

Testimony for Resolution 26-38 Johann Lall

Aloha, GREAT Committee,

Mayor Bissen's appointment of Jacky Takakura to the Planning Director position surprised me. Ms. Takakura was my boss as Deputy Director and later my direct supervisor as Administrator of Long Range. Based on her actions in those positions, **I oppose Resolution 26-38** to confirm Jacalyn Takakura as Planning Director.

In 2022 I became aware of a fine reduction "settlement" done without a hearing and approval by Maui Planning Commission which was required by the SMA Rules in place at the time. In 2023 after leaving to start a new job at University of Hawai'i, I filed a UIPA request for the emails that would prove malfeasance, and was initially given an Epstein-style set of emails that were almost totally redacted.

Eventually in 2024 with the help of Law Center for the Public Trust (formerly Civil Beat Law Center), I was able to obtain an email chain that was still missing some documents but adequately showed the improper fine reduction.

From the 2024 release, I first learned that the fine reduction was authorized by Jacky in her role as Deputy Director. I can anticipate that if this comes up at GREAT Committee or full Council, the administration or Jacky may refer to it as an "allegation" or an "accusation". However, the emails document the improper action with surprising clarity.

In 2021, Alpha Construction was working on the Iwa 'Ike Subdivision on Makena Rd between Makena State Park and Ahihi Kina'u NAR. They performed ground altering work without an archaeological monitor as required by SMA conditions. The archaeological conditions were meant to protect burials and historic resources that might be encountered. These violations were witnessed and photographed by ZAED inspectors on two separate dates. In November 2021, a fine for \$65,000 was issued and later contested by lawyers for the violator, Cal Chipchase and Christopher Goodin.

Over the next few months there were lengthy discussions, at times contentious, between Jordan and the violator's agents. As soon as Jacky took office as Deputy Director in July 2022, she was contacted by Chipchase to wrap things up. Inexplicably, she offered a choice between having a settlement agreement for \$15,000 approved by Planning Commission (**as required by SMA Rules at the time**), or rescinding the original fine and reissuing a new one with the lower amount (the illegal method):

>>> Jacky Takakura 7/27/2022 2:35 PM >>>

Hello Cal and Chris

I believe you have already been in discussion on this subject, and have agreed to a reduced fine of \$15,000. Do you want us to rescind the NOV and reissue a new one with this amount? Or do you prefer a settlement which must be approved by the Maui Planning Commission? Please advise at your convenience and we'll work on next steps.

Thank you

Jacky

Jacky Takakura
Deputy Director
Maui County Department of Planning

The Planning Department has taken the position that the rescind-reissue was simply to correct a mistake. But the fine calculator spreadsheet, emails, and nature of the violation do not support that claim. The inspector, who I believe is Native Hawaiian and took her job as a regulator seriously, documented the violations carefully. She calculated a fine that was appropriate for the risk created by the violations, the repeat violation even after verbal warning, lack of mitigating circumstances beyond the violator's control, size of the company, etc.

Concurrently with the email discussions, the fine calculator spreadsheet was altered to reach a lower sum. However the spreadsheet itself has no authority, it's only a guide. The violator could have asked Maui Planning Commission to hold a public hearing and reduce the fine to \$15,000.

Iwa 'Ike chose to go with Jacky's second option, to rescind and reissue the fine which was done in November 2022.

Jacky offering the choice of a settlement approved by MPC shows that she understood that there wasn't a mistake to be fixed. If there was a *true mistake* like an extra zero or the wrong address listed, I believe that would justify rescinding and reissuing.

But just because a violator convinced the Deputy Director that fine was excessive doesn't mean there was a mistake. This was obviously a "settlement agreement" that still required Planning Commission approval. The SMA Rules were later changed in 2024 and now up to \$50,000 fine reductions are allowed with only Director approval. This did not legalize the 2022 rescind-reissue.

In policing, reducing or removing a violation improperly is known as "ticket fixing". There have been many scandals in recent years. A court even ruled that a Tennessee police officer was wrongly fired for whistleblowing on ticket fixing:

<https://www.courthousenews.com/tenn-court-rules-for-ex-cop-in-ticket-fixing-case/>

In 2023, before I obtained the emails, I reported this along with other ethical issues to DMD Josiah Nishita and MD Kekuhaupio Akana. I thought the former deputy police chief and the mayor, a retired judge, would take ethics seriously and understand that this is the same as ticket fixing.

As far as I know, the only person to face any consequences for reporting this to the Bissen administration was myself. The Planning Department opened an investigation into me for "sharing confidential information outside the Department" which I consider a clear violation of HRS § 378.

The Bissen administration did choose to investigate Planning for retaliation, but contracted a Honolulu lawyer who specializes in getting employers off the hook for complaints from employees. As expected, she found no wrongdoing.

I don't believe the fine reduction was ever investigated, nor any other ethical violations that I brought to the attention of the administration.

A more in-depth discussion of the Alpha rescind-reissue and other subjects can be found in my Substack article: <https://johannlall.substack.com/p/normalized-corruption-in-maui-planning>

I have also attached the email chain and NOV's to make sure they are part of the record. It is confusing because the emails are out of order but I attempted to make it readable by removing the archaeological report attachments and several pages of duplicated signatures.

In addition to rescind-reissue, I am aware of instances in which Jacky Takakura retaliated against Planning Department employees but those individuals are unlikely to come forward. There have also been concerning statements made by Ms. Takakura that I believe show lack of sufficient knowledge of planning and related subjects required of a Planning Director.

Surprisingly, the Acting Director has not been at Maui Planning Commission since taking office. For important topics, Directors Blystone, McLean, and Aoki were present at MPC to answer questions and provide guidance.

On February 24th, MPC reviewed Resolution 25-230. I support CM Tom Cook's bill to create H-3 and H-4 zoning and give Minatoya owners due process to attempt to retain their current usage on a case-by-case basis. I believe I was the only Minatoya phase-out supporter who also testified in favor of 25-230.

Acting Director Takakura was absent from the H-3/H-4 meeting, and instead the meeting was staffed by Current Division Administrator, Danny Dias. Commissioners, seeming to lack full understanding of the bill, voted 5-1 against recommending approval.

I suggest that Council ask the administration the following questions:

1. Why has Acting Director Takakura been absent from MPC meetings and will she be present or remotely connected going forward?
2. Does the administration believe that legal requirements for Planning Commission approval of certain settlements can be bypassed by rescinding and reissuing a fine?
3. Does AD Takakura have a Bachelor's or higher degree in Planning or a related field?
4. Is Acting Director Takakura a certified planner?
5. How many investigations have there been into AD Takakura for Equal Employment Opportunity (EEO) related allegations?
6. How many investigations have there been into AD Takakura for retaliation as defined by HRS § 378?
7. Under previous administrations did AD Takakura participate in personnel actions that resulted in employees being fired and later rejoining the County after successful lawsuits or settlements?
8. Did one consultant have special privileges during the South Maui Community Plan process which were not granted to other consultants and developers?
9. Was the moratorium on sand mining in the Sand Hills put in place because Native Hawaiians "want the sand for themselves"?

I expect that Acting Director Jacky Takakura will be approved but I hope that ethics issues and qualifications for the Planning Director position are addressed during the Council meetings. Any Planning staff reading this should be aware that per state law they are totally within their rights to report malfeasance to Mayor Bissen, the Managing Director, County Council members, the State of Hawai'i AG, or any government body that has oversight authority over the Planning Department.

Thank you,
Johann Peter Lall