

REQUEST FOR LEGAL SERVICES

Date: August 2, 2017
From: Elle Cochran, Chair
Infrastructure and Environmental Management Committee


TRANSMITTAL

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

Subject: Moratorium on Exporting Sand, The Maui Inland Sand Resource Quantification Study and Sand Mining Regulation (IEM-33)

Background Data: Review and approve proposed ordinance. 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 Gary Saldana (Telephone Extension: 7137)
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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): August 8, 2017
REASON: For posting of IEM meeting of August 14, 2017

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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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 _____

By _____

(Rev. 7/03)

iem:ltr:033acc04:grs

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

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 20.40 to read as follows:

“Chapter 20.40

SAND MINING

Sections:

- 20.40.010 Purpose.
- 20.40.020 Definitions.
- 20.40.030 Moratorium on sand mining.
- 20.40.040 Exceptions.
- 20.40.050 Penalty.
- 20.40.060 Administrative rules.
- 20.40.070 Administrative enforcement.

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; establish regulations for mining inland sand to protect Maui’s environment; 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 taking of inland sand until such time as an ordinance regulating the mining, extracting, excavating, or stockpiling of inland sand is adopted.

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

“Inland sand” means sand, as defined in Chapter 20.08, located inland (mauka) from the shoreline area, as defined in Section 205A-41, Hawaii Revised Statutes.”

“Sand mining” means activities related to the extraction or removal of sand from its original, natural location.

“Central Maui inland sand” means inland sand deposits that start downwind of the mouth of Waihee Stream, parallel along the Waiehu coastline, and fan out towards Maalaea generally between Kahekili Highway and Honoapiilani Highway on the west side, and Kuihelani Highway on the east side. Waiko Road demarcates the southerly boundary of the inland sand deposits, though there is a sand layer under the level lands towards Maalaea.

20.40.030 Moratorium on sand mining. No individual or entity shall mine Central Maui inland sand.

20.40.040 Exceptions. The following exceptions shall be permitted during the term of the moratorium:

A. Sand extracted and used for purposes of rebuilding or enhancing the protective capacity and environmental quality of coastal dunes, as defined in section 20.08.020 of this title.

B. Mining of sand used for activities such as land management for agriculture, landscaping and related uses as described in subsections 20.08.030(A) and 20.08.030(C) of this title within the same tax map key parcel.

C. Excavation or grading of sand directly related to on-site construction for purposes other than mining or quarrying, where no sand is transported outside the same tax map key parcel.

D. Any activities required to comply with all County, State and Federal regulations.

20.40.050 Penalty. Any person who violates any provision of this chapter shall upon conviction, be guilty of a petty misdemeanor subject to fine up to \$1,000 or imprisonment for not more than one-year, or both. Each day of each violation shall constitute a separate offense.

20.40.060 Administrative rules. The director of public works shall adopt administrative rules to implement this chapter, pursuant to chapter 91, Hawaii Revised Statutes.

20.40.070 Administrative enforcement. The director of public works shall enforce this chapter pursuant to section 19.530.030 of this code, relating to administrative enforcement.”

SECTION 2. This ordinance shall take effect upon its approval; provided two years from the effective date of this ordinance, this ordinance shall be repealed unless reenacted as provided by law; and further provided this ordinance shall be repealed when the council receives an update to the Maui Inland Sand Resource Quantification Study (2006) and passes an ordinance regulating the mining, extracting, excavating, or stockpiling of Central Maui inland sand.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

iem:misc:033abill03:grs