



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Judiciary & Hawaiian Affairs
Monday, March 29, 2021 at 2:00 P.M.
Written Testimony**

**RE: HCR 35 / HR 28, STRONGLY URGING THE UNITED STATES MILITARY TO
CLEAN UP MUNITIONS AND EXPLOSIVES OF CONCERN IN HAWAII UNDER THE
MILITARY MUNITIONS RESPONSE PROGRAM.**

Chair Nakashima, Vice-Chair Matayoshi, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** both HCR 35 and HR 28.

The Chamber's Military Affairs Council (MAC) was established in 1985 to specifically advocate on behalf of Hawaii's military as it is the second economic driver for the State of Hawaii, comprised of business leaders, state and local officials, non-profit organizations, community leaders and retired U.S. flag and general officers to advocate and liaison with the military commands.

As a community partner in Hawaii, we take the military munitions response (MMR) seriously. We continue to actively advocate for the removal of military munitions from Hawaii lands which have come from previous military activities and training. The MAC works with the military commands and landowners to increase the op-tempo of munition remediation and removal to reduce risk, and to allow for the productive use of these former training lands.

Thank you for the opportunity to offer testimony.



HCR35/HR28

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

Ke Kōmike Hale o ka Ho‘okolokolo a me ke Kuleana Hawai‘i
House Committee on Judiciary & Hawaiian Affairs

Malaki 29, 2021

2:00 p.m.

Lumi 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HCR35/HR28, 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 Mākuā 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 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/HR28. 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 (HÖKŪLANI 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: 3/25/2021 3:15:11 PM

Testimony for JHA on 3/29/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl B.	Individual	Support	No

Comments:

Support

This is another resolution that should NOT have to happen. The military should be cleaning up. IF the USA feels that Hawai`i really is so important to them, then they should take the time to prove it. Instead they ignore Hawai`i Supreme Court rulings and continue bombing, destroying the islands. When is enough enough?

HCR-35

Submitted on: 3/27/2021 8:15:02 PM

Testimony for JHA on 3/29/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dana Keawe	Individual	Support	No

Comments:

I strongly support hcr35

HCR-35

Submitted on: 3/28/2021 12:03:19 PM

Testimony for JHA on 3/29/2021 2:00:00 PM

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

Comments:

Dear Chair Nakashima and Vice Chair Matayoshi,

Please pass this measure. We need to restore land so it can be usable. The limited land we have should not be fenced off.

Aloha,

Max Moonier