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COUNTY COUNCIL
COUNTY OF MAUI
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June 23, 2017

MEMO TO: Patrick K. Wong
Corporation Counsel

F R O M: Elle Cochran, Chair 
Infrastructure and Environmental Management Committee

SUBJECT: **MORATORIUM ON EXPORTING SAND, THE MAUI INLAND SAND
RESOURCE QUANTIFICATION STUDY AND SAND MINING
REGULATION** (IEM-33)

At its meeting of June 22, 2017 the Council's Infrastructure and Environmental Management Committee discussed establishing a moratorium on extraction, stockpiling or excavation of inland sand and the regulation of sand mining.

During its discussion the Committee requested additional information as it relates to a resolution that would establish a "temporary" moratorium on sand mining within the Central Maui region.

Subsequently, after reviewing the matter further, it appears that precedence for establishing moratoria have previously been accomplished by ordinance. One example is Ordinance 2636 (1998) Interim Restrictions on Agricultural Subdivisions (copy attached).

Therefore to assist with the deliberations of the Committee and for purposes of clarification may I respectfully request that you opine on whether the appropriate action, by the Council, to establish a moratorium on sand mining, shall be accomplished by ordinance or resolution.

I would appreciate receiving a response by Monday, **July 3, 2017**. To ensure efficient processing, please include the relevant Committee item number in the subject line of your response.

Patrick K. Wong
June 23, 2017
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Should you have any questions, please contact me or the Committee staff (Gary Saldana at ext. 7137, or Stacey Vinoray at ext. 8006).

Iem:ltr:033acc03:grs

Attachment

cc: Richelle Thomson, Deputy Corporation Counsel

ORDINANCE NO. 2636

BILL NO. 4 (1998)

A BILL FOR AN ORDINANCE AMENDING TITLE 18 OF
THE MAUI COUNTY CODE, PERTAINING TO
SUBDIVISIONS

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

SECTION 1. Title 18 of the Maui County Code is amended by adding thereto a
new chapter to be designated and to read as follows:

"Chapter 18.50

INTERIM RESTRICTIONS ON AGRICULTURAL SUBDIVISIONS

Sections:

- 18.50.010 Purpose and intent.**
- 18.50.020 Definitions.**
- 18.50.030 Applicability.**
- 18.50.040 Term.**

18.50.010 Purpose and intent. Title 18 of the Maui County Code requires that subdivisions be in conformance with the county general plan and community plans. The Maui County Council finds that agricultural subdivisions permitted by Title 18 have resulted in development which is rural or residential in character. Therefore the standards for agricultural subdivisions must be amended to give proper effect to the land use mandates of the general plan and community plans, thus avoiding further adverse impacts of rural and residential development in agricultural areas.

To address these concerns, the Council has prepared legislation which would remedy this subdivision problem by setting new standards for lot size and number of lots to promote agricultural use of the land and preserve and protect agricultural resources. Such legislation has undergone extensive review and comment, but cannot be enacted in time to effectively respond to this rapidly growing concern.

While legislation is being completed, the Council finds it necessary and appropriate to restrict the granting of permits and other agency actions related to the processing of agricultural subdivisions for a period of three months.

18.50.020 Definitions. For the purposes of this chapter, the definitions of words and phrases set forth in chapter 18.04 of the Maui County Code shall apply. Additionally, the following definitions shall apply for purposes of this chapter:

“Agricultural subdivision” means any subdivision of land, as defined in section 18.04.470, within the agricultural land use district designated by the State of Hawai‘i pursuant to chapter 205 of the Hawai‘i Revised Statutes.

“Recorded document” means a legally binding instrument, executed by all parties thereto, approved as to form and legality by the County corporation counsel, recorded in the Bureau of Conveyances of the State of Hawai‘i or the Land Court of the State of Hawai‘i, or both, which shall run with the land and shall bind and constitute notice to all subsequent grantees, assignees, mortgagees, lienors and any other person who claims an interest in the subject property.

18.50.030 Applicability. A. Except for the exemptions in subsection B hereof, agricultural subdivisions, as defined in section 18.50.020, are prohibited.

B. The following agricultural subdivisions are exempt from this chapter:

1. Subdivisions into six or fewer lots, provided that all lots created by the subdivision shall be subject to a recorded document prohibiting resubdivision.

2. Subdivisions by agencies of the federal, state or county governments, or utility companies with the power of eminent domain.

3. A lot resulting from a subdivision, the purpose of which is to dedicate the lot to a federal, state or county government agency, or to a utility company with the power of eminent domain.

4. Subdivisions described in sections 18.04.030.1 and 18.04.030.3.


C. This chapter shall apply to consolidations and resubdivisions which result in the creation of one or more additional developable lot(s), unless exempted in subsection B hereof.

18.50.040 Term. This ordinance shall automatically expire three months from the date of its approval, unless reenacted by the Council as provided by law.”

SECTION 2. Severability. If any provision of this ordinance or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 3. This ordinance shall take effect upon its approval and shall apply to all agricultural subdivisions except those which received preliminary subdivision approval on or before January 27, 1998.

APPROVED AS TO FORM AND LEGALITY:



KELLY A. CAIRNS
Deputy Corporation Counsel
County of Maui

lu:misc:32mbill3:jsr/mnc

I, DARYL T. YAMAMOTO, County Clerk of the County of Maui, State of Hawaii, DO HEREBY CERTIFY that the foregoing BILL NO. 4 (1998) was passed on Second and Final Reading by the Council of the County of Maui, State of Hawaii, on the 20th day of February, 1998, by the following vote:

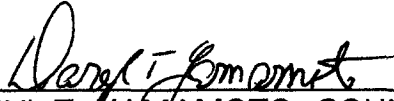
AYES: Councilmembers James "Kimo" Apana, Alan Arakawa, J. Kalani English, Sol P. Kaho`ohalahala, Alice L. Lee, Charmaine Tavares, and Chair Patrick S. Kawano.

NOES: Councilmember Dennis Y. Nakamura.

EXCUSED: Councilmember Wayne K. Nishiki.

I FURTHER CERTIFY that on the 20th day of February, 1998, said BILL NO. 4 (1998) was presented to the Mayor of the County of Maui for her approval or otherwise; that on the 5th day of March, 1998, the Mayor returned said BILL NO. 4 (1998) without her signature; therefore, pursuant to Section 4-3 of the Charter of the County of Maui, said BILL NO. 4 (1998) was designated as ORDINANCE NO. 2636 of the County of Maui.

DATED at Wailuku, Maui, Hawaii, this 9th day of March, 1998.



DARYL T. YAMAMOTO, COUNTY CLERK
COUNTY OF MAUI, STATE OF HAWAII

Passed First Reading: February 6, 1998.

Effective Date of Ordinance: March 6, 1998.