



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

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The Adjutant General
Manager, CZM

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

**Before the Senate Committee on
WATER AND LAND**

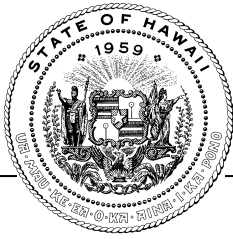
**Wednesday, March 15, 2023
1:00 PM
State Capitol, Conference Room 229 & Videoconference**

**In consideration of
HOUSE BILL 1091 HOUSE DRAFT 2
RELATING TO REAL PROPERTY DISCLOSURES WITHIN SHORELINE AREAS**

House Bill 1091 HD2 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.

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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Statement of
SCOTT GLENN, Director

before the
SENATE COMMITTEE ON WATER AND LAND
Wednesday, March 15, 2023, 1:00 PM
State Capitol, Conference Room 229

in consideration of
HB 1091 HD2
RELATING TO REAL PROPERTY DISCLOSURES WITHIN SHORELINE AREAS

Chair Inouye, Vice Chair Elefante, and Members of the Senate Committee on Water and Land:

The Office of Planning and Sustainable Development (OPSD) **supports HB 1091 HD2**, 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, and disclosure of annual coastal erosion rates for the zoning lot, when publicly available.

HB 1091 HD2 supports actions that further the state's consistency with Hawaii Revised Statutes (HRS) § 226-109 Climate change adaptation 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.



UNIVERSITY OF HAWAII SYSTEM

‘ŌNAEHANA KULANUI O HAWAII

Legislative Testimony

Hō'ike Mana'o I Mua O Ka 'Aha'ōlelo

Testimony Presented Before the
Senate Committee on Water and Land
Wednesday, March 15, 2023 at 1:00 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 HD2 – RELATING TO REAL PROPERTY DISCLOSURES WITHIN SHORELINE AREAS

Chair Inouye, Vice Chair Elefante, and Members of the Committee:

The University of Hawai'i Climate Resilience Collaborative (CRC) and Sea Grant College Program (Hawai'i Sea Grant) **support House Bill 1091 HD2.**

This measure requires disclosure of all existing permitted and unpermitted shoreline erosion control structures on, and the annual coastal erosion rates for, parcels of land adjacent to the shoreline before real estate transactions.

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 updating coastal models that project the impacts of sea level rise.

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 that promote better understanding, conservation, and use of coastal resources.

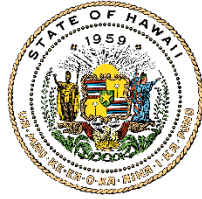
CRC and Hawai'i Sea Grant would be happy to provide updated sea level rise data and projections to the Committee or any lawmaker upon request.

CRC and Hawai'i Sea Grant support House Bill 1091 HD2.

Thank you for the opportunity to testify on this measure.

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
WATER AND LAND

Wednesday, March 15, 2023
1:00 p.m.

State Capitol, Conference Room 229 & Videoconference

In consideration of
HOUSE BILL 1091, HOUSE DRAFT 2
RELATING TO REAL PROPERTY DISCLOSURES WITHIN SHORELINE AREAS

House Bill 1091, House Draft 2 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.**

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 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 2 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 2 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 2 will also require the additional disclosure of annual erosion rate as determined by historical analysis for properties adjacent to the shoreline when publicly available on county databases. 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.

House Bill 1091, House Draft 2 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 2 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 provide testimony in strong support of this bill.

OFFICE OF CLIMATE CHANGE, SUSTAINABILITY AND RESILIENCY

CITY AND COUNTY OF HONOLULU

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RICK BLANGIARDI
MAYOR

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

NICOLA HEDGE
DEPUTY DIRECTOR &
DEPUTY CHIEF RESILIENCE OFFICER

WEDNESDAY, MARCH 15, 2023, 1:00 P.M.

STATE OF HAWAII
SENATE COMMITTEE ON WATER AND LAND

**TESTIMONY ON HOUSE BILL 1091, HD2
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 Inouye, Vice Chair Elefante, and Members of the Committee:

The City and County of Honolulu (“City”) Office of Climate Change, Sustainability and Resiliency (CCSR) **supports** HB1091 HD2, which requires disclosure of all existing permitted and unpermitted shoreline erosion control structures on, and the annual coastal erosion rates for, parcels of land adjacent to the shoreline before 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. Prospective buyers should additionally understand the historical erosion rates for a property, as the migrating public trust boundary will impact future property boundaries.

Thank you for the opportunity to offer these comments in support of HB1091 HD2.

March 15, 2023

The Honorable Lorraine R. Inouye, Chair

Senate Committee on Water & Land
State Capitol, Conference Room 229 & Videoconference

RE: House Bill 1091, HD2, Relating to Real Property Disclosures Within Shoreline Areas

HEARING: Wednesday, March 15, 2023, at 1:00 p.m.

Aloha Chair Inouye, Vice Chair Elefante, 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, HD2, which requires disclosure of all existing permitted and unpermitted shoreline erosion control structures on, and the annual coastal erosion rates for, parcels of land adjacent to the shoreline before real estate transactions. Effective 6/30/3000.

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. Under this measure, a seller must disclose all permitted and unpermitted structures on state land seaward and adjacent to the parcel. **As these structures are located on state land, the seller may have no knowledge or control over these structures and should not be held liable for their disclosure.** As such, if the Committee is inclined to pass the measure, we would respectfully request the following amendments on page 4, lines 6-11:

(1) All permitted and unpermitted erosion control structures on the parcel ~~[or on state land seaward and 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, this measure requires a seller to disclose the annual coastal erosion rate for the zoning lot as determined by historical analysis and shown on the county databases for historical erosion rates, when publicly available. Per the Department of

Land and Natural Resources, only the counties of Maui, O'ahu, and Kaua'i have websites that are currently available to determine historical erosion rates:

- Maui: www.mauicounty.gov/865/Maui-Shoreline-Erosion-Atlas
- Kaua'i:
kuaigis.maps.arcgis.com/apps/webappviewer/index.html?id=ce0eb348f1ec4682affba1321ca5c9e6
- O'ahu:
cchnl.maps.arcgis.com/apps/View/index.html?appid=6694193a396f40fb87f78e98fbad7d73

Determining the erosion rate for a seller's property can be challenging for the average seller, as it often falls outside the scope of their knowledge and expertise; therefore, we appreciate the interactive nature of the maps for Kaua'i and O'ahu. However, we note that these websites identify erosion rates in a way that do not always clearly align with property parcels, which may pose challenging for sellers. Sellers can have multiple different historical shoreline rates to report for a single property. Additionally, Maui's maps, being in the form of images, could pose additional difficulties for a seller in accurately gauging the erosion rates for their particular property. As such, **we respectfully request this requirement be removed until there is a centralized database of all islands where a seller can easily determine the erosion rate of their property by address or tax map key.**

If this Committee intends to pass this measure, **we also 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 after legislative session ends.

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



3/15/2023

WTL Committee
Hawai'i State Capitol
Honolulu, Hawai'i 96813

Dear Chair Inouye, Vice Chair Elefante, and Members of the Committee on Water and Land,

Position: Support HB1091 HD2- RELATING TO REAL PROPERTY DISCLOSURES WITHIN SHORELINE AREAS

The Surfrider Foundation, Hawai'i region, is testifying in **strong support of HB1091 HD2**, 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 HD2, 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,

Camile Cleveland
Volunteer Policy Coordinator
Surfrider Foundation, O'ahu Chapter

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

HB-1091-HD-2

Submitted on: 3/14/2023 11:57:58 AM

Testimony for WTL on 3/15/2023 1:00:00 PM

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

Comments:

Strong support!