

REQUEST FOR LEGAL SERVICES

Date: November 1, 2017
From: Elle Cochran, Chair
Infrastructure and Environmental Management Committee


RECEIVED
By Dept. of The Corporation Counsel at 11:25 am, Nov 01, 2017

TRANSMITTAL
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Richelle Thomson, Esq., Esq.

Subject: Proposed Moratorium on Exporting Sand and the Maui Inland Sand Resource Quantification Study (2006) (IEM-33)

Background Data: Please review and approve as to form and legality. An original, signed copy of the ordinance is required.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER:

Requestor's signature  Elle Cochran	Contact Person <u>Mimi DesJardins</u> (Telephone Extension: <u>7886</u>)	OFFICE OF THE COUNTY COUNSEL	2017 NOV - 1 PH 2:12	RECEIVED

ROUTINE (WITHIN 15 WORKING DAYS) RUSH (WITHIN 5 WORKING DAYS)
 PRIORITY (WITHIN 10 WORKING DAYS) URGENT (WITHIN 3 WORKING DAYS)
 SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): November 6, 2017
REASON: For consideration at the Council meeting on Friday, November 17, 2017

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: RMT	ASSIGNMENT NO. 2017-0092	BY: kku
-------------------------	---------------------------------	----------------

TO REQUESTOR: APPROVED DISAPPROVED OTHER (SEE COMMENTS BELOW)
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date 11/1/2017

By 

(Rev. 7/03)

iem:ltr:033acc09:mzd

Attachment

ORDINANCE NO. _____

BILL NO. _____ (2017)

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 IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Title 20, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

“Chapter 20.40

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

Sections:

- 20.40.010 Purpose.**
- 20.40.020 Definitions.**
- 20.40.030 Moratorium on sand mining of central Maui inland sand.**
- 20.40.040 Penalty.**
- 20.40.050 Administrative rules.**
- 20.40.060 Adjustment by council.**
- 20.40.070 Term.**
- 20.40.080 Moratorium area map.**

20.40.010 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.

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

“Central Maui inland sand” means inland sand located within the area shown on the map set forth in section 20.40.080.

“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.

“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 the effective date of this ordinance.

20.40.030 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.

20.40.040 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 section 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.

20.40.050 Administrative rules. The director may adopt administrative rules to implement this chapter.

20.40.060 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.




20.40.070 Term. The ordinance codified in this chapter shall be repealed upon council’s determination that the purposes established in section 20.40.010 have been satisfied, or six months after the effective date of this ordinance, whichever is sooner, unless reenacted by the council as provided by law.

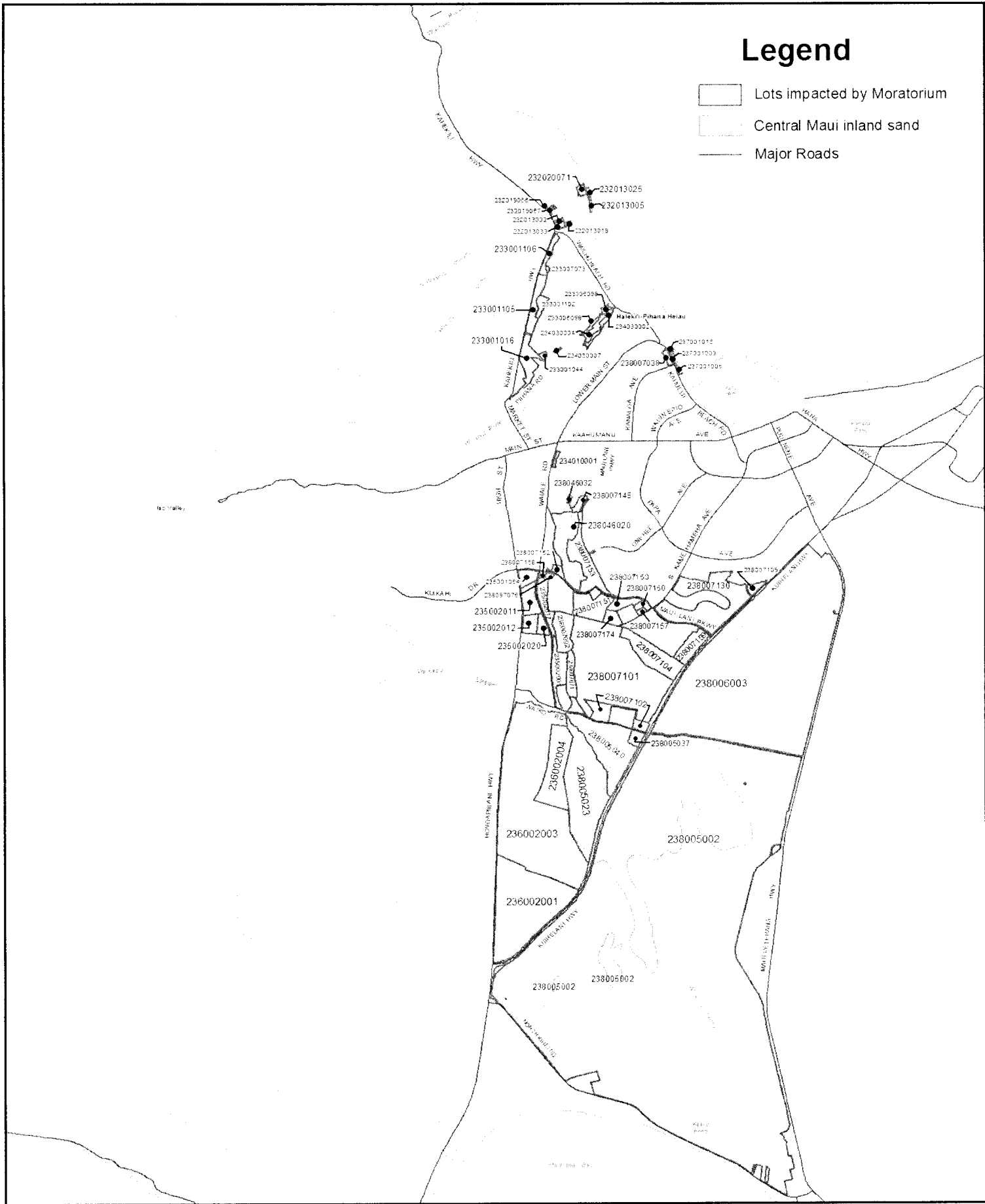
20.40.080 Moratorium area map. The lots subject to the requirements and restrictions of this chapter are identified by tax map key number and shown on the following map. The area identified as “central Maui inland sand,” as shown on the map, controls; all or part of a lot may be affected by the moratorium.

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
235001064	KEHALANI AG INVESTORS LLC/DOWLING CO	14.416

TMK	OWNER	Lot Area (Acres)
235002011	EMMANUEL LUTHERAN CHURCH OF MAUI	25.263
235002012	VALLEY ISLE FELLOWSHIP, INC.	14.99
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

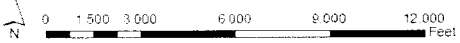
Legend

-  Lots impacted by Moratorium
-  Central Maui inland sand
-  Major Roads



Small vertical text on the left edge of the map, likely a scale or reference number.

Moratorium Area Map



”

SECTION 2. This ordinance shall take effect upon its adoption.

APPROVED AS TO FORM AND LEGALITY:



RICHELLE M. THOMSON
Department of the Corporation Counsel
County of Maui
2017-0092
IEM-33 2017-11-1
iem:misc:033abill11:mzd