.** On account of their potential impact on the County as a whole, the following activities are deemed DCIs subject to the requirements of this chapter:

**11.2.1.** oil and gas drilling and production;

**11.2.2.** mining and resource extraction;

**11.2.3.** substantial land alteration;

**11.2.4.** landfills;

**11.2.5.** junkyards;

**11.2.6.** large-scale feedlots and factory farms; and

**11.2.7.** sand and gravel extraction that is of a scope and scale, as determined by subsequent amendment to the SLDC, that it merits regulation as a DCI pursuant to subsection 11.3.6. of the SLDC.

**11.3. REGULATION.** The following regulations shall apply to DCIs:

**11.3.1. Oil and Gas Drilling and Production.** *See* County Ordinance No. 2008-19.

**11.3.2. Mining and Resource Extraction.** Reserved (*but see* Section 1.1.7. and Chapter 10, *generally* and County Ordinance 1996-10, Article II, Section 5 "Mineral Exploration and Extraction").

**11.3.3. Substantial Land Alteration.** Reserved.

**11.3.4. Landfills.** Reserved.

THIS COPY RECORDED BY 5/28/11

**11.3.5. Large-Scale Feedlots and Factory Farms.** Reserved.

**11.3.6 Sand and Gravel Extraction.** Reserved, pending subsequent amendment to the SLDC that regulates sand and gravel extraction whose scope and scale requires that it be regulated as a DCI.

ALL OTHER RECORDS ARE CONTROLLED BY SYSTEMS



proposed height is the minimum necessary for proper functioning, and the proposed accessory structure will not adversely affect neighboring properties.

## **10.18. SATELLITE DISH ANTENNAS.**

**10.18.1 Applicability.** This section applies to any satellite dish antenna except:

**10.18.1.1.** An antenna that is one meter (3.28 feet) or less in diameter and is used to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite;

**10.18.1.2.** An antenna that is one meter (3.28 feet) or less in diameter or diagonal measurement and is used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, or to receive or transmit fixed wireless signals other than via satellite;

**10.18.1.3.** An antenna of any size that is used for residential purposes to receive television broadcast signals and high speed internet; and

**10.18.1.4.** A mast supporting an antenna described in the subsections .1-.3 above.

**10.18.2. Location.** A satellite dish antenna shall not be located or mounted:

**10.18.2.1.** In the required front or side yards in any residential or commercial district; or

**10.18.2.2.** On the roof or wall of a building that faces a public right-of-way.

**10.18.3. Development Permit.** A satellite dish antenna in excess of the dimensions described above requires a development permit with site development plan approval.

**10.18.4. Screening.** Without restricting its operation, a satellite dish antenna located on the ground shall be screened from view from public roads and from adjacent properties.

**10.18.5. Height.** A satellite dish antenna located on the building roof shall be governed by the regulations for the maximum height of structures of the applicable district.

## **10.19. SAND AND GRAVEL EXTRACTION.**

**10.19.1. Applicability.** This section applies to any mineral extraction activity for construction materials, including but not limited to, stone, sand, gravel, aggregate, or similar naturally occurring construction materials. Such activity shall be allowed where permitted by the Use Table, Exhibit B, subject to approval of a conditional use permit (§ 4.9.6.) and the additional requirements of this section. If the extraction activity requires blasting, then this section shall not apply and the operation will be treated as a Development of Countywide Impact under Chapter 11.

**10.19.2. Related Uses.** Related office and material processing uses may be permitted at the sand and gravel extraction sites where approved as part of the conditional use permit and constructed and operated in compliance with the SLDC and so long as the use is consistent. Such related uses may include, but are not limited to, road materials fabrication plants, asphalt hot mix plants, concrete batch plants, and the use of mobile equipment such as crushers, stackers and conveyors.

**10.19.3. Application.** In addition to the submittal requirements for a conditional use permit (§ 4.9.6.), including any studies, reports and assessments required by Table 6-1, an application for approval of a sand and gravel extraction facility shall include the following:

**10.19.3.1. Operations Plan.** An operations plan for the facility consisting of the following:

1. Maps, plans, graphics, descriptions, timetables, and reports which correlate and specify:
  - a. a detailed description of the method(s) or technique(s) to be employed in each stage of the operation where any surface disturbance will occur;
  - b. the size and location of area(s) to be disturbed, which includes excavations, overburden spoils, topsoil stockpiles, driveways and roads;
  - c. pursuant to the standards of §7.17 (Terrain Management), a description of all earthmoving activities, including backfilling of cuts and leveling or compaction of overburden;
  - d. if applicable, the location and size of all water diversions and impoundments or discharge of water used in extraction operations;
  - e. areas to be used for storage of equipment and vehicles;
  - f. location and size of any structures;
  - g. areas designated to be reclaimed;
  - h. hours of operation and, if applicable, a description of outdoor lighting; and
  - i. fire protection plans.
2. A description of how construction materials will be processed on and/or removed from the site.
3. A description of how each phase of exploration or extraction correlates to the reclamation plan.
4. A timetable for each phase of operations and reclamation.
5. A description of the steps to be taken to comply with applicable air and water quality laws and regulations and any applicable health and safety standards.
6. A drainage control plan showing methods which will be utilized to avoid erosion on and adjacent to the site.
7. A description of all hazardous materials to be used and transported in connection with the activity and a description of steps that will be taken to insure that the use of such materials will have no adverse impact on the residents or environment of Santa Fe County.

8. A description of the projected noise to be generated and an explanation of how the operator will comply with the requirements of §7.21.4 (Noise).

9. A statement concerning compliance, as applicable, with regulations of the Federal Aviation Administration (FAA).

**10.19.3.2. Reclamation Plan.** A plan that provides for reclamation of the site. For extraction activities involving open pit operations, the plan shall account for recontouring and reseeding or revegetation of the site. The reclamation shall include reseeding or revegetating of all disturbed areas of the site, excluding roads, with reasonable allowances to recognize areas that cannot be practically seeded or revegetated because of slope, rock conditions or other limitation factors. The applicant shall be responsible for maintaining revegetation for two growing seasons, in an attempt to provide roughly comparable vegetation to that which existed in the area prior to extraction, through a single reasonable effort.

**10.19.3.3. Other Permits.** A listing of all permits required to be obtained to engage in the extraction activities on the site. Copies of the submittals or other data presented in support of obtaining required permits shall be provided to the Administrator upon request and the listing of the regulatory agency under which the permit is required. Upon obtaining the required permits, a copy of each shall be submitted to the Administrator.

**10.19.4. Water for Site Control.** The applicant shall possess a suitable water supply to meet the requirements of the New Mexico Environment Department pursuant to the applicant's air quality permit and for general dust control. As necessary, a WSAR may be required by the Administrator as described on Table 6-1 to establish the necessary water supply.

**10.19.5. Approval Standards.** In addition to meeting those standards required for approval of a conditional use permit under § 14.9.6, the applicant shall demonstrate each of the following with respect to the proposed sand and gravel extraction facility:

**10.19.5.1.** The existence of significant mineral resources at the site;

**10.19.5.2.** That the proposed use is reasonably compatible with other uses in the area, including but not limited to traditional patterns of land use, recreational uses, and present or planned population centers;

**10.19.5.3.** That the site is suited for sand and gravel extraction, in comparison with other reasonably available areas of the County;

**10.19.5.4.** That the operations plan and reclamation plan are feasible and adequately protective and the application can be conditioned upon carrying out both plans; and

**10.19.5.5.** A history of significant mining activity in the area, if mining has been conducted in the area.

## **10.20. SEXUALLY ORIENTED BUSINESSES.**

**10.20.1. Purpose and Intent.** It is the purpose of this section to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the County, and to establish reasonable and uniform regulations to prevent the negative secondary effects of sexually oriented businesses within the County, which include increased crime, neighborhood blight and reduced property values. The provisions of this section have neither the purpose nor effect of imposing a limitation or restriction on the content of or reasonable access to

Comment and Opposition to the Ordinance Entitled "*Emergency Interim Development Ordinance Imposing a Twelve Month Moratorium on Development Approvals or the Issuance of Development Permit for Specified Development Countywide Impacts* ('Ordinance')." This is submitted on behalf of Buena Vista Estates, LLC/Rockology (the applicants for permit).

**Introduction : The proposed Ordinance is both unnecessary and illegal**

As set forth in more detail below, the Ordinance is unnecessary because there has been no showing that the circumstances sought to be addressed by the Ordinance have any factual basis or evidentiary support.

Instead, the Ordinance targets a specific application that was timely submitted, completely and fully reviewed by staff of County Development Review Committee ("CDRC"); previously recommended for approval by County Planning staff and is therefore ready for decision.

Because the notice of the Ordinance is completely lacking in factual/evidentiary basis— which otherwise should allow for public comment and Commission review as to use of evidence that has not previously been made available to the public—the moratorium is void as a matter of law.

**I. The Buena Vista Estates, LLC/Rockology Application is the only factual circumstance that led to the proposed ordinance (moratorium).**

The Commission is well aware of the Buena Vista Estates/Rockology previous application(s) for permit.

For not only purposes of this comment but for appeal or further litigation, I request that the complete record of that matter be incorporated by the County Commission staff as part of the record for the proposed moratorium.

The *New Mexico Administrative Procedures Act*, provides for review of agency actions on the "entire record." NMSA 1978, Sec. 12-8-22(A).

A review of the whole record is clearly indicated in those cases where the administrative agency serves not only as the fact finder but also as the complainant and prosecutor. *Duke City Lumber Co. v. New Mexico Environmental Improvement Bd.*, 681 P.2d 717, 101 N.M. 291 (N.M., 1984); *Rio Grande Chapter of Sierra Club v. N.M. Mining Comm'n*, 2003-NMSC-005, ¶ 17, 133 N.M. 97, 61 P.3d 806 ("A ruling by an administrative agency is arbitrary and capricious if it is unreasonable or without a rational basis, when viewed in light of the whole record."); *see also* 73A C.J.S., Public Administrative Law and Procedure Sec. 213 (1983).

The substantial evidence rule must be applied to the entire record and segments of the record may not be ignored in applying this rule.

It is my understanding that the entire record consists of the transcripts of the two County Commission hearings, public comment, and numerous exhibits.

It is important to note that from the outset, County staff has recommended approval of the proposed application. After the first Commission hearing, the staff was instructed to supplement the record with additional information. That information continued to support the staff's recommendation for approval and, in fact, provided additional support for demonstration that the application meets all of the applicable requirements. Indeed, during the second Commission hearing the issues regarding the Caja Del Rio Landfill were discussed by exhibits that had been presented to staff and were subsequently presented to the Commission along with comments from third-parties. *See Applicants' Comments on Testimony and Analysis of Laird Graeser, Aug. 12, 2014 Commission hearing; SFSWMA July 23, 2014 letter, attached.*

The record shows that the Caja Del Rio Sand and Gravel operations are operating without required zoning or other permit approval by Santa Fe County and that the Caja Del Rio Landfill opposes the Buena Vista/Rockology application because it does not want competition to its low grade sand and gravel, which is a byproduct of excavation for the landfill which would otherwise be deemed "waste material." *Id.*

The applicants are the only known parties attempting permit, whereas 1) the Caja Del Rio Sand and Gravel operations are operating without a permit; 2) residents to the proposed project are over four miles away, and 3) the Waldo quarry operation in the vicinity of the proposed project has already been deemed compatible by the County. *See Applicants' Introduction, pg. 103 admitted to the record at the 7/11/2014 hearing, attached.*

Thus, the record shows no competent evidence that the moratorium addresses a *genuine* need to preserve the status quo to address curtailing sudden surges in building and rezoning changes. Thaddeus R. Ailes, *Not in my Backyard: A Critique of Current Indiana Law on Land Use Moratoria*, 72 IND. L. J. 809, 817 (1997); *see also Shafer v. City of New Orleans*, 743 F.2d 1086 (5th Cir. 1984) (upholding a moratorium ordinance on land use development in order to preserve the status quo while studying the area and its needs). As such the Commission will rely only on hearsay if it passes the ordinance. In that case, the passage of the ordinance is not supported by sufficient evidence and is subject to further legal attack.

The *New Mexico Administrative Procedures Act* provides that evidence may be relied upon "if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs." NMSA 1978, Sec. 12-8-11(A). The standard for admissibility in an administrative hearing under this Act is therefore one of whether

the evidence has any probative value. However, New Mexico courts require that an administrative action be supported by some evidence that would be admissible in a jury trial. This has been referred to as the legal residuum rule. *Young v. Board of Pharmacy*, 81 N.M. 5, 462 P.2d 139 (1969). New Mexico has continued to require a residuum of competent evidence to support the findings of an administrative agency where a substantial right is at stake. *Trujillo v. Employment Security Commission*, 94 N.M. 343, 610 P.2d 747 (1980).

**II. The proposed ordinance constitutes Illegal “stopgap zoning” and “regulatory taking” such that it shall be subject to further legal attack**

As indicated above, I attach copies of the memorandum I presented at the initial County Commission meeting and the subsequent County Commission meeting. I also attach the letter from the Caja Del Rio Landfill (SFSWMA July 23, 2014 letter).

The record for that proceeding clearly indicates that the New Mexico Environment Department Solid Waste Permit does not provide any permitting or zoning authorization for that sand and gravel operations. County staff and attorney were unable to provide any legal basis for authorization of the sand and gravel operations during that hearing, which is now closed. Accordingly, the record clearly reflects that the Caja Del Rio sand and gravel operations are being conducted without permits and that the Caja Del Rio is seeking to derive an unfair advantage over legitimate New Mexico resident competitors who meet all applicable requirements and have a higher quality sand and gravel.

The County via SFSWMA is discriminating against its *own* residents rather than non-residents, and as a matter of law cannot avail itself of so-called “market participation exception” to discriminate against the applicants in violation of the Commerce clause of the United States Constitution (Article I, Section 8, Clause 3). *Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794 (1976).

Rather than issue a decision on the Buena Vista Estates/Rockology application the Commission and/or County staff has chosen to try to move forward with a disfavored and frequently litigated moratorium ordinance that focuses on issuance of permits for specific uses. Paul R. Gogleman, Fla. Bar, *Moratoria and Interim Growth Management*, in 2 FLORIDA ENVIRONMENTAL AND LAND USE LAW HANDBOOK 5-1, 3 (1994), WL ELUII FL-CLE 5-1.

The proposed moratorium ordinance is not necessary to allow for further public comment, which has been robust in the previous hearings in this matter, and in opposition to the proposed project. The previous transcripts of hearings, public comment and exhibits thereto again are part of the record proper. There is no crisis condition that the County faces such as lack of ability to treat sewage such that the

proposed ordinance is necessary. *Id.*, at 6. As previously stated, there is no genuine need to preserve the status quo to address curtailing sudden surges in building and rezoning changes relevant to the applicants' specific and singular permit attempts.

The moratorium, however, does place the County and its taxpayers at substantial and unnecessary risk. In the likely event the moratorium is determined illegal, Buena Vista Estates/Rockology, and perhaps others, have claims for temporary and/or permanent takings. *Agins v. Tiburon*, 447 U.S. 255 (1980) (application of land-use regulations to a particular piece of property is a taking when it denies the land owner reasonable, viable use of it, or "if the ordinance does not substantially advance legitimate state interests ... or denies an owner economically viable use of his land."); *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304 (1987) (same).

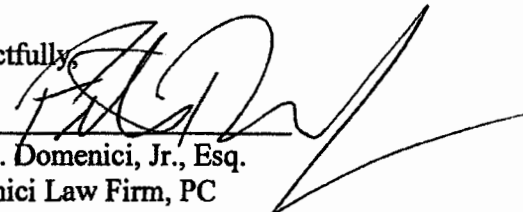
Since there is no legitimate basis for the moratorium, other than illegally specifically targeting the Buena Vista Estates/Rockology application, the moratorium will be held arbitrary, capricious, contrary to law, and not supported by substantial evidence in further legal proceeding(s). Any or all of these objections to the moratorium can subject the County to regulatory temporary/permanent taking liability.

### CONCLUSION

The ill-founded, unnecessary and illegal proposed moratorium should be denied for the reasons set forth herein and for other reasons, which the Commissioners or members of the public may point out. Buena Vista Estates/Rockology repeats its request that the entire proceeding of its application be incorporated as part of the record on the moratorium. Buena Vista Estates/Rockology suggests that the unintended consequences of the moratorium may include inability of the Caja Del Rio Sand and Gravel operation to become legal, if it determined that zoning or other permit approvals from the County are necessary and appropriate for that operation. There may be other unintended consequences of this ill-conceived and hasty moratorium.

The attached documents indicate that 1) the timeline of the development of the SLDC, 2) the zone map, and 3) the lack of a timeline section of the SLDC all provide further reasons why the moratorium is unnecessary and illegal.

Respectfully,

  
\_\_\_\_\_  
Pete V. Domenici, Jr., Esq.  
Domenici Law Firm, PC  
320 Gold Avenue SW, Suite 1000  
Albuquerque, NM 87102



**INTRODUCTION**

1. The owners of the 1,359 acres are native New Mexicans and longstanding tax paying members of the Santa Fe and greater New Mexico community.
2. The owners have a history of successfully completing other projects in New Mexico that have proven to benefit the surrounding community.
3. The owners intend for this project to be well run and positive, and they plan to make productive use of resources in a way that is compatible with both historic and current land use.
4. The operation is small (a phased operation which will quickly place all onsite equipment into the excavated pit so the limited visibility will be reduced to no visibility from nearby viewpoints), unobtrusive (the site is limited to 50 acres and the phased development will utilize portable, temporary equipment for seasonal production), and is sensitive to the concerns of neighboring residents. The residents are over four miles away and nearby activities include the Rail Runner and the Waldo Quarry with its operations and hauling activities and rural grazing activities, which have been determined as compatible.

SFC CLERK RECORDED 07/11/2014

**REQUIREMENTS OF THE SANTA FE COUNTY COMMISSION**

1. The hearing on the Application is quasi-judicial, meaning that the Applicants have a right to have the matter decided on competent evidence of the applicable Santa Fe County Ordinance using standard statutory construction techniques. The requirements for this hearing include:
  - a. A right to cross-examine witnesses.
  - b. Opportunity to be heard and present by evidence.
  - c. Your decision must be made on a fair application of the applicable ordinances using reliable evidence.

**PROPERTY AT ISSUE**

1. The property at issue is 50 acres of private property within a 1,359 acre parcel of private property.
  - a. The 1,359 acres and the 50 acres proposed for the zoning change are not subject to any of the following:
    - i. Conservation easements.
    - ii. Covenants or other restrictions.
    - iii. View easements (which are legally enforceable restrictions placed on a property protecting giving other parties a right to a particular view). Under New Mexico law there are no implied view easements; a view easement requires an express easement grant. New Mexico law establishes there are no implied view easements; an express easement grant is required.



(Winrock Inn Co. v. Prudential Ins. Co. of America, 928 P.2d 947, 122 N.M. 562 (N.M. App. 1996))

2. There is no ownership by Santa Fe County or any other governmental or non-governmental entity.

Much of the comments and testimony is in the nature of claiming an expectation to a particular view or aesthetic condition with respect to the Applicant's property that has not been acquired, established, or purchased by Santa Fe County, any other governmental or non-governmental entities, or any private persons.

3. The Santa Fe County staff analysis of the Application exhibits the evaluation of reliable facts applied to the ordinances and reaches a reasoned determination. The staff recommended approval of the Application with some conditions:

"...the following facts presented support the request for the creation of a mining zone; the Application is comprehensive in establishing a scope of the project; existence of significant mineral resources have been demonstrated by the Applicant; the use of 50 acres of land within a 1,359 acre parcel for a mining use is reasonably compatible with other uses in the vicinity; the designated 50 acres site is particularly suited for mining uses, in comparison with other uses in the County..." [emphasis added]

4. The basis for the denial by the CRDC was illegal, was contrary to law, arbitrary and capricious, and not supported by substantial evidence.

The two committee member stating justifications for the denial on the record relied on improper Application of fact to the ordinance for their denial.

Commissioner Katz relied on the general welfare provision of the ordinance, (1.16 states, "no mining use activity will be permitted if it is determined that the use will have a significant adverse effect on health, safety, morals or general welfare of the County or its residents.")

The reliance upon "general welfare" provisions to deny this type of Application is limited by law and should be carefully and narrowly utilized as the primary basis to deny this Application that meets applicable requirements.

The manner in which the CRDC used the "general welfare" provision is unconstitutionally vague. Mr. Katz states there is a policy of the County to not allow development near prominent landmarks, natural features, distinctive rocks and landforms of that sort. However, there has been no formal designation process to narrowly and specifically identify such features. Owners of such property need the opportunity to have input on such designation and to request compensation or other appropriate relief for a harm caused by such designation. Nothing of this sort has been done with respect to the 50 acres at issue. The 50 acres may be within an

SFC CLERK RECORDED 07/11/2014

area as large as many thousands of acres that could contain or comprise prominent landmarks, natural features, and distinctive rocks and landforms to which the CRDC referred. Even assuming a distinctive landscape, the evidence does not demonstrate that the operation as applied for will affect that landscape in any meaningful way.

Most of the testimony supports the County or other governmental or non-governmental entities following appropriate constitutional processes to designate and acquire property within the so called Bajada Mesa landscape, not rely on the "general welfare" provisions of the ordinance to deny individual Applications which provide for limited, unobtrusive, and otherwise fully compliant activities.

See for example *Holiday Management Co. v. City of Santa Fe, et. al.* 1971-NMSC-088 (1971). The trial court in a decision reversing a sign ordinance that phased out billboards stated, "...that the economic life of the sign was thirty to forty years; that it was not a health, safety or moral hazard and did not adversely affect the general welfare..." (This decision was reversed on other grounds but shows that the general welfare clause does not support broad view protections.)

- 5. Argument and testimony at this hearing that suggests the general welfare provision of the ordinance justifies denial does not provide a basis for the denial is not persuasive.

**WATER AND MINERAL RIGHT ISSUES**

- 1. Water and mineral right issues are fully and appropriately addressed by the Application.
  - a. The Applicant submitted a legal opinion that the material excavated is not a "mineral" subject to mineral ownership. Legal opinions are the recognized method for determining title to minerals or material. Staff or the Commission does not have the expertise or the jurisdiction to determine that the legal opinion provided by the Applicant is inaccurate or insufficient. No competent evidence has been presented challenging the legal opinion which the Applicant presented. The Applicant, staff and the Commission are entitled and required to rely upon a legal opinion with respect to title to the material. The provisions of the ordinance requiring information regarding mineral rights need to be read with an interpretation which means that the County is entitled to require that the Applicant demonstrate that they have title to the material at issue. This has been satisfied by the Applicant.
  - b. Water issues have been fully satisfied by the Applicant.
    - i. The Applicant has demonstrated that is has commitment of potable water from the County water source. This type of

commitment is allowed and accepted in other County Applications and it is sufficient to establish that the mine has sufficient water for the life of the mine. The calculations regarding water amounts are accurate.

- ii. In the event there are any issues regarding sufficiency of water for operations or reclamation the County can address those through an enforcement of its ordinances and the mining permit and satisfy any deficiencies by the bond that has been placed. It is highly unlikely there will be any water shortage issues.
2. The County can condition the use such that the mine must use effluent to the extent it is available. The Applicant has made arrangements to obtain effluent and will use effluent as the water source for the location and has a backup, dedicated and committed source in the event the affluent is unavailable.
  3. Finally, the quantities of water that are not used at the operation are minimal.

**MINERAL EXTRACTION MEETS COMPATIBILITY REQUIREMENTS**

Article XI, Section 1.2.2 establishes compatibility requirements. 1.2.2 requires that,

Use of the land for mining uses is reasonably compatible with other uses in the area affected by the mining use, including but not limited to, traditional patterns of land use, recreational uses, and present or planned population centers or urban metropolitan areas. [emphasis added]

Reading 1.2.2 requires that the Commission look at other uses in the area affected by the mining use. The record clearly indicates that the mining use is compatible to activities within a several mile vicinity. The activities within the several mile vicinity include another mine, the Rail Runner, high voltage power lines, a road used primarily by gravel trucks and rural grazing. The well operated largely non-visible mining activities are compatible with these uses.

**NEW SSLDC (2013) DOES APPLY TO THIS APPLICATION**

1. Contrary to statements made in writing and perhaps by witnesses, the new SSLDC on its face does not apply to this Application. The SSLDC applies prospectively and has no role in this decision. Any reference to or Application of the SSLDC would result in an illegal and reversible decision. See attachment.

**CONDITIONS AND ENFORCEMENT ADDRESS MANY CONCERNS**

1. Many of the concerns of interested parties can be addressed by permit conditions or enforcement of the permit or ordinances. Santa Fe County, with the involvement or the Rural Conservation Alliance, has already been involved in a lengthy legal proceeding regarding suspending and revoking the permit of Cerrillos Gravel Products, Inc. That permit had twenty conditions and Santa Fe County was able to enforce those conditions and other provisions of the ordinance. (see *Cerrillos Gravel Products v. Board of County Commissioners*, 2005 NMSC 0-23).

For example a condition regarding water use can resolve many of the concerns regarding water conservation. A condition stating that effluent must be used if available before potable water is used is agreeable. Denying the Application because of water conservation concerns is inappropriate.

#### CONCLUSION

The Applicant's request should be granted and recognizable concerns can be addressed by permit conditions and enforcement.

As set forth in the staff report, the Applicant has met the requirements for a mining zone. The ordinance dictates that, "Mineral extraction for construction materials.... shall be allowed anywhere in the County provided requirements of the ordinance are met." Article XI, Section 1.1 Applicability.

There is insufficient evidence that the mining operations subject of the Application will be significant enough to interfere with or cause impacts that justify denial of the Application. The Applicants have demonstrated that the proposed operation is small, unobtrusive, and meets all of the standards.

Based on the evidence as applied to the applicable ordinances, the Applicants strongly urge the Board to approve the Application.

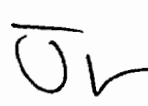
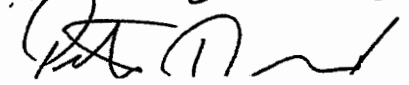
SFC CLERK RECORDED 07/11/2014

SFC CLERK RECORDED 10/15/2014

**SANTA FE BOARD OF COUNTY COMMISSIONERS**  
**AUGUST 12, 2014**  
**CDRC Case #ZMXT 13-5360 Buena Vista Estates, Inc. & Rockology LLC.**

Applicants' Comments on the following statements in the Testimony and Analysis of Laird Graeser:

- Aggregate production at CdR is governed by its landfill permit (Executive Summary of Testimony and Analysis by Laird Graeser, page 1)
- Hereafter, gravel operations that obtain their permits from and report production and sales statistics to the NM EMNRD are referred to as "State gravel-permitted" operations. Other legal production comes from "adjunct-permitted" operations, whose permits allow gravel production secondary to a main purpose, such as landfill at CdR; and from "temporary, permit" operations, usually specific to borrow pits for road construction. Neither adjunct nor temporary production should be thought of as operating without any permit. (*Id.*)
- Gravel, and other types of mining, are generally regulated and monitored by the State of NM's Energy Minerals and Natural Resources Department, Mining and Minerals Division, which issues mining permits and collects and publishes production and sales statistics. Caja del Rio, because it operates under a stricter type of permit, is not required to be permitted by EMNRD. Because of this, CdR's production and sales are not reported to EMNRD's Mining and Minerals Division and therefore the quantity of materials are produced and sold are not included in EMNRD's data either at the County level or State level. (Laird Graeser White Paper, ¶6).
- Is aggregate production and sale at Caja del Rio legal?
- No support or citation for statements about "adjunct-permitted" operations
- Article XI- Zoning for Extraction of Construction Materials, Santa Fe County Development Code
  - No demonstration of County zoning approval
  - No demonstration of County permitting
- No support for claim that Caja del Rio's solid waste permit governs aggregate production and sales
  - The solid waste permit issued to Caja del Rio
    - governs disposal of solid waste at Caja del Rio
    - does not regulate or authorize production of aggregate materials
    - does not regulate or authorize sales of aggregate materials
- No public notice of aggregate production and sale
- Conclusion
  - Caja del Rio does not comply with County law
  - Caja del Rio does not comply with State law
  - No public notice has been provided
  - Caja del Rio being provided a competitive/regulatory advantage

by Pete Domenici  atty for applicant  


REC'D BY RECORDED IN 10/15/14



**SANTA FE SOLID WASTE MANAGEMENT AGENCY**

*Caja del Rio Landfill  
Buckman Road Recycling and Transfer Station*

July 23, 2014

Board of County Commissioners  
Santa Fe County  
P.O. Box 276  
Santa Fe, NM 87504

RE: CDRC Case #ZMIN 13-5360 Buena Vista Estates, Inc. and Rockology LLC  
Application to Mine La Bajada Mesa

Dear Commissioners Anaya, Chavez, Holian, Mayfield, and Stefanics:

By way of introduction, I am Randall Kippenbrock, Executive Director of the Santa Fe Solid Waste Management Agency (Agency) that operates the Caja del Rio Landfill and the Buckman Road Recycling and Transfer Station. The Agency is jointly governed by the City of Santa Fe and Santa Fe County. I want to dispel the inaccurate and somewhat damaging comments made in the closing remarks by the applicant's attorney, Pete Domenici, Jr., at the June 11, 2014 public hearing for the above referenced application.

The transcript from Mr. Domenici's comments on the quality of rock at the Caja del Rio Landfill is as follows:

*"I want to thank all the public participants for all of their courtesy and politeness to Mr. Siebert and myself as the only two proponents here. We were quite outnumbered and we appreciate the politeness.*

*I want to just hit on a couple of points. First of all, we had statements from the manager of Caja del Rio. The problem with Caja del Rio and the reason they have so much material stockpiled is the quality is not suitable. And that is what Mr. Hooper's testimony indicated. It is a much more limited quality and its use is much more limited. So it will be stockpiled for a long time. But the material that it is not sufficient for continues to be trucked in either provided by the Waldo Quarry or trucked from Algodones. And the Algodones pits are running out and are closing so we're looking at losing that source and I think we are going to need a source for Santa Fe to keep aggregate affordable for these construction that is anticipated by the various plans that we've discussed."*

Mr. Domenici's comments do not give an accurate portrayal with regard to the quality of rock at the Caja del Rio landfill. Attached is a June 24, 2014, letter from Western Technologies Inc., an accredited laboratory by the American Association of State Highway and Transportation, attesting that they have provided many years of materials-acceptance reports on many of the aggregates produced at the Caja del Rio Landfill. Western Technologies also attested that the crushed basalt rock meets the NMDOT and FHWA requirements for concrete, asphalt, and base course materials. Western Technologies have tested and produced materials-acceptance reports for the following agencies:

(505) 424-1850 Office (505) 424-1839 Fax

149 Wildlife Way

769  
dco 87506-8342



- New Mexico Department of Transportation (NMDOT)
- Federal Highway Administration (FHWA)
- Federal Aviation Administration (FAA)
- Bureau of Indian Affairs (BIA)
- City of Santa Fe Public Works
- Private contractors and subcontractors

The Agency recently entered into an eight-year contract with Del Hur Industries of Port Angeles, WA to continue to crush and sell aggregate materials produced from the Caja del Rio Landfill. The Agency estimates there is a stockpile of 1.6 million tons of unprocessed basalt rock at the landfill. The Agency anticipates that it will take 8 to 16 years to sell it all, depending on the market and economy.

In conjunction with the agreement with the Agency, Del Hur Industries has an exclusive aggregate supply agreement with Associated Asphalt and Materials of Espanola, NM where Associated Asphalt and Materials agrees to purchase 110,000 tons of aggregate materials annually from Del Hur Industries. Most of the aggregate materials are transported to Associated Asphalt and Materials' asphalt plants located in Santa Fe and Espanola.

Del Hur Industries anticipates additional 50,000 tons of aggregate materials will be sold annually to customers other than Associated Asphalt and Materials.

Based on the past eight years of aggregate sales at the Caja del Rio Landfill, it is my opinion that there is not a need for a second basalt rock quarry in Santa Fe County. Furthermore, I feel both the Agency and County have a moral obligation to ensure that the stockpile of unprocessed basalt rock is used first before approving another rock quarry. By doing this, it will show that we are being "good neighbors" to our constituents, particularly to the residents living near the Caja del Rio Landfill and the Las Campañas Subdivision.

If you have any questions, please contact me at (505) 424-1850, ext. 100 or rkkippenbrock@sfswwa.org.

Respectfully,

*Randall Kippenbrock*  
 Randall Kippenbrock, P.E.  
 Executive Director

Attachment: June 24, 2014 Western Technologies Inc. Letter to Del Hur Industries

260



**Western  
Technologies  
Inc.**  
The Quality People  
Since 1984

8305 Washington Plaza N.E.  
Albuquerque, New Mexico 87113-1670  
(505) 823-4488 • Fax 821-2963

June 24, 2014

To Whom It May Concern

RE: Delhur Industries - Caja Del Rio Aggregate Pit - Santa Fe, New Mexico

Western Technologies Inc. is an accredited AMRL laboratory by the American Association of State Highway and Transportation Officials (AASHTO) doing business in the greater Albuquerque area since 1984. We have provided quality control and materials acceptance reports on many of the products produced out of the Caja Del Rio Pit for many years. As such, we can attest that the materials produced out of the pit have been tested and acceptable by many agencies that specify aggregates for highway, bridge, and building materials. We have tested and produced reports for the following agencies:

- New Mexico Department of Transportation (NMDOT)
- Bureau of Indian Affairs (BIA)
- Federal Highway Administration (FHWA)
- City of Santa Fe Public Works
- Private Contractors and subcontractors.
- Federal Aviation Administration (FAA)

The aggregate pit is a basalt flow crushed material that meets the aggregate index required by the NMDOT for concrete, asphalt, and base course materials. In addition, the aggregates meet the durability requirements of the FHWA section 703, for concrete, asphalt, base course, and RIP RAP materials. The coarse aggregates have been used for concrete on Santa Fe Public Works projects for years and meet all requirements of ASTM C-33.

Respectfully Stated,

WESTERN TECHNOLOGIES INC.

Andrew L. Cuadras, SR. - Managing Director/Vice President

261



PHOTO\_SITES, 7/30/2014, Page 1

FID	Shape	Id	PHOTO_NUM	COMMENT
0	Point	0	31	WALDO CANYON ROAD STRAIGHT ON STORY POLE
1	Point	0	32	WALDO CANYON ROAD 1 MILE IN
2	Point	0	33	WALDO CANYON ROAD RIGHT BEFORE DESCENT INTO ALLEY
3	Point	0	35	OCEAN VIEW DRIVE
4	Point	0	41	BETHLEHEM HILL
5	Point	0	43	MADRID HEIGHTS TRAIL
6	Point	0	45	ROGERSVILLE ROAD (CLOSEST RESIDENCE IN VIEWSHED)
7	Point	0	46	STAGECOACH PASS DRIVE



262

Appendix B: Use Table

Sustainable Land Development Code Use Table

Use	Function	Structure	Activity	Agriculture/Ranching	Rural	Rural Fringe	Rural Residential	Residential Fringe	Residential Estate	Residential Community	Traditional Community	Commercial Neighborhood	Mixed Use	Commercial General	Industrial	Public Institutional	Planned Development	Special Conditions
Apiary and other related structures		8700		P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Crop production outdoor		9100		P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Crop production greenhouse		8500		P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Display or sale of agricultural products raised on the same premises				P	P	P	A	A	A	A	A	P	P	P	P	P	P	
Forestry and logging operations		9300		P	P	P	P	P	P	P	P	X	P	P	P	P	P	
Game preserves and retreats		9400		P	P	P	C	C	C	C	C	X	C	C	C	P	P	
Support business and operations for agriculture and forestry				P	P	P	A	A	A	A	C	P	P	P	P	P	P	
Parks, open space areas, conservation areas, and preservation areas				P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Public or community outdoor recreation facilities				P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Concentrated animal feeding operation		8310		DCI	DCI	DCI	X	X	X	X	X	X	X	X	X	X	X	
Cattle ranching, and the grazing or cattle or other livestock		8230		P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Dairy farms		8210		P	P	C	X	X	X	X	X	X	X	X	X	X	X	
Other farm and farming-related structures		8900		P	P	P	A	A	A	A	P	A	A	A	A	A	P	
Poultry farms and poultry production facilities		8220		P	P	C	X	X	X	X	X	X	X	X	X	X	X	
Sheds, or other agricultural facilities		8000		P	P	P	A	A	A	A	A	A	A	A	A	A	P	
Animal waste lagoons		8420		DCI	DCI	DCI	X	X	X	X	X	X	X	X	X	X	X	
<b>Mining and extraction establishments</b>																		
Oil and natural gas exploration or extraction		8100		DCI	DCI	DCI	DCI	DCI	DCI	DCI	DCI	DCI	DCI	DCI	DCI	DCI	DCI	
Metallic minerals mining		8200		DCI	DCI	DCI	DCI	DCI	DCI	DCI	DCI	DCI	DCI	DCI	DCI	DCI	DCI	
Coal mining		8300		DCI	DCI	DCI	DCI	DCI	DCI	DCI	DCI	DCI	DCI	DCI	DCI	DCI	DCI	
Nonmetallic minerals mining		8400		DCI	DCI	DCI	DCI	DCI	DCI	DCI	DCI	DCI	DCI	DCI	DCI	DCI	DCI	
Quarrying and stone cutting		8500		C	C	C	X	X	X	X	X	X	X	C	C	X	X	
Sand and gravel Mining				C	C	C	C	C	X	X	X	X	C	C	C	X	X	
Sand and gravel mining with blasting (as specified in Section 11.2.7)				DCI	DCI	DCI	DCI	DCI	X	X	X	X	X	DCI	DCI	X	X	
<b>* Subject to inclusion in approved list of uses that is part of the site plan for the Mixed Use and Planned Development District.</b>																		