

# REQUEST FOR LEGAL SERVICES

**Date:** September 5, 2017  
**From:** Elle Cochran, Chair  
Infrastructure and Environmental Management Committee

**TRANSMITTAL**

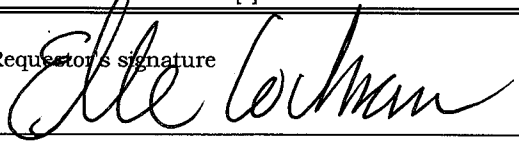
**Memo to:** DEPARTMENT OF THE CORPORATION COUNSEL  
Attention: Richelle Thomson, Esq.

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

**Background Data:** Please replace the attached version of the proposed ordinance with the version submitted to you on August 31, 2017 and earlier today. A copy of the bill comparing your suggested revisions of August 7, 2017, against the most recent version, is submitted electronically with this request. Please review and approve proposed ordinance. An original, signed copy of the ordinance is required.

**Work Requested:** ☒ FOR APPROVAL AS TO FORM AND LEGALITY

☐ OTHER:

Requestor's signature  Elle Cochran, Councilmember	Contact Person <u>Mimi DesJardins</u> (Telephone Extension: <u>7886</u> )
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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): September 8, 2017  
REASON: For posting on the IEM meeting of September 12, 2017.

**FOR CORPORATION COUNSEL'S RESPONSE**

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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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 \_\_\_\_\_

By \_\_\_\_\_ (Rev. 7/03)

Iem:ltr:033acc07:mzd

Attachment

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2017)

A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20.40, MAUI  
COUNTY CODE, DECLARING A MORATORIUM ON SAND MINING

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

SECTION 1. Title 20, Maui County Code, is amended by adding a new  
chapter to be appropriately designated and to read as follows:

**“Chapter 20.40**

**MORATORIUM ON SAND MINING OF  
CENTRAL MAUI INLAND SAND**

Sections:

- 20.40.010 Purpose.
- 20.40.020 Definitions.
- 20.40.030 Moratorium on sand mining of Central Maui inland  
sand.
- 20.40.040 Exceptions.
- 20.40.050 Penalty.
- 20.40.060 Administrative rules.
- 20.40.070 Administrative enforcement.
- 20.40.080 Adjustment by director.
- 20.40.090 Term.

**20.40.010 Purpose.** The purpose of this chapter is to declare a moratorium on mining of Central Maui inland sand to conduct further analysis required to establish regulations for mining inland sand to protect Maui’s environment and limited natural resources and prevent the disturbance of Hawaiian historical, cultural, or archaeological sites, and unmarked human burial sites. The Maui Inland Sand Resource Quantification Study (2006) found the remaining inland sand inventory is limited to approximately 970,000 tons. Given the finite nature of this important natural resource, it is necessary to limit and regulate the mining of inland

sand until such time as an ordinance regulating the mining, extracting, excavating, or stockpiling of inland sand is adopted.

**20.40.020 Definitions.** Whenever used in this chapter, the following words shall have the meaning indicated:

“Central Maui inland sand” means inland sand deposits on vacant land, sand dunes, historical, cultural and environmentally sensitive areas that lie within the following area:

Beginning at the mouth of Waihee River and follow downwind in a southerly direction generally parallel to the Waiehu coastline to the West Breakwater (Coral Stockpile) of the Kahului Harbor;

Continue across the breakwater and along the south coastline of the harbor to the extension of Pu’unene Avenue at the coastline near Pier 2;

Travel south on Pu’unene Avenue to its intersection with Mokulele Highway (SR311);

Follow Mokulele Highway (SR311) to North Kihei Road (SR 310). Turn westerly following North Kihei Road (SR 310) to its intersection with Honoapi’ilani Highway (SR 30);

Follow northerly along Honoapi’ilani Highway (SR 30) to its intersection with Main Street (SR 32) where you turn easterly along Main Street to Market Street (CR 330) at which you turn northerly;

Follow Market Street through Happy Valley where it becomes Kahikili Highway (CR330);

Continue northerly as Kahikili Highway becomes SR 340 and turns north-westerly and follow it back to the Waihee River; and

At the Waihee River follow the river downstream to the point of beginning; the same area as shown on the map entitled “Moratorium on Sand Mining” dated \_\_\_\_\_ delineates the affected areas of the moratorium and shall be on file in the office of the County clerk with certified copies being placed on file in the Departments of Planning and Public Works and shall be deemed to be incorporated herein by reference.

“Inland sand” means “sand”, as defined in Section 20.08.020 of this code, located inland (mauka) from the “shoreline area”, as defined in Section 205A-41, Hawaii Revised Statutes.

“Lot” shall have the same meaning as set forth in section 19.04.040 of this code.

“Sand mining” means activities related to the extraction or removal of sand from its original, natural location.

**20.40.030 Moratorium on sand mining of Central Maui inland sand.** No person shall conduct sand mining of Central Maui inland sand notwithstanding the provisions in title 19 and chapter 20.08 of this code.

**20.40.040 Exceptions.** Sand mining of Central Maui inland sand shall be permitted during the term of the moratorium as follows, provided that an exception pursuant to this section does not obviate the need to obtain other permits or approvals:

A. Mining of Central Maui inland sand for purposes of rebuilding or enhancing the protective capacity and environmental quality of coastal dunes, as defined in section 20.08.020 of this title.

B. Mining of Central Maui inland sand used for activities such as land management for agriculture, landscaping, and related uses as described in subsection 20.08.030(C) of this title within the same lot.

C. Excavation or grading of Central Maui inland sand directly related to on-site construction for purposes other than mining or quarrying, where no such sand is transported outside the same lot.

D. Activities required to comply with County, State, or Federal regulations.

E. The limited exclusions described in section 20.08.031 of this title.

**20.40.050 Penalty.** Any person who violates any provision of this chapter shall upon conviction, be guilty of a petty misdemeanor subject to fine up to \$1,000 or imprisonment for not more than one-year, or both. Each day of each violation shall constitute a separate offense.

**20.40.060 Administrative rules.** The director of public works may adopt administrative rules to implement this chapter, pursuant to chapter 91, Hawaii Revised Statutes.

**20.40.070 Administrative enforcement.** The director of public works shall enforce this chapter pursuant to section 19.530.030 of this code, relating to administrative enforcement.

**20.40.080 Adjustment by director.** The director may, subject to council approval by resolution, authorize a reduction, adjustment, or waiver of any provision of this chapter

**20.40.090 Term.** The ordinance codified in this chapter shall automatically expire \_\_\_\_\_, unless reenacted by the council as provided by law."

SECTION 2. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

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Department of the Corporation Counsel  
County of Maui

iem:misc:033abill07:mzd