KAUA`I COUNTY COMPREHENSIVE ZONING ORDINANCE UPDATE:

SINGLE-FAMILY TRANSIENT VACATION RENTALS BED AND BREAKFAST HOMES

FINAL REVIEW DRAFT

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Department of Planning

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CHAPTER 1: OVERVIEW

1.1 Introduction

On November 30, 2000, Kaua`i Mayor Maryanne W. Kusaka signed Bill No. 1957, Draft 2 into law, adopting a new General Plan for the County of Kaua`i. Among its primary purposes, the General Plan establishes the following framework:

> *"The General Plan is a direction-setting, policy document. It is not intended to be regulatory. It is intended to be a guide for future amendments to land regulations…"*

The subject of transient accommodations, in its many forms, was an important consideration for the General Plan. In fact, the General Plan makes several recommendations concerning transient accommodations. It recognizes the need to amend the County of Kaua`i Comprehensive Zoning Ordinance (CZO) in order to bring the CZO up-to-date with changes in patterns of land use that the CZO does not adequately regulate (see Chapter 2 for a detailed discussion of the General Plan recommendations regarding transient accommodations). The need for these changes must be understood in the context of the age of the CZO (over 30 years with no comprehensive review), and that socio-economic changes have occurred on Kaua`i that were never contemplated when the CZO was first adopted in 1970, including the proliferation of transient accommodations outside of hotels and resort zoning districts.

1.2 Content of the Report

Using the General Plan as a point of departure, the County of Kaua`i Department of Planning retained the firm of Helber Hastert & Fee, Planners (HH&F) to address the recommendations of the General Plan with respect to Transient Vacation Rentals (TVRs) and Bed and Breakfast establishments (B&Bs). This report presents the findings of HH&F and makes specific recommendations concerning the regulation of TVRs and B&Bs, primarily related to changes that should be made to the CZO. The report includes a discussion of the regulatory framework of TVRs and B&Bs (Chapter 2), a review of pertinent data available for the report (Chapter 3), and an analysis of the data in an appropriate context for the Kaua`i community (Chapter 4).

It must be noted that the efforts of the Planning Department were supplemented by the work of a group of Kaua`i citizens ("the Stakeholders Group") who initiated their own investigation of transient accommodations at roughly the same time as the Planning Department[1]. The Stakeholders Group was comprised of a mix of community representatives, industry representatives, and County officials (see Appendix A for a list of individuals who participated as part of this group). At a very early stage in the work of both groups, it was recognized that a cooperative process of public information gathering would enhance analysis, and maximize the efficient use of public meeting opportunities. Along with the Planning Department, the Stakeholders Group sponsored a series of three public meetings held between April 8, 2005 and May 23, 2005 in Lihue to discuss issues relevant to TVRs and to collect the thoughts and views of the citizens of Kaua`i on TVRs. A description of these meetings is found in Chapter 3.

[1] At the printing of this report, the Stakeholders Group was in the process of preparing a separate report of their findings and recommendations regarding TVRs.

1.3 Methods of Information Gathering

In addition to the three public meetings, information was obtained from a variety of sources. This included the American Planning Association (APA), the Hawaii Tourism Authority (HTA), the Department of Business, Economic Development & Tourism (DBED&T), the U.S. Census Bureau, and other private sector reports on transient accommodations.

A series of ten in-depth interviews were conducted for this report, with a variety of Kaua`i residents (see Appendix B for a list of interviewees). These interviews provides additional background with an island-wide perspective, to supplement the comments received during the public meetings.

1.4 Zoning Regulations: Science or Art?

Zoning ordinances across the United States are filled with detailed standards and rules. Many of these requirements have been firmly established as zoning tools that are universally accepted. As zoning tools, they have been effectively used to assist local governments to achieve desired community goals. It is certainly instructive to review what other jurisdictions are doing relative to a local zoning issue. However, the researcher will find a wide distribution of value when other zoning regulations are reviewed for consistency. Should a setback be 5 feet or 10 feet? Should heights in the residential districts be restricted to 25 feet or 35 feet? Should certain non-residential uses be allowed as conditional uses in residential zoning districts? What is an appropriate standard of parking requirement in commercial districts, one space per 300 square feet, or one space per 400 square feet?

There is no uniformly correct answer to any of these questions, and local governments have made use of many different approaches to the same issue. There are several questions to consider when writing new zoning regulations. Citizens, agencies, and adoptive bodies should ask themselves whether the new regulation is consistent with the goals, values, and objectives of their own community. They should question whether the regulation is related to public, health, safety, and welfare. And they should consider whether the regulation is consistent with prevailing legal doctrine, which requires that all citizens receive equal protection under the law, and that due process is followed when implementing and enforcing regulations. From this perspective, we examine the specific needs of the Kaua`i community as applied to the regulation of TVRs and B&Bs.

CHAPTER 2: REGULATORY FRAMEWORK

2.1 TVRs and B&Bs Defined

Definitions are at the heart of regulations contained in zoning ordinances anywhere in the United States. It is the lack of appropriate definitions in the CZO that creates many of the regulatory problems associated with TVRs and B&Bs. Before tackling the job of providing a definition for the CZO, it is instructive to review how other jurisdictions define these terms. By reviewing other definitions, it is easier to get a sense of what elements comprise definitions of TVRs and B&Bs, and what would be appropriate for the CZO. The structure of any definition is essential to successful administrative implementation and regulatory enforcement.

B&Bs

Currently, the CZO does not provide a definition of "B&B." The term "bed and breakfast" can be used to describe a wide variety of accommodations. Therefore, when crafting a definition, it is important to define the term precisely in the zoning code. The American Bed and Breakfast Association (ABBA) differentiates between bed-and-breakfast *homestays* and bed-and-breakfast *inns*. According to the ABBA, B&B *homestay* is a private, owner-occupied residence with one to three guest rooms. The B&B homestay is subordinate and incidental to the main residential use of the building. A B&B *inn* is operated primarily as a business, even though the owner may live on the premises. B&B inns typically have four to 20 guest rooms.

Zoning News (APA, 1989) (Appendix C), cites other examples of B&B definitions, such as the Clackamas County, Oregon, zoning code. Clackamas County defines three types of B&B accommodations: 1) small, owner-occupied "homestay" establishments with one or two guest rooms; 2) medium-sized, owner-occupied "B&B residences" with up to five rooms; and 3) full-fledged inns that may offer over a dozen rooms and include restaurants that cater to the general public as well as to overnight guests. Baltimore County, Maryland, also distinguishes among three types of B&Bs: 1) homes (one to three rooms); 2) inns (up to 12 rooms); and 3) country inns (up to 12 rooms and also offer a full-service restaurant).

A comparison of B&B definitions from other jurisdictions in Hawaii and elsewhere in the United States is provided in Table 1. A review of these definitions reveals basic criteria common to the majority of these examples:

- Accommodations are in exchange for compensation;
- Maximum number of consecutive days occupied is identified, with 30 days maximum as the most common;
- Facility is a single-family dwelling;
- Establishment is owner- or operator-occupied;
- Maximum number of bedrooms is identified; and
- Only breakfast or one meal can be provided to guests for *homestay* facilities[2].

The Kaua`i County General Plan includes the following definition for consideration that may be used in a zoning ordinance update:

[2] B&Bs are exempted from the Department of Health definition of "food establishment" (Title 11, Chapter 12 §11-12-2, Hawaii Administrative Rules), and do not require approval for a commercial kitchen.

Table 1: Selected Bed and Breakfast Definitions From Other Hawai`i Counties and U.S. Jurisdictions

Kaua`i County, HI	**Santa Fe, NM**
Currently not defined	**Bed and Breakfast Inn -** A dwelling unit that contains no more than 12 guest rooms where lodging, with or without meals, is provided for compensation. Transient means an overnight stay of less than 30 consecutive days.
Hawaii County, HI	**Charleston, SC**
Bed and Breakfast Establishment - Any single-family dwellings and/or guest houses (pursuant to section 25-4-9), which have been permitted on a building site, in which overnight accommodations and only breakfast meals are provided to a maximum of ten guests, for compensation, for periods of less than thirty days.	**Bed and Breakfast -** A use by the record owner of property, who is also the resident of the property where the use is proposed, which contains no more than one (1) bed and breakfast unit consisting of one (1) or more rooms arranged for the purpose of providing sleeping accommodations for transient occupancy by one family.
Maui County, HI	**Freeport, ME**
Bed and Breakfast Home - A use in which overnight accommodations are provided to guests for compensation, for periods of less than thirty days, in a detached single-family dwelling unit occupied by the owner-proprietor or lessee-proprietor. The home shall include bedrooms, one kitchen, and living areas used by the family occupying the home and shall include no more than six bedrooms for short-term rental, as specified within the zoning district provisions of this title.	**Bed and Breakfast Inn -** A SFD in which the resident(s) provide short-term overnight lodging to paying guests in a maximum of 7 guest rooms located within the dwelling or permitted attached structures. Breakfast shall be the only meal served and shall be limited to overnight guests. Commercial kitchens and rentals for more than 1 month in a calendar year are prohibited. The inn shall function like a private home with houseguests. A B&B Inn with 3 guest rooms or less shall be considered a home occupation accessory to the principal use of the dwelling.
City and County of Honolulu, HI	**Sedona, AZ**
Bed and Breakfast Home - A use in which overnight accommodations are provided to guests for compensation, for periods of less than 30 days, in the same detached dwelling as that occupied by an owner, lessee, operator or proprietor of the detached dwelling.	**Bed and Breakfast Establishment -** A residence in which the owners serve breakfasts and provide lodging to guests, for compensation. A guest unit shall be defined as one (1) room having no kitchen facilities.
Ashland, OR	**Fargo, ND**
Traveler's Accommodations - Any establishment having rooms or dwellings rented or kept for rent to travelers or transients for a charge or fee paid or to be paid for rental or use of such facilities for a period of less than thirty (30) days (Ord. 2097 S3, 1980; Ord. 2484 S1, 1988).	**Bed and breakfast Facility -** A private home that is used to provide accommodations for a charge to the public, with not more than seven lodging units, in which no more than two family style meals are provided per day.
Anchorage, AK	**South Hampton, NY**
Bed and Breakfast - A single-family or one unit of a two-family dwelling, excluding mobile homes, except in the R-5, R-5A district which is host/owner/operator of the enterprise occupied and offering overnight accommodations for which compensation is paid on a daily or weekly basis for no more than thirty (30) consecutive days, and which offers only one daily meal.	**Bed and Breakfast -** An owner-occupied building designed, used and occupied as a single-family or two-family residence, managed by the property's owner, and having, as an accessory use, bedroom accommodations and breakfast provisions, served in the host's private dining room or kitchen for those accommodated as paying guests, who are referred to, for purposes of this article, as "registered guests."
St. Paul, MN	**Wichita Falls. TX**
Bed and Breakfast Residence - A dwelling unit, located within a one or two family dwelling, in which four or fewer guest rooms are rented on a nightly basis for a period of less than one week and where at least one meal is offered in connection with the provision of sleeping accommodation only.	**Bed and Breakfast Homestay -** An owner-occupied dwelling unit that is at least fifty (50) years old or is a designated Wichita Falls historic landmark, and contains no more than five (5) guest-rooms, where short-term lodging, with or without meals, is provided for compensation.

> *"A **"Bed-and-Breakfast"** is the use of a portion of a residence, an additional dwelling unit or a cottage for transient rental (less than 30 days) on a property where the owner resides in the principal residence."*

TVRs

Currently, the CZO defines Transient Vacation Rental as:

> *"… rentals in a multi-unit building for visitors over the course of one (1) or more years, with the duration of occupancy less than thirty (30) days for the transient occupant.*

The main difficulty with this definition is that it restricts the interpretation of the term "transient vacation rental" to apply only to multi-unit buildings, and does not include single-family dwellings, which are a key focus of this report and a significant perceived problem on Kaua`i.

The Kaua`i County General Plan offers the following definition of vacation rental for consideration:

> *A **"Single-Family Vacation Rental"** is a single-family dwelling that is used as a transient rental.*

A comparison of Transient Vacation Rental definitions in Hawai`i and elsewhere in the United States is provided in Table 2. A review of these definitions reveals basic criteria common to a majority of these examples:

- Accommodations are in exchange for compensation;
- Maximum number of consecutive occupied days is identified;
- Minimum number of consecutive occupied days is identified; and
- Type of residential structure(s) identified.

In a comprehensive review of the transient vacation rental phenomenon, *Zoning News* (APA, 2002) (Appendix D), explains that definitions are often at the root of governing short-term rentals. Unfortunately, many zoning codes have a discrepancy between defined terms and the provisions that use them. Terms are sometimes defined at the beginning of the ordinance but then never used in the provisions. Conversely, provisions may contain undefined terms, rendering the code too ambiguous. For example, some towns prohibit "transient rentals" in certain districts without defining the term "transient." Distinctions can be made easily between the various types of lodging and rental property, and only those uses that are specifically listed as permitted or conditional should locate to designated districts. According to *Zoning News*, ***where single-family residences are a permitted use, and the length of tenure for occupancy of a single-family dwelling is unspecified, nothing in the ordinance can stop property owners from renting the house on a short-term basis***. This is a particularly appropriate observation for Kaua`i, because the CZO does not include length of tenure related to single-family dwellings.

Table 2: Selected Definitions of Transient Vacation Rental (or Similar Term) from Other Hawaii Counties and U.S. Jurisdictions

Kaua`i County, HI	Carmel by the Sea, CA
Transient Vacation Rentals - Rental in a multi-unit building for visitors over the course of one (1) or more years, with the duration of occupancy less than thirty (30) days for the transient occupant.	**Transient Commercial Use -** Use of property for commercial use, by any person, of residential property for bed and breakfast, hostel, hotel, inn, lodging, motel, resort or other transient lodging uses where the term of occupancy, possession or tenancy of the property by the person entitled to such occupancy, possession or tenancy is for less than 30 consecutive days.
Hawai'i County, HI	**Laguna Beach, CA**
Currently not defined	**Short-Term Lodging Unit -** Lodging Unit or Unit means a room or suite of rooms used for the residential use and occupancy of one family rented to person(s) other than the owner. Short-Term means the leasing or occupancy of a lodging unit for a period of thirty (30) consecutive calendar days or less.
Maui County, HI	**Solana Beach, CA**
Transient Vacation Rentals or Use - Occupancy of a dwelling or lodging unit by transients for any period of less than one hundred and eighty days.	**Short-Term Vacation Rental -** The rental of any structure or any portion of any structure for occupancy for dwelling, lodging or sleeping purposes for more than 15, but no more than 30, consecutive calendar days in duration in a residential zoning district, including detached single-family residences, condominiums, duplexes, twinplexes, townhomes and multiple-family dwellings.
City and County of Honolulu, HI	**Sullivan's Island, SC**
Transient Vacation Unit - A dwelling unit or lodging unit which is provided for compensation to transient occupants for less than 30 days, other than a bed and breakfast home. For purposes of this definition, compensation includes, but is not limited to, monetary payment, services or labor of employees.	**Vacation Rental -** The use of a dwelling(s) that is: (1) rented, leased, assigned for tenancies; or (2) made available for use, occupancy, possession, sleeping accommodations, or lodging for one or more persons in return for valuable consideration for any period of less than twenty-eight (28) continuous days duration.
Cocoa Beach, FL	**Saco, ME**
Transient Lodging Establishments - Any unit, group of units, dwelling, building, group of buildings within a single complex of buildings, or any similar place which is rented more than 3 times a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to transients.	**Seasonal Rental Dwelling:** A single-family dwelling (detached), two-family dwellings, or multi-family dwellings within the specified area which are rented occasionally for periods of at least six days, but less than four months, subject to the City's Seasonal Property Rental ordinance and all zoning ordinance requirements single-, two-, and multi-family dwellings.
Key West, FL	**Ashland, OR**
Transient Living Accommodations - Any unit, group of units, dwelling, building, or group of buildings within a single complex of building, which is 1) rented for a period(s) of less than 30 days or 1 calendar month, whichever is less; or 2) advertised as a place rented to transients regardless of the occurrence of an actual rental. Such a short-term rental use of or within a single family dwelling, two family dwelling, or multi-family dwelling shall be deemed a transient living accommodation.	**Traveler's Accommodations -** Any establishment having rooms or dwellings rented or kept for rent to traveler or transients for a charge or fee paid or to be paid for rental or use of such facilities for a period of less than thirty (30) days.

For communities grappling with these land use issues, clear definitions are essential. Other terms that have been used for short-term rentals include: *transient commercial use*; *vacation rental home*; *travelers accommodation*; *vacation property*; *transient*

lodging; *resort dwelling*; *and resort housing*. If the term "transient" also is used in the definition of other terms, it too should be defined to alleviate confusion and ambiguity. Typically, these terms are defined using various criteria, such as structure type, length of stay, measures of occupant's permanency, number of occupants, and the type of occupants (family members or unrelated people).

The type of structure (single- or multi-family) often is not specified in the ordinance, allowing room for interpretation about what actually is a short-term rental. Length of stay (where not determined by a definition of transient) is an important factor in defining short-term rentals.

A wide range of occupancy tenure has been utilized by other jurisdictions in regulation pertaining to short-term rentals. Some communities specify the maximum length of stay in days, weeks, or month. Others simply distinguish the use by type of occupant, usually transient or tourist, in which case the terms should be clarified in the definitions section.

Measures of occupants' permanency can include everything from specifying the length of stay to whether the residence is the legal address of its occupants. At this fundamental level, communities can best begin to guide local land-use practices. Here, parameters are set largely according to the nature of a community's tourist population, the importance of tourism in the local economy, and community goals.

2.2 Evolution in the Tourism Industry and Diversity in Product Offered

The Sustainable Tourism Plan (DBED&T, 2004) describes some of the changes that have occurred in the hospitality industry over the years and identifies trends expected for the future. The plan recounts that during the first part of the 20th century, tourism was a relatively low-level economic activity relying mostly on well-heeled American visitors arriving via cruise ships or "clipper" planes and staying in scattered, mostly upscale inns and lodges.

The combination of statehood (1959) and jet plane proliferation (1960s) resulted in the development of "mass tourism" in Hawai`i – initially more apparent in Waikiki, and then later throughout the Hawaiian Islands, where the master-planned resort complex began to overshadow stand-alone hotels in the 1970s and 1980s. The neighbor Islands have experienced the biggest market shifts, first with the emergence of master-planned resorts and then with changes in the market for different types of *non-hotel* resort residential property.

Master-planned resorts are economically driven by resort real estate. In general, return on developers' investments has come far more from sales of apartment or single-family resort housing units than from development or sale of hotel properties. In some areas with high development costs, such as resorts carved out of lava in West Hawai`i, hotels might even be "loss leaders" – their purpose was ultimately to expose potential buyers to the real estate product. In the 1970s, this real estate product largely consisted of multi-family condominium units sold to upper-middle-class investors who often put them into a visitor rental pool. These "condominium hotels" had the look and feel of regular hotels, though with few restaurants or other services. But in the 1980s and 1990s, changes in tax deduction laws and the emergence of a strong market for vacation homes among the wealthy led resorts to tear up old plans and start building a much more upscale real estate project – villas and single -family houses.

Various industry experts have noted that few new traditional hotels are likely to be built in Hawai`i for the foreseeable future. Hawai`i land values and construction costs are high and room rates have not grown as rapidly as expected over the past decade. Consequently, the return on investment in new hotels now appears very risky, especially in comparison to the alternatives that follow.

Timeshare Development: In established resorts, timeshare projects are replacing traditional hotels as the major form of new growth in accommodations. The principal reason is that developers realize their return almost immediately. Because of redevelopment following Hurricane Iniki in 1992, Kaua`i is illustrative of the trend toward timeshare development.

Bed-and-Breakfasts and Transient Vacation Rentals: B&Bs (with on-site residential hosts) and TVRs (no on-site host) have proliferated as a direct result of advertising on the Internet. Anecdotal reports from county officials suggest that thousands of such units may be operation. However, because they are not allowed without a permit in most counties, and because county governments have little resources for enforcement, there is no definitive sense of their actual numbers, although recent studies indicate as many as 9,000 statewide (HTA, 2005).

Recreational Real Estate: As previously noted, the business model for many master-planned resorts is ultimately based on the sale of vacation homes (or home lots) – both single-family homes and luxury condominiums. This strategy began to pay off for developers in a major way in the 1990s and 2000s.

The Kauai County General Plan describes the current visitor industry on Kaua`i as a vibrant, stable visitor industry, with high occupancy rates and a strong mix of first-time and return visitors. While it is a major visitor destination, Kaua`i has successfully maintained its rural character. Limited in height and size, visitor accommodations and attractions are designed to complement the rural setting.

Consistent with maintaining the rural character of Kauai, relatively few new hotel developments are expected in the current visitor industry economy. Growth or change in tourism accommodations will more likely take the form of cruise ships, timeshare, B&Bs, and TVRs, as well as the continued development of recreational real estate (vacation and retirement homes). Most hotels and resort facilities will be limited to the major visitor destination areas of Princeville, Wailua-Kapa`a, Lihu`e/Nukoli`i, and Po`ipu (Kukuiula).

2.3 Why B&Bs and TVRs are a Concern Now

Since the 1980s, there has been a large increase in the number of B&Bs and single-family TVRs on Kaua`i. These alternative transient accommodations are found in existing single-family residences located in single-family residential neighborhoods or in agricultural subdivisions. The County estimated that there are over 200 B&Bs and single-family vacation rentals presently operating on the island, though it was believed the number could be much higher.

Due to this trend, there is a need to develop a clear policy regarding B&Bs and TVRs. The 1984 General Plan was silent concerning alternative lodging units. This is primarily because at that time, they were not an issue on Kaua`i as the tourist industry was still dominated by hotels and resort condominiums. The CZO does not define B&Bs as a specific use. The CZO only defines “transient vacation rentals” in the context of *multi-unit*

buildings (i.e., condominiums) within a "Visitor Destination Area;" it is silent on *single-family* vacation rentals. In the absence of specific direction, the Planning Department has developed in-house policies for addressing both uses.

The lack of clear regulations has created a climate of uncertainty and hesitation on the part of operators. Should they apply for permits? Of the estimated 100-200 B&Bs operating on Kaua`i today, only eight have obtained Planning Commission-approved Use Permits. Single-family vacation rental operators claim, with the support of County planning and legal officials, that since the CZO is silent on the issue of single-family vacation rentals, they need not apply for use permits in areas zoned Residential, Agriculture, and Open. While it has not adopted a formal interpretation, the Planning Department has generally not required use permits for vacation rentals.

Over the years, the Planning Department has received complaints about both B&Bs and single-family TVRs in residential neighborhoods. Complaints have mostly concerned B&Bs with multiple units for rent and impacts of traffic, parking, and signs. Other concerns relate to the following issues:

Neighborhood Impacts: In general, the impact of short-term vacationers compared with year-round residents can be significant. Resident populations live and work in the community, and thus become somewhat integrated, while impacts associated with short-term vacationers, are more nuisance related, often generating noise and light pollution. Late-night music and merrymaking, floodlights, garbage taken out on the street on off days, illegal parking, and negligent property maintenance are garden-variety complaints often cited by annoyed neighbors.

Length of Stay: Generally, the shorter the stay, the less inclined one might be to respect neighbor diplomacy. The stereotypical "weekend warrior," trying to pack the most fun into the least amount of time, will invariably generate more trips to the store or beach, keep later hours, and create a greater disruption with light and noise. Still, for some people, the concern is not so much the negative impacts as the lack of community involvement typical of transients.

Commercial vs. Residential Use: Some neighbors complain that TVRs look like single-family homes but function more like commercial uses. Less disruptive are small-scale B&Bs, with a full-time resident and operator on-site. However, B&Bs with over a dozen guest rooms are primarily businesses and would create a greater impact in residential settings.

Community Character: Property owners rely on rent streams and spending dollars generated by vacationers, but local residents want to preserve their neighborhood's residential character. Local residents have become concerned about the large concentrations of vacation rentals in certain communities, particularly beach communities such as Hanalei and Haena. In public meetings, residents have reported that many Haena houses were used primarily as vacation rentals and that the character of the area had changed. The neighborhood is affected not only by the continual turnover of vacation renters, but also by the lack of full-time residents.

Housing: TVRs have long been perceived as negatively impacting the availability of affordable housing. There has not been a conclusive study that proves a direct correlation between TVRs and the cost and availability of long-term housing. However, there is significant anecdotal information which suggests that when property owners

decide to increase their "rent stream" with short-term rental agreements rather than renting by the season or year, they essentially "squeeze" the supply of housing, pushing up the demand and, subsequently, the cost.

International Real Estate Market: As a resort area with universal appeal, Kaua`i is blessed with the characteristics that people desire and expect to experience in a first class destination: natural beauty, fresh air, and recreation. In the last few years, a combination of factors has contributed to the popularity of Hawai`i in general, and Kaua`i in particular, as a target for off-shore real estate investors. These factors include: (1) low interest rates; (2) the comparative value of Hawai`i real estate; (3) low return on other investments; and (4) the rising affluence of a larger number of individual investors. The use of the residential dwelling unit as a TVR can assist financing the acquisition of local housing, and it can fuel speculation in a rising housing market.

Commuting: Real estate values near resorts are high, so long-distance commuting is now part of "rural lifestyle" for many Neighbor Islanders. High housing costs push many workers out of resort employment nodes, causing local residents to endure longer commuting distances.

Tax Revenue: An issue concerning both State and County officials is the lost tax revenue from TVRs and B&Bs that operate without a license. The State requires a 7.25 percent tourist accommodation tax (TAT) and a 4 percent general excise tax (GET) from hotels, as well as from alternative forms of lodging. Without County ordinances that allow government officials to regulate, monitor, and provide enforcement, many TVRs and B&Bs are likely to remain "underground," and operate without a license or permit.

Property tax is another form of revenue that can be considered. Given that alternative forms of lodging can be interpreted as a commercial enterprise, should TVRs and B&Bs be allowed to receive a homeowner exemption?

Illegal conversion of single-family dwellings to multi-unit, single structure vacation rentals is seen as a growing problem on Kaua`i. There is a significant amount of anecdotal information that suggests that some single-family dwellings are being illegally converted to multi-unit vacation rentals. This includes lock-outs and multiple kitchens. Such conversions are clearly contrary to the use of property in residential and other zoning districts, and significantly increases demands on infrastructure.

Enforcement: For a variety of reasons, the Kauai County Planning Department has had difficulty enforcing zoning regulations for illegal vacation rentals and B&Bs. In order to sustain an enforcement case, the Planning Department must be able to prove that someone has paid for a transaction to rent a TVR or B&B, and the money has been accepted for a rental that is for a period of less than 30 days. A sign in the yard or an advertisement in the *Garden Island* or on the internet is not adequate proof for enforcement action to proceed. It is also unlawful for County staff to enter the premises and search for evidence without a search warrant. The cost of such enforcement activities is significant, and there is insufficient staff available to monitor and enforce regulations for the B&Bs and TVRs that now exist.

Despite these concerns, small-scale alternative forms of lodging can benefit the community in the following ways:

Rural Lifestyle: TVRs and B&Bs provide alternative forms of lodging at a smaller scale, supporting Kaua`i's rural lifestyle. According to the "Kaua`i Product Assessment" prepared for the Hawai`i Tourism Authority (HTA), the essence of Kaua`i's attraction to visitors lies in its natural resources rather than its developed ones. By providing an alternative lodging experience, B&Bs and single-family vacation rentals allow visitors to learn about Hawaii's culture and environment from a community setting.

Visitor Industry: B&Bs and TVRs are a part of the visitor industry, which is the most significant economic force on Kaua`i, as it is in the state as a whole. It is estimated that about 40 percent of Kaua`i's jobs are dependent on the visitor industry. Therefore, the economy of Kaua`i is to a large extent determined by the number of visitors drawn to the island, how long they stay, and how much they spend.

Economic Diversification: Kaua`i Vision 2020 (from the Kauai General Plan) emphasizes diversifying the economy so that the County is not over-reliant on the visitor industry. Nevertheless, tourism is expected to remain Kaua'i's single largest industry over the next two decades. By adding lodging options available to visitors, B&Bs and TVRs help to diversify the product offered within the visitor industry.

Economic Strength: Alternative visitor lodging supports Kaua`i's economy by reducing the "leakage" of revenues outside of the community. In other words, a greater proportion of the revenue generated by small businesses stays in the community and circulates, creating additional secondary employment. For example, a vacation rental owner or B&B operator is likely to buy equipment and supplies from local businesses, employ landscape maintenance companies, window washers, appliance service operators, and painters, among others. As money is spent and re-spent, more local businesses and job-holders benefit.

2.3.1 Kauai County General Plan

The Kauai County General Plan discusses the issue of "Alternative Visitor Accommodations" and provides policies and implementation measures to address B&Bs and TVRs. The guidance provided in the General Plan is as follows:

4.2.8 Policy

4.2.8.1 Supply of Visitor Units and Location of Resort Development

(a) Encourage and support resort development on lands planned and zoned for resort use, primarily at Princeville, Kapa`a-Wailua, and Po`ipu.

(b) Plan for a limited number of visitor accommodations on the West Side, to be provided in residential- and inn-style buildings. The intent is that, over the long term, the West Side should have about five to ten percent of the island's total visitor units.

4.2.8.2 Alternative Visitor Accommodations

(a) The County of Kaua`i shall recognize alternative visitor accommodations, such as B&Bs, vacation rentals, inns, cabins, and retreat centers.

(b) The County shall enact clear standards and permit processes for regulating alternative visitor accommodation structures and operations in Residential, Agriculture, Open, and Resort zoning districts.

(c) County development standards and permit processes shall be scaled to the size and potential impact of the use:

(1) Single-unit B&Bs and vacation rentals should be allowed with development standards and a use permit requiring administrative review, and opportunity for public input.

(2) Multi-unit B&Bs and vacation rentals, retreat centers, and inns should be regulated through a set of development standards and a permit process requiring a public hearing and a decision by the Planning Commission.

(d) Permitting processes should consider the cumulative impact that a large concentration of alternative visitor units can have on a residential neighborhood.

4.2.9 Implementing Actions

4.2.9.2 Alternative Visitor Accommodations

(a) The Planning Department shall prepare amendments to the Comprehensive Zoning Ordinance setting development standards and permit processes for regulating alternative visitor accommodation structures and operations in Residential, Agriculture, Open, and Resort districts.

(b) The Planning Department shall prepare CZO amendments to facilitate the permitting of existing, nonconforming alternative visitor accommodations.

(c) In preparing the CZO amendments, the Planning Department shall consult with the Kaua`i B&B and vacation rental trade organizations, community associations, and the Finance Department.

(d) The Planning Department shall consult with the State Office of Planning to interpret existing State statutes with regard to permitting alternative visitor accommodations within the State Agricultural District under a Special Use Permit. If necessary, the County shall propose an amendment to HRS Ch. 205.

(e) *These Implementing Actions relating to Alternative Visitor Accommodations shall be a top priority and shall be initiated forthwith by the Planning Department.*

2.3.2 Comprehensive Zoning Ordinance: Visitor Destination Areas (VDAs)

In September 1982, the Kaua`i County Council passed, and Mayor Eduardo E. Malapit signed into law, Ordinance No. 436, which established Visitor Destination Areas (VDAs) in Poipu, Lihue (Nawiliwili), Wailua-Kapaa, and Princeville. Since 1982, adjustments have been made to the boundaries of the Princeville VDA, and a new VDA has been added at Kukuiula, near Poipu. The primary rationale supporting the establishment of the VDAs in 1982 was the need to accommodate time share units within the regulatory framework of the CZO. IN 1982, time share accommodations were a relatively new phenomenon, and the CZO had no provisions to deal with them.

By establishing the boundaries of the various VDAs, Ordinance No. 436 effectively established the larger boundaries of a land use pattern that was intended to provide for the full range of land uses necessary to support visitor activities, including, hotels, multi-family units other than time share units, time share units, commercial, golf courses, and single-family resort dwellings, among other uses. The primary use of the VDAs has always been visitor-related. An important consideration articulated by the County Council in Ordinance No. 436 was the availability of public services and facilities. VDAs typically include zoning designations for Resort, Commercial, Residential, Multi-family, and Open districts.

CHAPTER 3: DATA REVIEW

3.1 Regulations Governing B&Bs and TVRs in Hawai`i and other Jurisdictions

Communities throughout the U.S., including Hawai`i, regulate B&Bs and TVRs using a combination of tools including zoning permits, business licenses and/or taxes. A survey of TVR and B&B ordinances from several communities has been compiled and is included in Tables 3 and 4. A comparison of the communities surveyed along with research by the American Planning Association (*Zoning News*, March 2002) reveals that regulations to manage B&Bs and TVRs are similar, but differ on two counts: (1) B&B's are required to have the owner-operator live on the premises; and (2) Food service is regulated. TVRs generally do not have an on-site manager, nor do they offer food service. Other than these two characteristics, the regulatory elements from B&B and TVR ordinances have a great deal of overlap. These elements are described below, with the exception of the first two categories, which apply more to B&B operations rather than TVRs.

1. **Owner-occupied:** Zoning regulations consistently require that the B&B owner-operator or proprietor occupy the premises of the establishment.
2. **Food Service:** B&B regulations commonly stipulate that food service is limited to one meal per day (breakfast) and prohibit service to outside patrons. The exception being large B&B establishments or "B&B Inns," which operate more like a hotel or motel with a full service restaurant. Typically, the B&B Inn will have 10 or more guest rooms available. Regulations for large B&B Inns have different standards and requirements due to the scale and intensity of the use, as compared to small homestay operations. Inspections to ensure food preparation and service is in compliance with health and safety codes are also commonly required.
3. **Permitted zones:** Zoning regulations articulate whether TVR or B&B uses are: 1) outright *prohibited* or *permitted* in a zone, 2) permitted only if the TVR or B&B meets certain criteria, or 3) allowed as a *conditional use* if it meets specific criteria and receives approval from a governing body, often requiring a public hearing.
4. **Permit Process:** How regulations are administered can range from a simple process of registration, physical inspections, business licensing, and/or administrative zoning approval by the regulatory staff, all the way to review by a commission or council with a public hearing. The values of the community and the size and location of the facility are what typically dictate the level of review that may be prescribed.
5. **Residential Character:** Compatibility with the neighborhood character can be regulated with standards relating to exterior as well as interior design, historic districts, spacing limitations, food service restrictions, and signage. Sign regulations are an effective tool to control the visual impact on a neighborhood, with the intent directed towards identification of the facility vs. advertising the facility.
6. **Spacing:** Some jurisdictions articulate spacing requirements for B&Bs and TVRs while others do not. For those that do, a minimum distance between each facility is stipulated and enforced (e.g. 400 feet, 1,000 feet). Another method is to

regulate by ratio, where an acceptable ratio of short-term rentals to year-round dwellings is adopted and administered. However, regulation by ratio requires administrative accounting for B&Bs and TVRs, and all residential units, and can be difficult to maintain.

7. **Parking:** B&B and TVR regulations typically require at least one or more off-street parking stall per guest room or unit in addition to owner-operator parking. Guest parking can be calculated based on the number of stalls per: 1) guest room; 2) guest room size; 3) bed; or 4) unit. In addition to the number of stalls required, other standards found in regulations are whether the cars are allowed to be parked in tandem or stacked formation, or if parking is permitted off-site (with distance limits) vs. on-site. Site standards can also be implemented through screening and fencing requirements as well as prescriptions on the location of the parking stalls.
8. **Maximum number of rooms and guests:** The number of rooms, guests and guests per room has a direct relationship on the impact the facility will have on a neighborhood. A small to mid-sized B&B is typically limited to 1 to 6 guest rooms, 2 to 4 guests per room, and/or 2 to 12 guests total. Some TVR regulations defer to building and/or fire codes to set the limit on the number of rooms and guest allowed on the premises. Some limit the number of rooms and guests based on the size of the lot and the size of street that the facility is located on (e.g. collector or arterial). While others set a specific limit on the number of units or guests allowed, and others are silent and limit occupancy standards to the underlying zoning for the area.
9. **Physical Inspection:** Physical inspection of a property is commonly required to ensure compliance with building, fire and health codes.
10. **Mitigation:** Regulations can limit the impact that B&Bs and TVRs have on a neighborhood by incorporating mitigation measures such as:

    1) Requiring a 24-hour contact person that can respond to complaints or inquiries (particularly for TVRs);
    2) Requiring vehicle registration;
    3) Requiring a sign that identifies the home as a TVR or B&B with the name of the management company with contact person included in the information;
    4) Requirement for regular inspections; and
    5) Mandatory notice to guests that informs them of appropriate neighborhood conduct and provides house rules with respect to noise, lights, parking, garbage pick-up, recycling, and safety.

    Other measures, such as increasing code enforcement staff and bolstering visitor awareness through signage to inform them of the neighborhood's quiet residential character are effective means of mitigating the negative impacts that B&Bs and TVRs may have on a community.
11. **Compliance and Enforcement:** Detection, compliance, and enforcement are all areas that must be addressed in crafting an ordinance. Detection of problem rentals can occur from neighbor complaints and/or a municipal enforcement staff. Penalties for non-compliance can include fines, denied permit renewals, permit revocation, or misdemeanor citations. Administering a short-term rental

ordinance burdens both the budget and staff of the local zoning authority. Issuing permits and code enforcement requires time and money. Permit or licensing fees and taxes on short-term lodging can offset these expenses. Lastly, proof of illegal operations can be cumbersome unless regulations define what constitutes evidence of a transient operation that would support enforcement and legal action. An example of this strategy is to require all advertisements for B&Bs or TVRs to include an approved permit number, certificate, or license number and street address to ensure legitimacy.

12. **Taxes:** Although taxes are implemented outside of the zoning code, the zoning permit process can require proof of a license number before issuing a permit. One example is to require proof of a current transient accommodations tax license and general excise tax license prior to approving a permit. Property taxes can also be tied to an approval for a B&B or TVR, and property tax rates may be adjusted for commercial vs. residential tax rates where it is deemed appropriate. Conversely, if a community seeks to support long-term rentals vs. short-term rentals, property taxes may be adjusted to encourage home-owners to keep their home in the long-term market.

3.2 Interviews with other Hawaii Planning Officials

Interviews concerning B&Bs and TVRs were conducted with planning officials from each of the planning agencies in other Hawai`i counties. The purpose of the interviews was not only to learn about the specific regulations of the other counties, but also to gain perspective on the experience the planning agencies have had administering zoning regulations pertaining to B&Bs and TVRs. Following is a synopsis of each of these interviews.

City and County of Honolulu (Mike Friedel, Department of Planning and Permitting (DPP), Chief, Code Compliance Branch)

In 1989, the Honolulu City Council adopted a bill that regulated B&Bs and TVRs for the first time. The basic premise of the bill was to recognize the legal status of existing TVRs and B&Bs that had been operating previously and were paying required TAT and GET. The new law enabled operators to apply for a non-conforming use certificate (NUC) that would allow them to continue to operate. Once granted, the NUC was renewable on an annual basis, provided that the operator could prove that required TAT and GET had been paid for the previous year. **There were no provisions to allow new B&Bs or TVRs**.

The NUC program started in 1990 with 2,500 registered TVRs and B&Bs. The program has been modified some over the years, primarily by changing the re-registration period from annually to every two years. There is also a $200/year re-registration fee. Occupancy is limited to 2 bedrooms in B&Bs. One off-street parking space is required for each B&B room. If the operator fails to re-register his unit, then the NUC is lost.

Table 3: Transient Vacation Rentals Regulations for Hawai`i Counties and Other U.S. Jurisdictions

Location	Permitted Zones & Conditional Use Zones	Owner-Occupied / Property Manager	Licensing / Medallion / Signage	Parking	Maximum Rooms	Maximum Guests	Minimum / Maximum Stay	Inspections / Restrictions
Kauai County	Allowed: (a) In Hotels in Resort or Commercial Districts; and (b) Resort and Residential Districts when such districts are located within Visitor Destination Areas of Poipu, Lihue, Wailua-Kapaa or Princeville. Code does not specifically prohibit TVRs in single-family residential districts	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Hawaii County	No TVR ordinance - unregulated	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Maui County	No TVR ordinance; Permitted in the Hotel District. Use permit required from County in the State Urban District; and use permit required from State if in the State Agricultural District	N/A	N/A	N/A	N/A	N/A	N/A	N/A
City and County of Honolulu	Permitted in the Resort District; and permitted with a valid existing non-conforming use certificate. Permitted in the A-2 medium density apartment district provided: (a) They are within 3,500 feet of a resort zoning district of greater than 50 contiguous acres; and (b) The resort district and the A-2 district shall have been rezoned pursuant to the same zone change application as part of a master-planned resort community.	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Table 3: Transient Vacation Rentals Regulations for Hawai`i Counties and Other U.S. Jurisdictions (continued)

Location	Permitted Zones & Conditional Use Zones	Owner-Occupied / Property Manager	Licensing / Medallion / Signage	Parking	Maximum Rooms	Maximum Guests	Minimum / Maximum Stay	Inspections / Restrictions
Ashland, OR	R-2 District - Intended for residential and appurtenant community services. CUP for R-3 District - Intended for residential and appurtenant community services.	Must be business-owner occupied / Must be primary residence of business-owner / Owner of accommodation can lease property to business-owner / Property Manager Prohibited	Signage allowed: ground or wall sign of non-plastic material, max size 6 SF, only exterior illumination allowed.	1 off-street parking space per accommodation unit / 2 off-street parking spaces for business-owner	Total number of units, including owner's unit, determined by dividing total SF of lot by 1,800 SF / Max number of units not to exceed 9 for arterial street locations, and 7 for collector streets / Minimum unit size at least 400 SF.		Maximum stay 29 days.	Inspections: Annual Health Department inspection
Key West, FL	No limitations	Lease between dwelling owner and tenant-operator required	Occupational license / Medallion required	1 off-street parking / unit except in historic districts		Occupancy standards of building code		Restrictions: Fire Marshall approval required / Local contact person available 24/7
Laguna Beach, CA	R-1, R-2, R-3, LB/P, C-N, C-1, CH-M VC Zoning Districts / CUP for R-1 / All require Administrative Use Permit, filing fee, and Public Notice within 300 feet of perimeter.		Valid Business License and Transient Occupancy Registration Certificate	Shall comply with current parking standards	Shall not exceed that permitted by the Building Fire Codes	Shall not exceed that permitted by the Building Fire Codes	Short-term means occupancy 30 consecutive days or less	
Solana Beach, CA	No limitations	Occupation not required / Applicant must be owner or owner's agent	Permit required annually					

Table 3: Transient Vacation Rentals Regulations for Hawai`i Counties and Other U.S. Jurisdictions (continued)

Location	Permitted Zones & Conditional Use Zones	Owner-Occupied / Property Manager	Licensing / Medallion / Signage	Parking	Maximum Rooms	Maximum Guests	Minimum / Maximum Stay	Inspections / Restrictions
Saco, ME			Licenses renewed Dec. 31 each year in accordance with Fire, Building, and Life Safety Codes / License displayed in front window for Codes Officer and Assessor	1 off-street parking space per unit	No independent rooms that may be rented separately / No additional entrances allowing rooms to be occupied separately	Determined by Code Enforcement Officer / Occupied by only one family	Minimum 6 days / Maximum 4 months	Safety Inspections: Fire Department and Code Enforcement for application and every 5-years / Restrictions: Shall comply with Seasonal Property Rental Ordinance
Sullivan's Island, SC	Prohibited in RS (Single Family) Zoning District	Occupation not required / Applicant must be owner or owner's agent / leasing to roommates violates regulations / Roommate status defined by use of common entrance	Certificate of Compliance approved by Zoning Administrator and Town Clerk and Vacation Rental Business License	Provide off-street parking for all vehicles use by tenants		Shall conform to Fire and Building Ordinances / No more than 12 occupants or 24 people total / 2 occupants for each 120 square feet + 1 more for each additional 60 square feet	No overnight leases / Minimum 3 contiguous nights / Maximum 28 days.	Inspections: Fire Chief and Building Inspector / Restrictions: Contact person available 24/7, register tenant name and phone number with Police Department, Owner records tenant vehicle registration and address
Telluride, CO			Business license required		4 bedrooms and 1 unit/lot		Minimum of 15 days	Restrictions: Clearly defined trash area with adequate number of trash cans / Local contact person available 24/7
Village of Islamorada, FL	RH - Residential High	Property Manager required	Annual licensing / Medallion displayed on outside of property	Off-street only		2 per bedroom + 2 persons	Minimum of 7 days unless in tourist commercial zoning district	Restrictions: Rental Agreement Conditions signed by occupant and restrictions displayed in each unit / Trash pick-up time posed with rental agreement

Table 4: Bed and Breakfast Regulations for Hawai`i Counties and Other U.S. Jurisdictions

Location	Permitted Zones	Conditional Use Zones	Owner-Occupied	Spacing	Parking	Maximum Rooms	Maximum Guests	Guest House(s)
Kauai County	No B&B ordinance							
Hawaii County	Permitted in RD, RM, RCX, V, CN, CG and CV districts. Use permit required for the RS districts and RA, FA, A districts if within the state land use urban district.	Special Permit required from State LUC for any B&B if located in either the State land use rural or agricultural districts.	Operator Occupied	None	1/room + 1 for the unit	5	10	1 per bldg. Site, max. 500 sf. on min. 7,500 sf. lot, no kitchen
City and County of Honolulu	Prohibited unless granted a non-conforming use certificate as of 12/28/89		Operator Occupied; Detached dwellings shall be occupied by a family and shall not be used as a group living facility.		1/room + 1 for the unit	2	4/room or 8	
Maui County	Type I: Residential districts, Administrative Approval	Some Type II approved as CUP by PC; Type III approved by Council; Special permit required of any B&B located in State Rural or Agricultural Districts	Must be County resident and be either a owner-operator or lessee-operator with 5-year lease	None	1/room + 2/SFD	6	2/room or 12	
Ames, IA	RM, RH, RL and comply with home occupation ordinance				1/guest room + 1 for owner	5 rooms per structure in the RM and RH zones; and 2 per structure in RL zone		
Barnstable, MA			Owner-occupied			3 guest rooms	6 guests	
Charleston, SC	Accommodations overlay zone; must be in historic zone & constructed prior to 1860		Owner-operator & occupied		1 per unit + 1			Incidental to principal use

Table 4: Bed and Breakfast Regulations for Hawai`i Counties and Other U.S. Jurisdictions (continued)

Location	Permitted Zones	Conditional Use Zones	Owner-Occupied	Spacing	Parking	Maximum Rooms	Maximum Guests	Guest House(s)
Coeur d'Alene, ID	R-34 Hotel/Motel Note: No other commercial uses permitted		Owner-occupied where individual has 25% of ownership..		1 off street parking per guest bedroom in addition to residential requirement / Shall not consume more than 40% of front yard area	5 guest sleeping rooms / guest rooms cannot consume more than 40% of gross floor area		
Freeport, ME		All subject to "site review": RR-I rural residential & RR-IA rural residential; MDR-I medium density residential; MD-A & MD-B medium density; V-I village I; C-I commercial; VC-I village commercial			1/guest room + 1/employee	7 guest rooms; 3 rooms or less is home-occupation		
Grand Haven, MI		Planning Commission Approval	Operator occupied					Confined to the SFD/principal unit
Healdsburg, CA		Residential, Multi-Family Residential, Office and Multiple Family Residential, Downtown Residential, Downtown Commercial, Highway Commercial, Service Commercial, Plaza Retail	Owner or operator occupied		1/guest room or 2 beds, whichever greater + 1/2 employees or owner occupant			
Raleigh, NC		Historic property within R-10, R-15, R-20, R-30, Res.-Business, Office and Institution-1	Owner or operator occupied	There are no rooming house, boarding house, tourist home or bed and breakfast in located within 400 feet (determined by a straight line) of the facility.	1.5/guest room > 70 SF.; 1/guest room < 70 SF.		Residential density permitted in the district	

Table 4: Bed and Breakfast Regulations for Hawai`i Counties and Other U.S. Jurisdictions (continued)

Location	Permitted Zones	Conditional Use Zones	Owner-Occupied	Spacing	Parking	Maximum Rooms	Maximum Guests	Guest House(s)
Santa Fe, NM	C-1, C-2, B-CD, I-1				0.7 per unit	12 guest rooms		
Sedona, AZ	OP office professional; C-1 & C-2 general commercial; L lodging district allow lodging uses	RM-1 medium density multifamily residential; RM-2 & RM-3 high density multifamily residential			1 per unit + 1	6 guest units		
St. Charles, MO	Agricultural district and comply with home occupation provisions	Residential zoning districts	Operator must be a member of the family occupying home and employees must be part of the family		1/guest room	3 rooms in buildings 2,500 SF. or less; and 6 rooms in buildings greater than 2,500 SF.		Conducted within dwelling and incidental and secondary to principal use for residential purposes
St. Paul, MN	Single-family residence zones (R-1, R-2, R-3, R-4 & B-3)	RT-1, RT-2, RM-1, RM-2		1,000 ft. if more than 1 guest room	Res. District 1.5 per unit and 1 per guest room up to 3 rooms. Com. Distr. 1.5 per unit & .5 per room	Single Family Dwelling: 2 guest rm./6,000 SF. Lot; 3/7,000 SF. Lot; 4/8,000 SF. Lot; Duplex: 1/6,000 SF. Lot; 2/7,000 SF. Lot; 3/8,000 SF. Lot		Guest rooms must be contained within the principal structure

DPP checks to make sure operators provide GET and TAT license information with re-registration; they also check occupancy records. B&Bs must have at least 28 days occupied during the previous year and TVRs must have 35 days occupied during the previous year in order to renew the NUC. Since 1990, the number of B&B and TVR operators with valid NUCs has dropped to approximately 1,000 operators. Every year, about 40-60 units drop off the non-conforming use list. Of the existing 1,000, there are about 60 B&Bs and 940 TVRs. Of the 940 TVRs, 675 are in Waikiki.

Enforcement of illegal B&Bs and TVRs for the City and County of Honolulu is largely complaint-driven, as is common in other Hawai`i jurisdictions. The reasons for this are two-fold: (1) enforcement is time and budget-consuming; and (2) there is a lack of political will for pro-active zoning enforcement of any kind.

While the 1989 legislation could be considered successful in that it effectively located and registered a large percentage of the B&BS and TVRs that were operating at the time, the law did not provide for new operations, and it is apparent that the number of illegal operations has proliferated. A study commissioned by the HTA (HTA, 2005) reported that at least 2,000 B&Bs and TVRs are operating on O`ahu vs. the 1,000 that the County has on their records.

Two bills have recently been referred by the Honolulu City Council to the DPP that will re-examine the regulation of TVRs and B&Bs in the wake of the recognition of the widespread increase in illegal units, and the disproportionate impact these units are having in selected O`ahu neighborhoods (Kailua in particular). One bill (Resolution 05-186) would require that all transient vacation units (TVRs and B&Bs) that still retain their NUC, must include the NUC number in all advertisements (internet, newspaper, brochure, and other media). Specific fines are provided for those operators that advertise without a required NUC number.

The second bill (Resolution 05-187) would, for the first time, allow new B&Bs to be established legally on O`ahu with an approved permit, but makes no provisions for TVRs. New B&Bs would be allowed only under the following criteria:

- The permit process requires a public hearing
- All property owners within 500 feet of the proposed B&B must be notified of the public hearing
- Opposition by at least 75% of the property owners within 500 feet of the proposed B&B automatically triggers denial of the permit request
- B&Bs are limited to two bedrooms
- One parking space is required for each B&B bedroom
- The approved permit number must be included in all advertisements for the B&B
- The permit is valid for one-year and is renewable, provided that the facility has operated within the limits of requirements for B&Bs

Both of these bills have been referred to the Director of DPP for processing.

Hawaii County (Norman Hayashi, Senior Planner, Planning Department)***)***

B&Bs. Zoning rules for B&Bs in Hawai`i County were first adopted in 1986. B&Bs are allowed as a Use Permit or a Special Permit, depending on whether the site is located in

the State Urban, Rural or Agricultural District (a Use Permit would be required in the State Urban and Rural Districts; a Special Permit is required in the State Agricultural District). Many existing B&Bs are operating without permits. Similar to other counties, the County of Hawai`i has no pro-active enforcement program to find out if B&Bs are complying with zoning regulations or not.

Use Permits for B&Bs require a public hearing and are approved by the County Planning Commission. Generally, there have been no objections at the hearings. Applicants for B&Bs typically file for a permit as a result of complaints or voluntarily because they are aware of the code rules.

Conditions of approval are usually attached to the Use Permit, which commonly relate to: (1) parking; and (2) submitting an annual status report to the County. Permits are not monitored or enforced to ensure compliance with these requirements. The issue of not monitoring approved permits is a general County-wide problem not specific to B&Bs. Also, the County makes no effort to determine whether B&Bs register for the TAT and GET.

There are many B&Bs in the rural areas of the County (Puna, Kau, Kona, the outskirts of Waimea, and Volcano). In 2004 there were 3 B&Bs approved through a Special Permit and 2 through a Use Permit. Approximately 120 B&B permits have been processed on the island of Hawai`i since 1986.

TVRs
TVRs are not currently regulated on the Big Island or discussed in the zoning code, and there is no impetus within the County to do so. The issue may be contentious so the County is not anxious to pursue more regulations until there are more complaints that would give the issue a higher profile. The county does not distinguish between long-term rentals for residents and short-term vacation rentals for tourists. Currently, there are only occasional complaints on TVRs.

Maui County (Simone Bosco, Staff Planner, Planning Department**)**

There are three different types of application processes for B&Bs within Maui County: Type I, II and III. The B&B operation must be in an appropriate zoning district, meet the B&B definition in the zoning code, and the owner-operator or lessee-operator of the B&B must live in the facility.

The Type I B&B establishment is limited to 1-2 bedrooms for B&B use and requires only administrative approval. The Type II establishment is limited to 3-4 bedrooms for B&B use and must be approved by the Planning Commission after a public hearing. The Type III establishment is limited to 5-6 bedrooms for B&B use and must be approved by both the Planning Commission and the County Council, with hearings before both bodies.

To date, only a few B&Bs have been permitted (45-50) by Maui County. Similar to other counties, Maui is “complaint-driven” relative to zoning enforcement, and it is assumed that many B&Bs are unregulated. If sited as a nuisance, the policy has been to require compliance and have the B&B operator either apply for a permit or shut down operations. There is a process for violations that leads to civil fines.

TVRs are not currently addressed in the Maui County Comprehensive Zoning Code. However, there are zoning rules that provide a vehicle for Maui County planners to process TVRs. If the TVR is located within the State Urban or Rural Districts, the County can allow a TVR by issuing a Conditional Permit. According to the Maui County Zoning Code:

> *"The intent of the conditional permit is to provide the opportunity to consider establishing uses not specifically permitted within a given use zone where the proposed use is similar, related or compatible to those permitted uses and which has some special impact or uniqueness such that its effect on the surrounding environment cannot be determined in advance of the use being proposed for a particular location."*

The Conditional Permit is similar to the Use Permit administered by Kaua`i County, and can cover any use that is not listed (silent) for a specific zoning district. Authority to approve Conditional Permits rests with the appropriate county Planning Commission (Maui, Lanai, Molokai), after a public hearing on the matter. If the property is located within the State Agricultural District, a TVR must apply for a State Special Use Permit in addition to a county Conditional Permit. If the parcel is less than 15 acres, the County Planning Commission makes the final decision on the permit. If the parcel is greater than 15 acres, decision-making authority rests with the State Land Use Commission.

It is noteworthy that TVRs in Maui County are assessed and taxed at a property rate higher than single family dwellings. In addition, B&Bs lose their homeowner's tax exemption (which is a disincentive to apply for a permit).

The Planning Department is in the process of revisiting the transient accommodation issue, and it is anticipated that a draft bill dealing with the subject will be prepared in the short-term.

3.3 State Agricultural and Conservation Districts

Under the provisions of Chapter 205, Hawaii Revised Statutes (HRS), the State Land Use Law, all land in the State of Hawai`i is placed into one of four land use districts, as determined by the State Land Use Commission: (1) Urban; (2) Agricultural; (3) Rural; and (4) Conservation. Lands in the Urban and Rural Districts are administered by the respective counties. Lands in the Agricultural District are also administered by the Counties, but are assigned additional guidance by Chapter 205, HRS. Lands in the Conservation District are administered by the State Department of Land and Natural Resources (DLNR).

Conservation District. The State Conservation District is administered by the State Department of Land and Natural Resources (DLNR), under the provisions of Chapter 13-5, Hawaii Administrative Rules (HAR), entitled "Conservation District." The Conservation District is further subdivided into four main subzones:

- Protective
- Limited
- Resource

- General

The regulations for each subzone identify the uses permitted within that subzone. Single-family dwellings are allowed in the Limited, Resource, and General subzones, after a public hearing by the Board of Land and Natural Resources (BLNR), provided they meet certain design criteria and limitations. The rules do not expressly include "short-term vacation rentals" as one of the identified land uses in any of the subzones. However, according to recent correspondence between Mr. Peter Young, Chairperson, DLNR and Mayor Baptiste;

> *"…it appears that the Board of Land and Natural Resources (BLNR) may approve such uses under Section 13-5-42(5), HAR, which states, "The single family residence shall not be used for rental or any other commercial purposes unless approved by the Board.""*
> (Peter Young, March 19, 2004)

This means that in theory a TVR or B&B could be allowed by the BLNR, under the umbrella of permitting a single-family dwelling. This would be a matter of a discretionary finding by the BLNR. In any event, the County is not responsible for permitting under any circumstances in the Conservation District. In practice, it is virtually inconceivable that the BLNR would allow short-term vacation rental in the Conservation District. Vacation rentals are contrary to the intent of the district, particularly as they relate to single-family dwellings. The primary philosophy regarding single-family dwellings in the Conservation District is to recognize the right of landowners to build a dwelling as their ***primary residence*** (Personal Communication, Sam Lemmo, June 9, 2005).

Agricultural District. Chapter 205, HRS also governs uses within the Agricultural District. §205-4.5 identifies uses allowed within the Agricultural District, depending on the soil classification of the property as determined by the Land Study Bureau's Detailed Land Classification. Yet, §205-6(a) provides opportunities to develop uses not found in §205-4.5, as follows:

> *"The county planning commission may permit certain unusual and reasonable uses within agricultural and rural districts other than for those which the district is classified. Any person who desires to use the person's land within an agricultural or rural district other than for an agricultural or rural use, as the case may be, may petition the planning commission of the county within which the person's land is located for permission to use the person's land in the manner desired."*

This language would allow the establishment of either a TVR or a B&B within the State Agricultural District. The size of the project site will determine the decision-making body for any such requests; if the land area is less than 15 acres, the county Planning Commission makes a final decision, and if the land area is greater than 15 acres, the State Land Use Commission makes a final decision.

3.4 2004 Visitor Plant Inventory

The *2004 Visitor Plant Inventory* (2005) was prepared by the Research and Economic Analysis Division of the State DBEDT, with assistance from OmniTrak Group Inc. Information about transient accommodations was gathered mainly from a survey of existing visitor accommodation properties and management companies. The survey provided information about available units and planned additions, and included some properties that were identified from a search of the internet. The report counts "visitor units," which include: apartment/hotels; B&Bs; condominium/hotels; hostels; hotels; individual visitor units (IVUs[3]); timeshares; and others. The Visitor Plant Inventory is an annual report prepared by DBEDT to track changes in the availability of visitor units Statewide. Table 5 compares changes in the visitor plant inventory between 2000 and 2004.

Table 5: Comparative Changes in the Visitor Plant Inventory: 2000 - 2004

	Total Units (2000)	Total Units (2004)	Total IVUs (2000)	Total IVUs (2004)	Total B&Bs (2000)	Total B&Bs (2004)
Area						
Kauai	7,159	8,105	382	566	95	104
Maui*	18,270	18,485	327	549	134	144
Hawaii	9,774	10,037	371	445	249	348
Oahu	36,303	35,987	267	273	35	41
State	71,506	72,614	1,347	1,833	513	637

*Does not include Molokai or Lanai
Source: DBEDT, 2000 and 2004

The value of this data can be found in comparing trends. Table 6 analyzes the data from Table 5, indicating patterns of growth within certain subcategories of visitor unit counts between 2000 – 2004.

Table 6: Changes in Visitor Unit Subcategories: 2000 - 2004

	% Change in Total Visitor Units 2000-2004	% Change in IVUs 2000-2004	% Change in B&Bs 2000-2004
Area			
Kauai	13%	48%	9%
Maui	1%	68%	7%
Hawaii	3%	20%	40%
Oahu	-1%	2%	17%
State	2%	36%	24%

Source: DBEDT, 2000 and 2004

Total statewide visitor plant inventory increased 2 percent from 2000 – 2004 (indicating apparent statewide stability) while Kaua`i County reported the highest overall growth rate in visitor units (+13%). Changes in the number of IVUs are even more compelling. While the Statewide total for IVUs increased by 36%, Kaua`i and Maui Counties increased by

[3] The terms "IVU" and "TVR" are used by different authors and studies to refer to single-family dwellings being used for short-term vacation rentals.

48% and 68%, respectively. This indicates that large numbers of single-family dwellings are being constructed and used as short-term vacation rentals, and some existing single-family dwellings are possibly being converted to short-term rental from long-term rental.

3.5 Hawaii Tourism Authority Study

In an effort to get a better understanding of the changes occurring in Hawaii's visitor accommodations industry, as evidenced by some of the trends reported in recent Visitor Plant Inventory Studies, the Hawaii Tourism Authority (HTA), working closely with DBED&T, conducted an investigation to more accurately determine the number of B&Bs and IVUs operating throughout the State (HTA, 2005). Although DBED&T does search the internet for additional units as part of its annual reporting, this recent effort substantially increased the depth and scope of the search.

The study involved an extensive internet search for B&B's and TVRs in Hawai`i. The study found approximately 9,000 of these types of visitor units throughout Hawaii that are not currently part of the *State's Visitor Plant Inventory Report*, compiled by DBED&T. Of the 9,000 units, the report cited a total of 1,793 vacation rentals (which includes single-family TVRs and resort condominium units) and 179 B&Bs on Kaua`i.

3.6 Kauai Market Segment Assessment

In 2004, the Kauaian Institute prepared an analysis (*Market Segment Assessment: Kaua`i Vacation Rentals, A Competitive Analysis of the Geographic and Economic Footprint*) of the Kaua`i vacation rental market for the Vacation Rental Managers of Kaua`i, funded by the Kaua`i Board of Realtors. This report expanded on the data presented by HTA by including analysis from Census 2000 data. The data was re-examined by the Kauaian Institute in April 2005, and updated for a public presentation on April 8, 2005. The results of this study indicated that there are 750 IVUs and 172 B&Bs on Kaua`i, which is even higher than the DBED&T (2004) *Visitor Plant Inventory Study* of 566 IVUs and 104 B&Bs.

This report also provided a more detailed analysis about where these units are located. Table 7 presents an overview of where TVRs and B&Bs are concentrated on Kaua`i, by town, and the representation of TVRs as a percentage of all housing units in that town. It is interesting to note that the highest concentration of TVRs on Kaua`i is found in the North Shore communities of Hanalei, Ha`ena/Wainiha, and Anini[4].

Data indicated that of the total of 750 IVUs identified by the Kauaian Institute, 628, (or 84%) are managed by a vacation rental company. The Kauaian Institute also documented the important economic contributions that TVRs and B&Bs make to the Kaua`i economy, as shown in Table 8.

[4] Although the percentage of TVRs in Anini is higher than any other neighborhood on Kaua`i, the data should not be used to compare situations in other areas. This is probably due to the convergence of several factors: (1) the relatively small number of dwellings in Anini; (2) the isolation of the area; and (3) the narrow strip of developable land that defines Anini, leaving all property very close to the ocean.

Table 7: Distribution of TVRs and B&Bs on Kaua`i, by Town

Town	No. of TVRs	No. of B&Bs	No. of All Housing Units	TVRs as % of All Housing Units
Maha`ulepu	1	0	1	100%
Hanapepe	2	1	749	<1%
Makaweli	1	0	106	<1%
Koloa	4	12	748	<1%
Omao	2	0	418	<1%
Lihu`e	4	0	2,429	<1%
Kalihiwai	1	5	94	1%
Waimea	7	1	682	1%
Lawai	10	14	775	1%
Wailua*	40	43	2,906	1%
Kapa`a*	54	21	3,667	1%
Kalaheo	32	8	1,522	2%
Waipake	1	2	44	2%
Kekaha	34	0	1,156	3%
Princeville*	80	5	1,641	5%
Poi`pu*	121	31	1,981	6%
Anahola	42	8	613	7%
Kilauea	55	6	802	7%
Ha`ena/Wainiha	92	2	422	**22%**
Hanalei	112	12	311	**36%**
Anini	41	1	77	**53%**
Total	**750**	**172**	**25,572****	**2.9%**

*VDA

**Includes 1,539 units from Ele`ele and Hanama`ulu

Source: Kauaian Institute, 2005

Census Block Data. The data provided by the Kauaian Institute is derived from data generated from the U.S. Census 2000. The information in Table 7 represents data collected at the Census Block level. This display provides a general view of conditions within larger areas. However, there was considerable discussion during the public meetings about the location of TVRs within proximity to the beach, and the ability of TVR operators to generate higher rental rates when closer to the ocean.

Figures 1, 2, and 3, document conditions at the Census Block level, which is the smallest subdivision of census data aggregation. These maps graphically depict the percentages of TVRs[5] compared to all housing units within each of Census Blocks shown on the map. Three areas were selected for this graphic treatment because discussion at the public meetings and other data suggest that these areas were either disproportionately affected by concentration of TVRs (Kilauea to Ha`ena) or are experiencing increased intrusion of TVRs into residential neighborhoods (Kekaha to Waimea).

Of 2,786 Census Blocks on Kaua`i, 241 Census blocks have at least one TVR (8.7% of the total number of Census Blocks). It is interesting to note that areas with the highest concentration of TVRs in Figures 1, 2, and 3 are found the closest to the

[5] The Census measures "Seasonal, Occasional, and Recreational Housing Units;" for the purposes of this analysis, the terms are synonymous.

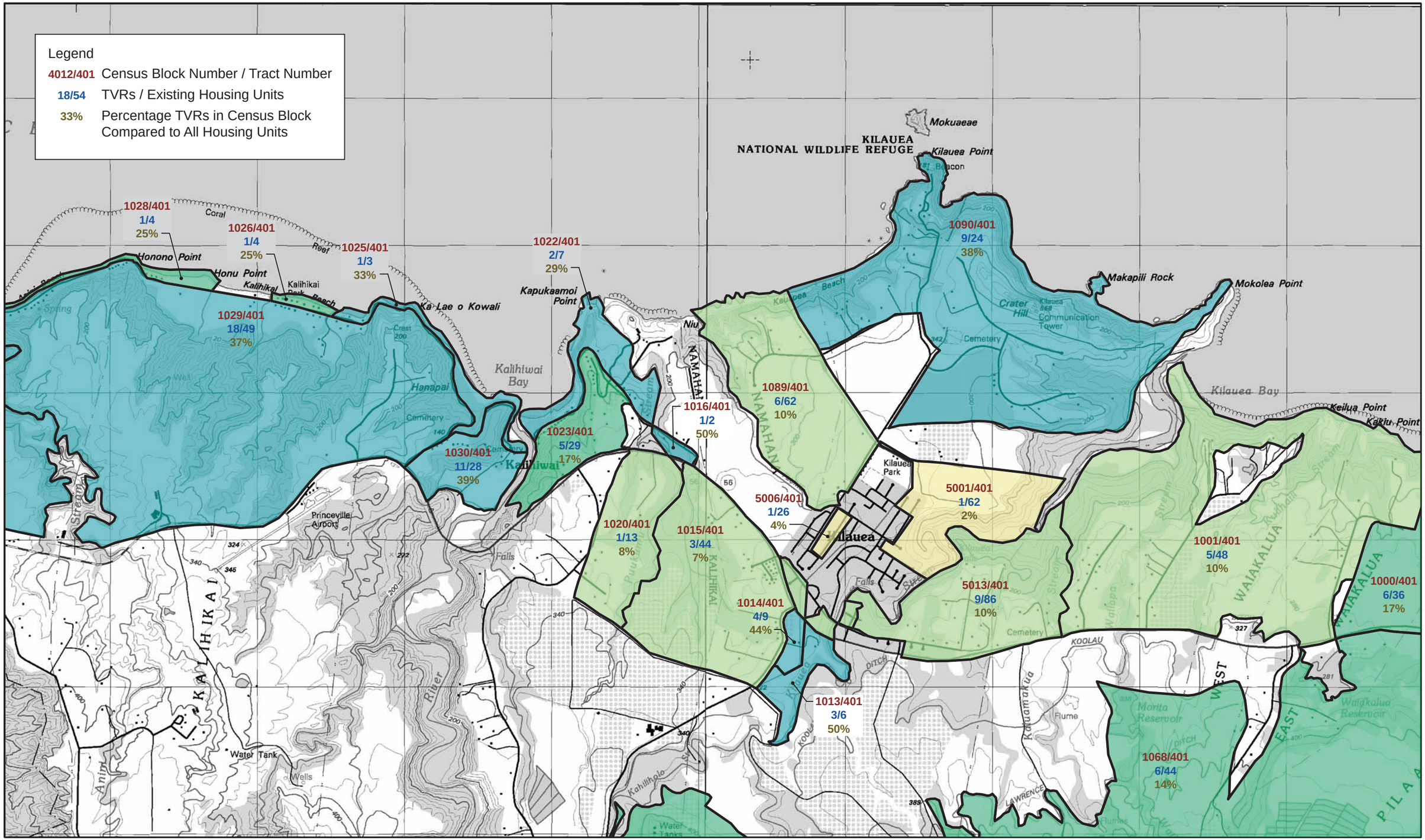


Figure 1: TVRs Located from Anini to Kilauea

Sources: U.S. Census Summary Form 1 (2000); Anahola (1996) and Hanalei (1996) USGS 7.5 minute quadrangles. Data classified using natural breaks (Jenks).
Note: Block 1032, Tract 401 containing 76 TVRs out of 290 housing units (26%) is not shown. See explanation on page ...

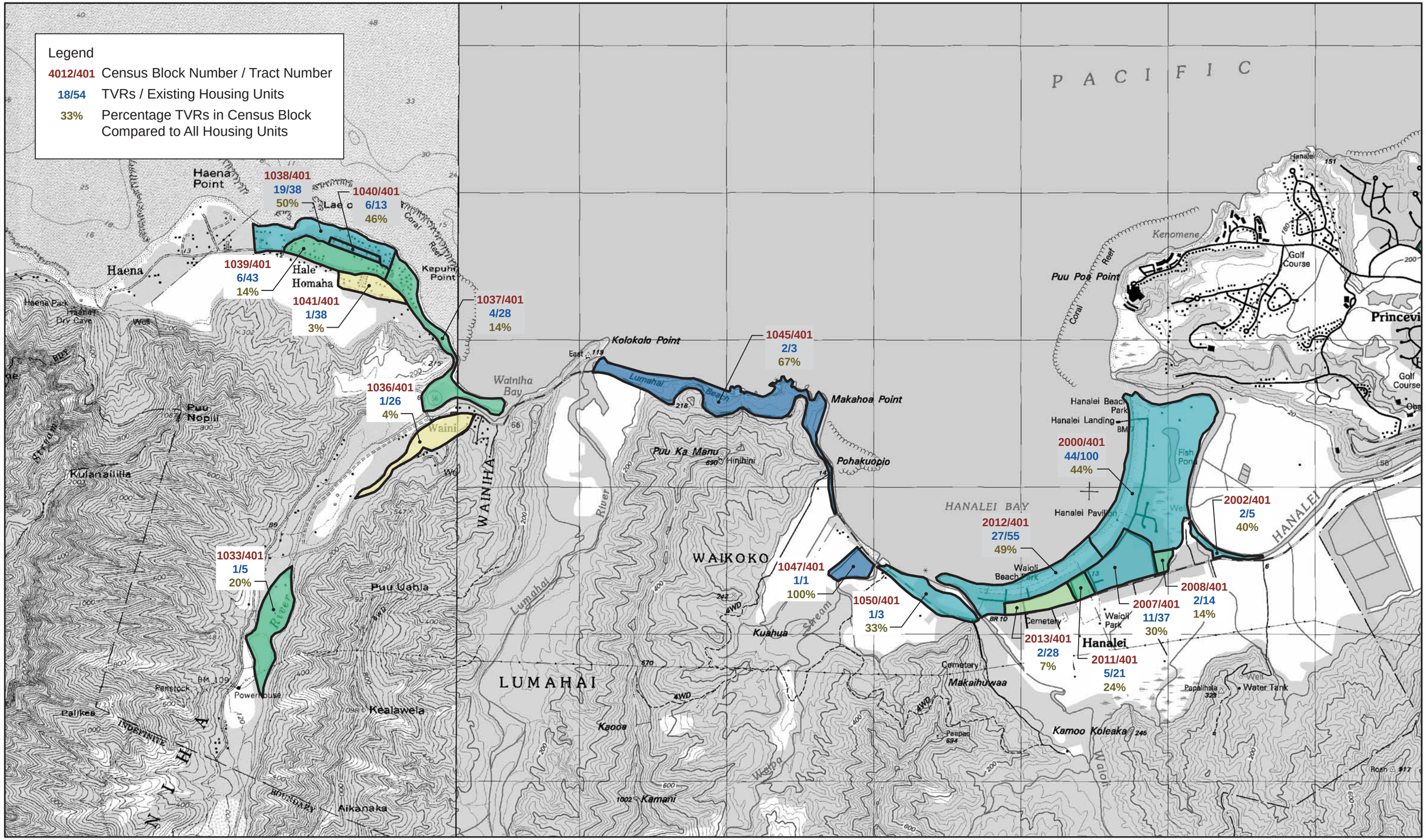


Figure 2: TVRs Located from Haena to Hanalei

0 Feet 2000
0 Meters 600

Seasonal & Recreational Housing as a Percentage of the Total Housing Units per Census Block

0.1% - 4.0% | 4.1% - 12.0% | 12.1% - 25.0% | 25.1% - 50.0% | 50.1% - 100.0%

Sources: U.S. Census Summary Form 1 (2000); Haena (1983) and Hanalei (1996) USGS 7.5 minute quadrangles. Data classified using natural breaks (Jenks).
Note: Block 1032, Tract 401 containing 76 TVRs out of 290 housing units (26%) is not shown. See explanation on page ...

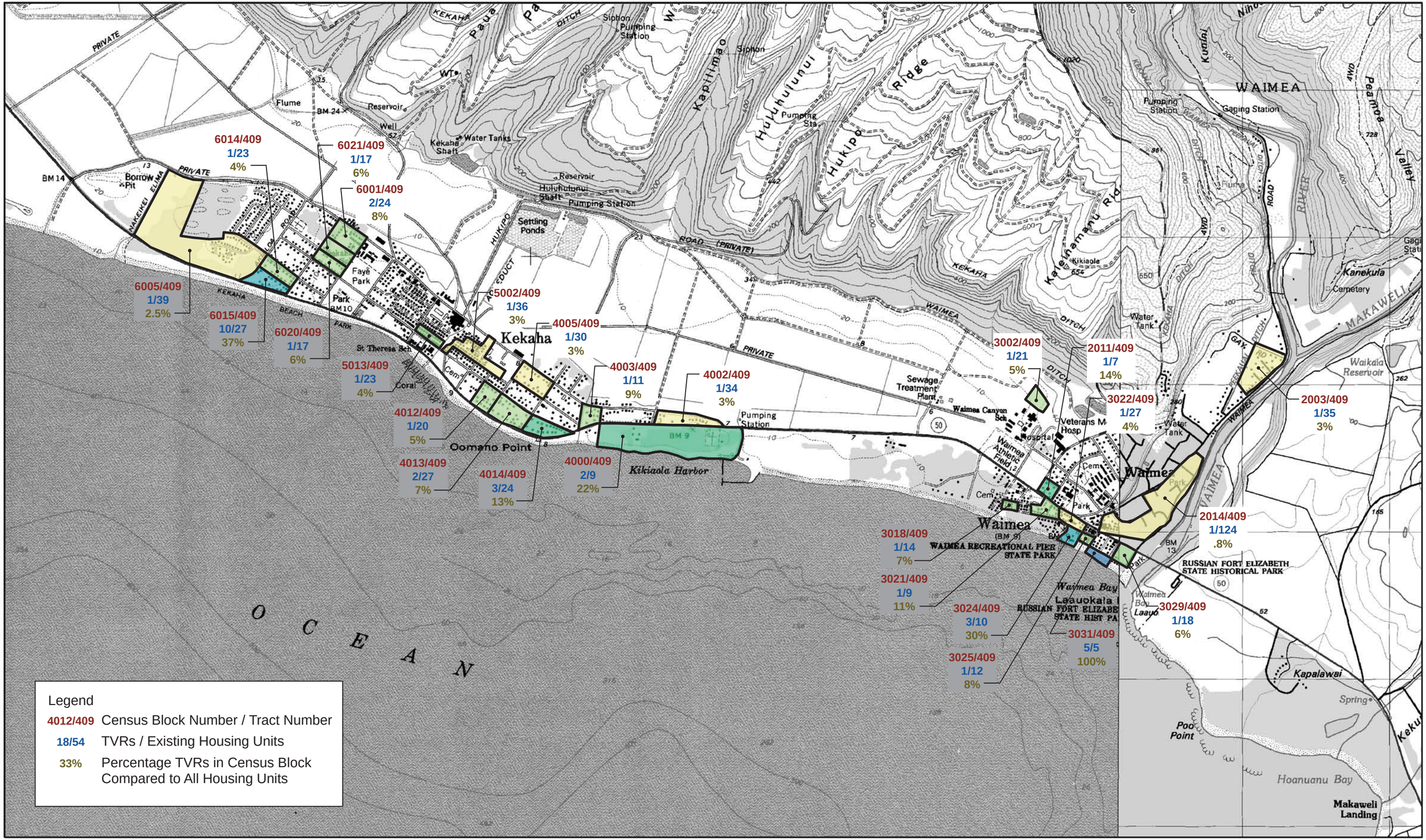


Figure 3: TVRs Located from Kekaha to Waimea

0 Feet 2000
0 Meters 600

Seasonal & Recreational Housing as a Percentage of the Total Housing Units per Census Block

0.1% - 4.0% | 4.1% - 12.0% | 12.1% - 25.0% | 25.1% - 50.0% | 50.1% - 100.0%

Sources: U.S. Census Summary Form 1 (2000); Kekaha (1983), Hanapepe (1996) and Waimea Canyon (1983) USGS 7.5 minute quadrangles. Data classified using natural breaks (Jenks).

ocean. The percentages decrease the further you get from the ocean. However, it is still instructive to note that the North Shore is the community located outside of a VDA that is the most heavily impacted by the presence of TVRs. This data suggests that the real estate marketplace has created its own visitor destination area, with the form of accommodation being the TVR, rather than hotels, resort condominiums, or time share units.

Table 8 displays the positive economic impacts attributable to the TVR industry. It is clear that TVRs provide a significant percentage of Kaua`i's overall economy.

Table 8: Economic Impact of Vacation Rentals (2002)

TYPE OF IMPACT	VALUE	SHARE
Vacation rental activity on Kaua`i		
Vacation rental revenue	$102 million	10% of visitor spending
Economic activity generated on Kaua`i		
Total output	$150 million	11% of island output
Household income	$41 million	5% of island income
Service, real estate, info and finance jobs Trade, industry and government jobs	986 jobs 591 jobs	6% of island jobs
State and County taxes generated		
Transient Accommodations Tax	$7.4 million	29% of island payments
General Excise Tax	$4.0 million	8% of island payments
Property Tax	$3.3 million	9% of island payments

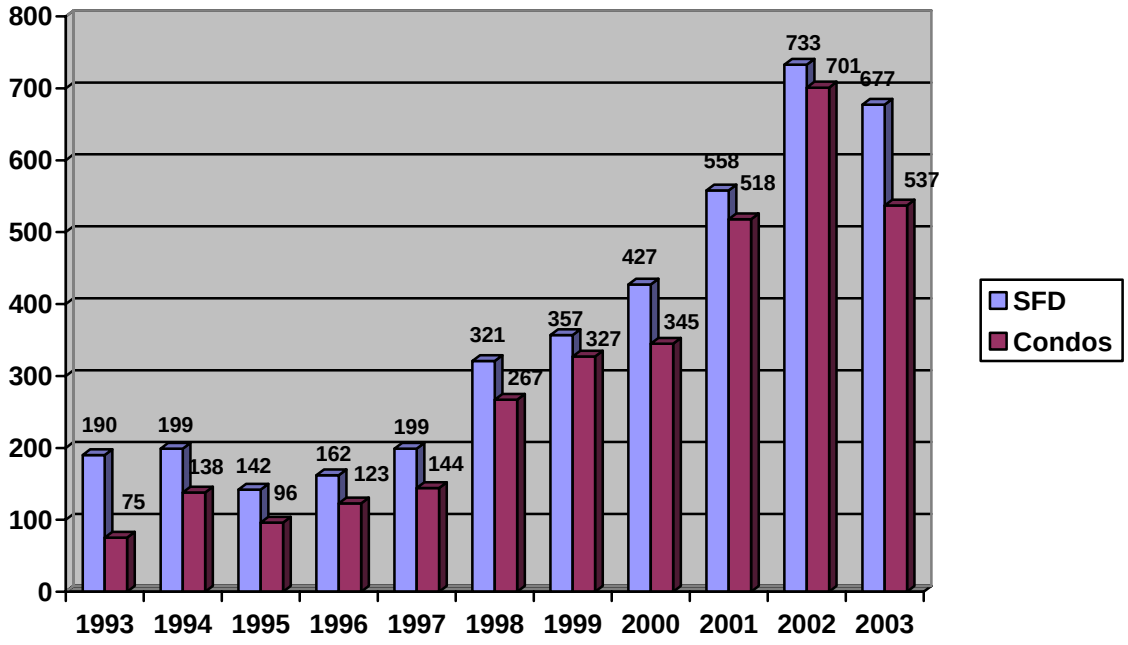
Source: Kauaian Institute, 2005

3.7 Real Estate/Housing Trends

The Kaua`i General Plan provides a good overview of the housing conditions on Kaua`i. The General Plan explains that housing market cycles have been strongly influenced by the visitor industry. From 1970 to 1992 (Hurricane Iniki), the daily visitor population on Kaua`i increased at an average annual rate of 8.7 percent. With the proportion of the visitor population increasing relative to the resident population, visitors exerted increasing pressure on real estate and building construction. Over time, more people traveled as free and independent travelers (FITs), rather than in tour groups. This led to increasing demand for apartment rentals, followed by a new market for timeshare interval ownership. People who first saw Kaua`i as tourists began in the 1970s to purchase condominiums and single-family houses not only in resort areas, but also in nearby local communities.

This trend has accelerated in the last decade, with a significant increase in construction and sales of resort properties, including condominiums and single-family dwellings. Table 9 presents data on the number of single-family and condominium resales that have occurred on Kaua`i between 1993 and 2003. Table 10 dramatizes the change in value of sales of all resort properties on the islands of Hawai`i, Kaua`i, and Maui in the last three years, and Table 11 presents the residency demographics of buyers who have purchased resort properties on Kaua`i in the last three years.

Table 9: Single-Family and Condominium Resales on Kaua`i, 1993 - 2003



Source: Hawaii State Data Book, 2004

Table 10: Change in Value of Sales of All Resort* Property

	Hawai`i		Kaua`i		Maui	
Year	**# of Sales**	**Avg Price**	**# of Sales**	**Avg Price**	**# of Sales**	**Avg Price**
2002	291	$1,613,576	442	$430,650	706	$690,309
2003	595	$996,786	637	$548,015	975	$800,522
2004	720	$1,151,090	435	$622,869	952	$987,678

*includes single-family dwellings and resort condominiums
Source: Data@Work, 2005

Table 11: Place of Residence for Buyers of Resort Property on Kaua`i, 2002 – 2004*

Primary Residence of Buyer	Number of Sales	% of Total Sales
California	204	43%
Hawaii	114	24%
Washington	23	5%
Arizona	14	3%
Colorado	14	3%
Japan	10	2%

*Total Sales = 476 properties (single-family dwellings and condominiums)
Source: Data@Work, 2005

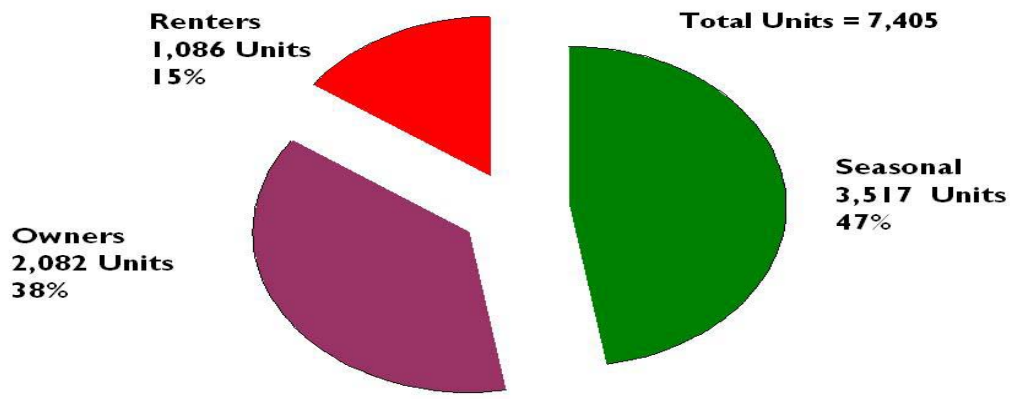
Another statistic that demonstrates the demand of the vacation dwelling market comes from the U.S. Census 2000 data. Between 1990 and 2000, the number of new housing units in Hawai`i increased by 18%. However, dwellings used by the vacation market (Seasonal, Recreational, Occasional Use) increased 100%. This is a clear indication that the housing market is responding to the high demand created by resort properties.

3.8 TVRS and Affordable Housing

The cost of housing, including both owner-occupied and rental units, continues to be one of the biggest economic concerns facing most Kaua`i residents. There are several factors affecting the availability of affordable housing units, and the proclivity of the housing industry to build new affordable units. These include, but are not limited to the following:

- General conditions in the real estate market (low supply/high demand)
- Developers making choices to build “high-end” housing
- Shortage of infrastructure to support new development in areas already urbanized
- Unpredictable and lengthy land use approval process
- High construction costs
- Insufficient construction labor pool

Figure 4: Distribution of New Housing Units Built on Kaua`i, 1990 - 2000



Source: Kauaian Institute, 2005 (from Census, 2000)

The notion that the percentage of new construction is devoted to vacation, or seasonal properties can be seen in Figure 1, which shows the distribution of new housing units built on Kaua`i between 1990 and 2000. As demonstrated, 47% of all new housing units built on Kaua`i between 1990 and 2000 were for the vacation market.

TVRs are certainly a contributory factor to the high cost of housing on Kaua`i. However, prohibiting short-term vacation rentals will not necessarily solve the affordable housing

problem by itself. Clearly, Kaua`i remains an extremely attractive investment area for offshore buyers. The volume of sales to offshore buyers (see Table 11, above), and the increase in purchase costs (Table 10) has priced many Kaua`i families out of the housing market. Anecdotal information and statements from Kaua`i residents submitted during the public meetings for this project (see below) revealed many families and individuals have been displaced as a result of the conversion of a dwelling from long-term rental to short-term vacation rental. In addition, rents have increased island-wide in response to the increasing values in the real-estate market, and the high demand for product in every market. In Hawai`i, such conditions as high demand and increased rents do not necessarily result in increased production or rental housing. Very high land and construction costs make even relatively high-end multi-family rental projects unprofitable.

Some off-island buyers are retirees, some are part-time residents or vacation homeowners, and an increasing number are independent businesspeople enabled by changes in technology to move their home-office to a remote location. More of these buyers are seeking single-family homes than in the past. In the late 1990s, a large influx of mainland buyers stimulated a boom in high-end residential real estate sales – much of it single-family. This affluent market is focused in and around resort communities such as Princeville and Po`ipu, though some buyers are now looking in local communities like Kekaha, Kilauea, and Lawa`i, because other areas have no product or are priced too high.

In reviewing the supply of units and land for resident housing, it is important to consider the price profile of each location. Communities with lots and homes in the highest price categories will serve a relatively limited segment of the local market and have a proportionately larger share of off-island buyers.

The inter-relationship between transient and long-term rentals tends to exaggerate the fluctuations in Kaua`i's housing market, affecting property owners as well as renters. It suggests that government participation in the development of affordable housing should be targeted to increase rental units during economic upturns and should avoid over-supplying the market during downturns.

This report does not attempt to downplay the real impacts these events have on Kaua`i families. However, it is unproven that a premise suggesting offshore investment in Kaua`i residential real estate would dry up if TVRs are banned in residential districts. **What is clear from available data is the disproportionate impact being felt by the neighborhoods of the North Shore, about the presence of TVRs.**

Existing tax relief for owners of long-term rentals. In 2004, the Kaua`i County Council passed a tax relief measure for owners of properties that are placed in long-term rentals. Chapter 5A of the Kaua`i County Code was amended to provide:

> *"Any owner who owns real property that is rented or leased as a long term affordable rental shall be taxed on its assessed value….provided that any increase in taxes shall not exceed 6% a year."*

This provision provides some incentive for property owners to keep their property in long-term rentals rather than to convert to short-term vacation rentals. The incentive will

probably not affect offshore buyers who cannot commit to long-term rentals because they wish to use the property for some periods during the year, and cannot have people living in the house when they wish to use it.

Zoning regulations for TVRs cannot solve affordable housing problems alone. It has been estimated that only 20% of TVRs would be realistic long-term rental housing properties anyway (John Knox, 2005). A large number of short-term rentals are in high-priced neighborhoods, and would not be affordable to most families on Kaua`i. In addition, regulating TVRs may not affect the purchase price for "high-end" housing products, as the demand for these properties could remain quite strong. Finally, there has not been sufficient incentives for developers to construct affordable units (rental or purchase) in Hawai`i. New laws have been passed recently by the Hawai`i State Legislature concerning incentives to build new affordable housing units. It remains to be seen whether they will be effective.

3.9 Kauai County Stakeholder Group Series of Public Meetings

As discussed above (Section 1.2), a group of Kaua`i citizens and public officials formed a committee (Stakeholders Group) to undertake a review of the TVR problem[6] (a list of group members is attached as Appendix A). Group meetings conducted over a period of several weeks identified a framework to gather information, including public input, and to make recommendations to guide future County legislation regarding TVRs. A major element of this effort was a series of three public meetings, jointly sponsored by the Stakeholder Group and the County of Kaua`i Planning Department[7]. Meetings were held on April 8, May 21, and May 23, 2005. All three meetings were televised by Ho`ike (the community access cable television station on Kaua`i). The purposes of the first meeting (April 8) were primarily to: (1) present an overview of the problem; (2) gather background information from invited speakers; and (3) listen to comments from the public. Public comments were also received after the meeting via e-mail. A summary of all comments received were posted on the County of Kaua`i website, which has a dedicated link exclusively for the Stakeholders Group process.

A wide variety of comments was received, and included the following subject areas:

- TVRs are a vital part of the Kaua`i economy, because they provide a variety of support jobs in many service areas
- TVR problem areas particularly on the North Shore (Ha`ena/Hanalei)
- Shortage of affordable rentals not directly linked to vacation rentals
- Shortage of affordable rentals is directly linked to proliferation of vacation rentals
- No TVRs should be found outside of Visitor Destination Areas (VDAs)
- Impacts of TVRs are felt at the neighborhood level (noise, lights, increased traffic, parking, etc.)
- Should allow existing TVRs to remain
- There are many "illegal" TVRs
- Communities should have some input as to whether TVRs should be allowed in their neighborhoods
- Enforcement is a problem
- Support for owner-occupants renting out additional units on property

[6] B&Bs were specifically excluded from this process because the Stakeholder Group believed that TVRs were a more serious problem, and should receive a higher priority for this effort.
[7] The County of Kaua`i Planning Director, Ian Costa, was an invited member of the Stakeholders Group.

- Absentee owners are not part of the community
- Property managers should make short-term renters aware of "neighborhood rules"
- Vacation rentals put more money back into the economy with less "leakage" out-of-state
- TVRs are a way for families to buy property on Kaua`i with the hope of moving to Kaua`i
- Tax vacation rentals as commercial property
- Neighborhoods that have a high concentration of TVRs are losing their sense of community

The second meeting (May 21, 2005) included a presentation by the Planning Department's consultant (Helber Hastert & Fee, Planners), that provided a broader discussion of the TVR issue and draft recommendations for regulations concerning TVRs. These recommendations were intended to promote discussion of regulatory alternatives (a copy of this presentation is attached as Appendix E).

The third meeting (May 23, 2005) was intended to include a discussion of alternative regulatory strategies and identification of preferred solutions. However, there was insufficient time to accomplish these goals, and at the writing of this report, no other meetings had yet been scheduled. The Stakeholders Group did manage to reach consensus on two recommendations:

- **TVRs should be allowed in VDA areas without permits**
- **There should be a grandfathering provision for existing TVRs**

3.10 Kaua`i County Community Leaders Interviews

As a supplement to the participation of the Stakeholders Committee and the collection of public comments during the public meeting series, 10 interviews were conducted with various community leaders on Kaua`i to obtain additional perspective on TVRs and B&Bs. Helber Hastert & Fee, Planners, conducted these interviews between May 3, 2005 and May 26, 2005. Some were conducted by telephone; others were conducted in-person. A list of interviewees is presented in Appendix B. Key comments during this process included the following:

- Renting of vacation properties has a long history on the North Shore. The North Shore has traditionally been a vacation destination, especially for families.
- Kaua`i should support recognition of existing TVRs that have otherwise been operating legally (paying taxes, etc.).
- Kaua`i has reached a saturation point for the number of TVRs, and additional encroachment into residential neighborhoods should be curtailed
- Trends in the real estate market have accelerated the conversion of single-family dwellings to short-term vacation rentals
- There could be other strategies to employ that would create economic-based (tax) incentives to retain housing in long-term occupancies (either rental or ownership):
    - ❖ Increase the property tax exemption for occupancy of a "primary dwelling"

- ❖ Promote and/or expand the program offering caps on property tax increases to owners who maintain dwellings in long-term rentals and meet criteria for affordability
- ❖ Establish a differential tax rate for residential properties that are owner-occupied or maintained in long-term rental and residential properties that used for short-term vacation rentals

- The tourist market is clamoring for alternative accommodations to hotels
- Each County has to establish a vision of where it wants to go relative to tourism; upcoming work on County sustainable tourism plans will facilitate creation of this vision
- Kaua`i will always have a demand for hotel units; it will be important to maintain and improve the quality of the existing physical plant
- The Kaua`i real estate market has always been linked to the economy of the West Coast
- Long-term rentals have advantages compared to short-term rentals, such as guarantee of income stream, less maintenance costs; but a key consideration for off-shore owners is the availability of the unit to the owner for periods during the year, which would preclude long-term rental
- The off-shore owner is just looking to break even (relative to mortgage and other carrying costs)
- A number of long-term rentals that used to participate in the County Section 8 housing program were removed from the program and converted to short-term vacation rentals; some of which are owned by County of Kaua`i residents
- There are definite island-wide economic advantages to TVRs, but there is also an urgent need for more affordable rental housing
- The concentration of TVRs is much greater the closer that development is located near the ocean; economic return associated with TVRs reduces dramatically as you retreat from the ocean
- It will be difficult to enforce any regulations for TVRs, and TVRs will always exist
- It will be very difficult to reach a consensus on the TVR issue
- With many hotels converting to time-share, TVRs contribute an important visitor accommodation alternative
- Kauai` needs to collect TAT revenues if units are being used as TVRs or B&Bs; this is important revenue that can be used to balance the use of public facilities by visitors
- Kaua`i has a limited amount of land available for residential development; it is a resource the island cannot afford to use imprudently and resident needs for housing are not being addressed

CHAPTER 4: ANALYSIS AND RECOMMENDATIONS

4.1 Overview

Since the voyages of Captain James Cook, the islands of Polynesia have long held the fascination of visitors who have traveled to their shores. The advent of Hawai`i's statehood, coupled with the ability to transport visitors to Hawai`i in five hours at an affordable cost, has facilitated an increase in the number of visitors from 296,000 in 1960 to 6,900,000 in 2000 (DBED&T, 2003). **This represents a rise of 2,280%!** Not only has the industry and support services that sustain visitors changed over this time period, but the characteristics of these visitors has changed as well. A common characteristic of visitors to Hawai`i is that there is a significant rate of return travel. As visitors have become more familiar with the various destinations that comprise the Hawai`i market, they have become less inclined to spend their time in hotel rooms. They now seek to venture out into our communities, and experience Hawai`i as a seasoned traveler with a more discriminating eye. Integral to the evolution of the visitor profile, is a significant demand expressed by an increasing percentage of visitors to own their own piece of paradise, including the purchase of single-family dwellings. Data presented in this report indicates the increasing scale at which this has occurred, due to a variety of favorable market conditions.

This phenomenon is not restricted to the neighborhoods of Kaua`i. Many communities on all islands in Hawai`i, and elsewhere in the United States, are challenged to manage the quasi-commercial land uses of B&Bs and TVRs. Impacts such as the loss of sense of community, noise, and traffic are commonly cited as the outcome of the establishment of TVRs and B&Bs. There is also a perception that TVRs are directly connected to a rise in property values that effectively pushes local residents out of the housing and property marketplace, and displaces other residents from long-term rentals as existing homes are converted to short-term vacation rentals. Even though these perceptions are wide-spread, and sometimes passionately expressed, there is no quantifiable data available that supports them.

Data suggests that about 3% of the total number of housing units on Kaua`i are devoted to transient vacation rentals; however, many communities are disproportionately impacted by the presence of TVRs. In particular, the area between Kilauea and Ha`ena on the North Shore has become the hub of the TVR industry on Kaua`i, although TVRs can be found in most neighborhoods on Kaua`i. Although there is an increasing number of voices that wish to see TVRs regulated, perhaps even banned, there is significant data that demonstrates TVRs are an important aspect of the Kaua`i economy, and between direct and indirect jobs, employ a large number of Kaua`i residents.

B&Bs are considered a more benign land use than TVRs, primarily because the proprietor (in most cases the property owner) lives in the dwelling being operated as a B&B. The operator can control some of the behavior that is negatively perceived by neighbors. However, if there is a large number of rooms being rented as part of the B&B, there could be a greater impact on public facilities and infrastructure than otherwise would occur with a TVR.

It is clear from this analysis that the subject of regulating TVRs and B&Bs is complex, and involves regulatory mechanisms beyond the CZO. The recommendations presented below follow from a consideration of all the information made available during the course

of this project and presented as appropriate. Major recommendations are followed by more detailed recommendations.

4.2 Recommendations

General Recommendations

1. Purpose and Intent. Any bill prepared to implement the recommendations contained herein, in part, or in whole, must have an appropriate purpose and intent section clearly tied to the public health, safety, and welfare of the residents of Kaua`i. Language prepared by the City of Imperial Beach, California is offered as an example: "*there is a current and immediate threat to the public health, safety, or welfare of its citizens by owners or their agents renting or selling units for periods of thirty consecutive calendar days or less… and that such rentals in the residential zones of the city…may create adverse impacts*."

Bed and Breakfast Facilities

1. Definition. The term "Bed and Breakfast Facility" must be defined in the CZO. The definition should include the following elements:
   - Accommodations are in exchange for compensation;
   - Maximum number of consecutive days occupied is identified, with 30 days maximum as the most common;
   - Facility is a single-family dwelling;
   - Establishment is owner or operator occupied;

2. General Limitations for New B&Bs:
   - B&Bs will be permitted in single-family dwellings only (no multi-family structures)
   - Regardless of location, all B&Bs should include no more than 2 bedrooms, in order to limit impacts to the surrounding neighborhood;
   - Only one meal (breakfast) can be provided to guests by the operator;
   - One additional parking space must be provided for each room to be occupied by guests;
   - One sign may be erected identifying the dwelling as a B&B, no larger than 3 square feet. It cannot be directly illuminated and the sign must include the approved permit number for the B&B;
   - A site plan must accompany each application for a permit to allow any B&B
   - A floor plan must accompany each application for a permit to allow any B&B, and must identify all rooms in the dwelling intended to be used for overnight guests;
   - Subsequent to the issuance of any permit allowing the development of a B&B, the County Planning Department shall inspect the premises to ensure that the site plan and the floor plan are accurate;
   - Permits issued for B&B facilities shall be valid for two years, but would be renewable provided there is no evidence that the B&B has not complied with the general limitations pertaining to B&Bs, or with any specific conditions of approval that may have been included with the permit approval;
   - If an additional dwelling unit (ADU) is already located on a parcel, a B&B shall not be approved;
   - Any new B&B in an Agricultural District shall not be the principal use of the parcel, and there shall be documented agricultural activity being conducted on the parcel;
   - It is recommended that a renewal fee be established for each two-year interval;
   - 24-hour contact information must be provided to the Planning Department;

- Renewal requests must be accompanied by proof of a valid TAT license and GET license;
- Any advertisement for an approved B&B (internet, newspaper, magazine, brochure, other media) must include the approved permit number for the B&B

3. B&B Processing:
   - Residential districts within a VDA: Class II Zoning Permit;
   - Residential districts outside a VDA: Class IV Zoning Permit and Use Permit (R-1 through R-6 only)
   - Open District: Class IV Zoning Permit and Use Permit
   - Agriculture Districts: Class IV Zoning Permit. Use Permit, Special Use Permit

4. Existing B&B Facilities:
   - Existing B&Bs are eligible to apply for a NUC;
   - Existing B&Bs must have been established at least within the six months prior to the effective date of the ordinance amending the CZO;
   - The burden of proof to establish the NUC shall be on the owner-operator;
   - Proof of documenting nonconformity may include records of occupancy or tax documents, such as State of Hawaii GET records, TAT records, and federal and/or tax returns;
   - Failure to apply for a NUC within 6 months of the effective date off the ordinance amending the CZO shall nullify the ability to obtain a NUC, and the B&B will then be considered illegal;
   - No more than 2 guest rooms shall be used to rent to B&B guests;
   - One off-street parking space shall be provided for each guest room, in addition to the required spaces for the dwelling unit;
   - Any advertisement for an approved B&B NUC (internet, newspaper, magazine, brochure, other media) must include the NUC number for the B&B;
   - NUCs shall be renewable every two years, with a fee, provided that the B&B has operated within limits of approvals, and can demonstrate continuous operations throughout the previous year. Continuous operations shall be defined, with a suggestion being that guests must have stayed at the B&B for at least 90 nights during the previous year;
   - Proof of valid TAT and GET license shall be required in order to obtain renewal
   - A site plan and interior floor plan must accompany the request for a NUC

Transient Vacation Rentals

1. Definition: The term “transient vacation rental” must be redefined in the CZO. Either the current term should be completely re-written, or a new term should be added for “single-family transient vacation rental,” and the existing term could be retitled “multi-family transient vacation rental.” The definition should contain the following elements:

   - Accommodations are in exchange for compensation;
   - Maximum number of consecutive days occupied is identified, with 30 days maximum as the most common;
   - Facility is a single-family dwelling.

2. Limitations for TVRs:

   - New TVRs will only be allowed in VDAs

3. New TVR processing:
   - All new TVRs in VDAs will be processed as a Class 1 Zoning Permit
   - Class 1 Zoning Permits for TVRs shall be renewable every two years, with a fee, provided that the TVR has operated within limits of approvals, and can demonstrate continuous operations throughout the previous year. Continuous operations shall be defined, with a suggestion being that guests must have stayed at the TVR for at least 90 nights during the previous year

4. Existing TVRs:
   - Existing TVRs are eligible to apply for a NUC;
   - Existing TVRs must have been established at least within the six months prior to the effective date of the ordinance amending the CZO;
   - The burden of proof to establish the NUC shall be on the owner;
   - Proof of documenting nonconformity may include records of occupancy or tax documents, such as State of Hawaii GET records, TAT records, and federal and/or tax returns;
   - Failure to apply for a NUC within 6 months of the effective date of the ordinance amending the CZO shall nullify the ability to obtain a NUC, and the TVR will then be considered illegal;
   - Only one dwelling unit can be included in any TVR;
   - Notice must be provided to occupants concerning house rules, neighborhood rules, code of conduct related to excess noise, lights, parking, garbage pick-up, recycling.
   - A 24-hour contact person must be identified for each TVR;
   - Any advertisement for an approved TVR NUC (internet, newspaper, magazine, brochure, other media) must include the NUC number for the B&B;
   - NUCs shall be renewable annually, provided that the TVR has operated within limits of approvals, and can demonstrate continuous operations throughout the previous year. Continuous operations shall be defined, with a suggestion being that guests must have stayed at the TVR for at least 90 nights during the previous year;
   - A site plan and interior floor plan must accompany the request for a NUC, and no interior lock-outs will be permitted.

4.3 Additional Recommendations

Zoning Enforcement. Enforcement and administration is a critical concern for the success of any zoning regulation. In terms of sheer numbers, there are close to 1,000 nonconforming TVRs and B&Bs on Kaua`i. If the owners of all these facilities come in for a NUC, there will be an avalanche of administrative processing required of the Planning Department, in addition to the added work load of inspections, enforcement, and NUC renewal. It will be problematic for the Planning Department to handle this new workload in a timely and efficient manner without additional staff.

Tax Enforcement. The registration of nonconforming TVRs and B&Bs will allow the County Planning Department to keep a record of facilities that should be paying TAT and GET. The Planning Department should coordinate with the County Finance Department and the State Tax office in order to ensure that operators are paying required taxes. This is especially important because the County receives a percentage return on the total amount of TAT collected on Kaua`i.

Program Monitoring. The recommendation to allow new TVRs only in VDAs, was predicated on three premises: (1) There are already sufficient numbers of TVRs to accommodate existing demand; (2) Demand for TVRs is driven by proximity to the ocean, and existing units have established areas where demand is the highest and future conversion to TVRs in these neighborhoods could have significant social impacts; and (3) approximately 1,700 TVRs could be built in existing VDAs, including the recently approved VDA at Kukuiula (Nitta, Personal Communication, May 2005).

The intent of the recommendation is to channel TVR construction in areas set aside for resort uses. It is recognized that the reason TVRs are so popular in some areas, is because these units provide a lodging alternative away from concentrated resort areas, offering visitors a more tranquil experience. It is recognized that market forces exert a tremendous influence beyond the restrictions of zoning, and that the market tends to "vote with its feet." That is, uses like TVRs and B&Bs will appear where demanded, regardless of zoning.

Census data for 2010 will hopefully provide an indication about whether the TVR phenomenon is under control, or whether market forces have overcome zoning regulations. It will be important to revisit this question when this data is available.

Legal Issues. Consideration should be given to include language in the CZO with respect to whether a use is allowed or not when it does not appear in a list of allowable uses within specific zoning districts. Other counties (Maui and Hawai`i) provide processing requirements for uses not otherwise permitted. It would be helpful to clarify how such uses should be treated on Kaua`i, within the structure of the CZO.

It would also be beneficial to collaborate with the Corporation Counsel to investigate methods to improve the enforcement process, by clarifying what should be considered *prima facia* evidence as adequate proof for enforcement of zoning regulations in general. This would help any zoning enforcement program .

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APPENDICES

APPENDIX A:

STAKEHOLDERS GROUP LIST

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Louie Abrams

Hilary Chandler

Linda Faye Collins

Ian Costa, Planning Director

Caren Diamond

Council Member Jay Furfaro

David Helela

Lucy Kawaihalau

Cheryl Lovell Obatake

Chris Kobayashi

Koral McCarthy

Michael Olanolan

Karen Olanolan

Bruce Pleas

Barbara Robeson

Gary Smith

Leah Sausen

Joanne Watanabe

Council Member JoAnn Yukimura

APPENDIX B:

IN-DEPTH INTERVIEW LIST

In-depth Interview List

Louie Abrams

Nadine Nakamura

Sue Kanoho

John Isobe

Vida Mossman

Mattie Yoshioka

Carol Furtado

Patsy Sheehan

Representative Ezra Kanoho

Helen Bruhn

APPENDIX C:

ZONING NEWS 1989 (BED AND BREAKFASTS)

ZONING News
DECEMBER 1989
AMERICAN PLANNING ASSOCIATION
APA

American Bed and Breakfast Association

Bed and Breakfasts: An Accommodating Neighbor

Imagine the perfect winter weekend. You spend the day on the slopes followed by a cup of hot mulled cider sipped in front of a roaring fire at the ski lodge. Then you head back to your home away from home—a Victorian bed and breakfast that a friend recommended. But what does the zoning code have to say about that quaint hideaway?

As bed-and-breakfast establishments have gained in popularity over the past decade, more and more communities are wondering just how they should regulate these "classy but homey" accommodations. Many codes do not specifically address B&Bs, making it unclear whether they should be treated as a commercial or residential use. This ambiguity can become a problem, especially since not all B&Bs are alike. Traditional B&Bs—a single-family home with one or two guest rooms—are compatible with and can even enhance established residential neighborhoods. Bed-and-breakfast inns with over a dozen guest rooms are primarily businesses and would be quite disruptive in residential settings.

This issue of *Zoning News* reports on local zoning codes that allow bed-and-breakfast establishments in residential districts. It examines zoning standards designed to ensure that B&Bs are compatible with the residential character of the neighborhood. For example, most codes limit the number of guest rooms allowed and permit only minimal exterior modification of the structure and grounds. In addition, this issue discusses parking and sign requirements for bed-and-breakfast establishments.

Defining B&Bs

Because the term "bed and breakfast" is used to describe a wide variety of accommodations, it is important to define the term precisely in the zoning code. The American Bed and Breakfast Association differentiates between bed-and-breakfast homestays and bed-and-breakfast inns. A B&B homestay is a private, owner-occupied residence with one to three guest rooms. The B&B homestay is subordinate and incidental to the main residential use of the building. A B&B inn is operated primarily as a business, even though the owner may live on the premises. B&B inns must obtain a commercial license and typically have four to 20 guest rooms.

The Clackamas County, Oregon, code defines three types of B&B accommodations—small, owner-occupied "homestay" establishments with one or two guest rooms; medium-size, owner-occupied "B&B residences" with up to five rooms; and full-fledged inns that may offer over a dozen rooms and include restaurants that cater to the general public as well as to overnight guests. Baltimore County, Maryland, also distinguishes among three types of B&Bs—homes (one to three rooms); inns that may have up to a dozen rooms; and country inns that have up to a dozen rooms and also offer a full-service restaurant.

Regulating Small Bed-and-Breakfast Establishments

There are usually strict limits on the number of guest rooms permitted in B&Bs located in residential districts. Some codes place a limit on the total number of guests allowed at any given time, although this provision may be more difficult to enforce than a limit on guest rooms. The Madison, Wisconsin, zoning code allows up to four guest rooms in bed-and-breakfast establishments. The Upper Saucon Township, Pennsylvania, definition allows eight guests per night, while Aiken, South Carolina, permits a maximum of three guests.

Zoning codes also limit the length of stay of the guests. These limits are used to ensure that the B&Bs operate as transient accommodations, rather than as rooming houses. The maximum length of stay may range from one week, as in the Upper Saucon Township code, to one month in St. Charles, Illinois. The San Diego County, California, code allows guests to stay for 14 consecutive days but stipulates that the establishment cannot offer weekly rental rates. The Clackamas County code prohibits guests from staying at a particular B&B more than 60 days in any one-year period.

Zoning codes vary as to whether small bed-and-breakfast establishments are allowed as a permitted or conditional use in residential districts. In fact, the Raleigh, North Carolina, Traverse City, Michigan, King County, Washington, and Madison codes allow B&Bs as a permitted use, provided that they conform to certain specific standards. This allows planning staff to employ specific criteria to review the appropriateness of the establishment without requiring the owner of the B&B to obtain a conditional use permit.

Jackson County, Oregon, and San Diego County treat B&B homes as accessory uses that must obtain permits. Clackamas County classifies B&B homestays as major home occupations, which require a permit. The Galveston, Texas, Long Beach, California, and Aiken codes require B&Bs located in residential districts to obtain a conditional use permit.

Parking and Sign Regulation

Most bed-and-breakfast ordinances require one parking space per guest room, plus one or two spaces for the innkeeper. It is a good idea to allow some flexibility in these provisions in order to avoid having an underused paved parking lot in a single-family neighborhood. The Long Beach and Madison codes allow tandem or stacked parking arrangements. In addition, the Long Beach code allows required parking spaces to be located along the curb abutting the lot. Clackamas County permits the use of off-site parking areas as long as the parking area is not more than 200 feet from the B&B.

A number of codes include specific standards for parking lot design. The Jackson County code prohibits parking in the front yard unless the area is screened and is found to be compatible with the neighborhood. Clackamas County requires parking areas located to the side or rear of the structure to be screened from adjacent properties by a five-foot-high wood or masonry fence or by sight-obscuring vegetation. Parking areas in rural residential districts must be surfaced with four inches of crushed rock and must have timber or railroad tie boundaries.

Sign regulations should permit signs that identify, rather than advertise, the establishment. The Raleigh code permits B&Bs to have one small, unlighted, announcement sign that may not exceed two square feet in area and three and one-half feet in height. The Placentia, California, code limits the sign area to three square feet and requires that the sign be attached to and parallel with the front wall of the building. Typically, rural jurisdictions have less restrictive limits on sign area. The Clackamas County code permits B&Bs in rural residential districts to have one stationary sign not to exceed eight square feet in area and six feet in height.

Additional Standards

Communities often impose additional standards to ensure that bed-and-breakfast establishments do not disrupt the residential character of the neighborhood. The following sample standards are taken from 14 different local codes.

Historic Districts. Bed and breakfasts are best suited to large historic homes that need renovation. Often, these renovations are not financially feasible for an individual homeowner. However, the home may be a viable investment for someone interested in starting up a B&B. The following codes either require or encourage B&Bs to be located in historic structures.

> The structure must be either listed on the National Register of Historic Places or must be at least a contributing structure, as defined in the Code of Federal Regulations. (*Raleigh, N.C.*)
>
> The structure must be included on the "Official List of Historically Significant Residences" compiled by the Placentia Historical Committee. (*Placentia, Calif.*)
>
> A maximum of five bedrooms shall be made available for rent. A bed-and-breakfast home having more than five bedrooms for rent may be approved if the home is designated as a historic landmark. (*San Diego County, Calif.*)
>
> The use shall be allowed only in older residential structures that are recognized as architecturally, historically, or culturally significant and that, through renovation and use as a bed-and-breakfast inn, will contribute significantly to the ambience, character, or economic revitalization of the neighborhood. (*Long Beach, Calif.*)

Spacing Requirements. Spacing or dispersal requirements are often adopted in order to prevent the proliferation of nonresidential uses in residential neighborhoods. Reasonable spacing requirements may reduce neighborhood opposition to B&Bs without being unduly restrictive.

> No rooming house, boarding house, or bed-and-breakfast inn may be located within 400 feet of the facility. (*Raleigh, N.C.*)
>
> No bed-and-breakfast home shall be located on a lot closer than 200 feet from any other lot containing a bed-and-breakfast home. (*San Diego County, Calif.*)
>
> Bed-and-breakfast establishments within 1,000 feet of another such establishment are only allowed when approved by the Plan Commission. However, the distance limitation shall not apply to bed-and-breakfast establishments located in designated landmark buildings. (*Madison, Wisc.*)

Preparation of Food. The kitchens in small B&Bs generally are not built to commercial kitchen standards. Food service should be limited to breakfast for the inn guests.

> The only meal to be provided to guests shall be breakfast, and it shall only be served to guests taking lodging in the facility. (*Jackson County, Ore.*)
>
> No food preparation or cooking for guests shall be conducted within any bedroom made available for rent. (*San Diego County, Calif.*)
>
> Individual rooms that are rented shall not contain cooking facilities. (*Baltimore County, Md.*)

Interior Design Standards. These standards ensure that the integrity of the interior space is maintained. In most cases, a small B&B home should be easily reconverted back to a residential use.

> Any interior modification shall be described in the application and shall not be injurious to the historic character of the structure, woodwork, stairways, fireplaces, windows and doors, cornices, festoons, moldings, chair rails, or light fixtures. (*Raleigh, N.C.*)
>
> Rooms used for sleeping shall be part of the primary residential structure and shall not have been specifically constructed or remodeled for rental purposes. (*Traverse City, Mich.*)
>
> The architectural integrity and arrangement of the existing interior spaces must be maintained, and the number of guest rooms shall not be increased, except as may be required to meet health, safety, and sanitation requirements. (*Jackson County, Ore.*)

Exterior Design Standards. These standards limit changes to the exterior structure and grounds. The B&B should be virtually indistinguishable from the other homes in the neighborhood.

> Minimal outward modification of the structure or grounds may be made only if such changes are compatible with the character of the area or neighborhood. (*Jackson County, Ore.*)
>
> The exterior appearance of the structure shall not be altered from its single-family character. (*Traverse City, Mich.*)
>
> No exterior alterations, other than those necessary to ensure

the safety of the structure, shall be made to any building for the purpose of providing a bed and breakfast. (*Aiken, S.C.*)

Intensity of Use. The B&B use should remain incidental to the primary residential use of the property.

The guesthouse operation shall not use more than 50 percent of the floor area of the principal residence. (*King County, Wash.*)

There must be at least 500 square feet of gross interior floor area for each rental unit. The maximum potential rental units would be determined by dividing the gross interior floor area of the structure by 500 square feet. (*Jackson County, Ore.*)

Florida County Declares Development Moratorium

Pinellas County, Florida, recently adopted a moratorium on development along the county's overburdened highway corridors. The moratorium ordinance may be the first of many throughout the state as local governments try to cope with the state's growth management legislation.

"Concurrency" has become the latest planning buzzword in Florida. The state's growth management act requires that public facilities—including roads and water and sewer facilities—be built concurrent with the impacts of new development. The Pinellas County moratorium is part of a local "concurrency management system" designed to ensure that public facilities do not lag behind new growth. The county found that a number of highways were operating at less than the minimum level-of-service (LOS) D, as established by the comprehensive plan. In particular, portions of the state highway system were operating at LOS F—bumper-to-bumper traffic—during peak hours.

The ordinance declares a moratorium along these corridors until the necessary improvements—or the money to pay for them—are in place. Developers who commit to making improvements that fully mitigate the impacts of a project can receive development approval. Variances from the moratorium are granted for the redevelopment of existing uses and to limited access projects that would not degrade existing roadway conditions.

Sarah Ward, principal planner for the county, says that developers were naturally opposed to the ordinance. "They were not happy about it, but we had to show the state that we are doing something serious about managing growth in the county."

Revised NYC Charter Promises Zoning Reform

Last month, New York City voters approved sweeping changes to the city charter. The vote promises to change the way that land-use and zoning decisions are made in the city. The charter plan was devised after the Supreme Court unanimously ruled that the Board of Estimate violated the constitutional principal of one person, one vote earlier this year. The charter revision calls for eliminating the Board of Estimate and redistributing its authority over land use, franchises, contracts, and the budget primarily to the city council and the mayor.

Currently, most zoning and land-use initiatives are first reviewed by community boards, which take an advisory vote on the proposals. The initiatives are then reviewed by the planning commission and sent to the Board of Estimate, which may approve, disapprove, or modify the proposals. Under the revised charter, the city council replaces the Board of Estimate as the final arbiter on major land-use issues, such as zoning changes and urban renewal plans. The charter plan streamlines the review process by giving the planning commission final review over other matters, particularly the selection of sites for incinerators and shelters for the homeless.

Eric Lane, the executive director of the Charter Revision Commission, said decisions governing major or controversial proposals would be made by the city council, and less politically charged matters would be resolved by the planning commission. Proponents of the revision noted that the city council would be overwhelmed if it had to take on all the responsibilities of the Board of Estimate, whose land-use review agenda often extends to 500 pages.

The Board of Estimate will retain final authority over most land-use and zoning initiatives until September 1, 1990. The planning commission will be expanded to 13 members—seven appointed by the mayor and one each by the city council president and the borough presidents. The new planning commission will be in place by July 1, 1990.

The plan cannot go into effect until it is approved by the U.S. Justice Department. The Justice Department is currently reviewing the new charter to determine whether it would dilute the strength of minority voters.

ZONING *Reports*

Carrots and Sticks: New Zoning Downtown

Terry Jill Lassar, Urban Land Institute, 1090 Vermont Ave., NW, Washington, DC 20005. 1989. 196 pp. $42 ULI members; $54 Nonmembers.

This publication is a practical guide to innovative downtown zoning controls. The book offers a critical review of techniques like linkage requirements, commercial development caps, and bonus incentives. It includes samples of ordinance provisions and case studies of downtown zoning in Hartford, Cincinnati, Seattle, Washington, D.C., Portland, San Francisco, and other cities.

Creating Successful Communities

The Conservation Foundation, Island Press, P.O. Box 7, Covelo, CA 95428. 1989. 350 pp. $39.95 cloth; $24.95 paper.

This book is designed to help rapidly growing towns and villages maintain the distinctive qualities that attract people to live, work, or visit there. It is a practical compendium of growth management techniques and includes discussions of agricultural and historic preservation, wetlands protection, and land conservation.

APPENDIX D:

ZONING NEWS 2002 (TRANSIENT VACATION RENTALS)

ZONING News

MARCH 2002

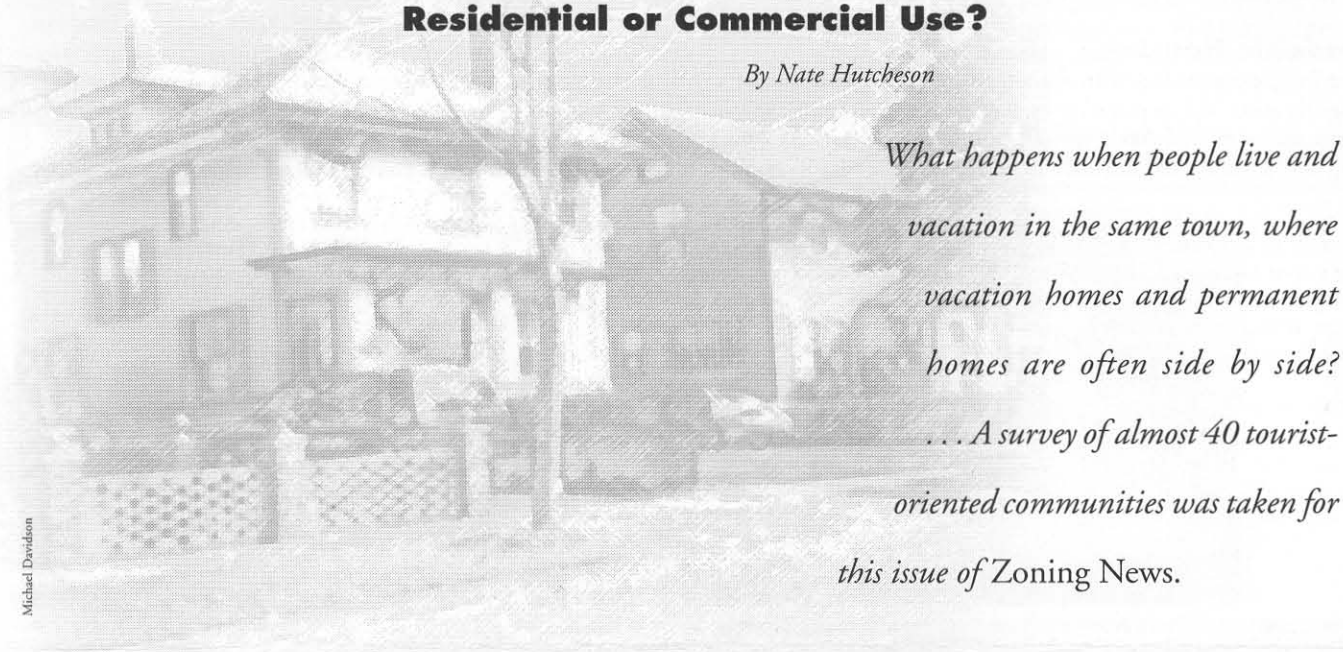
AMERICAN PLANNING ASSOCIATION

APA

Short-Term Vacation Rentals:

Residential or Commercial Use?

By Nate Hutcheson



Michael Davidson

What happens when people live and vacation in the same town, where vacation homes and permanent homes are often side by side? . . . A survey of almost 40 tourist-oriented communities was taken for this issue of Zoning News.

Americans love to vacation as much as they love their vacation destinations, and demographers have noticed. New migration patterns into some of the fastest growing communities in the country—resort towns—suggest that many people are relocating to the places that were once just summer or weekend getaways. According to Peter Wolf, author of *Hot Towns,* "A new species of American is on the move: not, as in the past, the needy, but the comfortable, well-educated, and well-trained; not the job seekers and risk takers, but those with leisure, choices, and the wherewithal to seek out the best." By Wolf's estimates, this migration includes anywhere from 700,000 to 1.6 million people per year. The strong 1990s economy brought a wave of second-home purchases as investments and family retreats. Resort areas—coastal, mountain, and lakeside—have what these trendsetters want: natural beauty, fresh air, and recreation. Communities with such amenities are prime candidates for conflicts in land-use planning.

What happens when people live and vacation in the same town, where vacation homes and permanent homes are often side by side? Regulations that govern short-term rentals in residential districts are getting more attention as planners and residents notice that these vacation homes can have a much greater impact on the community than those that house year-round residents. Angry neighbors say short-term rentals look like single-family homes but function more like commercial uses. The crux of the matter for planners is finding a balance between the interests of year-round, seasonal, and vacationing people while considering the effects on property rights, economic vitality, and the sanctity of residential neighborhoods. The dynamics vary from one town to the next, but the issue seems to grow more contentious as more vacationers and year-round residents live next to one another. A survey of almost 40 tourist-oriented communities was taken for this issue of *Zoning News* in order to shed light on this increasingly vexing land-use phenomenon.

Relevance and Research Background

In 2001, APA's Planning Advisory Service recorded an increase in the number of inquiries about planning for and regulating short-term rental properties in residential areas—particularly single-family districts. The survey revealed that a significant percentage experienced an increase in conflicts between these and adjacent land uses. While some have recently drafted ordinances to address the short-term rental problem, others are still in the process of doing so or have expressed the need for change, and because resort communities have different attitudes toward tourism, each approaches the issue in a different way.

Impacts

The impact of a short-term vacationer compared with year-round residents can be significant. Seasonal populations live and work in the community, and thus become somewhat integrated. Naturally, they increase demands on infrastructure and services. Impacts associated with short-term vacationers, however, are more nuisance related, often generating noise and light pollution. Generally, the shorter the stay, the less inclined one might be to respect neighbor diplomacy. Late-night music and merrymaking, floodlights, garbage taken out to the street on off days, dogs at large, illegal parking, and negligent property maintenance are

garden-variety complaints often cited by annoyed neighbors. Neighbors, planners, and property owners point to the correlation between such problems and length of stay for the rental property. In other words: the shorter the stay, the higher the impact. The stereotypical "weekend warrior"—trying to pack the most fun into the least amount of time—will invariably generate more trips to the store or beach, keep later hours, and create a greater disruption with light and noise. Still, for some communities, the concern is not so much the negative impacts as the lack of community involvement typical of transients.

Affordable Housing

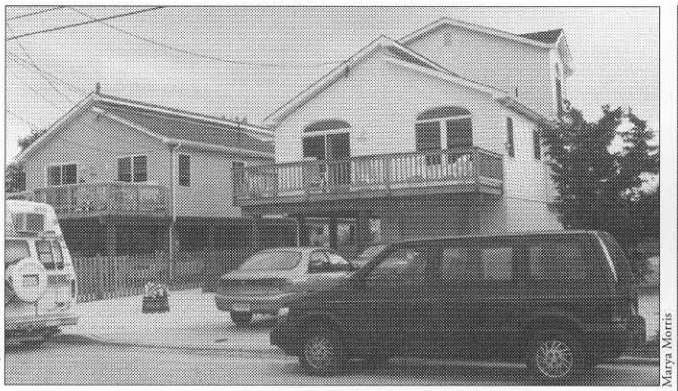
A more insidious problem with short-term rentals is their impact on housing costs. When property owners decide to increase their "rent stream" with short-term rental agreements rather than renting by the season or year, they essentially "squeeze" the supply of housing, pushing up the demand and, subsequently, the cost. Ty Simrosky, planning director for Key West, Florida, says, "It's another means of financing the acquisition of local housing by non-local people and it fuels speculation in a rising housing market." Simrosky explains that by allowing short-term rentals, investors can cover the carrying costs of a house for a year or two while the property appreciates in value and then sell it for a healthy profit. Simrosky also says that while long-term homebuyers are strongly opposed to short-term rentals in a prospective neighborhood, investment buyers are less inclined to care if a neighboring property is a short-term rental. This can create a snowball effect that eventually replaces year-round neighborhood residents with vacationers.

Communities most affected by a housing shortage are those with businesses that rely on lower-paying service and tourism jobs. High housing costs have pushed many workers out of the community, even beyond commuting distance. Simrosky also speculates that there are workers being bused in from the Florida mainland to sleep in bunk-house conditions just to work for three- or four-day periods in Key West.

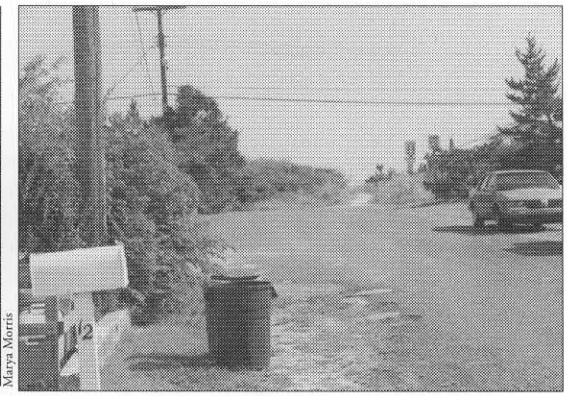
Politics

Planners admit to a dilemma: Many property owners rely on the rent streams and spending dollars generated by vacationers, but locals want to preserve their neighborhood's residential character. Furthermore, business owners would prefer to see an expansion of the local vacation lodging market. When property owners are unwilling to forfeit certain rights, leaving them at odds with neighbors who want the relative quietude expected in a single-family neighborhood, what should be done?

Indeed, people "vote with their feet" when choosing vacation destinations or a permanent home, so politicians try to appease the greatest number of constituents. Invariably, residents will threaten to abandon a once-beloved community or resort locale if renting a house on the beach or settling into a neighborhood means an endless stream of nuisances from disruptive vacationers.



Marya Morris



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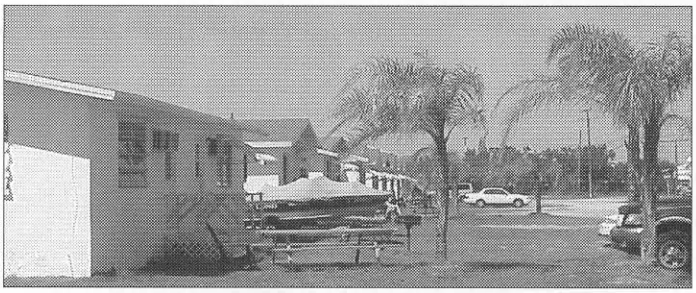


Julie Thomson

(Above, left) Short-term rentals in Ship Bottom, New Jersey. Paved yards and excessive numbers of vehicles at short-term rental houses are a common complaint of neighbors. Believe it or not, these are the fronts of the houses. (Above, right) Most short-term renters are unaware of garbage collection schedules. (Left) Boat and recreation vehicle parking is an unpleasant sight for neighbors in this Monroe County, Florida, neighborhood.

Residents of Monroe County, Florida, put the issue on a ballot, narrowly deciding—51 to 49 percent—against allowing short-term rentals in improved subdivisions (single-family districts). Subdivisions retained the right to vote on the issue separately.

Health, Safety, and General Welfare

Historically, property owners in resort communities could rent a home, regardless of the duration of the stay, by claiming that the house was not used "primarily for commercial purposes." What this really meant was that the structure could not be used for such purposes for more than 50 percent of the year. However, planners claim that approach is difficult to monitor and easy to abuse. Most feel zoning codes and a licensing system offer a better solution despite the time and expense required for administering and enforcing new regulations.

Most of the surveyed communities deal with short-term rentals through the zoning code. Imperial Beach, California, justifies its interim short-term rental ordinance with a purpose and intent that states "there is a current and immediate threat to the public health, safety, or welfare of its citizens by owners or their agents renting or selling units for periods of thirty

Community	Regulate Short-Term Rentals	Specific Ordinance Provisions[1]	Term Used	Permitted: Number of Consecutive Days[2]	Permitted: Number of Times Per Year	Permitted: By Zone	License Required	Year Adopted	Legal Challenges
Aspen, CO	No								
******, NC[3]	Yes	No							
Boone, NC	No								
Burlington, VT	No								
Cape Cod, MA	No								
Carmel-by-the-Sea, CA	Yes	Yes	Transient Commercial Use	30		Prohibited		1975	
Cocoa Beach, FL	Yes	Yes	Transient Lodging	30	3	Yes		2000	
Colchester, VT	No								
Eagle County, CO	Yes					per/PUD[4]			
Imperial Beach, CA	Yes	Yes	Short-term Rental	30		Prohibited	Yes	2001	Yes
Islamorada, FL	Yes	Yes	Vacation Rental	28		Yes	Yes		
Key West, FL	Yes	Yes	Transient Lodging	30				1998	Yes
Kiawah Island, SC	Drafting		Short-term Rental	30		Yes	Yes	In draft	
Maggie Valley, NC	No								
Manchester, VT	No								
Marathon, FL	Yes	Yes	Vacation Rental	30		Yes	Yes	2000	
Melbourne Beach, CA	Yes	No	Resort Dwelling	30			Yes		
Mendocino County, CA	Yes	No	Transient Habitation	30			Yes	1987	
Monroe County, FL	Yes	Yes		30		Yes	Yes		Yes/Upheld
Monterey, CA	Yes	No	Short-term Residential Rental	30		Prohibited			
Muskegon, MI	Yes	No		7		Yes	No		
Myrtle Beach, SC	Yes	Yes	Transient Accommodation	30		Yes	Yes		
Nantucket, MA	No						Yes		
Ocean City, MD	No								
Pasco County, FL	Yes	Yes	Short-term Rental	30	3	Yes	Yes	1999	
Saco, ME	Yes	Yes	Seasonal Rental Daily Rental	4 months 1		Prohibited	Yes		
San Juan County, WA	Yes	Yes	Transient Accommodation/ Residence/Guesthouse	30				1998	
Sanibel, FL	Yes	Yes	Resort Housing	30		Yes	Yes	2001	
Santa Cruz, CA	No/Transit Occupancy Tax		Short-term Rental					1984	
Saugatuck, MI	No								
South Haven, MI	Yes	Yes	Short-term Dwelling Unit	2		Yes	No		
Stowe, VT	No								
Sturgeon Bay, WI	No/Transit Occupancy Tax								
Sullivan's Island, SC	Yes	Yes	Vacation Rental	28		Yes[5]	Yes		
Telluride, CO	Yes		Short-term Dwelling Unit	30	X[6]			1992	
Traverse City, MI	No								
Vail, CO	No								
Yachats, OR	Yes	Yes	Transient Rental	30		Allowed in all Zones	Yes	1992	

Photo by Marya Morris; research by Nate Hutcheson

This matrix is not exhaustive. Every reasonable attempt was made to achieve accuracy and thoroughness, but variations in ordinance language, format, and local practice made a "complete" matrix impossible. Thus, it is meant only as a quick reference guide for readers of this article. The short-term rental survey evolved as it was being conducted, so not all questions were asked uniformly or of every survey participant.

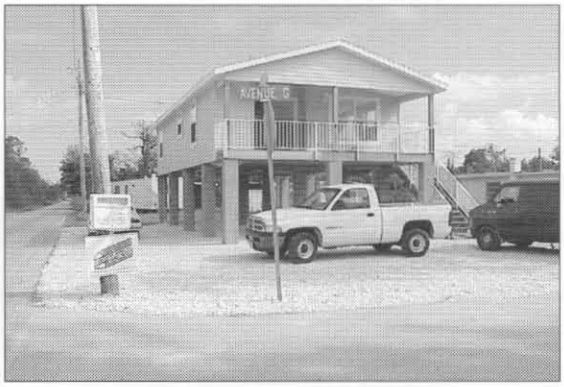
1. This indicates any section of the code that is dedicated to short-term rentals, such as interim ordinances or amendments.
2. Language varies from code to code in terms of how they specify a time period. Where a month or four weeks was used as the length of the term, 30 days is the default response.
3. Community preferred not be mentioned by name.
4. Decision made by subdivision bylaws.
5. STRs not permitted by right in any of the zones.
6. In most restrictive districts, they are pemitted to rent three times or fewer per year for a total of 30 days or less.

consecutive calendar days or less . . . and that such rentals in the residential zones of the city...may create adverse impacts."

Commonly cited reasons for drafting an ordinance or provision for short-term rentals include protecting residential character, maintaining housing affordability, managing infrastructure and service requirements, and complying with hurricane evacuation capacity. Zoning ordinances, business permits, and transient occupancy taxes are ways of managing this quasi-commercial use.

Definitions are often at the root of governing short-term rentals. Unfortunately, many zoning codes have a discrepancy between defined terms and the provisions that use them. Terms are sometimes defined at the beginning of the ordinance but then never used in the provisions. Conversely, provisions may contain undefined terms, rendering the code too ambiguous. For example, some towns prohibit "transient rentals" in certain districts without defining the term "transient." Distinctions can be easily made between the various types of lodging and rental property, and only those uses that are specifically listed as permitted or conditional should locate to designated districts. However, where single-family residences are a permitted use, and the length of tenure is unspecified, nothing in the ordinance can stop property owners from renting the house on a short-term basis.

Marya Morris



Julie Thomson

Bill Miller

(Above, left) Short-term rental property prominently displayed on a corner lot in Lewes, Delaware. The impact: Vehicles of vacationers spilling over from the driveway onto the street. The problem: This type of impact occurring for weeks or months on end. (Above, right) Apparently, more pavement, less yard means more parking and less yard maintenance for this short-term rental property in Monroe County, Florida. (Right) Driveway signs for a Kiawah Island, South Carolina, short-term rental welcome the next round of families sharing a house.

Definitive Criteria

For communities grappling with such disputes, clear definitions are essential. Other terms for short-term rentals include transient commercial use, vacation rental home, vacation property, transient lodging, resort dwelling, and resort housing. Because transient also is used in the definition of other terms, it too should be defined in context to alleviate confusion and ambiguity. These terms are defined using various criteria, such as structure type, length of stay, measures of occupants' permanency, number of occupants, and the type of occupants (family members or unrelated people).

The type of structure (single or multifamily) often is not specified in the ordinance, allowing room for interpretation about what actually is a short-term rental. Length of stay (where not determined by a definition of transient) is an important factor in defining short-term rentals.

There is a wide range of occupancy tenure in a short-term rental ordinance. Communities specify the maximum length of stay in days, weeks, or months. Some simply distinguish the use by type of occupant, usually transient or tourist, in which case the terms should be clarified in the definitions section.

Measures of occupants' permanency can include everything from specifying the length of stay to whether the residence is the legal address of its occupants. At this fundamental level, communities can best begin to guide local land-use practices. Here, parameters are set largely according to the nature of a community's tourist population, the importance of tourism on the local economy, and community goals.

Regulating the number of occupants also can mitigate the impacts of rental properties. Some communities specify total number of occupants by persons per bedroom, family members, or non-related persons, not withstanding local fire codes. Islamorada, Florida, limits occupancy to two people per bedroom plus two additional persons. Other communities simply limit occupancy to a single family, as defined in their ordinance (see "Definitions and Distinctions" for examples and commentary on relevant terms).

Defining family also can complicate the matter. Restricting the use of single-family homes to families can be a difficult way to regulate short-term rentals, mainly because the term family is open to a wide range of literal and legal interpretations. Even so, "traditional" families are not devoid of impact risks, including noisy infants or rowdy teenagers. The ever-changing family paradigm does not make it the best measure by which to regulate short-term rentals.

Once Defined, Where Are Short-term Rentals Allowed?

Tolerance levels about the impacts of short-term rentals will vary among communities. Communities with an intense interest in

DEFINITIONS AND DISTINCTIONS

■ Bed and Breakfast

Commentary: Bed and breakfasts are similar in appearance and location to many short-term rentals in residential areas. However, the primary distinction is the mitigating presence of the owner/operator.

Definitions: Generally small, owner-operated businesses providing the primary financial support of the owner. Usually the owner lives on premises. The building's primary usage is for business. Inns advertise, appropriate taxes, and post signs. Breakfast is the only meal served and only to overnight guests. The inn may host events such as weddings, small business meetings, etc. Room numbers range from four to 20 with a small, but increasing number up to 30. Reservations may be made directly with the property. *(Professional Association of Innkeepers International)*

Bed and breakfast means the use of an owner-occupied or manager-occupied residential structure providing no more than four rooms for temporary lodging for transient guests on a paying basis. A "Bed and Breakfast Inn" may include meal service for guests. *(Blue Springs, Mo.)*

■ Boarding House

Commentary: A boarding/rooming/lodging house differs from the short-term rental house because it has multiple rooms or units for rent and occupants share common kitchen or dining facilities. Occupants of a boarding house also tend to be less transient (the definition of which depends on community standards).

Definitions: A single-family dwelling where more than two, but fewer than six rooms are provided for lodging for definite periods of times. Meals may or may not be provided, but there is one common kitchen facility. No meals are provided to outside guests. *(Champaign, Ill., which uses the term "boarding/rooming house")*

An establishment with lodging for five or more persons where meals are regularly prepared and served for compensation and where food is placed upon the table family style, without service or ordering of individual portions from a menu. *(Venice, Fla.)*

■ Family

Commentary: Restricting the use of single-family homes to families can be a problematic way to regulate short-term rentals, mainly because the term family is open to a wide range of literal and legal interpretations. Even so, a "traditional" family is not without impacts, such as vocal infants or rowdy teenagers. The definition of family or single-family house is not the most widely used or recommended tool for short-term rental regulation.

Definitions: One or more persons occupying a single dwelling unit, as a single housekeeping unit, provided that unless all members are related by blood, marriage, or adoption, no such family shall contain over six persons, including any roomers, boarders and/or domestic servants. A home for independent living with support personnel that provides room and board, personal care and habilitation services in a family environment as a single-housekeeping unit for not more than six resident elderly or disabled persons (mentally and/or physically impaired) with at least one, but not more than two resident staff persons shall be considered a family. *(Tulsa, Okla.)*

One or more persons, related by blood, marriage, or adoption, occupying a living unit as an individual housekeeping organization. A family may include two, but not more than two, persons not related by blood, marriage, or adoption. *(Iowa City, Iowa)*

One or two persons or parents, with their direct lineal descendants and adopted or legally cared for children (and including the domestic employees thereof) together with not more than two persons not so related, living together in the whole or part of a dwelling comprising a single housekeeping unit. Every additional group of four or fewer persons living in such housekeeping unit shall be considered a separate family for the purpose of this code. *(St. Paul, Minn.)*

Two or more persons related to each other by blood, marriage, or legal adoption living together as a single housekeeping unit; or a group of not more than three persons who need not be related by blood, marriage, or legal adoption, living together as a single housekeeping unit and occupying a single dwelling unit. *(Lake County, Ill.)*

One or more persons occupying a premise[s] and living as a single housekeeping unit as distinguished from a group occupying a boardinghouse, lodging house, or hotel as herein defined. *(Scottsdale, Ariz.)*

■ Guest House or Guest Cottage

Commentary: Guest cottages can present a loophole for short-term rentals in single-family residential districts unless certain specifications are made—namely that usage is only allowed for non-paying guests.

Definition: Guest house (accessory dwelling unit) means a detached or attached accessory structure secondary to the principal single-family residential unit designed and most commonly used for irregular residential occupancy by family members, guests, and persons providing health care or property maintenance for the owner. *(San Juan County, Wash.)*

■ Hotel or Motel

Commentary: Hotels/Motels typically have separate entrances and an on-site management office.

Definitions: A building in which lodging is provided and offered to the public for compensation, and which is open to transient guests and is not a rooming or boarding house as herein defined. *(Boone County, Mo.)*

A building or group of buildings in which lodging is provided to transient guests, offered to the public for compensation, and in which access to and from each room or unit is through an exterior door. *(Cecil County, Md.)*

■ Transient

Commentary: "Transient" can be used to describe a person or a land use. Ambiguous or subjective words—"short," "long," "seasonal," "temporary"—should be either avoided altogether or clarified with precise units of time—number of hours, days, weeks, or months. When a community defines a transient as a person living in a dwelling unit for "a short time only," the term "short" could be interpreted in a variety of ways. To alleviate further confusion, the nature of a person's stay may be clarified, as is done in the definition below from Sturgeon Bay, Wisconsin.

Definitions: A person who travels from place to place away from his or her permanent address for vacation, pleasure, recreation, culture, or business. *(Sturgeon Bay, Wis.)*

Any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a visitor accommodation facility shall be deemed to be a transient until the period of 30 days has expired unless there is an agreement, in writing, between the operator and the occupant providing for a longer period of occupancy. *(Monterey, Calif.)*

promoting tourism may be more permissive, allowing them in restricted districts, while others will diligently protect residential districts. In the most restrictive communities, short-term rentals may be prohibited outright in residential districts. Monroe County, Florida, prohibits them unless a majority of homeowners vote them into a subdivision. Communities may permit short-term rentals as a conditional use or allow them only when rented fewer than four times each year.

Conditional Uses and Licensing

Whether short-term rentals are allowed by right or as a conditional use, additional requirements to benefit both the occupants and neighbors are recommended. For example, operating a short-term rental may require physical inspection to determine the safety of the structure from hazards such as fire and over occupancy. Other requirements might include posting a "notice to occupant" reminding visitors of mandatory evacuation in case of a hurricane (in prone areas) or a "code of conduct" for the neighborhood, which might list regulations for occupancy, parking, boat dockage, fines, or helpful information such as garbage and recycling pick-up. Both should be printed in a large font and prominently displayed.

Regulating by Ratio

Mendocino County, California, settled on an acceptable ratio of short-term rental properties to year-round residents: Locals deemed 13 year-round resident houses to one short-term rental house tolerable. The community requires operating permits for short-term rental properties. An additional vacation rental permit is issued for every 13 new residential units. The number of permits is finite but siting is still flexible. To maintain an orderly and fair distribution of permits, the county does not allow them to be sold or transferred. The county considers short-term rentals a commercial use, allowing additional short-term rentals as part of a 50/50 mix of commercial and long-term residential dwelling units in mixed-use districts.

Legal Challenges

Legal challenges will invariably arise in neighborhoods where homeowners enjoying the comforts of a quiet back yard are suddenly interrupted by noise or light from an adjacent short-term rental property. Places with restrictions on short-term rentals such as Key West and Imperial Beach have faced legal challenges, which may include vesting, consistency with the comprehensive plan, definition of family, and allowable time for amortization. However, anecdotal evidence suggests that the longer an ordinance has been in place, the more accepted it is. Most of the planners interviewed for this article were confident in the defensibility of their short-term rental ordinances.

Mitigation and Amortization

Some of the mitigation tools used to offset the impacts of short-term rentals include having a 24-hour contact person or management service, vehicle registration, and short-term rental medallions—a sign or badge on the front of the home identifying the residence as a vacation property, the name of the management company, and a contact person. The use of medallions is widely criticized because critics say they invite thieves and vandals. Such mitigation measures are typically paid for and provided by the property owner as a condition of receiving an operating permit. Other measures, such as increasing code enforcement staff—as is done in Key West—or bolstering visitor awareness through signage to politely inform them of the neighborhood's quiet residential character may be paid for with tax revenue generated from short-term rental properties.

To avoid a takings challenge, communities that have recently enacted more restrictive codes also have included an amortization schedule that phases out short-term rental properties. Islamorada allows two years for amortization and Imperial Beach is proposing five-year amortization. Sullivan's Island, South Carolina, requires proof of use as a short-term rental during the previous 12-month period to reduce the number of rental properties. Those that lapse are not eligible for future licensing.

Enforcement

Detection of problem rentals can occur either from complaining neighbors or a dedicated municipal enforcement staff. Penalty fines range from $100 a day in Saco, Maine, to $500 for each day of violation in Kiawah Island, South Carolina. Other penalties include denied permit renewals, permit revocation, or misdemeanor citations. Fines are a comparatively small expense for property owners whose short-term rentals generate healthy returns, so some owners virtually ignore the restrictions, says Monroe County planner Marlene Conway. Saco requires property owners to renew permits annually. A history of complaints is kept on file and those with more than two recorded complaints will not be issued a permit for the coming year.

Administering a short-term rental ordinance burdens both the budget and staff. Issuing permits and code enforcement takes time and money. Permit or licensing fees and taxes on short-term lodging can offset these expenses. Fees vary from a fixed amount to a sliding scale based on the percent of income generated per calendar year—both of which usually amount to $100 to $200. In states that grant local governments the authority to tax this type of land use, the taxes for the lodging fee can range from four percent on the low end to seven percent in Deschutes County, Oregon. Santa Cruz, California, taxes 10 percent.

Conclusion

Technology, telecommuting, and lifestyle priorities will continue to fuel the infiltration of newcomers into resort communities with long-established residents. For these and other reasons, the populations of traditional get-away destinations will surge and change, bringing with them increased pressure to adapt to new people and new land-use challenges. Deciding whether short-term rentals are commercial or residential land uses is an important first step in addressing the issue. Perhaps the zoning code is the best defense in preserving the tranquility that made such places attractive in the first place.

Selected ordinances from the short-term rentals survey are available to *Zoning News* subscribers. Please contact Michael Davidson, Co-editor, *Zoning News*, American Planning Association, 122 South Michigan Avenue, Suite 1600, Chicago, IL 60603, or e-mail mdavidson@planning.org.

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APPENDIX E:

HELBER HASTERT & FEE, PLANNERS PRESENTATION MAY 21, 2005

Single-Family Transient Vacation Rental

Stakeholder Committee

Public Meeting

May 21, 2005

Helber Hastert & Fee
Planners, Inc.

General Plan Guidance

"The County of Kauai <u>shall</u> recognize alternative visitor accommodations, such as B&Bs, vacation rentals, inns, cabins, and retreat centers."

Section: 4.2.8.2(a)

General Plan Guidance

"The County <u>shall</u> enact clear standards and permit processes for regulating alternative visitor accommodation structures and operations in Residential, Agriculture, Open, and Resort zoning districts."

Section: 4.2.8.2(b)

General Plan Guidance

"Permitting processes should consider the cumulative impact that a large concentration of alternative visitor units can have on a residential neighborhood."

Section: 4.2.8.2(d)

General Plan Guidance

"The Planning Department <u>shall</u> prepare CZO amendments to facilitate the permitting of existing, nonconforming alternative visitor accommodations."

Section: 4.2.9.2(b)

Key Data

Homes on Kaua`i, by Type

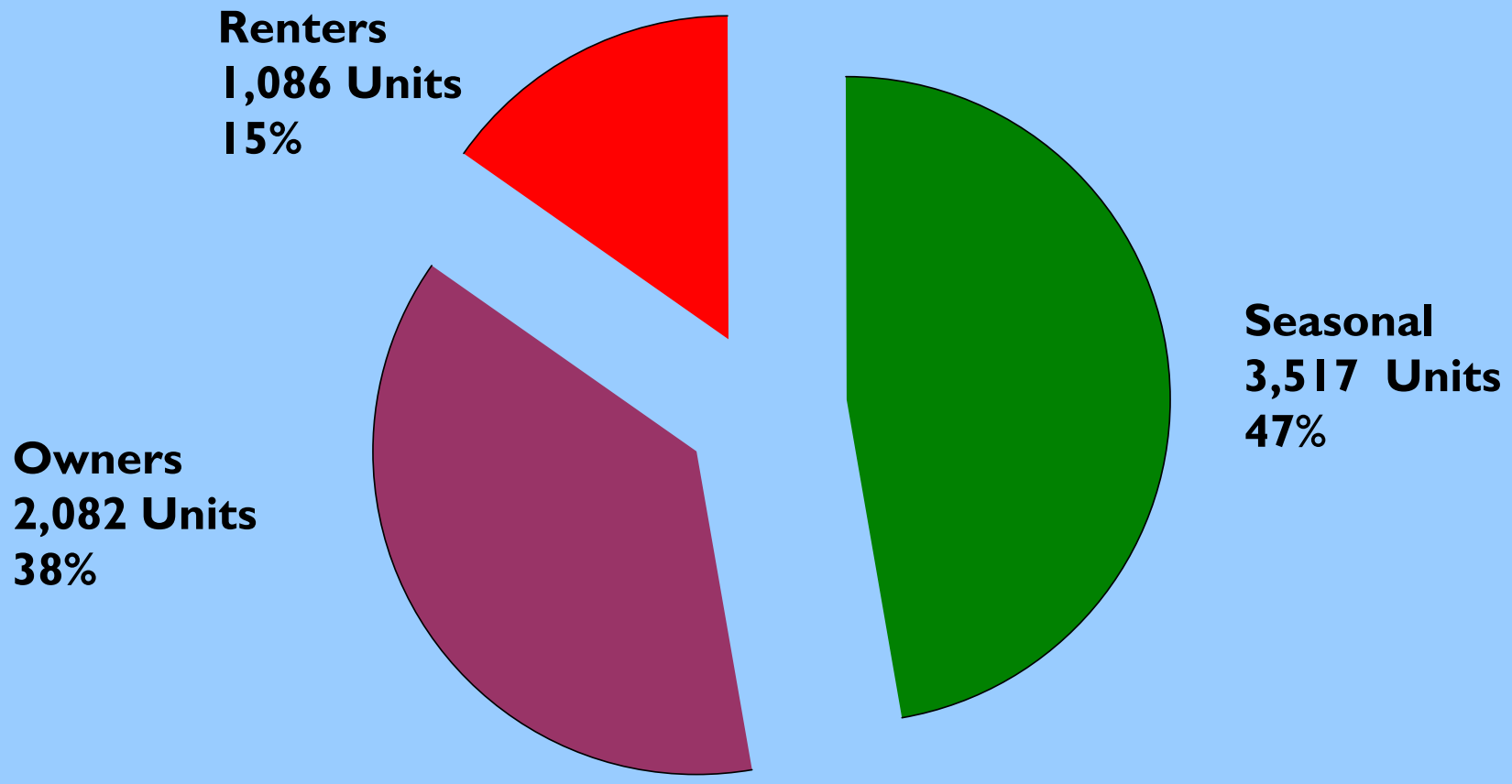
Total Homes on Kaua`i	=	25,331
Homes Occupied by owners	=	12,384
Homes Occupied by renters	=	7,799
Vacant	=	5,148*
Total SFTVRs	=	750

*3,850 for SROU

Source: State of Hawaii Data Book 2003

Key Data

Distribution of New Housing Types Built on Kaua`i 1990 - 2000



Total Units = 7,405

Source: Kauaian Institute, 2005 (from Census, 2000)

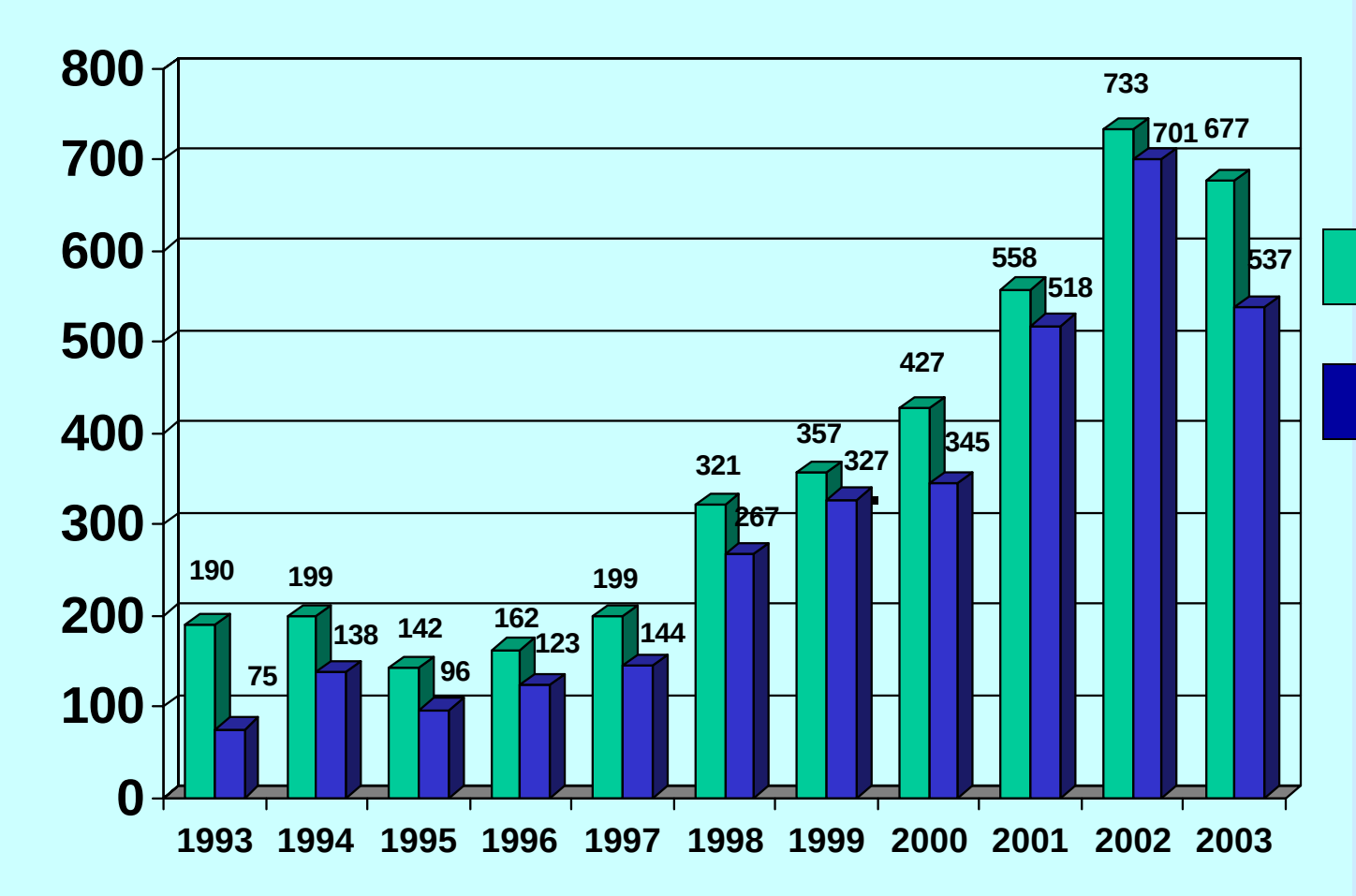
Vacation Home/Rental Indicators

- U.S Census Data 1990 - 2000 change:
  - All Hawai`i housing units up 18%
  - "Seasonal, Recreational, Occasional Use" (SROU) up 100% (includes some timeshare)
- Year 2000, SROU as % of all housing
  - Maine, (15.6% 1st in country)
  - Florida (6.6% 6th in country)
  - Hawai`i (5.5% 10th in country)
    - O`ahu (2.2%)
    - Big Island (8.1%)
    - Kaua`i (15.2%)
    - Maui County (17.3%)

Source: John Knox, 2005

Global Real Estate Market

Number of Single Family and Condominium Resales on Kaua`i, 1993 - 2003



Source: State of Hawaii Data Book 2003

Demographics of All Resort Purchases on Kauai, 2002 - 2004*

Primary Residence of Buyer	Number of Sales	% of Total
California	204	43%
Hawaii	114	24%
Washington	23	5%
Arizona	14	3%
Colorado	14	3%
Japan	10	2%

*Total Sales = 476

Source: Data@Work, 2005

Change in Value of Sales of All Resort* Property

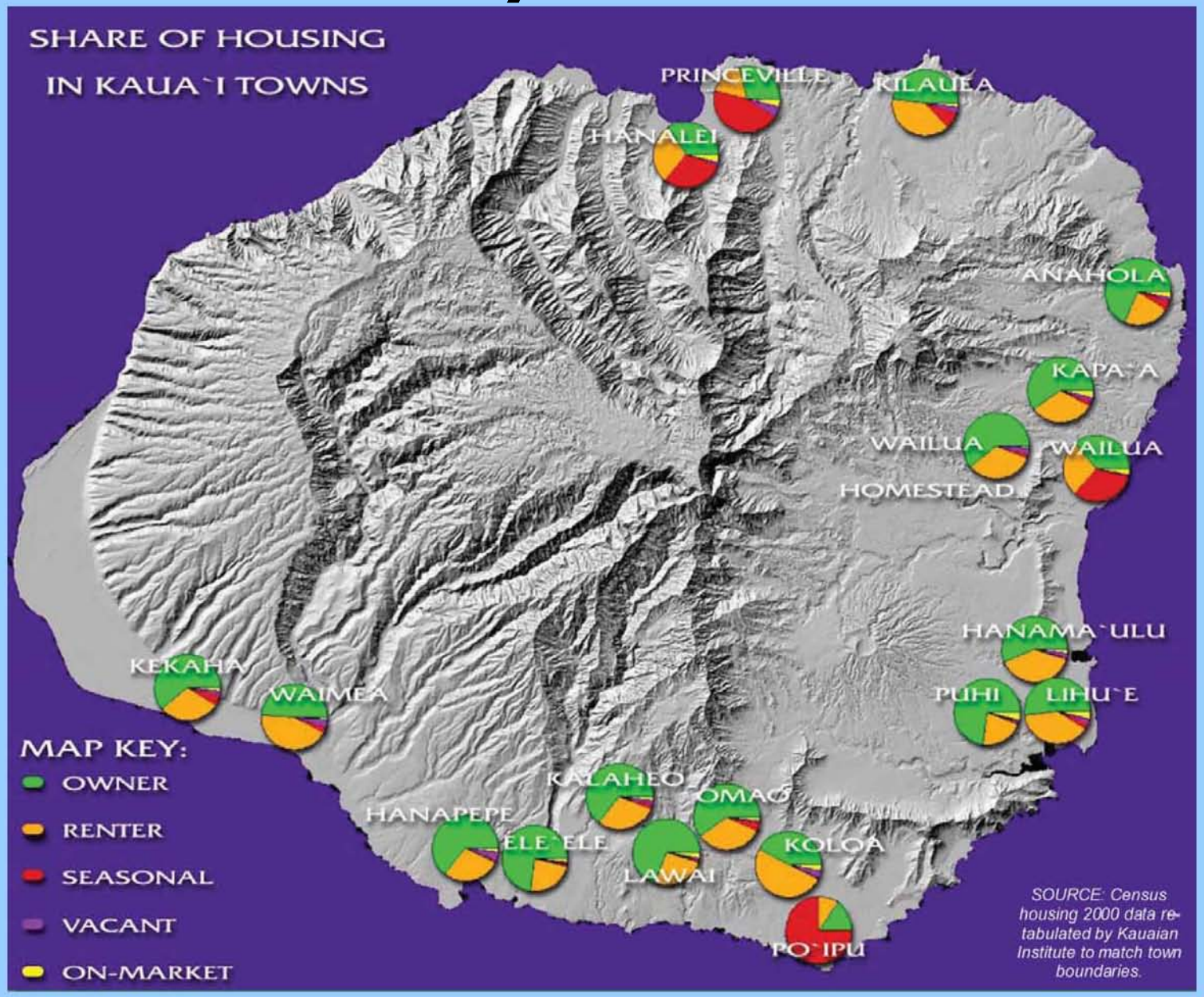
	Hawaii		Kauai		Maui	
Year	Sales	Avg Price	Sales	Avg Price	Sales	Avg Price
2002	291	$1,613,576	442	$430,650	706	$690,309
2003	595	$996,786	637	$548,015	975	$800,522
2004	720	$1,151,090	435	$622,869	952	$987,678

Change in value from 2002 - 2004 = 45%

*Includes SFD and resort condominiums

Source: Data@Work, 2005

Key Data



Source: Kauaian Institute, 2005

Key Data

Concentration of SFTVRs in Specific Neighborhoods

Town	No. of SFTVRs	No. of All Housing Units	SFTVRs as % of All Housing Units
Wailua*	40	2,906	1%
Kapa`a*	54	3,667	1%
Kekaha	34	1,156	3%
Princeville*	80	1,641	5%
Poi`pu*	121	1,981	6%
Anahola	42	613	7%
Kilauea	55	802	7%
Ha`ena/Wainiha	92	422	22%
Hanalei	112	311	36%
Anini	41	77	53%

* Visitor Destination Area

Source: Kauian Institute, 2005

Key Data
Where SFTVRs are Located

- 40 % of all SFTVRs are located in a VDA
- 53% of all SFTVRs are located on the North Shore (Kilauea to Ha`ena, including Princeville)
- 80% of SFTVRs on North Shore are located outside VDA
- 27% of all SFTVRs on Kaua`i are located in Hanalei and Ha`ena/Wainiha

Source: Kauian Institute, 2005

Key Data

1,200 Affordable or Market Housing Units are planned for Kaua`i between 2005 and 2010

Source: NKN Project Planning for the Hawai`i HomeOwnership Center, 2005

2001 - 2003 Survey on Vacation Rentals

		State	Kaua`i
Vacation Rentals in my community are not a problem	Agree	70%	75%
	Disagree	25%	25%
Having new bed-and-breakfasts or vacation rentals in residential areas would be good for Hawai`i	Agree	45%	37%
	Disagree	42%	52%*

*Kaua`i was only area in state with majority disagreeing

Source: John Knox, 2005

Good or Bad for Hawai`i?

	State (% Good)	Kaua`i (% Good)
Growing number residential area B&Bs	61%	48%
More vacation homes in resort areas	49%	40%
Growing number residential vacation rentals	41%	30%

Source: John Knox, 2005

Major Issues of Concern

- Loss of sense of "community"/neighborhood impacts
- Perceived reduction in access to affordable housing (rental and purchase) for Kaua`i residents

Factors Affecting Affordable Housing on Kaua`i

- General real estate market (low supply/high demand)
- Developers making choices to build "high-end" housing
- Shortage of infrastructure to support new development in areas already urbanized
- Unpredictable and lengthy land use approval process
- High construction costs
- Inusfficient labor pool

Existing Tax Relief for Owners of Long-term Rentals

Chapter 5A of the Kaua`i County Code:

"Any owner who owns real property that is rented or leased as a long term affordable rental shall be taxed on its assessed value….provided that any increase in taxes shall not exceed 6% a year."

Zoning Regulations for SFTVRs Cannot Solve Affordable Housing Problems Alone

- Only 20% of SFTVRs estimated to be realistic long-term rental housing
- Regulating SFTVRs may not impact the purchase price for "high-end" housing products
- Poorly enforced regulations will not affect "black market" availability of SFTVRs (this is a state-wide issue)
- Lack of incentives for developers to construct affordable units (rental or purchase)

Key Observations

- The CZO currently allows one guest house on parcels greater than 9,000 sf in all Residential, Resort, Open and Agricultural zoning districts.
- The CZO already permits several non-residential uses of equal or greater intensity of use compared to SFTVRs, through the Use Permit process in residential zoning districts:
  - medical and nursing facilities
  - retail shops and stores
  - schools and day-care centers
  - residential care homes
  - clubs, lodges and community centers
  - churches, temples and monasteries

Preliminary Zoning Recommendations to Regulate SFTVRs

- Definition
- Allow (yes or no)? If so, where?
- How to process?
- Concentration in neighborhoods?
- Existing SFTVRs?
- Monitoring?

Preliminary Zoning Recommendations to Regulate SFTVRs

Definition

- A clear definition of SFTVRs should be incoporated into the CZO.

Allow (yes or no)? If yes, where? How to Process?

- SFTVRs should be a permitted use within VDAs and Resort Districts.
- SFTVRs should be processed with an optional public hearing (as a Class III Zoning Permit) in all Residential Districts outside of the North Shore.
- SFTVRs should processed with a mandatory public hearing (as a Class IV Zoning Permit and Use Permit) in all Residential Districts on the North Shore. Use permits on the North Shore should be reviewed annually.

Preliminary Zoning Recommendations to Regulate SFTVRs

(continued)

Allow (yes or no)? If yes, where? How to Process?

- SFTVRs should be processed with a mandatory public hearing (Class IV Zoning Permit and Use Permit) in County Agriculture Zoning Districts, provided the following conditions are met:
  - SFTVR counts toward residential density
  - there may be no more than one SFTVR on any single parcel
  - there must be a t least one other SFD on the parcel
- SFTVRs should be processed with a mandatory public hearing (Class IV Zoning Permit and Use Permit) in Open Districts, provided that the minimum lot size should be 9 acres for a SFTVR, if the parcel is located in a State "Urban" district, and 15 acres if the parcel is located in a State "Agricultural" district.

Preliminary Zoning Recommendations to Regulate SFTVRs

(continued)

Concentration in Neighborhoods

- A maximum percentage of concentration should be established in, with a differential percentage between North Shore neighborhoods and other areas, by census tract.
- The concept of SFTVR concentration within neighborhoods should be discussed further by the Stakeholder Committee.

Existing SFTVRs

- Existing SFTVRs should be treated as non-conforming uses, and should be required to obtain non-conforming use certificates from the Planning Department, under the following conditions:
  - Proof of previous payment of TAT and GET
  - Certificates will be renewed annually
  - If discontinued for 12 consecutive months, the certificate will lapse

Preliminary Zoning Recommendations to Regulate SFTVRs

(continued)

Monitoring

- Any advertisement for an SFTVR (newspaper, magazine, internet, brochure, etc.) shall include the either the nonconforming use certificate number or the approved permit number for the SFTVR
- Approval of any SFTVR shall require the identification of a 24-hour contact who is a resident of Kaua`i

Additional Preliminary Recommendations

- ***Enforcement.*** **The Planning Department should be allocated additional staff, as they require, to handle the increased work load associated with the regulation of SFTVRs.**
- ***Property Tax.*** **The County should consider a differential property tax rate for owner-occupied dwellings/long-term rentals and SFTVRs, with the rate for SFTVRs to be closer or equal to the rate for commercial uses.**
- ***Affordable Housing.*** **The County should investigate additional incentives at the County level for developers to construct affordable housing units for rental and purchase by Kaua`i residents.**