

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

December 11, 2018

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Land Use Committee, having met on November 8, 2018, makes reference to a Miscellaneous Communication dated October 9, 2017, from the County Clerk, reporting that the Council referred the matter relating to resource extraction or processing and attaching a copy of Resolution 17-140, entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL TO AMEND THE COMPREHENSIVE ZONING ORDINANCE RELATING TO RESOURCE EXTRACTION OR PROCESSING."

Resolution 17-40 attaches as Exhibit "1" a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, RELATING TO RESOURCE EXTRACTION OR PROCESSING." The purpose of the proposed bill is to amend the definition of "resource extraction" in Section 19.04.040, Maui County Code ("MCC"), to preserve and protect the County's finite natural resources. As proposed, the term would be amended to "resource extraction or processing" and the activities falling within the definition of the land use would be identified with greater specificity.

By correspondence dated January 31, 2018, the Planning Director transmitted the planning commissions' comments on the proposed bill attached as Exhibit "1" to Resolution 17-140. Your Committee did not receive a stand-alone proposed bill from the Department of Planning.

Your Committee is in receipt of correspondence dated November 1, 2018, from Councilmember Don S. Guzman, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, RELATING TO RESOURCE EXTRACTION AND RESOURCE PROCESSING." The purpose of the proposed bill is to preserve and protect the County's finite natural resources by amending

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

Page 2

Committee
Report No. _____

the definition of “resource extraction,” adding a separate definition for “resource processing,” and restricting the extraction of sand. The proposed bill incorporates revisions to the legislation attached as Exhibit “1” to Resolution 17-140.

A Deputy Corporation Counsel said representatives of the Department of Planning, the Department of Public Works, and the Department of the Corporation Counsel came together in multiple meetings and determined having two distinct definitions for “resource extraction” and “resource processing” will better help the County protect natural resources such as sand.

Your Committee notes the proposed bill amends the definition of “resource extraction” to mean “activities related to the mining or extraction of minerals, ores, soils, or other solid matter, including rock, gravel, sand, and topsoil, from below the natural grade primarily for purposes other than those directly related to preparation of the land for development; or land uses subject to the Federal Mine Safety and Health Act, title 30 United States Code section 802(h).”

The proposed bill adds a separate definition for “resource processing” to mean “processing, preparation, cleaning, or other treatment of minerals, ores, soils, or other solid matter, including rock, gravel, sand, and topsoil, for commercial purposes, except where such solid matter is for use on the same site from which it was extracted or will otherwise remain on the same site from which it was extracted.”

In the M-3 Restricted Industrial District, “rock, sand, gravel, or earth excavation, crushing or distribution” is a permitted use. A similar use, “mining and resource extraction,” is a special use in the Agricultural District. The proposed bill replaces these uses with “resource extraction” and requires a Conditional Permit for the extraction of sand in excess of 100,000 cubic yards for financial gain. The proposed bill also incorporates “resource processing” as a permitted use in the M-3 District and as a special use in the Agricultural District.

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

Page 3

Committee
Report No. _____

In the M-2 Heavy Industrial District, the proposed bill adds “resource extraction” as a permitted use, with the same Conditional Permit requirement for the extraction of sand as applies in the M-3 District and the Agricultural District. The proposed bill also adds “resource processing” as a permitted use, and removes “rock, sand, gravel, or earth excavation, crushing or distribution” as a special use in the M-2 District.

The proposed bill also imposes the same Conditional Permit requirement on “resource extraction” in the Open Space District, which is already allowed as a special use on the island of Lanai.

Your Committee notes the Conditional Permit process will allow the Council to review large-scale sand extraction projects before they begin and to deny permits for these uses if appropriate.

Your Committee voted 7-0 to recommend passage of the proposed bill transmitted by correspondence dated November 1, 2018 on first reading and filing of the communication. Committee Chair Carroll and members Atay, Crivello, Guzman, King, Sugimura, and White voted “aye.” Committee Vice-Chair Hokama and member Cochran were excused.

Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating a nonsubstantive revision.

Your Land Use Committee **RECOMMENDS** the following:

1. That Bill _____ (2018), attached hereto, entitled “A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, RELATING TO RESOURCE EXTRACTION AND RESOURCE PROCESSING,” be **PASSED ON FIRST READING** and be **ORDERED TO PRINT**; and
2. That the Miscellaneous Communication be **FILED**.

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

Page 4

**Committee
Report No.** _____

This report is submitted in accordance with Rule 8 of the Rules of the Council.



ROBERT CARROLL, Chair

lu:cr:18048aa:jgk/cmn

ORDINANCE NO. _____

BILL NO. _____ (2018)

A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE,
RELATING TO RESOURCE EXTRACTION AND RESOURCE PROCESSING

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. The purpose of this ordinance is to preserve, protect, and regulate the use of the County's finite natural resources by amending the definition of "resource extraction," adding a new definition of "resource processing," and restricting the extraction of sand.

SECTION 2. Section 19.04.040, Maui County Code, is amended by amending the definition of "resource extraction" to read as follows:

"Resource extraction" means [activities engaged in the exploration, mining and processing of natural deposits of rock, gravel, sand, and topsoil.] activities related to the mining or extraction of minerals, ores, soils, or other solid matter, including rock, gravel, sand, and topsoil, from below the natural grade primarily for purposes other than those directly related to preparation of the land for development; or land uses subject to the Federal Mine Safety and Health Act, title 30 United States Code section 802(h)."

SECTION 3. Section 19.04.040, Maui County Code, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Resource processing" means processing, preparation, cleaning, or other treatment of minerals, ores, soils, or other solid matter, including rock, gravel, sand, and topsoil, for commercial purposes, except where such solid matter is for use on the same site from which it was extracted or will otherwise remain on the same site from which it was extracted."

SECTION 4. Section 19.07.030, Maui County Code, is amended to read

as follows:

“19.07.030 Permitted uses. The following uses shall be permitted within the open space districts subject to the “special conditions”:

(Note: “x” means a permitted use in the category. An empty cell indicates that the use is not permitted in that category.)

Uses	OS-1	OS-2	Special [Conditions] conditions
A. Principal uses.			
1. Agriculture		x	No processing of products on premises.
2. Native Hawaiian traditional and customary uses	x	x	Customary and traditionally exercised subsistence, cultural, and religious uses in accordance with article XII, section 7, [of the] Hawaii State Constitution, and Hawaii case law.
3. Outdoor recreation		x	Limited to hiking; fishing; hunting; noncommercial tent camping; picnicking; equestrian activities; walking, jogging, and bicycling; and playfields with non-permanent seating. Uses not listed are not allowed as a principal use.
4. Park	x	x	OS-1 category: Limited to recreation, passive. OS-2 category: Not including golf courses. Not including commercial uses except when under the supervision of a government agency in charge of parks and playgrounds.

Uses	OS-1	OS-2	Special [Conditions] conditions
5. Passive land use	x	x	
6. Recreation, passive	x	x	
7. Restoration of cultural sites	x	x	Includes retention, restoration, or rehabilitation of buildings, sites, or cultural landscapes of historical or [archeological] <u>archaeological</u> significance.
B. Accessory uses.			
1. Assembly area		x	Includes only unenclosed and typically uncovered seating area in association with a park or outdoor recreation.
C. Special uses. The following uses and structures shall be permitted in the open space districts if a special use permit has been obtained pursuant to section 19.510.070 of this [code.] title.			
1. Agriculture	x	x	Agriculture within the OS-1 district and processing of agricultural products in the OS-2 district.
2. Cemetery		x	
3. Outdoor recreation	x	x	Outdoor recreation within the OS-1 district. Commercial tent camping, motorized recreational vehicles and playing fields with permanent seating are not permitted in the OS-1 district and a special use permit is required for these uses in the OS-2 district.
4. Park	x		Uses not permitted as a principal use; but not including golf courses, and not including commercial uses except

Uses	OS-1	OS-2	Special [Conditions] conditions
			when under the supervision of a government agency in charge of parks and playgrounds.
5. Resource extraction		x	Limited to the Island of Lanai only; [and limited to the extraction of natural material only; no processing permitted on site.] <u>provided that the extraction of sand, as defined in section 20.08.020 of this code, in excess of 100,000 cubic yards, for financial gain shall require a conditional permit.</u>
6. Structure	x	x	Facilities associated with a principal use or approved special use, such as restrooms, information kiosks, required off-street parking, solar systems, and equipment sheds. Subject to the plan conditions of section 19.07.060.

”

SECTION 5. Section 19.25.020, Maui County Code, is amended to read as follows:

“19.25.020 Permitted uses. Within the M-3 restricted industrial district, no building, structure, or premises shall be used, and no building or structure hereafter erected, structurally altered, replaced, or enlarged except for one or more of the following uses:

Uses	Notes and exceptions
Acetylene gas manufacture or bulk storage	

Uses	Notes and exceptions
Acid manufacture	
Alcohol manufacture	
Ammonia, bleaching powder, or chlorine manufacture	
Asphalt manufacture of refueling and asphaltic concrete plant	
Automobile wrecking	
Blast furnace or coke oven	
Boiler and steel works	
Brick, tile, or terra cotta manufacture	
Canneries	
Cement, lime, gypsum, or plaster of paris manufacture	
Chemical manufacture	
Concrete or cement products manufacture	
Crematories, morgues	
Energy systems, power plants, substations, and utility facilities, major	
Explosives manufacture or storage	
Factories	
Fertilizer manufacture	
Fish canneries	
Foundries	
Freight classification yard (railroad)	
Garbage, offal, or dead animals reduction or dumping	
Gas manufacture	
Glue manufacture	
Heavy equipment storage, servicing, and sales	
Junk establishment used for storing, depositing, or keeping junk or similar goods for business purposes	
Landfill, solid waste processing, and disposal	
Lime kilns	
Lumber yard and wood treatment facilities	
Machine shops	
Oilcloth or linoleum manufacture	
Oil storage plants	

Uses	Notes and exceptions
Paint, oil (including linseed), shellac, turpentine, lacquer, or varnish manufacture	
Petroleum or biofuel product manufacturing or wholesale storage of petroleum or biofuels	
Petroleum refinery	
Planing mill	
Plastic manufacture	
Quarry or stone mill	
Railroad repair shops	
Recycling processing facilities or material recycling and recovery facilities	
[Rock, sand, gravel, or earth excavation, crushing or distribution] <u>Resource extraction</u>	<u>The extraction of sand, as defined in section 20.08.020 of this code, in excess of 100,000 cubic yards, for financial gain shall require a conditional permit.</u>
<u>Resource processing</u>	
Rolling mills	
Saw mill	
Ship works	
Slaughter of animals	
Soap manufacture	
Stock yard or feeding pens	
Sugar mills and refineries	
Tannery or the curing or storage of raw hides	
Telecommunication towers, [antenna] antennae, and equipment	
Utility facilities, major	
Wood treatment plants	
In general, those uses [which] <u>that</u> may be obnoxious or offensive by reason of emission of odor, dust, smoke, gas, noise, vibration, and the like, and not allowed in any other district	Provided, however, that any use not specified in this section shall not be permitted unless approved by the planning director as conforming to the intent of this [title] <u>chapter</u> .

SECTION 6. Section 19.26.020, Maui County Code, is amended to read

as follows:

“19.26.020 Permitted uses. Within the M-2 heavy industrial district, no building, structure, or premises shall be used and no building or structure hereafter erected, structurally altered, replaced, or enlarged except for one or more of the following uses:

Uses	Notes and [Exceptions] exceptions
Any use permitted in the B-1, B-2, and B-3 business districts and M-1 light industrial district; provided, however, that no building, structure, or portion thereof shall be hereafter erected, converted, or moved onto any lot in an M-2 heavy industrial district for dwelling purposes, including hotels, motels, or apartments except living quarters used by watchmen or custodians of an industrially used property	
Alcohol manufacture	
Automobile wrecking, if conducted within a building	
Boiler and steel works	
Brick, tile, or terra cotta manufacture	
Canneries except fish canneries	
Chemical manufacture	
Concrete or cement products manufacture	
Factories	
Foundries	
Freight classification yard (railroad)	
Junk establishment used for storing, depositing, or keeping junk or similar goods for business purposes	Such establishment shall not be nearer than 8 feet from any other property line for the storage of the junk or similar goods except in buildings entirely enclosed with walls
Lime kilns which do not emit noxious and offensive fumes	
Lumber yard	
Machine shops	
Material recycling and recovery facilities	
Oilcloth or linoleum manufacture	
Oil storage plants	

Uses	Notes and [Exceptions] exceptions
Paint, oil (including linseed), shellac, turpentine, lacquer, or varnish manufacture	
Petroleum products manufacture or wholesale storage of petroleum	
Planing mill	
Plastic manufacture	
Railroad repair shops	
<u>Resource extraction</u>	<u>The extraction of sand, as defined in section 20.08.020 of this code, in excess of 100,000 cubic yards, for financial gain shall require a conditional permit.</u>
<u>Resource processing</u>	
Rolling mills	
Ship works	
Soap manufacture	
Sugar mills and refineries	
Utility facilities, major	
In general, those uses [which] that may be obnoxious or offensive by reason of emission of odor, dust, smoke, gas, noise, vibration, and the like, and not allowed in any other district	Provided, however, that any use not specified in this section shall not be permitted unless approved by the planning director as conforming to the intent of this [title] chapter.

”

SECTION 7. Section 19.26.040, Maui County Code, is amended to read as follows:

“**19.26.040 Special uses.** The following uses and structures shall be permitted in the M-2 heavy industrial district provided a County special use permit, pursuant to section 19.510.070[, Maui County Code,] of this title has first been obtained.

Special [Uses] uses
Acetylene gas manufacture or bulk storage
Acid manufacture
Ammonia, bleaching powder, or chlorine manufacture
Asphalt manufacture of refueling and asphaltic concrete plant
Blast furnace or coke oven
Cement, lime, gypsum, or plaster of paris manufacture
Crematories

Creosote treatment plants
Explosives manufacture or storage
Fertilizer manufacture
Fish canneries
Garbage, offal, or dead animals reduction or dumping
Gas manufacture
Glue manufacture
Petroleum refinery
Quarry or stone mill
[Rock, sand, gravel, or earth excavation, crushing or distribution]
Saw mill
Slaughter of animals
Stock yard or [deeding] <u>feeding pens</u>
Tannery or the curing or storage of raw hides

SECTION 8. Section 19.30A.060, Maui County Code, is amended by amending subsection A to read as follows:

“A. The following uses and structures are permitted in the agricultural district if a special use permit, as provided in section 19.510.070 of this title, is obtained; except that if a use described in this section also requires a special permit as provided in chapter 205, Hawaii Revised Statutes, and if the land area of the subject parcel is fifteen acres or less, the State special permit shall fulfill the requirements of this section:

1. Additional farm dwellings beyond those permitted by subsection 19.30A.050(B)(1).
2. Farm labor dwellings that do not meet the criteria of subsection 19.30A.050(B)(2).
3. Commercial agricultural structures that do not meet the standards and restrictions of this chapter.
4. Public and quasi-public institutions that are necessary for agricultural practices.
5. Major utility facilities as defined in section 19.04.040 of this title.
6. Telecommunications and broadcasting [antenna.] antennae.
7. Open land recreation uses, structures, or facilities that do not meet the criteria of subsection 19.30A.050(B)(10), including commercial camping, gun or firing ranges, archery ranges, skeet shooting, paint ball, bungee jumping, skateboarding, rollerblading, playing fields, and accessory buildings and structures. Certain open land

recreation uses or structures may also be required to obtain a special permit as provided in section 205-6, Hawaii Revised Statutes. The following uses or structures are prohibited: airports, heliports, drive-in theaters, country clubs, drag strips, motor sports facilities, golf courses, and golf driving ranges.

8. Cemeteries, crematories, and mausoleums.

9. Churches and religious institutions.

10. ~~[Mining and resource]~~ Resource extraction ~~.];~~
provided that the extraction of sand, as defined in section 20.08.020 of this code, in excess of 100,000 cubic yards, for financial gain shall require a conditional permit.

11. Resource processing.

~~[11.]~~ 12. Landfills.

~~[12.]~~ 13. Solar energy facilities that are greater than fifteen acres."

SECTION 9. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 10. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND
LEGALITY:



DAVID A. GALAZIN

Department of the Corporation Counsel

County of Maui

2017-0095/2018-0070

LU-48 2018-11-09 Ord re Resource Extraction