

# REQUEST FOR LEGAL SERVICES

**D a t e:** November 25, 2024

**F r o m:** Yuki Lei K. Sugimura, Chair

Budget, Finance, and Economic Development Committee

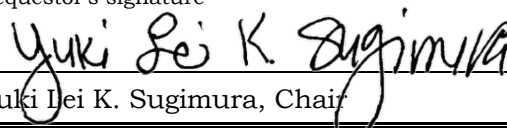
TRANSMITTAL

**Memo to:** DEPARTMENT OF THE CORPORATION COUNSEL  
Attention: Mimi Desjardins, Esq.

**Subject:** BILL 69 (2023), RELATING TO ACCEPTANCE OF CONSERVATION EASEMENTS  
(BFED-30)

**Background Data:** Please see revised bill. Please submit your response to  
bfed.committee@mauicounty.us with a reference to BFED-30.

**Work Requested:** ☒ FOR APPROVAL AS TO FORM AND LEGALITY  
☐ OTHER:

Requestor's signature  Yuki Lei K. Sugimura, Chair	Contact Person <u>Kasie Apo Takayama or Richelle Kawasaki</u> (Telephone Extension: <u>7665 or 7137, 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): November 27, 2024  
REASON: Posting for the December 6, 2024, Council meeting.

## 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)

bfed:ltr:030acc01:kmatt

Attachment

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

BILL NO. **69, CD1** (2023)

A BILL FOR AN ORDINANCE AMENDING SECTIONS 3.44.015 AND 3.88.070,  
MAUI COUNTY CODE, RELATING TO ACCEPTANCE OF CONSERVATION  
EASEMENTS

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

SECTION 1. Section 3.44.015, Maui County Code, is amended by  
amending subsection (F) to read as follows:

“F. The director may acquire real property or easements  
without council approval if any one of the following applies:

1. The conveyance is approved by the director of  
environmental management[,] and either is part of a capital  
improvement project by the department of environmental  
management or is necessary for improvement to a publicly  
owned treatment works, as defined in section 14.19A.040.

2. The conveyance is approved by the director of  
water supply[,] and either is part of a capital improvement  
project by the department of water supply or is necessary for  
improvement to a public water system, as defined in section  
14.01.040.

3. The conveyance is approved by the director of  
parks and recreation[,] and is made [in accordance with]  
under a park assessment agreement approved by council  
resolution [in accordance with] under section 18.16.320.

4. The conveyance is approved by the director of  
public works[,] and either:

a. is part of a capital improvement project by  
the department of public works;

b. involves a road lot, road widening lot,  
remnant lot, or easement that complies with title 16 or  
title 18; or

c. is required by and complies with title 16 or  
title 18[; except that council approval is required when  
the conveyance is not compliant with title 16 or title  
18.].

5. The conveyance is approved by the mayor and is required by a grant agreement under section 3.88.070.

SECTION 2. Section 3.88.070, Maui County Code, is amended to read as follows:

**“3.88.070 Ownership, use, and long-term stewardship of property acquired by a land conservation organization.** A. The grant agreement to the land conservation organization [shall] must contain[, among other things,] provisions in substantially the following form:

1. “Title to or other interest in the [subject] property acquired by the grantee with funds wholly or partially provided under chapter 3.88, Maui County Code, [shall] must be held in perpetuity by the grantee unless conveyed to the County of Maui or another qualified land conservation organization or agency approved by the Maui County Council[.”;] by resolution.

2. “The grantee [shall] must submit to the mayor or the mayor's designee annual reports for the first three years documenting progress toward implementation of the long-term management plan and compliance with terms and conditions of this grant. Each report [shall] must be incorporated into the director of finance's next quarterly report to the council. [Subsequent annual] Quarterly reports will be provided to the County as specified in the perpetual conservation easement.”[;]

3. “[In the event that] If the grantee dissolves, title to or other interest in the [subject] property [shall] must be conveyed to the County of Maui or to another qualified land conservation organization or agency approved by the Maui County Council[.”;] by resolution.

4. “[Pursuant to] Under [section] subsection 3.88.070(B), Maui County Code, the grantee [shall] must convey to the County of Maui at closing a perpetual conservation easement, if the grantee receives fee simple title to the property.”[;]

5. “The [subject] property [shall] may not be sold, exchanged, divested, or converted to other uses that are inconsistent with the purposes [as set forth] in the conservation easement without the prior approval of the Maui County Council by resolution.”[; and]

6. “The grantee [shall] must not mortgage, hypothecate, or pledge any portion of the [subject] property [or any portion thereof] without the prior approval of the Maui County Council by resolution.”[.]

B. If the land conservation organization receives fee simple title to the property, the land conservation organization [shall] must convey to

the County, at closing, a perpetual conservation easement[, subject to council approval pursuant to chapter 3.44 of this code, as amended.]. The easement [shall] must contain, among other things, restrictive covenants in substantially the following form:

1. “This property has been acquired by (insert grantee's name here) with funds from the Maui County open space, natural resources, cultural resources, and scenic views preservation fund. Upon dissolution of (insert grantee's name here), title to or interest in this property [shall] must be conveyed to the County of Maui or to another qualified land conservation organization or agency approved by the Maui County Council[.];] by resolution.

2. “The general public [shall] must be allowed reasonable access to this property, [provided that] with access [may be] limited or controlled for cultural and environmental resource protection and public safety.”[; and]

3. “This property [shall] must be managed for land conservation purposes only and [shall] may not be converted to other uses except as approved by the Maui County Council by resolution [at such time as the potential conversions may be contemplated].”

C. The escrow company used to complete the closing of the subject property [shall] must provide the mayor or the mayor's designee with copies of the closing documents, including a copy of the recorded deed, within sixty days of recordation of the deed. The escrow company [shall] must be instructed that the conservation easement [shall] must be recorded before, or at the time of, closing.”

SECTION 3. 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 4. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

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Department of the Corporation Counsel  
County of Maui

bfed:misc:030abill01:kmatt

INTRODUCED BY:

Yuki Lei K. Sugimura  
YUKI LEI K. SUGIMURA

## **BFED Committee**

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**From:** BFED Committee  
**Sent:** Tuesday, November 26, 2024 7:57 AM  
**To:** CorpCounselRFLS@co.maui.hi.us  
**Cc:** BFED Committee  
**Subject:** (OCS), (BFED-30); reply by 11/27/24  
**Attachments:** 030acc01 signed.pdf