

# CHRISTOPHER J. YUEN

March 24, 2015

Senator Laura Thielen and Members of the Senate Committee on Water and Land:

Here are my responses to the Committee's questionnaire.

## **1. Please describe the core State values that the Department of Land and Natural Resources (DLNR) is charged to protect.**

The DLNR's mission is to implement the values stated in art. XI of state constitution, which begins:

"For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawai'i's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

All public natural resources are held in trust by the State for the benefit of the people."

Many of the difficult decisions faced by DLNR hinge on finding the balance between these two mandates: "conserve and protect" and "development and utilization."

The words of the constitution points toward a resolution of the two mandates: "development and utilization" must be "consistent with their conservation and in furtherance of the self-sufficiency of the State." For us to utilize natural resources in the future, we must protect the resource base in the present: to continue to draw water, we must protect the forest, to continue to harvest fish, we must protect the reefs, to continue to attract visitors, we must protect natural beauty.

Underlying the broad words of the state constitution are even deeper values, eloquently stated in Hawaiian, which resonate in those who call Hawai'i home: "aloha 'aina" (love of the land), "malama 'aina" (caring for the land), and to do what is "pono" (right and just.)

More specifically, these some values that directly motivate DLNR programs:

- respect for cultural heritage (historic preservation, many state parks)
- stewardship of our priceless heritage of unique plants and animals (forestry and wildlife, aquatic resources)
- love of nature and the outdoors (state parks, hunting, fishing, boating)
- protecting the rights of the majority against the misdeeds of a few (conservation enforcement)
- prudent management of the state's assets (land management, small boat harbors, conveyances)

Finally, there are values in Hawai'i that relate to how decisions are made: inclusiveness, attempt to achieve consensus, respect for differing views.

## **2. What do you think is the role of a member of the Board of Land and Natural Resources?**

A BLNR member's primary role is to participate in decision-making at the board's meetings, representing the public. We were appointed to serve as members of a board that makes decisions collectively, not to wield power as individuals. The Sunshine Law requires that these decisions be made openly.

In the meetings, agenda items will almost always have a staff-recommended decision. While these recommendations deserve respect, the board members must look at issues from all perspectives, listen to public testimony, and exercise independent judgment in making the final decision.

The BLNR is an "executive board" according to its governing statute, but many functions have been delegated to the chairperson and staff. Rightly so, because the board could not, for example, participate effectively in personnel decisions such as hiring, promotions, and discipline, nor in the active management of the ongoing daily functions of the department—maintenance, employee supervision, enforcement, and so on. Even for the delegated functions, though, the board can be a venue for public oversight and accountability.

Of the many types of issues that do come to the board, I would highlight the following:

- conservation district use permits, which have involved major projects such as the H-3 and the Thirty Meter Telescope.
- leasing of land to private businesses. The DLNR is the state's main landlord. The public entrusts us to earn a fair return on its leased lands, and we need successful lessees to achieve that goal.
- dispositions of public land to other state and county agencies. Most other state and county agencies have only land that they obtained by executive order or acquisition for specific purposes. To expand facilities, for example, new school sites, they often need BLNR approval to obtain unencumbered state lands. While we must carefully scrutinize these requests, we also must recognize that it is the other agency that is primarily responsible for the site selection.
- adoption of administrative rules, which can have far-reaching effects on such issues as the use of conservation lands, hunting, and fishing.

Outside of the formal meetings, a board member can play a number of constructive roles. Occasionally the chairperson or the board may ask an individual member to work on or investigate a particular problem or issue. The board member can be a listening post for public concerns and complaints and relay those to the chairperson for appropriate action. The board member can try to help communication between the department and the community, and be an ambassador for the department with various stakeholders and other public officials.

## **3. As someone outside the department, what issue do you think the DLNR should address? What issue do you think the DLNR has handled well in the past?**

I wouldn't suggest any entirely new issues for DLNR. It's working on huge responsibilities right now, and the main challenge is to more effectively address what it already has on its plate. The funds for DLNR are far too small for its current mandate.

That being said, whenever a person—or an organization—is very busy, it's easy to forget that you have to stop sometimes and sharpen your tools. Among the “tools” that DLNR should sharpen are its administrative rules. The DLNR recently established rules for civil enforcement of violations of our fish, game, and other conservation-related laws. This should make enforcement much more timely and efficient. The department can improve its functions by reviewing rules for the conservation district and contested case hearings, and by the ongoing project to review the environmental assessment exemption lists.

The DLNR could also do more to tell the positive side of its story. The main impression from reading news about DLNR is that it is in constant controversy. This is the nature of news, of course—you won't see a news story that says “537,000 motorists arrived safely at their destinations today.” But there is a bigger DLNR story about dedicated employees planting trees, repairing fences, building parks, and watching after our beaches and ocean.

The DLNR has done many good things over the years, and I don't want to minimize some accomplishments by neglecting to mention them. I'd like to highlight the following, though:

- the department has done a great job in partnering with other conservation organizations and the public with programs such as the Watershed Partnerships, the Community Based Subsistence Fisheries Areas, and Makai Watch.
  - DOFAW has worked hard to maintain and improve hunting opportunities—in just the last month, for example, renewing the Lana'i cooperative game management area and negotiating a new public access across private land to the Ka'u Forest Reserve.
  - DLNR is playing a big role in preparing our state for climate change.
- 4. Four years from today—if you are confirmed and looking back on your term as a Board member—is there anything in particular you'd like to see done or accomplished during this time?**

At the end of the term, if I am confirmed to this position, I would like to look back and see that we:

- made fair, balanced decisions that are supported by law.
- helped to empower DLNR staff to take initiatives that fulfill its duties of stewardship and conservation.
- expanded protected areas of all types—forest, ocean, historic sites.
- improved the resource base for hunting and fishing through good management.
- made better and more productive use of those State lands that are properly devoted to business enterprises.

**5. Provide a description of any volunteer activities, especially those pertinent to the mission of the DLNR, including any service on boards or other positions in organizations, or other community service projects or activities.**

I had the good fortune to grow up in Hawai'i close to nature and from a fairly young age I realized that I was very lucky, and that the good things that I enjoyed could easily be lost. When I was 19 years old, in 1971, a number of us, mostly college and high school students, saw that the private land next to the beach parks in Keaukaha were zoned for resort development, and we started a petition drive to convince the county to change that. As a result, the administration of Mayor Kimura found federal funds to acquire the Carlsmith's and Richardson's properties to add to the county parks, and now, these are havens for people in Hilo and East Hawai'i.

After going to law school, working for the County as a deputy corporation counsel, and starting a private law practice, around 1987 I became involved in protecting a cherished beach and wetland area in Kona—Makalawena—from development. We formed an organization called Friends of Makalawena. Eventually, the landowner, Kamehameha Schools, withdrew the development proposal and today the public shoreline of this area is still enjoyed as a natural area by the public.

In 1988-1989, I represented the opponents of a proposed development on the adjoining property, Awake'e, pro bono at the LUC reclassification hearing. The developer withdrew the petition before the LUC vote.

Later, I was appointed to the BLNR and served from 1990-1998. The high point of my service was when the chair, Bill Paty, asked me to negotiate the terms of a land exchange between the state and the owners of Awake'e. Under the final land exchange, the state acquired the Awake'e property, including a mile of shoreline, while trading land nearby in Manini'owali, but retaining the shoreline of Manini'owali to a depth of 1000' inland, with an additional no-build buffer of 400'. The developer also contributed \$2.5 million to the construction of a beach park at Kua Bay.

Today, this coastal area, along with acquisitions at Mahai'ula and Kua Bay, forms part of Kekaha Kai State Park, which encompasses about 1300 acres and 4.5 miles of shoreline. Kekaha Kai State Park, in turn, is part of a 17 mile long stretch of shoreline in North Kona that is publicly owned (except Makalawena, but that is still designated conservation), and includes County parks at Kohanaiki and the Kaloko-Honokohau National Historical Park.

More recently, since 2012, I've been on the advisory councils for the Laupahoehoe and Pu'uwa'awa'a Experimental Tropical Forests. The advisory councils give public input to DOFAW and the U.S. Forest Service on planning and management of these two forest areas.

I was also vice-president of Ka 'Ahahui o Pu'uwa'awa'a, a community organization dedicated to the stewardship of Pu'uwa'awa'a, from 1999-2002.

Over the years I've also done things like volunteer tree planting at Pu'uwa'awa'a and the Hakalau National Wildlife Refuge.

**6. Are there any situations where you can foresee recusing yourself from a decision by the Board of Land and Natural Resources on the grounds that you have, or there is an appearance of, a bias or favoritism?**

I should mention two potential ethical issues:

1. I had a private law practice for 13 years. I'm still licensed although I don't actively practice law. It's possible that former clients will have matters before the board, and I would consult with the attorney general to ask if I should recuse myself. This shouldn't happen often; I didn't have the type of clients who are likely to have many issues at the board.

2. One of my daughters is a civil service employee in DLNR. She started in early 2008. Occasionally an agenda item will come to the board that she had worked on. I sought advice from the State Ethics Commission when I was appointed to the interim position on the board in July 2014 on ethical issues that may arise from this. She is not my dependent, the board doesn't make personnel decisions, and her job is not contingent on favorable board decisions. The staff attorney for the Ethics Commission advised me that it was ethically allowable for me to vote when she had worked on the item. The staff attorney advised that this did not create a conflict of interest, real or apparent, nor an appearance of bias or favoritism, as long as I didn't show a pattern of voting inconsistently depending whether or not my daughter had been involved.

**7. Is there any other information regarding your experience and background that you believe should be considered by the committee?**

Please see the attached letter to the committee.

# CHRISTOPHER J. YUEN

March 24, 2015

Senator Laura Thielen and Members of the Senate Committee on Water and Land:

I want to thank Gov. Ige for giving me the opportunity to continue doing work that is very important and deeply satisfying. The DLNR is probably the most important institution in the state protecting our natural environment, and it touches the lives of many people every day: hikers, hunters, fishermen, people enjoying our parks, small business lessees, and, in some way, everyone in Hawai'i.

I also want to thank this committee for so promptly scheduling this hearing for me and my fellow nominees, and for considering my confirmation.

The committee chair sent a questionnaire that covered many of the things that someone would want to know about a nominee to the BLNR, but I also wanted to give the committee a more personal statement about the experiences that I hope to bring to the board.

Gov. Waihee first appointed me to the BLNR in 1990. Around this time I'd made a personal transition. I came to realize that the most serious threats to Hawai'i's environment, like the decline of native forests, could be remedied only by active stewardship. The main problems were things like invasive species that can be cured only by time, money, and hard work. The general public tends to get aroused and riled up by particular unpopular development projects and will rally to fight them. This can be very important, and I've been involved in these fights, but I decided to be a person who put energy into the longer-term solutions.

So I became involved in the DLNR, the most hands-on organization dealing with Hawai'i's natural resources. I was fortunate to work with three chairpersons: Bill Paty, Keith Ahue, and Mike Wilson. I learned a lot about administrative procedure, the conduct of contested case hearings, the laws that apply to the DLNR, and functions of the DLNR that are crucial to many people involved but not so visible to the general public, like the small boat harbors and the business leases. I tried to support positive initiatives by the DLNR. When we had community projects that needed leases or other support, I tried to be on the side of giving them a chance.

I also learned, very slowly over eight years, to sit quietly, listen, and to understand the passionate and sometimes intemperate testimony that often occupies hours of public hearings.

In December 2008, Mayor Harry Kim appointed me as planning director for Hawai'i County. I held the job for eight years. Before this, like most people who worried about growth and over-development, I'd focused mostly on protecting areas from development. As planning director, I also had to focus on the flip side of this: where do you want people to live? People move to Hawai'i, lured by the same good things that keep us here, local children grow up and need to move out of the family home into their own households. Good planning means finding places for them to live.

I also learned that planning is not just about coloring in maps that show what goes where. You have to balance competing rights and interests. I had to respect decisions made in the past upon which people had relied, even if I didn't personally agree with them.

Since leaving the planning department in December 2008, I've put most of my energy in my farm. I had always wanted to try stewardship over land by farming in a way that, hopefully, leaves the earth better than I found it, so I accepted the discipline of being a certified organic farmer. In my previous roles, as a lawyer, planning director, and public servant, I had dealt a lot in concepts, in words. Farming is practical, concrete. You can't make plants grow by talking to them--at least, I can't. And it's very satisfying to see your trees bear fruit and feed people.

Often, those of us concerned about Hawai'i's environment fear a gloomy future. The story is one of loss and lament. Yet many good things are happening, and it's important to know that they are possible. I've seen dramatic regeneration of thousands of acres of koa forests at Kamehameha School's Keauhou property, in the Volcanoes National Park, on the slopes of Mauna Kea at 'Umikoa Ranch. Even from miles away on the inter-island flight from Hilo to Honolulu, or on satellite photos, you can see the dark green of native plants established by volunteers at the Hakalau Wildlife Refuge.

We've added thousands of acres of protected forests, miles of shoreline parks, and continue to do so, usually through programs supported by DLNR. We could fill several pages with a list of volunteer groups that are taking care of heiau, lo'i fishponds, marshes, parks, beaches.

I would like to continue to be a part of these kinds of efforts by serving on the BLNR.

Thank you for considering my nomination.

Yours truly,

Chris Yuen

# CHRISTOPHER J. YUEN

## RESUME

### Work Experience

- Owner and manager of The Family Farm, Inc., a 20 acre certified organic farm, supplying local markets with bananas, lychees, and rambutans, 1995-present.
- Planning Director, Hawai'i County, Dec. 2000-Dec. 2008.
- Private practice of law, 1987-Dec. 2000, primarily civil litigation. As a pro bono attorney, briefed and argued a case in the Supreme Court of the United States, winning a 1993 decision protecting homeowners' rights.
- Deputy Corporation Counsel, County of Hawai'i, 1982-1987.
- Interpretive Naturalist, National Park Service, 1978-1979, Hawai'i Volcanoes National Park.

### Education

- William S. Richardson School of Law, J.D. 1982.
- State University of New York, College of Environmental Science & Forestry, Masters' degree in Environmental Science, 1980.
- Stanford University, A.B., Human Biology 1974.
- St. Joseph High School, Hilo, Hawai'i 1969.

### Community Service

- At-large member, Board of Land and Natural Resources, July 2014-present.
- Advisory Council, Laupahoehoe Experimental Tropical Forest, 2012-present.
- Advisory Council, Pu'uwa'awa'a Experimental Tropical Forest, 2012-present.
- Hawai'i Island Member, Board of Land and Natural Resources, 1990-1998.

#### Major activities:

- Negotiated Awake'e-Manini'owali land exchange
- Revision of conservation district rules
- Review of more than 400 Conservation District Use Permits
- Approval of master plan for Kekaha Kai State Park
- Ka 'Ahahui o Pu'uwa'awa'a. Vice-president of community group, 1998-2001.
- Friends of Makalawena. Organized group to preserve coastline in Kona which culminated in the Kekaha Kai State Park, a 4.5 mile long, 1300 acre coastal park.
- Organized campaign to protect Keaukaha shoreline in 1971, which led to County's purchase of Richardson's and Carlsmith's properties for parks.

### Academic Publications

- "Common Heritage" v. "Freedom of the High Seas: Which Governs the Seabed?" 19 San Diego L. Rev. 493 (1982) (with Jon Van Dyke); also published



in Miles and Allen (eds.) The Law of the Sea and Ocean Development Issues in the Pacific Basin, 15 L. Sea Inst. Proc. 206 (1983).

—Palila v. DLNR, (with Jonathan Durrett), U.H. Law Review (1982).

### **Academic Awards and Honors**

—East-West Center Grantee, 1981-82

—Corpus Juris Secundum Award (highest GPA in law school class) 1981-82

—Hornbook Awards (highest grade in law school class) Contracts, Criminal Law, Civil Procedure, Administrative Law (1979-1980)

—National Science Foundation Graduate Fellowship, 1978-79

—Graduation with Distinction, Stanford University, 1974

—Valedictorian, St. Joseph High School, 1969

### **Personal**

—Born in Hilo, Hawai'i, March 2, 1952

—Married to Dr. Noelle Rodriguez. Daughters: Nina Yuen, Emma Yuen.