

# REQUEST FOR LEGAL SERVICES

**Date:** August 6, 2024  
**From:** Yuki Lei K. Sugimura, Chair  
Budget, Finance, and Economic Development Committee

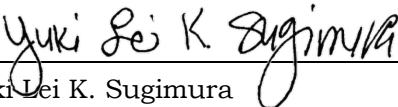
**TRANSMITTAL**

**Memo to:** DEPARTMENT OF THE CORPORATION COUNSEL  
Attention: Michael J. Hopper, Esq.

**Subject:** **BILL 112 (2024) AND BILL 113 (2024), RELATING TO FLOOD DEVELOPMENT PERMIT APPLICATION REVIEW FEES** (BFED-96)

**Background Data:** Please see attached proposed FD1 version of Bill 113 (2024). Please transmit your response to [bfed.committee@mauicounty.us](mailto:bfed.committee@mauicounty.us).

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

Requestor's signature  Yuki Lei K. Sugimura	Contact Person <u>James Krueger</u> (Telephone Extension: <u>7761</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): August 12, 2024  
REASON: For August 13, 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:096acc01:jgk

Attachment

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

BILL NO. 113, FD1 (2024)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 16.29,  
MAUI COUNTY CODE, RELATING TO FLOOD HAZARD AREAS

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

SECTION 1. Section 16.29.050, Maui County Code, is amended by adding  
a new subsection H to read as follows:

**“16.29.050 Administration.** A. Special flood hazard area development permit. A special flood hazard area development permit must be obtained from the director before construction of any development begins within any special flood hazard area, flood-related erosion hazard area, or mudslide area. Application for a permit must be made on forms furnished by the director that may require plans in duplicate drawn to scale showing the nature, location, dimensions, and elevation of the area in question, existing or proposed structures, fill, stockpiles, and drainage facilities. The application must require the following:

1. Proposed elevation, in relation to mean sea level of the lowest floor, including basement of all structures. In zone AO, elevation of highest adjacent grade and proposed elevation of lowest floor of all structures.

2. Proposed elevation, in relation to mean sea level, to which any structure will be floodproofed.

3. All appropriate certifications required under section 16.29.060.

4. Description of any anticipated watercourse alteration or relocation as a result of the proposed development.

B. Permit review. The director will review all special flood hazard development permit applications to determine the following:

1. That the requirements of this chapter have been satisfied.

2. That the site is reasonably safe from flooding.

3. That where base flood elevations have been determined but a floodway has not been designated, the cumulative effect of the proposed development, as certified by an engineer, when combined with all other existing and

anticipated development will not increase the water surface elevation of the base flood at any point.

4. That all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including under the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334, section 404.

5. That for proposed building sites in flood-prone areas where special flood hazard areas have not been defined, water surface elevations have not been provided, and there is insufficient data to identify the floodway or coastal high hazard areas, but the director has determined that there are verifiable physical indications that hazards are present, all new construction and substantial improvements, including the placement of manufactured homes, must be:

a. Designed and adequately anchored to prevent flotation, collapse, or lateral movement.

b. Constructed of flood-resistant materials.

c. Constructed by methods and practices that minimize flood damage.

d. Constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed or located at least one foot above the base flood elevation to prevent water from entering or accumulating within the components during conditions of flooding.

e. Constructed so that new and replacement utilities will comply with the requirements of subsection 16.29.060(B).

C. Use of other base flood data. Where base flood elevations have not been determined, the director must obtain, review, and reasonably use any base flood elevation and floodway data available from a federal or state agency, or other source, in administering section 16.29.060.

D. Flood map revisions. Whenever the director determines that base flood elevations may increase or decrease due to a proposed development in a special flood hazard area, the owner of the property must obtain a conditional letter of map revision from FEMA before the approval or issuance of any development permit, as follows:

1. If a floodway is not designated within the subject special flood hazard area, any development in the subject special flood hazard area requires a conditional letter of map revision.

2. If a floodway is designated within the subject special flood hazard area and the development will cause a

rise in the base flood elevation, a conditional letter of map revision is required. Development within the floodway fringe does not require a conditional letter of map revision.

A letter of map revision must be obtained from FEMA whenever a development has increased or decreased the base flood elevation within any special flood hazard area. An application for a letter of map revision must be submitted to FEMA no later than six months after the completion of a development.

E. Watercourse alteration. Whenever a watercourse is to be altered or relocated, the director will:

1. For riverine situations, require the applicant to notify the State of Hawaii department of land and natural resources, commission on water resource management, before alteration or relocation, and submit evidence of the notification to the Federal Insurance Administration and FEMA.

2. Require that the flood-carrying capacity of the altered or relocated portion of the watercourse be maintained.

F. Certifications. The director will obtain and maintain for public inspection the certifications required under section 16.29.060.

G. Boundary determinations. The director must determine, where needed, the exact location of boundaries of special flood hazard areas, including where there appears to be a conflict between a mapped boundary and actual field conditions.

1. Where interpretation is needed as to whether or not a development lies within a special flood hazard area or as to the base flood elevation affecting a development, a request for interpretation must be submitted to the director. The request must include a description of the development site, a location plan showing the property lines and dimensions of the development, and a copy of the tax map showing the parcel on which the development is proposed to be constructed. The director must, where interpretation is possible from the information shown on the FIRM, issue written determination of the specific area boundaries and the base flood elevation.

2. Where, in the opinion of the director, interpretation is not possible from the information shown on the FIRM, the director must require the applicant to provide more detailed information concerning the request for determination of flood boundaries and the base flood elevation. The additional information must be submitted to the director and must contain a recommendation certified by an engineer as to the flood area and base flood elevation that should apply to the proposed development and must include

three sets of documents certified by the engineer containing adequate data consistent with this chapter, such as flood and hydrology studies, project site and location plans, property maps showing lines and dimensions, tax maps, and topographic data including contours or spot heights based upon mean sea level. After review, the director must, in writing:

a. Inform the applicant that the detailed request contains inadequate data to determine flood area boundaries and base flood elevations, and specify the specific lack of data needed to resolve the question and decline to make a determination; or

b. Based on the supporting data submitted with the request for interpretation and other available data, determine the flood area boundaries and the base flood elevations affecting the development.

H. Fees. Except for applications filed by County agencies, application fees shall be required in the amounts specified in the annual budget ordinance."

SECTION 2. New material is underscored. In printing this bill, the County Clerk need not include the underscoring.

SECTION 3. This Ordinance takes effect on September 1, 2024.

APPROVED AS TO FORM AND LEGALITY:

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Deputy Corporation Counsel  
County of Maui

bfed:misc:096abill01:jgk

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Chris Lee", is written over a horizontal line.

Upon the request of the Mayor.

## **BFED Committee**

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**From:** BFED Committee  
**Sent:** Wednesday, August 7, 2024 7:52 AM  
**To:** CorpCounselRFLS@co.maui.hi.us  
**Cc:** BFED Committee  
**Subject:** OCS - BFED - Bill 112 (2024) and Bill 113 (2024), Relating to Flood Development Permit Application Review Fees (BFED-96)  
**Attachments:** 096acc01.pdf

Please see the attached RFLS.

Thank you,  
BFED Committee Staff