

PC Committee

From: David Arakawa <darakawa@lurf.org>
Sent: Tuesday, February 14, 2017 3:50 PM
To: PC Committee
Cc: Wynde Yamamoto
Subject: MAUI - Planning Committee Agenda Item PC-06 on February 16, 2017 - LURF's Testimony in Opposition
Attachments: 170214 Maui - Membership Reqts for Planning Commission and Adv Committee Mmbrs - LURF oppo (wmy).pdf

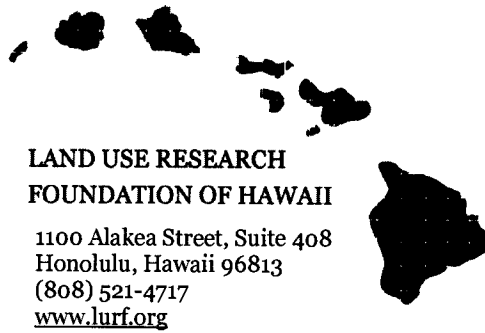
Aloha Planning Committee Clerk,

Attached is the testimony of the Land Use Research Foundation for committee to Proposed Bill Entitled "A Bill for an Ordinance Amending Chapter 2.28, Maui County Code, Relating to Planning Commission and Hana Advisory Committee Membership Requirements

Please feel free to contact me if you have any questions.

Mahalo, Dave

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Via E-Mail

February 14, 2017

Honorable Kelly T. King, Chair
Honorable Yuki Lei K. Sugimura, Vice-Chair,
and Members of the Planning Committee
Council of the County of Maui
County of Maui
Kalana O Maui Building, 8th Floor
200 South High Street
Wailuku, Maui, Hawaii

Testimony in Opposition to Proposed Bill Entitled “A Bill for an Ordinance Amending Chapter 2.28, Maui County Code, Relating to Planning Commission and Hana Advisory Committee Membership Requirements.” (Item PC-06 on the Committee’s Agenda).

Thursday, February 16, 2017, at 9:00 a.m. in the Council Chamber, Kalana O Maui Building, 8th Floor, 200 South High Street, Wailuku, Hawaii 96793

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. LURF's mission 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.

For consideration before this Committee, is a proposed bill, the purpose of which is to require 1) at least one member of each planning commission and the Hana advisory committee to have a background in conservation and natural resources as evidenced by certain qualifications or credentials; and 2) at least one other member of each planning commission to have demonstrated expertise in native Hawaiian traditional and customary practices as evidenced by certain credentials.

Background. LURF understands that the functions and responsibilities of the planning commissions, including any respective advisory committee(s), are two-fold: 1) to serve as an advisory body to the County Council on legislative matters; providing recommendations to the Council based on input from the public on planning issues and matters; and 2) to function in a quasi-judicial capacity in matters for which the commission has been afforded the legal authority to grant or deny applications for permits or approvals.

Particularly when serving in its latter role, each commission (as well as any respective advisory committee(s)) is bound by the facts contained in the application before it and after reviewing the same pursuant to stated criteria contained in governmental laws, county codes, rules, regulations, and requirements, may only impose appropriate conditions as authorized by law. In these cases, the commission's and advisory committee's decisions should not be influenced by the specialized personal knowledge, opinion, or bias of any one commission or advisory committee member.

In short, the commission or any advisory committee may not attempt to overextend its authority by serving as an additional review agency, or imposing additional review criteria or conditions which are not the legal responsibilities of the commission, the advisory committee, or its members.

LURF's Position. While LURF has never been opposed to comprehensive training for commission or advisory committee members with respect to subject matter areas and laws pertinent to the many issues and matters placed before them for determination (which may include various specialized areas of expertise such as housing, agriculture, industrial uses, etc.), LURF strongly objects to members' seats on any commission or committee being earmarked for individuals with specialized knowledge, training, or qualifications in one given area, which would possibly, if not likely result in those members being biased, or making decisions based on special interests as they relate to issues involving those particular subject matter areas.

LURF strongly believes such a result would be inherently unfair. And while individuals who possess specialized information or knowledge should not be excluded from serving on commissions or advisory committees, members should ideally bring to the table, their unadulterated understanding of the facts and law, and apply the same fairly and objectively to the issues and matters under consideration.

Moreover, there seems to be no evidence of any compelling need for this proposed bill, as the proposed qualification requirements do not appear to have any direct relevance to the commissions' responsibilities, which are clearly set by code and statute. LURF is also unaware of any indication or complaint that the

commissions lack access to information that can only be provided by specialists in conservation and/or native Hawaiian practices, which would justify this measure. In fact, LURF understands that the Maui Cultural Resources Commission may be used as a resource for advising the commissions regarding native Hawaiian practices. And if necessary, experts could also be consulted or asked to provide testimony with respect to any conservation issues. As such, this proposed bill otherwise appears to be yet another attempt to indefensibly transform or extend the commissions' role from a planning agency into an unwarranted enforcement-type agency.

In view of the lack of any factual support for the proposed bill, LURF must **oppose** this proposed bill, and believes it would be unjustifiable and unreasonable for this Committee to agree to support this measure without thorough review and analysis of facts and information, if any, relating to the legitimacy of the measure's true purpose, as well as any potential consequences thereof.

Thank you for the opportunity to provide comments regarding this matter.