



SB436
RELATING TO TRAINING

House Committee on Ocean, Marine Resources, & Hawaiian Affairs

March 18, 2015

10:00 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) **STRONGLY SUPPORTS** SB436, which is a bill in OHA's 2015 Legislative Package. This bill would require the members of certain boards and commissions to attend a Native Hawaiian Law training course funded by OHA, and developed by third-party legal experts. Accordingly, SB436 represents an opportunity to ensure that key State policymakers understand and make decisions that are consistent with the State's fiduciary obligations to the Native Hawaiian people.

A training course in Native Hawaiian Law for relevant board and commission members is necessary to fulfill the trust obligations and responsibilities held by the State of Hawai'i towards Kānaka Maoli. The boards and commissions listed in SB436 administer resources and programs that directly impact Native Hawaiian traditional and customary rights, natural and cultural resources, and the public trust. As state entities, these boards and commissions have a duty to protect and enforce Native Hawaiian rights, and to administer the public trust in the interest of its beneficiaries, including Native Hawaiians. However, notwithstanding the broad range of expertise and experience of the individuals selected to serve on these boards and commissions, many may not possess knowledge of the unique legal rights and responsibilities that relate to Native Hawaiians, or to the public trust. Unfortunately, this has likely contributed to a sense of disenfranchisement felt by many in the Native Hawaiian community, and policy decisions that have failed to uphold the duties of the State.

To address this problem, since 2013, OHA has offered a Native Hawaiian Law training course on a voluntary basis to state and county legislators, board and commission members, and other relevant individuals. This training course was developed in partnership with the Ka Huli Ao Center for Excellence in Native Hawaiian Law at the William S. Richardson School of Law, and has been presented in January 2013, January 2014, and July 2014. In total, over 250 individuals have attended the course, including members of all the boards and commissions enumerated in this bill. **Notably, training course attendees overwhelmingly indicated that as a result of the course, they better understood the State's legal responsibilities towards Native Hawaiians and the public trust.**

Requiring similar legal training for each member of the boards and commissions listed in this bill will ensure that *all* of these critical decisionmakers are provided with the information they need to successfully fulfill the state's legal obligations towards Native

Hawaiians and the public trust. Towards this end, OHA has and will continue to commit funds for the further development and administration of a Native Hawaiian Law training course, eliminating the need for appropriations from the state general fund.

As the constitutionally established body responsible for protecting and promoting the rights of Native Hawaiians, OHA is the appropriate agency to create and administer a Native Hawaiian Law training course. OHA's kuleana include serving as the agency responsible for the 1) performance, development, and coordination of programs and activities relating to Native Hawaiians, as well as 2) the assessment of policies and practices of other agencies impacting Native Hawaiians. SB436 accordingly furthers OHA's purpose and kuleana in these areas, by ensuring that agency officials making policy decisions on Hawaiian issues have a basic understanding of legal protections for Native Hawaiian rights and interests.

Therefore, OHA strongly urges the Committee to **PASS** SB436. Mahalo nui loa for the opportunity to testify.

DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
CARTY CHANG
Interim Chairperson**

**Before the House Committee on
OCEAN, MARINE RESOURCES & HAWAIIAN AFFAIRS**

**Wednesday, March 18, 2015
10:00 am
State Capitol, Conference Room 325**

**In support of
SENATE BILL 436
RELATING TO TRAINING**

Senate Bill 436 proposes to mandate that the Office of Hawaiian Affairs (OHA) develop a training course on Native Hawaiian rights, and to require members of ten boards, commissions, or councils to attend these trainings. Training would be offered twice per year to ensure ample opportunity for board, commission, or council members to attend. **The Department of Land and Natural Resources' (Department) comments are limited to those boards and commissions under its jurisdiction. As such, the Department supports this measure.**

Senate Bill 436 notes that it is the duty of all boards, commissions, and councils to protect Native Hawaiian traditional and customary rights. However, many appointees to the boards, commissions, and councils that have the potential to impact native Hawaiian traditional and customary rights are not adequately trained in what those rights are, or the tools that they can use to protect those rights.

The Department notes that OHA has offered three such training courses since January 2013, and the Department has sent boards and commission members, as well as staff members, to the course each time. Everyone who attended had high praise for the course and indicated it was well worth their Saturday.

Thank you for the opportunity to testify.

CARTY S. CHANG
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DANIEL S. QUINN
INTERIM FIRST DEPUTY

W. ROY HARDY
ACTING 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

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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CARTY S. CHANG
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Aha Moku Advisory Committee (AMAC)

Testimony of
Leimana DaMate

Before the Senate Committees on
Hawaiian Affairs
And
Government Operations

Friday, February 13, 2015
1:30 P.M.
State Capitol, Conference Room 224

In **SUPPORT** of **Senate Bill 436**

Relating to the OHA Package; Native Hawaiian and Hawaiian Rights; Training Course

Senate Bill 436 requires OHA to administer a training course on native Hawaiian and Hawaiian rights. It requires members of certain state councils, boards, and commissions to attend the training course.

The Aha Moku System encompasses the eight main Hawaiian Islands and supports the traditional and generational knowledge of the people who are connected to each of the 43 moku and 587 ahupua'a. Many of the state's regulatory policies and laws are derived from the foundation of cultural practices and codified within the Hawaii State Constitution. However, these laws and practices are not commonly translated into practical knowledge by sitting members of many of the state's official councils, boards, commissions and advisory committees. These same entities have great influence in the creation and implementation of current statutes and rules which directly impact the lives of the public trust including Native Hawaiians.

We believe that this bill is necessary and long-overdue. It will bring a much needed understanding of how public trust resources and programs directly impact Native Hawaiian and Hawaiian traditional and customary rights and natural resource protection and access rights.

We humbly ask that the Senate Hawaiian Affairs and the Water and Land Committees pass HB 436.

Melody Kapilialoha MacKenzie
Ka Huli Ao Center for Excellence in Native Hawaiian Law
William S. Richardson School of Law, UH-Mānoa
2515 Dole Street, Honolulu, Hawai'i 96822

S.B. 436

Relating to Training

Committee on Ocean, Marine Resources, & Hawaiian Affairs

Rep. Kaniela Ing, Chair

Rep. Nicole E. Lowen, Vice Chair

Hearing on Wednesday, March 18, 2015, at 10 a.m.

Mahalo for this opportunity to submit testimony in strong **support** of **S.B. 436** relating to training of members of state councils, boards, and commissions on Native Hawaiian legal issues – especially the state's trust duties in relation to natural and cultural resources. I am a professor at the William S. Richardson School of Law and director of Ka Huli Ao Center.

As you know, Ka Huli Ao has partnered with the Office of Hawaiian Affairs to provide three Native Hawaiian Law training courses with a focus on the public land trust, water, traditional and customary rights, and iwi kūpuna or ancestral remains. Over 270 people have attended these daylong training courses. Most attendees were members of state and county boards, councils, and commissions or staff members; some of state legislators and county councilmembers also attended. The response to the training has been overwhelmingly positive. The training evaluations indicate that 75-80% of those responding believed that the training had increased their understanding and knowledge of the state's trust duties and responsibilities. When asked to identify the most important "take-aways" from the training, responses included:

- The State is obligated to protect and mālama Native Hawaiian traditional and customary rights.
- The Public Land Trust is real and important.
- Water laws in Hawai'i incorporate a concept of public trust.
- The counties do have an obligation to conserve and protect the State's natural resources.
- It is very important that the decision makers know their kuleana and obligation to perform their duties and to determine these with both Western and Hawaiian lenses.

We believe that the training courses have significantly increased the understanding of attendees, and have given them the knowledge and tools to help make difficult decisions. Moreover, attendees from different agencies and departments have been able to interact and share concerns and possible solutions with each other, building common understanding and increasing cooperation among agencies and departments.

Ka Huli Ao has been honored to partner with OHA in this effort. We ask that this committee pass S.B. 436, as it did the companion bill, H.B. 207, earlier this year. It is of utmost importance, particularly for newly-appointed members of councils, boards, and commissions, to be required to attend a training on areas of law that so strongly impact Hawai'i's natural and cultural resources and the Native Hawaiian community. Mahalo for the opportunity to express our strong **support** for S.B. 436.

Statement of
Daniel E. Orodener
Executive Officer
Land Use Commission

Before the
House Committee on Ocean, Marine Resources, and Hawaiian Affairs

March 18, 2015
10:00 AM
State Capitol, Conference Room 325

In consideration of
SB 436
RELATING TO TRAINING

Chair Ing, Vice Chair Lowen, and members of the Committee on Ocean, Marine Resources, and Hawaiian Affairs:

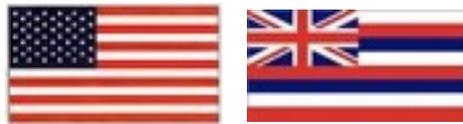
The Land Use Commission strongly supports SB 436 in that it provides the Land Use Commission (LUC) with training that is incredibly valuable for staff who must advise commissions and non-expert commissioners who deal with public trust issues involving Hawaiian traditional and customary rights, water, natural and archaeological resources, and burials.

These trainings have been cost-effective (offered at no cost to the agency), time-efficient, and at least for the LUC, highly relevant to the legal issues and the type of findings they are required to make in their decisions and orders. LUC staff and several of our past commissioners have attended OHA-sponsored training sessions with unanimous agreement as to their value and utility.

The LUC will continue to take advantage of such training opportunities for our staff and commissioners in the future.

Thank you for the opportunity to testify on this matter.

Center for Hawaiian Sovereignty Studies
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Kane'ohe, HI 96744
Tel/Fax (808) 247-7942
Kenneth R. Conklin, Ph.D. Executive Director
e-mail Ken_Conklin@yahoo.com
Unity, Equality, Aloha for all



To: HOUSE COMMITTEE ON OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS

Re: SB 436 RELATING TO TRAINING.

Requires OHA to administer a training course on native Hawaiian and Hawaiian rights. Requires members of certain state councils, boards, and commissions to attend the training course.

For hearing on March 18, 2015

TESTIMONY IN OPPOSITION

The bill says that OHA offered its training courses on three occasions to government officials on various boards and commissions, and that some of those officials took the course, and then some who took the course reported that they had found it helpful. How nice for OHA! Participation was voluntary, free of cost to those who took it and to their employers; and of course they were enthusiastic (or at least they

were polite enough to their instructors to give a positive evaluation). How nice for those who took the course and for those who taught it!

This bill proposes to make the course mandatory for all members of a long list of boards and commissions. How awful it would be to force people to be brainwashed by OHA's political propaganda on highly controversial topics with no presentation of opposing views. Would any member of a board or commission dare to ask a question in class that challenges the correctness of what the OHA-designated teacher is saying, or disagrees with the opinions being presented? By analogy, imagine the situation of a middle-school student from a Christian fundamentalist family being forced to attend a sex-education course which graphically describes anal sex as normal behavior, and whose parents are denied the right to opt-out. This bill would require the "students" in the OHA brainwashing course to hear some highly controversial views which some (including myself) would find greatly offensive, and have no way to opt-out from attending.

This bill places one state agency, OHA, in a position of authority over other state agencies by requiring employees to pass a course whose purpose is to brainwash them with the political views of OHA. Dozens -- perhaps hundreds -- of members of previously independent boards and commissions would now be placed under the direct authority and supervision of OHA, knowing that if they refuse to kow-tow to their OHA instructor they will be given a failing grade in this mandatory course and will then be ineligible to continue as a member of their board or commission.

For example, OHA has certain views regarding who owns the ceded lands and whether the state has a right to sell parcels of ceded lands. The Hawaii Supreme Court made a 5-0 decision upholding OHA's views. But on appeal, the U.S. Supreme Court ruled 9-0 that OHA's views are wrong. Can we expect OHA to teach correct information about who owns the ceded lands and whether the state can sell them?

For example, OHA has certain views about the Hawaiian revolution of 1893 that overthrew the monarchy, and points to the Blount Report of 1893 and the U.S. apology resolution of 1993 to bolster OHA's views. But those views are controversial, and are disproved by the Morgan Report issued by the U.S. Senate in 1894 and by the majority report of the Native Hawaiians Study Commission issued by a joint Senate/House commission in 1983. Can we expect OHA to provide both sides of this controversy, or will OHA brainwash state employees by teaching only the views OHA endorses?

This bill would require government employees to learn about, and give deference to, the ancient Hawaiian religion as the justification for various state laws and practices regarding water rights for taro, protection of ancient burials, etc. It would constitute an establishment of religion contrary to the First Amendment of the U.S. Constitution; and it would also force employees who have no Hawaiian blood to bow to a religion which portrays people who do have Hawaiian blood as possessing an inherent God-given right to rule these islands.

This bill requires government employees to learn about "traditional and customary rights" of Native Hawaiians to ensure that in carrying out their duties, the employees will give respect and deference to Native Hawaiian beliefs and cultural values. For example, we might expect employees to be trained regarding sacred places, the reasons why taro patches are given special guarantees of access to water, the reasons why ancient burials must not be disturbed, etc.

Those topics, and many others, are based in the ancient Hawaiian religion, which has a creation legend which today's sovereignty activists (incorrectly) describe as portraying Native Hawaiians (and only Native Hawaiians) as genealogically the children of the gods and the brothers to these islands, and the younger brothers of the taro plant, in a way nobody ever can be who lacks a drop of native blood.

The Hawaiian religion is the only one to be given special deference under the terms of this bill; thus this bill would be an establishment of religion. Under terms of this legislation, government money will be used to indoctrinate government employees with a religious belief. Furthermore, the way that belief is likely to be taught can best be described as religious fascism because it justifies giving governmental authority over land-use decisions to a particular racial group.

In 1819, the year before the American missionaries came to Hawaii, the sovereign King Liholiho Kamehameha II, with his regent stepmother Queen Ka'ahumanu, and with Kahuna Nui (High Priest) Hewahewa, exercised sovereignty on behalf of all native Hawaiians to abolish the ancient religion, and ordered the destruction of the heiaus and burning of idols. Those ethnic Hawaiians who try to resurrect the ancient religion for political purposes disrespect the decision of their ali'is and ancestors. By seeking to elevate that ancient religion above all other religions, they disrespect the right to freedom of religion possessed by all Americans.

This committee should not disrespect the mainstream majority of today's ethnic Hawaiians, and the multiracial, multicultural people of Hawaii, by passing this bill.



Testimony of Hawai'i Green Growth In Support of SB436
House Committee on Ocean, Marine Resources, & Hawaiian Affairs
18 March 2015, 10:00am, Room 325

Audrey Newman
Hawai'i Green Growth
P.O. Box 535 Ho'olehua, Hawai'i 96729

Hawai'i Green Growth is a voluntary partnership of more than 60 state, county, federal, business, and non-governmental leaders from energy, food production, natural resources, waste reduction, planning, green jobs, and other sectors who have come together to support a shared statewide commitment and tangible actions toward sustainability and a model green economy.

Aloha Chair Ing, Vice Chair Lowen, and Members of the Committee,

Hawai'i Green Growth (HGG) supports SB436 relating to Native Hawaiian Law Training Courses. HGG supports the bill proposed by the Office of Hawaiian Affairs (OHA) to require a Native Hawaiian Law Training Courses provided by OHA for the State of Hawai'i's board and commission members. This will help ensure government entities better understand traditional and customary practices, rights and responsibilities (kuleana) regarding Native Hawaiian rights and the public trust doctrine.

SB436 will help advance action on the *Aloha+ Challenge's* Green Workforce and Education 2030 target to "increase local green jobs and education to implement [the *Aloha+ Challenge* sustainability] targets." Education on Native Hawaiian culture and traditional practices is an integral part this target. *The Aloha+ Challenge: A Culture of Sustainability – He Nohona 'Ae'oi'a* is a joint leadership commitment to achieve six sustainability targets by 2030 in the areas of clean energy, local food production, natural resource management, solid waste reduction, smart growth and climate resilience, green jobs and education. The *Aloha+ Challenge* was unanimously endorsed by the 2014 Legislature (SCR 69) and signed by Hawai'i's Governor, Mayors and Office of Hawaiian Affairs. It was also internationally recognized as a model of integrated sustainability at the UN Conference on Small Island Developing States in Samoa.

We respectfully urge your support for **SB436**.

Mahalo nui,

A handwritten signature in black ink that reads "Audrey Newman". The signature is written in a cursive style and is placed over a light gray rectangular background.

Audrey Newman

Senior Advisor, Hawai'i Green Growth (HGG)

Bringing leaders together to achieve sustainability in Hawai'i & be a model for a green economy

<http://www.hawaiiingreengrowth.org/>



KO`OLAUPOKO HAWAIIAN CIVIC CLUB

March 16, 2015

TO: Rep. Kaniela Ing, Chair / & Members
Ocean Resources & Hawaiian Affairs Committee

FROM: Alice P. Hewett, President
Ko`olaupoko Hawaiian Civic Club

RE: S.B. 436 – Relating to Training– Support

Aloha Chair Ing and members of this Committee:

On behalf of the Ko`olaupoko Hawaiian Civic Club and our president Aunty Alice Hewett, I offer our strong support for passage of Senate Bill 436, which would require the members of certain state boards and commissions to undergo specialized training on Native Hawaiian rights and public trust law.

We believe that it is important that these boards and commission members have the basic understanding about how their decisions affect Native Hawaiian traditional and customary practices, public trust resources, and protections for `iwi kupuna and sacred sites.

Some years ago, we encountered problems with a State agency director on a matter regarding wahi kapu – sacred lands – in Ha`iku Valley. He was seemingly unaware of his obligations to respect cultural resources on the property, and had given a longterm lease to someone to develop a structure on a heiau in the valley.

His attitude toward Native Hawaiians and our kupuna, especially, was disrespectful of both our culture and Native rights regarding historic sites and cultural properties under his jurisdiction. If he had received training suggested by this bill, perhaps he would have handled the matter better, more respectfully and more responsibly.

This bill takes a positive step forward in reaffirming the state's commitment to Native Hawaiians and communities across the state. We urge the committee to pass this bill.

The Ko`olaupoko Hawaiian Civic Club was established in 1937 and is a not-for-profit community organization dedicated to preserving and perpetuating the history, heritage and culture of Native Hawaiians. Its membership is open to people of Hawaiian ancestry and those who are "Hawaiian at heart".



Association of Hawaiian Civic Clubs

P. O. Box 1135
Honolulu, Hawai`i 96807

COMMITTEE ON OCEAN MARINE RESOURCES AND HAWAIIAN AFFAIRS

SB436 RELATING TO TRAINING

Wednesday, 3/18/15; 10:00 am; Room 325

Aloha Chairman Ing, Vice Chair Lowen and members of the Committee. The Association of Hawaiian Civic Clubs(AHCC) supports this bill that would provide government officials with background information with regard to native Hawaiian rights, laws and rulings.

Based on feedback from participants who took the course when it was first offered, the training was beneficial and helpful in making knowledgeable decisions. Laws with regard to native peoples, in this case native Hawaiians, are at times quite specific as to their cause and application. It's a sensible idea to offer this kind of training particularly to new appointees and employees in State government.

Thank you for the opportunity to support this measure.

Contact: Jalna.keala2@hawaiiantel.net



March 17, 2015

Representative Kaniela Ing, Chair
Representative Nicole E. Lowen, Vice Chair
House Committee on Ocean, Marine Resources, & Hawaiian Affairs

Comments, Concerns and Opposition to current form of SB 436 Relating to Training (Requires the Office of Hawaiian Affairs to administer a training course on native Hawaiian and Hawaiian legal rights. Requires members of certain state councils, boards, and commissions to attend the legal rights training course).

OMH Hearing: Wednesday, March 18, 2015, 10:00 a.m., in Conference Room 325

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. LURF's mission is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources, and public health and safety.

While LURF **supports the intent** of providing State councils, boards and commission with training on native Hawaiian and Hawaiian rights and **supports the Office of Hawaiian Affairs (OHA) working with the Department of the Attorney General (Attorney General) in preparing that training course**, it is **OPPOSED** to the current version of SB 436, and respectfully requests that this Committee **HOLD** this bill, based on the following:

(1) This bill is unnecessary, because **the State Administration and Attorney General could create a "comprehensive training program" for State councils, boards and commissions, and with the guidance and assistance from OHA, which could include areas relating to native Hawaiian and Hawaiian traditional and customary practices and legal rights, natural resources protection and access rights, and the public trust**; and also include the State's trust responsibilities and include other legal issues relating to natural resources, agriculture, ranching, aquaculture, fishing, hunting, water, tourism, housing, education, business, military, land use, renewable energy, astronomy, sustainability, genetic modification, high technology and other areas of state interests.

(2) This bill is unnecessary, because OHA and the Department of Land and Natural Resources have confirmed that **even without legislation such as SB 436, OHA has already offered three such training courses since January 2013**, which have attracted attendees representing a broad spectrum of state and county government officials.

(3) The bill is unnecessary, because **current law already allows OHA to publicly present its factual and legal positions relating to native Hawaiian and Hawaiian traditional and customary practices and legal rights, natural resources protection and access rights, and the public trust to State councils, boards and commissions and also allows OHA to be official parties in matters, hearings, meetings and contested cases before those entities.**

(4) **The exclusive legal training by OHA would usurp the statutory authority of the Attorney General as the legal advisor for State councils, boards and commissions.** OHA's legal training could be contrary to the Attorney General's legal interpretations and advice and could create confusion for members of those State entities.

(5) Pursuant to Section 10-3 (4), of the Hawaii Revised Statutes (HRS), **OHA's purposes include "conducting advocacy efforts" and "affecting public policy" relating to State councils, boards and commissions.** Thus, OHA's proposed mandatory legal rights training to those same State entities would represent **conflict of interest** between its statutory "*advocacy*" responsibilities to affect public policy and OHA's proposed mandatory legal rights training role;

(6) In situations where OHA is involved in a contested case hearing, or other quasi-judicial administrative matters, OHA's exclusive access and legal training will involve an opportunity for illegal **ex parte communications** on legal and factual issues that will come before State councils, boards and commissions. During those *ex parte* legal training sessions OHA will have the exclusive opportunity to affect the public policy decisions of those State entities, by providing information, advocating, supporting, opposing or criticizing various State, county or private initiatives and projects;

(7) In contested cases and quasi-judicial administrative matters, OHA's exclusive *ex parte* legal training of will create **special and unfair access and advantage** for OHA over those State councils, boards and commissions. **Due process, equal protection and fairness dictate that opposing parties and advocacy organizations, which may have different views on other important issues, should be afforded the same mandatory legal training opportunities.** Differing legal interpretations and training could be provided by parties and advocacy organizations involved in areas including, but not limited to, natural resources, agriculture, ranching, aquaculture, fishing, hunting, water, tourism, housing, education, business, military, land use, renewable energy, astronomy, sustainability, genetic modification, high technology and other areas of state interests.

(8) **The dates that government officials could start performing their duties would be based solely on the dates of the OHA training.** The bill also authorizes OHA to repeat the law training course at least twice per year; requires the governor to provide OHA with the names of the persons required to take the law training course within thirty calendar days of their initial appointment; requires OHA to notify those persons; and requires those persons to take the law course within thirty calendar days of their initial appointments. **This scheduling requirement severely restricts the ability of the Governor's appointees to promptly serve on the various state councils, boards and commissions.**

SB 436, HD1 OHA's native Hawaiian and Hawaiian Law Training Course. The Office of Hawaiian Affairs ("OHA") website and legislative package describes this bill as "**OHA-3 Native Hawaiian Law Training Course.**" This bill proposes to require OHA to establish, design, and administer a "law training course" relating to native Hawaiian and Hawaiian traditional and customary rights, native Hawaiian and Hawaiian natural resources protection and access rights, and the public trust, including the State's trust responsibility; and specified members of the following councils, boards and commissions would be required to take the law training course:

- Land Use Commission
- Board of Land and Natural Resources ("BLNR")
- Commission on Water Resource Management
- Environmental Council
- Board of Directors of the Agribusiness Development Corporation
- Board of Agriculture
- Legacy Land Conservation Commission
- Natural Area Reserves Systems Commission
- Hawaii Historic Places Review Board
- Board of Health

This bill is somewhat similar to, and duplicative with some of the purposes of Act 288 (SLH 2012) (HB 2806, HB 2, SD 2, CD 1), which created the Aha Moku Advisory Committee ("Aha Moku") to advise the Office of the Chairperson of the BLNR on issues related to land and natural resource management through the aha moku system - a system of best practices based upon the indigenous resource management practices of moku (regional) boundaries, which acknowledges the natural contours of land, the specific resources located within those areas, and the methodology necessary to sustain resources and the community.

LURF's Position. It appears that this is a well-intended bill regarding very important issues, which has been proposed in the past. LURF supports the intent of the bill, which is to provide training for certain State councils, boards and commissions relating to native Hawaiian and Hawaiian rights and supports the involvement of OHA in that training process. However, there are still serious and major concerns that have not been resolved by the prior legislative committees, or in the current version of this measure. Thus, LURF must **OPPOSE** the current version of SB 436; and respectfully recommends that it should be **HELD** in this Committee.

Major concerns and issues. SB 436 includes the following issues, concerns and objections:

- **This bill is unnecessary: the State administration could develop and implement a "comprehensive training program."** Instead of passing this bill, perhaps the State Administration and Attorney General could consider working with various organizations, including OHA, to develop and implement a "**comprehensive training course**" for members of the certain boards, councils, and commissions relating to various issues that will come within their purview, including:

- ❖ native Hawaiian and Hawaiian traditional and customary rights, native Hawaiian and Hawaiian natural resources protection and access rights, and the public trust, including the State's trust responsibilities;
 - ❖ the State responsibilities and legal rights in areas of natural resources, agriculture, ranching, aquaculture, fishing, hunting, water use, land use, tourism, housing, education, business, military, renewable energy, astronomy, sustainability, genetic modification, high technology and climate change; and
 - ❖ any "legal training" of State councils, boards and commissions should only be taught by the Attorney General or his deputies, as they are the legal advisors for State councils, boards and commissions.
- **The bill is unnecessary, because current law already allows OHA to publicly present its factual and legal positions relating to native Hawaiian and Hawaiian traditional and customary practices and legal rights, natural resources protection and access rights, and the public trust to State councils, boards and commissions and also allows OHA to be official parties in matters, hearings and meetings before those entities.**
 - **OHA's mandatory law training could usurp the statutory authority of the Attorney General and could be contrary to the legal interpretation and advice provided by the Attorney General and cause unnecessary confusion for the State councils, boards and commissions.** The Attorney General is the legal counsel and advisor for the above-referenced State councils, boards and commissions. In the recent past, OHA's interpretation of legal rights and responsibilities sometimes appear inconsistent with, or contrary to the Attorney General's legal interpretations and advice to those State councils, boards and commissions. If OHA administers mandatory training and expresses legal interpretations, conclusions and advice that is inconsistent with or contrary to the Attorney General, it will cause unnecessary confusion for the State councils, boards and commissions and could lead to messy legal challenges.
 - **OHA's conflict of interest.** OHA's website emphasizes its focus on advocacy:

*"OHA is focused on strategic priorities for improving the conditions of Native Hawaiians in the areas of aina, culture, economic self-sufficiency, education, governance and health. **OHA's advocacy** involves conducting research findings are used **to guide decisions** and empower communities to inspire positive results in these areas. **OHA's advocacy also calls for developing and shaping public policies** that have broad implications for the Hawaiian community. **OHA's advocacy** is reflected in its efforts **to help ensure that laws are complied with** at the local, state and federal levels. In addition, OHA's advocacy requires working with communities to share information and build public support for Hawaiian issues."*

Given OHA's focus on advocacy and affecting public policy of State councils, boards and commissions, OHA will have a conflict of interest between its statutory "advocacy" responsibilities before government boards and commissions and its proposed absolute power to implement the mandatory legal training for those same councils, boards and

commissions. As noted above, OHA's statutory purposes include conducting "advocacy efforts" for native Hawaiian and Hawaiians" before the very same boards, councils and commissions for which they are they are establish, design, and administer a "mandatory law training course", **on the very same issues they are advocating for**. If OHA opposes a particular State or private initiative or project, it would have the statutory mandate and opportunity to **advocate** their own OHA's legal position and arguments to those State councils, boards and commissions.

- In contested case hearings, or other quasi-judicial matters, OHA's proposed legal training course could be considered **improper *exparte* communication** and opposition to, or criticism of current and future State and private initiatives and projects that will come before those same State councils, boards and commissions.

OHA's statutory purposes include "*Assessing the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and **conducting advocacy efforts for Native Hawaiians and Hawaiians.***" HRS §10-3(4). It is a responsibility that OHA performs often and well and is of great value. Over the years, OHA has opposed or expressed concerns with the State Administration's legislative package and with other major private and State-related initiatives or projects. OHA's past and continuing legal and other opposition to state projects are a healthy and necessary part of the public comment and advocacy process. However, given **OHA's statutory advocacy mission**, there are concerns whether OHA's legal training of State councils, boards and commissions will include such advocacy, opposition to and criticism of private and State-related projects or initiatives that will be the subject of contested case hearings or other quasi-judicial proceedings, and thus be considered **improper *exparte* communications**.

- **OHA will have a "special and unfair advantage" over other organizations and groups which have differing legal interpretations and are engaged in contested case hearings or other quasi-judicial proceedings involving OHA.** This bill gives OHA the absolute power to determine the legal training for State boards and commissions and provide OHA with "a special and unfair advantage" over any other individual or public interest organizations that seek to provide differing public input or legal interpretations to those State boards, councils and commissions. If this bill passes in its present form, other major public interest groups will not have a "level playing field" with OHA, including organizations with technical and legal expertise and interests in natural resources, agriculture, ranching, aquaculture, fishing, hunting, water, tourism, housing, education, business, military, land use, renewable energy, astronomy, sustainability, genetic modification, and high technology.

Due process, equal protection and fairness dictate that such other organizations, which may have different views on other important issues, should be afforded the same mandatory legal training opportunities. One of the main concerns is whether OHA's absolute power to establish and administer the mandatory legal training program will provide OHA with the power preclude any other person's or organization's right to provide the advice and training to the specified members of state boards, councils, and commissions on similar issues; and would arguably have the effect of creating and favoring OHA as "a special class", as it confers favorable treatment, special access, rights and privileges only to OHA, as one special interest group, thereby potentially rendering the measure unconstitutional.

- **Especially for councils, boards and commissions that engage in contested cases and other quasi-judicial proceedings, other organizations and special interest groups should have the same rights to provide legal training to certain State boards, councils and commissions.** Laws enacted by the Legislature must rightly support the free speech, due process and equal protection rights of all citizens, special interest groups, industry groups and stakeholders who may also wish to provide training or advice to specified members of State boards, councils, and commissions relating to the broad spectrum of subject matters and the law relating to land and natural resource management, which includes legal issues regarding natural resources, agriculture, ranching, aquaculture, fishing, hunting, water, tourism, housing, education, business, military, land use, renewable energy, sustainability, genetic modification, and high technology. All of the groups named above should have the same rights as OHA to conduct mandatory legal training of those State boards, councils and commissions.

As stated above, LURF supports the intent of this bill and supports OHA's involvement in such a training process.

However, based on the reasons stated above, LURF respectfully recommends that the current version of SB 436 should be **HELD** in this Committee.

Thank you for the opportunity to present LURF's position in **OPPOSITION** to the current form of this measure.

TO: Representative Kaniela Ing, Chair
Representative Nicole E. Lowen, Vice-Chair
House Committee on Ocean, Marine Resources & Hawaiian Affairs

FROM: Sara L. Collins, Ph.D., President
Society for Hawaiian Archaeology
sara.l.collins.sha@gmail.com

HEARING: Wednesday, March 18, 2015 at 10:00 AM in Conference Room 325

SUBJECT: Testimony in STRONG SUPPORT of SB 436, Relating to Training

I am Dr. Sara Collins, President of the Society for Hawaiian Archaeology (SHA). We have over 150 members that include professional archaeologists and advocates of historic preservation in general. SB 436 amends Chapter 10, Hawaii Revised Statutes (HRS) to require the Office of Hawaiian Affairs (OHA) to administer a training course on native Hawaiian and Hawaiian rights. The amendments will also require members of certain state councils, boards, and commissions to attend the training course, and allow other state or county officers, representatives, or employees to request to enroll in the training course.

Since 2013, OHA has offered three such training courses attended by a broad range of state and county government officials. An overwhelming majority of the attendees found the course materials, content, and presentation to be very valuable. Upon completion, attendees felt that they had a better understanding of Native Hawaiian traditional and customary rights, natural resource protection, access rights, and the public trust.

SB 436 proposes to amend §10.2, HRS by adding a new part that requires the following actions:

- The training shall be required for members of the Land Use Commission, Board of Land and Natural Resources, Commission on Water Resource Management, Environmental Council, Board of Directors of the Agribusiness Development Corporation, Board of Agriculture, Legacy Land Conservation Commission, Natural Area Reserves Commission, Hawaii Historic Places Review Board, and the Board of Health. Such individuals shall complete the training course within 12 months of the members' initial appointments.
- At its own expense, OHA will establish, design, and administer the training course relating to Native Hawaiian and Hawaiian traditional and customary rights, Native Hawaiian and Hawaiian natural resource protection and access rights, and the public trust, including the State's trust responsibility. OHA shall offer the training course at least twice per year.
- The Governor shall provide to OHA the names of the persons required to take the training course within 30 calendar days of their initial appointments.

We support the subject bill and believe that a training course of this type will be valuable to incoming commissioners and others who may choose to take the course. We would only recommend that the required content include some basic information on State historic preservation law (Chapter 6E, HRS) as well as the content identified in SB 436.

Mahalo for considering our testimony. Should you have any questions, please feel free to contact me at the above email address.

**Testimony of
TARO SECURITY AND PURITY TASK FORCE**

**MARK ALAPAKI LUKE
Chair**

**Before the House Committee on
OCEAN, MARINE RESOURCE, & HAWAIIAN AFFAIRS
Wednesday, March 18, 2015, 10:00AM
State Capitol, Conference Room 325**

**In consideration of
SENATE BILL 436
RELATING TO TRAINING**

Senate Bill 436 requires the Office of Hawaiian Affairs (OHA) to establish, design, and administer a training course on Native Hawaiian and Hawaiian rights. This measure also requires the members of appropriate State councils, boards, and commissions to take this course.

The Taro Security and Purity Task Force recognizes that the State has a constitutional and legal mandate to protect Hawaiian traditional and customary rights. Given that members of certain State councils, boards, and commissions are charged with administering public trust resources and programs, we find training in Hawaiian traditional and customary rights, natural resources, and the public trust to be an important priority for those members in order to best protect these rights. OHA's "Ka Wai Ola" primer provides excellent information on kuleana water rights, for example, which is of particular importance to the health and economic viability of taro growers across the State. This primer is a great starting point to prepare State officials to fulfill their trust responsibilities.

The Taro Security and Purity Task Force strongly supports SB436 and its purpose to help enable State officials to better execute their roles more fully informed of these essential cultural and legal rights.

Mahalo nui loa,



Mark Alapaki Luke, Chair
Taro Security and Purity Task Force

SB 436: Hawaiian Training
Committee HWN/GVO
March 18th 2015
In Strong Support
Rafael Bergstrom

Aloha Members of the OMH Committee,

I would like to offer my strong support for HB 207 and its intent to instill our public officers, employees, and representatives with a stronger connection to the cultural past and present of these islands. History is such an important component to all of our existence and fostering a deep understanding of the people and way life that existed here for thousands of years prior is a necessity in understanding the current cultural climate that we live in. In order to foster stronger community bonds and include the diversity of our past into our future, it should be mandatory for those working in this state to be educated on the island way of life that has existed for thousands of years prior to the current structure. Diversity makes our world a better, more interesting place and it should be our duty to make sure that our cultural past is not marginalized.

Hawaiian cultural to this day has such strong ties to the land and natural resources and many of these connections should be instilled in a society today that seems to slip farther and farther away from a deep appreciation of the land. Our community in these islands could learn much from the past while still moving into the future with a modern ethos. To let the Hawaiian way of life be pushed aside and disregarded is a shameful action. I believe that all visitors and residents should be better educated in these realms so that we can all better understand each other as humans.

Having the Office of Hawaiian Affairs administer a training course in native Hawaiian culture and rights would be a step in a direction that includes the interests of the native people to these lands. Please give HB 207 your strong consideration and support this meaningful piece of legislation.

Thank you for your time and understanding.

Cheers,
Rafael Bergstrom
Oahu Chapter Coordinator, Surfrider Foundation

ing2-Mary

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 17, 2015 6:48 AM
To: omhtestimony
Cc: pohaimm@gmail.com
Subject: *Submitted testimony for SB436 on Mar 18, 2015 10:00AM*

SB436

Submitted on: 3/17/2015

Testimony for OMH on Mar 18, 2015 10:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
C.R.P. Montague-Mullins	Individual	Support	No

Comments:

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ing2-Mary

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 16, 2015 10:59 AM
To: omhtestimony
Cc: robertl@oha.org
Subject: *Submitted testimony for SB436 on Mar 18, 2015 10:00AM*

SB436

Submitted on: 3/16/2015

Testimony for OMH on Mar 18, 2015 10:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Robert K. Lindsey, Jr.	Individual	Support	No

Comments:

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ing2-Mary

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 16, 2015 12:37 PM
To: omhtestimony
Cc: kealohafox@gmail.com
Subject: Submitted testimony for SB436 on Mar 18, 2015 10:00AM

SB436

Submitted on: 3/16/2015

Testimony for OMH on Mar 18, 2015 10:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Leanne Fox	Individual	Support	No

Comments: I strongly SUPPORT SB436 which will require certain state boards and commission members to take a training course on Native Hawaiian rights and public trust law. I believe that it is important that these boards and commission members have the basic understanding about how their decisions affect Native Hawaiian traditional and customary practices, public trust resources, and protections for 'iwi kupuna and sacred sites. This bill takes a positive step forward in reaffirming the state's commitment to Native Hawaiians and communities across the state. I urge the committee to PASS this bill.

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ing2-Mary

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 16, 2015 1:22 PM
To: omhtestimony
Cc: igoraaina@hotmail.com
Subject: Submitted testimony for SB436 on Mar 18, 2015 10:00AM

SB436

Submitted on: 3/16/2015

Testimony for OMH on Mar 18, 2015 10:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Mary Gora-Aina	Individual	Support	No

Comments: I strongly SUPPORT SB436 which will require certain state boards and commission members to take a training course on Native Hawaiian rights and public trust law. I believe that it is important that these boards and commission members have the basic understanding about how their decisions affect Native Hawaiian traditional and customary practices, public trust resources, and protections for 'iwi kupuna and sacred sites. This bill takes a positive step forward in reaffirming the state's commitment to Native Hawaiians and communities across the state. I urge the committee to PASS this bill.

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ing2-Mary

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 16, 2015 3:15 PM
To: omhtestimony
Cc: laluz@maui.net
Subject: Submitted testimony for SB436 on Mar 18, 2015 10:00AM

SB436

Submitted on: 3/16/2015

Testimony for OMH on Mar 18, 2015 10:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
lucienne de naie	Individual	Support	No

Comments: Please Support this important bill. There is a real gap in the knowledge many volunteers have of laws that protect traditional Hawaiian cultural practices and rights. Mahalo Lucienne de Naie Huelo, Maui

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ing2-Mary

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 16, 2015 10:57 AM
To: omhtestimony
Cc: kamakane73@gmail.com
Subject: *Submitted testimony for SB436 on Mar 18, 2015 10:00AM*

SB436

Submitted on: 3/16/2015

Testimony for OMH on Mar 18, 2015 10:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Kama Hopkins	Individual	Support	No

Comments:

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I strongly **SUPPORT SB436** which will require certain state boards and commission members to take a training course on Native Hawaiian rights and public trust law. I believe that it is important that these boards and commission members have the basic understanding about how their decisions affect Native Hawaiian traditional and customary practices, public trust resources, and protections for `iwi kupuna and sacred sites. This bill takes a positive step forward in reaffirming the state's commitment to Native Hawaiians and communities across the state. I urge the committee to **PASS** this bill.

Holly K Coleman

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 17, 2015 1:54 PM
To: omhtestimony
Cc: brytni@hawaii.edu
Subject: Submitted testimony for SB436 on Mar 18, 2015 10:00AM

SB436

Submitted on: 3/17/2015

Testimony for OMH on Mar 18, 2015 10:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Brytni K-aloha	Individual	Support	No

Comments: I strongly SUPPORT SB436 which will require certain state boards and commission members to take a training course on Native Hawaiian rights and public trust law. I believe that it is important that these boards and commission members have the basic understanding about how their decisions affect Native Hawaiian traditional and customary practices, public trust resources, and protections for 'iwi kupuna and sacred sites. This bill takes a positive step forward in reaffirming the state's commitment to Native Hawaiians and communities across the state. I urge the committee to PASS this bill.

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omhtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 17, 2015 3:51 PM
To: omhtestimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for SB436 on Mar 18, 2015 10:00AM*

SB436

Submitted on: 3/17/2015

Testimony for OMH on Mar 18, 2015 10:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 17, 2015 3:28 PM
To: omhtestimony
Cc: shane.nelsen@gmail.com
Subject: *Submitted testimony for SB436 on Mar 18, 2015 10:00AM*

SB436

Submitted on: 3/17/2015

Testimony for OMH on Mar 18, 2015 10:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Shane Nelsen	Individual	Support	No

Comments:

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omhtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 17, 2015 10:30 AM
To: omhtestimony
Cc: jching808@gmail.com
Subject: *Submitted testimony for SB436 on Mar 18, 2015 10:00AM*

SB436

Submitted on: 3/17/2015

Testimony for OMH on Mar 18, 2015 10:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Jon	Individual	Support	No

Comments:

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LATE

**House Committee on Ocean, Marine Resources, & Hawaiian Affairs (OMH)
Wednesday, March 18, 2015 | 10:00 a.m. | Conference Room 325
In SUPPORT of SB436, Relating to Training**

Aloha Chair Ing, Vice Chair Lowen, and Honorable Members of the Committee,

The Hawaiian Affairs Caucus of the Democratic Party of Hawaii strongly supports SB436 that requires OHA to administer a training course on native Hawaiian and Hawaiian rights and requires members of certain state councils, boards, and commissions to attend the training course.

The State of Hawaii has a trust obligation and a fiduciary duty to Native Hawaiians. Knowledgeable leaders are in the best position to make sound decisions on matters concerning Native Hawaiian issues that come before them.

OHA's voluntary training classes have been well received. Appointees are more fully informed of their roles and responsibilities toward Native Hawaiians. This is a winning situation for the Hawaiian beneficiaries and for those who carry out various mandates in the State.

Mahalo for this opportunity to testify in support of SB436.

Davis Price
Chair



LATE

Testimony Before The House
Committee on Ocean, Marine Resources and Hawaiian Affairs
IN SUPPORT OF SB 436
Wednesday, March 18, 2015, 10:00AM, Room 325

My name is Kevin Chang and I am the Executive Director of Kua'āina Ulu 'Auamo (or KUA). KUA works to empower grassroots rural and Native Hawaiian mālama 'āina groups to celebrate their places and pass on their traditions to better Hawai'i and achieve 'āina momona— an abundant, productive ecological system that supports community well-being.

KUA supports SB 436 as an incremental step towards 'āina momona. This bill would require members of state councils, boards, and commissions that have an impact on Native Hawaiian and public trust resources to attend a training course on their fiduciary duties in regard to those resources.

We employ a community-driven approach that currently supports a network of more than 31 mālama 'āina community groups collectively referred to as E Alu Pū (moving forward together), 40 fishpond projects and practitioners called the Hui Mālama Loko l'a, and a new and growing hui of Limu practitioners all from across our state.

Many of the communities in the networks we facilitate focus on improving natural resource management and restoration of native ecological systems, values and ethics more sensitive to the needs of their wahi (their places). Quite often the issues they work to advance come before state and county councils, boards and commission dealing with historical and cultural sites, land, agriculture and water issues. When members of these decision-making bodies are uninformed of their fiduciary duties confusion often results in un-necessary delay and drain of resources sometimes even resulting in prolonged and personally taxing lawsuits.

We commend the Office of Hawaiian Affairs for the development and implementation of these training sessions and advancement of this important issue before you. However, the long term vision for these programs should ultimately be one embraced and furthered by the broader community.

Our communities are committed to ensuring the long-term health of our cultural and natural resources because they have depended on them for generations. This bill among others is an exciting trend towards increasing government's role as a partner with our communities to restore the abundance that we are all often so nostalgic about.

Mahalo for this opportunity. Aloha 'āina momona.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 17, 2015 7:18 PM
To: omhtestimony
Cc: amybrinker@mac.com
Subject: *Submitted testimony for SB436 on Mar 18, 2015 10:00AM*

Categories: Late



SB436

Submitted on: 3/17/2015

Testimony for OMH on Mar 18, 2015 10:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Amy Brinker	Individual	Support	No

Comments:

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