

**COUNCIL OF THE COUNTY OF MAUI**  
**COMMITTEE OF THE WHOLE**

June 3, 2016

**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 May 17, 2016, makes reference to County Communication 15-6, from Councilmember Mike White, relating to litigation matters.

By correspondence dated April 28, 2016, the Department of the Corporation Counsel requested consideration of 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 ENVIRONMENTAL PROTECTION AGENCY FOR SETTLEMENT OF ALLEGED VIOLATIONS AT MAUI RACEWAY PARK."

The purpose of the proposed bill is to authorize the Mayor to enter into an intergovernmental agreement with the United States Environmental Protection Agency to settle alleged violations of the Safe Drinking Water Act relating to a large capacity cesspool at the Maui Raceway Park, now known as the Maui Motor Sports Park, on a parcel identified for real property tax purposes as tax map key (2) 3-8-008:037.

At the meeting, the Chair of your Committee distributed a revised proposed bill, approved as to form and legality, incorporating nonsubstantive revisions and a revision to delete the proposed authorization for the Mayor to enter into amendments to the intergovernmental agreement.

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

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by ordinance. In addition, Section 3.16.020(B), Maui County Code, requires Council authorization for any settlement in excess of \$7,500.

Your Committee discussed the historical background relating to this cesspool and the regulation requiring closure.

A Deputy Corporation Counsel informed your Committee the United States Environmental Protection Agency issued a mandate on April 5, 2005, requiring closure of all large capacity cesspools. In the non-residential context, a large capacity cesspool is defined as a cesspool having the capacity to serve 20 people or more a day if it receives solely sanitary waste.

The Deputy said on June 3, 2005, by Resolution 05-88, the County accepted the property identified in State Executive Order 4024, which set aside 222.626 acres at the Maui Raceway Park for the purposes of a public and recreational site. The Resolution provides that the County shall take over the exclusive management and control of the property.

A second Deputy said that although the County had received notice of the closure mandate and departments had conducted Countywide reviews to identify affected facilities, it appears the closeness in time of the mandate and the Executive Order may have led to the Maui Raceway Park's cesspool being overlooked.

Your Committee noted the importance of diligently reviewing properties being accepted by Executive Order to check for regulatory issues that may apply.

A Deputy explained the maximum penalty under the Safe Drinking Water Act for the alleged violations is \$187,000, and the Department had been able to negotiate to have the penalty reduced.

The Deputy requested an executive meeting to discuss the terms of a proposed settlement of the alleged violations at the Maui Raceway Park.

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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 7-0 to recommend passage of the revised proposed bill on first reading. Committee Chair Guzman, Vice-Chair Crivello, and members Baisa, Carroll, Cochran, Couch, and Hokama voted "aye." Committee members Victorino and White were excused.

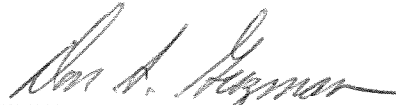
Your Committee of the Whole RECOMMENDS that Bill \_\_\_\_\_ (2016), attached hereto, entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY FOR SETTLEMENT OF ALLEGED VIOLATIONS AT MAUI RACEWAY PARK," 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.



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DON S. GUZMAN, Chair

cow:cr:16001(38):cmn

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

BILL NO. \_\_\_\_\_(2016)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY FOR SETTLEMENT OF ALLEGED VIOLATIONS AT MAUI RACEWAY PARK

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

SECTION 1. Purpose. The United States Environmental Protection Agency (“EPA”), Region 9, alleges that the County operated a large capacity cesspool at the Maui Raceway Park (now known as the Maui Motor Sports Park), on property identified for real property tax purposes as tax map key (2) 3-8-008:037, in violation of the Safe Drinking Water Act, 42 United States Code Section 300f, et. seq. (“the Alleged Violations”). The County and EPA, to avoid incurring expenses and the uncertainty of an administrative or judicial determination of the parties’ respective rights and liabilities, have attempted to reach a resolution of the Alleged Violations by way of a negotiated Consent and Final Order (“CAFO”), upon the terms set forth in an executive meeting before the Committee of the Whole.

Section 2.20.020, Maui County Code, provides: “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.”

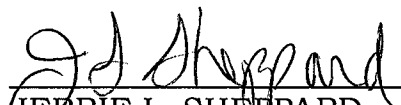
Section 3.16.020(B), Maui County Code, provides that any settlement in excess of \$7,500 shall require Council authorization.

SECTION 2. Council Authorization. The Council, having reviewed the facts and circumstances regarding this case, and being advised of attempts to reach a resolution by way of a negotiated settlement and CAFO between the County and the EPA, hereby approves settlement of the Alleged Violations by way of the CAFO and payment of a penalty not to exceed the amount set forth in an executive meeting before the Committee of the Whole.

Pursuant to Section 2.20.020, Maui County Code, the Council of the County of Maui hereby authorizes the Mayor to execute an agreement reflecting those terms and all other necessary documents relating to the agreement.

SECTION 3. Effective Date. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

  
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JERRIE L. SHEPPARD  
Deputy Corporation Counsel  
County of Maui  
(LF 2015-4276)