

Request to the Board of Land and Natural Resources

Aloha Board Members,

Thank you for your attention to the erosion caused by the Kikiaola Harbor that has resulted in significant loss of land to many properties west of the harbor, including our home. We appreciate the Board's effort to find a long-term arrangement to protect our home from this erosion.

As the State has acknowledged multiple times, the erosion is caused by the interruption of alongshore sediment by Kikiaola Harbor. To remedy such erosion, several studies have recommended bypassing sand to the west of the harbor. Of the initial 80,000 cubic yards and the 6000 yards annual maintenance amounts of sand that were recommended to be bypassed in the '08 Corps of Engineers study (page 29), $(80,000 + (15 \text{ yrs} \times 6000) = 170,000$ yards) only 54,000 yards have been bypassed in the subsequent 15 years, an 116,000 cubic yards of sand deficit (11,600 truck loads).¹ The State made a commitment to bypass the sand prior to our purchase of our home in a number of documents, for example DLNR:OCCL: DE Correspondence: OA-09-211 June 26, 2009.

For 10 years we had a reasonable compromise: The State would bypass sand when funds were available, and we were allowed to stop further erosion of our property with an erosion control system. The State never moved the sand quantity that the studies had recommended, so the erosion was never properly addressed, however the State also permitted the erosion protection system without additional cost, rent or purchase. Not ideal but acceptable.²

Last year when renewing our permits we found it was much more difficult.

The State has repeatedly admitted responsibility for the erosion (causing a loss of 60 feet of depth of our property, plus the previously present 60 feet of State land for approx. 12,000 sqft/ 9000 cubic yards/ 900 truck loads of total land loss)³, and admitted that the State is not compliant with their obligation to address the erosion (through sand-bypassing or other means). Meanwhile, the sand is filling up and destroying the harbor.

We have spent \$100,000+ stabilizing the beach since '10 due to the lack of adequate sand bypass efforts, not including legal fees. The State is now proposing that we purchase and pay rent for the right to use the land that we lost to the erosion caused by the harbor, which the State has repeatedly failed to address.⁴ This is unfair and punitive. To clear up a significant error in the D-3 submission, we do not oppose or refuse the recommended actions including an easement, we oppose paying for actions such as an easement.

¹ May 30, 2023, Permit Extension KA-23-06 at 1-2 (Exhibit J to item D-3 in agenda page 35)

² Ironically, citing the ProPublica reporting, the Land Division tries to lump us with well-connected owners who have been causing shoreline erosion of public beaches. Here, however, it is the State and the harbor, managed by DLNR, who are the main culprits of erosion and loss of public space.

³ 1970 County of Kauai Zoning Map

⁴ We only object to paying to purchase and rent the land taken by the state. The proposal by the Land Division states that the cause of the erosion is irrelevant to this matter and that we, as the owners, alone hold responsibility for the mitigation measures to address the erosion. While we will leave the legal arguments to our attorneys regarding on-going physical takings without any compensation, we will note that we bought the property relying on the State's commitment to address the erosion and work with homeowners as expressed in various communications following the '08 Corps of Engineers study. See page 29 of D-3 dated 6/26/2009 prior to our purchase.

Additionally, our insurance has DLNR as “also insured”, the Kauai Land Division office has a copy, sent 9/7/2022 by email. This is another error in the D-3 submission.

With the erosion protection in place, the beach is walkable and stable (see current photo.) Yes, occasional storms wash away the sand, but the revetment protects our house and property from further erosion. The solution is known: **Bypass the sand to save the Harbor.** When the State has shown that they bypass the deficit noted above and have a record of annual maintenance for a few years, we will remove the bags at our own cost; this is the current agreement with the Board for the OCCL permit, and it should be the agreement with the Board for the Land Division’s Right of Entry permit as well. Even though legally we do not have to, we also do not oppose maintaining our liability insurance, and indemnifying the state. We only request that we not be charged fees or rent for the land lost to erosion and that initial right-of-entry permit (to be followed by eventual easement) be issued for at least one year in duration, additionally we request not paying a removal bond. This is fair and avoids costly legal fights that are in no one’s interest.

We request a solution acceptable to the Board with no additional cost to us.

Thank you again,

Graham and Marisa Chelius

PS: When planning the next Kikiaola Harbor sand bypass that was funded recently, please consider the Corp of Engineers option for a permanent pump installation rather than the trucking option. With the pump, every so often (annually please) a small team can bypass the sand. The Harbor is a huge economic engine for west Kauai, and we hope it continues to operate for another 60+ years. The State needs to adequately manage the sand impounding however, it is destroying the harbor. See attached COE study cover sheet. GC/MC



**KIKIAOLA LIGHT DRAFT HARBOR WEST BREAKWATER
ROOT EXTENSION AND SAND BYPASS STUDY**

ISLAND OF KAUAI, HAWAII

September 2008



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