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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
WATER AND LAND

Monday, February 6, 2023
1:05 p.m.

State Capitol, Conference Room 229 & Videoconference

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

Senate Bill 1389 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 Administration bill and offers suggested amendments to strengthen the positive impact of this measure.**

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 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 (HRS) 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 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 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 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 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.

The Department suggests a few edits to further strengthen and provide flexibility in achieving the purpose and goal of the proposed legislation.

§508D-15 Notification required; ambiguity (page 4)

On page 4, line 7 the bill discusses properties that lie within the “shoreline area as identified by official tax maps.” We note that the “shoreline area” as defined in HRS Section 205A-41 is not identified on official tax maps, and recommend referring instead to properties that lie “adjacent to the shoreline.”

On page 4, line 14 the bill refers to the “Hawaii Shoreline Study web map.” The Department notes that historical erosion rates are now available from the counties of Kaua‘i, Honolulu, and Maui. These rates are used for planning and permitting in each county, and for calculating erosion rate-based shoreline construction setbacks. These maps can be found online and are freely available for the public to use at the following sites:

Historical erosion rates are 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 Hawai‘i Shoreline Study web map, available online at www.soest.hawaii.edu/crc/index.php/hawaii-shoreline-study-web-map, is a valuable resource, but the Department recommends referencing these official county databases for historical erosion rates.

On page 4, lines 15-16 the bill requires the disclosure of the distance from the shoreline of all structures on the parcel. The Department is concerned that most property sellers will not be able to properly identify where the shoreline is based on the definition in HRS Section 205A-1 without hiring a professional land

surveyor and possibly involving relevant state agencies. This could be overly burdensome in time and cost for the purpose of real estate transactions. The Department feels that this requirement can be deleted without impacting the strength of the bill.

With the Department's recommendations, page 4 lines 6 through 16 would be amended to read:

(b) When residential real property lies ~~within adjacent~~ to 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 shall disclose the annual coastal erosion rate(s) for the zoning lot as determined by historical analysis and shown on the ~~Hawaii Shoreline Study web map, or its successors~~ official county databases for historical erosion rates. ~~and the current actual distance from the shoreline, as defined in section 205A-1, of all structures on the parcel.~~

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



UNIVERSITY OF HAWAII SYSTEM
‘ŌNAEHANA KULANUI O HAWAII

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

LATE

Testimony Presented Before the
Senate Committee on Water and Land
Monday, February 6, 2023 at 1:05 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

SB 1389 – RELATING TO REAL PROPERTY DISCLOSURES WITHIN SHORELINE AREAS

Chair Inouye, Vice Chair Elefante, 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 SB 1389 and offer one comment.**

This measure 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. In essence, this measure builds on Act 179, SLH 2021, that required mandatory seller disclosures of sea level rise risk in real property transactions.

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. Historical erosion rates are available from the Counties of Kaua'i, Honolulu, and Maui and are already applied in planning and permitting. Hawai'i Sea Grant and CRC have reviewed the Department of Land and Natural Resources's proposed amendment language and agree with it.

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 SB 1389 and recommend consideration of the above-mentioned amendment.

Thank you for the opportunity to testify on this measure.

February 6, 2023

The Honorable Lorraine R. Inouye, Chair

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

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

HEARING: Monday, February 6, 2023, at 1:05 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** on Senate Bill 1389, 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 regulation. HAR has 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.

HAR's Seller's Real Property Disclosure Statement contains questions such as if the property is located in a Special Management Area; if there are any past and existing State Shoreline Certificates; whether there are any nonconforming uses or unpermitted structures on the property; and zoning or setback violations and/or citations. As such, requiring a mandatory disclosure on existing permitted and unpermitted shoreline erosion control structures may not be necessary.

Furthermore, this measure requires disclosures that are often **outside the knowledge of the typical seller**, such as annual coastal erosion rates for the zoning lot as determined by historical analysis and current actual setback of all structures for shoreline properties. This could lead to the seller needing to hire experts to determine erosion rates which could be costly and create added delays. Additionally, based on the measure's justification sheet, it notes that payment of existing fines and/or rental fees for occupancy of state land would be required prior to the sale of the property, and continued responsibility for the erosion control structures would be explicitly passed to the buyer. Negotiating a lease with the State could also post significant delays to a transaction.



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The Pacific Islands Ocean Observing System through the University of Hawai'i has created a State of Hawai'i Sea Level Rise Viewer¹ and has the knowledge and expertise in this area. Instead, this data should be included on the Hawai'i Sea Level Rise Viewer for a buyer to view and make informed choices when purchasing a property.

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

¹ Pacific Islands Ocean Observing System. (2021) *State of Hawai'i Sea Level Rise Viewer*.

<http://hawaiisealevelriseviewer.org>.

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To: The Honorable Chair Inouye and Vice-chair Elefante, and members of the Senate Committee on Water and Land

From: Hawai'i Reef and Ocean Coalition (by Ted Bohlen)

Re: Hearing SB1389 **RELATING TO REAL PROPERTY DISCLOSURES WITHIN SHORELINE AREAS**

Hearing: Monday, February 6, 2023, 1:05 p.m.

Aloha Chair Inouye, Vice Chair Elefante, and members of the Committee:

The Hawai'i Reef and Ocean Coalition (HIROC) is a group of scientists, educators, filmmakers and environmental advocates who have been working since 2017 to protect Hawaii's coral reefs and ocean.

The Hawai'i Reef and Ocean Coalition SUPPORTS SB1389!

With sea level rise coming, buyers of oceanfront property need to be better prepared for the future challenges and implications. We all need to protect our shorelines from harmful structures.

This bill would help protect Hawaii's real estate purchasers of oceanfront property by requiring disclosure of permitted and unpermitted erosion control structures, requiring disclosure of the erosion rate for the property and the current actual setback from the shoreline of structures.

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We thank the committee for hearing this important measure! We urge your passage of SB1389.

Mahalo!

Hawai'i Reef and Ocean Coalition (by Ted Bohlen)



LATE

2/5/2023

Water and Land Committee
Hawai'i State Capitol
Honolulu, Hawai'i 96813

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

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/>