

STAND. COM. REP. NO. **3828**

Honolulu, Hawaii

JUL 08 2020

RE: GOV. MSG. NO. 583

Honorable Ronald D. Kouchi
President of the Senate
Thirtieth State Legislature
Regular Session of 2020
State of Hawaii

Sir:

Your Committee on Water and Land, to which was referred Governor's Message No. 583, submitting for study and consideration the nomination of:

BOARD OF LAND AND NATURAL RESOURCES

G.M. No. 583 CHRISTOPHER YUEN,
for a term to expire 06-30-2022,

begs leave to report as follows:

Your Committee reviewed the personal history, resume, and statement submitted by Christopher Yuen for service on the Board of Land and Natural Resources.

INTRODUCTION

The advice and consent process is a constitutionally mandated responsibility. Your Committee undertook its responsibility seriously, especially as this process involves the confirming of an individual who will be appointed as the steward of the State's natural resources and responsible for ensuring that these resources will be preserved and sustained in perpetuity for the benefit of future generations.

Your Committee was aware that this nomination was attracting public attention and passionate testimony for both sides.

Your Committee notes that there were two committee hearings held for the nominee. The first hearing on May 13, 2020, included thirty-five nominees being considered for the many various boards

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and commissions subject to the jurisdiction of the Water and Land Committee. Due to the high number of nominees under consideration at that hearing, the Committee did not have the appropriate amount of time to ask the nominee questions nor did the nominee have the appropriate amount of time to answer the Committee's questions. Your Committee then held a second hearing on July 1, 2020, to give the nominee a full two hours to answer questions from the Committee. The Committee Chair does appreciate the nominee's willingness to do that.

TESTIMONY

Your Committee received testimony in support of the nominee from the Department of Land and Natural Resources, Aha Moku Advisory Committee, two members of the Hawai'i County Council, University of Hawai'i at Hilo, Hawai'i Farm Bureau, Hawaii Island Community Development Corporation, Ponoholo Ranch Limited, Armstrong Produce, Conservation Council for Hawai'i, The Nature Conservancy, Hawaii Island Chamber of Commerce, and thirty-three individuals.

Your Committee received testimony in opposition to the nominee from Sierra Club of Hawai'i, KAHEA: The Hawaiian-Environment Alliance, Ka Lāhui Hawai'i, and one thousand seventy-four individuals.

Your Committee received comments from the Office of Hawaiian Affairs.

THE RESPONSIBILITY OF THE BOARD OF LAND AND NATURAL RESOURCES

The responsibilities of the Department of Land and Natural Resources (DLNR) and its board, the Board of Land and Natural Resources (BLNR), play an essential role in the self-sufficiency, long-term resiliency, and environmental and cultural integrity of the State of Hawaii. This includes the stewardship and management of natural and cultural resources of unparalleled significance to the people of Hawaii. It also includes the disposition, including leasing, licensing, and permitting of public lands. The BLNR, more than any other board or commission, has public trust responsibilities, drawn down directly from the State Constitution, to conserve and protect Hawaii's natural and cultural resources for the benefit of the people, including the traditional and customary practices of Native Hawaiians. The BLNR's



responsibilities are vast. It has jurisdiction over approximately 1.3 million acres of public, "ceded", and public land trust lands; seven hundred and fifty miles of coastline; thousands of historic sites, including burial sites, and approximately two million acres of private and public lands that lie within the state land use conservation district.

As a trustee of the "ceded" lands and the public land trust, the BLNR also has a fiduciary obligation with respect to the use and disposition of such lands. This is no small task. BLNR's decisions touch almost every aspect of Hawaii's economy, and while there is no doubt that corporate needs and economic benefits should be considered in board decisions, the board's obligations under the State Constitution and the mission of the DLNR to "enhance, protect, conserve and manage Hawaii's unique and limited natural, cultural and historic resources" must also be a top priority. This is why it is imperative that board members, who are sworn to uphold the public trust, not only possess the requisite knowledge and experience, but an exemplary level of integrity and commitment to the public trust obligations in fulfilling their board duties.

BACKGROUND

Christopher J. Yuen received a Juris Doctor degree from the William S. Richardson School of Law; a Master of Science degree in Environmental Science from the State University of New York, College of Environmental Science & Forestry; and a Bachelor of Arts degree in Human Biology from Stanford University. He is the owner and manager of The Family Farm, Inc., a twenty-acre certified organic farm, supplying local markets with bananas, lychees, and rambutans. He was the Planning Director of Hawai'i County and a Deputy Corporation Counsel for the County of Hawai'i. Mr. Yuen also served on the BLNR from 1990 to 1998 and 2014 to the present. He is also presently on the Advisory Councils for Laupahoehoe Experimental Tropical Forest and Pu'uwa'awa'a Experimental Tropical Forest.

The nominee's resume indicates that during his time on the BLNR in the 1990s, he spearheaded the negotiations in the Awake'e-Manini'owali land exchange; revision of conservation district rules; review of more than four hundred Conservation District Use Permits; and approval of a master plan for Kekaha Kai State Park. In addition, in 1988, the nominee organized the Friends of



Makalawena to preserve the coastline in Kona, which culminated in the Kekaha Kai State Park, a 4.5 mile long, one-thousand three hundred acre coastal park. In 1971, the nominee organized a campaign to protect the Keaukaha shoreline, which led to the County of Hawaii's purchase of Richardson's and Carlsmith's properties for open space public beach parks.

In his personal statement, the nominee stated, "In this latest period after being reappointed to the BLNR, starting in July 2014, I've tried to support the community initiatives that come before us: the community-based fisheries management areas at Kaupulehu and Haena, and land purchases, like Mapulehu on Moloka'i, Waikapuna on the Big Island, and the Kuilima and Helemano areas on Oahu."

In his questionnaire, when asked "How do you perceive the role and responsibilities of a member of the BLNR?", Mr. Yuen responded, in part, that "There is, however, a line between the Board member's proper role and the operational management of the Department-including personnel decisions-that has properly been delegated to the Chairperson and the other DLNR staff. The line is not exact, but it is there, and I respect it. The Board members were appointed to make decisions as a group, not wield power as individuals." In addition, in his questionnaire, when asked "What do you hope to accomplish during your terms of service?", Mr. Yuen responded, in part, that:

After my years of service, I would like to look back and be able to say that the Board...made fair, balanced decisions consistent with law [and]...expanded protected areas of all types-forest, ocean, historic sites...

Also in his questionnaire when asked, "When exercising control over the state's land and natural resources, what consideration, if any, is given to the state's duty to also protect traditional and customary Native Hawaiian rights and practices?", Mr. Yuen responded, in part, that "[p]rotecting traditional and customary Native Hawaiian rights and practices is a constitutional mandate and a crucial part of decision-making at the Board."

YOUR COMMITTEE'S CONCERNS

While Mr. Yuen may have been an excellent and promising candidate when first appointed to the BLNR in 1990 and then again



in 1995, and 2014, your Committee finds that extending his fourteen year-long tenure on the BLNR would inhibit efforts to promote the kind of open-mindedness, accountability, and innovative thinking ideal in the public servant who assumes the profound responsibility that comes with the position. Specifically, your Committee is concerned about a number of issues that came to light during the nominee's written and oral testimony, including the answers he provided in response to the Committee's hearing questions. There was overwhelming testimonial evidence that the nominee has failed to employ his full authority as a BLNR member to protect the public's interest in our State's public trust resources. The nominee's candid responses during the two Water and Land Committee hearings made plain that the vital authority of the BLNR to gather information, impose mitigation measures, monitor compliance, and enforce against violations has been roundly underutilized to the detriment of the State's natural resources. Additionally, after reviewing a small sampling of the BLNR's published meeting minutes, questions began to surface as to their accuracy and integrity, and the extent to which Mr. Yuen's personal bias interfered with the objective recording of the BLNR's decisions. This issue is of particular concern for the Committee because those actions undermine the public's trust and confidence in the BLNR's actions.

As is the case with all BLNR members, the nominee is a trustee of all public trust natural and cultural resources in Hawaii. He is obligated to make decisions that protect those public trust resources for the benefit of Native Hawaiians and all the people of Hawaii. The BLNR has authority to protect the public and public trust resources through its decisions and has the following tools to mitigate adverse impacts:

- (1) Denying a permit, lease, or application;
- (2) Delaying approval of a permit, lease, or application until additional information is provided;
- (3) Adding conditions that require actions by the applicant to reduce and/or remedy harm to natural and cultural resources and the public trust beneficiaries that rely upon them;
- (4) Requiring additional information, assessment, and studies; and



- (5) Requiring meaningful, fair-market value compensation for use of public trust resources.

A. Evaluation of Recent Decisions

A review of the nominee's decisions over his latest term on the BLNR demonstrates he has failed to employ his full authority as a BLNR member to protect Hawaii's public trust resources.

I. Kahala Hotel

In recent years, Kahala Hotel (formerly Kahala Hilton Hotel) used the public beach for commercial activities. On the public beach, the hotel has rented out cabanas for more than \$100 per day, charged high rates for expensive weddings, operated a portion of its restaurant, and rented out clamshell loungers. The hotel's commercial use of public land, to the exclusion of the public, was not limited to the sandy beach. The grassy area mauka of the sand is also a part of the public beach and public land trust lands. This grassy area was also used by the hotel through its revocable permit.

Even though the nominee was aware that the Kahala Hotel profited off of impermissible weddings, operation of a restaurant, and cabana and clamshell rentals on the public beach in 2016, 2017, and 2018, he did not ensure that the hotel pay for those illegal past uses before voting to approve the hotel's future revocable permits. In 2018, instead of enforcing a dedication of an area for public use, the nominee supported the hotel's continued use of that area for the operation of a restaurant, the rental of cabanas, and the rental of clamshell chairs. In 2019, instead of requiring the hotel to meaningfully compensate the State for its past inappropriate use, the nominee moved to charge the hotel a meager \$702 for use of clamshell chairs on public property over a nine-day period.

II. Kalo'i Gulch

For over a decade, developer Haseko, Inc. has proposed drainage improvements for Kalo'i Gulch to allow stormwater from large rain events to flow directly into the ocean. Their proposed improvements involved lowering a natural berm along the 'Ewa Beach shoreline to increase the stormwater discharge capacity of a drainage channel through One'ula Beach Park, a place storied across



Hawaii as the "House of Limu." In December 2018, the BLNR voted 6-1 to deny an easement and construction right-of-entry permit for the drainage project. This was the first opportunity for the nominee to publicly and substantively weigh in on this controversial project.

During the confirmation hearing, the nominee commented, consistent with his vote at the December 2018 BLNR meeting, that if there were no flood, Haseko's lowering of the berm would not change anything. The nominee's statement, however, ignores the fact that once the berm is lowered, all stormwater discharge, including motor oil, heavy metals, and other toxic compounds, would be free to flow directly into the ocean to pollute marine resources, including limu harvested for consumption.

During the Committee's questioning, when the nominee was asked to explain the precautionary principle¹, a well-settled legal principle that discourages the postponement of effective resource protection measures in the absence of full scientific certainty, the nominee affirmed his understanding of this in answering, "When there is a substantial unknown factor that you err on the side of both protecting the environment and on the side of protecting human health." Despite demonstrating a clear understanding of his legal duties, the nominee's decision on this matter did not comport with that duty.

The nominee failed to uphold his legal obligation as a trustee in his subjective decision to expose (rather than protect) resources and those reliant on them to harm. When given the opportunity to require a supplemental environmental impact statement to consider, for the first time, the adverse health impacts on Hawaiian limu gathering and consumption, the nominee voted against requiring the applicant to produce affirmative evidence (as the law requires) that no harm would befall those who harvest limu to subsist and perpetuate traditional cultural practices. In doing so, the nominee abandoned the protective benefits of the precautionary principle in favor of approving and

¹ "[W]here there are present or potential threats of serious damage, lack of full scientific certainty should not be a basis for postponing effective measures to prevent environmental degradation... In addition, where uncertainty exists, a trustee's duty to protect the resource mitigates in favor of choosing presumptions that also protect the resource." In re Water Use Permit Applications, 94 Hawaii 97, 154-55, 9 P.3d 409, 466-67 (2000).



expediting the applicant's easement and construction right-of-entry permit.

III. Revocable Permit Task Force

The Revocable Permit Task Force (Task Force) was formed in 2016 after a series of news articles and significant public concern over the lack of transparency and accountability in the issuance of revocable permits (RPs) for tens of thousands of acres of land under the jurisdiction of the DLNR. The Task Force presented its recommendations to the BLNR to provide consistency and accountability in the RPs program, acknowledging that RPs are generally not the ideal method of land disposition, and outlining a checklist of specific criteria for their issuance and renewal.

The nominee was appointed by the DLNR Chair to the Task Force and BLNR approved the checklist it recommended. Despite this effort, the nominee and the rest of the board repeatedly failed to ensure that the requirements on the checklists were met before approving RPs. Even when applicants refused to meet with DLNR staff to discuss the appropriateness of their RPs or when applicants did not ensure compliance with conservation district rules, the nominee moved and voted to approve those RPs over multiple years.

IV. Stream Diversion/East Maui Watershed

In the context of stream diversions, BLNR's responsibility to the public trust is met when private requests to divert stream water for consumptive use are considered only after public trust purposes, such as the needs of the native stream ecosystem, protected cultural practices such as taro farming, reservations of the Department of Hawaiian Home Lands, and domestic uses, are determined and satisfied². A presumption must be made in favor of these public trust purposes, and private stream diversions can only be approved if the diverter can demonstrate an actual and quantified need for water that is both reasonable, beneficial, and justified in light of these public trust purposes and any other competing reasonable beneficial uses.

Yet, for the east Maui watershed, in its annual approvals of RPs allowing the diversion of tens of millions of gallons of water

² See, Haw. Const. Art. XI, §7, Haw. Rev. Stat. §174C; See also In re Water Use Permit Applications, 94 Hawaii 97, 130, (2000).



per day from streams that feed aquifers, estuaries, and springs depended upon by native species and other natural and cultural resources protected under the public trust doctrine, the BLNR made no such presumption in favor of public trust purposes, made no explicit consideration of these purposes, and failed to require the applicant to demonstrate the actual amount of water it would need for each annual RP period.

Despite his stated recognition of the BLNR's historical failure to safeguard the public trust, the nominee's actions in leading decision-making on the east Maui stream diversion RPs each year since 2016 suggest otherwise. These actions suggest a concerning, deference to the interests and unverified statements of the applicant to divert water, and a concerning dismissal of the concerns of members of the public, including Native Hawaiian cultural practitioners, farmers, and organizations. When questioned by a member of the Committee about his most recent motion to increase the amount of water allowed to be diverted from the staff-recommended thirty-five million gallons a day to forty-five million gallons a day, measured over the year, the nominee could point to nothing beyond the applicant's request to justify his motion. Additional testimony from the public to the Committee revealed that when concerns about diversion structures spreading invasive species were raised, the nominee attempted to counter these concerns by showing how the applicant contributes toward public-private partnerships for invasive species removal, which turned out to not be the case. Testimony to the Committee also revealed that when members of the public presented evidence of rusty pipes, broken cement blocks, and other debris in the stream to the BLNR, the nominee took the applicant at its word that all trash and debris had been removed when it apparently had not been. Renewing the RPs for east Maui stream water inflated the sales value of the applicant's land that receives this stream water by \$62,000,000, yet the nominee made no effort to recover any of that profit that could have been used to advance the DLNR's mission.

The nominee could have employed a wide variety of regulatory mechanisms to ensure the applicant's compliance with strict RP conditions. Unfortunately, he did not do that. Over the past four years, the nominee failed to uphold his duty as a trustee by failing to ensure that a minimum amount of water flowed in streams that the Water Commission's 2018 decision did not address, failing to require those seeking the diversion of stream water to demonstrate their actual, quantified need for such water during each RP period, failing to determine whether and to what extent



this need would impact, and be justified in light of, the public trust purposes in the streams to be diverted, failing to require monitoring and reporting of the amount of water left in streams and the amount of water diverted from streams, and eventually delivered to and used in central Maui, failing to require that those profiting from RP diversions contribute to the control of invasive species in the east Maui watershed, failing to address the harm caused by diversion structures and discarded pipes on public land, and failing to scrutinize requests from those private entities seeking stream diversions, including the request for even more water far in excess of how much water was recommended by DLNR staff, particularly in light of how much water has actually been used for farming in previous RP periods, how much might reasonably be needed in the prospective RP period, and how much has been wasted.

V. Na Pua Makani/North Shore Wind Farm

The nominee was active in BLNR deliberations regarding various approvals for the Na Pua Makani wind project. At issue was the proposed Habitat Conservation Plan (HCP) for the highly endangered 'ōpe'ape'a (Hawaiian hoary bat).

The contested case hearing officer, after months of investigation, evidence, briefings, and arguments found Na Pua Makani's plan to protect bats from harm caused by the wind turbines to be inadequate and recommended the plan be returned to the Endangered Species Recovery Committee (ESRC) for reconsideration. The nominee, however, made a motion to reject the hearing officer's recommendation and approve the HCP for the 'ōpe'ape'a, despite the insufficiencies identified by the hearings officer. At the Committee's hearing, the nominee explained that his rationale for rejecting the hearing officer's recommendation was based on prioritizing the clean energy needs over the protection of endangered species.

Issues identified during the contested case hearing process are now included in the latest draft guidance for protection of the 'ōpe'ape'a. The BLNR decision to accept the HCP and issue an Incidental Take License is now on appeal at the Hawaii Supreme Court.

Originally proposed as fourteen 428-foot turbines, Na Pua Makani revised its plans to fewer, yet taller turbines. Toward the end of the community engagement process and HCP discussions at



the ESRC, the turbine height was increased to 512-feet. The maximum height was increased again to 656-feet (sixty-five stories tall) by the time the EIS was presented for approval to the BLNR. By the end of the contested case, Na Pua Makani modified its request to build eight turbines of 568-feet in height.

Except for a handful of residents who expressed interest in managing the community benefits package of \$10,000 per turbine per year, there has been widespread community opposition for this second wind project in Kahuku.

The newly constructed 568-foot turbines that surround Kahuku have led to significant strife and pain and emotional stress in that community. More than two hundred people were arrested for protesting the delivery of turbine parts for this wind project. When asked during the committee hearing what he would say to the people of Kahuku, the nominee said, "I understand the reasons for wanting your view plane to remain the same, I understand that, I urge people to put it in their minds to look at the wind turbines with a point of pride."

This reflects a concerning disconnect between the nominee and the constituents served by the BLNR. Granted, while public sentiment should not necessarily dictate BLNR decisions, it is nonetheless necessary to mindfully consider how board decisions can affect communities.

B. Additional Concerns

In the course of its review of the nominee's performance, the Committee also identified additional areas of concern that warrant further consideration.

I. BLNR Meetings and Minutes

BLNR meeting minutes are a government record as defined by chapter 92F, Hawaii Revised Statutes, and section 13-1-2, Hawaii Administrative Rules. These are the official record of all actions taken by the BLNR. It is crucial to the functioning of the government that the minutes accurately reflect the discussion and actions taken by the Board.

Public testimony received by the Committee raised serious concerns about the accuracy of BLNR minutes. Upon further inquiry and questioning, the Committee confirmed that: the nominee



prepared minutes of BLNR meetings where he participated in the decision-making, there are substantive inconsistencies between the audio recordings of a BLNR meeting and the nominee's minutes of that meeting on (agenda item D-14 on December 14, 2018), and the discrepancies resulted in significant confusion between all parties that frustrated efforts to resolve a long-standing dispute over stream water access on Kauai. According to correspondence from the DLNR Chair dated July 5, 2020, the nominee prepared drafts of minutes on January 13, 2017; January 27, 2017; February 10, 2017; February 24, 2017; May 26, 2017; June 9, 2017; and December 14, 2018. Based on audio from the December 8, 2017, BLNR meeting, the Committee also affirmatively believes the nominee worked on the minutes from the November 9, 2017, meeting.

Your Committee finds that there was sincere confusion over the motion on which the BLNR voted at its meeting on December 14, 2018. On April 26, 2019, the applicant confirmed that there was confusion about the details of the BLNR's December decision. During the committee hearing, the nominee conceded to the Committee that he was confused about the motion at that BLNR hearing. The Committee finds that where there is confusion regarding an agency's action, the appropriate remedy is to clarify the agency action at a properly noticed public meeting. Unfortunately, that did not occur.

In this situation, the nominee made a detailed motion at the BLNR hearing on December 14, 2018. The nominee began by saying that he would "like to put substantive things on the record" and then detailed a motion to renew the RP and restore water to the stream. He said, "I'm making a motion to approve the renewal of the permit with conditions set by the staff recommendation which involve putting back 4 million gallons a day into the stream, into Waialeale Stream, and a million plus I think is the number, I don't remember exactly into Waikoko Stream." The audio recording from the discussion of this agenda item shows that the Commission on Water Resource Management (CWRM) staff when asked by a BLNR member what other streams would water be returned besides the Waialeale stream stating, "Per the land division submittal, 1.6 MGD for Waikoko Stream."

The nominee then prepared the minutes of that meeting, as confirmed by the Chair, and they were posted in draft form to the BLNR website in January 2019. Those minutes, however, did not include any of the important details of the nominee's motion. The minutes of the motion state,



D-13. The holdover of Revocable Permit No. S-7340 to Kauai Island Utility Cooperative ("KIUC'9, as amended. The Board included a condition that KIUC is to invite Earthjustice, Kia, Wai 0 Wai ale 'ale, Sierra Club, Grove Farm, and the Department of Hawaiian Home Lands (together, the "Working Group"), to participate in a facilitated discussion regarding their respective positions on KIUC's request to use State water for its hydroelectricity plants in the permit area, as well as any other relevant matters they choose to discuss. The Working Group may invite other individuals or organizations to participate in the discussion. KIUC shall report back to the Board on the progress of the discussions in three months.

MOTION: Approved as amended (Yuen, Roehrig) unanimous. Member Oi recused.

Your Committee, after listening to the audio and reviewing the minutes affirmatively, have concluded that the December 14, 2018, minutes, prepared by the nominee, are not accurate.

Then on April 26, 2019, when the parties returned to the BLNR for an informational briefing about the status of their mandated mediation, the BLNR learned that the mediation was not successful because there was a discrepancy between what was heard at the BLNR meeting and the minutes of that meeting. Instead of remedying this discrepancy by holding a publicly noticed meeting to clarify the motion and board action, the nominee attempted during this informational briefing to explain the discrepancy by recharacterizing the BLNR's December motion in a way that favored the applicant taking more water from the stream. As a result of the confusion about the BLNR motion, the mediation process between the applicant and the public broke down.

Your Committee finds that the nominee's treatment of the minutes for the BLNR meeting on December 14, 2018, to be inappropriate. Accurate minutes of agency meetings are crucial to ensuring public faith in BLNR decisions. The Committee also finds there to be a concerning correlation between the minutes prepared for the December 14, 2018, meeting by the nominee, which omitted key parts of the CWRM staff testimony and the "on the record" motion made to the board by the nominee, and input by the nominee four months later on April 26, 2019, which ultimately influenced



the record in a manner that could be interpreted to be inconsistent with the previous board action.

Moreover, your Committee finds that it is incumbent on all members of the BLNR to ensure that they understand the motion being considered, review all minutes to verify they accurately reflect the actions taken at each meeting, and immediately address any confusion using established procedures. Unfortunately, none of those procedures were employed on this specific matter.

II. Section 171-4, Hawaii Revised Statutes

During the committee hearing a committee member suggested that the nominee should be disqualified due to a violation of section 171-4, Hawaii Revised Statutes. Section 171-4(a), Hawaii Revised Statutes, provides that "The board of land and natural resources shall be comprised of seven members, one from each land district and three at large, to be nominated and, by and with the advice and consent of the senate, appointed by the governor as provided in section 26-34. The term and removal of a member of the board and the filling of a vacancy on the board shall also be as provided in section 26-34. *There shall be not more than three members on the board from the same political party.*" (Emphasis added).

The committee member then identified three other members of the BLNR that were verified to be members of the same political party, which if including the nominee would be four members of the same political party, thereby violating section 171-4, Hawaii Revised Statutes. During the hearing, the nominee then stated that, "I think future service on the board at this point is more important to me than the Democratic party and I will resign." Although not formally provided to the Committee by the nominee, the Committee did receive correspondence from the DLNR Chairperson on July 5, 2020, that effective July 1 2020, after the hearing for the nominee, the Chairperson of the DLNR and the nominee have resigned from the Democratic Party.

CHAIR'S COMMENTS

Your Committee Chair notes that while the Governor is under no obligation to do so, it is concerning that the nominees to the BLNR have been overwhelmingly male. Out of his ten nominees to the BLNR, only two have been female. Additionally, there is only one woman on the Commission of Water Resource Management, the DLNR



Chairperson, who serves on both the BLNR and CWRM. Of the eight seated members on the Land Use Commission (LUC), only two are female. The result is that women compose less than twenty percent of three of the most important and influential boards in the State.

Your Committee Chair also notes that in filling vacancies on the BLNR, for this and previous posts, the Governor's administration failed to open the positions to members of the public, instead filling positions with a preferred candidate. This was the same process employed when the administration filled the critical cultural practitioner position for the BLNR, which has proven highly problematic on the issues of Native Hawaiian rights and traditional practices. The failure to openly solicit qualified, willing applicants in good faith is concerning.

CONCLUSION

Your Committee believes that Mr. Yuen is thoughtful and highly educated, and his prior service to our State is sincerely appreciated. However, due to the concerns raised by your Committee, as highlighted in this report, your Committee believes it is time for a change and to give other highly qualified individuals on Hawai'i Island an opportunity to apply and serve on the BLNR. Your Committee again thanks the nominee for his participation in this process and wishes the nominee well in his future endeavors.

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, recommends that the Senate not advise and consent to the nomination.

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



KAIALI'I KAHELE, Chair



