

# REQUEST FOR LEGAL SERVICES

**Date:** February 12, 2025  
**From:** Tamara Paltin, Chair  
Disaster Recovery, International Affairs, and Planning Committee

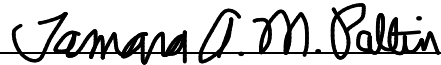
TRANSMITTAL

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

**Subject:** BILL 103 (2024), AMENDING CHAPTER 19.08, MAUI COUNTY CODE, RELATING TO DENSITY WITHIN RESIDENTIAL DISTRICTS (DRIP-2)

**Background Data:** Please review the Department of Planning's attached response to Question #3. Is it within the Committee's purview to insert an amendment to Subsection 19.36B.080(A), Maui County Code, on landscaping requirements under Bill 103, at this juncture? The provision was not a part of the planning commissions' review but is an outgrowth of the proposal. Please submit your response to [drip.committee@mauicounty.us](mailto:drip.committee@mauicounty.us) with a reference to DRIP-2.

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

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 18, 2025  
REASON: For consideration at the February 19, 2025, DRIP Committee 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 \_\_\_\_\_

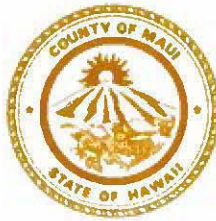
By \_\_\_\_\_

(Rev. 7/03)

RICHARD T. BISSEN, JR.  
Mayor

KATE L. K. BLYSTONE  
Director

ANA LILLIS  
Deputy Director




DEPARTMENT OF PLANNING  
COUNTY OF MAUI  
ONE MAIN PLAZA  
2200 MAIN STREET, SUITE 315  
WAILUKU, MAUI, HAWAII 96793

September 5, 2024

Honorable Richard T. Bissen, Jr.  
Mayor, County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

 9-6-24  
Mayor Date

For Transmittal to:

Honorable Tasha Kama, Chair  
Housing and Land Use Committee  
200 South High Street  
Wailuku, Hawaii 96793  
via: [hlu.committee@mauicounty.us](mailto:hlu.committee@mauicounty.us)

Dear Chair Kama:

**SUBJECT: BILL 103 (2024), AMENDING CHAPTER 19.08, MAUI COUNTY CODE, RELATING TO DENSITY WITHIN RESIDENTIAL DISTRICTS (HLU-32)**

Thank you for your August 20, 2024 letter requesting information pertaining to Bill 103. The following identifies your request (in *italics*) and the Department's response:

- On page 4 of your correspondence dated February 21, 2024, to the planning commissions, you noted the pendency of Senate Bill 3202, which has since been enacted in a modified form as Act 39, Session Laws of Hawaii 2024, effective May 28, 2024. The requirements of Act 39, SLH 2024, do not appear to apply until the enactment of a County zoning ordinance, which must occur by December 31, 2026, or subject the County to the risk of being unable to deny a permit application under certain circumstances.*

*Please advise whether your Department recommends any revisions to Bill 103 as a result of Act 39, and if so explain the revisions.*

**Department's Response:** The changes in density as a result of Act 39 appear to be relatively minimal. The Department does not recommend any changes to the proposed amendment.

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 Housing and Land Use Committee  
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Specifically, since February 21, 2024, when the Department notified the Planning Commissions of pending state legislation (SB 3202 and HB 1630), there have been changes that were incorporated into the enactment of Act 39. Specifically, related to density, Act 39 requires that counties amend their ordinances to allow for at least two accessory dwelling units (ADU) per residentially zoned property. As you may know, Resolution No. 24-143, which would initiate an amendment to Maui County Code (MCC) Title 19 to implement the changes required of Act 39, appeared on the County Council agenda of August 27, 2024. At that meeting, the County Council referred that matter to the Housing and Land Use Committee for further discussion.

As shown in the tables below, Act 39 will increase density further than envisioned through Bill 103, but the effect of that varies per island and Residential land use district type (i.e. R-1, R-2 or R-3). On Maui island, Act 39 will increase Bill 103’s envisioned density only in the R-1 district by allowing one more ADU. On Lāna‘i island, Act 39 will increase Bill 103’s envisioned density in the R-1 district by two ADUs, and in the R-2 and R-3 districts by 1 ADU. On Moloka‘i island, because the Moloka‘i Planning Commission recommended that the Council not increase the density in the R-1, R-2 and R-3 districts, the affect of Act 39 will result in an increase density of that only beyond the existing MCC requirements; an increase of two ADUs in the R-1 district, and 1 ADU in the R-2 and R-3 districts.

<b>Maui Island</b>				
<b>District</b>	<b>Min. Lot Size</b>	<b>Existing Code Density</b>	<b>Bill 103 Density</b>	<b>Act 39 + Bill 103 Density</b>
R-1	6,000 sf	1 du + 1 ADU	2 du + 1 ADU	2 du + 2 ADU
R-2	7,500 sf	1 du + 2 ADU	3 du + 2 ADU	3 du + 2 ADU
R-3	10,000 sf	1 du + 2 ADU	4 du + 2 ADU	4 du + 2 ADU

<b>Lanai Island</b>				
<b>District</b>	<b>Min. Lot Size</b>	<b>Existing Code Density</b>	<b>Bill 103 Density</b>	<b>Act 39 + Bill 103 Density</b>
R-1	6,000 sf	1 du	2 du	2 du + 2 ADU
R-2	7,500 sf	1 du + 1 ADU	3 du + 1 ADU	3 du + 2 ADU
R-3	10,000 sf	1 du + 1 ADU	4 du + 1 ADU	4 du + 2 ADU

<b>Molokai Island</b>				
<b>District</b>	<b>Min. Lot Size</b>	<b>Existing Code Density</b>	<b>Bill 103 Density</b>	<b>Act 39 + Bill 103 Density</b>
R-1	6,000 sf	1 du	1 du	1 du + 2 ADU
R-2	7,500 sf	1 du + 1 ADU	1 du + 1 ADU	1 du + 2 ADU
R-3	10,000 sf	1 du + 1 ADU	1 du + 1 ADU	1 du + 2 ADU

Additionally, as discussed on page two of the Department’s June 27, 2024 transmittal letter to the Council, it is important to frame expectations of Bill 103 by pointing out that the

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cost of construction to increase density on a lot that already contains a single-family home can be significant, and that development of potential units will occur over time. Further, existing development standards (setbacks, building height, limits on impervious surface, and required area for parking) and infrastructure availability (water and wastewater management) will still control the number and type of units a lot can physically support. The Department does not believe that Act 39 will alter these expectations enough to warrant a change to Bill 103. It is expected that property owners trying to provide housing for multiple generations or extended family will take advantage of the proposed allowable density increase resulting from Bill 103/Act39; specifically, families in the fire-affected areas needing to re-build multigenerational housing, which would not be permitted without these proposed changes.

2. *Subsection 19.60.030(E), Maui County Code, relating to the Napili Bay Civic Improvement District, provides that, "The permitted uses shall be as provided for in the residential and apartment districts as listed in chapters 19.08 and 19.12 of this title for any use established after August 6, 2021."*

*Subsection 19.90A.040(A)(1), Maui County Code, relating to the Kihei-Makena Project District 9 (Wailea 670), provides that, "Any use or structure permitted under chapter 19.08 of this code" shall be permitted in the single-family residential subdistrict.*

*Please confirm whether these cross-references to Chapter 19.08 were intended to be captured within the proposed amendment, or whether your Department has any concerns and if so, please explain.*

Department's Response: The changes to the residential district density are intended to affect other districts by cross reference, where applicable, subject to any district specific regulations or limitations that may exist.

Regarding the Nāpili Bay Civic Improvement District (NBCID), yes, the cross-references to Chapter 19.08 were intended to be captured within the proposed amendment. While there are existing residential land uses within the NBCID that could take advantage of the proposed amendment, there are also existing transient vacation uses in the NBCID that if changed to residential at some point in the future, could also take advantage of the proposed amendment and increase overall residential housing supply. Importantly, however, some of the standards listed in subsection 19.60.030 may preclude further development activity. Additionally, it should be noted that the West Maui Community Plan Designation for the NBCID is Residential and since subsection 19.60.030(E) allows for residential uses per Chapter 19.08, Act 39, as discussed in response #1 above would allow for at least two ADUs within the NBCID.

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Regarding the Kīhei-Mākena Project District 9 (Wailea 670), while not yet constructed, this District is different than the NBCID discussed in the preceding paragraph in that it restricts the total number of dwelling units within the District to 1,400 units. While the District does not set a specific density requirement per lot, it does specify that the single-family residential land use subdistrict shall be 2.5 units per acre or less and that approximately 40% of dwelling units shall be single-family. Likewise, the density requirement for the multi-family residential land use subdistrict shall be 10 units per acre or less, and approximately 60% of dwelling units shall be multifamily. While subsection 19.90A.040(A)(1) does reference Chapter 19.08 for types of uses, the maximum number of units and density requirements described within the District would take precedence over the density requirements of Chapter 19.08 (i.e. the proposed amendment). The Department does not believe this necessitates a change to the proposed amendment. Importantly, when this District moves forward for development, the Department will need to evaluate subdivision and development plans to ensure compliance with the maximum number of units and density requirements established within the District. Since the District represents a residentially zoned area, the Department will also need to include in its evaluation the allowance for two ADUs through Act 39.

3. *Subsection 19.36B.080(A), Maui County Code, appears to require landscaping for parking areas if multifamily dwelling units are built. Did your Department consider this requirement and decide it is appropriate in this circumstance? Please explain.*

Department's Response: Compliance with 19.36B.080(A) may be triggered in some instances but would not be triggered in most instances. Because compliance is triggered by the creation of five or more parking stalls, for the development of one single family dwelling 3,000 square feet or less with two ADUs, a total of only four parking stalls would be required. In instances where the main dwelling exceeds 3,000 square feet and both ADUs are built contiguous to the main dwelling, compliance with 19.36B.080(A) would be required.

While subsection 19.36B.080(A) excludes “single-family dwellings, accessory dwellings, farm dwellings, farm labor dwellings, and duplex dwellings” from parking lot landscaping requirements, you are correct that it would require parking lot landscaping for multi-family dwelling units. Since the MCC defines “Multi-family dwelling unit” as “a building or portion thereof which consists of three or more dwelling units and which is designed for occupancy by three or more families living independent of each other,” it is possible that the proposed amendment will result in multi-family buildings of three units or more on one lot within the R-1, R-2 or R-3 zoning district. Unfortunately, the Department did not consider the parking lot landscaping requirement in its proposed amendment. The Department does not believe that parking lot landscape requirements should apply in instances where a smaller multi-family building of only 3 attached units is developed on an R-1, R-2 or R-3 district lot as this would further discourage development of additional

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dwelling units and be contrary to the purpose of the proposed amendment; namely, to increase housing stock in Maui County. To address this issue, the Department would recommend a minor revision to the first sentence of Section 19.36B.080(A) that would exclude multi-family dwellings consisting of no more than three units located in the R-1, R-2 or R-3 districts; to read as follows:

*"To provide shade, visual screening, and aesthetics, landscaping shall be provided for all parking areas in all zoning districts, excluding parking areas for single-family dwellings, accessory dwellings, farm dwellings, farm labor dwellings, [and] duplex dwellings, and multi-family dwellings consisting of no more than three units located in the R-1, R-2 or R-3 residential zoning districts."*

Thank you for the opportunity to provide this information. If you have any further questions, please do not hesitate to contact me.

Sincerely,



KATE L. K. BLYSTONE  
Planning Director

xc: Ana Lillis, Deputy Director (pdf)  
Jordan Hart, Planning Program Administrator (pdf)  
Gregory Pfof, Administrative Planning Officer (pdf)

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## HLU Committee

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**From:** Michelle Santos <Michelle.Santos@co.maui.hi.us>  
**Sent:** Monday, September 9, 2024 10:46 AM  
**To:** HLU Committee  
**Cc:** Ana Lillis; Cynthia Sasada; Josiah Nishita; joy.paredes@co.maui.hi.us; Kate Blystone; Pili Nahooikaika  
**Subject:** MT#10742 Bill 103 Amending Chapter 19.08, Maui County Code, Relating to Density Within Residential Districts  
**Attachments:** MT#10742-HLU Committee.pdf

**NOTE: PLEASE DO NOT FORWARD MY EMAIL TO ANYONE OUTSIDE OF THE COUNTY OF MAUI. YOU MAY CLICK ON THE ATTACHMENT ITSELF AND CREATE YOUR OWN EMAIL TO FORWARD THE DOCUMENT TO ANOTHER PERSON OUTSIDE OF THE COUNTY.**

*Michelle L. Santos*

Office Operations Assistant

Office of the Mayor

County of Maui

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Wailuku, HI 96793

phone: (808) 270-7855

fax: (808) 270-7870

## DRIP Committee

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**From:** DRIP Committee  
**Sent:** Wednesday, February 12, 2025 9:35 AM  
**To:** CorpCounselRFLS  
**Cc:** DRIP Committee  
**Subject:** (OCS); (DRIP-2), reply by 2/18/25  
**Attachments:** 002acc01signed.pdf