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Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Water and Land
Monday, March 13, 2023
1:00 p.m.
State Capitol, Conference Room 229

On the following measure:
H.B. 12, H.D. 1, RELATING TO TIME SHARING

Chair Inouye and Members of the Committee:

My name is Lori Beth Van Cantfort, and I am the Time Share Administrator for the Department of Commerce and Consumer Affairs (Department), Professional and Vocational Licensing Division. The Department appreciates the intent of and offers comments on this bill.

The purpose of this bill is to clarify that a developer is responsible for ensuring that the use of time share units located outside the State for time sharing purposes complies with zoning and land use laws and rules of the jurisdiction where the time share units are located, but is not required to submit evidence of such compliance to register in Hawaii.

For time share plans located in Hawaii, developers are required to provide a Confirmation of County Zoning Regulations form, which is signed by the county and confirms that the property is located in an area properly zoned to allow time share use. For time share plans located outside the State, the Department currently requires other

evidence that the out-of-state property is in an area properly zoned to allow time share use in the property. This bill merely requires developers to ensure that an out-of-state property is compliant with the zoning and land use laws of the jurisdiction where the property is located. Developers would not be required to provide any proof of compliance or even make a representation that this is true. The Department is concerned that, should it later be determined that the property is not allowed to be time shared, purchasers who own in that time share plan would lose their ability to use the time share, and the time share plan would no longer meet the one-to-one use-right to use-night requirement. In addition, the Department has concerns with providing Hawaii consumers adequate protections and recourse for these out-of-state time shares. If developers are not required to provide evidence of compliance, they should be required to certify that they have reviewed the jurisdiction's zoning and land use regulations and have concluded that the out-of-state properties are in compliance with those regulations.

The Department has been working with the American Resort Development Association (ARDA), the proponents of this bill, to come to an agreement regarding the required information to be submitted. The Department has reviewed ARDA's proposed H.D. 2, which would require the developer to provide a statement that they have verified that the use of the properties is in compliance with the out-of-state jurisdiction's zoning and land use regulations, and finds the proposal acceptable.

Thank you for the opportunity to testify on this bill.

CHARLES E. PEAR, JR., P.A.
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March 10, 2023

Senator Lorraine R. Inouye, Chair, Chair
Senator Brandon J.C. Elefante, Vice Chair
Senate Committee on Water and Land

Re: HB 12, H.D.1 – Relating to Time Sharing Plans
Hearing on March 13, 2023, at 1:00 PM
Conference Room 229

Dear Chair, Vice-Chair, and Members of the Committee:

My name is Charles Pear. I am testifying as legislative counsel for ARDA Hawaii.

ARDA Hawaii supports the bill.

Earlier this session, this Committee heard testimony on HB84, dealing with zoning for short-term rental properties. I did not attend the oral hearings on that bill but some of the written testimony appears to be very passionate.

In some respects, this is similar to the impassioned feelings expressed when the Time Share Act was enacted in 1980. The 1980 legislators were very concerned with whether the introduction of time sharing in residential neighborhoods such as Kailua or Hawaii Kai was disruptive to the residential character of such neighborhoods.

In particular, I believe that the guidance provided by this bill will offer a mandate for the protection of residential lifestyle whether in Waikiki or Hawaii Kai.
Remarks of Rep. Ikeda, House Journal P. 914-915, 1980 Legislature.

The legislature intends by this Act that the counties will be guided by the notion that time sharing and transient vacation rental should not be permitted where the lifestyles of the permanent residents will be disrupted in an unreasonable manner.
* * * Therefore, it is my understanding that we are voting for this measure in order to protect residents in apartment precincts such as the Waikiki Special Design District, Kahala, Lanikai and all areas where time-sharing may be attempted. Remarks of Rep. Larsen, House Journal P. 916 - 917, 1980 Legislature.

To address this concern, Sections 514E-4 and 5 were adopted by the legislature. Section 514E-4 requires that the counties designate areas appropriate for time sharing using their zoning authority. Section 514E-5 prohibits time sharing in areas not zoned for time sharing.

It is important to note that Sections 514E-4 and 5 address only zoning of Hawaii property. Section 514E-30 makes it clear that these sections do not apply to out-of-state property.

Even so, the DCCA is requiring time share developers to provide evidence that out-of-state time share units are in compliance with local zoning laws that regulate the use of property in their state or country. This is being done despite the fact that nothing in the statute or regulations authorizes the DCCA to impose this requirement.

Hawaii is unique in requiring this information. No other state requires it. And the Hawaii legislature has not required it.

The Hawaii Time Share Administrator asserts that zoning is basic and that it is not unreasonable to require that out-of-state properties are in compliance with applicable zoning laws.

When a time share developer represents that a unit is available for occupancy, it is implied that local zoning laws permit such use, that building permits were obtained, that construction of the unit has been completed, that the unit complies with federal and state health and safety requirements, that a certificate of occupancy has been issued, that the unit is furnished, and that water, electric and other utility services required for occupancy are in place. If any of these things are not in place, the developer would be risking liability for misrepresentation under the Act.

The point here is that while there may be many things that are relevant to determining the availability of out-of-state time share units for occupancy, nothing in our statute or regulation requires it or authorizes the DCCA to require evidence of it.

Moreover, the DCCA is unable to keep up with the things that actually are required by law. More specifically, the DCCA is simply not able to process time share developers' applications for registration in a timely fashion. As a result, time share registrations can take months, if not years, to process in Hawaii.

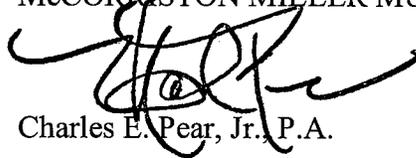
To satisfy the zoning request of the DCCA, the developers typically furnish a legal opinion. Legal opinions can be expensive, especially when a separate opinion may be required for each site (many plans contain dozens of sites). Each time that additional inventory is annexed in a previously approved site, a new opinion of counsel may be required for each affected site. Each such opinion must be reviewed, negotiated, and approved by the DCCA consultant reviewing the application. This further slows the already protracted registration timeline.

Chair, Vice-Chair, and Members of the
Senate Committee on Water and Land
March 10, 2023
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In light of the fact that (i) there is no legal basis for requiring zoning confirmation for out-of-state time share units, and (ii) the Department is unable to timely review the things that actually are required by law, ARDA respectfully requests that you pass this bill.

Very truly yours,

McCORRISTON MILLER MUKAI MacKINNON LLP

A handwritten signature in black ink, appearing to be 'CEP', written over the printed name of Charles E. Pear, Jr.

Charles E. Pear, Jr., P.A.

CEP:kn



March 12, 2023

TO: Chair Inouye
Vice-Chair Elefante
Senate Committee on Water and Land

FR: AMERICAN RESORT DEVELOPMENT ASSOCIATION – HAWAII (ARDA-Hawaii)

RE: HB 12 HD1 – RELATING TO TIME SHARING

Hearing date: March 13, 2023, at 1:00 PM

Aloha Chair Inouye, Vice Chair Elefante and members of the Senate Committee on Water and Land,

ARDA-Hawaii is the local chapter of the trade association for the timeshare industry. There are currently 98 resorts and more than 15,000 timeshare units throughout Hawaii. ARDA-Hawaii hereby submits testimony in **STRONG SUPPORT of HB 12 HD1- RELATING TO TIME SHARING.**

The timeshare industry in Hawaii enjoys **high occupancy levels (90+ percent) during good times and bad**, with visitors staying for an average of 9 days in length every visit. Further, the timeshare industry employs **5,000+ hard working local employees in Hawaii** and is a major economic driver contributing **\$55 million in state and county taxes**. Timeshare is an important and stabilizing part of the tourism industry and Hawaii's economy, supporting economic development and job creation throughout the state. Timeshare owners have made a long-term commitment to our state and are consistent and dependable visitors who bring substantial tax dollars to Hawaii and who continue to visit Hawaii even during periods of economic downturn.

HB 12 HD1 imposes an obligation on a developer to ensure out-of-state time share units comply with zoning and land use laws and rules of the jurisdiction where the time share units are located. HB 12 HD1 further clarifies that a developer is not required to submit evidence of compliance with zoning requirements in other jurisdictions upon registering in Hawaii, as that is inconsistent with the express language in the statute. (See HRS Section 514E-5; 514E-30.)

ARDA Hawaii supports the intent of HB 12 HD1 to address ongoing delays of reviews of time share registrations by clarifying the intent of the already existing of the zoning compliance requirement. Currently, Section 514E-5, HRS, prohibits time sharing in areas of Hawaii that are

time sharing. It was adopted to protect residential neighborhoods from transient and time share use.

Section 54E-5 applies only to property located in Hawaii and not in other jurisdictions. In fact, Section 514E-30 specifically exempts out-of-state property from the zoning compliance requirement set forth in Section 514E-5. Over time, however, the Department has requested confirmation or legal opinions that out-of-state time share units comply with the applicable jurisdiction's zoning requirements in order to register such units here in Hawaii. This requirement has resulted in an unnecessary step, which at times is nearly impossible to comply with due to the varying zoning regulations and governmental processes of different countries. Consequently, aside from being in direct contravention of existing law, this requirement has made the registration review of time share projects in Hawaii slower, more expensive, and in some cases, nearly impossible to achieve.

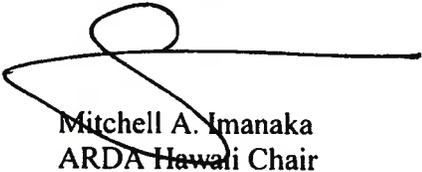
As indicated previously, this requirement is inconsistent with the original intent of the zoning requirement, and can be difficult, expensive, and nearly impossible to comply with. For example, other countries around the world that allow time sharing may not share the same zoning principles we have here in Hawaii and the broader United States. Thus, requiring zoning confirmation, specifically from a foreign government, is extremely difficult and unnecessary under Hawaii law. On the other hand, developers will be held responsible to assure that these requirements imposed by other jurisdictions are met.

HB 12 HD1 seeks to restate and clarify the original intent of the zoning confirmation requirement while maintaining adequate protection for purchasers. Under HB 12 HD1, the use of Hawaii property for time sharing would still be subject to written confirmation by the applicable county. As drafted, the measure places responsibility and liability for non-compliance of out-of-state time share units squarely on time share developers.

ARDA Hawaii stands in strong support of HB 12 HD1, as it seeks to balance consumer protection with greater efficiency in registering a time share project in order to allow our industry to continue to thrive in Hawaii. ARDA Hawaii looks forward to working with all interested parties on this issue.

Thank you for your consideration.

Respectfully submitted,



Mitchell A. Imanaka
ARDA Hawaii Chair



March 10, 2023

Senator Lorraine Inouye, Chair
Senator Brandon Elefante, Vice Chair
Members of the Senate Committee on Water and Land
Thirty-Second State Legislature
Regular Session of 2023

RE: House Bill 12, HD1 – RELATING TO TIME SHARING
Hearing date: Wednesday, March 13, 2023, at 1:00 PM

Aloha Chair Inouye, Vice Chair Elefante and members of the Senate Committee on Water and Land:

My name is Thomas Goodman of Hilton Grand Vacations, and I'm writing on behalf of our company in support of **HB12, HD1 - Relating to Time Sharing**. Hilton Grand Vacations (HGV) is a leading global timeshare company, with resorts and timeshares units across Hawaii Island, Oahu, Maui, and Kauai. We have a longstanding history of investing in the local communities where our team members and timeshare owners live, work and vacation.

Section 54E-5 applies only to property located in Hawaii and not in other jurisdictions. In fact, Section 514E-30 specifically exempts out-of-state property from the zoning compliance requirement set forth in Section 514E-5. Over time, however, the Department has requested confirmation or legal opinions that out-of-state time share units comply with the applicable jurisdiction's zoning requirements in order to register such units here in Hawaii. This requirement has resulted in an unnecessary step, which at times is nearly impossible to comply with due to the varying zoning regulations and governmental processes of different countries. Consequently, aside from being in direct contravention of existing law, this requirement has made the registration review of time share projects in Hawaii much slower, more expensive, and in some cases, nearly impossible to achieve.

The bill presents an opportunity to streamline the review process for timeshare registration filings by restating and clarifying the zoning confirmation requirements. Further, this measure will not decrease substantive consumer protection for buyers.

Like many companies in the timeshare industry, HGV has awaited approval for new timeshare registration filings for 12 to 15 months and amendments to existing filings for

six to nine months. These delays prevent us from submitting all of the filings that we would otherwise pursue, making it difficult to realize the benefits and support our industry can fully provide to the state.

Our company employs 1,700 people and supports over 540 local businesses across its footprint. We maintain consistently high occupancy levels from people who have owned their vacation properties and supported our local communities for decades, even in times of economic downturn. We also contributed \$88M in annual state and county taxes from 2016 to 2022. Most importantly, we have a long-standing history of supporting communities throughout the state through HGV Serves, our CSR platform, which is driven by initiatives focused on sustainability, homelessness, youth development, disaster relief and veterans.

We strongly support HB12, HD1 and its proposed clarifications to the registration filing process, which would allow us to enhance our industry and continue making a sustained impact in Hawaii. On behalf of Hilton Grand Vacations, I respectfully ask the Commissioners to vote in support of HB12, HD1.

Mahalo nui loa,

Thomas Goodman
Vice President, Legal
Hilton Grand Vacations



March 10, 2023

Senator Lorraine R. Inouye, Chair
Senator Brandon J.C. Elefante, Vice Chair
Members of the Senate Committee on Water & Land
Thirty-Second State Legislature
Regular Session of 2023

RE: HB 12, HD1 – Relating to Time Sharing
Hearing date: March 13, 2023 at 1:00 pm

Aloha Chair Inouye, Vice-Chair Elefante and Members of the Committee,

Thank you for allowing me to submit testimony on behalf of Marriott Vacations Worldwide Corporation (“MVWC”) in **STRONG SUPPORT** of HB 12, HD1 – Relating to Time Sharing. MVWC is a global leader in the timeshare industry, with five resort properties in Hawaii. Timeshare units are an important and stabilizing part of the tourism industry, and resort development and operations provide thousands of jobs in the islands year after year.

HB 12, HD1 would provide clarity on the intent of HRS §§ 514E-5 and 514E-30 for a registration in Hawaii. The intent of the zoning confirmation requirement in HRS § 514E-5 was to ensure that Hawaii timeshare properties conformed to local zoning laws. HRS § 514E-30, however, would appear to indicate that the zoning confirmation of HRS § 514E-5 does not apply to time share units located outside of Hawaii. In some instances, however, these provisions have prompted the DCCA to request zoning confirmation for out-of-state time share units. Some modern timeshare trust plans have 50 or more component sites located in a variety of states and local counties. Not all states and counties provide evidence of zoning similar to Hawaii. In addition, such zoning confirmation can cost developers as much as \$30,000 or more to obtain and does nothing to further consumer protection. For example, a resort may have a confirmation of zoning but may not be available due to a variety of other factors. Requiring zoning compliance for out of state properties has served to delay Hawaii’s already long review process. A long review process impacts consumers as key updates to the disclosure statements are delayed from being provided to the consumers while the review is ongoing.

Accordingly, MVWC supports HB 12, HD1 as a way to streamline the timeshare review process while maintaining the proper level of consumer protection. Accordingly, MVWC strongly urges the committee to pass HB 12, HD1.

Mahalo for your consideration,

Robin Suarez
Senior Vice President & Associate General Counsel
Marriott Vacations Worldwide Corporation



Maui Hotel & Lodging
ASSOCIATION

Testimony of
Lisa H. Paulson
Executive Director
Maui Hotel & Lodging Association

LATE

Senate Committee on Water and Land
House Bill 12 HD1: Relating To Time Sharing
March 13, 2023, 1:00 pm
Conference Room 229

The Maui Hotel & Lodging Association (MHLA) is the legislative arm of the visitor industry for Maui County. We represent over 180 property and allied business members and 22,000 employees. **MHLA supports House Bill 12 HD1**, which clarifies that a developer is responsible for ensuring that the use of out-of-state time share units for time sharing purposes complies with zoning and land use laws and rules of the jurisdiction where the time share units are located but is not required to submit evidence of such compliance to register in Hawaii.

MHLA supports the intent of HB12 HD1 to address ongoing delays of reviews of timeshare registrations by clarifying the purpose of the already existing zoning compliance requirement. Section 514E-5, HRS currently prohibits time sharing in Hawaii areas that are not zoned for time sharing. It was adopted to protect residential neighborhoods in Hawaii from transient and timeshare use.

Section 54E-5 applies only to Hawaii property and not other jurisdictions. **Section 514E-30 specifically exempts out-of-state property from the zoning compliance requirement outlined in Section 514E-5.** Over time, the Department has requested governmental confirmation or legal opinions from other jurisdictions that out-of-state timeshare units comply with the applicable jurisdiction's zoning requirements to register such units here in Hawaii. This constitutionally questionable requirement has resulted in an unnecessary step, which at times is nearly impossible to comply with due to the varying zoning regulations and governmental processes of different countries. Consequently, aside from being in direct contravention of existing law, this requirement has made the registration review of time-share projects in Hawaii **slower, more expensive, and in some cases, nearly impossible to achieve.**

This requirement is inconsistent with the original intent of the zoning requirement and can be difficult, expensive, and nearly impossible to comply with. For example, other countries worldwide that allow time sharing may not share the same zoning principles we have here in Hawaii and the broader United States. Thus, requiring zoning confirmation, specifically from a foreign government, is a challenging requirement to fulfill and is not currently required under Hawaii law. On the other hand, under this measure, developers will be held responsible for ensuring that these requirements imposed by other jurisdictions are met.



Maui Hotel & Lodging
ASSOCIATION

SB 798 seeks to restate and clarify the original intent of the zoning confirmation requirement while maintaining adequate protection for purchasers. Under SB 798, the use of Hawaii property for time sharing would still be subject to written confirmation by the applicable county. As drafted, the measure places responsibility and liability for non-compliance of out-of-state timeshare units squarely on timeshare developers.

For the reasons stated above, **MHLA supports House Bill 12, HD1.**

Thank you for the opportunity to provide this testimony.