



OFFICE OF HAWAIIAN AFFAIRS

Legislative Testimony

SB 2189, SD 1, RELATING TO MÄKUA

House Committee on Public Safety and Military Affairs

March 13, 2008

8:30 a.m.

Room: 309

The Office of Hawaiian Affairs (OHA) SUPPORTS, with amendments, S.B. 2189, S.D. 1, which would create a Mäkuu Valley Reserve Commission, following a similar format to the creation of the Kaho'olawe Island Reserve Commission. The Mäkuu Valley Reserve Commission (Commission) would oversee preservation, cultural perpetuation and restoration activities in Mäkuu Valley.

OHA has substantive obligations to protect the cultural and natural resources of Hawai'i for its beneficiaries, the people of this land. Part of this mission is to identify and protect traditional cultural landscapes, which serve as the last vestiges of meaningful connections with the ancestors of Hawai'i and the unique and fragile natural, cultural, and historical resources these connections rely upon. SB 2189, S.D. 1, would be a natural progression of this important kuleana to mälama Mäkuu Valley. The establishment of the Commission would greatly assist in the protection and perpetuation of this unique cultural landscape and heritage center for all the people of Hawai'i and, more importantly, for future generations.

OHA suggests removing the following sections of the bill to facilitate practical implementation and to allow for a broader cultural and legal base for management of Mäkuu Valley's cultural and historic resources.

From Section -6 "Responsibilities and duties of the commission" -

-- subsection (6), which would have removed the powers and duties of the Board of Land and Natural Resources and the Land Use Commission regarding permits pertaining to the valley, including the federal National Historic Preservation Act requirements of the State Historic Preservation Division; and

-- subsection (8), which would have removed the O'ahu Island Burial Council from decision-making on burials and iwi kūpuna found in the valley.

Of particular concern is the provision to remove the O'ahu Island Burial Council from decision making on iwi kūpuna found in Mākua Valley. Most of the role of the OIBC is currently as a consulted Native Hawaiian Organization (NHO) under the Native American Grave Protection and Repatriation Act of 1990 (NAGPRA) when iwi kūpuna are discovered on federal lands such as Mākua Military Reservation. The island burial councils have extensive experience in issues involving the care, management and protection of iwi kūpuna, in conjunction with the State Historic Preservation Division (SHPD), of which they receive administrative support, as well as in the network of other island burial councils, since many descendants of 'ohana from Mākua now reside on other islands. While the Kahoʻolawe Island Reserve Commission acts as the island burial council for the island of Kahoʻolawe, to parcel out a portion of Oʻahu and remove it from longstanding OIBC jurisdiction as an agency would not be prudent in our assessment.

OHA urges the Committee to PASS S.B. 2189, S.D. 1, to assure further deliberations, taking the above considerations into account. Thank you for the opportunity to testify.

LINDA LINGLE
GOVERNOR OF HAWAII



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

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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
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**TESTIMONY OF THE CHAIRPERSON
OF THE BOARD OF LAND AND NATURAL RESOURCES**

on Senate Bill 2189, Senate Draft 1 – Relating To Makua

**BEFORE THE HOUSE COMMITTEE ON
PUBLIC SAFETY AND MILITARY AFFAIRS**

March 13, 2008

Senate Bill 2189, Senate Draft 1, establishes a Makua Valley Reserve Commission under the Department of Land and Natural Resources (Department). The Department of Land and Natural Resources (Department) does not support this measure.

The Department believes that Makua Valley is rich in cultural resources and the creation of a Makua Valley Reserve Commission provides a sensitive approach to appropriately managing the Valley however it seems premature since the Army has a lease (GL 3848) with the Department for training in Makua Valley which expires on 8/16/2029. The Department notes that it has not had any conversations with the Army on continuing their use of the Valley after 2029.

Additionally, the Makua Valley Reserve Commission cannot by law have jurisdiction over the proper treatment of burial sites or human remains found in the Valley. The Department's Oahu Burial Council would need to retain its responsibilities under Section 6E-43(b), Hawaii Revised Statutes.

The Department would ask this Committee to instead support the Department's Supplemental Budget request, which allocates funds to the Department's State Historic Preservation Division, to strengthen the State's oversight and support of historic preservation across the State.

Position requests include two Compliance Specialists, which will provide accurate project intake and classification, consistent data base maintenance and help ensure timely responses to public inquiries, as well as, a Librarian to maintain the State Historic Preservation Division's libraries on all islands and provide a consistent filing system for reports.

Additional money is requested for reinternment of iwi in the state inventory on all islands. The funding will allow the department to purchase burial vaults and to pay for labor to reinter the iwi. The Department is also requesting lease rent monies for Hawaii Island staff, which lost its Kona office space and is in need of a permanent office.



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REPRESENTATIVE CINDY EVANS, CHAIR
REPRESENTATIVE SHARON E. HAR, VICE-CHAIR
HOUSE COMMITTEE ON PUBLIC SAFETY & MILITARY AFFAIRS

TESTIMONY RE: SENATE BILL NO. 2189, SD 1
RELATING TO MĀKUA

March 13, 2008, 8:30 a.m.
Conference Room 309

Good morning Chair Evans, Vice-Chair Har, and members of the Committee:

My name is David Henkin, and I am an attorney with Earthjustice. I appreciate the opportunity to offer this testimony regarding Senate Bill No. 2189, SD 1. Earthjustice supports the basic intent of this bill, which is to start planning for the return of Mākua, Kahanahāiki and Ko'iahi Valleys to the people of Hawai'i, so these sacred lands can once again be put to productive and appropriate use. While we support the bill's fundamental intent, we have concerns about specific provisions, which should be addressed in an amended draft:

1. When the military seized the lands that lie within Mākua Military Reservation (MMR) in 1942, it promised the families it evicted that their lands would be returned within six months of the cessation of hostilities. The military never kept that promise. SB 2189 should address the claims of the families that previously lived in Mākua, Kahanahāiki and Ko'iahi Valleys, who have been unjustly deprived of their lands for over six decades.

2. Among its other responsibilities, the Mākua valley reserve commission would be entrusted to negotiate with the U.S. Army over matters related to Mākua, including possible discussions to facilitate the return of MMR upon the expiration of the Army's lease. While the Army is a necessary party to those negotiations and discussions, it should not have a seat on both sides of the table. Accordingly, the commission should not include a representative of the commanding officer of the U.S. Army in the Pacific. See § -5(a)(7). Similarly, since the specified uses of the reserve do not include future military activities, the commission's membership should not include a representative of the adjutant general of the State of Hawai'i. See § -5(a)(8).

3. To avoid infringing First Amendment religious freedoms, the commission should not favor one form of spiritual practice over others through curator or stewardship agreements with Hawaiian cultural and spiritual community organizations. See § -6(5). Rather, freedom of religious and cultural practice should be guaranteed for all.

4. The Mākua valley reserve commission should not displace the functions of the O'ahu Island Burial Council and Department of Land and Natural Resources with regard to treatment of

burial sites and human skeletal remains as many members of the commission would lack the necessary expertise to carry out those duties. See § -6(8).

5. Likewise, while the commission should advise the Board of Land and Natural Resources, Land Use Commission, and City and County of Honolulu with respect to dispositions and approvals, it should not displace their functions. See § -6(6)-(7).

6. As part of its interim activities prior to the return of Mākua, Kahanahāiki and Ko‘iahi Valleys, the commission should enter into discussions with the Army to ensure the clean-up of unexploded ordnance and expansion of opportunities for cultural access. Such interim efforts will help avoid post-transfer problems like those that have affected Kaho‘olawe by, among other things, making substantial progress on completing the clean-up while MMR is still under Army control.

We respectfully urge you to pass SB 2189, SD1, with amendments to address the aforementioned concerns. Thank you again for the opportunity to offer this testimony.

REPRESENTATIVE CINDY EVANS, CHAIR
REPRESENTATIVE SHARON E. HAR, VICE-CHAIR
HOUSE COMMITTEE ON PUBLIC SAFETY & MILITARY AFFAIRS

Testimony Re: Senate Bill # 2189, SD 1
Relating to Makua
March 13, 2008, 8:30 a.m.
Conference Room 309

I am James "Sparky" Rodrigues a resident of Lualualei in Waianae and a member of Malama Makua.

I support this bill's fundamental intent. I have concerns about specific provisions and wish to suggest amendments.

- 1) Malama Makua has agreements in place with the Army to continue access for overnigher durning Makahiki, twice a month for cultural. Completing the EIS, Bio-study, Water monitoring... these must be insured to continue.
- 2) Malama Makua has worked with a sister organization Hui Malama O Makua. The group includes Kupuna, Kumu Hula, Opio, Ohana, Educators and students as well as those interested and love Makua. Hui Malama O Makua must be represented on the Makua Reserve Commission.
- 3) Makua Valley is made up of three separate Ahupua'a. On the left is Kahanahaiki, the center is Makua and to the right is Koi'ahi, all need to be listed in this bill to prevent confusion or exclusion.
- 4) Makua has been used by the Armed Forces since the late 1920s, nearly Eighty years. The Army seized the valley with the promise of its return 6 months after WWII. The State of Hawaii gave a lease in 1964 that expires August 2029 or sooner if the Army so chooses. Clean up needs to continue in perpetuity.
- 5) The goal is to return the land to pre use condition allowing for the return of native forest, environments that support endangered species, a restoration of historic sites and a return of our culture and traditional practices. Not a museum piece but part of a living legacy that allows for active use.
- 6) There are those who say Makua will never be cleaned up. I believe that the clean up will take generations to return the land to be safe and productive again. The plan need to take the long view and to achieve that goal, funding needs to be designed to last in perpetuity.
- 7) University of Makua is a place for all to learn. An economic incubator to design methods that may be exportable to other communities experiencing similar restorative needs. Scientist working with community to learns, gain skills that will restore Makua's contaminated lands to a safe useable condition. Traditional practices are promoted in a place that Hawaiian culture is allowed to be practiced.

Mahalo,

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MAKUA VALLEY RESERVE COMMISSION
S.B. NO. 2189, S.D. 1
(SSCR2452)

I, Patricia Patterson, a member of the Hu`i Malama O Makua, am strongly in favor of this Bill but have several suggestions for amendment:

1. Capitalize all appropriate names and words.
2. Page 1 Sect. 1 Paragraph -2 **Definitions** line 16 , after "Koi`ahi", insert "extending from the crest of the mountains into the sea in accordance with the hisorical extent of ancient Hawaiians' ahupua`a land divisions".
3. Page 2 Sect. 1. Paragraph -3 (1) at the end of line 5, insert "including the type of farming carried on by the families living in the Valley at the time martial law forced them out and promised to return their land to them six months after the end of World War II".
4. Page 3 Revise Sec. 1. Paragraph -5(a) (1) line 12 Delete "**One**" and insert Two
(2) line 13 Delete "**One**" and insert Two
5. Page 4 Delete Sec. 1. Paragraph -5 lines 1-3 (7) and lines 6-7 Paragraph -5 (8)
6. Page 4 Insert after "resources" near the end of Paragraph -5 (9) line 7 "or his or her delegated representative"
7. Page 4 Sec. 1 S-5 L (b) Delete "**The Governor shall appoint**" and insert after "chairperson" shall be elected by the members of the Commission from among their membership.
8. Page 4 Sec. 1 Paragraph -5 (d) Delete the number **Four** and insert the number Six.
9. Page 4 Sec. 1 Paragraph -5, following line 21, insert a new (f) to read "The Commission shall consult with the Commanding Officer of the United States Army in the Pacific, or the Commanding Officer's designee, in regard to matters concerning the former military use of Makua Valley. The Commission shall also consult with the Adjutant General of the State of Hawaii, or the Adjutant General's designee, when appropriate."
10. Page 6 Sec. 1 Paragraph -6 (8) line 13 Delete **otherwise conferred upon** and insert in conjunction with

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Representative Cindy Evans, Chair
Representative Sharon E. Har, Vice-Chair
House Committee on Public Safety & Military Affairs

RE: Testimony on Senate Bill No. 2189, SD 1; Relating to Makua

March 13, 2008, 8:30 AM, Agenda Item No. 7

Aloha Chair Evans, Vice-Chair Har and Members of the Committee:

My name is Fred Dodge. I am a Physician and a member of Malama Makua. I appreciate the opportunity to offer this testimony regarding Senate Bill No. 2189, SD 1. The basic intent of this bill is admirable: i.e. to plan for the return of the valleys of Makua, Kahanahaiki & Ko'iahi (referred to as "Makua") to the people of Hawai'i, so that these special lands can be put to appropriate & peaceful use. While the bill's fundamental intent is good, I have concerns about specific provisions, which should be addressed in an amended draft:

1. In 1942 when the military seized the lands that lie within the Makua Military Reservation ("MMR"), it promised to return those lands within 6 months of the end of World War II. The Military never kept that promise. SB2189 should address the claims of the families that previously lived in Makua who were unjustly deprived of their lands for over sixty years.
2. Among other responsibilities, The Makua Valley Reserve Commission would be tasked to negotiate with the U.S. Army over matters related to Makua including possible discussions to facilitate the return of MMR. While the Army is a necessary party to those negotiations and discussions, it should not have a seat on both sides of the table. Accordingly, the commission should not include a representative of the commanding officer of the U.S. Army in the Pacific. See Section -5(a)(7). Similarly, since the specified uses of the reserve do not include future military activities, the commission's membership should not include a representative of the adjutant general of the State of Hawai'i. See Section -5(a)(8).
3. To avoid infringing First Amendment religious freedoms, the commission should not favor one form of spiritual practice over others through curator or stewardship agreements with Hawaiian cultural and spiritual community organizations. See Section -6(5). Rather, freedom of religious and cultural practice should be guaranteed for all.

4. The Makua Valley Reserve Commission should not displace the functions of the O'ahu Island Burial Council and the Department of Land and Natural Resources with regard to treatment of burial sites and human skeletal remains as many members of the Commission would lack the necessary expertise to carry out those duties. See section -6(8).
5. Likewise, while the Commission should advise the Board of Land and Natural Resources, Land use Commission and City and County of Honolulu with respect to dispositions and approvals, it should not replace their functions. See Section -6(6)-(7).
6. As part of its interim Activities prior to the return of Makua, the Commission should enter into discussions with the Army to ensure the clean-up of unexploded ordnance, and expansion of opportunities for cultural access. Such interim efforts will help avoid post-transfer problems like those that have affected Kaho'olawe by, among other things, making substantial progress on completing the clean-up while MMR is still under Army control.

I respectfully urge you to pass SB 2189, SD 1, with amendments to address the aforementioned concerns. Thank you again for the opportunity to offer this testimony.