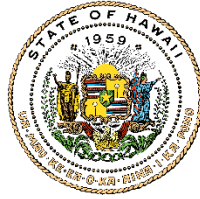


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

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 House Committee on
JUDICIARY & HAWAIIAN AFFAIRS

Thursday, February 23, 2023

2:00 p.m.

State Capitol, Conference Room 325 & Videoconference

In consideration of
HOUSE BILL 1091, HOUSE DRAFT 1
RELATING TO REAL PROPERTY DISCLOSURES WITHIN SHORELINE AREAS

House Bill 1091, House Draft 1 proposes to require mandatory disclosure of all existing permitted and unpermitted shoreline erosion control 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. House Bill 1091, House 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. The structures also cause damage to the public trust resources.

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

House Bill 1091, House 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.

House Bill 1091, House Draft 1 will support informed consent and actual notice to all parties of a real estate transaction regarding encroachments on state land used to support homes and auxiliary buildings on the parcel and would result in the removal of harmful and dangerous unpermitted erosion control structures from state lands, thereby improving access to public trust resources.

House Bill 1091, House 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.

House Bill 1091 included the additional disclosure of annual erosion rate as determined by historical analysis for properties adjacent to the shoreline. Coupled with the existing Sea Level Rise Exposure Area (SLR-XA) disclosure, the official erosion rate will provide buyers with actionable information regarding the future migration of the shoreline and transition of land below the upper reach of the high wash of the waves to state ownership held in the public trust. The Department recommends that the bill be amended to require disclosure of the annual erosion rates, when publicly available.

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

Kauaʻi:

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

Oʻahu:

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. To avoid creating an undue burden on the seller, or requiring 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 4 through 12 would be amended (highlighted 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

Co-Chairs:
Chair, DLNR
Director, OPSD

Commissioners:
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Chair, Senate WTL
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Chairperson, DOE
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 House Committee on
JUDICIARY & HAWAIIAN AFFAIRS**

**Thursday, February 23, 2023
2:00 PM
State Capitol, Conference Room 325 & Videoconference**

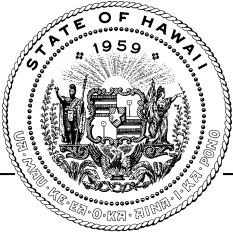
**In consideration of
HOUSE BILL 1091 HOUSE DRAFT 1
RELATING TO REAL PROPERTY DISCLOSURES WITHIN SHORELINE AREAS**

House Bill 1091 HD1 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 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. Sea level rise is impacting Hawai'i's shorelines now and will continue to do so in the future. In its 2018 statement on *Adaptation to Impacts of Sea Level Rise* the Commission requests all new development, redevelopment and modifications be directed away from beach areas, and urges counties to incorporate the 3.2 ft. sea level rise exposure area (SLR-XA) into their General and Development Plans. The Commission believes this bill builds on that recommendation. Act 179 (2021) requires mandatory seller disclosure if a residential real property lies within the sea level rise exposure area. This bill will build on that to ensure that buyers understand the hazards and risks they are assuming in purchasing oceanfront property.

The Commission respectfully requests that the committee return the requirement of disclosure of the erosion rate for the property and the current actual setback from the shoreline of all structures on the property where available. While data is not available statewide yet it is being developed and inclusion of the requirement where available will support the inclusion of important metrics as tools and data become more sophisticated.

Mahalo for the opportunity to submit testimony 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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Mailing Address: P.O. Box 2359, Honolulu, Hawai'i 96804

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Statement of
SCOTT GLENN, Director

before the
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
Thursday, February 23, 2023, 2:00 PM
State Capitol, Conference Room 325

in consideration of
HB 1091 HD1
RELATING TO REAL PROPERTY DISCLOSURES WITHIN SHORELINE AREAS

Chair Tarnas, Vice Chair Takayama, and Members of the House Committee on Judiciary & Hawaiian Affairs, the Office of Planning and Sustainable Development (OPSD) **supports the intent of HB 1091 HD1** which requires mandatory disclosure of all existing permitted and unpermitted shoreline erosion control structures on parcels of land adjacent to the shoreline prior to real estate transactions.

HB 1091 HD1 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.



‘ŌNAEHANA KULANUI O HAWAII

Legislative Testimony

Hō'ike Mana'o I Mua O Ka 'Aha'ōlelo

Testimony Presented Before the
House Committee on Judiciary & Hawaiian Affairs
Thursday, February 23, 2023 at 2:00 p.m.

By

Charles "Chip" Fletcher, PhD
Dean, School of Ocean and Earth Science and Technology

And

Darren T. Lerner, PhD
Director, Sea Grant College Program,
School of Ocean and Earth Science and Technology

And

Michael Bruno, Provost
University of Hawai'i at Mānoa

HB 1091 HD1 – RELATING TO REAL PROPERTY DISCLOSURES WITHIN SHORELINE AREAS

Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

The University of Hawai'i Sea Grant College Program (Hawai'i Sea Grant) and the Climate Resilience Collaborative (CRC) **support House Bill 1091 HD1** and request that your Committee consider our proposed amendments.

This measure requires disclosure of all existing permitted and unpermitted shoreline erosion control structures on parcels of land adjacent to the shoreline prior to real estate transactions.

The House Committee on Water and Land (WAL) amended this measure to delete the requirement of disclosure of the erosion rate for the property and the current actual setback from the shoreline of all structures on the property. WAL made this amendment because historical shoreline erosion data is not currently available for Hawai'i Island nor Moloka'i. However, historical erosion rates are available from the Counties of Kaua'i, Honolulu, and Maui and are already applied in planning and permitting. Instead of removing the requirement altogether, Hawai'i Sea Grant and CRC recommend this committee insert a caveat into the former requirement that clarifies that it is only applicable where erosion data is available.

In particular, HRS §508-15(b) could read "When residential real property lies within the shoreline area as identified by official tax maps, 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, where available, shall disclose the annual coastal erosion rate for the zoning lot as determined by historical analysis.”

For these rates, Hawai'i Sea Grant and CRC recommend referencing official county databases for historical shoreline erosion rates rather than the CRC Hawai'i Shoreline Study Map.

Hawai'i Sea Grant's mission is to provide integrated research, extension, and education activities that increase understanding and use of ocean and coastal resources of the Hawaiian and Pacific Islands and support the informed personal, policy, and management decisions that are integral to realizing this vision. Hawai'i Sea Grant is part of a national network of 34 university-based programs associated with the National Oceanic and Atmospheric Administration (NOAA) that promote better understanding, conservation, and use of coastal resources.

CRC is a multi-investigator research project at the University of Hawai'i at Mānoa focused on sea level rise adaptation and climate resilience. CRC is working to update coastal models with more recent projections of sea level rise and to take account of other variables that impact Hawai'i's shorelines.

Hawai'i Sea Grant and CRC would be happy to provide updated sea level rise data and projections to the Committee or any lawmaker upon request.

Hawai'i Sea Grant and the Climate Resilience Collaborative support House Bill 1091 HD1.

Thank you for the opportunity to testify on this measure.

LATE *Testimony submitted late may not be considered by the Committee for decision making purposes.

OFFICE OF CLIMATE CHANGE, SUSTAINABILITY AND RESILIENCY

CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 11th FLOOR • HONOLULU, HAWAII 96813
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RICK BLANGIARDI
MAYOR

MATTHEW GONSER, AICP, CFM
EXECUTIVE DIRECTOR &
CHIEF RESILIENCE OFFICER

NICOLA HEDGE
DEPUTY DIRECTOR &
DEPUTY CHIEF RESILIENCE OFFICER

THURSDAY, FEBRUARY 23, 2023, 2:00 P.M.

STATE OF HAWAII
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

**TESTIMONY ON HOUSE BILL 1091, HD1
RELATING TO REAL PROPERTY DISCLOSURES WITHIN THE SHORELINE AREA**

BY,

MATTHEW GONSER
EXECUTIVE DIRECTOR AND CHIEF RESILIENCE OFFICER
OFFICE OF CLIMATE CHANGE, SUSTAINABILITY AND RESILIENCY

Dear Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

The City and County of Honolulu (“City”) Office of Climate Change, Sustainability and Resiliency (CCSR) **supports and offers a suggested amendment to HB1091 HD1**, which requires disclosure of all existing permitted and unpermitted shoreline erosion control structures on parcels of land adjacent to the shoreline prior to real estate transactions.

Sea level rise is an issue that will require a mix of planning, regulatory, spending, and market-based tools. The State Legislature took an important first step through Act 179 (2021), which requires sellers to disclose when real property is located in the sea level rise exposure area. Disclosures are especially important in the shoreline area because it is a highly dynamic environment, where property boundaries—such as the regulatory shoreline—are not fixed. Prospective buyers should understand that they will not be able to rely on illegal or temporary shoreline armoring to mitigate potential future changes.

In addition to transparency of when erosion control structures are present, prospective buyers should additionally understand the historical erosion rates for a property, as the migrating public trust boundary will impact future property boundaries. We therefore respectfully request the reinsertion of the language from the original bill that requires disclosure of annual coastal erosion rates. This data and information is

Chair Tarnas and Vice Chair Takayama
HB1091 HD1
February 23, 2023
Page 2

readily available for the island of O‘ahu at the Climate Ready O‘ahu Web Explorer¹. Following the passage of Bill 41 (2022) by the Honolulu City Council on February 22, 2023, and beginning July 1, 2024, the City will be required to use this historical erosion data for calculated erosion rate-based shoreline setbacks and update the dataset as new studies become available.

Thank you for the opportunity to offer these comments in support of HB1091 HD1.

¹ <https://cchnl.maps.arcgis.com/apps/View/index.html?appid=6694193a396f40fb87f78e98fbad7d73>



February 23, 2023

The Honorable David A. Tarnas, Chair

House Committee on Judiciary & Hawaiian Affairs
State Capitol, Conference Room 325 & Videoconference

**RE: House Bill 1091, HD1, Relating to Real Property Disclosures Within
Shoreline Areas**

HEARING: Thursday, February 23, 2023, at 2:00 p.m.

Aloha Chair Tarnas, Vice Chair Takayama, 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 with suggested amendments** for House Bill 1091, HD1, which requires disclosure of all existing permitted and unpermitted shoreline erosion control structures on parcels of land adjacent to the shoreline prior to real estate transactions. Effective 6/30/3000.

We appreciate and support the amendments made in the previous Committee but upon further review a seller may have no knowledge of all permitted and unpermitted structures on state land adjacent to the parcel. As such, if the Committee is inclined to pass the measure, we would respectfully request the following amendments on page 4, lines 6-7:

(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.

Additionally, we respectfully request an effective date of November 1st, to allow our organization time to update our Seller's Real Property Disclosure Statement and to educate our members on the required changes. HAR creates and provides Standard Forms for the entire industry to utilize, November is the next scheduled update for all our Standard Forms.

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



2/22/2023

Judiciary and Hawaiian Affairs Committee
Hawai'i State Capitol
Honolulu, Hawai'i 96813

Dear Chair Tarnas, Vice Chair Takayama, and Members of the House Committee on Judiciary and Hawaiian Affairs,

Position: Support HB1091- RELATING TO REAL PROPERTY DISCLOSURES WITHIN SHORELINE AREAS

The Surfrider Foundation, Hawai'i region, is testifying in **strong support of HB1091**, 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 HB1091, 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/>

HB-1091-HD-1

Submitted on: 2/22/2023 9:27:56 AM

Testimony for JHA on 2/23/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
lynne matusow	Individual	Support	Written Testimony Only

Comments:

How wonderful that none of us will be alive to see the fruits of a bill that takes affect in almost 800 years. The defective effective date implies that its passage is doomed. The legislature is up to its old tricks, the public be damned.

I support this bill. First,the effetive date must be changed to some date in the year 2023. Methuselah I am not.

I am tired of media reports concerning land owners who are flauting the law, installing illegal and unpermitted erosion control structures, which are interfering with mother nature. Shorelines are affected, erosion is pushed elsewhere, and the aina loses. Many of them purchased their properties knowing the risk. That is on them. Please support this bill.