

Tina Rothman

IEM Committee, 8/20/2018

**Testimony on Agenda Item IEM-80: Traffic Safety and Environmental Concerns Resulting From Development in Makena**

My name is Tina Rothman. I am one of the many people who helped with the Mo'omuku Development presentation. I'm testifying as private citizen and concerned community member. I'd like to address what I personally believe to be some of the loopholes in the County system:

- 1) **Concurrent processing of SMA permits and grading permits.**
  - Why it's a problem: Creates a situation where grading activities are approved in coastal areas before they are examined for environmental or historic impacts. The Mo'omuku development is an example of this.
  - Possible solution: Sequential, not concurrent, processing of SMA permits and other permits, where the SMA is first permit issued when a development involves multiple permits.
  - To Public Works, as the department that issues grading permits, please take note of the following: §205A-29 Special management area use permit procedure: **No agency authorized to issue permits pertaining to any development within the special management area shall authorize any development unless approval is first received in accordance with the procedures adopted pursuant to this part.** For the purposes of this subsection, county general plan, state land use district boundary amendments, and zoning changes are not permits.
  
- 2) **Penalties for SMA violations are negotiated down or waived entirely.**
  - Why it's a problem: The laws have no teeth if they are not enforced.
  - Possible solution: Start collecting fines.
  - §205A-32 Penalties. (a) Any person who violates any provision of part II or part III shall be liable as follows: (1) **For a civil fine not to exceed \$100,000;** or (2) **For the cost of returning the affected environment or ecology within the coastal management area to the condition existing before the violation.** (b) **In addition to any other penalties, any person who is violating any provision of part II or part III shall be liable for a civil fine not to exceed \$10,000 a day for each day in which such violation persists.** (c) Any civil fine or other penalty provided under this section may be imposed by the circuit court or may be imposed **by the department** after an opportunity for a hearing under chapter 91.
  
- 3) **Abuse of after-the-fact permitting.**
  - Why it's a problem: This is not a black and white situation, but what I'm speaking to are those situations where after-the-fact permitting seems to be abused to avoid applying for appropriate permits at the very beginning of the process. Do these after-the-fact permits get the same level of environmental and historic preservation review as the SMA permit? Not to my understanding. So, I am concerned that an after-the-fact permit seems to be a way for developers to legally work in the SMA without accounting for the environmental or

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cultural impacts that that the SMA permit is designed to look at. And at for \$1,000 (cost of after-the-fact permit), at a fraction of the cost.

- Referring to Mo'omuku: I can only speak about what we found out about Mo'omuku development. I'd like to recap that all the work that was done there - none of it was permitted, or it was done under a permit that was prematurely approved because it didn't get SHPD comments. Again, NONE of it should have happened. And the only thing that is going to happen to the developer is that they will pay \$1,000 for an after-the-fact permit and then work will continue, without an EIS, without community consultation and without SHPD review.
- Possible solution: Refine the rules for after-the-fact permitting to limit abuse of this permit.