COUNCIL OF THE COUNTY OF MAUI

ECONOMIC DEVELOPMENT, ENERGY, AGRICULTURE, AND RECREATION COMMITTEE

December 4, 2015

Committee Report No. 15-166

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

Chair and Members:

Your Economic Development, Energy, Agriculture, and Recreation Committee, having met on November 3, 2015, and November 17, 2015, makes reference to County Communication 15-182, from the Mayor, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 3143, RELATING TO CHAPTER 5.24, MAUI COUNTY CODE, RELATING TO OCEAN RECREATIONAL ACTIVITY BUSINESS PERMITS, AND CHAPTER 13.04, MAUI COUNTY CODE, RELATING TO RECREATIONAL AREA REGULATIONS."

The purposes of the proposed bill are to repeal outdated transitional provisions in Section 7 of Ordinance 3143 (2003) and to allow the Department of Parks and Recreation to issue new permits for commercial ocean recreational activity ("CORA") without the requirement of an environmental assessment.

Your Committee notes ocean recreational activity includes snorkeling, scuba diving, kayaking, surfing, kiteboarding, and windsurfing. Commercial entities permitted by the County to use County beach parks and other County property for ocean recreational activities are permitted.

Your Committee notes Ordinance 3143 established a new permitting system in Article X, Chapter 13.04, Maui County Code, "to fairly and effectively regulate commercial ocean recreational activity to ensure that County beach parks and other County property are utilized for the community's maximum recreational, environmental, and economic benefit."

Under the new permitting system, CORA permits are issued by the Department of Parks and Recreation. The prior CORA permitting system was administered by the Department of Finance pursuant to Chapter 5.24, Maui County Code, which was repealed by Ordinance 3143.

Your Committee notes Ordinance 3143 requires the preparation and acceptance of an environmental assessment prior to the issuance of any CORA permit under the new permitting system.

Your Committee further notes Ordinance 3265 (2005) modified the environmental assessment requirement in two respects: (1) requiring the County to prepare the environmental assessment; and (2) restricting the requirement for an environmental assessment to businesses that did not have a permit under the old permitting system. The Ordinance explains: "The Council finds that the primary objective of the environmental assessment is to estimate the impacts of new commercial ocean recreational activity arising from permits issued pursuant to Article X, Chapter 13.04, Maui County Code."

Your Committee observed no environmental assessment for commercial ocean recreational activity has been performed, resulting in a moratorium on the issuance of new permits.

In response to your Committee's inquiries and concerns raised in public testimony, a Deputy Corporation Counsel informed your Committee of the following:

1. Repealing the environmental assessment requirement is needed to allow those other than current permit holders to have the opportunity to obtain a permit under Article X, Chapter 13.04; and

2. Under State law, there is no requirement for an environmental assessment for commercial ocean recreational activity.

The Director of Parks and Recreation informed your Committee no other Hawaii county requires an environmental assessment for CORA permits.

The Department of the Corporation Counsel transmitted a revised proposed bill, approved as to form and legality, incorporating technical revisions.

Your Committee voted to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair Guzman and members Couch, Crivello, Victorino, and White voted "aye." Committee Vice-Chair Cochran and member Hokama were excused.

Your Economic Development, Energy, Agriculture, and Recreation Committee RECOMMENDS the following:

1. That Bill _____(2015), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 3143, RELATING TO CHAPTER 5.24, MAUI COUNTY CODE, RELATING TO OCEAN RECREATIONAL ACTIVITY BUSINESS PERMITS, AND CHAPTER 13.04, MAUI COUNTY CODE, RELATING TO RECREATIONAL AREA REGULATIONS," be PASSED ON FIRST READING and be ORDERED TO PRINT; and

2. That County Communication 15-182 be FILED.

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

DON S. GUZMAN, Chair

ear:cr:15037aa:scb

ORDINANCE NO. _____

BILL NO. _____ (2015)

A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 3143, RELATING TO CHAPTER 5.24, MAUI COUNTY CODE, RELATING TO OCEAN RECREATIONAL ACTIVITY BUSINESS PERMITS, AND CHAPTER 13.04, MAUI COUNTY CODE, RELATING TO RECREATIONAL AREA REGULATIONS

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

SECTION 1. The purpose of this ordinance is to repeal Section 7 of Ordinance No. 3143, (previously amended by Ordinance Nos. 3198 and 3265) and to amend Section 8 as follows:

"[SECTION 7. Transition. From January 1, 2004 to June 30, 2005, permits may be obtained under either Chapter 5.24, Maui County Code, or Article X, Chapter 13.04, Maui County Code; provided that, no permit shall be issued to a business under Chapter 5.24 after June 30, 2004 unless the business held a permit under Chapter 5.24 on June 30, 2004 and continuously thereafter; and provided that, no permits shall be issued for the following parks in which commercial ocean recreational activity is prohibited: Baldwin Beach Park, Cove Park, Hookipa Beach Park, Kamaole Beach Park I, Kamaole Beach Park II, Kamaole Beach Park III, the southern portion of Kalama Park (the section of Kalama Park from the sand beach at Cove Park to the southernmost parking area adjacent to South Kihei Road), Launiupoko Beach Park, and Puamana Beach Park. Until July 1, 2005, a permit holder complying with Chapter 5.24, Maui County Code, shall not be prosecuted for any alleged violation of Article X, Chapter 13.04, Maui County Code, other than Section 13.04.256, for any action or inaction relating to the permitted activity. From January 1, 2004, a permit holder complying with Article X, Chapter 13.04, Maui County Code, shall not be penalized pursuant to Section 5.24.080, Maui County Code, for any action or inaction relating to the permitted activity. Notwithstanding the foregoing, prior to the issuance of any permit pursuant to Article X of Chapter 13.04 to any business without a permit issued pursuant to Chapter 5.24, Maui County Code, an environmental assessment relating to commercial ocean

recreational activity, as defined herein, shall be prepared by the County and accepted in accordance with Chapter 343, Hawaii Revised Statutes

Section 8.] Section 7. Section 1 of this ordinance shall take effect on June 30, 2004. Sections 2 through [7] 6 of this ordinance shall take effect on January 1, 2004."

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 shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:

JEFFREY UEOKA
Deputy Corporation Counsel
s:\ALL\JTU\ORDS\2015-06-23 repeal Ord 3143 section 7.docx
LF 2015-4360