

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

October 6, 2015

Committee
Report No. _____

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

Chair and Members:

Your Committee of the Whole, having met on September 23, 2015, makes reference to County Communication 15-6, from Councilmember Mike White, relating to litigation matters.

By correspondence dated September 1, 2015, the Department of the Corporation Counsel requested consideration of the following:

1. A proposed bill entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE UNITED STATES DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE, FOR THE SETTLEMENT OF ALLEGED VIOLATIONS AT THE WAILUKU-KAHULUI WASTEWATER RECLAMATION FACILITY." The purpose of the proposed bill is to authorize the Mayor to enter into an intergovernmental agreement with the United States Department of the Interior, Fish and Wildlife Service ("USFWS"), to settle alleged violations regarding the take of endangered birds and migratory birds, nests, or eggs in violation of the federal Migratory Bird Treaty Act at the Wailuku-Kahului Wastewater Reclamation Facility ("Wailuku-Kahului facility") during September 2014.

2. A proposed bill entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE UNITED STATES DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE, FOR THE SETTLEMENT OF ALLEGED VIOLATIONS AT THE LANAI WASTEWATER TREATMENT FACILITY." The purpose of the

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proposed bill is to authorize the Mayor to enter into an intergovernmental agreement with the USFWS to settle alleged violations regarding the take of endangered birds and migratory birds, nests, or eggs in violation of the federal Endangered Species Act and Migratory Bird Treaty Act at the Lanai Wastewater Treatment Facility ("Lanai facility") during February 2012 and September 2014 to January 2015.

Your Committee notes Section 2.20.020, Maui County Code, provides that the mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation upon the County or any department or agency thereof, unless authorized by ordinance. In addition, Section 3.16.020(B), Maui County Code, requires Council authorization for any settlement in excess of \$7,500.

A representative of the Department of Environmental Management informed your Committee the alleged violations at the Wailuku-Kahului facility arose when sand was being excavated from a shoreline area to install a wall. Workers noticed feathers in the machinery, discovered that birds were burrowed in the area, and called the USFWS.

The representative said the alleged violations at the Lanai facility involved an oxidation pond that had been drained to investigate problems with the pond liner. When the pond was drained, botulism toxin and maggots infected with the toxin were in the exposed sludge, which were in turn eaten by the birds, causing the birds to die.

Your Committee discussed steps taken to rehabilitate two injured birds, training sessions the County is participating in, and standard operating procedures developed to address these concerns.

A Deputy Corporation Counsel requested an executive meeting to discuss the terms of proposed settlement agreements of the alleged violations at each facility with the USFWS.

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Your Committee voted to convene an executive meeting, closed to the public, to consult with legal counsel pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

Following the executive meeting, your Committee reconvened in regular session. Based on the information received and the recommendation of the Department of the Corporation Counsel, your Committee voted 5-0 to recommend passage of the proposed bills on first reading. Committee Chair Guzman, Vice-Chair Crivello, and members Carroll, Hokama, and White voted "aye." Committee members Baisa, Cochran, Couch, and Victorino were excused.

Your Committee of the Whole RECOMMENDS the following:

1. That Bill _____ (2015), attached hereto, entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE UNITED STATES DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE, FOR THE SETTLEMENT OF ALLEGED VIOLATIONS AT THE WAILUKU-KAHULUI WASTEWATER RECLAMATION FACILITY," be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That Bill _____ (2015), attached hereto, entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE UNITED STATES DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE, FOR THE SETTLEMENT OF ALLEGED VIOLATIONS AT THE LANAI WASTEWATER TREATMENT FACILITY," be PASSED ON FIRST READING and be ORDERED TO PRINT.

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



DON S. GUZMAN, Chair

cow:cr:15001(20)aa:cmn

ORDINANCE NO. _____

BILL NO. _____ (2015)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE UNITED STATES DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE, FOR THE SETTLEMENT OF ALLEGED VIOLATIONS AT THE WAILUKU-KAHULUI WASTEWATER RECLAMATION FACILITY

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

SECTION 1. Purpose. The United States Department of the Interior, Fish and Wildlife Service, alleged violations regarding the take of endangered birds and migratory birds, nests, or eggs in violation of the federal Migratory Bird Treaty Act at the Wailuku-Kahului Wastewater Reclamation Facility during September 2014 (“Alleged Violations”). The County and the United States Department of the Interior, Fish and Wildlife Service, to avoid incurring expenses and the uncertainty of an administrative or judicial determination of the parties’ respective rights and liabilities, will attempt to reach a resolution of the Alleged Violations by way of a negotiated settlement.

Section 2.20.020, Maui County Code, provides that, unless authorized by ordinance, the Mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation upon the County or any department or agency thereof.


Section 3.16.020(B), Maui County Code, provides that any settlement in excess of \$7,500 shall require Council authorization. The Department of the Corporation Counsel has requested authority to settle the Alleged Violations under the terms set forth in an executive meeting before the Committee of the Whole.

SECTION 2. Authorization. The Council hereby approves settlement of the Alleged Violations under the terms set forth in an executive meeting before the

Committee of the Whole. The Council hereby authorizes the Mayor to execute an agreement reflecting those terms, all other necessary documents relating to the agreement, and any amendments thereto as may be imposed, and agreed to, by the Corporation Counsel.

SECTION 3. Effective date. This ordinance shall take effect upon its approval. Certified copies of this ordinance shall be transmitted to the Mayor, the Director of Finance, the Director of Environmental Management, and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY:



RICHELLE M. THOMSON
Deputy Corporation Counsel
County of Maui

ORDINANCE NO. _____

BILL NO. _____ (2015)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE UNITED STATES DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE, FOR THE SETTLEMENT OF ALLEGED VIOLATIONS AT THE LANAI WASTEWATER TREATMENT FACILITY

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

SECTION 1. Purpose. The United States Department of the Interior, Fish and Wildlife Service, alleged violations regarding the take of endangered birds and migratory birds, nests, or eggs in violation of the federal Endangered Species Act and Migratory Bird Treaty Act at the Lanai Wastewater Treatment Facility during February 2012 and September 2014 to January 2015 (“Alleged Violations”). The County and United States Department of the Interior, Fish and Wildlife Service, to avoid incurring expenses and the uncertainty of an administrative or judicial determination of the parties’ respective rights and liabilities, will attempt to reach a resolution of the Alleged Violations by way of a negotiated settlement.

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