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STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
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Testimony of
RYAN K.P. KANAKA'OLE
Acting Chairperson

Before the Senate Committees on
COMMERCE AND CONSUMER PROTECTION
And
JUDICIARY

Thursday, February 26, 2026
9:30 AM.
State Capitol, Conference Room 229

In consideration of
SENATE BILL 3035, SENATE DRAFT 1
RELATING TO REAL ESTATE TRANSACTIONS

Senate Bill 3035, Senate Draft 1 proposes to require the seller and agent of real property adjacent to the shoreline to include information regarding all permitted and unpermitted erosion control structures on the parcel in advertisements in addition to disclosure documents at sale. **The Department of Land and Natural Resources (Department) supports this bill.**

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. The Department believes that it is critical that buyers of coastal property 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.

Hawaii Revised Statutes (HRS) Section 508D-15 was amended in 2023 to require mandatory disclosure of information related to all permitted and unpermitted erosion control structures for real property that lies adjacent to the shoreline after an offer is accepted. Senate Bill 3035, Senate Draft 1 would further inform buyers of existing hazards on the property prior to sale at the beginning of real estate transactions rather than at the end to ensure an informed purchase.

Shoreline property owners maintain erosion control structures such as sandbags and burritos, and in some cases, seawalls as erosion control. A large number of these erosion control structures are 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.

Senate Bill 3035, 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 during the advertisement phase for all shoreline properties. As such, Senate Bill 3035, Senate Draft 1 will support informed consent and actual notice to all parties prior to a real estate transaction of actual coastal hazards associated with living on 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.

Mahalo for the opportunity to comment on this measure.

February 26, 2026

The Honorable Jarrett Keohokalole, Chair

Senate Committee on Commerce and Consumer Protection

The Honorable Karl Rhoads, Chair

Senate Committee on Judiciary

State Capitol, Conference Room 229 & Videoconference

RE: Senate Bill 3035, SD1, Relating to Real Estate Transactions

HEARING: Thursday, February 26, 2026, at 9:30 a.m.

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

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 Hawaii and its over 10,000 members. HAR **opposes** Senate Bill 3035, SD1, which requires a seller of real property adjacent to the shoreline, and the seller's agent, to disclose and include in all advertisements certain shoreline erosion issues related to the parcel.

Requiring all advertisements to include detailed information on permitted and unpermitted erosion control structures, permit expiration dates, violation notices, and fines for expired permits or unpermitted structure could be unworkable due to space constraints. While this measure also allows for a website link stating, "This property has an erosion disclosure," many real estate advertisements appear on platforms with character limits, such as online listings, social media posts, and newspapers. Additionally, printed advertisements, such as newspaper or magazine ads, would not be able to accommodate a clickable website link. Ensuring full compliance in these settings may require significantly reducing or eliminating other key property details, which could confuse buyers rather than inform them.

HAR has provisions regarding erosion control structures based on current law within the *Seller's Real Property Disclosure Statement* (SRPDS) for the seller to disclose to the buyer if applicable. Below is an example of the shoreline disclosure information the seller must disclose in the SRPDS.

14) Does the property lie adjacent to the shoreline?
14a) If yes, does the property include any erosion control structure? If yes, disclose in section G every permitted and unpermitted erosion control structure on the property, expiration dates for each permitted erosion control structure on the property, and notices of alleged violations and fines for each expired permitted or unpermitted erosion control structure on the property.

HAR worked with the Legislature and key stakeholders to proactively create a two-page *Oceanfront Property Addendum* in addition to the SPRDS to provide buyers with additional information specific to oceanfront properties. This document includes



 808-733-7060

 808-737-4977

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

information to inform buyers, such as on Special Management Areas, state shoreline certification, shoreline setback, shoreline boundaries, erosion control, sea level rise, encroachments, flood control, and flood insurance. These two documents help ensure potential buyers receive crucial details about shoreline properties in the appropriate context.

Shoreline disclosure information is just one of over 126 disclosures that a seller must provide to a potential buyer in the SRPDS about a property prior to closing. All this information is important for potential buyers to have to make an informed decision about whether to proceed with purchasing a property. Providing limited or selective information in advertisements without proper context may unintentionally mislead or confuse consumers about the condition and circumstances of a property.

Mahalo for the opportunity to provide testimony on this measure.



SB-3035-SD-1

Submitted on: 2/22/2026 3:05:09 PM

Testimony for CPN on 2/26/2026 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Ted Bohlen	Testifying for Hawai'i Reef and Ocean Coalition	Support	Written Testimony Only

Comments:

Hawaii Reef and Ocean Coalition SUPPORTS this legislation,



February 24, 2026

Senate Committee on Commerce and Consumer Protection
Senate Committee on Judiciary
Hawai'i State Legislature
Via Electronic Transmission

Re: Testimony in SUPPORT of SB3035 SD1, Relating to Real Estate Transactions
Hearing: Thursday, February 26, 2026, 9:30 AM CR 229 & Via Videoconference

To: The Honorable Chair Keohokalole, Chair Rhoads, Vice Chair Fukunaga, Vice Chair Gabbard, and Members of the Committees

Surfrider Foundation Hawai'i Region strongly supports SB3035 SD1, which strengthens shoreline erosion disclosure requirements by ensuring that specific shoreline erosion-related issues are disclosed early at the advertising and marketing stage of a real estate transaction, rather than later in the process after buyers have already made significant commitments.

Surfrider Foundation is a grassroots environmental organization dedicated to protecting the ocean, waves, and beaches for all people. Through our Coast & Climate initiative, our chapters on Maui, Kaua'i, and O'ahu work directly on issues related to coastal erosion, shoreline armoring, and the loss of public beach access. From this work, we see firsthand how shoreline erosion risks are often poorly understood by buyers and too often minimized or omitted in early property marketing.

Oceanfront homes in Hawai'i are often marketed for their picturesque views and beach access, without clearly communicating documented shoreline instability, expired permits, or enforcement history. Buyers may underestimate erosion risk and overestimate what they can legally or practically do to protect shoreline-adjacent structures. In some cases, properties are purchased sight unseen, relying heavily on online marketing that emphasizes lifestyle over known shoreline conditions.

The issue is not whether disclosure is required, it is when. Real estate agents may note that shoreline issues are addressed through two existing disclosure forms. The Seller's Real Property Disclosure Statement required under HRS §508D-15, as amended by Act 231 (2023), requires sellers of shoreline-adjacent property to disclose permitted and unpermitted erosion control structures, expiration dates of permitted structures, notices of alleged violation, and

associated fines- but this statutory disclosure is required only within ten days after a purchase contract is accepted.

The other form commonly referenced is the Oceanfront Property Addendum. While a valuable additional resource, it serves as a general coastal risk acknowledgment and does not expressly list the four specific Act 231 (2023) disclosure items.

SB3035 does not create new disclosure categories or expand existing legal requirements. It simply requires that the specific shoreline erosion disclosures established under Act 231 (2023) be included in advertising and marketing materials for shoreline-adjacent properties. Moving these disclosures to the front end of the transaction is grounded in truth in advertising and ensures buyers receive critical, property-specific risk information before making an offer- when that information can meaningfully inform their decisions. Because these disclosures are already occurring, this measure should not pose an undue burden; rather, it promotes consistency, transparency, and fairness.

Early, transparent disclosure serves the broader public interest. When specific shoreline risks are clear upfront, buyers can make risk-informed decisions, reducing pressure on agencies from repeated post-purchase emergency hardening requests or other last-ditch interventions. Coastal erosion issues facing oceanfront property owners must be brought into the open and addressed with urgency, rather than passed down the line to future homeowners, agencies, and the public.

Oceanfront living is a privilege that also carries real and increasing risk. SB3035 ensures those risks are clearly communicated from the outset, strengthening consumer protection while supporting responsible shoreline management.

Thank you for the opportunity to submit testimony in strong support of SB3035 on behalf of the Surfrider Foundation's three Hawai'i chapters and members statewide

Sincerely,

Hanna Lilley
Hawai'i Regional Manager
Surfrider Foundation



In Strong Support of SB3035 – Real Estate Disclosure

Aloha Chair and Members of the Committee,

Maui Nui Resiliency Hui respectfully submits strong support for SB3035.

This measure is about transparency in the face of accelerating shoreline risk. As sea level rise and chronic erosion intensify, buyers increasingly rely on online listings to understand a property's condition. SB3035 ensures that known shoreline erosion issues are disclosed up front, where most buyers first encounter a property.

Case Study: Kahana Sunset, West Maui

At **Kahana Sunset Condominium**, the **Hawai'i Department of Land and Natural Resources Office of Conservation and Coastal Lands (OCCL)** issued a detailed response to a request to resolve shoreline encroachments on State land seaward of the property.

It is important to distinguish roles clearly:

- The condominium association's own retained professionals (engineers and planners) have documented severe shoreline impacts and have assessed Building F as unsafe for habitation, with the building reportedly unoccupied for an extended period.
- DLNR OCCL did not originate the engineering determination. OCCL reviewed the submitted record, including the history of erosion, wave run-up, sinkholes, and emergency actions and **concurred that the shoreline is dynamic and unstable**, and that certain shoreline encroachments should not be allowed to continue through easement.

Based on its evaluation criteria and applicable law, OCCL determined:

- Multiple structures originally built mauka of the shoreline are now on or over **State submerged lands** due to erosion and shoreline migration;
- The shoreline is "dynamic and unstable," with a documented history of sinkholes and wave run-up;
- OCCL supports only a limited disposition for certain encroachments (for shoreline certification purposes), and **does not support processing any disposition request** for other encroachments;

- OCCL **does not support granting easements** that would enable continued use and maintenance of structures that negatively impact shoreline processes, beach resources, and lateral access;
- Removal of encroaching structures is the appropriate remedy to enable shoreline certification at the property.

OCCL also concluded that shoreline hardening in this bay has negatively impacted beach deposition and has contributed to diminished beach resources and severely limited public access.

Compare That to the Real Estate Marketing Buyers See Online

A current listing for a unit at Kahana Sunset describes:

“Nestled in a quiet and serene beachfront setting... comfort and style just steps from the ocean.”

“Secluded white sand beach... ideal for year-round sunsets and seasonal whale watching.”

“One of Maui’s most affordable fee simple ownership opportunities in a truly oceanfront setting.”

Another listing states:

“You can fall asleep to the sound of the waves at night.”

“Beautifully updated... meticulously maintained... available as a vacation rental.”

Most ads make no mention of the history of over \$10 million dollars spent over 15 years of futile efforts to hold back the ocean.

A buyer reading these listings would not understand that the State has documented shoreline migration onto State submerged lands, declined to support easements for multiple shoreline encroachments, and concluded that removal, not continued maintenance, is the appropriate remedy for shoreline certification.

In short: buyers see sunsets and serenity, not a clear description of shoreline instability and escalating risk.

Why SB3035 Is Necessary

SB3035 is a common-sense consumer protection and climate adaptation measure. When known shoreline erosion issues are not clearly disclosed in listings and advertisements:

- Buyers unknowingly assume climate-related liability and potential special assessments;

- Lenders and insurers misprice risk;
- Markets distort value and prolong risky investment;
- Pressure increases to armor shorelines rather than adapt, undermining public trust beaches and access.

Disclosure does not prevent a sale. It ensures informed consent.

Kahana Sunset is not unique, it is a visible example of what is increasingly occurring statewide. SB3035 ensures that when a property is marketed as a “serene beachfront setting,” the public also receives clear, upfront information if there are known shoreline erosion issues affecting the property.

Maui Nui Resiliency Hui respectfully urges passage of SB3035.

Mahalo for your consideration.

Respectfully submitted,

Kai Nishiki & Sarah Freistat Pajimola,

Executive Directors, Maui Nui Resiliency Hui

SB-3035-SD-1

Submitted on: 2/25/2026 5:28:29 AM

Testimony for CPN on 2/26/2026 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Robert Douglas	Individual	Support	Written Testimony Only

Comments:

Fully support this bill.

Bob Douglas

Hilo, HI

SB-3035-SD-1

Submitted on: 2/25/2026 8:16:46 AM

Testimony for CPN on 2/26/2026 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Denise E Antolini	Individual	Support	Written Testimony Only

Comments:

Aloha CPN/JDC Chairs, Vice Chairs, and members,

I strongly support SB3035 SD1.

SD1 (WLA) makes a sensible amendment to clarify that the key four elements of information (permits/violations) can be disclosed easily via a website or link. As explained below, the Seller’s Agent MUST already have in hand information on the four elements to be disclosed because the Legislature required in 2023 that this permit/violation information must be contained already in the disclosure after the purchase agreement - (which is too late) - but it shows that no real additional work is needed on the part of the Seller’s Agent to achieve truth in advertising for properties with severe erosion and violations that are going up for sale on our shorelines.

As a resident of the North Shore of O‘ahu in the Pūpūkea-Paumalū-Sunset area, I have been engaged in monitoring and voicing community concerns about the "erosion hot spot" on the North Shore in an area called Kammies (between Sunset Beach and Rocky Point), in the ahupua‘a of Paumalū.

This is the same area where two houses (owned by the same investor, Joshua VanEmmerik) were demolished in 2024 by order of the City and County of Honolulu Department of Planning and Permitting (DPP) when one house collapsed into the beach after months of beach erosion and undermining of the house.

The house that collapsed was notorious because Mr. VanEmmerik, who is not from the North Shore, had poured tons of concrete illegally on the beach when erosion began to accelerate in front of the house after he bought the home and the one he bought next door to use as illegal vacation rentals.

Let me tell you a story about why this bill is **SUPER important**: the landowner of those two homes (Mr. VanEmmerik) had put them up for **sale on Zillow AFTER** he had been caught by the Department of Land and Natural Resources (DLNR) for the illegal concrete pour and **AFTER** he put in an illegal burrito system. He was trying to dump these distressed houses - for millions each.

The real estate agent who represented him (seller's agent) did NOT disclose to prospective buyers the severe erosion issues, the pending fines from DLNR, or the unpermitted "erosion control devices."

I know this first hand because I went to an Open House when the first home was on the market - **the seller's agent NEVER mentioned the facts of the erosion history or violations or the two BLNR enforcement actions** (the ad, as I recall, simply said the buyer had to do "due diligence" on their own), and the buyer's agent (supposedly representing me as the potential buyer) only vaguely mentioned the erosion issue (about which I had extensive knowledge from attending several BLNR meetings on the matter).

"My" (buyer) agent handed me "engineered drawings" that supposedly would "secure" the house from falling into the ocean - again without disclosing the key history or facts. I later showed the drawings to experts who just laughed at the fool's errand and misrepresentation of putting an "anchor system" under the house that was sitting on an rapidly eroding sand dune.

This is the same house that later COLLAPSED onto the beach and spread debris all over the beach an into the ocean! Mr. VanEmmerik ultimately had to demolish both houses, and defaulted on his mortgages to two banks.

Remember, these two houses with serious shoreline violations and fines by DLNR were being marketed for months on Zillow to buyers worldwide without disclosure of key erosion info in the advertising. Outrageous.

Some real estate agents, particularly those with roots in the community, are honest with buyers. Many are not. I can say that with some confidence after speaking to an agent up here on the North Shore who was "appalled" to hear a seller's agent (for a different home, on Waialua shoreline) fail to disclose the home's illegal seawall. She was so outraged she insisted on walking her client out of the home on the spot - and she told me that **many shoreline homes are being sold without full disclosure of the erosion risks to prospective buyers in advertising.**

This bill is a big step forward for "truth in advertising" and also will protect buyers who should be able to rely on agents to tell them the truth. In turn, agents would be required to get accurate information from the seller. Most importantly, it provides key information to the market as a whole for shoreline property about the true risk and value. It makes no sense and is inconsistent with the state shoreline policies in Act 16 (2020) to wait until an offer is made for this critical information to be shared with potential buyers.

Please move this bill forward as a complement to the prior "transaction" disclosure bill passed by the Legislature three years ago to protect our beaches held in public trust.

Mahalo.

Denise Antolini, Pūpūkea resident

Member, Protect Paumalū

