

JAN 23 2009

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 on the island of
15 Oahu as Makua valley, including the three ahupuaa of
16 Kahanahaiki, Makua, and Koi'ahi.



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 those of its employees as it deems
2 reasonable and necessary, to serve and execute
3 warrants, arrest offenders, or issue citations in all
4 matters relating to enforcement of the laws and rules
5 applicable to the 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 chapters 76 and 77, may hire employees, including an executive
21 director, 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 -3;
- 21 (6) Shall carry out those powers and duties otherwise
22 conferred upon the board of land and natural resources



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



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

6 § -7 **Interim activities of the commission.** Prior to the
7 return of the valley reserve from the United States Army to the
8 State, the commission may enter into discussions with the United
9 States Army to facilitate the expedient return of the valley
10 reserve upon the expiration of the United States Army's lease.

11 § -8 **Penalty.** Any person who violates any of the laws
12 or rules applicable to the valley reserve shall be guilty of a
13 petty misdemeanor and shall be fined not more than \$1,000 or
14 imprisoned not more than thirty days, or both, for each offense.
15 Each day of each violation shall be deemed a separate offense.

16 § -9 **General administrative penalties.** (a) Except as
17 otherwise provided by law, the commission may set, charge, and
18 collect administrative fines, or bring legal action to recover
19 the administrative costs of the commission or the department, or
20 payment for damages, or for the cost to correct damages
21 resulting from a violation of this chapter or any rule adopted
22 thereunder. The administrative fines shall be as follows:



1 (1) For a first violation, by a fine of not more than
2 \$10,000;

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

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

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

19 (c) Any criminal penalty for any violation of this chapter
20 or any rule adopted under this chapter shall not be deemed to
21 preclude the commission from bringing a civil legal action to
22 recover additional administrative fines and costs. Any civil



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

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

11 § -10 **Transfer.** Upon its return to the State, the
12 resources of the valley reserve shall be held in trust as part
13 of the public land trust; provided that the State shall transfer
14 management and control of the valley reserve to the sovereign
15 native Hawaiian entity upon its recognition by the United States
16 and the State.

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

21 § -11 **Makua valley rehabilitation trust fund.** (a)
22 There is created in the state treasury a trust fund to be



1 designated as the Makua valley rehabilitation trust fund to be
2 administered by the department with the prior approval of the
3 commission. Subject to this chapter, all moneys received from
4 the federal government for the rehabilitation and environmental
5 restoration of the valley reserve, any moneys appropriated by
6 the legislature to the trust fund, any proceeds from
7 administrative fines imposed and collected under this chapter,
8 and the interest or return on investments earned from moneys in
9 the trust fund, shall be deposited in the trust fund and shall
10 be used to fulfill the purposes of this chapter.

11 (b) The commission may use moneys in the trust fund to
12 carry out the purposes of this chapter, including hiring
13 employees, specialists, and consultants necessary to complete
14 projects related to the purposes of this chapter.

15 (c) Moneys deposited into or appropriated to the trust
16 fund shall remain available until they are obligated or until
17 the trust fund is repealed.

18 (d) The trust fund shall be repealed on July 1, 2045. The
19 commission shall transfer to the credit of the state general
20 fund, all unexpended or unencumbered balances remaining in the
21 trust fund prior to June 30, 2045; provided that all unexpended



1 or unencumbered balances of federal moneys shall be disbursed in
2 accordance with applicable federal law.

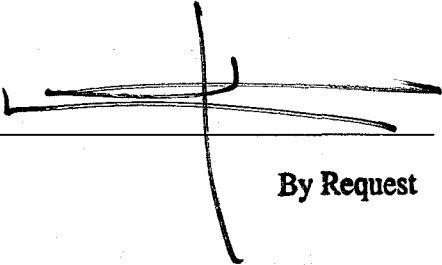
3 § -12 Severability. If any provision of this chapter or
4 the application thereof to any person or circumstance is held
5 invalid, the invalidity shall not affect other provisions or
6 applications of this chapter that can be given effect without
7 the invalid provision or application, and to this end the
8 provisions of this chapter are severable."

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

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

14

INTRODUCED BY:


By Request



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.

