

[From Santa Fe County Attorney's Office. Handed out 3/26/10]
Blue underlining are suggested additions. **Red highlights** are text of special concern or that we question.

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DEVELOPMENTS OF COUNTYWIDE IMPACT ("DCIs)

Development of Countywide Impact ("DCI") include significant activities that have the potential for far reaching effects in the community. Developments that have this potential include mining, quarrying or land excavation activity to include mineral, ore, rock, sand, gravel, limestone, bedrock, landfill, and other land alteration activities that have significant impacts.

Regulation of DCI's (sic) 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 SLDP, any Area, Specific or Community Plan, the CIP and the Official Map.

DCI's should be regulated in order to protect degradation of air, surface and ground water; soils, environmentally sensitive lands; and visual and scenic qualities and scenic highways. 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 approval 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.

DCI's must be regulated by the SLDC. Specific sites and activities may constitute public nuisances or land uses impacting and affecting the health and safety of nearby and countywide residents and resources and such projects are required to fully mitigate all

adverse public nuisance and land use impacts and effects prior to obtaining a development order granting development approval.

Comment: The above sounds good. How do DCIs relate to BUDs (takings).

Land Excavation.

Land Excavation includes activities designed to mine, extract, quarry or remove minerals, ore, rock, sand, gravel, limestone, bedrock or landfill for commercial purposes; **excavation of an exposed bedrock slope steeper than 3:1 that is over one (1) foot in height; or removal of significant material from a site of more than [1,000 cubic yards] per acre of land or any excavation activity that utilizes a crusher.**

Comment: Using numbers such as cubic yards to define what is and by inference, is not, Land Excavation, seems irresponsible. Such definitions would result in loop holes such that an excavation could dodge levels of classification by removal of say ~900 cubic yards per acre. A typical dump truck equals 10 cubic yards.

Regulation of certain land excavations as DCI's is necessary for the same reasons that 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; regulation is also necessary to preserve the quality and sustainability of life, the economy, infrastructure, environment, natural resources and natural landscapes consistent with the SLDP, any Area, Specific or Community Plan, the CIP and the Official Map.

Land Excavation should also be classified as a DCI and therefore be **required to obtain an Overlay Zoning District Classification and Conditional Use Permit**, and should be subject to all of the studies, reports and assessments identified in the SLDC to include a development agreement pursuant and conform to all general requirements for the overlay and base zone, major site plan approval and site location criteria and standards, and exterior storage and reclamation standards.

Substantial Land Alteration ("Land Alteration").

Substantial land alteration removes primarily earth with mineral, ore, rock, sand, gravel, limestone, or bedrock material **that occurs over a period of more than 3 months; substantial land alteration can also occur upon removal of more than 1000 cubic yards per acre** of earth with minerals, rock, sand, gravel, limestone, or bedrock material, or movement of earth on an entire tract or parcel of land in common **ownership in excess of 5,000 cubic yards.**

Comment: Along with using specific numbers of cubic yards, time periods also by inference, would be equally irresponsible by allowing loop holes such that an excavation could dodge levels of classification by limiting removal of minerals to less than 3 months.

Regulation of substantial land excavation as a DCI is necessary for the same reasons that 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; regulation is also necessary to preserve the quality and sustainability of life, the economy, infrastructure, environment, natural resources and natural landscapes consistent with the SLDP, any Area, Specific or Community Plan, the CIP and the Official Map.

Minor Land Alteration ("Grading").

Minor land alteration is a development activity that removes primarily earth with **insignificant** amounts of mineral, ore, rock, sand, gravel, limestone, or bedrock material and meets[?] or land disturbing activities removing primarily earth, with only insignificant amounts of mineral, ore, rock, sand, gravel, limestone, or bedrock and designed to occur **over a period of less than 3 months; or resulting in exposed bedrock slope less than 2:1**. Minor land alteration should **not be regulated as a DCI**.

Comment: The interpretation or judgement of the terminology used here (“insignificant”) is ultimately up to interpretation and discretion and subject to abuse. The New Mexico landscape can be fragile and what might be judged as “insignificant” might take years to reclaim. Again, here we have specified periods of time that could likewise create huge loopholes in the code.

Other potential DCI's:

1. 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.

2. 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.