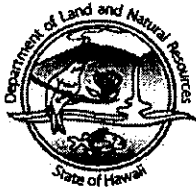


LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

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CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Department of Land and Natural Resources Testimony Transmittal Cover Sheet

Date Submitted: April 4, 2010

Testifier's Name/Title: Pua Aiu, State Historic Preservation Division Administrator

Committee Name: HOUSE COMMITTEE ON LEGISLATIVE MANAGEMENT (LMG)

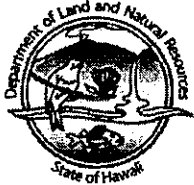
Day and Date: Monday, April 5, 2010

Time/Location: 3:30 PM, Conference Room 423

Measure Number: HOUSE CONCURRENT RESOLUTION 50, HOUSE DRAFT 1 –
REQUESTING A ONE-DAY SUMMIT FOR THE HEALING AND
CRATION OF POSITIVE CHANGE FOR THE STAT HISTORIC
PRESERVATION DIVISION OF THE DEPARTMENT OF LAND AND
NATURAL RESOURCES

Number of Copies: 1 (including original) to Room 439 in the State Capitol

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
LAURA THIELEN
Chairperson**

**Before the House Committee on
LEGISLATIVE MANAGEMENT**

**Monday, April 5, 2010
3:30 pm
Conference Room 423**

**In Consideration of
HOUSE CONCURRENT RESOLUTION 50, HOUSE DRAFT 1 –
REQUESTING A ONE DAY SUMMIT FOR HEALING AND POSITIVE CHANGE FOR
THE STATE HISTORIC PRESERVATION DIVISION OF THE DEPARTMENT OF
LAND AND NATURAL RESOURCES**

House Concurrent Resolution 50, House Draft 1, requests a one day summit for “healing and positive change” for the State Historic Preservation Division (SHPD) of the Department of Land and Natural Resources (Department). The Department supports a one day summit.

The topic of the summit however needs to recognize that the success of Hawaii’s Historic Preservation Program relies upon more than a single division staffed with fewer than thirty positions. The summit should be focused on the update of the statewide Historic Preservation (State) Plan, the roles and responsibilities of all parties responsible for aspects of that plan, including the SHPD, the County Certified Local Governments, the professional firms preparing inventories, plans and surveys relating to historic properties, structures and developments, and the government and non-government organizations supporting historic preservation under the federal and state laws.

The topic should examine SHPD’s role under the state law, include conversation on the related legislative proposal to transfer the Chapter 6E, Hawaii Revised Statutes, Burial Program from SHPD to the Office of Hawaiian Affairs, the concept of creating a Tribal Preservation Office in Hawaii, and the National Park Service (NPS) commitment to support the implementation of the federal historic preservation laws in Hawaii in light of the substantially higher amount of federal properties in our state. Accordingly, the Department respectfully recommends the Legislature broaden the scope of this event and the list of attendees as described above.

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

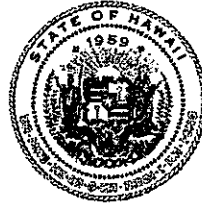
RUSSELL Y. TSUJI
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
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The Department also asks the Legislature to note that the date of the event must be no sooner than late Fall 2010. This is because NPS in its recent report of SHPD specifically mandated that SHPD stop all state plan undertakings for six months while resources are put into updating the inventory and clarifying SHPD's review and compliance process. Failure to meet the NPS corrective action plan will result in the loss of the federal grant and recognized state historic preservation program. Accordingly, the Department cannot undertake hosting any large summit before receiving NPS clearance that their priorities have been adequately addressed.

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
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HISTORIC PRESERVATION
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**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the Senate Committee on
WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS**

**Saturday, April 3, 2010
10:30 AM
State Capitol, Room 229**

**Informational Briefing on
NATIONAL PARK SERVICE REPORT ON THE STATE HISTORIC PRESERVATION DIVISION**

Thank you for the opportunity for a thoughtful discussion on our State's Historic Preservation Program. This Program has significant federal and state missions, affects our economy in ways most people do not realize, and has struggled for well over a decade trying to meet these demanding mandates.

The recent National Park Service (NPS) designation of the Hawaii State Historic Preservation Division (SHPD) as a "high risk" grantee is the topic of today's briefing. However, it is imperative for this Committee and everyone in the State to recognize that the NPS focus is far narrower and different than the focus of Hawaii's State Historic Preservation laws. Accordingly, **this Committee must consider the NPS report in the context of our State laws and the broader SHPD mission. Failure to recognize those differing mandates will continue the long history of complaints about the program and the loss of opportunities to preserve, enhance and showcase Hawaii's rich history.**

I would like to provide the Committee with

- o an overview of SHPD, including an outline of recent improvements;
- o brief description of our plans to address the NPS compliance plan, including the needed assistance from NPS and the detrimental impact that will have on our ability to meet the mandates under state law that differ from the federal program; and,
- o An explanation of the need to restructure our entire State Historic Preservation Program, and not just limit our focus on the division within this department.

I. Brief Overview of SHPD

In 2002 the Legislative Auditor issued a report on the State Historic Preservation Division that addressed the operations and management of the division over the prior Administration. The Legislative Auditor found:

that untimely and inconsistent archaeological reviews compromised the division's ability to protect Hawaii's unique historic sites and artifacts. Projects were delayed for months and sometimes years. ... diverse standards are applied when reviewing the archaeological reports. Disparate review standards threaten the division's ability to protect historic sites....Inconsistent standards also plague the division's burial program.... The division also failed to ensure the safekeeping of historical artifacts in its custody. ... The administrator caused the State to lose over \$65,000 when he failed to subgrant these federal funds to local certified governments as required by federal law.

Between 2002 and 2006 new leadership was brought to SHPD in an attempt to address the concerns raised in the Audit. However, that process also had the result of staff turnover, leaving SHPD at times without the full compliment of staff meeting the minimum qualifications required under the NPS federal grant. As a result, SHPD began again to fall behind on permit reviews.

In 2007 the SHPD Administrator resigned, and the department initiated a broad-based and transparent transition process seeking new leadership and identifying program priorities. The department created a search committee to identify the qualifications of a new Administrator, interview candidates and recommend to the department the top candidate. The committee was comprised of Timothy Johns, Director of Bishop Museum, Dr. Ku Kahakalau, member of Big Island Burial Council and founder of Hawaii's cultural based public charter school movement, and (ret) Judge Patrick Yim, board member of the Queen Lilioukalani Children's Trust.

In addition, the department entered into an agreement with the Office of Hawaiian Affairs and created a transition team to assist in administering SHPD during the period we were seeking a new Administrator. Stanton Enomoto of OHA and Rowena Sommerville of the Department of the Attorney General were detailed to SHPD to manage the transition period.

In 2007 Dr. Puaalaokalani Aiu was selected as the new Administrator of SHPD, Nancy McMahan, a 20-year veteran of SHPD was selected as the Archeology Branch Chief and Deputy Historic Preservation Officer.

Significant Progress by SHPD in 2007-2010

Under the leadership of Dr. Aiu and Ms. McMahan, SHPD has made tremendous progress on many of the long-standing issues plaguing the division. A brief list includes:

- In the past two years, SHPD has made astounding progress in review and compliance. Two years ago the backlog of review was extremely large. SHPD routinely failed to complete regulatory reviews within the statutorily mandated timeframe. Today we are current with all federal 106 federal reviews and our state Chapter 6E reviews.
- In the past two years we have taken steps to bring enforcement actions to ensure landowners are complying with conditions to protect historic sites. Two examples include an enforcement action against a developer for violations on Oahu and action to address a desecration of a heiau on Maui.
- In an effort to update Hawaii's State Historic Preservation Plan for the first time in a decade, SHPD created a Task Force of thirteen members, including Historic Hawaii, Society for Hawaii Archeology, Friends of SHPD, NPS, Office of Hawaiian Affairs, National Trust for Historic Preservation, Architectural Industry Association State Chapter, NOAA, and several committed individuals.

Members of the Task Force met in working session twice monthly to develop a draft outline, framework and plan. The Plan framework was presented to the Hawaii Review Board for comment and approval. The next step is to hold public meetings to gather broader input, and then finalize the Plan.

- In 2008 we met the NPS priority to work with the local entities and distributed federal funds to the Maui Certified Local Government (CLG). In 2009 the DLNR Land Board approved the Kauai CLG contract. In the event the other two counties develop an approved CLG program, SHPD will alternate federal funds to those entities as well.
- In the past two years SHPD completed the following NPS recommendations for programmatic improvements, which NPS asked us to prioritize:
 - Adopted personnel policies per request by NPS
 - Hired additional qualified staff, including an Administrator(Pua Aiu), two archeologists (Theresa Donham and Patti Conte), two Cultural Specialists (Phyllis Cayan and Analu Josephedes) and Urban Planner to fill the Keeper of the Register position (Ross Stephenson) and an Administrative Assistant (Randolph Lee)
 - Completed approximately 15 Programmatic Agreements, Memorandum of Understanding and Memorandum of Agreements with a wide variety of agencies, including the Federal Highways Administration, State Department of Transportation, and Department of the United States Army, National Park Service and the Natural Resources Conservation Service.
 - Timely filed an NPS approved End of Year grant report for FY 2008 and 2009
 - Met all additional NPS payment requests documentation and requirements and accurately accounted for grant funds and matching shares

- Developed a policy on archeological and architecture curation policy, which is being reviewed by NPS
- Followed NPS grant manual procedures consistently

- Another area in which we've made significant progress these past two years that is not subject to the federal grant as it's under exclusive state jurisdiction, but is of great importance to our program, is the reinterment of *iwi kupuna* that have been residing in SHPD inventory for years. Over the past two years SHPD has reinterred approximately 90 percent of *iwi* stored on Oahu. This has brought the inventory down from approximately 300 sets of *iwi* to about 25 sets of *iwi*.

The department thanks NPS for recognizing in their report that SHPD has made progress these past few years.

The NPS recognizes that the SHPD has made significant improvements in some programs as the result of outside technical assistance and the desire to improve the program. ...

Mr. (Randolph) Lee has also taken initiative to oversee the Certified Local Government Program and was pivotal in providing essential training to Hawaii's CLG. ...

Under the direction of Mr. Ross Stephenson, the SHPD's National Register program has the potential for success and growth. ...

The NPS team also visited the SHPD field offices on Maui and Hawaii ... (and) the files, logs, and libraries in both offices are well organized, and the staff is well qualified and dedicated. ...

NPS also recognizes that Ms. Laura Thielen, Chairperson, Department of Land and Natural Resources and State Historic Preservation Officer, has made great efforts to correct many of the grant administrative-related problems of the SHPD that were present prior to her appointment as SHPO. ...

Progress is being made in revising the Statewide Historic Preservation Plan...

The SHPD consequently meets the minimum professional staffing requirement of the Act. ...

The SHPD should be commended for its recent efforts to digitize library files through a Docu-Share system.

Report on Hawaii State Historic Preservation Division Operations, National Park Service, March 19, 2010.

II. Addressing the NPS Compliance Plan

NPS is requiring SHPD to meet specific expectations in five areas:

- Survey and Inventory
- Review and Compliance
- National Register of Historic Places
- Certified Local Government Administration
- Historic Preservation Planning

SHPD has arranged an initial meeting with NPS staff to address the compliance plan in detail. The first step is to ensure we understand precisely what the NPS expects in order to comply with their demands. For example, we do not want to spend two years developing an inventory system the NPS does not find satisfactory.

SHPD also hopes that NPS will entertain input into this plan, as we have been requesting this for over eight months. Frankly, our concern is the compliance plan does not fully comprehend the fiscal challenges facing our state as well as the limited professional talent pool we have in our small and isolated state.

National Register; CLG Administration; Historic Preservation Planning

SHPD is making progress on three of the five areas of the NPS Compliance Plan: the National Register of Historic Places, the Certified Local Government administration, and updating the State Plan. Accordingly, we foresee maintaining our progress will result on compliance in these three areas.

We stress that our ability to maintain progress depends heavily on maintaining existing staff. SHPD is long plagued by staff turnover and the challenge of finding “qualified” professional staff – archeologists, architects, historians – in Hawaii’s limited population. The fact that the job is one under intense public scrutiny and often caught in the cross-hairs of larger public debates and acrimony makes recruitment far more difficult.

Hawaii also suffers an additional handicap under the federal grant system. NPS requires historians to have a history degree in order to meet their federal qualifications. Accordingly, a person with a European History, Ancient Aztec History, or Chinese History degrees would be an NPS “Qualified” historian. A person with a Hawaiian Studies degree from UH Hilo would be deemed “Unqualified” by NPS. This makes recruitment more difficult for SHPD, and frankly, eliminates personnel who should be far higher qualified for work in Hawaii from consideration.

SHPD has requested NPS provide us with a waiver to recognize Hawaiian Studies degrees as “Qualified.” NPS has rejected that request. We will reiterate that request and would appreciate legislative support in the form of a concurrent resolution recommending NPS approve.

Survey and Inventory

SHPD's biggest concern is our inability to meet the technological aspects of the NPS required on-line, searchable database for the inventory and surveys. We have requested NPS provide technical support in the form of IT or archivist staff. Disappointingly, the NPS report simply recommends the state hire such staff, and it appears NPS is limiting their resource support to hiring an administrator to oversee SHPD's efforts.

We are reaching out to other partners to seek technical support. To date one private firm and Historic Hawaii have offered to assist in these efforts. In addition, Pacific Disaster Center has examined our current GIS system and developed a plan for searchable database integrated with GIS. The department will not be able to implement this plan unless outside technical assistance is provided, and we will be seeking NPS support. In the meantime, we have placed one archeologist on special assignment to work with existing systems to develop an improved inventory and correspondence file tracking system.

Review and Compliance

The NPS focus on review and compliance is limited to federal projects reviewed under the federal law. SHPD is current with those reviews and does have qualified staff conducting those reviews. However, the NPS focus on federal reviews combined with the other four aspects of the federal demands will come at the expense of SHPD review of state and private projects under state law.

SHPD currently focuses its efforts on review and compliance, conducting approximately 6,000 reviews per year. Forty-nine other states have Historic Preservation Programs that limit reviews to federal properties and projects funded with federal monies, with some also reviewing projects on state lands. No other state has a state law like Hawaii which requires reviews of private projects on private property. We have the largest review mandate of any historic preservation program in the entire nation. Hawaii's broad review mandates are driven primarily by the burial program. In contrast, the federal program does not consider burials and does not consider private development on private lands.

SHPD will need to defer some reviews under state law in order to meet the NPS compliance plan which focuses exclusively upon the federal mandates.

III. Need to Restructure the State Historic Preservation Program

The NPS action puts our state historic preservation program at a cross roads. In a nutshell, here are our choices:

1. We can defer activities mandated under state law in order to concentrate on the federal requirements for the next two years to meet the NPS directives.

Consequence:

- We will meet NPS requirements and maintain federal funds and a federally-approved State Historic Preservation Program.
- During this two-year period we will not review an unknown number of private and state projects, likely resulting in an increase in the number of inadvertent burials discovered and historic sites on private and state land affected.

2. We can reject the federal demands and determine our state mission maintains priority.

Consequence:

- In two years we will lose recognition as a federally-approved state historic preservation program. We will lose the \$900,000 federal grant. More importantly, Hawaii will lose the ability to locally review and comment on all the federal and federally-funded projects in Hawaii. If SHPD loses federal recognition, those reviews will be conducted by the Advisory Council of Historic Preservation and staff in Washington D.C.
- While we maintain state priorities for two years, after the loss of the federal grant, either the State must fund the shortfall to continue the program or it will fail.

3. We can stick our heads in the sand; pretend that SHPD can meet both the federal and state mandates; and blame SHPD staff and DLNR management for failure.

Consequence:

- SHPD staffs are driven into an early grave, high turnover and vacant positions persist.
- Hawaii doesn't meet or barely limps to meeting the NPS compliance plan.
- Hawaii misses an opportunity to develop a meaningful historic preservation program.

4. We restructure Hawaii's Historic Preservation Program

Consequence:

- If we develop a constructive process focused on success rather than blame, are respectful of the differing and sometimes contrasting priorities of various stakeholders, and are willing to listen to alternatives and new ideas with an open mind, we could develop a historic preservation program that celebrates and showcases Hawaii's rich history.
- If we take a different approach, or even with the best of intentions, we could end up with various stakeholders backed into corners angrily defending their priorities, and leaving SHPD exclusively responsible – yet again – for all missions, and leaving Hawaii with a program that simply documents history before it is destroyed or removed.

IV. Conclusion

I do not have a proposal for how the state historic preservation program should be restructured. That would be presumptuous of me. The current program was developed over many years with input from many people. Any restructuring should be done in the same manner.

What I do propose is that the state undergoes a process to restructure the state program. Not just SHPD. The entire program. We will never achieve a robust program that meets both the state and federal missions through a single, small division within DLNR. There is broader responsibility, broader authorities; broader opportunities.

If any good can come out of this NPS Report, it is because it becomes the catalyst that requires the State to directly face the challenges and unrealistic mission and expectations facing the SHPD and the need to resolve some of the challenges imposed by the current laws and expectations. As a start, we'd request the following:

- NPS provide SHPD with technical, not administrative, staff support to implement the archive and online inventory and survey system;
- NPS grant SHPD a waiver recognizing that Hawaiian Studies degrees can be considered qualified under federal standards;
- Archeological community recognize their work is driven primarily by the public policy in state law recognizing the importance of historic sites, and accordingly to support some form of minimum professional standards and oversight outside of the SHPD;
- Legislature's concurrent resolution move beyond a "day of healing." Support a symposium focused on updating Hawaii's Statewide Historic Preservation Plan in a manner that examines restructuring the program, with a report back to the Legislature next year; and
- Senate withdraw their budget proposal to cut SHPD funding an additional 10%.

In closing, all parties need to recognize the limitations of a single small division within a department with as broad a mission as DLNR. Giving SHPD more unfunded mandates, or even funded mandates, will not work. The division has more on its hands than is possible given the NPS demands.

I am proud of the current staff for the remarkable progress they have made these past two years. But given the additional burden of the NPS report, we need help in the form of people ready to roll up their sleeves and deliver the work alongside us. State Historic Preservation cannot be successfully accomplished by a single agency. It requires the kuleana of everyone.

LATE TESTIMONY



HCR50 HD1
**Requesting a one-day summit for the healing and creation of positive change for the State
Historic Preservation Division of the Department of Land and Natural Resources**
House Committee on Legislative Management

April 5, 2010

3:30 p.m.

Room: 423

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HCR50, HD1, which requests a one-day summit for the healing and creation of positive change for the State Historic Preservation Division of the Department of Land And Natural Resources.

There is an increased and heightened awareness of the extreme challenges facing the State Historic Preservation Division (SHPD). The deterioration of the historic landscape and irreparable loss of cultural resources, critical to the well-being of our island lāhui, is often attributed to these pervasive systemic issues.

There needs to be a kākou effort by all involved with this issue to work together to find workable solutions now. Time is of the essence. This proposed summit can be a foundational beginning to kāhea the collective wisdom, intervention and guidance of our ancestors to help bring us all to a place where their legacy of aloha is meaningfully identified, protected and preserved for the future children of this beautiful one-of-a-kind place called Hawai'i.

Therefore, OHA urges the committee to PASS HCR50 HD1. Thank you for the opportunity to testify.

HOUSE OF REPRESENTATIVES
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2010

COMMITTEE ON LEGISLATIVE MANAGEMENT

Rep. James Kunane Tokioka, Chair
Rep. Blake K. Oshiro, Vice Chair

Rep. Pono Chong Rep. Kymberly Marcos Pine
Rep. Cindy Evans

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2010 APR -1 P 5: 18

SERGEANT-AT-ARMS
HOUSE OF
REPRESENTATIVES

NOTICE OF HEARING

DATE: Monday, April 5, 2010
TIME: 3:35pm
PLACE: Conference Room 423
 State Capitol
 415 South Beretania Street

A G E N D A

HCR 155
(HSCR968-10)
Status
HR 93
(HSCR967-10)
Status

REQUESTING THE PRESIDENT OF THE SENATE AND THE
SPEAKER OF THE HOUSE OF REPRESENTATIVES TO
AUTHORIZE THE JOINT LEGISLATIVE COMMITTEE ON
AGING IN PLACE TO CONTINUE TO MEET AND CARRY OUT
THE WORK OF THE COMMITTEE.

HLT/HUS, LMG

DECISION MAKING TO FOLLOW

Persons wishing to offer comments should submit testimony at least 24 hours prior to the hearing with a transmittal cover indicating:

- Testifier's name with position/title and organization;
- The Committee the comments are directed to;
- The date and time of the hearing;
- Measure number; and
- The number of copies the Committee is requesting.

While every effort will be made to copy, organize, and collate all testimony received, materials received on the day of the hearing or improperly identified or directed to the incorrect office, may be distributed to the Committee after the hearing.

Submit testimony in ONE of the following ways:

PAPER: 1 copies (including an original) to Room 439 in the State Capitol;

FAX: For comments less than 5 pages in length, transmit to 586-6341 (for Oahu) or 1-800-535-3859 (for Neighbor Islanders without a computer to submit testimony through e-mail or the Web);

EMAIL: For comments less than 5 pages in length, transmit to LMGtestimony@Capitol.hawaii.gov; or

WEB: For comments less than 4MB in size, transmit from the Web page at <http://www.capitol.hawaii.gov/emailtestimony>.

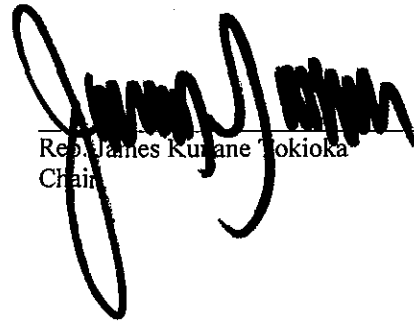
Testimony submitted will be placed on the Legislative Web site after the hearing adjourns. This public posting of testimony on the Web site should be considered when including personal information in your testimony.

Hearing LMG 04-05-10 2



If you require special assistance or auxiliary aids and/or services to participate in the House public hearing process (i.e., sign or foreign language interpreter or wheelchair accessibility), please contact the Committee Clerk at 586-6340 or email your request for an interpreter to HouseInterpreter@Capitol.hawaii.gov at least 24 hours prior to the hearing for arrangements. Prompt requests submitted help to ensure the availability of qualified individuals and appropriate accommodations.

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Rep. James Kuniame Tokioka
Chair





HOUSE OF REPRESENTATIVES

STATE OF HAWAII
STATE CAPITOL
HONOLULU, HAWAII 96813

Rep. Marilyn B. Lee
38th District
Ph: 586-9460 Fax: 586-9466
Email: replee@capitol.hawaii.gov

April 1, 2010

TO: Rep. Blake Oshiro
Vice-Chair, Committee on Legislative Management

FROM: Representative Marilyn Lee

SUBJECT: Request to Hear Resolutions

I would like to request that you hear the following resolutions in your committee:

HCR155/HR93 Requesting the President of the Senate and the Speaker of the House of Representatives to Authorize the Joint Legislative Committee on Aging in Place to Continue to Meet and Carry out the Work of the Committee.

Thank you for your consideration.

ML