



**HCR84**

**URGING THE ADOPTION OF LAWS TO REQUIRE WRITTEN PERMISSION FROM THE  
LANDOWNER IN ORDER TO HUNT ON PRIVATE LANDS AND TO DEFINE PLACES OF  
FORMAL HUNTING.**

House Committee on Judiciary

April 3, 2012

2:00 p.m.

Room 325

The Office of Hawaiian Affairs (OHA) **OPPOSES** HCR84, which would urge the adoption of laws to require written permission from the landowner in order to hunt on private lands and to define places of formal hunting.

Many Native Hawaiians currently practice hunting for subsistence and other purposes as a traditional and customary practice. The Hawai'i Constitution, Supreme Court, and this Legislature consistently protect the perpetuation of these historic practices as a living component of the Hawaiian Culture. Requiring Native Hawaiian practitioners to obtain written permission from private landowners prior to engaging in these practices would unduly burden the practices and, in some areas, could regulate them out of existence.

Hunting remains an important cultural and subsistence practice for many Native Hawaiians in rural regions. For example, a report issued by the Governor's Moloka'i Subsistence Task Force found that Hawaiian families on Moloka'i continue to rely heavily upon subsistence to supplement meager incomes, deriving 38% of their food from these activities. These practices rely primarily upon wildlife game that is abundant on privately owned land because the game on public lands is too scarce to be hunted. This report revealed that subsistence activities, including hunting, were also critical to the persistence of Hawaiian cultural customs and values.

OHA appreciates the desire to protect property rights and ensure the safety of all citizens of Hawai'i. However, the laws envisioned by this resolution reach too broadly by requiring prior permission from private landowners. Such requirements do not consider the difficulty most will find in attempting to obtain such permission. Much of Hawai'i's land is owned by large landowner corporations whose offices may exist on a different island from the land in question, and most landowners—even if they know hunting currently takes place on their land—would not open themselves to the liability inherent in conferring written permission for hunters to bear and use firearms on their properties.

Additionally, this resolution presents many practical concerns for practitioners on the ground. The boundaries between public and private property in forested and undeveloped areas are rarely clearly marked. Also, although the Constitution broadly protects these activities, practitioners in the field could still experience a chilling effect, as they could not be assured that agents enforcing this law properly understood the complex legal authority protecting their practices. Moreover, such laws would place the burden upon Native Hawaiian practitioners to legally defend themselves and their lawful actions.

In light of all these concerns, OHA urges the committee to HOLD HCR84. Mahalo for the opportunity to testify on this important measure.

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of  
WILLIAM J. AILA, JR.  
Chairperson**

**Before the House Committee on  
JUDICIARY**

**Tuesday, April 3, 2012  
2:00 PM  
State Capitol, Conference Room 325**

**In consideration of  
HOUSE CONCURRENT RESOLUTION 84  
URGING THE ADOPTION OF LAWS TO REQUIRE WRITTEN PERMISSION FROM  
THE LANDOWNER IN ORDER TO HUNT ON PRIVATE LANDS AND TO DEFINE  
PLACES OF FORMAL HUNTING**

The purpose of House Concurrent Resolution 84 is to address problems related to illegal trespass, vandalism and unauthorized use of firearms on private lands that creates safety risks and causes damage to property, crops, and livestock. The Department of Land and Natural Resources (Department) appreciates the intent of this resolution to help develop laws to reduce lawless behavior on private ranch and farmland, and provides comments on approaches to make such legislation effective.

The Department cautions against adopting provisions to define "formal hunting areas". These provisions may be confusing and may prohibit the carrying and use of firearms by government agencies and private partners charged with natural resource management and public safety mandates on state lands that are not "formal hunting areas". The use of firearms for the control of invasive species and predators on state lands not open to hunting because of location or size is a routine part of management. The Department suggests that other approaches would be more effective without potentially restricting legitimate use of firearms for resource management activities.

The problem that this resolution is trying to address is one of trespass and hunting on private property without permission. The Department supports a change in Section 183D-26, Hawaii Revised Statutes (HRS), which requires showing proof of "written permission" to hunt on private land. The Department further believes a more effective change would be amending the criminal trespass statutes, "Section 708-813 Criminal trespass in the first degree", HRS, to make trespass an easier offense to enforce. This would enable a greater response from the county police departments, who have far greater resources to assist private landowners with trespass than does the Department's Division of Conservation and Resources Enforcement (DOCARE). DOCARE,

WILLIAM J. AILA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI  
FIRST DEPUTY

WILLIAM M. TAM  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

is already stretched to the limits with enforcement on state lands and does not have the resources to cover private lands.

The Department supports measures to increase enforceability of trespass laws on private land, including hunting without permission, but urges an approach that does not deter the thousands of legal and courteous hunters that do follow the rules from participating, or hinder the ability of agencies and partners to carry out their statutory mandates to protect natural resources.

The Department suggests that this resolution be amended to strike references to the establishment of "formal hunting areas", and suggests that the resolution be revised to focus on criminal trespass rather than "formal hunting areas". The following suggested amendments to Section 183D-26 and Section 708-813, HRS, are offered for discussion.

1. Amend Section 183D-26, HRS, to read as follows:

**"§183D-26 Hunting on private lands prohibited.** ~~[(a)]~~ No person shall enter upon any land or premises belonging to, held, or occupied by another, for the purpose of hunting or to take any kind of wildlife including game without first having obtained written permission from the owner or a duly appointed agent, if the owner is the occupier or holder, or if the owner has let another occupy or hold the same, without having first obtained the permission of the occupier or holder thereof, or the duly appointed agent of the occupier or holder.

~~[(b) No prosecution shall be brought under this section, except upon the sworn complaint of the owner, occupier, or holder of the land or premises, or a duly appointed agent, or if the owner, occupier, or holder is either a corporation or a partnership, then the complaint shall be sworn to by an officer of the corporation or by one of the members of the partnership.]"~~

2. Amend Section 708-813, HRS, to read as follows:

**"§708-813 Criminal trespass in the first degree.** (1) A person commits the offense of criminal trespass in the first degree if:

- (a) That person knowingly enters or remains unlawfully:
  - (i) In a dwelling; or
  - (ii) In or upon the premises of a hotel or apartment building;
- (b) That person:
  - (i) Knowingly enters or remains unlawfully in or upon premises ~~[that are fenced or enclosed in a manner designed to exclude intruders]~~; and
  - (ii) Is in possession of a firearm, as defined in section 134-1, at the time of the intrusion;  
[or]
- (c) That person enters or remains unlawfully on private property at night while in the possession of a firearm, as defined in section 134-1; or
- ~~[(e)]~~ (d) That person enters or remains unlawfully in or upon the premises of any public school as defined in section 302A-101, or any private school, after reasonable warning or request to leave by school authorities or a police officer; provided however, such warning or request to leave shall be unnecessary between 10:00 p.m. and 5:00 a.m.

(2) Criminal trespass in the first degree is a misdemeanor. "

A proposed House Concurrent Resolution 84, House Draft 1 to take this approach is attached for consideration.

HOUSE OF REPRESENTATIVES  
TWENTY-SIXTH LEGISLATURE, 2012  
STATE OF HAWAII

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## HOUSE CONCURRENT RESOLUTION

URGING THE ADOPTION OF LAWS TO REQUIRE WRITTEN PERMISSION FROM THE LANDOWNER IN ORDER TO HUNT ON PRIVATE LANDS.

WHEREAS, farmers and ranchers have continually experienced problems, including damage and injury caused by trespassing hunters, yet have no recourse against them and are defenseless against claims by the trespassers for incidents on private land despite the trespassers' illegal entry; and

WHEREAS, poaching and agricultural theft have escalated over the years and must be better controlled through proper enforcement and strict sentencing; and

WHEREAS, trespassing hunters also present safety issues for the farmers, ranchers, their families, and workers; and

WHEREAS, existing laws inadequately protect private landowners from bodily injury and damage to property, livestock, and crops as a result of entry onto private property by trespassers engaged in hunting with firearms; and

WHEREAS, private landowners are willing to work with licensed hunters who often assist the landowners in controlling the population of feral ungulates such as pigs, goats, and deer that damage the environment; and

WHEREAS, requiring written permission from private landowners for hunting or other legitimate purposes is the very least that should be done to address the ongoing concerns of property owners relating to trespass; now, therefore,

BE IT RESOLVED by the House of Representatives of the Twenty-sixth Legislature of the State of Hawaii, Regular Session of 2012, the Senate concurring, that laws be adopted to require written permission from landowners in order to hunt on private lands; and

BE IT FURTHER RESOLVED that this resolution be carried out through amendments to Section 183D-26, HRS, to require written permission to hunt on private lands, and to remove the requirement that a landowner file a sworn complaint before prosecution may be brought under that section.

BE IT FURTHER RESOLVED that this resolution be carried out through amendments to Section 708-813, HRS, to remove the provision that trespass is unlawful only if committed on lands that are fenced or enclosed in a manner to exclude intruders, and to include that a person commits criminal trespass in the first degree if they enter or remain unlawfully on private property at night while in possession of a firearm.

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Chairperson of the Board of Land and Natural Resources, the Attorney General, and the Mayors and the Councils of the Counties.



March 30, 2012

Representative Gilbert S.C. Keith-Agaran, Chair  
Representative Karl Rhoads, Vice Chair  
House Committee on the Judiciary

**Support of House Concurrent Resolution (“HCR”) No. 84, Urging the Adoption of Laws to Require Written Permission from the Landowner in Order to Hunt on Private Lands and to Define Places of Formal Hunting.**

**Tuesday, April 3, 2012, 2:00 p.m., in Conference Room 325**

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.

We appreciate the opportunity to provide testimony **in support of HCR 84, and to offer comments.**

**HCR 84.** The intent of this Resolution is to require those who wish to access private land for hunting or other legitimate purposes to obtain written permission from the landowner, and to define places of formal hunting, thereby clarifying areas in which hunting may be allowed.

**LURF’s Position.** LURF members include private property owners, farmers and ranchers who own, occupy, and maintain private property, and who consider such land resources critical to their well-being, to conduct their operations, and to sustain their businesses. This Resolution assists these property owners by attempting to bolster existing laws which inadequately protect these owners and occupiers of private land from bodily injury and damage to property, livestock and crops as a result of entry onto private property by trespassers engaged in hunting with firearms.

Owners of land, particularly unimproved and unused lands, including farmers and ranchers, have continually experienced problems with trespass by hunters, as well as damage and injury caused by these trespassers, yet have had no legal recourse against them, and have in fact been defenseless against claims by such trespassers for incidents and injuries suffered on their own private lands, despite the trespassers’ illegal entry.

LURF concurs with the proponents of this Resolution that requiring those who wish to access private land for hunting or other legitimate purposes to obtain written permission

from the landowner is the very least that should be done to address the ongoing concerns of, and peril to property owners relating to trespass, and adds that it would be well if steps were also taken to actuate the proposed measure, as well as to enact new laws to more vigorously deter illegal entry onto private property.

Based on the above, LURF is in **support of HCR 84**, and respectfully urges your favorable consideration.

Thank you for the opportunity to present testimony regarding this matter.



TESTIMONY BEFORE THE COMMITTEE ON JUDICIARY

HOUSE CONCURRENT RESOLUTION 84  
RELATING TO HUNTING ON PRIVATE LANDS

PRESENTED TO THE TWENTY-SIXTH LEGISLATURE

APRIL 2012

CHAIRPERSON KEITH-AGARAN and Members of the Committee:

**STRONG SUPPORT.**

My name is Loren Mochida, Director of Agricultural Operations at W. H. Shipman, Limited in Keaau on the Big Island. We are a local kamaaina-family owned land management company that is engaged in Agriculture and Commercial/Industrial development and leasing. We currently lease lands to over 130 individually growers at W.H. Shipman, Ltd.

W. H. Shipman, Ltd., and their growers provide strong support to HCR 84, Relating to Hunting on Private Lands. This Resolution urging the adoption of laws to require written permission from the landowner in order to hunt on private lands for those who wish to access private land for hunting or other legitimate purposes. Presently there are no procedures to control illegal hunters on private lands.

This is a safety issue to the farmers and ranchers and their families and workers. Illegal hunters can verbally tell anyone that they obtained permission from the owners or the owner's representative. Existing provisions in the law are inadequate to deter persons with firearms from trespassing on lands and potentially causing bodily injury to others and damage to property, livestock, and crops.

Thank you very much for the opportunity to provide testimony on HCR 84.

Testimony for HCR84 on 4/3/2012 2:00:00 PM

**Testimony for HCR84 on 4/3/2012 2:00:00 PM**

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

**Sent:** Friday, March 30, 2012 3:01 PM

**To:** JUDtestimony

**Cc:** jimmygomes@hawaii.rr.com

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Testimony for JUD 4/3/2012 2:00:00 PM HCR84

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: James Gomes

Organization: Individual

E-mail: jimmygomes@hawaii.rr.com

Submitted on: 3/30/2012

Comments:

Testimony for HCR84 on 4/3/2012 2:00:00 PM

**Testimony for HCR84 on 4/3/2012 2:00:00 PM**

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**Sent:** Friday, March 30, 2012 3:25 PM

**To:** JUDtestimony

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Testimony for JUD 4/3/2012 2:00:00 PM HCR84

Conference room: 325  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Gregory Friel  
Organization: Haleakala Ranch Company  
E-mail: gregf@haleakalaranch.com  
Submitted on: 3/30/2012

Comments:

Testimony for HCR84 on 4/3/2012 2:00:00 PM

**Testimony for HCR84 on 4/3/2012 2:00:00 PM**

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**Sent:** Monday, April 02, 2012 7:18 AM

**To:** JUDtestimony

**Cc:** bcraven@lanihau.net

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Testimony for JUD 4/3/2012 2:00:00 PM HCR84

Conference room: 325  
Testifier position: Support  
Testifier will be present: No  
Submitted by: britt craven  
Organization: palani ranch  
E-mail: bcraven@lanihau.net  
Submitted on: 4/2/2012

Comments:

Testimony for HCR84 on 4/3/2012 2:00:00 PM

**Testimony for HCR84 on 4/3/2012 2:00:00 PM**

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**Sent:** Monday, April 02, 2012 10:19 AM

**To:** JUDtestimony

**Cc:** afrancokaupo@gmail.com

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Testimony for JUD 4/3/2012 2:00:00 PM HCR84

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: Alex Franco

Organization: Individual

E-mail: afrancokaupo@gmail.com

Submitted on: 4/2/2012

Comments:

Testimony for HCR84 on 4/3/2012 2:00:00 PM

**Testimony for HCR84 on 4/3/2012 2:00:00 PM**

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

**Sent:** Monday, April 02, 2012 5:48 PM

**To:** JUDtestimony

**Cc:** diamondbranchhi@aol.com

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Testimony for JUD 4/3/2012 2:00:00 PM HCR84

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: Brendan Balthazar

Organization: Maui Cattlemens Assn.

E-mail: diamondbranchhi@aol.com

Submitted on: 4/2/2012

Comments:

Testimony for HCR84 on 4/3/2012 2:00:00 PM

**Testimony for HCR84 on 4/3/2012 2:00:00 PM**

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

**Sent:** Tuesday, April 03, 2012 5:49 AM

**To:** JUDtestimony

**Cc:** PSGMikilua@aol.com

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Testimony for JUD 4/3/2012 2:00:00 PM HCR84

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: Phyllis Shimabukuro-Geiser

Organization: Mikilua Farm Bureau Center

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Submitted on: 4/3/2012

Comments: