

DAVID Y. IGE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**SUZANNE D. CASE**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**KEKOA KALUHIWA**  
FIRST DEPUTY

**JEFFREY T. PEARSON P.E.**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**Testimony of**  
**SUZANNE D. CASE**  
**Chairperson**

**Before the House Committee on**  
**ENERGY AND ENVIRONMENTAL PROTECTION**

**Thursday, February 4, 2016**  
**8:00 AM**  
**State Capitol, Conference Room 325**

**In Consideration of**  
**HOUSE BILL 2770**  
**RELATING TO THE ENVIRONMENTAL REVIEW PROCESS**

Senate Bill 2293 proposes to ensure that environmental justice and the precautionary principle are taken into account in the Environmental Impact Statement/Environmental Assessment process.

**The Department of Land and Natural Resources (Department) opposes the bill because it is redundant with existing law, and too broadly written to implement effectively in a state with a unique host culture and no true minority population.**

The Department would suggest “environmental justice impacts” be made one of the significance criteria listed in Hawaii Administrative Rule §11-200-12, and that “environmental justice” and “minority population” be clearly defined in the definitions section of Hawaii Revised Statutes Chapter 343.

The Department believes that while the precautionary principle can be useful, the environmental assessment process should be based on the best available science. The language in the proposed Section 343-B creates a standard that may be impossible to attain and will likely prevent many actions that could have significant benefits from being implemented.



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February 4, 2016

HEARING BEFORE THE  
HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

**TESTIMONY ON HB 2770**

RELATING TO THE ENVIRONMENTAL REVIEW PROCESS  
Room 325  
8:00 AM

Aloha Chair Lee, Vice Chair Lowen, and Members of the Committee:

I am Randy Cabral, President of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,900 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interests of our diverse agricultural community.

The Hawaii Farm Bureau offers the following comments on HB 2770, which incorporates the principles of environmental justice and the precautionary principle into the environmental review process. While on the surface, these concepts seem laudable and based on common sense, we are concerned about how they may be used to negatively affect Hawaii's farms and ranches. Over the last several years, we have observed an extremely detrimental movement against local agriculture, led by mainland activists who generate fear and misunderstanding among the public, and use any means available in their attempt to shut down farms that don't meet their particular standards.

We are concerned that, along with other pressures that make farming in Hawaii extremely challenging, any new policies, laws, or regulations that place further unwarranted obstacles or restrictions on farming will cause the demise of commercial agriculture in Hawaii, and with that, the end of any hope for Hawaii's self-sufficiency.

In this bill, "precautionary principle" (PP) is defined as the taking of precautionary measures when it is determined that a proposed action poses a threat of harm to human health or the environment, regardless of whether causation between the proposed action and the threatened harm is fully established scientifically.

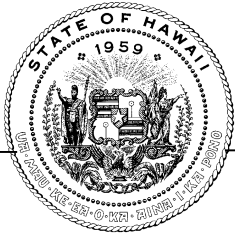
HFB members strongly believe that health and safety must come first in every enterprise. Hawaii's farmers and ranchers are also protective parents with children and grandchildren, and they are proud and active members of the communities in which they farm. However, we are not comfortable with the definition of the PP proposed by the bill.

It is unclear as to how a determination would be made that a proposed action does or does not pose a threat of harm to human health or the environment. It seems likely that a strict interpretation of the PP will leave us paralyzed, by delaying or not allowing any new project that may have some unknown or unforeseen risk. We would certainly not be driving our cars, using modern medicine, riding in elevators, building wastewater treatment plants, exploring the ocean and outer space, or flying in airplanes if we adhered strictly to this interpretation of the PP. If there is the slightest theoretical possibility of harm that cannot be conclusively ruled out, this version of the PP would block the development of any innovation or new technology, to the detriment of our knowledge, our economy, and our health.

As farmer representatives, we believe that this premise is flawed and its incorporation into the EA/EIS process is problematic. We are most concerned that these types of policies will affect agriculture, perhaps through state land leases, our need for water via irrigation systems, state permitting requirements, agriculture's use of pesticides, the growing of genetically engineered crops, or any other legal and accepted practice that could be jeopardized if this policy is adopted.

We believe that, at least with regard to farming, the United States and the State of Hawaii already use the Precautionary Principle through extensive scientific studies, testing, legally binding requirements and appropriate enforcement of agronomic regulations. The addition of PP will do nothing to increase public safety or environmental protection. We fear that these types of policies, while well-intentioned, could result in more local farmers being forced to give up farming altogether, ending any hope that Hawaii has of becoming food and energy self-sufficient.

We respectfully urge you to hold HB 2770.



# OFFICE OF ENVIRONMENTAL QUALITY CONTROL

DAVID Y. IGE  
GOVERNOR

SCOTT GLENN  
INTERIM DIRECTOR

DEPARTMENT OF HEALTH, STATE OF HAWAII  
235 South Beretania Street, Suite 702, Honolulu, HI 96813

Phone: (808) 586-4185  
Email: oeqchawaii@doh.hawaii.gov

Testimony of  
**SCOTT GLENN**  
Interim Director

before the  
**HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION**

Thursday, February 04, 2016

9:00 AM

State Capitol, Conference Room 229

in consideration of  
**HOUSE BILL 2770**  
**RELATING TO THE ENVIRONMENTAL REVIEW PROCESS**

Chair Lee, Vice Chair Lowen, and Members of the House Committee on Energy and Environmental Protection,

The Office of Environmental Quality Control (OEQC) administers Hawai'i Revised Statutes (HRS) Chapter 343, Environmental Impact Statements (EIS). The purpose of the EIS law is to "establish a system of environmental review which ensures that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations" (HRS §343-1). Additionally, the OEQC serves "the Governor in an advisory capacity on all matters relating to environmental quality control," as directed in HRS §341-3.

HB 2770 proposes to incorporate the principles of environmental justice and the precautionary principle into the environmental review process. It proposes four new sections to HRS Chapter 343: principles for considering environmental justice, the precautionary principle, analysis for the precautionary principle, and guidelines for considering environmental justice in specific phases of the environmental review process. It also proposes to add new definitions for the terms "community benefits agreement," "environmental justice," "local assessment committee," and "planning"/"scoping."

The OEQC respectfully offers the following comments on HB 2770 for the Committee's consideration:

- 1) Much of the language presented in HB 2770 is from the 2008 Hawai'i Environmental Justice Initiative Report, available on OEQC's website. The report is an outcome of Act 294, which Governor Lingle signed on July 10, 2006, and the State Environmental Council produced with the assistance of a consultant. As stated in the report, Act 294 aimed to accomplish two tasks: "to define environmental justice in the unique context of Hawai'i through community outreach activities, and to develop and adopt a guidance document that addresses environmental justice in all phases of the environmental review process with assistance from the community" (p. ES-1).

- 2) The report recommends accomplishing its purpose through guidance initially. It further recommends that, “after the efficacy and practical implications of the environmental justice guidance document have been evaluated, [HRS] Chapter 343 be amended to incorporate the successful aspects of the Environmental Justice Guidance Document.”
- 3) The report notes that Hawai‘i does not have explicit laws that require the evaluation of disproportionate negative impacts to human health or the environment on Native Hawaiian, minority, and low-income populations. While that may be the case, HRS §343-2 currently defines an “environmental impact statement” to mean:

“an informational document prepared in compliance with the rules adopted under section 343-6 and which discloses the environmental effects of a proposed action, effects of a proposed action on the economic welfare, social welfare, and cultural practices of the community and State, effects of the economic activities arising out of the proposed action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects.”

In addition, Hawai‘i Administrative Rules (HAR) 11-200-16 currently requires for any EIS:

"The contents shall fully declare the environmental implications of the proposed action and shall discuss all relevant and feasible consequences of the action."

To the extent environmental justice is related to economic welfare, social welfare, and cultural practice, and is relevant to the proposed action, the existing process is capable of addressing environmental justice.

Thank you for the opportunity to testify on this measure.



# Hawaii Crop Improvement Association

*Growing the Future of Worldwide Agriculture in Hawaii*

## HOUSE COMMITTEE ON ENERGY AND ENVIRONMENT

### Testimony on House Bill 2770

### Related to Environmental Review Process

February 4, 2016. Room 325. 8:00 am

#### **HCIA 2014-2016 Board of Directors**

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Mark Phillipson

##### **Executive Director**

Bennette Misalucha

Aloha Chair Lee, Vice Chair Lowen and members of the Committee,

My name is Bennette Misalucha, Executive Director of the Hawaii Crop Improvement Association (HCIA). HCIA is a Hawaii-based non-profit organization promoting agricultural bio tech to help farmers and communities succeed. Through education, collaboration, and advocacy, we work to ensure a safe and sustainable food supply, support responsible farming practices, and build a healthy state economy.

HCIA respectfully opposes House Bill 2770.

We are concerned that these types of policies in the environmental review process could impede agricultural operations or negatively affect farming interest at a time when agriculture is already besieged by so many challenges. We also believe that if passed, there would be economic implications (i.e. less farmers) would adversely impact Hawaii's goal of achieving food sustainability for our Island state.

We respectfully urge the Committee to reject HB 2770.

Thank you for the opportunity to submit testimony.

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**Testimony to the House Committee on Energy and Environmental Protection  
Thursday, February 4, 2016 at 8:00 A.M.  
Conference Room 325, State Capitol**

**RE: HOUSE BILL 2770 RELATING TO ENVIRONMENTAL REVIEW PROCESS**

Chair Lee, Vice Chair Lowen, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") is **very concerned** about the language in HB 2770, which proposes to incorporate the principles of environmental justice and the precautionary principle into the environmental review process.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The bill proposes to add the following definitions to Chapter 343 HRS.

"Community benefits agreement" means a legally binding agreement between an agency or applicant and a community organization in which the agency or applicant agrees to shape the proposed project in a manner to provide specified benefits to the community and the community organization agrees to support the proposed project before any government bodies are required to approve any necessary permits and subsidies.

"Environmental justice" means:

1. The right of every person in the State to live in a clean and healthy environment, to be treated fairly, and to have meaningful involvement in decisions that affect that person's environment and health;
2. The duty of every person in the State to uphold traditional and customary native Hawaiian practices that preserve, protect, and restore the natural environment for present and future generations; and
3. The recognition that no segment of the population or a geographic area should be disproportionately burdened with environmental or health impacts resulting from the development, construction, operation, or use of natural resources.

"Local assessment committee" means a committee that consists of a representative sampling of minority, low-income, and other members of a community that would be impacted by a proposed action.



# Chamber of Commerce HAWAII

*The Voice of Business*

"Planning" and "scoping" mean identifying impacts, alternatives, and actions that will be considered in completing an environmental assessment or an environmental impact statement, respectively."

The intent of Chapter 343 HRS is to develop a public disclosure document which essentially identifies impacts, proposes mitigation measures and assesses different alternatives for agencies to use in their decision making process. Chapter 343 HRS should not be viewed as or used as a vehicle to impose requirements on a specific project. The proper entities to impose conditions are the agencies who issue permits for the projects.

In addition, Chapter 343 HRS documents are usually required for government projects. Private projects may also be required to prepare a 343 HRS document depending on the permitting requirements for the project.

Finally, the purpose of preparing a Chapter 343 HRS document is to disclose information about a project to the public. In the past, most of the information required was factual and quantifiable. The proposed amendments to Chapter 343 HRS would require subjective and qualitative judgments to be made. This invariable will present problems as there will be disagreement on some of the judgments being made.

It may be more appropriate to rethink where it would be proper to impose these requirements on a proposed project rather than complicate and confuse the existing Chapter 343 HRS public disclosure process.

We are opposed to the bill as presently drafted. Thank you for the opportunity to express our views on this matter.

Thank you for the opportunity to testify.





**Conservation Council  
for Hawai'i**

*Hawai'i's voice for wildlife*

*Kō Hawai'i leo no nā holoholona lōhiu*



Testimony Submitted to the House Committee on Energy and Environmental Protection  
Hearing: Wednesday, February 4, 2016 8 am  
Conference Room 325

In Support of HB 2770 Relating to the Environmental Review Process

Chair , Vice Chair, and Members of the Committee.

Aloha. Conservation Council for Hawai'i supports HB 2770, which incorporates the principles of environmental justice and the precautionary principle into the environmental review process.

This is a just and reasonable requirement. Please support HB 2770.

Mahalo nui loa for the opportunity to testify.

Marjorie Ziegler

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P.O. Box 2923 | Honolulu, HI 96802 | Office: 250 Ward Ave., Suite 220 | Honolulu, HI 96814

President: Julie Leialoha | Vice President: Koalani Kaulukukui | Secretary: Wayne Tanaka  
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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 03, 2016 1:59 PM  
**To:** EEPtestimony  
**Cc:** kyle.kajihiro@gmail.com  
**Subject:** Submitted testimony for HB2770 on Feb 4, 2016 08:00AM

**HB2770**

Submitted on: 2/3/2016

Testimony for EEP on Feb 4, 2016 08:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kyle Kajihiro	Hawaii Peace and Justice	Support	No

Comments: Thank you for the opportunity to testify on this bill. For many years we have worked alongside the residents of Wai'anae to raise awareness about and demand action to address the startling health statistics and negative environmental impacts afflicting their community. Although environmental justice (EJ) has been part of federal and state law for several decades, an EJ analysis has not been specifically required in state environmental review processes. This bill will make the environmental review process consistent with state and federal standards. Furthermore, the precautionary principle is an important way to approach potential new environmental harms. I urge your support for this bill. Thank you.

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*Cynthia K.L. Rezentes*

Wai`anae, HI  
Email: rezentesc@aol.com

February 4, 2016

Committee on Energy & Environmental Protection  
Thursday, February 4, 2016, 8:00 a.m., Conference Room 325

**RE:** Testimony in **Support** of HB2770 RELATING TO THE ENVIRONMENTAL REVIEW PROCESS

Dear Chair Lee and members of the Committee on Energy & Environmental Protection:

Thank you for the opportunity to submit testimony in **support** of HB 2770 which allows for the incorporation of environmental justice principles and the precautionary principle.

As I sit on the EPA National Environmental Justice Advisory Council, I have heard numerous heart-breaking stories of how minorities, people of color and people who live in poverty are adversely affected by industrial concerns surrounding or near their communities. Some of these stories include people not able to drink or wash with their traditional waters due to an industrial challenge (Tennessee Kingston Coal Plant toxic sludge accident, Flint, Michigan Water Quality, etc.) These stories are heart-breaking as there is, in many cases, little options for these people except to either accept their living conditions, or if at all possible and economically feasible to move from places where they have generational knowledge and history.

Many of these locations are readily agreed to as detrimental to people's being able to enjoy their property or health due to the differing factors affecting their living conditions. Some of these locations include: locations around transit ports, transportation hubs (either trucks or railroads), near landfills, near refineries or other chemical processing facilities.

While we do not have significant amounts and concentrations of these types of facilities in Hawaii, we should still, nevertheless, be aware of the locating of industries that may have a deleterious effect on the health and well-being of our own people of color or minorities or those who live in lower income locations.

An example of this could be similar to the area that I was raised in and currently reside, the Wai`anae Coast. We host the only legal construction and demolition landfill on the island, are near the only municipal solid waste landfill on the island and are located near the largest oil-fired electrical generating facility on the island. Also, not too far away in Campbell Industrial Park are located numerous other industrial processes which could potentially affect our community by adding their air-borne pollutants, i.e. coal-fired electrical generating facility, Waste to Energy Plant (H-Power), two refineries, another bio-fuel electrical generating facility, etc.

By adding to the Environmental Review process that the principle of environmental justice should be studied before proceeding and filing either an EA/EIS, a true evaluation could be had in understanding not only the effects of that endeavor but also the cumulative impacts on surrounding communities which may be affected by the endeavor, especially if those surrounding communities are already challenged by cultural, social, occupational, historical or economic factors that may increase the natural and physical effects of the actions proposed.

We have many communities throughout the State which could benefit from this analysis. Consider that we do not recommend building electric generating facilities in areas that are heavily visited by our tourist industry, nor do we propose landfills in the middle of our visitor centers. These types of facilities are always projected to be located in areas that we, the residents of the State live, work and play within. We need to guarantee that any proposal does not burden one community over another and that for those least able to remove themselves from those locales with these industries that we provide the best protections that we can so that that location does not produce the next health or economic victim community.

Therefore, I request your favorable support in passing HB2270.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 03, 2016 2:43 PM  
**To:** EEPtestimony  
**Cc:** tampaltin@gmail.com  
**Subject:** Submitted testimony for HB2770 on Feb 4, 2016 08:00AM

**HB2770**

Submitted on: 2/3/2016

Testimony for EEP on Feb 4, 2016 08:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Tamara Paltin	Individual	Support	No

Comments: Aloha and Mahalo for reading my testimony, Mahalo also for introducing this bill I am in strong support. There is no other state in the USA that the environment is the economy as much as Hawaii and so all of our decisions should be made with an eye to how it will affect our environment and our health via the environment because we are very isolated from medical care as well

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 02, 2016 4:46 AM  
**To:** EEPtestimony  
**Cc:** starmer@hawaii.edu  
**Subject:** \*Submitted testimony for HB2770 on Feb 4, 2016 08:00AM\*

**HB2770**

Submitted on: 2/2/2016

Testimony for EEP on Feb 4, 2016 08:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kaelan	Individual	Support	No

Comments:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 03, 2016 8:07 AM  
**To:** EEPtestimony  
**Cc:** dylanarm@hawaii.edu  
**Subject:** \*Submitted testimony for HB2770 on Feb 4, 2016 08:00AM\*

**HB2770**

Submitted on: 2/3/2016

Testimony for EEP on Feb 4, 2016 08:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dylan Armstrong	Individual	Support	No

Comments:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, February 04, 2016 6:19 AM  
**To:** EEPtestimony  
**Cc:** gkvierra@gmail.com  
**Subject:** Submitted testimony for HB2770 on Feb 4, 2016 08:00

**LATE**

**HB2770**

Submitted on: 2/4/2016

Testimony for EEP on Feb 4, 2016 08:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
George Vierra	Individual	Support	No

Comments: Keep Hawaii's environment beautiful and healthy!

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, February 04, 2016 6:09 AM  
**To:** EEPtestimony  
**Cc:** gottlieb@hawaii.rr.com  
**Subject:** \*Submitted testimony for HB2770 on Feb 4, 2016 08:00AM

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**HB2770**

Submitted on: 2/4/2016

Testimony for EEP on Feb 4, 2016 08:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Gottlieb	Ponoholo Ranch Limited	Oppose	No

Comments:

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# SIERRA CLUB OF HAWAII

## MĀLAMA I KA HONUA. *Cherish the Earth.*

House COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

Thursday February 4, 2016 8AM Room 325

In Support **HB2770** Relating to Environmental Review Process

**LATE**

Aloha Chairman Lee and members of the House EEP Committee,

On behalf of our 12,000 members and supporters, the Sierra Club of Hawai'i **strongly supports** HB2770 to add principles of environmental justice to the environmental review process.

### **Precautionary Principle Essential to Protect Public Interests**

Our current method for evaluating a proposed action affecting the quality of our environment is based on managing risk. Project proponents admit the potential for harm from a project and propose actions to mitigate that harm. This approach results in a wide range of problems, especially in marginalized communities, including:

**Allows harm:** risk management allows some amount of harm to occur, the burden for limiting that harm is on the project opponent.

**Failed mitigation:** mitigation proposed in an EIS may never be implemented, or implemented to a lesser degree than proposed, or fully implemented but completely miss the problem to be solved.

**Compound problems:** when where the harms of many different projects in close proximity to each are mitigated, the mitigated level of harm from each project builds on the next resulting significant cumulative impacts.

By contrast, the precautionary principle serves to minimize foreseeable risks to public health and environment without requiring project opponents prove that harm exists to some certainty.

Key elements of the principle include taking precaution in the face of scientific uncertainty; exploring alternatives to possibly harmful actions; placing the burden of proof on proponents of an activity rather than on victims or potential victims of the activity; and using democratic processes to carry out and enforce the principle-including the public right to informed consent. According to the precautionary principle, when reasonable scientific evidence of any kind gives us good reason to believe that an activity, technology or substance may be harmful, we should act to prevent harm.

### **Environmental Justice Long Over Due**

Despite having a robust environmental impact statement statute on the book since 1974, Hawaii has been slow to codify protections for environmental justice. In Hawai'i, objective

assessments of environmental impacts historically ignored the context of a proposed project, the unique character of a community, and the fact that some communities were already overburdened with locally unwanted land uses. The idea that some communities were expendable explained why landfills, power plants, and munition dumps were sited in the same communities. And these "features" resulted in more illegal dumping, severed connections between residents and their local environment, and depreciation of property values. These harms are real and long-lasting.

The Sierra Club strongly supports every effort to redress the longstanding environmental injustice suffered by certain communities in our islands. HB2770 is a thorough and thoughtful step in the right direction.

For these reasons, the Sierra Club urges this Committee to move this measure forward. Thank you for the opportunity to testify on this measure.

Mahalo,

A handwritten signature in black ink, appearing to read "M. Townsend", is written over a light gray rectangular background.

Martha Townsend  
Director

**LATE**

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 03, 2016 10:41 PM  
**To:** EEPtestimony  
**Cc:** dale@hicattle.org  
**Subject:** \*Submitted testimony for HB2770 on Feb 4, 2016 08:00AM\*

**HB2770**

Submitted on: 2/3/2016  
Testimony for EEP on Feb 4, 2016 08:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dale Sandlin	Hawaii Cattlemens Council	Oppose	No

Comments:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 03, 2016 5:58 PM  
**To:** EEPtestimony  
**Cc:** henry.lifeoftheland@gmail.com  
**Subject:** Submitted testimony for HB2770 on Feb 4, 2016

**LATE**

**HB2770**

Submitted on: 2/3/2016

Testimony for EEP on Feb 4, 2016 08:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Henry Curtis	Life of the Land	Support	No

Comments: Aloha Reps Life of the Land has long supported including environmental justice and the precautionary principle in all aspects of planning. Please support this bill.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 03, 2016 5:48 PM  
**To:** EEPtestimony  
**Cc:** kat.caphi@gmail.com  
**Subject:** Submitted testimony for HB2770 on Feb 4, 2016 08:00AM

**HB2770**

Submitted on: 2/3/2016

Testimony for EEP on Feb 4, 2016 08:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kat Brady	Individual	Support	No

Comments: Aloha! I'm Kat Brady, testifying as a citizen. Mahalo for this opportunity to say, HB 2770 is a great bill! It upholds the true intention of Chapter 343, our Environmental Impact Statement law, - it protects all communities and makes their health and safety a priority for exploration and investigation in any development proposal. Please support HB 2770 and protect all that is unique and wonderful in our archeipelago...and that includes the people! "The care of human life and happiness and not their destruction is the first and only legitimate object of good government." Thomas Jefferson

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**LATE**



**HB2770**  
**RELATING TO THE ENVIRONMENTAL REVIEW PROCESS**  
House Committee on Energy & Environmental Protection

February 4, 2016

8:00 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) Beneficiary Advocacy and Empowerment Committee **SUPPORTS** HB2770, which provides a framework of analysis for incorporating environmental justice considerations in the environmental review process. By helping to identify and address the potential disproportionate impacts of government decisionmaking on vulnerable and underrepresented groups, such as rural Hawaiian communities, this measure will help to preserve the social and moral fabric of our islands, perpetuate our cultural foundation, and promote positive public health outcomes for all who call Hawai'i home.

The concept of environmental justice recognizes the need to address the disproportionate environmental burdens borne by marginalized, underrepresented, or otherwise vulnerable communities from projects, policies, and government decisionmaking. Whether due to a lack of visibility, resources, political capital, or other factors, the environmental and health needs of such communities are more likely to be overlooked or disregarded in planning or decisionmaking, relative to more privileged classes or groups. In Hawai'i, this phenomenon has manifested in many ways, such as in the concentration of municipal waste facilities and the relatively lax enforcement of dumping laws in Wai'anae, a rural region populated predominantly by low-income Native Hawaiian and ethnic minority residents.<sup>1</sup> In addition to localized impacts to natural resources, including resources gathered for subsistence purposes, the proliferation of landfills and other waste disposal facilities has also now led to public health concerns, based on the prevalence of respiratory conditions and similar illnesses in adjacent neighborhoods.<sup>2</sup> The Commission on Water Resources Management's historical failure to recognize the impacts of groundwater withdrawals and stream diversions on Native Hawaiian communities, the selection of Native Hawaiian sacred sites and regions for target practice and military live-fire training, and the failure to implement meaningful laws or protections for subsistence fishery resources critical to rural Native Hawaiian communities, are other salient examples of the need to more actively promote the concept of environmental justice in Hawai'i nei.

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<sup>1</sup> See Chasid M. Sapolu, *Dumping on the Wai'anae Coast: Achieving Environmental Justice through the Hawai'i State Constitution*, 11 ASIA PACIFIC LAW & POL'Y J. 208 (2009).

<sup>2</sup> Samson Kaala Reiny, *PVT landfill: Nanakuli residents say big business is trumping their basic health concerns*, THE HAWAII'I INDEPENDENT, September 4, 2010.

By providing an explicit framework of analysis for environmental justice concerns in the state environmental review process, this measure will take a significant step towards ensuring a better and healthier environment for all of Hawai'i's communities. Expressly identifying an action's potential disproportionate impacts to marginalized populations may facilitate the development of mitigation measures or alternatives that might not otherwise have been considered, and that may better reflect our ideals of fairness and justice. Similarly, the bill's authorization of legally-binding "community benefits agreements" may also allow unavoidable impacts to be balanced by compensation or other benefits specific to communities bearing any disproportionate environmental burden. Notably, such agreements may also reduce the potential for conflict, and facilitate the implementation of projects that might otherwise be delayed by costly legal and other challenges.

In addition, this measure may help to perpetuate the cultural foundation of our islands. The measure's express consideration of impacts to Native Hawaiian communities, including rural, kīpuka communities, as well as Native Hawaiian traditional and customary practices, may facilitate the protection of traditional lifestyles and customs that inform our islands' cultural heritage and values. Such consideration may also greatly assist government agencies in identifying, protecting, and enforcing the traditional and customary rights of Native Hawaiians, as required by our constitution, statutes, and case law.

Finally, OHA notes that this measure is consistent with the policy direction set forth by Act 155 of the 2014 Legislature, which recognized the role and responsibility of all state agencies in addressing the "social determinants of health" of health-vulnerable communities. As understood in the traditional Hawaiian concept of "Mauli Ola," the health of individuals and communities is inextricably tied to environmental and social factors such as housing, education, culture, and recreational opportunities. In light of the growing recognition that these "social determinants of health" are the most influential factors in individual and community health outcomes, the state legislature amended the state planning act to require all agencies to address the social determinants of health of vulnerable communities in their objectives, programs, services, and other activities. The instant measure, which ensures the consideration of environmental impacts specific to vulnerable and marginalized communities, furthers this policy direction and facilitates its implementation in all decisionmaking involving environmental review. Accordingly, by addressing the environmental factors that can and do affect individual and community health, this measure has the potential to promote better health outcomes for all of our islands' communities.

OHA therefore urges the Committee to **PASS** HB2770. Mahalo nui for the opportunity to testify on this measure.



**LATE**

February 3, 2016

Aloha e Representatives,

We are writing in strong support of H.B. No. 2770, which would greatly improve the environmental review process pursuant to Hawaii Revised Statutes, Chapter 343. KAHEA is a Hawai'i-community based 501(c)(3) nonprofit organization with over 10,000 supporters.

H.B. No. 2770 would require consideration of environmental justice in its assessment of impacts of proposed actions requiring environmental review. The U.S. Environmental Protection Agency (EPA) defined "environmental justice" to mean:

*The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people, including racial, ethnic, or socioeconomic group should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.*

EPA, "Final Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses," at 1.1.1 (Apr. 1998). KAHEA incorporates environmental justice principles in its work with Hawai'i's communities.

KAHEA partners with the Concerned Elders of Wai'anae to raise awareness and address environmental justice issues in leeward communities, where a high concentration of Native Hawaiians live on O'ahu. We host Huaka'i Kāko'o no Wai'anae Environmental Justice Bus Tours, coordinate Wai'anae Environmental Justice Working Group meetings; organize the "Mālama i ka Wai o Wai'anae 2<sup>nd</sup> Annual Environmental Justice Day in Wai'anae", and have collaborated with Wai'anae community partners to produce a "Environmental Justice Bill of Rights" (below).

Incorporating environmental justice considerations into Hawai'i's environmental review processes would accord with the "Wai'anae Environmental Justice Bill of Rights," forward KAHEA's programming and mission, and improve processes for decisionmaking for all of Hawai'i. Mahalo nui for considering our testimony.

Me ke ha'aha'a,

KAHEA 2016 Board & Staff

PROTECTING

NATIVE HAWAIIAN

CUSTOMARY & TRADITIONAL

RIGHTS AND OUR FRAGILE

ENVIRONMENT

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KAHEA: the Hawaiian-Environmental Alliance is a non-profit 501(c)3 working to protect the unique natural and cultural resources of the Hawaiian islands. KAHEA translates to English as "the call."



# Environmental Justice Bill of Rights for the People of Wai‘anae

## Definitions

“**Environmental Justice**” is defined by the U.S. Environmental Protection Agency as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”

“**Fair treatment**” is defined by the EPA as a condition where “no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies.”

“**Meaningful involvement**” is defined by the EPA as conditions where “(1) people have an opportunity to participate in decisions about activities that may affect their environment and/or health; (2) the public’s contribution can influence the regulatory agency’s decision; (3) their concerns will be considered in the decision making process; and (4) the decision makers seek out and facilitate the involvement of those potentially affected.”

## A Vision Statement for the Wai‘anae District

As residents of the Wai‘anae Moku, we share a vision for a future where kūpuna, the elders and grandparents, and their mo‘opuna, their grandchildren, can live in an environment that is not harmful to our health and which sustains our well-being. As largely Kanaka ‘Ōiwi residents of Wai‘anae, we bear a disproportionate share of the negative environmental consequences resulting from landfills, illegal dumping, and noxious industries in Wai‘anae, and we want a future where, instead, people will recognize the abundance that we have in Wai‘anae.

We want clean water, and we want to see changes that will restore our waterways, the wai, fresh waters, the kai, salt waters, and the muliwai between, the blending of the salt and fresh waters, all being able to travel from the mountains to the seas, remedying the concrete channelization to restore the muliwai as estuaries for the pua, the baby fish, and the ocean forms of life like types of limu that have disappeared with channelization. We want greater accountability regarding our waters so that we can see our springs and other water sources restored. We want to be sure that O‘ahu’s only municipal landfill follows environmental safety guidelines so we do not see our beaches polluted. We want to see our watersheds replenished through reforestation.

We want to have clean air to breathe, protection from fugitive dust arising from the only construction and demolition landfill on O‘ahu that is sited in Lualualei and from the adjacent cement recycling plant. We want to be sure that any waste materials permitted for dumping in Wai‘anae does not make its way to our oceans and streams.

We want to see the ‘āina, that which feeds us, protected. We want to see sustainable farming that does not use pesticides that poison the land. We want access to our mountains, valleys, streams and seas, especially when they are necessary to our customary and traditional practices as Kanaka ‘Ōiwi.

Most importantly, we want to see these protections enforced. We do not simply want the palapala, the documentation of our rights. We want to see any violation of these rights acted upon so that our vision of the future can become a reality. We rely on state institutions, such as the Environmental Court, established by Act 218 signed into law by Governor Abercrombie in 2014. We look to the Environmental Court to help us to realize this vision of the future.

All of this we want for Wai‘anae and all of its abundance, including our elders, ourselves, our children and future generations, for the next seven generations to come.

## **Wai‘anae Environmental Justice Bill of Rights**

**The people of Wai‘anae have a right to an environment that is not harmful to their health.** In Wai‘anae, we need environmental justice. We bear an unjust burden of the negative environmental consequences of landfills, namely O‘ahu’s only municipal landfill at Waimānalo Gulch and the only construction and demolition landfill at PVT Landfill, and noxious industries like the HECO Kahe Power Plant, the largest carbon polluter in the state of Hawai‘i.

**The people of Wai‘anae have a right to an environment that is not harmful to their well-being.** The environment has an inherent and intrinsic value, and people have a responsibility to care for and steward that environment. Our well-being is dependent on the conservation and protection of the land and her historical, cultural, and social histories. The well-being of a people, then, includes the integrity of their culture as it is remembered in land forms and features. The mo‘olelo, histories and stories, of these wahi pana, celebrated places and wahi kapu, sacred places, is not “ephemeral,” as developers have told us. They are collective memories sustained over time, many dating back to the Kumulipo, composed in 1700 but based on much earlier genealogies.

**The people of Wai‘anae have a right to clean water.** This includes the kai, the ocean salt waters, the wai, the fresh waters, and the muliwai, the blending of the fresh and salt waters. All three are necessary for life and a healthful environment. On the one hand, we recognize the need for flood mitigation and control, but we also believe that the channelization of streams has been a more expedient solution rather than a sustainable one, and in particular, has had an adverse impact on the muliwai, which serves as the estuaries and nurseries for the pua, the baby fish and the life systems in the ocean, including limu. The Wai‘anae Watershed Management Plan includes a Concrete Flood Channel Redesign Program, and we would like to see either the concrete channels broken up or the planting of indigenous plants in the concrete channels to help restore the estuaries.

**The people of Wai‘anae have a right to a protected watershed.** The Wai‘anae Watershed Management Plan includes implementation strategies for ecosystem restoration programs, like the forest restoration program, wetlands restoration and protection program, and the stream conservation corridor program. We also believe that implementing a “slow-growth” policy for Wai‘anae aligns with the rural character of Wai‘anae envisioned in the Wai‘anae Sustainable Communities Plan. This means opposing industrial or urbanization projects that would put undue strain on our water resources.

**The people of Wai‘anae have the right to know the kinds of pollutants that affect clean water and understand the sources of those pollutants.** We have been investigating the hydrology reports presented in the Draft Environmental Impact Statement for the PVT Landfill expansion that runs along Ulehawa Stream, and we have been looking into the studies that make up this report to gain an understanding of what the water is being tested for and what the results have been.

**The people of Wai‘anae have the right to report sources of illegal pollutants to the correct City or State or other authority without fear of retaliation.** As often stated in environmental justice bills of right written in other places, retaliation for whistle-blowing is a key concern in the reporting of any violation of environmental protection laws. The people of Wai‘anae should know that they can report harmful activities without fear of reprisal.

**The people of Wai‘anae have a right to clean air.** Fugitive dust has been an urgent health issue for people in Wai‘anae who suffer from high rates of respiratory diseases. The difficulty for our community has been in establishing a cause-and-effect correlation between conditions generating dust and the health of neighboring communities. Our kūpuna have taken action to plant Native plants along places like Lualualei Naval Access Road to mitigate the dust in the area from the hundreds of trucks that pass through that road each day. We want to see more of a green belt graded around landfills and noxious industries to minimize the fugitive dust that gets into our homes.

**The people of Wai‘anae have a right to know if and what kinds of chemicals are used on plants and the land to control insects and weeds.** We have a right to know the lasting effect of these chemicals on the land, people, plants, and animals as well as on the reefs and oceans systems from the run-off. We have a right to know the protocol of the clean-up of these chemicals.

**The people of Wai‘anae have a right to see agricultural land preserved so that we can produce and buy healthy food.** Wai‘anae is well-known for its truck farms, two-acre farms on deep parcels of land, and that kind of farming is the most sustainable. We vigorously oppose “urban spot zoning” that enables “urban creep,” a condition where developers purchase cheap agricultural land and speculate on rezoning for profit. Once a spot as been rezoned, other developers purchase adjacent properties, arguing that their proposed industrial or urban uses are consistent with existing uses on the rezoned spot. Urban spot zoning also leads to what the State Department of Agriculture calls “the Impermanence Syndrome.” If banks and other loan institutions do not see a future in farming, they will be hesitant to lend farmers money for expensive machinery or buildings. We believe in preserving low-density population and preserve the panorama of open space. We also believe that implementing a “slow-growth” policy for Wai‘anae aligns with the rural character of Wai‘anae envisioned in the Wai‘anae Sustainable Communities Plan.

**The people of Wai‘anae have a right to be informed of any plans that may change and / or pose threats to the health of the land, water, air and all life.** As a community, we need to be informed prior to such planning, and we need time to weigh the impacts of any proposal. For example, although many resident of Wai‘anae would like to shut down the Waimānalo Gulch municipal landfill, the reality is that that would mean the opening up of a landfill closer to residential communities in Wai‘anae.

**The people of Wai‘anae have a right to be informed prior to degradation of or change to the environment through the use of public funds, such as taxes collected for the City and County of Honolulu’s illegal dumping of concrete in the Mā‘ili‘ili‘i Stream.**

**The people of Wai‘anae have a right to pono and healthy ecosystems that are publicly recognized as interdependent, from the mountains to the sea.** We want any development project to recognize that impacts do not stop at boundary lines but extend past them. We have a right to know that our descendants and others in our community will inherit a “whole” place, a place that is pono, balanced and healthy, and that supports a healthy community.

**The people of Wai‘anae have a right to educate themselves and others about any harmful activities happening on the ‘āina.** The better educated people are, the better able they will be to defend and protect the ‘āina.

**The people of Wai‘anae have a right to raise their keiki on the ‘āina of their ancestors.**

We have a right to live as Kanaka on our ko pae ‘āina, our archipelago. Developers tell us that it is “unrealistic” for a family to live on the same land their ancestors lived on, but we have strong connections to our ancestral lands, and we want to maintain this connection to the kulāiwi.

**The people of Wai‘anae have a right to sustainable energy, but that sustainable energy must remain in balance with our other concerns, such as the preservation of celebrated and sacred places, prime agricultural lands, protection of indigenous species, and the health of our people.** Although solar farms may sound like a clean energy source, proposals to build solar farms on prime agricultural lands lack foresight. Another proposal for renewable energy outlines plans to build windmills 12 miles off Ka‘ena Point, but high voltage DC lines may have devastating effects on ocean life, sea birds, fishing, sharks and migratory fish, and drag anchors may entangle whales and dolphins. Moreover this project failed in Denmark, so this raises other questions about the implementation of this project in Hawai‘i.

**The people of Wai‘anae have a right to voice our concerns to those in government entrusted with the responsibility of permitting change in land use.** Environment and people’s health is paramount over corporate profit, and development projects must be carefully scrutinized. We are concerned when state agencies make executive decisions at the expense of community members in order to support “economic growth.” We are not against economic growth, but we are concerned about the instances when that growth occurs at the expense of the environment or people’s health or well-being.

**The people of Wai‘ane have a right to access places for Hawaiian traditional and customary practices.**

**The people of Wai‘anae have a right to meaningful involvement, to be consulted about environmental decisions and development projects, and to be involved in the enforcement of environmental protection laws and policies.** In 1973, the Neighborhood Board System was established to ensure community participation in decision-making processes of government that affect them. The Neighborhood Boards enable important discussions to take place between community members, government officials and developers. We are concerned, however, that the City Department of Planning and Permitting often approves permits without consulting the community, as in the case of solar farms recently permitted for A and B rated agricultural lands. The City and County of Honolulu Ordinance

states that a solar farm is not an acceptable use on A and B lands, can only occupy 10 percent of C and D lands, and is permissible on E lands, so the DPP approves permits in ways that violate City ordinances. In these cases, we insist on community consultation, and we also believe we need to be able to enforce laws protecting the environment, a role that is much more than the advisory one that Neighborhood Boards currently provide.

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**Testimony to the House Committee on Energy & Environmental Protection**

**The Honorable Chris Lee, Chair  
The Honorable Nicole Lowen, Vice-Chair  
Members of the Committee  
Thursday, February 4, 2016**

**LATE**

**RE: HB 2770: Relating to Environmental Review Process.**

Dear Chair Lee, Vice-Chair Lowen, and members of the Committee:

My name is Gladys Marrone, Chief Executive Officer for the Building Industry Association of Hawaii (BIA-Hawaii), the Voice of the Construction Industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, and affiliated with the National Association of Home Builders.

BIA Hawaii is very concerned about the language proposed in HB 2770 which proposes to incorporate the principles of environmental justice and the precautionary principle into the environmental review process. Therefore, we are opposed to the bill as written.

The bill proposes to add the following definitions to Chapter 343 HRS.

"Community benefits agreement" means a legally binding agreement between an agency or applicant and a community organization in which the agency or applicant agrees to shape the proposed project in a manner to provide specified benefits to the community and the community organization agrees to support the proposed project before any government bodies are required to approve any necessary permits and subsidies.

"Environmental justice" means:

1. The right of every person in the State to live in a clean and healthy environment, to be treated fairly, and to have meaningful involvement in decisions that affect that person's environment and health;
2. The duty of every person in the State to uphold traditional and customary native Hawaiian practices that preserve, protect, and restore the natural environment for present and future generations; and
3. The recognition that no segment of the population or a geographic area should be disproportionately burdened with environmental or health impacts resulting from the development, construction, operation, or use of natural resources.

"Local assessment committee" means a committee that consists of a representative sampling of minority, low-income, and other members of a community that would be impacted by a proposed action.

"Planning" and "scoping" mean identifying impacts, alternatives, and actions that will be considered in completing an environmental assessment or an environmental impact statement, respectively."

The intent of Chapter 343 HRS is to develop a public disclosure document which essentially identifies impacts, proposes mitigation measures and assesses different alternatives for agencies to use in their decision making process. Chapter 343 HRS should not be viewed as or used as a vehicle to impose requirements on a specific project. The proper entity to impose conditions are the agencies who issue permits for the projects.

In addition, Chapter 343 HRS documents are usually required for government projects. Private projects may also be required to prepare a 343 HRS document depending on the permitting requirements for the project.

Honorable Chris Lee, Chair  
House Committee on Energy and Environmental Protection  
February 4, 2016  
Testimony on BIA-Hawaii  
H.B. 2770, Relating to Environmental Review Process

Finally, the purpose of preparing a Chapter 343 HRS document is to disclose information about a project to the public. In the past, most of the information required was factual and quantifiable. The proposed amendments to Chapter 343 HRS would require subjective and qualitative judgments to be made. This invariable will present problems as there will be disagreement on some of the judgments being made.

It may be more appropriate to rethink where it would be proper to impose these requirements on a proposed project rather than complicate and confuse the existing Chapter 343 HRS public disclosure process.

We are opposed to the bill as presently drafted. Thank you for the opportunity to express our views on this matter.

**From:** mailinglist@capitol.hawaii.gov  
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**HB2770**

Submitted on: 2/4/2016

Testimony for EEP on Feb 4, 2016 08:00AM in Conference Room 325

**LATE**

Submitted By	Organization	Testifier Position	Present at Hearing
Alice Greenwood	Concern Elders of Waianae	Support	No

Comments: Aloha my name is Alice Greenwood. We are in support of H.B. #2770. The statements and comments that are written in this Bill. Are many of the concerns we have endured in many pass and present environmental concerns, in our community of Waianae and alongside our many communities throughout Oahu. Mahalo Concerned Elders of Waianae

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