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Lihu'e, Kaua'i, Hawai'i 96766

January 27, 2017

TESTIMONY OF MEL RAPOZO
COUNCIL CHAIR, KAUA'I COUNTY COUNCIL
ON
SB 862, RELATING TO ZONING
Senate Committee on Public Safety, Intergovernmental,
and Military Affairs
Tuesday, January 31, 2017
1:15 p.m.
Conference Room 229

Dear Chair Nishihara and Members of the Committee:

Thank you for this opportunity to provide testimony in support of SB 862, Relating to Zoning. My testimony is submitted in my individual capacity as Council Chair of the Kaua'i County Council and as Secretary of the Hawai'i State Association of Counties.

I wholeheartedly support this measure that addresses the persistent issue of whether Single-Family transient vacation rentals are treated as residential or resort units. SB 862 will provide the counties with the ability to exercise its zoning amortization authority over a "reasonable" time.

For the reason stated above, I urge the Senate Committee on Public Safety, Intergovernmental, and Military Affairs to support this measure. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188.

Sincerely,

MEL RAPOZO
Council Chair, Kaua'i County Council

AMK:cy

Bernard P. Carvalho, Jr.
Mayor



Michael A. Dahilig
Director of Planning

Wallace G. Rezentes, Jr.
Managing Director

Ka'āina S. Hull
Deputy Director of Planning

PLANNING DEPARTMENT

County of Kaua'i, State of Hawai'i

4444 Rice Street, Suite A-473, Lihue, Hawai'i 96766

**Testimony before the Senate Committee on Public Safety, Intergovernmental and Military
Affairs
SB862 Relating to Zoning**

January 31, 2017 at 1:15 pm Conference Room 229

By Michael A. Dahilig
Director of Planning, County of Kauai

Chair Nishihara, Vice Chair Wakai and Honorable Members of the Committee:

On behalf of the County of Kaua'i Planning Department, I offer testimony in **SUPPORT** of this measure as it addresses a persistent issue whether Single-Family transient vacation rentals should be treated as residential or resort units.

Over years, with the growth in the vacation rental market, Single-Family transient vacation rental uses have gentrified communities by displacing residential areas with resort uses. Further, these vacation rental uses are already required by the State Tax Office to pay Transient Accommodation Taxes, and General Excise taxes- just like a hotel, and in contrast to a neighbor which lives in a community long term for residential purposes.



Vacation rental uses have a place within a community. However, the counties should have the ability to treat this distinct use differently than a typical residential house and place them in an appropriate place. However, the ambiguity in this current provision of the zoning authorization statute provides vacation rental operators room to argue their use is residential and circumvent many regulatory controls, leading to vacation rentals in the middle of workforce areas like Lihue and Kekaha, leading to increased property values for our local residents adjacent to these uses.


The effect of this proposal before this committee strictly aligns this use with the genre of other similar uses like resort, commercial and industrial with respect to the counties' ability to exercise zoning amortization authority. Further, amortization is strictly limited to a "reasonable" time.

Simply put, the proposal is only for authorization, only applies to non-conforming vacation rentals, for counties with a population less than 100,000 residents and would still need to be implemented fully by ordinance.

We respectfully request the committee **APPROVE** the measure as is, and forward to the next Committee for consideration. Mahalo for your consideration.



 | 808-733-7060
 | 808-737-4977

 | 1259 A'ala Street, Suite 300
Honolulu, HI 96817

January 31, 2017

The Honorable Clarence K. Nishihara, Chair
Senate Committee on Public Safety, Intergovernmental,
and Military Affairs
State Capitol, Room 229
Honolulu, Hawaii 96813

RE: S.B. 862, Relating to Zoning

HEARING: Tuesday, January 31, 2017, at 1:15 p.m.

Aloha Chair Nishihara, Vice Chair Wakai, and Members of the Committee.

I am Myoung Oh, Director of Government Affairs, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 9,000 members. HAR **opposes** S.B. 862 which allows counties with populations less than one hundred thousand to enact a zoning ordinance to amortize or phase out nonconforming single-family transient vacation rental units over a reasonable period of time.

While we understand the argument for regulating non-conforming uses, it is important to note that there are many property owners who have been legitimately and responsibly running Transient Vacation Rentals ("TVRs") – and have been collecting and remitting appropriate taxes.


Counties should have the power to adequately control what goes on in their communities. However, we believe that counties already have the authority they need to regulate TVRs via their existing powers to enact zoning ordinances and enforce those ordinances.


For example, in 2009, the County of Maui adopted a permitting system that would allow TVRs and Bed and Breakfast operations ("B&Bs") in residential areas, and established caps on the number of permitted units in specific neighborhoods and districts. Maui County Council has the authority to either repeal the vacation rental permitting ordinances, or issue a moratorium on new permits until more residential housing is available.


Kauai, for example, in 1982, established what are called "visitor destination areas" ("VDA") via the passage of Ordinance 436. The primary reason for establishing VDA's was to designate areas on the island where resort activity would be permitted, and to preserve other areas of the island for residential, agricultural or other non-resort commercial and non-commercial uses.





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Today, TVR's can operate legally within VDA's and can operate outside of the VDA only if a nonconforming use certificate is obtained by the County of Kauai Planning Department. This certificate must have been obtained by March 30, 2009 and the County will permit no additional TVR's outside the VDA after that date.

Mahalo for the opportunity to testify in opposition to this measure.





Senate
The Twenty-Ninth Legislature
Regular Session of 2017

To: Sen. Clarence K. Nishihara, Chair
Sen. Glenn Wakai, Vice Chair

Date: January 30, 2017

Time: 1:15 p.m.

Place: Conference Room 229
Hawaii State Capitol

RE: Senate Bill 862, Relating to Zoning

Chair Nishihara, Vice Chair Wakai and Members of the Committee:

Rental By Owner Awareness Association (RBOAA), is a Hawaii non-profit corporation whose mission is to provide Hawaii property owners with information to help them comply with the applicable State and County regulations, support the Hawaii economy by offering visitors choice of accommodations, and to advocate for the rights of Hawaii vacation property owners. RBOAA members provide transient vacation rentals in full compliance with existing tax and county regulations. RBOAA supports full enforcement of existing regulations.

RBOAA fully recognizes the delicate balance in which residents and visitors share the Hawaiian islands. RBOAA's mandate is to defend the rights of vacation property owners.

RBOAA would like to voice our **opposition** to S.B. No. 862 for three reasons and offers five recommendations.

1. The proposed changes to the zoning act are inconsistent with constitutional property rights of owners to exercise their right to use (including rent) their own properties.
 - a. Implementing a law that would prohibit the exercise of a property owner's right to rent their property based solely upon a time duration may infringe upon their constitutional property rights. Property owners have the constitutional right to use, including rent, their property. By specifically adding transient vacation rentals, and not adding other legal uses of the property, the state of Hawaii is almost certainly infringing on owners' constitutional property rights.

2 | HB 825 RELATING TO TRANSIENT ACCOMODATIONS

- b. Property rental is a landlord-tenant relationship and owners are entering into a lease contract, the duration of which (short term or long term) does not redefine the nature of the transaction.
- c. The Committee may see testimony from other parties stating that vacation rental operations are businesses. This statement is not correct from a legal standpoint, but even it was correct, it would be discriminatory to treat “vacation rental businesses” differently than other home based businesses such as daycares, hairdressers, home offices, home-based sales, mechanical repair shops, etc.
- d. It is also discriminatory to outlaw something based on generalized behavior profiling; in this case, the presumed behavior of visitors as compared to the presumed behavior of residents or tenants.

If the committee concludes that the constitutional rights of property owners should be disregarded, there are two other major problems with this bill.

2. The wording included in the bill “*provided further that a zoning ordinance may provide for the amortization or phasing out of nonconforming single-family transient vacation rental units over a reasonable period of time in an area of any zoning classification*” is too vague.
 - a. There is no framework for how the amortization process would be carried out, including the notification process, the identification process and the timeline.
 - b. There is also no framework for how a property owner would be *compensated for loss of value*. Owners have made significant investments in Hawaii but those investments could be impaired by *subsequent changes to zoning*. The State and the Counties must provide fair and just compensation to owners for loss of fair value.
3. The proposed wording refers to amortization “in an area of any zoning classification”. The wording is unnecessarily broad and the zoning classifications to be included *could reasonably be limited* to some sub-zones of residential and some sub-zones of agriculture without including zoning such as hotel/resort or business zones, for example. The committee may consider certain residential sub-zones to be appropriate for vacation rentals and other sub-zones to be inappropriate, for example.

We believe this bill should be rejected, but if this bill is passed, we would like to recommend five amendments to this bill.

1. RBOAA recommends the State of Hawaii require each *county to submit for approval*, a detailed framework around amortization before the county implements the provisions of this bill. The framework should include how owners and community leaders are consulted, how properties are identified, the compensation payable to owners for loss of value, the timeframe for amortization, the process of any amortization, and other factors as determined.



2. RBOAA recommends the State of Hawaii require each county to submit for approval the specific zoning classifications to be included in this measure, rather than “any” classification.
3. RBOAA recommends the State of Hawaii require each county to adopt a common definition of short term rentals. Some counties use “30 days or less” while other counties, and the State, use “less than 180 days” as the definition of short term rental.
4. RBOAA recommends the State of Hawaii mandate the counties to issue non-conforming permits to all non-conforming vacation rental properties in operation on the date this bill takes effect, *with specific provision to collect any and all taxes in arrears.*
5. RBOAA suggests that the State of Hawaii use portions of existing funds created to support housing to acquire properties affected by zoning changes. The counties or the state could either re-sell the properties or use those properties as rentals to help address the high cost of housing in the state.

RBOAA recognizes, as do the members of this committee, that there are parties in Hawaii who are opposed to any and all transient vacation rentals, regardless of location. The members of the committee recognize the importance of tourism to the Hawaiian economy and therefore the need to provide appropriate accommodation choices to visitors. We respectfully request the committee consider these facts when debating this bill.

Thank you for the opportunity to testify on this measure.

Sincerely,

Meera Kohler
Co-President,
Rentals by Owner Awareness Association

SB 862 Testimony in Strong Support submitted to the
Committee on Public Safety, Intergovernmental, and Military Affairs

Senator Clarence K. Nishihara, Chair

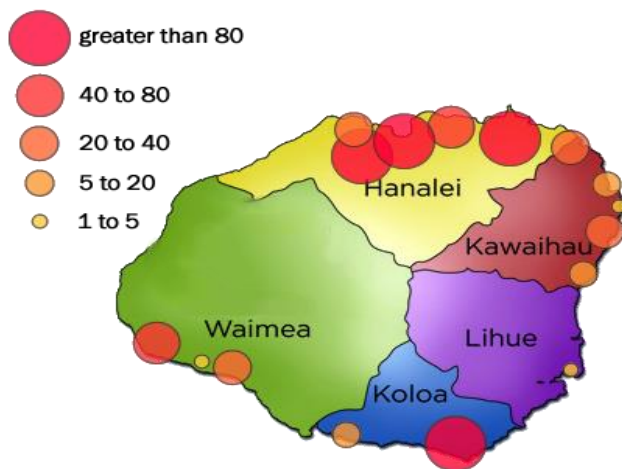
Senator Glenn Wakai, Vice Chair

January 31, 2017 at 1:15 pm

Conference Room 229

Honorable Members of the Committee,

As a matter of safety I hope you will give **strong support to SB 862**. The largest concentration of Transient Vacation Rentals operating outside of the Visitor Destination Area, (VDA) on Kauai is on the North Shore, not only in residential zoned lands, but in the tsunami evacuation zone. The Hanalei District is home to 7 one-lane bridges along the coast to get to the Wainiha/ Haena area, is well known for being a high hazard area and yet we have the highest concentration of transient vacation rentals. This has created serious negative impacts from the unprecedented expansion of the VDA in contravention of Kauai's zoning laws.



Map showing the high volume of TVR's outside the Visitor Destination Areas operating in Residential Districts.

The North Shore faces vital safety issues due to the inability to safety evacuate as TVRs increased the non-resident population in tsunami inundation zones. The health, safety, and welfare of residents and visitors are impacted by the high numbers of transient units.

Single-family transient vacation rentals are more similar to resort use than residential use; please support allowing counties with under 100,000 people to mitigate the cumulative impacts and diminish the intensity of uses by amortization or phasing out of nonconforming single-family transient vacation rental units over a reasonable period of time.

Mahalo,
Caren Diamond
PO Box 536
Hanalei, HI 96714

Testimony Submitted to the
Senate Committee on Public Safety, Intergovernmental, and Military Affairs
in **Strong Support of SB 862** Relating to Zoning

Hearing: Tuesday, January 31, 2017, 1:15 pm, Conference Room 229

January 30, 2017

Aloha Chair Nishihara, Vice-Chair Wakai and Honorable Members of the Committee,
I strongly urge you to approve SB 862.

I live in Hanalei, Kauai. Hanalei is not designated as a "Visitor Destination Area." Hanalei's housing stock is intended to be used for residential purposes. Hanalei's housing stock is not supposed to be used for tourist/transient vacation rentals, which are resort uses, not residential uses. But due to past misinterpretations of Kauai's Comprehensive Zoning Ordinance, over the years more than 40% of Hanalei's housing has been converted to transient vacation rental/resort uses.

In order to restore the residential nature of the community, the non-residential/resort uses of Hanalei's residential housing stock need to be reduced or phased out.

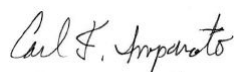
But it is claimed by some that HRS 46-4, due to supposed ambiguity over the meaning of "residential use," prohibits the counties from enacting policies to amortize or phase out these resort uses. The resulting controversy over the meaning of HRS 46-4 has hamstrung the County of Kauai's ability to deal with non-conforming resort uses in Hanalei and other residential neighborhoods.

HRS 46-4 quite appropriately intends to protect non-conforming residential uses. But it defies credibility to believe that it was the intent of HRS 46-4's drafters that the wording of HRS 46-4 should enable transient/resort uses to be given the "no amortization/no phase out" status that HRS 46-4 affords to truly residential uses.

It is very important for the viability of Hanalei's existence as a thriving residential community that the County of Kauai not be prevented from enacting fair and reasonable policies to protect and restore residential communities like Hanalei.

SB 862 would enable the County of Kauai to move forward. I therefore respectfully ask that you approve SB 862.

Thank you for considering this testimony.



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**TESTIMONY OPPOSING SB 862, RELATING TO ZONING
FOR THE 1/31/16 1:15 PM PUBLIC HEARING OF THE
SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS
IN CONFERENCE ROOM 229**

I support amending Section 46-4, Hawaii Revised Statutes, to grant all counties the discretion to phase out nonconforming structures and land uses which formerly were legal but are no longer comply with county zoning. Unfortunately, SB 862 would only apply to the County of Kauai. That violates the Hawaii Constitution. Article VIII, Section 1 of the State Constitution does not authorize a special law which can only apply to a single county.

**ARTICLE VIII
LOCAL GOVERNMENT
CREATION; POWERS OF POLITICAL SUBDIVISIONS**

Section 1. The legislature shall create counties, and may create other political subdivisions within the State, and provide for the government thereof. Each political subdivision shall have and exercise such powers as shall be conferred under general laws.

Att. Gen. Op. 61-36. Law specifically repealing statute pertaining to single county is void as special law.

Att. Gen. Op. 62-11. Law conferring power on only certain specified counties is a special law.

SB 862 Testimony in Strong Support submitted to the
Committee on Public Safety, Intergovernmental, and Military Affairs
Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair

January 31, 2017 at 1:15 pm Conference Room 229

Aloha Honorable Members of the Committee,

I am writing in **strong support of SB 862**. Growing up on the island of Kauai, I've witnessed the many detrimental impacts of non-conforming transient vacation rentals (TVRs) on our residential communities. On Kauai, communities outside the visitor destination area (VDA) such as Ha'ena and Hanalei have been particularly inundated with transient vacation rentals. In addition to the residential zoning of these neighborhoods, the tsunami and flood hazards of Ha'ena and Hanalei make these areas especially unsuitable for such large numbers of TVRs. SB 862 would provide a much needed avenue for counties with under 100,000 people to amortize single family nonconforming transient vacation rentals over a reasonable period of time. For the health, safety, and welfare of our residents and visitors please support SB 862.

Thank you,
Emily DeVille