

STAND. COM. REP. NO. 28

Honolulu, Hawaii

OCT 30 2007

RE: GOV. MSG. NO. 5

Honorable Colleen Hanabusa  
President of the Senate  
Twenty-Fourth State Legislature  
Second Special Session of 2007  
State of Hawaii

Madam:

Your Committee on Water and Land, to which was referred Governor's Message No. 5, submitting for study and consideration the nomination of:

CHAIRPERSON OF THE BOARD OF LAND AND NATURAL RESOURCES

G.M. No. 5            LAURA H. THIELEN,  
                          for a term to expire 12-31-2010,

begs leave to report as follows:

Your Committee received testimony in support of the nominee from the Office of the Governor; State Attorney General; Department of Health; Department of Land and Natural Resources; Department of Business, Economic Development, and Tourism; Department of Labor and Industrial Relations; Department of Agriculture; Department of Transportation; State Department of Defense; Office of Hawaiian Affairs; Aloha Tower Development Corporation; Mayor of Hawaii County; one State House Representative; one Honolulu City Councilmember; The Nature Conservancy; KAHEA; Architects Hawaii Limited; Wai'anae Coast Community Alternative Development Corporation; John M. Knox & Associates, Inc.; Historic Hawai'i Foundation; Feather & Fur Clinic; Rick Gaffney & Associates Inc.; Oceanic Institute; The Trust for Public Land; Civil and Public Works Branch, U.S. Army Engineer District, Honolulu; SunPower Corporation; Connections Public School Charter; 'Ahahui Mälama I Ka Lökahi; Townscape, Inc.; Bitstream Inc.; Parker Ranch; Honolulu Board of Realtors; F.T. Opperman Construction, LLC; Stanford Carr Development, LLC; Laborers-Employers Cooperation and Education Trust; Alakea Design Group, LLC; Ocean Tourism Coalition; Leeward Insurance Agency,

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Inc.; Ameron International; Mouse Builders Inc.; Kanu o ka 'Aina New Century Public Charter School; Outrigger Enterprises, Inc.; Hawai'i Alliance for Community-Based Economic Development; Title Guaranty of Hawaii, Inc.; Hawaii Academy of Arts & Science; Fidelity National Title & Escrow of Hawaii, Inc.; Chun Rair & Yoshimoto LLP; Bendet, Fidell, Sakai & Lee; Hawaii Escrow & Title; Myron B. Thompson Academy; Kikiaola Land Company; Hawai'i Forest Industry Association; and ninety-two individuals. Testimony in opposition was received from six individuals.

Ms. Thielen is currently the acting Chairperson of the Department of Land and Natural Resources. She was previously the Director of the State Office of Planning. She has practiced law for the Legal Aid Society of Hawaii and a law firm. She received a B.A. degree in political science from the University of Colorado and a J.D. degree from Case Western Reserve School of Law. She also holds a Master's in Public Policy from Georgetown University Public Policy Institute.

Ms. Thielen states in her written testimony her priorities and goals to: (1) transform the department from resource management to resource stewardship; (2) increase compliance with resource protection laws and rules through education, and civil and criminal enforcement; and (3) develop the full mission of the State Historic Preservation Division. Her future specific steps are: (1) implementation of an ocean resource management plan; (2) strategic planning for enforcement and compliance; and (3) increasing resource stewardship efficiency and effectiveness through improved technology and administrative support.

Your Committee queried the nominee on her plans to improve the State Historic Preservation Division. She stated her priorities as: (1) filling vacant positions to bring the division up to full staffing; (2) seeking salary differentials to fill the archeologist and cultural specialist branch manager position; (3) decreasing the backlog of cases; (4) establishing a record-keeping system to track cases from the time the division receives the case; and (5) revising the minimum qualifications for specialists to match federal standards. She sees the historic preservation function of the department as a means to protect and preserve historic and cultural sites. Her ambition is to establish a global positioning system resource map that is publicly accessible for the public and particularly for developers and contractors. Such a mapping system would also greatly aid the historic preservation division in making the location of historic or



cultural sites readily available, thereby avoiding the current, time-consuming practice of conducting paper-based research.

Your Committee further queried the nominee about the General Growth Properties site on the Ward Properties as to the Native Hawaiian burial sites, which now number approximately sixty-five. Ms. Thielen felt that the division had done everything required under law. Unfortunately, the 'iwi were discovered seriatim, which calls for construction to stop each time for an archeological inventory survey. If a discovery is made, the division may order a removal of the 'iwi or allow the 'iwi to remain in place. The developer remained very cooperative throughout and did more mitigative work than was required.

Your Committee is also concerned with the problems at the Bureau of Conveyances that have given rise to three investigations into alleged mismanagement. The three investigations are being made by the State Ethics Commission, State Attorney General, and a joint legislative investigative committee. Your Committee believes that it is important to ensure that government represents the public interest fairly when real property changes hands. The broad question is whether the various private title companies, and the landowners they represent, are treated fairly. There is yet a broader possibility of eventual administrative relocation of the bureau to another department. While findings and recommendations on these issues are outside of the jurisdiction of your Committee for purposes of this confirmation proceeding, it is still incumbent upon the nominee to resolve the mismanagement, lack of fiscal accountability, and low employee morale problems of the department as soon as possible.

The nominee seems to have a grasp of what is needed to rectify the problems at the Bureau of Conveyances. She states in her written testimony: "The Chairperson of the Department is responsible for the nuts and bolts management of the agency: making sure the divisions and program managers are operating effective programs and managing staff; recruiting and getting positions filled with qualified people; providing training and resources for staff to do their jobs; and, setting priorities for the resources allocated to the agency. The Chair is responsible for developing solutions to chronic problems that plague the department and interfere with the mission, and to work with staff to successfully implement those solutions." When this statement is viewed in the light of the Bureau of Conveyances, it as though Ms. Thielen had the Bureau of Conveyances in mind when she wrote



it. Accordingly, your Committee will hold the nominee to her testimony.

Your Committee has many strong concerns about the nominee, among these concerns are:

- (1) That the nominee is not qualified, and neither is the Administrator of the State Historic Preservation Division to be the State Historic Preservation Officer under section 6E-5, Hawaii Revised Statutes, a federally designated position;
- (2) That federal funds may be in jeopardy for funding for the State Historic Preservation Division if qualified persons as prescribed by federal law are not part of the division's decision-making team;
- (3) That the nominee is undertaking "programmatic agreements" for transportation projects and projects with the counties, without benefit of statutory or administrative rule authority, leading to a lack of oversight standards of the projects;
- (4) With regard to the ocean management resource plan, the establishing of in-stream flow standards should be the highest priority; and the nominee's statement that it could take two years to complete is not acceptable;
- (5) With regard to fishers and the fishing community, the nominee's statement that the nominee is working proactively with them has been disputed by the fishers, who would like the nominee to meet with them in a roundtable discussion with all parties at the table; the nominee stated instead that community meetings would be held on the possible rule changes; your Committee believes that the nominee may not be taking the fishers seriously enough;
- (6) With regard to the Kawai Nui Marsh, the nominee is willing to meet City and County of Honolulu officials and key stakeholders as to the transfer of title, but the nominee is held up by the nominee's interpretation of land board actions; instead, the nominee should be placing the matter on the land board agenda for November so as not to lose \$4.1 million in federal funding,



particularly in view that City and County of Honolulu officials have expressed their willingness to negotiate the issues and share in the costs; and

- (7) That the nominee should consult with the Society of Hawaiian Archeologists and various stakeholder groups when filling vacancies in the State Historic Preservation Division in order to create job descriptions, set minimum qualifications, and in developing a functional division.

As affirmed by the record of votes of the members of your Committee on Water and Land 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 and Land,



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CLAYTON HEE, Chair



The Senate  
Twenty-Fourth Legislature  
State of Hawaii

**Record of Votes**  
**Committee on Water and Land**  
**WTL**  
**Advise and Consent**

Governor's Message No.:* <div style="text-align: center; font-size: 1.5em;">5</div>	Committee Referral: <div style="text-align: center; font-size: 1.2em;">WTL</div>	Date: <div style="text-align: center; font-size: 1.5em;">10/29/07</div>		
<input type="checkbox"/> The Committee is reconsidering its decision				
The Recommendation is:				
<input checked="" type="checkbox"/> Advise and Consent 2340 <span style="margin-left: 150px;"><input type="checkbox"/> Not Advise and Consent 2345</span>				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	/			
KOKUBUN, Russell S. (VC)	/			
FUKUNAGA, Carol	/			
TOKUDA, Jill N.	/			
WHALEN, Paul				/
<b>TOTAL</b>	4			1
Recommendation:				
<input checked="" type="checkbox"/> Adopted <span style="margin-left: 150px;"><input type="checkbox"/> Not Adopted</span>				
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