

REQUEST FOR LEGAL SERVICES

RECEIVED

By Dept. of the Corporation Counsel at 9:19 am, Nov 26, 2024

Date: November 25, 2024

From: Yuki Lei K. Sugimura, Chair

Budget, Finance, and Economic Development Committee

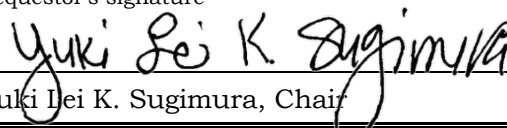
TRANSMITTAL

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: KCT	ASSIGNMENT NO. 2023-0087	BY: ALH
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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 11/26/24

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:



KRISTINA C. TOSHIKIYO

Department of the Corporation Counsel
County of Maui

bfed:misc:030abill01:kmatt

INTRODUCED BY:

Yuki Lei K. Sugimura
YUKI LEI K. SUGIMURA

BFED Committee

From: Kristina C. Toshikiyo <Kristina.C.Toshikiyo@co.maui.hi.us>
Sent: Tuesday, November 26, 2024 12:50 PM
To: BFED Committee
Cc: Kasie M. Takayama; Alice L. Hale
Subject: Transmitting BFED-30 Bill 69 (2023)
Attachments: BFED-30 2024-11-26 RFLS Closing Bill 69 (2023) Amd 3.44.015 and 3.88.070 .pdf

Aloha,

Please see the attached, approved bill.

Thank you!

Kristina

***Department of the Corporation Counsel emails may contain attorney-client privilege information and should not be forwarded without approval.

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