

COUNCIL OF THE COUNTY OF MAUI

INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE

August 3, 2018

**Committee
Report No.** _____

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

Chair and Members:

Your Infrastructure and Environmental Management Committee, having met on February 12, 2018, July 2, 2018, and July 23, 2018, makes reference to the following:

1. County Communication 18-51, from Councilmember Elle Cochran, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND SECTION 20.40.020, MAUI COUNTY CODE, RELATING TO THE DEFINITION OF 'SAND MINING.'" The purpose of the proposed bill is to amend Section 20.40.020, Maui County Code, relating to the definition of sand mining.
2. A Miscellaneous Communication dated April 20, 2018, from the County Clerk, reporting that the Council referred Contract C6477 with SSFM International, Inc., for the Maui Inland Sand Resource Quantification Study Update for the Department of Public Works.

Your Committee notes it previously reported on this matter through Committee Report 17-167, which recommended that a proposed bill, entitled "A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20.40, MAUI COUNTY CODE, DECLARING A MORATORIUM ON SAND MINING OF CENTRAL MAUI INLAND SAND," be passed on first reading and ordered to print, and County Communications 17-214 and 17-215 be filed. At its meeting of November 17, 2017, the Council amended the proposed bill and postponed consideration of Committee Report 17-167. At its meeting of December 1, 2017, the Council again postponed consideration of the Committee Report. At its meeting of

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December 15, 2017, the Council adopted the recommendations in Committee Report 17-167, as amended (Ordinance 4804 (2017)).

Your Committee notes the purpose of Ordinance 4804 (2017) was to limit and regulate the mining of inland sand until such time as: 1) an ordinance regulating the mining, extracting, or removing of inland sand is adopted, and 2) the Maui Inland Sand Resource Quantification Study (2006) is updated. Ordinance 4804 (2017) expires by its own terms upon the Council's determination that the purposes of the ordinance have been satisfied, or six months after its effective date of January 19, 2018.

At its meeting, your Committee noted the purposes of Ordinance 4804 (2017) had not been fulfilled prior to the expiration of the moratorium. The Director of Public Works said the deadline for the update to the Maui Inland Sand Resource Quantification Study (2006) ("Sand Study"), Contract C6477 with SSFM International, Inc., was extended from June 29, 2018 to December 31, 2018. An ordinance regulating the mining, extracting, or removing of inland sand had not yet been adopted.

At the request of the Chair of your Committee, the Department of the Corporation Counsel transmitted correspondence dated July 10, 2018, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE ESTABLISHING CHAPTER 20.40A, MAUI COUNTY CODE, DECLARING A CONTINUED MORATORIUM ON SAND MINING OF CENTRAL MAUI INLAND SAND."

The purpose of the proposed bill is to enact a continued moratorium on sand mining of central Maui inland sand until the Council determines the purposes established in the proposed bill have been satisfied, or December 31, 2018, whichever is sooner; and to allow the Council, by resolution, to extend the term of the moratorium on sand mining of central Maui inland sand prior to the repeal of the ordinance. Upon approval, the ordinance would be retroactive to July 19, 2018, the expiration date of the first ordinance.

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Your Committee discussed the appropriateness of revising the term of the moratorium to six months after the effective date of the ordinance. However, your Committee noted an expiration date of December 31, 2018, was an appropriate timeframe to allow the update to the Sand Study to be completed and an ordinance regulating the mining, extracting, or removing of inland sand to be adopted.

Your Committee voted 6-0 to recommend passage of the proposed bill on first reading. Committee Chair Cochran and members Atay, Carroll, Hokama, Sugimura, and White voted "aye." Committee Vice-Chair Guzman was 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 nonsubstantive revisions.

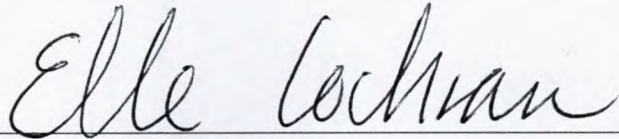
Your Infrastructure and Environmental Management Committee RECOMMENDS that Bill _____ (2018), attached hereto, entitled "A BILL FOR AN ORDINANCE ESTABLISHING CHAPTER 20.40A, MAUI COUNTY CODE, DECLARING A CONTINUED MORATORIUM ON SAND MINING OF CENTRAL MAUI INLAND SAND," be PASSED ON FIRST READING and be ORDERED TO PRINT.

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



ELLE COCHRAN, Chair

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ORDINANCE NO. _____

BILL NO. _____ (2018)

A BILL FOR AN ORDINANCE ESTABLISHING CHAPTER 20.40A, MAUI COUNTY CODE, DECLARING A CONTINUED MORATORIUM ON SAND MINING OF CENTRAL MAUI INLAND SAND

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

SECTION 1. Chapter 20.40, Maui County Code, was repealed on July 19, 2018, which was six months after the effective date of Ordinance 4804 (2018), pursuant to Section 20.40.070, Maui County Code. The Council wishes to continue the moratorium on sand mining of Central Maui Inland Sand because the purpose of Ordinance 4804 (2018) has not been met, namely: 1) an ordinance regulating the mining, extracting, or removing of inland sand was not adopted, and 2) the Maui Inland Sand Resource Quantification Study (2006) was not updated.

SECTION 2. Title 20, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

“Chapter 20.40A

**MORATORIUM ON SAND MINING
OF
CENTRAL MAUI INLAND SAND**

Sections:

- 20.40A.010 Purpose.
- 20.40A.020 Definitions.
- 20.40A.030 Moratorium on sand mining of central Maui inland sand.

- 20.40A.040 Penalty.
- 20.40A.050 Administrative rules.
- 20.40A.060 Adjustment by council.
- 20.40A.070 Term.
- 20.40A.080 Moratorium area map.

20.40A.010 Purpose. The purpose of this chapter is to declare a moratorium on mining of central Maui inland sand to conduct further analysis required to establish regulations for mining inland sand to protect Maui's environment and limited natural resources and prevent the disturbance of Hawaiian historical, cultural, or archaeological sites, and unmarked human burial sites. The Maui Inland Sand Resource Quantification Study (2006) found the remaining inland sand inventory is limited to approximately 970,000 tons. Given the finite nature of this important natural resource, it is necessary to limit and regulate the mining of inland sand until such time as: 1) an ordinance regulating the mining, extracting, or removing of inland sand is adopted, and 2) the Maui Inland Sand Resource Quantification Study (2006) is updated.

20.40A.020 Definitions. Whenever used in this chapter, the following words shall have the meaning indicated:

"Central Maui inland sand" means inland sand classified Qdo by USGS located within the area shown on the map set forth in section 20.40A.080.

"Director" means the director of public works.

"Inland sand" means "sand", as defined in section 20.08.020 of this title, located inland (mauka) from the "shoreline area", as defined in section 205A-41, Hawaii Revised Statutes.

"Lot" shall have the same meaning as set forth in section 19.04.040 of this code.

"Qdo" means older dune deposits (Holocene and Pleistocene).

"Sand mining" means extraction and removal of sand from a lot, except for the following:

1. Activities required to comply with county, state, or federal regulations.
2. Activities related to land management for agriculture, landscaping, and related uses as described in subsection 20.08.030(C) of this title where no inland sand is transported outside the same lot.
3. Activities conducted pursuant to a valid permit issued prior to January 19, 2018.

20.40A.030 Moratorium on sand mining of central Maui inland sand. Notwithstanding provisions in title 19 and chapter 20.08 of this code, no person shall conduct sand mining of central Maui inland sand.

20.40A.040 Penalty. A. Any person who violates any provision of this chapter or rules relating thereto shall, for each day of violation, or portion thereof, be subject to a fine not exceeding \$1,000. In addition, that person shall be liable for any costs incurred by the County to correct the violation. In lieu of, or in addition to, enforcement by criminal prosecution, the director may prosecute violations administratively pursuant to 19.530.030 of this code or any other provision or rule adopted hereafter.

B. The remedies provided for in this chapter shall be cumulative and not exclusive. Nothing in this chapter shall impair the right of the County to seek enforcement by criminal prosecution, administrative proceeding, if any, or civil action, including filing suit for damages or injunction as provided by law.

20.40A.050 Administrative rules. The director may adopt administrative rules to implement this chapter.

20.40A.060 Adjustment by council. The council may, by resolution approved by two-thirds of its members, authorize a waiver of any provision of this chapter. To qualify for a waiver, the council must find:

A. The proposed activity would not affect a "burial site", as defined in section 6E-2, Hawaii Revised Statutes.

B. The proposed activity does not conflict with the purposes of this chapter.

20.40A.070 Term. The ordinance codified in this chapter shall be repealed upon council's determination that the purposes established in section 20.40A.010 have been satisfied, or December 31, 2018, whichever is sooner. The council may, by resolution, extend the term prior to the repeal of this ordinance upon a finding that the purposes established in section 20.40A.010 have not been satisfied.

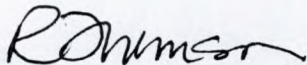
20.40A.080 Moratorium area map. The lots subject to the requirements and restrictions of this chapter are identified by tax map key number and shown on the following map. The area identified as "central Maui inland sand," as shown on the map, controls; all or part of a lot may be affected by the moratorium.

TMK	OWNER	Lot Area (Acres)
232013002	KA HOME MAHA MAU CEMETERY	3.47
232013005	COUNTY OF MAUI	2.081
232013018	KOREAN BENEVOLENT SOC	1.63
232013025	COUNTY OF MAUI	1.65
232013033	MAUI ELECTRIC CO	0.743
232019066	LEISURE LAND CORP	0.9578
232019067	LEISURE LAND CORP	0.5147
232020071	COUNTY OF MAUI	4.02325
233001016	RCFC PIIHANA LLC/DOWLING CO LLC	28.1
233001044	MAHALANI CEMETERY ASSN	2.62
233001102	GOODFELLOW BROS INC/et al	8.51
233001105	RCFC PIIHANA LLC/DOWLING CO LLC	25.056
233001106	MAUI ECONOMIC OPPORTUNITY, INC.	11.476
233006098	STATE DEPT OF HAWAIIAN HOME LANDS	3.27979
233006099	STATE DEPT OF HAWAIIAN HOME LANDS	3.579683
233007073	CJ PARK ENTERPRISES LLC	1.1475436
234010001	A&B HAWAII INC.	2.6405188
234030002	HALLER, MICHELE LEE/et al	6.358
234030004	STATE DEPT. OF LAND & NATURAL RESOURCES	10.228
234030007	COUNTY OF MAUI	0.82

TMK	OWNER	Lot Area (Acres)
235002011	EMMANUEL LUTHERAN CHURCH OF MAUI	25.263
235002020	WAIALE ROAD 201 LLC	10.365
236002001	WAIALE 905 PARTNERS LLC	284.826
236002003	WAIALE 905 PARTNERS LLC	521.4
236002004	COUNTY OF MAUI	100
237001003	STATE OF HAWAII	0.116
237001005	A&B HAWAII INC.	1.98
237001016	A&B HAWAII INC.	1.283
238005023	COUNTY OF MAUI	209.043
238005037	ALEXANDER & BALDWIN	10
238005040	ALEXANDER & BALDWIN	131.496
238006003	ALEXANDER & BALDWIN	1199.058
238007038	HAWAIIAN ISLANDS LAND TRUST	4.043
238007062	STATE OF HAWAII	0.002
238007071	KULAKANE LLC	20.921
238007092	COUNTY OF MAUI/WAILUKU AGRIBUSINESS	37.45
238007104	STATE OF HAWAII	65.378
238007105	ABC DEVELOPMENT COMPANY, LLC	8.552
238007109	HRT REALTY LLC	6.731
238007145	MAUI LANI PARTNERS	6.839
238007150	COUNTY OF MAUI	14.44
238007151	GENTRY MAUI DEVELOPMENT LLC	46.698
238007152	MAUI LANI 100, LLC	7.537
238007157	MAUI LANI PARTNERS	2.568
238007159	HRT REALTY LLC	30.89
238007160	HRT REALTY LLC	5.749
238007168	MAUI LANI VILLAGE CENTER INC	2.07
238007174	MAUI LANI 100 LLC	12.11
238046020	ALEXANDER & BALDWIN	76.932
238046032	COUNTY OF MAUI	1.578
238097076	MAUI LANI VILLAGE CENTER INC	2.208
235002001	HEONA INVESTMENTS LLC	34.357
235002017	KIHEI GARDENS LANDSCAPING COMPANY, LLP	24.982
238005002	ALEXANDER & BALDWIN	4388.77
238007101	ALEXANDER & BALDWIN	353.301
238007102	WAIKO INDUSTRIAL INVESTMENT, LLC	31.222
238007130	HRT REALTY LLC	148.634
238007153	MAUI LANI PARTNERS	62.581

SECTION 3. This ordinance, upon its approval, shall take effect retroactive to July 19, 2018.

APPROVED AS TO FORM AND LEGALITY:



Department of the Corporation Counsel
County of Maui

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2018-7-9