REQUEST FOR LEGAL SERVICES

D a t e: **February 28, 2025**

F r o m: **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 opine on the attached questions relating to Bill 103 (2024). Please submit your response to drip.committee@mauicounty.us with a reference to DRIP-2.

Work Requested: [ ] FOR APPROVAL AS TO FORM AND LEGALITY
[X] OTHER: Legal opinion.

Requestor's signature	Contact Person
Tamara A. M. Paltin	Jarret Pascual or Carla Nakata
Tamara Paltin, Chair	(Telephone Extension: 7141 or 5519, respectively)

[ ] ROUTINE (WITHIN 15 WORKING DAYS) [ ] RUSH (WITHIN 5 WORKING DAYS)
[ ] PRIORITY (WITHIN 10 WORKING DAYS) [ ] URGENT (WITHIN 3 WORKING DAYS)

[X] SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): March 12, 2025
REASON: For consideration at the March 19, 2025, DRIP meeting.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:

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)

drip:ltr:002acc02:jpp

Attachments

May I please request your response to the following:

1. May Bill 103 be amended to prohibit condominium property regimes? If so, please consult with the Department of Planning on draft language to prohibit condominium property regimes on single-family lots for insertion into Bill 103.

    a. Are there existing condominium property regimes on properties zoned R-1, R-2, or R-3 Residential District? If so, and the Committee amends Bill 103 to prohibit condominium property regimes on single-family lots, could this amendment apply prospectively to properties with existing condominium property regimes? Please explain.

    b. Does Bill 103 apply to existing infill lots if they have the supporting infrastructure or to new subdivisions, or both?

2. Act 39 (2024), relating to urban development, provides:

    > "…each county shall adopt or amend ordinances defining reasonable standards that allow for the construction of at least two accessory dwelling units, **or the reasonable equivalent**, for residential use on all residentially zoned lots." (Emphasis in boldface)

    By the attached correspondence dated September 5, 2024, the Planning Director presented a table reflecting the increases in dwelling units and accessory dwelling units that would result from the passage of Bill 103 and an ordinance effectuating the requirements of Act 39. In addition, Bill 104, if passed, would allow for the creation of more autonomous living areas within a dwelling unit through authorized kitchenettes.

    a. Would the additional dwelling units and accessory dwelling units in Bill 103 satisfy a greater share of the ADU requirements of Act 39 (2024) than may be reflected in the table? For instance, on Maui, in the R-1 Residential District, would the addition of a second dwelling unit authorized by Bill 103 be the "reasonable equivalent" of an ADU, so that the maximum number of units would remain at two dwelling units and one ADU even once the ordinance effectuating Act 39's requirements is passed?

    b. If Bill 104 is passed, would the autonomous living space created through the installation of a kitchenette represent the

"reasonable equivalent" of an ADU? If so, would the kitchenette count toward the Act 39 requirement?

drip:ltr:002acc02_attachment1:jpp

ACT 39

S.B. NO. 3202

A Bill for an Act Relating to Urban Development.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"§46- Accessory dwelling units on residentially zoned lots. (a) Each county shall adopt or amend accessory dwelling unit ordinances pursuant to this section to help address deficits in their housing inventory based on Hawaii housing planning studies published by the Hawaii housing finance and development corporation.

(b) Except as provided in subsections (c) and (d), each county shall adopt or amend ordinances defining reasonable standards that allow for the construction of at least two accessory dwelling units, or the reasonable equivalent, for residential use on all residentially zoned lots.

(c) A county that does not adopt or amend an ordinance pursuant to subsection (b) shall adopt or amend ordinances pursuant to this subsection and subsection (d), if applicable, defining:

(1) Districts that authorize at least two accessory dwelling units, or the reasonable equivalent, for residential use per each permitted exist-

ing single-family dwelling on a residentially zoned lot; provided that these districts shall be:

(A) Consistent with the county's comprehensive general plan;

(B) Reasonably distributed throughout the county's various regional planning areas; and

(C) Estimated to add development potential equivalent to half of the county's projected five-year demand of needed housing units for ownership or rental as stated in the 2019 Hawaii housing planning study; and

(2) Districts that authorize at least two accessory dwelling units or the reasonable equivalent for residential use per each permitted existing single-family dwelling on a residentially zoned lot within a reasonable walking distance to and from:

(A) Stations of a locally preferred alternative for a mass transit project; and

(B) Urban principal arterials as classified by the Federal Highway Administration for purposes of federal-aid highways projects and situated within a primary urban area, urban core, or county equivalent identified by a county comprehensive general plan.

(d) In addition to the requirements under subsection (c), a county with a population of five hundred thousand or more shall adopt or amend an ordinance defining reasonable standards to add development potential in existing apartment districts or apartment mixed-use districts equivalent to the county's projected five-year demand of needed housing units for ownership or rental in the 2019 Hawaii housing planning study.

(e) Accessory dwelling units developed pursuant to this section shall be subject to all development standards adopted by the respective county, including but not limited to those adopted pursuant to this chapter.

(f) Nothing in this section shall preclude a county from denying applications for permits if there is insufficient utility infrastructure to service the additional demand caused by the development of accessory dwelling units pursuant to this section.

(g) If a county does not adopt or amend zoning ordinances pursuant to this section by December 31, 2026, the county shall not deny any permit application on the basis of exceeding the maximum number of housing units allowed if any owner, or their designated representative, of a single-family dwelling in a residentially zoned lot applies for construction of up to two accessory dwelling units, or the reasonable equivalent, until the county adopts or amends an ordinance pursuant to this section; provided that a county may deny a permit application on the basis of infrastructure, design, or development standards.

(h) No county shall adopt prohibitions on using any dwelling unit on a residentially zoned lot as separately leased long-term rentals, as defined by each county.

(i) This section shall not apply to:

(1) Any area outside of the urban district established by chapter 205;

(2) County powers within special management areas delineated pursuant to chapter 205A; and

(3) Any area within an urban district that a county deems to be at high risk of a natural hazard such as flooding, lava, or fire, as determined by the most current data and maps issued by a federal or state department or agency.

(j) Neither this section, any permit issued in accordance with this section, or structures developed pursuant to this section shall create any vested

rights for any applicant, permit holder, or land owner. This section shall not preempt a county's ability to accept, review, approve, and deny permit applications.

(k) For purposes of this section, "residentially zoned lot" means a zoning lot in a county zoning district that is principally reserved for single-family and two-family detached dwellings. "Residentially zoned lot" does not include a lot in a county zoning district that is intended for rural, low density residential development, and open space preservation."

SECTION 2. Chapter 205, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"§205- Private covenants; residentially zoned lots; urban district. (a) No private covenant for a residentially zoned lot within an urban district recorded after the effective date of this Act shall limit the:

(1) Number of accessory dwelling units on that residentially zoned lot below the amount allowed pursuant to section 46- ; or

(2) Long-term rental of residential units on that residentially zoned lot.

(b) This section shall not apply to any private covenants recorded before the effective date of this Act.

(c) For purposes of this section, "residentially zoned lot" means a zoning lot in a county zoning district that is principally reserved for single-family and two-family detached dwellings. "Residentially zoned lot" does not include a lot in a county zoning district that is intended for rural, low density residential development, and open space preservation."

PART II

SECTION 3. Section 46-4, Hawaii Revised Statutes, is amended to read as follows:

"§46-4 County zoning. (a) This section and any ordinance, rule, or regulation adopted in accordance with this section shall apply to lands not contained within the forest reserve boundaries as established on January 31, 1957, or as subsequently amended.

Zoning in all counties shall be accomplished within the framework of a long-range, comprehensive general plan prepared or being prepared to guide the overall future development of the county. Zoning shall be one of the tools available to the county to put the general plan into effect in an orderly manner. Zoning in the counties of Hawaii, Maui, and Kauai means the establishment of districts of such number, shape, and area, and the adoption of regulations for each district to carry out the purposes of this section. In establishing or regulating the districts, full consideration shall be given to all available data as to soil classification and physical use capabilities of the land to allow and encourage the most beneficial use of the land consonant with good zoning practices. The zoning power granted [~~herein~~] in this section shall be exercised by ordinance, which may relate to:

(1) The areas within which agriculture, forestry, industry, trade, and business may be conducted;

(2) The areas in which residential uses may be regulated or prohibited;

(3) The areas bordering natural watercourses, channels, and streams, in which trades or industries, filling or dumping, erection of structures, and the location of buildings may be prohibited or restricted;

(4) The areas in which particular uses may be subjected to special restrictions;

(5) The location of buildings and structures designed for specific uses and designation of uses for which buildings and structures may not be used or altered;
(6) The location, height, bulk, number of stories, and size of buildings and other structures;
(7) The location of roads, schools, and recreation areas;
(8) Building setback lines and future street lines;
(9) The density and distribution of population;
(10) The percentage of a lot that may be occupied, size of yards, courts, and other open spaces;
(11) Minimum and maximum lot sizes; and
(12) Other regulations the boards or city council find necessary and proper to permit and encourage the orderly development of land resources within their jurisdictions.

The council of any county shall prescribe rules, regulations, and administrative procedures and provide personnel it finds necessary to enforce this section and any ordinance enacted in accordance with this section. The ordinances may be enforced by appropriate fines and penalties, civil or criminal, or by court order at the suit of the county or the owner or owners of real estate directly affected by the ordinances.

Any civil fine or penalty provided by ordinance under this section may be imposed by the district court, or by the zoning agency after an opportunity for a hearing pursuant to chapter 91. The proceeding shall not be a prerequisite for any injunctive relief ordered by the circuit court.

Nothing in this section shall invalidate any zoning ordinance or regulation adopted by any county or other agency of government pursuant to the statutes in effect [~~prior to~~] before July 1, 1957.

The powers granted [~~herein~~] in this section shall be liberally construed in favor of the county exercising them, and in [~~such~~] a manner [~~as to promote~~] that promotes the orderly development of each county or city and county in accordance with a long-range, comprehensive general plan to ensure the greatest benefit for the State as a whole. This section shall not be construed to limit or repeal any powers of any county to achieve these ends through zoning and building regulations, except insofar as forest and water reserve zones are concerned and as provided in subsections (c) [~~and~~], (d)[~~.~~], (g), and section 46- .

Neither this section nor any ordinance enacted pursuant to this section shall prohibit the continued lawful use of any building or premises for any trade, industrial, residential, agricultural, or other purpose for which the building or premises is used at the time this section or the ordinance takes effect; provided that a zoning ordinance may provide for elimination of nonconforming uses as the uses are discontinued, or for the amortization or phasing out of nonconforming uses or signs over a reasonable period of time in commercial, industrial, resort, and apartment zoned areas only. In no event shall [~~such~~] the amortization or phasing out of nonconforming uses apply to any existing building or premises used for residential (single-family or duplex) or agricultural uses. Nothing in this section shall affect or impair the powers and duties of the director of transportation as set forth in chapter 262.

(b) Any final order of a zoning agency established under this section may be appealed to the circuit court of the circuit in which the land in question is found. The appeal shall be in accordance with the Hawaii rules of civil procedure.

(c) [~~Each~~] Except as provided in section 46- , each county may adopt reasonable standards to allow the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted.

(d) Neither this section nor any other law, county ordinance, or rule shall prohibit group living in facilities with eight or fewer residents for purposes or functions that are licensed, certified, registered, or monitored by the State; provided that a resident manager or a resident supervisor and the resident manager's or resident supervisor's family shall not be included in this resident count. These group living facilities shall meet all applicable county requirements not inconsistent with the intent of this subsection, including but not limited to building height, setback, maximum lot coverage, parking, and floor area requirements.

(e) Neither this section nor any other law, county ordinance, or rule shall prohibit the use of land for employee housing and community buildings in plantation community subdivisions as defined in section 205-4.5(a)(12); in addition, no zoning ordinance shall provide for the elimination, amortization, or phasing out of plantation community subdivisions as a nonconforming use.

(f) Neither this section nor any other law, county ordinance, or rule shall prohibit the use of land for medical cannabis production centers or medical cannabis dispensaries established and licensed pursuant to chapter 329D; provided that the land is otherwise zoned for agriculture, manufacturing, or retail purposes.

(g) Notwithstanding any other law, county charter, county ordinance, or rule, any administrative authority to accept, reject, and approve or deny any application for subdivision, consolidation, or resubdivision of a parcel of land that has been fully zoned for residential use within the state urban district designated pursuant to section 205-2 shall be vested with the director of the county agency responsible for land use or a single county officer designated by ordinance; provided that:

(1) The parcel of land being subdivided is not located on a site that is:
    (A) Designated as important agricultural land pursuant to part III of chapter 205;
    (B) On wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW2;
    (C) Within a floodplain as determined by maps adopted by the Federal Emergency Management Agency;
    (D) A habitat for protected or endangered species;
    (E) Within a state historic district:
        (i) Listed on the Hawaii register of historic places or national register of historic places;
        (ii) Listed as a historic property on the Hawaii register of historic places or the national register of historic places; or
        (iii) During the period after a nomination for listing on the Hawaii register of historic places or national register of historic places is submitted to the department of land and natural resource's state historic preservation division and before the Hawaii historic places review board has rendered a decision; or
    (F) Within lava zone 1 or lava zone 2, as designated by the United States Geological Survey;
(2) Any approval under this subsection shall be consistent with all county zoning, development standards, and requirements pursuant to part II of chapter 205A; and
(3) This subsection shall not apply to county powers within special management areas delineated pursuant to part II of chapter 205A.

Neither this subsection, any permit issued in accordance with this subsection, or structures developed pursuant to this subsection shall create any vested rights for any applicant, permit holder, or land owner."

PART III

SECTION 4. Section 46-143, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) An impact fee shall be substantially related to the needs arising from the development and shall not exceed a proportionate share of the costs incurred or to be incurred in accommodating the development. The following [~~seven~~] factors shall be considered in determining a proportionate share of public facility capital improvement costs:

(1) The level of public facility capital improvements required to appropriately serve a development, based on a needs assessment study that identifies:
   (A) Deficiencies in existing public facilities;
   (B) The means, other than impact fees, by which existing deficiencies will be eliminated within a reasonable period of time; and
   (C) Additional demands anticipated to be placed on specified public facilities by a development;
(2) The availability of other funding for public facility capital improvements, including but not limited to user charges, taxes, bonds, intergovernmental transfers, and special taxation or assessments;
(3) The cost of existing public facility capital improvements;
(4) The methods by which existing public facility capital improvements were financed;
(5) The extent to which a developer required to pay impact fees has contributed in the previous five years to the cost of existing public facility capital improvements and received no reasonable benefit therefrom, and any credits that may be due to a development because of [~~such~~] the contributions;
(6) The extent to which a developer required to pay impact fees over the next twenty years may reasonably be anticipated to contribute to the cost of existing public facility capital improvements through user fees, debt service payments, or other payments, and any credits that may accrue to a development because of future payments; [~~and~~]
(7) The extent to which a developer is required to pay impact fees as a condition precedent to the development of non-site related public facility capital improvements, and any offsets payable to a developer because of this provision[~~.~~]; and
(8) The square footage of the development; provided that:
   (A) In cases where the developer is converting an existing structure, the square footage of the existing structure shall be deducted from the total square footage of the development when calculating impact fees; and
   (B) In cases where the public facility impacted is a water or sewage facility, the appropriate board of water supply may choose to calculate impact fees based on the total number of fixtures in the development, rather than by square footage."

PART IV

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.[1]

SECTION 6. This Act shall take effect on upon its approval.

(Approved May 28, 2024.)

Note

1. Edited pursuant to HRS §23G-16.5.

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, HAWAI'I 96793

September 5, 2024

APPROVED FOR TRANSMITTAL

Mayor 9-6-24 Date

Honorable Richard T. Bissen, Jr.
Mayor, County of Maui
200 South High Street
Wailuku, Hawai'i 96793

For Transmittal to:

Honorable Tasha Kama, Chair
Housing and Land Use Committee
200 South High Street
Wailuku, Hawai'i 96793
via: 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:

1. *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.

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.

Maui Island				
District	**Min. Lot Size**	**Existing Code Density**	**Bill 103 Density**	**Act 39 + Bill 103 Density**
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

Lanai Island				
District	**Min. Lot Size**	**Existing Code Density**	**Bill 103 Density**	**Act 39 + Bill 103 Density**
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

Molokai Island				
District	**Min. Lot Size**	**Existing Code Density**	**Bill 103 Density**	**Act 39 + Bill 103 Density**
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

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.

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

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 Pfost, Administrative Planning Officer (pdf)

S:\ALL\APO\19.08 residential\2024 revisions\08302024 CM Kama info on Bill 103.docx

DRIP Committee

From: DRIP Committee
Sent: Friday, February 28, 2025 4:35 PM
To: CorpCounselRFLS@co.maui.hi.us
Cc: DRIP Committee
Subject: (OCS); (DRIP-2) reply by 3/12/2025
Attachments: 002acc02 signed.pdf