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2021 MAY -5 PM 2:01

OFFICE OF THE
COUNTY CLERK

May 5, 2021

Maui County Council
200 S. High Street
Kalana O Maui Bldg.
Wailuku, HI 96793

Re: Testimony in Opposition to CC 21-232

Aloha Chair Lee and Maui County Council Members,

My name is Gino Soquena, Executive Director of the Hawaii Building & Construction Trades Council (HBCTC), which is comprised of 16 of the 19 construction trade unions here in the State of Hawaii. Mahalo for allowing me to submit this testimony in **opposition** to CC 21-232 and the corresponding bill regarding a "Moratorium on Visitor Accommodations Development in West and South Maui."

HBCTC's mission is to promote the interests of the Hawaii Building and Construction Trades Council, its members and affiliates, with the underlying goal of creating job opportunities and a healthy and vibrant construction industry throughout Hawaii. We are committed to providing Hawaii's working men and women with hope for a better tomorrow through support of smart growth techniques while maintaining our valuable natural resources.

While the proposed bill's stated intent to preserve our environment is commendable, it is not an appropriate means to provide the desired protection. The bill provides no scientific studies or evidence suggesting that prohibiting building permits for visitor accommodations will provide any meaningful climate-change mitigation during the two years of the moratorium.

Conversely, this bill will cause substantial harm to Maui's construction and tourism industries which could cause significant financial detriment to hundreds of Maui's working families. This bill would cause the loss of hundreds of well-paying construction jobs during the moratorium. Our members rely on these jobs to provide for their families and continue to call Maui home. During this critical time in Maui's economic recovery, it is unthinkable that the council would consider a bill such as this one without significant research on the detrimental effects.

We urge the council to consider the financial impact this bill will have on working families that have called Maui home for generations and find other ways to address the concerns the council may have. Accordingly, we at the HBCTC ask that the council please defer this bill.

Mahalo Nui Loa,

Gino Soquena
Executive Director
Hawaii Building & Construction Trades Council



HEARING OF THE COUNCIL OF THE COUNTY OF MAUI

ATTN: CHAIR ALICE L. LEE & VICE-CHAIR
KEANI RAWLINS-FERNANDEZ

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2021**

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ph: 808.791.0729
126 Queen St., Ste. 306
Honolulu, Hawaii 96813
www.hilt.org

Testimony in Strong Support of Communication No 21-222, Resilience Office, transmitting a proposed resolution entitled "Authorizing the Use of Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Funds by Grant to Ke Ao Hāli'i to be Used to Purchase Property in Hana, Maui, Hawaii, and Authorizing the County to Receive a Perpetual Conservation Easement"

Feb. 25, 2021, 11:00am

Aloha mai kākoku Chair Lee, Vice-Chair Rawlins-Fernandez & Members of the Council of the County of Maui,

Hawaiian Islands Land Trust, d/b/a Hawai'i Land Trust ("HILT") is Hawai'i's islands-wide land trust that is both a Hawai'i 501(c)3 nonprofit, and a nationally accredited land trust. HILT'S mission is to protect and steward the lands that sustain Hawai'i, and to perpetuate Hawaiian values by connecting people to 'āina. Mahalo for the opportunity to provide testimony in strong support of Communication No. 21-222 and its accompanying resolution.

Mālama Maka'ala, Kāki'o, and Mokae's Coastal Lands at Hāna, Maui: Open Space funding for these Hāna acquisitions will allow for the permanent project of over 70.07 acres of coastline along the Hāna coast from Maka'ala to Mokae (Waioka Pond to Hamoa Beach). The project structure includes a fee acquisition to Ke Ao Hāli'i, local 501(c)(3), whose Board members include representation by genealogical Hāna families; and conservation easements to be co-held by HILT and the County of Maui to ensure permanent protection and public use. The use of these funds meets multiple Open Space purposes and allows the opportunity to invest in community, cultural, and environmental sustainability and resilience—extremely important factors as our County, State, and communities navigate holistic health in these trying times.

Project partners have also successfully leveraged other public and private funding sources to support the permanent protection of these lands, with \$3,445,000.00 coming from the State Legacy Land Conservation Program (LLCP) fund and over \$300,000.00 in private funding sources.

As HILT steps into its 10-year anniversary in 2021, we are humbled and equally emboldened in how our mission and partnerships provide direct reprieve to address the complex environmental and community resilience issues that we collectively face statewide. Mahalo nui loa for your public service and for the opportunity to submit testimony. We look forward to working collaboratively to protect our most special places throughout the County of Maui.

Mālama pono,

Shae Kamakaala

Director of 'Āina Protection, shae@hilt.org, 808-940-0639

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HAWAI'I LODGING & TOURISM
ASSOCIATION

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2021 MAY -6 AM 8:05

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Testimony of
Mufi Hannemann
President & CEO
Hawai'i Lodging & Tourism Association

Maui County Council
Council Meeting

CC 21-232: AMENDING THE BUILDING CODE TO ADD CHAPTER 40 RELATING TO A
MORATORIUM ON BUILDING PERMITS FOR HOTELS

Chair Lee and members of the Maui County Council, mahalo for the opportunity to submit testimony on behalf of the Hawai'i Lodging & Tourism Association, the state's largest private sector visitor industry organization.

The Hawai'i Lodging & Tourism Association—nearly 700 members strong, representing more than 50,000 hotel rooms and nearly 40,000 lodging workers—advocates on behalf of an industry that has been disproportionately hamstrung by the COVID-19 pandemic. Our people and our businesses are just beginning to get back on their feet, and we, as community, should be trying to make it easier for businesses to recover safely especially during an economic downturn that has hurt our state's top economic driver. At its core, this proposed measure unfairly discriminates against a single industry that consistently contributes millions of dollars each year in State and county revenues.

It should also be noted that the findings of this proposed measure cite tourism statistics from 2019 that do not take into account the pandemic, or the year-long depression in visitor arrival numbers. These numbers will not rebound overnight- we will not see 10 million visitors statewide or 70,000 daily visitors to Maui County any time soon. This would provide both West and South Maui ample time to update their respective community plans without limiting measured growth and or renovation of aging properties.

Moreover, the proposed language of the measure cites several goals including the lowering of carbon emissions, climate change mitigation, and limiting global warming by "pausing visitor accommodation development and the related increase in tourism" but limiting development and renovation now would not accomplish this. Any restriction on hotel development would not in any effective manner lower the demand for travel to Maui County at this time. It would, however, severely limit a property's ability to retrofit or upgrade its infrastructure during planned rebuilding.

Finally, restricting construction, expansion, or renovation would only harm other sectors of our economy like construction and other trades that have survived the pandemic. Building permits of all types ultimately mean more projects and, by extension, more jobs for Maui residents. It would seem self-destructive to enact such limiting constraints on both the travel industry and the trades in Maui which is historically the county most reliant upon tourism for its economic well-being. This fact was made

especially clear during and throughout a pandemic that has left Hawai'i with the highest unemployment rate in the nation.

For these reasons, HLTA strongly opposes this proposed measure.

Thank you for the opportunity to offer this testimony.

County Clerk

From: Marlene Purdy <kammypurdy@gmail.com>
Sent: Wednesday, May 05, 2021 7:10 PM
To: Mayors.Office@co.maui.hi.us; County Clerk
Subject: Maui County Board of Water Supply, Representative for Molokai

Aloha Mayor Victorino and Maui County Council, We are Marlene Kamuela Purdy and Harry Kanekawaiola Purdy III from Hoolehua, Molokai. Our ohana are native beneficiaries of the Hawaiian Homes Commission Act 1920 (HHCA) that have dedicated our lives, time, and effort to protect our precious Hawaii waters and native Hawaiians water rights as written in the HHCA.

It is absurd that for ten years, Molokai has had no representation on the Maui County Board of Water Supply (MCBWS) especially when our island has an extensive County water system. We need a permanent Molokai seat at the MCBWS table. Currently, there are several critical Molokai water issues that need to be addressed. We support our Molokai water expert Juanita Colon as our representative. She is knowledgeable and most likely understands the Water Use Development Plan more than most. We urge Mayor Victorino to please reconsider his selection to fill the MCBWS vacant seat with our Molokai water expert, Juanita Colon. We believe she is the best person to keep Molokai informed and to advocate on our behalf all Molokai water issues.

Mahalo,
The Purdy's

Sent from my iPhone

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County Clerk

From: justin kanakaole <kanakaolej@gmail.com>
Sent: Wednesday, May 05, 2021 7:27 PM
To: County Clerk
Subject: Letter in support of having a Molokai representative on the Board of Water Supply in Maui County

I was raised in East Maui in a small town known as Hana. I was raised by my grandparents. My grandfather Eric on weekends would take my younger brother, my older cousin and myself to hold signs at a place called Makapipi in Nahiku Maui protesting EMI's claim to water rights. I was 8 years old during this time. The issue of water runs very deep in me and my ohana. You can say I have a passion, an affinity for wai (water). I know the struggle. From an early age I knew the struggle. Moloka'i has proven time and again that their community can unify and uplift. They know their kuleana and do a job so amazing to protect their precious island and it's resources that I cannot find the words to describe such a beautiful display of Aloha Aina. I trust that Molokai knows as a community what they are doing and entrusting such a responsibility to Ms. Juanita Colon with such an important role to represent them at the seat of The Board of Water Supply is something I don't think Molokai takes lightly. I trust the Molokai community and their decision for Ms. Colon to represent them. Please give Molokai a representative, who is actually from Molokai and lives there, a seat on the Board of Water Supply. In closing, I myself truly feel every island and it's community deserves to dictate what goes on on their own island. We should speak for our own island and not mingle in an other islands affairs. I understand that we are a state in America , in some opinions, but not in my opinion, and we fall under a county in jurisdiction, in some opinions, but not in my opinion, and that the county as regulated by the State which is as regulated by the Federal government of the United States, feels the need to appoint whom they see fit to such roles as in this case. But what about what the people want?

Aloha,
Justin Keli'i Kanakaole

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May 5, 2021

Aloha Chair and Council Members,

I am Co-Founder of the Hawaii chapter of 350.org, the largest international organization dedicated to fighting climate change. 350Hawaii.org **supports County Communication 21-232**, the proposed bill that would amend the building code to place a moratorium on visitor accommodations development in West and South Maui. This bill will help ensure the County stays on track to implement critical plan action items relating to the visitor-industry impact on the County's environment.

Just last month the State Legislature followed Maui County's lead and officially declared a Climate Emergency for Hawaii. But it is not enough to acknowledge the crisis we face, meaningful actions to address the climate crisis must be taken. This moratorium would do just that by providing the County with clear policy direction to mitigate climate change and work toward resilience. As a means to facilitate further discussion on visitor impacts, resilience, sustainable tourism, and impacts to Maui, we recommend referring this bill to the Climate Action, Resilience, and Environment Committee whose purview includes carbon emissions and other related contributors to climate change.

Thank you for the opportunity to testify.

Sherry Pollack, Co-Founder, 350Hawaii.org

I believe that the following paper will show that Tourism to Hawaii, beyond all other considerations, must be judged in an environmental and climate change context. Hawaii's tourism, as a societal construction enjoys a mixture of benefits and consequences. However when placed in the context of the environmental damage done, particularly in regards to 'climate justice' and global warming, its societal balance sheet loses significance. In spite of its economic benefits, tourism to Hawaii must be abandoned for the environmental reasons discussed in this paper.

I composed the following paper in October, 2020. It was published in a monthly Honolulu e-Journal, 'Climate Emergency Digest' and was presented to the City and County of Honolulu Climate Change Commission. Of the 5 commissioners, 4 are climate scientists. The paper was described as 'very important' and was recommended to be presented to the State Climate Commission. Of this 10 page paper, the final 5 pages are references focusing on the importance of including 'non-carbon' emissions in calculation of 'Global Warming Potential', as recognized by the IPCC. The definitive work in the scientific literature on quantifying air transport emissions leading to global warming was published by Lee, et al. in the journal Atmospheric Environment in January, 2021 and was not available to me in forming this paper. That paper is entitled "The Contribution of Global Aviation to Anthropogenic Climate Forcing, 2000 to 2018" and is linked here: <https://www.sciencedirect.com/science/article/pii/S1352231020305689> The summation statement in the abstract of this dense and technical paper is the following: "CO2-warming-equivalent emissions based on global warming potentials (GWP method) indicate that aviation emissions are currently warming the climate at approximately three times the rate of that associated with aviation CO2 emissions alone." As will be seen, I believe that this serves to substantiate the conclusions which are reached regarding global warming emissions from air transport of Hawaii visitors.

Tawn Keeney MD

HAWAII VISITOR AIR TRAVEL EMISSIONS AS CONTRIBUTOR TO GLOBAL WARMING

This paper attempts to answer the question "How much global warming emissions are generated though air travel of visitors to Hawaii?" Though discussion and criticism will appropriately arise, the core answer will be 18 million tons of CO2(equivalent) emissions arose from air travel of visitors in 2019. To gain perspective on this number, the emissions from all of Hawaii's Stationary Combustion (electricity generation from power plants, petroleum refineries, etc.) was 7.8 million tons CO2(e), and all emissions from ground transportation in the islands reached 4 million tons CO2(e). (Hawaii State Greenhouse Gas Inventory) It is therefore proposed that Hawaii's imperative efforts toward conversion of power generation and ground transportation to zero emissions sources will make only modest improvement in the state's emissions profile if we continue to host the current numbers of visitors.

The derivation of the figure of 18 million tons CO2(e) from visitor transport must be understood.

REGION	# of VISITORS	ORIGIN CITY	ROUND TRIP MILES	EMISSIONS -CO2(e)
U.S. West	4,600,000	Portland	5,200	6,440,000 tons
U.S. East	2,300,000	Washington D.C.	9,600	5,750,000 tons

Japan	1,600,000	Tokyo	7,600	1,600,000 tons
Canada	500,000	Vancouver B.C.	5,400	700,000 tons
Europe	140,000	London	14,000	546,000 tons
Oceania	360,000	Sydney	10,000	972,000 tons
Korea	230,000	Seoul	9,200	552,000 tons
China	90,000	Shanghai	9,800	234,000 tons
EMISSIONS (EQUIVALENTS CO ₂) TOTAL:				18,394,000 tons

The above table, in its first two columns, collates information from the Hawaii Tourism Authority 2019 data regarding numbers of visitors from each of 8 'Regions of Origin'. The third column chooses an origin airport representative of that 'region'. The fourth column calculates the round-trip miles in the most direct flight itinerary from that origin airport to Honolulu. We will discuss the 5th column momentarily as we choose the correct method to convert each itinerary into its CO₂(e) emissions.

For this discussion the number of miles traveled for each passenger itinerary, and the CO₂(e) emissions for which each passenger is responsible, are calculated by the Carbon Offset websites. The several available carbon offset websites calculate carbon emissions from various activities including air transportation and then allow the purchase of 'offsets' to be applied to environmentally restorative projects to compensate for those emissions. Each 'offset' website has its own methodology for these calculations.

The number of miles traveled by visitors from each region is derived from the most direct itinerary from the chosen airport in that region to Honolulu. Factoring the number of travelers from each region in 2019, it is determined that the average visitor to Hawaii travels approximately 7,000 miles in their round-trip to the 'most remote inhabited archipelago from any continental land mass' on the planet. From the 2019 Hawaii Tourism Authority data, Hawaii hosted 10 million such visitors in 2019 (70 billion miles traveled). I must pause to acknowledge that we don't know what percentage of those travelers might have been stopping here in an otherwise necessary trip across the Pacific, or how Hawaii as destination might have been shaped by other travel plans. That limitation of this study should be understood.

The calculation of the emissions associated with flight itineraries is the major accomplishment of the Carbon Offset websites. In order to determine which website we would use for our calculations, we looked at eight of the most commonly used international websites and calculated the emissions burden of round-trip flight for the example: Portland to Honolulu. The outcome was as follows:

ICAO (International Civil Aviation Organization):	1,317 lbs. CO ₂
Terrapass (US):	3,365 lbs. CO ₂ (e)
Atmosfair (German):	3,740 lbs. CO ₂ (e)
Sustainable Travel International:	2,640 lbs. CO ₂ (e)
My Climate:	2,800 lbs. CO ₂ (e)
Native Energy:	3,460 lbs. CO ₂ (e)
Carbon Footprint:	2,340 lbs. CO ₂ (e)
Climate Care (British):	2,500 lbs. CO ₂ (e)

(This British site multiplies the carbon emissions by 1.9 to account for non-carbon emission, as recommended by the British government environmental agency)

The Carbon Offset website coming closest to the average (2,770 lbs.) of the calculated values is the site My Climate. I have therefore chosen this Offset calculator to derive the emissions reflected in Column 5 of the above table. However, it is imperative that one understands the reasons between the large discrepancy between the calculations of ICAO and those of the other Offset sites.

Other than ICAO, the computations of the carbon offset sites include the 'non-CO2' emissions and other factors which go to make up the Radiative Forcing Index and Global Warming Potential. These are measures of the total heating potential of any activity, not just the CO2 emissions. The IPCC, through the work of various investigators has determined that in air traffic flying above 9,000 meters (which would comprise 90% of all flight time to Hawaii) the non-CO2 emissions such as water vapor and ice crystals (as contrails) and nitrogen oxides and particulates are substantially more contributive to global warming than the CO2 emissions themselves, up to a factor of 2x. Most regional air traffic does not reach this height. For a more complete description of these factors and calculations see the Atmosfair Carbon Calculator Methodology (particularly Chapter 4 on non-CO2 emissions) here:

https://www.atmosfair.de/en/standards/emissions_calculation/emissions_calculator/

The ICAO (which, though UN affiliated, is airline industry operated) computations do not acknowledge 'non-CO2' factors. Atmosfair factors Non-CO2 emissions above 9,000 meters as equivalent to fully 2x the CO2 emissions, acknowledged by the IPCC with "not less than low confidence (not 'very low')". This then is added to the CO2 component of emissions. Countries such as Austria or Germany consider a warming effect of non-CO2 that is comparable to CO2 in national assessments of aviation impacts. This reflects that much of their air traffic is regional and below 9,000 meters. The IPCC has indicated that they will address the issue of 'non-CO2' factors again in their 2021 assemblies. Suffice it to say that there is uncertainty in how to apply the 'non-CO2 emissions' factor. However, the Precautionary Principle should apply to all climate change associated considerations. The five pages of Documentation and References at the end of this paper focuses on the issue of the importance of 'non-carbon emissions'.

Using the emissions calculator of the carbon offset site 'My Climate' as the mid-way or middle-ground method between ICAO and Atmosfair, and applying it to the representative airport from each of the origin airports and factoring the number of visitors from that region, we derive the emissions of CO2(e) from that region. Adding these we derive a total emissions of over 18 million tons from visitor air travel to Hawaii.

It follows that, with 10 million visitors in 2019, the 'average' visitor's emissions burden is 1.8 tons CO2(e) from his round trip flight. It is important to understand this 1.8 tons emission burden for the average visitor in terms of the notion 'climate justice'. The IPCC in late 2020 has recalculated the equitable yearly CO2(e) budget for each world citizen.. There is a 66% chance of keeping world temperature increase below 1.75 degrees C if a yearly equitable carbon budget for each world citizen of 2.75 tons CO2(e) emissions is achieved and world CO2(e) emissions reach net 0 by 2050. With 1.8 tons in travel emissions that average visitor has 'blown through' 2/3 of this yearly 2.75 tons equitable carbon allotment in his flight to Hawaii. Further, because the government of Hawaii, through funding the Hawaii Tourism Authority, actively promotes this tourism for the benefit of it's people, the citizens of Hawaii must assume ownership of these emissions. Each Hawaii resident has thereby appropriated the equitable carbon emissions allotment of five world citizens. (18 million tons/1.4 million residents/2.75 tons/person). The carbon budget calculations do not include positive feedback

loops such as progressive methane release from melting arctic permafrost or drying or burning of the Amazon rainforest. Nature Conservancy states that the US average yearly carbon emissions now amounts to 16 tons per person and the yearly global average is 4 tons.

It is notable that the Hawaii State 2019 Greenhouse Gas Inventory designates the category 'Domestic Air Transport'. It reports the 2019 emissions as 3.2 million tons CO₂(e). This category includes only inter-island flights and flights departing from Hawaii to the US mainland. It does not include US mainland arrivals. It does not include international flights (either arrivals or departures). It does not include the 'non-carbon emissions' above 9,000 meters (considered to have up to twice the global warming potential of the accompanying CO₂ emissions, and which comprises 90% of the flight time to and from Hawaii.)

Will the development of Sustainable Aviation Fuel be the answer for the Hawaii Economy's reliance on tourism? Because of EU's cap & trade policy Europe may have taken the lead in SAF development. A European study estimates that by 2030, with ideal policy support and continued favorable conditions, plant based SAF could account for 6% to 9% of European air transportation fuel use. < <https://skynrg.com/news-and-inspiration/expert-opinions/expert-opinion-on-green-horizons/> > Though we should explore SAF, we should not paint the picture that aviation is about to become sustainable. Hydrogen powered flight is being actively investigated. However, I refer to calculation by a French astrophysicist of the amount of renewable electricity required to make the hydrogen sufficient to power all current flights at Charles de Gaulle Airport: 5,000 sq. kilometers of wind turbines or 1,000 sq. kilometers of solar panels. < <https://www.youtube.com/watch?v=vPoDjNWJJ0w> >

Ultimately, advertisement of Hawaii as a visitor destination must be abandoned. This imperative will eventually be forced upon us, but by being proactive we could lead the world in commitment to climate change mitigation. However, if the Hawaii Tourism Authority's \$80 million budget for the promotion of tourism were discontinued, the multi-billion dollar visitor industry itself would quickly step in with funding for advertising Hawaii. Though the public would save this money, which is derived from the Transient Accommodations Tax, the visitors would keep coming, the goal would not be achieved. In 1990, 8 years before promotion of tourism by public funding through creation of the HTA, the Hawaii Visitors Bureau reported 7 million visitors.

Another approach might be to modify a modest proposal currently before legislature of a \$20 'green fee' applied to the TAT for each Hawaii visitor. This \$20 Transient Accommodations 'Green Fee' could become a nightly fee. This nightly fee could be raised by \$5 to \$10 each year until the number of visitors in the preceding year had fallen to the 'desirable' level. Hopefully this level would reflect respect for the above notion of 'climate justice'. What is that level? Keith Amemiya, as candidate for mayor, was asked that question. His reply (after some thought) - "somewhere around 6 million". This examiner would place that number lower.

The Hawaii Tourism Authority reports that the 'average' visitor to Hawaii spends \$1,800 on their visit. Is that visitor going to be dissuaded from his 10 day visit by an extra \$200 spent as 'green fee'? A few, but not most. The Hawaii Tourism Authority has endorsed the position that perhaps 2019's numbers reached 'too many', and that we may want to reduce the number of budget or economy travelers, but continue to encourage the more high end or extravagant visitors. Those 'higher end' travelers will not even notice the extra \$20 per day spent.

Our world is 'on fire'. Twice in the past year, temperatures have been recorded above the arctic circle at 100 F or higher. These times are unprecedented. This is the beginning. The scientists are saying that global warming is coming faster than they had imagined possible. It is time for commitment.

DOCUMENTATION AND REFERENCES

1. Yerton, S. (2019, August 27). Air Travel's Carbon Footprint Takes a Big Environmental Toll in Hawai'i. *Civil Beat*.

<https://www.civilbeat.org/2019/08/air-travels-carbon-footprint-takes-a-big-environmental-toll-in-hawaii/>

2. Shkvorov, A. (2020, July 3). Hawai'i's Runaway Tourism. Excerpts from the transcript of the main presentation delivered during the virtual colloquium "Hawai'i's tourism futures: What constrains the realm of possibilities?"

<http://hrt.hawaii.red>

3. Atmosfair Emissions Calculator Methodology.
Chapter 4: Climate Impact of Non-carbon Emissions.

https://www.atmosfair.de/en/standards/emissions_calculation/emissions_calculator/

Chapter 4 Summary:

Aircraft engines emit various pollutants that contribute directly or indirectly to raising global temperatures. Among them, carbon dioxide (CO₂) is the easiest to explain in terms of origin and effect. The combustion of kerosene produces CO₂: the more kerosene is consumed, the more CO₂ is produced. CO₂ is used as the basis for calculating climate damage. Other pollutants and their effects can be summarized using an internationally recognized calculation method and these warming effects can hence be converted into those of CO₂. First, the emissions calculator calculates the fuel consumption per passenger and based on this result, determines the amount of CO₂ that has a comparable effect to that of all other pollutants emitted by the flight added together (effective CO₂ emissions). This is the calculator's final CO₂ output, which Atmosfair will then offset through climate protection projects.

The degree of climate impact for emissions and their effects depends on the altitude and the state of the atmosphere at the time of the flight and when the aircraft emits the pollutants. The emissions calculator only processes the non-carbon emissions when the flight profile exceeds 9000-meter altitude. For a short-haul flight of 400 km, the amount of time spent at over 9000 m usually equals 0% of the flight profile (depending on the aircraft type) and then gradually rises to over 90% (for distances of 10,000 km and beyond). In order to properly include the effect of those emissions in the calculations, the CO₂-emissions produced at over 9000 m are multiplied by two and then added to the actual carbon emissions ("factor 3").

The effects those pollutants have on the climate have been described in detail by the IPCC, the Intergovernmental Panel on Climate Change (IPCC 1999, 2013), and by subsequent studies directly based on the IPCC's findings (Grassl, Brockhagen 2007). This document will only address the major pollutants and their effects. See the above Atmosfair website for further discussion.

4. Articles referencing the contribution of 'non-CO₂' air transport emissions to global warming.

4.1. Gössling, S. & Humpe, A. (2020). The global scale, distribution and growth of aviation: Implications for climate change. *Global Environmental Change* 65, 102194.

<https://www.sciencedirect.com/science/article/pii/S0959378020307779>

An important omission of Kyoto Protocol and Paris Agreement is their focus on CO₂ and other long-lived greenhouse gases, ignoring aviation's contribution to radiative forcing from short-lived emissions such as nitrous oxides (NO_x), or in the form of contrails or clouds (H₂O) (Lee et al., 2020). These non-CO₂ emissions are not directly comparable with long-lived GHG, but they do contribute to global warming (Lee and Sausen, 2000).

Non-CO₂ warming is expected to remain relevant in the short and medium-term future (Bock and Burkhardt, 2019). To account for non-CO₂ warming, countries such as Austria or Germany consider a warming effect of non-CO₂ that is comparable to CO₂ in national assessments of aviation impacts (Environment Agency Austria, 2018; German Environment Agency, 2018). In 2018, aviation has been estimated to account for 2.4% of anthropogenic emissions of CO₂ including land use changes (Lee et al. 2020). There is an additional warming effect related to contrail cirrus and NO_x, which is larger than the warming from CO₂, if calculated as net effective radiative forcing. Lee et al. (2020:2) conclude that "aviation emissions are currently warming the climate at approximately three times the rate of that associated with aviation CO₂ emissions alone".

4.2. Le Page, M. (2019, June 27). It turns out planes are even worse for the climate than we thought. *New Scientist*.

<https://www.newscientist.com/article/2207886-it-turns-out-planes-are-even-worse-for-theclimate-than-we-thought/>

Burkhardt and her colleagues used a computer model of the atmosphere to estimate how much warming contrails caused in 2006 - the latest year for which a detailed air traffic inventory is available - and how much they will cause by 2050, when air traffic is expected to be four times higher. The model accounts for not only of the change in air traffic volume, but also the location and altitude of flights, along with the changing climate. The team concludes that the warming effect of contrails will rise from 50 milliwatts per square metre (mW/m²) of Earth's surface in 2006 to 160 mW/m² by 2050. In comparison, the warming due to CO₂ from aviation will rise from 24 to 84 mW/m² by this time. In a scenario in which the airline industry increases fuel efficiency and reduces the number of soot particles emitted by improving fuels and engines, the warming from contrails by 2050 is limited to 140 mW/m² and the warming from CO₂ to 60 mW/m².

4.3. Timperley, J. (2017, March 15). Explainer: The challenge of tackling aviation's non-CO₂ emissions. *CarbonBrief*.

<https://www.carbonbrief.org/explainer-challenge-tackling-aviations-non-co2-emissions>

4.4. Larsson, J., et al. (2018). Measuring greenhouse gas emissions from international air travel of a country's residents. *Environmental Impact Assessment Review* 72: 137-144.

<https://www.sciencedirect.com/science/article/pii/S0195925517303116>

There are also non-CO₂ effects from aviation on the climate including nitrogen oxides, contrails, and aviation-induced cirrus clouds (Azar and Johansson, 2012; Boucher et al., 2013; ICAO, 2013; David S Lee et al., 2010). There are significant uncertainties about how large these effects are. Our choice to include them is mainly based on that they are accounted for in the last scientific review carried out by the IPCC (Boucher et al., 2013). We apply this by using the most

cited scientific estimate (David S Lee et al., 2010). The inclusion of non-CO₂ effects is done by multiplying CO₂ emissions by an Emission Weighting Factor (EWF). The EWF is highly dependent on the time perspective considered: the shorter the time perspective, the higher the EWF will be. In this paper, we used Global Warming Potential (GWP) with a 100-year perspective, for which the EWF is 1.9 (Lee et al., 2010).

4.5. Sullivan, A. (2020, January 21). To fly or not to fly? The environmental cost of air travel.

Deutsche Welle. <https://www.dw.com/en/to-fly-or-not-to-fly-the-environmental-cost-of-air-travel/a-42090155>

Many estimates put aviation's share of global CO₂ emissions at just above 2 percent. That is the figure the industry itself generally accepts.

But according to Stefan Gössling, a "professor at Sweden's Lund and Linnaeus universities and co-editor of the book *Climate Change and Aviation: Issues, Challenges and Solutions*, "That's only half the truth." Other aviation emissions such as nitrogen oxides (NO_x), water vapor, particulates, contrails and cirrus changes have additional warming effects. "The sector makes a contribution to global warming that is at least twice the effect of CO₂ alone," Gössling told DW, settling on an overall contribution of 5% "at minimum." A few years ago, environmental group

Germanwatch estimated that a single person taking one roundtrip flight from Germany to the Caribbean produces the same amount of damaging emissions as 80 average residents of Tanzania do in an entire year: around four metric tons of CO₂.

4.6. IPCC. (1999). *Aviation and The Global Atmosphere*. J.E.Penner, D.H.Lister, D.J.Griggs, D.J.Dokken, M.McFarland (Eds.) Prepared in collaboration with the Scientific Assessment Panel to the Montreal Protocol on Substances that Deplete the Ozone Layer Cambridge University Press, UK.

<https://www.ipcc.ch/report/aviation-and-the-global-atmosphere-2/>

In an attempt to aggregate and quantify the total climate impact of aircraft emissions, the Intergovernmental Panel on Climate Change (IPCC) estimated that aviation's total climate impact is some two to four times that of its direct CO₂ emissions alone (excluding the potential impact of cirrus cloud enhancement).

4.7. Azar, C. & Johansson, D. J. A. (2012). Valuing the non-CO₂ climate impacts of aviation. *Climatic Change* 111 (3-4): 559-579.

<https://link.springer.com/article/10.1007/s10584-011-0168-8>

While the principal greenhouse gas emission from powered aircraft in flight is CO₂, other emissions may include nitric oxide and nitrogen dioxide (together termed oxides of nitrogen or NO_x), water vapor and particulates (soot and sulfate particles), sulfur oxides, carbon monoxide (which bonds with oxygen to become CO₂ immediately upon release), incompletely burned hydrocarbons, tetraethyllead (piston aircraft only), and radicals such as hydroxyl, depending on the type of aircraft in use. Emissions weighting factor (EWFs) i.e., the factor by which aviation CO₂ emissions should be multiplied to get the CO₂-equivalent emissions for annual fleet average conditions is in the range 1.3-2.9.

4.8. Jardine, C. N. (2009). Calculating the Environmental Impact of

Aviation Emissions. <https://www.eci.ox.ac.uk/research/energy/>

In 1999 the contribution of civil aircraft-in-flight to global CO₂ emissions was estimated to be around two percent. However, in the cases of high-altitude airliners which frequently fly near or in the stratosphere, non-CO₂ altitude-sensitive effects may increase the total impact on anthropogenic (human-made) climate change significantly. A 2007 report from Environmental Change Institute/Oxford University posits a range closer to 4% cumulative effect.

4.9. Faber, J. & Nelissen, D. (2017). Towards Addressing Aviations Non-CO₂ Climate Impacts. *CE Delft*.

https://www.cedelft.eu/publicatie/towards_addressing_aviations_non-co2_climate_impacts/
1961

Aviation has different impacts on the climate. While the EU and ICAO have started to address the impacts of CO₂ emissions, the other impacts remain unaddressed directly. This note argues that they should be addressed in line with established European policy as well as because of the precautionary principle.

In terms of radiative forcing, the non-CO₂ climate impacts of aviation are estimated to be about as large as the impacts of CO₂. In other words, the cumulative effect of the non-CO₂ impacts on the current climate is about as large as the cumulative effect of aviation CO₂ emissions. (Note, however, that radiative forcing is not a good metric for designing policies as it tends to measure the impact of past activities rather than influence future activities, and so does not fully account for the different lifetimes of the CO₂ and non-CO₂ impacts).

In view of the impact of aviation's non-CO₂-emissions on climate, there are good reasons to implement policies to address them. The uncertainty about the exact size of the impact is not a valid argument to postpone action when the precautionary principle applies. This section shows that this appears to be the case.

In its communication on the Precautionary Principle, the European Commission (EC, 2000) states that the precautionary principle can be invoked to take action when the following criteria are met:

- It should be “considered within a structured approach to the analysis of risk which comprises three elements: risk assessment, risk management, risk communication. The precautionary principle is particularly relevant to the management of risk”.
 - “Potentially dangerous effects deriving from a phenomenon, product or process [should] have been identified”.
 - “Scientific evaluation does not allow the risk to be determined with sufficient certainty”.
- Each of the criteria has been met for non-CO₂ climate impacts of aviation.

There exists a well-established EU policy to deal with emissions causing climate risks in general, as is evident from the 2020 climate and energy package and the 2030 climate and energy framework, for example. This policy underlies the EU ETS and effort sharing, as well as policies aimed at for example fluorinated greenhouse gases. The EU policy contributes to a global policy framework within the UNFCCC.

The potentially dangerous effects of climate emissions, including aviation NO_x-emissions, have been identified, but there is ongoing discussion about the size of the impact.

Although it is clear that the non-CO₂ climate impacts add to the global temperature increase, the level of scientific understanding of the aviation non-CO₂ impacts is still considered too low to calculate the risks exactly (Lee, et al., 2010). Moreover, there is an ongoing discussion about the relevant metric for comparing long-term and short-term climate impacts which is in itself not a scientific but rather a political decision because it depends on the type of risk that a society is willing to accept.

4.10. Hemmings, B. (2017). The non-CO₂ impacts of aviation must be tackled. [A *Transport & Environment* briefing]. Brussels.

https://www.transportenvironment.org/sites/te/files/publications/2017_06_non_CO2_aviation_briefing_final_0.pdf

Non-CO₂ effects of aviation have been acknowledged by scientists but ignored by policymakers. It is estimated that gases other than CO₂ have at least as large a climate impact as CO₂. The European Commission has so far failed to address aviation's non-CO₂ effects despite undertaking to do so in 2008. This risks undermining the EU's climate policy. T&E recommends the Commission now acts on its 2008 promise and proposes a charge on NO_x emissions and earmarks funds for research into other non-CO₂ effects such as contrail and cirrus formation and their avoidance.

Measures proposed or in place to address aviation's climate impact, such as EU Emissions Trading System (EU ETS), the CO₂ standard for new aircraft or the proposed global measure (CORSIA), only address CO₂ emissions from aviation. However, aviation's non-CO₂ climate effects including NO_x emissions at altitude, contrails, cirrus cloud formation, soot and water vapor etc. can equal or exceed the climate impact of aviation CO₂.

European Commission Brussels, 3.2.2017 Commission Staff Working Document Proposal for a regulation of the European Parliament and of the Council amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community in view of the implementation of a single global market-based measure to international aviation emissions.

The Commission's Impact Assessment accompanying its February 2017 ETS proposal restates the high importance of non-CO₂: "Aviation also has non-CO₂ impacts, such as emissions of NO_x and water vapor at high altitudes, which have been estimated to have several times the impact of aviation's CO₂ emissions. This impact assessment does not further consider these impacts."

EU's Clean Sky Initiative: "Aviation climate scientists tell us there is a dearth of research funds into aviation non-CO₂. Industry greatly influences funded research projects and won't have pushed for such work as there are no financial benefits to carriers of reducing non-CO₂ effects."

4.11. Sims R., R. Schaeffer, F. Creutzig, X. Cruz-Núñez, M. D'Agosto, D. Dimitriu, M.J. Figueroa Meza, L. Fulton, S. Kobayashi, O. Lah, A. McKinnon, P. Newman, M. Ouyang, J.J. Schauer, D. Sperling, and G. Tiwari, 2014: Transport. In: *Climate Change 2014: Mitigation of Climate Change*.

Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Edenhofer, O., R. Pichs-Madruga, Y. Sokona, E. Farahani, S. Kadner, K. Seyboth, A. Adler, I. Baum, S. Brunner, P. Eickemeier, B. Kriemann, J. Savolainen, S. Schlömer, C. von Stechow, T. Zwickel and J.C. Minx (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA.

https://www.ipcc.ch/site/assets/uploads/2018/02/ipcc_wg3_ar5_chapter8.pdf

Author's Note

The accompanying article should be considered a 'living document'. It is a first effort at communicating conclusions which may change shape as more data and more perspectives are assembled in service to the important examination of environmental and societal consequences of visitor travel to Hawai'i. Further investigation will be ongoing and contributions to this discussion are welcomed.

Tawn Keeney, MD

**In Opposition to Maui County Council Bill
Relating to a moratorium on building permits for visitor accommodations**

MAUI COUNTY COUNCIL MEETING
May 7, 2021, 9:00 a.m.

Chair Lee and Members of the Maui County Council,

We are writing in **strong opposition** to the proposed bill to "amend the building code to add Chapter 40 relating to a moratorium on building permits for visitor accommodations."

The bill is overreaching and **unnecessary** given that the County, through the existing process, can already decide which proposed developments are good for the community without imposing a moratorium.

Implementing a moratorium on building permits for new hotel, resort, timeshare, short-term rental homes, bed and breakfast homes, and transient vacation rental units for an undefined period of time will have far-reaching and long-term negative impacts on real estate, construction, tourism and the whole island economy.

While the intent is to place a pause on the development of visitor accommodations and any increase in visitors, it also will have a negative impact on much-needed employment opportunities for our Maui residents who work in construction, tourism and in other related fields such as transportation and retail. Other unintended consequences include the negative impact on other areas of our economy that rely on the trickle-down effects of employment and tourism, such as suppliers of products that support such accommodations.

Our timeshare industry cares about the environment, and we recognize the need for responsible tourism and better management of our precious resources. Due consideration should be given to the broader impacts of the proposed measure, however. We as a community need to look to some sort of resolution that provides our local residents with the ability to continue to work to provide for their families while at the same time addressing the impacts of the influx of visitors until Maui can transition to a more diversified economic base.

We respectfully request that you **defer this measure** and instead **convene a task force** with representatives from all stakeholders to address these concerns in a deeper and more meaningful way.

Thank you for your consideration.

Respectfully submitted,

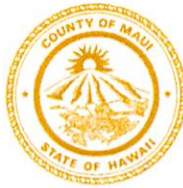


Ryan A. Nobriga
ARDA Hawaii
Maui Task Force Chair

RECEIVED
2021 MAY -6 AM 9:01
OFFICE OF THE
COUNTY CLERK

Michael P. Victorino
Mayor

Sananda K. Baz
Managing Director



OFFICE OF THE MAYOR
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov

May 6, 2021

RECEIVED
2021 MAY -6 AM 10:49
OFFICE OF THE
COUNTY CLERK

Honorable Michael P. Victorino
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

For Transmittal to:

Michael P. Viti 5/6/21
Mayor Date

Honorable Alice L. Lee, Chair
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

Dear Chair Lee:

SUBJECT: BILL 40 (2021)

At its Council meeting of April 16, 2021, information relating to County Communication 21-186 was requested by Councilmember Mike Molina. The Department of Housing and Human Concerns provides the following response:

1. For the Aging and Disability Resource Center ("ADRC") grant and Title III grant, what is the term of the grant - provide start/end date for use of the funds.

ADRC:

- *Current contract date: June 30, 2020 – June 29, 2022. However, if a contract period is ending and the funds are not expended, the State of Hawaii Executive Office on Aging modifies the contract to extend the date so that the funding can be expended.*

Title III:

- *Current contract date: October 1, 2019 – September 30, 2021. Funds can be used for two years past the end date of the contract.*

2. National Housing Trust Fund - who will be receiving the funds and how much will each recipient receive?

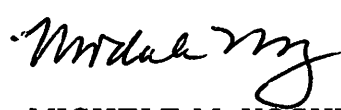
For the National Housing Trust Fund (HTF), there are two different Program Year ("PY") allocations for PY 2020 (July 1, 2020 to June 30, 2021) and PY 2019 (July 1, 2019 to June 30, 2020) that the County will be receiving from the State of Hawaii through the Hawaii Housing Finance and Development Corporation.

The County of Maui typically receives an allocation from the HTF program every 3 years. The year the County expected to receive an allocation was PY 2020. For PY 2020, the County was awarded \$2,850,000. Of this award, \$2,700,000 will be distributed to the Kaiaulu O Halelea low-income multi-family rental housing project located in Kihei and \$150,000 will be retained by the County of Maui for administration of the program.

The County of Maui was selected to receive additional funds that became available from another County for PY 2019. The County of Maui will receive \$485,570 in HTF PY 2019 funds. \$460,570 will be distributed to the Kaiaulu O Halelea project and \$25,000 will be retained by the County of Maui for administration of the program.

Should you have any further questions, please contact me at ext. 7212.

Sincerely,



MICHELE M. YOSHIMURA
Budget Director



May 6, 2021

TO: Councilmember Alice L. Lee, Chair
Councilmember Keani Rawlins-Fernandez, Vice-Chair
Members of the Maui County Council

FR: AMERICAN RESORT DEVELOPMENT ASSOCIATION - HAWAII (ARDA-Hawaii)
Mitchell Imanaka, Chair

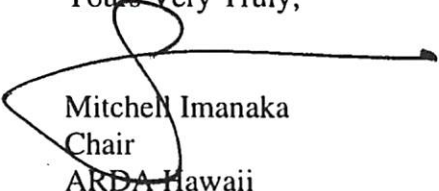
RE: CC 21-191 (Amending The Building Code To Add Chapter 40 Relating To A Moratorium
On Building Permits For Hotels) and CC 21-232 (Amending The Building Code To Add
Chapter 40 Relating To A Moratorium On Building Permits For Visitor Accommodations)

(Sent via e-mail to county.clerk@mauicounty.us)

Dear Chair Lee, Vice-Chair Rawlins-Fernandez, and Members of the Maui County Council:

Attached please find a memo regarding the legality of certain aspects of the proposed measure on a moratorium on the issuance of building permits in certain districts on Maui. Your kind consideration of the points raised would be greatly appreciated.

Yours Very Truly,


Mitchell Imanaka
Chair
ARDA Hawaii

2021 MAY -6 AM 10:57

RECEIVED

OFFICE OF THE
COUNTY CLERK

DATE: May 5, 2021

TO: ARDA Hawaii c/o Mitchell A. Imanaka, Esq.

FROM: Cades Schutte LLP

RE: CRC 21-191 (Amending The Building Code To Add Chapter 40 Relating To A Moratorium On Building Permits For Hotels) and CC 21-232 (Amending The Building Code To Add Chapter 40 Relating To A Moratorium On Building Permits For Visitor Accommodations)

We were asked to review CRC 21-191 (“**Bill 191**”) and CRC 21-232 (“**Bill 232**”) (together, the “**Bills**”) to assist our client in its evaluation of the Bills. This memorandum offers our preliminary assessment.

I. INTRODUCTION

Bill 191. On April 8, 2021, Councilmember King transmitted proposed Bill 191 to the Maui County Council (“**Council**”). Bill 191 seeks to add Chapter 40 (Moratorium on Building Permits for Hotels) to the Maui County Building Code. Under Bill 191, Chapter 40 (Moratorium on Building Permits for Hotels) would provide in material part as follows:

4000.4 Prohibition on building permits for hotel development in West Maui and South Maui. No building permit applications for **hotel development** in West Maui or South Maui may be accepted.

Section 4000.4 (emphasis added).

The term “hotels” is defined as “transient accommodations.” Section 4000.3. The term “development” is defined as “any **new** units used for transient accommodations.” *Id.* (emphasis added). Although the term “new” is not defined in the Bill, the plain meaning of the word is a “thing recently come into being.” Black’s Law Dictionary (11th ed. 2019). Hawai’i courts construe statutes according to their plain meaning. *Peer News LLC v. City & County of Honolulu*, 138 Hawai’i 53, 60, 376 P.3d 1, 9 (2016) (where the language is plain and unambiguous, a “court’s sole duty when construing [ordinances] is to give effect to its plain and obvious meaning”). In accordance with the plain meaning of the word “new,” the Bill does not apply to the renovation of existing “transient accommodations.”

The term “transient accommodations” is not defined in Bill 191 or the Maui County Code. It appears that the use of the term “transient accommodations” in the Bill is intended to capture hotels, time share units, transient vacation rentals and bed and breakfast homes. Under this construction, Bill 191 would prohibit the acceptance of building permit applications for the construction of units intended to service “transients,” which Maui County Code defines as “any visitor or person who owns, rents or uses a lodging or dwelling unit, or portion thereof, for less than one hundred eighty days and whose permanent address for legal purposes is not the lodging or dwelling unit occupied by the visitor.” Maui County Code 19.04.040.

The prohibition on the “development” of “transient accommodations” in West Maui and South Maui would automatically lift at the earlier of two years from the effective date of the law or when the ordinance approving the South Maui Community Plan update takes effect if that date is later than the effective date of the ordinance approving the West Maui Community Plan update. Given the anticipated timing of the South Maui Community Plan updated, Bill 191 would apply in West Maui and South Maui until the South Maui Community Plan has been updated.

Under Bill 191, there are no exemptions as of right. Instead, “the Council may authorize exceptions from [the prohibition] by resolution upon request by the director of public works.” Section 4000.5.

The findings presented in the Bill contain three parts. First, the findings imply that the development of transient accommodations has increased the ratio of visitors to residents. Second, according to the findings, a large percentage of these transient accommodations are in West Maui and South Maui, for which updated community plans are under review. Third, as support, the findings assert that prior moratoria on construction—specifically, Maui County Ordinances 1997 (1991) and 5125 (2020), City and County of Honolulu Ordinance 18-6 (2018) and City of Asheville, North Carolina, Ordinance 4766 (2019)—have been used as tools to temporarily preserve the status quo.

Bill 191 was placed on the agenda for the April 16, 2021 meeting of the Council and again on the agenda for the May 7, 2021, meeting of the Council.

Bill 232. On April 29, 2021, Councilmember King transmitted proposed Bill 232 to the Council. Bill 232 also seeks to add Chapter 40 (Moratorium on Building Permits for Visitor Accommodations) to the Maui County Building Code. Under Bill 232, Chapter 40 (Moratorium on Building Permits for Visitor Accommodations) would provide in material part as follows:

4000.4 Prohibition on building permits for visitor accommodation development in West Maui and South Maui. No building permit applications for **visitor accommodations** in West Maui or South Maui may be accepted.

Section 4000.4 (emphasis added). “Development” is defined as “any new units **expressly** designated to be used for visitor accommodations.” Section 4000.3 (emphasis added). The term “visitor accommodation” is defined as “any kind of transient accommodations, including hotels, resorts, timeshares, short-term rental homes, bed and breakfast homes, and transient vacation rentals.” *Id.* As is true with Bill 191, Bill 232 would not apply to the renovation of existing “visitor accommodations.”

The prohibition on the “development” of “visitor accommodations” in West Maui and South Maui would automatically lift at two years from the law’s effective date. Alternatively, the prohibition would automatically end in West Maui on the effective date of the West Maui Community Plan update if the West Maui Community Plan update becomes effective in less than two years. Similarly, the prohibition would automatically end in South Maui on the effective date of the South Maui Community Plan update if the South Maui Community Plan update becomes effective in less than two years.

Unlike Bill 191, Bill 232 “does not apply to any development that has received its last discretionary approval prior to the effective date of the ordinance establishing the chapter.” Section 4000.5. Like Bill 191, “the Council may authorize exceptions from [the prohibition] by resolution upon request by the director of public works.” *Id.*

Bill 232 presents the same findings as Bill 191. In addition, Bill 232 claims that the development of visitor accommodation and the presumed related increase in tourism cause negative impacts on the environment. To preserve the County’s environment, mitigate climate change and work toward resilience, visitor accommodation development must be prohibited. Thus, the stated “purpose of the moratorium . . . is to lower carbon-emission levels, mitigate climate-change impacts and limit the rate of global warming.” Section 1 (Findings and purpose).

Bill 232 has been placed on the agenda for the May 7, 2021 meeting of the Council.

II. ANALYSIS

A. The Maui Planning Commission Must Review the Bills. The Maui County Charter provides in relevant part:

The [Maui] planning commission shall:

1. Advise the mayor, council, and the planning director in matters concerning planning programs.

...

3. Review other proposed land use ordinances and amendments thereto prepared by the director or the council and, after public hearings, transmit such ordinances with its findings and recommendations thereon to the council for consideration and action no later than one hundred twenty (120) days after the final public hearing.

Maui County Charter Section 8-8.4.

The Bills prohibit a specific kind of development—“transient accommodations” or “visitor accommodations”—in specific community planning districts of Maui—West Maui and South Maui. Prohibiting specific uses in specific districts is quintessentially a zoning power under the Hawai‘i Zoning Enabling Act. *See* HRS § 46-4(a) (“zoning” is the “establishment of districts . . . and the adoption of regulations for each district”) (emphasis added). Furthermore, the Bills connect the prohibition on development to the adoption of updates to the West Maui and South Maui Community Plans. Planning is a fundamental part of zoning and, in Hawai‘i, must precede the adoption of zoning regulations. *Id.* (“Zoning in all counties shall be accomplished within the framework of a long-range, comprehensive general plan prepared or being prepared to guide the overall future development of the county . . . [and] shall be one of the tools available to the county to put the general plan into effect in an orderly manner.”). Finally, the findings in the Bills expressly assert that they are intended “to temporarily maintain the status quo by establishing a moratorium on building permits . . . in West Maui and South Maui until both community plans are updated.” Bill 191, Section 1; Bill 232, Section 1. Thus, from the findings to the moratorium itself and to the end of the moratorium, the Bills purport to exercise the County’s zoning power and materially involve “planning programs” and “land use.”

In accordance with the Maui County Charter, if the Council advances the Bills, the Council is required to submit the Bills to the Maui Planning Commission. Public hearings must be held on the Bills. The Council may not act until the hearings have been completed and the Commission’s findings and recommendations have been adopted.

B. The Bills Fail to Substantially Advance a Legitimate State Interest. The Due Process Clause of the Fourteenth Amendment provides that no State shall “deprive any person of life, liberty, or property, without due process of law.” U.S. CONST. amend. XIV; *accord* HAW. CONST. art I, § 5. “The Due Process clause confers both procedural and substantive rights.” *Richardson v. City & Cty. of Honolulu*, 124 F.3d 1150, 1162 (9th Cir. 1997). Substantive due process protects individuals from arbitrary acts of government and ensures that “the government does not exercise power without any reasonable justification in the service of a legitimate government objective.” *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). A “regulation that fails to serve any legitimate governmental objective may be so arbitrary or irrational that it runs afoul of the Due Process Clause.” *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 542 (2005); *see also id.* at 549 (Kennedy, J. concurring) (noting

that the *Lingle* decision “does not foreclose the possibility that a regulation might be so arbitrary and irrational as to violate due process”).

The Bills fail to serve a legitimate governmental objective in two ways. First, an increase in hotel rooms and other visitor accommodations has not caused an increase in the daily visitor population. On the contrary, hotel rooms on Maui have declined from 8,577 units in 2000 to 7,251 units in 2020. Only a handful of hotels have been built during the last 25 years. Yet the daily visitor count has continued to increase.

Second, hotels and other visitor accommodations, such as timeshares, may only be developed in areas that are designated for hotel use (not in residential neighborhoods) consistent with existing zoning laws. Accordingly, the development of hotel and other visitor accommodations avoids the potentially adverse effects on neighborhood character, area infrastructure and the availability of on-street parking.

Furthermore, the assertion in Bill 232 that the prohibition on the development of visitor accommodations is intended to address negative impacts on the environment does not withstand scrutiny. No rational review leads to the conclusion that developing visitor accommodations in two areas of Maui over a period that would not exceed two years has any effect on carbon-emission levels, climate change or global warming.

Resting the Bills on demonstrably flawed factual premises severs the connection between the purported purposes of the Bills and the actual effect of the Bills. With the failure of the purposes of the Bills, the prohibition becomes arbitrary and the Bills are invalid. *See, e.g., New Jersey Shore Builders Ass’n v. Township Committee of Dover Tp.*, 468 A.2d 742 (N.J. 1983) (holding that a moratorium on issuance of building permits for construction of multi-family housing and for conversion of motels into condominiums was invalid due to lack of factual justification for moratorium in regard to problems of water supply and water pressure and explaining that “[t]he situation must be exigent, the causes must be adequately explored, and it must be demonstrated that other less extreme solutions have been investigated and found to be not feasible. None of these requisite proofs is before the court. Stripped to its essentials, the ordinance is nothing more than an expedient legislative reaction”).

C. The Trigger for Ending the Moratorium in West Maui in Bill 191 Lacks a Rational Basis. As explained above, a law must bear “a rational relationship to a legitimate governmental purpose.” *Romer v. Evans*, 517 U.S. 620, 635 (1996) (a law must bear “a rational relationship to a legitimate governmental purpose”). Bill 191 rests in large part on the need to adopt revisions to the community plans before new units are developed. Accepting this premise as true, it is irrational to prohibit the development of units in West Maui until the revised South Maui Community Plan has been adopted.

D. The Bills Violate Vested Rights. The right to proceed with a project despite a change in the law vests upon reliance on the last discretionary approval for a project. *Kauai County v. Pacific Standard Life Ins. Co.*, 65 Haw. 318, 328, 653 P.2d 766, 774 (1982) (a “final discretionary action constitutes official assurance”). While Bill 232 exempts “any development that has received its last discretionary approval prior to the effective date of the ordinance establishing the chapter,” neither Bill exempts projects that do not require discretionary approval to proceed. If a project does not require discretionary approval before applying for a building permit, the right to proceed has vested, whether or not an application for the building permit has been accepted. To conform to the law of vested rights, Bill 232 would need to exempt any development that has received its last discretionary permit and any development that does not require discretionary approval. As explained in the next section, Bill 191 has an additional flaw.

E. Bill 191 Compounds the Violation of Vested Rights. Bill 191 does not exempt projects for which the owner has obtained its last discretionary approval, such as an Special Management Area (“SMA”) permit. Prohibiting the issuance of building permits for vested projects, subject only to a “discretionary exception” left in the hands of the Council, is invalid. *See Allen v. City & Cty. of Honolulu*, 58 Haw. 432, 439, 571 P.2d 328, 331 (1977); *Waikiki Marketplace Inv. Co. v. Chair of Zoning Bd. of Appeals of City & County of Honolulu*, 86 Hawai‘i 343, 949 P.2d 183.

F. The Bills Violate the Equal Protection Clause. The Equal Protection Clause “keeps governmental decision-makers from treating differently persons who are in all relevant respects alike.” *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992). Where the challenged government action does not implicate a suspect class or burden a fundamental right, the action is unconstitutional if it does not “rationally further a legitimate state interest.” *Nordlinger*, 505 U.S. at 10.

Here, the Bills respectively single out “transient accommodations” or “visitor accommodations” in West Maui and South Maui and treat such accommodations differently from the rest of the County. There is no rational basis for treating developers of such accommodations in West Maui and South Maui differently from similarly situated developers in the rest of the County. Because there is no rational basis for the regulation, the classifications drawn in the Bill violate The Equal Protection Clause.

G. The Examples of Moratoria Cited in the Bills Do Not Support the Bills. The Hawai‘i examples of moratoria cited in support of the Bill materially differ from the moratorium proposed in the Bill. Beginning with Maui Ordinance No. 1997, the measure (1) only applied to “hotels,” (2) applied to the “issu[ance]” of a permit and not the “accept[ance]” of an application and (3) included express exemptions for, among other things, (a) pending applications (“19.82.979 Exemptions. This ordinance shall not prevent the following: 1. The processing, approval, or granting of any permit or approval application for hotel development which is complete and has been properly filed with the county prior to the effective

date of this ordinance . . .”), (b) projects that had received SMA approval (“19.82.979 Exemptions. This ordinance shall not prevent the following: . . . 2. The processing, approval, or granting of any permit or approval application for hotel development for which a special management area permit has been granted prior to the effective date of this ordinance.”) and (c) permits or approvals necessary for the renovation of guest rooms (“19.82.979 Exemptions. This ordinance shall not prevent the following: . . . 5. The granting of necessary permits or approvals for maintenance, repair and alteration which do not create additional guest rooms.”).

Similarly, Maui Ordinance No. 5125 (2020) (1) only applied to the issuance of transient vacation rental permits, bed and breakfast home permits, short-term rental home permits, County special use permits, State special permits, conditional permits and building permits that would allow transient vacation rental use or transient accommodations, except in any zoning district where transient vacation rental use was a permitted use (Section 19.97.020), (2) only applied on Lānaʻi (*id.*), (3) only lasted until the earlier of one year or the adoption of a cap on the maximum under bed and breakfast and short term rental permits (Section 19.97.030) and (4) included exemptions for permit applications that had been completed prior to the effective date of the ordinance (Section 2).

Turning to Honolulu Ordinance No. 18-6, the measure only applied to “large detached dwellings,” “accessory dwelling unit[s] located on the same lot as an existing large detached dwelling” and “two family detached dwelling[s]” in one residential district on lots with an area of less than 10,000 square feet. (Section A.) Even in this limited application, the Ordinance contained (1) a general exception for “large detached dwellings” meeting specific characteristics (Section B), (2) exemptions for certain kinds of developments, including projects with SMA approval, “for which a discretionary permit has been lawfully issued by any government agency, and is in effect on the effective date of this ordinance” (Section C) and (3) and “exemptions for any development for which a building permit application has been submitted to and accepted as complete by any government agency for processing as of the effective date of this ordinance” Section C.

We could not locate the mainland example—City of Asheville, North Carolina, Ordinance 4766 (2019).

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May 6, 2021

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Frank T. Goeckel
Senior Vice President - Strategy, Acquisitions and Government Affairs
Office: 407 626-3854
Mobile: 407 818 7826
Frank.goeckel@wyn.com

RE: Opposition to Maui County Council Bill (CC 21-232)

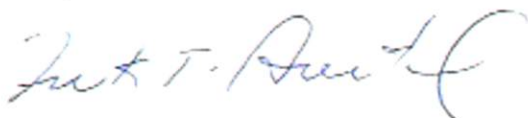
Please accept this testimony in strong opposition of the proposed moratorium on building permits for visitor accommodations.

Wyndham Destinations is the world's largest vacation ownership company with more than 245 vacation club resort locations across the globe. Of the 850,000 families that own our product, Maui is one of the most popular destinations for owners and exchangers. Some of the primary reasons are the pristine beaches and tropical paradise that the island offers. That is why we are supportive of efforts to maintain the environment and have taken steps as a company in our resorts to use environmentally friendly products, reduce energy and water consumption, and minimize waste.

While it is clear we are in alignment on the goal of protecting and preserving Maui, we believe this measure is unwarranted and does not advance its stated purpose. There is no evidence that visitor accommodations in two areas of Maui have had any effect on carbon-emission levels, climate change or global warming. Yet this proposal would enact such extraordinary measures as to put a pause on a whole industry for up to two years with no data to support it.

We respectfully request that this Bill be held until the Council has taken appropriate steps to consider the effect that this will have on the citizens of Maui that rely on the hospitality industry for employment, whether it be in one of the many beautiful existing resorts or in construction jobs building new resorts. Please take careful consideration whether enough research and evidence has been provided that support taking such extreme actions against an industry that has been a good partner to residents of Maui both as an employer and a supporter of the causes they care about.

Respectfully Submitted,



Frank T. Goeckel
Senior Vice President - Strategy Acquisitions and Government Affairs

County Clerk

From: Syl Cabral <sylviacabralmaui@gmail.com>
Sent: Saturday, May 01, 2021 12:43 AM
To: County Clerk; mayors.office@mauicounty.gov
Subject: Testimony and Questions for county council May 7th overturn Veto

Please explain who, if any, are in line and who are the developers who can't wait to start building? We always know Peter Martin.
Who else?

Do these investors have the land acquired and zoned?
Or are you making up laws for "future considerations".

I think the residency requirement is the answer to years of frustration getting around the HUD requirement that the properties go "public" after 90 days.
It was Kihei Kalama Kai and the north kihei project Kamalani where 5 local families out of 55 qualified at Kalama Kai (advertised as "oceanfront luxury") and 20 out of 220 qualified for Kamalani. The broker at the time said locals could not qualify because they had a "car payment" Surely those in the range of \$75k x 2= \$150k surely can have a car payment and at this time qualify for a one million dollar home. All the hype about no housing is not correct. The county has no responsibility to build homes for the middle class and should stop catering to developers who build very little affordable and reap the benefits of state, county and federal infrastructure. As soon as the courts open, there will be a flood of homes in foreclosure. Many are living mortgage free this past year and the banks will not be able to evict for up to another 2-3 years or longer with the courts facing a tremendous backlog of evictions which often take minimum six to 12 months to evict since many of Maui's judges fail to follow state, county and real estate laws of evictions. After living rent/mortgage free for 3-4 years, those people can go bankrupt and then clammer on the next administration about the need for new affordable homes starting over with clean slates within 3 years after bankruptcy. Anyways, I doubt one affordable home (under Bill 10) will be built before the deluge of foreclosures start.
If builders want to build, they will. Savio does and spencer did.
The rule was 75% affordable about 10 years ago. It should be 100% affordable and let developers build their mc mansions, hotels, condos on their own dime. Please do not tell us the new condo project in wailea is doing "affordable housing" somewhere on poisoned monsanto lands to fulfill any county requirements.
Under Arakawa and maybe Apana, the county NEVER collected the funds according to their own codes from people who flipped the homes before the covenants were up. Build longer covenants, make affordable housing leasehold and no investors will be interested. The Queen decreed "leasehold lands". The administrations ignored the Hawaiian laws.

Please Be Very Well,

Sylvia Cabral Realty
Call Me @ 808 879 9007
For Daily Properties News

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County Clerk

From: Syl Cabral <sylviacabralmaui@gmail.com>
Sent: Thursday, May 06, 2021 10:56 AM
To: Maui_County Council_mailbox; County Clerk; Council - Maui County
Subject: May 7th Testimony Affordable Housing

The county complains about "no funds". The last two mayors let the affordable housing covenants expire and let people sell their affordable homes and net great returns ignoring the county codes.

LACK OF ENFORCEMENT

It remains a fraud of federal documents (mortgages) for buyers to sign they are buying a home for long term occupancy when in fact they are buying to hold and sell every 2 years. Remember holding for the 2 years circumvents the home ownership tax exemption.
wink wink

Please Be Very Well,

Sylvia Cabral Realty
Call Me @ 808 879 9007
For Daily Properties News

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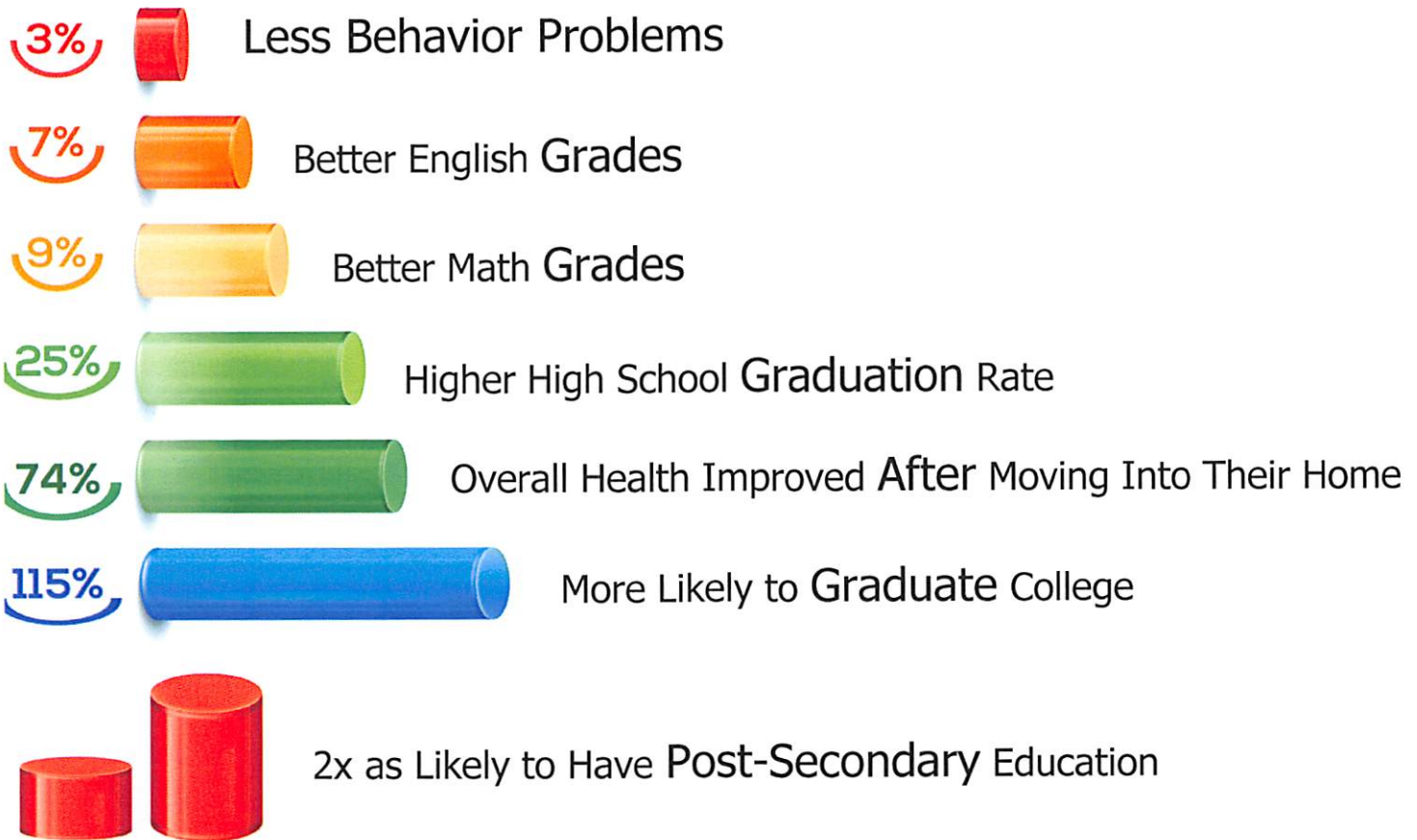
From: Syl Cabral <sylviacabralmaui@gmail.com>
Sent: Thursday, May 06, 2021 11:02 AM
To: Maui_County Council_mailbox; County Clerk; Council - Maui County
Subject: Moving Checklist for Children May 7th Testimony Affordable Housing

- As you travel on the plane or in the car to your next place, bring your favorite stuffed animal to keep you company.
 - Remember a nightlight or flashlight for camping in the bushes & doing homework.
- Get used to taking showers at public facilities while getting ready for school
- Make sure that you have your favorite bedtime stories.
 - Bring a small bag of toys, games, coloring books, and crayons, maybe even a puzzle, to keep you busy while Mom and/or Dad pack up the black trash bags with your belongings.
 - label your bags with your name so you'll know where your special things are.
 - Have Mom or Dad take some pictures of your best friends, and take these photos with you to help you from being lonely until you make new friends in your new school.
 - Give your pets some hugs, and take good care of them during the move. Reassure them that you hope you do not need to send your pets away.
 - Tell your friends you are moving, and get their addresses and phone numbers so you can write to them or give them a call.
 - Say goodbye to your teachers, and let them know you learned a lot from them.
 - Put on a happy face, and understand how important it is to keep the Aina clean and safe

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Home Ownership & Helping Children Grow Up Stronger, Smarter & With More

Statistics show that children who are raised in homes that are owned (not rented)...



**I am passionate about helping families and children thrive.
Call me today to learn more about home ownership in our market.**

LOCAL #1 HI, IUBAC



International Union of Bricklayers and Allied Craftworkers Local #1 of Hawaii

2251 North School Street, Honolulu, HI 96819

Phone: (808) 841-8822 • Fax: (808) 777-3456

May 7, 2021

The Honorable Alice L. Lee, Chair
The Honorable Keani Rawlins-Fernandez, Vice Chair
Maui County Council
200 South High Street, Eighth Floor
Wailuku, Hawai'i 96793

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Statement of Local 1 in Strong Opposition to CC 21-232

Dear Chair Lee, Vice Chair Rawlins-Fernandez, and Members:

The International Union of Bricklayers and Allied Crafts, Local 1, writes to strongly oppose CC 21-232, which transmits a proposed bill entitled "Amending the Building Code to Add Chapter 40 Relating to a Moratorium on Building Permits for Visitor Accommodations."

Our members would be dramatically and detrimentally affected by the proposed bill. Due to the discerning nature of Maui's visitors, hotel construction and renovations typically involve a substantial amount of high-quality, high-finish stone, marble, terrazzo, and tile work – the type of work that our well-equipped contractors and well-trained members perform. Hotel construction and renovation work provides our members with living wage jobs so they can support their families on Maui County.

If the proposed bill transmitted by CC 21-232 were to pass, our members and contractors would find it nearly impossible to find stable and economically-sustaining work opportunities in Maui County. While the bill purports to only be in effect for a few years, if our Maui members are forced to move way from the island, it will be much more difficult for them to return home afterwards even if hotel construction were to be permitted again. If local contractors close up shop and are unable to open back up after the bill expires, the void will be filled by mainland contractors which would further harm the local economy.

With the tourism industry in a tenuous position due to the COVID-19 pandemic and with an uncertain future ahead for the local construction industry due to the state of the global economy, we are extremely concerned by this proposal. Thus, we must respectfully urge the Council to reject this very problematic proposal.

Thank you for the opportunity to testify on this matter.



INTERNATIONAL LONGSHORE & WAREHOUSE UNION

LOCAL OFFICE • 451 ATKINSON DRIVE • HONOLULU, HAWAII 96814 • PHONE 949-4161

HAWAII DIVISION: 100 West Lanikaula Street, Hilo, Hawaii 96720 • OAHU DIVISION: 451 Atkinson Drive, Honolulu, Hawaii 96814
MAUI COUNTY DIVISION: 896 Lower Main Street, Wailuku, Hawaii 96793 • KAUAI DIVISION: 4154 Hardy Street, Lihue, Hawaii 96766

LOCAL 142

May 6, 2021

Maui County Council
Kalana O Maui Building, 8th Floor
Councilmember Alice Lee, Chair
Councilmember Keani Rawlins-Fernandez, Vice Chair
Friday, May 7, 2021; 9:00 a.m.

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COUNTY CLERK

STATEMENT OF THE ILWU LOCAL 142 ON COUNTY COMMUNICATION 21-232

Dear Council Chair Alice Lee and Council Vice Chair Keani Rawlins-Fernandez:

The ILWU Local 142 opposes the proposed bill entitled "amending the building code to add Chapter 40 relating to a moratorium on building permits for visitor accommodations."

The Covid-19 pandemic caused record unemployment for the County of Maui and across Hawaii and today, there are still thousands of workers without jobs. While the economy is slowly recovering and some workers are returning back to work, it is going to take a few years before the economy may reach pre-pandemic levels.

Knowing that, this is the last thing the Maui County Council should be considering. We need to ensure good-paying jobs are available to all Maui residents. A moratorium on hotel construction and visitor accommodations will limit good-paying jobs and hurt economic recovery. Workers are struggling and we should not make it worse.

For those reasons, we strongly oppose. Economic recovery should be paramount during this time.

Thank you for the opportunity to testify.

Sincerely,

ILWU Local 142
Maui Division

Roberto Andrion
Division Director