



HCR35

STRONGLY URGING THE UNITED STATES MILITARY TO CLEAN UP MUNITIONS AND EXPLOSIVES OF CONCERN IN HAWAII UNDER THE MILITARY MUNITIONS RESPONSE PROGRAM

Ke Kōmike ‘Aha Kenekoa o ka Palekana Lehulehu, ka Pilina o Nā Aupuni, a me ke
Kuleana Pū‘ali Koa
Senate Committee on Public Safety, Intergovernmental, and Military Affairs

‘Apelila 8, 2021

1:05 p.m.

Hālāwai Keleka‘a‘ike

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HCR35, which urges the United States military to clean up munitions and explosives of concern in Hawai‘i under the Military Munitions Response Program.

As an initial matter, OHA notes that Native Hawaiians have a heightened interest in the substantial acreage of federal and state lands currently under military control. In addition to the estimated 114,499.67 acres of federal lands that are eligible for transfer to the State under Public Law 88-233,ⁱ another 30,176.18 acres are controlled by the federal government under leases set to expire in 2029. These lands are overwhelmingly part of the 1.8 million acres of former Government and Crown Lands that were taken as a result of the unlawful overthrow of the Hawaiian Kingdom in 1893,ⁱⁱ and that were “ceded” to the United States’ federal government upon annexation – despite strong opposition from and without any consent by, or compensation to, Queen Lili‘uokalani or the Native Hawaiian people.ⁱⁱⁱ Native Hawaiians continue to maintain unrelinquished claims to the entire “ceded” lands corpus, including those lands held or controlled by the federal government, and therefore have a particularly heightened interest in ensuring that these lands are properly remediated and not rendered unusable due to military training activities.

Notably, historical and ongoing examples of the treatment of “ceded” lands under federal ownership or control raise particular concerns regarding the need for meaningful remediation and restoration actions by the U.S. military. For example, the island of Kaho‘olawe was taken for U.S. military use in 1953, with assurances that it would be restored to a “habitable condition”; to this day, only 9% of the island has been cleared beyond the surface level.^{iv} Ironically, Kaho‘olawe accounts for most of the federal “ceded” lands relinquished to the State since statehood,^v and it was only released from federal control in 1993 after years of protests and lawsuits.^{vi} Additionally, there are still ongoing concerns about the remediation of Mākua Valley in Wai‘anae, O‘ahu, which has also been used for live-fire training, and which will also need substantial remediation and

restoration as a result of such activities.^{vii} The Hawai‘i Supreme Court has also recently called attention to the potential for irreparable harm to 22,971 acres of state “ceded” lands leased to the federal government at Pōhakuloa, Hawai‘i Island, which the court found were not adequately cared for as required under the public trust doctrine.^{viii} **These historical and recent examples counsel the need to ensure that “ceded” lands used by the federal government for military purposes are appropriately remediated and restored for non-military use – a critical component of restorative justice for Native Hawaiians who maintain claims to these lands.**

Therefore, OHA urges the Committee to **PASS** HCR35. Mahalo nui for the opportunity to testify on this important issue.

ⁱ Section 5(e) of the Admission Act provided a five-year window for the federal government to convey back to the State of Hawai‘i lands it no longer needed; after this five-year period, title to those lands would have vested permanently in the United States. However, Public Law (P.L.) 88-233, abolished the five-year deadline so that the federal government could relinquish control of “ceded” lands at any time. Notably, P.L. 88-233 was a double-edged sword: in exchange for removing the deadline for the federal government to relinquish lands, nearly 228,000 acres of “ceded” lands set aside for national parks, monuments, and reservations became the fee-simple property of the federal government. These lands are now ineligible for transfer under P.L. 88-233. In any case, the federal government has continued to maintain control over the vast majority of the lands it retained upon statehood notwithstanding the lack of any significant federal use, such as Bellows Air Force Base in East O‘ahu. MELODY MACKENZIE ET AL., *NATIVE HAWAIIAN LAW TREATISE* 84-85 (2015).

ⁱⁱ MACKENZIE ET AL, *supra* note 1, at 27.

ⁱⁱⁱ The state of Hawai‘i and the United States have both acknowledged this injustice, as well as the role of the U.S. military in the unlawful overthrow of the Hawaiian Kingdom. *See, e.g.,* The Apology Resolution, Pub. Law No. 103-150, 107 Stat. 1510 (1993); Act 359 (Reg. Sess. 1993).

^{iv} MELODY MACKENZIE, *supra* note 3 at 39; DAVIANNA MCGREGOR, KANALOA KAHO‘OLAWE, *in* DETOURS: A DECOLONIAL GUIDE TO HAWAI‘I 261, 264 (HŌKŪLANI K. AIKAU ET. AL, ED.) 2019.

^v According to a 2012 inventory of public lands, 31,247.49 acres have been transferred to the state pursuant to P.L. 88-233, of which Kaho‘olawe comprises 28,776.70 acres. *Id.* at 84.

^{vi} *Id.* at 39-40.

^{vii} *Id.* at 8.

^{viii} *See Ching v. Case*, 449 P.3d 1146, 1160-62, 1174-80 (Haw. 2019).

HCR-35

Submitted on: 4/6/2021 2:40:32 PM

Testimony for PSM on 4/8/2021 1:05:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------------|---------------------------|---------------------------|
| Jim Albertini | Testifying for Malu 'Aina | Support | No |

Comments:

Aloha Legislators,

Our organization strongly supports HCR 35 for military clean-up. On Hawaii Island, we have documented 57 present and former military sites involving hundreds of thousands of acres of military lands in need of clean-up. It's not only the surface and subsurface that needs clean up but the possible contamination of the groundwater and nearshore waters from military toxins need to be addressed as well. Military ordnance by the barge loads has been dumped in Hilo bay and off Kawaihae. More than 2,000 fifty-five gallon drums of nuclear waste from refueling nuclear submarines (contaminated tools, clothing, etc) have been dumped off Oahu's southern shores. This is all documented in a book I co-authored entitled "The Dark Side of Paradise --Hawaii in a Nuclear World." (available in Hawaii libraries) In addition, there is the issue of the winds transporting extremely hazardous Depleted Uranium (DU) oxide particles long distances. DU oxide is created when DU metal is burned from being hit with high explosives. The military has officially confirmed the DU metal spotting rounds have been used at Schofield and Pohakuloa. Likely Makua too, and possibly Kaho'olawe and other sites as well. The military always has plenty of money to make its mess but too little to clean up its mess. Stop Military Bombing of Hawaii and Clean up the mess.

Mahalo. Jim Albertini for Malu Aina.

HCR-35

Submitted on: 4/6/2021 4:29:24 PM

Testimony for PSM on 4/8/2021 1:05:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|-------------------------------------|---------------------------|---------------------------|
| Nancy Redfeather | Testifying for Ka Ohana O Na Pua | Support | No |

Comments:

Aloha, The MMRP was created in 2001 to address munitions-related concerns, including explosive safety, environmental, and health hazards from releases of unexploded ordnance (UXO), discarded military munitions (DDM), and munitions constituents (MC) found at locations other than operational ranges on active and [Base Realignment and Closure \(BRAC\)](#) installations and Formerly Used Defense Sites (FUDS) properties. On Hawai'i Island alone, there are 57 present and former sites involving 1,000s of acres that are in need of clean up under this Program's law. There are also toxic waste materials that need to be removed in the ocean at Kawaihae, Hawai'i Island and off the west shore of Oahu. The military has officially confirmed that DU metal spotting rounds have been used at Schofield and Pohakuloa. DU presents a health hazard for the public when subject to heat. Ka Ohana O Na Pua is dedicated to preserving the lands of Hawai'i Island for the next generation and so implores you to follow the law and keep your responsibility to the people and the lands of Hawai'i through the MMRP Program. Mahalo.

HCR-35

Submitted on: 4/6/2021 5:24:55 PM

Testimony for PSM on 4/8/2021 1:05:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Yvonne Geesey | Individual | Support | No |

Comments:

support, mahalo!

HCR-35

Submitted on: 4/7/2021 8:47:06 AM

Testimony for PSM on 4/8/2021 1:05:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|--|---------------------------|---------------------------|
| Sanford Yee | Testifying for Hawai'i Peace and Justice | Support | No |

Comments:

Hawai'i Peace and Justice STRONGLY URGES THE UNITED STATES MILITARY TO CLEAN UP MUNITIONS AND EXPLOSIVES OF CONCERN IN HAWAII UNDER THE MILITARY MUNITIONS RESPONSE PROGRAM.

Please stop polluting and desecrating the Aina!

LATE

HCR-35

Submitted on: 4/7/2021 1:07:41 PM

Testimony for PSM on 4/8/2021 1:05:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Caroline | Individual | Support | No |

Comments:

Aloha, I'm writing to express my STRONG SUPPORT for this bill. It is important for Hawaii's residents to have a clean and safe environment, and where the military has munitions, etc., in Bellows, I ask that they clean up the environment rather than fence off and restrict it. We all need to act responsibly in our use and enjoyment of the 'aina. Respectfully, the military should take action to clean up Bellows and restore it rather than fence it off.

LATE

HCR-35

Submitted on: 4/7/2021 1:10:12 PM

Testimony for PSM on 4/8/2021 1:05:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Kamuela Werner | Individual | Support | No |

Comments:

Aloha:

My ohana are Waimanalo homesteaders. With them and their descendents in mind, I strongly support HCR35. Land formerly used for military training purposes, including Bellows Air Force Base, should be restored rather than merely fenced off. This bandaid approach deprives surrounding communities from enjoying and making productive use of the land (e.g. farming, recreation, affordable housing, etc.). Therefore, please pass HCR35.

Me ke aloha,

Kamuela Werner

LATE

HCR-35

Submitted on: 4/7/2021 6:06:15 PM

Testimony for PSM on 4/8/2021 1:05:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Bernice Strand | Individual | Support | No |

Comments:

I strongly support urging the military to clean up the Bellows property to assure no contamination of soil, ground water, or ocean from munitions and other debris that may exist at the site. Waimanalo is not a garbage dump for military left-overs. Do not disrespect the community and the ahupuaa of Waimanalo. Mahalo.

LATE

HCR-35

Submitted on: 4/7/2021 10:06:31 PM

Testimony for PSM on 4/8/2021 1:05:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Max Moonier | Individual | Support | No |

Comments:

On an island with limited resources, we cannot let land go to waist. We need to reclaim this very valuable area so it can be enjoyed and used again.