

LATE TESTIMONY



Legislative Testimony  
**HB 2522, RELATING TO THE LAND USE COMMISSION**  
House Committees on Water, Land, Ocean Resources & Hawaiian  
Affairs  
and Agriculture

February 20, 2008  
Room: 325

9:00 a.m.

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The Office of Hawaiian Affairs (OHA) **OPPOSES** HB 2522, which would allow counties to reclassify lands not more than fifty acres, instead of fifteen, and would allow for the consolidation of the boundary amendment process with county proceedings to amend land use maps contained in county plans.

By increasing the minimum amount of land acreage for county land use reclassification from 15 acres to 50, this bill would take the vast majority of land reclassification applications out of the State Land Use Commission's (LUC's) purview and give it to the counties as a consolidated rezoning process. The LUC's requirements for review of boundary amendments are far more involved and in-depth, for good reason.

Also, the Hawaii Revised Statutes (HRS) mandate OHA to ensure the betterment of the condition of Native Hawaiians, in part by examining, assessing and advising other agencies' actions. Public review of important land use decisions such as these allows OHA to fulfill its advocacy mandate by providing it with adequate opportunity to ensure the protection of traditional and cultural access rights and uses, Native Hawaiian archaeological and burial sites, and natural and cultural resources.

Despite requirements that counties also consult with us, the counties rarely comply with HRS § 10-1(b). This statute mandates, "It shall be the duty and responsibility of all state departments and instrumentalities of state government providing services and programs which affect native Hawaiians and Hawaiians to actively work toward the

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goals of this chapter and to cooperate with and assist wherever possible the office of Hawaiian affairs."

Most of the counties also do not have a good track record of consulting with the State Historic Preservation Division, unlike the LUC, which regularly complies with the statutes within HRS Chapter 6E, such as §§ 6E-3 ("Historic Preservation Program"), 6E-8 ("Review of effect of state projects"), and 6E-42 ("Review of proposed projects").

By taking so many land reclassifications and resulting development projects away from the LUC, the Legislature would effectively be removing the classification of "state projects," thus limiting Historic Preservation review. This review is imperative to help prevent impacts to Hawai'i's invaluable and limited archaeological and cultural resources, particularly inadvertent finds of iwi kūpuna, which can, and should, halt work on a project indefinitely. If developers are seeking further efficiency in their processes, they should not try to avoid the effective, protective measures that are currently in place at the State level to help minimize impacts to cultural and historic resources by keeping developers and decision-makers appropriately informed.

Furthermore, the LUC has explicitly been ordered by the Hawai'i Supreme Court to "preserve and protect customary and traditional practices of Native Hawaiians." (Ka Paʻakai O Ka ʻĀina v. Land Use Comm'n, 94 Haw. 31, 45 (2000)). While the intent of this decision should carry over to other state and county agencies, OHA continues to have to advocate and educate to that effect, while the LUC has taken this order seriously from the beginning.

This bill seeks to bypass the State land use laws and environmental and cultural review processes, which the Legislature saw fit to create and the Hawai'i State Courts have seen fit to uphold. The Legislature cannot be fooled by this bill's methods or intentions.

Because of the enormous number of land use cases that fall between the current 15-acre limit and the proposed 50-acre increase, OHA has compelling concerns about the implications of removing so many proposed developments and land use amendments from the capable purview of the LUC and placing it within the less regulated county jurisdictions.

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Counties also do not have to provide statewide notice for their land use determinations, which should be required when large portions of our agricultural districts could be reclassified in bulk, according to this bill, which would also allow for the consolidation of the boundary amendment process with county proceedings to amend land use maps contained in county plans.

This bill, therefore, would not only eliminate an adequate response by the public and public agencies like OHA, but it also eliminates other government controls by effectively exempting hundreds of large projects - often within our precious, constitutionally protected agricultural district - from Historic Preservation and cultural review laws.

For all of the above reasons, OHA urges the Committees to HOLD HB 2522. Thank you for the opportunity to testify.

**THE UNIVERSITY OF HAWAII ENVIRONMENTAL CENTER IS  
PLEASED TO SUBMIT THIS TESTIMONY IN ACCORDANCE  
WITH ACT 132 OF 1970 WHICH CREATED THE CENTER.  
AUTHORS ARE MEMBERS OF THE UNIVERSITY COMMUNITY.**

RL: 2166

HB 2522  
RELATING TO THE LAND USE COMMISSION

House Committee on Water, Land, Ocean Resources and Hawaiian Affairs  
House Committee on Agriculture  
Joint Public Hearing – February 20, 2008  
9:00 a.m., State Capitol, Conference Room 325

By  
Peter Rappa, Environmental Center

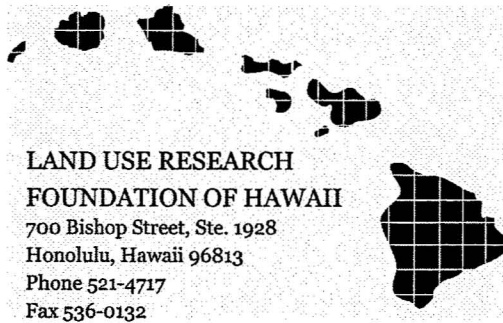
HB 2522 allows county land use decision-making authority to reclassify lands not more than fifty acres and allows for the consolidation of the boundary amendment process with county proceedings to amend land use maps contained in county plans. We emphasize that our testimony on this measure does not represent an official position of the University of Hawaii.

Although the rationale for the expansion of county authority for redistricting land from 15 acres to 50 acres is to guide growth and development to areas designated by these county planning documents and to promote the principles of smart growth development, I do not see how this bill will accomplish this. The counties have in place a mechanism for guiding growth and development as outlined in the county general plans and the subsequent sustainable community or development plans. As such, Counties can work through the Land Use Commission's boundary review process, therefore enabling the conformity of state land use classification with county plans.

Additionally, I find it difficult to see how giving the counties this added authority will help the promotion of smart growth principles. Several developments on Maui and Hoopili in the ewa district on Oahu are basing their development on the principles embodied in the smart growth movement. These projects, however, have had to seek approval or are seeking approval from the Land Use Commission as a prerequisite for obtaining permits from the county prior to construction. It has been my experience that county land use ordinances present a much larger obstacle to proposing smart growth development than that of seeking approval for land reclassification from the Land Use Commission. For example, most county ordinances are based on the principle of segregated uses rather than mixed use and include wide street design requirements that are counter to the principles of smart growth.

Thank you for the opportunity to comment on this bill.





February 20, 2008

The Honorable Ken Ito, Chair  
The Honorable Jon Riki Karamatsu, and Members  
House Committee on Water, Land, Ocean Resources  
And Hawaiian Affairs  
The Honorable Clift Tsuji, Chair  
The Honorable Tom Brower, Vice Chair, and Members  
House Committee on Agriculture  
Hawaii State Capitol, Room 325  
Honolulu, HI 96813

BY E-MAIL

**Testimony in Support of House Bill No. 2522 Relating to the Land Use Commission (County authority to reclassify less than 50 acres)**

Dear Chair Ito, Chair Tsuji, Vice Chair Karamatsu, Vice Chair Brower, and Committee Members:

My name is Dave Arakawa, 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 and rational land use planning, legislation and regulations affecting common problems in Hawaii.

We appreciate the opportunity to provide our testimony **in strong support of H.B. No. 2522.**

**H.B. No. 2522.** The purpose of this bill is to promote smart growth and to streamline its process by:

- Allowing land use district boundary amendment petitions to be filed with the county for lands less than fifty (50) acres in the rural and urban districts and agricultural districts lands that are not Important Agricultural Lands; and
- Provide for the consolidation of the boundary amendment process with county proceedings to amend the general plan, a land use map contained in a county general plan, county community, county development, or county community development plan, zoning, or any other proceeding.

**LURF's Position.** LURF is in strongly supports H.B. No. 2522, based on, among other things, the following:

- **Bill 2522 is consistent with the policies and procedures in the existing HRS §205-3.1, which already authorizes the counties to determine state boundary amendments for properties which are fifteen (15) acres or less, and already allows the counties to consolidate such boundary amendment proceedings with county land use proceedings.** HRS §205-3.1 authorizes the appropriate county land use decision-making authority to determine district boundary amendments involving land areas of fifteen (15) acres or less (except of important agricultural lands), and allows that county authority to consolidate proceedings to amend the state land use district boundaries with county proceedings to amend the general plan, development plan, zoning or other proceedings.
- **Bill No. 2522 is also consistent with the policies and procedures in HRS §205-2 (a).** HRS §205-2 provides that “in establishing the boundaries of the districts in each county, the Commission shall give consideration to the master plan or general plan of the county.”
- **The existing processes for county planning and land use approvals afford ample opportunity for public scrutiny, input and transparency.** The counties have extensive processes for long-range planning, involving county general plans, regional district development plans, county community plans, county development plans, county community development plans and zoning approvals - - all of which are approved by the county planning commissions and/or county councils after public hearings, public meetings and opportunities for extensive scrutiny and input from the local community.
- **A County approval process for district boundary amendments will result in land use terms, conditions and requirements which are consistent and which will specifically address local conditions and needs.** In many instances, the land use terms, conditions and requirements imposed by the Commission are inconsistent with the terms, conditions and requirements set forth in county planning and zoning documents for the same project. Each county has different circumstances and concerns relating to issues such as affordable housing, water resources, transportation, disposal of solid waste and sewerage, construction practices and sales procedures. This proposed bill will result in one set of conditions for boundary amendments under fifty (50) acres, which address the specific concerns of the counties.

LURF appreciates the opportunity to express our strong support for this matter.



## Hawaii's Thousand Friends

25 Maluniu Ave., Suite 102., PMB 282 • Kailua, HI 96734 • Phone/Fax: (808) 262-0682 E-mail: htf@lava.net

February 20, 2008

Testimony via email

### COMMITTEE ON WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS

Rep. Ken Ito, Chair

Rep. Jon Riki Karamatsu, Vice Chair

### COMMITTEE ON AGRICULTURE

Rep. Clift Tsuji, Chair

Rep. Tom Brower, Vice Chair

HB 2522

### RELATING TO THE LAND USE COMMISSION

Hawaii's Thousand Friends, a statewide nonprofit land use organization, opposes HB 2522 that allows county land use decision-making authority to reclassify lands not more than fifty acres and allows for the consolidation of the boundary amendment process with county proceedings to amend land use maps contained in county plans.

Hawaii's Land Use Law §205 was enacted in response to a lack of adequate controls that caused the development of Hawaii's limited and valuable land for short-term gain for the few while resulting in long-term loss to the income and growth potential of our state's economy. Development of scattered subdivisions, creating problems of expensive yet reduced public services, and the conversion of agricultural land to residential use, were key reasons for establishing the statewide zoning system.

In an effort to streamline the decision-making process, the law as amended in 1985 to allow applicants for land use changes of 15-acres or less to apply directly to the counties. Since then each county has seen many proposals to develop 14.9-acres. In some cases the acreage is adjacent to one another but each increment avoided the Land Use Commission because it stayed under the 15-acre exemption. In these cases the cumulative impact of the entire acreage to be development is never evaluated or understood.

The LUC plays an essential role in protecting Hawaii's natural resources, open space, agricultural lands, native Hawaiian rights, taxpayers' money and the long-term health of our economy. When the LUC is eliminated in the land use decision-making process the public loses:

- The right to question developers and their "expert" witnesses;
- The right to appeal decisions based on a complete record for violations of clear standards;
- The right to have decisions made based upon evidence presented; and

- The right to have a decision rendered by an objective party.

The agricultural district contains wetlands that protect water quality, provide habitat to endangered species and reduce flood impacts. Agricultural lands contain known and unknown cultural sites and stream corridors with outstanding aquatic, riparian, scenic and recreational resources.

Planning Commissions and County Councils do not have the biological or cultural expertise to protect sensitive wetlands, wildlife habitat or archeological areas.

Densities under the present 15-acre exception can vary from eight house per acre to fifteen units or greater. If the exemption is increased to 50-acres with a ration of twenty units per acre the result will be result in thousands of additional homes approved with out regard for cumulative impacts and State infrastructure such as roads and schools. Increasing the exception from 15-acres to 50-acres acres will intensify pressure on existing agricultural activities as residential areas consume more agricultural land and bump up against agricultural activities and the farm odors, noise and general agricultural activities nuisances that farming brings.

Existing exceptions such as Special Use Permits, Affordable Housing §201E, fifteen-acre rule and non-agriculture related uses on agriculture land already hamper the state's ability to protect agricultural land and farming activities. Increasing the exemption will only make it harder for the state and counties to comprehensively plan for growth while protecting the state's interest and natural and cultural resources.

HB 2522 continues the chipping away at the established checks and balances - State and County process established to provide an overall framework of land use management. Do not exacerbate existing problems by passing this bill.

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House Committee on Water, Land, Ocean Resources and Hawaiian Affairs  
House Committee on Agriculture  
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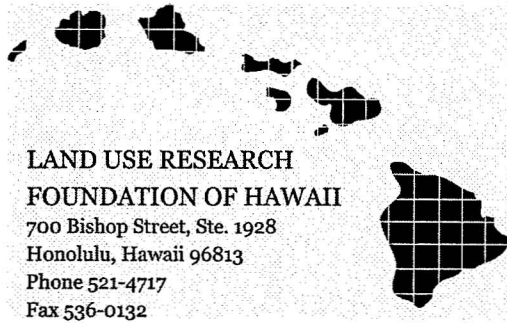
By  
Peter Rappa, Environmental Center

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Thank you for the opportunity to comment on this bill.



February 20, 2008

The Honorable Ken Ito, Chair  
The Honorable Jon Riki Karamatsu, and Members  
House Committee on Water, Land, Ocean Resources  
And Hawaiian Affairs  
The Honorable Clift Tsuji, Chair  
The Honorable Tom Brower, Vice Chair, and Members  
House Committee on Agriculture  
Hawaii State Capitol, Room 325  
Honolulu, HI 96813

BY E-MAIL

**Testimony in Support of House Bill No. 2522 Relating to the Land Use Commission (County authority to reclassify less than 50 acres)**

Dear Chair Ito, Chair Tsuji, Vice Chair Karamatsu, Vice Chair Brower, and Committee Members:

My name is Dave Arakawa, 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 and rational land use planning, legislation and regulations affecting common problems in Hawaii.

We appreciate the opportunity to provide our testimony **in strong support of H.B. No. 2522.**

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- Provide for the consolidation of the boundary amendment process with county proceedings to amend the general plan, a land use map contained in a county general plan, county community, county development, or county community development plan, zoning, or any other proceeding.

**LURF's Position.** LURF is in **strongly supports H.B. No. 2522**, based on, among other things, the following:

- **Bill 2522 is consistent with the policies and procedures in the existing HRS §205-3.1, which already authorizes the counties to determine state boundary amendments for properties which are fifteen (15) acres or less, and already allows the counties to consolidate such boundary amendment proceedings with county land use proceedings.** HRS §205-3.1 authorizes the appropriate county land use decision-making authority to determine district boundary amendments involving land areas of fifteen (15) acres or less (except of important agricultural lands), and allows that county authority to consolidate proceedings to amend the state land use district boundaries with county proceedings to amend the general plan, development plan, zoning or other proceedings.
- **Bill No. 2522 is also consistent with the policies and procedures in HRS §205-2 (a).** HRS §205-2 provides that “in establishing the boundaries of the districts in each county, the Commission shall give consideration to the master plan or general plan of the county.”
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## *Hawaii's Thousand Friends*

25 Maluniu Ave., Suite 102., PMB 282 • Kailua, HI 96734 • Phone/Fax: (808) 262-0682 E-mail: htf@lava.net

February 20, 2008

Testimony via email

COMMITTEE ON WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS

Rep. Ken Ito, Chair

Rep. Jon Riki Karamatsu, Vice Chair

COMMITTEE ON AGRICULTURE

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HB 2522

RELATING TO THE LAND USE COMMISSION

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In an effort to streamline the decision-making process, the law as amended in 1985 to allow applicants for land use changes of 15-acres or less to apply directly to the counties. Since then each county has seen many proposals to develop 14.9-acres. In some cases the acreage is adjacent to one another but each increment avoided the Land Use Commission because it stayed under the 15-acre exemption. In these cases the cumulative impact of the entire acreage to be development is never evaluated or understood.

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Existing exceptions such as Special Use Permits, Affordable Housing §201E, fifteen-acre rule and non-agriculture related uses on agriculture land already hamper the state's ability to protect agricultural land and farming activities. Increasing the exemption will only make it harder for the state and counties to comprehensively plan for growth while protecting the state's interest and natural and cultural resources.

HB 2522 continues the chipping away at the established checks and balances – State and County process established to provide an overall framework of land use management. Do not exacerbate existing problems by passing this bill.



February 19, 2008

The Honorable Ken Ito, Chair  
The Honorable Jon Riki Karamatsu, Vice Chair, and Members  
House Committee on Water, Land, Ocean Resources  
and Hawaiian Affairs  
The Honorable Clift Tsuji, Chair  
The Honorable Tom Brower, Vice Chair, and Members  
House Committee on Agriculture  
Hawaii State Capitol, Room 325  
Honolulu, HI 96813

BY E-MAIL

***HB 2522 - Relating to the Land Use Commission***

Dear Chair Ito, Chair Tsuji, Vice Chair Karamatsu, Vice Chair Brower & Committee Members:

Thank you for the opportunity to provide input on HB 2522, involving smart growth principles. Grove Farm understands the significance of smart growth and the long term benefits to the community. In planning for our future developments on Kauai, Grove Farm has implemented smart growth principles, which we hope will serve as a model for our County and the State.

With smart growth implementation, there are increased costs that must be considered with the increased amenities. It is necessary to strike a balance with quality of life and economic feasibility. In order to reduce the time and associated costs or permitting and entitlements, Grove Farm is supportive of legislation that streamlines these lengthy processes.

Therefore, Grove Farm is supportive of this bill to increase the acreage from fifteen acres to fifty acres where the Land Use Commission (LUC) does not need to become involved. The role of the LUC is to direct issues that have a statewide impact. Meanwhile, the counties have the experience and expertise in municipal planning, and thus are best able to decide how to implement their own respective growth planning.

This bill stands to streamline the process of reclassifying lands by removing a layer of administration for land issues involving areas less than fifty acres. This will also aid in reducing the backlog at the LUC and allow them to concentrate on instances that indeed have a statewide impact, without sacrificing the opportunities for public input and transparency.

Again, we appreciate the opportunity to offer our input to this important bill.

Sincerely,

Warren H. Haruki  
President & Chief Executive Officer

3-1850 Kaunualii Highway P.O. Box 662069 Lihue, HI 96766-7069

☎ 808.245.3678 ☎ 808.246.9470

[www.grovesfarm.com](http://www.grovesfarm.com)

**COUNTY COUNCIL**  
Bill "Kaipo" Asing, Chair  
Mel Rapozo, Vice Chair  
Tim Bynum  
Jay Furfaro  
Shaylene Iseri-Carvalho  
Ronald Kouchi  
JoAnn A. Yukimura



**OFFICE OF THE COUNTY CLERK**

Peter A. Nakamura, County Clerk  
Ernesto G. Pasion, Deputy County Clerk

Telephone (808) 241-6371  
Fax (808) 241-6349  
Email [cokcouncil@kauai.gov](mailto:cokcouncil@kauai.gov)

**Council Services Division**  
4396 Rice Street, Room 206  
Lihue, Kaua'i, Hawai'i 96766-1371

February 20, 2008

The Honorable Ken Ito, Chair  
House Committee on Water, Land, Ocean Resources & Hawaiian Affairs  
The Honorable Clift Tsuji, Chair  
House Committee on Agriculture  
State Capitol, Conference Room 325  
Honolulu, Hawai'i 96813

Dear Chairmen Ito, Tsuji, and Members:

RE: HB 2522, RELATING TO THE LAND USE COMMISSION.

I submit my comments as an individual member of the Kaua'i County Council, with extensive background in planning at the county level. I am presently the chair of the Planning Committee of the Kaua'i County Council.

I am opposed to HB 2522, because the bill may be well-intentioned, but it could have troubling consequences that would negatively affect Kaua'i and Hawai'i.

First of all, what is its purpose? Will it further better planning and land use decision-making in the counties? Have you checked the record of the counties with respect to their existing powers over lots equal to or under 15 acres? I would say the record is mixed at best and definitely should be documented before moving forward with HB 2522.

As a local government decision-maker, I know how difficult it is on a small island to say "no" to applications from local citizens who want to "cash in" on their land. It is possible to stay strong and clear as to planning criteria and the greater whole, but only if the planning framework, the criteria for change, the strength of community plans and guidelines are well established, which they are NOT—at least on Kaua'i.

This bill has the possibility of further fragmenting good agricultural lands by enabling larger chunks to get through in a piecemeal fashion.

I believe this bill would do more harm than good, and therefore, please defer action on HB 2522 in committee.

Thank you for your consideration.

Sincerely,

  
JOANN A. YUKIMURA  
Councilmember