

STAND. COM. REP. NO.

1184

Honolulu, Hawaii

APR 0 1 2013

RE: S.C.R. No. 102

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawaii

Madam:

Your Committees on Water and Land and Judiciary and Labor, to which was referred S.C.R. No. 102 entitled:

"SENATE CONCURRENT RESOLUTION REQUESTING THE AUDITOR TO CONDUCT AN AUDIT OF THE KAPIOLANI PARK TRUST TO EVALUATE ITS GOVERNANCE STRUCTURE AND IDENTIFY THE PERMISSIBLE USES OF THE PARK LANDS, INCLUDING DELINEATING ANY LIMITATIONS ON COMMERCIAL OR OTHER INCONSISTENT USES THAT MAY FALL OUTSIDE THE SCOPE OF THE TRUST'S PURPOSE OR MAY CONSTITUTE WASTE OF THE TRUST PROPERTY,"

beg leave to report as follows:

The purpose and intent of this measure is to request the Auditor to conduct an audit of the Kapiolani Park Trust to evaluate its governance structure and identify the permissible uses of the park lands, including delineating any limitations on commercial or other inconsistent uses that may fall outside the scope of the trust's purpose or may constitute waste of the trust property.

Your Committees received testimony in support of this measure from the Kapiolani Park Preservation Society, Kapiolani Park Advisory Council, and Oahu Park Conservancy.

Your Committees find that Kapiolani Park is a popular venue for various public functions, including amateur sporting events, cultural fairs, and family gatherings that are all well attended by Hawaii residents and visitors. There is a significant public interest in maintaining the existing nature and character of



Kapiolani Park through the preservation of its open space for the public's benefit in perpetuity and of the Park's historic value.

The recent proposal from the City and County of Honolulu to use land next to the Waikiki Aquarium to develop a new ocean safety substation has raised concerns of whether the proposal is a permissible use of park property under the trust instrument. A decision on the proposal as a permissible use will likely be based on whether the use of park property for an ocean safety substation demonstrates a sufficient nexus with the use and care of the park. This decision has the potential of establishing a precedent regarding how the park space may be used in the future.

Your Committees further find that defining commercial and other inconsistent uses and burdens and outlining limitations on such uses within the park should be addressed to better enable the general public, as sole beneficiary, and the members of the Honolulu City Council, as trustees, to differentiate between acceptable and non-acceptable public and private uses of Kapiolani Park and maintain transparency and accountability among the trustees and beneficiaries.

Your Committees request that the trustees of the Kapiolani Park Trust seek guidance from the courts prior to making any decisions involving usage of the Kapiolani Park land in order to ensure that any use or lease is congruent with the intended purpose of the Kapiolani Park Trust.

As affirmed by the records of votes of the members of your Committees on Water and Land and Judiciary and Labor that are attached to this report, your Committees concur with the intent and purpose of S.C.R. No. 102 and recommend that it be referred to the Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committees on Water and Land
and Judiciary and Labor,



CLAYTON HEE, Chair



MALAMA SOLOMON, Chair



