

REQUEST FOR LEGAL SERVICES

Date: June 18, 2020
From: Michael J. Molina, Chair
Governance, Ethics, and Transparency Committee


TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Gary Murai, Esq.

Subject: BANK OF AMERICA'S COMMITMENT TO PROVIDE MORTGAGES FOR NATIVE HAWAIIANS ON HAWAIIAN HOME LANDS (GET-19)

Background Data: Please review the revised proposed resolution and, if appropriate, approve as to form and legality. This resolution differs from the prior only by correcting the spelling of two words ("described" and "marshal") and adding one word ("require," in the sixth BE IT RESOLVED clause).

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER:

Requestor's signature  Michael J. Molina	Contact Person <u>James Forrest</u> (Telephone Extension: <u>7134</u>)
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ROUTINE (WITHIN 15 WORKING DAYS) RUSH (WITHIN 5 WORKING DAYS)
 PRIORITY (WITHIN 10 WORKING DAYS) URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): June 30, 2020
REASON: For posting on the July 10, 2020 Council meeting agenda.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: APPROVED DISAPPROVED OTHER (SEE COMMENTS BELOW)
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____

(Rev. 7/03)

get:ltr:019acc07:dr

Attachment

Resolution

No. _____

AUTHORIZING THE EMPLOYMENT OF SPECIAL
COUNSEL TO FILE LEGAL CLAIMS AGAINST
BANK OF AMERICA AND OTHER MORTGAGE
LENDERS FOR FAILURE TO FULFILL LOAN
COMMITMENTS, FRAUDULENT
FORECLOSURES, AND SIMILAR UNLAWFUL
CONDUCT

WHEREAS, the Council's Governance, Ethics, and Transparency Committee has reviewed a report, in response to Resolution 19-171, analyzing potential legal claims against Bank of America and other mortgage lenders for failure to fulfill loan commitments to native Hawaiians, Filipinos, and others, fraudulent foreclosures, and similar unlawful conduct; and

WHEREAS, the Council would like to retain special counsel with relevant expertise and experience to represent the County, in State or Federal court, to initiate and pursue legal claims against the mortgage lenders for failure to fulfill loan commitments, fraudulent foreclosures, and similar unlawful conduct; and

WHEREAS, the Council alone is authorized to retain or employ special counsel by resolution adopted by a two-thirds vote; and

WHEREAS the Council finds there is a real necessity to retain special counsel to file the potential legal claims described above; and

WHEREAS, the Council recognizes the procurement of contracts on the County's behalf, including for special counsel, is usually a function of the executive branch; and

WHEREAS, because the County's proposed legal action is a Council-initiated action, it is appropriate for the Council Chair, as the legislative branch's chief procurement officer, to execute the contract with special counsel; now, therefore,

Resolution No. _____

BE IT RESOLVED by the Council of the County of Maui:

1. That the Council authorizes the employment of special counsel to represent the County in the initiation and pursuit of legal claims against Bank of America and other mortgage lenders failure to fulfill loan commitments, fraudulent foreclosures, and similar unlawful conduct;
2. That the Council Chair is authorized to execute a contract with special counsel that may include a contingency-fee agreement, hourly rates for attorneys' fees, or a combination of attorneys' fees and hourly based attorneys' fees, with total compensation arising from hourly based attorneys' fees not to exceed \$200,000;
3. That compensable costs include fees for printing and witnesses; fees for copies necessarily obtained for use in the case, fees of the clerk and marshal, fees of the court reporter for necessary transcripts, docket fees, compensation of court-appointed experts and interpreters, and pre-approved travel;
4. That non-compensable costs include telephone calls, facsimile charges, postal charges, messenger charges, fees for computerized legal research, investigative expenses, and other costs reasonably considered part of a law firm's overhead;
5. That the Corporation Counsel is requested to cooperate with the special counsel in representation of the County;
6. That expenditures of additional funds or substantial changes to the responsibilities require prior Council approval by a resolution approved by a two-thirds vote; and
7. That certified copies of this resolution be transmitted to the Council Chair, the Mayor, the Corporation Counsel, the Director of Council Services, and the Director of Finance.

Resolution No. _____

APPROVED AS TO FORM AND LEGALITY

Department of the Corporation Counsel
County of Maui

get:misc:019areso05:jbf