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# A BILL FOR AN ACT

RELATING TO MAKUA VALLEY.

**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 Koiahi.

17 § -3 Reservation of uses. (a) The valley reserve shall  
18 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 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 who  
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 -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  
16          appropriate island burial council and the department  
17          with regard to proper treatment of burial sites and  
18          human skeletal 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 provision of  
12          this chapter or any rule adopted thereunder 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  
15          offense. Each day of each violation shall be deemed a separate  
16          offense.

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



1 adopted thereunder. The administrative fines shall be as  
2 follows:

- 3 (1) For a first violation, a fine of not more than  
4 \$10,000;
- 5 (2) For a second violation within five years of a previous  
6 violation, 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, 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 natural resource or any historic property  
12 taken, killed, injured, broken, or damaged in violation of this  
13 chapter or any rule thereunder.

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





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

7 (e) For the purposes of this section:

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

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

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

21 All terms, conditions, agreements, and laws affecting the  
22 valley reserve, including any ongoing obligations relating to



1 the clean-up of the valley reserve, shall remain in effect  
2 unless expressly terminated.

3       **§ -11 Makua valley rehabilitation trust fund. (a)**

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

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

11       (2) Any moneys appropriated by the legislature to the  
12          trust fund;

13       (3) Any proceeds from administrative fines imposed and  
14          collected under this chapter; and

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

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

19       (b) The commission may use moneys in the trust fund to  
20 carry out the purposes of this chapter, including hiring  
21 employees, specialists, and consultants necessary to complete  
22 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 general fund of the State, all  
6 unexpended or unencumbered balances remaining in the trust fund  
7 on June 30, 2045; provided that all unexpended or unencumbered  
8 balances of federal moneys shall be disbursed in accordance with  
9 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. This Act shall not obstruct, deny, or revoke  
17 any rights or privileges heretofore exercised by the United  
18 States Army in its use of Makua valley throughout the term of  
19 its lease.

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

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INTRODUCED BY:

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JAN 18 2013



# H.B. NO. 509

**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.*

