



1           §    **-3 Reservation of uses.**   (a)   The valley reserve shall  
2 be used solely and exclusively for the following purposes:

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

6           (2)   Preservation and protection of its archaeological,  
7                historical, and environmental resources;

8           (3)   Rehabilitation, revegetation, habitat restoration, and  
9                preservation; and

10          (4)   Education.

11          (b)   The valley reserve shall be reserved in perpetuity for  
12 the uses enumerated in subsection (a). Commercial uses shall be  
13 strictly prohibited.

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

19          (1)   Implement controls and permitted uses for the valley  
20                reserve;

21          (2)   Enforce this chapter;

22          (3)   Provide administrative support to the commission; and

1           (4) Authorize its employees as it deems reasonable and  
2           necessary, to serve and execute warrants, arrest  
3           offenders, or issue citations in all matters relating  
4           to enforcement of the laws and rules applicable to the  
5           valley reserve.

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

- 12           (1) One member shall be a member of Malama Makua;  
13           (2) One member shall be a member of Hui Malama O Makua;  
14           (3) One member shall be a representative of families that  
15           were evicted from the valley reserve or whose lands in  
16           the valley reserve were condemned by the federal  
17           government;  
18           (4) One member shall be appointed by the governor from a  
19           list provided by the Waianae coast community;  
20           (5) One member shall be a trustee or representative of the  
21           office of Hawaiian affairs;

1 (6) One member shall be the commanding officer of the  
2 United States Army, Pacific, or the commanding  
3 officer's designee;

4 (7) One member shall be the adjutant general of the State,  
5 or the adjutant general's designee;

6 (8) One member shall be the chairperson of the board of  
7 land and natural resources; and

8 (9) One member shall be appointed by the governor from a  
9 list provided by native Hawaiian organizations.

10 (b) The governor shall appoint the chairperson from among  
11 the members of the commission.

12 (c) The members of the commission shall serve without pay  
13 but shall be reimbursed for their actual and necessary expenses,  
14 including travel expenses, incurred in carrying out their  
15 duties.

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

19 (e) The commission, without regard to the requirements of  
20 chapter 76, may hire employees, including an executive director,  
21 necessary to perform its duties.

1           §    -6   **Responsibilities and duties of the commission.**   The  
2   general administration of the valley reserve shall rest with the  
3   commission.  In carrying out its duties and responsibilities,  
4   the commission:

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

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

9           (3)   Shall provide advice to the governor, the department,  
10               and other departments and agencies on any matter  
11               relating to the valley reserve;

12          (4)   Shall provide advice to the office of planning and the  
13               department of the attorney general on any matter  
14               relating to the federal conveyance of the valley  
15               reserve;

16          (5)   May enter into curator or stewardship agreements with  
17               appropriate Hawaiian cultural and spiritual community  
18               organizations for the perpetuation of native Hawaiian  
19               cultural, religious, and subsistence customs, beliefs,  
20               and practices for the purposes stated in section

21                       -3;

- 1           (6) Shall carry out those powers and duties otherwise  
2                   conferred upon the board of land and natural resources  
3                   and the land use commission with regard to  
4                   dispositions and approvals pertaining to the valley  
5                   reserve. All powers and duties of the board of land  
6                   and natural resources and the land use commission  
7                   concerning dispositions and approvals pertaining to  
8                   the valley reserve are transferred to the commission;
- 9           (7) Shall carry out those powers and duties concerning the  
10                   valley reserve otherwise conferred upon the city and  
11                   county of Honolulu by chapter 205A. The powers and  
12                   duties of the city and county of Honolulu and its  
13                   agencies concerning coastal zone dispositions and  
14                   approvals pertaining to the valley reserve are  
15                   transferred to the commission;
- 16           (8) Shall carry out those powers and duties concerning the  
17                   valley reserve otherwise conferred upon the island  
18                   burial councils and the department with regard to  
19                   proper treatment of burial sites and human skeletal  
20                   remains found in the valley reserve;
- 21           (9) Shall adopt rules in accordance with chapter 91 that  
22                   are necessary for the purposes of this chapter and

1 shall maintain a record of its proceedings and  
2 actions; and

3 (10) May delegate to the executive director or employees of  
4 the commission, by formal commission action, such  
5 power and authority vested in the commission by this  
6 chapter as the commission deems reasonable and proper  
7 for the effective administration of this chapter.

8 § -7 **Interim activities of the commission.** Prior to the  
9 return of the valley reserve from the United States Army to the  
10 State, the commission may enter into discussions with the United  
11 States Army to facilitate the expedient return of the valley  
12 reserve upon the expiration of the United States Army's lease.

13 § -8 **Penalty.** Any person who violates any of the laws  
14 or rules applicable to the valley reserve shall be guilty of a  
15 petty misdemeanor and shall be fined not more than \$1,000 or  
16 imprisoned not more than thirty days, or both, for each offense.  
17 Each day of each violation shall be deemed a separate offense.

18 § -9 **General administrative penalties.** (a) Except as  
19 otherwise provided by law, the commission may set, charge, and  
20 collect administrative fines, or bring legal action to recover  
21 the administrative costs of the commission or the department, or  
22 payment for damages, or for the cost to correct damages

1 resulting from a violation of this chapter or any rule adopted  
2 thereunder. The administrative fines shall be as follows:

3 (1) For a first violation, by a fine of not more than  
4 \$10,000;

5 (2) For a second violation within five years of a previous  
6 violation, by a fine of not more than \$15,000; and

7 (3) For a third or subsequent violation within five years  
8 of the last violation, by a fine of not more than  
9 \$25,000.

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

21 (c) Any criminal penalty for any violation of this chapter  
22 or any rule adopted under this chapter shall not be deemed to



1 preclude the commission from bringing a civil legal action to  
2 recover additional administrative fines and costs. Any civil  
3 legal action against a person to recover administrative fines  
4 and costs for any violation of this chapter or any rule adopted  
5 under this chapter shall not be deemed to preclude the State  
6 from pursuing any criminal action against that person.

7 (d) In any judicial proceeding to recover an  
8 administrative penalty imposed, the commission need only show  
9 that notice was given, that a hearing was held or the time  
10 granted for requesting a hearing has run without such a request,  
11 that an administrative penalty was imposed, and that the  
12 administrative penalty remains unpaid.

13 § -10 **Transfer.** Upon its return to the State, the  
14 resources of the valley reserve shall be held in trust as part  
15 of the public land trust; provided that the State shall transfer  
16 management and control of the valley reserve to the sovereign  
17 native Hawaiian entity upon its recognition by the United States  
18 and the State.

19 All terms, conditions, agreements, and laws affecting the  
20 valley reserve, including any ongoing obligations relating to  
21 the clean-up of the valley reserve, shall remain in effect  
22 unless expressly terminated.

1           §    -11   **Makua valley rehabilitation trust fund.**   (a)

2   There is created in the state treasury a trust fund to be  
3   designated as the Makua valley rehabilitation trust fund to be  
4   administered by the department with the prior approval of the  
5   commission. Subject to this chapter:

6           (1) All moneys received from the federal government for  
7               the rehabilitation and environmental restoration of  
8               the valley reserve;

9           (2) Any moneys appropriated by the legislature to the  
10            trust fund;

11           (3) Any proceeds from administrative fines imposed and  
12            collected under this chapter; and

13           (4) The interest or return on investments earned from  
14            moneys in the trust fund;

15 shall be deposited in the trust fund and shall be used to  
16 fulfill the purposes of this chapter.

17           (b) The commission may use moneys in the trust fund to  
18 carry out the purposes of this chapter, including hiring  
19 employees, specialists, and consultants necessary to complete  
20 projects related to the purposes of this chapter.

1 (c) Moneys deposited into or appropriated to the trust  
2 fund shall remain available until they are obligated or until  
3 the trust fund is repealed.

4 (d) The trust fund shall be repealed on July 1, 2045. The  
5 commission shall transfer to the credit of the state general  
6 fund, all unexpended or unencumbered balances remaining in the  
7 trust fund on June 30, 2045; provided that all unexpended or  
8 unencumbered balances of federal moneys shall be disbursed in  
9 accordance with applicable federal law.

10 § -12 **Severability.** If any provision of this chapter or  
11 the application thereof to any person or circumstance is held  
12 invalid, the invalidity shall not affect other provisions or  
13 applications of this chapter that can be given effect without  
14 the invalid provision or application, and to this end the  
15 provisions of this chapter are severable."

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

20 SECTION 3. This Act shall take effect on January 1, 2020.

**Report Title:**

Makua Valley; Reserve Commission Established

**Description:**

Establishes the Makua valley reserve commission to oversee preservation and restoration activities in Makua valley on Oahu.  
(SD2)