

HLU Committee

From: Martin Thompson <mt@thompsonlaw.net>
Sent: Wednesday, October 22, 2025 5:26 AM
To: HLU Committee
Cc: Tasha A. Kama; Nohe M. Uu-Hodgins; Thomas M. Cook; Gabe Johnson; Alice L. Lee; Tamara A. Paltin; Keani N. Rawlins; Shane M. Sinenci; Yukilei Sugimura
Subject: RE: The Temporary Investigative Group (the "TIG") and its February 14, 2025 report (the "TIG Report") regarding the proposed Bill 9 apartment properties Transient Vacation Rental ("TVRs") ban
Attachments: October 21 2025 - Letter to HLU Committee Members.pdf
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Aloha HLU Committee members,

Attached is a revised version of the October 21, 2025 letter I e-mailed to you yesterday, which corrects the reference in Section 6 (iv) on page 4 from the "Schedule A properties" to the "Schedule 2 properties".

My apologies for the inconvenience.

Mahalo,

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October 21, 2025

To: The Housing and Land Use Committee

By e-mail to: HLU.committee@mauicounty.us;

And to: [Tasha Kama \(tasha.kama@mauicounty.us\)](mailto:tasha.kama@mauicounty.us), [Alice Lee \(alice.lee@mauicounty.us\)](mailto:alice.lee@mauicounty.us), [Nohelani U‘u-Hodgins \(nohe.uu-hodgins@mauicounty.us\)](mailto:nohe.uu-hodgins@mauicounty.us), [Tom Cook \(thomas.cook@mauicounty.us\)](mailto:thomas.cook@mauicounty.us), [Gabe Johnson \(gabe.johnson@mauicounty.us\)](mailto:gabe.johnson@mauicounty.us), [Tamara Paltin \(tamara.paltin@mauicounty.us\)](mailto:tamara.paltin@mauicounty.us), [Keani Rawlins-Fernandez \(keani.rawlins@mauicounty.us\)](mailto:keani.rawlins@mauicounty.us), [Shane Sinenci \(shane.sinenci@mauicounty.us\)](mailto:shane.sinenci@mauicounty.us), and [Yuki Lei Sugimura \(yukilei.sugimura@mauicounty.us\)](mailto:yukilei.sugimura@mauicounty.us)

Re: The Temporary Investigative Group (the “TIG”) and its February 14, 2025 report (the “TIG Report”) regarding the proposed Bill 9 apartment properties Transient Vacation Rental (“TVRs”) ban

As the President of the Maui Eldorado Association of Apartment Owners, I commend the HLU Committee for establishing the TIG, and the TIG for its due diligence and pragmatism in identifying Apartment zoned properties where continuing TVR uses may be appropriate, and in investigating and taking seriously the forecasted economic risks and social impacts of terminating TVR uses therefrom. I have the following comments and suggestions.

1. The TIG report exposes excessive Bill 9 overreach and its potential adverse economic impact

The stated purpose of Bill 9 is to create more affordable housing units. However:

- (i) As the aggregate annual TVR property tax surcharge and County TAT from Apartment properties is apparently \$75,000,000 annually (which presumably funds County services to Hawaii residents) why would the County forego over 50% of that annual TVR revenue from the Schedule 2 properties which could not realistically be converted to affordable housing?
- (ii) The inclusion of the Schedule 2 properties in Bill 9 also creates material risks to the economy and jobs, as projected in the UHERO study attached to the TIG report. Why would the County accept those additional significant economic risks and job losses for the Schedule 2 properties if they could not realistically be converted to affordable housing?

The TIG’s recommendation that continuing TVR uses would be appropriate for 52 of the 102 “Minatoya List” Apartment properties exposes the apparent failure to conduct any such due diligence and make those kinds of practical “affordable housing suitability” assessments for Bill 9, or to consider the increased material adverse economic impact of including all 102 properties in the Bill 9.

Accordingly, there appears to be irreconcilable differences between Bill 9, which includes all 102 “Minatoya List” apartment zoned properties in its TVR ban, and the TIG Report, which recommends that 52 of those 102 properties cannot or should not be converted to affordable housing and should therefore continue to have the legal right to engage in TVRs in the future.

2. There is no assurance that the TIG Report’s recommendation of creating new hotel zoning categories, revising the Community Plans and rezoning the Schedule 2 properties will ever be achieved.

The TIG's recommended rezoning solution as an antidote to Bill 9 puts its objective of reducing both the scope of the TVR ban to realistically achievable affordable housing units and its reduced adverse economic consequences at considerable risk because its proposed rezoning solution is a complicated, time-consuming and uncertain process which is not entirely within this Council's control, and may never be achievable. This HLU Committee and this Council should not allow that to happen. Quite simply this Council needs to control the process from start to finish.

The idea that the excessive scope and increased economic risks of Bill 9 should still be approved in the hope that its excesses may be rectified by a series of future events that may never happen, is not sound planning. No phase-out date can redeem a series of future events which this Council cannot control and may never occur.

The issues are whether the HLU Committee and Council are prepared to:

- (a) approve Bill 9 in its current form despite its being fundamentally in conflict with the TIG Report's determination that 52 of the 102 Schedule 2 properties should continue to have the legal right to engage in short term rentals in the future,
- (b) accept the significantly increased economic fallout and job loss by including all 102 properties in the Bill 9 TVR ban, and
- (c) accept the risk that some currently uncertain and complicated process which this Council does not control, will be created to save the day and seamlessly enable the Schedule 2 properties, whose TVR use has been arbitrarily and potentially illegally expropriated by Bill 9, to be transferred to new hotel zoning categories and with new Community Plan designations (neither of which currently exist), prior to the expiry of the Bill 9 phase-out periods.

3. A Practical and Achievable Solution.

The solution is to simply exclude the Schedule 2 properties from Bill 9. This would allow the Schedule 2 properties to continue their current lawful TVR permitted use under their existing A-2 zoning until such time as the new hotel zoning and community plan categories are created and the rezoning of the Schedule 2 properties into those proposed new hotel categories has been completed. At that time, TVRs as a permitted use under the existing apartment zoning can be terminated.

4. Implementation

In her letter dated July 2, 2025 to Mayor Bissen and HLU Committee Chair Kama, the Director of Planning confirmed that "(I)f it is desired by the Council to exclude **these** and/or other properties from Bill 9 without requiring these properties to go through the current code or community plan amendment process, then it could propose an amendment to the Bill that would retain Section 19.12.020(G) but amend the current text to specifically call out those properties that it would desire to remain as permissible to operate a TVR use in the Apartment District. Such an amendment could be as follows:

19.12.020.G. Transient vacation rentals in the following buildings and structures provided that they meet all of the criteria listed in 19.12.020.G.1 through 19.12.020.G.7: (List each building/property by TMK and description of project)."

The Director of Planning's reference above to "these" properties refers to the two A-2 zoned properties designated in the West Maui Community Plan as "Resort/Hotels", which includes our Maui Eldorado Resort property.

The Director of Planning's implementation solution provides the necessary continuing "bridge" to permit the Schedule 2 properties to continue to engage in TVRs as a lawful permitted use under their existing A-2 zoning until such time as their proposed rezoning into the proposed new hotel categories has been completed.

5. Legal Issues

The Schedule 2 properties currently have the right to engage in TVRs as a legally permitted use under existing A-2 zoning. Accordingly, if they are excluded from Bill 9, they will continue to have the legal right to engage in TVRs as a permitted use in the future.

If Maui Corporation Counsel has advised the HLU Committee or Council otherwise, it is imperative that Counsel engage independent outside legal counsel to provide its legal opinion with respect thereto. Maui Corporation Counsel works with the Mayor and Council on an ongoing basis as "in-house counsel", and having regard to the stakes involved in this decision, at the very least, obtaining an objective second legal opinion from outside counsel would normally be prudent, and in this case, necessary.

There will inevitably be an onslaught of lawsuits against the County if Bill 9 is enacted. Excluding the Schedule 2 properties from Bill 9 will likely result in a significant reduction thereof. However, the legal issues to be litigated, and the chances of the County's success, will be the same, regardless of the number of lawsuits initiated against the County. It makes no difference to the outcome if the County is sued by 1 property owner or by hundreds of property owners. The Court's decision will be based solely on the legality of Bill 9, not by the number of lawsuits or properties adversely impacted by Bill 9. Accordingly, if Maui Corporation Counsel has advised the HLU Committee or Council that excluding any or all of the Schedule 2 properties from Bill 9 will in any way adversely impact the County's legal position strategically, it is imperative that Council engage independent outside legal counsel to provide its independent, objective legal opinion with respect thereto.

6. The two A-2 zoned properties which are also designated as bona fide "Resort/Hotels" in the 2022 West Maui Community Plan

If, for any reason, the HLU Committee and Council are not prepared to exclude the Schedule 2 properties from Bill 9, we urge the HLU Committee and Council to accept and implement the request made to Council by the Planning Commission to exclude the two A-2 zoned properties which are designated as bona fide "Resort/Hotels" in the 2022 West Maui Community Plan (including our Maui Eldorado Resort property) from Bill 9, for the following reasons:

- (i) their permitted use under both the Community Plan and A-2 zoning includes the right to engage in TVRs,

- (ii) the West Maui Community Plan deems A-2 zoning to be “most compatible” with Resort/Hotel designated properties in the West Maui Community Plan,
- (iii) the reason given by the Planning Commission to exclude these two A-2 zoned properties from Bill 9 was that their designation as “Resort/Hotels” had been vetted and approved at the 2022 West Maui Community Plan public hearings,
- (iv) these 2 “Resort/Hotel” properties are the only Schedule 2 properties which have been approved and designated as “Resort/Hotel” properties in the West Maui Community Plan, and
- (v) the designation of these 2 properties as “Resort/Hotels” was approved by Council (including 5 current Council members) when it approved the 2022 West Maui Community Plan.

Mahalo for your time.

ASSOCIATION OF APARTMENT
OWNERS OF MAUI ELDORADO



By: _____
Martin Thompson
President

