

JOSH GREEN, M.D.
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STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

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Testimony of
DAWN N. S. CHANG
Chairperson

Before the Senate Committee on
CONSUMER PROTECTION

Wednesday, March 29, 2023
10:01 a.m.

State Capitol, Conference Room 415 & Videoconference

In consideration of
HOUSE BILL 1091, HOUSE DRAFT 2, SENATE DRAFT 1
RELATING TO REAL PROPERTY DISCLOSURES WITHIN SHORELINE AREAS

House Bill 1091, House Draft 2, Senate 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 comments to strengthen the consumer and natural resource protections provided by the 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, 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 occupy state land at the shoreline boundary of the properties and 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

Senate Draft 1 removed the disclosure requirement for erosion control structures on state land seaward of and adjacent to the parcels in response to testimony from the Hawai'i Association of Realtors which expressed concern that a seller may not have knowledge or control over structures on state land. The Department notes that the erosion control structures are large, and it is unlikely that homeowners are not aware of their existence. Exhibit 1 contains drone footage taken by the Department's Office of Conservation and Coastal Lands (OCCL) in September, 2022 for one single ahupua'a, Paumalū on the North Shore of O'ahu.

The Department maintains that the existence of these structures should be disclosed when a property is for sale. We also note that OCCL has issued notices of alleged violations to landowners when unauthorized or expired structures on State land are associated with their parcel. We believe the following minor additions to the bill will address the Hawai'i Association of Realtor's concerns about unknown structures while meeting the intent of the bill to mandate full disclosure:

Page 4, lines 12 and 13, add the following:

- (b) When residential real property lies adjacent to the shoreline, the seller shall disclose:
 - (1) All permitted and unpermitted erosion control structures on the parcel, expiration dates of any permitted structures, any notices of alleged violation^[5] associated with the parcel, and any fines for expired permits or unpermitted structures^[5] associated with the parcel; and

With the suggested amendments, House Bill 1091, House Draft 2, 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. House Bill 1091, House Draft 2, Senate Draft 1 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.

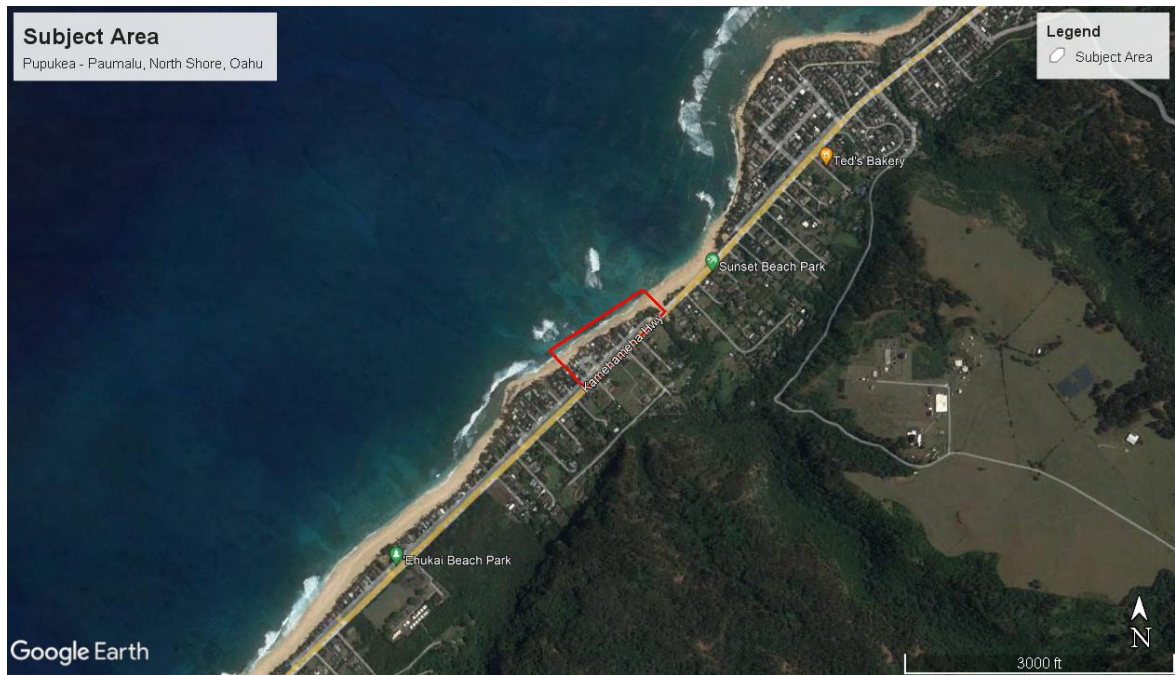
House Bill 1091, House Draft 2, Senate Draft 1 will support informed consent and actual notice to all parties of a real estate transaction regarding encroachments on state land used to support homes and auxiliary buildings on the parcel and would result in the removal of harmful and dangerous unpermitted erosion control structures from state lands, thereby improving access to public trust resources.

House Bill 1091, House Draft 2, 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 OCCL and Division of Conservation and Resources Enforcement.

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

Exhibit 1: Drone Footage, Paumalū, Ko‘olaualoa, O‘ahu

Taken by Department of Land and Natural Resources,
Office of Conservation and Coastal Lands
September 07, 2022



Google Earth image of area, July 21, 2021

Tax Map Keys (1) 5-9-002:002, 003, 004, 005



Tax Map Keys (1) 5-9-002:008, 009, 011, 012, 017



Tax Map Keys (1) 5-9-002:017,018, 024, 025, 027, 026



Tax Map Keys (1) 5-9-002:034



TMK 5-9-002:002, 003
59-147 A Ke Nui Road, 59-147 Ke Nui Road



TMK 5-9-002:004
59-149 Ke Nui Road



TMK 5-9-002:005
59-151 A Ke Nui Road



TMK 5-9-002:008
59-155 E Ke Nui Road



TMK 5-9-002:009
59-157 Ke Nui Road



TMK 5-9-002:011, 112
59-161 Ke Nui Road; 59-163 Ke Nui Road



TMK 5-9-002:017
59-165 D Ke Nui Road (cesspool)



TMK 5-9-002:018
59-165 B Ke Nui Road



TMK 5-9-002:024, 025
59-165 C Ke Nui Road , 59-171 D Ke Nui Road



TMK 5-9-002:027
59-175 B Ke Nui Road



TMK 5-9-002:026
59-175 C Ke Nui Road



TMK 5-9-002:034
59-181 D Ke Nui Road



March 29, 2023

The Honorable Jarrett Keohokalole, Chair

Senate Committee on Commerce and Consumer Protection
State Capitol, Conference Room 229 & Videoconference

RE: House Bill 1091, HD2, SD1, Relating to Real Property Disclosures Within Shoreline Areas

HEARING: Wednesday, March 29, 2023, at 10:01 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 with suggested amendments** for House Bill 1091, HD2, SD1, which requires disclosure of all existing permitted and unpermitted erosion control structures on the parcel and the annual coastal erosion rate for the zoning lot in real estate transactions when residential real property lies adjacent to the shoreline. Effective 6/30/3000.

We appreciate the intent of this measure and support the amendments made in the previous committee. We do however seek clarity on one remaining issue regarding the reporting of erosion rates. 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. This measure as currently written would require 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
- O'ahu:
chnl.maps.arcgis.com/apps/View/index.html?appid=6694193a396f40fb87f78e98fbad7d73
- Kaua'i:
kauaigis.maps.arcgis.com/apps/webappviewer/index.html?id=ce0eb348f1ec4682affba1321ca5c9e6

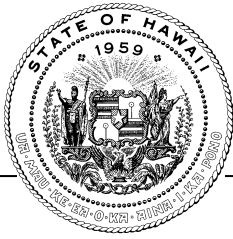
Determining the erosion rate for a seller's property can be challenging for the average seller, as it often falls outside the scope of their knowledge and expertise; therefore, we appreciate the interactive nature of the maps for Kaua'i and O'ahu. However, we note that these websites identify erosion rates in a way that do not

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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.



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

JOSH GREEN, M.D.
GOVERNOR

SCOTT J. GLENN
INTERIM DIRECTOR

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Statement of
SCOTT GLENN, Interim Director

before the
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Wednesday, March 29, 2023, 10:01 AM
State Capitol, Conference Room 229

in consideration of
HB 1091 HD2 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 HB 1091 HD2 SD1** 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 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.

HB-1091-SD-1

Submitted on: 3/26/2023 12:25:01 PM

Testimony for CPN on 3/29/2023 10:01:00 AM

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.



UNIVERSITY OF HAWAII SYSTEM
‘ŌNAEHANA KULANUI O HAWAII

LATE

Legislative Testimony
Hō'ike Mana'o I Mua O Ka 'Aha'ōlelo

Testimony Presented Before the
Senate Committee on Commerce and Consumer Protection
Wednesday, March 29, 2023 at 10:01 a.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 SD1 – RELATING TO REAL PROPERTY DISCLOSURES WITHIN
SHORELINE AREAS

Chair Keohokalole, Vice Chair Fukunaga, 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 SD1 and respectfully offer one comment.**

This measure requires disclosure of all existing permitted and unpermitted erosion control structures on the parcel and the annual coastal erosion rate for the zoning lot in real estate transactions when residential real property lies adjacent to the shoreline.

CRC and Hawai'i Sea Grant respectfully ask that the Committee reinsert the requirement that sellers of real property disclose all permitted and unpermitted erosion control structures on the parcel and associated with the parcel. CRC and Hawai'i Sea Grant have reviewed and support the precise amendment language proposed by the Department of Land and Natural Resources in its testimony at Page 4, lines 12 and 13 of the current SD1.

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 SD1 and appreciate the Committee's consideration of our comment.

Thank you for the opportunity to testify on this measure.