

STAND. COM. REP. NO. 913

Honolulu, Hawaii

MAR 17 2015

RE: GOV. MSG. NO. 514

Honorable Donna Mercado Kim
President of the Senate
Twenty-Eighth State Legislature
Regular Session of 2015
State of Hawaii

Madam:

Your Committee on Water and Land, to which was referred Governor's Message No. 514, submitting for study and consideration the nomination of:

CHAIRPERSON OF THE DEPARTMENT OF LAND AND NATURAL RESOURCES

G.M. No. 514 CARLETON CHING,
for a term to expire 12-31-2018,

begs leave to report as follows:

Your Committee has reviewed the personal history, resume, and statement submitted by the nominee, Carleton Ching, in consideration of his nomination for the position of the Chairperson of 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 substantial public attention and opposition. Three days after the nomination was announced, a group of approximately twenty organizations issued a public request to the Governor to withdraw the nomination. In addition, an online petition to reject the

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nominee was circulated and had collected several thousand signatures within two weeks.

In its efforts to maintain a fair, balanced, transparent, and respectful confirmation hearing, your Committee followed an open process and planned agenda, which included posting notice of the confirmation hearing three weeks in advance, posting testimony from the nominee and from the public prior to the hearing, accepting written testimony throughout the course of the public hearing, establishing ground rules for public testimony to ensure that personal attacks or remarks were not made and focusing the process on the substantive issue of the nominee's qualifications for the position, and providing all members of the public, regardless of their position, a fair opportunity to present their testimony.

TESTIMONY

Your Committee received testimony overwhelmingly in opposition to the nomination. Organizations and individuals submitting written testimony in opposition numbered approximately 1,120, and in addition there was a petition with over 7,596 signatures opposing the nominee. Those submitting written testimony in support of the nominee numbered approximately 272 organizations and individuals.

Your Committee received testimony in support of the nominee from the Office of the Governor; Department of Transportation; Department of Agriculture; Department of Human Services; Department of Hawaiian Home Lands; Department of Human Resources Development; Department of Land and Natural Resources, Department of Budget and Finance; Office of Planning; Agribusiness Development Corporation; Aha Moku Advisory Committee; Building Industry Association of Hawaii; Gentry Homes, Ltd.; Honolulu Wood Treating; SSFM international; Ashford & Wriston, LLP; Bickerton Dang LLP; Enviro Services & Training Center LLC; Hidano Construction Inc; Lyon.US.Com; Matsubara-Kotake; Takushi Wong Lee & Yee; Ocean Tourism Coalition; Pacific Housing Assistance Corporation; Schlack Ito LLLC; Yamaguchi Inc; Yamamoto Caliboso LLLC; Imanaka Asato LLLC; Valley Isle Excursions Inc; Waioli Research Foundation Corp.; Hawaii Construction Alliance; Hawaii Hunting Association; General Contractors Association of Hawaii; Lanihau Properties, LLC; Masons' Union Local 1; Hawaii Fishermen's Alliance for Conservation and Tradition, Inc.; Stryker Weiner & Yokota; Hawaii Pacific Health; Royal Contracting Co., Ltd; Pali



Momi Medical Center; Land Use Research Foundation of Hawaii; W.H. Shipman, Limited; William L. Moore Planning, Inc.; Activities & Attractions Association of Hawaii; Chamber of Commerce Hawaii; Enterprise Honolulu; Capitol Consultants of Hawaii, LLP; Hawaii Laborers-Employers Cooperation and Education Trust; Hawaii Cattlemens Council; Aloun Farms Inc; Avalon Group; Hawaii Laborers Local 368; Castle & Cooke Hawaii; Hawaii Operating Engineers Industry Stabilization Fund; Hawaii Regional Council of Carpenters; Hawaii Reserves, Inc.; Waiahole Poi Factory; Sheet Metal Workers International Association; Title Guaranty Escrow Services Inc.; Maunaloa Hawaiian Civic Club; and numerous individuals.

Your Committee received testimony in opposition to the nominee from Americans for Democratic Action Hawaii; Atooi; Aqua Lung Pacific; Banyan Tree Farm; Big Island Native Plant Society; Citizens United for Lanai; Earth Lovers of Puna; FoL Book Club; Friends of Lana'i; Hawaii Farmers Union United, Kona Chapter; Hawaiian Sustainability Foundation; Ho'okipa Network - Kauai; Ho'omana Pono LLC; Hulumanu Foundation; Kapuna Farms LLC; Kauai Albatross Network; Kona Songbird Farm; Malama O Puna; Malu'aina; Mehana Consulting; Pacific Agricultural Land Management Systems; Sierra Club Hawaii Chapter; Steelgrass Farm; Student Sustainability Coalition of Hawaii; Kahea - The Hawaiian Environmental Alliance; Kailua Neighborhood Board; Loko Ia Consulting; Maui Tomorrow Foundation, Inc; Sierra Club Big Island; Adopt A Beach Hawaii; West Maui Preservation Association; Hui o Ko'olaupoko; Earthtrust; South Kohala Alliance; The Outdoor Circle; Aha Wahine; Hoi Mai Ka Lei I Mamao; Hawaii's Thousand Friends; AdvoCats Hawaii; Gay Lesbian Bisexual and Transgender Caucus of the Democratic Party of Hawaii; Society of Hawaiian Archaeology; Defend Oahu Coalition; Surfrider Foundation; Earthjustice; The Sierra Club; Conservation Council for Hawai'i; Surfrider Foundation Oahu Chapter; 'Ilio'ulaokalani Coalition; Windward Ahupua'a Alliance; Progressive Democrats of Hawaii; Babes Against Biotech; Shaka Movement Hawaii; Hoomana Pono LLC; Save Manoa Valley; Protect Keopuka Ohana; Island Eyes Video; Kupa Aina Creations; and numerous individuals.

Your Committee received comments from the Office of Hawaiian Affairs, Hawaiian Affairs Caucus of the Democratic Party, Common Cause Hawaii, and nine individuals.



THE RESPONSIBILITY OF THE CHAIRPERSON OF THE BOARD OF LAND AND
NATURAL RESOURCES

The Chairperson of the Board of Land and Natural Resources (BLNR) oversees the Department of Land and Natural Resources (DLNR), which, through recommendations to the BLNR as well as through its own administrative authorities, is tasked with the use and management of approximately 1.3 million acres of public lands under its jurisdiction (much of which are former Hawaiian Kingdom government and crown land).

In addition, the Chairperson of the BLNR oversees the staff of the Commission on Water Resources Management (CWRM), while also serving as the Chairperson of CWRM.

This individual oversees the regulation of all uses on both public and private lands within the conservation state land use district; the protection and appropriate management of our islands' critical and limited public trust water resources, including the aquifers and streams; the regulation and protection of cultural and historic resources on all public and private lands and in ocean waters, including the protection of iwi kūpuna and sacred historic sites; the regulation and protection of all natural resources on all public and private lands and in state ocean waters three miles out from land, including the Northwestern Hawaiian Islands; the promotion of aquifer recharge through watershed protection and restoration; and the management of state beaches, including the maintenance of lateral access to coastal areas and public access to watershed and mountain resources.

Notably, the BLNR/CWRM Chairperson is responsible for implementing distinct and specific constitutional trust obligations when carrying out its regulatory and management responsibilities, including: maintaining all ceded lands as a public trust for native Hawaiians and the general public; protecting all public natural resources held in trust for the benefit of present and future generations; protecting, controlling, and regulating the use of Hawaii's water resources



for the benefit of the people; and protecting all traditional and customary practices possessed by native Hawaiians.¹

In addition, the Chairperson also serves as the State Historic Preservation Officer (SHPO), who is charged with administering the state historic preservation program, developing and implementing a comprehensive statewide historic preservation plan; is a member of the Kaho'olawe Island Reserve Commission, which manages the Kaho'olawe Island Reserve in trust for the future Native Hawaiian sovereign entity; is an ex officio, voting member of the Natural Area Reserves System Commission, which oversees the protection of native ecosystems; and has oversight over the Aha Moku Advisory Committee, which serves in an advisory capacity to

¹DLNR is charged with fulfilling the following obligations pursuant to the Hawaii State Constitution:

- (1) The public trust obligations pertaining to public lands pursuant to article XI, section 1, of the Hawaii State Constitution, which states:

Section 1. For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii'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.

- (2) The Native Hawaiian cultural obligations under article XII, section 7, which states:

Section 7. The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

- (3) Water rights pursuant to article XI, section 7, of the Hawaii State Constitution, which states:

Section 7. The State has an obligation to protect, control and regulate the use of Hawaii's water resources for the benefit of its people.

The legislature shall provide for a water resources agency which, as provided by law, shall set overall water conservation, quality and use policies; define beneficial and reasonable uses; protect ground and surface water resources, watersheds and natural stream environments; establish criteria for water use priorities while assuring appurtenant rights and existing correlative and riparian uses and establish procedures for regulating all uses of Hawaii's water resources.

- (4) The Hawaiian Homestead Lands pursuant to article XII, section 4, which states:

Section 4. The lands granted to the State of Hawaii by Section 5(b) of the Admission Act and pursuant to Article XVI, Section 7, of the State Constitution, excluding therefrom lands defined as 'available lands' by Section 203 of the Hawaiian Homes Commission Act, 1920, as amended, shall be held by the State as a public trust for native Hawaiians and the general public.



the BLNR on issues related to land and natural resources management through indigenous place-based practices with moku or regional boundaries.

CARLETON CHING - BACKGROUND

Carleton Ching received a Bachelor of Business Administration degree from Boise State University and an Associate of Arts degree from Columbia Basin Community College. Mr. Ching is currently the Vice President, Community and Government Relations, for Castle & Cooke Hawaii.

Mr. Ching's position with Castle & Cooke Hawaii since 2003 involved lobbying, communications, and government relations on behalf of the company regarding the company's strategic planning, residential, commercial, agriculture, and resort operations; renewable energy operations; and developments on Oahu, Lanai, and the Island of Hawaii.

Prior to 2003, Mr. Ching briefly served as Senior Project Manager at SSFM International; Project Manager/Operations at Molokai Ranch, Resort and Operations Division; Project Coordinator at Castle & Cooke Kunia; Vice President of Pheasant Ridge Corporation, WESTLOCH, INC.; Housing Specialist II (Development Project Coordinator) at the Hawaii Housing Authority; Account Executive at Tropic Shores Realty, Ltd.; and has been a private consultant.

The nominee is or has been an executive board member of the Land Use Research Foundation of Hawaii for nearly a decade in addition to serving on the Boards of Pali Momi Hospital; Pacific Housing Assistance Corporation; Hawaii Pacific University (Trustee); Building Industry Association; Chamber of Commerce - Infrastructure, Transportation, Quality of Life Committee; and Hawaii Business Roundtable, Legislative Advisory Group.

YOUR COMMITTEE'S CONCERNS

Your Committee was aware that one of the primary objections to the nominee was his lack of experience in natural, historic, and cultural resources management. In an effort to be fair to the nominee, your Committee held the confirmation hearing in mid-March, giving the nominee a month and a half to meet with the DLNR staff, organizations, and individuals in order to familiarize himself with the scope of the responsibilities of the DLNR, the



nature of conservation and resource management, the state core values that the DLNR is charged with implementing, and the constitutional mandates of the DLNR.

The nominee did make a sincere effort to reach out to a wide variety of groups and individuals, including many who had objected to his nomination, and did spend a significant amount of time with DLNR staff.

Your Committee was concerned, however, that after all this time and meetings, the nominee did not bring forward a clear understanding of the DLNR's core values, or provide any vision for how he would approach the challenges of resource management. Neither was there any sign that he understood the administrative and regulatory processes the Chairperson is responsible for overseeing, which are the vehicles by which the DLNR ensures that the State meets its various public trust responsibilities.

In his opening remarks, the nominee merely repeated the DLNR's mission statement, which he summarized as the need to protect historic and cultural history and to do everything we can to protect our resources on public land.

However, when pressed on what he meant by those statements, the nominee struggled to find answers. The nominee repeatedly retreated into a response that he would simply comply with the law, follow the staff's recommendations, and implement the mission of the DLNR.

Your Committee then presented specific hypotheticals to the nominee in order to determine what factors he would use to make policy, regulatory, and administrative decisions that the Chairperson is charged with. Most of the nominee's responses reflected the perspective of a career spent advocating on behalf of private developers of land, and not of a person who understands or fully appreciates the stewardship of public trust responsibilities. A few examples include:

- (1) In his opening remarks, the nominee noted that the State needs to protect "assets" on public lands, while uses on private lands may be different. When asked about the DLNR's role in regulating uses on private lands, the nominee initially seemed surprised. His remarks focused on private landowners' right to put their property to highest and best use. When reminded



about the restrictions on uses in the conservation district, which is under the exclusive jurisdiction of the DLNR, Mr. Ching replied the DLNR would comply with the law;

- (2) When asked what recommendation he would make to the Land Use Commission if a private landowner submitted a petition to shift land from the conservation district to the urban district in order to develop a resort in a coastal area, and the DLNR staff recommended keeping the land designation as conservation due to fragile coastal resources and traditional and cultural practices in the area, Mr. Ching said he would balance the competing needs for the land. The nominee did not express what that balance meant, and there was no mention of the value of the resources in their natural state, the constitutional rights of practitioners, or why he would disregard the recommendations of the staff in this case;
- (3) When asked how he would evaluate a development proposal in an area where only ten percent of native forest remained, again the nominee merely stated he would balance the landowner's request with the resource needs. No concern was expressed or even acknowledged by the nominee regarding Hawaii's rapidly disappearing native habitat, nor of the possibility that cumulative impacts of development may possibly result in placing a priority on the need to protect the resource rather than simply balancing the competing needs as equal when making some regulatory decisions;
- (4) When asked about eliminating some of the statutorily required development permits, the nominee supported these efforts as "streamlining". When the nominee was reminded that some of the permits were the vehicles by which the State ensured private developments did not eliminate native Hawaiian access for traditional and customary practices or the public right to access public beaches, he referred to these matters as "details"; and
- (5) Several times during the hearing, the nominee referred to land as "dirt" and the need to preserve Hawaii's "brand". While some may argue these terms are merely



semantics, it is revealing that the nominee repeatedly used them during his nomination hearing, when one would expect a nominee to this position to express the need to malama 'aina and affirm a commitment to the native Hawaiian culture.

The lack of familiarity with the subject matter of the DLNR was not surprising, given that the nominee has no job experience in the subject, nor has he volunteered for any conservation or resource projects. What was surprising, however, was the nominee's argument as to why the Committee should not be concerned with this fact, which seemed to be that the Committee members should simply trust him to follow the mission of the DLNR.

A nomination to the position of Chairperson of the BLNR is too important to risk to an improbable candidate having no background in conservation, environmental protection, and historic preservation.

Your Committee did not get a convincing impression that the nominee has an understanding of the constitutional obligations and rights that make Hawaii unique. Many important day-to-day decisions that the Chairperson makes do not go before the BLNR or the CWRM for a vote. These seemingly innocuous daily decisions can have an enormous impact on the public's rights and on Hawaii's natural, cultural, and historic resources in the short run as well as the long run.

Lastly, but in need of mentioning, is the fact that the nominee has spent approximately thirteen years working for Castle & Cooke, a company which owns a significant amount of land in Hawaii and is one of our State's largest local developers. Hawaii law currently does not have a "reverse conflict of interest" rule, meaning Mr. Ching would not legally be required to recuse himself were Castle & Cooke to appear before the BLNR or CWRM for any permit approval.

When asked whether he would voluntarily recuse himself from such a decision, the nominee initially evaded providing an answer, claiming he would rely on the advice of the Attorney General. When the conflict of interest law was explained to him again and he was pressed for an answer, the nominee declined to commit to any position.



There is no question that Castle & Cooke will have some interaction with the DLNR over the next four years. Indeed, given the nature of their land holdings and developments, it is likely that Castle & Cooke will interact with the DLNR multiple times during this period. While the conflict of interest laws are not the responsibility of the nominee, the Senate must be mindful of the public perception and resulting loss of trust in government that may arise should this nominee be placed in this position of land use regulatory oversight.

CONCLUSION

Your Committee believes that Mr. Ching is a man of integrity and honesty and would be well-suited for another position in the Governor's cabinet. Your Committee also believes that many of the people who oppose the nominee for this position would be avid supporters were he appointed to head an agency charged with developing workforce and affordable housing. Your Committee recognizes and appreciates that the nominee is willing to step away from a well-paid position in the private sector in order to serve his State.

Your Committee also notes for the record that a development background does not disqualify someone for the position of Chairperson of BLNR/CWRM. Indeed, a couple of the BLNR's past Chairpersons did have work histories with Hawaii's "Big Five" firms. However, these individuals also had conservation and resource protection experience, including working for The Nature Conservancy and heading our State Constitutional Convention, which adopted many of the public trust responsibilities the DLNR is charged with upholding.

The nominee's lack of such experience, coupled with his inability to grasp the primacy of native Hawaiian and public trust claims regarding resources on private as well as public lands, and his failure to provide any clear vision for the DLNR beyond complying with the law and following the mission, lead us to conclude he does not have the requisite qualifications for the job. Your Committee believes Mr. Ching is not the right individual for the position of the Chairperson of the Board of Land and Natural Resources.

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,


LAURA H. THIELEN, Chair



