

**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII 96813

Mike Gabbard, Chair  
Nestor R. Garcia, Vice-Chair  
Romy M. Cachola, Trustee  
Donovan M. Dela Cruz, Trustee  
Charles Djou, Trustee  
Ann H. Kobayashi, Trustee  
Barbara Marshall, Trustee  
Gary H. Okino, Trustee  
Rod Tam, Trustee

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## MINUTES

REGULAR MEETING  
TUESDAY, SEPTEMBER 7, 2004

COUNCIL COMMITTEE MEETING ROOM  
2<sup>ND</sup> FLOOR, HONOLULU HALE  
HONOLULU, HAWAII 96813

### CALL TO ORDER

The meeting of the Kapiolani Park Trust was called to order by Trust Chair Gabbard at 2:41 p.m. with Trustees Djou, Garcia, Marshall and Okino present. Trustees Cachola and Kobayashi were not present at this juncture. Trustee Tam was excused from the meeting. Trustee Dela Cruz was not present at the meeting.

### STAFF PRESENT

Ron Boyer, Senior Advisor to Trust Chair Gabbard  
Douglas Chun, Analyst, Office of Council Services  
Stan Kuniyuki, Attorney, Office of Council Services  
Lori Sunakoda, Deputy Corporation Counsel, Department of the Corporation Counsel  
assigned to the Kapiolani Park Trust  
Dawn Spurlin, Deputy Corporation Counsel, Department of the Corporation Counsel  
assigned to the Committee on Parks  
Tess Morimoto, Committee Clerk, Office of the City Clerk

### ORDER OF BUSINESS

### APPROVAL OF MINUTES

The minutes of the May 13, 2003; September 5, 2003; and July 27, 2004 meetings of the Kapiolani Park Trust were approved as circulated.

AYES: GABBARD (Chair), DJOU, GARCIA, MARSHALL, OKINO - 5.  
NOES: None.  
EXCUSED: TAM - 1.  
ABSENT: CACHOLA, DELA CRUZ, KOBAYASHI - 3.

FOR ACTION

1. APPROVAL OF THE FIFTH (TRIENNIAL) REPORT OF THE KAPIOLANI PARK TRUSTEES.

The following individual provided general comments on Kapiolani Park:

Lillian Hong

At 2:43 p.m., Trustee Cachola arrived at the meeting.

Trust Chair Gabbard remarked that the report was drafted by the Office of Council Services and subsequently evaluated by the Department of the Corporation Counsel. It was distributed to all Trustees for review as Communication D-819 (2004) on August 31, 2004, and must be signed by a majority of the Trustees prior to its submittal to the Probate Court.

The Trustees were provided with an oral summary of Court requirements relating to the report; the Court filing and hearing process; and an overview of the contents of the report.

Responding to a query about substantive actions taken by the Trustees during the three-year period covered by the Fifth Report of the Trustees, Ms. Sunakoda highlighted the Petition For Instructions currently pending before the Probate Court relating to the legality of the Honolulu Zoo art fence and craft fairs at Kapiolani Park. She also noted that an informational briefing on the Trust and Trust matters was conducted in May 2003 due to a significant change in the Trust membership resulting from the election of new councilmembers.

The Fifth (Triennial) Report of the Trustees of Kapiolani Park approved for submittal to the Court.

AYES: GABBARD (Chair), CACHOLA, DJOU, GARCIA, MARSHALL, OKINO - 6.

NOES: None.

EXCUSED: TAM - 1.

ABSENT: DELA CRUZ, KOBAYASHI - 2.

EXECUTIVE SESSION

At 2:50 p.m., the Committee resolved into Executive Session (Ayes: Gabbard (Chair), Cachola, Djou, Garcia, Marshall, Okino - 6; Noes: None; Excused: Tam - 1; Absent: Dela Cruz, Kobayashi - 2).

(At 3:00 p.m., Trustee Kobayashi arrived at the Executive Session.)

ADJOURNMENT

There being no further business, the meeting was adjourned at 3:15 p.m.

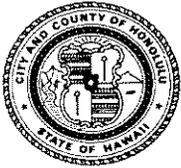
Respectfully submitted,



DENISE C. DE COSTA  
City Clerk

tm  
DATE APPROVED

April 28, 2005



CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII 96813

KAPIOLANI PARK TRUST

Mike Gabbard, Chair  
Nestor R. Garcia, Vice-Chair  
Romy M. Cachola, Trustee  
Donovan M. Dela Cruz, Trustee  
Charles K. Djou, Trustee  
Barbara Marshall, Trustee  
Ann H. Kobayashi, Trustee  
Gary H. Okino, Trustee  
Rod Tam, Trustee

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## A G E N D A

### KAPIOLANI PARK TRUST MEETING

TUESDAY, SEPTEMBER 7, 2004  
COMMITTEE MEETING ROOM  
IMMEDIATELY FOLLOWING THE  
2:30 P.M. PARKS COMMITTEE MEETING

#### NOTICE:

Persons wishing to speak on items listed on the agenda are requested to register by the commencement of the meeting in the interest of time management as follows:

- a. use the On-Line City Council Speaker Registration form available at <http://www.honolulu.gov/council/agendas.htm>;
- b. send a fax to 527-5733 indicating your desire to speak, along with your name, address, phone number and subject matter. Written testimonies may also be faxed to 527-5733;
- c. fill out the registration form in person; or
- d. call 527-5134.

Each speaker is limited to a **three-minute** presentation.

Persons who have not registered to speak should raise their hands at the time the item is announced and they will be given an opportunity to speak following oral testimonies of the registered speakers.

Any disabled person requiring special assistance should call 527-5134 for details at least one day prior to the meeting date.

**FOR APPROVAL:** MINUTES OF MAY 13, 2003; SEPTEMBER 5, 2003;  
& JULY 27, 2004

**FOR ACTION:**

1. **APPROVAL OF THE FIFTH (TRIENNIAL) REPORT OF THE KAPIOLANI PARK TRUSTEES**

Related Communication

D-819 from Lori K. K. Sunakoda, Deputy Corporation Counsel, submitting the proposed Fifth Report of the Trustees of the Kapiolani Park for the period July 1, 2001 through June 30, 2004.

2. **EXECUTIVE SESSION**

The Executive Session is pursuant to Hawaii Revised Statutes Section 92-5(a) (4), to consult in a closed meeting with the attorneys for the Kapiolani Park Trustees on questions and issues pertaining to the Trustees' powers, duties, privileges, immunities and/or liabilities.



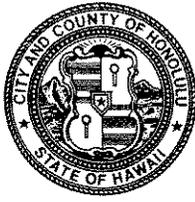
MIKE GABBARD, Chair  
Kapiolani Park Trust

DEPARTMENT OF THE CORPORATION COUNSEL  
**CITY AND COUNTY OF HONOLULU**

CITY CLERK  
HONOLULU, HAWAII

530 SOUTH KING STREET, ROOM 110 • HONOLULU, HAWAII 96813  
TELEPHONE: (808) 523-4859 • FAX: (808) 523-4583 • INTERNET: www.co.honolulu.hi.us

AUG 31 1 29 PM '04



JEREMY HARRIS  
MAYOR

DAVID Z. ARAKAWA  
CORPORATION COUNSEL

RECEIVED

August 31, 2004

Honorable Mike Gabbard  
Chair  
Trustees of the Kapiolani  
Park Trust  
City Council  
Honolulu Hale  
Honolulu, Hawaii 96813

RECEIVED  
2004 AUG 31 A 11:40  
CITY CLERK  
HONOLULU, HAWAII

Dear Trustee Chair Gabbard:

Re: Meeting of the Trustees of Kapiolani Park  
Trust Scheduled for September 7, 2004 -  
Approval of the Fifth (Triennial) Report of  
the Trustees

Please find attached the proposed *Fifth Report of the Trustees of the Kapiolani Park Trust* regarding the Trustees' administration of the Trust, including any significant events and/or issues concerning the Trust Property and any actions taken by the Trustees, for the period commencing July 1, 2001 through June 30, 2004.

As we previously indicated, pursuant to the *Amended Findings of Fact and Conclusions of Law and Decision and Order*, issued by the Circuit Court of the First Circuit, State of Hawaii, on June 28, 1991, in City and County of Honolulu v. Warren Price III and Kapiolani Park Preservation Society, S.P. No. 89-0015, the Trustees are required to file a Report with the State Circuit Court regarding the administration of the Trust every three years.

Dept. Com. No. 819  
PARKS (KPT)

Honorable Mike Gabbard  
Page 2  
August 31, 2004

The *Special Rules of the Council as Trustees of Kapiolani Park (Rev.)* requires the Trustee Chair to prepare the Triennial Report of the Trustees regarding administration of the Trust, and following approval of such report by a majority of the Trustees at a meeting of the Trustees, file the Report with the State Circuit Court.

The Report of the Trustees is required to be approved and signed by a majority of the Trustees prior to submittal to the Court and must be accompanied by a "Petition" requesting formal approval of the Report of the Trustees, by the court. (The Petition is a court pleading, which will be prepared by our office.) Following submittal of the Petition and attached Report of the Trustees, the Court will then schedule the Petition for a hearing and notify the parties of same.

Please do not hesitate to contact me at extension 5249 should you have any questions regarding the above.

Very truly yours,



LORI K. K. SUNAKODA  
Deputy Corporation Counsel

APPROVED:

*Deane T. Kawachi*

*for* DAVID Z. ARAKAWA  
Corporation Counsel

LKKS:ct  
Attach.

L-CCL.1

## FIFTH REPORT OF THE TRUSTEES OF THE KAPIOLANI PARK TRUST

The Trustees of the Kapiolani Park Trust hereby submit their Fifth Report for the period from July 1, 2001 to June 30, 2004. The Trustees are required to file a report with this Court once every three years.

The following are the significant events and issues concerning the Trust Property and the actions taken by the Trustees.

### I. INFORMATIONAL BRIEFING

A number of the Trustees were recently appointed by virtue of their election to the Honolulu City Council commencing in January 2003, and accordingly, wished to familiarize themselves with the Trust and their duties as Trustees. Therefore, on May 13, 2003, the Department of the Corporation Counsel conducted an informational briefing for the Trustees at the Trustees' meeting. The informational briefing consisted of an overview of the history of the Kapiolani Park Trust, including the transfer of Trust property to the City by Executive Order and the Circuit Court ruling (Amended Findings of Fact and Conclusions of Law and Decision and Order, filed June 28, 1991, in City and County of Honolulu v. Warren Price III and Kapiolani Park Preservation Society, S.P. No. 89-0015, Circuit Court of the First Circuit, State of Hawaii (the "1991 Order")), which appointed elected members of the Honolulu City Council as successor Trustees of the Kapiolani Park Trust, established the duties and responsibilities<sup>1</sup> of the Trustees, clarified whether certain uses of Trust property and location of certain facilities on Trust property were proper and consistent with the terms of the Trust, and determined that day-to-day operations and management of Kapiolani Park and other Trust property shall remain with the City's executive branch, and pending issues relating to the Trust.

The informational briefing also included an overview of the role of the State Attorney General, acting as *parens patriae*. The Trustees were informed that the role of the State Attorney General, acting as *parens patriae*, is to represent the interests of the general public (the beneficiaries of public charitable trusts such as the Kapiolani Park Trust), and to monitor and initiate enforcement action when necessary in order to ensure proper administration of the Trust.

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<sup>1</sup>Pursuant to the 1991 Order, the Court concluded that the role of the Trustees is limited to administering the provisions of the Trust to ensure that those portions of Kapiolani Park, which are part of the Trust, are kept within the Trust, in perpetuity, and to ensure that the Trust lands are used only for park purposes within the terms of the Trust, and to file a report with the Court on the Trustees' administration of the Trust every three years.

The Trustees were also briefed regarding (1) their duty to seek instructions from the Probate Court where an issue has arisen as to whether an activity occurring on Trust property is consistent with the terms of the Trust and (2) the current status of the Petition<sup>2</sup> previously filed on behalf of the Trustees to obtain a determination from the Probate Court regarding whether the Honolulu Zoo Art Fence and craft fairs at Kapiolani Park are permissible activities consistent with the terms of the Trust. With respect to the pending Petition, the issues before the Court are whether those activities are legal and whether the commercial aspect of the activities constitutes an acceptable use of Trust property. The Trustees were informed that the Department of the Corporation Counsel would advise them of any new dispositive developments in the case (i.e., scheduling and convening of a hearing on the Petition and issuance of a decision and order regarding the issues set forth in the Petition for Instructions).

In response to a question raised regarding the role of Trustees in approving certain uses of Trust property, e.g., “Sunset on the Beach” events and cultural festivals, the Trustees were informed that the City’s Department of Parks and Recreation was responsible for the day-to-day management of the Trust property, including determining appropriate activities on the property, subject to the Trustees taking action, if there is a question as to whether an activity violates or is otherwise inconsistent with the terms of the Trust.

## **II. PROPOSED TRANSIT STATION**

In response to concerns about a proposed transit station at Kapiolani Park for the City’s Bus Rapid Transit (“BRT”) project, the Trustees called a meeting on September 5, 2003 to assess the impact of the proposed transit station on Kapiolani Park. Representatives of the Kapiolani Park Advisory Council expressed concern that BRT commuters would park at the Honolulu Zoo parking lot, and that the proposed transit station would constitute a use of Trust lands for “municipal purposes” rather than for park purposes.

The Kapiolani Park Advisory Council presented testimony asserting that the transit station would be located on Trust Property; however, DTS representatives stated that the proposed transit station would not be located on Trust property.

Representatives of the City’s Department of Transportation Services (“DTS”) conducted a presentation on the various design features and considerations regarding the proposed transit station for the Trustees and stated that the proposed transit station would not be located on Trust Property.

On September 9, 2003, the Trustees received a letter from the Department of the State Attorney General, acting as *parens patriae*, opining that the proposed location for the BRT transit station is not on Trust property and therefore would not be subject to the restrictions of the Trust.

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<sup>2</sup>In the Matter of the Kapiolani Park Trust; T. No. 03-1-0018 (Trust) (CKH).

In response to other concerns raised regarding the volume of buses and passengers expected to use the transit station, DTS representatives testified that based on the estimated number of passengers and buses using the station each hour, the transit station would not be a major bus terminal.

Respectfully submitted,

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Mike Gabbard, Trustee Chair

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Romy M. Cachola, Trustee

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Donovan M. Dela Cruz, Trustee

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Charles K. Djou, Trustee

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