

REQUEST FOR LEGAL SERVICES

RECEIVED
By Dept. of the Corporation Counsel at 7:51 am, Oct 17, 2025

Date: October 16, 2025
From: Yuki Lei K. Sugimura, Chair
Budget, Finance, and Economic Development Committee

TRANSMITTAL
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Nancy H. Zhao, Esq.

Subject: BILL 138 (2025), BILL 139 (2025), BILL 140 (2025), AND RESOLUTION 25-186, RELATING TO WEST MAUI LAND ACQUISITIONS (WEST MAUI COMMUNITY PLAN AREA)
(BFED-7)

Background Data: Please see the attached. Please submit your response to bfed.committee@mauicounty.us with a reference to BFED-7.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER: Legal opinion.

Requestor's signature <u>Yuki Lei K. Sugimura</u> Yuki Lei K. Sugimura, Chair	Contact Person <u>Kirsten Szabo or Peter Hanano</u> (Telephone Extension: <u>7662 or 8007, respectively</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): October 22, 2025
REASON: Councilmember Paltin requested the response be received before the matter is discussed at the October 24, 2025, Council meeting.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: <u>NHZ/KCT</u>	ASSIGNMENT NO. <u>2025-0169</u>	BY: <u>ALH</u>
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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): Please see the attached for the specific request.

DEPARTMENT OF THE CORPORATION COUNSEL

Date 10/22/25

By [Signature] (Rev. 7/03)

As discussed at the October 7, 2025, BFED Committee meeting, may I please request a legal opinion on the following:

1. Please explain, in layperson's terms, the "exceptions" and "exclusions" sections of the title report.
2. Please state whether the County's title insurance provides protection against heirship or land court issues. The example discussed includes cases where not all heirs signed and later quiet title claims, similar to the Pioneer Mill matter (Lot 3A), were filed. If coverage exists, describe its scope and limits. If coverage does not exist, or is excluded, please explain.
3. Please identify whether heirship and quiet title scenarios are treated as an "exclusion" or an "exception" under the policy. Please cite the specific clause or clauses.
4. Does the County's title insurance cover claims that may be triggered during the effort to clear the title for the eighteen parcels, or if required to seek eminent domain, include historical kuleana or other land-tenure claims (e.g., homestead, cultivation areas, or access rights)? If coverage is limited, please identify the specific policy exclusions or exceptions that apply and any endorsements available to address this risk (meeting time stamp 56:59).

RICHARD T. BISSEN, JR.
Mayor

VICTORIA J. TAKAYESU
Corporation Counsel

MIMI DESJARDINS
First Deputy

LYDIA A. TODA
Risk Management Officer



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MEMO TO: Maui County Council - BFED Committee
Yuki Lei K. Sugimura, Chair

FROM: Nancy H. Zhao, Deputy Corporation Counsel

DATE: October 22, 2025

SUBJECT: BFED-7 Bill 138 (2025), Bill 139 (2025), Bill 140 (2025), and
Resolution 25-186, Relating to West Maui Land Acquisitions
(West Maui Community Plan Area)

This memorandum responds to your request for legal services dated October 16, 2025, which seeks a response to the questions presented below.

1. Please explain, in layperson's terms, the "exceptions" and "exclusions" sections of the title report.

Exhibit I of the title report from the title company (Old Republic National Title Insurance Company) lists the standard exclusions and exceptions included in all standard coverage policies issued under the California Land Title Association (CLTA), which is also used in Hawai'i. These exclusions and exceptions define the limits of what the title company agrees to insure.

2. Please state whether the County's title insurance provides protection against heirship or land court issues. The example discussed includes cases where not all heirs signed and later quiet title claims, similar to the Pioneer Mill matter (Lot 3A), were filed. If coverage exists, describe its scope and limits. If coverage does not exist, or is excluded, please explain.

For parcels with "clean title," title insurance generally protects the County against undisclosed heirship or ownership defects not shown in the recorded title history, subject to the insurance policy's stated terms, conditions, exceptions, and exclusions. Parcels identified by the title company as having "clouded title" are not insured, meaning the County would bear any risk, cost, or defense obligations arising from heirship or quiet title claims involving those parcels.

3. Please identify whether heirship and quiet title scenarios are treated as an “exclusion” or an “exception” under the policy. Please cite the specific clause or clauses.

In the CLTA Standard Coverage Policy form (Exhibit I of the title report), heirship and quiet-title matters are not specifically listed as exclusions. However, generic Schedule B Exceptions 2 and 3 in Part I of Exhibit I – covering off-record or possession-based claims such as unrecorded rights or occupancy – may apply to limit or exclude coverage, depending on the title company’s review.

4. Does the County’s title insurance cover claims that may be triggered during the effort to clear the title for the eighteen parcels, or if required to seek eminent domain, include historical kuleana or other land-tenure claims (e.g., homestead, cultivation areas, or access rights)? If coverage is limited, please identify the specific policy exclusions or exceptions that apply and any endorsements available to address this risk (meeting time stamp 56:59).

The County’s title insurance does not extend to parcels identified by the title company as having clouded title. For all other parcels, coverage for any claims arising from efforts to clear title or potential kuleana or land-tenure disputes would be subject to the insurance policy’s stated exclusions and exceptions. Under Exclusion 2 of the CLTA Standard Coverage Policy (Exhibit I), title insurance does not cover eminent domain (i.e., government takings or condemnations) unless a notice of such taking was already recorded before the policy date. The title company has confirmed that no affirmative coverage or endorsements are available for the uninsurable parcels.

APPROVED FOR TRANSMITTAL:



MIMI DESJARDINS
First Deputy Corporation Counsel

BFED Committee

From: Melody A. Andrion <Melody.Andrion@co.maui.hi.us>
Sent: Wednesday, October 22, 2025 9:38 AM
To: BFED Committee
Cc: Kristina C. Toshikiyo; mimi.desjardins@co.maui.hi.us; Kirsten E. Szabo; Peter A. Hanano
Subject: BFED-7 Bill 138 (2025), Bill 139 (2025), Bill 140 (2025), and Resolution 25-186
Attachments: BFED-7 2025-10-22 Closing Response Memo Chair Sugimura.pdf

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

See attached closing of RFLS received on 10/17/2025 regarding the subject matter (Response Memo to Chair Sugimura by Nancy H. Zhao, Deputy Corporation Counsel). Thanks!

Councilmember Paltin requested the response be received before the matter is discussed at the October 24, 2025, Council meeting.

NOTICE: The information in this transmittal (including attachments, if any) is privileged and confidential and is intended only for the recipient(s) listed above. Any review, use, disclosure, distribution or copying of this transmittal is prohibited except by or on behalf of, the intended recipient. If you have received this transmittal in error, please notify me immediately by reply email and destroy all copies of the transmittal. Thank you.