

Great Committee

From: Mike J. Molina
Sent: Tuesday, June 29, 2021 7:24 AM
To: Great Committee
Subject: Fw: WRITTEN TESTIMONY - GREAT ITEM 36 - JUNE 2021
Attachments: Brown Development Summary 6 4 21.pdf; Brown 4 Exhibits.pdf

MICHAEL J. MOLINA
Councilmember



Office of Councilmember Michael J. Molina
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From: Chris Salem <chrissalem8@yahoo.com>
Sent: Tuesday, June 29, 2021 7:17 AM
To: Mike J. Molina <Mike.Molina@mauicounty.us>
Cc: Kelly King <Kelly.King@mauicounty.us>; Tamara A. Paltin <Tamara.Paltin@mauicounty.us>; Gabe Johnson <Gabe.Johnson@mauicounty.us>; Kathy L. Kaohu <Kathy.Kaohu@mauicounty.us>; Keani N. Rawlins <Keani.Rawlins@mauicounty.us>
Subject: WRITTEN TESTIMONY - GREAT ITEM 36 - JUNE 2021

WRITTEN TESTIMONY

MAUI COUNTY COUNCIL

GOVERNMENT RELATIONS, ETHICS, AND TRANSPARENCY COMMITTEE

GREAT-36: CONSTRUCTION ON LOWER HONOAPIILANI ROAD (NAPILI)

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Dating back to the shores of Montana Beach, citizen driven complaints have revealed a pattern of abuse of discretionary authority and negligent administration of the delegated duty to uphold the Shoreline

Management Area (“SMA”) rules and environmental laws pursuant to HRS §205A. Millions of dollars of citizen driven complaints and costly legal disputes in Maui County have been the direct result.

Two decades later, the damaging pattern continues right before our eyes along the pristine shores of Napili Bay. The massive Brown development, which citizens were denied of their rights to public hearings and environmental preservation, was exempted from SMA by the staff of the Planning Department. Director Michele Mclean alleges she would not have issued the exemption despite her name being signed by a staff member on the SMA Permit exemption.

Consequently, questions and debates have arisen about where the duty lies to ensure the adopted SMA rules are honored and enforced. Allegations have been made that Planning Department has the “sole authority” to enforce violations of environmental rules adopted by the Maui County Planning Commission. The County Charter speaks otherwise. The Supreme Court ruling this week raises serious questions of whether the County Council should replace the Planning Commission as the SMA rule making authority.

At a community protest meeting in Napili attended by Planning Director McLean and Deputy Planning Director Hart, the citizens were informed that the decision to issue a SMA Permit violation notice to Brown Development would be a collective one between the Mayor, Corporation Counsel, Planning Director, and the County Council.

A summary of the alleged violations and false representations by the Developer Brown is attached. For the record, this violation summary was forwarded to Mayor Victorino, Council Member Tamara Paltin, the Chair of the Council Planning Committee, and Planning Director Mclean. No County from official either branch of County government has responded to a written request to review and opine on the findings and conclusions. Local attorneys, representing the impacted property owners and community members, have agreed with the findings and conclusions.

Which raises a parallel question; When a questionable act or decision by a Director or Department is discovered, under the Maui County Charter, which branch of government is responsible for an investigation of citizens’ or County employee complaints and to declare whether the decisions are consistent with adopted County laws and ordinances?

COUNTY OF MAUI  
**NAPILI BAY**  
**CIVIC IMPROVEMENT DISTRICT**

**PROJECT INFORMATION**

|                                       |                                        |
|---------------------------------------|----------------------------------------|
| TMK:                                  | (2)-4-3-002-057-0000                   |
| Address:                              | 5385 Lower Honoapiilani Rd. Napili, HI |
| State Land Use Designation:           | Urban                                  |
| West Maui Community Plan Designation: | Multi-Family Residential               |
| Maui County Zoning: Zone 4            | Napili Bay Civic Improvement District  |
| Shoreline Management Area:            | HRS §205A                              |
| FEMA Flood Zone                       | Zone X                                 |

**PROJECT GOVERNMENT RECORDS**

|                                          |                              |
|------------------------------------------|------------------------------|
| SMA Permit:                              | Two Story Single Family Home |
| Building Permit: #T2019-0636 / #20200448 | Main Dwelling with a Garage  |
| County KIVA:                             | Single Family Detached       |
| County Real Property Tax                 | Short Term Rental            |

**COUNTY PLANS**

|                        |                                                                                 |
|------------------------|---------------------------------------------------------------------------------|
| General Plan           | Long Term Blueprint for Identity of County                                      |
| Countywide Policy Plan | Broad Goals & Objectives<br>Framework for Maui Island Plan &<br>Community Plans |
| Maui Island Plan       | Urban and Rural Growth Areas                                                    |
| Community Plan(s)      | Land Use for Specific Region                                                    |

**COUNTY AUTHORITIES**

|                           |                                           |
|---------------------------|-------------------------------------------|
| Urban Design Review Board | Advising Planning Dept. on Project Design |
| Planning Commission       | Shoreline Management Area Authority       |
| Maui County Council       | Community Plan Amendment Authority        |

## **I. INTRODUCTION**

On March 12, 2021, in response to a letter from the Board of Directors of the Napili Bay and Beach Foundation<sup>1</sup> (“Napili Foundation”) demanding the revocation of the SMA Permit Exemption<sup>2</sup> issued to developer Greg Brown, Planning Director McLean sent a letter to developer Brown stating impart, the following;

*“The property is zoned Napili Bay Civic Improvement District” which allows the uses as a Hotel District, including single family homes, apartments, and hotels, pursuant to Sections 19.60.030 and 19.14.020, Maui County Code. (“MCC”)*

*Regardless, the SMA assessment and building permit applications both indicate the proposed use and structure as being a single family dwelling. “*

As affirmed by Director McLean’s letter, the SMA and Building Permit applications submitted by developer Greg Brown’s representatives allege the proposed structure is a “single family residence” in an “Urban Residential Area”. Conclusively, the Brown development did not qualify for County Building Permits or a SMA Permit Exemption as a “single family residence”.

Pursuant to the findings and facts presented herein, developer Brown’s applications and plan submissions are deceptive and falsified. Consequently, the Napili Foundation and residents of West Maui were denied of their rights to public hearings by the Urban Design Review Board and Maui County Planning Commission.

Under the Maui County Charter, Mayor Victorino has a duty and authority to protect and preserve the adopted restrictions of the Napili Bay Improvement District, the Shoreline Management Area, the West Maui Community Plan, and the Maui County Code.

Therefore Mayor Victorino is called upon to honor Napili Foundation’s preservation based demands for revocation of developer Brown’s SMA Permit Exemption and Building Permits. As evidence herein, the Foundation’s demands have merit and are fully supported and petitioned by the residents and affected property owners of the Napili Village.

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<sup>1</sup> See Exhibit “A” - Letter from Napili Bay and Beach Foundation letter dated March 24, 2021

<sup>2</sup> See Exhibit “B - SMA Permit Exemption dated April 10, 2019

## II. RULE OF LAW

### STATE OF HAWAII COASTAL ZONE MANAGEMENT – HRS 205A

Pursuant to the State of Hawai'i Shoreline Management Area ("SMA") statutes, HRS §205A-2 Coastal Zone Management Program; the following objectives and policies shall apply;

(4) Coastal ecosystems;

(A) Protect valuable coastal ecosystems, including reefs, from disruption and minimize adverse impacts on all coastal ecosystems.

(7) Managing development;

(A) Improve the development review process, communication, and public participation in the management of coastal resources and hazards.

(8) Public participation;

(A) Stimulate public awareness, education, and participation in coastal management.

Pursuant to State of Hawai'i Shoreline Management Area ("SMA") statutes, HRS §205A-26; "No Development shall be approved unless the authority has found that the development is consistent with County general plan and zoning."

### COUNTY OF MAUI SHORELINE MANAGEMENT AREA RULES

Pursuit to the Pursuant to the County of Maui SMA Rules adopted by the Planning Commission, Title 12, the more restrictive laws and ordinances shall apply.

Pursuant to County of Maui SMA Permit Assessment Application guidelines; "Any misrepresentation regarding this application may result in permit denial, permit revocation, and other possible violations and / or fines."

### MAUI COUNTY ZONING

Pursuant to the Maui County Code, ("MCC") Title 19 - Zoning, the subject parcel is falls under the rules and restrictions of the Napili Bay Civic Improvement District. ("NBCID")

Pursuant to MCC Title 19.60.010 Purpose: "The purpose of the district is to "maintain the orderly and harmonious appearance of and esthetic development of land and structures.."

Pursuant to MCC Title 19.60.030.1 Precise Plan: Pursuant to Chapter 19.34 of the is code, the precise plan for the NBCID shall be as follows;

- A. Building Height shall not exceed 2 stories.
- B. Total floor area of structures shall be limited to 50 percent of lot area.
- C. Construction shall be of new material..

- D. Construction of architecture shall be in conformance with the present developments in the NBCID.
- E. The permitted uses shall be as provided for the hotel district and as listed in Chapter 19.14 of this code...

Pursuant to MCC Title 19.14.020, the permitted uses in the NBCID, are as follows;

- A. Any use permitted in residential and apartment districts
- B. Hotels
- C. Apartment Hotels
- D. Auditoriums and theaters
- E. Automobile Parking Lots and Buildings
- F. Bona fide nonprofit clubs and lodges
- G. Nonprofit museums, libraries, art galleries
- H. Cell or radio antenna attached to existing building

Pursuant to the West Maui Community Plan, the subject parcel is designated as Multi-Family Residential.

Pursuant to MCC Title 19.08.050, Height Regulations, the Residential District, no Building shall exceed two stories or 30 feet in height.

Pursuant to MCC Title 19.040.030, the more restrictive laws and ordinances shall apply.

Pursuant to MCC Title 19.14.050 – Development Standards under category Hotel: H-1, the maximum building height is 35 feet, except elevator and staircase shafts may extend an addition al 10 feet above the building roof.

### **MAUI COUNTY BUILDING CODE**

Pursuant to Building Code, Chapter 16.B.101.4.1, Conflicts with other codes. “If the referenced code conflicts with another applicable law of the jurisdiction, the said applicable law shall prevail over guidelines in the referenced code.”

### **III. STATEMENT OF FACTS**

On April 10, 2019, under the authority of Planning Director Michele Mclean, the Department of Planning issued a SMA Permit Exemption to private developer Greg Brown. The SMA Exemption was signed by Planning Department employee Ann Cua on behalf of Director Mclean.

Just weeks prior, on March 21, 2019, the State of Hawai’i Historic Division sent a letter

authorizing Planning Director McLean to move forward with the issuance of the referenced SMA Permit. The letter reveals the SMA Permit application and review was processed under Mayor Alan Arakawa's Administration.

The SMA Exemption makes the following representations;

- i. The proposed development is a construction of a 2 story single family dwelling with grading, grubbing, and fill.
- ii. The proposed activity is determined to be the construction of a single family residence.
- iii. The proposed activity has been determined to not be a development and is exempt from the applicable requirement of Chapter 205A.
- iv. The application requires building permits.

The Building Permit application, B2020/0448, shows an occupancy group of R-3 for occupants that are primarily permanent, with a structure class of "single family, detached"

#### IV. RELEVANT FINDINGS

##### PLANNING DIRECTOR REPRESENTATIONS

In a letter dated March 12, 2012, to developer Greg Brown, Planning Director McLean states;

*"It is important to note that the Department did not proposed Hotel or Vacation Rental use or a Hotel structure during the SMA Permit or Building Permit review process."*

On May 10, 2021 during a Napili community protest meeting, Director Mclean acknowledged the Planning Department does not perform a review of building plans to confirm compliance and consistency with the SMA permit application plans.

In an email communication sent to West Maui resident Junya Nakoa, Planning Director Mclean states;

***"I didn't say we made a mistake -- we have to be very careful about terminology here. I said I wouldn't have issued them if they had come to me, and I wish we hadn't issued them. But their issuance can be defended (to me, it's a weak defense). SMA exemptions involve a fair amount of discretion. The exemption is valid, but I don't think it was the right call. "***

On May 21, 2021 in a Lahaina News article Planning Director McLean states;

*"Our review to date shows errors in judgement. But we need further review. I can't say whether our errors would justify revocation, and that discussion would have to occur with County Council and Corporation Counsel. We haven't yet review any applicant representations."*

## DEVELOPER APPLICATION REPRESENTATIONS

Bedrooms: 8

Baths: 14

Story: 2

Grading Quantities:

- |                                 |                                                                                                 |
|---------------------------------|-------------------------------------------------------------------------------------------------|
| • SMA Permit                    | Quantity of Cut: Less than 2 Feet<br>Quantity of Fill: Less than 100 Yards                      |
| • Building Permit App EL-FORM H | Quantity of Cut/Fill: 0 Cubic Yards<br>Max Depth Cut/ Fill: 0 Feet                              |
| • Building Plans– Sheet C-1     | Volume of Cut: 735 Cubic Yards<br>Volume of Fill: 280 Cubic Yards<br>Max Depth of Fill 4.5 Feet |

## V. CONCLUSION

The Napili Bay Civic Improvement District allows for mixed use building and development applications including single family, apartments, and hotels. The subject parcel is designated in the Community Plan as a residential. The Brown Development SMA Permit application represents the proposed development as a single family residence.

In accordance with the Napili Bay Civic Improvement District overlay, the Maui County Code adopted by the Maui County Council, and the SMA Rules adopted by the Planning Commission, the more restriction conditions apply in each section of the development review process. Pursuant to the Maui County Code, a single family residence has a two story and 30 foot height restriction. The Napili Bay District has a 2 story restriction.

However, the developers SMA Permit application and building plans represent a 35 high building with additional 10 foot projections for an elevator shaft and staircase structures. The building plans represent 4.5 feet of soil fill. From original grade, the structure is almost 50 feet tall. The developer's application represents 8 bedrooms, the project plans show 12 bedrooms.

Developer Brown's representations of a single family home development are false. The only section of the Maui County Code which allows for a 45 tall structure is the Hotel District Designation H-1. The Brown parcel is not zoned for a Hotel structure.

Based on findings, facts, and conclusions of applicable laws and ordinances, the Planning Department erred in its judgement and review of the proposed Development. Therefore, the SMA Permit Exemption issued to developer Brown must be revoked by the Planning Director.



# **REFERENCES**

## **NAPILI BAY CIVIC IMPROVEMENT DISTRICT**

**Maui County Code Title 19. Zoning 19.60.010**

**“The purpose of the district is  
to maintain the orderly and  
harmonious appearance of  
and esthetic development of  
land and structures..”**

Further, agreements between a government entity and developers are frequently held to be third-party beneficiary contracts for the benefit of a discrete group or members of the public. *Shell v. Schmidt*, 272 P.2d 82, 89 (Cal. App. 1<sup>st</sup> Dist. 1954); *Villa Siera Condo. Ass'n. v. Field Corp*, 878 P.2d 161 (Colo. App. 1994)(agreement of developer to construct roadside improvements); *Vale Dean Canyon Homeowners. Ass'n. v. Dean*, 785 P.2d 772 (1990) (agreement of developer to construct road improvements in subdivision).



# Maui Island Digital Zoning Map 2

Page A1

Ordinance: 5006 (Bill 56)

Effective: 11/13/2019

Map includes all subsequent Change In Zoning ordinances through January 10, 2020.

## Legend

|                        |                                           |
|------------------------|-------------------------------------------|
| R-0 Residential        | AP Airport                                |
| R-1 Residential        | AG Agriculture                            |
| R-2 Residential        | RU-0.5 Rural 1/2 Acre                     |
| R-3 Residential        | PD Project District                       |
| D-1 Duplex             | CID Napili Bay Civic Improvement District |
| A-1 Apartment          | OS Open Space                             |
| A-2 Apartment          | OS-2 Active Open Space                    |
| H Hotel                | P-1 Public/Quasi-Public                   |
| HM Hotel               | Beach Right-of-Way                        |
| H-2 Hotel              | PK Park                                   |
| B-2 Business-Community | PK(GC) Park-Golf Course                   |
| B-3 Business-Central   | Interim                                   |
| BR Business-Resort     | (road)                                    |
| M-1 Light Industrial   |                                           |

# **SMA PERMIT**

## *SMA ASSESSMENT APPLICATION CHECKLIST*

Instructions:

- Any misrepresentation regarding this application may result in a permit denial, permit revocation, and other possible violations and/or fines.

**ANY  
MISREPRESENTAION  
REGARDING  
THIS APPLICATION  
MAY RESULT  
IN  
PERMIT DENIAL  
PERMIT REVOCATION  
&  
OTHER POSSIBLE  
VIOLATIONS OR FINES.**


# **DEVELOPER'S REPRESENTATION**


## **SMA Permit Check List**

- |     |                                                                                                                                                                                                                                                                                                                                                                                                    |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (E) | Involves secondary impacts, such as population changes (i.e. increase/decrease) and increased effects on public facilities, streets, drainage, sewage, and water systems, and pedestrian walkways (i.e. increased demands and deficiencies):<br><br>No significant secondary impacts are anticipated, because the proposed construction will be a single family home in an urban residential area. |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**“NO SIGNIFICANT  
SECONDARY IMPACTS ARE  
ANTICIPATED  
BECAUSE  
THE PROPOSED  
CONSTRUCTION WILL BE  
A SINGLE FAMILY HOME IN  
AN URBAN RESIDENTIAL  
AREA”**

DAVID Y. ICE  
GOVERNOR OF  
HAWAII





**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
STATE HISTORIC PRESERVATION DIVISION  
KAKUHIHEWA BUILDING  
601 KAMOKILA BLVD, STE 555  
KAPOLEI, HAWAII 96707

SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCES MANAGEMENT

ROBERT K. MASUDA  
DIRECTOR

M. KALEO MANUEL  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BEACHING AND OCEAN RECREATION  
DEPARTMENT OF CONVEYANCES  
COMMISSION ON WATER RESOURCES MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
DIVISION  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAWAHAU ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

March 21, 2019

Ms. Michele Chouteau McLean, Director  
County of Maui  
Planning Department  
2200 Main Street  
One Main Plaza, Suite 315  
Wailuku, Hawaii 96793

Dear Ms. McLean:

SUBJECT: Chapter 6E-42 Historic Preservation Review –  
SMA Permit Application – SMX 2018-0141  
5385 Lower Honoapiilani Rd., Napili – New SFD and pool  
Owner Name: Napili Beach House LLC  
Napili 4-5 Ahupua'a, Kā'anapali District, Island of O'ahu  
TMK: (2) 4-3-002:057

IN REPLY REFER TO:  
Log No. 2018.02477  
Doc. No. 1903LS29  
Archaeology

# STATE LETTER TO DIRECTOR

## MARCH 21, 2019

Approved by: *[Signature]* Date: 4/10/19  
for ANN CUA, Current Planning Supervisor  
MICHELE CHOUTEAU MCLEAN, Planning Director

xc: John S. Rapacz, Planning Program Administrator (PDF)  
James A. Bulka, Staff Planner (PDF)  
Tom Schnell, Consultant (PDF)  
Project File (with attached plans)

MCM:CIY:JAB:rma  
K:\WP\_DOCS\Planning\SM5\2019\0082\_5385 Lower Honoapiilani\Approval.docx

# SMA PERMIT “EXEMPTION”

## APRIL 10, 2019

## CHAPTER 343, HRS, COMPLIANCE CHECKLIST

Complete the following worksheet to determine whether the proposed action triggers Chapter 343, HRS, relating to Environmental Impact Statements.

A ☐ YES ☒ NO Do any of the proposed actions listed below apply to your project? The proposed actions listed below trigger Chapter 343, HRS.

If YES, check any that apply and continue with question B below.

If NO, stop here, an *Environmental Impact Statement* may not be required.

- |                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 <input type="checkbox"/> Use of state or county lands or funds<br>2 <input type="checkbox"/> Use of conservation district lands<br>3 <input type="checkbox"/> Use of shoreline area<br>4 <input type="checkbox"/> Use of historic site or district<br>5 <input type="checkbox"/> Amendment to county general plan | 6 <input type="checkbox"/> Reclassification of conservation lands<br>7 <input type="checkbox"/> Construction/modification of helicopter facilities<br>8 <input type="checkbox"/> Propose any: (a) wastewater facility, except an individual wastewater system or a wastewater facility serving fewer than fifty (50) single-family dwellings or the equivalent; (b) Waste-to-energy facility; (c) Landfill; (d) Oil refinery; or (e) Power-generating facilities |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

### Maui County Urban Design Review Board Checklist of Standard Concern

#### SMA permit review (for recommendations to Planning Commission)

What are the visual impacts of the proposed site related improvements noted below:

- ☐ Traffic (pedestrian and vehicular) relative to adjacent streets
- ☐ Parking layout
- ☐ Miscellaneous site structures
  - ☐ Trash collection areas
  - ☐ Site walls & fencing
  - ☐ Parking trellises, carports
- ☐ Site lighting
- ☐ Drainage concept

Do the proposed landscaping improvements address the items of concerns noted below:

- ☐ Planting for parking areas relative to the parking ordinance requirements
- ☐ Plant material types, sizes, scale, screening and shading
- ☐ irrigation system, water source
- ☐ Significant historical or exceptional trees on site or on adjacent property

Are the following architectural and building design items addressed aesthetically and with minimal impact on the neighboring properties and the public:

- ☐ Building scale and setbacks
- ☐ Building color, texture, materials
- ☐ Roof design, fenestration, ornamentation
- ☐ Exterior lighting on buildings
- ☐ Within historic area or in close proximity to historic area
- ☐ Signage program
- ☐ Are measures proposed to preserve the makai views relative to this development?
- ☐ Are mitigative measures proposed to reduce noise and privacy impacts on neighboring properties?
- ☐ Has subdivision CC&R's design criteria been reviewed and approved?
- ☐ Has there been input from the community for or against this development?

( The Rules and Regulations of the Planning Commissions should also be referenced relative to the intent of the board's purpose in reviewing SMA permit applications)

# **EXHIBITS**

# DEVELOPER'S GRADING REPRESENTATION


## SMA Permit

### Site Plan Notes

1. Refer to Drawing A-0.
2. Ground alternation includes driveway, parking, and building footprint.
3. Cut anticipated to be less than two feet.
4. Fill anticipated to be less than 100 cubic yards.
5. All storm water will be retained on the property.

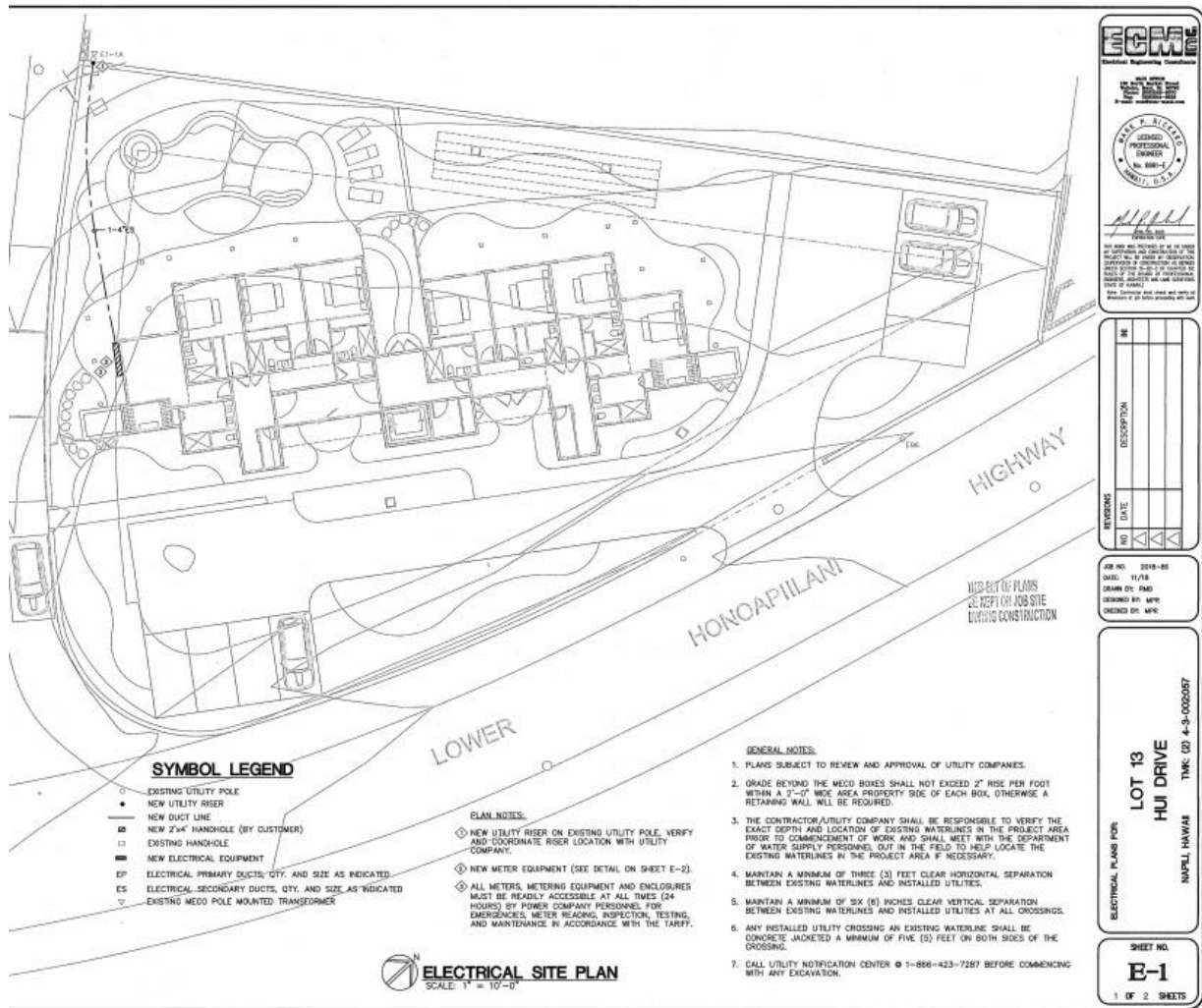
**“CUT LESS THAN TWO FEET”**  
**“FILL LESS THAN 100 CUBIC YARDS”**

## Building Plans

|                                                                                                                                                                                                                                                                                                                      |                                                   |         |     |      |                |       |          |     |              |       |            |               |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|---------|-----|------|----------------|-------|----------|-----|--------------|-------|------------|---------------|
|                                                                                                                                                                                                                                   | <b>LIMITS OF GRADING (ENTIRE LOT) = 20,899 SF</b> |         |     |      |                |       |          |     |              |       |            |               |
|                                                                                                                                                                                                                                                                                                                      | <b>VOLUME OF CUT = 735 CY</b>                     |         |     |      |                |       |          |     |              |       |            |               |
|                                                                                                                                                                                                                                                                                                                      | <b>VOLUME OF FILL = 260 CY</b>                    |         |     |      |                |       |          |     |              |       |            |               |
|                                                                                                                                                                                                                                                                                                                      | <b>MAX. DEPTH OF FILL = 4.5 FT</b>                |         |     |      |                |       |          |     |              |       |            |               |
|                                                                                                                                                                                                                                                                                                                      | <b>QUANTITIES INCLUDE AREA UNDER STRUCTURE</b>    |         |     |      |                |       |          |     |              |       |            |               |
| <b>GRADING, DRAINAGE AND EROSION CONTROL PLAN</b>                                                                                                                                                                                                                                                                    |                                                   |         |     |      |                |       |          |     |              |       |            |               |
| SCALE: 1" = 10'                                                                                                                                                                                                                                                                                                      |                                                   |         |     |      |                |       |          |     |              |       |            |               |
| NOTE: GRADE (RETAINING) WALLS REQUIRE SEPARATE BUILDING PERMITS AND WILL BE DESIGNED BY OTHERS.                                                                                                                                                                                                                      |                                                   |         |     |      |                |       |          |     |              |       |            |               |
| <table border="1"><tr><td>CHECKED</td></tr><tr><td>LYT</td></tr><tr><td>DATE</td></tr><tr><td>MARCH 11, 2000</td></tr><tr><td>SCALE</td></tr><tr><td>AS NOTED</td></tr><tr><td>JOB</td></tr><tr><td>BROWN (NAPL)</td></tr><tr><td>SHEET</td></tr><tr><td><b>C-1</b></td></tr><tr><td>1 OF 2 SHEETS</td></tr></table> |                                                   | CHECKED | LYT | DATE | MARCH 11, 2000 | SCALE | AS NOTED | JOB | BROWN (NAPL) | SHEET | <b>C-1</b> | 1 OF 2 SHEETS |
| CHECKED                                                                                                                                                                                                                                                                                                              |                                                   |         |     |      |                |       |          |     |              |       |            |               |
| LYT                                                                                                                                                                                                                                                                                                                  |                                                   |         |     |      |                |       |          |     |              |       |            |               |
| DATE                                                                                                                                                                                                                                                                                                                 |                                                   |         |     |      |                |       |          |     |              |       |            |               |
| MARCH 11, 2000                                                                                                                                                                                                                                                                                                       |                                                   |         |     |      |                |       |          |     |              |       |            |               |
| SCALE                                                                                                                                                                                                                                                                                                                |                                                   |         |     |      |                |       |          |     |              |       |            |               |
| AS NOTED                                                                                                                                                                                                                                                                                                             |                                                   |         |     |      |                |       |          |     |              |       |            |               |
| JOB                                                                                                                                                                                                                                                                                                                  |                                                   |         |     |      |                |       |          |     |              |       |            |               |
| BROWN (NAPL)                                                                                                                                                                                                                                                                                                         |                                                   |         |     |      |                |       |          |     |              |       |            |               |
| SHEET                                                                                                                                                                                                                                                                                                                |                                                   |         |     |      |                |       |          |     |              |       |            |               |
| <b>C-1</b>                                                                                                                                                                                                                                                                                                           |                                                   |         |     |      |                |       |          |     |              |       |            |               |
| 1 OF 2 SHEETS                                                                                                                                                                                                                                                                                                        |                                                   |         |     |      |                |       |          |     |              |       |            |               |

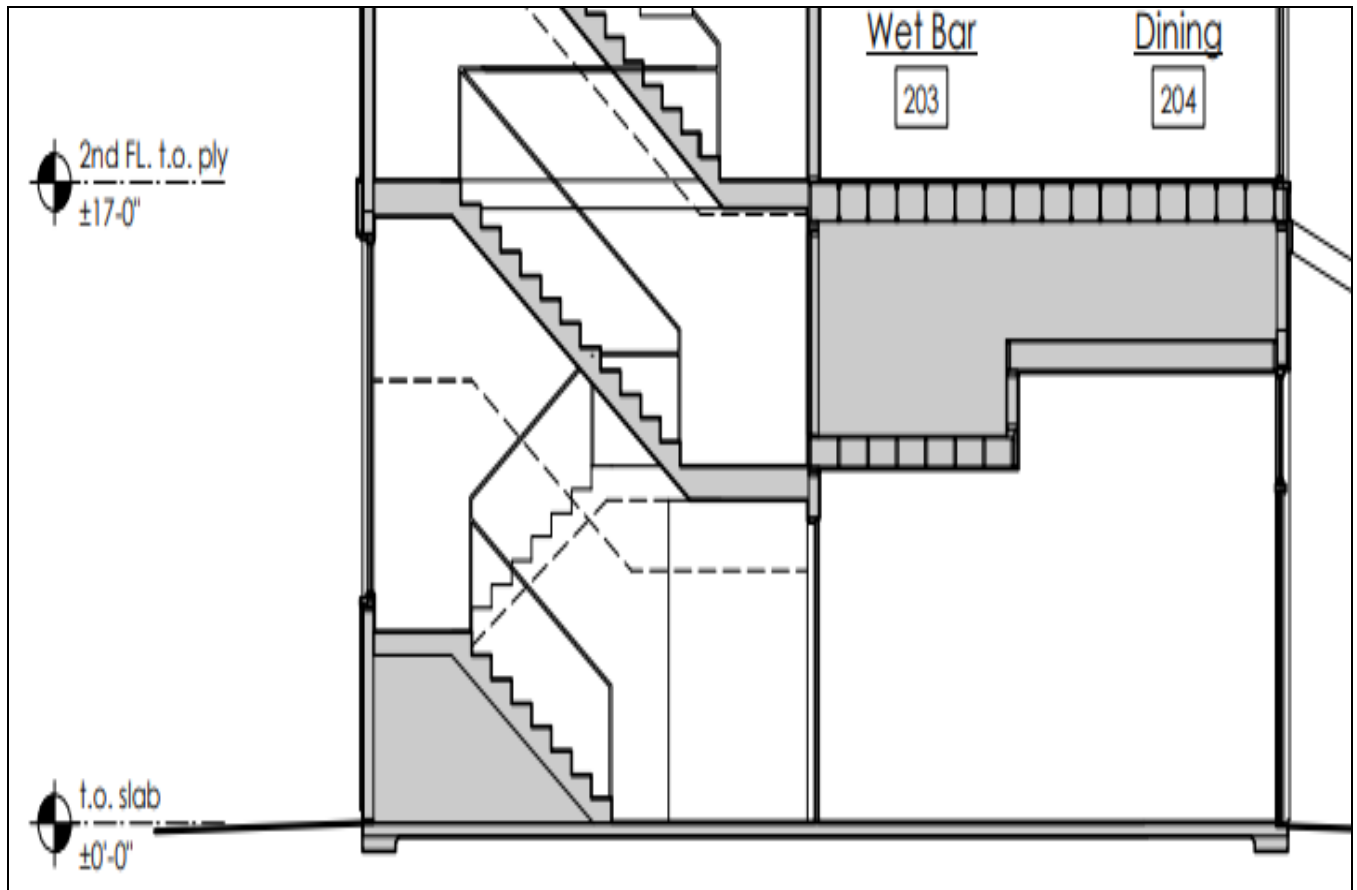
**“CUT 735 CUBIC YARDS”**  
**“FILL 260 CUBIC YARDS - 4.5 FEET”**



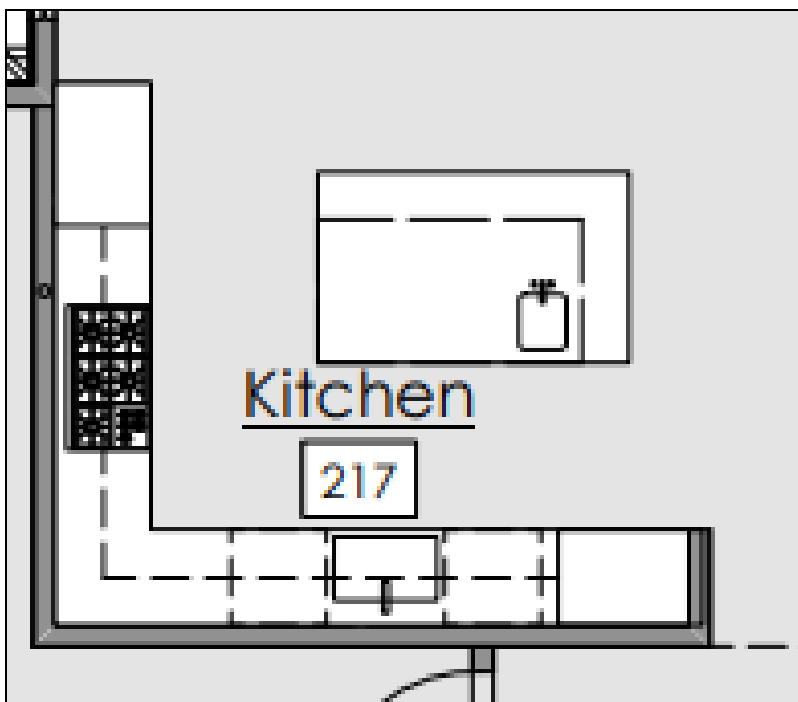
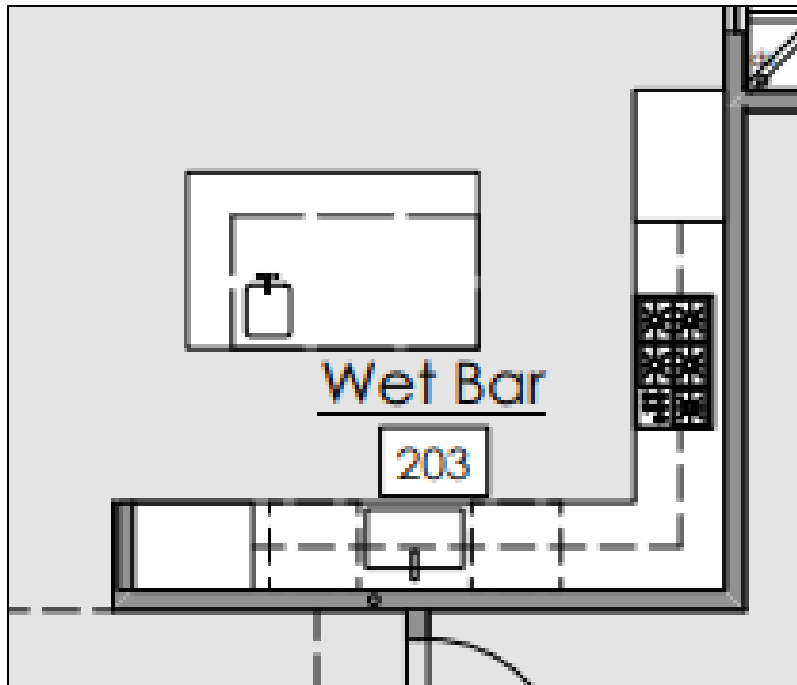


**STAMPED BUILDING PLANS  
REPRESENT  
“MEDIA ROOM” WITH BED &  
FULL BATH w/ 2 SINKS &  
WALK IN CLOSET**

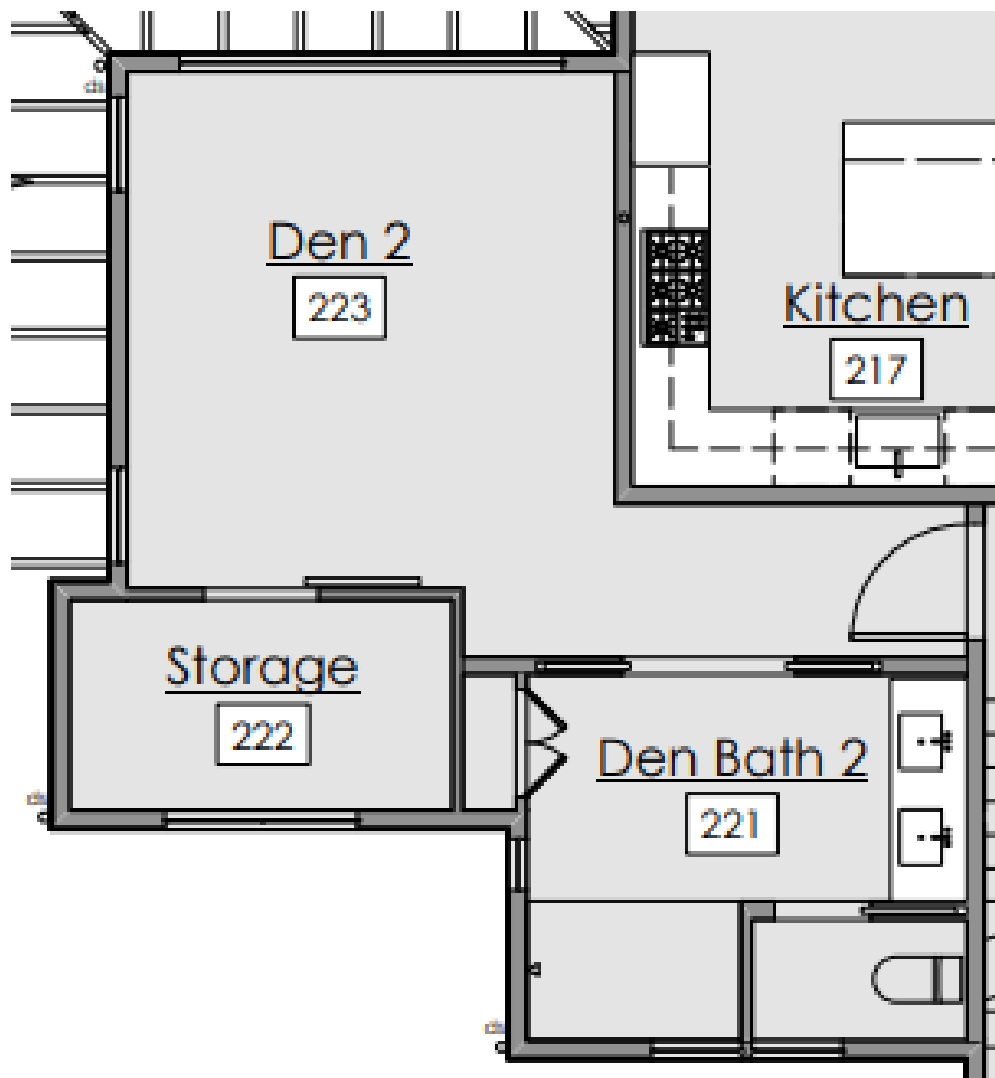




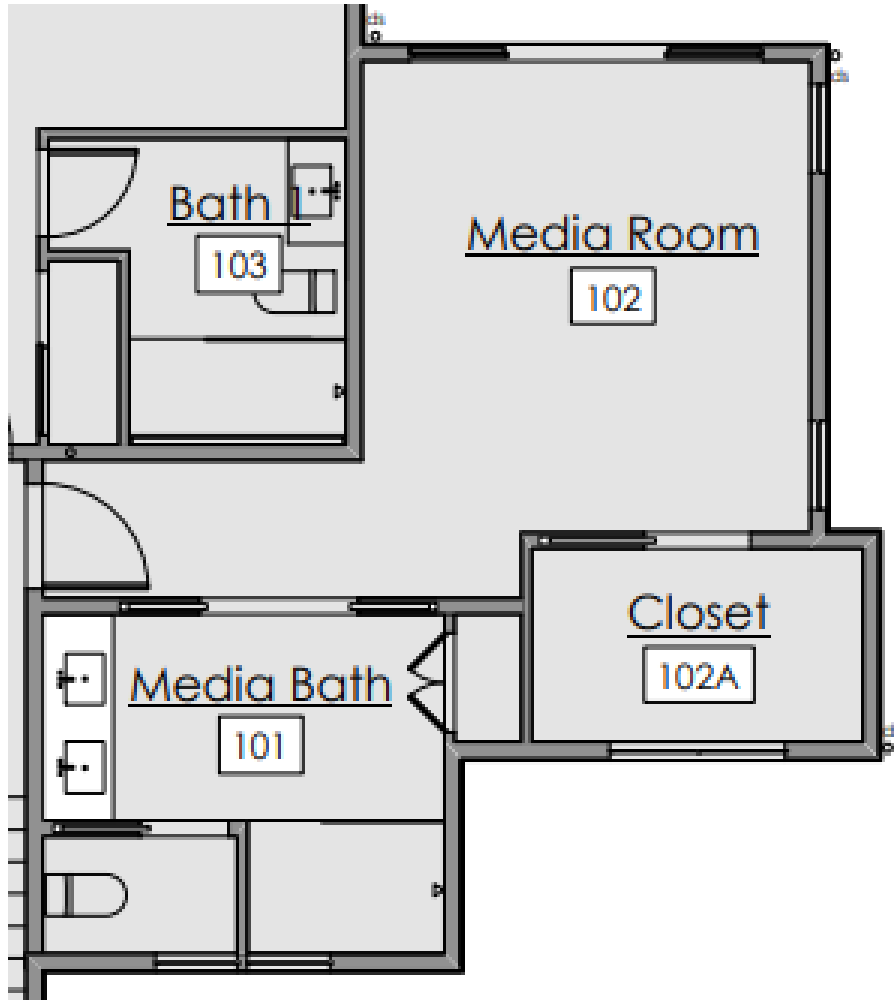
# **17' CEILING ON FIRST FLOOR w/ LANDING AT CENTER OF CEILING**



**KITCHEN #2 REPRESENTED  
AS WET BAR**



**2 MASTER BEDROOMS W/  
FULL BATHROOM & 2 SINKS  
REPRESENTED AS  
“DENS”**



**2 MASTER BEDROOMS W/  
FULL BATHROOM & 2 SINKS  
REPRESENTED AS “MEDIA  
ROOM”**



**45' TALL STRUCTURE  
REPRESENTED  
AS A  
2 STORY SINGLE FAMILY  
RESIDENCE**

# **PLANNING DEPARTMENT'S REPRESENTATIONS**

*"I didn't say we made a mistake -- we have to be very careful about terminology here.*

*I said I wouldn't have issued them if they had come to me, and I wish we hadn't issued them.*

*But their issuance can be defended  
(to me, it's a weak defense).*

*SMA exemptions involve a fair amount of discretion.  
The exemption is valid, but I don't think it was the  
right call. "*

Planning Director Mclean



# REFERENCES

## Chapter 19.14 “Mixed Use” Hotel Districts

### Chapter 19.14 - HOTEL DISTRICTS<sup>[5]</sup>

#### Footnotes:

--- (5) ---

*Editor's note—* Ord. No. 4103, § 1, adopted in 2014, amended former Ch. 19.14 in its entirety which pertained to similar subject matter and derived from the prior code, § 8-1.7; Ord. No. 2030, § 4, 1991.

#### 19.14.010 - Purpose and intent.

A hotel district is a high density multiple-family area bordering business districts or ocean fronts, or both. This district includes public and semi-public institutional and accessory uses.  
(Ord. No. 4103, § 1, 2014)

#### 19.14.020 - Permitted uses.

Within hotel districts, the following uses shall be permitted:

- A. Any use permitted in residential and apartment districts;
- B. Hotels;
- C. Apartment-hotels;
- D. Auditoriums and theaters;
- E. Automobile parking lots and buildings;
- F. Bona fide nonprofit clubs and lodges;
- G. Nonprofit museums, libraries, art galleries, and philanthropic institutions; and
- H. Cell or radio antenna attached to an existing building.

(Ord. No. 4103, § 1, 2014)

#### 19.14.050 - Development standards.

|                                   |        |
|-----------------------------------|--------|
|                                   | H-1    |
| Minimum lot area (square feet)    | 10,000 |
| Minimum lot width (in feet)       | 75     |
| Maximum building height (in feet) | 35     |

#### 19.60.030 - Precise plan.



Pursuant to [chapter 19.34](#) of this code, the precise plan of the Napili Bay civic improvement district shall be as follows:

- A. Building height shall not exceed two stories.
- B. Total floor area of structures shall be limited to 50 percent of the lot area.
- C. Construction shall be of new material and the relocation of old buildings will not be permitted.
- D. Construction and architectural styling of buildings and structures shall be in conformance with present developments in the Napili Bay civic improvement district.
- E. The permitted uses shall be as provided for in the hotel district and as listed in [chapter 19.14](#) of this code, provided, that any permitted accessory use shall be an integral function of the hotel operation and shall be operated by the management provided only for the convenience of the guests and shall not be an independent commercial venture.
- F. Location of accessory uses shall be to the rear of interior of the lot.
- G. Signs and advertisements shall not be gaudy or excessive in size.
- H. Off-street parking shall be as provided in [chapter 19.36B](#) of this code.
- I. Special permits may be granted for marginal uses that would conform with the intent of the civic improvement district as approved by the Maui planning commission.

( [Ord. No. 4921](#), § 15, 2018; Ord. 3176 § 2, 2004; prior code § 8-4.3)

### **19.08.050 - Height regulations.**

No building shall exceed two stories nor thirty feet in height.

(Prior code § 8-1.4(e))

### **19.08.010 - Generally.**

Areas for single-family dwellings are established to provide for harmonious residential neighborhood without the detraction of commercial and industrial activities.

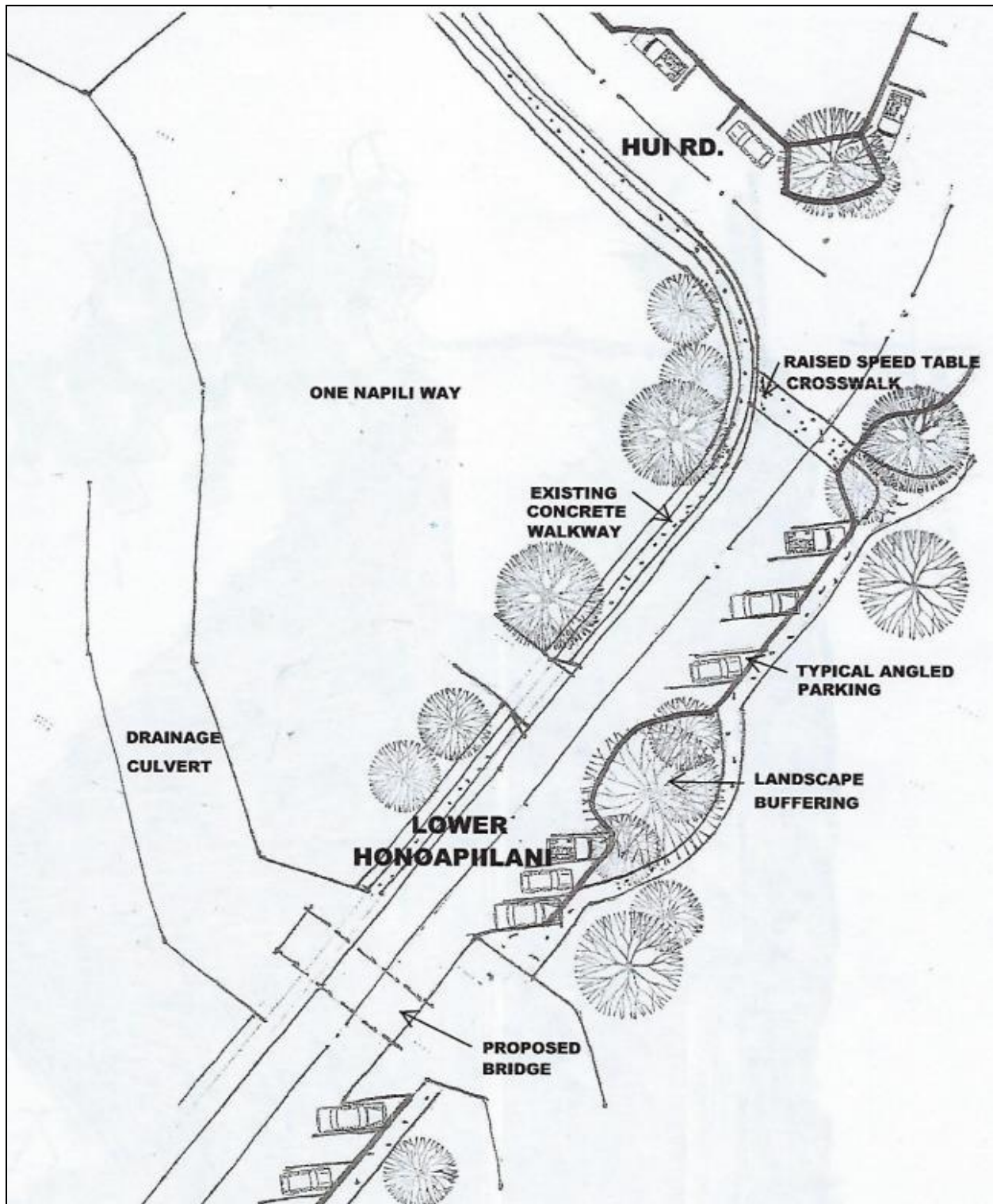
(Prior code § 8-1.4(a))

"Floor area" means the roofed area of all floors of a structure measured from the exterior faces of the exterior walls or from the center line of party walls dividing a structure; the floor area of a structure, or portion of the floor area, that is not enclosed by exterior walls shall be the area under the covering, roof, or floor that is supported by posts, columns, partial walls, or similar structural members that define the wall line. Excluded from the floor area are:

- Attic areas with head room less than seven feet.

"Story" means that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement or cellar is more than six feet above grade, such basement or cellar shall be considered a story.

# SOLUTIONS





4.5 ft of fill added to original grade

Structure is 45 feet tall

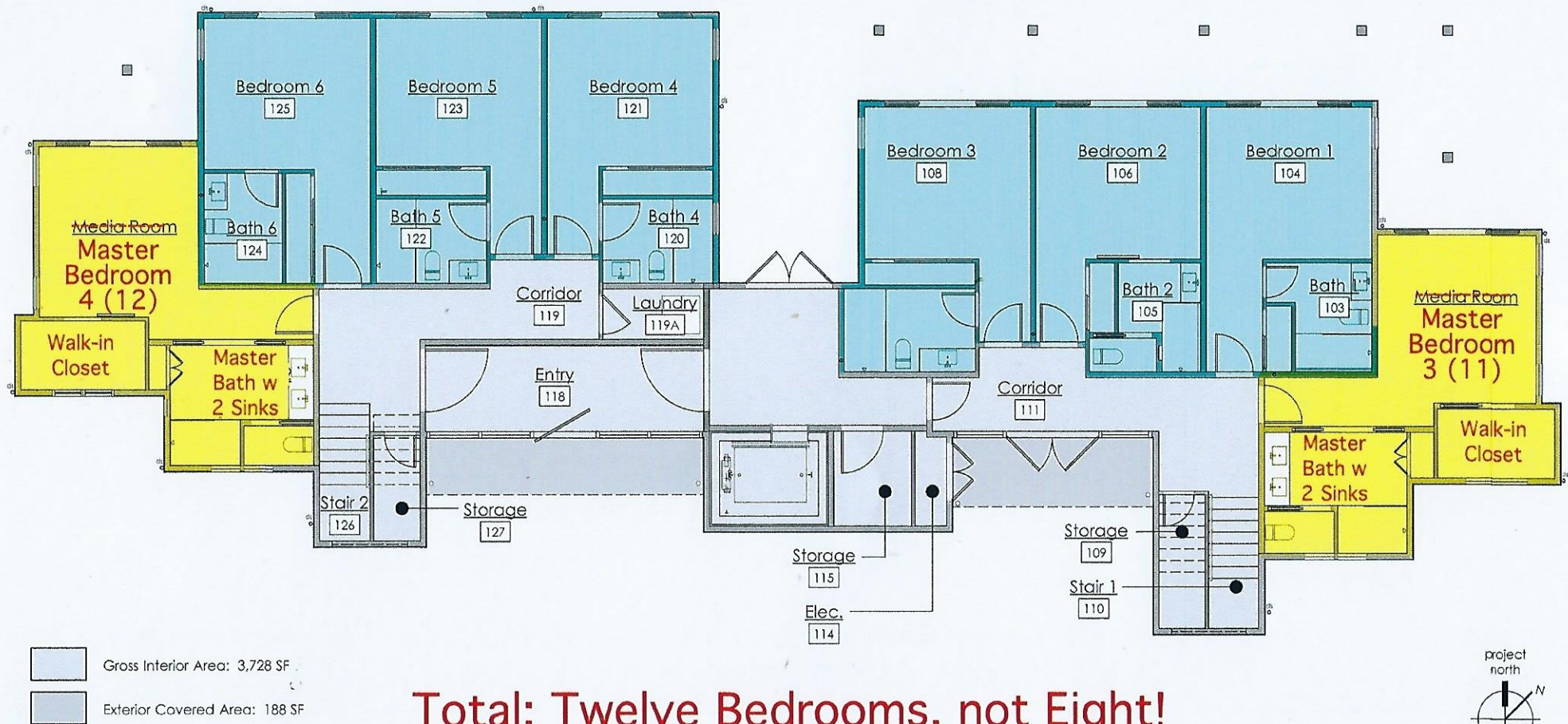
Total height above original grade: 49.5 ft

Hotel standards have been wrongfully applied to what got Exempted from SMA as a Single Family Home





## Two Media Rooms are Misrepresented - Actually Two Master Bedrooms with Walk-in Closets and Master Bath with 2 sinks



### First Floor Plan

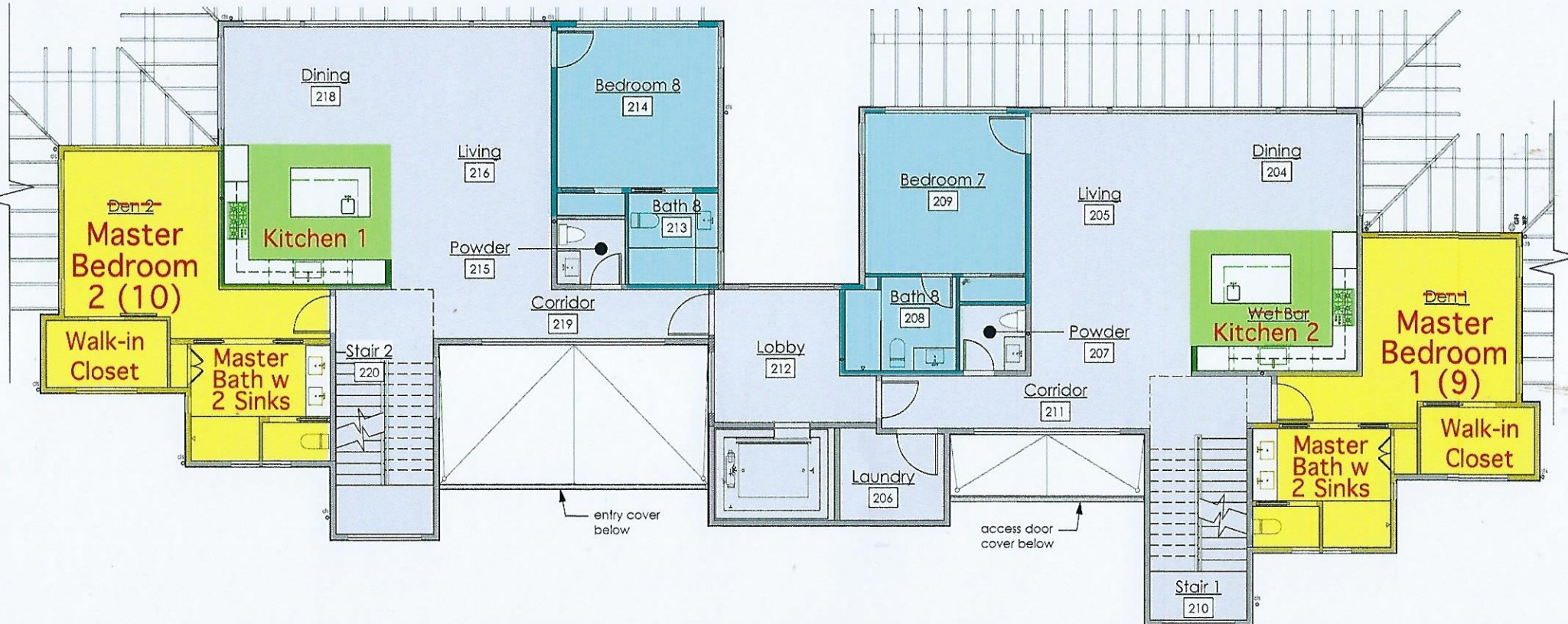
Napili Estate  
 5385 Lower Honoapiilani Road  
 Lahaina, Hawaii 96761  
 TMK (2)4-3-002:057  
 scale: 1/8" = 1'-0"  
 date: 03.30.19



JUDGE  
 STUDIO  
 architects



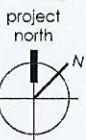
Two Dens are Misrepresented - Actually Two Master Bedrooms  
 Wet Bar is Misrepresented - Actually 2nd Full Kitchen



With two Full Kitchens, this is NOT a Single-Family Home  
 Wrongfully exempted from SMA as a Single Family Home

Second Floor Plan

Napili Estate  
 5385 Lower Honoapiilani Road  
 Lahaina, Hawaii 96761  
 TMK (2) 4-3-002:057  
 scale: 1/8" = 1'-0"  
 date: 03.30.19



JUDGE  
 STUDIO  
 architects



- Existing loopholes deny upfront community input and make citizens the only protection against permit fraud and environmental abuse.

| Inspections                               |        |                |              |          |      |   |  |   |  |
|-------------------------------------------|--------|----------------|--------------|----------|------|---|--|---|--|
| Inspection                                | Result | Completed Date | Completed By | Schedule | CORR |   |  | N |  |
|                                           |        |                |              |          | O    | C |  |   |  |
| There are no inspections for this permit. |        |                |              |          |      |   |  |   |  |

| Activities                 |          |       |     |      |                 |             |             |               |  |
|----------------------------|----------|-------|-----|------|-----------------|-------------|-------------|---------------|--|
| Description                | Assigned | Nodes |     | Dur. | Est. Completion | Target End  | Decision    | Decision Date |  |
|                            |          | Beg   | End |      |                 |             |             |               |  |
| INITIAL PERMIT APPL REVIEW | 9930     | 1     | 2   | 5    | 13-May-2000     | 13-May-2000 | A           | 11-May-2000   |  |
| PRELIMINARY APPROVAL       | 9930     | 3     | 4   | 15   | 24-May-2000     | 24-May-2000 | A<br>W/COND | 23-Jun-2000   |  |
| CONSTRUCTION PLAN APPROVAL | 0680     | 4     | 5   | 30   | ?               | ?           | ?           | ?             |  |
| Comment: SEE ROUTING.      |          |       |     |      |                 |             |             |               |  |
| FINAL PLAT REVIEW          | 9930     | 6     | 7   | 15   | 24-May-2000     | 24-May-2000 | A           | 10-Sep-2001   |  |
| FINAL REVIEW APPROVAL      | 9930     | 7     | 8   | 19   | 13-Jun-2000     | 13-Jun-2000 | A           | 08-Sep-2000   |  |

Existing Loopholes allow fraudulent plans to go unchecked.

Simple legislation can require Public Works and Planning to crosscheck permit applications and perform final inspections to avoid costly litigation.