

STAND. COM. REP. NO.

3206

Honolulu, Hawaii

APR 20 2010

RE: GOV. MSG. NO. 340

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2010
State of Hawaii

Madam:

Your Committee on Water, Land, Agriculture, and Hawaiian Affairs, to which was referred Governor's Message No. 340, submitting for study and consideration the nomination of:

LAND USE COMMISSION

G.M. No. 340 RONALD I. HELLER,
for a term to expire 6-30-2014,

begs leave to report as follows:

Your Committee has reviewed the personal history, resume, and statements of the nominee, and finds Ronald I. Heller to have the necessary qualifications for the Land Use Commission.

Testimony in support of the nomination was submitted by one state agency, one state commission, three organizations, and twenty-six individuals. Written testimony presented to the Committee may be reviewed on the Legislature's website.

Mr. Heller is nominated to be an at-large member of the Land Use Commission. He received his Bachelor's degree in Economics and Philosophy, his Master's degree in Business Administration, and his Juris Doctor from the University of Michigan. He is presently employed as an attorney at Torkildson, Katz, Moore, Hetherington & Harris and is also a certified public accountant. He has served on numerous boards and committees, most recently as the Vice-Chair of the Tax Review Commission, the President of the Hawaii Society of Certified Public Accountants, and as a Councilmember of the American Institute of Certified Public



Accountants. He has been continuously listed in "The Best Lawyers in America" under the tax law section since 1993.

Mr. Heller believes that one of the main responsibilities of a Land Use Commissioner is to follow the law. Each decision requires a careful analysis of what the facts are, how the law applies to those facts, and what result the law requires. Although his professional experience does not qualify him as a land use expert, he has litigated a variety of cases which required the ability to ascertain the facts, research and analyze the law, determine how the law applies to those facts, and explain why a particular decision is the correct one under the law. He understands this is the same process the Land Use Commission uses for contested cases. However, he also understands the difference between being an advocate and being a decision maker. His experiences as an arbitrator have impressed upon him the importance of a decision maker being fair, open-minded, and impartial. Additionally, Mr. Heller recognizes that the quasi-judicial process of the Land Use Commission requires Commissioners to consider the impacts of specific cases on those persons and organizations who may not have attorneys and consultants to represent them. The law states clear policy objectives for the Land Use Commission and Mr. Heller believes that these policy objectives are imperative to Land Use Commission decisions.

Your Committee was referred a total of four nominees to the Land Use Commission this Regular Session for advise and consent. Three nominees are current Land Use Commissioners and have worked in construction and housing developments. The fourth nominee, Mr. Heller, is a civil litigation attorney with no experience in land issues who will be replacing a current Commissioner who is an attorney in construction litigation. Of the remaining four Commissioners, two are attorneys in construction litigation - one in insurance defense and one in real estate, one Commissioner works in a related construction field, and one is a retired union business agent. While the nominees have come from varied backgrounds, not one nominee is a farmer, conservationist, or ecologist.

Although the State is mandated by Article XI, Section 3 of the Hawaii State Constitution to conserve and protect agricultural lands, the Land Use Commission has reclassified 2,022 acres of conservation (29 acres) and prime agricultural lands (1,993 acres) for urban uses within the last five years. These acres are forever lost for future agriculture use.



In 2005, the Legislature passed Act 183 to implement the intent and purpose of Article XI, Section 3 of the Hawaii State Constitution and establish standards, criteria, and mechanisms to identify important agricultural lands (IAL). In 2008, the Legislature passed Act 233 that provided incentives to private land owners to designate their lands IAL, required the Department of Agriculture and Department of Land and Natural Resources to jointly identify the state-owned lands that should be designated as "important agricultural lands", and transferred management authority over those lands to the Department of Agriculture.

The Land Use Commission has two pending petitions to reclassify over 2,098 acres of prime agricultural lands on Oahu to urban use (Koa Ridge at 545 acres and Hoopili at 1,554 acres), or twenty per cent of the estimated 10,900 acres of remaining prime agricultural lands on Oahu.

Your Committee is concerned with the lack of identification of prime agricultural lands by both private and public landowners on Oahu. The current laws are inadequate to protect Hawaii's prime agricultural lands if the State does not compile an inventory of remaining prime agricultural lands on all islands. Furthermore, the non-compliance by the Department of Land and Natural Resources and the Department of Agriculture to jointly identify State-owned prime agricultural lands further exacerbates the lack of protection for prime agricultural lands. Perhaps the Legislature should place a moratorium on the reclassification of agricultural lands until identification has been completed.

The Legislature cannot relinquish its authority to reclassify lands to state departments, commissions, or counties. This authority transcends the nominations for key commissions and boards as well. To do otherwise is to fail in our constitutional mandate to protect and preserve agricultural lands.

As affirmed by the record of votes of the members of your Committee on Water, Land, Agriculture, and Hawaiian Affairs that is attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominee, has found the nominee to be qualified for the position to which nominated and recommends that the Senate advise and consent to the nomination.



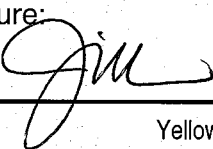
Respectfully submitted on
behalf of the members of the
Committee on Water, Land,
Agriculture, and Hawaiian
Affairs,



CLAYTON HEE, Chair



Record of Votes
Committee on Water, Land, Agriculture and Hawaiian Affairs
WTL
Advise and Consent

Governor's Message No.:* GM 340	Committee Referral: WTL	Date: 3/24/10		
<input type="checkbox"/> The Committee is reconsidering its decision				
The Recommendation is:				
<input checked="" type="checkbox"/> Advise and Consent 2340	<input type="checkbox"/> Not Advise and Consent 2345			
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	/			
TOKUDA, Jill N. (VC)	/			
BUNDA, Robert	/			
FUKUNAGA, Carol	/			
KOKUBUN, Russell S.	/			
TAKAMINE, Dwight Y.	/			
HEMMINGS, Fred				/
TOTAL	U	Ø	Ø	1
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original File with Committee Report	Yellow Clerk's Office	Pink Drafting Agency	Goldenrod Committee File Copy	

*Only one Governor's Message per Record of Votes