

COUNCIL OF THE COUNTY OF MAUI
AGRICULTURE AND PUBLIC TRUST
COMMITTEE

June 4, 2021

Committee
Report No. _____

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

Chair and Members:

Your Agriculture and Public Trust Committee, having met on May 18, 2021, makes reference to County Communication 21-137, from Councilmember Shane M. Sinenci, transmitting a proposed bill entitled “A BILL FOR AN ORDINANCE TO REPEAL THE EXCLUSION FOR GRADING AND GRUBBING PERMITS FOR TRENCHING FOR UNDERGROUND UTILITIES.”

The purpose of the proposed bill is to amend Section 20.08.031, Maui County Code, to repeal the exclusion for grading permits when there is trenching for underground utilities.

The Director of Public Works and the Principal Archaeologist, Department of Management, advised your Committee of the activities that require a grading permit and discussed related issues with your Committee.

Representatives of Hawaiian Electric Company spoke to the importance of expedited processes for emergency repairs and other critical infrastructure work that involves underground trenching.

Your Committee noted the bill’s intent is to protect ancestral remains—not to inhibit operations by County agencies or utility companies.

Your Committee further noted the exclusion should only apply in areas not identified as sensitive by the Principal Archaeologist.

COUNCIL OF THE COUNTY OF MAUI
AGRICULTURE AND PUBLIC TRUST
COMMITTEE

Page 2

Committee
Report No. _____

Following this discussion, your Committee revised the proposed bill's title to clarify that the exclusion for grading and grubbing permits for trenching for underground utilities would be amended but not be repealed.

After consulting with legal counsel, your Committee revised the proposed bill to allow for trenching for underground utilities without a grading permit "in areas not identified as sensitive by the County archaeologist." Your Committee's legislative intent is for "County archaeologist" to mean the Principal Archaeologist.

Your Committee notes the Principal Archaeologist position is not yet required or described in the Revised Charter of the County of Maui (1983), as amended, or the County Code, but the Council and the Administration have worked to establish the position through enactment of the annual budget and other means. The Principal Archaeologist has expertise in cultural and historic resources and plays a vital role in their preservation and in the County's compliance with related State and County laws.

Your Committee further revised the proposed bill to specify an effective date of November 1, 2021, allowing time for the County to adopt administrative rules to implement the new ordinance and the possible consideration of further legislation.

Your Committee supported the revised proposal bill as an appropriate means of balancing cultural and historic preservation with public safety.

Your Committee voted 7-0 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair Sinenci, Vice-Chair Johnson, and members King, Lee, Molina, Paltin, and Rawlins-Fernandez voted "aye."

Your Committee is in receipt of a revised proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE EXCLUSION FOR GRADING AND GRUBBING PERMITS FOR TRENCHING FOR UNDERGROUND

COUNCIL OF THE COUNTY OF MAUI
**AGRICULTURE AND PUBLIC TRUST
COMMITTEE**

Page 3

**Committee
Report No. _____**

UTILITIES,” incorporating your Committee’s recommended revisions and nonsubstantive revisions.

Your Agriculture and Public Trust Committee RECOMMENDS the following:

1. That Bill _____ (2021), as revised herein and attached hereto, entitled “A BILL FOR AN ORDINANCE TO AMEND THE EXCLUSION FOR GRADING AND GRUBBING PERMITS FOR TRENCHING FOR UNDERGROUND UTILITIES,” be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 21-137 be FILED.

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



SHANE M. SINENCI, Chair

ORDINANCE NO. _____

BILL NO. _____ (2021)

A BILL FOR AN ORDINANCE TO AMEND THE EXCLUSION FOR GRADING
AND GRUBBING PERMITS FOR TRENCHING FOR UNDERGROUND UTILITIES

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

SECTION 1. Section 20.08.031, Maui County Code, is amended to read
as follows:

“20.08.031 Limited exclusions. Sections 20.08.040 through 20.08.160 regarding permit applications and requirements [shall] do not apply to the following[.]; however all other provisions of this chapter, including the provision of minimum bmps as required by section 20.08.035, [shall] remain applicable to all work performed, and the following [shall] exclusions do not affect the applicability of section 20.08.040.C relating to cut or fill activity in special management areas:

A. Subsurface excavations and backfill for buildings and other structures authorized by a valid building permit issued by the land use and codes administration or excavations and backfill for cesspools and septic tanks authorized by the state department of health. This [exception shall] exclusion does not affect the applicability of this chapter to the placing of fill materials obtained from the excavations on other premises[;].

B. Excavation, fill, or stockpiling [which] that does not alter the general drainage pattern with respect to abutting properties and [which] that does not exceed one hundred cubic yards of material on any one site and does not exceed four feet in vertical height at its highest point; [provided] except that the slope face may not be steeper in slope and be located a minimum distance from neighboring properties, as enumerated in sections 20.08.170 through 20.08.210[;].

C. Grubbing [which] that does not alter the general drainage pattern with respect to abutting properties and does not exceed one acre[;].

D. Trenching for underground utilities when the trenches are backfilled[,], and the surface restored to its pre-existing grade and ground cover[.] in areas not identified as sensitive by the County

archaeologist, based on data provided by the state historic preservation division under Hawaii Revised Statutes chapter 6E, and less than two feet deep and less than fifty cubic yards.”

SECTION 2. 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 3. This Ordinance takes effect November 1, 2021.

apt:misc:011abill02:kmatt