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November 14, 2014

Honorable Donald G. Couch, Jr.  
Chairman  
Maui County Council Planning Committee  
Kalana O Maui Building  
200 South High Street  
Eight Floor  
Wailuku, Hawai'i 96793

RE: Proposed amendments to Maui County Code Sections  
19.32.040 and 19.37.010

Dear Mr. Couch,

I represent the Association of Apartment Owners of Alaeloa ("Alaeloa").

Alaeloa is a 43-unit planned development in Napili that seeks an amendment to Bill No.67 (Ordinance No. 4063). This legislation, made into law in October 2013, amended Maui County Code Sections 19.32.040 and 19.37.010 to allow for certain planned developments to qualify for transient vacation rentals ("TVRs") as a permitted use.

Alaeloa meets all of the conditions of MCC Section 19.32.040, as amended, except for the single condition found in Section 19.32.040(H)(3) ("Condition H3") that requires a planned development to consist of only duplexes or multi-family dwelling units. Alaeloa contains 43 single-family units.

RECEIVED AT PC MEETING ON 9/3/15  
*Committee Chair Couch*

The overriding purpose of Ordinance No. 4063 was to legitimize TVR as a permitted use for planned developments that had received final approval and were engaged in TVR activity before the initial TVR ordinance was enacted. That purpose fits Alaeloa the same that it fits the only two planned developments—Puumanu and Kaanapali Plantation--that benefited from Ordinance No. 4063.

For the reasons discussed below, Alaeloa believes that Condition H(3) should be removed from MCC 19.32.040(H) as it does not support any viable planning objective and in fact disfavors planned developments, such as Alaeloa, with less density than projects consisting of only duplexes or multi-family dwelling units.

### **Background**

Alaeloa is a planned development located on 13.5 acres in Napili, Maui. It was developed in 1964. Twenty-seven of the project's units are single family, while 16 of its units are duplex. The project was completed in 1964. The project's Declaration provides for minimum 30-day rentals as a permitted use. (See, Declaration included with this letter, at pp. 18.) This TVR activity has been carried out consistently by many unit holders since shortly after Alaeloa was developed. The six-person Board of Directors unanimously endorses TVR as a permitted use<sup>1</sup>, and there has never been any significant opposition to TVR use in the project as permitted by the CCR's.

As you know, Bill No. 67 started out as "the Puumanu bill". Its intent was to provide the residents of the Puumanu condominium project in Lahaina with certainty that they could engage in TVR as a permitted use, consistent with the Minatoya opinion that was issued on July 30, 2001 (see copy attached).

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<sup>1</sup> The Alaeloa Board has reviewed and unanimously approved this request.

The initial legislation restricted planned developments of less than 25 acres that otherwise qualified for permitted TVR activity under the proposed legislation. During the Maui County Council hearings on the proposed legislation, the Council deemed it appropriate to remove the acreage restriction in its entirety. The only other project that was represented during the hearings was Kaanapali Plantation, which qualified for the TVR use as proposed upon the elimination of the acreage restriction. During the Council's deliberations, it was specifically noted by the Planning Department that Alaeloa was a planned development that fit the legislative intent of Bill No. 67 except for the fact that it contained some single-family units. The Council noted that Alaeloa had no representative present at the hearings; the Council therefore took no initiative to further amend Bill No. 67 to eliminate the condition that a planned development that otherwise qualified for TVR treatment had to consist of only duplexes or multi-family dwelling units.

**Amendment of MCC Sections 19.32.040 and 19.37.010**

As noted above, Alaeloa meets all of the conditions of MCC Sections 19.32.04 and 19.37.010 except for Condition H(3).

Alaeloa was privately funded and received final approval prior to 1981. At least one unit in Alaeloa was operating as a TVR on or before April 20, 1981. Alaeloa is located on residentially zoned land.

Moreover, TVR activity is specifically permitted as a use at Alaeloa by its governing documents and is in fact supported almost universally by all Alaeloa unit owners, many of them long-time buyers who have used their units as vacation rentals.

As to Condition H(3), Alaeloa believes that, similar to the initial 25 acre limitation that was ultimately removed from the bill, Condition H(3) was made a part of Ordinance because it fitted the building configurations at Puumanu, which are either duplexes or multi-family

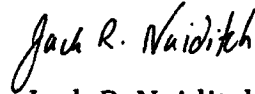
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units. From a planning standpoint, however, there does not appear to be any viable reason why these restrictions should exist. In fact, a project that consists of a majority of single-family units in addition to duplexes and multi-family units should be considered even more suitable for the commercial ebb and flow of TVR activity (ie., density) than projects containing only duplexes and multi-family units.

Alaeloa would very much appreciate your committee reviewing this request and initiating legislation to remove Condition H(3) from the current ordinance.

Should you have any questions or concerns, or need additional information, please do not hesitate to contact me.

Sincerely,

  
Jack R. Naiditch

Enclosures

cc: Board of Directors of the Association of  
Apartment Owners of Alaeloa