

TESTIMONY
SB 86

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony Of
LAURA H. THIELEN
Chairperson

Before The Senate Committee On
WATER, LAND, AGRICULTURE AND HAWAIIAN AFFAIRS

Friday, January 30, 2009
3:00 PM
Senate Conference Room 229

In Consideration of
SENATE BILL 86
RELATING TO MAKUA VALLEY RESERVE

Senate Bill 86 establishes a Makua Valley Reserve Commission (Commission) under the Department of Land and Natural Resources (Department). **The Department does not support this measure.**

The Department believes that Makua Valley (Valley) is rich in cultural resources and the creation of a 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.

The Department also has concerns because this bill will add responsibilities without augmenting funding or positions.

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
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AQUATIC RESOURCES
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KAIIOGLAWS ISLAND RESERVE COMMISSION
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TO: COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS

Senator Clayton Hee, Chair

Senator Jill N. Tokuda, Vice Chair

Date: January 28, 2009

Re: SB 86 RELATING TO MAKUA

For hearing Friday January 30, 2009, 3:00 PM

Conference Room 229

TESTIMONY IN OPPOSITION

By: Kenneth R. Conklin, Ph.D.

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Aloha Chair Hee, Vice Chair Tokuda; members of the committee, and members of the public,

I strongly OPPOSE SB 86 relating to Makua.

Some of my concerns are general; and some are specific to particular items in the bill.

GENERAL CONCERNS

This bill is a wolf in sheep's clothing. It is a Hawaiian sovereignty bill masquerading as a bill for environmental and cultural preservation. This bill is similar to a bill passed in 2008 to establish Ha'iku Valley (Kane'ohe) as a cultural preserve, which was wisely vetoed by Governor Lingle, whose veto was sustained

in a later special session for overriding vetoes.

I believe the single most important issue facing Hawai'i in the foreseeable future is the imminent and continuing threat that the lands, resources, government and people of Hawai'i will be divided along racial lines. Please see "Hawaiian Apartheid: Racial Separatism and Ethnic Nationalism in the Aloha State"
<http://tinyurl.com/2a9fqa>

The Legislature has repeatedly passed resolutions favoring the Akaka bill to create a racially exclusionary government empowered to negotiate with YOU, the legislators. It is expected that you will give away massive amounts of land, money, and jurisdictional authority.

This bill would already designate Makua Valley as the property of the Akaka tribe even before the tribe is created, and before any negotiations have started. That's absurd! No responsible negotiator gives away important concessions before the opponents even arrive at the table. Legislators have a fiduciary duty to protect the lands and resources of Hawaii on behalf of all our people, not just some.

SB 86 is also a bill to push the military out of Makua, despite a long history of military training there which has included environmental stewardship. Court decisions have repeatedly affirmed the Army's right to use Makua while making allowances for cultural activities and preservation; but this bill would over-rule those court decisions. § -12 Severability Section 2, coming at the bottom of the bill, may be insufficient to protect the rights of the Army.

I vehemently oppose the effort (1) to place Makua valley under the control of a racially and ideologically stacked "cultural reserve commission"; and (2) to single out one particular racial group and its cultural heritage as the sole source of value for historic and

cultural preservation; and (3) to declare that the valley will be transferred to a future race-based government if and when that new government achieves federal/state recognition.

Makua belongs to all the people of Hawaii, and should stay that way. It has been used for a variety of agricultural, commercial, cultural, and religious purposes by people of various racial heritages. May it always be so! That's why this bill must be rejected.

SPECIFIC ITEMS IN THE BILL

§ -3 Reservation of uses.

"(1) Preservation and practice of all rights customarily and traditionally exercised by native Hawaiians for cultural, spiritual, and subsistence purposes"

But of course those rights are preserved throughout all of Hawaii. There's no need to reaffirm them here. Furthermore, all other racial and cultural groups in Hawaii should also be entitled to exercise their customs, and it is improper to single out only ethnic Hawaiians for protection to the exclusion of others. If paragraph (1) is regarded as necessary to be reaffirmed so explicitly, then the rights of everyone else should also be reaffirmed explicitly. And in particular, the rights of the Army, found at the bottom of the bill in § -12 Severability Section 2, should be moved up to this paragraph so it is clearly given equal priority with ethnic Hawaiian race-based "rights."

By failing to mention military uses, lines 1 and 2 in the bill would actually exclude the military: "The valley reserve shall be used solely and exclusively for the following purposes"

By failing to allow commercial uses, and later explicitly prohibiting such uses, this bill would deny former residents of the valley, who

were evicted and whose lands were condemned, any opportunity to return and to resume their former activities including farming and ranching. The bill would also prohibit local residents from selling any fish they catch, and prohibit snorkel tours and other profit-making ocean recreational activities.

§ -5 Commission.

(a)

This section enumerates the criteria for membership on the Commission for each of its nine members. The criteria guarantee that the vast majority of members will be anti-military; and the criteria lean heavily in favor of guaranteeing a racial majority for ethnic Hawaiians. Here are six of the nine members as specified in Section 5: (1) Malama Makua, and (2) Hui Malama O Makua, and (3) families that were evicted from the valley -- these three are anti-military and dominated by ethnic Hawaiians; (4) How is the "Waianae coast community" defined, and by what mechanism will that community choose its representative? (5) Office of Hawaiian Affairs is race-based and has a history of filing anti-military lawsuits; (9) "member shall be appointed by the governor from a list provided by native Hawaiian organizations" is clearly race-based. Thus 6 out of 9 Commission members are either required to be, or very likely to be, ethnic Hawaiian.

(d) "Any action taken by the commission shall be approved by a simple majority of its members. Four members shall constitute a quorum to do business." Since 4 members are a quorum, the ethnic Hawaiians could call meetings and make decisions in the absence of the other members.

(e) Why is there an exemption from chapters 76 and 77 ? Furthermore, in these difficult financial times, do we really want to be expanding the size of government by hiring an executive director and other "warm bodies"?

§ -6 Responsibilities and duties of the commission.

(5) "...curator or stewardship agreements with appropriate Hawaiian cultural and spiritual community organizations for the perpetuation of native Hawaiian cultural, religious, and subsistence customs, beliefs, and practices ..." This is clearly racist, because it excludes other ethnicities, religions and cultures.

§ -10 Transfer. "Upon its return to the State, the resources of the valley reserve shall be held in trust as part of the public land trust; provided that the State shall transfer management and control of the valley reserve to the sovereign native Hawaiian entity upon its recognition by the United States and the State."

Section 10 is outrageous. Handing over a piece of Hawaii to a racially exclusionary government is both illegal and immoral. Setting aside Makua for such a fate even before the Akaka bill passes and before negotiations have begun with the Akaka tribe is a violation of the fiduciary duty of the Legislature to protect the property and rights of all the citizens of our State.

§ -12 Severability

SECTION 2. It is the express intent of the legislature and this Act not to obstruct, deny, or revoke any rights or privileges heretofore exercised by the United States Army in its use of Makua valley throughout the term of its lease.

Now you tell us! This paragraphs should be placed at the top of the document rather than at the bottom.

From: Bill Prescott [nanakulibill@msn.com]
Sent: Wednesday, January 28, 2009 12:15 PM
To: WTLTestimony
Subject: Testimony in Opposition to SB 86

TO: COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS

Senator Clayton Hee, Chair
Senator Jill N. Tokuda, Vice Chair
Date: January 28, 2009
Re: SB 86 RELATING TO MAKUA
For hearing Friday January 30, 2009, 3:00 PM
Conference Room 229

TESTIMONY IN **OPPOSITION**

By: **William Prescott**
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Aloha Chairman Hee, Vice Chair Tokuda; members of the committee,

I, a native Hawaiian, Commander of **Leeward VFW Post 849** and speaking for its members, strongly **OPPOSE SB 86** relating to Makua. Hawai'i's Veterans of Foreign Wars in Resolution No. 465 also fully supports our military's use of Makua.

Comments:

1. The Bill does not provide for our military's continued use of the area for training. And why not? It has been used for preparing our soldiers to fight our country's enemies since WW II. We are now engaged in a war on terrorist and our ohana, friends, and neighbors are involved. The threat from terrorist in the pacific region is real. In a letter I received from US Senator Daniel K. Inouye, "We are a nation at war and need to do all we can to be sure that our troops are adequately equipped and trained before they step into harm's way on our behalf."

2. The Army has a lease on 1,500 acres which runs along side the road, that ends in 2028. They also bought 170 acres. There should be no restrictions placed on these lands.

3. Fear. Look at the rubbish, garbage, abandoned vehicles, appliances, etc., dumped along the road sides, bushes, and beaches in Makua. Look at the graffiti, trash dumping at Makua's Ka'ena Cave (which now has cement barriers). Turn the valley over to civilians and there's reason for fear.

4. Training off island, causing family separations, excessively high cost to tax payers to move men and equipment is not the answer.

THE BILL

§ -3 Reservation of uses.

(1) What cultural and spiritual practices? Praying to Hawaiian gods is not and has not been a Hawaiian cultural or spiritual practice since 1819. To sanction the practice is to sanction the punishment (death) for sins (breaking a kapu). This is the reason Kamehameha II abolished the Hawaiian religion and the kapu that supported it. And why there are no churches that pray to Hawaiian gods in Hawaii. Additionally, isn't this provision setting a precedence that may require other land owners to allow this kind of practice on their property. Religion should be practiced on one's own property not on others.

(2) The military is doing an outstanding job in protecting important land sites

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SENATOR CLAYTON HEE, CHAIR
SENATOR JILL N. TOKUDA, VICE-CHAIR
SENATE COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS

TESTIMONY RE: SENATE BILL NO. 86
RELATING TO MĀKUA

January 30, 2009, 3:00 p.m.
Conference Room 229

Good afternoon Chair Hee, Vice-Chair Tokuda, and members of the Committee:

My name is **David Henkin**, and I am an attorney with **Earthjustice**. We appreciate the opportunity to offer this testimony regarding Senate Bill No. 86. Earthjustice **supports** the basic intent of this bill, which is to start planning for the return of Mākua, Kahanahāiki and Ko‘iahi 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 86 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. See § -7. 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)(6). 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)(7).
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, 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 86, with amendments to address the aforementioned concerns. Thank you again for the opportunity to offer this testimony.

Testimony to the Senate Committee on Water and Land Use -----

Friday, January 30, 2009

3:00 p.m.

Conference Room 229 ---

RE: SENATE BILL NO. 86 RELATING TO MAKUA

Chair Hee, Vice Chair Tokuda, and members of the committee.

My name is **Charles Ota** and I am the Vice President for Military Affairs at The **Chamber of Commerce of Hawaii** (The Chamber). I am here to state The Chamber's **opposition** to Senate Bill No.86, Relating to Makua.

The Chamber's Military Affairs Council (MAC) serves as the liaison for the state in matters relating to the U.S. military and provides oversight for the State's multi-billion dollar defense industry.

The measure proposes to establish the Makua Valley Reserve Commission to oversee the preservation and restoration activities in Makua Valley on O`ahu.

The proposed action is premature as there are no known plans for the U.S. Army to return Makua Valley to the state in the foreseeable future.

The current wars involving U.S forces in Iraq and Afghanistan continue to require the support of U.S. troops forward-based in Hawaii. Moreover, Hawaii-based forces remain on constant patrol and are held in combat-ready status to meet contingencies in the ongoing fight against global terrorism and other security threats within the U.S. Pacific Command's area of responsibility.

Recent discussions with senior military commanders indicate that the strategy of forward-basing of combat forces in Hawaii, Guam, and Japan will continue. To demonstrate the high level of U.S. interest in the Asia Pacific region, a \$14.0 billion effort is underway, in collaboration with the Government of Japan, to relocate more than 8,000 U.S. Marines to Guam.

Army ground and aviation forces require regular training at established training areas such as the range at Makua Valley in order to receive combat certification. The range at Makua Valley is the Army's only remaining live-fire, company level, maneuver training range on O`ahu.

We would also mention that the U.S. Army continues to spend millions of dollars annually to preserve and protect the environment and cultural resources at Makua Valley and other Army held lands throughout Hawaii in accordance with established state and federal laws. For example, the Army reports that more than \$6.0 million was spent in support of Makua Valley alone during FY2008, even though the training range was not available to the Army. The Army's environmental and cultural programs are exemplary and meet or exceed the standards required by these laws.

For these reasons, the MAC recommends that SB 86 be held in committee.

Thank you very much for the opportunity to testify.



Peter Apo

CASA

West Oahu – Kaua'i

98-021 Kamehameha Highway, Suite 212, Aiea, HI 96701, (808) 256-6191

*Individual
oppose*

January 30, 2009

3:00 p.m.

Senate Conference Room 229

**TESTIMONY RE: SENATE BILL 86 RELATING TO MAKUA
TO ESTABLISH A MAKUA VALLEY RESERVE COMMISSION**

Senator Clayton Hee

Chair, Water, Land & Hawaiian Affairs

Hawai'i State Capitol

Honolulu, Hawai'i 96813

Dear Senator Hee and Members of the Committee:

I am privileged to serve as a Civillan Aide to the Secretary of the Army for West Oahu and Kaua'i. As you are aware the ahupua'a of Makua is located in West Oahu and is currently leased to the Army as a combat training facility and designated as the Makua Military Reservation (MMR).

I am a native son of Makaha and have been conversant with the challenges of the stewardship of Makua since 1975 when serving as chair of the Waianae Neighborhood Board, from 1980-1982 when serving as one of the first Trustees of the Office of Hawaiian Affairs, from 1982 – 1994 when serving in the Hawai'i State House of Representatives, and as a private citizen from 1995 up to my appointment as a CASA in 2008.

The Makua Military Reservation operates under the United States Army Pacific Command (USARPAC). USARPAC, headquartered in Hawai'i, stretches deep into the Asia-Pacific region. It includes 41 nations that serve as home to 60% of the world's population, crosses 16 time zones, and includes Iraq and Afghanistan. The mission of USARPAC to provide full spectrum operations covering more than half the world is not likely to diminish in the foreseeable future. In fact, it is more probable that USARPAC operations will see more growth as peacekeepers in

support of President Obama's commitment to global diplomacy. The need for USARPAC to maintain its training facilities will become more rather than less vital in the coming years. While I cannot speak for USARPAC, it would not seem prudent to support creating a Commission or an agenda that prematurely anticipates termination of training at Makua and preclude any discussion of lease renegotiation as July 1, 2045 approaches. This is my personal observation and not triggered by anything I have heard from the Army.

Regarding the managing of the lands at Makua I believe it would be an understatement to say the Army considers the environmental, natural resources, and cultural sites stewardship of all lands in Hawai'i under its jurisdiction as a top priority. The USARPAC commitment is reflected in its expenditure of 58 million dollars in the last five years with another 135 million dollars budgeted during the next seven years in its plans to maintain these programs. Their cultural and environmental stewardship of Makua has grown dramatically over the years and has exceeded even the state's efforts to manage its public lands. The Makua effort is exemplary and unmatched by any other program in the country. The Army has been well underway in already meeting the purposes of SB 86 as articulated in Section 3 (1), 3(2), 3(3), 3(4).

Moreover, my recommendation to the committee would be to hold SB 86 and request a briefing on Makua (and perhaps of USARPAC) by General Benjamin R. Mixon which I would be happy to arrange. It's an opportunity General Mixon would welcome.

Finally, as a Civilian Aide to the Secretary of the Army, my role as a liaison between the Army and the communities of West Oahu and Kaua'i is not supervised by the army or the community. My testimony reflects my best personal judgment as an individual and I do not speak on behalf of the army or any segment of the community.

Thank you for the opportunity to testify.

TESTIMONY
SB 86
(END)