

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 the valley's
5 archaeological, historical, and environmental
6 resources;

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

9 (4) Education.

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

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

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

20 (2) Enforce this chapter;

21 (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, or the chairperson's
8 designee; and

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

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

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

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

20 (e) The commission, without regard to the requirements of
21 chapter 76, may hire employees, including an executive director,
22 necessary to carry out 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 provision of
14 this chapter or any rule adopted thereunder 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
17 offense. Each day of each violation shall be deemed a separate
18 offense.

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



1 to recover payment for damages, or for the cost to correct
2 damages resulting from a violation of this chapter or any rule
3 adopted thereunder. The administrative fines shall be as
4 follows:

- 5 (1) For a first violation, a fine of not more than
6 \$10,000;
- 7 (2) For a second violation within five years of a previous
8 violation, a fine of not more than \$15,000; and
- 9 (3) For a third or subsequent violation within five years
10 of the last violation, a fine of not more than
11 \$25,000.

12 (b) In addition, an administrative fine of up to \$5,000
13 may be levied for each natural resource or any historic property
14 taken, killed, injured, broken, or damaged in violation of this
15 chapter or any rule thereunder.

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



1 thereunder shall not be deemed to preclude the State from
2 pursuing any criminal action against that person.

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

9 (e) For the purposes of this section:

10 "Historic property" means any building, structure, object,
11 districts, area, or site, including heiau and underwater sites,
12 which is over fifty years old.

13 "Natural resource" includes any archaeological artifacts;
14 minerals; any aquatic life or wildlife or parts thereof,
15 including eggs; and any land plants or parts thereof, including
16 seeds.

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



1 All terms, conditions, agreements, and laws affecting the
2 valley reserve, including any ongoing obligations relating to
3 the clean-up of the valley reserve, shall remain in effect
4 unless expressly terminated.

5 **§ -11 Makua valley rehabilitation trust fund. (a)**

6 There is created in the state treasury a trust fund to be
7 designated as the Makua valley rehabilitation trust fund to be
8 administered by the department with the prior approval of the
9 commission. Subject to this chapter:

10 (1) All moneys received from the federal government for
11 the rehabilitation and environmental restoration of
12 the valley reserve;

13 (2) Any moneys appropriated by the legislature to the
14 trust fund;

15 (3) Any proceeds from administrative fines imposed and
16 collected under this chapter; and

17 (4) The interest or profit on investments earned from
18 moneys in the trust fund,

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

21 (b) The commission may use moneys in the trust fund to
22 carry out the purposes of this chapter, including hiring



1 employees, specialists, and consultants necessary to complete
2 projects related to the purposes of this chapter.

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

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

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

18 SECTION 2. This Act shall not obstruct, deny, or revoke
19 any rights or privileges heretofore exercised by the United
20 States Army in its use of Makua valley throughout the term of
21 its lease.



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

2



INTRODUCED BY: _____

JAN 26 2011



Report Title:

Makua Valley; Reserve Commission

Description:

Establishes the Makua Valley Reserve Commission to oversee preservation and restoration activities in Makua Valley on Oahu.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

