

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

December 11, 2018

Committee
Report No. 18-221

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Land Use Committee, having met on January 3, 2018, January 24, 2018, and November 8, 2018, makes reference to County Communication 17-394, from Councilmember Don S. Guzman, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 20.08, MAUI COUNTY CODE, RELATING TO SOIL EROSION AND SEDIMENT CONTROL."

The purpose of the proposed bill is to preserve and protect sensitive historic, cultural, and archaeological sites, and unmarked human burial sites by clarifying the grading and grubbing permit ("permit") process.

Your Committee notes the proposed bill strengthens enforcement mechanisms for grading and grubbing work by adding grounds for permit suspension or revocation to Section 20.08.120, Maui County Code ("MCC"). The proposed bill also amends Section 20.08.160, MCC, to allow agencies with authority over the grading and grubbing work to enter onto the property to ensure compliance with requirements for the work.

By correspondence dated January 3, 2018, Councilmember Guzman transmitted a revised proposed bill amending Section 20.08.080, MCC, to also require applicants for a permit to provide information sufficient to show their proposed work will be in conformance with Soil and Water Conservation District ("SWCD") standards.

A representative of the Department of Planning voiced concerns that the revised proposed bill would require the County to evaluate and enforce State requirements, which County personnel are not trained to do. Your Committee supported retaining requirements relating to SWCD and the State Historic Preservation Division ("SHPD"), but recommended revisions to clarify the County is not tasked with interpreting those requirements.

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

Page 2

Committee
Report No. 18-221

Your Committee discussed the discretion afforded the Director of Public Works in suspending or revoking permits if the permittee's work is not in accordance with the terms of the permit. The Deputy Director of Public Works said this discretion allows permittees to fix minor issues, such as a broken fence, without the Director needing to suspend or revoke their permits.

By correspondence dated November 1, 2018, Councilmember Guzman transmitted a further revised proposed bill specifying circumstances under which the Director is required to suspend or revoke a permit, as opposed to simply being allowed to suspend or revoke it. The further revised proposed bill also allows the Director to require a pre-construction meeting before a permittee starts any grading or grubbing.

The further revised proposed bill also supplements the permit review process by requiring information sufficient to show the work will meet the requirements of Chapter 6E, Hawaii Revised Statutes, and related administrative rules.

Your Committee recommended a revision to the further revised proposed bill to clarify the property onto which agency representatives shall be allowed is the property for which the permit was issued. Based on SWCD testimony, your Committee also incorporated a revision to specify the SWCD standards referenced in the bill are on file at the Department of Public Works and other nonsubstantive revisions.

Your Committee voted 7-0 to recommend passage of the further revised proposed bill on first reading and filing of the communication. Committee Chair Carroll and members Atay, Crivello, Guzman, King, Sugimura, and White voted "aye." Committee Vice-Chair Hokama and member Cochran were excused.

Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel,

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

Page 3

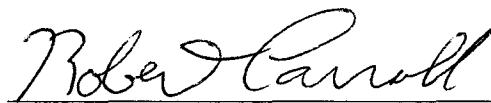
Committee
Report No. 18-221

incorporating your Committee's recommended revisions and nonsubstantive revisions.

Your Land Use Committee RECOMMENDS the following:

1. That Bill _____ (2018), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 20.08, MAUI COUNTY CODE, RELATING TO SOIL EROSION AND SEDIMENT CONTROL," be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 17-394 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



ROBERT CARROLL, Chair

ORDINANCE NO. _____

BILL NO. _____ (2018)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 20.08, MAUI COUNTY
CODE, RELATING TO SOIL EROSION AND SEDIMENT CONTROL

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

SECTION 1. The purpose of this ordinance is to preserve and protect sensitive historic, cultural, and archaeological sites, and unmarked human burial sites by clarifying the grading and grubbing permit process.

SECTION 2. Section 20.08.020, Maui County Code, is amended by amending the definition of “director” to read as follows:

““Director” means the director of public works [and environmental management], County of Maui, or the director’s duly authorized representative.”

SECTION 3. Section 20.08.075, Maui County Code, is amended by amending subsection B to read as follows:

“B. The plot plan shall also state:

1. All construction related conditions of the special management area permit[;].

2. That the importation and placement of soil is prohibited within the shoreline area as defined by chapter [201A-41,] 205A-41, Hawaii Revised Statutes, except for sand as defined in this chapter[; and].

3. That grading of the coastal dune is prohibited pursuant to section 20.08.035.”

SECTION 4. Section 20.08.080, Maui County Code, is amended to read as follows:

“20.08.080 Grading and grubbing permit review. Drainage, engineering slope hazard report, and erosion control plans shall be submitted to the applicable soil and water conservation district(s) and to the department of land and natural resources’ state historic preservation division for review and comment. Applicants shall provide information sufficient to enable the reviewing agencies to determine that the proposed work will be in conformance with the most current standards on file at the department of public works of the soil and water conservation district(s) and will meet the requirements of chapter 6E, Hawaii Revised Statutes, and related administrative rules. Final approval or disapproval shall be made by the County [shall be made] within ten days after receiving [their] the reviewing agencies’ comments.”

SECTION 5. Section 20.08.120, Maui County Code, is amended to read as follows:

“20.08.120 Permit—suspension or revocation. A. The director may, in writing, suspend or revoke a permit issued under the provisions of sections 20.08.040 through 20.08.160 whenever [the permit has been issued on the basis of incorrect information supplied by the permittee or whenever] the grubbing, stockpiling, or grading is not being performed in accordance with the terms and provisions of the permit.

B. The director shall, in writing, suspend or revoke a permit issued under the provisions of sections 20.08.040 through 20.08.160 whenever any of the following occurs:

1. The permit has been issued on the basis of incorrect information supplied by the permittee.

2. The director has received written notification from a federal, state, or county agency of any warnings or violations of the requirements related to the work.

3. The director has received written notification from the department of land and natural resources’ state historic preservation division of any warnings or violations issued, including warnings or violations relating to archaeological monitoring, preservation, or mitigation plans approved by the state historic preservation division, and applicable to the permitted area.”


SECTION 6. Section 20.08.160, Maui County Code, is amended to read as follows:

“20.08.160 [Permit—Requirements.] Permit—requirements. The permittee shall notify the director at least two days [before the permittee or his agent begins] prior to beginning any grading or grubbing. The director may require a pre-construction meeting prior to commencement of the work. Plans and specifications for grading or grubbing bearing the approval of the director shall be maintained at the site during the progress of any work. Where it is found by inspection that the soil or other conditions are not the same as stated or shown in the application for a grading or grubbing permit, the director may stop the grading or grubbing until revised grading or grubbing plans, based upon the existing conditions, are submitted by the permittee and approved by the director. Permittees shall comply with state and county laws and regulations; the recommendations of the soil and water conservation district(s) as approved by the County; and the requirements of the department of land and natural resources’ state historic preservation division. The director or any state or county agency with authority relevant to the work, including soil and water conservation district(s), the department of planning, or the department of land and natural resources’ state historic preservation division, shall be allowed onto the property for which a grading and grubbing permit has been issued to ensure compliance with this section.”

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:



DAVID GALAZIN
Department of the Corporation Counsel
County of Maui
2017-0095/2018-0070
LU-47 2018-11-13 Ord re Soil Erosion