

MOANA M. LUTEY
County Clerk



RICHELLE M. THOMSON
Deputy County Clerk

OFFICE OF THE COUNTY CLERK

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

February 6, 2023


Honorable Tamara Paltin, Chair
Disaster, Resilience, International Affairs,
and Planning Committee
Council of the County of Maui
Wailuku, Hawaii 96793

Dear Chair Paltin:

Respectfully transmitted is a copy of Bill No. 4 (2023), entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.12, MAUI COUNTY CODE, RELATING TO CONVERTING APARTMENT BUILDINGS FROM TRANSIENT VACATION RENTAL USE TO LONG-TERM RESIDENTIAL USE" that was referred to your Committee by the Council of the County of Maui at its meeting of February 3, 2023.

Also transmitted for your convenience is a copy of a communication received from the Planning Director.

Respectfully,


MOANA M. LUTEY
County Clerk

/jym

Enclosure

cc: Director of Council Services

OFFICE OF THE
COUNTY CLERK

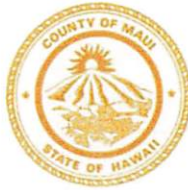
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MICHAEL P. VICTORINO
Mayor

MICHELE CHOUTEAU MCLEAN, AICP
Director

JACKY TAKAKURA
Deputy Director



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

RECEIVED

2022 DEC 30 PM 3:16

OFFICE OF THE
COUNTY CLERK

December 29, 2022

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

APPROVED FOR TRANSMITTAL

Michael P. Victorino 12-30-22

Mayor Date

For Transmittal to:

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

Dear Council Chair Lee and Councilmembers:

SUBJECT: A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.12, MAUI COUNTY CODE, RELATING TO CONVERTING APARTMENT BUILDINGS FROM TRANSIENT VACATION RENTAL USE TO LONG-TERM RESIDENTIAL USE

The attached bill was initiated by the County Council's Planning and Sustainable Land Use Committee and proposes to amend Maui County Code (MCC) Chapter 19.12 – Apartment Districts to allow owners to convert from transient accommodation use to long-term residential use. Chapter 19.12 allows transient vacation rentals (TVRs) on properties that meet certain criteria listed in Sec. 19.12.020.G; as far as the Department of Planning (Department) is aware, there are 7,143 units at 103 properties that meet the Sec. 19.12.020.G criteria for TVR use.

The bill proposes to add a new section to Chapter 19.12, to establish criteria for owners of property that are allowed to conduct TVR use to voluntarily discontinue TVR use if 100 percent of the owners agree to execute a declaration which would be filed with the State Bureau of Conveyances. The declaration would state that the owners will use the property for long-term residential use only, and that they forfeit any right to TVR use.

According to Sec. 19.12.010, the purpose and intent of the Apartment District is to provide higher density housing options and occupancy on a long-term residential basis; therefore, the Department supports the provision to allow properties to convert to long-term residential use.

The Department consulted with the three island planning commissions, the Department of

Honorable Michael P. Victorino, Mayor
For Transmittal to:
Honorable Alice Lee, Chair
December 29, 2022
Page 2

Finance, the State Office of Planning and Sustainable Development (OPSD), and the State Department of Business, Economic Development and Tourism (DBEDT). The response from Finance Director Scott Teruya is attached. He suggested removing the language to allow TVR use with a permit, and the Department agrees; therefore, this revision was included in the bill referred to the commissions. OSPD did not have any comments and DBEDT did not respond.

Consistency with Long-Range Plans

Passage of this bill would further a number of General Plan policies, goals, and objectives, including the following components of the Countywide Policy Plan (Ordinance 5264):

- Page 59, Policy 3.h: Encourage long-term residential use of existing and future housing to meet residential needs.
- Page 74, Objective 1.c: Limit the number of visitor-accommodation units and facilities in Community Plan Areas.
- Page 74, Objective 1.d: Maintain a sustainable balance between the resident, part-time resident, and visitor populations.

The bill would also be consistent with the Maui Island Plan which establishes growth areas that indicate where development is intended and will be supported. The plan's goals, policies, programs and actions are based on an assessment of current and future needs and available resources. Chapter 4 – Economic Development and Chapter 7 – Land Use includes:

- Page 4-13, Objective 4.2.2: Comprehensively manage future visitor-unit expansion
- Page 4-13, Policy 4.2.2.c: Manage impacts from transient vacation rentals, hotels, bed and breakfast units, timeshares, and resort condominiums on residential communities, public infrastructure, and community facilities.
- Page 4-13, Policy 4.2.2.d: Discourage supplanting of existing island housing to visitor accommodations that may have a negative impact on long-term rental housing, price of housing, and price of land.
- Page 7-25, Policy 7.3.2.g: Provide incentives to facilitate the development of multifamily housing.

The majority of Apartment district TVRs are in the Kihei-Makena and West Maui Community Plan areas. At this time, the 1998 Kihei-Makena plan is currently going through the update process, with an initial draft being reviewed by the South Maui Community Plan Advisory Committee. The West Maui Community Plan was updated in 2022 and directs county planning and other actions for this area. It includes the following relevant policies and actions:

Honorable Michael P. Victorino, Mayor
For Transmittal to:
Honorable Alice Lee, Chair
December 29, 2022
Page 3

- Page 58, Policy 2.5.16: Increase the inventory of long-term housing units, whether owner-occupied or long-term rental, and whether single-family or multi-family.
- Page 150 Action 5.08: Propose legislation to amortize the short-term occupancy list and phase out short-term rental use to make more housing units available for long-term occupancy.

Planning Commission Review

The Planning Commissions supported, with the Department's revision, the draft bill transmitted by the Council. Here is a summary of the commissions' recommendations:

<u>Planning Commission</u>	<u>Date of Vote</u>	<u>Recommendation</u>	<u>Vote Count</u>
Lanai	Sept.21, 2022	Recommended approval	6-0
Maui	Sept.27, 2022	Recommended approval	6-0
Molokai	Sept.28, 2022	Recommended approval	Unanimous consent

The Maui Planning Commission recommended reducing the 100 percent owner agreement requirement to 67 percent. The Molokai and Lanai Planning Commissions supported keeping the 100 percent requirement, and the Department concurs. Other minor grammatical revisions are included in the attached bill for ordinance.

However, the version transmitted herein has been revised by Corporation Counsel to add Sec. 19.12.025.F "The director must not accept an application for a short-term rental home permit, bed and breakfast home permit, or conditional permit for transient vacation rental use." This addition clearly removes the option of applying for a short-term rental home, bed and breakfast home, or conditional permit to conduct TVR use on a property that is converted to long-term residential use, and clarifies that properties with any of these permits are not eligible to convert. The Department agrees with this addition.

Therefore, pursuant to Sections 8-8.3(6) and 8-8.4 of the Revised Charter of the County of Maui (1983), as amended, I respectfully request the Council's consideration of the attached proposed bill, "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.12, MAUI COUNTY CODE, RELATING TO CONVERTING APARTMENT BUILDINGS FROM TRANSIENT VACATION RENTAL USE TO LONG-TERM RESIDENTIAL USE."

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

Honorable Michael P. Victorino, Mayor
For Transmittal to:
Honorable Alice Lee, Chair
December 29, 2022
Page 4

Sincerely,

A handwritten signature in black ink, appearing to read "Jacky Takakura". The signature is fluid and cursive, with the first name "Jacky" written in a larger, more prominent script than the last name "Takakura".

JACKY TAKAKURA
Deputy Planning Director

Attachments

C: Michele McLean, AICP, Planning Director
MCM:JMCT
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out\221227Transmittal\19.12VoluntaryConversionLongTermResidential.docx


MICHAEL P. VICTORINO
Mayor
MICHELE CHOUTEAU MCLEAN, AICP
Director
JORDAN E. HART
Deputy Director

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

September 21, 2022

MEMORANDUM

**TO: MAUI PLANNING COMMISSION
MOLOKAI PLANNING COMMISSION
LANAI PLANNING COMMISSION**

**FROM: MICHELE CHOUTEAU MCLEAN, AICP 
PLANNING DIRECTOR**

**SUBJECT: A PROPOSED BILL AMENDING CHAPTER 19.12, MAUI
COUNTY CODE, RELATING TO CONVERTING APARTMENT
BUILDINGS FROM TRANSIENT VACATION RENTAL USE TO
LONG-TERM RESIDENTIAL USE**

The attached Resolution No. 22-154 was adopted by the County Council on June 21, 2022, and transmits to the three planning commissions a proposed bill to amend Maui County Code (MCC) Chapter 19.12 – Apartment Districts to allow owners to convert from transient accommodation use to long-term residential use. Chapter 19.12 allows transient vacation rentals (TVRs) on properties that meet certain criteria listed in Sec. 19.12.020.G; as far as the Department of Planning (Department) is aware, there are 7,143 units at 103 properties that meet the Sec. 19.12.020.G criteria for TVR use.

The bill proposes to add a new section to Chapter 19.12, to establish criteria for property owners to voluntarily discontinue TVR use if 100 percent of the owners agree to execute a declaration which would be filed with the State Bureau of Conveyances. The declaration would state that the owners will use the property for long-term residential use only, and that they forfeit any right to TVR use.

The Department consulted with the Department of Finance, the State Office of Planning and Sustainable Development (OPSD), and the State Department of Business, Economic Development and Tourism. The response from Finance Director Scott Teruya is attached. OSPD did not have any comments.

Recommendation and Options

According to Sec. 19.12.010, the purpose and intent of the Apartment District is to provide higher density housing options and occupancy on a long-term residential basis; therefore, the Department supports the provision to allow properties to convert to long-term residential use, with one revision to the bill from the County Council:

19.12.025.D. Recordation of the declaration constitutes a forfeiture on the part of the owners, and all successors and assigns, of any right to transient vacation rental use of the property~~[, unless such use is then allowed in accordance with a valid permit].~~

As noted by Finance Director Teruya, prohibiting TVRs but then allowing the use with a permit is contradictory. The Department agrees, and proposes to remove the language allowing the use with a permit (in brackets and strikethrough above).

The Commission has the following options:

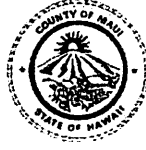
1. Recommend approval of the proposed bill to the Maui County Council.
2. Recommend approval of the proposed bill with amendments to the Maui County Council.
3. Recommend denial of the proposed bill to the Maui County Council.
4. Vote to defer action on the proposed bill in order to gather specific additional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

Attachments

MCM:JMCT

S:\ALL\APO\19.12 apartment\2022 voluntary phase out\220902CommissionsMemoReport.docx

KATHY L. KAOHU
County Clerk



JAMES G.M. KRUEGER
Deputy County Clerk

RECEIVED

OFFICE OF THE COUNTY CLERK

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

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OFFICE OF THE MAYOR

June 22, 2022

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

For transmittal to:

Handwritten signature: Scott 6/23/22

Maui Planning Commission
Planning Department
County of Maui
Wailuku, Hawaii 96793

Dear Chair and Members:

Transmitted herewith is a certified copy of Resolution No. 22-154,
which was adopted by the Council of the County of Maui, State of Hawaii,
on June 21, 2022. Also attached is a copy of Committee Report
No. 22-53.

Respectfully,

Handwritten signature: Kathy L. Kaohu

KATHY L. KAOHU
County Clerk

/lks

Enclosure

CC: Wilton Leauanae, Legislative Analyst
David Raatz, Deputy Director of Council Services

Resolution

No. 22-154

REFERRING TO THE PLANNING COMMISSIONS
A PROPOSED BILL RELATING TO CONVERTING
APARTMENT BUILDINGS FROM TRANSIENT
VACATION RENTAL USE TO LONG-TERM
RESIDENTIAL USE

WHEREAS the Council is considering a proposed bill to allow property owners of buildings in the Apartment District to permanently convert property from transient vacation rental use to long-term residential use; and

WHEREAS Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended, require that the appropriate planning commission review proposed land use ordinances and provide findings and recommendations to the Council; now therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it refers the proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.12, MAUI COUNTY CODE, RELATING TO CONVERTING APARTMENT BUILDINGS FROM TRANSIENT VACATION RENTAL USE TO LONG-TERM RESIDENTIAL USE," a copy of which is attached as Exhibit "1," to the Lanai Planning Commission, Maui Planning Commission, and Molokai Planning Commission for appropriate action, in accordance with Sections 8.8.4 and 8.8.6 of the Revised Charter of the County of Maui (1983), as amended;
2. That it respectfully requests that the Lanai Planning Commission, Maui Planning Commission, and Molokai Planning Commission transmit their findings and recommendations to the Council as expeditiously as possible; and
3. That certified copies of this Resolution be transmitted to the Mayor, the Planning Director, the Lanai Planning Commission, Maui Planning Commission, and Molokai Planning Commission.

INTRODUCED BY:

Tamara A. M. Paltin
TAMARA PALTIN

ORDINANCE NO. _____

BILL NO. _____ (2022)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.12, MAUI COUNTY
CODE, RELATING TO CONVERTING APARTMENT BUILDINGS FROM
TRANSIENT VACATION RENTAL USE TO LONG-TERM RESIDENTIAL USE

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

SECTION 1. The purpose of this Ordinance is to allow property owners of buildings located in the Apartment District to permanently convert property from transient vacation rental use to long-term residential use by filing a declaration with the State of Hawai'i Bureau of Conveyances and providing notice to the County.

SECTION 2. Chapter 19.12, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

"19.12.025 Conversion of real property from transient vacation rental use to residential use. The owners of property in which transient vacation rental use is allowed under subsection 19.12.020(G), may opt to permanently discontinue such use upon filing a declaration with the State of Hawai'i bureau of conveyances in a form prescribed by the department in accordance with this section. A. The declaration must be executed by 100 percent of the property owners and must apply to the entire parcel.

B. The declaration must state the owners will use the property for long-term residential use only.

C. The property owners must cause the declaration to be filed with the State of Hawai'i bureau of conveyances.

D. Recordation of the declaration constitutes a forfeiture on the part of the owners, and all successors and assigns, of any right to transient vacation rental use of the property, unless such use is then allowed in accordance with a valid permit.

E. A recorded copy of the declaration must be filed with the director by September 1 of any calendar year. Upon receipt, the

director must review the declaration and determine whether it is complete within forty-five days.

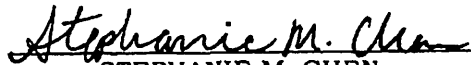
F. The director must notify the department of finance, real property assessment division of the recordation of a declaration permanently converting property from transient vacation rental use to long-term residential use that is determined to be complete.

G. The director may enforce the failure to abide by the declaration as a violation of this title."

SECTION 3. New material is underscored. In printing this bill, the County Clerk need not include the underscoring.

SECTION 4. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:



STEPHANIE M. CHEN
Deputy Corporation Counsel
County of Maui

LF2021-0016
PSLU-34 2022-05-31 Ord Amd Ch 19.12
pslu:misc:034abill01:wal

INTRODUCED BY:

Tamara A. M. Paltin

TAMARA PALTIN

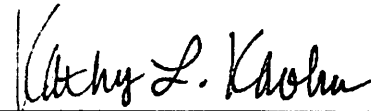
COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that RESOLUTION NO. 22-154 was adopted by the Council of the County of Maui, State of Hawaii, on the 21st day of June, 2022, by the following vote:

MEMBERS	Alice L. LEE Chair	Keoni N. W. RAWLINS- FERNANDEZ Vice-Chair	Gabriel JOHNSON	Natalie A. KAMA	Kelly T. KING	Michael J. MOLINA	Tamara A. M. PALTIN	Shane M. SINENCI	Yuki Lei K. SUGIMURA
ROLL CALL	Aye	Aye	Excused	Excused	Excused	Aye	Aye	Aye	Aye



COUNTY CLERK

COUNCIL OF THE COUNTY OF MAUI
PLANNING AND SUSTAINABLE LAND
USE COMMITTEE

June 21, 2022

Committee
Report No. 22-53

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Planning and Sustainable Land Use Committee, having met on November 3, 2021, and June 2, 2022, makes reference to County Communication 21-422, from Councilmember Tamara Paltin, transmitting a proposed resolution entitled "REFERRING TO THE PLANNING COMMISSIONS A PROPOSED BILL RELATING TO PHASING OUT TRANSIENT ACCOMMODATIONS IN THE APARTMENT DISTRICTS."

The purpose of the proposed resolution is to refer the proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.12, MAUI COUNTY CODE, PHASING OUT TRANSIENT ACCOMMODATIONS IN THE APARTMENT DISTRICTS," to the appropriate planning commissions in accordance with Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended. The purpose of the proposed bill is to amend the Comprehensive Zoning Ordinance by phasing out transient accommodations in the Apartment Districts to create long-term affordable housing opportunities for residents, as recommended in the Maui County Comprehensive Affordable Housing Plan.

By correspondence dated October 29, 2021, Council Vice-Chair Keani N.W. Rawlins-Fernandez transmitted a revised proposed resolution, entitled "REFERRING TO THE PLANNING COMMISSIONS A PROPOSED BILL PHASING OUT TRANSIENT VACATION RENTALS IN THE APARTMENT DISTRICTS," and a revised proposed bill attached as Exhibit "1," entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.12, MAUI COUNTY CODE, PHASING OUT TRANSIENT VACATION RENTALS IN THE APARTMENT DISTRICTS." The revised proposed bill removes the need for the Planning Director to determine that the building or structure

COUNCIL OF THE COUNTY OF MAUI
PLANNING AND SUSTAINABLE LAND
USE COMMITTEE

Page 2

Committee
Report No. 22-53

is within the sea level rise exposure area, and incorporates an effective date of January 1, 2023.

By correspondence dated May 27, 2022, the Chair of your Committee transmitted a further revised proposed resolution, entitled "REFERRING TO THE PLANNING COMMISSIONS A PROPOSED BILL RELATING TO CONVERTING APARTMENT BUILDINGS FROM TRANSIENT VACATION RENTAL USE TO LONG-TERM RESIDENTIAL USE," and a further revised proposed bill attached as Exhibit "1," entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.12, MAUI COUNTY CODE, RELATING TO CONVERTING APARTMENT BUILDINGS FROM TRANSIENT VACATION RENTAL USE TO LONG-TERM RESIDENTIAL USE." The further revised proposed bill would allow property owners of buildings located in the Apartment District to permanently convert property from transient vacation rental use to long-term residential use by filing a declaration with the State of Hawaii Bureau of Conveyances and providing notice to the County.

By correspondence dated May 31, 2022, the Department of the Corporation Counsel transmitted a further revised proposed bill which includes a provision that allows the Planning Director to enforce the declaration as a violation of Title 19, and nonsubstantive revisions.

Your Committee noted concerns, consistent of those raised by testifiers, on the requirement for the declaration to be executed by 100 percent of property owners. Your Committee supported 67 percent to be a more reasonable percentage.

A Deputy Corporation Counsel explained the intent of the provision is to be a recordation of a declaration with the Department of Finance, Real Property Assessment Division that would permanently convert property from transient vacation rental use to long-term residential use, which could be revised to further clarify the provision.

COUNCIL OF THE COUNTY OF MAUI
PLANNING AND SUSTAINABLE LAND
USE COMMITTEE

Page 3

Committee
Report No. 22-53

The Deputy Corporation Counsel said the declaration must apply to the entire parcel and the planning commissions could amend the bill to require 67 percent of homeowners to agree to the conversion instead of 100 percent.

Your Committee agreed with the intent of the bill and supported the increase of affordable housing opportunities in the County, consistent with the recommendations in the Maui County Comprehensive Affordable Housing Plan.

Your Committee voted 9-0 to recommend adoption of the revised proposed resolution entitled "REFERRING TO THE PLANNING COMMISSIONS A PROPOSED BILL RELATING TO CONVERTING APARTMENT BUILDINGS FROM TRANSIENT VACATION RENTAL USE TO LONG-TERM RESIDENTIAL USE," and filing of the communication. Committee Chair Paltin, Vice-Chair King, and members Johnson, Kama, Lee, Molina, Rawlins-Fernandez, Sinenci, and Sugimura voted "aye."

Your Committee is in receipt of a revised proposed resolution incorporating your Committee's revisions.

Your Planning and Sustainable Land Use Committee RECOMMENDS the following:

1. That Resolution 22-154, as revised herein and attached hereto, entitled "REFERRING TO THE PLANNING COMMISSIONS A PROPOSED BILL RELATING TO CONVERTING APARTMENT BUILDINGS FROM TRANSIENT VACATION RENTAL USE TO LONG-TERM RESIDENTIAL USE," be ADOPTED; and
2. That County Communication 21-422 be FILED.

COUNCIL OF THE COUNTY OF MAUI
PLANNING AND SUSTAINABLE LAND
USE COMMITTEE

Page 4

Committee
Report No. 22-53

This report is submitted in accordance with Rule 8 of the Rules of the Council.

Tamara A. M. Paltin

TAMARA PALTIN, Chair

pslu:cr:22034aa:pmg

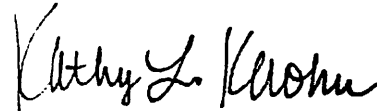
COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that the recommendations contained in COMMITTEE REPORT NO. 22-53 were adopted by the Council of the County of Maui, State of Hawaii, on the 21st day of June, 2022, by the following vote:

MEMBERS	Alice L. LEE Chair	Keani N. W. RAWLINS- FERNANDEZ Vice-Chair	Gabriel JOHNSON	Natalie A. KAMA	Kelly T. KING	Michael J. MOLINA	Tamara A. M. PALTIN	Shane M. SINENCI	Yuki Lei K. SUGIMURA
ROLL CALL	Aye	Aye	Excused	Excused	Excused	Aye	Aye	Aye	Aye



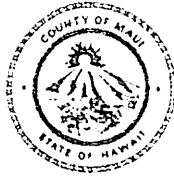
COUNTY CLERK

22/2044

MICHAEL P. VICTORINO
Mayor

SCOTT K. TERUYA
Director

MAY-ANNE A. ALIBIN
Deputy Director



COUNTY OF MAUI

DEPARTMENT OF FINANCE
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov

RECEIVED

22 AUG 23 A7:16

County Of Maui
Planning Department

DIRECTOR
DEPUTY DIRECTOR
CURRENT
ZALD
LONG RANGE
DEPT SECRETARY

PT	COMMENTS	SEE ME	ASSIGN	FILE	DRAFT RESPONSE
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Due Date: _____

Date: _____

MEMORANDUM

TO: MICHELE MCLEAN, DIRECTOR OF PLANNING, JBV

FROM: SCOTT K. TERUYA, DIRECTOR OF FINANCE ST

SUBJECT: RESOLUTION NO. 22-154 REFERRING TO THE PLANNING COMMISSIONS A PROPOSED BILL RELATING TO CONVERTING APARTMENT BUILDINGS FROM TRANSIENT VACATION RENTAL USE TO LONG-TERM RESIDENTIAL USE

In response to the Deputy Director Jacky Takakura's email dated July 14, 2022, below are the Department of Finance's comments relating to the assumption that the proposed bill will result in real property tax relief for second home owners who live in resort areas.

1. Sections B and D appear to be contradictory. Section B states that the owners will use the property for long-term residential use only. Section D however, states that owners can apply for a valid permit which would allow them to use the property as a short-term rental home.
2. "Long-term residential use" means occupied by an owner or lessee for terms of not less than six months. Timeshare properties are occupied cumulatively by owners for most of the year. It may be prudent to update Chapter 19.37, Maui County Code to read that timeshare plans are not long-term residential use.
3. The Real Property Assessment Division (RPAD) under the Department of Finance does not know of a way to exclude durational LLC ownership from this program. For this reason, the RPAD recommends to continue to classify these projects as short-term rental, even if it is prohibited due to the declaration, as classification should be based upon highest and best use.
4. Owners in these projects, which are allowed to do short-term rentals, are eligible for the owner-occupied and long-term rental exemptions and classifications. Will the proposed tax relief result in a reduction of long-term rentals and primary home purchases?

- a. 7% of the units have home exemptions (505 units)
 - b. 2% of the units have a long-term rental exemption (107 units)
5. Should Maui County Code allow taxpayers, who are primarily from out of state, choose their zoning and tax rate classification? Currently, the County of Maui has legal means for property owners to change their zoning. A declaration is not an official change in zoning.
 6. Will this bill negatively impact the County of Maui's ability to project real property tax revenue? How will this be viewed by credit agencies?
 7. The Real Property Assessment Division has identified 87 resort condominium projects with 6,954 units who may be impacted by this bill (see attached Exhibits A and B).
 - a. This bill has the potential to reduce real property tax revenues by over \$18,000,000 annually.
 - b. The division cannot predict how many of these projects will convert or when they will convert.
 - c. Nine of the projects have a total of 213 time share units.
 - d. All of the 87 projects are located in the Special Management Area (SMA)
 - e. 55 of the projects, containing a total of 3,781 units, are located in a FEMA Flood Hazard Zone.
 - f. 56 of the projects, containing a total of 3,411 units, are located in the Sea Level Rise Exposure Area.
 - g. 594 units have foreign owners (8.5%). This number is greater than the number of homeowner exemptions.
 - h. 5,141 units have out of state owners.
 - i. Within the 87 projects, there are 750 corporate owners (LLC, CORP).
 8. Tax incidence should be carefully considered. A sample tax incidence chart is shown below. Policy makers should be aware that second homes have a low tax incidence. A low tax incidence can negatively impact a jurisdiction's ability to pay for expenses incurred by real property occupants.

Tax Incidence Chart					
Tax	Time share	Short-term rental	Second home	Long-term rental	Owner-occupied
TAT	No	Yes	No	No	No
TOT	Yes	No	No	No	No
Hawaii State	No	Yes	No	Yes X 2	Yes
Number of taxes paid	1	2	0	2	1
Occupancy	95%	75%	75%	95%	100%
FY 23 RPT effective rate	\$14.60	\$11.85	\$7.07	\$3.31	\$2.03
X 2 (owner and tenant)					

9. A low second home owner real property tax rate could create competition with local buyers who would be using the real property as a home or long-term rental. Local buyers are subject to Hawaii's higher cost of living and low wages. A lower real property tax allows a purchaser to qualify for a higher price. If out-of-state second home owners are also given

tax relief, local buyers could lose their competitive advantage when making an offer to buy real property in the County of Maui.

10. The occupancy of second homes should be considered. Is it lower than time share or short-term rental? Second homes could have a relatively high occupancy depending upon the ownership style. For example, an LLC could have 12 members where they each stay one month of the year. In this case, the occupancy may be similar to a time share at 95%. Owners or companies may allow family and friends to stay in these resort homes and only pay a cleaning fee. Converting resort properties into second homes may not reduce the de facto population.
11. How will converting short-term rental homes to long-term residential use impact the economy and population? Would replacing visitors with second home owners decrease visitor spending without reducing the de facto population?

Should you have any questions, please feel free to contact me at ext. 7474.

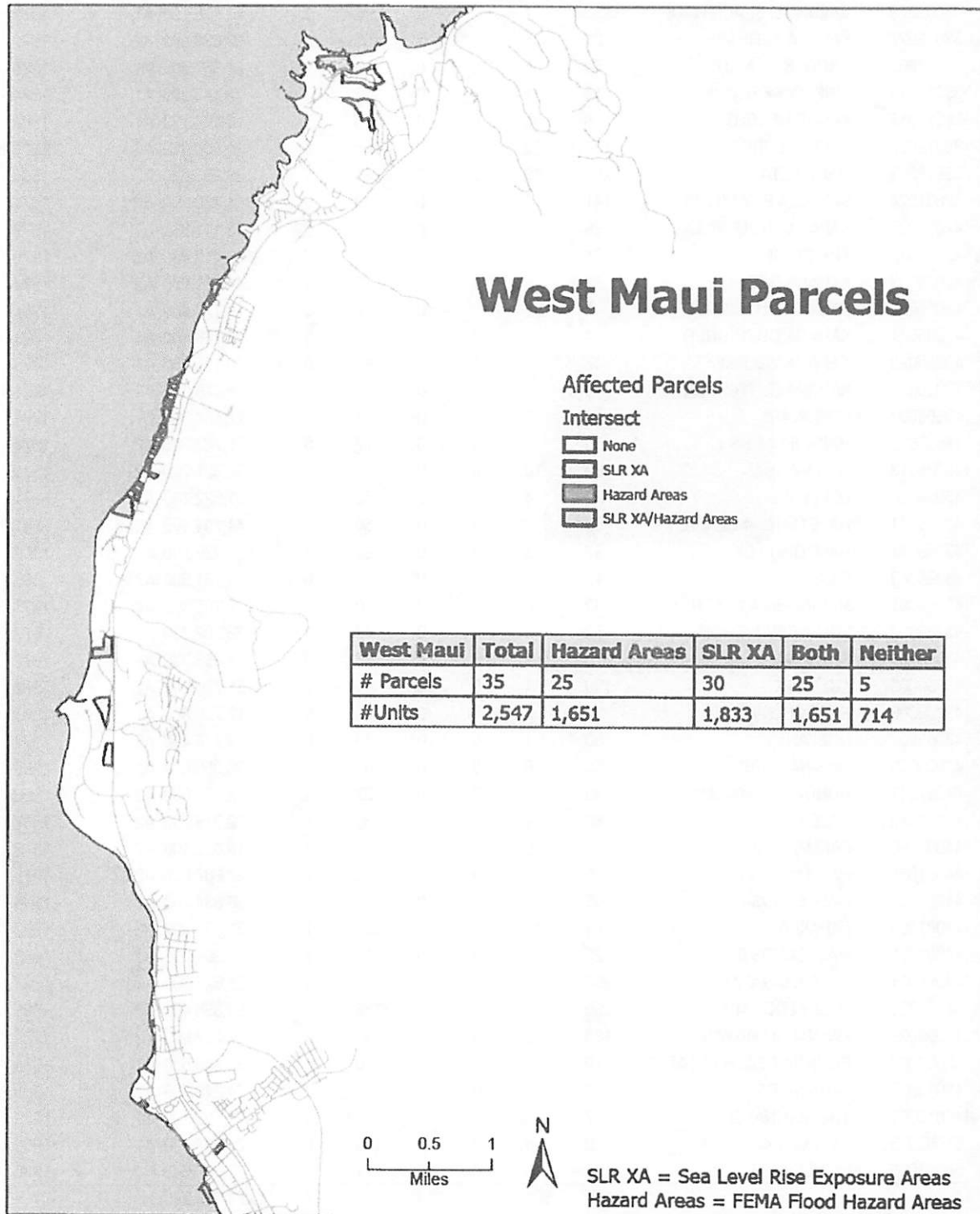
cc: Jacky Takakura, Deputy Director of Planning

Exhibit "A"

	MASTERTMK	condo	TOT	9	1	0	11	12	totval	ZONING	avgyr
1	14005040	HANA KAI-MAUI	19	0	0	0	19	0	9,918,500	A1	1974
2	21008060	WAILEA EKAHI II	92	1	0	0	90	1	119,048,600	A1	1976
3	21008064	WAILEA EKAHI I	100	0	0	0	100	0	109,349,300	A1	1976
4	21008065	WAILEA EKAHI III	104	3	0	0	101	0	105,487,200	A1	1976
5	21008077	WAILEA EKOLU	148	16	1	0	128	3	148,563,400	A1	1979
6	21008082	PALMS AT WAILEA I	150	5	0	0	145	0	137,884,200	A1	1990
7	21008104	GRND CHAMP VILLAS	188	14	1	0	169	4	152,824,300	A2	1989
8	26012050	KUAI PLAZA	30	2	0	0	27	1	11,484,600	A2	1973
9	38014001	MAKANI A KAI	24	1	0	0	23	0	14,582,000	A2	1974
10	38014002	HONO KAI	46	6	0	0	40	0	18,977,500	A2	1972
11	38014004	KANAI A NALU	79	5	0	0	74	0	31,693,200	A2	1977
12	38014011	MAALAEA BANYANS	78	8	0	0	69	1	40,281,700	A2	1978
13	38014015	ISLAND SANDS	83	9	0	0	70	4	49,603,200	A2	1975
14	38014016	LAULOA MAALAEA	47	6	0	0	41	0	35,148,000	A2	1979
15	38014021	MAALAEA KAI	79	12	0	0	64	3	51,506,100	A2	1974
16	38014022	MILOWAI-MAALAEA	42	8	0	0	34	0	16,313,400	A2	1977
17	39001002	MAUI SUNSET	225	18	0	45	160	2	142,113,900	A2	1974
18	39001006	LUANA KAI	113	8	0	0	103	2	72,431,900	A2	1979
19	39001057	WAIPIULANI	42	17	0	0	15	10	14,749,300	A2	1975
20	39001075	KAUHALE MAKAI	169	21	0	13	132	3	95,501,300	A2	1976
21	39001107	KIHEI BAY SURF	118	9	0	0	105	4	37,763,600	A1	1980
22	39001110	LEINAALA	24	3	0	0	21	0	14,652,800	A2	1975
23	39001134	KOA RESORT II	54	5	1	0	48	0	30,501,800	A1	1980
24	39001136	KIHEI RESORT	64	10	0	0	49	5	27,948,000	A1	1981
25	39001143	KIHEI BAY VISTA	60	2	0	0	56	2	26,330,100	A1	1989
26	39004004	KAMAOLE SANDS	440	11	0	0	427	2	278,302,400	A2	1983
27	39004081	MAUI HILL	140	4	0	75	61	0	91,578,400	A1	1981
28	39004082	MAUI KAMAOLE III	240	11	0	0	228	1	174,668,600	A1	1995
29	39004084	HALE KAMAOLE	188	10	0	0	178	0	108,213,700	A2	1974
30	39004097	HALEAKALA SHORES	76	16	0	0	59	1	48,825,100	A2	1974
31	39004098	MAUI PARKSHORE	64	5	0	0	58	1	42,437,200	A2	1974
32	39004139	KEAWAKAPU	18	2	0	0	14	2	8,402,000	A1	1976
33	39005017	LIHIKAI APTS	8	0	0	0	8	0	2,244,400	A1	1963
34	39005018	KIHEI COVE	6	2	0	0	4	0	2,593,500	A1	1980
35	39005021	HALE MAHALANI	6	2	0	0	4	0	1,887,700	A1	1976
36	39005023	KAMAOLE ONE	12	1	0	0	11	0	19,932,300	A1	1973
37	39005035	HALE ILILI	4	2	0	0	2	0	6,759,600	A1	1978
38	39005038	PUNAHOA BEACH APTS	15	0	0	0	15	0	11,599,300	A1	1970
39	39008003	HALE KAI O'KIHEI	59	1	0	0	58	0	38,667,300	A1	1969
40	39008011	KIHEI GARDEN ESTATES	84	9	0	0	75	0	39,699,400	A1	1979
41	39008031	KIHEI BEACHFRONT	4	0	0	0	4	0	3,784,400	A1	1980
42	39009005	KAPU TOWNHOUSE	2	0	0	0	2	0	3,139,300	A1	1991
43	39009010	WAIQHULI BCH DUPLEX	2	0	0	0	2	0	1,722,800	A1	1979

	MASTERTMK	condo	TOT	9	1	0	11	12	total	ZONING	avgpr
44	39009029	WAIHOLI BEACH HALE	52	1	0	0	50	1	31,730,000	A1	1979
45	39016027	KALAMA TERRACE	61	5	0	0	55	1	22,638,000	A2	1972
46	39017003	SHORES OF MAUI	50	5	0	0	44	1	26,361,700	A1	1975
47	39017010	KIHEI PARKSHORE	16	1	0	0	13	2	8,543,200	A1	1974
48	39017017	KANOE RESORT	18	9	0	0	8	1	6,088,100	A1	1982
49	39018002	PACIFIC SHORES	136	22	0	0	108	6	71,900,000	A2	1989
50	39018003	MAUI VISTA	280	13	0	0	261	6	129,999,500	A2	1980
51	42001024	KAPALUA BAY VILLAS	141	2	0	0	139	0	164,778,700	A2	1977
52	42001028	KAPALUA GOLF VILLAS	186	7	0	0	176	3	148,141,900	A2	1979
53	42001032	THE RIDGE	161	19	0	0	140	2	150,412,400	A2	1979
54	43005009	KAHANA REEF	88	8	0	0	79	1	44,561,000	A2	1974
55	43005020	KAHANA OUTRIGGER	8	0	0	0	8	0	8,128,000	A1	1981
56	43005021	KAHANA OUTRIGGER	4	0	0	0	4	0	3,766,400	A1	1981
57	43005029	KAHANA VILLAGE	42	0	0	0	42	0	40,195,000	A1	1978
58	43005031	KAHANA OUTRIGGER	4	0	0	0	4	0	4,416,500	A1	1981
59	43006007	NOHONANI	28	1	0	0	27	0	22,564,200	A1	1974
60	43006012	MAKANI SANDS	30	3	0	0	27	0	21,727,600	A2	1974
61	43006013	KALEIALOHA	67	10	0	0	51	6	30,821,200	A2	1973
62	43006016	LOKELANI	36	4	0	0	32	0	31,522,100	A2	1971
63	43006041	HALE MAHINA BEACH	53	3	0	0	50	0	44,104,500	A2	1981
64	43006044	HALE ONO LOA	67	3	0	0	64	0	33,338,200	A2	1969
65	43006063	PIKAKE	12	1	0	0	11	0	8,191,500	A2	1966
66	43008001	MAHINAHINA BEACH	32	10	0	0	18	4	27,185,800	A1	1979
67	43008002	POLYNESIAN SHORES	52	3	0	0	47	2	36,782,700	A1	1972
68	43008004	KULEANA	18	1	0	4	13	0	14,896,300	A1	1972
69	43008005	KULEANA	100	4	0	29	65	2	56,720,500	A1	1974
70	43008006	HOYOCHI NIKKO	17	0	0	0	17	0	12,725,800	A1	1973
71	43009002	NOELANI	50	1	0	0	49	0	39,778,400	A2	1974
72	43009005	MAHINA SURF	56	0	0	0	56	0	36,959,600	A1	1969
73	44001041	HONOKOWAI PALMS	30	4	0	0	23	3	9,491,500	A2	1965
74	44001042	HALE KAI I	40	4	0	0	35	1	22,319,300	A2	1967
75	44001050	PAKI MAUI III	28	0	0	1	26	1	19,836,400	A2	1978
76	44001051	PAKI MAUI I & II	80	11	0	5	63	1	37,807,800	A2	1975
77	44001052	MAUI SANDS I	56	5	0	0	50	1	36,834,100	A2	1966
78	44001055	PAPAKEA	364	10	0	34	319	1	251,939,200	A2	1977
79	44001071	MAUI SANDS II	20	2	0	0	17	1	7,307,000	A2	1969
80	44006011	HALE KAAHAPALI	258	5	0	0	253	0	155,626,700	A2	1967
81	44008021	MAUI ELDORADO	205	7	0	0	198	0	59,395,400	A2	1968
82	44008023	KAAHAPALI ROYAL	105	12	0	0	93	0	82,223,600	A2	1980
83	45004002	PUUNOA BEACH ESTATES	10	0	0	0	10	0	31,445,500	A1	1984
84	45013027	LAHAINA ROADS	42	5	0	0	35	2	24,248,700	A2	1969
85	46010002	THE SPINNAKER	57	15	0	0	38	4	20,130,700	A1	1979
86	51003013	KE NANI KAI	120	13	0	7	100	0	24,237,700	A1	1983
87	56004055	WAVECREST	126	10	0	0	114	2	22,085,500	A2	1975
88	Total:		6,952	504	3	213	6,125	107	4,483,023,200		





Exhibit "B"



South Maui Parcels

Affected Parcels

Intersect

-  None
-  SLR XA
-  Hazard Areas
-  SLR XA/Hazard Areas

South Maui	Total	Hazard Areas	SLR XA	Both	Neither
# Parcels	48	27	26	22	17
#Units	4,160	1,867	1,532	1,380	2,105

0 0.5 1
Miles

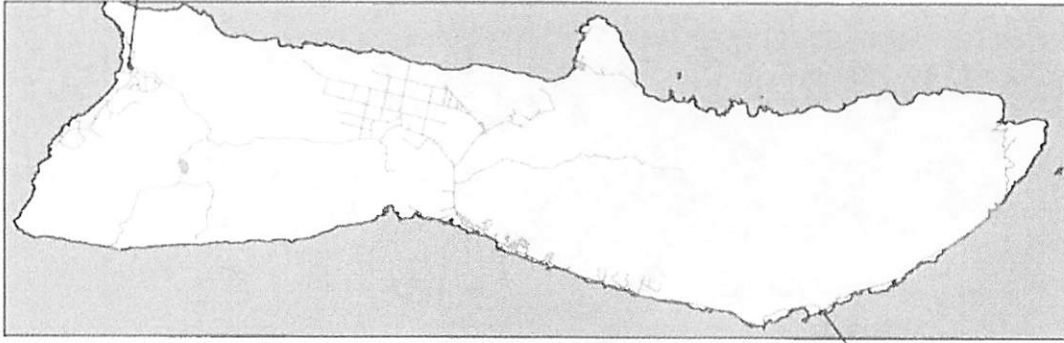


SLR XA = Sea Level Rise Exposure Areas
Hazard Areas = FEMA Flood Hazard Areas

Molokai Parcels



Molokai	Total	Hazard Areas	SLR XA	Both	Neither
# Parcels	2	1	1	1	1
#Units	246	126	126	126	120



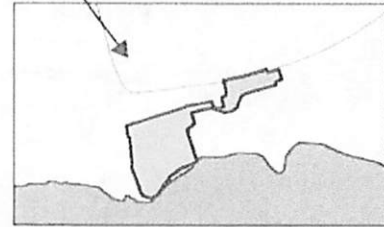
0 5 10
Miles



Affected Parcels

Intersect

- None
- SLR XA
- Hazard Areas
- SLR XA/Hazard Areas

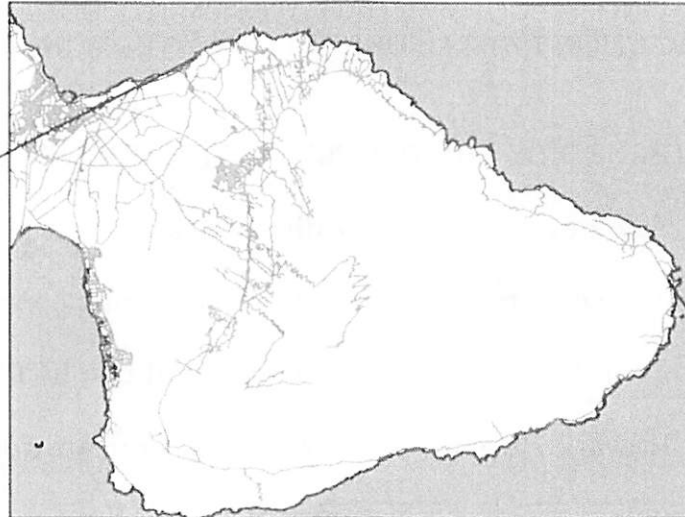


SLR XA = Sea Level Rise Exposure Areas
Hazard Areas = FEMA Flood Hazard Areas

County of Maui
Department of Finance
Real Property Assessment Division

Kuau

Kuau	Total	Hazard Areas	SLR XA	Both	Neither
# Parcels	1	1	0	0	0
#Units	30	30	0	0	0



Hana



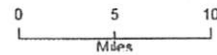
Affected Parcels

Intersect

- None
- SLR XA
- Hazard Areas
- SLR XA/Hazard Areas

Hana	Total	Hazard Areas	SLR XA	Both	Neither
# Parcels	1	1	0	0	0
#Units	19	19	0	0	0

SLR XA = Sea Level Rise Exposure Areas
Hazard Areas = FEMA Flood Hazard Areas



County of Maui
Department of Finance
Real Property Assessment Division

ORDINANCE NO. ____

BILL NO. ____ (2022)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.12, MAUI COUNTY CODE, RELATING TO CONVERTING APARTMENT BUILDINGS FROM TRANSIENT VACATION RENTAL USE TO LONG-TERM RESIDENTIAL USE

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

SECTION 1. The purpose of this Ordinance is to allow property owners of buildings located in the Apartment District to permanently convert property from transient vacation rental use to long-term residential use by filing a declaration with the State of Hawai'i Bureau of Conveyances and providing notice to the County.

SECTION 2. Chapter 19.12, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

"19.12.025 Conversion of real property from transient vacation rental use to residential use. The owners of property where transient vacation rental use is allowed under subsection 19.12.020(G) may opt to permanently discontinue such use upon filing a declaration with the State of Hawai'i bureau of conveyances in a form prescribed by the department in accordance with this section.

A. The declaration must be executed by 100 percent of the property owners and must apply to the entire parcel.

B. The declaration must state the owners will use the property for long-term residential use only.

C. The property owners must cause the declaration to be filed with the State of Hawai'i bureau of conveyances.

D. Recordation of the declaration constitutes a forfeiture on the part of the owners, and all successors and assigns, of any right to transient vacation rental use of the property.

E. A recorded copy of the declaration must be filed with the director by September 1 of any calendar year. Upon receipt, the director must review the declaration and determine whether it is complete within forty-five days.

F. The director must notify the department of finance, real property assessment division of the recordation of a declaration permanently converting property from transient vacation rental use to long-term residential use that is determined to be complete.

G. The director may enforce the failure to abide by the declaration as a violation of this title."

SECTION 3. New material is underscored. In printing this bill, the County Clerk need not include the underscoring.

SECTION 4. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel
County of Maui

But saying you worked on a component of the project, you know, many months ago or a year ago, and you don't have any current involvement and no anticipated future, that's probably far enough attenuated that it wouldn't rise to the level of a conflict. But I think you have some, just because of the nature of, of Pulama, and you know, Lanai being such a small community that does come up more frequently than it does on Maui or on Molokai. We can always talk it through too if anything comes up.

And this is in your planning commission rules, and talking about conflicts of interest. So if you have a conflict or a potential conflict, you make a full disclosure to the other members, especially the Code of Ethics talks about and your rules talks about financial interests that can be affected by the action that the Commission will take, that member is disqualified from voting.

And we kind of touched on this before, an employer employee relationship isn't automatically a disqualification. And it really depends on the circumstances and the Board of Ethics, unfortunately, sometimes the timing doesn't work out, ideally, but the Board of Ethics is available for advisory opinions. And if you seek an advisory opinion from the Board of Ethics and you act in accordance with that, you are obviously not considered to violate the Code of Ethics.

So if you know, if a complaint is filed and they think that you know, one of the members did have a violation, a conflict, but was silent on it and continue to participate and vote, you could possibly face a fine or be removed from the Commission. But I think one of the things you know is also an unfortunate ramification is that the Board's decisions can be called into question and voided, and nobody wants that.

So thank you for your, thanks for your attention. I'm sorry, I probably rambled on a little longer than I had hoped, but I really appreciate the questions that you had during --, it makes much more interesting, and I think for everybody when we talk about that. And I will follow up with that case I mentioned earlier. Thanks Chair.

Mr. Gima: All right. Thank you, Richelle. Commissioners, any questions or comments about what we covered in the last hour? All right, hearing none, let's take a five minute recess and then move on to the, tonight's public hearing. So be back in five.

(The Lanai Planning Commission recessed at 6:03 p.m. and reconvened at 6:09 p.m.)

C. PUBLIC HEARING (Action to be taken after public hearing.)

- 1. A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.12, MAUI COUNTY CODE, RELATING TO CONVERTING APARTMENT BUILDINGS FROM TRANSIENT VACATION RENTAL USE TO LONG-TERM RESIDENTIAL USE**

Ms. Michele Chouteau McLean, AICP, Planning Director, referring to the Maui, Molokai and Lanai Planning Commissions a proposed bill to amend Maui County Code Chapter 19.12 – Apartment Districts, to allow property owners of buildings located in the Apartment Districts to permanently convert property from transient vacation rental use to long-term residential use. (J. Takakura)

The entire text of the proposed bill for ordinance is available at <https://www.mauicounty.gov/DocumentCenter/View/134354/Bill-for-Ordinance-amending-Chapter-1912-relating-to-converting-vacation-rentals-to-long-term-use>

Mr. Gima: We have quorum on screen. At this time for a public hearing, we have a bill for an ordinance amending Chapter 19.12, Maui County Code, relating to converting apartment buildings from transient vacation rental use to long-term residential use. Michele McLean, Planning Director, referring to the Maui, Molokai, and Lanai Planning Commissions, a proposed bill to amend Maui County Code Chapter 19.12, Apartment Districts, to allow property owners of buildings located in the Apartment Districts to permanently convert property from transient vacation rental use to long-term residential use. So at this time, I will hand this over to, to Jacky.

Ms. Jacky Takakura: Okay, good evening Lanai Planning Commission. I don't have a power point presentation. This bill is pretty short, and it's related to the Apartment Zoning District, and that's Chapter 19.12 of the Maui County Code. And as Chair Gima mentioned it's to allow owners to convert from transient vacation rental use, or TVR use, to long-term residential use.

Just some background information. The Apartment District, the purpose and intent of the apartment district is to provide higher density housing options and occupancy on a long-term residential basis. However, Maui and on Molokai, there are apartment district properties with vacation rental use because they meet certain criteria. Basically, they were conducting the transit vacation rental use before it became prohibited.

The County Council proposed this bill to add a new section to Chapter 19.12 to establish criteria for property owners to voluntarily, voluntarily discontinue TVR use if 100 percent of the owners agree to execute a declaration which would be filed with the State Bureau of Conveyances. The declaration would state that the owners will use a property for long-term residential use only, and that they forfeit any right to TVR use. My understanding is that the benefit to the property owners would be the lower rate for real property taxes. The County Council did discuss bringing the percentage down to 67 percent instead of 100 percent of owners, but they decided to leave that up to the Planning Commissions.

The Planning Department, as I mentioned, if you read the memo report, we just have one proposed revision and that's, let's see, if you look at the memo report, it's on page two. And that's for the proposal to add this 19.12.025 (D) as in dog. The resolution from the Council

has that this wording about unless such use is then allowed in accordance with a valid permit. And to us that that's kind of contradictory because first you would prohibit it and then you would allow with a permit. So we proposed to remove that language, allowing the use with a permit, and just make it really clean. And the Finance Director agreed with that, and so we have that on there. And that's about it. I'm here to answer any questions, and I do know that on the island of Lanai, you do have some apartment zoning district properties. But as far as I know, I don't think they conduct vacation rental use because they don't meet the criteria of having their building permits before 1989 and so forth. At least as far as I know. So I don't believe that this bill affects any of the Lanai District Apartment District parcels. But I've been wrong before, so I allow myself to be stand corrected if I need to be. But that's it in a nutshell for this bill. I can answer any questions if you have.

What the Lanai Planning Commission can do is approve the proposed bill, approved the bill with amendments, deny, or defer action. Chair, I'll stop here and like I said, I can always answer any questions if you have them. Thank you.

Mr. Gima: Okay, thank you, Jacky. So before we, the Commissioners' comments or ask any questions, I will now open it for public testimony. Leilani, do we have anyone wishing to testify on this agenda item?

Ms. Ramoran-Quemado: Thank you, Chair. There is no one who signed up on BlueJeans and there is no one in the Planning Conference Room wanting to testify.

Mr. Gima: Okay, thank you. Roxanne, how's about anybody in the Lanai Office?

Ms. Roxanne Morita: Nobody here.

Mr. Gima: Okay, thank you, Roxanne. At this time, I will close public testimony and now open it up for Commissioners' questions, comments for Jacky. Go ahead, Lisa.

Ms. Grove: Thank you. Jacky, I'm sorry, there's some things that I was having a hard time tracking, and so I apologize if these are kind of pedestrian questions. But it said that in the, in the memo from the Director of Finance, a couple of things on, one is that this would increase the proliferation of second home owners. And when I read it, I was like, oh yeah, we're going to provide more apartment rentals to the, you know, full-time residents and kama'aina. And I'm just curious, like, how does this increase the second homeowners or is that is that something to be concerned about? I mean, does it still make the rentals for the people who live on Maui and Molokai more difficult?

Ms. Takakura: Commissioner Grove, my understanding with the second homes issue would be that property owners who did conduct vacation rental use would let their unit sit empty because they do use it occasionally. And so instead of vacation renting it out when they're not there, it would just sit empty. That's my understanding in terms of the second homes.

Ms. Grove: Thank you. That, earlier in that that document it says the bill has the potential to reduce real property tax revenues by over \$18 million. Has the potential has me a little worried because that's not obviously a fixed number, but that \$18 million in reduction in property tax revenues. Can you talk a little bit about that? That's a chunk of change.

Ms. Takakura: So Commissioner Grove that would probably be like an, an extreme example if all of the 87 projects switched over.

Ms. Grove: And, and because they get it, the taxes that they pay on it are just at a different rate?

Ms. Takakura: That is correct because --

Ms. Grove: Okay.

Ms. Takakura: -- the short-term rental rate is the highest of all the real property tax classes.

Ms. Grove: Okay. And then before, as before I got to the, the, later in the report, I was concerned a little bit about that 100 percent number instead of the sixty-seven. I just get worried that's hard to get anybody, 100 percent of anybody, to agree on anything. Is there -- ? Can you --? How come the decision was made to keep it at a 100 and not at 67, and is anybody else recommending that maybe that number be lowered?

Ms. Takakura: Commissioner Grove, thank you. That's a really good question. So I was listening to the discussion at the Council. I believe it was the PSLU Committee, Planning and Sustainable Land Use Committee meeting. And yes, some testifiers did say exactly what you said, that it's, it's very difficult to get the 100 percent. And so that's why that suggestion of the two-thirds, the 67 percent came up because I think that's consistent with, I guess, how, how maybe HOAs or CCRs can be changed. But yeah, that was the conversation at PSLU. So I was actually myself a little bit surprised that they kept the 100 because of the testimony received that the 67 percent would be more realistic. But I guess, yeah, they just wanted to get your folks' thoughts on that.

Ms. Grove: Okay, thank you. And then my last question is just what's the incentive for an apartment owner to, to move to this long-term residential situation?

Ms. Takakura: So, Commissioner Grove, I do, I can, I know of one example in Kapalua where, it's Kapalua Ironwoods where they all have agreed that they are going to be long-term rental and not do any vacation rental. And I believe it's their tax class because they have this agreement that's on file with RPA and that allows them to have a better tax class. That's my understanding of what the benefit is.

Ms. Grove: To switching over?

Ms. Takakura: Yes.

Ms. Grove: Okay.

Ms. Takakura: And it's just easier to . . . (inaudible) . . .

Ms. Grove: So . . . (inaudible) . . .

Ms. Takakura: I'm sorry.

Ms. Grove: It would be -- I'm sorry -- in their best interest to they get a tax benefit to switch to a long-term residential. Okay, thank you. That's, that's all I had. I'm sorry, one last question, which is could they just do this now without this Charter? Do they need the Charter to get it done because it's a voluntary thing here, right? So I'm just kind of wondering why this exists if they can, and it's a voluntary program, what was the sort of inception?

Ms. Takakura: So Commissioner Grove that's a really good point, too, because like I mentioned, Kapalua Ironwoods has chosen to do this, but I think they would like to encourage other properties to do this because, you know, that one, there might be like one or two others, but I don't know. I don't, I don't think this is very common. So if they can kind of encourage other property owners to do the same, then you know, maybe might, more might want to. And I have gotten calls from various unit owners here and there that have asked about this. But you know, they would have to talk to the rest of their, you know, to make the change. So I know there is some general interest, but we'll see if it does cause more to become long-term rentals.

Ms. Grove: Great. Thank you.

Mr. Gima: Any other Commissioners have questions, comments about this bill or proposed bill? Zane, go ahead.

Mr. de la Cruz: I, um, I guess they're, yeah, like looking at the change over from the short-term rentals to long-term rentals, I think, was pulling from some of the attached documents where there was some concern about, like, I think we had discussed this previously is, well, about like an LLC purchasing the unit and using it as a de facto timeshare. And so is there -- and therefore like allowing like a timeshare, essentially effectively a timeshare unit outside of the resort areas. Was I reading that right? Is that the concern that was brought up? I think it was a financial director in his report, or their report.

Ms. Takakura: Chair Gima, may I try to answer that one?

Mr. Gima: Yes, please.

Ms. Takakura: Okay. So I don't know if you remember, but maybe a month or two, maybe, maybe more than two months ago, we did propose a bill to include in the definition of transient those LLC type operations so that they would be subject to that same 180 days rule to try to eliminate that type of, you know, these corporations buying a house and then, you know, selling partial memberships. So with that bill, which has not been passed by County Council yet, but I did transmit it already, so it's with the County Council, those LLCs would be treated just like anybody who owns a property, and they would have to follow those 180 days. And anything less would be subject to the vacation rental rules. You know, they'd have to have -- it have to be like in a hotel zoning district or a place where they can do that use. So that's kind of an attempt to put them on a level playing field with any other property owner. But this, you know, if it's in the Apartment Zoning District and, you know, they can get enough votes --. Well, if this changes to 67 percent or something else, then they would have to follow the rules, you know, just like all the rest of the unit owners. Not sure if that helps answer your question.

Mr. de la Cruz: I guess it's, it's, there is --. Since that other bill hasn't been passed yet, there is potential for this to be opened up as a kind of like de facto timeshare, like these units? Like that loophole exists because that other bill hasn't passed yet.

Ms. Takakura: Yeah, I think so. The, the potential is there, yes. Yes.

Mr. de la Cruz: I think -- I'm not sure if this is really a question or something. I just kind of want to get out to the rest of the Commission. Like with that bill we were looking at, not sure if was last month or two months ago, that was looking at reducing and capping short-term rentals and all the other zones, like one of the, at least for me, one of the takeaways of that meeting was that people coming to visit or looking for, I guess, a more diversified stay option than just hotels. And, you know, with this stuff going purely into long-term rentals, like how is that going to affect like short, short-term stay? Because we're potentially removing hundreds of units from short-term rental. I'm not saying that's good or bad in either direction, but I think there are definitely consequences there if we don't think about that.

Ms. Takakura: So Commissioner de la Cruz, you know, the apartment buildings that can conduct the rental, vacation rental use, those are going to be a lot of the older properties, like in Kihei or Lahaina that were built or got their permits before 1989. And so those are the condos. So I guess that this bill could have the potential to remove some of that type of lodging from the pool. Yeah, it's mainly those older apartment district properties that we're conducting the use, you know, from the 80s or so. There's a lot of them in Kihei. I mean, they're all over. There's one in Paia, you know, . . . (inaudible) . . . But yeah, it's a lot of the older properties. So that's the kind of vacation rental option that this could impact if the owners want it. And what I'm thinking is the properties that would want it would be the ones that are still very high, long, you know, long-term residential use. Because if the property is already, you know, real high, vacation rentals, there's not going to be the motivation to convert to long-term.

Ms. Trevion: Hi, this is Chelsea. I would like to ask a question.

Mr. Gima: Yes. Go ahead Chelsea.

Ms. Trevino: Okay, so I guess I didn't realize when I was reading it until you made the comment, Jacky, earlier, the context of the 67 percent versus the 100 percent. So I think what you were saying is if 67 -- if we went with the 67 percent -- if a building had 67 percent or a little bit more than who wanted to transition to the long-term, it would, it would force the whole building. Is that correct? Versus -- so there could possibly be some apartment owners who maybe were reluctant to or didn't want to that would have to. Correct? So maybe that's why they opted with the 100 percent.

Ms. Takakura: Yes. If you're -- if the Lanai Planning Commission recommended changing the number from 100 to 67 percent, then you're correct. I guess, you know, it would just be, yeah, that 67 percent of property owners voting and then the 33 percent who were not in support would be obligated to follow along. Yeah.

Mr. Gima: Go ahead Zane.

Mr. de la Cruz: Yes. A clarification for me. So these apartment districts that have short-term rentals as an allowed use, the long-term rentals also an allowed use, but what we believe the incentive is, is that if the disallowed short-term rental use, then their tax liabilities are lowered? Is that kind of the incentive?

Ms. Takakura: Yes. And just FYI, I do have a list on our Planning Department's homepage, it's under, it's the last of the hot topics, and it's the list of the different properties. And there's, you know, there's Wailea, Maalaea, Kihei, Lower Honoapiilani Road. And then just two in the Island of Molokai. So if you're interested that I do have that list posted on our website...of, of properties that can have vacation rentals in the Apartment District.

Mr. Gima: Chelsea, Zane, you guys . . . (inaudible) . . . ? Nikki, Erin, Lisa, Sally?

Ms. Kaye: Yeah, I have a follow up question. I had the, I had the same question that Chelsea did, and I guess from a legal perspective, if I'm the 37 percent who don't want to do this, how are, how are is it going to be anticipated that you avoid a huge amount of litigation over this?

Ms. Takakura: I think that's a great question for Corporation Counsel.

Ms. Thomson: Hi there. Can everyone hear me? Okay good. I think that that's definitely one of the concerns that that we had too. You know, not necessarily that the County would be drawn into a lawsuit, but that it would generate a lot of litigation, you know, in these older condo complexes. One of the options that hasn't been discussed and I know both the property tax division and also, I believe, Planning, are not necessarily in favor of this, is unit by unit, where units can opt out. So legally, that's an option. I know that just from record keeping and trying to keep track of, you know, if you have one building that's, you know, some are still going with the short-term option that they have currently and others opt out, you know. But,

but, it is also a way of achieving that goal of systematically trying to convert to weeding out this short-term exemption, or exception that certain condos have. But yeah, you're, you're completely right, Commissioner Kaye.

Ms. Kaye: Okay, so I'm going to assume the impetus for this is to try to provide more opportunity for residence to have long-term rental opportunities. I don't --. I think Richelle is right. I think it either has to be 100 percent or unit by unit. I think 67 is a recipe for endless litigation. And yeah, maybe the County won't get pulled into it, but nothing going to get resolved until the litigation is. So I would think we'd have to think about which of those options might better achieve the goal here.

Mr. Gima: Go ahead Zane.

Mr. de la Cruz: Um yeah, like, I, I agree with what was just said. Is there --. Like does it have to be a one or the other? Can it be, you know, like, say, a building and for the sake of math, there's a 100 unit in it. Um, and you know, they can't get the 100 percent that's, you know, the extreme end, but they can get the 67 percent. Could that be like a trigger that would allow them do a unit by unit so that way you can try to keep the record keeping paperwork as manageable as possible. But, um, sometimes it's just not going to happen. Like if they can get the 100 percent, great, easy, or relatively easy. But if they can't get the 100 percent, then maybe that trigger is a unit by unit thing.

Ms. Takakura: Chair Gima, just to address that, you know, in the Department's recommendation, we didn't really go down that path about discussing the percentage, so I think the Lanai Planning Commission could make any recommendation they thought was, you know, made sense to the Commission. You know, I, yeah, I think it's up to you folks because you have some really good issues here to bring up.

Ms. Trevino: I don't --. This is Chelsea. I just wanted to ask about now this is the Exhibit A and B which is part of the, the Director of Finance's response. I'm just looking at I'm assuming it's showing us, you know, the, the condo and then it's giving us the total, it sounds, it looks like total apartment, I don't know. And then there's several columns, and some have, they have numbers in them. And then when you add them all together they equal the total. Do you have any idea what the nine, one, zero, 11 and 12 are? Because maybe that helps us understand which ones are being used for short-term or I don't know.

Ms. Takakura: Commissioner Trevino, yes, that, those are those classes of real property tax class. And I do have it on another spreadsheet so I can look for it real quick. But yeah, that's, those are the real property tax codes from RPA. So I can tell you what those are in just a moment. Let's see here.

Ms. Trevino: Because number 11 seems to be very high, so I don't know what that is.

Ms. Takakura: I just need a minute. I have it somewhere else in a different spreadsheet than they've given me. Okay, so one is non-owner occupied in a residential, so that would be like rentals. I don't know if they have a two. Is there --? So one is non owner occupied residential. And then nine is owner occupied homeowner. So nine is the ones where you actually have long-term rentals. So one is non owner. And I don't have the codes for 11 and 12. So those are very good questions. I will have to ask RPA what the zero, and the 11, and the 12 is. The 11, it could be short-term rental tax class, STR. I just don't have that. Just looking at how high the number is for 11. So I can get that information. Sorry about that.

Ms. Trevino: And then just to make sure I understand correctly. The whole, the way it is right now, the whole building is short-term or there are some short-term and some long-term currently like.

Ms. Takakura: Some of these, like, for example, I'm looking at Exhibit A, Wailea Ekahi, which is the third one where it's got 100, under 11, that's probably all, all units are probably short-term rental.

Ms. Trevino: Yeah, but I guess what --? I'm, well, what I'm trying to ask is -- I'm sorry because, because somebody can have a short-term lease but still rent long-term. Like, I think what I'm trying to figure out is these people who are renting long-term, are they renting from short-term rental people which might increase their rent? I'm just trying to figure out, like, the play of this thing because I mean, to be honest, to look at these numbers, how would somebody get the whole building to turn it over if, if they're all, you know. So I just kind of just trying to understand who, who it would benefit or what would be the benefit of it and, and, who maybe it may cause more challenges for. And in that context, I'm, you know, I'm generally for something that contributes to a little bit more ease on a full-time resident, right? I mean, that's just me personally, so that's why I'm asking that. Because I wasn't sure if the whole building, then, is short-term, or you can have some that aren't because the earlier suggestion was, well, maybe we could do unit by unit.

Ms. Takakura: So Commissioner Trevino, so real property tax, which is where this spreadsheet, the attachment is from, is going to know which units are short-term rentals and which are, you know, have homeowner exemptions and so forth. And it does seem like the vast majority are mostly, you know, some sort of short-term rental tax class. Whereas for what we look at in Planning Department, we look at the entire property because as we've said before, unit by unit is really hard to for us to manage and it can create a sense of unfairness, you know, like why can one do it, and then next door, they can't and so forth when, when, you know, as far as the structure is concerned, they are basically the same. So, yeah, that's the main difference is. RPA knows the details. But yeah, for Planning, we don't keep track of that. And just looking at some of these numbers, yeah, it might be hard for some of them to get even 67 percent. It might just be a small majority that might try to take advantage of this bill.

Mr. Gima: So Jacky, from a planner's perspective, from a planning's perspective, there seems to be a lot missing in this bill. I mean, or I should say, as written, does the bill meet the goals of what a planner or the Planning Department is striving for?

Ms. Takakura: Um, it might encourage some properties to switch, but like I said, you know, just looking at some of these numbers on how high the numbers of vacation rental units are on these properties, it may not have a lot of impact overall.

Mr. Gima: I mean, is the goal -- I'm looking at the letter -- is the goal to phase out transient accommodations or is the goal to increase affordable housing, long-term affordable housing opportunities?

Ms. Takakura: Well, in the, that's a very good question, Chair Gima. It actually has both. In, in the Planning and Sustainable Land Use Committee report, you know, the purpose of the bill is to create long-term affordable housing opportunities by phasing out transient accommodations. By doing it on a voluntary basis, then you know, you eliminate that takings claim, I guess.

Ms. Kaye: Okay, can I, can I have a follow up question for you, Jacky, and possibly Richelle? Why couldn't those units who individually want to do this, just do it? And then the ones that are remaining, I don't know how you could force them to do it without doing litigation. So I'm not sure why there's even a percentage at all. Yeah, I think the unit by unit, if it's, if it's attractive enough to do it, I understand the tax, the tax ramifications of, okay, it's going to sit empty and people won't be spending money in the, in the community. But if those are the two goals, it seems to me that you've got to give as much leeway as possible to the property owners or you're going to be in Court forever.

Ms. Takakura: Chair Gima, if I may? I don't know how to answer that, but I'm going to write that down as a big concern by the Lanai Planning Commission, if that's okay. I'm not sure if Richelle has any comments on that.

Ms. Thomson: I agree with that. I think that the having the percentage would make this probably just less useful. I think if you're, you know, if they're able to get 67 --. What, I mean, where that comes from is from as Jacky said, the condominium law and it's generally, it's not set across the board, but it's generally the amount of the percentage of the, the owners that would have to vote to change the, the bylaws. And you know, the, the trouble, though, the trouble is that these units because they have they've been grandfathered in and is allowed short-term use, I think that that's also one of the things that makes them more sellable and saleable when people do want to sell. So I'm not quite sure that the 67 would work for a practical sense. And then I also think that those holdout owners, if they are really committed to wanting to maintain that property value, it comes with short-term rental, I think they would be willing to invest in litigating.

Mr. Gima: So Jacky, going back to my earlier question, I mean, if the goal is long-term affordable housing opportunities by getting rid of transient accommodations, why is it limited to only the apartment districts?

Ms. Takakura: Chair Gima, I believe it's because the specific purpose of Apartment District is, is that, you know, long-term residential use at a higher density. Whereas other zoning districts that have vacation rentals, you know, might have more commercial type uses, you know, like B2 or, you know, Business Zoning Districts, or BCT, Business Country Town. Or, you know, short-term rental homes and B&Bs are a whole another subject because they're single-family dwellings. But I guess because apartment district, you know, the intent, like I mentioned, is supposed to be for housing. Not sure if that's a very good answer, but this is one of those complicated zoning districts.

Mr. Gima: So in, so in Director Teruya's submittal he identifies 6,954 units in 87 reserved condominium project. Those that 6,954, is that the bulk of the transient vacation accommodations? I mean, what percentage is that of the total on the island of, or in the County?

Ms. Takakura: So Chair Gima, based on some 2021 data I had, you know, they're from real property, they, they, they had a little bit over 24,000. So if we take, let's round this to 7,000. Where's my calculator? Seven thousand divided by twenty four five hundred, so 28 percent. But you've got to remember that that 24,000 from RPA is a mix of hotel units and short-term rental homes and parcels, and so it's kind of a mix of units versus parcels. And so this 28 percent is a very rough estimate.

Mr. Gima: Okay, thank you. Someone else had a question?

Ms. Grove: I did. I just said one question of the planning experts. Just in your opinion, how effective do you think this is going to be in transitioning these units to long-term residential? I mean, it's voluntary. I hear and agree with Commissioner Kaye on the litigation issue. Um, I'm just wondering -- . Like and I guess my second question is are, are there concerns about unintended consequences? Because I will tell you, it doesn't look like this is going to be terribly effective. And I get the 100 percent; I'm now totally on board. But like you can, it's saying, the County saying, well, you can voluntarily do this. These people have no real financial incentive to do it. Probably many of them don't live on island or even in Hawaii, so they don't have, they don't feel the pull every day of the housing crisis that the people of Maui are feeling. So there's no kind of emotional righteous reason for them to do this. And then we're left with this thing that and I guess the question is what, how do the risk and rewards work in your mind and what kind of damage could we be getting ourselves into if we pass this?

Ms. Takakura: Thank you, Commissioner Grove. That's a very good question. I personally, based on the phone calls I get regarding properties, I don't know that it's going to make a big difference. It might affect a few properties here and there, but I think the pressure to vacation rent is so strong. You know, I get calls from real, real estate agents all the time about, you

know, being able to conduct vacation rental use. And then they want that answer right now because they have a sale. Maybe not so much lately, but you know, there's so much pressure because the potential to make money is there. And I feel my heart goes out to the few long-term tenants of these properties because, you know, the vacation renters, you know, they're going to play at the pool and make as much noise as they want at 11 p.m. because they're on vacation and they don't care. And like you said, the property owners are not here. And so my heart goes out to those people who are trying to live in these properties. But it's, it's always going to be a challenge against this, this pressure to profit off of these, these properties. And, yeah, I don't know, it's so difficult. I'm not sure. But you know, this might help a few properties if, if, if the ones, unit owners who want to do this can convince the rest of their group. I know it's hard once, once a transient vacation rental unit owner or when those owners get onto the board, then forget it, it's not going to happen. The board has to be made up of the long-term renters or people who live there. So that's just what I see based on the calls I get. I don't know.

Ms. Grove: Thank you. And it just seemed like from your Kapalua example that they can. If there is the will, they found the way, and they didn't need this to get it done. And so I'm just, I'm a little worried about just another layer of something that could have some unintended consequence or create some pain to the people living on Maui and Molokai.

Mr. Gima: Jacky, I have two questions. One, when did the 120-day time limit start and the second one was the need for long-term affordable housing has been around for, for years. Did anything happen that prompted Council to introduce this bill?

Ms. Takakura: Okay, Chair Gima, so the first question about the 120-days. We actually have not had the last public hearing yet. That one is going to be the Moloka'i Planning Commission, which is next Wednesday, the 28th. So the clock has not really started ticking until the 28th of this month. So it would be four months after. So I guess September, October, November, December, I guess January, end of January or so.

And then what triggered this? I think, you know, the Planning and Sustainable Land Use Committee has been trying various ways to try to increase long-term residential use in Apartment District and prior attempts, I think, got kind of close to becoming takings. And this latest bill is by making it voluntary, it takes away that that threat of takings claims. Just on my, what I've been observing from the Planning and Sustainable Land Use Committee.

Mr. Gima: Okay, thank you. Commissioners, any other questions, suggestions, recommendations? Zane, go ahead.

Mr. de la Cruz: Just referring back to Exhibit-A again, with those different numbers representing different tax codes. So is this saying that, you know, some of these units there are owner occupants. With this breakdown, does that mean that --? So are the owner occupants paying for short-term rental tax or are they paying owner occupant tax?

Ms. Takakura: Um, so Commissioner de la Cruz, they would be owner occupied homeowner tax class. So yeah, they would have the, they must have submitted their, you know, proof that so they could be that, they could get that homeowner exemption. That would be number nine, column nine, the first one is the homeowner owner occupied slash homeowner. And then number one, non nonowner occupied residential, that might be that that long-term residential rate, but I'm not sure. Sorry, I interrupted you.

Mr. de la Cruz: No, that's fine. Um, I forgot -- yeah, the thought slipped my mind. Sorry, I remember now. When -- so with, so when this building with, you know, we'll say the majority of them were short-term rentals, taxed as short-term rentals, and these other ones that are taxed as owner occupied, is that permanently owner occupied or is that still like if someone else purchased the unit, then they could go back into short-term rental? Is that, is that true? Am I reading that correctly?

Ms. Takakura: Commissioner de la Cruz, my understanding, yes. If, say, a unit is sold, I would imagine the new owner would have to file all that information and then check off which box for which tax class they're going to be claiming as far as real property tax goes. As far as zoning goes, the entire property can do vacation rentals so, you know, they can switch. And even like if that owner isn't changing, but they want to change the use like they're going to move out and then change it to short-term rental, they can. They just got to --. We do work with real property because like if we see ads, you know, we do let them know, hey, we're seeing ads, they need to be taxed at the right tax class. But I do believe that when, you know, they're supposed to go to RPA and file the correct tax class when they change the use.

Ms. Grove: And just to follow up with that, this doesn't change that, right? The building is grandfathered in because of the age of the building and no matter what happens, someone who has a long-term lease can switch it over because of the date of the building or when the, when the law was passed or whatever.

Ms. Takakura: Commissioner Grove, I believe if this were to pass and 100 percent of the unit owners voted on it, then they would become ineligible to vacation rent and I would remove them from that STR list.

Ms. Grove: So they could still do that now, right? I mean, is there any --? There's, there's nothing in this that says if you're a long-term rent, you know, if you're a long-term resident and you sell, there's nothing to stop that, that new buyer from turning it into a short-term rental in that in this language, correct? Thank you.

Ms. Takakura: In the current Code, there's nothing stopping property owners. Yes.

Ms. Grove: In this, this this proposed -- sorry for interrupting -- this proposed amendment doesn't do anything, either, yeah?

Ms. Takakura: Well, I think if they, if they file that, with, with the Bureau of Conveyances that they're forfeiting the right, then I guess they wouldn't be able to ever convert to or change their tax class to short-term rental.

Ms. Grove: Okay, so 100 percent of the people in, in a unit and then somebody sells that person who can't come in and switch it, right? So that's going to be a reason to go for it.

Ms. Takakura: Correct.

Ms. Grove: Okay, thank you.

Mr. Gima: I miss . . . (inaudible) . . .

Ms. Trevino: . . . (inaudible) . . . Sorry.

Mr. Gima: Go ahead, Chelsea.

Ms. Trevino: No, I just was going to say so we could look at this in a long, with the vision of long-term in the context of these are the numbers we're seeing now, this is how it's being used now. But if in the future more, more long-term start or more owners, you know, decide they don't want to do the short-term anymore, then conceivably little by little you might have buildings switching over here and there, and then that would just keep them from ever going back to short-term rental, right? Because man, these are some old buildings.

Ms. Takakura: Commissioner Trevino, you're absolutely correct. Yes.

Mr. Gima: So Jacky, I misunderstood. So all of these buildings were built or got the designations before 1989, and the entire building was giving carte blanche short-term rental opportunities. I mean, everyone, all the units in the building are short-term accommodations.

Ms. Takakura: Chair Gima --

Mr. Gima: So they didn't have --. So they do --.

Ms. Takakura: Sorry to interrupt.

Mr. Gima: So did they have, so did the individual units have to apply to the County for short-term rental designation or just, just because that they were part of this building it's automatic that they get it?

Ms. Takakura: Chair Gima, um, I think what happened recently was real property switched all of their tax classes the highest and best use. And then ones who can prove that they're long-term or homeowner occupied had to go in and tell them, oh, this is my correct tax class.

Ms. Trevino: This is Chelsea. I have another question. So in regards to that bill we were talking about previously, that one was, if I understood correctly, right, what was being suggested was capping out short-term rental and hotels and everything where they're at, yeah? No, no decrease. And so if that took place, like if that passed, then assuming we hit the cap, then then people would even if it was zoned for a short-term, you know, you, it could be short-term use. If we had hit the cap, they would not be able to change, correct?

Ms. Takakura: Commissioner Trevino, so if for Apartment Zoning District, the proposal in the moratorium is, is correct that no new ones, the number can't change. But actually in Apartment District, there's already is a cap because you have to meet all this criteria, including having your building permit by 1989. So there really can't be any new ones right now anyway. I guess what this bill is, is to try to, you know, get it to drop. Not, not stay steady at a cap, but actually to decrease.

Ms. Trevino: I'm going to just throw it out there that I feel like we possibly should pass it because I don't see the harm that it's going to do to anyone currently who, who, who lives and owns. If anything, it will at least contribute to possibly at some point moving forward more buildings turning into long-term and being allocated that forever, like not being able to go back. So I can, I can I make a motion or --?

Mr. Gima: Sure. Hold, hold on one second. Jacky, given the points that some of the Commissioners brought tonight, is the Planning Department still recommending that this bill be approved?

Ms. Takakura: Chair Gima, yes. It's consistent with the purpose and intent of the Apartment District, so yes. Just with that one revision about allowing the use with a valid permit. Yeah, it's okay.

Mr. Gima: Okay. Go ahead, Chelsea.

Ms. Trevino: So I would say I'm motion to accept with the, what is that thing called, the suggestion, recommendation for the valid permit as an option. I don't know how to word it.

Ms. Kaye: Can I ask just a point of clarification? Chelsea, does your motion include the 100 percent?

Ms. Trevino: Yeah, that's what it's at right now, right? It's at 100 percent.

Ms. Kaye: Okay.

Ms. Trevino: Yeah.

Ms. Takakura: So Chair Gima, if I can clarify that, yes. We're not proposing any changes to that percentage. The 100 percent is what we're in agreement with that. But you folks can change if you want to, but yeah, we're not proposing any changes to that.

Mr. Gima: Okay, was there a second?

Ms. Grove: Yeah. Grove second.

Mr. Gima: Okay. It's been moved by Commissioner Trevino, seconded by Commissioner Grove that we approve the proposed ordinance to allow properties to convert to long-term residential use, and as amended by the Planning Department in Section 19.12.025 (D) where there's a strikeout. Okay, any discussion?

Ms. Kaye: Yeah, I'm sorry. I want, I want to just clarify. I think that's fine. But my question to Jacky and Richelle is if I'm a homeowner and I want to opt out of a short-term opportunity and I want to do this conveyance, I mean, recommendation with the Bureau conveyances and give up my right, can I do that under this as an independent owner or do I have to wait for 100 percent of my building to agree to it?

Ms. Thomson: Good question. Right now, you'd have to wait until 100 percent of the building to also locked in. So you can't do it individually.

Ms. Kaye: Okay. But, but, you could, if I'm the owner and I want it, I could change my tax classification and get the benefit that this bill would allow me, I'm just not hindering a future use of the, of the property by making the recommendation that a future owner would be saddled with. Is that right? So I could do it. I just won't have -- well, I don't know what the benefit would be, except that you would be in perpetuity saddling the property with that designation, which is not a bad thing. But is that right?

Ms. Thomson: Yes, that's correct. So the way that you could change your tax class would be either, you know, as a homeowner to file a home exemption application or long-term rental. And those two are still opportunities regardless of the situation that we're talking about with these 80-plus condos.

Mr. Gima: Okay, anything else, Sally, or does the, does the motion need to reflect that or is it assumed?

Ms. Kaye: No, I'm, I'm just making sure there's no downside for an individual who's either wanting to go long-term or already has. The only option for the one who already has that long-term designation is to make it permanent. And, and I'm guessing that's not possible under this bill. But I'm not sure what the benefits of that property owner would be. So if I've got that right, then then, yeah. No, I think I understand where we're going.

Mr. Gima: Okay, Commissioners, any, any comments or questions with what Sally brought up and that was clarified by Richelle? Okay, if there's no further questions, all in favor of the motion raise your hands? One, two three, four, five. Okay. All opposed? Any abstentions? Okay, so with five ayes, motion passes. All right. Thank you.

It was moved by Ms. Chelsea Trevino, seconded by Ms. Elisabeth Grove, then

VOTED: To recommend approval of the proposed ordinance, as amended by the Planning Department, to the County Council.

(Assenting: N. Alboro, Z. de la Cruz (abstain), E. Atacador, E. Grove, S. Kaye, C. Trevino)
(Excused: S. Menze, S. Preza)

Ms. Takakura: Thank you.

Mr. Gima: All right. Moving on. Yes?

Ms. Kaye: I'm sorry, Chair, did we lose quorum? I mean, did we lose some people here? You said only five. We had more than five.

Mr. Gima: Five voted. Yes, five voted in the affirmative. No one voted against the bill, and one abstention.

Ms. Kaye: Oh, who was that?

Mr. Gima: Zane.

Ms. Kaye: Okay. All right. I'm just -- I thought we needed that for the record.

D. DIRECTOR'S REPORT

1. Open Lanai Applications Report as distributed by the Planning Department with the September 21, 2022 agenda.

Mr. Gima: Okay, let's move on to the Director's Report.

Ms. Cua: Good evening Chair, members. A couple of things. First of all, we have the open Lanai applications report, and I do have one update on the third item, the fleet yard repair and maintenance buildings, the Country Town Business District Approval. That was, that was actually approved on September 13th. Other than that, everything else is still in process. You just completed, at your last meeting, your review of the Koele Project District items. The Department is waiting for the minutes to be prepared so that we can send the ordinances up to the County Council on those. And the other two items are still in process by staff. Any questions?

1 DIRECTOR MCLEAN: Commissioner Hipolito?

2 COMMISSIONER HIPOLITO: Aye.

3 DIRECTOR MCLEAN: Commissioner Thayer?

4 COMMISSIONER THAYER: Aye.

5 DIRECTOR MCLEAN: Vice Chair Pali?

6 VICE CHAIR PALI: Aye.

7 DIRECTOR MCLEAN: And Chair La Costa?

8 CHAIR LA COSTA: Aye.

9 DIRECTOR MCLEAN: Chair, that's unanimous.

10 What do we have? One, two, three, four -- six ayes.

11 Two excused, Commissioners Lindsey and -- so the

12 motion passes. The item will not be referred.

13 CHAIR LA COSTA: Thank you, Director. Now
14 we will move into Item B.

15 Director?

16 DIRECTOR MCLEAN: Yes, Chair. This is a
17 public hearing item referring to you a proposed bill
18 to amend Maui County Code Chapter 19.12, the
19 Apartment Districts, to allow property owners of
20 buildings located in the Apartment Districts to
21 permanently convert property from transient vacation
22 rental use to long-term residential use.

23 Jacky Takakura will do a presentation after
24 which we will take public testimony. Jacky, go
25 ahead.

1 MS. TAKAKURA: Can everyone hear me okay?
2 Can I get a thumbs-up if you can hear me?

3 CHAIR LA COSTA: Can't hear you.

4 MS. TAKAKURA: Oh, shucks.

5 DIRECTOR MCLEAN: Can we -- put your
6 speakers on.

7 MS. TAKAKURA: Thank you. I don't have a
8 PowerPoint presentation today. This one is very
9 short.

10 So this morning's public hearing is related
11 to the apartment zoning district, and that's Chapter
12 19.12 of the Maui County Code. And it's basically to
13 allow owners to convert from transient vacation
14 rental, or TVR, use to long-term residential use.

15 Just some background information, the
16 purpose and intent of the Apartment District is to
17 provide higher density housing options and occupancy
18 on a long-term residential. However, on Maui and
19 Molokai, there are Apartment District properties with
20 vacation rental use because they meet certain
21 criteria, and that's basically that they were
22 conducting the TVR use before it became prohibited.

23 The county council proposed this bill to
24 add a new section to Chapter 19.12 to establish
25 criteria for property owners to voluntarily

1 discontinue TVR use if 100 percent of the owners
2 agree to execute a declaration which would be filed
3 with the state Bureau of Conveyances. The
4 declaration would state that the owners will use the
5 property for long-term residential use only and that
6 they forfeit any right to transient vacation rental
7 use.

8 My understanding is that the benefit to the
9 property owners would be the lower rate for their
10 real property taxes.

11 The county council did discuss bringing the
12 percentage down to 67 percent of owners to agree, but
13 they decided to leave that up to the planning
14 commissions.

15 We do have one proposed revision for this
16 bill, and that's regarding the recording of the
17 declaration. In the proposal from the county
18 council, they have in 19.12.02.5D, as in dog, they
19 have this part about:

20 Recordation would
21 constitute a forfeiture
22 on the part of the
23 owners of any right to
24 transient vacation rental
25 use of the property unless

1 such use is then allowed

2 in accordance with a

3 valid permit.

4 We think that prohibiting TVRs but then
5 allowing them the use with a permit is contradictory,
6 so we propose to remove that language "allowing the
7 use with a permit."

8 And I have that in the memorandum. If you
9 take a look at Page 2 under Recommendation and
10 Options, you can see that part that -- proposed to
11 bracket and remove from the county council's
12 resolution. So that's it in a nutshell.

13 In the handout, you have the memorandum.
14 You also have the resolution and the proposed
15 ordinance from the county council. You have the
16 ordinance with the watermark "draft" across -- going
17 across the page. It's just two pages, and on that
18 one, we don't have that part about allowing the use
19 with the permit.

20 And then there's also some really good
21 comments from the director of finance, and I can try
22 to answer some questions best I can if you have any
23 about them. But that's it in a nutshell; it's pretty
24 simple.

25 Do you have any questions? I can answer

1 some clarifying questions after public testimony or
2 however you would like to do that. Thank you.

3 CHAIR LA COSTA: Thank you, Ms. Takakura,
4 for your presentation.

5 DIRECTOR MCLEAN: If commissioners have any
6 clarifying questions, right now would be a good time
7 just for clarifying questions. If not, we can
8 proceed with public testimony.

9 CHAIR LA COSTA: Commissioner Freitas?

10 COMMISSIONER FREITAS: Ms. Takakura, so
11 if -- let's just say 100 percent of the owners agree,
12 then on the property, each individual owner then can
13 decide which way they want to go, or once 100 percent
14 agree, all of them have to switch?

15 MS. TAKAKURA: So Commissioner Freitas, it
16 would be the entire property would have to agree to
17 not conduct a TVR.

18 COMMISSIONER FREITAS: Thank you.

19 CHAIR LA COSTA: Commissioners, other
20 questions? None? We'll move to -- sorry.
21 Commissioners, other questions?

22 Commissioner Thompson, question?

23 COMMISSIONER THOMPSON: Mr. Hopper.

24 DIRECTOR MCLEAN: You still need to speak
25 into (indicating microphone).

1 COMMISSIONER THOMPSON: Mr. Hopper, I own
2 one of those units. Do you have a comment or
3 (indiscernible) about this?

4 MR. HOPPER: I'd advise if you're an actual
5 owner, that you should not be voting on this item. I
6 didn't know that before the meeting, but it's
7 important -- it's good that you're disclosing that
8 and that's known to the public, but, yeah, I think in
9 that case, you should probably not vote or comment on
10 the recommendation if you actually own one of the
11 units and -- in a complex that this would -- this
12 could be -- this is being contemplated.

13 CHAIR LA COSTA: So with that, Commissioner
14 Thompson, are you going to be recusing yourself?

15 So let the record note that Commissioner
16 Thompson has recused himself from this item. Okay.

17 We have one person signed up to testify
18 currently. Oh, there are two, excuse me.

19 So Diana Brennan (sic), if you are on the
20 call, please unmute yourself, introduce yourself,
21 promise to tell the truth, and you have three
22 minutes. Thank you.

23 ///

24 ///

25 ///

1 DIANA BRESNAN,
2 called to testify,
3 was sworn to tell the truth
4 and testified as follows:
5

6 MS. BRESNAN: Aloha. I am Diana Bresnan.
7 I am -- can you hear me okay? I hear some
8 reverberation.

9 DIRECTOR MCLEAN: We can hear you now.

10 MS. BRESNAN: Okay, great. I'm the board
11 president of Mahinahina Beach and also an owner of a
12 unit there, so I appreciate the work that the
13 Planning and Sustainable Land Use Committee's done in
14 working to remedy some of the unintended consequences
15 of properties being classified as short-term rentals
16 when they do not allow short-term rentals. So thank
17 you.

18 Mahinahina Beach was recently reclassified
19 as a short-term rental property based on one unit's
20 improper rental years ago which violated our
21 governing documents. That was addressed and remedied
22 at the time.

23 And we've since amended our declaration to
24 prohibit short-term rentals of less than 180 days,
25 and we've increased fines for violating this

1 provision to align with the county's fine level at
2 \$20,000 per violation, plus \$10,000 per day
3 thereafter. So we've taken this very, very seriously
4 to prevent short-term rentals.

5 Both of these changes were implemented
6 after more than 67 percent of owners approved them,
7 consistent with Hawaii Law 514B governing condominium
8 associations. So we're contributing to the
9 availability of long-term housing by not allowing
10 short-term rentals.

11 We primarily have owner-occupied and
12 long-term rental units in our 32-unit complex, and we
13 have zero short-term rentals. Classifying our
14 property as a short-term rental is inconsistent with
15 actual use and inconsistent with governing documents.

16 So continuing with this classification
17 while not actually renting short term on our property
18 may actually encourage our property to convert to
19 short-term rentals, which is contrary to what we're
20 all trying to accomplish for long-term housing.

21 We recommend two changes in the proposed
22 language, which we submitted to the land use
23 committee. One of those is to require only 67
24 percent of owners to approve versus 100 percent.
25 This is consistent with 514B, which governs

1 associations, and you can imagine it would be nearly
2 impossible to get 100 percent of people to approve
3 everything -- to approve anything.

4 So we would recommend that you seriously
5 consider that. I think without changing that to
6 align with 514B, it's going to render this language
7 generally useless.

8 The other language that we would recommend
9 is to modify the phrase:

10 The declaration must
11 state owners will use the
12 property for long-term
13 residential use only,

14 and change that to "The owners will not use
15 the property for short-term rentals."

16 Some persons purchased at Mahinahina Beach
17 with a plan to relocate there for retirement in
18 future years, and this would support classifying that
19 as owner-occupied instead of a short-term rental.

20 We believe that these changes would meet
21 the desired goal of encouraging long-term housing,
22 and 514B has supported 67 percent voting decisions
23 for condominium associations since its inception in
24 2006. So I appreciate your consideration, and I
25 thank you for the work that you're doing.

1 CHAIR LA COSTA: Thank you, Ms. Bresnan.
2 Commissioners, have you any questions for the
3 testifier? Seeing none, I thank you so much for your
4 testimony.

5 MS. BRESNAN: Mahalo.

6 CHAIR LA COSTA: Next up is Mr. Tom Croly.
7 He will be followed by Madeline Monaco.

8 Mr. Croly, if you're on, three minutes,
9 please. Go ahead.

10
11 TOM CROLY,
12 called to testify,
13 was sworn to tell the truth
14 and testified as follows:
15

16 MR. CROLY: Aloha, commissioners.
17 Tom Croly speaking on my own behalf and with no
18 interest, no financial interest in this. But I would
19 like to bring you a little more background about
20 what -- why this came about. And this is really a
21 real property tax bill that has implications that --
22 on land use, but it really is based on real property
23 tax classification.

24 And that is because three years ago, the
25 Maui County Council decided to take away the self

1 declaration of condominium units for their use and to
2 classify condominium units based on their highest and
3 best use.

4 So essentially, what they were saying was
5 if you own a condominium unit in a building or in a
6 complex that is allowed to make short-term rental
7 use, we will classify you as short-term rental
8 whether you're making that use or not, with two
9 exceptions.

10 With the exception of if you are living in
11 it and you have a homeowner exemption, then you get
12 the owner-occupied rate. Or if you have a long-term
13 rental and you have applied to the county for the
14 long-term rental exemption, you would get the
15 long-term rental rate.

16 But what it -- the net effect of this was
17 it turned 1800 units where the owners had said, We
18 are not making short-term rental units, we are only
19 using these units as our second homes, so we should
20 not be in the short-term rental classification, it
21 reclassified those folks into short-term rental.

22 And as a result, some of those folks, when
23 they got their tax bills and found out that their
24 real property tax bills had doubled as a result of
25 this, they said, Hey, this isn't fair.

1 So the council brought this forward as a
2 way to remedy that situation, only for people who are
3 using their properties as second homes would -- that
4 it would affect them, and they -- this could work if
5 it was on a unit-by-unit basis, if each unit owner
6 was able to say, Okay, I'm opting out of short-term
7 rental.

8 But I understand the problem that that
9 would create for the planning department, who then on
10 an enforcement basis would have to figure out what
11 units in a building are allowed to make short-term
12 rental uses and what building -- what units in that
13 building are not allowed for -- to make those
14 short-term rental uses.

15 The change from 67 percent to 100 percent
16 adoption of this probably came from lawyers saying,
17 Hey, you can't take away someone's use without them
18 expressly saying that they're allowing you to take
19 away that use. But as was pointed out in the last
20 testimony, if the homeowners association, the
21 apartment owners association approves it, then they
22 are empowered to do that.

23 It's not the county taking away the use;
24 it's the homeowners association registering the
25 property that way. Leaving this at 100 percent and

1 saying you have to get 100 percent of the owners to
2 agree --

3 MS. TAKAYAMA-CORDEN: Three minutes.

4 MR. CROLY: -- essentially tables this.
5 Nothing -- it's not going to have any effect.

6 I'll leave it at that, Chair, and be open
7 to any questions that you might have. Thank you.

8 CHAIR LA COSTA: Thank you, Mr. Croly.

9 Commissioners, have you any questions?

10 Commissioner Pali?

11 Sorry. We have to readjust everything
12 here.

13 VICE CHAIR PALI: Mr. Croly, I just have
14 two questions for you. Thank you for your testimony.
15 So you gave us a lot of really good things to think
16 about factually, but I don't know that I -- did I
17 miss your opinion? Are you in favor or are you not
18 in favor or were you just trying to be neutral and
19 have us consider things? Let me know.

20 MR. CROLY: Yeah. In its current form, I
21 don't see this bill having any effect when you say
22 that 100 percent of all the owners have to agree. I
23 don't think any properties are going to fall into
24 this.

25 So this could have an effect if you wanted

1 it to, if you broke it down to each individual owner
2 or reduced it to 67 percent, then you would have --
3 have a policy that might actually make sense.

4 But what's on the table for you -- and I
5 don't really have an opinion about -- but real
6 property tax certainly does -- is you would be
7 losing -- or the County of Maui would be losing the
8 revenues that they get from taxing someone at
9 short-term rental. And therefore taxing them at a
10 lower rate when their property is used for a second
11 home and not as a long-term rental that they have
12 applied for a long-term rental exception or -- or as
13 a primary residence where they have applied for a
14 homeowner exemption. So for this thing -- for this
15 policy to work, it needs to be modified.

16 VICE CHAIR PALI: Got it. Thank you.
17 Thank you. One last question. Are you saying that
18 you might -- I mean, it almost sounds like you're in
19 favor of bringing back the self declaration, which is
20 kind of what that did. It went by -- unit by unit.
21 Is that your testimony? Am I understanding that
22 correct or not?

23 MR. CROLY: Yeah, that's not -- that's not
24 what's before you, but I agree that the self
25 declaration was more fair.

1 VICE CHAIR PALI: Okay. Thank you, sir.
2 Thank you very much.

3 MR. CROLY: Aloha, everybody.

4 CHAIR LA COSTA: Commissioners, any other
5 questions for Mr. Croly? Seeing none, as always,
6 mahalo mui for your testimony.

7 Next up is Madeline Monaco. Ms. Monaco,
8 please unmute yourself, introduce yourself, and
9 promise to tell the truth. Thank you.

10
11 MADELINE MONACO,
12 called to testify,
13 was sworn to tell the truth
14 and testified as follows:

15
16 MS. MONACO: Hi. This is Madeline Monaco.
17 I have unmuted myself. I'm having a hard time on
18 showing my video, so -- can you hear me?

19 CHAIR LA COSTA: We can hear you. Yes, we
20 can hear you.

21 MS. MONACO: Oh, okay. Perhaps I will just
22 continue. And I do promise to tell the truth. I'll
23 continue without video.

24 I would like to thank you all for your hard
25 work to improve the housing market for Maui residents

1 and for the opportunity to testify today.

2 I live at Mahinahina Beach, as does Diana
3 Bresnan who testified previously. And I have been
4 living on and off Maui for the past 25 years. I love
5 Maui.

6 And I'm testifying in support of this
7 legislation that will allow properties that do not
8 allow short-term rentals to be reclassified
9 accordingly. At Mahinahina Beach, we have a no less
10 than six-month rental policy which is enforced by a
11 \$20,000 fine if anyone violates our policy.

12 We have -- as Diana said, we have had one
13 person that violated that policy, or our previous
14 policy, and they were fined accordingly. And, in
15 fact, they no longer live at Mahinahina Beach, and we
16 do not have anyone who's renting short-term at the
17 time. We do have -- at this time, I should say. And
18 it hasn't been for several years.

19 We do have several units that are rented
20 long term so, again, we do feel that we are
21 contributing to the solution for long-term rentals on
22 Maui. And I think that's the intent of the -- the
23 planning commission and the Maui council.

24 I'd also like to add that the planning and
25 sustainable use committee supported the requirement

1 of 67 percent of owners versus 100 percent of owners
2 approving a permanent ban on short-term rental. We
3 support that because it's consistent with Hawaii
4 Law 514B governing condominium associations, and it
5 is practically impossible to get any group of people
6 to agree 100 percent on anything.

7 And indeed, it has been testified
8 previously at the planning and sustainable land use
9 meetings that it is extremely difficult to get all
10 apartment owners in a complex to vote on anything.

11 I've been a president of another homeowners
12 association for five years, and it's really hard to
13 even get anybody to come to a meeting. And even if
14 you send out ballots by mail, you will not get 100
15 percent of the people returning those ballots or to
16 vote on anything.

17 I'd also like to suggest a change to the
18 phrase:

19 The declaration must
20 state the owners will
21 use the property for
22 long-term residential
23 use only,

24 to something such as, "Owners will not use
25 the property for short-term rentals." I think that's

1 consistent with what this legislation is trying to
2 achieve.

3 And finally, I support the legislation also
4 because it will provide equality amongst apartment
5 communities that are already classified as apartment
6 because they do not allow short-term rental,
7 regardless of whether the owners are full-time Hawaii
8 residents or part-time Hawaii residents. I know at
9 least one such property, and we at Mahinahina Beach
10 would like to have the same opportunity to be
11 reclassified based on the real usage of our units.

12 MS. TAKAYAMA-CORDEN: Three minutes.

13 MS. MONACO: That's basically what I wanted
14 to say. Thank you very much.

15 CHAIR LA COSTA: Thank you, Ms. Monaco, for
16 your testimony. Commissioners, have we any questions
17 for the testifier? No? Seeing none, thank you very
18 much.

19 Before we continue, I'd like to welcome
20 Commissioner Lindsey who joined us at 10:30. So
21 welcome.

22 COMMISSIONER LINDSEY: Hi. Thank you for
23 welcoming me.

24 CHAIR LA COSTA: Okay. Our next testifier
25 is Bart Gill. Mr. Gill, will you please unmute

1 yourself, introduce yourself, and promise to tell the
2 truth. Mahalo.

3
4 BART GILL,
5 called to testify,
6 was sworn to tell the truth
7 and testified as follows:
8

9 MR. GILL: Thank you very much. My name
10 is -- and aloha. My name is Bart Gill. I am a
11 part-time resident of Mahinahina Beach and a member
12 of the -- vice president of the association board.

13 I would like to go on record as supporting
14 the modifications to the measure as identified by
15 Ms. Bresnan and Madeline Monaco. I think they laid
16 out the cases very well for justification for those
17 changes.

18 We have a tight-knit community at
19 Mahinahina Beach. It's only 32 units, and we feel
20 like ohana. And the vast majority, although not
21 100 percent, do not favor any type of short-term
22 rentals at all. And that's why we changed our
23 declaration and voted -- and voted as a membership
24 with over 67 percent of the membership to not allow
25 short-term rentals on the property.

1 The only additional comment I wanted to
2 make is that it came as a shock to many of us, when
3 we got our tax bill two years ago, that it doubled.
4 That was a tremendous shock.

5 And the reason it was is, you know,
6 short-term rentals -- by the nature of short-term
7 rentals allow owners to increase their revenue on a
8 property and maybe support a larger tax bill. And if
9 you're not using your property for short-term
10 rentals, you don't have that opportunity to increase
11 your revenues on the property to support the doubling
12 of your -- of your tax bill.

13 So I think it's a bit of injustice to those
14 of us who are part-time residents on Maui like myself
15 and intend to be long-term residents at some time in
16 the near future, which many of us at Mahinahina Beach
17 are in that category.

18 So I support the measure. I support it
19 with the changes that have been identified by
20 Ms. Bresnan and Ms. Monaco.

21 And I thank Thomas Croly for his summary
22 because I think he put it in really good perspective
23 about -- about what I would call an injustice to
24 those of us who are part-time residents and need to
25 suffer a short-term rental tax classification.

1 Mahalo, and thank you very much for your --
2 for the work that the commission does. We appreciate
3 it. Mahalo.

4 CHAIR LA COSTA: Thank you, Mr. Gill.

5 Commissioners, have you any questions?
6 Commissioner Pali?

7 VICE CHAIR PALI: Yes. I just have two
8 questions. The first question, I think I wanted to
9 address for clarification purposes that you mentioned
10 you -- you know what? It's not even about the topic.
11 Never mind. I'll just take your testimony as is and
12 will not veer off the path. No questions. Forget
13 it.

14 CHAIR LA COSTA: You can tell that this
15 technological issue we're having is kind of throwing
16 everybody off their game. So thank you again for all
17 of your patience with this. Okay.

18 Commissioners? Okay. I see no further
19 questions for Mr. Gill. Mr. Gill, mahalo for your
20 time and your testimony, appreciate it very much.

21 Is there anyone else who wants to testify
22 on this matter? If so, would you please step forward
23 and notify us in the chat room that you'd like to
24 testify. Going once, going twice. Seeing no further
25 testimony, public testimony is now closed. Okay.

1 With that, commissioners, discussion?

2 Commissioner Freitas.

3 COMMISSIONER FREITAS: Yes. Thanks, Chair.
4 I would like to take -- make an amendment and go with
5 the suggestion to change it to 66.7 percent instead
6 of 100 percent. And I'll -- yeah, a motion. Is that
7 a motion needed? Okay.

8 And also, I like the idea of saying no
9 vacation rentals versus it must be used as a
10 long-term residential use only. I agree with the two
11 testifiers that had mentioned that. That's all.
12 That's enough.

13 CHAIR LA COSTA: Second?

14 Commissioner Pali? Discussion?

15 Commissioner Freitas?

16 COMMISSIONER FREITAS: Yes. I believe the
17 woman that said -- the testifier that said you can't
18 get 100 percent of people to, even if it's mail-in or
19 whatever, to come to any agreement. This would just
20 not happen. It falls within the rule that she
21 stated, 514B. I haven't checked that, but I'm sure
22 Mr. Hopper did, and I agree with that.

23 CHAIR LA COSTA: Thank you.

24 Commissioner Pali as the second?

25 VICE CHAIR PALI: Okay. I got a couple

1 issues on this one, but I appreciate

2 Commissioner Freitas bringing that motion up.

3 I'm not clear about the 100 percent or 67
4 percent. I don't know the law in that area, and
5 so -- but it does sort of make sense that if the
6 majority votes anything within that complex that it
7 becomes an association decision.

8 And then -- because I'm all about property
9 rights. So I was kind of leaning on, oh, every owner
10 should have a right to say this or this because they
11 bought the property or the unit knowing that they had
12 these rights and then those rights would be taken
13 away.

14 I was super concerned about -- but like
15 every normal association, when they have their annual
16 meetings, and things are changing, lots of things are
17 changing with the association and the management of
18 that. So I can see how maybe that might fall into
19 the 67 percent? I'm not sure.

20 But assuming it's legal, it sounds like
21 that could be the case, but I just want to go on
22 record by saying that just because we do these
23 things, it does not mean it will create more rentals
24 for our kamaaina.

25 I don't know about you guys, but Mahinahina

1 Beach? Those sold over millions of dollars. If they
2 were to lease it long term to a kamaaina, what are
3 they going to charge? Five grand a month? Does that
4 sound like that's residential housing? Like, no.

5 So I just want to be real clear that just
6 because that's the goal doesn't mean that this would
7 get us to that goal. There are many properties that
8 are not going to fall into -- these are luxury
9 properties (indiscernible) but in most cases not.

10 So I just want to make sure that if that's
11 what we're going for, this might open the doors. But
12 let's not kid ourselves. That is not what's going to
13 happen.

14 I think that Tom Croly had a really good
15 point about property taxes. We got a lot of extra
16 money this year from second home users by imposing
17 short-term rental vacation classification when
18 they're not doing that.

19 So this idea of, Oh, let's create more
20 residential housing, more affordable housing with
21 existing units, well, it might not do that. And then
22 we're going to lose a heck of a lot of money on the
23 property tax sector. So just -- we just need to be
24 aware that if we say yes to this, we're saying no to
25 that.

1 But it seems a little out of my control
2 right now. So what's in front of us, I feel
3 comfortable. If you're going to just make a way and
4 allow them to do it, then let's just do that and see
5 where it goes. But I seconded the motion. That's
6 where I fall. So thank you.

7 CHAIR LA COSTA: Thank you,
8 Commissioner Pali.

9 MR. HOPPER: Chair?

10 CHAIR LA COSTA: Mr. Hopper, go ahead.

11 MR. HOPPER: Can you hear me okay? I know
12 you can, but I want to make sure I'm good on the
13 audio.

14 The -- a couple of things. One is the
15 67 percent. I think you can make that as a
16 recommendation. Our office would still have to
17 review and approve that.

18 And the other issue, though, is that
19 Commissioner Freitas had mentioned -- Commissioner
20 Freitas had mentioned changing long-term residential
21 use, and I'm not sure what it's changing to. Again,
22 if you could reiterate that.

23 And then also, the reason "long-term
24 residential use" was picked, I think, was because
25 that's a definition in the county code. So it says:

1 The declaration must
2 state the owners will
3 use the property for
4 long-term residential
5 use only.

6 What was the other language you were
7 thinking of? And -- yeah, I mean, that may not be
8 broad enough to cover all of the potential issues.
9 So I think I would advise long-term residential use
10 at this point (indiscernible) counsel.

11 DIRECTOR MCLEAN: (Audio difficulty) they
12 think that it's more appropriate to narrow it down,
13 then those are the comments that we will send back.
14 So --

15 MR. HOPPER: I am not disagreeing. And
16 certainly the commission can comment however they
17 want, but if we're going to look to approve this as
18 to form and legality, I wanted to explain, I think,
19 why that language was originally stated there.

20 So again, you can provide any
21 recommendation you like; that's certainly true. But
22 that's why that language was there, and so you can
23 consider that and vote how you would please.

24 CHAIR LA COSTA: Commissioner Pali?

25 VICE CHAIR PALI: If I may, Commissioner

1 Freitas. I think one of the testifiers said that
2 right now they're saying that they can do this use,
3 but they mentioned, like, I don't actually even do
4 long term, it's my second home.

5 So saying that you could do this use might
6 give the impression that he has to do that use, and
7 he's not doing that use. He has no intention.

8 So I think the staff's recommendation in
9 the report says that we should remove the ability to
10 do short-term rentals for permits -- you agreed with
11 that one; right? So we don't want conflicting
12 information.

13 And then the testifier said instead of
14 saying you're forced to do long-term use, just say
15 that you're just not allowed to use it as vacation
16 rentals. So whether they're using it for long-term
17 use or if they're personal use, they can do it in
18 that space but just identifying again that the use
19 cannot be short-term rental.

20 CHAIR LA COSTA: Correct. And what -- the
21 verbiage that I got from Commissioner Freitas is that
22 the owners will not use the property for short-term
23 rentals.

24 COMMISSIONER FREITAS: Yes.

25 CHAIR LA COSTA: Okay. So we confirmed

1 that that is the language that the commission wants
2 to send forward to the council?

3 DIRECTOR MCLEAN: Well, the motion on the
4 floor is to recommend approval of the bill with
5 changing 100 percent to 67 percent, changing B from
6 "The owners will use the property for long-term
7 residential use" to "will not use the property for
8 short-term rental or transient vacation rental use."

9 And then the department also had one
10 recommended change to letter D, which is to delete
11 that last phrase, "unless such use is then allowed."
12 So if that was part of your motion -- I don't know if
13 that third part was part of your motion, but those
14 would be the three revisions in the motion.

15 CHAIR LA COSTA: Commissioner Freitas?

16 COMMISSIONER FREITAS: I would like to say
17 that I appreciate Commissioner Pali's comments about
18 a certain resort that has like a high price.

19 But I think when I had mentioned the 67
20 percent based on the two testifiers, I feel that the
21 list of properties -- I think the majority is not
22 those \$5 million units, so we're making a decision
23 based on a lot of other ones that could easily fall
24 within the affordability of a lot of our residents.

25 And if those that are in the 5 million

1 don't want it, they can vote it down, and that might
2 be what's going to happen there.

3 So just wanted to share that in response to
4 your great -- yeah, okay.

5 CHAIR LA COSTA: Thank you, Commissioner
6 Freitas. Commissioners, additional comments? Okay.

7 Seeing none, then we will move to the vote.
8 So do roll call vote, Director, please.

9 DIRECTOR MCLEAN: Commissioner Freitas --
10 and again the motion is to recommend approval of the
11 bill with the three changes. Commissioner Freitas?

12 COMMISSIONER FREITAS: Aye.

13 DIRECTOR MCLEAN: Commissioner Thompson?

14 COMMISSIONER THOMPSON: Recused.

15 DIRECTOR MCLEAN: Thank you.

16 Commissioner Hipolito?

17 COMMISSIONER HIPOLITO: Aye.

18 DIRECTOR MCLEAN: Commissioner Lindsey

19 COMMISSIONER LINDSEY: Am I allowed to
20 vote?

21 DIRECTOR MCLEAN: Yes.

22 COMMISSIONER LINDSEY: Even though I wasn't
23 here for the whole testimony?

24 DIRECTOR MCLEAN: I believe so.

25 MR. HOPPER: That's correct. Members can

1 vote even if they weren't here for the whole item
2 because this is -- this item is not a contested case.

3 COMMISSIONER LINDSEY: So I can vote? Aye.

4 DIRECTOR MCLEAN: Commissioner Thayer?

5 COMMISSIONER THAYER: Aye.

6 DIRECTOR MCLEAN: Vice Chair Pali?

7 VICE CHAIR PALI: Aye.

8 DIRECTOR MCLEAN: And Chair La Costa?

9 CHAIR LA COSTA: Aye.

10 DIRECTOR MCLEAN: Chair, that's six ayes,
11 one recused, and two -- Mr. Thompson -- and two
12 excused -- or one excused, Commissioner Deakos. So
13 the motion passes.

14 CHAIR LA COSTA: Commissioners, thank you
15 very much.

16 MS. TAKAKURA: Thank you.

17 DIRECTOR MCLEAN: Thank you, Jacky.

18 COMMISSIONER FREITAS: Thank you, Jacky.

19 CHAIR LA COSTA: Mahalo, Jacky.

20 At this juncture, we're going to take a
21 short recess so that Mr. Chipchase can set up his
22 computer because of our issues with technology, so we
23 will take a ten-minute recess.

24 (Whereupon, a recess was held
25 from 10:53 a.m. to 11:03 a.m.)

MOLOKAI PLANNING COMMISSION
REGULAR MINUTES
SEPTEMBER 28, 2022

A. CALL TO ORDER AND ROLL CALL

Prior to the call to order, Chairperson Buchanan requested that Vice-Chair Poepoe chair the September 28, 2022 meeting.

The regular meeting of the Molokai Planning Commission was called to order by Vice-Chairperson Laakea Poepoe at 11:03 a.m., Wednesday, September 28, 2022, at Department of Planning's Molokai Office, 100 Ainoa Street, Kaunakakai, Molokai, Hawaii 96748 and via BlueJeans Meeting No. 277 020 949.

Vice-Chair Poepoe conducted a roll call of the members. A quorum of the Commission was present. (See Record of Attendance.)

Mr. Poepoe: Welcome, everybody, to the Molokai Planning Commission meeting for September 28, 2022, Wednesday, approximately 11:03 a.m., online on BlueJeans. Okay, we can begin with item A., Call to Order and Roll Call, so we're going to do individual rollcall so you're the location and if anybody is with you, starting with Commissioner Phifer.

Mr. Phifer: Present. I'm at Puu O Hoku Ranch. Outside. No one's around.

Mr. Poepoe: Oh.

Mr. Phifer: You can hear me, Commissioner?

Mr. Poepoe: Yeah.

Mr. Phifer: Okay.

Mr. Poepoe: Commissioner Moore.

Mr. Moore: Good morning. I am at home in Ranch Camp and nobody in the room but me and two dogs.

Mr. Poepoe: Commissioner Bishaw-Juorio.

Ms. Bishaw-Juorio: Aloha. I'm at home. My husband just came home for a lunch break, so he'll be home for about half-an-hour.

Mr. Poepoe: Commissioner Mowat.

Ms. Mowat: Good morning. I'm home and no one is in the home but me.

Mr. Poepoe: Chair Buchanan.

Ms. Buchanan: I go next. This is Lori Buchanan. I'm at home and I have two-year-old Kaleopapa Buchanan running in and out, in and out until his daddy come and pick him up in about 25 minutes. Thank you, Laa.

Mr. Poepoe: And myself, Vice-Chair Laa Poepoe, I'm outside with nobody around. And that's our attendance for the Commissioners for today's meeting. We do have quorum for votes, so moving to item B., Public Hearing, number 1.:

B. PUBLIC HEARING (Action to be taken after the Public Hearing)

- 1. Ms. Michele Chouteau McLean, AICP, Planning Director, referring to the Molokai Planning Commission a proposed bill to amend Maui County Code Chapter 19.12 – Apartment Districts, to allow property owners of buildings located in the Apartment Districts to permanently convert property from transient vacation rental use to long-term residential use. (J. Takakura)**

The entire text of the proposed bill for ordinance is available at <https://www.mauicounty.gov/DocumentCenter/View/134354/Bill-for-Ordinance-amending-Chapter-1912-relating-to-converting-vacation-rentals-to-long-term-use>

Mr. Poepoe: Okay, so, staff, whenever you ready. Thank you.

Ms. Takakura: Thank you, Vice-Chair Poepoe. Good morning, Molokai Planning Commission. This is Jacky, from Maui, the admin office of the Planning Department. Good morning. This is a real short bill and I don't have a PowerPoint presentation. Sorry, you gotta just stare at me. But, this morning's public hearing is related to the apartment zoning district, and, as the Vice-Chair mentioned, that's Chapter 19.12, of the Maui County Code, and what the proposal is is to allow owners to convert -- convert from transient vacation rental use, or TVR use, to long-term residential use.

Just for some background information. The purpose and intent of the apartment district, which is 19.12, in the code, is to provide higher density housing options and occupancy on a long-term residential basis. However, on Maui and Moloka'i, there are apartment district properties with vacation rental use because they meet certain criteria, and that's basically that they were conducting transient vacation rental use before it became prohibited. My understanding is there's two properties on the island of Molokai and that

is in Ke Nani Kai and Wavecrest that fit the bill of this. The rest of the properties are on the island of Maui.

So, the County Council proposed this bill to add a new section to Chapter 19.12, and that would establish criteria for property owners to voluntarily discontinue transient vacation rental use if 100 percent of the owners agree to execute a declaration, which would be filed with the State Bureau of Conveyances. The declaration would state that the owners will use the property for long-term residential use only and that they would forfeit any right to vacation rental use. My understanding is that the benefit to the property owners would be the lower rate of -- for real property taxes. The County Council did discuss bringing the percentage of homeowners down to 67 percent instead of 100 percent of the owners agreeing, but they decided to leave that percentage up to the planning commissions, and the bill we have has it as 100 percent, but that's a good topic for a few folks to discuss. We, at the Planning Department, we do have one proposed revision and that's to part 19.12.205D, as in dog, and that's deleting that last part about allowing the use with a valid permit because, first, we're saying, oh, we don't want to do the use, but then we're saying here, hh, but then if you get a permit, you could, so we think that's contradictory, and even the Finance Director said the same thing so we're proposing to delete that part, and you can see what we have it in writing on Page 2, of the memorandum in the packet that was sent to you, at the end of that Part D, removing that part that says, "unless such use is then allowed in accordance with a valid permit." You know, if they give up that right, then we should just be really clean and clear and they don't do the use.

That's basically it. And, like I said, I don't have any presentation, but in the handout, you have the memorandum, which kind of gives some background, and then, like I mentioned, our recommendation to make that one change. You do have the whole packet from the County Council and a little bit of information from the PSLU Committee, and then you have some information from Real Property Tax Assessment Division, from Department of Finance, and, at the end, they do have the listing of the two properties, Ke Nani Kai and Wavecrest listed in their information.

So, that's all I have. I guess if you have clarifying questions, we can go to that or I guess you could go to public testimony, but I'm -- I'm just going to stop here, and then you can always ask me questions if you have any. Thank you.

Mr. Poepoe: Thank you, Jacky. I'll go ahead and allow members to ask any clarifying questions before or prior going to testimony. Anybody has questions? You can go ahead and ask now.

Ms. Buchanan: Vice-Chair. this is Lori. I -- I have some questions. Thank you for clarifying the incentive for people to convert, and the -- and the incentive is a lower tax bracket from the very high transient vacation rental bracket. I'm sure, within the Department, you guys have talked extensively about if the threshold is less than 100

percent of the people in that apartment building don't sign on, wouldn't that open a can of worms as to their rights and -- and takings? You like respond to that, Jacky?

Ms. Takakura: I can try. So, there's I guess pros and cons to the different percentages. One of the advantages of having the 67 percent of homeowners agreeing is that that's consistent with -- it says, "HRS 514," or something like that that -- that's normally how homeowners association documents get changed by a two-thirds vote as it's much easier to get two-thirds. But then, on the other hand, you know, homeowner's associations could possibly be, I don't know, sued maybe by the thirty-three percent that did not vote for it and feel that it's a takings, whereas, if you have 100 percent of the homeowners agreeing, then you don't have to worry about, you know, litigation or anything like that. So, yeah, that's kind of a tough one. There's pros and cons to both percentages. Some people say, you know, if you try to -- if you say it's 100 percent, that's going to be impossible because there's always going to be that one person who, you know, doesn't want to give up that right so --

Chair Buchanan: Okay, but -- but -- so clearly, say, let's just take one of the apartment buildings on Molokai and -- and I -- I would think that everybody's CC&Rs, yeah, the covenants and restrictions of every condominium unit is -- would -- would vary from unit to unit, and I know the State of Hawaii has ongoing issues and litigation with people and their CC&Rs being, you know, over -- overbearing and erroneous, so my question then would be if the apartment building or the condominium association voted within their CC&Rs to do the conversion, the voluntary conversion, and if the -- if there was a portion of the people that did not agree because I would see them giving up their highest and best use of their apartment building, maybe they're making bank on being one transient vacation rental, and so it would now become the problem of that condominium association, right, if -- if people still wanted to rent out TVR because they'd have to police themselves, right?

Ms. Takakura: Chair Buchanan, I believe that is correct. Yes. Because it would be something that the homeowner's association changes, not -- not the County.

Chair Buchanan: Okay, but -- but we asking the homeowners association to police their own people if it's not 100 percent. I mean, still yet they got to police their people but I just thinking, it's like, whoa, you know, your neighbors would have to be throwing you under a bus if they know that you still renting transient vacation rentals and -- and they not -- and -- but you are now not needing to comply with the -- with the higher tax bracket and you just getting a break, almost like gentlemen estates in ag land where they get a break and building million-dollar homes.

Ms. Takakura: So, Chair Buchanan, I'm thinking that if, say -- say it's 67 percent and the -- the homeowners association does decide to change, and they get the 67 percent of the votes, and they file this, if they file it and become ineligible to vacation rent, I'm thinking

that we -- I guess we would be able to enforce, you know, that they would be violating this part of the code. I'd have to defer also to Corporation Counsel. Yeah, there he's raising his hand so --

Chair Buchanan: Hi, Mike.

Mr. Hopper: Hi. Chair, if I may?

Chair Buchanan: Sure.

Mr. Hopper: There is a section in the bill that says, "The director may enforce the failure to abide by the declaration as a violation of this title." So, if they don't follow the declaration, the County could enforce and, not to mention, I think that the tax classification would revert back too; potentially, there could be consequences there. In addition, if there's also CC&Rs that prohibit the use, the homeowners association could enforce, but the CC&Rs are a private covenant between the homeowners and so the association would have to enforce that, the County couldn't enforce the private CC&Rs, but if the declaration is recorded that the code says that that would be enforceable by the County so the County could actually investigate and -- and enforce that as a violation.

Chair Buchanan: Okay. What I thought was one simple bill is not simple at all. Yeah, because so -- so I missed it in the bill, Jacky and -- and Michael, the part about the -- the big stick of enforcement, so the homeowners association would be able to enforce against their -- their owners, and then the County could, by I would say through request for service or some other -- the same way we -- we turning in people now, could enforce, so it does seem there that they could lose their tax -- their tax status if they fail to enforce their own people or if we find that they in violation? That's a question for staff.

Mr. Hopper: Well, I mean, the -- it requires that they record something against the property that says they won't do transient vacation rental use, so I don't think it would be much -- make much sense to have them record that and say they can't do transient vacation rental use if the County couldn't do anything if they -- if they just ignored that, so that would be recorded on the property, they couldn't do transient vacation rental use, and the County could enforce that either by, you know, resulting in the tax classification changing or the, you know, fines and penalties as a violation of Title 19. So, that's -- that's what the -- the ordinance would say.

Chair Buchanan: Somebody remind me what is the fines under Title 19 for this type of violation?

Mr. Hopper: Well, if it's -- if it's -- it's up to a thousand dollars a day, generally. If it's a transient vacation rental where transient vacations aren't allowed, that can be up to \$20,000.00 initial and \$10,000.00 per day. It's a good question to look into it whether

that's a violation of doing TVR where it's not permitted, or if it's going to be the thousand-dollar per day for a -- other violation of the title, but those are the two fine amounts. I -- I think there's an argument this could be considered a \$20,000.00 -- up to \$20,000.00 fine if you're doing a TVR where you're not allowed, although the zoning technically still allows it, there's the special covenant that you've done to say you're not going to do it, so I think that -- that -- that's -- there's a potential for that as well.

Chair Buchanan: So, Jacky, I guess one of the feedback that I would have is to check that gray area of fines for this type of violation.

Mr. Hopper: Oh, Chair?

Chair Buchanan: Okay, go ahead, Michael.

Mr. Hopper: Oh, sorry. Just if we're going to get into actually making recommendations, I think we should take --

Chair Buchanan: Oh, okay.

Mr. Hopper: Public testimony first. If there's clarifying questions more, that's great, but just to do that before the recommendation would be advisable.

Chair Buchanan: Okay. I'll be quiet now. Go ahead.

Mr. Poepoe: Any other members have questions for staff before I move to testimony? Okay, if not, I'll open up for public testimony, go ahead and unmute, anybody who wants to provide testimony. First come, first serve, and follow the procedures of stating your name, and, Corp Counsel, is swearing in necessary?

Mr. Hopper: Not for this item, Chair. This -- this item is a recommendation to Council, so it's not a contested case.

Mr. Poepoe: Okay. Thank you. I see no -- no takers for public testimony. If not, we can close public testimony and move on to some more discussion or is it recommendation time?

Chair Buchanan: Hi. Question, Laa Poepoe. Oh, you know what? I guess I'm -- I'm -- I can see that enforcement going be one issue if not 100 percent of people sign in to -- to do the voluntary -- the -- the incentive is -- is pretty huge because, right now, TVR is -- the tax on TVR is -- is -- is really a heavy tax and -- and I would be just like the rest of the people who trying to hide my vacation rental, if I had one. It -- it was easier for us to say on Molokai that all of the apartment districts was able to do TVR, so I see that more as one issue for a condominium and apartment owners themselves, you know, being those

that don't rent out short term, you know, are getting taxed just because they live in a apartment building so I can see how this bill is proposed to help those that live long term at Wavecrest or Ke Nani Kai. But, if that's the case, then they gotta get the people onboard. It's so hard. I -- I -- that's a tough one. I don't know what to say. It's like a mixed use, and so I can see how that would be one real problem for get a hundred percent from either Ke Nani Kai owners or Wavecrest owners because so many of them rent TVR. So, I don't know what you guys think, Commissioners. It's the foot in the door. It's -- if I know it's -- it's all hundred -- it's all done deal and then, you know, we could turn them in for TVR, but I think it's just one slippery slope of hard enforcement all the way around. And then, like I said, Jacky, earlier, that's my only -- to find out, I would be curious about if my stick of enforcement was good enough, and then if -- if it's not going to be one thing that draws out for two years fighting back and forth to prove that somebody -- 'cause, right now, to prove that somebody is illegally renting a TVR is really difficult. It is difficult. You need proof. You cannot just accuse somebody of illegally renting a transient vacation rental, you have to get evidence, and so that puts the onus back on the community to come up with that, so that's the only reason why I'm kinda I don't know. So, please check on the fines and enforcement and -- and one scenario for that.

Ms. Takakura: Chair Buchanan and Vice-Chair Poepoe, I can try just answer that a little bit. For vacation rentals, when we do enforce, we usually do go with the -- the higher fines, the 10,000 and the \$20,000.00 fines. The only thing that would be \$1,000.00 per day is the advertising, but the actual operations would fall into the 10 and the \$20,000.00 fine categories. In terms of enforcement, you know, we rely -- we do review the ads that we get based on our memorandums of understanding with Airbnb and Expedia, so, you know, we're regularly checking those, and then we also do have -- we've been -- we had another vendor that does the online searches for us so we can track those pretty easily. So, we have increased our staff, so enforcement has become more manageable, I mean we're always going to be chasing after them, but we will be able to find them eventually. But, yeah, if -- if a property were to file that document with the Bureau of Conveyances, you know, we would remove them from our list and so if any ads came up for that TMK, you know, we would know that those are illegal so we'd be able to follow up if -- if a property were to do this.

Chair Buchanan: Okay, so what if somebody does a request for service and turns somebody in, and it doesn't show up on Airbnb or VRBO or through your contractor, what is the burden of proof that is needed for the County to do enforcement?

Ms. Takakura: So, Chair Buchanan, that one is a little more complicated. We would have to get probably testimony from guests, you know, real hard evidence to prove; that -- that's much more difficult when we don't have the advertising. So, we usually go with the advertising.

Chair Buchanan: Okay. And, therein lies the issue, you know, back to the community to coming up with the burden of proof, so policing your neighbors. Okay, that's all I got, Vice-Chair.

Mr. Poepoe: Any other members want to weigh in on the subject? If not, I got some -- you know that 67 percent is -- was described as the two-third vote in a -- whatever other section, that was pretty one -- kind of throw off the -- this entire -- throws off the decision-making part. If it were to stick to 100 percent, that's a lot easier. I don't know. I guess you can, like everything else, you could agree to a hundred percent, everybody agrees to the long-term renting and then look the other way and continue to rent out regardless of changes. Not sure, since I don't own a condo at Wavecrest or Ke Nani Kai, and I don't know how much units actually get rented out, I doubt that it's going to stop so I kinda reluctant to pull the plug out away from the places that we negotiated that are the visitors do stay if they choose to. Although, we not really -- shouldn't really be held hostage to tourism on Molokai. Yeah, I would lean more towards the side of what the staff was following or describing, that hundred percent. Yeah, I just -- yeah. Go ahead, Jacky.

Ms. Takakura: Thank you. So, if you have that memo from Scott Teruya, the Director of Finance, this one, you got a chart that kinda -- it looks like, you know, like this spreadsheet, and on the bottom of the last page before you get to the maps, there's Ke Nani Kai, with 120 total units, and Wavecrest, with 126 units, so at the top of the chart, you can see some numbers, and I asked him, well, what do those numbers mean, and they explained that those are the tax classes, and number nine is owner-occupied homeowners, so like for Ke Nani Kai, there's 13 owner-occupied homeowners, and for Wavecrest, there's ten, and then Tax Class 1 is non-owner-occupied residential, and neither of them have any, and then the one that -- the column that says zero, that Ke Nani Kai has seven, that's timeshare, and then Column 11 is the short-term rental.

Chair Buchanan: Oh. Wow.

Ms. Takakura: And then Column 12, 12 is long-term rental, and you can see Wavecrest has two.

Chair Buchanan: Wow.

Ms. Takakura: So, I guess a couple of years ago, Real Property Assessment Division went in and changed the tax classes to highest and best use, and then I think property owners had to come back and show that, oh, I'm living there or I have a long-term residential rental or something like that, so that's what those numbers mean on this chart from Real Property Assessment Division so --

Chair Buchanan: Wow.

Mr. Poepoe: Alright. That makes sense.

Chair Buchanan: Mr. Vice-Chair, eh, Jacky, thank you for bringing the -- the chart up. It's extremely helpful and very telling that the greater room rentals on both sides are transient vacation rentals. A lot. But, what I was going to say before you shared the graph was that I can support the hundred percent, you know, for Molokai because if it's a hundred percent, it puts the onus back onto the condominium owners out of the gate to get all of their people in line and onboard. That would probably help to thwart future issues with illegal renting outside of the tax bracket. I think anything less than that would be a can of worms, you know, on both sides. The fact that the County is even giving the chance to these landowners to lessen their tax burdens is -- is admirable. I feel sorry for the 13 people at Ke Nani Kai, and the ten guys at Wavecrest that have voluntarily said that they are residing there long term so that's -- I think it's up to their condominium association to see, you know, if -- so all I saying is I can support that, the hundred percent, to put the monkey back on that burden, and then the -- the fines part, just making sure what -- what the fines would be if the violation occurs. And then, I'm concerned about the burden of proof again, that if the burden of proof is not through the venue that the County is using now, that would place a big burden on the residents. Okay, thank you.

Mr. Poepoe: Thank you for that, telling us where that graph exists in our packet, Jacky, and that is pretty revealing. Highly unlikely that -- it looks very unlikely that it's going to change anytime soon so I have no problem with the hundred percent recommendation. Go ahead, Jacky.

Ms. Takakura: Vice-Chair Poepoe, I just wanted to comment that this has come up at some of the other hearings that some of those in the short-term rental tax class might be second homeowners that are not actually conducting the transient vacation rental use, but they don't qualify for any of the other rates. They just, you know, I guess, maybe their unit remains unoccupied when they're not here, but this whole conversation about second homeowner came up on this, and that's kind of like this whole other issue, but it may not be that all of them are rented out actively as vacation rentals, you know, some might be vacant, but it's another conversation.

Chair Buchanan: Mr. Vice-Chair?

Mr. Poepoe: Go ahead, Chair.

Chair Buchanan: Thank you for bringing that up, Jacky, because we know that, in Hawaii, if you're a homeowner and you own one home, you have an exemption and that exemption is pretty significant, so if you're a homeowner of more than one home in Hawaii, then, of course, then your tax burden increases a lot, you know, so thank you for pointing that out. That is something I never think about looking at the numbers. Thank you.

Mr. Poepoe: Jacky, are you talking about the exemption that you get if you only own one property and if it applies to -- sorry, go ahead.

Ms. Takakura: So, Vice-Chair, those would probably be like the -- the 13 and the 10 units at Ke Nani Kai and Wavecrest that would be able to get the homeowners exemption. I meant the -- the second home, you know, I guess they live somewhere else and then they come here for a month at a time or something, and they just stay at this place, but their real residence is somewhere else, wherever. But, in the time that they're not here, their unit might remain vacant or they might vacation rent it, but yeah, it's like their second home. They would fall in that -- probably that same category as with the short-term rental tax class.

Mr. Poepoe: That seems fine to me. Any other members have questions or points of discussion they would like to add? Now, is there a recommendation that's going to be read into the record, Jacky?

Ms. Takakura: So, Vice-Chair, the Department of Planning's recommendation, you know, the bill does encourage long-term residential use, which is the purpose of the apartment district, so we do support the bill with the one change to the proposed Section 19.12.025D to remove the last few words of that part, which is, "unless such uses that are allowed in accordance with a valid permit." That was the only recommendation by the Planning Department but, otherwise, we support the bill.

Mr. Poepoe: Was our next step a majority or for transmitting our own recommendations?

Ms. Takakura: Yes.

Mr. Poepoe: Or including -- including our own recommendations or --

Mr. Hopper: Chair?

Mr. Poepoe: Oh, go ahead, Corp Counsel.

Mr. Hopper: Thanks. Maybe a recommendation would be if you want to go around and see if there's comments that -- that anybody wants to transmit. The Council's going to get a letter with your recommendations in it. Sometimes if you want to have the members provide what they think the comments should be, and then if you want, you could approve by unanimous consent. You could say if there's no objections, those will be forwarded to the Council as are comments. If there's dispute among the comments would be sent, you could have a motion and a vote. But, if you want to just provide the comments, have, you know, Jacky maybe summarize them to make sure that they're -- that you have all of them, and then they would prepare a letter on your behalf and that would be provided to

the Council as your comments, so you could do it by unanimous consent if you just -- you could ask the members what comments you want to provide. If you want to just say provide the comments that have already been provided throughout the course of the meeting, and ask Jacky if she can summarize those, and then you could say okay, if there's no objections, we can have those transmitted as our comments, then that's fine too. But, that's maybe an easier way than a motion or a vote. You could just ask, you know, to ask for a summary of the comments that were provided, and then say if there's no objections, those can be provided, and if nobody objects, that's a unanimous consent essentially.

Mr. Poepoe: Yeah, that sounds good. Thank you, Michael Hopper. That would have never come out of me. I wouldn't have been able to spit out that description, so thank you. Yeah, any -- any members want to include additional suggestions or recommendations into our transmittal to the Department or --

Chair Buchanan: Mr. Vice Chair, can I suggest that Jacky read back what she thinks she heard from our Commission, and then if there's -- she's missing something, then we can add it on, and then you can see if there's support for that? You like, take a stab, Jacky?

Ms. Takakura: Okay, Chair, I will try. Okay, so the first, well, I don't have an order for this, but one of the comments is we would like to ensure that enforcement -- so we want to make sure that we follow up on enforcement and that any fines are at the 10 and the \$20,000.00 rates. Is that correct? Ten-thousand dollars for the initial and the \$20,000 fines. And then, there was some discussion about the percentage of homeowners voting and as the bill proposes 100 percent, but there had been talk about 67 percent. My -- my understanding from you folks is that the 100 percent is better because it puts the burden on the homeowner's association. Is that correct?

Chair Buchanan: That's correct.

Ms. Takakura: Okay. Okay. So, those are the comments that I -- I have written down from you folks. Anything else?

Mr. Poepoe: Any of the members want to include, you know, any other comments or suggestions?

Chair Buchanan: Yeah. Mr. Vice Chair, I'd like to suggest that we support the Department's amendment to the last paragraph, as Jacky proposed.

Mr. Poepoe: Okay.

Chair Buchanan: And then the -- and then only one more comment that -- that the burden of proof, the comment about the burden of proof, if it comes from outside the current way

that the County is enforcing TVRs, just a note that it puts the burden back on the community to come up with the burden of proof if it's not through -- if they don't catch it from online ads. I think that's not good. Okay.

Mr. Poepoe: Any members have any objections to that additional suggestion? If not, we can include it into our submittal or transmittal. And if -- okay, yeah, looks like we -- it appears that we have a -- a unanimous agreement.

Mr. Hopper: Yeah, Chair, you could just say if there's no objections, those will be forwarded as our comments. And if no one says anything, then it's unanimous.

Mr. Poepoe: Okay, if there's no objections, then we'll go ahead and submit that. Yeah, looks like it.

Ms. Takakura: Okay, thank you very much, everyone.

Mr. Poepoe: Thank you, Jacky. Section B, number 2:

Vice-Chair Poepoe read the following agenda item description into the record:

2. COUNTY SPECIAL USE PERMIT

MS. LEEANA SMITH-RYLAND, on behalf of HAWAII PACIFIC TELEPORT, is requesting a County Special Use Permit to operate a new satellite antenna site within an easement at the Molokai Landfill, TMK (2) 5-2-011:027 (por.), in Hoolehua, Island of Molokai, Hawai. (CUP2022-0003) (T. Furukawa)

The Commission may act to approve or disapprove the County Special Use Permit, or defer

Mr. Poepoe: Okay, go ahead, staff.

Ms. Furukawa: Aloha. The project has been forwarded to you because the proposed telecommunications site will be set up on and operate on 2,601 square feet of County agricultural land. The property's State land use district designation is agricultural, but the construction and operation of the wireless communications antenna is a permitted use so no State Land Use Commission special permit is necessary. The applicant's representative, Leeana Smith-Ryland, is in attendance as she has a presentation about the proposed project for you, and she can respond to any questions you might have about the project.