

IEM Committee

From: Michele McLean <Michele.McLean@co.maui.hi.us>
Sent: Friday, June 02, 2017 4:59 PM
To: IEM Committee
Cc: David Raatz; John Rapacz; William Spence; Gary Saldana
Subject: Re: Moratorium on Exporting Sand (IEM-33)

Aloha Chair Cochran and IEM Committee Members,

The comments below were related to an earlier draft of the proposed bill that we received from the Department of the Corporation Counsel. Since we received this earlier draft on the day that the agenda was posted with the revised proposed bill, we did not review the posted bill that you will consider on June 5. E kala mai for not checking.

Here are our revised comments:

1. Same as below: The Planning Department believes that this type of moratorium should be codified in Title 20 (Environmental Protection) of the Maui County Code, and not Title 19 (Zoning). The issue relates more to natural and cultural resources than it does to land use. If a moratorium is codified in Title 20, then review by the planning commissions is not required. If it is codified in Title 19 and planning commission review is required, we request that the comments below be thoroughly discussed by the committee, and revisions be made to the proposed bill, before the matter is referred to the commissions.
2. Similar to below: One of the keys to regulating or prohibiting sand mining is making a distinction between mining/resource extraction and grading. The bill does not do this. It should differentiate mining from common grading related to a specific development.
3. We have not had the chance to review the rest of Title 19 to see where the definition of "resource extraction" is used. Because the proposed bill would amend this definition by deleting "sand," we would want to be sure that this change would not be problematic in other areas of Title 19.
4. The proposed new definition of "sand mining" uses the verbs dig, excavate, drill, extract, tunnel, dredge and stockpile, but the proposed new moratorium section only uses mine, extract, stockpile and excavate. Does that mean it's okay to dig, drill, tunnel or dredge? Perhaps it would be more clear to state "no individual shall mine sand in any zoning district" instead.
5. The moratorium applies to "inland sand" but "inland sand" is not defined. There is a definition of "sand" in Title 20 (*"particles of mineralogic or rock material ranging in diameter from 0.062 mm to 4 mm that shall be substantially clean of rubble and debris; shall contain no more than fifteen percent volume of silt and clay size material; and shall not consist of artificially crushed coral. Additional provisions on quality may be required by the SMA review process."*) (sec. 20.08.020). If there is a distinction between inland sand and other sand, it should be specified. We would think that the moratorium should apply to beach sand.
6. The proposed bill would not allow an individual lot to grade to build a house, or a deck, or landscape, if there is sand located on the lot. On some properties, no cut-and-fill grading would be allowed. It seems overly restrictive to not allow any movement of sand whatsoever. Taken to perhaps a ridiculous extreme, this could mean that a child would not be able to play in a sandbox (no digging allowed), and that new sandboxes could be made only with imported sand. Consideration should be given to exceptions for smaller projects.

Today we received the request to attend the meeting; we will have a department representative present.

Mahalo,
Michele.

>>> Michele McLean 6/2/2017 12:35 PM >>>
Aloha Chair Cochran and IEM Committee Members,

Please accept these brief comments from the Planning Department on the proposed sand moratorium bill.

1. The Planning Department believes that this type of moratorium should be codified in Title 20 (Environmental Protection) of the Maui County Code, and not Title 19 (Zoning). The issue relates more to natural and cultural resources than it does to land use. If a moratorium is codified in Title 20, then review by the planning commissions is not required. If it is codified in Title 19 and planning commission review is required, we request that the comments below be thoroughly discussed by the committee, and revisions be made to the proposed bill, before the matter is referred to the commissions.

2. One of the keys to regulating or prohibiting sand mining is making a distinction between mining/resource extraction and grading. The bill does not do this. It needs to define what it means to mine, extract resources, stockpile or excavate, and to differentiate these uses from common grading related to a specific development.

3. The exemptions as drafted are problematic. Sand mining has occurred in the past with a properly issued grading permit; therefore, exempting developments that have received a grading permit will allow the mining to continue. Exempting public uses will also not achieve the goal since mined sand has surely been used to make cement for public roadways, public buildings and other public infrastructure. Exempting agriculture purposes raises a question -- how is sand used for agricultural purposes, or at least in such quantities that it needs to be exempt?

We have not received a notice that we have been requested to attend your June 5 meeting, but we are working to adjust our schedules so that someone from our department can be present in the event you have any questions or would like further input.

Mahalo for your consideration of these comments.
-Michele.

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