

Testimony before the State Land Use Commission  
August 24, 2012  
Docket 94-706

My name is William Spence, I am the Planning Director for Maui County. I am testifying today on this docket as it may be helpful in decision making for the State Land Use Commission ("LUC") to have some background on Maui's zoning code, how common it is to have large-scale commercial uses within our light industrial zoning district, how we have related our zoning regime to HRS 205, and finally how these properties relate to the Maui Island Plan.

1. Zoning. In approximately 1960, Maui County adopted a "Euclidian" zoning regime. Named for the Supreme Court case, *Euclid vs. Ambler*, in 1926, it is probably the oldest and most common zoning schemes used in the country.

A common trait of this zoning is that uses are "stacked" or "tiered" into progressively intense land use zones. Uses thought to be less intense or intrusive are permitted in the more intense zoning categories because they are thought to be compatible. In some ways the State Districts could be considered Euclidian in that the less intense uses from Conservation would be permitted Agriculture, agricultural uses are permitted in Rural, and Rural uses could be permitted by the counties in Urban if desired (state law delegates urban uses to the counties).

Under this regime, Maui's industrial districts (and including M-2 Heavy Industrial) allows, as of right, all of the commercial uses (retail, office, etc.) contained in our Business districts, B-1, B-2, and B-3. Apartments are also permitted. These different uses are stacked or tiered within the M-1 district because they are thought to be compatible with the light industrial uses.

In 1960, when the zoning code was adopted, the island's population was about 37,000 and the economy centered around agriculture and related industries. The County zoned a considerable amount of land in support of the primary economic engine. In Kahului alone we have 385 acres of M-1, but only 57 acres of B-1, B-2, or B-3.

In time the demand for light industrial uses shifted to commercial as conditions changed. The economy moved away from agriculture to tourism and other businesses. The demand also changed as the population grew from 37,000 in 1960 to approximately 140,000 in 2010. The M-1 zoning allows the flexibility for land uses to change with socio-economic conditions.

2. Commercial is Common in M-1 Light Industrial. As a result of the above zoning regime and changes over time, a very large portion of Maui's light industrial lands have converted to commercial uses. Our major commercial

centers (including malls) are located on both light and heavy industrial lands. The following is by no means a comprehensive list:

- Queen Ka`ahumanu Center (Kahului, the island's largest mall)
- Maui Mall (Kahului)
- Maui Marketplace (Kahului)
- Wailuku Town Center
- Lahaina Cannery
- Lahaina Gateway
- Haiku Cannery
- Haiku Marketplace
- Pauwela Cannery

In addition, there are a considerable number of apartment units on M-1 zoned land:

- Iao Parkside (Wailuku) 480 individually owned, affordable units
- Ali'i Koa Apartments – (Wailuku) 20 rental units
- Approximately 92 other units along Lower Main in Wailuku
- Kahului Town Terrace – 72 low-income rental units
- Opukea – (Lahaina) 114 predominantly affordable units

In summary, there is nothing unusual about shopping malls being located on light industrial land. Maui County has treated our M-1 District essentially as a default business district, as well as a fairly significant apartment district.

3. County Zoning in Relation to State Law. State law delegates authority to the Counties to zone within the Urban district.

**§205-2 (b)** *Urban districts shall include activities or uses as provided by ordinances or regulations of the county within which the urban district is situated.*

In Docket 94-706, by virtue of placing these properties in the Urban District (and without any conditions to limit commercial uses), the LUC authorized the County to control the uses thereon by their own zoning codes and practices.

Maui's legislative body zoned the properties M-1 Light Industrial, a district that can only be applied in the State Urban District. Though during the zoning process recommendations were made to limit commercial uses, the County Council chose not to do so. As a result, the property owner does not have any limitations as to commercial uses.

4. Maui Island Plan. The Maui County Council is scheduled to adopt the Maui Island Plan before the end of 2012. In this plan are "growth boundaries" where County has found it desirable for growth,

A copy of Map S-1 is attached that shows the location of the project in relation to the growth boundaries. Roughly, the docket property is located in the center of an area of North Kihei that is slated for urban growth, and to be within the Urban District. This map was adopted by the Council's General Plan Committee, and is likely to be adopted by the full Council with little or no change.

Sincerely, e

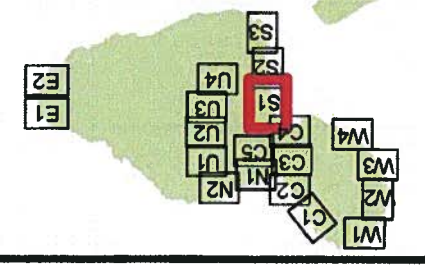
A handwritten signature in black ink, appearing to read 'William Spence', written in a cursive style.

William Spence  
Planning Director



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 Planning Department for Zoning confirmation.  
 This is not a zoning map. Please contact the



- Legend**
- Parcels 2011
  - Primary Road
  - 2010 Directed Growth Boundaries
  - Urban
  - Country Town
  - Rural Service Center
  - Rural Residential
  - 2010 Protection Areas
  - Greenbelt
  - Greenway
  - Regional Park
  - Preservation
  - Sensitive Lands
  - TDR Sending Area
  - Director's Proposed Amendments
  - Growth Boundary Change
  - Protection Area Change
  - Combined Area Change

**Maui Island Plan  
 2012 Director's  
 Proposed  
 Amendments  
 North Kihei  
 S1**

