

HLU Committee

From: County Clerk
Sent: Tuesday, October 21, 2025 7:47 AM
To: HLU Committee
Subject: FW: testimony on Bill 9 – TIG Report & Maalaea Banyans STR Rights
Attachments: Terri_Zager_3min_Testimony.pdf

From: terri zager <terrizager@gmail.com>
Sent: Tuesday, October 21, 2025 5:26 AM
To: Alice L. Lee <Alice.Lee@mauicounty.us>; Yukilei Sugimura <Yukilei.Sugimura@mauicounty.us>; Tasha A. Kama <Tasha.Kama@mauicounty.us>; Thomas M. Cook <Thomas.Cook@mauicounty.us>; Gabe Johnson <Gabe.Johnson@mauicounty.us>; Tamara A. Paltin <Tamara.Paltin@mauicounty.us>; Keani N. Rawlins <Keani.Rawlins@mauicounty.us>; Shane M. Sinenci <Shane.Sinenci@mauicounty.us>; Nohe M. Uu-Hodgins <Nohe.Uu-Hodgins@mauicounty.us>; Maui_County_Council_mailbox <county.council@mauicounty.us>; County Clerk <County.Clerk@mauicounty.us>
Subject: testimony on Bill 9 – TIG Report & Maalaea Banyans STR Rights

You don't often get email from terrizager@gmail.com. [Learn why this is important](#)
Aloha Councilmembers,

Please accept the attached letter as my written testimony for the October 21, 2025 Housing & Land Use Committee meeting regarding Bill 9 and the TIG report recommendations.

Mahalo for your time and thoughtful consideration of this important matter.

Warm regards,

Terri Zager

Owner, Maalaea Banyans

190 Hauoli Street, Wailuku HI 96793

3-Minute Testimony – Maalaea Banyans

Date: October 20, 2025

From: Terri Zager, Owner, Maalaea Banyans (190 Hauoli St, Wailuku)

To: Maui County Council – Housing & Land Use Committee (HLU)

Good afternoon, Councilmembers. My name is Terri Zager, and I am an owner at the Maalaea Banyans.

I am here because your Temporary Investigative Group has recommended that Maalaea Banyans lose its short-term rental rights, while the complex right next door — Island Sands, just one hundred feet away — is allowed to keep them.

Same street. Same zoning. Same age. Nearly identical buildings. Yet two completely different outcomes. That looks **arbitrary, selective, and unfair**.

You've said this is about freeing up affordable housing for Maui families. But does my **550-square-foot condo**, with **one parking space and zero storage**, really meet your workforce housing criteria?

Does my **\$5,000-a-month cost** — mortgage, HOA dues, taxes, and insurance — meet your definition of affordable?

That is not workforce housing. Teachers, firefighters, nurses — the very families you say you want to help — cannot buy or rent these units. Taking away STR rights here will not put local families in these condos.

What it will do is cut off a major source of County revenue. By your own tax classifications, shifting thousands of units like this out of STR status could cost Maui County **tens of millions of dollars every year** in lost property tax and TAT revenue. You will lose revenue without creating usable housing.

So I ask you directly:

- What **price point** did you decide was affordable?
- What **income level** are you actually targeting?
- And why are two neighboring properties, virtually identical, treated so differently?

The community deserves **clear standards, transparency, and equal treatment under the law**. Anything less opens this County to challenges of **arbitrary and discriminatory enforcement**.

If your true goal is housing for local families, then focus on properties that actually meet those needs — multi-bedroom homes, inland neighborhoods, places where residents can truly live and thrive. Do not take away STR rights from oceanfront one-bedroom condos that will never be workforce housing.

This body has a choice: act fairly and transparently, or adopt a policy that is unfair, legally questionable, and financially harmful to Maui County.

I urge you to reconsider. Thank you.

HLU Committee

From: Evan K. Oue <eoue@imanaka-asato.com>
Sent: Tuesday, October 21, 2025 9:02 AM
To: HLU Committee
Subject: RAM Testimony on TIG Report
Attachments: RAM Testimony on TIG Report Findings 10-20-25.pdf

Aloha,

On behalf of the Realtors of Maui (RAM), please find attached the testimony regarding the TIG report.

Please let me know if the HLU committee needs additional information.

Mahalo,

Evan K. Oue



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October 22, 2025

Councilmember Tasha Kama, Chair
Councilmember Nohe U'u- Hodgins, Vice Chair
Members of the Committee on
Housing and Land Use

**RE: Bill 9 CD1 – TEMPORARY INVESTIGATIVE GROUP ON POLICIES AND
PROCEDURES FOR TRANSIENT VACATION RENTAL USES IN THE
APARTMENT DISTRICTS**
Hearing Date – October 22, 2025 at 9:00 a.m.

Aloha Chair Kama, Vice Chair U'u-Hodgins and members of the Council,

Thank you for allowing the REALTORS® Association of Maui (“RAM”) to submit testimony providing **COMMENTS** on the **TEMPORARY INVESTIGATIVE GROUP ON POLICIES AND PROCEDURES FOR TRANSIENT VACATION RENTAL (TVR) USES IN THE APARTMENT DISTRICTS**. RAM is an association of over 2,003 real estate brokers and salespersons dedicated to the preservation of the fundamental right to own, transfer, and use real property.

We greatly appreciate the extensive work of the Bill 9 Temporary Investigative Group (TIG). The TIG conducted seven meetings and site visits and gathered input from the Department of Planning, housing advocates, business leaders, and community members. In the TIG report released at the hearing on October 14th, the report made the below findings:

1. **Revenue Impact:** County Real Property Tax (RPT) revenue could decline if TVR units convert to owner-occupied housing; losses would be smaller if units remain non-owner occupied.
2. **Tourism & Economy:** Reducing TVRs would limit visitor accommodations, leading to fewer hospitality jobs and lower General Excise and Transient Accommodations Tax collections.
3. **Housing Availability:** Phasing out TVRs may modestly increase long-term housing supply, especially in West Maui, though infrastructure and market constraints limit impact.
4. **Investor Behavior:** Both local and out-of-state investors are likely to purchase reclassified units, reducing the potential for local homeownership gains.
5. **Barriers to Local Purchase:** Units under litigation or regulatory uncertainty are harder to finance, forcing cash-only sales that disadvantage local buyers.

Further, the TIG recognized that while reducing TVR use in Apartment Districts may help address housing supply, the economic impacts to Maui County could be significant, and a targeted,

balanced approach is necessary to avoid unintended harm. The TIG made the following recommendations:

- **New Hotel Zoning Districts:** Introduce H-3 and H-4 Hotel Districts, mirroring A-1 and A-2 Apartment Districts but permitting TVRs outright. Proposed legislation should be introduced by the County to expedite review.
- **Council-Initiated Land-Use Changes:** Rezone selected Apartment District properties (listed in *Exhibit 2*) from A-1/A-2 to H-3/H-4 Hotel Districts once those districts exist and subsequently update community plan designations accordingly. Allow individual owners not included in Exhibit 2 to apply independently for land-use changes.
- **Procedural Improvements:** Amend Chapter 19.510 (Maui County Code) to make land-use applications more cost- and time-efficient.

In turn, RAM appreciates the TIG's commitment to a balanced approach and offers the following comments on the TIG findings and recommendations.

1. Policy Uncertainty

Primarily, RAM is concerned about the procedural uncertainty of advancing Bill 9 before the County implements the key policies and zoning changes recommended by the TIG. Proceeding with Bill 9 without first establishing the proposed H-3 and H-4 Hotel Districts or streamlining the rezoning process creates a significant policy gap. This sequence would effectively remove lawful TVR use in Apartment Districts while offering no clear, timely pathway for property owners to apply for new land-use designations or continued operation. RAM is concerned that such uncertainty exposes the County to administrative backlogs, inconsistent enforcement, and potential legal disputes from property owners seeking relief through the courts.

RAM urges the council to implement the TIG's recommended rezoning and procedural reforms prior to passing Bill 9. Implementing the TIG's recommendations for the creation of the H3 and H4 zoning classifications and rezoning the properties in Exhibit 2 would enable a full and clear understanding of the how many units will be impacted by Bill 9. Further, there is the additional risk that these policies may face delayed implementation potentially allowing Bill 9 to go into effect without the intended balanced approach provided by the TIG.

2. Economic Impact Still Remain

According to the TIG's final report, the economic impact to the County's Real Property Tax (RPT) revenue would be largest if all units became owner-occupied, as this would shift high-value properties into lower tax classifications. The report further noted that the phase-out could affect County revenues from the General Excise Tax (GET) and Transient Accommodations Tax (TAT) and potentially reduce hospitality employment.

RAM shares the TIG's perspective that a one-size-fits-all ban would cause unnecessary economic disruption without guaranteeing affordable housing outcomes.

Without first implementing the mitigating policies proposed by the TIG, Maui County may face the most severe economic impacts without accomplishing the stated goal of additional housing units. As referenced, the University of Hawai‘i Economic Research Organization’s (UHERO) March 2025 study projects that phasing out TVRs could reduce annual visitor spending by \$900 million, result in the loss of approximately 1,900 local jobs, and decrease County revenues by \$60 million in property taxes and \$15 million in GET and TAT collections annually. RAM remains concerned that such losses could severely impact public services and funding for affordable housing programs.

3. Affordability Concerns

RAM maintains that Maui residents may face challenges in purchasing reclassified units due to the high cost. RAM applauds the TIG for acknowledging the cost for owning these units and accounting for these higher valued properties when determining exemption from Bill 9. For many of the remaining impacted units, long-term rental is not a financially viable option due to high **mortgage payments, insurance costs, and potential special assessments may be cost prohibitive in addition to the exorbitant maintenance fees**. For example, on the low end, a 1 bedroom, 1 bathroom unit in the Paki Maui I II will have a monthly carrying cost of **\$3,419**. Further, for a local family to afford 2- or 3-bedroom unit, the month cost would range from **\$5,629.00- \$11,351.44**.

RAM concurs with the TIG findings that should litigation occur as a result of Bill 9, Maui residents may not be able to obtain mortgages as lenders typically permit only cash transactions for those properties. **In 2025 alone, 539 Minatoya properties were sold with 297 being cash transactions making up about 55% of sales.**

As a result, for impacted properties, Maui residents may face challenges purchasing units in a market environment both local and out-of-state investors competing for these properties. Ultimately, RAM remains concerned that the high cost of these units combined with challenges for obtaining mortgages may preclude Maui residents from obtaining units for long term use. **In turn, even with the adopting of the TIG proposed exemptions, Bill 9 will not accomplish the intended goal of creating housing units.**

4. Legal Concerns Remain

Furthermore, RAM has consistently advocated to preserve a property owner’s right. Again, while we appreciate the TIG’s willingness to exempt certain units, the proposed measure may violate legally obtained property owners’ rights to conduct TVRs. **RAM is concerned that enacting Bill 9 without first implementing the TIG’s recommended zoning and procedural reforms could expose the County to substantial litigation** from all impacted units under the current version of Bill 9.

Many of the affected properties who lawfully obtained the right to operate as TVR under existing zoning and permits, and in numerous cases, the Covenants, Conditions, and Restrictions (CC&Rs) for these condominium projects expressly contemplate transient or visitor use. By revoking these long-standing use rights without providing a clear, fair process for continued

operation or reclassification, such as the creation of the proposed H-3 and H-4 Hotel Districts, the County risks claims of regulatory taking from all impacted properties including those properties recommended to be exempted under Exhibit 2.

Such claims could argue that Bill 9 deprives owners of economically viable use of their properties, exposing taxpayers to costly and prolonged litigation, potential damages, and attorney's fees. Moreover, the absence of procedural clarity in land-use transitions could invite inconsistent enforcement actions and unequal treatment among similarly situated owners, further compounding legal exposure. **In short, adopting Bill 9 in its current form, before addressing these procedural and zoning issues, creates a high likelihood of legal challenges that could stall implementation for years and divert critical County resources away from housing and recovery priorities.**

5. Recommendations for a Balanced Path Forward

In light of these considerations, RAM respectfully recommends adopting a more balanced approach proposed by the TIG prior to implementing Bill 9.

- First, we urge the Council to adopt the TIG's recommendation to establish H-3 and H-4 Hotel Districts that allow continued TVR operations in appropriate areas while preserving residential zones for long-term housing.
- Second, we support efforts to streamline land-use and rezoning procedures to reduce costs and processing delays.
- Third, stricter enforcement against illegal TVRs could increase housing availability without penalizing lawful operators.
- Finally, the County should expand rental assistance, expedite permit approvals for new housing, and align infrastructure investment with housing development goals to achieve a comprehensive, systems-based approach.

In conclusion, RAM supports the goal of increasing housing opportunities for Maui residents and appreciates the Council's diligence in addressing this urgent issue. However, the evidence from both the TIG and UHERO reports demonstrates that the current form of Bill 9 risks severe economic harm without ensuring meaningful increases in housing affordability. We respectfully urge the Council to amend or defer the measure and instead adopt the TIG's balanced recommendations that protect Maui's economy, respect property rights, and advance long-term housing solutions.

Mahalo for your consideration,



Lynette Pendergast
REALTORS® Association of Maui

HLU Committee

From: Roxanne L. Berg <rlb@ksglaw.com>
Sent: Tuesday, October 21, 2025 9:50 AM
To: HLU Committee
Cc: David M. Louie; Joseph A. Stewart; Lana DeCabra; corpoun@mauicounty.gov
Subject: Airbnb Testimony on Bill 9 (2025)
Attachments: 2025-10-21 Testimony of David Louie as to Maui Bill 9 TIG Report.pdf

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Dear Maui County Council,

On behalf of Airbnb, please see attached written testimony of David Louie opposing proposed Bill No. 9 (2025), Temporary Investigative Group on Policies and Procedures for Transient Vacation Rentals Uses in the Apartment Districts (HLU-4(1)). There will be no oral testimony by Mr. Louie. Thank you.

Roxanne L. Berg | Legal Assistant
KOBAYASHI, SUGITA & GODA LLP
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October 21, 2025

MAUI COUNTY COUNCIL
Housing and Land Use Committee
Tasha Kama, Chair
Nohelani U‘u-Hodgins, Vice Chair

HEARING DATE: October 22, 2025
TIME: 9:00 am

Re: TESTIMONY ON BEHALF OF AIRBNB OPPOSING
THE PROPOSED BILL 9 (2025), TEMPORARY
INVESTIGATIVE GROUP ON POLICIES AND
PROCEDURES FOR TRANSIENT VACATION
RENTAL USES IN THE APARTMENT DISTRICTS
(HLU-4(1))

Dear Chair Kama, Vice Chair U‘u-Hodgins, and Committee Members:

We write on behalf of our client, Airbnb, to address the TEMPORARY INVESTIGATIVE GROUP (“TIG”)’s report on “On Policies And Procedures For Transient Vacation Rental Uses In The Apartment Districts (HLU-4(1))” (“**TIG Report**”).¹ We believe that the TIG Report represents a very important first step in asking the questions that the County should be asking before taking any action in relation to the proposed BILL 9 (2025), AMENDING CHAPTERS 19.12, 19.32, AND 19.37, MAUI COUNTY CODE, RELATING TO TRANSIENT VACATION RENTALS IN APARTMENT DISTRICTS (HLU-4) (“**Bill 9**”). However, as discussed more fully below, the TIG Report acknowledges that, while it raises questions, it still does not have answers to many of the key questions related to Bill 9. We therefore urge that the Maui County Council refrain from taking action on Bill 9 until answers to such questions are provided.

¹ This testimony incorporates my prior testimony dated June 6, 2025 in opposition to Bill 9. A copy of that testimony is attached hereto.

A. The TIG Report Correctly Notes that More Information Is Needed on the Economic Impact of Bill 9.

Specifically, the TIG Report correctly raises the issues of the economic impacts to the County and its taxpayers, but does not seem to have any real analysis of such impacts. Prior to taking any specific action, we would urge that the County Council make a comprehensive analysis of the financial impacts of the specific plan to be implemented.

B. All Administrative and Legislative Solutions Should be Implemented Before Taking Action on Bill 9.

The TIG Report also unanimously recommended two specific actions regarding legislation establishing H-3 and H-4 hotel districts, and Council initiated land-use designation changes. We commend the TIG for thinking about potential solutions to address the impacts for at least some of the impacted individual property owners. However, we have concerns to the extent that the County Council may consider approval of Bill 9 without actually implementing any of these administrative or legislative solutions. Such an approval, taken without any analysis of financial impacts and without simultaneously implementing ameliorating measures, would be akin to shooting first and aiming later. Such an action would lead to great uncertainty as to the economic impacts of Bill 9 on individual landowners, cause negative economic impacts and create a cloud that would drastically affect the ability of landowners to sell their property and the prices they could receive.

Furthermore, as acknowledged by the TIG Report, the proposed administrative and legislative recommendations would only have a potential impact to lessen the economic impacts on some of the affected landowners. Failure to address the economic impact on the remaining landowners could still result in massive litigation against the County for “takings” claims of potentially hundreds of millions of dollars or more, which would not serve the interests of either the County or the landowners.

C. Conclusion

In conclusion, the County stands at a critical juncture. Before it proceeds with taking action on Bill 9, it should address the issues and concerns raised by the TIG Report and by other stakeholders. The alternative would be to rush into ill-advised action for the sake of action. The impact on both the County’s finances and the individuals’ vested rights to use their residential properties without proper planning could result in substantial litigation and catastrophic economic impacts.

Maui County Council
October 21, 2025
Page 3

For the reasons set forth herein, we have significant concerns about the proposal and urge the County to not move forward with Bill 9.

Very truly yours,



DAVID M. LOUIE
for
KOBAYASHI SUGITA & GODA, LLP

Enclosure: June 6, 2025 testimony



KOBAYASHI SUGITA & GODA, LLP
Attorneys at Law

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June 6, 2025

MAUI COUNTY COUNCIL
Housing and Land Use Committee
Tasha Kama, Chair
Nohelani U‘u-Hodgins, Vice Chair

HEARING DATE: June 9, 2025
TIME: 10:00 pm

Re: TESTIMONY ON BEHALF OF AIRBNB OPPOSING
THE PROPOSED BILL 9 (2025), AMENDING
CHAPTERS 19.12, 19.32, AND 19.37, MAUI COUNTY
CODE, RELATING TO TRANSIENT VACATION
RENTALS IN APARTMENT DISTRICTS (HLU-4)

Dear Chair Kama, Vice Chair U‘u-Hodgins, and Committee Members:

We write on behalf of our client, Airbnb, in opposition to the proposed BILL 9 (2025), AMENDING CHAPTERS 19.12, 19.32, AND 19.37, MAUI COUNTY CODE, RELATING TO TRANSIENT VACATION RENTALS IN APARTMENT DISTRICTS (HLU-4) (“TVR Bill”).

The TVR Bill effectively eliminates short-term rentals in apartment-zoned districts in Maui. This is despite the fact that short-term rentals have been lawful, residential uses in these districts for decades. While we are encouraged by the Mayor’s proposal to extend the time period for this action from the original six months/one year to five years, the proposed action still violates U.S. and Hawai‘i law.

Specifically, the TVR Bill violates the well-established rights under the United States and State of Hawai‘i Constitutions of property owners—including many Maui residents who depend on income from TVRs to pay their mortgages, provide for their families, and fund their retirements. The TVR Bill will also have far-reaching—and potentially catastrophic—consequences for individuals and small businesses that depend on economic activity TVRs generate, in addition to negatively impacting the environment, and, in turn, the health and well-being of all Maui residents.

The TVR Bill would also invite years of lawsuits from property owners who have lawfully used their property as short-term rentals for decades and who have incurred substantial expenses to support such activity. Protracted litigation would be costly to the County—and should challengers prevail, the County could be required to pay property owners millions of dollars to compensate them for the taking of their properties and damages resulting from the ban.

As discussed more fully below, both the State of Hawai‘i and federal courts of Hawai‘i have explicitly recognized the vested rights of apartment owners to use their homes for short-term rentals as a residential use. Consequently, there is a substantial likelihood that the TVR Bill will ultimately be deemed unconstitutional. Furthermore, the bill would eliminate a major source of tax revenue that supports affordable housing and divert funds that could address Maui’s housing challenges to pay litigation expenses—an unnecessary and unfortunate outcome.

For these reasons, we strongly urge that the Council not move forward the TVR Bill.

A. The Proposed TVR Bill Eliminates the Vested Rights of Maui Property Owners.

The proposed TVR Bill seeks to eliminate short-term rentals that have been lawful in Maui for over half a century. As Maui’s Planning Director has recognized, “[short-term rentals], in one form or another, have been permitted within Apartment Districts since 1960.”¹ The specific apartments targeted by the TVR Bill, moreover, have for years been permitted to operate as short-term rentals “by right.”² The TVR Bill’s proposed elimination of these short-term rentals—and this right—plainly violates Hawai‘i law.

The law is clear and unequivocal: preexisting lawful uses of property *cannot be eliminated* by subsequent zoning ordinances. Property owners have a “right . . . to the continued existence of uses and structures which lawfully existed prior to the effective date of a zoning restriction.”³ “[P]reexisting lawful uses of property are generally considered to be vested rights that zoning

¹ Memorandum from Kate L. K. Blystone, Planning Director to Maui Planning Commission, Molokai Planning Commission, and Lanai Planning Commission regarding An Ordinance Amending Chapters 19.12, 19.32 and 19.37 Relating to Transient Vacation Rentals in Apartment Districts, at 10 (Jun. 25, 2024).

² *Id.*

³ *Waikiki Marketplace Inv. Co. v. Chair of the Zoning Bd. of Appeals of City and Cty. of Honolulu*, 86 Haw. 343, 353, 949 P.2d 183, 193 (Ct. App. 1997).

ordinances may not abrogate.”⁴ This rule is deeply rooted in Hawai‘i law, is constitutional in nature,⁵ and does not depend on the text of Hawai‘i’s Zoning Enabling Act, Section 46-4(a).

In 1997, the Hawai‘i Intermediate Court of Appeals concluded that Honolulu could not fine a property owner for maintaining a nonconforming addition that was lawful at the time the addition was constructed.⁶ The appellate court explained that “the right of a property owner to the continued existence of uses and structures which lawfully existed prior to the effective date of a zoning restriction is grounded in *constitutional* law.”⁷ Requiring the owner “to remove the addition and pay daily fines,” the court reasoned, “would constitute an interference with [the owner’s] vested property rights, in violation of the due process clauses of the federal and state constitutions.”⁸

In 2016, the Hawai‘i Intermediate Court of Appeals affirmed these principles, this time in the context of short-term rentals. The appellate court rejected Kaua‘i’s interpretation of an ordinance that permitted only individuals who owned a seventy-five-percent-or-greater interest in their property to apply for short-term rental nonconforming use certificates.⁹ The court reasoned that such an interpretation would raise “serious constitutional questions” because “persons with less than a seventy-five percent ownership interest [in their property] may have vested rights to pre-existing lawful uses.”¹⁰ Those vested rights, in turn, the court explained, cannot be abrogated by zoning law.¹¹

More recently, in 2022, the United States District Court for the District of Hawai‘i considered the constitutionality of a Honolulu ordinance that banned short-term rentals of less than 90 days. The federal court reasoned that homeowners in Honolulu had “a vested property right” in using their homes for short-term rental, because the homeowners had been doing so for years in reliance on existing law.¹²

⁴ *Robert D. Ferris Trust v. Planning Com’n of Cnty. of Kauai*, 138 Haw. 307, 312 (Haw. Ct. App. 2016); *Waikiki Marketplace Inv. Co. v. Chair of Zoning Bd. of Appeals of City & Cnty. of Honolulu*, 86 Haw. 183, 193-94 (Haw. Ct. App. 1997).

⁵ *Id.*

⁶ *Waikiki Marketplace*, 86 Haw. at 193.

⁷ *Id.* (emphasis added).

⁸ *Id.* at 194.

⁹ *Ferris Trust*, 138 Haw. at 313.

¹⁰ *Id.*

¹¹ *Id.* at 312.

¹² *Hawaii Legal Short-Term Rental Alliance v. City and Cnty. of Honolulu*, 2022 WL 7471692, at *10 (D. Haw. Oct. 13, 2022).

And again last year courts in Hawai‘i expressly recognized property owners’ vested right to “the preexisting lawful use of [a] [p]roperty as a nonconforming TVR”¹³ and acknowledged property owners’ “vested right” to operate a TVR as a lawful, non-confirming use.¹⁴

Apartment owners in Maui who lawfully use their apartments for short-term rentals have a vested right in that preexisting use. Under state and federal law, Maui may not abrogate that vested right. The recent changes to Hawai‘i Revised Statutes, Section 46-4(a) referenced in the TVR Bill¹⁵, purporting to remove statutory protections for homeowners who use their homes for short-term rentals, do not change the analysis. As the courts have found, the statutory protections of Section 46-4 derive from constitutional law.¹⁶ Even if the statutory protections can be removed, the constitutional foundation remains, and the TVR Bill violates those constitutional protections.

B. The Proposed TVR Bill Causes an Unconstitutional Taking of Property Under the United States and Hawai‘i Constitutions.

The TVR Bill also implicates constitutional protections of apartment owners. The Fifth Amendment to the United States Constitution prohibits “private property [from] be[ing] taken for public use, without just compensation.” U.S. Const. amend. V. The Hawai‘i Constitution too states that “[p]rivate property shall not be taken or damaged for public use without just compensation.” Haw. Const. art. I, § 20. Because the Hawai‘i Constitution prohibits not just takings, but also mere “damage” to property interests, provides even broader protection than its federal counterpart. By preventing apartment owners from using their apartments for short-term rentals, the proposed TVR Bill effects an unconstitutional taking of private property under federal and state law.

A *per se* taking occurs whenever government interference with property effects “a direct government appropriation or physical invasion of private property.”¹⁷ When the government “appropriates for the enjoyment of third parties” “a fundamental element of the [owners’] property right,”¹⁸ or “otherwise interfere[s] with [such fundamental] right[s],” “[t]hat sort of intrusion on property rights is a *per se* taking” that automatically “trigger[s]” the “right to compensation.”¹⁹

¹³ *Rigotti v. Planning Dep’t of the Cnty. of Kauai*, 155 Haw. 181 (Ct. App. 2024) (unpublished).

¹⁴ *Kendrick v. Plan. Dep’t of the Cnty. of Kaua‘i*, 155 Haw. 230, 240 (Ct. App. 2024).

¹⁵ TVR Bill, Section 7.A.

¹⁶ *Campos v. Planning Comm’n*, 153 Haw. 386, 393 (Haw. App. Ct. 2023); Ferris Trust, 138 Haw. at 312; Waikiki Marketplace, 86 Haw. at 353.

¹⁷ *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 537 (2005).

¹⁸ *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 147 (2021).

¹⁹ *Sheetz v. Cnty. of El Dorado, Cal.*, 601 U.S. 267, 274 (2025).

The TVR Bill prohibits property owners from leasing their properties on a short-term basis. But a fundamental element of property ownership is the right to lease for a duration of the owner's choosing.²⁰ The proposed ordinance also violates owners' right to include persons of their choosing (here, short-term lessees) on their property. The right to include is a corollary of the right to exclude, a recognized fundamental right.²¹ “[T]he right to exclude must encompass . . . the owner's right to include others.”²² Because the proposed TVR Bill effects a *per se* taking, property owners are automatically entitled to compensation for the value of property taken.²³

In 2022, the United States District Court for the District of Hawai‘i entered a preliminary injunction, preventing Honolulu from enforcing similar legislation, for this exact reason.²⁴ The Hawai‘i Federal District Court explained that property owners have a vested property right, for purposes of the federal Takings Clause, in using their homes for short-term rentals.²⁵ In finding this right, the court pointed to, among other things, the fact that property owners had relied on Honolulu regulations, decisions, and agreements that had long permitted such use.²⁶ The court then explained that “there is no question” that the attempted ban constitutes a taking because it outlaws existing short-term rentals “without providing any process to compensate or accommodate nonconforming uses.”²⁷ In entering a preliminary injunction, the court blocked Honolulu from enforcing the ordinance.

The same is true here, and the same result will likely follow. Banning TVRs will have a swift—and dramatic—impact on owners. Property owners (including several Maui residents) testified before the Planning Commission that the ban will eliminate TVR income on which they rely to pay their mortgages, provide for their families, or fund their retirements. It will also destroy the value of their properties. UHERO projects that condominium prices will decline by 20-40

²⁰ See *Terrace v. Thompson*, 263 U.S. 197, 215 (1923); *Zaatari v. City of Austin*, 615 S.W.3d 172, 190 (Tex. App. 2019) (observing “[t]he ability to lease property is a fundamental privilege of property ownership,” and recognizing plaintiffs’ “settled interest in their right to lease their property short term”).

²¹ See, e.g., *Union Carbide Corp. v. Alexander*, 679 S.W.2d 938, 940 (Tenn. 1984) (explaining that the fundamental “rights associated with the ownership of property” include the core rights and their corollaries—i.e., “the right to refuse to do any of the[m]”)

²² Thomas W. Merrill, *Property and the Right to Exclude*, 77 Neb. L. Rev. 730, 742-43 (1998)

²³ See, e.g., *Sheetz*, 601 U.S. at 274. The TVR Bill also effects a regulatory taking under the *Penn Central* factors. See 438 U.S. at 124 (considering the “(1) economic impact of the regulation [on the property owner], (2) its interference with reasonable investment-backed expectations, and (3) the character of the government action” to determine whether a taking has occurred).

²⁴ *Hawaii Legal Short-Term Rental Alliance*, 2022 WL 7471692, at *9-11.

²⁵ *Id.* at 10.

²⁶ *Id.* at 10 n. 23.

²⁷ *Id.* at 10.

percent after the TVR Bill takes effect.²⁸ The proposed ordinance interferes with owners' reasonable expectations—supported by decades of lawful use and the County's express assurances—that they would be able to continue using their properties as TVRs—expectations on which they based significant decisions about their lives and livelihoods. The County's action, which will impose severe consequences on property owners, effects a taking for which property owners must be compensated.²⁹

C. The Proposed TVR Bill Violates the Law in Several Other Ways

The proposed TVR Bill is likely unlawful for numerous other reasons. As one additional example, the proposed TVR Bill violates principles of zoning estoppel, which prevents municipalities from repudiating prior zoning decisions on which property owners have relied. As the Hawai'i Supreme Court has explained:

[T]he doctrine of zoning estoppel is based on a change of position on the part of a [property owner] by substantial expenditure of money in connection with his project in reliance, not solely on existing zoning laws or on good faith expectancy that his development will be permitted, but on official assurance on which he has a right to rely that his project has met zoning requirements, that necessary approvals will be forthcoming in due course, and he may safely proceed with the project.³⁰

Apartment owners in Maui for years have relied on the official assurances from their government that their preexisting lawful uses are protected. If enacted, and when challenged in court, Maui will be estopped from repudiating these assurances.

The TVR Bill also implicates property owners' substantive due process rights by arbitrarily and unreasonably impairing their vested rights, in violation of due process principles.³¹ Specifically, it arbitrarily eliminates property owners' right to lease their properties for any period less than 180-days, without any reasonable justification.³² Importantly, the TVR Bill will likely not survive the heightened scrutiny courts apply to evaluate laws that burden fundamental rights.³³

²⁸ The Economic Research Organization at the University of Hawai'i, "An Economic Analysis of the Proposal to Phase Out Transient Vacation Rentals in Maui County Apartment Districts" ("UHERO Report"), at 1 (Mar. 31, 2025).

²⁹ See *DW Aina Le'a Dev., LLC v. Land Use Comm'n*, 716 F. Supp. 3d 961, 975 (D. Haw. 2024), aff'd, 2025 WL 546356 (9th Cir. Feb. 19, 2025).

³⁰ *Life of the Land, Inc. v. City Council of City & Cnty. of Honolulu*, 606 P.2d 866, 902 (1980); see also *Pacific Standard*, 653 P.2d at 744 (quoting same).

³¹ See *Waikiki*, 86 Haw. at 353-54, 949 P.2d at 193-94.

³² See *United Prop. Owners Assoc. v. Belmar*, 447 A.2d 933, 937 (N.J. Super. Ct. App. Div. 1982), cert. den. 453 A.2d 880 (1982) ("[T]ime limitations imposed on renting residential property are impermissibly arbitrary and constitute an unreasonable restraint on the use of private property.").

³³ *Nagle v. Bd. of Ed.*, 63 Haw. 389, 403, 629 P.2d 109, 119 (1981).

It is not narrowly tailored to serve the County's interest in promoting affordable housing and undermines this goal by eliminating TVRs, which represent the largest source of property tax revenue for the County and provide the largest contributions to affordable housing development in Maui.³⁴

Further, apartment owners affected by the TVR Bill are likely to have various other legal claims based on their individual circumstances.

D. Consideration of the Proposed TVR Bill is Premature

The current deliberation on the elimination of existing lawful uses, based on the record before the Council, is premature and lacks a comprehensive foundation. Such an approach may lead to legal challenges. Before enacting any restrictions, it is crucial for the County to thoroughly evaluate, among others, the following considerations:

- 1. Absence of Compensation for Loss.** When the government eliminates a valid use, it generally must compensate those who are impacted for such loss. The TVR Bill does not make any consideration of compensation. We recommend that the Council convene an analysis to determine the compensation it will be required to pay for the taking prior to consideration of the TVR Bill.
- 2. Economic Impacts on the County.** The Economic Research Organization at the University of Hawai'i (UHERO)'s recent study projects that the TVR Bill will result in a **\$900 million** annual decline in total visitor spending and the loss of roughly **1,900** jobs in accommodations, food services, arts, entertainment, and retail trade, and cause Maui's real GDP to contract by **4 percent**.³⁵ UHERO estimates that property tax revenues will fall by up to \$60 million annually by 2029, due to declining property values and changes in tax class, and General Excise Tax and Transient Accommodations Tax revenues will fall by 10 and 8 percent (respectively), resulting in an additional \$15 million of annual losses.³⁶ Airbnb submits that this is likely

³⁴ Jen Russo, Short Term Rentals are the Biggest Revenue Source for Maui County Real Property Tax FY22-23, MAUI VACATION RENTAL ASSOCIATION (May 22, 2022), available at <https://mvra.net/news/12800076>.

³⁵ The Economic Research Organization at the University of Hawai'i, "An Economic Analysis of the Proposal to Phase Out Transient Vacation Rentals in Maui County Apartment Districts" ("UHERO Report"), at 1-2 (Mar. 31, 2025).

³⁶ *Id.* at 1. A report by Kloninger & Sims Consulting LLC reached similar conclusions. According to that report, visitors staying in TVRs contributed approximately \$2.2 billion to Maui's economy in 2023 alone, generating \$33.7 million in county Transient Accommodations Tax and \$11.8 million in county General Excise Tax revenues—a total of \$45.5 million. The elimination of Maui's TVRs would result in a \$128.3 million to \$280.9 million decline in county tax collections.

a conservative estimate of the actual impacts to the County. The proposed TVR Bill does not consider how to address that loss or consider the fact that such revenue loss to the County could, in fact, be used by the County to increase the amount of affordable housing that is available to working families. This should be more fully vetted prior to any decision on the TVR Bill.

3. **The County Must Consider Potential Environmental Impacts.** TVRs provide a sustainable and environmentally friendly alternative, consuming fewer resources than resorts, hotels, or motels.³⁷ The County has not yet evaluated the adverse environmental consequences or aim to minimize these impacts. We strongly recommend that the County undertake a complete analysis of the potential environmental impacts of the TVR Bill before its consideration.

As we summarized above, the TVR Bill impedes fundamental rights and is subject to heightened scrutiny. However, the failure to fully examine, study, and consider these issues makes it questionable as to whether the TVR Bill even meets the standard of rational basis review. We would submit that it would be premature to pass the TVR Bill without explicitly considering these issues.

E. Conclusion

In conclusion, the County stands at a critical juncture. It can either choose to proceed with eliminating individuals' vested rights to use their residential properties, thereby inviting substantial litigation, or it can opt to explore collaborative solutions to Maui's housing challenges. By working with apartment owners and leveraging the tax revenue generated from TVRs, the County can develop housing that better meets the needs of Maui's workforce.

It is also imperative the Council enact laws that align with and uphold the protections guaranteed by the Hawai'i and federal Constitutions. The passage of the TVR Bill, as currently proposed, would contravene these constitutional protections. Such a legislative change is likely to trigger extensive litigation, which could ultimately nullify the TVR Bill. While the goals of increasing housing availability and affordability are important objectives, imposing unlawful and ineffective restrictions on short-term rentals is not a viable solution.

³⁷ For example: A 2018 analysis using a "Cleantech" model found that when guests stay at a TVR, significantly less energy and water is used, greenhouse gas emissions are lower, and waste is reduced, compared to hotel stays. See Airbnb, "How the Airbnb Community Supports Environmentally-Friendly Travel Worldwide" (Apr. 19, 2018), available at <https://news.airbnb.com/how-the-airbnb-community-supports-environmentally-friendly-travel-worldwide>.

For the reasons set forth herein, we have significant concerns about the proposal and urge the County to not move forward with the TVR Bill.

Very truly yours,



David M. Louie
for
KOBAYASHI SUGITA & GODA, LLP

HLU Committee

From: Maui_County_Council_mailbox
Sent: Tuesday, October 21, 2025 3:19 PM
To: HLU Committee
Subject: Fw: Bill 9 TIG
Attachments: 10-21-25 angie 3 minute testimony MB.pdf

Aloha HLU Committee,

Forwarding the following email from the county.council@mauicounty.us inbox.

Mahalo,



Support Section

County of Maui | Office of Council Services
Email: county.council@mauicounty.us
Phone: (808) 270-7838 | Fax: (808) 270-7686

From: Angie Hamlin <angiehamlinart@gmail.com>
Sent: Tuesday, October 21, 2025 3:04 PM
To: Tasha A. Kama <Tasha.Kama@mauicounty.us>; Maui_County_Council_mailbox <county.council@mauicounty.us>; Alice L. Lee <Alice.Lee@mauicounty.us>; Yukilei Sugimura <Yukilei.Sugimura@mauicounty.us>; Thomas M. Cook <Thomas.Cook@mauicounty.us>; Gabe Johnson <Gabe.Johnson@mauicounty.us>; Tamara A. Paltin <Tamara.Paltin@mauicounty.us>; Keani N. Rawlins <Keani.Rawlins@mauicounty.us>; Shane M. Sinenci <Shane.Sinenci@mauicounty.us>; Nohe M. Uu-Hodgins <Nohe.Uu-Hodgins@mauicounty.us>
Subject: Bill 9 TIG

You don't often get email from angiehamlinart@gmail.com. [Learn why this is important](#)
Aloha Council Members,

Attached below is my testimony since I just flew out of state last night,
Mahalo for your consideration,
Angie Hamlin
Owner Ma'alaea Banyans
190 Hau'oli Street #113, Wailuku, HI 96793

3-Minute Testimony – Maalaea Banyans

Date: October 21, 2025

From: Angie Hamlin, Owner, Ma'alaea Banyans (190 Hauoli St, Wailuku)

To: Maui County Council – Housing & Land Use Committee (HLU)

Good afternoon, Council members. My name is Angie Hamlin, and I have owned at the Ma'alaea Banyans for 25 years.

I am here because your Temporary Investigative Group has recommended that Maalaea Banyans (along with Kanai a Nalu, and Makani a Kai) lose short-term rental rights, while the complex right next door to Ma'alaea Banyans — Island Sands, just one hundred feet away — is allowed to keep them.

Same street. Same zoning. Same age. Nearly identical buildings. Yet two completely different outcomes. That looks **arbitrary, selective, and unfair**.

You've said this is about freeing up affordable housing for Maui families. But does my **550-square-foot condo, with one parking space, no pets, and zero storage**, really meet your workforce housing criteria? Also consider we paid a \$10,000 special assessment for the elevator last year and have more to pay for common element water pipes that are deteriorating, replacing the aging septic system, roofs, etc. This is happening with all the condos in Ma'alaea due to when they were built.

Does a **\$5,000-a-month- mortgage, plus another \$1100+ a month** for HOA dues, taxes, and insurance — meet your definition of affordable?

That is not workforce housing. Teachers, firefighters, nurses — the very families you say you want to help — cannot buy or rent these units. Taking away STR rights here will not put local families in these condos.

What it will do is cut off a major source of County revenue. By your own tax classifications, shifting thousands of units like this out of STR status could cost Maui County **tens of millions of dollars every year** in lost property tax and TAT revenue. You will lose revenue without creating usable housing.

So I ask you directly:

- what **price point** did you decide was affordable?
- What **income level** are you actually targeting?
- Why are two neighboring properties, virtually identical, treated so differently?

The community deserves **clear standards, transparency, and equal treatment under the law**. Anything less opens this County to challenges of **arbitrary and discriminatory enforcement**.

If your true goal is housing for local families, then focus on properties that actually meet those needs — multi-bedroom homes, inland neighborhoods, places where residents can truly live and thrive. Do not take away STR rights from oceanfront one-bedroom condos that will never be workforce housing.

This body has a choice: act fairly and transparently, or adopt a policy that is unfair, legally questionable, and financially harmful to Maui County. I urge you to reconsider, thank you.

HLU Committee

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Sent: Tuesday, October 21, 2025 3:20 PM
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Forwarding the following email from the county.council@mauicounty.us inbox.

Mahalo,



Support Section

County of Maui | Office of Council Services
Email: county.council@mauicounty.us
Phone: (808) 270-7838 | Fax: (808) 270-7686

From: Paul Hamlin <paul_hamlin@msn.com>
Sent: Tuesday, October 21, 2025 3:09 PM
To: Tasha A. Kama <Tasha.Kama@mauicounty.us>; Maui_County_Council_mailbox <county.council@mauicounty.us>; Alice L. Lee <Alice.Lee@mauicounty.us>; Yukilei Sugimura <Yukilei.Sugimura@mauicounty.us>; Thomas M. Cook <Thomas.Cook@mauicounty.us>; Gabe Johnson <Gabe.Johnson@mauicounty.us>; Tamara A. Paltin <Tamara.Paltin@mauicounty.us>; Keani N. Rawlins <Keani.Rawlins@mauicounty.us>; Shane M. Sinenci <Shane.Sinenci@mauicounty.us>; Nohe M. Uu-Hodgins <Nohe.Uu-Hodgins@mauicounty.us>
Subject: Bill 9 TIG

Some people who received this message don't often get email from paul_hamlin@msn.com. [Learn why this is important](#)

Aloha Council Members,

Attached below is my testimony,,
Mahalo for your consideration,
Paul Hamlin Owner Ma'alaea Banyans
190 Hau'oli Street #113, Wailuku, HI 96793

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To: Maui County Council – Housing & Land Use Committee (HLU)

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This body has a choice: act fairly and transparently, or adopt a policy that is unfair, legally questionable, and financially harmful to Maui County. I urge you to reconsider, thank you.

HLU Committee

From: Martin Thompson <mt@thompsonlaw.net>
Sent: Tuesday, October 21, 2025 4:32 PM
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

October 21, 2025

To: The Housing and Land Use Committee
By e-mail to: HLU.committee@mauicounty.us;
And to: [Tasha Kama](mailto:Tasha.Kama@mauicounty.us) (tasha.kama@mauicounty.us), [Alice Lee](mailto:Alice.Lee@mauicounty.us) (alice.lee@mauicounty.us), [Nohelani U'u-Hodgins](mailto:Nohelani.U'u-Hodgins@mauicounty.us) (nohe.uu-hodgins@mauicounty.us), [Tom Cook](mailto:Tom.Cook@mauicounty.us) (thomas.cook@mauicounty.us), [Gabe Johnson](mailto:Gabe.Johnson@mauicounty.us) (gabe.johnson@mauicounty.us), [Tamara Paltin](mailto:Tamara.Paltin@mauicounty.us) (tamara.paltin@mauicounty.us), [Keani Rawlins-Fernandez](mailto:Keani.Rawlins-Fernandez@mauicounty.us), (keani.rawlins@mauicounty.us), [Shane Sinenci](mailto:Shane.Sinenci@mauicounty.us) (shane.sinenci@mauicounty.us), and [Yuki Lei Sugimura](mailto:Yuki.Lei.Sugimura@mauicounty.us) (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

Aloha,

In my capacity as the president of the Maui Eldorado Association of Apartment Owners., I attach our response to the Temporary Investigative Group report.

Kindly call or e-mail me if you have any questions or comments.

Mahalo for your time.

Martin Thompson
President
Maui Eldorado AAO
Tel: (604) 351-0558
E-mail: mt@thompsonlaw.net



October 21, 2025

To: The Housing and Land Use Committee

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

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

