

**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
KA 'OIHANA O KA LOIO KUHINA  
THIRTY-SECOND LEGISLATURE, 2023**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 521, RELATING TO MILITARY LAND USE.

**BEFORE THE:**

SENATE COMMITTEES ON PUBLIC SAFETY AND INTERGOVERNMENTAL AND  
MILITARY AFFAIRS AND ON WATER AND LAND

**DATE:** Monday, February 13, 2023      **TIME:** 3:02 p.m.

**LOCATION:** State Capitol, Room 225

**TESTIFIER(S):** Anne E. Lopez, Attorney General, or  
Alison S. Kato or Bryan C. Yee, Deputy Attorneys General

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Chairs Wakai and Inouye and Members of the Committees:

The Department of the Attorney General provides the following technical comments on this bill.

This bill proposes to establish a Surplus Military Land Task Force (Task Force) within the Office of Planning and Sustainable Development (OPSD) to plan for the remediation and restoration of lands currently under federal control that are anticipated to be returned to the State, consider potential alternative uses, and identify any lands that should continue under federal control.

On page 5, lines 18-20, it states that "[t]he department shall provide all necessary administrative, professional, technical, and clerical support required by the task force." Chapter 225M, Hawaii Revised Statutes, which places OPSD within the Department of Business, Economic Development, and Tourism for administrative purposes, does not define the term "department." Because the Task Force is established in OPSD, the intent appears to be to have OPSD or the Department of Business, Economic Development, and Tourism provide the necessary support services to the Task Force. To remedy this, we recommend that the word "department" on page 5, line 18, be revised to either "office of planning and sustainable development" or "department of business, economic development, and tourism."

Thank you for the opportunity to testify.



**SB521**  
RELATING TO MILITARY LAND USE  
Senate Committee on Public Safety and Intergovernmental and Military Affairs  
Senate Committee on Water and Land

February 13, 2023

3:02 PM

Room 225

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The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on **SB521**, which would create a long-term task force to proactively plan for the remediation and restoration of lands currently under federal control that are anticipated and should be returned to the State. **OHA urges the Legislature to name OHA as the “organization with a mission statement or purpose of preserving Native Hawaiian traditional and cultural practices and preventing the desecration of the environment.”**

OHA is the principal public agency in the State responsible for the performance, development, and coordination of programs and activities relating to Native Hawaiians.<sup>1</sup> OHA has the constitutional mandate “to hold title to all real and personal property in trust for Native Hawaiians”<sup>2</sup> as well as “to manage and administer the proceeds from the sale or other disposition of lands, natural resources, minerals and income derived from whatever sources for Native Hawaiians.”<sup>3</sup> OHA has provided unrivaled and substantial advocacy toward both the preservation of Native Hawaiian traditional and cultural practices as well as advocacy and enforcement against the desecration of Native Hawaiian cultural resources and the natural environment.

OHA also maintains a critical interest in the Crown and Government lands of the Hawaiian Kingdom, as a preeminent matter of unresolved historical wrongdoing committed against the Hawaiian people. Professor Jon M. Van Dyke stated it most succinctly:

“In January 1893, the Kingdom was overthrown by Western businessmen (primarily Americans), with the support of U.S. military forces and the U.S. diplomatic official posted in Honolulu. These westerners and their supporters established a Provisional Government in 1893 and later the ‘Republic of Hawaii,’ which lasted from 1894 to 1898. The Republic confiscated the Crown Lands, merged them administratively with the Government Lands, and established homestead programs through which some acreage was transferred into private hands. In 1898, when Hawai‘i was [illegally] annexed to

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<sup>1</sup> HRS §10-3.

<sup>2</sup> Haw. Stat. Con. Art. XII, Sec. 5 (1978).

<sup>3</sup> Haw. Stat. Con. Art. XII, Sec. 6 (1978).



**SB521**  
**RELATING TO MILITARY LAND USE**  
Senate Committee on Public Safety and Intergovernmental and Military Affairs  
Senate Committee on Water and Land

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the United States, the Republic ‘ceded’ the remaining Crown and Government Lands to the United States, and they became a Public Land Trust managed by the United States but maintained separately from the government’s other public lands because they were held in trust for the people of Hawai‘i. **In 1959, the United States transferred about 1.4 million acres of these lands in trust to the new State of Hawai‘i but retained the remaining 373,720 acres.**<sup>4</sup>

Finally, OHA maintains an economic interest in the Crown and Government lands of the Hawaiian Kingdom – including those that have yet to be returned to Native Hawaiians.<sup>5</sup> OHA wishes to emphasize that the Crown and Government lands of the Hawaiian Kingdom, often referred to as “Ceded Lands” of the Public Land Trust corpus, are continuously held in trust for the betterment of the conditions of Native Hawaiians.<sup>6</sup> In addition to its codification within the Hawai‘i Admissions Act, lawmakers sought to ensure the continuous uplifting of Native Hawaiian socio-economic status through the creation of OHA and the enacting of these principles into State law.<sup>7</sup> OHA serves as the principal public agency of the State responsible for the programs and activities of Native Hawaiians,<sup>8</sup> whose well-being is often positively impacted by the programs and services funded by revenue from the public land trust.

OHA appreciates the opportunity to provide comments on this measure and respectfully asks that the Legislature **amend SB521 to include OHA as a member of the Surplus Military Land Task Force.** Mahalo nui loa.

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<sup>4</sup> Jon M. Van Dyke, *Who Owns The Crown Lands of Hawai‘i?*, pp. 8-9, 2008.

<sup>5</sup> Pub. L. 86-3, 73 Stat. 4; Hawai‘i Admissions Act of 1959; Haw. Stat. Con. Art. XII, Sec. 4 (1978).

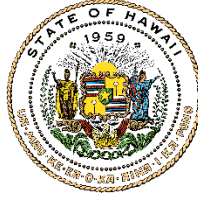
<sup>6</sup> Pub. L. 86-3, 73 Stat. 4; Hawai‘i Admissions Act of 1959.

<sup>7</sup> HRS §10-3.

<sup>8</sup> Id.

JOSH GREEN, M.D.  
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
KA 'OIHANA KUMUWAIWAI 'ĀINA

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DAWN N.S. CHANG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT

LAURA H.E. KAAKUA  
FIRST DEPUTY

M. KALEO MANUEL  
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

Testimony of  
DAWN N. S. CHANG  
Chairperson

Before the Senate Committees on  
PUBLIC SAFETY AND INTERGOVERNMENTAL AND MILITARY AFFAIRS  
and  
WATER AND LAND

Monday, February 13, 2023  
3:02 PM

State Capitol, Conference Room 225 & Videoconference

In consideration of  
SENATE BILL 521  
RELATING TO MILITARY LAND USE

Senate Bill 521 proposes to establish a Surplus Military Land Task Force within the Office of Planning and Sustainable Development to plan for the remediation and restoration of lands currently under federal control that are anticipated to be returned to the State, consider potential alternative uses, and identify any lands that should continue under federal control for the next ten years. **The Department of Land and Natural Resources (Department) offers the following comments, and proposed amendments.**

This measure addresses an important issue about which the public has raised concerns, and the Department strongly agrees that now is the right time to plan for the future appropriate use of lands under current military lease, that the public should have a voice in how the lands should be used, and that the effort should be collaborative amongst state departments, counties, communities surrounding federally-leased lands, those who steward and restore Hawai'i's lands and waters, the Native Hawaiian community that has a vested interest in the lands and has suffered harm and displacement from military use of state leased lands, and the diverse public.

Recognizing that the public has raised concerns regarding the continued status of the United States Department of Defense (USDOD) use of state public lands, including ceded lands, the Department has initiated discussions with USDOD on the Department's land disposition process, including environmental compliance, cultural impact statements, Ka Pa'akai Analysis, and

expectations of proactive and extensive community engagement by USDOD. The Department appreciates the Legislature's desire to create a task force to discuss and ensure remediation and restoration of lands under federal control. It is critical that the effectiveness of the Task Force recommendations proceed in a timely fashion to ensure their recommendations can be timely considered by the Department and ultimately the Board of Land and Natural Resources (Board) in its land disposition process.

The Department notes that Section 5(e)<sup>1</sup> of the Admissions Act already provides that any lands no longer needed by the United States shall be conveyed to the State of Hawai'i.

(e) Within five years from the date Hawaii is admitted into the Union, each Federal agency having control over any land or property that is retained by the United States pursuant to subsections (c) and (d) of this section shall report to the President the facts regarding its continued need for such land or property, and if the President determines that the land or property is no longer needed by the United States it shall be conveyed to the State of Hawaii.

The default position, without agreement otherwise by the Board, is that any such lands would return to the State through the Board.

The Department respectfully requests the following amendments:

- 1) Amend the bill's proposed Hawaii Revised Statutes (HRS) §225M(a). The Board has the authority, subject to compliance with applicable laws, to determine whether state public lands may be used, including for military purposes. Accordingly, the Department recommends the following amendment:  
There is established a surplus military land task force within the office of planning and sustainable development for administrative purposes, as provided in section 26-35, to plan for the remediation and restoration of lands currently under federal control that are anticipated to be returned to the State, **and** consider potential alternative uses [~~and identify any lands that should continue under federal control for the next ten years~~].  
(The Department's added language is bolded).
- 2) Delete the proposed HRS §225M(a)(5). Pursuant to HRS §171-95, the Board will approve any leases, including approving environmental remediation associated with federal leases. A task force that meets twice a year is not equipped to negotiate numerous and complicated leases and environmental remediation agreements, and is not authorized to do so, but their work and input will provide direction for the Department and the Board.
- 3) Add the Chair of the Board as a member of the task force under HRS §225M(b).

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<sup>1</sup> The five (5) year limitation in 5(e) was extended indefinitely.

- 4) Revise HRS §225M(b)(5) as follows:  
 A representative from each of the four counties, **from an adjacent community to the state land used by the military**, to be selected by the mayor of each county;  
 (The Department’s added language is bolded).
- 5) Revise HRS §225M(b)(6) as follows:  
 A representative from an organization whose mission statement or purpose ~~[is dedicated to]~~ **includes** the remediation and prevention of military debris and site contamination or degradation **and has a track record of such work in Hawaii**; and  
 (The Department’s added language is bolded).
- 6) Acknowledging the enormity of this work, revise the proposed HRS §225M(e)(1) and §225M (2) as follows:  
 (e) The task force shall:  
 (1) Submit a ~~[preliminary]~~ report of its findings and recommendations, including any proposed legislation, to the legislature, no later than twenty days prior to the convening of the regulation session of ~~[2024]~~ **2025**; **provided that the report shall include status updates on each of the tasks specified in subsection (a)**. ~~[and (2) Submit a second report on its findings and recommendations, including any proposed legislation, to the legislature, no later than twenty days prior to the convening the regular session of 2025; provided that the report shall include status updates on each of the tasks specified in subsection (a).]~~  
 (The Department’s added language is bolded.)
- 7) Appropriate significant funds commensurate with the significant time and staff resources needed to fulfill the proposed HRS §225M(a)(3) and HRS §225M(4). The Department will work with other state departments to provide information to fulfill the task force mandates HRS §225M(a)(1) through HRS §225M (a)(6). However, HRS §225M(a)(3) and HRS §225M(a)(4) will require public outreach meetings held in the adjacent communities on each island, and staff to design environmental remediation plans and alternative uses, and to document feedback from the meetings held in adjacent communities, and from appropriate departments and agencies, including the Office of Hawaiian Affairs. Due to the importance of this work, the Department requests funding for one dedicated staff person in the Chair’s Office to assist the Chair and Deputy Director to fulfill this measure, and a GIS staff person to support this work. The Department also recommends that funds for task force travel and meetings be provided, and that funding support be provided for staff positions at the Office of Planning and Sustainable Development.

Mahalo for the opportunity to comment on this measure and propose amendments that will facilitate a clear and coordinated process.

**SB-521**

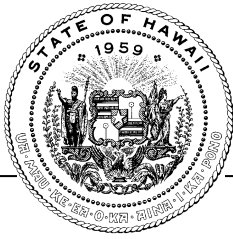
Submitted on: 2/12/2023 12:33:12 PM

Testimony for PSM on 2/13/2023 3:02:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Russell Tsuji	Testifying for DLNR	Comments	Remotely Via Zoom

Comments:

Request for zoom link to testify on behalf of DLNR. Written testimony was submitted on DLNR Testimony account and additional staff will be present to testify on the measure. Thank you!



**STATE OF HAWAII  
OFFICE OF PLANNING  
& SUSTAINABLE DEVELOPMENT**

**JOSH GREEN, M.D.**  
GOVERNOR

**SCOTT J. GLENN**  
DIRECTOR

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Statement of  
**SCOTT GLENN, Director**

before the  
**SENATE COMMITTEE ON PUBLIC SAFETY AND INTERGOVERNMENTAL AND  
MILITARY AFFAIRS**

and  
**SENATE COMMITTEE ON WATER AND LAND**

Monday, February 13, 2023, 3:02 PM  
State Capitol, Conference Room 225

in consideration of  
**SB 521**  
**RELATING TO MILITARY LAND USE**

Chair Wakai, Chair Inouye, Vice Chair Elefante, and Members of the Senate Committees on Public Safety and Intergovernmental and Military Affairs, and Water and Land:

The Office of Planning and Sustainable Development (OPSD) supports the intent and offers **comments** on SB 521, which establishes a Surplus Military Land Task Force within OPSD to plan for the remediation and restoration of lands currently under federal control that are anticipated to be returned to the State, consider potential alternative uses, and identify any lands that should continue under federal control for the next ten years.

SB 521 builds on the report which OPSD submitted to the Legislature during the Regular Session of 2022, pursuant to Act 93 (21). The OPSD believes that continuing to build the inventory of state lands under federal control that may be returned to the State and, further, may have hazardous materials that need remediation by the federal government before return to the State, is an important task for a task force that solicits input from adjacent communities and considers alternative uses and models for continued occupation.

OPSD raises a concern that negotiation with federal agencies over lease terms is not an appropriate role for OPSD or a task force. We request that page 4, lines 5 – 10 be deleted from this measure. DLNR and the Governor have the authority to conduct negotiations.

OPSD requests that sufficient funds and one FTE position be added to this measure, so long as the appropriation does not replace Administration priority requests. We suggest \$200,000 for in both FY 24 and FY 25.

Thank you for the opportunity to testify on this measure.





# Environmental Caucus of The Democratic Party of Hawai'i

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February 12, 2023

TO: Senator Glenn Wakai, Chair,  
Senator Brandon J.C. Elefante, Vice Chair, and Members of the  
Senate Committee on Public Safety and Intergovernmental and Military Affairs

Senator Lorraine R. Inouye, Chair,  
Senator Brandon J.C. Elefante, Vice Chair, and Members of the  
Senate Committee on Water and Land

Re: **SB 521 - Relating to Military Land Use**

Hearing: Monday, February 13, 2023, at 3:02 pm, in Room 225 and via videoconference

POSITION: **Strong Support**

Aloha, Chairs Wakai and Inouye, Vice Chair Elefante, and Members of the Committees:

The Environmental Caucus has an enrolled membership of 7,500 politically active Hawaii voters. We strongly SUPPORT this bill, which will take a second series of steps to try to create a more nearly equal relationship between the State of Hawaii and the US Military with respect to the use and occupation of lands in Hawaii by the Military.

The Environmental Caucus and its Human Environmental Impacts Committee are in strong support of SB 521, which builds on Act 93 of the 2021 Legislature (HB 1352). That earlier law required the Office of Planning (now the Office of Planning and Sustainable Development) to report to the Legislature with: (1) an inventory of lands within the State that are leased to or controlled by the federal government; (2) any known contaminants or environmental hazards associated with the inventoried lands based on past environmental studies; (3) input from executive branch departments and agencies and the Office of Hawaiian Affairs on proposed alternative uses for the lands that would be consistent with the departments and agencies' missions if the lands are returned to the State; and (4) its findings and recommendations, including proposed legislation, based on this information. The law required the Department of Land and Natural Resources and the Department of Health to submit reports to the Office of Planning regarding this issue.



For more than one hundred years, the United States Government has established naval and other military bases in Hawai'i without very much in the way of consent from the people of Hawai'i, who were not even organized as a State for a large part of that time. The playing field was anything but level.

The US Military has multiple long-term leases that are due to expire in a few years, including most notably the lease of more than 108,000 acres at Pohakuloa on Hawaii Island. This property is the largest US Military installation in Hawaii, or anywhere in the Pacific.

It is essential for the State to be well-prepared for those lease renewal negotiations. To the extent that the US Government expects to continue holding such properties, the State must hold the US Government accountable for environmental damages and it must ensure that leasehold rentals are at fair market value. The existing leases on Pohakuloa, Kahuku, and Poamoho Training Areas, and Makua Military Reservation allow the US Government to pay as little as one dollar for the entire leasehold period, often more than of sixty-five years! We trust that the US Government recognizes that that kind of colonialism must be rejected, and that fairness must enter the equation.

Accordingly, it is now essential to catch up with the calendar and establish a surplus military land task force to plan for the remediation and restoration of, and alternative uses for, lands now under federal ownership and control that are anticipated to be returned to the State.

The present bill would establish a Surplus Military Land Task Force within the Office of Planning and Sustainable Development to plan for remediation and restoration of lands currently under federal control that are anticipated to be returned to the State, consider potential alternative uses, and identify any lands that should continue under federal control for the next ten years.

The Democratic Party of Hawai'i adopted at its 2018 State Convention a resolution demanding clear safeguards to protect the 'āina against military destruction. The Party Platform specifically provides that Democrats "support the protection of our 'āina against destruction by military use." Especially with respect to properties that the United States has occupied for military purposes, very serious environmental contamination has taken place. As the United States continues its occupation of these properties and renews these leases, and even as it turns back over a few of these properties to the State, we are not seeing enough environmental remediation taking place as part of the process.

We continue to see far less than adequate removal of hazardous substances, pollutants, contaminants and military munitions resulting from active military activities. Inadequate remediation is oftentimes provided, insufficient to protect human health and the environment, thus failing to return military lands to usable condition.



Environmental Caucus of  
The Democratic Party of Hawai'i

Testimony on SB 521 for PSM-WTL– Military Land Use  
Hearing: Monday, February 13, 2023, 3:02 pm  
Page 3

Separately, we are not seeing the State taking any leadership role in pressing the United States to: (1) release properties that it is retaining under its control; and (2) engage in more thorough environmental remediation than the US Military has been willing to do to date. This bill would make great improvements in both of these areas and provide much transparency by requiring detailed annual reporting of these important matters.

Fundamentally, this bill intends to shift the responsibility for the lead from the federal government to the State, and pushes State officials to do what they need to do: require the federal government to return lands to the State, and to do so in an environmentally clean condition. Please pass this important and overdue legislation.

Thank you very much for the opportunity to testify on this key issue.

Alan B. Burdick and Melodie Aduja  
Co-chairs, Environmental Caucus

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**COMMENTS ON SENATE BILL 521  
RELATING TO MILITARY LAND USE**

**Committee on Public Safety and Intergovernmental and Military Affairs  
Senator Glenn Wakai, Chair  
Senator Brandon J.C. Elefante, Vice Chair**

**Committee on Water and Land  
Senator Lorraine R. Inouye, Chair  
Senator Brandon J.C. Elefante, Vice Chair**

Monday, February 13, 2023 at 3:02 P.M.  
Conference Room 225 & Videoconference

Chairs Wakai and Inouye, Vice Chair Elefante, and Members of the Committees:

The Hawaii Military Affairs Council ("MAC") offers **comments** on Senate Bill 521 to establish a Surplus Military Land Task Force within the Office of Planning and Sustainable Development to plan for the remediation and restoration of lands currently under federal control that are anticipated to be returned to the State, consider potential alternative uses, and identify any lands that should continue under federal control for the next ten years.

The Hawaii Military Affairs Council (MAC) was established in 1985 when the Chamber was appointed by the State to serve as the liaison to the military. The MAC advocates on behalf of Hawaii's military, and is comprised of business leaders, academic institutions, State and County officials, members of the CODEL, community leaders, labor unions and organizations and retired U.S. flag and general officers. The MAC works to support Hawaii's location as a strategic U.S. headquarters in the Indo-Asia-Pacific region which is crucial for U.S. national and homeland security.

The MAC recognizes that the just last month, the Air Force returned 363 acres of lands on Molokai which was used as a frequency receiver for radio communications back to the State of Hawaii. The Air Force determined it didn't need the land anymore, and began the process after an exhaustive and comprehensive remediation progress through approved collaboration with the state Department of Health and Department of Hawaiian Home Lands.



We express that when opportunities are available and lands are no longer in use, the Department of Defense seeks to return these lands, and to re-examine the state's obligations as stewards of Hawaiian trust lands.

Accordingly, there is already a mechanism in place for public, community, and state government input in the decision-making process, and with the addition of Act 93, Session Laws of Hawaii 2022, Senate Bill 521 may be duplicative and unnecessary.

Thank you for the opportunity to offer comments.

**SB-521**

Submitted on: 2/10/2023 10:17:09 AM

Testimony for PSM on 2/13/2023 3:02:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Regina Gregory	Individual	Support	Written Testimony Only

Comments:

Strong support. Maybe even add that the task force could recommend areas that the military should vacate because the land is needed for higher-value local purposes.

**SB-521**

Submitted on: 2/11/2023 11:51:24 PM

Testimony for PSM on 2/13/2023 3:02:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Sherry Pollack	Individual	Support	Written Testimony Only

Comments:

I support this measure that establishes a Surplus Military Land Task Force within the Office of Planning and Sustainable Development to plan for the remediation and restoration of lands currently under federal control that are anticipated to be returned to the State

I offer the suggested amendment. **None** of these leases should be extended. The military has proven to be a detriment to the safety and well-being of our communities. Their criminal, reckless contamination of the water and land must stop.

Mahalo.