

## PC Committee

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**From:** Mark Hyde <hydem001@icloud.com>  
**Sent:** Tuesday, February 13, 2018 1:35 PM  
**To:** PC Committee  
**Cc:** Kelly King; Robert Carroll; Stacy S. Crivello; Donald S. Guzman; Alika A. Atay; Riki Hokama; Mike White; Elle Cochran; Yukilei Sugimura  
**Subject:** Written Testimony for 2/15 Planning Committee Meeting  
**Attachments:** Planning Committee- Molokai Plan.docx

Please accept the attached written testimony for the 2/15 Meeting.

Mark Hyde

To: Planning Committee, Maui County Council  
From: South Maui Citizens for Responsible Growth (SMCRG)  
By Mark Hyde, President (hydem001@hawaii.rr.com)  
Re: Molokai Community Plan Update (PC-2)  
Chapter 6 - Relationship of Community Plans and Zoning  
**Committee Meeting Date: February 15, 2018**

**SMCRG opposes adoption of the Planning Department's proposed language describing the relationship between community plans (Chapter 6).**

**1. The proposed language inaccurately states, "Historically, land use designations in the various County community plans have been described *generally* and have not included a detailed list of permitted uses, standards and regulations to implement the designations." [Emphasis added.]**

This is simply not true as can be seen from any of our existing community plans. Take for instance the Kihei-Makena Community Plan (KMCP) which at pages 54 - 56 lists a number of land use categories, each with a crisp definition. See, for instance, the definition of light industrial use defined as follows: "This is for warehousing, light assembly, service and craft-type industrial operations." Nothing general about that. Quite the opposite.

Why is this important? Because zoning, which should implement our community plans, does the opposite and creates nothing short of chaos zones.<sup>1</sup> Here is an amazing list of things allowed in our [Swiss Cheese] light industrial zones and which are inconsistent with good planning and development<sup>2</sup>:

bakeries; barber and beauty shops; bed and breakfast and short term rental homes; book, stationery and gift stores; government agency and community facilities; candy stores; daycare facilities; delicatessens; drug stores; farmers' markets; flower shops; gasoline stations; grocery stores and meat markets; ice cream and snack counters; laundromats; liquor stores; play grounds;

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<sup>1</sup> Putting aside for the moment the fact that the zoning code states that light industrial zones are intended to contain "mostly" commonly defined light industrial uses, the word "mostly" is ignored by the Planning Department, which tosses it aside, bizarrely, as meaningless because it only appears in the Purpose and Intent clause introducing of the zone: "**The M-1 light industrial district is designed to contain mostly warehousing and distribution types of activity, and permits most compounding, assembly, or treatment of articles or materials with the exception of heavy manufacturing and processing of raw materials.** Residential uses are excluded except for dwelling units located above or below the first floor and apartments." (Ord. No. 3975, § 2, 2012)

<sup>2</sup> Often in support of out of state development capital with focus on ROI and not necessarily aligned with the needs and wants of community members.

recycling centers; religious centers; single family homes; small scale energy systems; first floor dwelling units; garages; amusement and recreational activities; animal hospitals; auditoriums, gymnasiums, dance clubs and fitness centers; automobile upholstery shops; awning or canvas shops; baseball, football or other sports stadiums; catering establishments; communications equipment and towers; daycare facilities; drive-in restaurants; eating and drinking establishments; day care facilities; educational institutions; educational facilities; general merchandising; general office activities and services; ice cream and milk manufacturing plants; libraries; marinas; multifamily dwellings; museums; new and used car lots; nursing and convalescent homes; nurseries; parking structures; pet shops; sanitariums; sign painting shops; and mortuaries and morgues.

**2. The proposed language further inaccurately states, “The zoning code by law is enacted consistent with the community plans of the County.”**

As can be seen above, there is almost little if any consistency between community plan definition of light industry and the laundry list of permitted uses in light industrial zones. In fact, few of the uses allowed in light industrial zones have anything to do with light industry. Sports stadiums? Liquor stores? Day care facilities? Eating and drinking establishments<sup>3</sup>? General merchandizing? Museums? Convalescent homes?

At a Maui County Planning Commission meeting about two years ago esteemed commissioner Wayne Hedani correctly and candidly stated, “Kihei is a mess.” It’s true, Kihei is a mess, which is why we so keenly and urgently require a community plan that will truly define and govern how the area is to be developed going forward, which is what the community did in 1998 when it called for commercial development to be located in four distinct areas *makai* of the Pi’ilani Highway. (See KMCP, pp. 17-18.) Carla Flood, a south Maui community leader who helped develop the 1998 plan testified that the aforementioned provision was inserted specifically to corral urban sprawl which then and now plagues Kihei, devaluing land and lowering quality of life.

**3. The proposed language further inaccurately states, “Zoning districts within the code are described specifically and include permitted uses and standards necessary to regulate and maintain the character of the zoning districts.”**

This is clearly false in light industrial zones. See the list of possible uses, most of

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<sup>3</sup> This would allow for another Kihei Triangle aggregation of late night bars and restaurants, perhaps next door to a day care center or a convalescent hospital or morgue. How’s that for community planning? For a peek into what this creates, take a look at the light industrial parcel of land just off Pi’ilani Highway at Okalani Street where a mish-mash of sprawling uses have developed into an unsightly community eyesore.

which have nothing to do with light industry. Many light industrial zones in Maui County contain a majority of uses bearing no resemblance to classic light industrial uses.

**4. The proposed language further inaccurately states, “The zoning districts have statements of purpose and intent that align with the descriptions of land use designations in the community plans of the County.”**

While it’s true each zoning district is introduced by a Purpose and Intent clause, these are routinely ignored by the Planning Department as being of no legal effect. Here’s what the Purpose and Intent intro to light industrial zones says about them:

“The M-1 light industrial district is designed to contain mostly warehousing and distribution types of activity, and permits most compounding, assembly, or treatment of articles or materials with the exception of heavy manufacturing and processing of raw materials. Residential uses are excluded except for dwelling units located above or below the first floor and apartments.” (Ord. No. 3975, § 2, 2012)

While this is indeed a true statement of what these zones are intended for, Corporation Council and the Planning Department maintain that these introductory words have no legal effect, freeing developers to do pretty much as they please in these zones, creating a kind of Developers Delight. See for instance the Maui Marketplace on Dairy Road. It is zoned light industrial but it is 100% retail.

**5. Finally, the Planning Department’s presentation to the Molokai community re enforceability of their community’s plan falls short, the effect of which was and is to deny the people knowledge that they could in fact create language within the plan that has legal/regulatory significance (enforceability) to guide future development<sup>4</sup>.**

Here’s what the community was mistakenly told (Minutes, Molokai Planning Commission Meeting, Community Plan Amendment Review, February 25, 2016, p. 3):

“So the community plan contains policies and actions, which provide guidance to state and county agencies, landowners and developers, community groups and organizations. But when are community plans actually regulatory? Community plans are regulatory in a couple of instances. **First** of all, community plans are regulatory for **change in zoning**. If a landowner comes in and wants to change a zoning on their land, it is

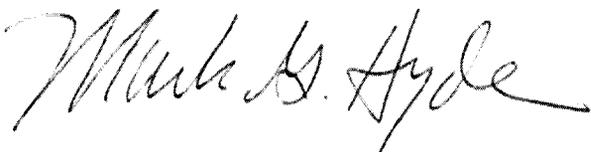
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<sup>4</sup> The Hawaii Supreme Court and a Hawaii Appellate Court have held that the KMCP has the force and effect of law. This would equally apply to all other Maui County community plans.

mandatory that what they change it to what is consistent with the community plan, with the policies in the community plan, as well as with the community plan land use maps. **Secondly**, the community plan is regulatory for **discretionary permits**. Some examples are special use permit or special management area, SMA permits. When someone is in one of these districts and they are proposing a development, a different use, it has to be consistent with the policies and the land use map in the community plan. So the community plan is regulatory in that instance. As well as subdivisions. If someone has a large parcel of land and they want to subdivide, they have to comply with the community plan. **Lastly capital improvement projects**. When the county does their CIP budget, the budgets are intended to implement the community plan." (Emphasis added.)

That's not a complete list. There is another important instance where a community plan is regulatory: when the plan explicitly states what is to happen with a given parcel or area, not in general terms (i.e., "we are to encourage diversity") but in specific terms (see for instance the KMCP cited above where the community restricted development of commercial services to four distinct locations *makai* of Pi'ilani Highway to encourage infill, a downtown, a sense of place and to rein in sprawl.)

Respectfully submitted,

A handwritten signature in black ink that reads "Mark G. Hyde". The signature is written in a cursive, flowing style.

Mark G. Hyde