NOTICE OF PUBLICATION AND NOTICE OF PUBLIC HEARING

Notice is hereby given that the Council of the County of Kaua'i will hold a public hearing on Wednesday, August 3, 2011, at 1:30 p.m., or soon thereafter at the Council Chambers, 3371-A Wilcox Road, Līhu'e, on the following:

BILL NO. 2410

A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8 OF THE KAUA'I COUNTY CODE, 1987, AS AMENDED, RELATING TO THE PERMITTING PROCESS FOR TRANSIENT ACCOMMODATION UNITS

The purpose of this bill is to amend Chapter 8 of the Kaua'i County Code 1987, as amended, relating to the permitting process for transient accommodation units.

This bill authorizes the Planning Commission of the County of Kaua'i to process and issue zoning permits, use permits, subdivision approvals, and variance permits for transient accommodation units pursuant to the provisions of Article III, Section 3.19 of the Kaua'i County Charter.

All interested persons who wish to present their comments may do so at the public hearing. Written testimonies prior to the hearing would be appreciated. Copies of the proposed ordinance are available at the Office of the County Clerk, Council Services Division.

(The Council Committee or Council may amend this Bill at its subsequent meetings. Meeting notices are posted at least 6 days in advance at the County Clerk's Office and the public may also testify at any of these meetings.)

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that the foregoing Bill No. 2410 was passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on July 6, 2011, by the following vote:

AYES:	Bynum, Chang, Kuali'i, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL - 7,
NOES:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	None	TOTAL - 0.

Līhu'e, Hawai'i
July 7, 2011

/s/ Peter A. Nakamura
County Clerk, County of Kaua'i

NOTE: SPECIAL ACCOMMODATIONS AND SIGN LANGUAGE INTERPRETER AND INTERPRETERS FOR NON-ENGLISH SPEAKING PERSONS ARE AVAILABLE UPON REQUEST FIVE (5) DAYS PRIOR TO THE MEETING DATE, TO THE COUNTY CLERK, 3371-A WILCOX ROAD, LĪHU'E, KAUA'I. TELEPHONE NO. 241-4188.

(One publication – The Garden Island – July 19, 2011)

KAUA'I Chamber of Commerce

August 2, 2011

TO: Honorable Chair and Member of the Kauai County Council
RE: Bill No. 2410, Relating to the CZO Permitting Process for Transient Accommodation Units
DATE: August 2, 2011

Council Chair Furfaro and members of the Kauai County Council,

For the record, my name is Randall Francisco, President/CEO of the Kauai Chamber of Commerce which represents nearly 450 members, 700 member representatives and about 6,000 employees. 92% of the membership comprises of small businesses. **On behalf of the Kauai Chamber of Commerce, I am writing in support of Bill No. 2410.** Previously, before the Planning Commission, I expressed our concerns for establishing growth limits at a time when our entire community is being severely impacted by the economic downturn. I do understand that the adoption of Bill 2410 relegates the responsibility for certain discretionary permits and subdivisions to the Planning Commission, where it rightfully belongs. Without this important implementing ordinance, all zoning, use, variance and subdivisions would have to be entertained by the council and would erode the authority granted to the Planning Commission by the county charter.

As business advocates we understand the importance of predictability for developers and contractors. We firmly believe in the "fairness" doctrine whereby if development projects have gone through the entitlement hoops and have expended substantial amounts of resources, then they should not be subject to the restrictions which are included in the Charter Amendment. We also understand that the focus of the subject bill and the Charter Amendment is on transient accommodations, which we do not have any control over now, but is so devastating to the lifeline of so many of our residents and people employed in secondary businesses that rely on the visitor industry.

The subject bill allows for permits to continue to be processed, albeit with a cap, but at least it will allow for some development to occur in our primary industry. We also support the projects that have attained all of their zoning approvals to proceed as planned.

For these and for reasons of expediency, I ask for your immediate support of Bill 2410. Thank you for the opportunity to provide this testimony. If you have any questions, please do not hesitate contact me at the Kauai Chamber of Commerce, 245-7363.

Mahalo Nui Loa and Aloha.

Randall Francisco
Kauai Chamber of Commerce

RECEIVED
'11 AUG -2 P4:14
OFFICE OF THE COUNTY COUNTY OF KAUAI

P.O. Box 1969, Lihu'e, HI 96766 • Ph: (808) 245-7363 • Fax: (808) 245-8815
email: info@kauaichamber.org • www.kauaichamber.org

Ordinance 2410 August 3, 2011

The Charter Amendment3.19 of 2008 is very clear in its purpose, and the Citizens of this County passed it by a nearly 2 to 1 margin. That is now part of the law of this County and you the Council, were sworn to uphold that and other State and federal laws.

If each of you as an individual votes in favor of passing this ordinance 2410, you will be violating your oath of office because this ordinance allows for the approval of a number of permits that is in direct violation of Charter Amendment 3.19 and the General Plan now in effect.

If there are members of the community who are not happy with the number of transient accommodation units that the Charter Amendment allows, then let them get in line and get their approval certificate "in chronological order".

This ordinance has "legaleze language" and exemptions that do not comply with Charter Amendment 3.19. Read section "C" of that document which clearly states what your responsibility is; to pass an ordinance that delegates issuance of permits to the planning commission, AND to pass an ordinance limiting the number of transient accommodation units to comply with Charter Amendment 3.19 and the General plan. It is then the responsibility of the Mayor and his appointees to follow that compliance or be replaced, since the Council has no disciplinary functions over Mayoral appointees. Ordinance 2410 clearly goes far beyond what 3.19 requires, and gives those appointees far too many opportunities to NOT comply. Historically even ethics violations result in only reappointment to another government post.

Passage of thie ordinance will create distrust of the Council Members who vote for it, just as State and Federal actions have created distrust and lack of confidence in members of those institutions.

Follow the Law of our County, protect your integrity, and vote no on this ordinance.

Rich Hoeppner

LAND USE RESEARCH
FOUNDATION OF HAWAII
1100 Alakea Street, 4th Floor
Honolulu, Hawaii 96813
(808) 521-4717
www.lurf.org

Via E-Mail

August 3, 2011

The Honorable Jay Furfaro, Council Chair
and Kauai County Council Members
Kauai County Council
3371A Wilcox Road
Lihue, Hawaii 96766

RE: General Support and Comments regarding Bill 2410 A Bill for an Ordinance to Amend Chapter 8 of the Kaua'i County Code 1987, as Amended, Relating to the Permitting Process for Transient Accommodation Units

Honorable Chair Furfaro and Kauai County Council Members,

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

LURF's Position. LURF strongly supports the portions of Bill 2410, which address the "vested rights" of Resort Projects, which currently exist and/or are under construction, where Substantial Sums have been expended in reliance on, or pursuant to the conditions of government approvals, including Project Visitor Destination Area (VDA) Ordinances, or Project Zoning Ordinances. We also have some comments and proposed revisions.

Background. This purpose of Bill 2410 is to authorize the Planning Commission of the County of Kaua'i to process and issue zoning permits, use permits, subdivision approvals, and variance permits for transient accommodation units (TAU) pursuant to Article III, Section 3.19 of the Kaua'i County Charter. Section 3.19, which became effective on December 5, 2008, establishes growth rate limits, or "caps" for TAU, which were inappropriately derived from the Visitor Unit Demand Study conducted for the Kaua'i General Plan (General Plan).

Bill 2410 also provides for exemptions for Existing Resort Projects and/or projects under construction, where substantial sums have been expended on such projects in reliance on, or pursuant to the requirements of government approvals, including a Project VDA Ordinance, or Project Zoning Ordinance.

The TAU Growth Limit Cap in Charter Amendment Section 3.19 is inconsistent with the Kauai General Plan. We would respectfully recommend that the findings section of Bill 2410 be amended to include the conclusions from the Kauai Planning Department Staff Report, dated February 8, 2011, which provided as follows:

> "...there are **inconsistencies between Charter Section 3.19 and the General Plan.** The policy proposed...pursuant to Charter Section 3.19 **does not concur with the General Plan's stated policy for visitor unit and resort growth**, and **will effectuate a growth rate that is loosely based on projections and studies that are not meant to function as compulsory targets.**"
>
> "The policy regarding visitor unit supply is to allow and support resort development within the VDA (namely Princeville, Kapa'a-Wailua and Po'ipu), as well as limited growth on the West Side. **The General Plan did not recommend limiting development within the VDA to a prescribed growth rate.**"
>
> **"A growth rate cap of 1.5%** that is based on the findings of a visitor unit demand study conducted in 1998 **does not account for recent and substantial growth in the visitor unit inventory over the past decade**. Obviously, implementing the 1.5% growth rate more than halfway through the General Plan's planning timeframe will not necessarily achieve the visitor unit demand that corresponds with the projected ADVC of 28,000 by 2020."
>
> (Emphasis added).

Exemptions based on fairness, equity and legal principles. We support SECTION 3. Sec. 8-28.5 of Bill 2410, which provides for exemptions for Existing Resort Projects, because it would be unfair, inequitable, and in violation of applicable legal principles, to apply Charter Section 3.19 to any resort projects which are currently existing and/or under construction, where substantial sums have been expended on such projects in reliance on, or pursuant to the requirements of a government approval designating a Resort land use, Project VDA ordinance, or Project Zoning Ordinance This section and the definitions section should also include some clarifications.

"Exempt" means "Exempt" and there is no basis to implement TAU caps or limitations on projects which are "Exempt." LURF's position is that the clear, plain and simple meaning of "exempt" is that the unit caps or limitations should not apply to exempt projects. There is no basis in the Charter amendment to create an "allocation program" or other hurdles and roadblocks for projects which are exempt under Bill 2410. LURF respectfully proposes the deletion of any provisions which propose a cap or limitation on projects which are already deemed exempt.

We appreciate the opportunity to present our **strong support of Bill 2410 and comments**, and respectfully ask for your favorable consideration of this bill, with LURF's recommended revisions.

August 3, 2011

Honorable Chair Furfaro and members of the Kauai County Council,

RE: **Bill No 2410, A Bill for an ordinance to amend Chapter 8, Kauai County Code 1987, as amended, relating to the Comprehensive Zoning Ordinance**

For the record, my name is Tom Shigemoto and on behalf of Kukui`ula Development Company (Hawaii), LLC and A&B Properties, Inc. I hereby submit testimony in support of the Bill 2410. The Planning Department did an excellent job crafting and evaluating the subject bill and providing some invaluable insights as to what the General Plan really intended relative to growth and growth rates and how these growth rate apply to the formulation of the General Plan.

As a member of the General Plan Citizens Advisory Committee back in 1999 and 2000, I concur with the Planning Department's assessment that the General Plan never intended for a finite growth cap to be adopted. Growth RANGES were discussed based on historic visitor counts, transient accommodations and population growth estimates. As in any long range plan, these growth factors are necessary to determine the infrastructural, housing, social service, recreational and other needs for the island. And typically, the higher number in a range is selected so as not to underestimate these needs. However, I also realize and understand that the Charter Amendment is now the law.

You are here today to entertain a bill that has been prepared by your county attorney to comply with the provisions of Section 2 of the Charter Amendment, which is to adopt an ordinance to carry out its intent. On the surface, the Charter amendment seems pretty straight forward as to who is responsible for entertaining zoning, use, variance and subdivision permits and what happens if the Council chooses not to be the approving body. What it fails to do is to provide any details or direction on how the provisions of the Charter Amendment are supposed to be implemented. Furthermore, the Charter Amendment language appears to contain contradictory objectives if the intent is to restrict transient units only and not primary dwelling units. For example, the preamble refers to some 4000 "transient overnight accommodation units" approved by the Planning Commission between 2000 and 2007 and tying these approvals to "commensurately excessive increase in the average daily visitor count" but by the definition for a "transient accommodation unit" other types of units aimed at residential A.D.U's and non-transient multi-family rentals and perhaps even affordable rental projects, which are not ones primary residence are included. The charter language also includes subdivisions, which normally are intended for single-family homes whether in VDA's or in a Resort use district. There is no discussion in the preamble about the impacts subdivision creates yet it was included as a "permit" that would be subject to the County Councils approval. Subdivision approvals, as you know, are really not a discretionary approval but a ministerial one and although the Planning Commission approves these subdivisions once all subdivision requirements are met, no discretion is necessary. If my interpretation is accurate, then amendments to this bill should be incorporated to correct this discrepancy.

I believe that the County Attorney has done an outstanding job in trying to interpret the intent and to develop an ordinance that adequately addresses the process to establish a base number and the kind of units/lots that would be counted, the system by which units would be allocated to applicants, the time frames for performance, a certification process for subdivisions that are intended for primary residential development as well as protecting the integrity of the county by recommending appropriate exemptions for vested projects. All of these things were not spelled out in the Charter petition but are all important elements to consider in adopting an implementing ordinance.

As you know, there are many people who rely on the visitor industry for their livelihoods and contractors who have to rely on timely approvals for permits to keep their employees working. There are also people in the development industry that need a certain level of predictability to sustain our long term viability. This bill is the first step in providing the process to allow these things to happen. Your expeditious review and approval is hereby requested. Thank you for the opportunity to provide my testimony on this very important bill.

Tom H. Shigemoto
Vice President

Glenn Mickens <glennruth@hawaiiantel.net>

Bill 2410

July 30, 2011 10:34:25 AM HST

All Council members Glenn Mickens testimony 8/3/11

I have been given a copy of the testimony that Walter Lewis emailed to your committee for this hearing and I approve and support the comments and suggestions he made.

Walter's conclusion that the Bill in its present form violates the terms of the Charter amendment should be clear to all.The accomplishment of the return of authority to process transient accommodation approvals to the Planning Commission as provided in the charter amendment would be simple except for the complications arising from the actions by the Planning Commission in conferring preliminary approvals for projects of owners who contemplated building transient accommodations. Disregarding the restraints of the General Plan the Commission bestowed its "blessings" at a rate vastly greater than the guidelines of the Plan. In all it seems that there may be as many as 4000 accommodation units involved. The owners of these properties are not culpable, they did nothing wrong, but their position is tainted by the excesses of the Planning Commission. Walter's suggestion for dealing with this difficult situation merits close consideration.

Walter's solution is reasonable and fair. First, have a registration of such owners and find out how many units are involved. Then give the qualifying owners a priority over others to build after meeting usual requirements. To allow the Planning Commission to give order to the priority require the owners to commit whn the units in the project

are to be built. This will allow owners who want to proceed earlier to go ahead of owners who want deferral of their time to build. It should be possible to process all such owners within a reasonable time. Finally, if any owner would be aggrieved by a decision of the Planning Commission give such owner or owners the right to appeal to the council to adjudicate the position.

This arrangement solves a difficult problem and allows both the purposes of the charter amendment to be carried out and gives any owner who believes his legal rights have not been honored a fair audience.

Walter S. Lewis
P. O. Box 223115 Princeville, HI 96722
July 28, 2011

Ms. Nadine Nakamura, chairperson
and members Kauai County Council Planning Committee
Lihue, HI 96766

Re: Bill 2410 Public Hearing August 3, 2011

Dear Council members:

In the year 2000 Kauai's economy was just recovering from the effects of 1992 Hurricane Iniki. That year the Council adopted a General Plan which offered guidelines for growth of tourist accommodations at about 1.5% per year. In the years 2000 to 2007 the Kauai Planning Commission utterly disregarded such guidelines and gave so many zoning, subdivision and other approvals that today there are estimated to be over 4000 unbuilt transient accommodation units which have some Planning Commission approvals. This is more than four times the number that should have been processed for this period. Alarmed by the irresponsible Planning Commission pattern, in 2008 a citizen sponsored Charter amendment was adopted by a nearly two to one margin that removed the Planning Commission from processing most of the permits for transient accommodations and entrusted that function to the County Council, although giving the Council authority to return the processing to the Planning Commission subject to a strict 1.5% annual growth rate limit.

In the period since the adoption of the charter amendment the real estate and tourist markets have plunged and they are predicted to remain depressed for some time. To date apparently no owner has sought Council approval for building transient accommodations.

Last year a Bill (2386) was introduced by a former council member seeking to exercise the authority to return the transient accommodation processing authority to the Planning Commission. But the County faced a troublesome threat. How to treat the owners of property who had taken steps toward being able to build tourist accommodations – principally hotels, time share and transient vacation rentals? Collectively this group was unjustifiably enlarged by the reckless action by the Planning Commission. But individually the bulk of the owners had acted in good faith to pursue a business opportunity and had expended funds to this end.

Bill 2386 sought to deal with this situation by exempting all such owners who had expended specified amounts from the 1.5% annual growth rate allowed under the charter amendment. The effect of this "solution" would be that over a reasonable build out period for the 4000+ units, say twenty years, there would likely be more than double the number of units constructed than contemplated by the charter amendment, and its citizen voted purposes would be defeated.

The Council requested review of the Bill by the Planning Commission, and the Bill, renumbered 2410, has been returned to for Council with the troublesome exemption intact.

While the Council can avoid the dilemma discussed by its retaining the approval processing for transient accommodations as is clearly expressed in the charter amendment, if it wishes to return such processing to the Planning Commission it must find a way to deal reasonably with such claims as the

owners having preliminary development approvals may have, but it must and also comply with the charter stated growth limit which the present Bill does not do.

I have the following suggestions for amendments to the Bill so that it might meet the above criteria.:

1.Provide a reasonable period up to one year for all owners of what are referred to as "Existing Resort Projects" (ERP) in the Bill to be identified, qualified and classified. Only those owners who have received Planning Commission action and have expended the required sums after 1999 should be included. In such registration all owners should be required to state whether and how many of the units owned would be completely built at five year intervals, by the end of five, ten, fifteen and twenty years after the effective date of enactment of the Bill. This information is needed to identify how many units should receive special consideration and the period over which they are to be built.

2. At the end of this registration period, in the five year cycles contemplated in the Bill the Planning Commission would authorize the number of transient accommodation units (TAUs) that are to be completed in such cycle and would be allowed at the 1.5% per annum rate. (With 9203 TAUs now existing as stated in the Bill about 710 new units would be authorized in the first cycle).

3. Qualified ERPs should be given priority, not exemptions. In making its selections the Planning Commission should give first priority to qualified ERPs who have committed to complete units within the cycle. If more qualified ERPs have committed to complete units within the cycle than are allowable then the selection among them should be made by lottery or other fair means.

4. If any owner is aggrieved by Planning Commission action, such owner should be allowed to appeal to the Council if it contends its legal rights have been violated or it will incur an undue economic hardship as a result of the Planning Commission action.

In my view, the Bill in its present form is clearly violative of the the terms of the charter amendment. However, I believe that the changes described above would permit the Council to enact a measure that would comply with the provisions of the charter amendment and also give appropriate recognition to claims of owners who have initiated steps to build TAUs.

Because of a conflict I will not be able to attend the August 3, 2011 public hearing. I would, however, if requested, be pleased to schedule a meeting with Committee members or staff to discuss further the above points.

Walter S. Lewis
July 28, 2011

Implementation of Charter Section 3.19.C

Kauai County Council Public Hearing on Bill 2410

August 3, 2011

Coalition for Responsible Government

Carl Imparato
808-826-1856
carl.imparato@juno.com

Kauai General Plan

November 2000

- General Plan growth scenarios:
  - Address Kauai's economic, social, environmental, and cultural needs.
  - Projected growth in Average Daily Visitor Census (ADVC) is the key element in the scenarios.
- High-end projections were based on ADVC of 28,000 in 2020.
  - This is a 73% increase over 1997 ADVC of 16,160.[1]
- Scenarios correspond to need for 2,060-3,510 additional visitor units by 2020 (at 80% targeted and 69% historical occupancy rates respectively).[2]
  - This corresponds to 800-1400 additional visitor units between 2000 and 2008.
  - At a 75% occupancy rate: 2,666 additional units are needed (= 1.5% annual average growth rate).
- **Kauai Planning Commission approved more than 4,500 additional units during 2000-2008.**[3]
  - This approval rate was 3 to 5 times the growth rate at the high end of the General Plan scenarios.

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[1] General Plan Table B-1

[2] General Plan Table 4-1

[3] Kauai Planning Department, February 2011

2008 Charter Amendment

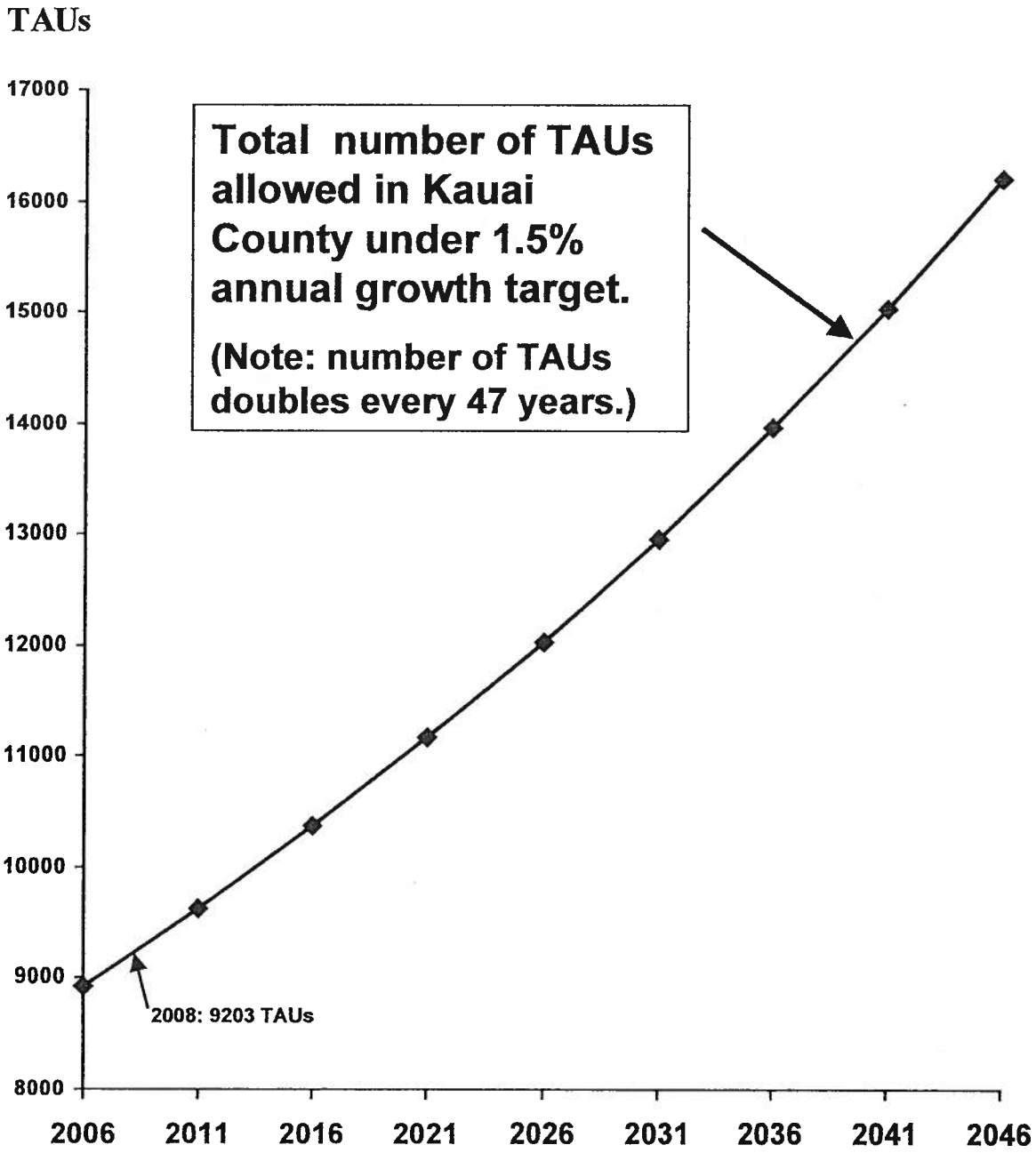
- Transferred authority to approve major permits for transient accommodation units (TAUs) to the Council.
  - In order to approve, Council must making findings of public interest and consistency with General Plan.
- Allows Council to delegate permit approval to the Planning Commission if the Council enacts an ordinance that limits the rate of increase in TAUs to 1.5% per annum on a multi-year average basis, or a rate within the growth range of a future general plan.
  - **No exceptions are allowed** from this limit for "Existing Resort Projects" (ERPs) that have been approved but not yet been built.
    - 3,847 potential TAUs approved since 2000.[1]
  - **No exceptions are allowed** from this limit for an additional 2,600 potential TAUs that could also assert claims as ERPs under Bill 2410's definition of ERP.[2]

Proper handling of the "backlog" of ERPs is critical to the legality of Bill 2410.

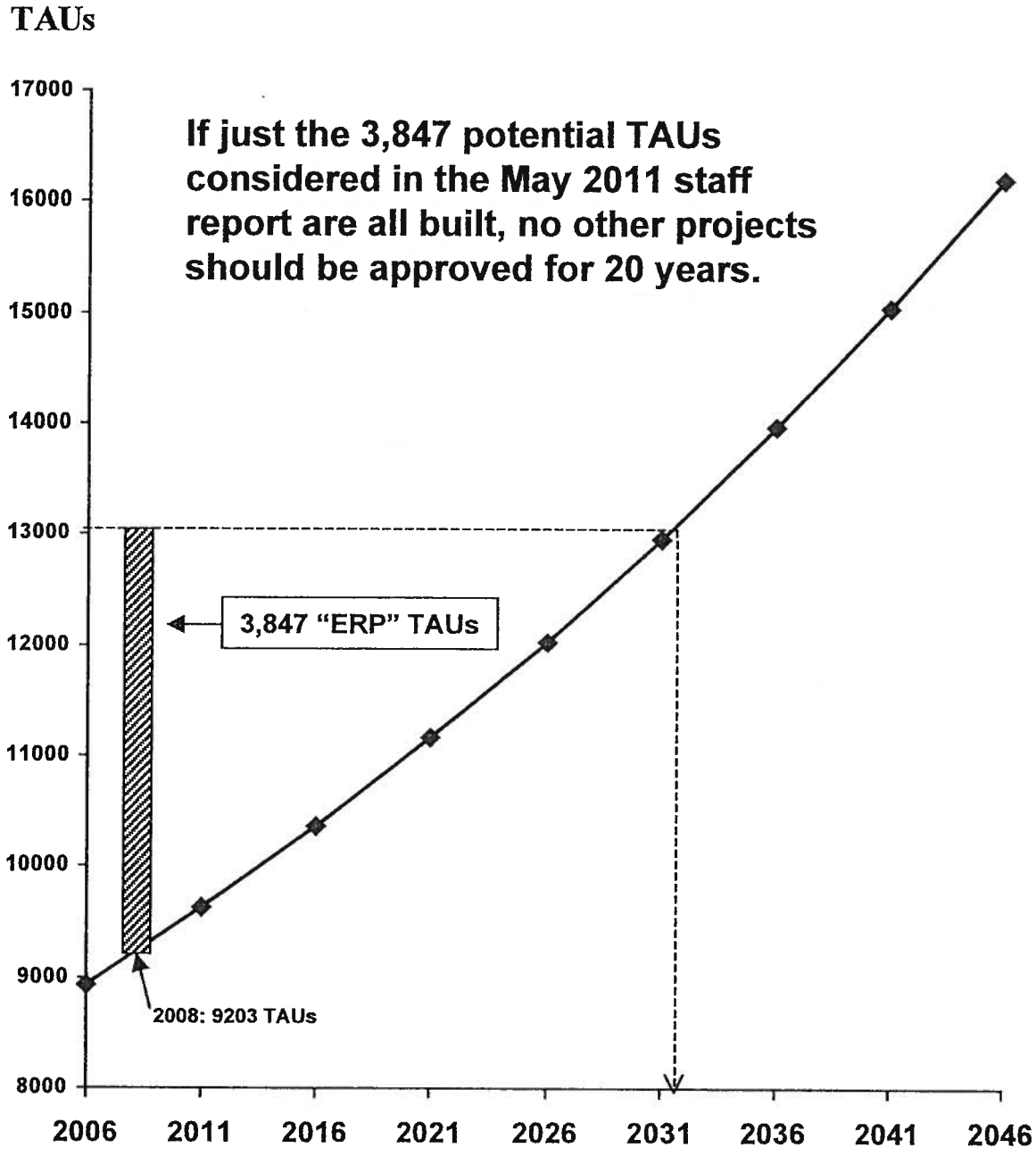
[1] Planning Department Staff Report, May 24, 2011

[2] General Plan Table C and February 2011 Planning Department Table of TAUs Permitted, 2000-2008

Transient Accommodation Unit (TAU) Target: 1.5% Annual Growth



The "Existing Resort Project" (ERP) Backlog



Treatment of the Backlog of "Existing Resort Projects"

- The 'vested rights" of developers must be respected... but this must be done in a way that complies with the letter and the spirit of the Charter.
- Basis for a solution: the requirement to comply with the 1.5% growth cap contains some flexibility ("a multi-year average basis").
  - The number of TAUs must not exceed the the TAU Target (defined by the 1.5% Annual Growth graph) over a reasonable period of time.
  - Legitimate ERPs can be given special treatment, but their impacts (i.e., the associated TAUs) must be fully included in the tally under the annual cap.
- Assuming that we start with a backlog of 3,000-or-more prematurely-approved TAUs:
  - These constitute an "overdraft" of future TAU Certificates. This is like a debt that needs to be repaid by approving fewer TAUs in future years until the debt is fully paid.
  - A significant percentage of future TAUCertificate allocations must be used to "pay down" this debt over a reasonable, credible period of time.

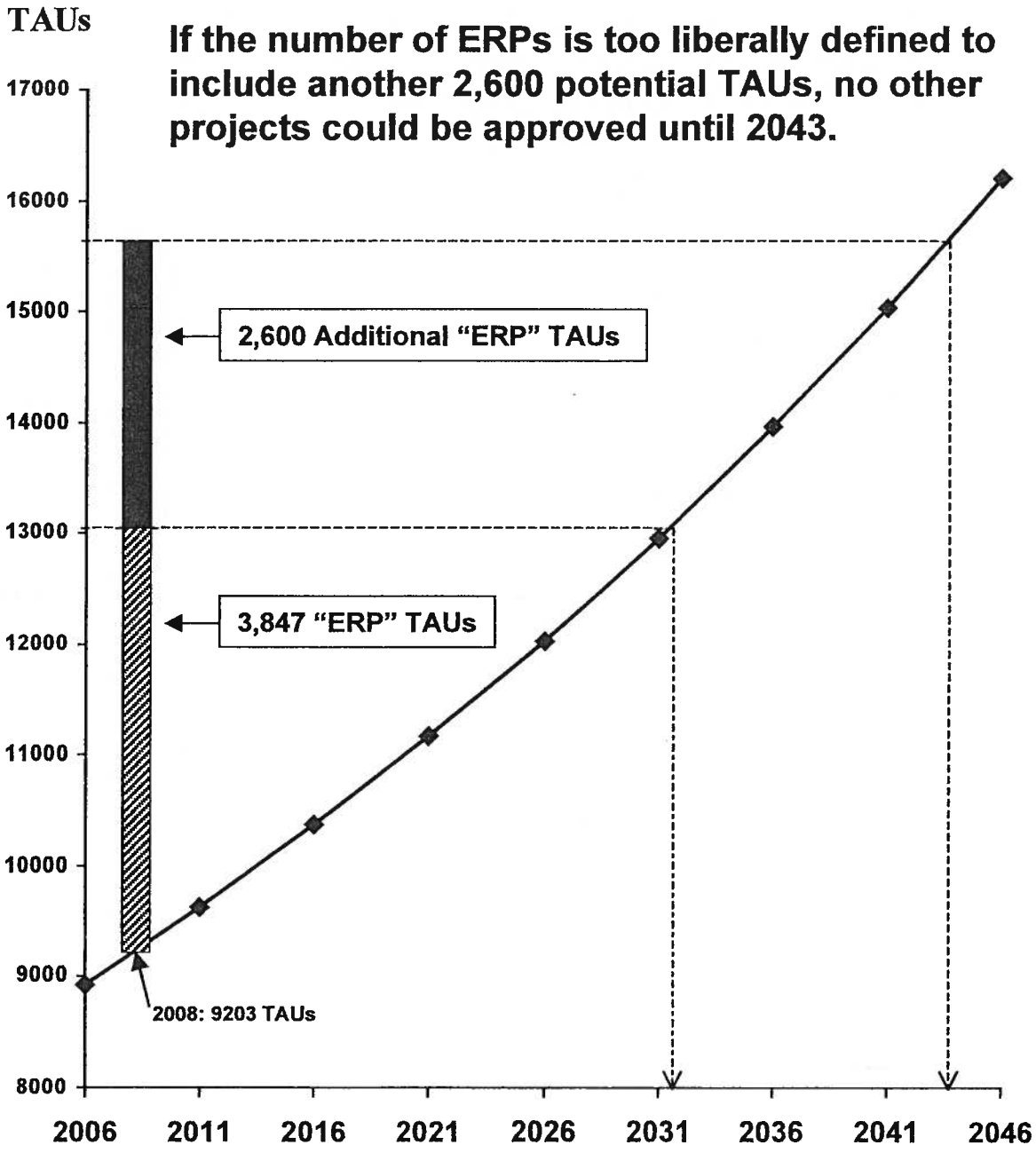
Major Problems with Bill 2410

1. **The "exemption" for Existing Resort Projects is too broad.**
   - The definition of ERP includes not only "live" projects that have received permits in the past 10 years, but even as-yet-unproposed future projects on Resort-zoned lots.
   - This could unnecessarily increase the "backlog" of "exempted" projects by an additional 40%-70% (an additional 1,700 - 2,600 TAUs), pushing off compliance with the Charter amendment by more than 30 years.

   Special treatment should be afforded only to actual projects that were underway in this century.
   - Other projects can apply for TAU Certificates using the regular TAU Certificate allocation processes.
   - Under Bill 2410, they can also apply to the Council if not enough TAU Certificates are available.

2. **The proposed exemptions for "tentatively approved subdivisions" (Section 5) and other multi-lot subdivisions (Section 8-28.2(a)) would also violate the Charter.**
   - There is no justification for allowing such exemptions.

Problem: Excessive Exemptions for "Existing Resort Projects"



Major Problems with Bill 2410

3. **Future growth would be based on the actual number of TAUs rather than allowed number of TAUs.**

   The proposed definition of "Pro Rata Allocation" would result in too many TAU Certificates being made available in the future.

   - Due to the immense "backlog" of ERPs, the actual number of TAUs that could materialize would far exceed the amount allowed under the 1.5% growth rate.
   - As an example: suppose 3,000 ERP TAUs came on-line between 2012 and 2016.
   - Under Bill 2410, the number of TAU Certificates granted in 2017 and future years would be based on 1.5% of 12,200 rather than 1.5% of 10,367 (the number allowed from the TAU Target Graph).
   - This is 20% higher than allowed... and this problem would be further compounded over time.

   Under the proposed definition, the further out-of-compliance the County is (with respect to the number of TAUs allowed under the Charter), the greater the number of TAUs the Planning Commission would be allowed to issue in the future!

Major Problems with Bill 2410

4. The reduction in the amount of growth allowed in the future is far too small to credibly compensate for excessive growth due to the build-out of "exempted" ERPs.

Bill 2410 appropriately recognizes that future allocations of TAU Certificates should be reduced to compensate for the huge backlog of approved-but-not-yet-built ERPs.

But the proposed number of future TAU Certificates that would be held back to "pay off" the huge backlog is too small to be credible.

Section 8-28.3(c) limits the number of certificates used for this purpose to 20%.

- At this rate, less than 25% of the potential 3,847 TAU backlog would be worked off after 25 years.
- This would not be a credible implementation of the Charter's requirements.

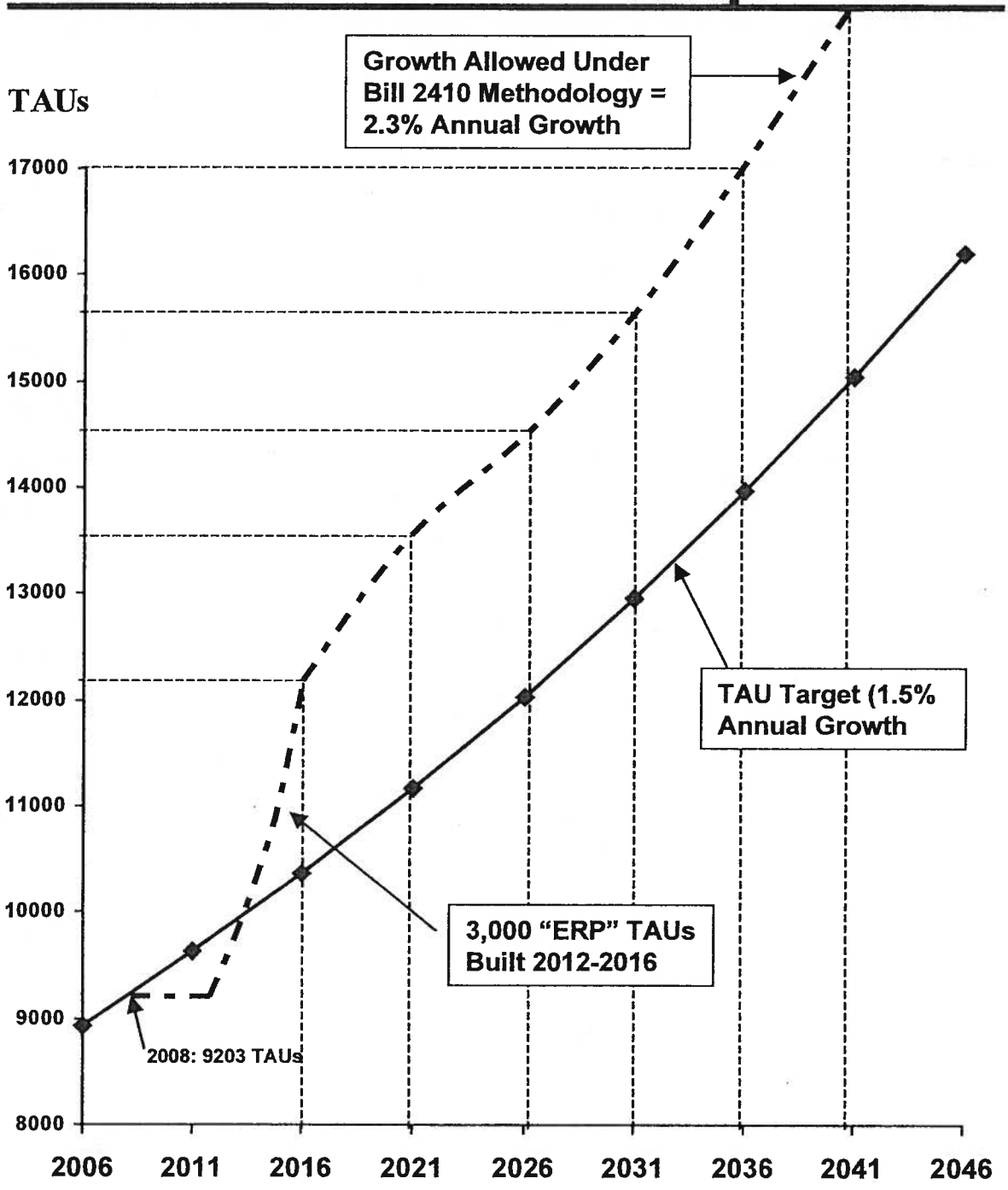
Major Problems with Bill 2410

5. **After 5 years, excessive past growth (for example, due to construction of ERPs) would be completely forgotten.** (Section 8-28.3(c))

   Consider a scenario in which 3,000 ERP TAUs are brought on-line between 2012-2016.

   - During that period, only 744 new TAUs should have been allowed, based on 1.5% annual growth.
   - The excess (3,000 - 744 = 2,256) TAUs would trigger the holding back of 20% of the TAU Certificates from the 2017 allocation process.
     - From the TAU Target graph, this hold back would = 20% * 813 = 163 TAU Certificates.
   - But: under Bill 2410's language, the subsequent allocation process (in 2022) would only look back at the 2017-2021 time period.
     - It would completely ignore the overbuilding that had occurred during the previous (2012-2016) period.
   - Thus, only 163 TAU Certificates would have been held back to compensate for the 2,256 excess TAUs.
   - This amounts to accounting for just 7% of the over-building, and simply walking away from accounting for (paying back) the remaining 93% of the overdraft.

Bill 2410 Methodology vs. Charter's 1.5% Annual Growth Requirement

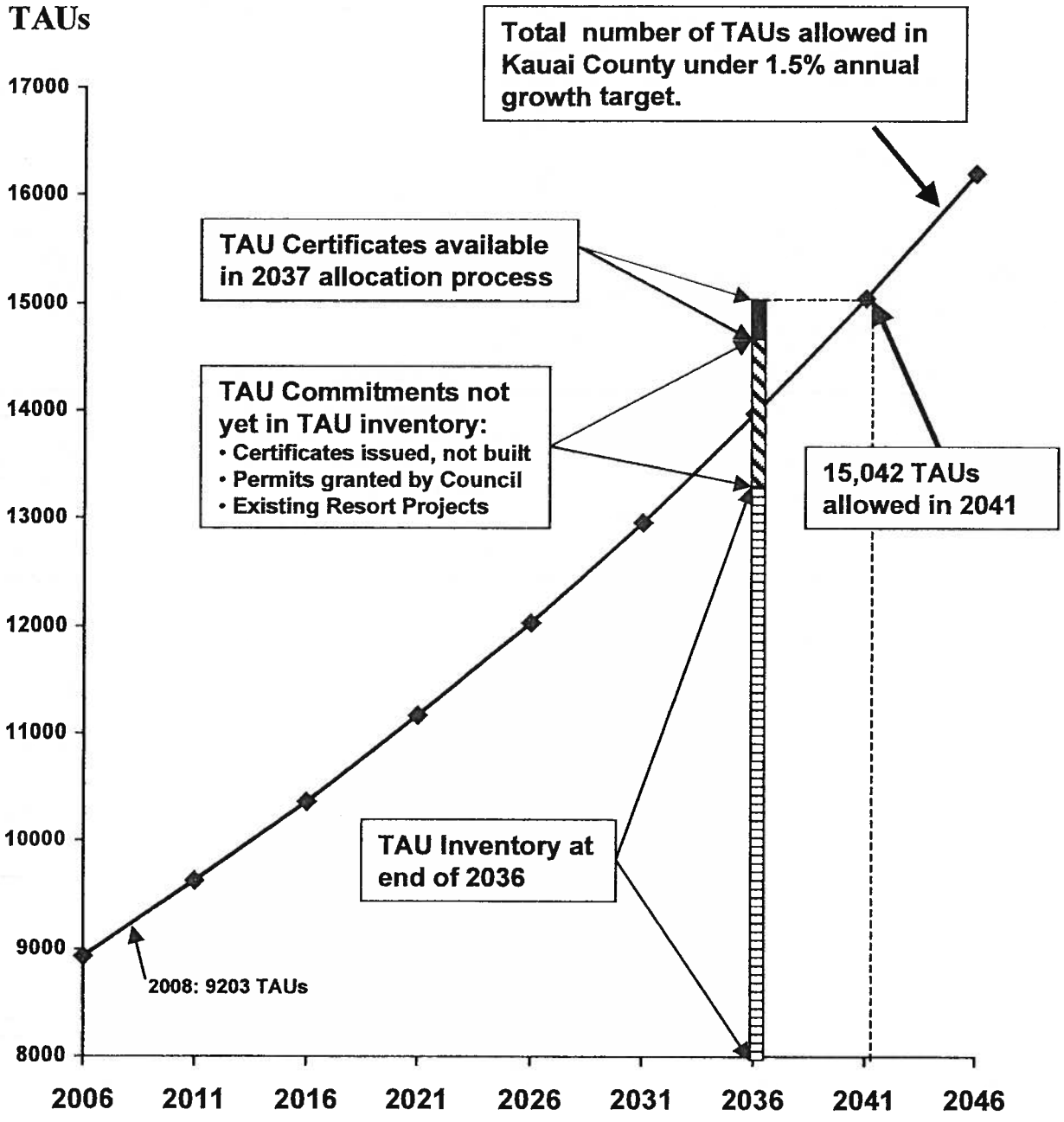


Over 30 years, the Charter (1.5%) allows 5,419 additional TAUs (a 59% increase); Bill 2410's language would allow 9,080 additional TAUs (a 99% increase). That equals a 2.3% annual growth rate.

Proper Implementation: *One* Alternative

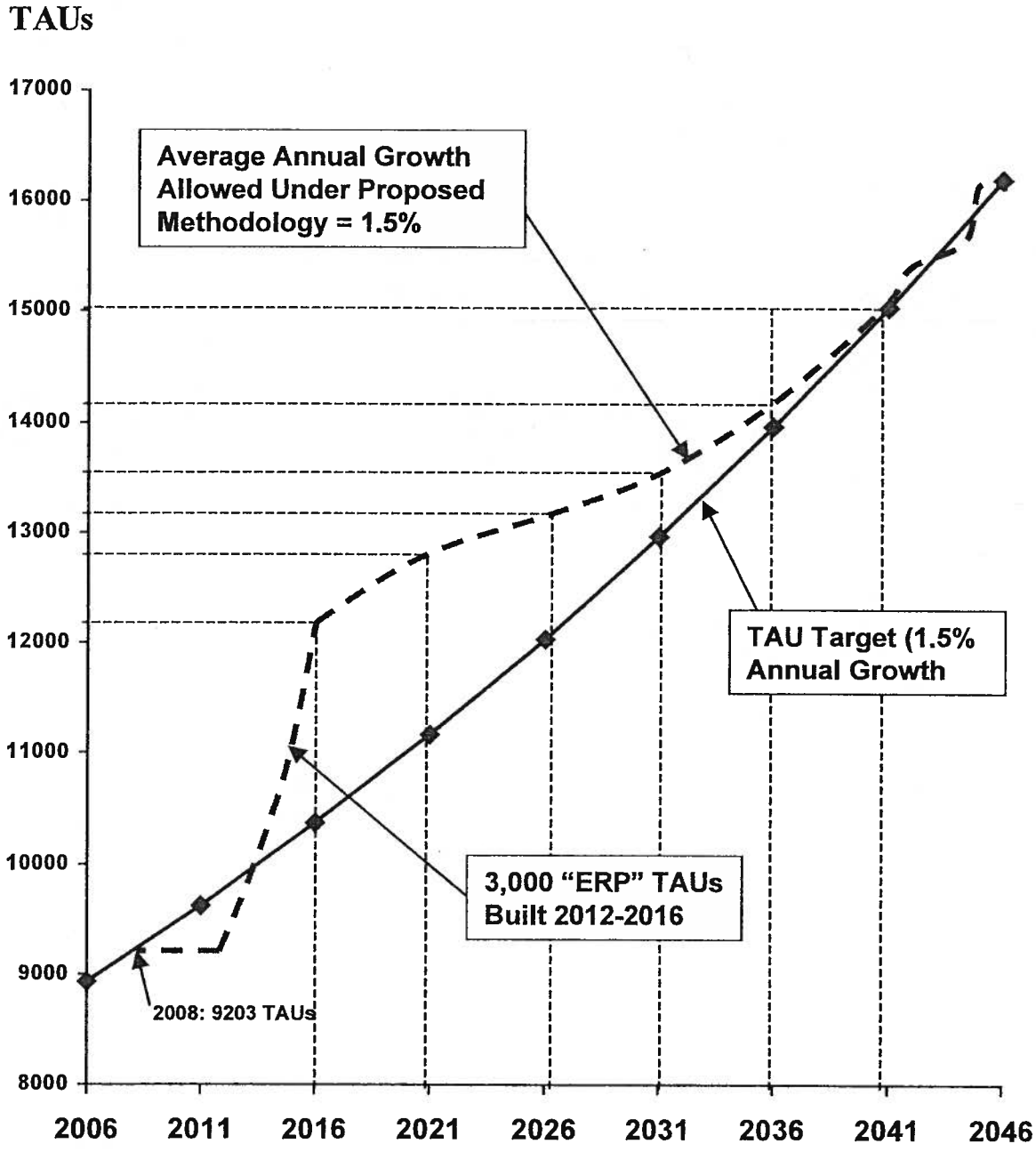
- Conduct the TAU Certificate allocation process every 5 years, as in Bill 2410.
- The number of TAU Certificates that can be allocated equals the maximum number of TAUs allowed 5 years in the future, calculated from the 1.5% annual growth rate formula, minus:
  - Actual TAU inventory in existence, and
  - Commitments for TAUs that have not yet entered the TAU inventory:
    - TAU Certificates that were issued but not yet used
    - TAUs associated with any permits granted by the Council
    - TAUs associated with Existing Resort Projects.
- (Optional) Ensure that some TAU Certificates will be made available during every cycle.
  - For example: If the number of TAU Certificates available under the formula above would be less than 350, the Planning Commission may nonetheless issue up to 350 Certificates.
    - Choose this "floor" to ensure that the "backlog" can be paid off in a reasonable number of years.
    - For example, with a 350 TAU Certificate floor, a backlog of 3,200 units could be bought down in 25 years.
- (Optional) Allow developer to apply to Council for approval, if no more TAU Certificates are available.

Calculation of Number of TAU Certificates Available for Release



The example above shows how the number of TAU Certificates available in the 2037 allocation process would be calculated.

Methodology that Complies with 1.5% Annual Growth Requirement



Assuming 3,000 ERPs are all built, the Charter limit and the proposed methodology converge in approximately 25 years. Average growth rate = 1.5%. (Growth rate in 2017-2037 period = 0.75% to compensate for the early excesses. After that, the growth rate once again becomes 1.5%.)

Conclusion

- Bill 2410 does not comply with the Charter's requirements.
  - Bill 2410's calculation methodology results in an excessively high growth rate.
- ERPs can be given special treatment, but their TAUs cannot be "exempted" (excluded) from the overall growth rate calculations.
- The proposed alternative methodology is one way to deal with the massive backlog of already-approved projects.
  - A good faith effort to comply with the Charter's requirements over a reasonable multi-year period.
  - Meets the 1.5% annual average growth rate requirement over time.
- The proposed alternative method addresses the rights of "vested" Existing Resort Projects, provided that "vesting" is not too-loosely defined.
  - Imposes no new burdens on projects that already have their permits.
  - Allowing developer to go to the Council for approval as a last resort, if there are no more TAU Certificates available, ensures that lawsuit threats contending "loss of rights" are hollow.