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TESTIMONY FOR IEM-33 CC 17-214 6/22/17

THE SAND IN THE DUNES IS A CULTURAL RESOURCE---THIS IS WHERE THE IWI (HUMAN SKELETAL REMAINS) OF KANAKA MAOLI WERE INTERRED FOR CENTURIES. UNFORTUNATELY, SAND IS REGARDED AS A COMMODITY AND REVENUE RESOURCE BY DEVELOPERS.

According to the April 27, 2017, KHON2 Investigative Report:

- Maui Lani has a permit to excavate several hundred thousand cubic yards at its Phase 9 site.
- It received the green light for a temporary trucking path through a nearby parcel.
- That road connects to a stockpile site on a parcel leased from A&B (Alexander & Baldwin) by HC&D, formerly known as Ameron, where another grading permit lets HC&D take in even more volume of sand and other earthen fill, and divvy it up from there.
- Some of the sand gets taken to the harbor every few weeks or so, put on the Quinault, a barge owned by HC&D, and shipped to its own cement plant on Oahu.
- From there, it's mixed in to make cement and is disbursed across the island, including for projects like rail.
- HC&D — paid as ownership entity Pohaku Paa and Ameron — **made \$30 million from rail last fiscal year alone**

**All these entities — Maui Lani Partners, the excavation company, the Quinault barge, the rail subcontractor — share a common owner in Bill Mills, a main partner in all of it.**

Source: <http://khon2.com/2017/04/27/sustainability-cultural-issues-raised-as-sand-disappears-from-central-maui-dunes/>

This proposed bill does nothing to address excessive sand mining or to restrict the exporting of Maui sand. It proposes amendments to definitions in Title 19 Zoning; taking the word *sand* out of the existing definition of "Resource extraction" and adding a new definition of "Sand mining" which pertains to 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**:

It then lists uses that are **excluded** from the "Sand mining" definition such as "mining of sand for use in subsurface infrastructure", and "mining of not more than 50 cubic yards of sand from an area of five acres or less in any 12 month period."

Therefore, according to this new definition, if you sand mine 50 cubic yards or less, you aren't sand mining.

The 50 cubic yards per 5 acres provision, is not a limit on sand mining. It is only **excluded** from the definition of sand mining. There are no limits on sand mining in this bill.

The proposed bill goes on to insert "Sand mining" as a special use permitted with an approved Special Use Permit in Open Space District 2, M-2 heavy industrial district, and the Agricultural District. Already a permitted special use in the Ag District, the bill deletes "Mining and resource extraction" and replaces it with "Resource extraction and sand mining."

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Regardless nothing in this bill will restrict the amount of sand mining done with a special use permit, or restrict its export. Where does it restrict sand mining? What is the point of creating a new, separate definition of sand mining if you aren't going to use it to specifically restrict its use?

The mayor and the community asked for a moratorium. For over ten years, we have been led to believe that it is illegal to ban the shipping of sand from Maui to other islands due to commerce laws; however, no one has yet to disclose exactly which specific commerce laws make it illegal. Please provide legal citations that show that commerce laws prohibit the ability to enact a moratorium on off island sand exports.

The problem does not lie with the Chapter 19 Zoning definition of "*Resource extraction*" which is the focus of this bill. The problem is in the Grading ordinance, Chapter 20.08, which was used to illegally **extract** hundreds of thousands of cubic yards of sand from the dunes in Maui Lani:

#### 20.08.010 Definitions

"Excavation, cut or borrow" means any act by which soil, **sand**, gravel, rock or any similar material is cut into, dug, uncovered, removed, displayed, **relocated**, or bulldozed

#### 20.08.030 - Exclusions.

This chapter **shall not apply to the following**:

A. Emergency operations for the protection of the general public and community;

B. **Mining or quarrying operations** which are regulated by the department of labor, mine safety and health administration.

The definition of Excavation seems clear and includes sand. Uses **excluded** from the Grading Ordinance include **Mining or quarrying**.

The Grading Permit application indicates the applicant was going to Excavate 213,920 cubic yards of sand. This is an excessive amount of excavating. Why didn't the Public Works Director investigate the purpose of this much excavating and deny the application as **mining or quarrying operations excluded from the Grading permit provisions?**

The permit has been renewed twice, allowing for two+ years of excavating over 500,000 cy of sand. Why did Public Works allow this to continue when it was obvious to everyone that they were sand mining with a grading permit?

Why didn't Public Works check to see if sand mining was a permitted use in the Maui Lani Project District? It isn't, and the Maui Lani representative who applied for the grading permit knew this, as he is a former Senior Planner of the county planning department.

You can't get a special use permit for a use that isn't compatible with existing uses in a project district. So the use is illegal and cannot be made legal with a special use permit.

There is no notation on the permit regarding a full time, on-site archeologist, as required by the State Historic Preservation Division? Who monitors the county permit for compliance with this condition? Did Public Works even know that the parcel was a known burial ground?

The application requirements and issuance of a grading permit need to be improved with checks and balances. At the very least, the zoning of the parcel should be included in the application and a limit

should be set on what constitutes normal excavation for building purposes and how much excavation constitutes a mining or quarry operation.

**There needs to be an IMMEDIATE MORATORIUM ON ALL UNDEVELOPED SAND DUNES.**

**THE PUBLIC WORKS INSPECTOR MUST TAKE NOTE OF ALL CRITICAL AREA CONDITIONS OF THE PERMIT. MAUI LANI SITS ON A KNOWN BURIAL GROUND, THEREFORE CHECKING OFF "NO" TO KNOWN BURIALS SHOULD HAVE SET OFF A RED FLAG FOR THE PUBLIC WORKS DEPARTMENT**

**THESE AMENDMENTS BELONG IN TITLE 20 - ENVIRONMENTAL PROTECTION. THEY HAVE LITTLE RELEVANCE IN TITLE 19- ZONING.**

**SAND IS A CULTURAL RESOURCE. IT IS NOT A COMMODITY.**

Mahalo,

Amy Halas