

COUNCIL OF THE COUNTY OF MAUI
PARKS AND ECONOMIC
DEVELOPMENT COMMITTEE

September 16, 2005

Committee
Report No.

05-137

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

Chair and Members:

Your Parks and Economic Development Committee, having met on June 2, 2005, June 16, 2005, and September 1, 2005, makes reference to the following:

1. Miscellaneous Communication dated September 23, 2003, from the County Clerk, transmitting a copy of Committee Report No. 03-104, As Amended, referring the matter of penalties under Chapter 13.04, Maui County Code.
2. Miscellaneous Communication dated September 23, 2003, from the County Clerk, transmitting a copy of Committee Report No. 03-104, As Amended, referring the matter relating to beach parks where ocean recreational activities are prohibited under Section 5.24.040, Maui County Code.
3. County Communication No. 04-143, from Councilmember Jo Anne Johnson, relating to the amendment of Ordinance No. 3143, pertaining to ocean recreational activity permits (ORAP).

Your Committee notes that Ordinance No. 3143 (enacted on October 13, 2003) provides that ORAP permits are to be exclusively issued by the Department of Parks and Recreation (pursuant to a new permitting system in Article X, Chapter 13.04, Maui County Code) instead of the Department of Finance (pursuant to an existing permitting system in Chapter 5.24, Maui County Code), after a transition period. Under Ordinance No. 3143, the new permitting system was to be effective on January 1, 2004; both the new permitting system and the existing permitting system were to be effective during a transition period from January 1, 2004 until June 30, 2004, when Chapter 5.24 was to be repealed.

Your Committee further notes that Ordinance No. 3143 was amended by Ordinance No. 3198 (enacted on June 22, 2004), which extended the transition period and delayed the repeal of Chapter 5.24 until June 30, 2005.

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Your Committee further notes that it previously reported on this matter through Committee Report No. 05-53. In that report, your Committee recommended that a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 3134, RELATING TO COMMERCIAL OCEAN RECREATIONAL ACTIVITY" be passed on first reading. At the Council meeting of March 23, 2005, the Council adopted Committee Report No. 05-53 (Bill No. 23 (2005)).

By correspondence dated March 16, 2005, the Chair of your Committee responded to an article entitled "Businesses shut out of beaches" that was published in the March 10-16, 2005 edition of the *Maui Weekly*.

By correspondence dated March 23, 2005, the Chair of your Committee requested an opinion from the Office of Environmental Quality Control (OEQC), State of Hawaii, regarding whether the establishment of a new permitting system for certain commercial uses of County property is a trigger for an environmental assessment (EA) under Chapter 343 of the Hawaii Revised Statutes (HRS), and whether other counties require an EA for their ORAP programs.

By correspondence dated April 5, 2005, Genevieve Salmonson, Director of the OEQC, responded that an EA would not be required under Chapter 343, and the OEQC has not received any EAs for ORAPs from other counties.

By correspondence dated May 3, 2005, Councilmember Michelle Anderson transmitted correspondence dated March 14, 2005, from Richard Roshon, Hawaii-Whales-R-Us, regarding the regulation of beach activity companies.

By correspondence dated May 3, 2005, Councilmember Michelle Anderson requested a meeting on the pending environmental assessment/environmental impact statement for the commercial use of parks.

By correspondence dated May 27, 2005, the Director of Parks and Recreation transmitted a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 13.04, ARTICLE VIII, MAUI COUNTY CODE, PERTAINING TO OCEAN RECREATIONAL ACTIVITY". The purpose of the proposed bill is to amend the penalty for violating Chapter 13.04, Article VIII, Maui County Code, relating to violations from any provision of Chapter 13.04, from a violation to a petty misdemeanor, allowing for a \$1,000 fine and/or imprisonment for not more than thirty days.

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By correspondence dated June 1, 2005, Alan Cadiz transmitted correspondence written by David Dorn, entitled "The hidden resource of professional watersport instructors."

At its meeting of June 2, 2005, your Committee met with the Deputy Director of Parks and Recreation, the Director of Finance, and a Deputy Corporation Counsel.

Your Committee received public testimony from two individuals. The first testifier expressed support for the proposed bill. He stated that fines should be used directly for the maintenance of parks, rather than placed in a general fund. The second testifier, an ORAP operator, provided oral and written testimony in opposition to the proposed bill. He stated that it was premature to revise the penalty section under Chapter 13.04 before the environmental study and administrative rules were completed. Your Committee also received written testimony from another ORAP operator in opposition to the proposed bill.

The Deputy Director of Parks and Recreation explained that the proposed bill is necessary to physically remove non-permitted commercial ORAP operators from utilizing County beach parks to conduct illegal commercial ocean recreational activity.

Your Committee questioned the relative seriousness of the proposed penalty and whether law-abiding citizens would be dissuaded from utilizing County beach parks. Your Committee also noted that illegal commercial ocean recreational activity is a serious problem that should be strongly penalized.

Your Committee received a copy of Section 711-1101, HRS, defining "disorderly conduct" in order to determine whether the definition of "disorderly conduct" under Section 13.04.240 of the Maui County Code would need to be clarified. Your Committee questioned whether "disorderly conduct" as stated in the Code would allow for the removal of illegal operators without amending the existing ORAP ordinance.

Your Committee stressed the importance of working collaboratively with the State and County to address the problem of illegal activity in beach parks.

Your Committee deferred the matter pending further discussion.

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At its meeting of June 16, 2005, your Committee met with the Deputy Director of Parks and Recreation; the Chief of Planning and Development, Department of Parks and Recreation; the Director of Finance; a Deputy Corporation Counsel; and a Planner from Munekiyo & Hiraga, Inc.

Your Committee notes that the Commercial Ocean Recreational Activity Study, being conducted by Munekiyo & Hiraga, Inc., began in April 2005 and is expected to be finalized at the end of the year. Due to budget limitations, the study was commissioned to assess 17 out of 35 beach parks on Maui. The study was formulated to identify use and management issues of these parks, based on a number of factors, including commercial ocean recreational activity. The 17 beach parks included in the study are as follows: Waihee, Kanaha (Developed and Undeveloped), Hana Bay, Malauaka, Makena Landing, Palauea, Ulua/Mokapu, Keawekapu I, Kalama (North), Waipuilani, Memorial/Mai Poina Oe Iau, Papalaua, Ukumehame, Kamehameha Iki, Wahikuli Wayside, Hanakao`o, and D.T. Fleming.

Your Committee received public testimony from an ORAP operator expressing support of the study being conducted by Munekiyo & Hiraga, Inc.

The Planner from Munekiyo & Hiraga, Inc. presented a computer-generated slideshow on the Commercial Ocean Recreational Activity Study. She explained that data obtained throughout the study will be compiled into a total of four Working Papers. Currently, Working Paper No. 1 and Working Paper No. 2 have been reviewed and input has been gathered through group meetings with commercial ORAP operators. She stated that a draft set of administrative rules will be prepared based on the findings and results of the study and will be included in the final report. The Planner added that, according to the study's time schedule, the process is a few months ahead of schedule.

Your Committee received a hard copy of the slideshow presentation from Munekiyo & Hiraga, Inc.

Your Committee deferred the matter pending further discussion.

By correspondence dated August 24, 2005, the Director of Parks and Recreation transmitted a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 13.04, MAUI COUNTY CODE, PERTAINING TO COMMERCIAL OCEAN RECREATIONAL ACTIVITY". The purpose of the proposed bill is to add a penalty section for violating Article X, Chapter 13.04, Maui County Code, relating to

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commercial ocean recreational activity, from a violation to a petty misdemeanor, allowing for a \$1,000 fine and/or imprisonment for not more than thirty days.

By correspondence dated August 26, 2005, Councilmember Michelle Anderson transmitted correspondence from Richard Roshon, Hawaii-Whales-R-Us, regarding regulation of beach activity companies.

At its meeting of September 1, 2005, your Committee met with the Deputy Director of Parks and Recreation; the Prosecuting Attorney; the Technical Services Captain from the Department of Police; and a Deputy Corporation Counsel.

There was no public testimony.

The Deputy Director of Parks and Recreation provided a brief overview of the proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 13.04, MAUI COUNTY CODE, PERTAINING TO COMMERCIAL OCEAN RECREATIONAL ACTIVITY", transmitted by the Director of Parks and Recreation on August 24, 2005. He explained that the proposed bill is necessary to physically remove non-permitted commercial ORAP operators that conduct such activity in County beach parks. The Deputy Director of Parks and Recreation further explained that non-permitted commercial ORAP operators divert business away from permitted commercial ORAP operators. As such, permitted commercial ORAP operators are in support of the increased penalties.

The Prosecuting Attorney made reference to House Concurrent Resolution No. 261, House Draft 1, Senate Draft 1, Regular Session of 2004, entitled "REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO REVIEW, ANALYZE AND RECOMMEND CHANGES TO THE STATUTES AND STATE RULES THAT CRIMINALIZE NON-SERIOUS OFFENSES AND REQUESTING EACH COUNTY TO REVIEW, ANALYZE AND CHANGE COUNTY ORDINANCES AND RULES THAT CRIMINALIZE NON-SERIOUS OFFENSES". She noted that this resolution requested the counties to consider decriminalizing non-serious offenses in their respective ordinances. The Prosecuting Attorney expressed concern that the proposed bill would be viewed as inconsistent with the Legislature's request. She further stated that it was highly unlikely for the courts to jail a first-time offender.

The Technical Services Captain expressed support for the proposed bill. He added that a collaborative effort by all relevant departments, specifically including the

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Department of the Prosecuting Attorney and Department of Police, would be necessary for the ordinance to be effective.

Your Committee expressed concern about increasing the penalties prior to the completion of the study and approval of administrative rules; however, your Committee realized that illegal ocean recreational activity in County beach parks constitutes a serious misuse of important public resources and, therefore, should be strongly penalized.

Your Committee voted to recommend passage of the proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 13.04, MAUI COUNTY CODE, PERTAINING TO COMMERCIAL OCEAN RECREATIONAL ACTIVITY" transmitted by the Director of Parks and Recreation on August 24, 2005, on first reading.

Your Parks and Economic Development Committee **RECOMMENDS** that Bill No. _____ (2005), attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 13.04, MAUI COUNTY CODE, PERTAINING TO COMMERCIAL OCEAN RECREATIONAL ACTIVITY", be **PASSED ON FIRST READING** and be **ORDERED TO PRINT**.

Adoption of this report is respectfully requested.

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JO ANNE JOHNSON Chair

ROBERT CARROLL Member

CHARMAINE TAVARES Vice-Chair

DANNY A. MATEO Member

MICHELLE ANDERSON Member