

RUSH

REQUEST FOR LEGAL SERVICES

RECEIVED

By Dept. of The Corporation Counsel at 9:14 am, Jun 19, 2017

Date: June 16, 2017

From: Elle Cochran, Chair

Infrastructure and Environmental Management Committee

TRANSMITTAL

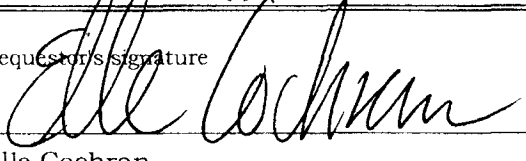
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Richelle Thomson, Esq.

Subject: MORATORIUM ON EXPORTING SAND, THE MAUI INLAND SAND RESOURCE QUANTIFICATION STUDY AND SAND MINING REGULATION (IEM-33)

Background Data: Review and approve proposed resolution. An original, signed copy of the resolution 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): June 21, 2017

REASON: For consideration at the IEM meeting of Monday, June 22, 2017

(Thursday)

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: <u>MJH RMT</u>	ASSIGNMENT NO. 2017-0092	BY: kku
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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 6/19/17

By EDM

(Rev. 7/03)

Iem:ltr:033acc02:grs

Attachment

Resolution

No. _____

REFERRING TO THE LANAI, MAUI, AND
MOLOKAI PLANNING COMMISSIONS A DRAFT
BILL TO AMEND THE COMPREHENSIVE
ZONING ORDINANCE RELATING TO
SAND MINING

WHEREAS, the Council is considering a proposed bill to revise the definition of resource extraction, adopt a separate definition of sand mining, and set exceptions for extraction or excavation of sand; and

WHEREAS, according to the Maui Inland Sand Resource Quantification Study 2006 (Study) the remaining inland sand inventory is limited to approximately 970,000 tons; and

WHEREAS, in an effort to preserve and protect the use of the County's finite inland sand resources; protect natural geological features; protect public health and safety; and avoid the disturbance of Hawaiian historical, cultural, or archaeological sites and unmarked human burial sites, extraction and excavation of sand must be regulated; and

WHEREAS, Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended, requires 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 draft bill, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19, MAUI COUNTY CODE, RELATING TO SAND MINING," 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

Resolution No. _____

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

A handwritten signature in black ink, appearing to read "R. O. Olemson", is written over a horizontal line.

Deputy Corporation Counsel
County of Maui

Iem:mis:033areso02:grs

ORDINANCE NO. _____

BILL NO. _____ (2017)

A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE,
RELATING TO SAND MINING

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 inland sand resources; protect natural geological features; protect public health and safety; avoid the disturbance of Hawaiian historical, cultural, or archaeological sites and unmarked human burial sites; and limit extraction and mining of sand. The Maui Inland Sand Resource Quantification Study (2006) found the remaining inland sand inventory is limited to approximately 970,000 tons, with the available resource further restricted by the physical extend of inland sand dunes, burial complexes, and existing and proposed land use.

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

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

SECTION 3. Section 19.04.040, Maui County Code, is amended by adding new definitions to be appropriately inserted and to read as follows:

"Sand," as defined in chapter 20.08.020.

“Sand mining” means activities related to the extraction or removal of sand from its original natural location and transported, processed, stored, or used for any purpose except the following:

1. Sand extracted and used for purposes of rebuilding or enhancing the protective capacity and environmental quality of coastal dunes, as defined in chapter 20.08.020.

2. Mining of sand used for activities such as emergency operations, land management for agriculture, and related uses as described in sections 20.08.030.A and 20.08.030.C.

3. Mining of sand for use in subsurface infrastructure such as bedding for water or sewer lines.

4. 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 or an adjacent tax map key parcel.

5. Exploration solely for purposes of determining the quality or potential quantity of subsurface sand, provided that during and as a result of such exploration, no materials shall be extracted and removed beyond that reasonably required for testing and analysis.

6. Mining of not more than 50 cubic yards of sand from an area of five acres or less in any 12 month period.

7. Sand extracted pursuant to a valid special or conditional use permit issued prior to the effective date of this ordinance.

8. Sand extracted from the shoreline area pursuant to the exceptions in section 205A-44.a.1, Hawaii Revised Statutes.”

SECTION 4. 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: “√” 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		√	No processing of products on premises.
2. Native Hawaiian	√	√	Customary and traditionally exercised

Uses	OS-1	OS-2	Special conditions
traditional and customary uses			subsistence, cultural and religious uses in accordance with article XII, section 7, of the Hawaii State Constitution, and Hawaii case law.
3. Outdoor recreation		√	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	√	√	OS-1 category: Limited to recreation, passive. OS-2 category: Not including golf courses. Not including commercial uses except when under the supervision of government agency in charge of parks and playgrounds.
5. Passive land use	√	√	
6. Recreation, passive	√	√	
7. Restoration of cultural sites	√	√	Includes retention, restoration, or rehabilitation of buildings, sites or cultural landscapes of historical or

Uses	OS-1	OS-2	Special conditions
			archeological significance.
B. Accessory uses.			
1. Assembly area		√	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.			
1. Agriculture	√	√	Agriculture within the OS-1 district and processing of agricultural products in the OS-2 district.
2. Cemetery		√	
3. Outdoor recreation	√	√	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	√		Uses not permitted as a principal use; but not including golf courses, and not including commercial uses except when under the supervision of a government agency

Uses	OS-1	OS-2	Special conditions
			in charge of parks and playgrounds.
5. Resource extraction____ and <u>sand mining</u>		√	Limited to the Island of Lanai only; and limited to the extraction of natural material only; no processing permitted on site.
6. Structure	√	√	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 5. 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	
Asphalt manufacture of refueling and asphaltic concrete plant	
Automobile wrecking	
Blast furnace or coke oven	
Boiler and steel works	

Uses	Notes and exceptions
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	
Paint, oil (including linseed), shellac, turpentine, lacquer, or varnish manufacture	

Uses	Notes and exceptions
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</u>	
Rolling mills	
Sand mining	
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 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

SECTION 6. 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, has first been obtained.

<u>Special uses</u>

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</u>
<u>Sand mining</u>
Saw mill
Slaughter of animals
Stock yard or deeding pens
Tannery or the curing or storage of raw hides

”

SECTION 7. 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 extraction.] Resource extraction and sand mining.

11. Landfills.

12. Solar energy facilities that are greater than fifteen acres.”

SECTION 8. 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 9. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

Iem:misc:033abill02:grs