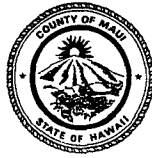


MOANA M. LUTEY
County Clerk



RICHELLE M. THOMSON
Deputy County Clerk

OFFICE OF THE COUNTY CLERK

COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/county/clerk

July 19, 2024

Honorable Tasha Kama, Chair
Housing and Land Use Committee
Council of the County of Maui
Wailuku, Hawaii 96793


Respectfully transmitted are copies of the following documents that were referred to your Committee by the Council of the County of Maui at its meeting of July 19, 2024:

BILLS:

- No. 103 (2024) - "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.08, MAUI COUNTY CODE, RELATING TO DENSITY WITHIN RESIDENTIAL DISTRICTS"
- No. 104 (2024) - "A BILL FOR AN ORDINANCE AMENDING CHAPTERS 19.04, 19.08, AND 19.29, MAUI COUNTY CODE, ADDING A NEW DEFINITION AND USE FOR KITCHENETTE AND AMENDING THE EXISTING DEFINITIONS OF DWELLING UNIT AND WET BAR, AND AMENDING SECTION 19.36B.020 TO ADD PARKING REQUIREMENTS FOR KITCHENETTES"
- No. 105 (2024) - A BILL FOR AN ORDINANCE AMENDING SECTION 19.500.110, MAUI COUNTY CODE, REGARDING NONCONFORMITIES"

Also transmitted for your convenience are copies of communications received pertaining to the bills.

Respectfully,


MOANA M. LUTEY
County Clerk

/jym
Enclosures
cc: Director of Council Services

2024 JUL 22 11:29
OFFICE OF THE
COUNTY CLERK

RECEIVED

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

June 27, 2024

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

APPROVED FOR TRANSMITTAL

Richard T. Bissen, Jr.
Mayor
Date: JUN 28 PM 3:12
RECEIVED
OFFICE OF THE
COUNTY CLERK

For Transmittal to:

Honorable Alice Lee, Chair
and Members of the Maui County Council
200 South High Street
Wailuku, Hawaii 96793

Dear Chair Lee and Council Members:

**SUBJECT: AN ORDINANCE AMENDING SECTION 19.500.110 REGARDING
NONCONFORMITIES TO ADDRESS STRUCTURES AND USES
THAT WERE DAMAGED, DESTROYED OR AFFECTED BY A
DISASTER PROCLAIMED BY THE GOVERNOR**

The Planning Department (Department) has initiated the attached ordinance to revise Maui County Code (MCC) section on "Nonconformities" in order to address structures and uses that were damaged, destroyed or effected by a disaster proclaimed by the Governor.

Background Information

The August 2023 wildfires caused extensive damage and complete destruction of a significant number of structures. Additionally, many businesses, whether directly or indirectly impacted by the wildfires were forced to close. In an effort to support recovery, this proposal is to allow those structures and uses that were non-conforming to the existing MCC to be re-constructed and used in a similar fashion that existed prior to the wildfires, provided that they are in compliance with existing building, fire and flood safety requirements. The Department's proposed ordinance presented to the Planning Commissions would allow nonconforming structures and uses affected by the August 2023 wildfires, and future disasters, to be re-established even if more than 50 percent of the structure was damaged, and proposes a four-year time frame to re-establish such structures and/or uses.

Honorable Richard T. Bissen, Jr.
For Transmittal to:
Honorable Alice Lee and Members of the Maui County Council
June 27, 2024
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Existing MCC Section 19.500.110 (Nonconformities), allows for the continuation of nonconformities under certain conditions. As it relates to “Nonconforming structures”, with limited exceptions, if a nonconforming structure is destroyed by any means to an extent of more than 50 percent of its replacement cost at the time of destruction, MCC requires that the structure be reconstructed in compliance with all provisions of the code. For example, if a residential structure permitted and constructed some time ago was nonconforming to the current MCC’s required setbacks, then if more than 50 percent of the structure was destroyed, the structure could only be re-constructed if it met all current MCC required setback requirements. This applies to all types of structural nonconformities, including density. Prior to this disaster there were no existing provisions that address the complete destruction of nonconforming structures.

As it relates to “Nonconforming uses”, MCC Section 19.500.110 (Nonconformities) indicates that any nonconforming use that is discontinued for twelve consecutive months shall not be resumed. Unfortunately, the MCC does not account for the amount of destruction experienced by the recent wildfires. Given the time necessary for debris removal, permit application preparation and processing, and countless other practical challenges, it will not be possible for affected nonconforming uses to re-establish in twelve months. Further, MCC does not address nonconforming uses that may have been discontinued due to lack of access, or lack of business activity.

In light of the foregoing, the Department proposed to the Planning Commissions an ordinance to address nonconforming structures and nonconforming uses by incorporating the following new text:

Nonconforming Structures (proposed ordinance):

19.500.110.B.1.d. A nonconforming structure that is damaged or destroyed to an extent of more than 50% of its replacement cost due to a disaster, recognized by the governor pursuant to chapter 127A, Hawaii Revised Statutes, can be repaired or reconstructed to its former nonconforming condition(s), provided that:

- i. Such repair or reconstruction is permitted in compliance with Title 16 of this code.
- ii. Such nonconforming structure may be repaired, expanded, renovated or altered in any manner that does not increase its nonconformity.
- iii. The owner of the property shall bear the burden of proof in providing evidence of the nonconforming portion(s) of the structure(s) that existed prior to the disaster in order to continue said nonconformity with any new repair or reconstruction. Said proof shall be subject to review and approval by the Director.
- iv. The building permit for the repair or reconstruction of the nonconforming structure shall be completed with final inspection within four years from the initial date the governor proclaims the state of disaster.
- v. The subject property and the previous nonconforming structure are located within an area of the county covered by the governor’s proclamation.

Honorable Richard T. Bissen, Jr.
For Transmittal to:
Honorable Alice Lee and Members of the Maui County Council
June 27, 2024
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vi. After the nonconforming structure is re-established with a building permit, the structure will still be deemed as nonconforming and will be subject to all other requirements of section 19.500.110.

Key Provisions of Proposed Ordinance:

- Allows nonconforming structures to be repaired or reconstructed if destroyed in a disaster by more than 50% of its replacement value. Current MCC requires nonconforming structures that exceed 50% damage to comply with MCC.
- Reconstruction must comply with current building (which includes fire) code and flood hazard regulations.
- Final inspections for the building permit for repair or reconstruction must be completed within 4 years.
- The reconstructed structure remains nonconforming. Any future changes must comply with MCC.

Nonconforming Uses (proposed ordinance):

19.500.110.D. Nonconforming uses affected by disaster. Nonconforming uses within existing structures that were damaged or destroyed, or were otherwise discontinued due to a disaster as recognized by the governor pursuant to chapter 127A, Hawaii Revised Statutes, shall comply with the following in order to continue with the nonconforming use:

1. The owner of the property shall bear the burden of proof in providing sufficient evidence that the nonconforming use existed prior to the disaster. Such proof shall be subject to review and approval by the Director.

2. If a nonconforming use was located in a structure that was damaged or destroyed by the disaster, then within four years from the initial date the governor proclaims the state of disaster, the nonconforming use shall be re-established within the same structure that has been repaired or reconstructed with a permit using the most current building code and flood hazard regulations.

3. If a nonconforming use was not contained within a structure that was damaged or destroyed due to the disaster, but the use is located within the specific area where the disaster occurred and was discontinued due to lack access or lack of business activity directly resulting from the disaster, then said nonconforming use may be reestablished within four year from the initial date that the governor proclaims the state of disaster.

4. Any structure that was damaged or destroyed by the disaster that contained a nonconforming use may, with approval of a permit in full compliance with Title 16 of this code, be repaired, reconstructed, expanded, renovated or altered in any manner that does not increase the nonconforming use. The owner of the property shall bear the burden of proof in providing

Honorable Richard T. Bissen, Jr.
For Transmittal to:
Honorable Alice Lee and Members of the Maui County Council
June 27, 2024
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sufficient evidence that the structure will not increase the nonconforming use subject to review and approval by the Director.

5. No nonconforming use shall be changed to another nonconforming use.

6. Any inspections which may be required for verification of compliance with Title 16 of this code shall be completed prior to occupancy. Upon re-establishment of the nonconforming use, the use will be considered nonconforming and subject to all other requirements of 19.500.110.

Key Provisions of Proposed Ordinance:

- Allows a nonconforming use in a damaged or destroyed structure as a result of a disaster to be re-established within 4 years.
- If the nonconforming use was not in a damaged or destroyed structure but was discontinued due to lack of access or lack of business activity and is located in the same specific area as where the disaster occurred, then it may be reestablished within 4 years.
- All appropriate building health and safety requirements are required prior to occupancy.
- Once re-established, the use will remain nonconforming. Any future changes must comply with the MCC.

Policy Implications:

MCC's nonconformity section was established to ensure compliance with the most current MCC through attrition (i.e. the individual loss of nonconformities to be replaced by conforming uses and structures). The proposed changes to the nonconforming structure and use sections re-set all nonconformities back to where they were prior to a disaster and allow for a longer period to be re-established. This proposal may delay ultimate MCC compliance for nonconformities affected by disasters. However, the proposal being put forward is in consideration of the scale of destruction caused but the 2023 wildfires. While it may be contrary to the previously established intent of MCC 19.500.110 – Nonconformities, the Department views this proposal as reasonable and appropriate in the context of this and future regional disasters.

Planning Commission Recommendations

The attached report to the Commissions was provided by the Department with its analysis and recommendation of approval for the proposed ordinance.

Public hearings were held by the Lānaʻi Planning Commission on February 21, 2024, the Maui Planning Commission on February 27, 2024, and the Molokaʻi Planning Commission on March 13, 2024. Attached are the minutes from each of these meetings. The following is a brief summary and action taken during each meeting:


Honorable Richard T. Bissen, Jr.
For Transmittal to:
Honorable Alice Lee and Members of the Maui County Council
June 27, 2024
Page 5

- **Lānaʻi Planning Commission Meetings:**
 - February 21, 2024: The Commission voted to recommend approval of the proposed ordinance with an amendment that would allow an extension to the four-year time frame if there is an unforeseen delay by the County in issuing building permits or allowing the use to occupy. The vote was 6-0.
- **Maui Planning Commission Meeting:**
 - February 27, 2024: The Commission voted to recommend approval of the proposed ordinance with an amendment to change the four-year time frame to five years, and to allow for up to a two-year extension if necessary. The vote was 6-0.
- **Molokaʻi Planning Commission Meeting:**
 - March 13, 2024: The Commission voted to recommend approval of the proposed bill with an amendment that would add the following text “except for Molokaʻi. The vote was 5-0.

Additional Changes Proposed Post-Planning Commission Hearings

With all recommendations and proposed modifications by the Planning Commissions listed above for Council’s consideration, the Department has attached a proposed revised bill for an ordinance that will result in the most effective amendment of the sections addressed, for the implementation of the County’s land use guidance system.

Thank you for your attention and consideration. Should further clarification be necessary, please feel free to contact me.

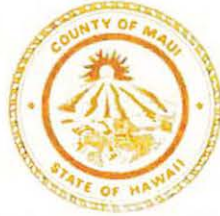
Sincerely,

KATE L.K. BLYSTONE
Planning Director

Attachments: Proposed Ordinance
Department Transmittal Letter to PC
Lānaʻi PC Minutes (excerpt), February 21, 2024
Maui PC Minutes (excerpt), February 27, 2024
Molokaʻi PC Minutes (excerpt), March 13, 2024

cc: Jordan E. Hart, Planning Program Administrator (pdf)
Gregory Pfost, Administrative Planning Officer (pdf)

RICHARD T. BISSEN, JR.
Mayor

KATE L. K. BLYSTONE
Acting Planning Director



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

February 21, 2024

MEMORANDUM

TO: MAUI PLANNING COMMISSION
MOLOKAI PLANNING COMMISSION
LANAI PLANNING COMMISSION

FROM: KATE L. K. BLYSTONE, Acting Planning Director 

**SUBJECT: AN ORDINANCE AMENDING SECTION 19.500.110 REGARDING
NONCONFORMITIES TO ADDRESS STRUCTURES AND USES THAT
WERE DAMAGED, DESTROYED OR AFFECTED BY A DISASTER
PROCLAIMED BY THE GOVERNOR**

The attached ordinance proposes to revise Maui County Code (MCC) section on "Nonconformities" in order to address structures and uses that were damaged, destroyed or effected by a disaster proclaimed by the Governor.

Background Information

The August 2023 wildfires caused extensive damage and complete destruction of a significant number of structures. Additionally, many businesses, whether directly or indirectly impacted by the wildfires were forced to close. In an effort to allow those structures and uses that were non-conforming to the existing MCC to be re-constructed and used in a similar fashion that existed prior to the wildfires, in compliance with existing building and fire safety requirements, the Planning Department (Department) is proposing to amend the MCC's nonconformity section to include provisions addressing nonconforming structures and uses that were affected by a disaster. Specifically, this ordinance will allow nonconforming structures and uses affected by the August 2023 wildfires, and future disasters, to be re-established even if more than 50 percent of the structure was damaged, and will provide for a four-year time frame to re-establish such structures and/or uses.

Discussion

According to the MCC, "Nonconforming building or structure" and "Nonconforming uses" are defined as follows:

"Nonconforming building or structure" means a building or structure or portion thereof which was previously lawful but which does not comply with the density, yard, setback, or height regulations of the district in which it is located, either on the effective date of the ordinance codified in this article or as a result of any subsequent amendment.

"Nonconforming uses" means any use of a structure or zoning lot which was previously lawful but which does not conform to the applicable use regulations of the district in which it is located, either on the effective date of the ordinance codified in this article or as a result of any subsequent amendment.

Existing MCC Section 19.500.110 (Nonconformities), allows for the continuation of nonconformities under certain conditions. As it relates to "Nonconforming structures," with limited exceptions, if a nonconforming structure is destroyed by any means to an extent of more than 50 percent of its replacement cost at the time of destruction, then the MCC requires that the structure be reconstructed in compliance with all provisions of the MCC. For example, if a residential structure permitted and constructed some time ago was nonconforming to the current MCC's required setbacks, then if more than 50 percent of the structure was destroyed, the structure could only be re-constructed if it met all current MCC required setback requirements. Per the definition above, this applies to all types of structure nonconformities, including density. While the MCC does include provisions for the complete (more than 50%) reconstruction of nonconforming historic properties or multi-family dwelling structures to their pre-destroyed state, unfortunately there are no existing provisions that address the complete destruction of other types of nonconforming structures, such as single-family residences, and commercial or industrial buildings when there is a significant disaster such as that experienced in August 2023.

As it relates to "Nonconforming uses," existing MCC Section 19.500.110 (Nonconformities) indicates that any nonconforming use that is discontinued for twelve consecutive months shall not be resumed. Unfortunately, the MCC does not account for the amount of destruction experienced by the recent wildfires as it will be impossible for any affected nonconforming use to re-establish itself in twelve months' time. For example, if there was a nonconforming retail use in Lahaina located within a residential zoning district and the retail use was discontinued due to the destruction of its structure, considering it will take longer than twelve months to reconstruct said structure, according to the existing MCC, the prior use would not be permitted to re-establish. Any new use will need to comply with the allowable residential uses of the district. Further, the MCC does not address nonconforming uses that were simply discontinued due to lack of access, such as being located within a cordoned off disaster area, or lack of business activity, such as having to close business due to lack of consumers within the disaster area.

In light of the foregoing, the Department is recommending adoption of the attached ordinance. The proposed ordinance will address nonconforming structures and nonconforming uses by incorporating the following new text:

Nonconforming Structures (proposed ordinance):

19.500.110.B.1.d. A nonconforming structure that is damaged or destroyed to an extent of more than 50 percent of its replacement cost due to a disaster, recognized by the governor pursuant to chapter 127A, Hawaii Revised Statutes, can be repaired or reconstructed to its former nonconforming condition(s), provided that:

i. Such repair or reconstruction is permitted in compliance with Title 16 of this code.

ii. Such nonconforming structure may be repaired, expanded, renovated or altered in any manner that does not increase its nonconformity.

iii. The owner of the property shall bear the burden of proof in providing evidence of the nonconforming portion(s) of the structure(s) that existed prior to the disaster in order to continue said nonconformity with any new repair or reconstruction. Said proof shall be subject to review and approval by the Director.

iv. The building permit for the repair or reconstruction of the nonconforming structure shall be completed with final inspection within four years from the initial date the governor proclaims the state of disaster.

v. The subject property and the previous nonconforming structure are located within an area of the county covered by the governor's proclamation.

vi. After the nonconforming structure is re-established with a building permit, the structure will still be deemed as nonconforming and will be subject to all other requirements of section 19.500.110.

Key Provisions of Proposed Ordinance:

- Allows nonconforming structures to be repaired or reconstructed for structures damaged or destroyed in a disaster by more than 50 percent of its replacement value. Current MCC requires nonconforming structures that exceed 50 percent damage to comply with MCC.
- Reconstruction must comply with current building code and flood hazard regulations.
- Building permit for repair or reconstruction must be completed within 4 years.
- The reconstructed structure is still considered nonconforming and thus any future changes must comply with MCC.

Nonconforming Uses (proposed ordinance):

19.500.110.D. Nonconforming uses affected by disaster. Nonconforming uses within existing structures that were damaged or destroyed, or were otherwise discontinued due to a disaster as recognized by the governor pursuant to chapter

127A, Hawaii Revised Statutes, shall comply with the following in order to continue with the nonconforming use:

1. The owner of the property shall bear the burden of proof in providing sufficient evidence that the nonconforming use existed prior to the disaster. Such proof shall be subject to review and approval by the Director.

2. If a nonconforming use was located in a structure that was damaged or destroyed by the disaster, then within four years from the initial date the governor proclaims the state of disaster, the nonconforming use shall be re-established within the same structure that has been repaired or reconstructed with a permit using the most current building code and flood hazard regulations.

3. If a nonconforming use was not contained within a structure that was damaged or destroyed due to the disaster, but the use is located within the specific area where the disaster occurred and was discontinued due to lack access or lack of business activity directly resulting from the disaster, then said nonconforming use may be reestablished within four years from the initial date that the governor proclaims the state of disaster.

4. Any structure that was damaged or destroyed by the disaster that contained a nonconforming use may, with approval of a permit in full compliance with Title 16 of this code, be repaired, reconstructed, expanded, renovated or altered in any manner that does not increase the nonconforming use. The owner of the property shall bear the burden of proof in providing sufficient evidence that the structure will not increase the nonconforming use subject to review and approval by the Director.

5. No nonconforming use shall be changed to another nonconforming use.

6. Any inspections which may be required for verification of compliance with Title 16 of this code shall be completed prior to occupancy. Upon re-establishment of the nonconforming use, the use will be considered nonconforming and subject to all other requirements of 19.500.110.

Key Provisions of Proposed Ordinance:

- Allows a nonconforming use in a damaged or destroyed structure as a result of a disaster to be re-established within 4 years.
- If the nonconforming use was not in a damaged or destroyed structure but was discontinued due to lack of access or lack of business activity and is located in the same specific area as where the disaster occurred, then it may be reestablished within 4 years.

- All appropriate building health and safety requirements will be in place prior to occupancy.
- Once re-established, the use will still be considered as nonconforming and thus any future changes to the use must comply with the MCC.

Policy Implications:

While the attached ordinance addresses the issues identified in the preceding paragraphs, and as a result will provide relief to many property and business owners affected by the most recent disaster, before moving forward, it is important to consider the policy implications of such an ordinance. Specifically, the MCC's nonconformity section was established with a purpose of establishing compliance with the most current MCC through attrition. This is why the existing MCC's nonconforming section allows for existing nonconforming structures and uses to continue, but expects that when more than 50 percent of a structure is destroyed or a use is abandoned for more than 12 months, that the new structure or use will be compliant with MCC. Thus, while the proposed changes to the nonconforming structure and use sections are important in that they basically re-set all nonconformities back to where they were prior to a disaster and allow for a longer period to be re-established, that purpose may not be what is desired as it will delay MCC compliance. The proposal being put forward is in consideration of the scale of destruction caused by the 2023 wildfires, and is directly contrary to the overall intent of MCC 19.500.110 – Nonconformities. That being said, the Department views this proposal as reasonable and appropriate at this time.

Recommendation and Options

The Department is recommending approval of the proposed ordinance as drafted. The Commission has the following options:

1. Recommend approval of the proposed bill to the Maui County Council.
2. Recommend approval of the proposed bill with amendments to the Maui County Council.
3. Recommend denial of the proposed bill to the Maui County Council.
4. Vote to defer action on the proposed bill in order to gather specific additional information.

Attachments: Draft Ordinance

xc: Jordan Hart, Planning Program Administrator - ZAED (pdf)
Danny Dias, Planning Program Administrator – Current Planning (pdf)
Jacky Takakura, Planning Program Administrator – Long Range Planning (pdf)
Jordan Molina, Director of Public Works
Gregory Pfost, Administrative Planning Officer (pdf)

ORDINANCE NO.

BILL NO. ____ (2024)

A BILL FOR AN ORDINANCE AMENDING SECTION 19.500.110, MAUI
COUNTY CODE, REGARDING NONCONFORMITIES

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

SECTION 1. The purpose of this Ordinance is to amend Section 19.500.110 – Nonconformities, Maui County Code. Said modifications address nonconforming structures and uses damaged, destroyed or affected by a disaster proclaimed by the Governor.

SECTION 2. Section 19.500.110, Maui County Code, is amended to read as follows:

19.500.110 - Nonconformities.

Nonconforming lots, structures, uses, and parking may be continued, subject to the following provisions:

A. Nonconforming lots.

1. A nonconforming lot shall not be reduced in area, width, or depth, except by government action to further public health, safety, or welfare.

2. Any nonconforming structure or use may be constructed, enlarged, extended, or moved on a nonconforming lot as long as all other requirements of this title are met.

B. Nonconforming structures.

1. If a nonconforming structure is destroyed by any means to an extent of more than 50 percent of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this title; except, that:

a. A nonconforming structure that is an historic property as defined in chapter 6E of the Hawaii Revised Statutes and a nonconforming structure devoted to a conforming use that contains multi-family dwelling units owned by owners under the authority of

chapter 514A of the Hawaii Revised Statutes, and whether or not the structure is destroyed by accidental means, including destruction by fire, other calamity, or natural disaster, may be restored to its former condition; provided, that such restoration is permitted by the building code and flood hazard regulations and is started within two years.

b. The burden of proof to establish that the destruction of a structure was due to accidental means as described above and that the structure was legally nonconforming shall be on the owner.

c. Except as otherwise provided in this title, no nonconforming structure that is voluntarily razed or required by law to be razed by the owner may thereafter be restored except in full conformity with the provisions of this title.

d. A nonconforming structure that is damaged or destroyed to an extent of more than 50% of its replacement cost due to a disaster, recognized by the governor pursuant to chapter 127A, Hawaii Revised Statutes, can be repaired or reconstructed to its former nonconforming condition(s), provided that:

i. Such repair or reconstruction is permitted in compliance with Title 16 of this code.

ii. Such nonconforming structure may be repaired, expanded, renovated or altered in any manner that does not increase its nonconformity.

iii. The owner of the property shall bear the burden of proof in providing evidence of the nonconforming portion(s) of the structure(s) that existed prior to the disaster in order to continue said nonconformity with any new repair or reconstruction. Said proof shall be subject to review and approval by the Director.

iv. The building permit for the repair or reconstruction of the nonconforming structure shall be completed with final inspection within four years from the initial date the governor proclaims the state of disaster.

v. The subject property and the previous nonconforming structure are located within an area of the county covered by the governor's proclamation.

vi. After the nonconforming structure is re-established with a building permit, the structure

will still be deemed as nonconforming and will be subject to all other requirements of section 19.500.110.

2. If a nonconforming structure is moved, it shall conform to the provisions of this title.

3. Any nonconforming structure may be repaired, expanded, renovated, or altered in any manner that does not increase its nonconformity.

C. Nonconforming uses. With exception to those nonconforming uses affected by disaster per section 19.500.110.D, all other nonconforming uses shall comply with the following:

1. A nonconforming use shall not extend to any part of the structure or lot that was not arranged or designed for such use at the time the use became nonconforming.

2. Any nonconforming use that is discontinued for twelve consecutive months shall not be resumed.

3. Work may be done on any structure devoted in whole or in part to any nonconforming use if the work is limited to ordinary repairs, including repair or replacement of walls, fixtures, wiring, or plumbing. Further, the work shall not exceed 50 percent of the current replacement cost of the structure within a twelve-month period, and the floor area of the structure, as it existed at the time the nonconforming use was created, shall not be increased.

4. No nonconforming use shall be changed to another nonconforming use.

D. Nonconforming uses affected by disaster. Nonconforming uses within existing structures that were damaged or destroyed, or were otherwise discontinued due to a disaster as recognized by the governor pursuant to chapter 127A, Hawaii Revised Statutes, shall comply with the following in order to continue with the nonconforming use:

1. The owner of the property shall bear the burden of proof in providing sufficient evidence that the nonconforming use existed prior to the disaster. Such proof shall be subject to review and approval by the Director.

2. If a nonconforming use was located in a structure that was damaged or destroyed by the disaster, then within four years from the initial date the governor proclaims the state of disaster, the nonconforming use shall be re-established within the same structure that has been repaired or reconstructed with a permit using the most current building code and flood hazard regulations.

3. If a nonconforming use was not contained within a structure that was damaged or destroyed due to the disaster, but the use is located within the specific area where

the disaster occurred and was discontinued due to lack access or lack of business activity directly resulting from the disaster, then said nonconforming use may be reestablished within four years from the initial date that the governor proclaims the state of disaster.

4. Any structure that was damaged or destroyed by the disaster that contained a nonconforming use may, with approval of a permit in full compliance with Title 16 of this code, be repaired, reconstructed, expanded, renovated or altered in any manner that does not increase the nonconforming use. The owner of the property shall bear the burden of proof in providing sufficient evidence that the structure will not increase the nonconforming use subject to review and approval by the Director.

5. No nonconforming use shall be changed to another nonconforming use.

6. Any inspections which may be required for verification of compliance with Title 16 of this code shall be completed prior to occupancy. Upon re-establishment of the nonconforming use, the use will still be considered nonconforming and subject to all other requirements of 19.500.110.

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 4. This ordinance will take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:

Corporation Counsel

1 not sure what I'm doing wrong.

2 CHAIR GIMA: Okay. In the meantime while
3 you're figuring that out, is anyone else in the room
4 with you?

5 COMMISSIONER KAYE: No.

6 CHAIR GIMA: Okay. Thank you.

7 COMMISSIONER FUJIE-KAAUAMO: Uncle Butch,
8 last time I was having camera issues. Can you guys
9 see me now? Okay, cool.

10 CHAIR GIMA: Okay, moving on to the agenda,
11 public hearing. We have four agenda items this
12 evening.

13 Selina, just a quick procedural question,
14 if the planning commission so chooses, can they make
15 amendments or modifications that is exclusive to
16 Lanai? That's question number one.

17 And question number two is can we make
18 amendments to the first three ordinances to make
19 it -- to make the ordinance time-limited and
20 area-specific?

21 MS. PANNELL: Yes, you could certainly
22 recommend those alterations.

23 CHAIR GIMA: Okay. Thank you. With that
24 being said, Public Hearing Number One:

25 A bill for an ordinance to

1 amend Section 19.500.10
2 (sic), Maui County Code
3 relating to
4 nonconformities. Ms. Kate
5 Blystone, Acting Planning
6 Director, referring to the
7 Maui, Molokai, and Lanai
8 Planning Commissions, a
9 proposed bill to amend
10 Maui County Code 19.500.10
11 relating to
12 nonconformities to address
13 disaster events. Proposed
14 revisions will allow for
15 post-disaster
16 reconstruction of
17 completely destroyed
18 nonconforming structures
19 to be compliant with
20 existing building and fire
21 requirements as well as
22 the resumption of
23 nonconforming uses. The
24 duration for
25 reconstruction of

1 nonconforming structures
2 and resumption of
3 nonconforming uses are
4 also proposed to be
5 extended.

6 So at this time, I will turn this over to
7 you, Jordan.

8 MR. HART: Chair, thank you very much.
9 I'm actually going to turn it over to Greg Pfof from
10 the planning department.

11 CHAIR GIMA: Okay. Thank you. All right,
12 Greg.

13 MR. PFOF: Hi, Chair, members of the
14 Commission. Thank you again. Greg Pfof,
15 administrative planning officer for the planning
16 department.

17 I have a PowerPoint presentation which I'm
18 going to share my screen hopefully here and see if
19 this works. Sorry. This is my first time on Webex.
20 Can you all see my screen?

21 CHAIR GIMA: Yes.

22 MR. PFOF: Okay, great. Thank you. So
23 as you're all aware, the August 2023 wildfires caused
24 excessive damage and complete destruction to a number
25 of structures as well as many businesses, whether

1 directly or indirectly impacted by the wildfires,
2 were forced to close.

3 In an effort to allow those structures and
4 uses that were possibly nonconforming to the existing
5 Maui County Code to be reconstructed and used in a
6 similar fashion, the department has initiated this
7 proposed code amendment to deal with nonconforming
8 structures and uses that were affected by a disaster.

9 I first want to do -- maybe go into a
10 little bit of background. Some folks may not
11 understand clearly what "nonconforming" means.
12 Within our code, there are definitions of
13 "nonconforming building" and also "nonconforming
14 uses."

15 And "nonconforming building" is basically a
16 structure that, at one time, was lawfully conforming
17 to the zoning code. But perhaps over time, the
18 zoning code has changed and that structure is no
19 longer conforming to the new zoning code or the
20 changes that have occurred. And for a building, this
21 would be perhaps nonconforming to density setbacks,
22 height regulations, and those kinds of things.

23 And, for example, a residential structure
24 maybe that was constructed some time ago with a
25 five-foot side yard setback and was lawfully

1 constructed in conformance with setbacks at that
2 time, maybe nonconformed -- would be nonconforming
3 now to the current codes requiring a six-foot side
4 yard setback.

5 And in addition to nonconforming
6 structures, there's nonconforming uses. And that
7 basically means a use of a structure -- not the
8 structure itself but the use which does not conform
9 to the applicable regulations of the district in
10 which -- the zoning district in which it is located.

11 For example, you may have a permitted
12 retail use in a structure that is nonconforming to
13 the current code's zoning of residential which would
14 prohibit retail uses. And so the nonconforming
15 section deals with nonconforming uses as well as
16 structures.

17 The current nonconforming code section
18 allows nonconforming structures and uses to continue.
19 It doesn't -- every time we do a code change, it
20 doesn't outright require all structures to come into
21 compliance -- that wouldn't be feasible -- so it
22 allows structures to continue, however, with some
23 provisions. If a nonconforming structure is damaged
24 or destroyed by more than 50 percent, then it
25 requires the rebuild to comply with all new

1 requirements in the code.

2 In a nonconforming use situation, if the
3 use is discontinued for 12 months, then it shall not
4 be resumed. And, really, you know, when you look at
5 the purpose of the nonconforming section, it's to
6 establish compliance with the current code through
7 attrition. So as buildings and uses turn over in
8 time, they will eventually come into compliance with
9 the new code or any changes to the code.

10 So the department recognized an issue as a
11 result of the August 2023 wildfires in that the
12 current code does not account for such large
13 disasters such as what we experienced and the
14 destruction of so much property.

15 The -- for example, in the Lahaina area,
16 there may be nonconforming structures that were
17 noncompliant to setbacks, heights, or density, or
18 even impervious surfaces requirement which is a new
19 code requirement. And there may be nonconforming
20 uses that were in the Lahaina area that, for obvious
21 reasons, are not possible to reestablish within the
22 12-month time frame that the current code requires.

23 There -- simply, there is -- you know,
24 there's -- there's time for the cleanup of the sites
25 and rebuilding of the -- of the structures. So

1 there's no way a nonconforming use could possibly be
2 reestablished.

3 So recognizing this issue in the current
4 code doesn't allow for -- doesn't account for such
5 large disasters such as what we experienced, the
6 department's initiating this bill to revise a
7 nonconforming section to allow the opportunity for
8 nonconforming structures and uses to be reestablished
9 back to the state that they were in prior to the
10 disaster.

11 And so I've provided in this slide a
12 summary in regards to nonconforming structure
13 provisions and what -- what the department is
14 proposing. It basically allows nonconforming
15 structures to be repaired or reconstructed that were
16 damaged or destroyed in disaster by more than 50
17 percent. And when I talk about "disaster," I mean a
18 disaster as proclaimed by the governor. So these are
19 significant disasters.

20 So -- whereas the current code requires
21 structures that exceeded 50 percent damage must
22 comply with the current code. So in other words,
23 we're allowing the full damage or destruction of a
24 structure to actually rebuild to their nonconforming
25 status.

1 The reconstruction must comply with the
2 current building code and flood hazard regulations,
3 and the repair and reconstruction must be completed
4 within a four-year time frame. And then after it is
5 reconstructed to -- and it will still remain as
6 nonconforming, so then in the future, any rebuild or
7 changes to the building will then have to comply with
8 the nonconforming section as currently written.

9 In regards to nonconforming uses, the
10 department's proposing to allow nonconforming uses in
11 a damaged or destroyed structure to be reestablished
12 within four years. If the nonconforming use was not
13 damaged or destroyed within a structure but perhaps
14 was discontinued due to lack of access to the
15 business -- excuse me -- or lack of business activity
16 but it's located within the same areas of disaster,
17 then it can be reestablished within four years as
18 well.

19 Of course, we will require that all
20 appropriate building health and safety requirements
21 will be in place prior to occupancy of the business
22 once it's reestablished. And then the -- and then
23 once it is reestablished, the nonconforming use will
24 still be nonconforming and any future changes would
25 need to comply with the -- with the county code.

1 The department is recommending approval of
2 the ordinance although -- while it is contrary,
3 really, to the purpose of the nonconforming code
4 section as it will extend nonconformities, we believe
5 it's reasonable to allow nonconforming uses and
6 structures that were damaged or destroyed in such a
7 disaster as we recently experienced to allow them to
8 reestablish following the disaster.

9 With that, the -- that concludes my
10 presentation. The planning commission options
11 tonight are to recommend approval of the ordinance to
12 the county council, recommended approval -- recommend
13 approval of the ordinance with amendments, or
14 recommend denial of the ordinance, or vote to defer
15 the action to gather more specific additional
16 information.

17 And that concludes my presentation. I'm
18 available for any questions. Thank you.

19 CHAIR GIMA: All right. Thanks, Greg.

20 For the record, Nikki Alboro is now in
21 attendance. So, Nikki, do you have anyone else in
22 the room with you?

23 COMMISSIONER ALBORO: I'm alone.

24 CHAIR GIMA: Okay. Thank you. And then
25 Sally's still having problems with her video, so --

1 but I guess we're okay, right, Selina, because we
2 already have enough for quorum?

3 MS. PANNELL: Yes, that's right. And then
4 also for voting later on, the video will need to be
5 on for anyone that wants to vote.

6 CHAIR GIMA: Okay. Thank you. All right.
7 So at this time, I'll open up for public testimony.

8 Leilani, do we have anyone in the chat or
9 in Wailuku wishing to testify?

10 MS. RAMORAN: Thank you, Chair. I do not
11 have anyone in the conference room or anyone signed
12 up via chat. Thank you.

13 CHAIR GIMA: Okay. Thank you.

14 How's about you, Roxanne? Roxanne, you
15 still in the meeting?

16 COMMISSIONER FUJIE-KAAUAMO: I don't see
17 her on.

18 CHAIR GIMA: She was on earlier. Okay, I
19 guess when she comes back on, we will ask. So we'll
20 keep public testimony open until such time Roxanne
21 comes back on.

22 Commissioners, any questions or comments
23 for Greg?

24 COMMISSIONER MANNA: Thank you, Chair. I
25 have a question for Greg.

1 CHAIR GIMA: Okay. Go ahead, Negus.

2 COMMISSIONER MANNA: Thank you. Hi, Greg.
3 How are you this evening?

4 MR. PFOST: Doing well, thank you. I
5 know -- also, just letting you know -- I'll let you
6 know that Jordan is also online to answer any
7 questions as well.

8 COMMISSIONER MANNA: Oh, fantastic. So, my
9 question is do you have any examples of certain
10 buildings that, you know, this -- this change has
11 come up for? Is there some historical reasons or
12 other things like that you're aware of?

13 MR. PFOST: I'm not aware of specific,
14 exact examples that -- within the Lahaina area. I'm
15 not sure if Jordan may be aware of. It's just, I
16 think, anticipating the potential that there may have
17 been or there may be nonconforming structures or
18 nonconforming uses was the -- really the reason why
19 we wanted to get this on board.

20 If you look in the section of the proposed
21 legislation, it does require actually the property
22 owner to come forward to actually -- or the business
23 owner to come forward and and prove that their
24 business or their property was a nonconforming.

25 I don't know if you have anything else to

1 add, Jordan.

2 MR. HART: Yeah. Thank you, Chair. So,
3 no, we haven't catalogued properties. But there
4 was -- certainly will be nonconformities.

5 Just -- by the way, the progression of the
6 code, the code didn't even exist at the time when
7 many of the historic structures were built, and then
8 it did exist, and then it's evolved over time.

9 So there will be -- and so the planning
10 department wanted to get in front of this issue and
11 provide an avenue to address that in the event these
12 individuals do come forward and want to reconstruct
13 as was legal at the time that the structure existed.

14 COMMISSIONER MANNA: Thank you, Jordan.

15 CHAIR GIMA: Anything else, Negus?

16 COMMISSIONER MANNA: Not at this moment,
17 Chair. Thank you.

18 CHAIR GIMA: All right. So piggybacking
19 off of Negus, Greg and Jordan, you guys have a
20 ballpark figure on what percent of either the Lahaina
21 or Kula structures or nonconforming uses exists? I
22 mean, just a ballpark figure?

23 MR. HART: No, we haven't, Chair. We
24 haven't done that kind of analysis. Determining if
25 a structure is nonconforming is actually pretty

1 complicated, which is -- which is why the onus is on
2 the landowner to provide documentation and proof that
3 they had a legally-permitted structure.

4 So for the department to proactively go
5 through and do that, in anticipation of whether or
6 not in the future landowners will even want to
7 exercise this potential option, it -- we just don't
8 have the resources to do that. But -- but suffice to
9 say, because of the age, there will be
10 nonconformities, but the exact number is not defined
11 at this time.

12 CHAIR GIMA: Okay. Thank you. Other
13 questions, comments from the commissioners? Since
14 we can't see you, Sally -- Sally, do you have any
15 questions or comments?

16 COMMISSIONER KAYE: Yes. Thank you so
17 much. I'm -- I'm showing that my video is on. I
18 don't see any way to make this get fixed. So just be
19 advised I'm here and thank you for asking.

20 I wanted to clarify that -- that,
21 obviously, this has a special purpose because of the
22 wildfires, but this would apply to any disaster
23 declared anywhere in Maui County, is that correct,
24 and the same provisions of a four-year deadline,
25 et cetera?

1 So any nonconforming use -- if a disaster
2 was declared on Lanai because of a hurricane or
3 something, it would apply here, correct?

4 MR. PFOST: That's correct.

5 COMMISSIONER KAYE: Okay. Second
6 question -- well, actually a suggestion then. In the
7 proposed ordinance, which is on Page 3 of the handout
8 that you guys provided us, if you go down to
9 section -- 1, 2, 3 -- Roman Numeral IV, okay:

10 The building permit for
11 the repair or
12 reconstruction of the
13 nonconforming structure
14 shall be completed with
15 final inspection within
16 four years,

17 blah, blah, blah. I think that we might
18 consider adding, "provided that the delay in
19 completing final inspection is not caused by the
20 planning department." Not that you guys would not
21 fall down on -- on the ball, but there have been --
22 there have been times when the planning department
23 just doesn't have the resources to get out to give
24 everybody an inspection.

25 And that seems pretty cut and dry when it

1 might not be the homeowner or business owner's fault.
2 So that's -- that's my suggestion.

3 CHAIR GIMA: Greg or Jordan, any comments
4 to that?

5 MR. HART: Sure, Chair. Fully understood
6 that suggestion, yeah, that's understood. We can --
7 we can add that. There are a number of moving parts.
8 There are other agencies that are involved.

9 But -- so whether or not it should be -- be
10 the County of Maui in processing appropriate
11 approvals or some version of that, we can -- we can
12 note the comment and work on how to articulate that
13 going forward in the process.

14 CHAIR GIMA: Okay. Thanks, Jordan.
15 Anything else, Sally?

16 COMMISSIONER KAYE: No, thank you. That's
17 a good point, Jordan. I'm sorry. I rushed through
18 that thinking that it was planning department, but it
19 could be any number of other agencies that could be
20 holding it up. So whoever would be the final -- the
21 final inspection, somebody's responsible for that;
22 correct?

23 MR. HART: Yes. Yes, there is. And so let
24 me add a little bit of background for this for
25 everybody's understanding.

1 The -- the criteria will be that the -- the
2 reconstructed buildings, while they may be
3 nonconformities, they'll comply with all existing
4 building and fire safety standards. So there will be
5 all of the normal agency inspections that you would
6 do. But for the planning department, when it comes
7 to the use, we'll be able to approve the final
8 inspections, noting that the use is a legal
9 nonconformity.

10 CHAIR GIMA: Okay. Thanks, Jordan.
11 Commissioners, any other questions or comments?

12 So, just got a few. So as I mentioned
13 earlier, what consideration, if anything, was given
14 to this amendment to make it time-limited or
15 area-specific?

16 MR. HART: Chair, you know, as Greg had
17 gone over during his presentation, the normal posture
18 of the county and most municipalities is that
19 nonconformities should go away over time and that,
20 over time through attrition, these properties should
21 be brought into compliance. But because of the
22 magnitude of this event, there is a desire to provide
23 relief and options.

24 And so the area is tied to the area of the
25 declared emergency. And the time frame -- basically

1 we started by looking at other municipalities, one
2 specific one, Santa Rosa, and then added a little bit
3 more time for Maui County considerations.

4 CHAIR GIMA: Okay. Thank you. And in --
5 in drafting this proposal, did the department look at
6 what some of the pros and cons are about this
7 ordinance?

8 MR. HART: Yes, we did. We discussed them
9 at some length. There's obviously the deviation
10 from the posture of -- of attrition, which is --
11 that's the standard for the county.

12 But, you know, it's evident that there's a
13 need for further consideration based on -- on the --
14 this event that's taken place and, you know, other
15 future disaster events that may be comparable in some
16 ways. So there was a desire to try to do something
17 to make the County's default response less harsh on
18 these individuals coming forward to rebuild.

19 And so there are there -- how would I put
20 this -- we propose to mitigate the drawbacks by
21 requiring the reconstruction to be in full compliance
22 with existing building and fire regulations. So
23 while the structures -- some of them may be larger
24 than could have been approved now under existing land
25 use regulations or they may be closer to their

1 setbacks or various things like that or a use may not
2 be permitted.

3 Let's use, for example, the nonconforming
4 use. A lot of times legal nonconforming uses,
5 they're commercial-type uses, and they're occurring
6 in structures that are not commercial
7 construction-type structures. So the safety features
8 are not as robust as they may -- they should be for
9 the volume of people that are being served under
10 normal regulations.

11 So in this situation, those -- those
12 levels of inspections would all be necessary before
13 reoccupying. So you can still initiate the use in --
14 in the location that doesn't have the proper zoning,
15 but the structure will need to be geared towards the
16 occupancy group type in order to pass your final
17 inspections.

18 And then, again, Planning is just going to
19 be able to -- to cite the -- or indicate approval in
20 the final inspections because the use would be
21 legally nonconforming if this ordinance were passed,
22 but all the other health and safety regulations would
23 be looked after and addressed.

24 CHAIR GIMA: Okay. Thanks. I know there
25 are a lot of opinions on how to rebuild the Lahaina

1 area. And if -- if it becomes like a project
2 district, or if the HCDA takes charge, which -- which
3 will be the governing ordinance or statute, if that
4 happens?

5 MR. HART: So, Chair, I'll defer to Greg.

6 Greg, you want to take a crack at this? I
7 know you've been analyzing the legislation a little
8 bit more closely than I have, at least the draft
9 legislation.

10 MR. PFOST: Yeah. That's -- it's a really
11 good question. I mean, what we have right now is --
12 is the code that we're dealing with and the ordinance
13 that we're dealing with in Title 19. And so we can
14 make the changes that affect or what we think are
15 going to be beneficial to those that are in a
16 disaster. I think that's important.

17 I think as -- if -- if things were to
18 change with land uses, we -- I mean, we can always
19 reevaluate this code section. And if things were to
20 be changed by other ordinances overriding our
21 ordinances, we can reevaluate that.

22 I don't know -- there are proposals within
23 state legislation that are moving forward with
24 dealing with the Lahaina area and post-disaster. We
25 don't know if those are going to -- those -- that

1 legislation is going to pass or not or what outcome
2 is going to come from that.

3 I think what we're doing is trying to move
4 forward as quickly as we can to accommodate Lahaina
5 residents and property owners the best that we can
6 right now for what we know and to move legislation
7 through, because obviously this needs to go to the
8 three Planning Commissions and then to council and
9 then -- so there's a process here.

10 And so we wanted to get a jump on it as
11 property owners may start to move forward in
12 obtaining permits. So that was our initial move
13 towards moving in this direction.

14 CHAIR GIMA: But if the state -- the -- I
15 forget what HCDA stands for, but if they are
16 determined to be the one that's going to so-called be
17 in charge of rebuilding Lahaina, will that take
18 precedence or will county planning ordinances still
19 take precedence?

20 MR. PFOST: That's a good question. I've
21 seen legislation that's proposed to -- for -- to come
22 up with a plan for Lahaina that would create its
23 own -- that may -- that may counter some of the
24 ordinances that currently apply -- or community plan.

25 I've also seen that legislation, as it's

1 being drafted, changing to account for more input
2 from Maui and the County of Maui and considering
3 existing county legislation through community plan
4 and ordinances and things like that. So I really
5 can't say how that's -- how it's going to turn out.

6 It would be interesting to see how that
7 could override our ordinances and create something
8 that may be inconsistent with our communities and
9 community plans or general plan. I don't know how
10 that would work out. I think there's a lot of -- I
11 don't know, a lot of issues pertaining to that.

12 I'm not sure I can opine upon what that
13 future is going to be. I've just been following the
14 legislation as it's been moving forward.

15 CHAIR GIMA: Okay. Thanks, Greg.

16 Negus, you had your hand up?

17 COMMISSIONER MANNA: Thank you, Chair.

18 Yeah. My question is to Jordan and Greg. I'm
19 curious on your guys's opinion how this change would
20 affect the coastal zone development setbacks dealing
21 with, like, a sea level rise? You know, is this
22 going to be in opposition to that? Or how does that
23 fit into this?

24 MR. HART: Chair, thank you. Apologize for
25 a second; they're vacuuming in our office. So this

1 section that's being revised is in Title 19 which is
2 the zoning code, and the Special Management Area
3 regulations that are -- that are authorized through
4 HRS 205A are on a different layer of regulation.

5 And when you're getting an SMA permit, you
6 need to comply with all layers of regulation from
7 state land use to the General Plan, the Island Plan,
8 the Community Plan, and zoning. And just because you
9 may be permitted to do this by zoning, if you're in
10 the Special Management Area, you would still need to
11 get your SMA approvals.

12 And the -- the -- either the Maui Planning
13 Commission or the director -- I'm just -- and it's
14 the same as the planning commission on Lanai. So if
15 you're reviewing an SMA permit, if there are impacts
16 to the Special Management Area, you don't have to
17 approve the total level of construction that they're
18 permitted to do by zoning.

19 So -- so just because a property may be a
20 nonconformity and it may qualify to make use of this
21 change in the legislation, if it's in another layer
22 of review, that layer of review can dictate what's
23 even possible. So the properties that are -- that
24 are outside of the SMA more directly could use this;
25 for instance, if they're mauka of the Honoapiilani

1 Highway. But then the ones that are -- that are in
2 the SMA, there will be whatever other normal
3 environmental considerations go on.

4 But if everything works out and it's okay
5 to rebuild a nonconformity consistent with this, then
6 the director and/or the planning commission could
7 reach the conclusion that's appropriate and then
8 issue that approval.

9 COMMISSIONER MANNA: Fantastic. Thank you
10 for explaining that, Jordan.

11 CHAIR GIMA: All right. Commissioners, any
12 other questions?

13 One last one for you, Greg. What are the
14 fiscal implications, if any, if this is approved?

15 MR. PFOST: Fiscal implications on the
16 property owner or the County?

17 CHAIR GIMA: The County.

18 MR. PFOST: I'm not sure there -- that I
19 can foresee any fiscal negative impacts to the County
20 that -- that I'm aware of at this moment. I can't
21 think of anything. I don't know about you, Jordan.

22 I mean, it will allow some businesses to go
23 back in, so that's obviously a benefit. But I can't
24 think of a fiscal impact issue to the county.

25 MR. HART: Sure. I can supplement that. I

1 think that there -- it creates the potential for more
2 staff time because more people would have the option
3 of presenting the argument that they qualify for a
4 nonconformity, but I don't think that there's any
5 other direct cost to the County to create this.

6 And -- and I also do think it will help to
7 facilitate redevelopment. So you know that -- there
8 could be the positive impacts of that related.

9 CHAIR GIMA: Okay. Thank you.
10 Commissioners, if there are no further questions or
11 comments, I'll go back to Roxanne to see if there are
12 anybody -- if there's anybody wishing to testify from
13 your office?

14 MS. MORITA: No, there's nobody here.
15 Sorry, Chair.

16 CHAIR GIMA: Okay. At this time, I'll
17 close public testimony on this first item.

18 Commissioners, anybody -- besides Sally's
19 amendment, any other amendments to the proposed bill?

20 Okay. Hearing none, I will entertain a
21 motion to recommend approval of the proposed bill
22 with the amendment made by Commissioner Kaye to the
23 Maui County Council.

24 MS. PANNELL: I'm sorry to interrupt. I
25 did just want to clarify, I misspoke earlier when I

1 said that Commissioner Kaye could not vote without
2 her camera on. As long as there is a quorum with
3 cameras on and Commissioner Kaye has her audio, she
4 can still vote. Sorry about that.

5 CHAIR GIMA: Okay. Thank you, Selina.

6 COMMISSIONER ATACADOR: So move, Chair.

7 CHAIR GIMA: Okay. Is there a second?

8 COMMISSIONER MANNA: I Second.

9 CHAIR GIMA: Okay. It's been moved by
10 Commissioner Atacador, seconded by Commissioner Manna
11 that we recommend approval of the proposed bill with
12 amendments made by Commissioner Kaye to the Maui
13 County Council.

14 All right. Any further discussion?

15 All right. Hearing none, all in favor,
16 please raise your hands.

17 COMMISSIONER KAYE: I'm raising my hand.

18 CHAIR GIMA: Okay. All right. Thank you.

19 All -- all opposed? Any abstentions?

20 Okay. Motion is unanimously approved. All
21 right. Thank you.

22 Okay. Moving on the agenda:

23 A bill for an ordinance to
24 amend Section 19.08, Maui
25 County Code, relating to

1 would be started at that time you speak. If you're
2 on -- if you're here in person, I will also have an
3 opportunity for you to testify as well.

4 Okay. Director, our first agenda item,
5 please.

6 ACTING DIRECTOR BLYSTONE: So our first
7 agenda item is a bill for an ordinance to amend
8 Section 19.500.110, Maui County Code, relating to
9 nonconformities.

10 And I'm going to turn it over to Greg Pfof
11 to give the presentation. Jordan Hart is also
12 available as a resource.

13 MR. PFOF: Yes. Thank you, Kate. Can you
14 all hear me okay? Yeah.

15 CHAIR PALI: Yes.

16 MR. PFOF: Okay. Good. Thank you. I
17 have a -- a brief PowerPoint presentation, so let me
18 share my screen here real quick. And can you all see
19 that?

20 CHAIR PALI: Yep, looks good.

21 MR. PFOF: Okay, thank you. My name is
22 Greg Pfof. I'm the administrative planning officer
23 for the planning department, County of Maui.

24 The item before you is a proposed
25 ordinance. This is a planning department-initiated

1 ordinance. We're initiating this ordinance to
2 address nonconforming structures and uses affected by
3 a disaster.

4 And I'll start off with a little bit of
5 background as some folks may not be aware of what a
6 nonconforming structure or use are. Both of these
7 are actually defined within the Maui County Code
8 under Title 19.

9 Basically a nonconforming building is a
10 building which was built at one time lawfully, with a
11 permit, and perhaps complied with all of the density
12 and setbacks and height regulations at that time.
13 But over time, maybe the code has changed. And so
14 subsequently you may have a different setback, a
15 different density requirement. And so that structure
16 that was lawfully built is no longer conforming to
17 the new code or the most recently-adopted code.

18 And an example of this might be a structure
19 that was permitted lawfully with a 5-foot side yard
20 setback and would be nonconforming to today's current
21 code which requires a 6-foot side yard setback.

22 We also have nonconforming uses defined in
23 the code as basically a use -- not a structure, but
24 the use of the structure which is located in a
25 district and is nonconforming to that existing -- the

1 existing regulation. So, for example, you might have
2 a retail use that is in a structure that has been
3 there for some time. And it might be nonconforming
4 to the current zoning code's use of residential which
5 would prohibit retail uses. So that would be a
6 nonconforming use in that residential zone.

7 The nonconforming code section allows
8 nonconformity structures and uses to continue,
9 however, with some provisions. One, if you have a
10 nonconforming structure, if it's damaged or destroyed
11 by more than 50 percent, then the rebuild of that
12 structure must conform to the new code requirements.

13 In regards to nonconforming uses, if
14 they're discontinued for 12 months, then they shall
15 not be resumed on that property.

16 And so, really, the purpose of a
17 nonconforming section -- code section within Title 19
18 is to ensure compliance with the current code through
19 attrition as buildings turn over or uses turnover,
20 then you'll see conformance happen with Title 19.

21 So the issue that's at hand here is that
22 the current code does not really account for large
23 disasters such as what we experienced in August 2023.
24 There may be structures that were damaged or totally
25 destroyed in the -- in the August wildfires that were

1 nonconforming to setbacks, height, impervious
2 surfaces requirement which is a more recent code
3 requirement, or density.

4 There also may have been nonconforming uses
5 and, importantly, those uses would not be able to be
6 reestablished because if they were in structures that
7 were damaged or destroyed, obviously, those uses
8 cannot be reestablished within a 12-month time frame
9 as the time frame to actually clean the sites and
10 then reconstruct would be longer than 12 months. So
11 that's the issue that we have at hand.

12 And so the purpose of this proposed bill is
13 to revise the nonconforming section to provide the
14 opportunity for nonconforming structures and uses to
15 be reestablished to their state prior to a disaster.

16 And what does this code amendment do
17 actually? It -- one, it allows nonconforming
18 structures -- in regards to structures -- to be
19 repaired and reconstructed that are damaged or
20 destroyed by more than 50 percent.

21 You may recall that I indicated the current
22 code says that if you have a nonconforming structure
23 that exceeds 50 percent damage, you need to comply
24 with the code. Well, this code amendment would allow
25 structures that are totally destroyed to allow -- to

1 allow to be rebuilt to its nonconforming status.

2 The reconstruction would need to comply
3 with current building code and flood hazard
4 regulations. The building permit for the repair
5 construction must be completed within four years.
6 And after completed, the reconstruction structure
7 would still be considered a nonconforming structure,
8 and so then any future changes would need to comply
9 with the nonconforming section of the code.

10 Regarding nonconforming uses, the proposed
11 code amendment would allow a nonconforming use in a
12 damaged or destroyed structure to be reestablished
13 within four years. If the nonconforming use was not
14 in a damaged or destroyed structure but was
15 discontinued due to lack of access to business
16 activities, such as a cordoned-off area that the
17 business activity could not be conducted and is
18 within the same specific areas the disaster occurred,
19 then it could be reestablished within four years.

20 Of course, all appropriate building and
21 healthy -- health and safety requirements would be
22 required to be in place prior to occupancy. And then
23 once reestablished, the use would be considered as
24 nonconforming. And then any future change would need
25 to comply with the code.

1 The department is recommending approval of
2 the ordinance as -- though while it is contrary to,
3 really, the purpose of the nonconforming section as
4 it will extend these nonconformities, we believe it's
5 reasonable to allow nonconforming uses in structures
6 to be reestablished following disasters such as what
7 we experienced in August 2023.

8 With that, the planning commission has the
9 options to recommend approval of the proposed
10 ordinance to the county council, recommend approval
11 of the ordinance with amendments, or recommend denial
12 of the ordinance, or vote to defer the action for
13 additional information.

14 That concludes my presentation. I'm
15 available for any questions. Thank you. I might
16 also note -- I'm sorry -- that Jordan Hart, the
17 program planning administrator for the ZAED Division
18 is also here to assist with questions as well. Thank
19 you.

20 CHAIR PALI: Great. Well, Director, if
21 there's not another presentation, we'll go to public
22 testimony.

23 Okay. While I wait for an online list if
24 there is one, is there anyone in house here that's in
25 attendance that would like to testify? If so, please

1 come to the mic and introduce yourself.

2
3 Ryan Churchill testified as follows:

4 MR. CHURCHILL: Good morning. My name is
5 Ryan Churchill. I was here for another item, but
6 since I'm here, I might as well give some testimony.

7 I'm with Pacific Rim Land. We lost a
8 building on Front Street. Our building was a
9 conforming structure so this really isn't applicable
10 to us.

11 However, just a couple comments. In
12 reading the bill, I think the 4-year time frame is
13 short considering what's gone on in Lahaina. Even if
14 there wasn't a -- a fire, the process to redesign a
15 building, go through the SMA, get your building
16 permits -- and the way it reads, it needs to be done
17 with final inspection of four years is -- is a short
18 time frame. So I recommend you consider extending
19 the 4-year period.

20 Also, the second item that's not addressed
21 in any of the three bills being heard today is the
22 SMA process. I know you've recently passed your SMA
23 rules. The planning commission typically does, you
24 guys know, you know, maybe ten major SMAs a year.

25 And I don't know how many properties below

1 the highway or in the SMA that burnt down, but, you
2 know, major SMA includes now all residential
3 properties that are on the water and will include all
4 commercial properties that are over \$500,000 in
5 construction.

6 So you're talking hundreds of major SMA
7 permits that have to be processed by this commission
8 within this time frame also. So that's just
9 something to consider in looking forward as how
10 that's going to be handled. Thank you.

11 CHAIR PALI: Appreciate it. Commissioners,
12 any questions for the testifiers? Seeing none, thank
13 you.

14 Any other testifiers that is in house? No?
15 Okay. Do we have any online? I don't think we have
16 any online, but I'll double-check. Okay.

17 So if you've just joined in and you're
18 online or called in via telephone, we are on the
19 first item of our agenda, and we are at the public
20 testimony portion.

21 We no longer have a list of any other
22 people who want to testify, so if you would like to
23 testify on this specific item, please unmute yourself
24 and state your name for the record.

25 ///

1 Kai Nishiki testified as follows:

2 MS. NISHIKI: Aloha. Good morning, Chair.
3 I'd like to offer testimony, please. I raised my
4 hand. I'm just not sure.

5 CHAIR PALI: Oh, I see it. I see it.
6 Yeah, please do. Go for it.

7 MS. NISHIKI: Good morning. I'm Kai
8 Nishiki testifying on my own behalf. And I believe
9 that this could be a bit premature to -- in this
10 whole rush to rebuild -- making this sort of proposal
11 could really put a great opportunity to thoughtfully
12 rebuild structures where our community wants them
13 built and rebuilt.

14 And while I understand that there are some
15 essential services like veterinarian and perhaps
16 some, you know, essential type of -- of -- of
17 businesses, there are a lot of tourism-related
18 businesses. There's a lot of short-term rentals and
19 things that are not really supported by a majority of
20 our community.

21 And that -- this would allow things to just
22 proceed at a much faster pace than if these -- these
23 structures were required to adhere to the 50 percent
24 rule. So I absolutely do not support this.

25 And I -- I just really think that there

1 is -- that there's -- that there's a rush, and that
2 even the shoreline and SMA rules need to be brought
3 back up on agenda and looked at because, you know, I
4 understand that, you know, there were changes made to
5 add fire as a -- as something that would allow
6 rebuilding. And, you know, that can be very
7 problematic in the shoreline and SMA area.

8 And so I would really urge you folks to
9 very carefully consider what the consequences are in
10 this -- in this rush to rebuild.

11 And, you know, even with Bill 21 at the
12 county council, all of these things are -- are going
13 to have a lot of consequences that, in the future,
14 you know, right now we're dealing with a fire. But
15 we're going to be -- we're going to be looking at a
16 lot of disasters coming from makai -- from the ocean
17 side, and we need to be --

18 ACTING DIRECTOR BLYSTONE: 30 seconds.

19 MS. NISHIKI: -- as careful to consider
20 what is coming in storms and hurricanes and coastal
21 flooding --

22 CHAIR PALI: Okay. I'm not sure if you've
23 heard, Ms. Nishiki, but the three minutes are up. Do
24 you want to finish your sentence, please.

25 MS. NISHIKI: Oh, sorry. No, I did not

1 hear that. E kala mai. Yes.

2 Please just consider what's coming from the
3 oceanside with flooding and hurricanes. And this is
4 just a -- this fire is just a taste of what is --
5 what is to come. Thank you.

6 Okay. One second. Commissioners, any
7 questions? Yes, Commissioner Deakos?

8 COMMISSIONER DEAKOS: Thank you, Chair.
9 And thank you, Ms. Nishiki.

10 Can you clarify Bill 21 that you mentioned?

11 MS. NISHIKI: Oh, that's at the county
12 council. And it is fast-tracking for -- for building
13 permits. And that includes not just residential but
14 commercial and other -- other permits that folks may
15 need to rebuild. So it's a -- it's a fast-tracking
16 bill for permits.

17 COMMISSIONER DEAKOS: Okay. Thank you.
18 Thank you, Chair.

19 CHAIR PALI: Any other questions,
20 commissioners? Great. Seeing none. Thanks,
21 Ms. Nishiki.

22 MS. NISHIKI: Thank you.

23 CHAIR PALI: All right. We're going to be
24 wrapping up public testimony for Item 1. If you can
25 hear my voice and you'd like to testify, please

1 unmute yourself and say hello. Okay. We'll give it
2 a few seconds before we close public testimony on
3 Item 1. All right. We're closing public testimony
4 for B1.

5 Okay, commissioners. This is a time that
6 you can ask any questions of the presenter. So,
7 commissioners, if you have any questions or have
8 clarifying questions, any questions that you feel
9 like you need answered prior to making a decision,
10 this will be a good time.

11 Commissioner Hipolito?

12 COMMISSIONER HIPOLITO: Thank you, Chair.
13 My question is -- to the director or the planner is
14 how was the four years established? How did they
15 come up with that calculation?

16 MR. HART: Chair, I can respond to that.
17 This is Jordan Hart.

18 So we -- we -- we used a lot of legislation
19 that Santa Rosa has already drafted for similar -- I
20 don't want to say similar, but as regard -- with
21 regard to fires occurring. And we took theirs which
22 was three years and we added onto it four years. But
23 it's -- it's essentially -- it's an estimate.

24 The testifier's comments, they're well
25 taken. We are basically trying to package up

1 something and put it out for consideration.

2 You have to put in context the existing
3 legislation of nonconformities. So the -- the
4 existing posture of the -- the county and the
5 department for many, many decades has been that
6 nonconformities are addressed through attrition.

7 So if you -- if you lose your structure in
8 a disaster, not a -- not a widespread disaster but a
9 personal disaster, you've essentially -- you've got a
10 very short period of time to reconstruct it. And the
11 purpose of that is to bring all of the buildings into
12 compliance with existing codes and regulations.

13 So, you know, this is somewhat
14 unprecedented for us as far as the -- the scale of
15 the disaster here, and there is a need for
16 consideration.

17 So we looked at a couple of things. We
18 looked at expanding the time frame, but we also
19 looked at ensuring health and safety considerations
20 are addressed so that all of these buildings that are
21 reconstructed, they'll need to comply with -- with
22 the existing building and fire code.

23 So the use will be considered a legal
24 nonconformity provided it's reconstructed in the time
25 frame being discussed, but the structure needs to

1 comply with existing standards. And the same goes
2 for nonconforming uses.

3 So a lot of times you'll see, like, a
4 mechanic shop or something like that that's occurring
5 in an old barn or whatever it may be. So this
6 building is not complying with existing
7 commercial-grade construction standards.

8 And so we're going to require that -- that
9 essentially a certificate of occupancy be obtained.
10 Not necessarily that they need to have a -- well, the
11 issue of whether or not they need to have a CO will
12 be -- need to be negotiated with public works, but
13 the inspections to ensure health, safety, and welfare
14 for the use type, the occupancy group type that's
15 occurring in the structure, they'll need to pass all
16 those -- those inspections.

17 So the -- the design and the construction
18 of the building will need to be a suitable
19 construct -- a commercial grade if the nonconforming
20 use is a commercial-type use. So we basically want
21 to provide flexibility and consideration, and there's
22 a lot of historic structures and things like that
23 that create the character of what Lahaina had been.
24 And so we want to allow for people to reconstruct
25 those kinds of things in the context of the land --

1 the zoning code.

2 So I want to clarify, too, there was a
3 concern expressed about environmental evaluations and
4 things like that. This doesn't supersede the
5 planning commission's SMA review or shoreline review.
6 And I want to add on to that a little bit because
7 there's a lot of things that were said in testimony.

8 The expedited building permit process
9 that -- that is being proposed excludes the shoreline
10 area. It excludes the flood zones and excludes
11 Historic District 1 and 2 in Lahaina. So it is
12 proposing to do things in a rush because there are
13 people who are -- you know, they've lost everything
14 that they had, and they're living in uncertain
15 housing situations.

16 So there is motivation and urgency on the
17 behalf of the administration. We're trying to do
18 things quickly and create a fast-moving system, but I
19 really honestly believe that it's not an
20 irresponsible approach. We're basically -- we're
21 gearing it all to fit within the envelope of our
22 existing regulations, and we have significant
23 regulations.

24 So the -- the scope that's exemptable is
25 the same scope that is exempt from an SMA permit.

1 And then the commercial-expedited context is it
2 doesn't exclude needing a major permit, and it
3 basically consists of processing those commercial
4 structures the same way we would normally process an
5 affordable-housing project, which is at each
6 resubmittal, it becomes the planner reviewer's next
7 project to review. But no environmental or public
8 engagement components of the process are proposed to
9 be short-cutted or skipped in this.

10 COMMISSIONER HIPOLITO: Thank you,
11 Mr. Hart, for your explanation. My next question
12 would be, based on this 4-year date, you truly
13 believe that an applicant in these four years would
14 be able to process all the processes that we have in
15 place, get all of their materials, everything,
16 project done within that four years? You truly
17 believe that can be done with all of the structure
18 that we have -- present structure that we have in
19 place?

20 MR. HART: Many, yes. The more -- some of
21 the more -- just to just zoom out a little bit
22 further, Lahaina has -- has almost some of the most
23 highly-regulated land use area because it includes
24 the Historic District.

25 So there's -- there's, like, Historic

1 District 1 and 2, but there's also a Lahaina National
2 Historic Landmark District that goes over all of
3 that. Then you have also flood in certain areas,
4 then you have shoreline properties, then you also
5 have the SMA Major Permit process in the back.

6 So -- so many -- I don't know all because
7 every project's unique and it comes with its own
8 geographic situations or community concerns or -- or
9 depending on the capacity of the applicant to
10 mobilize and prepare all of these applications, you
11 know, let's say you're pursuing a shoreline setback
12 variance, that's a trigger for an EA. It costs money
13 to prepare all of those things.

14 So whether or not everyone's ready,
15 willing, and able to -- to start now -- I think that
16 if everyone was ready, willing, and able to start
17 now, I think that -- that the majority would be able
18 to be through.

19 But, I mean, the testifier's comment was
20 well taken. We were trying to basically propose a
21 reasonable, responsible, initial transmittal to the
22 commissions to go to council. But you know, it's --
23 it's -- we're here for comment and recommendations.

24 COMMISSIONER HIPOLITO: Thank you,
25 Mr. Hart. And the reason why I ask is, you know,

1 we're -- we have been really hard on applicants
2 coming to us to do an extension on top of an
3 extension on top of an extension.

4 So we have the opportunity to make it more
5 realistic than -- we, as the commission, has that
6 opportunity today to hear and -- and make some
7 recommendations. Thank you. Thank you, Chair.
8 That's my question.

9 CHAIR PALI: Absolutely. Commissioners,
10 any other questions for the presenter or staff
11 planner?

12 Commissioner Deakos?

13 COMMISSIONER DEAKOS: Thank you, Chair.
14 Yeah, there's a lot to unpack in all this. I -- I
15 understand the need -- the rush.

16 I was -- I have a question regarding the --
17 so the new shoreline rules have been implemented, but
18 the old shoreline rules had the fire clause in it.

19 So does that allow 100 percent rebuild
20 except it must be conforming? And this would
21 allow -- this is just waiving that conformity?

22 CHAIR PALI: Jordan, can you explain how
23 this bill interacts with the SMA and shoreline rules,
24 please?

25 MR. HART: Sure. So, Chair, thank you.

1 And, you know, I want to back up a little bit
2 further.

3 I sincerely apologize that we're not there
4 in person. That was the intent, and there was a
5 little bit of miscommunication on the order of the
6 agenda. But because -- I mean, these things are
7 important, and I wanted to be there. But here we are
8 remotely.

9 These only (no audio) zoning. I just want
10 to clarify this is only for zoning. This has nothing
11 to do with planning commission's authority to review
12 and identify impacts or mitigation measures that are
13 appropriate for any project.

14 This is just -- basically when you get an
15 SMA permit, whether it be a Minor permit or a Major
16 permit, there's a land use test that's mandatory that
17 you -- you verify that the project is -- is
18 consistent with all the land use regulations from the
19 state land use to the island plan to community plan
20 to county zoning as well as the historic districts
21 that may apply or flood.

22 All of those layers have to be overlaid,
23 and you look at the requirements of each, and you
24 ensure that the project is -- isn't out of alignment
25 with any of those things. And that's the project

1 that you end up with.

2 So this -- this will just allow the
3 planning department to reach the conclusion that,
4 whether it be the property line setbacks or the
5 height of the building -- like some of these
6 buildings, they were built before there were building
7 codes, so -- or zoning.

8 So their height may exceed what was
9 permitted or their setbacks may not be what's
10 currently permitted. For the planning department's
11 part, we can say zoning is okay because the
12 nonconformity was proven.

13 And I want to -- I want to back up further
14 on that issue of the nonconformity being proven.
15 This is not just a -- the planning department
16 carefully vets the documentation that verifies that
17 the structure was legal in its nonconforming status
18 at the time that it was destroyed.

19 So we check -- like, what was this
20 addition? What are the building permits for this
21 addition? When was this change done? And if any of
22 those things are out of line, that -- those portions
23 are not conforming.

24 Only the thing that received an approval or
25 in the situation where it was built before there was

1 such thing as building permits and then there's
2 documentation of its existence, that's how that's
3 done.

4 And it's -- it's -- it's an intensive
5 process, but because of the nature of Lahaina that --
6 that -- it's -- there's going to be a lot of
7 nonconformities, and we wanted to provide the avenue
8 to address those issues.

9 Because if we didn't, there would be all
10 the people who had nonconformities coming in and
11 saying, you know, there's no avenue that you created
12 for me and here my time is -- I only got one year now
13 and my structure (audio difficulty) all night and my
14 structure is completely gone. And this thing was
15 here for 60 years.

16 So we wanted to try and create a situation
17 where at least there's a legal avenue to address
18 these issues and still -- they still have to go
19 through the SMA Major Permit process. And if they're
20 in the shoreline or the historic districts or the
21 flood zone, they have to address all of those matters
22 as well.

23 COMMISSIONER DEAKOS: Okay. And these may
24 not be related, but I know for the fast-tracking,
25 they left -- I think they're leaving out the

1 shoreline areas because there's greater concern -- or
2 I don't know if there's a master plan for what's
3 going to happen on the shoreline area, but is there
4 any overlap?

5 So the concerns with its shoreline being
6 mostly commercial and there's issues with
7 overhanging -- properties overhanging the ocean and a
8 lot of the complexities there and some of the
9 infrastructure. So, that area was left out on the
10 fast-tracking, I believe, which is a separate topic.

11 Does this have any -- does this overlap
12 with any of that? Or because it's more zoning and
13 use conforming, it really doesn't?

14 MR. HART: I can address this. So my
15 assignment is to coordinate the post-disaster
16 permitting working group, let's say. So it consists
17 of the -- the permit reviewing agencies because
18 the -- the county has a ministerial obligation to
19 produce permits for landowners.

20 So a ministerial permit is if you provide
21 all the material that's stated to be required for the
22 application, you're going to get your permit. And
23 so -- so we have that standing obligation to produce
24 for members of the community.

25 Under normal situations, you know, our

1 permit process takes a long time. And under this
2 situation, the normal duration -- the process is just
3 completely unacceptable.

4 So we had to create a system that can
5 address the concern. And so -- so I directly worked
6 on drafting the revision -- Greg and I did the
7 revision to 16.25, I believe it is.

8 Anyway, the point is what is excluded is
9 shoreline, flood zone, and Historic District 1 and 2.
10 We couldn't exclude the Lahaina National Historic
11 Landmark District because that's essentially the
12 drainageway -- I can't name it right now -- it has a
13 name, obviously, but the drainageway that bisects
14 (audio difficulty) and it goes all the way to Kahoma,
15 and it's essentially all of the SMA area in that
16 duration. And we couldn't just -- that's too many
17 people to exclude from the expedited process.

18 So we're working on a refined, clear, and
19 concise explanation of the National Historic Landmark
20 design criteria so that those people can also
21 participate in the expedited permit process. But --
22 but the areas that are more complex and more highly
23 regulated, like Historic District 1 and Historic
24 District 2, the shoreline, and the flood zone, they
25 have to address those items before they're welcome in

1 the expedited permit process because there's too much
2 complicated, environmental issues, cultural issues,
3 or evaluation or hearings that have to happen.

4 And so, once they're done with those things
5 and everything's okay, they can take the -- whatever
6 design and approved project comes out of the end of
7 the evaluation process, they can put that in the
8 expedited permit process.

9 COMMISSIONER DEAKOS: Okay. Thank you,
10 Mr. Hart. Thank you, Chair.

11 CHAIR PALI: Any other questions? Okay.
12 So staff planner is -- I think you in your
13 presentation -- but we would usually have you just
14 sort of reiterate the department's recommendation
15 here.

16 And then because we are not the final
17 authority in this, we're just simply recommending to
18 council, I think it's been our practice that we sort
19 of -- do you have a question?

20 VICE-CHAIR THAYER: Oh, maybe.

21 CHAIR PALI: Oh, she gave me a look like "I
22 might have a question."

23 Okay. Well, we'll go to Vice-Chair Thayer.
24 And then if there's any -- there's not any more
25 questions, we'll have staff planner reiterate the

1 recommendation from department, and then we'll just
2 take it to each commissioner to see if there's
3 changes or recommendations in the recommendation. So
4 that way we can vote on a draft recommendation that
5 we all agree on and then we can vote on. That's how
6 I see it going, but let's see how it goes.

7 Vice-Chair Thayer.

8 VICE-CHAIR THAYER: Thank you. Sorry. I
9 think I have two questions. One is what of the
10 properties that had less than 50 percent destruction?
11 Are they allowed to repair to what was there also?

12 MR. HART: Chair, yeah. They -- they
13 would. So basically the -- the existing regulation
14 cutoff is once you hit 50 percent, you're no longer
15 in the discussion, you've lost your nonconformity.
16 So 25 is already -- 20 is already in -- they're --
17 they're already permitted to reconstruct to their
18 nonconforming status.

19 We're basically saying there's no --
20 there's no back -- we're proposing that there be no
21 back end because of the way this situation unfolded.
22 There's not -- there are -- there are partially
23 damaged structures, but there's -- there's the vast
24 majority is completely eliminated structures.

25 VICE-CHAIR THAYER: Okay. Thank you. And

1 then what would be acceptable evidence of prior
2 existence? Just thinking that, you know, some plans
3 may not exist anymore.

4 MR. HART: There can be -- there's any
5 number of things. So this is kind -- this -- this,
6 unfortunately, is somewhat of like a subjective art
7 because you're recreating historic records, whatever
8 they may have been throughout time frame.

9 So there could be surveys, there could be
10 photographs, there could be historic building
11 permits, there could be any number of things that are
12 reputable and reliable that are from the time line.
13 And -- and not just things that can be created,
14 things that are verified to be legitimate in the time
15 line. And that's essentially what it is.

16 But everyone is different because it's
17 based on the information that that individual is
18 capable of gathering or what may exist on the record.
19 And some people have, you know, for example,
20 comprehensive photos in their family album or
21 something like that. Now, that's not going to be
22 something that's probably available to many people
23 here.

24 But there's -- there's books, there is
25 historic documents, there's studies, there's all

1 kinds of things that there are, and we'll entertain
2 and evaluate all of that to reach a -- a sound
3 conclusion. And we ought to conclude that there is
4 no proof that something is nonconformity -- a
5 nonconformity, so this is not -- this is not a
6 rubber-stamped process; it's actually a pretty
7 involved process.

8 But like it was said earlier, just because
9 the scale of the event, it's -- it's anticipated that
10 we're going to need some avenue to address this
11 issue.

12 VICE-CHAIR THAYER: Sure. Thank you,
13 appreciate that. It sounds like you might need a lot
14 of staff to sort through all of these history of
15 nonconformity. But thank you for the explanation.

16 CHAIR PALI: Okay. Any other questions,
17 commissioners? Yes, Commissioner Kealoha.

18 COMMISSIONER KEALOHA: Thank you, Jordan.
19 I think you said this, but I just want to make sure
20 I'm saying it in a way that I understand, too.

21 So I'm looking at the flood hazard map, and
22 it looks like most of -- like the makai side of Front
23 Street is -- at least in that really more congested
24 area, is within the flood hazard area.

25 So this would say that buildings that are

1 within that flood hazard area could potentially
2 rebuild but because they're in the flood hazard area
3 or the shoreline area, they would still have to come
4 through the Maui Planning Commission; is that right?

5 MR. HART: Let me -- let me -- I'll try and
6 clarify. And I want to say, like, it takes -- takes
7 years to organize all these layers of regulation,
8 like, in your head.

9 So, I mean, don't -- so flood permits are
10 ministerial permits. That means if you do whatever
11 is required, for example, elevate your building to
12 the height that it needs to be based on the base
13 flood elevation, that you will get your -- your
14 building permit.

15 Now, everything makai of the highway
16 essentially is in the Special Management Area. So
17 that's where the planning commission comes in. And
18 also on the shoreline, so you have your authority
19 already existing there.

20 Now in certain scenarios, the planning
21 commission has delegated authority to the director.
22 So that would be for concluding that something is
23 exempt; the director can conclude those and reports
24 those to the commission.

25 And then there's also Minor permits where

1 something -- it is a development in the Special
2 Management Area but it -- but the value -- it's --
3 it's -- it's small based on its value. It's
4 basically, you know, \$500,000 or less. That's --
5 that's of the scale that's created by the commission
6 to the director to administratively approve.

7 Anything that's \$500,001, it's an SMA Major
8 Permit application. And it is -- there's a bunch of
9 technical studies that are done, it is distributed to
10 the -- submitted to the planning department,
11 distributed to all relevant governmental agencies,
12 and then it's transmitted to the planning commission
13 for a public hearing.

14 So you could be in the flood (audio
15 difficulty) and you could comply with the -- let me
16 back up further, too. So, like, let's say you have a
17 nonconforming structure in the context of Title 19.

18 That doesn't mean you don't have to comply
19 with the flood zone regulations. You're going to
20 have to elevate your building or whatever you need to
21 do to comply with flood regulations.

22 But the other components that may be
23 nonconforming that don't relate to flood, you'll be
24 able to do those things. And you'll still have to
25 get your SMA approval, and if you're near the

1 shoreline, you have to get your shoreline approval.

2 But just the zoning part of it, the -- what
3 is -- what is -- what can the shape of the structure
4 or the size of the structure, the location of the
5 structure on the property be, or what can the use be,
6 those portions, if they're nonconforming with the
7 existing zoning, if they're proven to have been legal
8 prior to the fire and they're reconstructed, the
9 planning department, in our review, can mark this is
10 allowed to happen because this ordinance change is in
11 effect.

12 COMMISSIONER KEALOHA: Okay. Yeah, I got
13 it. Thank you.

14 CHAIR PALI: Okay. Final round of
15 questions. Anyone else? Commissioner Deakos.

16 COMMISSIONER DEAKOS: Thank you. And thank
17 you, again, for you, Mr. Hart. Again, like you said,
18 there's a lot of layers.

19 Regarding the setback -- so I'm just --
20 again, my concern is on the shoreline. I understand
21 it -- it needs to get shoreline review. But if -- if
22 it's residential, less than half million,
23 potentially, it could be a Minor or exempt and not
24 have to adhere to any setbacks, any concurrent
25 setback rules; is that accurate?

1 MR. HART: Okay. So -- so HRS 205-22 which
2 is where what is development in the Special
3 Management Area is defined, one single family
4 dwelling not part of a larger development -- which
5 statewide customarily includes one accessory dwelling
6 unit and the subordinate accessory structures, all of
7 that -- all of that square footage not exceeding
8 7,500 square feet can be exempt provided that it's
9 not part of a larger development, it's not located on
10 a shoreline parcel or a parcel that's affected by
11 erosion or wave action.

12 So -- so let's say somebody wanted to build
13 a cottage that was less than \$500,000 on a shoreline
14 parcel, obeying their shoreline setback requirement
15 of the parcel, that would be a Minor permit, or it
16 could be a minor permit anyway.

17 But -- but these Title 19 nonconforming
18 setbacks, it's no relation to the shoreline setback.
19 That's the area of the planning commission's rules or
20 the planning commission's evaluation of a project.

21 This is -- this is just -- so you could --
22 so, for example, you could qualify for the setbacks
23 allowed by this proposed ordinance, but then the
24 project comes before the planning commission and the
25 planning department with the planning commissions

1 evaluating the shoreline setback, and the shoreline
2 setback is more restrictive. You don't just get to
3 do whatever you want. Like, you have to obey all the
4 layers of regulations.

5 So you could -- you could -- it would --
6 like, you know, there could be a situation where you
7 are outside of the shoreline setback and you have
8 setbacks that are moving your property around and you
9 don't have to worry about the shoreline setback, and
10 this -- this ordinance would directly benefit you.

11 But there could be a situation where there
12 is a property that this ordinance would benefit you,
13 except that you are in the shoreline setback area and
14 those are the -- the controlling rules, and you don't
15 get to take advantage of this thing because there are
16 other regulatory layers that dictate.

17 So it's -- basically it's one piece of the
18 puzzle, but it doesn't circumvent or diminish the
19 planning commission's shoreline or SMA
20 responsibilities.

21 COMMISSIONER DEAKOS: Okay. But if it --
22 if the department determined it was a Minor permit
23 for an exemption because it doesn't qualify as a
24 construct -- you know, it's under 750, it's under
25 half a million, it's residential, this could end

1 up -- I know there's not a ton.

2 I don't believe there's a ton of
3 residential that we're talking about here, but these
4 could come in on our packets as Minors and so there
5 would be no review. It would be up to them to
6 decide?

7 MR. HART: No. Sorry, Chair. There's --
8 there's not -- first of all, there's not no review.
9 There's -- okay. A lot of things were just said.
10 There's not no review. The planning department --

11 COMMISSIONER DEAKOS: I didn't mean no
12 review, no review by the planning commission. Like
13 you -- it would be -- if it was a Minor or an
14 exemption, it would slide in on our list --

15 CHAIR PALI: Commissioner Deakos, I'm going
16 to jump in because I don't -- I just got to keep
17 moving, but let me -- let me just -- let me put a
18 little clarification here. And, hopefully, it's
19 going to be enough for you.

20 These rules in no way override, supersede,
21 or are the final authority in any sense of the means
22 when somebody wants to rebuild a property that's been
23 destroyed 100 percent.

24 So do you understand that?

25 MR. HART: Chair, the only clarifying thing

1 I want to say is -- is as it pertains to the Special
2 Management Area.

3 CHAIR PALI: Absolutely, SMA or shoreline.

4 MR. HART: (Indiscernible) management area,
5 this will -- is zoning, so, like, (indiscernible).
6 Thank you.

7 CHAIR PALI: Well, what I hear you saying,
8 Mr. Hart, is that -- and I wrote it down which, I
9 guess just because I'm getting older, we've got
10 State, General, Island, County plans. We've got
11 fire, flood, zoning. There are all these pieces.

12 So that applicant has to fit all those
13 pieces. And you're just trying to align the zoning
14 to allow for potential rebuild, but depending on
15 where the parcel is, it starts to go into a different
16 direction based off of where it's located.

17 And I think what Commissioner Deakos is
18 concerned about is, hey, if we've got this single
19 family on the shoreline, is there some way that that
20 particular person could bypass shoreline rules, SMA
21 rules based off of these new rules.

22 I think that's what his concern is. And I
23 hear you saying over and over that they still have to
24 go through those other processes.

25 MR. HART: Yeah. I just want to try and

1 clarify just because there's people watching and just
2 to be clear on the messaging of how the process
3 works.

4 So, basically, outside of the Special
5 Management Area, if you're just doing a ministerial
6 permit -- so let's say Kelaweia Mauka or something
7 like that, you just have to comply with zoning.

8 And this title -- this Title 19 issue on
9 nonconformities dovetails right into zoning. So,
10 like, if you had a nonconformity, we would verify
11 that with you. You're just going to get your
12 building permit.

13 Now, inside of the Special Management Area,
14 if you are exempt from a permit, so that could be a
15 single family dwelling that cannot be on the
16 shoreline or affected by erosion or wave action, you
17 don't need to do the land use test because the land
18 use test is permits.

19 But let's say there's -- there's something
20 that is considered to be development, so that could
21 be a single family dwelling that is on the shoreline
22 or affected by wave action, that triggers a permit.
23 If that permit is triggered, either it's above
24 \$500,000, public hearing with the planning
25 commission, or it's under \$500,000 and it's

1 administratively reviewed and approved by the
2 director.

3 In any case for a permit, every land use
4 layer needs to be evaluated and confirmed to be
5 consistent with the proposed scope. Otherwise, the
6 proposed scope has to conform itself to the
7 requirements. So that's shoreline setback, flood,
8 whatever it may be, historic district design, all of
9 those things. And if it doesn't, it's just not going
10 to get approved is how it works.

11 CHAIR PALI: Great. Thank you.
12 Commissioner Deakos, any further questions?

13 COMMISSIONER DEAKOS: I'm good. Thank you,
14 Mr. Hart. Thank you, Chair.

15 CHAIR PALI: And, Mr. Hart, just for
16 clarification, and that's based off of the shoreline
17 and SMA rules we just amended?

18 MR. HART: Okay. So, I mean, we're in an
19 interim time period; right? You have their
20 existing -- prior rules that are in play. And my
21 understanding is the mayor is -- is very soon going
22 to sign the new rules. So --

23 CHAIR PALI: Got it. But whatever is in
24 play at the moment, that's what the authority will
25 be.

1 MR. HART: That's right.

2 CHAIR PALI: Okay. Very good.

3 Commissioners, that's it for questions.

4 Staff planner, can you just give us a
5 summary of recommendations?

6 Commissioners, I'd like you to make a list
7 of any language changes or recommendation to change
8 their current recommendation. I know I took a couple
9 notes.

10 How are we feeling about the four years?
11 On one hand, you don't want to be -- you don't want
12 to give too many years because then if you have an
13 isolated incident outside of Lahaina, you want that
14 landowner -- if something bad happened and the whole
15 structure was gone, you don't want them to have
16 10 years to do it.

17 But we also do want to take into
18 consideration the -- Lahaina and the number of
19 applications that might be coming forward. Can they
20 process that many within the four years?

21 So think those things through, if four
22 years is still good for you folks based off of what
23 you've heard.

24 There's been a couple of other little
25 questions, but if you have a list of any potential

1 recommendation changes, I'd like to go over that as
2 well.

3 But staff planner please -- please proceed.

4 MR. PFOST: Yes. Thank you, Chair. Just
5 as a reminder, this is a proposed amendment that's
6 initiated by the planning department. So the
7 planning department is in support and recommends
8 approval of the attached ordinance that's before you.

9 The planning commission options are to
10 recommend approval to the Maui County Council of the
11 ordinance; recommend approval of the ordinance with
12 amendments, as you just stated, if the commission has
13 potential amendments, and we'll take those forward;
14 recommend denial of the ordinance; or vote to defer
15 the action, and we can come back at a later meeting
16 to discuss any additional information that you're
17 requesting.

18 So that's where we stand today.

19 CHAIR PALI: Great. Thank you.

20 MR. HART: Chair, could I add a clarifying
21 point just for consideration? I want to make -- make
22 clear that this -- this proposal is invoked by
23 declaration of emergency by the governor of the State
24 of Hawaii. So it's not -- it doesn't exist at all
25 times, only after a disaster resulting in significant

1 property damage has been invoked. So it -- when the
2 disaster is over, everyone is back to the normal
3 status for nonconformities.

4 CHAIR PALI: Great. That is helpful.
5 Mr. Hart, though, I do have a question about the
6 feasibility of the four years.

7 Would it benefit, so we wouldn't have to
8 take it up again in four years if we didn't finish
9 the process, to consider language that says, you
10 know, I don't know, giving grace, almost like an
11 automatic to your extension on that just so it
12 doesn't have to come back? Is that something that
13 you would recommend?

14 MR. HART: I think that some -- some
15 version of that is good. I think that, as it was
16 being discussed previously, Lahaina is uniquely
17 heavily regulated in the County of Maui. So there --
18 there will be events, for example, that happen
19 outside of the Special Management Area.

20 So there needs to be a balance, but I think
21 that some sort of relief valve or extension for good
22 cause is a reasonable thing to add because there will
23 be people who are diligently pursuing, but the
24 process is complicated and they -- I think that there
25 is -- they do deserve consideration.

1 CHAIR PALI: Well, just based off what you
2 said about it being specific under the emergency
3 proclamation, so we are now being specific to what
4 just happened, I also want to take into consideration
5 families that aren't going to be able to have the
6 funds or the means to do it within the four years.
7 Should they just lose out?

8 Like, those are the people who need our
9 help most. And depending on how the culture changes
10 in government and how that changes here on
11 commission, do those people just miss out? So I'd
12 like to consider those people as well.

13 MR. HART: Chair, so -- so just putting it
14 in context of what the existing position of the
15 County of Maui has been for many decades, it is a
16 pretty hard-nosed area of the code. But we're --
17 we're open to all comments, and we'll carry it on to
18 the council for consideration.

19 CHAIR PALI: Thank you. Okay. So I'm just
20 going to go one round. If you have any revisions on
21 the recommendation, I'd like to just hear it. And
22 then we'll all kind of agree on each item and then
23 move forward to try to create a draft that we can
24 recommend together in unity.

25 I'll start with -- sorry to do this to you

1 but, Commissioner Hipolito, is there any
2 recommendation changes to what you see?

3 COMMISSIONER HIPOLITO: Well, Chair, I
4 actually support your statement regarding the
5 two-year extension automatic. We're probably not
6 going to be around as commissioners, but it gives the
7 new commissioners at that time ability to not look at
8 this every four years or, you know, coming back for
9 extensions like two different, three different times.
10 So I support that. That's all, Chair.

11 CHAIR PALI: All right. Commissioner
12 Kealoha?

13 COMMISSIONER KEALOHA: I also support the
14 extension that you proposed.

15 And then I'm wondering if we can include
16 that this would all be with, like, the new shoreline
17 and SMA rules, not the current. But I know I'm --
18 I'm -- but just related to that last part of the
19 conversation that we had a little while ago.

20 Does that make sense?

21 CHAIR PALI: Yeah. Let me help you.

22 Jordan Hart, do you have a time frame on
23 when the mayor is going to look at the new proposed
24 shoreline and SMA and sign that into law?

25 Are we a month out, two months out, six

1 months out?

2 MR. HART: I don't -- but I -- I'm pretty
3 certain, and the Director can -- can provide comments
4 from her position. I don't think that there is -- I
5 don't think that this Title 19 change will have any
6 bearing on SMA approvals for compliance with -- with
7 SMA or setback criteria.

8 ACTING DIRECTOR BLYSTONE: Okay, I concur.

9 CHAIR PALI: Yeah. Okay. So it doesn't
10 matter then. Okay.

11 Do you have further questions on that,
12 Ms. Kealoha?

13 COMMISSIONER KEALOHA: No, thanks.

14 CHAIR PALI: Okay. Any other recommended
15 changes? Commissioner Kealoha, any other recommended
16 changes?

17 COMMISSIONER KEALOHA: No, thank you.

18 CHAIR PALI: Commissioner Deakos?

19 COMMISSIONER DEAKOS: Yeah. Thank you.
20 I -- I certainly understand and support the extension
21 and providing more time, given the circumstances.

22 I'm struggling wrapping my head around how
23 it impacts the shoreline rebuild. And just because
24 I'm -- when I'm thinking nonconforming, I'm thinking
25 of all the seawalls, and I just see it as an

1 opportunity to do a master plan on that. I haven't
2 heard any discussion or whatever.

3 So I -- I don't know if -- if we could
4 exclude the shoreline like they are doing the
5 fast-tracking, just because it's a more complicated
6 area that is probably going to, I presume, be visited
7 at a higher level, from some master planning.

8 I take it you're saying that it has no
9 impact on any of this, what I'm hearing. But I don't
10 think I can wrap my head around -- I fear that they
11 would -- they would -- we would just be redoing
12 nonconforming structures the way we had before when
13 there's an opportunity to improve that without
14 penalizing the property owners. So I -- I don't know
15 if excluding the shoreline area under this would help
16 with that or not.

17 CHAIR PALI: Okay. So what I did is I took
18 a list of each of the recommendations. And once we
19 hear them all, we'll go -- we'll -- we'll go through
20 them.

21 And if you can garner the five votes for
22 this particular one, just like the extension, we'll
23 see if it carries and then we can go to Jordan Hart
24 for maybe clarification on how he can achieve that if
25 we have the support.

1 Okay, Commissioner Deakos?

2 COMMISSIONER DEAKOS: Sounds good.

3 CHAIR PALI: Okay.

4 COMMISSIONER DEAKOS: That's all I got.

5 CHAIR PALI: Great. Commissioner Thompson?

6 COMMISSIONER THOMPSON: Nothing to add,
7 except for I am for the extensions based on the
8 amount of work that we'll see coming here. Like the
9 testifier said, it'll be hundreds. We'll have to
10 have meetings, like, every other day or something.

11 CHAIR PALI: All right.

12 COMMISSIONER THOMPSON: Extension plus,
13 yes.

14 CHAIR PALI: Thank you, Commissioner
15 Thompson. Vice-Chair Thayer?

16 VICE-CHAIR THAYER: Thank you, Chair. I --
17 I also like the -- to your extension idea, I'm
18 wondering if, in addition to that, we increase the
19 four years to five years because we're going to be a
20 year into it before we know it, and that only leaves
21 three more years for people to go through all of
22 those reviews along with hundreds of other people.

23 So I think, realistically, five years -- I
24 think five years might be more realistic and then
25 allow two years after that.

1 CHAIR PALI: Okay. I noted that. Any
2 other recommendations?

3 Okay. I can throw it to the director, or I
4 can just do it myself. We're going to take these one
5 at a time.

6 Since Vice-Chair Thayer threw in the five
7 years, I'll do that one first. If that doesn't pass,
8 we'll go down to the four.

9 So by show of hands -- and do you need
10 audio? Yeah, we'll do show of hands first and then
11 we'll do the audio vote.

12 If you are in agreeance with the changing
13 four years to five years with a two-year extension on
14 the time frame, please, by show of hands, if you
15 agree with that.

16 Okay. So you got five, that's Hipolito,
17 Kealoha, Deakos -- I guess six -- Thompson, Thayer,
18 and myself. So we'll make that change, and then we
19 won't have to do the other one.

20 And then -- I don't know, Hopper, are we
21 okay to -- is it -- is it even legal -- can we --
22 what -- we would take a vote on excluding shoreline
23 properties. If we were to vote that and want to
24 recommend that, is somehow that allowed in this space
25 here? I just want to make sure before we --

1 MR. HOPPER: I mean, I want to clarify sort
2 of the intent. This doesn't deal with
3 nonconformities as far as you're -- you're in
4 violation of the shoreline rules or you're in
5 violation of the SMA rules.

6 This deals with nonconformity as far as
7 you're inconsistent with zoning requirements, you're
8 either a nonconforming structure, like your setbacks
9 are not conforming, you know -- so if you had to
10 rebuild the setback, you wouldn't have enough room to
11 build on your property.

12 Or the setbacks in the current zoning code,
13 the property was built before they existed and now
14 the setbacks would say you have to build differently.
15 This would exempt you from -- from doing that as long
16 as you rebuild to what you were as far as a zoning
17 requirement.

18 Nonconforming uses also -- the use you were
19 doing was previously allowed by zoning or wasn't
20 restricted, and then it became restricted. Your
21 property was destroyed, and then you built back up.

22 This has nothing to do with whether you
23 need an SMA or a shoreline type of approval. If you
24 want to deal with those as far as giving some sort of
25 exemption for properties that were destroyed, you

1 would need to, again, amend your SMA or your
2 shoreline rules to deal with that.

3 This would not deal with that. This would
4 only deal with zoning issues. So, if you want to
5 exclude this from the shoreline, it would say that
6 properties that were destroyed in the shoreline area
7 will have to comply with current zoning standards
8 even if they were built before those zoning standards
9 existed.

10 It would -- this ordinance would still not
11 affect anything to do with shoreline or SMA rules.
12 Those are under your current rules.

13 And then when they're amended will be under
14 your new rules, and if you want to provide some sort
15 of nonconformities exemption for burned properties,
16 you would have to amend your SMA rules or shoreline
17 rules to provide for those. This would not do that.

18 CHAIR PALI: Got it. Okay, I see nodding.
19 Commissioner Deakos, go for it.

20 COMMISSIONER DEAKOS: Yeah. I may have
21 been confusing the setback. So we're -- we're
22 talking about the setback on your property from your
23 property line versus what I might have been confusing
24 it with, setback from the shoreline setback.

25 CHAIR PALI: Yes.

1 MR. HOPPER: Correct.

2 COMMISSIONER DEAKOS: That'll be where I
3 got confused. Okay. All right. Thanks for that
4 clarification. So I -- I -- I'll pull my --

5 CHAIR PALI: All right. I'll post the
6 director -- so the only real change then is changing
7 the four years to five years with an option for a
8 two-year extension if needed. And then I'll have the
9 director do a vote for sending and transmitting this
10 recommendation to county council.

11 ACTING DIRECTOR BLYSTONE: So, the first
12 vote is on the amendment. Okay.

13 Commissioner Deakos?

14 COMMISSIONER DEAKOS: Aye.

15 ACTING DIRECTOR BLYSTONE: Commissioner
16 Kealoha?

17 COMMISSIONER KEALOHA: Aye.

18 ACTING DIRECTOR BLYSTONE: Commissioner
19 Thompson?

20 COMMISSIONER THOMPSON: Aye.

21 ACTING DIRECTOR BLYSTONE: Commissioner
22 Hipolito?

23 COMMISSIONER HIPOLITO: Aye.

24 ACTING DIRECTOR BLYSTONE: Commissioner
25 Thayer?

1 VICE-CHAIR THAYER: Aye.

2 ACTING DIRECTOR BLYSTONE: Or Vice-Chair
3 Thayer. Chair Pali?

4 CHAIR PALI: Yes, I agree.

5 ACTING DIRECTOR BLYSTONE: That's six.

6 CHAIR PALI: So that's the amendment. And
7 now for transmittal to county council with the
8 amended language from five years and to extension --
9 to your extension.

10 ACTING DIRECTOR BLYSTONE: Commissioner
11 Deakos?

12 MR. HOPPER: This is -- again, this is to
13 recommend to the council approval of this as
14 recommended by the department with that one
15 amendment --

16 CHAIR PALI: Thank you, Mr. Hopper.

17 MR. HOPPER: -- just to clarify.

18 CHAIR PALI: I appreciate that.

19 MR. HOPPER: Well, you sort did a motion to
20 amend the first motion, but let's just do a motion
21 now with that new language as one motion for
22 recommendation.

23 CHAIR PALI: May I get a motion?

24 VICE-CHAIR THAYER: So move.

25 CHAIR PALI: All right. Vice-Chair Thayer

1 makes the motion.

2 Do I have a second? Commissioner Thompson.

3 Any discussion?

4 VICE-CHAIR THAYER: No discussion. I think
5 we've discussed it.

6 CHAIR PALI: Okay. Great. Second? All
7 right. Any other discussion? Seeing none, we'll go
8 to the vote.

9 ACTING DIRECTOR BLYSTONE: Commissioner
10 Deakos?

11 COMMISSIONER DEAKOS: Aye.

12 ACTING DIRECTOR BLYSTONE: Commissioner
13 Kealoha?

14 COMMISSIONER KEALOHA: Aye.

15 ACTING DIRECTOR BLYSTONE: Commissioner
16 Thompson?

17 COMMISSIONER THOMPSON: Aye.

18 ACTING DIRECTOR BLYSTONE: Commissioner
19 Hipolito?

20 COMMISSIONER HIPOLITO: Aye.

21 ACTING DIRECTOR BLYSTONE: Vice-Chair
22 Thayer?

23 VICE-CHAIR THAYER: Aye.

24 ACTING DIRECTOR BLYSTONE: Chair Pali?

25 CHAIR PALI: Yes. Aye. Thank you. All

1 right. On to B2.

2 Director, who is the planner for that?

3 COMMISSIONER HIPOLITO: Chair?

4 CHAIR PALI: Oh, yes?

5 COMMISSIONER HIPOLITO: Could I request for
6 a five-minute break? I need to address something.

7 CHAIR PALI: Absolutely. Okay. We will be
8 back in five minutes, 10:30.

9 (Whereupon, a recess was held
10 from 10:25 a.m. to 10:30 a.m.)

11 CHAIR PALI: Okay. Thank you. Welcome
12 back to the Maui Planning Commission. It is still
13 Tuesday, January (sic) 27th. It's 10:33. And we are
14 now on Public Hearing B Item 2.

15 And planning director, I'll let you
16 introduce it.

17 ACTING DIRECTOR BLYSTONE: Sure. This is a
18 bill for an ordinance to amend Section 19.08 of Maui
19 County Code relating to residential districts.

20 We have Gary Pfof -- or Greg, sorry --
21 Greg Pfof again. Sorry, Greg.

22 MR. PFOF: That's okay.

23 ACTING DIRECTOR BLYSTONE: And by Jordan
24 Hart as well. So same -- same group.

25 CHAIR PALI: Great.

1 requiring a special use permit if it were to be a
2 principal use, and should the council not agree that
3 the entirety of Maui accepts this, that Molokai would
4 like to.

5 VICE-CHAIR KELLY: Okay. So the motion,
6 Commissioner Mowat gave me a second.

7 COMMISSIONER MOWAT: I second. Yeah.

8 VICE-CHAIR KELLY: Okay. So all those in
9 favor, raise of hands?

10 Unanimously. Okay. Motion passed.

11 Okay, let's move on to the next one:

12 "Item 2, a bill for an
13 ordinance to amend Section
14 19.500.110, Maui County
15 Code, relating to
16 nonconformities."

17 Any other presentations?

18 MR. PFOST: Yes. Thank you, Chair, members
19 of the commission, Greg Pfoست again here. I'm going
20 to give a presentation over this and share my screen.
21 So bear with me for a moment.

22 Hopefully you can see my screen here. As
23 you know, the August wildfires caused extensive
24 damage and complete destruction of a significant
25 number of structures. Additionally, many businesses,

1 whether directly or indirectly, were impacted by the
2 wildfires and were forced to close.

3 In an effort to allow these structures and
4 uses that were nonconforming to the existing code to
5 be reconstructed in use in a similar fashion, the
6 department is initiating this proposed amendment to
7 change the nonconforming structures section and uses
8 section when it's affected by disaster. And when I
9 say "affected by disaster," I mean a disaster as
10 proclaimed by the governor. So we're talking about
11 significant disasters here.

12 Before I start, I just wanted to give a
13 little bit of background. Sometimes folks have a --
14 don't understand what nonconforming means. And so I
15 thought I'd throw up this slide.

16 Our existing code has a definition for
17 nonconforming buildings or structure and a definition
18 for nonconforming uses. And that's what we're
19 talking about today.

20 So a nonconforming building or structure is
21 a building which at one time in its life was
22 permitted legally and lawfully and perhaps at that
23 time was -- was built to a certain code at that time.

24 But as -- as we know, over time the codes
25 change. And so, subsequently, that building may not

1 be conforming to the existing code that we have
2 today.

3 And an example that I hit -- I indicate
4 here is you may have a residential structure that was
5 permitted lawfully at some time in the past with
6 maybe a five-foot side yard setback that was
7 conforming to the code at that time. But now our new
8 code requires a six-foot side yard setback, so that
9 building would be nonconforming to the existing code.

10 Similarly, in regards to nonconforming
11 uses, it means basically a use -- not the structure,
12 but a use within a structure that was permitted
13 lawfully at one time but does not conform to the
14 zoning district that it is in right now as per the
15 existing codes.

16 So in other words, the zoning district may
17 have changed over time or the types of uses allowed
18 in that zoning district may have changed over time.
19 And, subsequently, the lawful use that was
20 established originally may not be conforming to the
21 new code's requirements.

22 So an example might be you might have a
23 retail use in a structure that may be nonconforming
24 to the current code's zoning of residential where a
25 residential zoning district doesn't permit a retail

1 use. So that retail use, even though it was lawfully
2 established at one time, is nonconforming to the
3 existing code's requirement in the residential zoning
4 district.

5 So I just wanted to provide a little bit of
6 background on that. The current nonconforming code
7 section within the Maui County Code allows these
8 nonconforming structures and uses to continue.

9 Or, in other words, when you change a
10 zone -- when you change the zoning code, whether it
11 be the setback or density requirements or types of
12 uses, when you -- when that gets changed there over
13 time, it doesn't require all of the existing uses to
14 change automatically or existing structures to
15 change.

16 So the nonconforming section allows those
17 structures and uses to continue. However, if, for
18 example, nonconforming structures, if they're damaged
19 or destroyed by more than 50 percent, then they're
20 required to be rebuilt to the new code. Same thing
21 with nonconforming uses, if they are discontinued and
22 are discontinued for 12 months or more, then they
23 shall not be resumed.

24 And the whole purpose of those two
25 requirements is to make sure that -- that through

1 attrition or over time that buildings and uses become
2 conforming with our code.

3 Well, the issue at hand is in large
4 disasters such as what we experienced in August 2023,
5 is it doesn't allow for or account for those -- those
6 types of structures and uses that were entirely
7 eliminated through a large disaster.

8 So if, for example, in Lahaina there
9 were -- there -- we believe that there were
10 nonconforming structures that were inconsistent with
11 the current code setback requirements, height
12 requirements, or impervious surfaces requirements --
13 that's a new code section -- or density.

14 And we also believe there's nonconforming
15 uses that may have occurred in the Lahaina area that
16 they're not -- it's not possible for them to be
17 reestablished in a 12-month period simply because of
18 the -- the uses aren't allowed to -- the structures
19 won't even be rebuilt in a 12-month period.

20 So -- so the purpose of this bill is to
21 recognize those nonconforming structures and uses in
22 areas where there is a large disaster and allowing
23 them to reestablish to their prior structures or
24 prior uses before the disaster had occurred.

25 So what we're proposing -- and, again, this

1 is a code amendment that's been initiated by the
2 department, the planning department -- is in regards
3 to nonconforming structures. The department is
4 proposing to allow nonconforming structures to be
5 repaired or reconstructed when they're damaged or
6 destroyed in a disaster by more than 50 percent and
7 up to 100 percent.

8 So if a structure is entirely destroyed, it
9 can rebuild to its nonconforming status. That
10 reconstruction must comply with the existing -- the
11 current building code and flood hazard regulations,
12 must be completed within a four-year time period.

13 And after it is completed, it will still be
14 considered as nonconforming, so in the future at some
15 time, it will still be -- it will need to comply with
16 the current code in regards to nonconformities.

17 Excuse me.

18 Regarding nonconforming uses, what we're
19 proposing is to allow a nonconforming use that was in
20 a damaged or destroyed structure as a result of a
21 disaster to be reestablished within a four-year time
22 period.

23 If a nonconforming use was not in a damaged
24 or destroyed structure -- excuse me -- but it was
25 discontinued due to a lack of access or a lack of

1 business activity and located in the same area as a
2 disaster, then it may also be reestablished within a
3 four-year period.

4 Of course, before we allow occupancy,
5 appropriate building, health, and safety requirements
6 would need to be in place. And then once
7 reestablished, the use would still be considered
8 nonconforming and, therefore, any future changes
9 would need to comply with the code.

10 The department is recommending approval of
11 the ordinance because while it's kind of contrary to
12 the existing nonconforming section in that it will
13 extend nonconformities -- it will allow them to
14 continue for a longer period of time -- we believe
15 it's reasonable to allow nonconforming uses and
16 structures to reestablish following a proclaimed
17 disaster such as what we experienced.

18 With that, the planning commission's
19 options are to recommend approval of the ordinance,
20 recommend approval of the ordinance with any
21 amendments, or recommend a denial of the ordinance or
22 vote to defer the action to a future date if you have
23 additional questions that we can't answer today.

24 That concludes my presentation. I know
25 that Jordan and I are available for any questions you

1 may have. Thank you.

2 VICE-CHAIR KELLY: Okay. Just a question
3 if there's anyone else who would like to testify in
4 the public on this issue.

5 MS. LOPEZ: Hello, Vice-Chair. This is
6 Sybil Lopez, staff planner at the Molokai office.
7 And there is no one here wishing to testify. Thank
8 you.

9 VICE-CHAIR KELLY: Thank you.

10 MS. ESMERALDA: Hi, this is Suzie. I don't
11 have anyone signed up. Thank you.

12 VICE-CHAIR KELLY: Okay. Commissioners,
13 any questions or concerns?

14 COMMISSIONER ALBINO: Aloha. Hi. Yes,
15 this is Commissioner Albino.

16 I have a question because
17 previously-approved structures, especially in
18 Lahaina, had to meet certain codes for cultural
19 preservation.

20 So I'm wondering, because of this attempt
21 to reclassify certain codes and -- and do
22 adaptations, I'm wondering if those cultural
23 structures can be and will be able to retain whatever
24 structural ordinances that allowed them to be
25 retained under law, such as historical buildings.

1 Many were in Lahaina.

2 And so I'm wondering if these present
3 changes will affect those culturally sensitive and
4 important structures in Lahaina?

5 What -- what would that entail if this was
6 tasked? Because I was on the cultural commission for
7 a few years with the cultural commission, and there
8 were many items brought before the commission
9 regarding historical and culturally significant
10 buildings.

11 I know most of them were destroyed over
12 50 percent probably, but when they begin to rebuild,
13 will those structures be able to reflect the cultural
14 imagery that they had before? Not so much imagery,
15 but, you know, will the whole -- the whole of its
16 structure be maintained after this code passes? Will
17 that change to reflect only what resembles previous
18 structures?

19 I'm just worried about the cultural impact
20 that it has because it's -- it would change the
21 lifestyle definitely, of Lahaina especially, but I
22 want those structures to be able to maintain their
23 cultural stability once it's built.

24 MR. HART: Fair. Thank you. We can
25 respond to that.

1 So the -- there's a lot of regulatory
2 layers in the area of Lahaina that's really affected
3 by the change in this ordinance, at least as it
4 relates to the most recent disaster that's occurred.
5 So generally -- the answer to your question is
6 generally yes. The reason that it's complicated is
7 because there's various regulatory level or layers.

8 So let's say, for example, in the flood
9 zone, depending on how much the structure has been
10 damaged, there are regulations that require that
11 structures be elevated for health and safety
12 purposes. There may be -- I don't know a complete
13 answer on whether or not there can be variances for
14 historic purposes.

15 The standard position is that when a --
16 when a structure is damaged beyond 50 percent of its
17 replacement value, it needs to be brought into
18 compliance with existing flood regulations. A lot of
19 times, that means elevating the building.

20 But for historic structures that -- I'm
21 assuming -- under existing regulations, if the damage
22 was not in excess of 50 percent of the -- the
23 replacement of the value of the structure -- and
24 there's more to those regulations, it's listed in our
25 flood code that's now in Title 16 -- but if it was

1 not -- if it was not substantially damaged for the
2 disaster, you could reconstruct it using this bill
3 and be able to leave it as it is.

4 I think one of the challenges with this --
5 this fire is the way that everything unfolded. The
6 majority of the structures are completely destroyed
7 or nearly completely destroyed.

8 It's not as if the fire department was able
9 to respond and put out fires mid-process and there's
10 only partial damage. There's a lot of complete
11 damage and -- and some slight damage, but there's not
12 as much intermediate damage.

13 So, anyway, outside of the flood areas, I
14 think the answer is "yes" to your question. As you
15 get into the flood areas, it would have to be
16 case-by-case basis to figure out the answer to that
17 question. Thank you.

18 COMMISSIONER ALBINO: Thank you.

19 VICE-CHAIR KELLY: Any other commissioner
20 with questions?

21 COMMISSIONER LINDO: I have some. This is
22 a -- these are recommendations being proposed by the
23 department?

24 MR. HART: Yes.

25 COMMISSIONER LINDO: Okay. And is the

1 purpose of these at this -- at this point in time to
2 mainly deal with Lahaina?

3 MR. HART: The purpose now is -- is, yes,
4 mainly to deal with Lahaina. However, there's the
5 proposed legislation that basically activates it
6 after a governor's declaration of emergency.

7 So the intention that it would be -- it
8 would be in the code, and if there were other
9 large-scale disasters that resulted in loss of
10 property, that it could be activated at that time as
11 well.

12 But I'll also point out that we had an
13 existing post-disaster building permit process that
14 was in the code, but because of the duration of time
15 that passed between when it was initially adopted and
16 this disaster happened, we needed to amend it.

17 And I would say that there's probably a
18 chance that that would be the case in future
19 situations where if there's adjustments that need to
20 be made, that the people who are in these positions
21 at that future date would make those adjustments.

22 COMMISSIONER LINDO: Okay. Because part of
23 the issue I have with this blanket kind of
24 conformity -- you know, this blanket kind of ruling
25 is that every disaster is different.

1 And if part of the problem is nonconformity
2 within a district and -- and that attributes to fire
3 load, to inaccessibility, to noncompliance with
4 current updated codes that help with fire suppression
5 and other things, I would definitely not want to
6 support that what was once nonconforming goes back to
7 being nonconforming.

8 And so I guess I'm asking because I
9 under -- I understand the sensitivity and the need in
10 Lahaina. I'm not sure that I would be able to
11 support that it's something that we're -- it's
12 triggered by any disaster proclaimed by the governor;
13 right?

14 And so I guess the other question I would
15 have would be why do we have codes that classify
16 something as a conforming use?

17 What's -- what's our legal stance on when
18 somebody says, this is -- like, why do we have those
19 kinds of designations? For health and safety?
20 For -- for what?

21 MR. HART: Conforming -- conforming is
22 legal, and nonconforming is legal at the time that it
23 was created. And so, basically, let me -- let me say
24 a few things.

25 First of all, I do want to point out that

1 the -- the proposal for this bill is that it be
2 activated after a declaration of emergency that
3 included significant loss of -- for example, the
4 governor has a emergency proclamation for
5 homelessness.

6 That wouldn't -- that wouldn't trigger
7 something like this. It would need to be -- at least
8 as the department's proposing it, it would need to be
9 a physical disaster where people lost their
10 properties. So that's number one.

11 Number two is that basically, let's say I
12 applied for a building permit today. It takes me --
13 let's say it takes me two years to get my house
14 built. Three years from today, the Department of
15 Public Works was updating their building code and
16 they changed some things. My house is now a legal
17 nonconformity.

18 So the county doesn't go back through --
19 and the state and the federal government don't go
20 back through and say, Hey, we've changed the law.
21 Now you guys all got to spend money and fix whatever
22 is different from -- you were in compliance when you
23 did this, but we've updated our rules so now you guys
24 got to retroactively fix everything. It's just --
25 it's not an effective way to try and manage the

1 government, and so these legal nonconformities are
2 how that's addressed.

3 Now, the department -- and I don't want to
4 say "the department" because it's a county
5 regulation, but the existing -- the existing section
6 on legal nonconformities is that you have one year
7 from the time it's -- the structure is destroyed or
8 the use is stopped to rebuild the structure or to
9 reoccupy. My understanding of the reason that that's
10 aggressive is because the intent is to end
11 nonconformities slowly as they happen.

12 But here you have a situation where --
13 where an entire town essentially is wiped out. And
14 so does the county want to take the same aggressive
15 position of addressing one by one over time with the
16 whole community at one time?

17 And so we didn't think that they -- that
18 was the way the county wanted us -- like that -- that
19 would be what we would have to do when people come
20 in. And so we didn't think that's what people wanted
21 to be the situation, the only response we could give
22 them.

23 So we proposed this change. The other
24 thing I'll comment on is that reconstruction needs to
25 be in compliance with -- with the most current

1 building and fire codes. And the same for the
2 reoccupancy of a nonconforming use.

3 A lot of times, like, you'll have a
4 structure that was like a barn or it was a residence,
5 but somebody was doing some sort of store or
6 something like that or even a mechanic shop in there
7 over the years. So you have this building that's not
8 properly built or doesn't have the proper fire
9 suppression, but it's -- it's always been there.

10 So what we're saying is before you would
11 occupy, even if you're -- before you would occupy a
12 nonconforming use, you also need to do your
13 inspections to verify that all your health, safety,
14 and welfare standards are in place so that you're
15 safely operating.

16 But you could -- so what this will allow is
17 that -- let's say you had an old -- old building that
18 was built before there was requirement for building
19 permits, which there were a lot of in Lahaina. The
20 building may be in the side yard setback, or the
21 front yard setback, or it may be taller than we would
22 let you do now or maybe more square footage.

23 So when they come in for building permit,
24 planning department, if this ordinance is passed, we
25 can -- we can sign off on the -- on the use and say

1 this -- the structure in its configuration is -- is
2 okay because of this ordinance.

3 Or if they had -- let's say they had a
4 church in the residential district. That's not a
5 permitted use outright. So they say, Well, we had a
6 church -- we've had it there for, you know, 80 years,
7 we would like to come in and reconstruct that.

8 If this is passed, we can say, okay, that's
9 a legal use, you don't need to stop now and go get a
10 special use permit before you can -- we can support
11 your building permit. They can -- you know, they've
12 always been there, they can return there.

13 Now, the buildings would need to be built
14 under current building code for the type of use, the
15 occupancy group that they would be proposing to do,
16 and they need to pass all their inspections. But
17 separate from that, the planning department would be
18 able to say the use is legal with this bill.

19 Thank you.

20 COMMISSIONER LINDO: Okay, so then along
21 those lines, does it makes sense or could it be more
22 beneficial to look at changing land use policies
23 rather than trying to encourage nonconformity?

24 That could be done a number of ways. So --
25 so the question would be, from our perspective -- so

1 my post-disaster assignment is to coordinate the
2 post-disaster permitting process.

3 And so inside of Planning Department Zoning
4 Enforcement Administration Division, we review
5 building permit applications, and we respond to
6 requests for determination of whether or not a
7 specific use can be permitted at a certain property.
8 So I think that with the disaster in mind, there's an
9 order of operations.

10 Consideration of -- I do agree that it
11 would be appropriate to fix the zoning, especially
12 for -- if -- if any use was legally nonconforming, is
13 occurring in the community for a long period of time,
14 and everybody was content with it, I agree with you
15 that -- that it should be zoned.

16 But whether or not there is time or
17 capacity to track all of those, like, find everybody
18 who has a claim that they had a legal nonconforming
19 use, vet all those, draft up an ordinance to change
20 all their zoning and their community plan
21 designation, and then take that before Council, I
22 don't think that we would be able to execute that
23 before people are proposing that they be allowed to
24 reconstruct.

25 So I do think that they should get zoning,

1 whether they need to apply themselves or there's some
2 other way of correcting that zoning. I think you're
3 right that if a use is occurring and is supported,
4 that -- that it should be documented that way
5 properly.

6 But when everyone carves out the time to do
7 that, or who bears the burden of doing it, I think
8 that that's a larger, different conversation.

9 COMMISSIONER LINDO: Thanks, Jordan. How
10 does this change, complement, achieve, or -- or work
11 with existing community plans that are different
12 throughout all different districts of Maui County?

13 MR. HART: Throughout all districts of Maui
14 County, it could -- it could be more complicated
15 because in the Special Management Area, if you're
16 doing something that's considered to be a
17 development, which is generally everything that's not
18 one single family dwelling plus the accessory
19 dwelling and your support structures, that requires
20 an SMA permit.

21 And when you're getting an SMA permit, you
22 have to verify that the use that you're proposing is
23 permitted on all the land use layers that there are.
24 So state land use, Island Plan, Community Plan,
25 zoning, and then also flood and things like that,

1 shoreline.

2 So if we're talking about the Special
3 Management Area, there will not be a lack of
4 compliance with the Community Plan. It's not
5 possible -- you have to -- either you have to amend
6 your community plan or you have to change your
7 project. But that's the only way to get an SMA
8 permit in the SMA area.

9 Mauka, let's say that there was a community
10 plan -- the Community Plan in West Maui was just
11 updated. So let's say there was ongoing uses mauka
12 of the Honoapiilani Highway that were not reflected
13 in the Community Plan. This would create a situation
14 where they could reconstruct, but I don't know that
15 any of those exist.

16 My understanding from my looking -- now, I
17 haven't scoured every single parcel, but I've looked
18 over this area a couple of times -- that all the --
19 all the commercial areas are zoned -- there's light
20 industrial and there's heavy industrial and then
21 there's another light industrial subdivision, there's
22 some commercial.

23 My understanding is -- is it -- that it's
24 all zoned, but you know, that would just be an issue
25 to -- to consider. Do you want to create a system

1 that can accommodate the majority? And you're going
2 to accept that there might be a couple of odds and
3 ends here that aren't completely what everybody would
4 like?

5 Or -- or do you take a longer route and
6 check each one? But when you're doing that longer
7 route, which is what we were just discussing prior,
8 do the people wait for their permits? Or -- you
9 know, how do you manage that?

10 So this was our suggestion on how you let
11 people resume their lives and allow it to be legal
12 and safe.

13 COMMISSIONER LINDO: So I just -- so in
14 part of the verbiage, it says:

15 "Such nonconforming
16 structures may be repaired,
17 expanded, renovated, or
18 altered in any manner that
19 does not increase its
20 nonconformity."

21 Can you explain what that means?

22 MR. HART: So that's -- that's related to
23 an existing section we have in the -- in the -- in
24 the existing portion on nonconformities, which is
25 going to remain on the books. This -- this section

1 just sits there and waits. And if there's an
2 emergency, this section comes out.

3 But, anyway, let's say you had a house that
4 was built, you know, in the '40s, before building
5 permits, and it's sitting in your front yard setback.
6 And that's not legal. We can't let you do that now,
7 but we also don't make you take it out.

8 You can add on to the back of your house
9 that goes into the center of your lot. You just
10 can't add on to the front of your house that goes
11 further into the setback.

12 COMMISSIONER LINDO: Okay. Okay. Thank
13 you. Thank you. Sorry, I got one more question.

14 So the department is recommending going
15 from 12 months to four years. And that's what -- I'm
16 assuming that's where the completion of the entire
17 project; right? From approval of the permitting to
18 the completion of the project, is that correct?

19 MR. HART: It's actually from the first
20 declaration to the -- to the structure needs to be
21 done.

22 So I'll add on to this. The Lanai Planning
23 Commission suggested that we didn't provide enough
24 time and that there be the -- the applicant get
25 credit for any delays by county agencies in their

1 application process. And the Maui Planning
2 Commission suggested five years with a two-year
3 extension.

4 So we do acknowledge that it's tight. The
5 thought process that we were looking at -- first of
6 all, we -- we modeled this after another community in
7 California that had a fire disaster and tried to do
8 something similar.

9 We increased the years just because we have
10 a little bit more complicated process, but we were
11 trying to keep it tight because the existing
12 regulations are so aggressive that the purpose is to
13 basically say if you don't -- you know, if you don't
14 use it, you lose it.

15 And so we were trying to keep some sort of
16 similarity to that without going too far. But we do
17 agree that four years is tight. But that's the
18 thought process of how we got to this recommendation
19 or initial suggestion for discussion.

20 COMMISSIONER LINDO: Well, and also four
21 years -- in four years, a lot of things change, too.
22 So where you are already nonconforming, you're
23 probably way, like, past all the updated codes and
24 things that we can foresee happening.

25 So just to be -- so that I'm clear -- you,

1 you have a nonconforming structure, a house may be
2 built that wasn't permitted, like the example you
3 used in the discussion previous. It burns down
4 completely to the ground.

5 With this, it can be resurrected to the
6 exact same floor print that was before the fire or
7 before the natural disaster, but it would still
8 require updated building codes?

9 MR. HART: Yeah. And I would go back to
10 the discussion with Commissioner Albino. Let's say
11 it was in the flood zone. It would need to be
12 elevated at that point, too.

13 Like, so there's other things like --
14 that -- like, you're going to have to get a building
15 permit, though. And so in getting your building
16 permit, you trigger compliance with various things.

17 But, certainly, you're going to be to the
18 current health and safety standards for the
19 construction, you know, as far as fire department is
20 concerned; you may have to address flood if you're in
21 the flood area.

22 But let's say that you are just mauka of
23 the highway, you have no flood zone, you're just
24 regular residential, and you're in -- your structure
25 is in the setback, and you furnish documentation to

1 the planning department that you prove that that was
2 the situation and that it was permitted. We would
3 let you build right -- right back where it was.

4 But I will say also that I don't know how
5 many people are going to use this because, like,
6 let's say you just had a regular house. From my
7 perspective, you know, at my house, there are things
8 that, you know, aren't exactly the way I wanted them.
9 If I was starting again, I don't know if I would do
10 everything exactly the same.

11 So I don't think that everybody will do
12 this. And they have to go through the process of
13 proving. They have to have documentation, like we'll
14 use aerial photographs or -- or whatever historic
15 documentation exists on the record.

16 But it has to be proven. It's just -- not
17 just you say that you had your situation
18 nonconforming and we say, okay, here's your building
19 permit. Like, you submit documentation, we review
20 it, we ask you for supplemental submittals. We vet
21 it. If we agree, we treat it as a legal
22 nonconformity.

23 And this -- this is something we do
24 regularly. And we don't always agree or we don't
25 always -- or maybe it is a legal nonconformity, but

1 you're unable to furnish proof. I mean, like, we're
2 very sorry, but the burden of proof is on the
3 individual to show that this is the legal situation.

4 We can't just take people's word for why
5 some structure may not comply with regulations. We
6 have to be careful about vetting and verifying that
7 it's -- it's a legitimate claim. But when it is a
8 legitimate claim, then then we would honor it and
9 they deserve to -- to reconstruct under the existing
10 code and then, also, we believe, under this proposed
11 section, too.

12 COMMISSIONER LINDO: Does this -- does this
13 changes expedite any of the process from -- from
14 start to completion that a typical permitting
15 application process would be?

16 Does it -- does it expedite anything?

17 MR. HART: Not this section. I mean, it --
18 it expedites -- it expedites in the way that if it
19 didn't exist, there would be people who are upset
20 that they're not going to be able to do this, and we
21 would debate with them.

22 And then they would have to go -- for
23 example, like church and residential, they would have
24 to go get a special use permit and that that takes
25 time. So -- so in that (no audio) but there's a

1 different bill, 21, that went through committee and
2 council that amended 16.25, which is the
3 post-disaster building permit process.

4 And that one more specifically was intended
5 to -- after it's agreed on what you're -- you have
6 the right to construct, that expedites the review
7 process. But this is more the negotiation of what --
8 what can you say we're permitted to build on this
9 property. It does expedite that. Thank you.

10 COMMISSIONER LINDO: Thank you, Chair.

11 VICE-CHAIR KELLY: Any other commissioner
12 have questions? Concerns? If not, I'd like to
13 entertain a motion.

14 Well, sorry. Sorry. I do have one
15 comment. It's only a typo, Page 4, first sentence:

16 "The disaster occurred
17 and was discontinued due to
18 lack"
19 and then next sentence is "access." It
20 should be "due to lack of." Sorry, just adding an
21 "of."

22 MR. HART: Thank you.

23 VICE-CHAIR KELLY: That's my only comment.
24 So entertain a motion?

25 COMMISSIONER LINDO: Okay. I going take

1 one stab at this because I'm trying to be -- I'm
2 trying to be one team player. So I would like to
3 allow it except for Molokai. And if somebody would
4 second, I can explain.

5 COMMISSIONER ALBINO: I want to concur.
6 And my question was with -- with the Lahaina -- with
7 this -- with the governor's proclamation, the
8 changing of zoning to be able to get this process
9 moving really quickly kind of bothers me because from
10 the residential to commercial, it's a thin line.

11 And I'm worried that a lot of the
12 processing that's going to happen may discourage a
13 lot of people because of the homelessness and the,
14 you know, no homes to be -- to be had for the people
15 that were misplaced -- displaced from the disaster.

16 So I see the process of -- the
17 fast-forwarding of the process. But the changing
18 from residential to commercial bothers me because, in
19 this process, there's going to be only a thin line,
20 and there will be development.

21 That's what the Lahaina people worry about.
22 Development will take place of what they previously
23 had as a community.

24 So has this proposal gone to the community?
25 And, if so, what was the response from the Lahaina

1 community?

2 MR. HART: Chair, the public process that
3 we went through is the standard public hearing
4 process which is this public hearing that we're
5 having here, the public hearing before the Lanai
6 Planning Commission, and the public hearing before
7 the Maui Planning Commission.

8 On the island of Maui, we had testimony --
9 it was about split in favor and in opposition. Greg
10 may have the count total, but I don't off the top of
11 my head.

12 But I want to clarify that this does not
13 change zoning, and it's only for what did exist
14 prior, nothing -- nothing different. It has to be
15 proven to have been in existence and legal prior to
16 the fire. But it's -- nothing new or different is
17 permitted under this proposal.

18 COMMISSIONER ALBINO: Okay. Thank you.

19 COMMISSIONER LINDO: So, Chair, we have a
20 motion on the floor we can discuss.

21 VICE-CHAIR KELLY: Yes. It was seconded by
22 Commissioner Mowat. Yes.

23 COMMISSIONER LINDO: Okay. Okay. So let
24 me just state my reason. I just having one really
25 hard time with nonconforming uses.

1 And I think from every devastation, there's
2 an opportunity for us to get better. And we get
3 better from learning from our mistakes and having a
4 clean sheet of paper where we who once were not
5 conforming now have the opportunity to do just that.

6 I also -- but I'm not going to speak for
7 the people who are on -- in Lahaina or wherever, I
8 just personally speaking for Molokai as a
9 commissioner for this aina.

10 Also, I've been with the emergency disaster
11 response for over 20 years now. And I can tell you
12 that every single natural disaster has different
13 consequences, but they also have different -- they
14 also have different contributors. And I feel like
15 this doesn't allow for reasonable "No, we cannot do
16 this anymore."

17 And I feel like rather than looking at
18 disasters through the -- through the lens of "we need
19 to, we have to, we got to, we need to move because
20 people are out of their home," I understand that.
21 But I also think that these kinds of disasters can be
22 opportunities.

23 And many times, natural disasters reset our
24 aina back to the condition that it needs to be minus
25 human interaction and human pollution. And so, for

1 me, my heart feel for Lahaina. I cannot even begin
2 to understand, Jordan, what the planning department
3 and yourself are going through as you try to navigate
4 through how you address the people.

5 I can only speak for the people of Molokai.
6 And on Molokai, our commitment is to our aina and the
7 idea that when we take care of it, it will take care
8 of us. So words like "nonconformity," "special
9 allowances" on areas that are not permitted because
10 that's not what you're supposed to do in that area is
11 not in our wheelhouse to support.

12 What we want to support, if we need to, is
13 change the use, change the land use. Let's -- let's
14 vet it through the community, through the Community
15 Plan, and figure out how to ensure that for the
16 future of our generations, we're not leaving them
17 more opala and more stress, and the next guy is not
18 being left with more burden than the guy before him.

19 When we're successful in the community,
20 we're creating a world where the next people don't
21 have all that -- that weight and that heaviness so
22 that they can build more. They can build out more
23 resources and generate more benefit to our community
24 because each generation has done its kuleana to hold
25 fast.

1 And I do understand that for this instance,
2 especially with Lahaina, there is a need for Maui to
3 take a look at how you can expedite and help that
4 specific situation. And I wish this would have come
5 to us as a specific district proposal so that we
6 could -- so that I could fully support it.

7 But at this point, with the way it's
8 written to overlay over the entire county, my only
9 compromise to this would be to say that I aloha Maui,
10 and I aloha Lanai, and I support them in their
11 decisions of how they want to treat their aina and
12 their people. But for me, I would request that this
13 be approved with the amendment that says "except for
14 Molokai."

15 VICE-CHAIR KELLY: (No audio). Sorry. I
16 was muted. So, yes, I will call for the vote.

17 Raise of hands?

18 COMMISSIONER MOWAT: Wait, wait, what was
19 that? What's on the floor? To support the motion?

20 VICE-CHAIR KELLY: Yes, except for Molokai.
21 Okay, unanimous. Motion passed.

22 Okay, sorry. I'd like to call for a
23 five-minute recess. Is that okay?

24 COMMISSIONER MOWAT: Yep.

25 VICE-CHAIR KELLY: All right. Thank you.