Grassroot Institute of Hawaii
Policy Brief, July 2024

Six ways to speed up the recovery and rebuilding of Lahaina

Maui residents displaced by the 2023 wildfires need greater flexibility and certainty

By Jonathan Helton, Malia Hill and Jasmine Rocha

GRASSROOT
INSTITUTE OF HAWAII

Letter from the President

Keli'i Akina, Ph.D.
President and CEO
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Dear Reader,

It has been nearly a year since wildfires tore through Lahaina and West Maui, leaving death and destruction behind, and in that time, we have had to cope with grief and confront numerous challenges in our effort to rebuild.

Responding to such a disaster has not been easy, and one could easily become involved in second-guessing and criticizing the decisions thus far.

But I believe all of those involved in the relief and rebuilding efforts are doing their best in a changing, unfamiliar landscape. Again and again, they have had to evaluate what is being done and determine how to be more effective and efficient in their efforts.

This memo offers suggestions based on the challenges that have arisen during these initial months of clean-up and rebuilding. It is my hope that these detailed proposals will make it easier to build new housing and contribute to a revived Lahaina that respects the past and the visions of the area's property owners for the future.

The recovery process still has a long way to go, but we owe it to our Maui ohana to stay engaged in those efforts, and we at the Grassroot Institute of Hawaii remain committed to helping in every way we can.

Let's work together for the benefit of Lahaina and the people of Maui.

Sincerely,

Keli'i Akina

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Executive summary

The Grassroot Institute of Hawaii produced a widely distributed memo in January 2024 that offered numerous suggestions to federal, state and Maui County officials regarding how to facilitate the rebuilding of homes and other structures in Lahaina that were destroyed or damaged by the wildfires of August 2023.[1]

This policy brief builds on that memo by offering six more recommendations with the same goal in mind. Those six suggestions are:

1) Waive permit fees for all Maui residents seeking to rebuild their destroyed or damaged homes or build temporary housing.

2) Waive all fees and expedite review for damaged or destroyed properties within Maui's special management areas.

3) Allow nonconforming buildings to be reconstructed and nonconforming uses to be restored.

4) Emphasize existing liability protections for the county and builders of temporary structures.

5) Grant nonprofit builders exemptions from certain county zoning and building rules.

6) Allow more homes per lot in existing residential zones.

Introduction

Maui County has had a housing shortage for many decades. But the Aug. 8, 2023, wildfires that devastated Lahaina and parts of Kula, destroying 3% of the county's housing supply,[2] made it far worse.

The tragedy has strengthened calls to make it easier to build new homes, especially for the thousands of residents whose homes were destroyed or severely damaged.

Many of the residents displaced by the fires were forced to relocate far from their friends, families and communities to different parts of the county, state or even mainland – with some giving up hope of ever returning to their former neighborhoods.[3]

The long recovery time so far has been due in part to Maui County's regulatory maze, which had stifled homebuilding in general and led to the county having some of the nation's highest home prices even before the wildfires.

This report suggests six ways state and county lawmakers could help alleviate this situation, at least in the short run, until Maui County's zoning code can be more thoroughly reviewed and updated, tentatively by 2026.[4]

The first four suggestions apply to residents looking to rebuild in the Lahaina burn zone, as well as organizations working to provide temporary shelter to residents displaced by the fires.

The final two could play a role in allowing much-needed housing in general – in Lahaina and throughout the rest of the county.

1) Waive permit fees for all Maui residents seeking to rebuild their destroyed or damaged homes or build temporary housing.

Because of the dire need for new housing on Maui, lawmakers should make it easier to rebuild destroyed or damaged homes and other structures in Lahaina and Kula. One way to do that would be to waive all building permit fees, since they place an additional burden on anyone looking to produce shelter.

Maui County's building permit fees are graduated, with higher-value projects paying slightly higher fees than lower-value projects. This puts multi-unit residential properties at a disadvantage merely because of their value.

These fees, laid out in Appendix B of the county's annual budget, are replicated for the fiscal 2025 budget in Table A.[5]

Table A: Fees for building and construction permits in Maui County

Valuation:	Permit fees:
$1 to $500	$30
$501 to $2,000	$30 for the first $500 plus $3 for each additional $100 or fraction thereof, up to $2,000
$2,001 to $25,000	$75 for the first $2,000 plus $10 for each additional $1,000 or fraction thereof, up to $25,000
$25,001 to $50,000	$305 for the first $25,000 plus $9 for each additional $1,000 or fraction thereof, up to $50,000
$50,001 to $100,000	$530 for the first $50,000 plus $7 for each additional $1,000 or fraction thereof, up to $100,000
$100,001 to $500,000	$880 for the first $100,000 plus $5 for each additional $1,000 or fraction thereof, up to $500,000
$500,001 to $1,000,000	$2,880 for the first $500,000 plus $6 for each additional $1,000 or fraction thereof, up to $1,000,000
$1,000,001 and up	$5,880 for the first $1,000,000 plus $10 for each additional $1,000 or fraction thereof

The highest tier fee, which applies to any work done worth more than $1 million, covers many of the temporary housing projects permitted under the emergency proclamation.

The King's Cathedral and the Maui Family Life Center partnered in August 2023 to construct the 88-unit Ohana Hope Village project in Kahului. With the project valued at $4 million, Family Life Center had to pay $35,880 in building permit fees and $6,279 in plan-review fees,[6] which comprised a significant financial burden for a nonprofit organization relying on donations to fund construction and infrastructure upgrades.[7]

TY Management paid $15,880 in building permit fees and $2,779 for plan-review fees so it could build housing for its Kapalua Village Temporary Housing Project for Kapalua golf course employees. The 50-unit Kapalua Village was valued at $2 million.[8]

The state's 450-unit Ka La'i Ola project, valued at $115 million, would have had to pay about $1.1 million in building permit fees and $200,529 in plan-review fees,[9] but the Maui County Code exempts state and federal projects from needing building permits.[10]

On Kauai after Hurricane Iniki in 1992, the Kaua'i County Council waived all building permit fees for buildings that needed to be repaired or reconstructed. The waiver initially applied to permits requested before March 31, 1994 – a deadline later extended by ordinance to 1997.[11]

2) Waive all fees and expedite review for damaged or destroyed properties within Maui's special management areas.

Due to Lahaina's coastal location, a state law intended to preserve coastal zones and resources is slowing the rebuilding process for many properties in the burn zone.

The state Special Management Area law imposes cumbersome permitting protocols for most types of construction and imposes hefty fees.

In the map below, the areas in red mark the special management Area in Lahaina.[12]

This law is part of Chapter 205A of the Hawaii Revised Statutes, which creates standards for protecting coastal areas but gives the counties a degree of authority over granting approval to build in these zones.[13]

The Maui Planning Department is responsible for assessing all proposed developments in Maui's shoreline management area,[14] but under the SMA rules, not all building projects are considered developments.

An example of a project exempt from SMA rules would be a single-family home smaller than 7,500 square feet that doesn't pose a significant environmental danger.[15]

Almost all other projects – such as larger single-family homes, multi-family homes or business, commercial or industrial structures – must submit to extensive SMA review procedures and pay the associated fees.

Typically, developments are required to receive either a minor SMA permit or a major SMA permit.

Minor SMA permits are for developments that cost less than $500,000 and do not require a public hearing or vote from any of Maui County's three planning commissions.[16]

Major SMA permits, also called use permits, are for developments that cost more than $500,000 or pose a significant environmental and ecological danger within the SMA. The approval process involves public hearings and closer review by cultural and historical commissions, which makes it even longer and more complicated.[17]

All fees for the actions described above are documented in Maui County's annual budget ordinance.[18] The fees for fiscal 2025 are laid out in the two tables at right:

Table B – Fee schedule: Public hearing required

Service	Fee
SMA – New subdivisions, single-family or multi-family	$3,515.00
SMA – New single-family dwelling(s) on one lot	$2,404.00
SMA – New commercial/industrial up to 50,000 square feet	$3,515.00
SMA – New commercial or industrial 50,000 square feet and greater	$4,339.00
SMA – New hotel with up to 100 guest units	$3,515.00
SMA – New hotel with 100 guest units or greater	$5,165.00
SMA – Hotel renovation up to 50,000 square feet, can include additional guest units	$3,515.00
SMA – Hotel renovation 50,000 - 99,999 square feet, can include additional guest units	$4,339.00
SMA – Hotel renovation 100,000 square feet or greater can include additional guest units	$5,371.00
SMA – Mixed use up to 15 acres	$3,515.00
SMA – Mixed use 15 acres or greater	$4,339.00
SMA – Boundary amendment	$688.00
SMA – Additional review required by changes, additions, revisions, time extensions or renewals	$687.50
SMA – Additional public hearing notice	$687.50

Table C – Fee schedule: No public hearing required

Service	Fee
SMA – Emergency	$688.00
All other permits or reviews for which no public hearing is required, unless otherwise specified herein, including Special Management Area assessments for exemptions, SMA Minor permits	$206.00
Additional review required by changes, additions or revision	$206.00

Considering the human cost this law is currently imposing on Maui's wildfire victims, county lawmakers should immediately waive all fees relating to these laws and create an expedited SMA approval process for property owners seeking to rebuild.

3) Allow nonconforming buildings to be reconstructed and nonconforming uses to be restored.

Many of Lahaina's beloved buildings that were destroyed by the fires cannot be rebuilt under existing zoning laws, which state that any structure that has been at least 50% destroyed must be rebuilt under existing zoning codes.[19]

Historic structures and condominiums are exempt from this rule, but any other structures that did not meet current zoning codes when they were damaged or destroyed cannot be rebuilt as they were.

Bill 105 (2024), currently being considered by the Maui County Council, would fix this problem. Approved by the Maui Planning Commission in February, the bill would allow nonconforming structures to be rebuilt if the building permit is completed within five years of when the disaster occurred – though the county's building, residential, plumbing, electrical and fire codes would still apply.

The bill also would create an amnesty program for nonconforming uses that were discontinued because of the fires, such as bed and breakfast operations that are no longer allowed under current zoning rules.[20]

The Kaua'i County Council created a similar amnesty program for nonconforming structures and uses after Hurricane Iniki struck in 1992. Nonconforming structures could be rebuilt or repaired provided they did not increase the floor area above that which existed before the hurricane; increase the size of the nonconformity; or create structural alterations – unless those alterations used higher-grade materials or were better designed to withstand natural disasters.[21]

Kaua'i County's amnesty program for nonconforming uses was similar, allowing for them to be resumed as long as the structures in which they were offered received valid building permits and were rebuilt within the permit time frames.[22]

Enacting Bill 105 (2024) wouldn't guarantee that post-fire Lahaina would have the same look or feel as pre-fire Lahaina, but it would help restore more of it than otherwise would be allowed under current regulations.

Hale Mahaolu is a nonprofit builder, owner and manager of thousands of rental units across Maui County that lost several of its housing projects in Lahaina to the August 2023 fires. Two in particular will be difficult to rebuild as they were because they didn't conform to current zoning rules.

For example, its Lahaina Surf complex of 112 units in eight buildings built in the 1970s[23] featured 85,682 square feet of floor area on 4.353 acres of land, for a floor area ratio of 45.2%.

The county's A-1 zoning district permits a floor area ratio of no more than 40% for all parcels larger than three acres,[24] meaning that without either a nonconformity variance or comprehensive reform to the county's FAR rules, Hale Mahaolu will be forced to build smaller or fewer units.

Similarly, Hale Mahaolu's Eono complex, built in the late 1990s under a state affordable housing program[25] on land zoned R-1, featured 35 units before the fires.[26] But based on the current code's minimum lot size of 6,000 square feet per dwelling,[27] a maximum of only 18 units could be rebuilt without special approvals for the two parcels that made up the project.[28]

4) Emphasize existing liability protections for the county and builders of temporary housing.

One factor that has been delaying county-level approvals for temporary housing is the uncertainty regarding liability for both the county and the parties seeking permits.

To provide clarity, Gov. Josh Green should emphasize that the immunity provisions found in Section 127A-9 of the Hawaii Revised Statutes cover both county agencies and any private contractors hired by the counties to engage in approving permits related to the construction of temporary housing and the rebuilding of Lahaina.

Similarly, Gov. Green could specify that the liability protections designated under state law for individuals or organizations that provide emergency or homeless housing will extend to any organization that builds and provides temporary housing related to the Maui fires.

Section 663-10.6 of the Hawaii Revised Statutes exempts charitable organizations providing shelter to the needy from civil liability for injury and damages, absent gross negligence or wanton acts or omissions. Section 663-10.7 provides a similar exemption for private property owners who provide emergency access to land, shelter or subsistence during a disaster.

Clarifying that these statutes will be extended or interpreted to include individuals or organizations involved in the construction and provision of temporary housing on Maui would help clear away any uncertainty and risk that could be discouraging efforts to house Lahaina survivors.

5) Grant nonprofit builders exemptions from certain county zoning and building rules.

Churches, temples, synagogues, charities and land trusts often own land that could be used to provide temporary or permanent housing to individuals in need, but their financial resources often make it infeasible to endure the long and expensive process of obtaining the necessary permits to initiate construction.[29]

To help these types of organizations play a bigger role on Maui, local lawmakers could enact a "Yes, in God's backyard" law that would provide the certainty and regulatory flexibility these institutions need to do what they do best: Serve their communities.

The Pukalani Community Church of the Nazarene is in the process of receiving approval to build four temporary dwellings for displaced Lahaina residents, thanks to an emergency order issued by Maui Mayor Richard Bissen.[30] Building the four units would be impossible without the emergency order because the land the church owns is zoned public/quasi-public – a designation that does not allow dwellings under any circumstances.[31]

More specifically, "Yes, in God's backyard" laws provide zoning-related exceptions to qualified nonprofits. California pioneered this type of legislation, adopting a YIGBY law just last year for churches and educational institutions, and already it is paying dividends. The Los Angeles Episcopal Diocese, for example, announced it plans to build affordable housing on 25% of the church's 130 campuses in the area.[32]

In Hawaii, the state Legislature passed a resolution in April urging the counties to enact similar laws. House Concurrent Resolution 122 states that "creative solutions are needed to streamline building permit approvals for the development of new housing or modification of existing homes to address the severe lack of affordable housing."[33]

The Maui County Council should follow suit by crafting a YIGBY ordinance that would provide zoning and permit exemptions to medical, educational and religious institutions and community land trusts.

6) Allow more homes per lot in existing residential zones.

The Grassroot Institute pointed out in its recent report "How to facilitate more homebuilding in Hawaii" that many cities and states across the country have turned to allowing more homes per lot as a way to increase housing supply.[34]

Those leading the way include Minneapolis, Minnesota; Houston, Texas; Milwaukee, Wisconsin; and Columbus, Ohio; as well as the entire states of California and Montana.[35] A good international example is Auckland, New Zealand.[36] All have allowed greater housing density on lands already zoned for housing, and research indicates that these changes are working.[37]

Furthermore, directing development toward urban areas helps "keep the country country" and offers existing homeowners the possibility of building generational wealth through constructing small homes in their backyards or additions to their houses.

The Hawaii Legislature acknowledged the benefits of upzoning during its 2024 session in passing SB3202, now Act 39.[38] This new law requires that each county allow more accessory dwellings or "reasonable equivalents" in urban districts to increase housing supply.

Act 39 also requires the counties to ensure that the potential number of newly authorized housing units equals at least half of the county's five-year housing needs, as determined by the Hawaii Housing Planning Study. For Maui County, this would be about 5,200 new units.[39]

Hawaii's four counties have until 2026 to comply with the new law, but Maui County has a prime opportunity to comply and boost its housing supply right now. A bill that would allow more homes per residential lot, Bill 103 (2024), received a positive recommendation in February from the Maui Planning Commission and is now being considered by the Maui County Council.

Conclusion

The Maui County Council has scheduled a thorough review and update of the county's zoning code for 2026,[40] but residents and businesses affected by the August 2023 wildfires cannot wait two more years for decisive action on zoning and permitting reform.

Many are still in need of permanent housing, while reams of red tape have hindered meaningful progress toward achieving that goal.

Legislation aimed at boosting housing supply and lowering prices should be an immediate priority, which means removing or at least waiving regulations that have been standing in the way of rebuilding efforts in Lahaina and other parts of Maui.

The six recommendations offered in this report are intended mainly to address the island's short-term need for housing in the wake of the August 2023 wildfires, but an added benefit would be to ease the county's housing crisis in general, which has been long in the making.

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