

COUNCIL OF THE COUNTY OF MAUI
INFRASTRUCTURE AND
ENVIRONMENTAL MANAGEMENT
COMMITTEE

November 17, 2017

Committee
Report No. _____

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

Chair and Members:

Your Infrastructure and Environmental Management Committee, having met on June 5, 2017, June 22, 2017, July 3, 2017, July 17, 2017 August 14, 2017, September 12, 2017 (no quorum, testimony and presentation only), October 2, 2017, and October 30, 2017, makes reference to the following:

1. County Communication 17-214, from the Mayor, relating to a possible moratorium on exporting sand and referencing the Maui Inland Resource Quantification Study originally transmitted in February 2006; and
2. County Communication 17-215, from Councilmember Alika Atay, relating to sand and aggregate mining and export in Maui County.

At the request of the Chair of your Committee, on June 2, 2017, the Department of the Corporation Counsel transmitted a proposed resolution, approved as to form and legality, entitled "REFERRING TO THE LANAI, MAUI AND MOLOKAI PLANNING COMMISSIONS A DRAFT BILL TO AMEND THE COMPREHENSIVE ZONING ORDINANCE ESTABLISHING A MORATORIUM ON MINING, EXTRACTION, STOCKPILING, OR EXCAVATION OF INLAND SAND." The purpose of the proposed resolution is to refer to the planning commissions a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, ESTABLISHING A MORATORIUM ON MINING, EXTRACTION, STOCKPILING, OR EXCAVATION OF INLAND SAND." The purpose of the proposed bill is to amend Chapter 19.04, Maui County Code ("MCC"), by deleting the term "sand" from the definition of "Resource

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extraction”; by amending the definition of “sand mining” to include “drilling, extracting, tunneling, dredging, or stockpiling of sand from the land surface or underground”; by imposing a two-year moratorium on sand mining, in order to obtain an update of the Maui Inland Sand Quantification Study (2006) (“Sand Study”); and to allow Council time to pass an ordinance regulating the mining, extracting, excavating, or stockpiling of inland sand.

At your Committee’s meeting on June 5, 2017, the Deputy Planning Director stated the proposed bill could be codified in Title 20, MCC, Environmental Protection, rather than Title 19, MCC, Zoning, since its purpose is more to protect a natural and cultural resource than to set zoning standards. She further stated amending Title 20, MCC, would expedite the legislative process since the proposed bill would not be referred to the planning commissions for review and recommendations to Council.

The Director of Public Works concurred with the Deputy Planning Director’s assessment, and also noted that definitions of both “sand” and “sand mining” should be included in the proposed bill.

The Deputy Corporation Counsel agreed the proposed bill could be codified in either Title 19 or Title 20, MCC.

Your Committee further discussed the need to develop a map showing the areas affected by the proposed bill.

At the request of the Chair of your Committee, on June 19, 2017, the Department of the Corporation Counsel transmitted a revised proposed resolution, approved as to form and legality, entitled “REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A DRAFT BILL TO AMEND THE COMPREHENSIVE ZONING ORDINANCE RELATING TO SAND MINING.” The purpose of the revised proposed resolution is to refer to the planning commissions a revised proposed bill entitled “A BILL FOR AN ORDINANCE AMENDING

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TITLE 19, MAUI COUNTY CODE, RELATING TO SAND MINING.” The revised proposed bill differed from the previous version by amending Chapter 19.04, MCC, to include a definition of “sand”; expanding the definition of “sand mining”; amending Sections 19.07.030 and 19.25.020, MCC, related to “Permitted uses” to be consistent with the new definition of “sand mining”; and removing the moratorium language.

At your Committee’s meeting on June 22, 2017, the Chair of your Committee introduced language to amend the proposed bill, by replacing the term “Moratorium” with “Prohibition”; removing the two-year period of the moratorium, limiting the prohibition to “undeveloped” areas of inland sand; and defining the prohibited area to be “in the central Maui sand dunes from Kapuna to Ma’alaea.” Your Committee further discussed the need to develop a map showing the moratorium area in order to provide notice of those parcels that will be affected.

At your Committee’s meeting on July 3, 2017, the Administrator of the State Historic Preservation Division (“SHPD”) said that Section 6E, Hawaii Revised Statutes (“HRS”), provides SHPD its authority to review projects that might affect historic property. However, SHPD does not have the authority to enter upon private property to monitor ongoing work if non-compliance is reported, unless the SHPD representative is accompanied by a Maui County inspector, or the landowner invites SHPD onto the property. The Administrator also stated SHPD does not have the resources to conduct enforcement actions.

The Director of Public Works stated it would cost approximately \$25,000, and would take approximately three months, to update the Sand Study.

The Deputy Corporation Counsel stated if the Committee wished to expedite the moratorium process by considering an amendment to Title 20, MCC, there needed to be clarity as to what activities would be permitted and not permitted, and whether the moratorium would be

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defined by the quantity of sand being removed or by location of lots affected, regardless of quantity.

At your Committee's meeting on July 17, 2017, the Chair of your Committee transmitted a further revised proposed bill, entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 20, MAUI COUNTY CODE, ESTABLISHING A MORATORIUM ON MINING, EXTRACTION, STOCKPILING, OR EXCAVATION OF INLAND SAND." The purpose of the further revised proposed bill is to amend Title 20, MCC, rather than Title 19, MCC, to authorize a two-year moratorium on the mining of inland sand in order to conduct further analysis and proper regulation of inland sand; to protect public health, safety, and the general welfare of Maui's environment; and to preserve, enhance and avoid the disturbance of Hawaiian historical, cultural or archaeological sites and unmarked human burial sites.

Your Committee discussed the differences between amending Title 19 and Title 20, MCC. Your Committee noted the decision to amend Title 20, MCC, would allow for an expedited legislative review process, and would more appropriately address the environmental protections necessary to preserve the inland sand, as set forth in the further revised proposed bill.

The Deputy Corporation Counsel stated, although the new bill proposed a new Chapter 20.39, MCC, amendments to Title 19, MCC, to address the regulation of resource extraction, were still needed.

The Planning Director concurred the proposed moratorium was better placed in Title 20, MCC, and not Title 19, MCC.

On July 25, 2017, the Chair of your Committee transmitted a fourth revised proposed bill, entitled "A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20.40, MAUI COUNTY CODE, DECLARING A MORATORIUM ON SAND MINING." The purpose of the fourth revised proposed bill is to authorize a two-year moratorium on the

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mining of inland sand in order to conduct further analysis; establish proper regulations of inland sand; to update the Sand Study; define “inland sand” and “sand mining”; establish penalties for violations; allow for the establishment of administrative rules; and designate the Director of Public Works to enforce the terms of the ordinance.

Your Committee notes at the request of the Chair of your Committee, on August 7, 2017, the Department of the Corporation Counsel transmitted a memorandum commenting on concerns regarding a fifth revised proposed bill, transmitted to Corporation Counsel on August 2, 2017 which recommended: including a map to clearly show the area affected by the moratorium; amending the definition of “resource extraction” under Chapter 19.04, MCC; creating an exception to the terms of the moratorium that would allow some grading, where a valid permit was obtained, so long as the sand was not removed from the lot; and expressing concern about the duration of the moratorium.

At your Committee’s meeting on August 14, 2017, your Committee received a presentation from the County’s Geographic Information Systems Analyst (“GIS Analyst”), who produced a map showing the proposed moratorium area. Your Committee discussed that a more refined map, showing specifically which lots in the designated area would be affected by the moratorium, was required.

On September 5, 2017, the Chair of your Committee transmitted a sixth revised proposed bill. The revised proposed bill amended the title of the bill; amended the exceptions set forth in Section 20.40.040, MCC; included a section entitled “adjustment by director”; redefined “central Maui inland sand” by detailing the affected area; included a map to be attached to the ordinance; and left blank the term of the moratorium for further discussion.

At your Committee’s meeting on September 12, 2017, a quorum of the members was not present. Pursuant to Rule 5(D), Rules of the Council, and Section 92-2.5, HRS, the members present took public testimony and

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received a further presentation from the GIS Analyst, regarding the changes to the map that were discussed at your Committee's meeting on August 14, 2017. No discussion or deliberation took place.

Your Committee notes at the request of the Chair of your Committee, on September 14, 2017, the Department of the Corporation Counsel transmitted a memorandum commenting on the sixth revised proposed bill. These comments included: the need to still better define the map; adding the term "grading" to the proposed bill and not just "mining"; a need to clarify the definition of "resource extraction" in Chapter 19.04, MCC; and the need to better define "central Maui sand."

On September 26, 2017, the Chair of your Committee transmitted a seventh revised proposed bill. The purpose of the revised proposed bill is to amend the Exceptions, Penalty, and Term Sections of the bill.

At your Committee's meeting on October 2, 2017, the Chair of your Committee sought additional amendments to the revised proposed bill. The GIS Analyst gave a presentation, which included an amended map, with specific references to the lots affected by the proposed moratorium. Your Committee discussed the map needed further refining, as did the role of the Director of Public Works in the waiver process, as well as the conditions upon which a possible waiver from the terms of the moratorium could be provided. Your Committee noted the Director of Public Works had previously commented that inclusion of the specific tax map key parcel numbers on the moratorium map would be helpful in enforcing the moratorium. The Director of Public Works raised concerns about the waiver process, which were noted by your Committee. Your Committee discussed the two-year length of the proposed moratorium, whether that period of time was necessary, and whether six months would be a more appropriate term.

Your Committee further noted at the October 6, 2017 Council meeting, Vice-Chair Guzman proposed a bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 20.08, MAUI COUNTY CODE,

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RELATING TO SOIL EROSION AND SEDIMENT CONTROL” (County Communication 17-394), which would allow SHPD onto private property as a condition of receiving a grading permit from the County, and a resolution entitled “REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL TO AMEND THE COMPREHENSIVE ZONING ORDINANCE RELATING TO RESOURCE EXTRACTION OR PROCESSING” (County Communication 17-396), which would clarify the definition of resource extraction under Title 19, MCC. Your Committee notes that at its meeting, the Council referred County Communication 17-394 to your Land Use Committee; and adopted the proposed resolution (Resolution 17-140), filed County Communication 17-396, and referred the matter relating to resource extraction or processing to your Land Use Committee.

At your Committee’s meeting on October 30, 2017, your Committee discussed an eighth revised proposed bill, entitled “A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20.40, MAUI COUNTY CODE, DECLARING A MORATORIUM ON SAND MINING OF CENTRAL MAUI INLAND SAND.” The purpose of the revised proposed bill is to address certain concerns of your Committee. Specifically, the revised proposed bill shortened the moratorium time from two years to six months; attached a well-defined map of the affected moratorium area, including tax map key parcel numbers of the lots affected by the moratorium; provided specific criteria for a possible waiver from the moratorium conditions; redefined the term “central Maui inland sand” to refer to the attached map; amended the penalty provision to provide more enforcement detail, thereby removing the enforcement provision from the proposed bill; defined the term “director”; and further amended the definition of “sand mining.”

Your Committee notes at the October 20, 2017 Council meeting, the Council adopted a proposed resolution entitled “URGING THE MAYOR AND THE DEPARTMENT OF PUBLIC WORKS TO UPDATE THE 2006 MAUI INLAND SAND RESOURCE QUANTIFICATION STUDY” (Resolution 17-148). Your Committee notes an amended Sand Study would help to expedite the period of the moratorium.

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Your Committee removed the reference to Section 20.40.060(B) in the revised proposed bill.

Your Committee voted 6-0 to recommend passage of the revised proposed bill on first reading. Committee Chair Cochran, Vice-Chair Guzman, and members Atay, Carroll, Hokama, and Sugimura voted "aye." Committee member White was excused.

Your Committee is in receipt of a further revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions and non-substantive revisions.

Your Infrastructure and Environmental Management Committee **RECOMMENDS** the following:

1. That Bill _____(2017), attached hereto, entitled "A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20.40, MAUI COUNTY CODE, DECLARING A MORATORIUM ON SAND MINING OF CENTRAL MAUI INLAND SAND," be PASSED ON FIRST READING and be ORDERED TO PRINT;
2. That County Communication 17-214 be FILED; and
3. That County Communication 17-215 be FILED.

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



ELLE COCHRAN, Chair

iem:cr:17033aa:mzd

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 OF CENTRAL MAUI INLAND SAND

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 Penalty.**
- 20.40.050 Administrative rules.**
- 20.40.060 Adjustment by council.**
- 20.40.070 Term.**
- 20.40.080 Moratorium area map.**

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: 1) an ordinance regulating the mining, extracting, or removing of inland sand is adopted, and 2) the Maui Inland Sand Resource Quantification Study (2006) is updated.

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

“Central Maui inland sand” means inland sand located within the area shown on the map set forth in section 20.40.080.

“Director” means the director of public works.

“Inland sand” means “sand”, as defined in section 20.08.020 of this title, 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 extraction and removal of sand from a lot, except for the following:

1. Activities required to comply with county, state, or federal regulations.
2. Activities related to land management for agriculture, landscaping, and related uses as described in subsection 20.08.030(C) of this title where no inland sand is transported outside the same lot.
3. Activities conducted pursuant to a valid permit issued prior to the effective date of this ordinance.

20.40.030 Moratorium on sand mining of central Maui inland sand. Notwithstanding provisions in title 19 and chapter 20.08 of this code, no person shall conduct sand mining of central Maui inland sand.

20.40.040 Penalty. A. Any person who violates any provision of this chapter or rules relating thereto shall, for each day of violation, or portion thereof, be subject to a fine not exceeding \$1,000. In addition, that person shall be liable for any costs incurred by the County to correct the violation. In lieu of, or in addition to, enforcement by criminal prosecution, the director may prosecute violations administratively pursuant to section 19.530.030 of this code or any other provision or rule adopted hereafter.

B. The remedies provided for in this chapter shall be cumulative and not exclusive. Nothing in this chapter shall impair the right of the county to seek enforcement by criminal prosecution, administrative proceeding, if any, or civil action, including filing suit for damages or injunction as provided by law.

20.40.050 Administrative rules. The director may adopt administrative rules to implement this chapter.

20.40.060 Adjustment by council. The council may, by resolution approved by two-thirds of its members, authorize a waiver

of any provision of this chapter. To qualify for a waiver, the council must find:

A. The proposed activity would not affect a “burial site”, as defined in section 6E-2, Hawaii Revised Statutes.

B. The proposed activity does not conflict with the purposes of this chapter.

20.40.070 Term. The ordinance codified in this chapter shall be repealed upon council’s determination that the purposes established in section 20.40.010 have been satisfied, or six months after the effective date of this ordinance, whichever is sooner, unless reenacted by the council as provided by law.

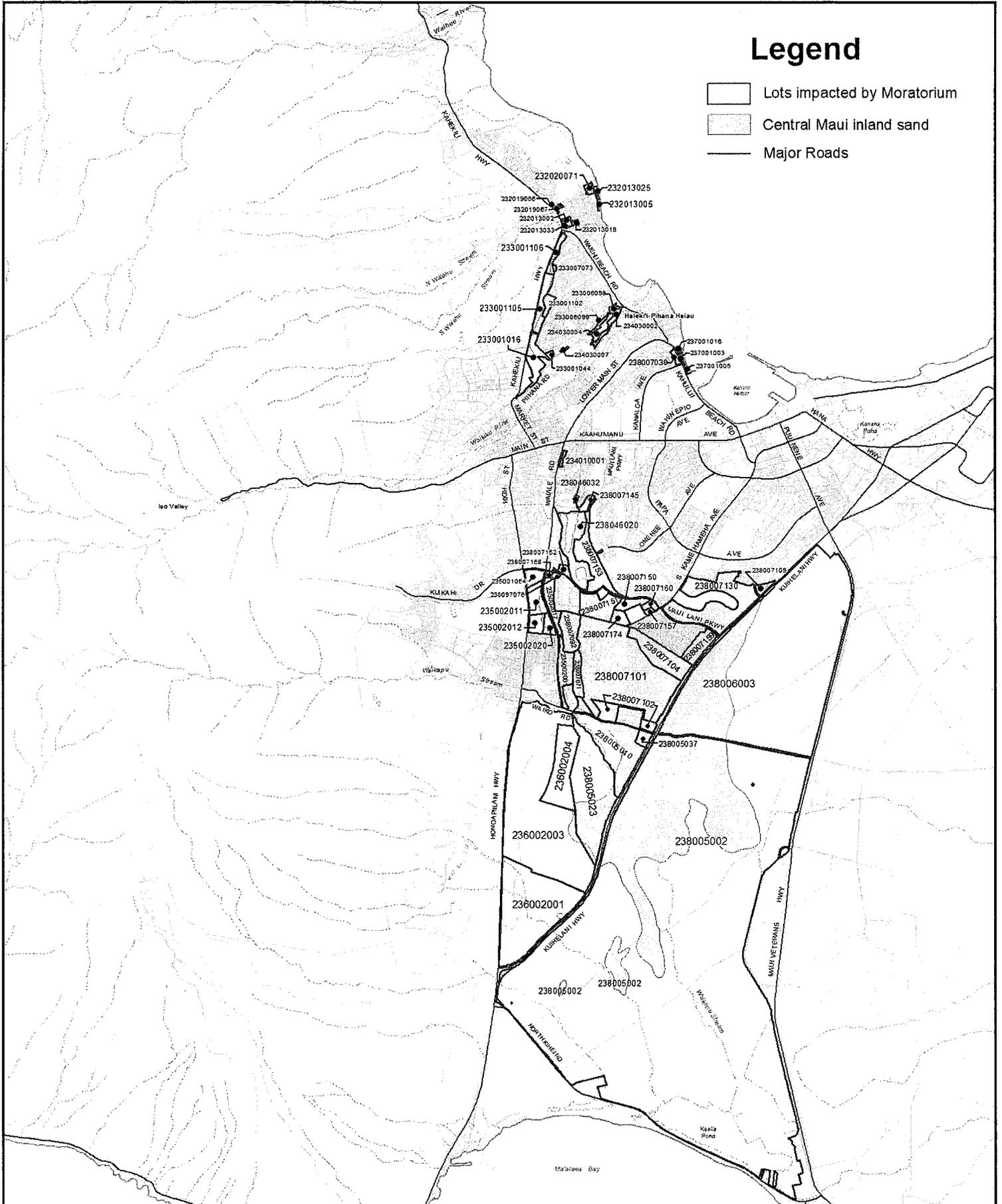
20.40.080 Moratorium area map. The lots subject to the requirements and restrictions of this chapter are identified by tax map key number and shown on the following map. The area identified as “central Maui inland sand,” as shown on the map, controls; all or part of a lot may be affected by the moratorium.

TMK	OWNER	Lot Area (Acres)
232013002	KA HOME MAHA MAU CEMETERY	3.47
232013005	COUNTY OF MAUI	2.081
232013018	KOREAN BENEVOLENT SOC	1.63
232013025	COUNTY OF MAUI	1.65
232013033	MAUI ELECTRIC CO	0.743
232019066	LEISURE LAND CORP	0.9578
232019067	LEISURE LAND CORP	0.5147
232020071	COUNTY OF MAUI	4.02325
233001016	RCFC PIIHANA LLC/DOWLING CO LLC	28.1
233001044	MAHALANI CEMETERY ASSN	2.62
233001102	GOODFELLOW BROS INC/et al	8.51
233001105	RCFC PIIHANA LLC/DOWLING CO LLC	25.056
233001106	MAUI ECONOMIC OPPORTUNITY, INC.	11.476
233006098	STATE DEPT OF HAWAIIAN HOME LANDS	3.27979
233006099	STATE DEPT OF HAWAIIAN HOME LANDS	3.579683
233007073	CJ PARK ENTERPRISES LLC	1.1475436
234010001	A&B HAWAII INC.	2.6405188
234030002	HALLER, MICHELE LEE/et al	6.358
234030004	STATE DEPT. OF LAND & NATURAL RESOURCES	10.228
234030007	COUNTY OF MAUI	0.82
235001064	KEHALANI AG INVESTORS LLC/DOWLING CO	14.416

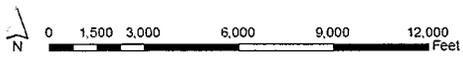
TMK	OWNER	Lot Area (Acres)
235002011	EMMANUEL LUTHERAN CHURCH OF MAUI	25.263
235002012	VALLEY ISLE FELLOWSHIP, INC.	14.99
235002020	WAIALE ROAD 201 LLC	10.365
236002001	WAIALE 905 PARTNERS LLC	284.826
236002003	WAIALE 905 PARTNERS LLC	521.4
236002004	COUNTY OF MAUI	100
237001003	STATE OF HAWAII	0.116
237001005	A&B HAWAII INC.	1.98
237001016	A&B HAWAII INC.	1.283
238005023	COUNTY OF MAUI	209.043
238005037	ALEXANDER & BALDWIN	10
238005040	ALEXANDER & BALDWIN	131.496
238006003	ALEXANDER & BALDWIN	1199.058
238007038	HAWAIIAN ISLANDS LAND TRUST	4.043
238007062	STATE OF HAWAII	0.002
238007071	KULAKANE LLC	20.921
238007092	COUNTY OF MAUI/WAILUKU AGRIBUSINESS	37.45
238007104	STATE OF HAWAII	65.378
238007105	ABC DEVELOPMENT COMPANY, LLC	8.552
238007109	HRT REALTY LLC	6.731
238007145	MAUI LANI PARTNERS	6.839
238007150	COUNTY OF MAUI	14.44
238007151	GENTRY MAUI DEVELOPMENT LLC	46.698
238007152	MAUI LANI 100, LLC	7.537
238007157	MAUI LANI PARTNERS	2.568
238007159	HRT REALTY LLC	30.89
238007160	HRT REALTY LLC	5.749
238007168	MAUI LANI VILLAGE CENTER INC	2.07
238007174	MAUI LANI 100 LLC	12.11
238046020	ALEXANDER & BALDWIN	76.932
238046032	COUNTY OF MAUI	1.578
238097076	MAUI LANI VILLAGE CENTER INC	2.208
235002001	HEONA INVESTMENTS LLC	34.357
235002017	KIHEI GARDENS LANDSCAPING COMPANY, LLP	24.982
238005002	ALEXANDER & BALDWIN	4388.77
238007101	ALEXANDER & BALDWIN	353.301
238007102	WAIKO INDUSTRIAL INVESTMENT, LLC	31.222
238007130	HRT REALTY LLC	148.634
238007153	MAUI LANI PARTNERS	62.581

Legend

-  Lots impacted by Moratorium
-  Central Maui inland sand
-  Major Roads



Sand Mining, OCT 08/17 to 2017.mxd, IBA, 3/1/2008, 1/17/22, walt.landenberger@maui.gov, maui, hawaii, 2/10/15, October 30, 2017



Moratorium Area Map

”

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

APPROVED AS TO FORM AND LEGALITY:



RICHELLE M. THOMSON
Department of the Corporation Counsel
County of Maui
2017-0092
IEM-33 2017-11-1
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