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# 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.

1           WHEREAS, Kapiolani Park is a popular venue for various  
2 public functions, including amateur sporting events, cultural  
3 fairs, and family gatherings that are all well attended by  
4 Hawaii residents and visitors; and

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6           WHEREAS, there is a significant public interest in  
7 maintaining the existing nature and character of Kapiolani Park  
8 through the preservation of its open space for the public's  
9 benefit in perpetuity as well as the park's historic value; and

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11           WHEREAS, in 1896, Kapiolani Park was established as a  
12 public charitable trust to be maintained as a free public park  
13 and recreation ground for its sole beneficiaries, the members of  
14 the general public; and

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16           WHEREAS, the members of the Honolulu City Council act as  
17 trustees of the Kapiolani Park Trust and are responsible for  
18 faithfully executing trust duties as directed under the trust  
19 instrument; and

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21           WHEREAS, Kapiolani Park is among the most valuable land in  
22 the State due to its vast expanse of open space, close proximity  
23 to Waikiki Beach, and frequent exposure to a high volume of  
24 residents and visitors; and

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26           WHEREAS, these factors contribute to frequent pressure from  
27 private entities and the City and County of Honolulu and its  
28 permittees who seek opportunities to conduct commercial or other



1 activities that may be inconsistent or contrary to the purposes  
2 of the trust on Kapiolani Park lands; and

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4 WHEREAS, the Hawaii Supreme Court held in Kapiolani Park  
5 Preservation Society v. City and County of Honolulu, 69 Haw.  
6 569, 751 P.2d 1022 (1988), that it is not within the power of  
7 any legislative body to terminate a charitable trust, change its  
8 administration on grounds of expediency, or seek to control or  
9 amend the disposition of its property under cy pres doctrines;  
10 and

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12 WHEREAS, furthermore, the court held that the City and  
13 County of Honolulu had no power to execute leases or deeds for  
14 part of or all of Kapiolani Park land; and

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16 WHEREAS, previous questions regarding the use of the park  
17 lands have led to establishing a standard whereby any use must  
18 demonstrate a nexus with the use and care of Kapiolani Park; and

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20 WHEREAS, in City and County of Honolulu v. Warren Price,  
21 III et al., (1991), the Circuit Court judge held that the City's  
22 use of Kapiolani Park for a nursery was a permissible use under  
23 the trust "so long as the nursery and plants [stored there] are  
24 used for city park purposes"; and

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26 WHEREAS, the State has a significant interest in ensuring  
27 that the Kapiolani Park Trust is executed in a manner that is  
28 consistent with the trust's purpose; and

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30 WHEREAS, furthermore, the State has a significant interest  
31 in ensuring that the decisions made by the Honolulu City Council  
32 regarding the park's permissible uses are made in the best  
33 interests of its beneficiaries and are consistent with the  
34 limitations of the trust instrument and the park's carrying  
35 capacity; and

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37 WHEREAS, defining commercial and other inconsistent uses  
38 and burdens and outlining limitations on such uses within the  
39 park should be addressed to better enable the general public, as  
40 sole beneficiary, and the members of the Honolulu City Council,  
41 as trustees, to differentiate between acceptable public and  
42 private uses of Kapiolani Park and maintain transparency and  
43 accountability among the trustees and beneficiaries; now,  
44 therefore,



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2 BE IT RESOLVED by the Senate of the Twenty-seventh  
3 Legislature of the State of Hawaii, Regular Session of 2013, the  
4 House of Representatives concurring, that the Auditor is  
5 requested to conduct an audit of the Kapiolani Park Trust to  
6 evaluate its governance structure and identify the permissible  
7 uses of the park lands, including delineating any limitations on  
8 commercial or other inconsistent uses that may fall outside the  
9 scope of the trust's purpose or may constitute waste of the  
10 trust property; and

11  
12 BE IT FURTHER RESOLVED that the Auditor is requested to  
13 report findings and recommendations, including any proposed  
14 legislation, to the Legislature no later than twenty days prior  
15 to the convening of the Regular Session of 2014; and

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17 BE IT FURTHER RESOLVED that certified copies of this  
18 Concurrent Resolution be transmitted to the Auditor, Mayor of  
19 the City and County of Honolulu, Chairperson of the Honolulu  
20 City Council, Director of the Department of Parks and Recreation  
21 of the City and County of Honolulu, and Board President of the  
22 Kapiolani Park Preservation Society.

