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Danny A. Mateo

Vice-Chair  
Joseph Pontanilla

Council Members  
Gladys C. Baisa  
Robert Carroll  
Elle Cochran  
Donald G. Couch, Jr.  
G. Riki Hokama  
Michael P. Victorino  
Mike White

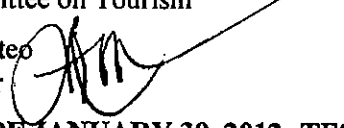


Director of Council Services  
Ken Fukuoka

**COUNTY COUNCIL**  
COUNTY OF MAUI  
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WAILUKU, MAUI, HAWAII 96793  
[www.maui-county.gov/council](http://www.maui-county.gov/council)

January 27, 2012

TO: The Honorable Tom Brower, Chair  
House Committee on Tourism

FROM: Danny A. Mateo  
Council Chair 

SUBJECT: **HEARING OF JANUARY 30, 2012; TESTIMONY IN SUPPORT OF HB 1760,  
RELATING TO TIME SHARE ZONING**

Thank you for the opportunity to testify in support of this important measure. The purpose of this measure is to authorize the counties to restrict time share units and time share plans in zoning districts, other than time share zoning districts, including areas designated for hotel use, resort use, or transient vacation rentals.

This measure is in the Maui County's Legislative Package; therefore, I offer this testimony on behalf of the Maui County Council.

The County Council supports this measure for the following reasons:

1. This measure empowers the counties to address the changing face of the visitor industry and the trend toward conversion of hotels to time shares, while explicitly authorizing the creation of a time share zoning district and a return to county-based land use decisions.
2. The measure gives the counties discretion to decide where time share operations belong, and would further the Legislature's intent under Section 514E-4, Hawaii Revised Statutes (HRS), to provide such discretion to the counties.
3. As noted in the Department of the Attorney General's February 8, 2006 opinion, "although a county may limit the location of time share units via its powers in HRS § 514E-4, HRS § 514E-5 allows time share units wherever hotel or resort use, or transient vacation rentals are allowed. . . . It is quite probable that a county zoning ordinance, pursuant to HRS § 514E-4, which prohibited time share units in a certain area that is also designated . . . for hotel or resort use, or transient vacation rentals, would be challenged as being contrary to HRS § 514E-5. In such an instance, HRS § 514E-5 might likely be deemed a more specific statute that would control. . ." Accordingly, the counties would likely face an argument that they had exceeded their authority if they attempted to restrict the location of time share operations by ordinance without first addressing HRS § 514E-5, which this measure does.

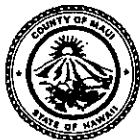
For the foregoing reasons, the Maui County Council supports this measure.

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January 27, 2012

TO: Honorable Tom Brower, Chair  
House Committee on Tourism

FROM: Robert Carroll  
Council Member, East Maui

Handwritten signature of Robert Carroll in black ink.

DATE: Monday, January 30, 2012

SUBJECT: **Support OF HB 1760 H.D., RELATING TO TIME SHARE ZONING**

Thank you for the opportunity to testify in support of this important measure. The purpose of this measure is to authorize the counties to restrict time share units and time share plans in zoning districts, including areas designated for hotel use, resort use, or transient vacation rentals.

I support this measure for the following reasons:

1. Pursuant to §46-4, Hawaii Revised Statutes (HRS), counties are granted zoning authority within the frame work of long range and comprehensive general plans to guide development within established districts. Furthermore, §514E-5 HRS restricts time share units with certain exceptions and requires that time share units be addressed consistent with hotel, resort or transient vacation rentals. I strongly believe that the demands and impacts of a hotel versus time share units are different on our land use, zoning and infrastructure. Therefore, time share units should not be interpreted and legislated as hotel units as noted by §514E-5 HRS, which requires that counties legislate these uses equally.
2. Typically hotels require more staffing than time share units; the habits and movement of the clientele contrast, in that, the arrival and departure of the guests vary; the number of guests occupying a time share unit is potentially greater than a hotel room; and the dining requirements of a hotel will impact local and resort facilities, especially since many time share units provide cooking facilities within the unit.
3. Counties throughout the State of Hawaii should have the discretion to enact far reaching and more restrictive legislation to protect their respective environs. Thus §514E-5 HRS, currently usurps county authority and repudiates home rule principles. Land use zoning policies are likely to have substantial impacts on local economic, social, and environmental conditions. Therefore, local government should retain authority on decisions about zoning policies to the greatest possible extent.

For the foregoing reasons, I support this measure.



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January 30, 2012

Representative Tom Brower, Chair  
Representative James Kunane Tokioka, Vice Chair  
House Committee on Tourism

**Opposition to HB 1760 Relating to Time Share Zoning  
(Restrictions on time share units)**

**Monday, January 30, 2012, 10:00 a.m., in CR 312**

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF appreciates the opportunity to express its **opposition and concerns regarding HB 1760**, which appears to be, among other things, contrary to the intent of the current time share law, lacking a public purpose, and unnecessary.

**HB 1760.** The current time share law, Hawaii Revised Statutes (HRS) §514E-5(2)(A), provides that time share units, time share plans and transient vacation rentals are allowed in areas designated for hotel use, resort use or transient vacation rentals, pursuant to county authority, or where the county, by its legislative process, designates hotel, transient vacation rental, or resort use. The changes proposed by HB1760, however, propose to restrict time shares to a newly established "time share zoning district;" and would also allow the county to prohibit time share units and time share plans on other zoning districts, including areas designated for hotel use, resort use, or transient vacation rentals.

**LURF's Position.** Timeshares provide vital diversity of choice for Hawaii's tourism industry, and thus serve a valuable function in maintaining consistent tourism levels, based on their high and consistent rates of occupancy and customer satisfaction. In addition to providing jobs similar to traditional hotel and resort operations jobs, timeshare projects also provide skilled technical, sales and marketing jobs. We also understand that time shares play a part in fostering the rehabilitation of older hotel properties, and could act as a stimulus to the local economy, by boosting construction and investments in the state.

LURF opposes the amendments proposed by HB 1760 based on, among other things, the following:

- **This measure is contrary to the intent of the current law.** The timeshare law, HRS §514E-5(1)(A) specifically allows time shares in areas designated for hotel use, resort use or transient vacation rentals, and the proposed measure would give the counties the power to prohibit timeshares in those same areas! The proposed measure is clearly contrary to the original intent of the law, and should not be approved.
- **There is no public purpose clause to justify this measure, and may be subject to litigation.** This measure lacks a purpose clause, so it is impossible to know the purpose and intent of this measure. Given the lack of purpose or explanation for this measure, it should be held in this Committee.
- **HB 1760 is unnecessary – The counties already have the power to prohibit time shares.** We understand that this proposed state-wide restriction on time shares was proposed as part of Maui County’s legislative package. It appears, however, that this measure is unnecessary, because the counties already have the authority to limit timeshares, pursuant to HRS §514E-4, which provides as follows:

“**County authority.** The several counties shall, by amendment of their zoning ordinances, limit the location of time share units, time share plans and other transient vacation rentals, within such areas as are deemed appropriate. “
- **The State Time Share Administrator and timeshare stakeholders should resolve any problems or issues.** HRS Chapter 514E governs timesharing plans. Pursuant to HRS §514E-1.5, the Director of the State Department of Commerce and Consumer Affairs (DCCA) has appointed a Time Share Administrator who is responsible for administering Chapter 514 E and is also responsible for the performance of the duties conferred upon the director by Chapter 514E. Instead of passing legislation with no stated purpose or intent, the State Time Share Administrator should be provided opportunity to resolve the issues are that gave rise to this measure.

Thank you for the opportunity to present testimony in opposition to this bill.



January 27, 2012

TO: Representative Tom Brower, Chair  
Committee on Tourism  
State House of Representatives

FROM: Daniel Dinell, Chair  
American Resort Development Association – Hawaii (ARDA-HI)

RE: H.B. 1760, Relating to Time Share Zoning

Chair Brower and Members of the Tourism Committee:

The American Resort Development Association is opposed to H.B. 1760, Relating to Time Share Zoning. The purpose of this bill is to authorize a county to create time share zoning districts that specifically allow time share units and time share plans. A county that creates such a time share district may prospectively restrict time share units and time share plans from other zoning districts, including areas designated for hotel use, resort use or transient vacation rentals in which time share units are presently permitted. Any attempt to segregate time share units or time share plans by creating a separate time share zoning district would be considered arbitrary, capricious and unreasonable by the courts without evidence that time share units and time share plans versus hotels and resorts represent such different land uses that the two should be separated into different zoning districts. To the contrary, both time share units and time share plans and hotels and resorts offer rooms and other accommodations and amenities for short-term visitors.

Zoning is the regulation of the use of land and buildings on the land. A zoning ordinance may authorize certain land uses in a particular zoning district while precluding all other land uses. However a zoning ordinance may not regulate the ownership of or the status of the person or entity who owns, occupies or operates the land or building.

HRS §514E-4 authorizes each county to limit the location of time share units and time share plans to " . . . such areas as are deemed appropriate." HRS §514E-5(2) essentially permits time share units and time share plans in areas designated by each county for hotel use, resort use or transient vacation rentals, because the operation of a time share plan is similar in nature to the operation of a hotel.

On Maui, for example, Chapter 19.37 of the County of Maui Zoning Ordinance currently creates a separate district for time share units and time share plans (registered after the 1981

effective date of this chapter) in the hotel zoning district. This ordinance satisfies the legal standard because it permits timeshare units and timeshare plans in the County's hotel zoning district. Subsection 19.37.010 D of the Ordinance provides that if a time share unit or time plan is to be created in a project or building that is not a hotel and does not contain time share units or time share plans, the time share use must be prominently authorized by the project instruments.

It is ARDA-HI's belief that an attempt to segregate time share plans by creating a separate time share zoning district would be considered arbitrary, capricious and unreasonable without evidence that time share units and time share plans and hotels represent such different land uses that they should be separated into different zoning districts. In order to survive judicial scrutiny there must be a reasonable basis for the creation of separate zoning districts.

While hotels and time share plans may offer different levels of service and accommodations, the trend of combining hotel components and time share components in a single resort project would make it difficult to provide a factual basis for the creation of separate zoning districts. Integrating hotel and time share uses in a single project, such as the recently opened Disney's Aulani Resort and Spa, makes it impossible to demonstrate that the two uses have distinct land use characteristics that would make them incompatible or justify the creation of separate hotel and time share zoning districts.

Creation of separate zoning districts for hotel and time share use would likely be considered a violation of Equal Protection clause of the Fourteenth Amendment to the U.S. Constitution. A zoning ordinance must be equal in operation and effect, and provide users in similar circumstances with equal protection of the law. McQuillin, *Municipal Corporations* §25.61. In order to satisfy this requirement (1) a zoning ordinance must treat all members within a designated class alike, (2) there must be reasonable grounds to distinguish between those users within and without the designated class, and (3) the proposed classification must bear a rational relationship to the purpose of the regulation. *Grader v. City of Lynwood*, 728 P. 2d 1057 (Wash. Ct. App.1986).

For the foregoing reasons we believe that H.B. 1760 would not survive judicial scrutiny, and request that it be held in committee.

Thank you for the opportunity to submit these comments.

# **STARWOOD**

VACATION OWNERSHIP

9002 San Marco Court  
Orlando, Florida 32819  
(407) 418-7271

January 30, 2012

To: Honorable Tom Brower, Chair  
Honorable James Kunane Tokioka, Vice Chair  
House Committee on Tourism

Fr: Robin Suarez, Vice President/Associate General Counsel  
Starwood Vacation Ownership

RE: **HB1760 – Relating to Time Share Zoning - Oppose**  
State Capitol, Conference Room 312 – 10:00 AM

Aloha Chair Brower, Vice Chair Tokioka and Members of the Committee:

My name is Robin Suarez, Vice President & Associate General Counsel for Starwood Vacation Ownership, (“Starwood”). Starwood opposes this legislation which authorizes counties to restrict timeshare units and timeshare plans in timeshare zoning districts.

Timeshare project development should not be restricted to a timeshare zoning district because the future development of new and upgraded hotels may require a timeshare component to be economically feasible. Hawaii must continue to compete aggressively for the tourist dollar against other destination markets that have upgraded their inventories. Our economy and trends in the visitor industry demonstrate that timeshare accommodations are highly desired, especially with visitors traveling with large parties. Attempts to discourage the development of timeshares are likely to also discourage or even stop the development of future mixed-use hotel developments.

Timeshare projects are not a form of land use; instead timeshare projects are a form of ownership that may take many forms: apartments, condominiums, single-family residences. Therefore, creating a zoning district for timeshares may not be permissible. Furthermore, counties already have authority to permit timeshare use by existing zoning ordinances so a timeshare zoning district is not needed.

Timeshare resorts experience high and consistent rates of occupancy and customer satisfaction. During this deep recession period, timeshares are a stabilizing factor for Starwood and for the health of our state’s economy.

Studies continue to prove that timeshare projects create an equivalent number of jobs when compared to hotel projects, and provide more consistent levels of employment.

Timeshare properties are good employers, are good for the community and pay their fair share of taxes. As employers, we work diligently to provide stable employment and have not laid off any employees during this unprecedented period of recession. In fact, we have continued to hire as our occupancy rates average around 95%.

In addition to providing traditional resort operations jobs similar to hotel projects, timeshare resorts add high skilled and high compensated sales and marketing jobs. As such, timeshare resorts represent a valuable and diverse component of Hawaii's important tourism market.

Timeshare owners do not behave any differently from hotel guests and do not place any additional burden in comparison to hotel guests on Hawaii's infrastructure. Timeshare owners and guests do eat at restaurants and support local markets. Local residents come to timeshare projects to vacation or enjoy dining facilities. In addition, local food banks are grateful recipients of unused food items from timeshare units. Many timeshare owners are proud to be part of the fabric of the surrounding communities and participate in clean up and other community events.

For these reasons, we respectfully request your committee to oppose this bill.



GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

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**TO:** Representative Tom Brower  
Chair, Tourism Committee  
State Capitol Room 315

**FROM:** Gary M. Slovin / Mihoko E. Ito

**DATE:** January 29, 2012

**RE:** **H.B. 1760, Relating to Timeshare Zoning**  
**Hearing: Monday, January 30, 2012, 10:00 a.m.**  
**Room 312**

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Dear Chair Brower and Members of the Tourism Committee:

Wyndham Vacation Ownership offers individual consumers and business-to-business customers a broad suite of hospitality products and services through its portfolio of world-renowned brands. Wyndham has a substantial presence in Hawaii through its Wyndham Vacation Resorts and WorldMark by Wyndham brands.

Wyndham **opposes** H.B. 1760, Relating to Time Share Zoning, which would authorize the counties to restrict time share units and time share plans in zoning districts, other than time share zoning districts, including areas designated for hotel use, resort use, or transient vacation rentals.

The proposed legislation imposes an unfair and unreasonable restriction on time shares by pushing development away from traditionally designated resort areas. Visitors to Hawai'i who enjoy timeshares will suffer, as they will not be allowed to fully experience all of the wonderful attributes that the Islands have to offer. As a result, the State of Hawaii will lose the economic benefits that timeshares and their unit owners bring to the Islands.

Wyndham opposes this unfair and economically unsound restriction and urges the committee to hold the bill.

Thank you for the opportunity to submit testimony.