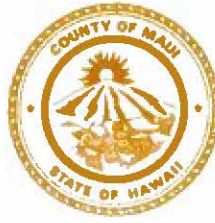


RICHARD T. BISSEN, JR.  
Mayor

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

October 10, 2024

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

APPROVED FOR TRANSMITTAL

  
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

Dear Chair Kama:

**SUBJECT: BILL 105 (2024), AMENDING SECTION 19.500.110, MAUI COUNTY CODE, REGARDING NONCONFORMITIES (HLU-34)**

Thank you for your October 1, 2024 letter requesting information pertaining to Bill 105. While your letter requested a response by October 16, 2024, based upon the discussion at the Housing and Land Use (HLU) Committee meeting held on October 9, 2024, wherein Committee members requested that Bill 105 be placed on the October 23, 2024 HLU meeting agenda, the Department has worked diligently to provide the following responses early. The following identifies your request (in *italics*) and the Department's response:

- Subsection 19.500.110(D), Maui County Code, relating to nonconforming parking and loading, has been omitted from Bill 105. Is the Department proposing to repeal that subsection or should it be retained? Please explain.*

**Department's Response:** The Department is not proposing to repeal Maui County Code (MCC) subsection 19.500.110(D) related to nonconforming parking and loading; that subsection should be retained. Retaining this subsection is important as it would ensure that if there are any changes proposed to a nonconforming structure's use or size that would necessitate additional parking spaces, then the area of new use or expanded size would need

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Housing and Land Use Committee  
October 10, 2024  
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to meet the parking requirements of MCC Chapter 19.36B. For example, the proposed Bill would allow a structure damaged or destroyed by more than 50% as a result of a proclaimed disaster to be reconstructed to its former nonconforming condition even if the nonconformity was related to the required number of parking spaces or parking lot landscaping. However, if that same nonconforming structure proposes a change to its use or size, then per the subsection, that portion of the structure or use that is proposed to be changed would need to comply with current MCC parking requirements.

2. *The bill makes reference to the Governor recognizing or proclaiming a disaster under Chapter 127A, Hawai'i Revised Statutes. References will be made consistent with Section 127A-14, Hawaii Revised Statutes, which refers to the Governor's ability to "declare the existence of a state of emergency in the State by proclamation if the governor finds that an emergency or disaster has occurred." Please note that this section also authorizes a Mayor to "declare the existence of a local state of emergency in the county by proclamation if the mayor finds that an emergency or disaster has occurred." Did the Department intend to also allow for these nonconformities if the Mayor declares a local state of emergency in the County? Please explain.*

Department's Response: The Department agrees that Hawai'i Revised Statutes (HRS) 127A provides the opportunity for the Mayor to declare the existence of a local state of emergency in the county. The Department simply utilized the term "Governor" in the proposed Bill believing that a proclamation issued by the Governor would apply to a regional type disaster similar to what was experienced in August 2023. Further, the Department mirrored the language in the Council's adoption of Ordinance No.5629 (Bill 21, CD1) on March 8, 2024, which amended subsection 16.25.105.2.2 – "Emergency alterations, repairs, reconstruction, and new construction of structures in disaster affected areas." That amendment also referred to only the "Governor" proclaiming the state of disaster. The Department is not familiar enough with HRS 127A to understand the legal differences, if any, between identifying the "governor," "mayor," or both in the proposed Bill. If desired, the Department recommends that you seek assistance from Corporation Counsel on these differences to determine how to proceed with this Bill.

3. *Proposed Code Section 19.500.10(B)(1)(d)(iv) states "The building permit for the repair or reconstruction of the nonconforming structure must be completed with final inspection within five years from the initial date the governor proclaims the state of disaster."*
  - a. *The provision requires completion of the building permit within five years. Is this what was intended or is the Department proposing that the repair or reconstruction be completed within five years? Please explain.*

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Department's Response: For clarity, it is important to note that as referenced in the June 27, 2024 transmittal letter for Bill 105, the Maui and Lānaʻi Planning Commissions recommended a longer period than the Department's originally proposed four-year time frame. Hence, the Bill as proposed to County Council, starting on page 6 of the transmittal letter, implements the Planning Commissions' recommendation by amending proposed Code Section 19.500.110(B)(1)(d)(iv) to read, "*The building permit for the repair or reconstruction of the nonconforming structure must be completed with final inspection within five years from the initial date the governor proclaims the state of disaster. A two-year extension to the five-year deadline may be granted by the director for due cause*" (emphasis added).

This subsection is intended to ensure that a building permit is obtained, the repair or reconstruction is completed, and a final inspection has been issued so that the structure may be occupied within a total of five years; allowing for an additional two-year extension if granted by the Director. The Department added the phrase "*must be completed with final inspection*" to ensure all was completed within the noted time frame.

*b. Is there a time limit within which the building permit must be obtained? If the issuance of the building permit is delayed and repair or reconstruction cannot be completed within five years, what happens with the owner's ability to reestablish the nonconforming use? Please explain.*

Department's Response: While there is not a specific time limit for just the building permit to be obtained, there is a time limit within which both, the building permit and reconstruction must be completed - five years from the initial date the governor proclaims the state of disaster, with the potential for a two-year extension granted by the Director. If the owner is not able to reestablish the nonconforming use or reconstruct the nonconforming structure within the maximum seven-year period, then the owner will not be able to reestablish the nonconforming use or structure.

4. *Please refer to the first bullet point of the Director of Public Works' attached correspondence dated September 25, 2024, which states: "Compliance with Title 16 may cause an increase to the non-conformity. For example, meeting current building codes may cause the rebuilt structure to increase in size. Also, rebuilds that trigger road widening improvements may cause the building footprint to change. It should be clarified how such conflicts would be addressed." Please provide the Department's comments in response to this observation.*

Department's Response: The proposed Bill requires that any repair and reconstruction of a nonconforming structure must comply with Title 16. The Director of Public Works is correct that compliance with Title 16 may cause an increase in nonconformity in some cases. For

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example, if a pre-disaster building was nonconforming to the current MCC required front yard setback and the post-disaster re-build of that structure triggered road widening along the front of the property, the proposed new structure intending to build to its pre-disaster location would result in an increase its nonconformity since the front property line has now moved towards the structure. The proposed Bill does allow the nonconforming structure to be *“repaired, expanded, renovated or altered in any manner that does not increase its nonconformity.”* Thus, in this specific example, it may be possible for the structure to be relocated on the lot so it complies with the MCC current setback requirement, or at minimum meets its pre-disaster nonconforming setback to the newly established property line that resulted from the street widening. Further, this provision will allow for an increase in size of the pre-disaster nonconforming structure, which may account for revisions necessary to meet Title 16 as purported by the Public Works Director, provided that the increase does not create a new nonconformity or increases the prior nonconformity.

Unfortunately, it is not possible to identify all scenarios where compliance with Title 16 may cause the reconstruction of nonconforming structures to increase their nonconformity. Importantly, for those instances where compliance with Title 16 may result in situations where a property owner cannot comply, the owner has other options available to them, such as the filing of a Variance application.

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 Pfost, Administrative Planning Officer (pdf)

KLKB:GP:jlj

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## HLU Committee

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**From:** Michelle Santos <Michelle.Santos@co.maui.hi.us>  
**Sent:** Friday, October 11, 2024 2:27 PM  
**To:** HLU Committee  
**Cc:** Ana Lillis; Cynthia Sasada; Gregory Pfof; Jordan Hart; Josiah Nishita; joy.paredes@co.maui.hi.us; Katie Blystone; Kelii Nahooikaika  
**Subject:** MT#10809 Bill 105  
**Attachments:** MT#10809-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*

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Office of the Mayor

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