

JAN 18 2008

A BILL FOR AN ACT

RELATING TO MAKUA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 MAKUA VALLEY RESERVE

6 § -1 Administration of chapter. The Makua valley
7 reserve commission and the department of land and natural
8 resources shall administer this chapter.

9 § -2 Definitions. As used in this chapter, unless the
10 context otherwise requires:

11 "Commission" means the Makua valley reserve commission.

12 "Department" means the department of land and natural
13 resources.

14 "Valley reserve" means the area designated as the island of
15 Oahu as Makua valley.

16 § -3 Reservation of uses. (a) The Makua valley reserve
17 shall be used solely and exclusively for the following purposes:



- 1 (1) Preservation and practice of all rights customarily
- 2 and traditionally exercised by native Hawaiians for
- 3 cultural, spiritual, and subsistence purposes;
- 4 (2) Preservation and protection of its archaeological,
- 5 historical, and environmental resources;
- 6 (3) Rehabilitation, revegetation, habitat restoration, and
- 7 preservation; and
- 8 (4) Education.

9 (b) The Makua valley shall be reserved in perpetuity for
10 the uses enumerated in subsection (a). Commercial uses shall be
11 strictly prohibited.

12 **§ -4 Powers and duties.** The department and other
13 departments and agencies of the State shall be subject to the
14 oversight of the commission with regard to the control and
15 management of the valley reserve. Subject to section -6, the
16 department shall:

- 17 (1) Implement controls and permitted uses for the valley
- 18 reserve;
- 19 (2) Enforce this chapter;
- 20 (3) Provide administrative support to the commission; and
- 21 (4) Authorize those of its employees as it deems
- 22 reasonable and necessary to serve and execute warrants



1 and arrest offenders or issue citations in all matters
2 relating to enforcement of the laws and rules
3 applicable to the valley reserve.

4 **§ -5 Commission.** (a) There is established the Makua
5 valley reserve commission to be placed within the department of
6 land and natural resources for administrative purposes as
7 provided in section 26-35. The commission shall consist of
8 seven members to be appointed in the manner and to serve for the
9 terms provided in section 26-34; provided that:

- 10 (1) One member shall be a member of the Malama Makua;
- 11 (2) One member shall be appointed by the governor from a
12 list provided by the Waianae coast community;
- 13 (3) One member shall be a trustee or representative of the
14 office of Hawaiian affairs;
- 15 (4) One member shall be the commanding officer of the
16 United States Army in the Pacific, or the commanding
17 officer's designee;
- 18 (5) One member shall be the adjutant general of the State
19 of Hawaii, or the adjutant general's designee;
- 20 (6) One member shall be the chairperson of the board of
21 land and natural resources; and



1 (7) One member shall be appointed by the governor from a
2 list provided by native Hawaiian organizations.

3 (b) The governor shall appoint the chairperson from among
4 the members of the commission.

5 (c) The members of the commission shall serve without pay
6 but shall be reimbursed for their actual and necessary expenses,
7 including travel expenses, incurred in carrying out their
8 duties.

9 (d) Any action taken by the commission shall be approved
10 by a simple majority of its members. Four members shall
11 constitute a quorum to do business.

12 (e) The commission, without regard to the requirements of
13 chapters 76 and 77, may hire employees necessary to perform its
14 duties.

15 § -6 Responsibilities and duties of the commission. The
16 general administration of the valley reserve shall rest with the
17 commission. In carrying out its duties and responsibilities,
18 the commission:

19 (1) Shall establish criteria, policies, and controls for
20 permissible uses within the valley reserve;

21 (2) Shall approve all contracts for services and rules
22 pertaining to the valley reserve;



- 1 (3) Shall provide advice to the governor, the department,
2 and other departments and agencies on any matter
3 relating to the valley reserve;
- 4 (4) Shall provide advice to the office of planning and the
5 department of the attorney general on any matter
6 relating to the federal conveyance of Makua valley;
- 7 (5) May enter into curator or stewardship agreements with
8 appropriate Hawaiian cultural and spiritual community
9 organizations for the perpetuation of native Hawaiian
10 cultural, religious, and subsistence customs, beliefs,
11 and practices for the purposes stated in section -3;
- 12 (6) Shall carry out those powers and duties otherwise
13 conferred upon the board of land and natural resources
14 and the land use commission with regard to
15 dispositions and approvals pertaining to the valley
16 reserve. All powers and duties of the board of land
17 and natural resources and the land use commission
18 concerning dispositions and approvals pertaining to
19 the valley reserve are transferred to the commission;
- 20 (7) Shall carry out those powers and duties concerning the
21 valley reserve otherwise conferred upon the city and
22 county of Honolulu by chapter 205A. The powers and



1 duties of the city and county of Honolulu and its
2 agencies concerning coastal zone dispositions and
3 approvals pertaining to the valley reserve are
4 transferred to the commission;

5 (8) Shall carry out those powers and duties concerning the
6 valley reserve otherwise conferred upon the island
7 burial councils and the department with regard to
8 proper treatment of burial sites and human skeletal
9 remains found in the valley reserve;

10 (9) Shall adopt rules in accordance with chapter 91 that
11 are necessary for the purposes of this chapter and
12 shall maintain a record of its proceedings and
13 actions; and

14 (10) May delegate to the executive director or employees of
15 the commission, by formal commission action, such
16 power and authority vested in the commission by this
17 chapter as the commission deems reasonable and proper
18 for the effective administration of this chapter.

19 **§ -7 Interim activities of the commission.** Prior to the
20 return of Makua valley from the United States Army to the State,
21 the commission may enter into discussions with the Army to



1 facilitate the expedient return of Makua valley upon the
2 expiration of the Army's lease.

3 **§ -8 Penalty.** Any person who violates any of the laws
4 or rules applicable to the valley reserve shall be guilty of a
5 petty misdemeanor and shall be fined not more than \$1,000 or
6 imprisoned not more than thirty days, or both, for each offense.
7 Each day of each violation shall be deemed a separate offense.

8 **§ -9 General administrative penalties.** (a) Except as
9 otherwise provided by law, the commission may set, charge, and
10 collect administrative fines, or bring legal action to recover
11 administrative costs of the commission or the department, or
12 payment for damages, or for the cost to correct damages
13 resulting from a violation of this chapter or any rule adopted
14 thereunder. The administrative fines shall be as follows:

- 15 (1) For a first violation, by a fine of not more than
16 \$10,000;
- 17 (2) For a second violation within five years of a previous
18 violation, by a fine of not more than \$15,000; and
- 19 (3) For a third or subsequent violation within five years
20 of the last violation, by a fine of not more than
21 \$25,000.



1 (b) In addition, an administrative fine of up to \$5,000
2 may be levied for each specimen of natural resource or any
3 historic property taken, killed, injured, broken, or damaged in
4 violation of any rule adopted under this chapter. For purposes
5 of this section, "natural resource" includes any archaeological
6 artifacts, minerals, any aquatic life or wildlife or parts
7 thereof, including their eggs, and any land plants or parts
8 thereof, including seeds. Also for purposes of this section,
9 "historic property" means any building, structure, object,
10 districts, area, or site, including heiau and underwater site,
11 which is over fifty years old.

12 (c) Any criminal penalty for any violation of this chapter
13 or any rule adopted under this chapter shall not be deemed to
14 preclude the commission from bringing a civil legal action to
15 recover additional administrative fines and costs. Any civil
16 legal action against a person to recover administrative fines
17 and costs for any violation of this chapter or any rule adopted
18 under this chapter shall not be deemed to preclude the State
19 from pursuing any criminal action against that person.

20 (d) In any judicial proceeding to recover an
21 administrative penalty imposed, the commission need only show
22 that notice was given, that a hearing was held or the time



1 granted for requesting a hearing has run without such a request,
2 that an administrative penalty was imposed, and that the
3 administrative penalty remains unpaid.

4 **§ -10 Transfer.** Upon its return to the State, the
5 resources of Makua valley shall be held in trust as part of the
6 public land trust; provided that the State shall transfer
7 management and control of the valley to the sovereign native
8 Hawaiian entity upon its recognition by the United States and
9 the State of Hawaii.

10 All terms, conditions, agreements, and laws affecting the
11 Makua valley, including any ongoing obligations relating to the
12 clean-up of the valleys, shall remain in effect unless expressly
13 terminated.

14 **§ -11 Makua valley rehabilitation trust fund.** (a)
15 There is created in the state treasury a trust fund to be
16 designated as the Makua valley rehabilitation trust fund to be
17 administered by the department with the prior approval of the
18 commission. Subject to this chapter, all moneys received from
19 the federal government for the rehabilitation and environmental
20 restoration of the Makua valley, any moneys appropriated by the
21 legislature to the trust fund, any proceeds from administrative
22 fines imposed and collected under this chapter, and the interest



1 or return on investments earned from moneys in the trust fund,
2 shall be deposited in the trust fund and shall be used to
3 fulfill the purposes of this chapter.

4 (b) The commission may use moneys in the trust fund to
5 carry out the purposes of this chapter, including hiring
6 employees, specialists, and consultants necessary to complete
7 projects related to the purposes of this chapter.

8 (c) Moneys deposited into or appropriated to the trust
9 fund shall remain available until they are obligated or until
10 the trust fund is repealed.

11 (d) The trust fund shall be repealed on July 1, 2045. The
12 commission shall transfer to the credit of the state general
13 fund, all unexpended or unencumbered balances remaining in the
14 trust fund prior to June 30, 2045; provided that all unexpended
15 or unencumbered balances of federal moneys shall be disbursed in
16 accordance with applicable federal law.

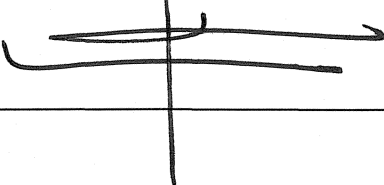
17 **§ -12 Severability.** If any provision of this chapter or
18 the application thereof to any person or circumstance is held
19 invalid, the invalidity shall not affect other provisions or
20 applications of this chapter that can be given effect without
21 the invalid provision or application, and to this end the
22 provisions of this chapter are severable."



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

5 SECTION 3. This Act shall take effect upon its approval.

6

INTRODUCED BY: 



Report Title:

Makua Valley; Reserve Commission Established

Description:

Establishes a Makua reserve commission to oversee preservation and restoration activities in Makua valley on Oahu.

