

REQUEST FOR LEGAL SERVICES

Date: January 21, 2025
From: Tamara Paltin, Chair
Disaster Recovery, International Affairs, and Planning Committee

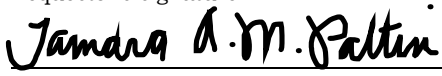
TRANSMITTAL

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

Subject: BILL 105 (2024), AMENDING SECTION 19.500.110, MAUI COUNTY CODE, REGARDING NONCONFORMITIES (DRIP-4)

Background Data: Please provide a written response to the attached November 6, 2024, request for legal services from the Council's Housing and Land Use Committee (2023-2025 Council term).

Work Requested: ☐ FOR APPROVAL AS TO FORM AND LEGALITY
☒ OTHER: Request response.

Requestor's signature  Tamara Paltin, Chair	Contact Person <u>Jarret Pascual or Carla Nakata</u> (Telephone Extension: <u>7141 or 5519, 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): February 3, 2025
REASON: For possible committee discussion on February 5, 2025.

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): _____

See attached response.

DEPARTMENT OF THE CORPORATION COUNSEL

Date 1/22/25

By MJH

(Rev. 7/03)

drip:ltr:004acc01:jpp

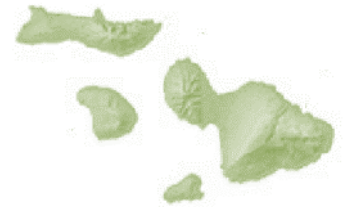
Attachment

RICHARD T. BISSEN, JR.
Mayor

VICTORIA J. TAKAYESU
Acting Corporation Counsel

MIMI DESJARDINS
First Deputy

LYDIA A. TODA
Risk Management Officer



DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET, 3RD FLOOR
WAILUKU, MAUI, HAWAII 96793
EMAIL: CORPCOUN@MAUICOUNTY.GOV
TELEPHONE: (808)270-7740

January 22, 2025

Tasha Kama, Chair
Housing and Land Use Committee
Maui County Council
200 S. High Street
Wailuku, Maui, Hawaii 96793

Re: DRIP-4 (Formerly HLU-34) Bill 105 (2024) Amending Section 19.500.110, Maui County Code, Regarding Nonconformities

Dear Chair Paltin:

This letter is in response to the correspondence dated November 6, 2024 from HLU Committee Chair Kama, in which the Chair asked several questions about a proposed amendment to Bill 105 (2024). That bill relates to nonconforming structures and uses damaged or destroyed by disasters subject to an emergency proclamation. The bill is a land use ordinance that was reviewed by the Maui, Molokai and Lanai Planning Commissions as required by section 8-8.4(3) of the Revised Charter of the County of Maui. The bill would allow more favorable treatment for nonconforming structures destroyed in a disaster and allows up to five years for a nonconforming use to be reestablished rather than twelve months if the use was discontinued because of an emergency or disaster.

The ASF proposes to amend subsection 19.500.110(E) and states that nonconforming transient vacation rental uses discontinued for any reason, including because they were within structures damaged/destroyed by disasters may not be continued. As I understand this was proposed before the current subsection E of this ordinance was drafted the ASF may need to be changed to move the language to a more appropriate place in the ordinance.

The Chair asks the following questions on the proposed amendment, which I will answer individually:

1. Please explain the extent to which nonconforming transient vacation rental uses can be excepted from Section 19.500.110, Maui County Code. Can the nonconforming uses be excepted from the entire Section or only from the new provisions added by the proposed CD1 version of Bill 105?

Section 19.500.110 currently states that any nonconforming use that is discontinued for any reason for more than twelve consecutive months may not be resumed.¹ Section 19.500.110(E) of the bill proposes to provide an exception to this rule by allowing uses that were discontinued due to a disaster up to five years (instead of twelve months) to resume before they must be discontinued.

The Planning Commissions reviewed the proposed amendments that would provide for more favorable treatment for structures and uses affected by disaster and had the ability to recommend whether to adopt the amendments. However, at no point did the Commissions consider a proposal to alter the current twelve-month time frame for nonconforming uses to resume. While the Council can consider amendments to proposed ordinances after Commission review, the amendments must not constitute an entirely new proposal.²

Given this history, transient vacation rentals can be excluded from the proposed amendments on nonconforming uses in Bill 105. This would keep the current requirement that any transient vacation rental use discontinued for any reason for more than twelve consecutive months could not be resumed. The Planning Commissions could have recommended that the Council adopt or not adopt some or all of the proposed amendments. However, amending the existing twelve-month allowance for nonconforming uses to resume operation to shorten the time, whether or not the break in use was caused by disaster, would be beyond the scope of the proposed amendments, which were proposed to provide nonconforming uses with additional time to resume operation.

2. Please explain whether only particular nonconforming transient vacation rental uses can be excepted. For example, can the Committee consider excepting only those nonconforming transient vacation rental uses that existed in the Apartment Districts?

While I would need to review any particular proposal and its basis, the Council may be able to make the amendments applicable or inapplicable to only specific zoning designations.

3. Please advise whether your Department has concerns with the amendment as worded. If so, please provide language that addresses those concerns.

As stated previously, the Council could exclude transient vacation rental uses from the amendments in Bill 105 to the nonconforming uses section of 19.500.110 but could not exclude them from the current twelve-month period to resume operation through this ordinance. As such, appropriate amendments should be made to sections 19.510.110(D) and 19.510.110(E) of Bill 105 to make clear that transient vacation rental uses are not subject to the new five-year grace period

¹ See section 19.500.110(D)(2) of Bill 105

² See for example Ala Moana Boat Owners Assn. v. State, 50 Haw. 156, 159-160, 434 P.2d 516, 519 (1967); Carlsmith v. CPB Properties, Inc., 64 Haw. 584, 645 P.2d 873 (1982)

Tasha Kama, Chair
Housing and Land Use Committee
January 22, 2025
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but remain subject to the one-year grace period. If this is the intent, I can work with Council staff to draft this language.

Sincerely,

/s/ Michael J. Hopper

MICHAEL J. HOPPER
Deputy Corporation Counsel

Attachment
HLU-34
LF2023-0141

DRIP Committee

From: Michael J. Hopper <Michael.Hopper@co.maui.hi.us>
Sent: Wednesday, January 22, 2025 9:31 AM
To: DRIP Committee
Cc: Carla M. Nakata; Jarret P. Pascual; Alice L. Hale
Subject: Bill 105 (PSLU-4 /HLU-34)
Attachments: 004acc01 signed (002).pdf; PSLU-4 (HLU-34) 2024-11-19 Response ltr](1).pdf

I have attached the response to the Committee's questions on Bill 105, please let me know if you need any further assistance.

Thank you.