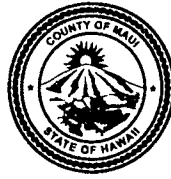


ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director



LU 48

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FEB 21 9:16
OFFICE OF THE
COUNTY CLERK

COUNTY OF MAUI

DEPARTMENT OF PLANNING

January 31, 2018

Honorable Alan M. Arakawa
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

For Transmittal to:

Honorable Mike White, Chair
and Members of the Maui County Council
200 South High Street
Wailuku, Hawaii 96793

RECEIVED
2018 FEB - 1 AM 9:44
OFFICE OF THE
COUNTY CLERK

Alan Arakawa 2/1/18

Dear Chair White and Members of the Council:

SUBJECT: RESOLUTION 17-140, TITLED "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL TO AMEND THE COMPREHENSIVE ZONING ORDINANCE RELATING TO RESOURCE EXTRACTION OR PROCESSING"

By Resolution 17-140, the Maui County Council requested that the Lanai Planning Commission, Maui Planning Commission, and Molokai Planning Commission review and comment on the transmitted bill titled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19, MAUI COUNTY CODE, RELATING TO RESOURCE EXTRACTION OR PROCESSING." The resolution, titled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL TO AMEND THE COMPREHENSIVE ZONING ORDINANCE RELATING TO RESOURCE EXTRACTION OR PROCESSING," was adopted on October 6, 2017 and received by the Department of Planning on October 13, 2017, as seen in Exhibit 1.

Under the current version of the Comprehensive Zoning Ordinance, "resource extraction" is a special use in the OS-2 (Open Space) District for the Island of Lanai only, subject to specified restrictions. In addition, "Mining and resource extraction" is a special use in the Agricultural District. As stated in Section 19.04.040, Maui County Code, "Resource extraction" means activities engaged in the exploration, mining and processing of natural deposits of rock, gravel, sand, and topsoil.

County Special Use Permits are granted by the Planning Commissions. Resource extraction can be conducted in other zoning districts pursuant to a Conditional Permit granted by ordinance.

The bill would establish the following new definition:

"Resource extraction or processing" means:

ONE MAIN PLAZA BUILDING / 2200 MAIN STREET, SUITE 315 / WAILUKU, MAUI, HAWAII 96793
MAIN LINE (808) 270-7735 / FACSIMILE (808) 270-7634
CURRENT DIVISION (808) 270-8205 / LONG RANGE DIVISION (808) 270-7214 / ZONING DIVISION (808) 270-7253

1. *Activities related to the mining or extraction of minerals, ores, soils, and other solid matter, including rock, gravel, sand, and topsoil from their natural subsurface location primarily for purposes other than those directly related to preparation of the land for on-site construction;*
2. *Processing, preparation, cleaning, or other treatment of minerals, ores, or other solid matter, including rock, gravel, sand, and topsoil, in excess of 100,000 cubic yards for a duration of more than 18 months so as to make such material suitable for commercial, industrial, or construction use; or*
3. *Uses of land subject to the Federal Mine Safety and Health Act, 30 U.S.C.A. §802(h).*

"Resource extraction and processing" would replace "Resource extraction" a special use in the OS-2 District (Lanai only) and replace "Mining and resource protection" in the Agricultural District.

In addition, the bill would add "Resource extraction and processing" as a special use in the following zoning districts: M-2 Heavy Industrial District and M-3 Light Industrial District. In both M-2 and M-3, the following would be deleted from the list of special uses: "Rock, sand, gravel, or earth excavation, crushing or distribution."

The Department of Planning reviewed and transmitted the bill to the Lanai, Maui, and Molokai Planning Commissions, consistent with the requirements of the Revised Charter of the County of Maui (1983), as amended. Each body conducted a duly noticed public hearing and deliberated on the bill. Following is a summary of the Planning Commissions' recommendations.

<u>Body:</u>	<u>Hearing Date:</u>	<u>Recommendation:</u>
Maui Planning Commission	January 9, 2018	Recommended that the Council pass the bill as amended to address concerns raised by the following agencies: <ul style="list-style-type: none">• Department of the Corporation Counsel (Exhibit 2, dated December 29, 2017)• Department of Public Works (Exhibit 3, dated November 20, 2017)• Zoning Administration and Enforcement Division, Department of Planning (Exhibit 4, dated November 17, 2017)• Maui County Cultural Resources Commission (Exhibit 5, dated December 27, 2017)
Molokai Planning Commission	January 10, 2018	Recommended that the Council not pass the bill.
Lanai Planning Commission	January 17, 2018	Recommended the Council pass the bill as amended to incorporate suggestions provided in testimony by the Office of Hawaiian Affairs (Exhibit 6, dated January 9, 2018).

Honorable Mike White, Council Chair
January 31, 2018
Page 3

Among the issues or suggestions raised by agency comments and Planning Commission deliberations are the following:

- Resource extraction (addressed in the first numbered paragraph of the proposed new definition) and resource processing (second paragraph) are different activities and could be separated into two definitions.
- In the first paragraph, “their natural subsurface location” is unclear and would create enforcement challenges. The term could be either be deleted or changed to “below the natural grade” (a defined term) to indicate resource extraction involves removal of previously undisturbed subsurface deposits.
- In the first paragraph, the phrase “primarily for purposes other than those directly related to preparation of the land for on-site construction” should be deleted because it is too broad and creates a loophole. As written, it could be read to allow extraction of *any* quantity of resources, so long as it is for “on-site construction.”
- The second paragraph is unclear. In particular, the phrase “in excess of 100,000 cubic yards for a duration of more than 18 months” creates confusion and should be deleted. The referenced units of measurement would be difficult to apply in permit processing and enforcement actions. It is not known what policy objectives they would advance. If this paragraph is kept in the bill, “offsite” could be placed before “construction use” to establish clearer standards.

My report to the Lanai, Maui, and Molokai Planning Commissions, dated January 9, 2018, is available online: <https://hi-maui-county2.civicplus.com/DocumentCenter/View/111308>

Planning Commission meeting minutes will be provided when they are published. Thank you for your attention to this matter. Should further clarification be necessary, please contact David Raatz, Administrative Planning Officer, at david.raatz@maui-county.gov or Ext. 7743.

Sincerely,



WILLIAM R. SPENCE
Planning Director

Attachments (Exhibits 1-6)

xc: John Rapacz, Planning Program Administrator (PDF)
David Raatz, Administrative Planning Officer (PDF)
Maui Planning Commission
Molokai Planning Commission
Lanai Planning Commission

WRS:DMR:ckk

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17/5650

EXHIBIT 1

DANNY A. MATEO
County Clerk



JOSIAH K. NISHITA
Deputy County Clerk

RECEIVED

2017 OCT 9 11:43

DEPT. OF PLANNING

OFFICE OF THE COUNTY CLERK
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/county/clerk

**DEPT. OF PLANNING
COUNTY OF MAUI**

OCT 13 2017

October 9, 2017

RECEIVED

Honorable Alan M. Arakawa
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

For transmittal to:

Mr. William Spence
Planning Director
County of Maui
Wailuku, Hawaii 96793

Dear Mr. Spence:

Transmitted herewith is a certified copy of Resolution No. 17-140,
which was adopted by the Council of the County of Maui, State of Hawaii,
on October 6, 2017.

Respectfully,

DANNY A. MATEO
County Clerk

/lks

Enclosure

Resolution

No. 17-140

REFERRING TO THE LANAI, MAUI, AND
MOLOKAI PLANNING COMMISSIONS A
PROPOSED BILL TO AMEND THE
COMPREHENSIVE ZONING ORDINANCE
RELATING TO
RESOURCE EXTRACTION OR PROCESSING

WHEREAS, the Council is considering a proposed bill to revise the definition of resource extraction to preserve, protect, and regulate the use of the County's finite natural resources by clarifying the definition of "resource extraction"; and

WHEREAS, Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended, require that the appropriate planning commission review proposed land use ordinances and amendments thereto, and provide findings and recommendations to the Council; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it hereby refers the proposed bill, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19, MAUI COUNTY CODE, RELATING TO RESOURCE EXTRACTION OR PROCESSING," a copy of which is attached hereto as Exhibit "1" and made a part hereof, to the Maui, Lanai, and Molokai Planning Commissions for appropriate action, pursuant to Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended; and
2. That it respectfully requests that the Lanai, Maui, and Molokai Planning Commissions transmit their findings and recommendations to the Council as expeditiously as possible; and

3. That certified copies of this resolution be transmitted to the Mayor; the Planning Director; and the Lanai, Maui, and Molokai Planning Commissions.

APPROVED AS TO FORM
AND LEGALITY:



Richelle Thomson
Deputy Corporation Counsel
County of Maui
LF 2017-1137

ORDINANCE NO. _____

BILL NO. _____ (2017)

A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE,
RELATING TO RESOURCE EXTRACTION OR PROCESSING

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

SECTION 1. The purpose of this ordinance is to preserve, protect, and regulate the use of the County's finite natural resources by clarifying the definition of "resource extraction."

SECTION 2. Section 19.04.040, Maui County Code, is amended by amending the definition of "resource extraction" to read as follows:

"Resource extraction or processing" means: [activities engaged in the exploration, mining and processing of natural deposits of rock, gravel, sand and topsoil.]

1. Activities related to the mining or extraction of minerals, ores, soils, and other solid matter, including rock, gravel, sand, and topsoil from their natural subsurface location primarily for purposes other than those directly related to preparation of the land for on-site construction;

2. Processing, preparation, cleaning, or other treatment of minerals, ores, or other solid matter, including rock, gravel, sand, and topsoil, in excess of 100,000 cubic yards for a duration of more than 18 months so as to make such material suitable for commercial, industrial, or construction use; or

3. Uses of land subject to the Federal Mine Safety and Health Act, 30 U.S.C.A. §802(h)."

SECTION 3. Section 19.07.030 is amended to read as follows:

"19.07.030 Permitted uses. The following uses shall be permitted within the open space districts subject to the "special conditions":

(Note: "X" means a permitted use in the category. An empty cell indicates that the use is not permitted in that category.)

Uses	OS-1	OS-2	Special conditions
A. Principal uses			
1. Agriculture		X	No processing of products on premises.
2. Native Hawaiian traditional and customary uses	X	X	Customary and traditionally exercised subsistence, cultural, and religious uses in accordance with article XII, section 7, of the Hawaii State Constitution, and Hawaii case law.
3. Outdoor recreation		X	Limited to hiking; fishing; hunting; noncommercial tent camping; picnicking; equestrian activities; walking, jogging, and bicycling; and playfields with non-permanent seating. Uses not listed are not allowed as a principal use.
4. Park	X	X	OS-1 category: Limited to recreation, passive. OS-2 category: Not including golf courses. Not including commercial uses except when under the supervision of a government agency in charge of parks and playgrounds.
5. Passive land use	X	X	
6. Recreation, passive	X	X	

Uses	OS-1	OS-2	Special conditions
7. Restoration of cultural sites	X	X	Includes retention, restoration, or rehabilitation of buildings, sites, or cultural landscapes of historical or archeological significance.
B. Accessory uses.			
1. Assembly area		X	Includes only unenclosed and typically uncovered seating area in association with a park or outdoor recreation.
C. Special uses. The following uses and structures shall be permitted in the open space districts if a special use permit has been obtained pursuant to section 19.510.070 of this [code] title.			
1. Agriculture	X	X	Agriculture within the OS-1 district and processing of agricultural products in the OS-2 district.
2. Cemetery		X	
3. Outdoor recreation	X	X	Outdoor recreation within the OS-1 district. Commercial tent camping, motorized recreational vehicles and playing fields with permanent seating are not permitted in the OS-1 district and a special use permit is required for these uses in the OS-2 district.
4. Park	X		Uses not permitted as a principal use; but not including

Uses	OS-1	OS-2	Special conditions
			golf courses, and not including commercial uses except when under the supervision of a government agency in charge of parks and playgrounds.
5. Resource extraction or processing		X	Limited to the Island of Lanai only; and limited to the extraction of natural material only; no processing permitted on site.
6. Structure	X	X	Facilities associated with a principal use or approved special use, such as restrooms, information kiosks, required off-street parking, solar systems, and equipment sheds. Subject to the plan conditions of section 19.07.060.

SECTION 4. Section 19.25.020 is amended to read as follows:

“19.25.020 Permitted uses. Within the M-3 restricted industrial district, no building, structure, or premises shall be used, and no building or structure hereafter erected, structurally altered, replaced, or enlarged except for one or more of the following uses:

Uses	Notes and exceptions
Acetylene gas manufacture or bulk storage	
Acid manufacture	
Alcohol manufacture	
Ammonia, bleaching powder, or chlorine manufacture	

Uses	Notes and exceptions
Asphalt manufacture of refueling and asphaltic concrete plant	
Automobile wrecking	
Blast furnace or coke oven	
Boiler and steel works	
Brick, tile, or terra cotta manufacture	
Canneries	
Cement, lime, gypsum, or plaster of paris manufacture	
Chemical manufacture	
Concrete or cement products manufacture	
Crematories, morgues	
Energy systems, power plants, substations, and utility facilities, major	
Explosives manufacture or storage	
Factories	
Fertilizer manufacture	
Fish canneries	
Foundries	
Freight classification yard (railroad)	
Garbage, offal, or dead animals reduction or dumping	
Gas manufacture	
Glue manufacture	
Heavy equipment storage, servicing, and sales	
Junk establishment used for storing, depositing, keeping junk or similar goods for business purposes	
Landfill, solid waste processing, and disposal	
Lime kilns	
Lumber yard and wood treatment facilities	
Machine shops	
Oilcloth or linoleum manufacture	
Oil storage plants	

Uses	Notes and exceptions
Paint, oil (including linseed), shellac, turpentine, lacquer, or varnish manufacture	
Petroleum or biofuel product manufacturing or wholesale storage of petroleum or biofuels	
Petroleum refinery	
Planing mill	
Plastic manufacture	
Quarry or stone mill	
Railroad repair shops	
Recycling processing facilities or material recycling and recovery facilities	
[Rock, sand, gravel, or earth excavation, crushing or distribution] <u>Resource extraction or processing</u>	
Rolling mills	
Saw mill	
Ship works	
Slaughter of animals	
Soap manufacture	
Stock yard or feeding pens	
Sugar mills and refineries	
Tannery or the curing or storage of raw hides	
Telecommunication towers, antenna, and equipment	
Utility facilities, major	
Wood treatment plants	
In general, those uses [which] <u>that</u> may be obnoxious or offensive by reason of emission of odor, dust, smoke, gas, noise, vibration and the like, and not allowed in any other district	Provided, however, that any use not specified in this section shall not be permitted unless approved by the planning director as conforming to the intent of this [title] <u>chapter</u>

»

SECTION 5. Section 19.26.040 is amended to read as follows:

“19.26.040 Special uses. The following uses and structures shall be permitted in the M-2 heavy industrial district provided a County special use permit, pursuant to section 19.510.070[, Maui County Code,] of this title has first been obtained.

Special uses
Acetylene gas manufacture or bulk storage
Acid manufacture
Ammonia, bleaching powder or chlorine manufacture
Asphalt manufacture of refueling and asphaltic concrete plant
Blast furnace or coke oven
Cement, lime, gypsum, or plaster of paris manufacture
Crematories
Creosote treatment plants
Explosives manufacture or storage
Fertilizer manufacture
Fish canneries
Garbage, offal, or dead animals reduction or dumping
Gas manufacture
Glue manufacture
Petroleum refinery
Quarry or stone mill
[Rock, sand, gravel, or earth excavation, crushing or distribution] <u>Resource extraction or processing</u>
Saw mill
Slaughter of animals
Stock yard or [deeding] <u>feeding pens</u>
Tannery or the curing or storage of raw hides

SECTION 6. Section 19.30A.060 is amended by amending subsection (A)

to read as follows:

“A. The following uses and structures are permitted in the agricultural district if a special use permit, as provided in section 19.510.070 of this title, is obtained; except that if a use described in this section also requires a special permit as provided in chapter 205, Hawaii Revised Statutes, and if the land area of the subject parcel is fifteen acres or less, the State special permit shall fulfill the requirements of this section:

1. Additional farm dwellings beyond those permitted by subsection 19.30A.050(B)(1).

2. Farm labor dwellings that do not meet the criteria of subsection 19.30A.050(B)(2).
3. Commercial agricultural structures that do not meet the standards and restrictions of this chapter.
4. Public and quasi-public institutions that are necessary for agricultural practices.
5. Major utility facilities as defined in section 19.04.040 of this title.
6. Telecommunications and broadcasting antenna.
7. Open land recreation uses, structures, or facilities that do not meet the criteria of subsection 19.30A.050(B)(10), including commercial camping, gun or firing ranges, archery ranges, skeet shooting, paint ball, bungee jumping, skateboarding, rollerblading, playing fields, and accessory buildings and structures. Certain open land recreation uses or structures may also be required to obtain a special permit as provided in section 205-6, Hawaii Revised Statutes. The following uses or structures are prohibited: airports, heliports, drive-in theaters, country clubs, drag strips, motor sports facilities, golf courses, and golf driving ranges.
8. Cemeteries, crematories, and mausoleums.
9. Churches and religious institutions.
10. ~~[Mining and resource]~~ Resource extraction or processing.
11. Landfills.
12. Solar energy facilities that are greater than fifteen acres.”

SECTION 7. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 8. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:



RICHELLE M. THOMSON
Deputy Corporation Counsel
LF 2017-1137

COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

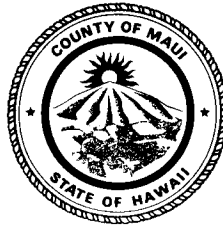
It is **HEREBY CERTIFIED** that **RESOLUTION NO. 17-140** was adopted by the Council of the County of Maui, State of Hawaii, on the 6th day of October, 2017, by the following vote:

MEMBERS	Michael B. WHITE Chair	Robert CARROLL Vice-Chair	Alika ATAY	Eleanora COCHRAN	S. Stacy CRIVELLO	Donald S. GUZMAN	G. Riki HOKAMA	Kelly T. KING	Yuki Lei K. SUGIMURA
ROLL CALL	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye


COUNTY CLERK

EXHIBIT 2

ALAN M. ARAKAWA
Mayor



PATRICK K. WONG
Corporation Counsel

EDWARD S. KUSHI
First Deputy

LYDIA A. TODA
Risk Management Officer
Tel. No. (808) 270-7535
Fax No. (808) 270-1761

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET, 3RD FLOOR
WAILUKU, MAUI, HAWAII 96793
EMAIL: CORPCOUN@MAUICOUNTY.GOV
TELEPHONE: (808) 270-7740
FACSIMILE: (808) 270-7152

December 29, 2017

TO: DAVID RAATZ, Administrative Planning Officer, Department of Planning

FROM: RICHELLE THOMSON
LF2017-1137

RE: Resolution 17-140, Bill amending Comprehensive Zoning Ordinance relating to the definition of "Resource extraction or processing"

The following comments pertain only to the proposed amendments to Section 19.04.040, Maui County Code, relating to the definition of "resource extraction or processing." We have no comments on the remainder of the proposed amendments.

Consideration may be given to other word or phrasing choices for the following terms:

- "their natural subsurface location" – revise to "below the natural grade," which is defined in Section 19.04.040, MCC, as "the existing grade or elevation of the ground surface which exists or existed prior to man-made alternations such as grading, grubbing, filling or excavating." This might better clarify that resource extraction involves removal of previously undisturbed subsurface deposits.
- "on-site construction" – although the terms "construction" and "development" are not defined in Section 19.04.040, MCC, the term "development" may encompass a broader spectrum of land-disturbing activity.
- Recommend amending the phrase "uses of land subject to the Federal Mine Safety and Health Act ..." to "land uses subject to the ..." This would clarify that the Act applies to the activities (uses) and not the land upon which they occur.

The proposed modifications are redlined below:

“Resource extraction or processing’ means: [activities engaged in the exploration, mining and processing of natural deposits of rock, gravel, sand and topsoil.]

1. Activities related to the mining or extraction of minerals, ores, soils, and other solid matter, including rock, gravel, sand, and topsoil from their natural subsurface location below the natural grade primarily for purposes other than those directly related to preparation of the land for on-site construction development;

2. Processing, preparation, cleaning, or other treatment of minerals, ores, or other solid matter, including rock, gravel, sand, and topsoil, in excess of 100,000 cubic yards for a duration of more than 18 months so as to make such material suitable for commercial, industrial, or construction use; or

3. Uses of Land uses subject to the Federal Mine Safety and Health Act, 30 U.S.C.A. §802(h).”

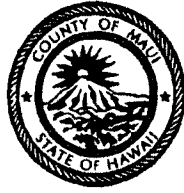
EXHIBIT 3

ALAN M. ARAKAWA
Mayor

DAVID C. GOODE
Director

ROWENA M. DAGDAG-ANDAYA
Deputy Director

Telephone: (808) 270-7845
Fax: (808) 270-7955



COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
200 SOUTH HIGH STREET, ROOM NO. 434
WAILUKU, MAUI, HAWAII 96793

RECEIVED GLEN A. UENO, P.E., P.L.S.
Development Services Administration
2017 NOV 21 P 1:00
CARY YAMASHITA, P.E.
Engineering Division
JOHN R. SMITH, P.E.
Highways Division
COUNTY OF MAUI
DEPT. OF PLANNING
ADMINISTRATION

November 20, 2017

MEMO TO: WILLIAM R. SPENCE, PLANNING DIRECTOR *Spence*
F R O M: DAVID C. GOODE, DIRECTOR OF PUBLIC WORKS
SUBJECT: **RESOLUTION NO. 17-140 REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL TO AMEND THE COMPREHENSIVE ZONING ORDINANCE RELATING TO RESOURCE EXTRACTION OR PROCESSING**

Thank you for the opportunity to review and comment on the above-referenced Resolution No. 17-140. The Department of Public Works has the following comments:

1. Under Maui County Code (MCC), Section 19.04.040, the definition of "Resource extraction or processing" (Item No. 1), it seems that you can extract any amount of sand, rock, gravel, etc. even greater than 100,000 cu. yds. if it is related to the preparation of the land for on-site construction. So, in theory, a place like Maui Lani Phase 9, for example, could still process, sell, and export sand if it is tied to the subdivision-related roadway and small-lot construction.
2. For Item No. 2, a few concerns. Do any one or all of the listed activities (processing, preparation, cleaning or other treatment) have to occur? What is "preparation" and "other treatment"? Is it resource extraction when activity is longer than 18 months and over 100,000 cu. yds.? What if a project grading permit is for over 100,000 cu. yds. and it is anticipated to only last 12 months, but goes on to be over 18 months?
3. Item No. 2 only makes reference to construction, but Item No. 1 exempts on-site construction. Seems like they need to better define construction use. Even "commercial" and "industrial" uses could be better defined.

**Memo to William R. Spence, Planning Director
November 20, 2017
Page 2**

- 4. We should discuss with your department which grading permits should be routed to Planning for its review and approval to enforce "resource extraction or processing", and how the grading permit application may have to be amended in order to enforce any MCC, Title 19 revisions.**

Thank you for the opportunity to comment. Should you have any questions, please contact Public Works Director David Goode at 270-7845.

DCG:RMDA:jso

xc: Development Services Administration

s:\rowena\william spence_comments re resolution 17-140_resource extraction

David Raatz - Comments on proposed amendments to "resource extraction"

From: John Rapacz
To: David Raatz
Date: 11/17/2017 11:26 AM
Subject: Comments on proposed amendments to "resource extraction"

It might be clearer if there were two definitions: one for Resource Extraction and one for Resource Processing. They are very different activities.

Delete "...from their natural subsurface location...

As written, it means that if you can get the resource out of the ground undetected (as is the case with almost all of the inland sand until Maui Lani) then that sand no longer fits the definition even if its still located or stockpiled where it was extracted. It's far too easy to claim that the material had already been extracted, or that it was brought in from another location.

It also means that if the area was ever farmed, the material is no longer in its natural subsurface location, and can be freely mined. Hawaiian Cement has said they have a 6-year stockpiled supply of sand. None of it is still in its natural subsurface location. Also, "subsurface" presents issues for topsoil, and does not seem to add meaning, and allows argument that particular resources were not subsurface.

Delete: "primarily for purposes other than those directly related to preparation of the land for onsite construction;" This is an enormous loophole, and is overly broad. The developers of cited Maui Lani parcel claimed that the sand was being removed to prepare the site for construction. One can claim that virtually any grading is for future construction. What evidence will we require? How will we determine whether someone is removing material far in excess of that actually required for the construction? This proposed language is unacceptably vague, and extremely difficult --if not impossible--to enforce.

I suggest that instead, better language for this type of exception already exists in MCC 20.08.031 *"limited exceptions" A: Subsurface excavations and backfill for buildings and other structures authorized by a valid building permit issued by the land use and codes administration or excavations and backfill for cesspools and septic tanks authorized by the state department of health.*

Exceptions C through D are worth considering as well.

Clarify "in excess of 100,000 cubic yards for a duration of more than 18 months". This does not seem to make sense, unless it says something like "100,000 cubic yards **per month** for a duration of more than 18 months." If that's what it is intended to mean, that is a very large total quantity...1,800,000 cubic yards. Maybe it means that there's an exception for up to 100,000 cubic yards in an 18 month period.

Delete "...so as to make such material suitable for commercial, industrial, or construction use;". This language is unnecessary. If the material is handled as "processed" is defined above, then it is processed. That's all we need to know. By introducing a purpose, intent or other qualification, it becomes difficult if not impossible to enforce.

////////////////////////////////////

SECTION 2. Section 19.04.040, Maui County Code, is amended by

amending the definition of "resource extraction" to read as follows:

""Resource extraction or processing" means: [activities

engaged in the exploration, mining and processing of natural deposits of rock, gravel, sand and topsoil.]

1. Activities related to the mining or extraction of minerals, ores, soils, and other solid matter, including rock, gravel, sand, and topsoil from their natural subsurface location primarily for purposes other than those directly related to preparation of the land for onsite construction;
2. Processing, preparation, cleaning, or other treatment of minerals, ores, or other solid matter, including rock, gravel, sand, and topsoil, in excess of 100,000 cubic yards for a duration of more than 18 months so as to make such material suitable for commercial, industrial, or construction use; or
3. Uses of land subject to the Federal Mine Safety and Health Act, 30 U.S.C.A. §802(h)."

SECTION 3. Section 19.07.030 is amended to

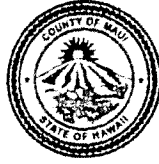
John S. Rapacz, Administrator
Zoning Administration and Enforcement Division,
Department of Planning
(808)270-7253

EXHIBIT 5

ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director



COUNTY OF MAUI

DEPARTMENT OF PLANNING

December 27, 2017

MEMORANDUM

TO: David Raatz, Administrative Planning Officer

FROM: William Spence, Planning Director *W.S.*

SUBJECT: **COMMENTS FROM THE CULTURAL RESOURCES COMMISSION ON COUNTY COUNCIL RESOLUTION 17-140 REFERRING TO THE MAUI, MOLOKAI, AND LANAI PLANNING COMMISSIONS A PROPOSED BILL TO AMEND TITLE 19 RELATING TO RESOURCE EXTRACTION OR PROCESSING**

At its December 7, 2017 meeting, the Cultural Resources Commission (CRC) discussed Resolution 17-140 referring a bill titled "a bill for an ordinance amending title 19, Maui County Code, relating to resource extraction or processing" to the Maui, Lanai, and Molokai Planning Commissions.

The CRC offered the following comments on the proposed bill contained in Resolution 17-140:

1. Consider adding language to the proposed bill to clarify that the regulations pertain to terrestrial resources as opposed to marine or other types of natural resources.
2. The quantity provision of 100,000 cubic yards contained in subsection 2.2 of the proposed bill is problematic. It allows people to push boundaries and evade regulation. The same is true for the duration provision of 18 months in subsection 2.2.
3. For the reasons stated in recommendation 2, subsection 2.2 of the proposed bill should be amended to read:

"Processing, preparation, cleaning, or other treatment of minerals, ores, or other solid matter, including rock, gravel, sand, and topsoil [in excess of 100,000 cubic yards for a duration of more than 18 months] so as to make such material suitable for commercial industrial, or offsite construction use; or"
4. Any quantity of grubbing or grading (so long as it requires a permit from the County) requires historic preservation review by the State Historic Preservation Division pursuant to HRS Chapter 6E.

Should you have any questions or require additional clarification, please contact Annalise Kehler, Cultural Resources Planner, at (808) 270-7506.

Mr. David Raatz, Administrative Planning Officer
December 27, 2017
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xc: David Raatz, Administrative Planning Officer (PDF)
Annalise Kehler, Cultural Resources Planner (PDF)
CRC File (K:\WP_DOCS\PLANNING\CRC\2017\Sand Mining)
General File
LRD Correspondence File

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EXHIBIT 6



OFFICE OF HAWAIIAN AFFAIRS
Administrative Testimony

Testimony of Kamana‘opono Crabbe, Ph.D
Ka Pouhana, Chief Executive Officer

County of Maui Planning Commission
Resolution 17-140

BILL AMENDING COMPREHENSIVE ZONING ORDINANCE RELATING TO THE DEFINITION OF “RESOURCE EXTRACTION OR PROCESSING”

January 9, 2018

9:00 a.m.

Planning Dept. Conference Room

The Administration of the Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on Resolution 17-140, which appears intended to clarify land use restrictions relating to the extraction and processing of Maui’s culturally significant sand resources. **While OHA appreciates the apparent responsiveness of this Resolution to activities impacting Native Hawaiian cultural sites and resources, OHA notes that this measure may inadvertently allow, in any zoning district - including districts where resource extraction is not currently allowed - large-scale mining activities that do not fall under the more precise definition of “resource extraction or processing.”** OHA accordingly urges the Commission’s consideration of further amendments to the proposed definition of “resource extraction or processing,” to improve its enforceability, and to avoid potential unintended negative consequences for Maui’s natural and cultural resources.

OHA understands that this measure was created in response to concerns over the industrial-scale mining and commercial sale of sand by Maui Lani Partners and others in central Maui. OHA emphasizes the significance and sacredness of central Maui’s inland sand dunes, whose expanse reaches from the traditional northern sea of Wailuku to the southern sea of Kealahou. As the Commission may be well aware, Maui’s inland sand dunes, specifically located in the ahupua‘a of ‘Īao, Waikapū, and Pokaheka (now Wailuku and Waikapū), were host to a number of historic battles, which include the famous battles of Kepaniwai and Kakanilua. Traditionally, these historic battlegrounds were considered sacred sites due to the physical and metaphysical impacts of the many lives lost there, including the iwi of countless fallen warriors who were buried in the dunes.¹ Today, the cultural significance of these sites continues to be valued by Native Hawaiian cultural practitioners.

Unfortunately, decades of sand mining in central Maui for commercial sale and other purposes has significantly impacted the physical and cultural integrity of Maui’s inland sand

¹ Maui’s inland sand dunes were once a strategic location for defending armies to gain an advantage over their opponents and for this reason, it has served as the site for many historic battles. Notably, traditional wartime practices did not afford the families of invading armies the opportunity to repatriate their fallen loved ones. In honor of the lives of their opponents, the victorious population would often employ the practice of battlefield burials, or the burial of opposing warriors where they had fallen. Given these documented historic events and practices, the discovery of countless burials through the decades of sand mining in central Maui is not surprising.

dunes. For example, the 2006 *Maui Inland Sand Resource Quantification Study* ("Maui inland sand study"), prepared for the County of Maui Department of Public Works & Environmental Management ("Department"), noted the uncovering of over 50 burials in central Maui sand dunes owned by Alexander & Baldwin, along the southern border of sand dune parcels owned by Maui Lani Partners. **The Maui inland sand study specifically noted that "[o]n the island of Maui, there is a high probability of iwi [bones] being buried in the sand dunes."** Nonetheless, Maui Lani Partners and its affiliates continued their sand extraction activities from the inland dunes, resulting in the continual disinterment of iwi since that time. Maui Lani Partner's land use activities have since led to substantial public outcry, not only for the irreparable harm to Native Hawaiian cultural sites and resources, but also for the impermissibility of sand mining and extraction activities within the Maui Lani district, per Maui's land use ordinances. Accordingly, OHA appreciates the Planning Department's recent efforts to further clarify land use regulations for sand mining and related activity, including the processing of sand for commercial, industrial, or construction use.

By narrowing the definition of "Resource extraction or processing," the resolution may inadvertently allow sand mining activities in districts where it is currently prohibited. OHA notes that under the current Maui County Code, "resource extraction," including "mining and processing of natural deposits of . . . sand" is already permitted only in certain industrial districts, and in the agricultural district with a special use permit; in other words, sand mining and extraction is not permitted in all other districts. For example, this measure's new definition of "resource extraction or processing" excludes activities that are "directly related to preparation of the land for on-site construction." **As the measure currently reads, sand mining and extraction could therefore occur in a district, such as in Maui Lani, where it is currently unpermitted, so long as it ostensibly occurs "primarily" for land "preparation" activities.**

Similarly, paragraph 2 of the proposed new "resource extraction or processing" definition excludes the processing, preparation, or cleaning of sand of less than 100,000 cubic yards, or that takes place for a duration of less than 18 months. **By this proposed definition, the processing of sand exceeding 100,000 cubic yards for a duration of less than 18 months would not be considered "resource extraction or processing," nor would the processing of less than 100,000 cubic yards of sand over an indefinite period.** Notably, mobile sand processing plants have a per-hour output range between 50-500 tons, and stationary sand processing plants can produce several thousand tons of sand per hour; **a single mobile sand processing plant on Maui could easily process the remainder of sand within the Maui inland sand dunes in less than 18 months' time, and thereby not be considered "resource extraction or processing" under the new definition.** Furthermore, at approximately 2,600 to 3,000 pounds per cubic yard, 100,000 cubic yards of sand would be the equivalent of 130,000 to 150,000 tons of sand. **Under the proposed definition, up to 150,000 tons of sand could be processed over any length of time, and not be considered sand "processing" for the purposes of Maui's land use ordinance. As a result, such large-scale sand mining and processing activities may be considered unregulated and potentially viewed as permissible, in districts where "resource extraction or processing" is not otherwise permitted.**

In addition, the specificity in the new definition of "resource extraction or processing" may be particularly challenging to enforce. As noted above, sand mining may occur so long as

its “primary” purpose is to “prepar[e] . . . the land for on-site construction”; such an exception could provide a loophole by which 150,000 tons of sand or more could be mined and processed, under the purported purpose of preparing land for development. **Moreover, the definition relating to “processing” sand may require regulators to quantify and document the processing of over 110,000 cubic yards of sand, and to establish evidence that such sand was processed over a continuous, 18-month period.** Given the Planning Department’s difficulties in accessing and observing, much less documenting, the most recent sand extraction activities in Maui Lani, it is unclear whether the department would have the capacity to document the evidence necessary to actually enforce this new definition.

For these reasons, OHA believes that this measure may inadvertently exacerbate Maui’s long-standing sand inventory issues and threaten further harm to Native Hawaiian cultural resources. Accordingly, OHA recommends the following amended definition of “resource extraction or processing,” to better effect this measure’s intent, while also serving to preserve and protect Native Hawaiian cultural resources:

1. Activities related to the mining or extraction of minerals, ores, soils, and other solid matter, including rock, gravel, sand, and topsoil from their natural subsurface location;
2. Processing, preparation, cleaning, or other treatment of minerals, ores, or other solid matter, including rock, gravel, sand, and topsoil, for the purposes of commercial, industrial, or construction use; or
3. Uses of land subject to the Federal Mine Safety and Health Act, 30 U.S.C.A. §802(h).²

Mahalo for the opportunity to comment on this measure.

² Should there be any concerns about the breadth of application of this recommended language, OHA notes that the existing conditional permit process would provide an opportunity for the consideration of “resource mining or extraction” activities in districts where they are not otherwise permitted, should such activities be compatible with other permitted uses and not be “significantly detrimental to the public interest, convenience and welfare.” Maui County Code § 19.40.070.