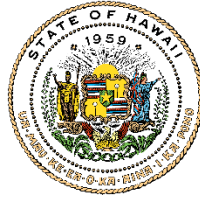


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621
HONOLULU, HAWAII 96809

Testimony of
DAWN N. S. CHANG
Chairperson

Before the Senate Committee on
COMMERCE AND CONSUMER PROTECTION

Thursday, February 23, 2023
10:00 a.m.

State Capitol, Conference Room 229 & Videoconference

In consideration of
SENATE BILL 1389, SENATE DRAFT 1
RELATING TO REAL PROPERTY DISCLOSURES WITHIN SHORELINE AREAS

Senate Bill 1389, Senate Draft 1 proposes to require mandatory disclosure of all existing permitted and unpermitted shoreline erosion control structures, the annual erosion rate, and the current actual setback of all structures for shoreline properties prior to real estate transactions. **The Department of Land and Natural Resources (Department) strongly supports this bill and offers suggested amendments to strengthen its positive impact.**

Vulnerability of coastal properties due to erosion (i.e., shoreline recession and land loss) and flooding from seasonal waves and storms is increasing with sea level rise. It is critical that buyers of coastal property in the State to understand the hazards and risks they are assuming in purchasing oceanfront property, in the spirit of transparency and disclosure and to support informed decision making by buyers and government agencies.

Hawai'i Revised Statutes Section 508D-15 was amended in 2021 to require mandatory disclosure of properties located within the sea level rise exposure area during real estate transactions. The required disclosure provides advance notice to buyers of future hazards on the property. Senate Bill 1389, Senate Draft 1 would further inform buyers of existing hazards and encroachments from their property onto state lands.

Shoreline property owners maintain erosion control structures, constructed of sandbags and burritos, and in some cases, unpermitted seawalls as erosion control. These erosion control structures are largely unpermitted or remain under expired permits far beyond their allotted authorization. Unpermitted and illegal structures present an enforcement challenge for the Department when the shoreline property changes ownership.

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
LAURA H.E. KAAKUA
FIRST DEPUTY
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

Senate Bill 1389, Senate Draft 1 will require the disclosure of all permitted and unpermitted erosion control structures, along with the expiration dates for permitted structures and notices of alleged violations and fines for unpermitted or expired permits prior to the real estate transaction for all shoreline properties. The bill further requires disclosure of the annual coastal erosion rate as determined by historical analysis.

Senate Bill 1389, Senate Draft 1 will support informed consent and actual notice to all parties of a real estate transaction regarding the location of the shoreline and would result in the removal of harmful and dangerous unpermitted erosion control structures from state lands, thereby improving access to public trust resources.

Senate Bill 1389, Senate Draft 1 will also provide greater accountability for private property owners adjacent to state lands for the removal of unpermitted encroachments. As such, it will reduce the enforcement burden on both the Department's Office of Conservation and Coastal Lands and Division of Conservation and Resources Enforcement.

following sites:

Historical erosion rates are currently available from the Counties of Kaua'i, Honolulu, and Maui at the following web addresses where they are applied in planning and permitting and, in the case of Kaua'i and Maui, for calculated erosion rate-based shoreline construction setbacks:

Kaua'i:

www.kauai.gov/Government/Departments-Agencies/Planning-Department/Shoreline-Setback
kauaigis.maps.arcgis.com/apps/webappviewer/index.html?id=ce0eb348f1ec4682affba1321ca5c9e6

O'ahu:

cchnl.maps.arcgis.com/apps/View/index.html?appid=6694193a396f40fb87f78e98fbad7d73

Maui:

www.mauicounty.gov/865/Maui-Shoreline-Erosion-Atlas

The Department recognizes that the erosion rates are not currently available for every island. In order to not create an undue burden on the seller, or to require them to do their own independent studies, we would recommend that the bill note that erosion rates need only be disclosed when publicly available. With the Department's recommendations, page 4, lines 9 through 17 would be amended (highlight in gray) to read:

(b) When residential real property lies adjacent to the shoreline, the seller shall disclose all permitted and unpermitted erosion control structures on the parcel or on state land adjacent to the parcel, including expiration dates of permitted structures and any notices of alleged violation and fines for expired permits or unpermitted structures; and shall disclose the annual coastal erosion rate(s) for the zoning lot as determined by historical

analysis and shown on the county databases for historical erosion rates[-], when publicly available.

Mahalo for the opportunity to provide testimony in strong support of this bill with proposed amendments.



STATE OF HAWAII
HAWAII CLIMATE CHANGE MITIGATION & ADAPTATION
COMMISSION
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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Chair, DLNR
Director, OPSD

Commissioners:
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Chair, Senate WTL
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Director, C+C DPP
Director, Maui DP
Director, Hawai'i DP
Director, Kaua'i DP
The Adjutant General
Manager, CZM

**Testimony of
Leah Laramee
Coordinator, Hawai'i Climate Change Mitigation and Adaptation Commission**

**Before the Senate Committees on
COMMERCE AND CONSUMER PROTECTION**

**Thursday, February 23, 2023
10:00 AM**

State Capitol, Via Videoconference, Conference Room 229

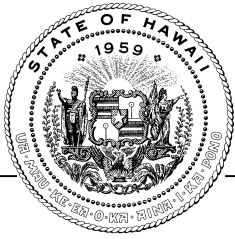
**In consideration of
SENATE BILL 1389 Senate Draft 1
RELATING TO REAL PROPERTY DISCLOSURES WITHIN SHORELINE AREAS**

Senate Bill 1006 SD1 requires mandatory disclosure of all existing permitted and unpermitted shoreline erosion control structures and the annual coastal erosion rates for shoreline properties in real estate transactions. **The Climate Change Mitigation and Adaptation Commission (Commission) supports this bill.**

The Hawai'i Climate Change Mitigation and Adaptation Commission consists of a multi-jurisdictional effort between 20 different departments, committees, and counties. As sea level rise continues to accelerate, the State of Hawai'i must maintain a constant and ongoing effort to adopt policies and programs to support adaptation to a changing world. The state must maintain a diligent focus on continual and ongoing improvement of community engagement, laws, regulations, and policies to meet the challenge ahead and safeguarding our cultural and natural resources while also providing adaptation tools to the people of Hawai'i in an equitable manner.

This bill supports recommendation 7.3 of the Commission's *Sea Level Rise Vulnerability and Adaptation Report* "to require mandatory disclosure for private properties and public offerings located in areas with potential exposure to sea level rise." It is important that buyers of coastal property in the State understand the hazards and risks they are assuming in purchasing oceanfront property, in the spirit of transparency and disclosure and to support informed decision making by buyers and government agencies. Senate Bill 1389 will also provide greater accountability for private property owners adjacent to state lands for the removal of unpermitted encroachments. As such, it will reduce the enforcement burden on both the Department's Office of Conservation and Coastal Lands and Division of Conservation and Resources Enforcement.

Mahalo for the opportunity to testify in support of this measure.



**STATE OF HAWAII
OFFICE OF PLANNING
& SUSTAINABLE DEVELOPMENT**

JOSH GREEN, M.D.
GOVERNOR

SCOTT J. GLENN
DIRECTOR

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Statement of
SCOTT GLENN, Director

before the
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Thursday, February 23, 2023, 10:00 AM
State Capitol, Conference Room 229

in consideration of
SB 1389 SD1
RELATING TO REAL PROPERTY DISCLOSURES WITHIN SHORELINE AREAS

Chair Keohokalole, Vice Chair Fukunaga, and Members of the Senate Committee on Commerce and Consumer Protection:

The Office of Planning and Sustainable Development (OPSD) **supports SB 1389 SD1** which requires mandatory disclosure of all existing permitted and unpermitted shoreline erosion control structures, the annual erosion rate, and the current actual setback of all structures for shoreline properties prior to real estate transactions.

SB 1389 SD1 supports actions that further the state's consistency with Hawaii Revised Statutes (HRS) § 226-109 Climate change priority guidelines. The OPSD is supportive of this effort to ensure that property transactions provide a mechanism to inform parties of existing conditions and builds awareness of coastal hazard risks to shoreline properties.

Thank you for the opportunity to testify on this measure.

February 23, 2023

The Honorable Jarrett Keohokalole, Chair

House Committee on Commerce and Consumer Protection
State Capitol, Conference Room 430 & Videoconference

RE: Senate Bill 1389, Relating to Real Property Disclosures Within Shoreline Areas

HEARING: Thursday, February 23, 2023, at 10:00 a.m.

Aloha Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee:

My name is Lyndsey Garcia, Director of Advocacy, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i and its over 11,000 members. HAR provides **comments** on Senate Bill 1389, SD1, which requires mandatory disclosure of all existing permitted and unpermitted shoreline erosion control structures, the annual erosion rate, and the current actual setback of all structures for shoreline properties prior to real estate transactions.

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. It is HAR's industry practice to create Standard Forms for use by our members and the real estate industry that follow and often exceed what is called for via laws, rules, and regulations. HAR created and continuously updates an Oceanfront Property Addendum that contains a comprehensive disclosure of information specific to the ownership of oceanfront property. Additionally, HAR has updated the Seller's Real Property Disclosure Statement and Purchase Contract to address sea level rise.

While we appreciate the amendments made in the previous committee, it has come to our attention that the **historical erosion maps provided in the county databases are not statewide and do not include the County of Hawai'i**. Requiring disclosures of erosion rates are beyond the knowledge of the typical seller and real estate professionals. As such, if the Committee is inclined to pass this measure, we would respectfully request this requirement be stricken until the counties have updated their maps to include all counties. Please see our suggested amendments on page 4, lines 9 - 17:

(b) When residential real property lies adjacent to the shoreline, the seller shall disclose all permitted and unpermitted erosion control structures on the parcel or on state land adjacent to the parcel, expiration dates of any permitted structures, any notices of alleged violation, and any fines for expired permits or unpermitted structures. ~~The seller shall disclose the annual coastal erosion rates~~



 808-733-7060

 808-737-4977

 1259 A'ala Street, Suite 300
Honolulu, HI 96817

~~for the zoning lot as determined by historical analysis and shown on the official county databases for historical erosion rates.~~

Thank you for your consideration of our comments. Mahalo for the opportunity to testify.





2/22/2023

Commerce and Consumer Protection
Hawai'i State Capitol
Honolulu, Hawai'i 96813

Dear Chair Keohokalole, Vice Chair Fukunaga, and Members of the Senate Committee on Commerce and Consumer Protection,

Position: Support SB1389 - RELATING TO REAL PROPERTY DISCLOSURES WITHIN SHORELINE AREAS

The Surfrider Foundation, Hawai'i region, is testifying in **strong support of SB1389**, relating to seller disclosures of existing permitted and unpermitted shoreline erosion control structures, the annual erosion rate, and the current actual setback of all structures for shoreline properties prior to real estate transactions.

The coastlines of Hawai'i are facing severe chronic erosion that is being exacerbated by climate change and sea level rise. 70% of the sandy beaches on Maui, O'ahu, and Kaua'i are experiencing chronic erosion that is further being exacerbated by rising sea levels. Homes, businesses, and public infrastructure like roads are in highly vulnerable coastal areas.

Despite the clear and ongoing threats to certain coastal areas in Hawai'i, it is evident that coastal homebuyers may continue to be under-prepared for the future challenges and implications of sea level rise, coastal erosion, and flooding. By clearly requiring disclosure of permitted and unpermitted erosion control structures on parcels for real estate transactions involving oceanfront property, requiring disclosure of the erosion rate for the property and of the current actual setback from the shoreline of all structures on the property, buyers are more aware of the threats posed by coastal erosion and increases purchaser protection.

Over the past year, the Surfrider Foundation, O'ahu Chapter and SeaGrant convened the North Shore Coastal Resilience Working Group (NSCRWG),¹ a group of stakeholders on the North Shore, to discuss the imminent threats of sea level rise and proposed solutions. One of the key findings was the lack of options and transparent, publicly-shared guidelines for homeowners impacted by shoreline erosion. This bill is an important steps towards further ensuring that property owners purchasing property in highly vulnerable areas are aware of and accept the risks associated with their purchases. It is also an important part of ensuring that future coastal property owners do not take illegal actions on the public shoreline.

Thank you for your consideration of this testimony in support of SB1389, submitted on the behalf of the Surfrider Foundation's 4 Chapters in Hawai'i and our 437 local community members.

The Surfrider Foundation is a national nonprofit organization dedicated to the protection and enjoyment of our ocean, waves, and beaches. Surfrider maintains a network of over 150 chapters and academic clubs nationwide, including 4 chapters in the Hawaiian Islands. The Surfrider Foundation focuses on many aspects of the environment such as coastal protection, plastic pollution, and water quality.

Sincerely,

Lauren Blickley
Hawai'i Regional Manager
Surfrider Foundation

¹ <https://hawaii.surfrider.org/northshoreworkinggroup/>