

LU Committee

From: Ryan Churchill <ryanc@pacificrimland.com>
Sent: Wednesday, November 07, 2018 2:55 PM
To: LU Committee
Cc: Donald S. Guzman; Leilani Pulmano
Subject: LU 47 and LU48
Attachments: Testimony on LU28 181107.pdf; Testimony on LU47 181107.pdf

Please see attached testimony on LU 47 and LU48 for Thursday's committee meeting.

Thanks,
Ryan Churchill

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November 7, 2018



Councilmember Robert Carroll, Committee Chair
Council Land Use Committee
200 South High Street
Wailuku, Hawaii 96793

SUBJECT: Chapter 20.08, Maui County Code, Relating to Soil Erosion and Sediment Control (LU-47)

Dear Chair Carroll:

The subject ordinance proposes making changes to Chapter 20.08 of Maui County Code, to ensure compliance HRS 6E, and provide enforcement provisions. We offer the following revisions for your consideration, which are highlighted on the attached Exhibit A.

In 20.08.120 B, the word "shall" should be replaced with "may", see Exhibit A. This will allow for the Director to make reasonable and logical decisions based on the information at hand. The word "shall" doesn't provide for any rationale discretion by the Director to make a decision on the severity of the warning or violation from any federal, state, or county agency. It is not practical to automatically suspend or revoke a permit for any warning or violation from any government agency no matter how small.

There is no "cure" period for a person to correct the warning or violation. Changing the word to "may" would allow the Director to provide a reasonable period to correct the issue or allow other areas of permit to continue to be graded or grubbed.

Additionally, the Director should suspend or revoke a permit only when this action has been requested from a federal, state or county agency. A suspension or revocation of a permit is an extreme measure and should be taken when it is warranted. A method to determine if a measure this extreme is warranted, would be if the agency requested for it. There are times when an agency has provided a warning or violation but has not risen to the level of a permit being suspended or revoked. Revised language to reflect this has been included in Exhibit A.

Please contact me at 874-5263 if you have any questions or need any further clarifications.

Sincerely,



Ryan Churchill

Exhibit A

November 1, 2018

RECEIVED

2018 NOV -1 AM 9:46

OFFICE OF THE
COUNTY COUNCIL

MEMO TO: LU-47 File

F R O M: Don S. Guzman, Councilmember



**SUBJECT: TRANSMITTAL OF LEGISLATIVE PROPOSAL RELATING TO
CHAPTER 20.08, MAUI COUNTY CODE, RELATING TO SOIL
EROSION AND SEDIMENT CONTROL (PAF 18-002)**

The attached legislative proposal pertains to Item 47 on the Committee's agenda.

paf:jgk:18-002j

Attachment

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 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 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); 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, may enter onto the property 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:



RICHELLE M. THOMSON
Department of the Corporation Counsel
County of Maui
2018-0070
PAF 18-002 2018-10-30 Ordinance Soil Erosion