DAVID Y. IGE GOVERNOR OF HAWAII





## STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621 HONOLULU, HAWAII 96809 CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA

SUZANNE D. CASE

M. KALEO MANUEL
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 Senate Committees on JUDICIARY and COMMERCE, CONSUMER PROTECTION, AND HEALTH

Wednesday, February 27, 2019 9:35am State Capitol, Conference Room 229

## In consideration of SENATE BILL 1340, SENATE DRAFT 1 RELATING TO REAL PROPERTY TRANSACTIONS

Senate Bill 1340, Senate Draft 1 proposes to require mandatory seller disclosures in real property transactions to include identification of residential real properties lying within a two-foot sea level rise exposure area designated by the Hawaii Climate Change Mitigation and Adaptation Commission. The Department of Land and Natural Resources appreciates the intent of the measure but prefers stronger and clearer language regarding mandatory disclosure of vulnerable coastal properties proposed in Senate Bill 1339, Senate Draft 1 and Senate Bill 1126, Senate Draft 1.

Thank you for the opportunity to comment on this measure.

# OFFICE OF PLANNING STATE OF HAWAII

DIRECTOR OFFICE OF PLANNING

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813 Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846 Fax: (808) 587-2824 Web: http://planning.hawaii.gov/

## Statement of LEO R. ASUNCION

Planning Program Administrator, Office of Planning before the

# SENATE COMMITTEES ON JUDICIARY AND COMMERCE, CONSUMER PROTECTION AND HEALTH

Wednesday, February 27, 2019 9:35 AM State Capitol, Conference Room 229

# in consideration of SB 1340, SD1 RELATING TO REAL PROPERTY TRANSACTIONS.

Chairs Rhoads and Baker, Vice Chairs Wakai and Chang, and Members of the Committees on Judiciary and Commerce, Consumer Protection & Health.

The Office of Planning appreciates the intent of SB 1340, SD1 and thanks the previous committee for considering OP's prior comments.

OP has reviewed prior testimony and general intent for the measure. Pursuant to HRS § 225P-3, given that the Sea Level Rise Vulnerability and Adaptation Report may be updated on a five-year basis with further best available science, the OP provides the following amendment for your consideration:

• Page 4, Lines 1-3: (5) Within the maximum scenario of the sea level rise exposure area as officially designated by the Hawaii climate change mitigation and adaptation commission.

Thank you for the opportunity to testify on this measure.





February 27, 2019

## **Senator Karl Rhoads, Chair** Senate Committee on Judiciary

Senator Rosalyn H. Baker, Chair Senate Committee on Commerce, Consumer Protection & Health State Capitol, Room 229 Honolulu, Hawaii 96813

RE: S.B. 1340, S.D.1, Relating to Real Property Transactions

HEARING: Wednesday, February 27, 2019, at 9:35 a.m.

Aloha Chair Rhoads, Chair Baker, and Members of the Joint Committees:

I am Ken Hiraki Government Affairs Director, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its over 9,500 members. HAR **opposes** S.B. 1340, S.D.1, which requires that mandatory seller disclosures in real property transactions include identification of residential real properties located within a two-foot sea level rise exposure area, subject to the availability of county maps designated the areas by tax map key.

Under Hawai'i Revised Statutes §508-D, the law imposes a broad obligation upon sellers of residential property to disclose all material facts that are within the knowledge or control of the seller. However, this measure places an unreasonable burden upon sellers because the typical seller does not have the capacity or ability to know whether their property are within a, "two-foot sea level rise exposure area" subject to the availability of county maps designating the areas by tax map key.

HAR has created and continuously updates an Oceanfront Property Addendum that contains a comprehensive disclosure of information specific to the ownership of oceanfront property. It is HAR's industry practice to create forms that exceed what is called for via laws, rules and regulation. Given the dynamic ever-changing nature of real estate disclosures, the voluntary inclusion of sea level rise information in the HAR Oceanfront Addendum appears to be the most effective method to address this issue.

Mahalo for the opportunity to testify.





# TESTIMONY TO THE SENATE COMMITTEES ON JUDICIARY, AND COMMERCE, CONSUMER PROTECTION, AND HEALTH State Capitol, Conference Room 229 415 South Beretania Street 9:35 AM

February 27, 2019

RE: SENATE BILL NO. 1339 SD1 & 1340 SD1, RELATED TO REAL PROPERTY TRANSACTIONS—
(DISCLOSURE OF VULNERABLE COASTAL PROPERTY)

Chairs Rhoads and Baker, Vice Chairs Wakai and Chang, and members of the committees:

My name is Gladys Quinto Marrone, CEO of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii. Our members build the communites we all call home.

BIA-Hawaii has the following **comments** on both S.B. 1339 SD1 & 1340 SD1, which proposes to require that a vulnerable coastal property statement accompany the sale of a vulnerable coastal property.

These bills define "vulnerable coastal property" as "real property within a two-foot sea level rise exposure area as officially designated by the Hawaii Climate Change Mitigation and Adaptation Commission."

We understand the desire to inform prospective buyers of the possible impacts to their property caused by sea level rise. To formally identify the properties identified as "vulnerable coastal property," perhaps the Hawai'i Climate Change Mitigation & Adaptation Commission should adopt maps, similar to conservation-zoned lands. This would allow affected landowners to be informed of the possible designation and raise any concerns they may have through the administrative rulemaking process used to adopt the maps.

We appreciate the opportunity provide comments on S.B. 1339 SD1 & 1340 SD1.

## SENATE COMMITTEES ON JUDICIARY AND COMMERCE, CONSUMER PROTECTION, & HEALTH

February 27, 2019 9:35 a.m. Room 229

In SUPPORT of SB1340 SD1: Relating to Real Property Transactions

Aloha Chairs Rhoads and Baker, Vice Chairs Wakai and Chang, and committee members,

On behalf of the Environmental Caucus of the Democratic Party of Hawai'i (ECDPH), we **support passage of SB1340 SD1**, relating to real property transactions, and offer one amendment.

Climate change and efforts to mitigate its effects is the single most pressing issue of our time. The impact of a 3.2 foot sea level rise, as outlined in the the findings of the Sea Level Rise Vulnerability and Adaptation Report in 2017 (hereafter referred to as "The Report"), is likely to be disastrous for Hawai'i's economy, sustainability, and way of life. Sea level rise is a reality, and it is necessary to revise our statutes accordingly.

Sea level rise creates a new type of coastal hazard affecting coastal properties now, and increasingly in the future. Many of our existing statutes related to coastal properties assume a fixed sea level. Our statutes must be updated to incorporate consideration of the impacts of sea level rise, including those which may affect the value of coastal properties over time as the sea level rises and encroaches on such properties.

SB1339 SD1, requires that purchasers of coastal properties within sea level rise exposure areas are of aware of and acknowledge in a written disclosure statement, the long-term risks associated with these properties. SB1340 SD1 provides for such notification. The bill as it is written, however, designates a sea level rise up to 2 feet as "vulnerable coastal property". According to the State's Climate Change Mitigation and Adaptation Commission's designations, we suggest amending the language to designate structures within a 3.2-foot sea level rise exposure area as "vulnerable coastal property".

It is also very important that sellers disclose properties within a sea level rise exposure area. This will help inform decisions by potential purchasers of such properties, before rather than after, the fact of their purchase.

SB1340 SD1 is a very important companion to SB1339 SD1, and we urge both to be passed.



# Environmental Caucus The Democratic Party of Hawai'i

Mahalo for this opportunity to provide testimony.
Lana Olson
Chair Environmental Caucus of the Democratic Party of Hawai'i



## SENATE COMMITTEES ON JUDICIARY AND COMMERCE, CONSUMER PROTECTION, & HEALTH

February 27, 2019 9:35 a.m. Room 229

**In SUPPORT of SB1340 SD1:** Relating to Real Property Transactions

Aloha Chairs Rhoads and Baker, Vice Chairs Wakai and Chang, and committee members,

The HAWAI'I REEF AND OCEAN COALITION (HIROC) was formed in 2017 by coral reef scientists, educators, local Hawai'i environmental organizations, elected officials, and others to address a crisis facing Hawai'i's coral reefs and ocean, including those related to sea level rise.

## HIROC strongly supports SB1340 SD1 and offers one amendment.

Sea level rise creates a new type of coastal hazard affecting coastal properties now, and increasingly in the future. Many of our existing statutes related to coastal properties assume a fixed sea level. Our statutes must be updated to incorporate consideration of the impacts of sea level rise, including those which may affect the value of coastal properties over time as the sea level rises and encroaches on such properties.

SB1339 SD1, heard previously, requires that <u>purchasers</u> of coastal properties within sea level rise exposure areas are aware of and acknowledge in a written disclosure statement, the long-term risks associated with these properties. SB1340 SD1 provides for such notification. The bill as it is written, however, designates a sea level rise up to 2 feet as "vulnerable coastal property". Consistent with the State's Climate Change Mitigation and Adaptation Commission's urging for the counties' planning, we suggest amending the language to designate structures within a 3.2-foot sea level rise exposure area as "vulnerable coastal property".

It is also very important that <u>sellers</u> disclose properties within a sea level rise exposure area. This will help inform decisions by potential <u>purchasers</u> of such properties, before rather than after, the fact of their purchase.

SB1340 SD1 is a very important companion to SB1339 SD1, and we urge both to be passed.

Mahalo for the opportunity to testify,

Kimiko LaHaela Walter on behalf of the Hawai'i Reef and Ocean Coalition.

We note that SB1339, also on today's agenda, will amend Chapter 508D, Hawaii Revised Statutes, to add disclosure of properties within sea level rise exposure areas as a material fact to be included in a written disclosure statement prepared by the seller or the seller's agent. This will provide potential purchasers of such properties advance warning of risks from sea level rise.

It also important to assure that <u>purchasers</u> of coastal properties within sea level rise exposure areas are of aware of and acknowledge in a written disclosure statement, the long-term risks associated with these properties. HB1340 provides for such notification.

<u>SB-1340-SD-1</u> Submitted on: 2/26/2019 7:53:06 AM

Testimony for JDC on 2/27/2019 9:35:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:



# SENATE COMMITTEE ON JUDICIARY AND COMMERCE, CONSUMER PROTECTION, AND HEALTH

February 27, 2019 9:35 a.m.. Room 229

In SUPPORT of SB 1340 SD1: Relating to Real Estate Transactions

Aloha Co-Chairs Rhoads and Baker, Co-Vice Chairs Wakai and Chang, and members of the committees.

The Sierra Club of Hawai'i **supports SB 1340 SD 1** Relating to Real Estate Disclosure, but **strongly recommends defining "vulnerable coastal property" as real property within the 3.2 foot sea level rise exposure area (SLR-XA)** as officially designated by the Hawaii Climate Change Mitigation and Adaptation Commission.

Act 32 (2017) established the Hawaii Climate Change Mitigation and Adaptation Commission and directed the commission to develop a sea level rise vulnerability and adaptation report showing areas at risk under sea level rise. The commission completed its report in December 2017, which includes identification, with maps at tax map key detail, of areas that are susceptible to sea level rise impacts based on a 3.2-foot (one meter) increase in sea level projected to occur by 2100 or earlier. These areas are designated as sea level rise exposure areas (SLR-XA), shown in the Hawaii Sea Level Rise Vulnerability and Adaptation Report, and can be viewed online using the Hawaii Sea Level Rise Viewer.<sup>1</sup>

The Hawaii Climate Change Mitigation and Adaptation Commission made it clear in their 2019 report to the Legislature<sup>2</sup> that the 3.2 foot SLR-XA projection should be used by state and county agencies dealing with sea level rise adaptation planning, as in the following excerpts from the report shown below (**emphasis added**). It would be inconsistent to base disclosure measures on some other projection.

- "Identified priorities for adaptation to Sea Level Rise. The Commission passed five recommendations aimed at State and counties. These are:
  - 1. Support legislation for disclosure for private property and public offerings located in areas with potential exposure to sea level rise;
  - 2. Request all new development, redevelopment, and modifications be directed away from beach areas;

<sup>&</sup>lt;sup>1</sup> https://www.pacioos.hawaii.edu/shoreline/slr-hawaii/

<sup>&</sup>lt;sup>2</sup> https://www.capitol.hawaii.gov/session2019/bills/DC61 .pdf,

- 3. Urge counties to incorporate the 3.2 ft. sea level rise exposure area (SLR-XA) into their general and development plan;
- 4. Encourage agencies and non-governmental utility providers to identify and prioritize assets within the 3.2 ft SLR-XA, or more, as described in the State's Sea Level Rise report, identify adaptation measures, and to provide a status update on this activity annually to the Climate Commission; and
- 5. Support legislation that funds State programs to meet mitigation goals, and to bring resources to assist in planning and implementation for sea level rise and other climate related impacts."

Climate change creates a new type of hazard affecting coastal properties now and increasingly in the future. Mandatory disclosures are needed to start the conversation about which properties are in the exposure area, to acknowledge potential impacts and risks of sea level rise, and to protect buyers, sellers, and governmental agencies as the rising seas become more apparent in future years. The Sierra Club supports this measure, but strongly recommends amending the bill to require mandatory disclosures within the 3.2 foot SLR-XA projections.

Mahalo for the opportunity to testify on this important measure.

godi frolinoski

Jodi Malinoski, Policy Advocate



Subject: Fwd: In support of SB 1339 SD 1 and SB 1340 SD 1, hearing in JDC/CPH on Wednesday, 2/27 @ 9:35 AM

Date: Wednesday, February 27, 2019 2:08:26 PM

----- Forwarded message -----

From: **Millicent Cox** < midicox@everyactioncustom.com>

Date: Sat, Feb 23, 2019 at 12:49 PM

Subject: In support of SB 1339 SD 1 and SB 1340 SD 1, hearing in JDC/CPH on Wednesday,

2/27 @ 9:35 AM

To: < hawaii.chapter@sierraclub.org>

Dear Chair Rhoads, Chair Baker and members of the JDC and CPH committees,

I am writing in strong support of SB 1339 SD 1 and SB 1340 SD 1, two bills that would require mandatory purchaser and seller disclosures for real estate transactions that include properties within sea level rise exposure areas.

Climate change creates a new type of hazard affecting coastal properties now and increasingly in the future. Mandatory disclosures are needed now to start the conversation about which properties are in the exposure area, to acknowledge potential impacts and risks of sea level rise, and to protect buyers, sellers, and governmental agencies as the rising seas become more apparent in future years.

I support these bills, but recommend that the committees amend the bills to require disclosure for properties within the 3.2 foot sea level rise exposure area, which is the latest scientific projections that are officially designated by the Hawaii climate change mitigation and adaptation commission. We are not sure how much sea level will rise, so it would be better to be overly cautious and implement disclosures for coastal properties that may be affected up to 3.2 feet.

Sincerely, Millicent Cox midicox@gmail.com

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## Sierra Club of Hawai'i

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## Form Letter in Support for SB 1340

- 1 Denise Boisvert
- 2 Kim Jorgensen
- 3 Diane Ware
- 4 Jennifer Milholen
- 5 Patricia Blair
- 6 Randy Ching
- 7 Ron Lew
- 8 Kathy Shimata
- 9 Andrea Anixt
- 10 William Caron
- 11 Don Cooke
- 12 Stuart Coleman
- 13 Michelle Kwock
- 14 Richard Furst
- 15 Frank DeGiacomo
- 16 Nicholas Chagnon
- 17 Javier Mendez
- 18 Greg Puppione





Subject: Fwd: In support of SB 1339 SD 1 and SB 1340 SD 1, hearing in JDC/CPH on Wednesday, 2/27 @ 9:35 AM

Date: Wednesday, February 27, 2019 2:14:04 PM

----- Forwarded message -----

From: Matthew Fernandez < fernandezm91@everyactioncustom.com>

Date: Fri, Feb 22, 2019 at 3:59 PM

Subject: In support of SB 1339 SD 1 and SB 1340 SD 1, hearing in JDC/CPH on Wednesday,

2/27 @ 9:35 AM

To: < hawaii.chapter@sierraclub.org>

Dear Chair Rhoads, Chair Baker and members of the JDC and CPH committees,

I am writing in strong support of SB 1339 SD 1 and SB 1340 SD 1, two bills that would require mandatory purchaser and seller disclosures for real estate transactions that include properties within sea level rise exposure areas.

I am a recent graduate from UH Manoa's Department of Urban and Regional Planning, and understand that effective planning whether community, environmental, infrastructure, or land use planning for sea level rise requires the need for local policy to stay up-to-date with the latest scientific data which suggests a 3.2 ft SLR-XA. This measure of 3.2 ft is also adopted by the City & County of Honolulu's Mayor Caldwell's Directive to all city departments and agencies to plan with this measurement in mind. I have been to Puerto Rico after Hurricane Maria for a research trip with my class, and have seen the damage done onto developments which are built so close to the coast, and the pain that businesses, homeowners, and local government had told us about thereafter. One of the things we learned from Puerto Rico was that there was a lack of trust between government and community, which led to miscommunications on disaster preparedness and recovery. We had recommended to our client, the Office of Climate Change, Sustainability, and Resilience for the C&C of Honolulu, was to be as transparent as possible to communities regarding the vulnerabilities to them and to effectively plan for it in order to be more resilient, and to hopefully think twice about residing there. All this comes down to is the ability to disclose all information including sea level rise risks to property owners, and potential owners that they are in an area likely to be affected in the future.

Climate change creates a new type of hazard affecting coastal properties now and increasingly in the future. Mandatory disclosures are needed now to start the conversation about which properties are in the exposure area, to acknowledge potential impacts and risks of sea level rise, and to protect buyers, sellers, and governmental agencies as the rising seas become more apparent in future years.

I support these bills, but recommend that the committees amend the bills to require disclosure for properties within the 3.2 foot sea level rise exposure area, which is the latest scientific projections that are officially designated by the Hawaii climate change mitigation and adaptation commission. We are not sure how much sea level will rise, so it would be better to be overly cautious and implement disclosures for coastal properties that may be affected up to

3.2 feet.

Sincerely, Matthew Fernandez Honolulu, HI fernandezm91@gmail.com

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Subject: Fwd: In support of SB 1339 SD 1 and SB 1340 SD 1, hearing in JDC/CPH on Wednesday, 2/27 @ 9:35 AM

Date: Wednesday, February 27, 2019 2:10:30 PM

----- Forwarded message -----

From: Michele Halligan < mahalligan 1 @everyactioncustom.com >

Date: Sat, Feb 23, 2019 at 11:58 AM

Subject: In support of SB 1339 SD 1 and SB 1340 SD 1, hearing in JDC/CPH on Wednesday,

2/27 @ 9:35 AM

To: < hawaii.chapter@sierraclub.org>

Dear Chair Rhoads, Chair Baker and members of the JDC and CPH committees,

I am writing in strong support of SB 1339 SD 1 and SB 1340 SD 1, two bills that would require mandatory purchaser and seller disclosures for real estate transactions that include properties within sea level rise exposure areas.

Climate change creates a new type of hazard affecting coastal properties now and increasingly in the future. Mandatory disclosures are needed now to start the conversation about which properties are in the exposure area, to acknowledge potential impacts and risks of sea level rise, and to protect buyers, sellers, and governmental agencies as the rising seas become more apparent in future years.

I support these bills, but recommend that the committees amend the bills to require disclosure for properties within the 3.2 foot sea level rise exposure area, which is the latest scientific projections that are officially designated by the Hawaii climate change mitigation and adaptation commission. We are not sure how much sea level will rise, so it would be better to be overly cautious and implement disclosures for coastal properties that may be affected up to 3.2 feet.

Especially in light of today's news of a cliff collapse in San Francisco -- and the probable death of a young woman as a result -- SB 1339 SD 1 and SB 1340 SD 1 are important steps towards saving lives in our changing times.

Sincerely, Michele Halligan 447 Park Blvd Ukiah, CA 95482-4206 mahalligan1@gmail.com

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### Sierra Club of Hawai'i

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Subject: Fwd: Strong support of SB 1339 SD 1 and SB 1340 SD 1, hearing in JDC/CPH on Wednesday, February 27 @

9:35

Date: Wednesday, February 27, 2019 2:09:05 PM

----- Forwarded message ------

From: William Liggett <wli>everyactioncustom.com>

Date: Fri. Feb 22, 2019 at 8:30 PM

Subject: Strong support of SB 1339 SD 1 and SB 1340 SD 1, hearing in JDC/CPH on

Wednesday, February 27 @ 9:35 To: <<u>hawaii.chapter@sierraclub.org</u>>

Dear Chair Rhoads, Chair Baker and members of the JDC and CPH committees,

I am writing in strong support of SB 1339 SD 1 and SB 1340 SD 1, two bills that would require mandatory purchaser and seller disclosures for real estate transactions that include properties within sea level rise exposure areas.

Its time to be upfront with the sea level rise as the best science has identified.

Climate change creates a new type of hazard affecting coastal properties now and increasingly in the future. Mandatory disclosures are needed now to start the conversation about which properties are in the exposure area, to acknowledge potential impacts and risks of sea level rise, and to protect buyers, sellers, and governmental agencies as the rising seas become more apparent in future years.

I support these bills, but recommend that the committees amend the bills to require disclosure for properties within the 3.2 foot sea level rise exposure area, which is the latest scientific projections that are officially designated by the Hawaii climate change mitigation and adaptation commission. We are not sure how much sea level will rise, so it would be better to be overly cautious and implement disclosures for coastal properties that may be affected up to 3.2 feet.

Sincerely, William Liggett 4947 Maunalani Cir Honolulu, HI 96816-4030 wliggett@twc.com

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<u>SB-1340-SD-1</u> Submitted on: 2/20/2019 4:33:44 PM

Testimony for JDC on 2/27/2019 9:35:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lois Crozer	Individual	Support	No

Comments:

## <u>SB-1340-S</u>D-1

Submitted on: 2/22/2019 4:37:30 PM

Testimony for JDC on 2/27/2019 9:35:00 AM

\$	Submitted By	Organization	Testifier Position	Present at Hearing	
Ni	cole Chatterson	Individual	Support	No	

## Comments:

Dear Chair Rhoads, Chair Baker, and members of the JDC and CPH committees,

I am writing in strong support of SB 1340 SD 1 to require mandatory purchaser and seller disclosures for real estate transactions that include properties within sea level rise exposure areas.

I support this bill and recommend that the committees amend the bill to require disclosure for properties within the 3.2 foot sea level rise exposure area, which is the latest scientific projections that are officially designated by the Hawaii climate change mitigation and adaptation commission.

Aloha,

Nicole Chatterson

<u>SB-1340-SD-1</u> Submitted on: 2/24/2019 11:08:50 AM

Testimony for JDC on 2/27/2019 9:35:00 AM

Submitted By	SUBMITTED BY Organization	Testifier Position	Present at Hearing
Suzanne Skjold	Individual	Support	No

Comments: