

MICHAEL P. VICTORINO
Mayor
MICHELE CHOUTEAU MCLEAN, AICP
Director
JORDAN E. HART
Deputy Director



DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

December 8, 2021

Honorable Michael Victorino
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Michael P. Victorino 12/9/21
Mayor Date

For Transmittal to:

Honorable Michael J. Molina, Chair
Government Relations, Ethics and Transparency Committee
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

Dear Chair Molina,

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

Thank you for your December 2, 2021 letter asking for a status update on the permitting concerns relating to property at 5385 Lower Honoapiilani Road (TMK 4-3-002: 057).

Attached please find a letter to the property owner, dated December 2, 2021, detailing the Department of Planning's concerns about compliance with Special Management Area and zoning requirements, and providing the owner with seven days to respond.

If you have any questions or require additional information, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Michele McLean".

MICHELE MCLEAN, AICP
Planning Director

Attachment
xc: Moana Lutey, Corporation Counsel
MCM:atw
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COUNTY OF MAUI
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WAILUKU, MAUI, HAWAII 96793

December 2, 2021

Certified Mail: 7020 3160 0000 6801 2019

Napili Bay Beach House LLC
Attn: Greg Brown
P.O. Box 1060
Lahaina, Hawaii 96761

Dear Mr. Brown:

**SUBJECT: BUILDING PERMIT AND SPECIAL MANAGEMENT
AREA (SMA) EXEMPTION FOR 5385 LOWER
HONOAPIILANI ROAD, LAHAINA, HAWAII,
TMK (2) 4-3-002:057; (B 2020/0448, SM5 2019/0082)**

As you are aware, zoning and SMA restrictions relating to the above-referenced property have been of significant concern to the Department of Planning (Department) for several months, with numerous conversations and correspondence exchanged between the Department and your representatives. In a final attempt to resolve matters prior to the initiation of enforcement, this letter provides you with seven days to respond to concerns relating to the above-referenced approvals.

SM5 2019/0082

On April 10, 2019, the Department issued an SMA exemption for a new two-story single-family dwelling comprised of 7,483 square feet at 5385 Lower Honoapiilani Road.

Chapter 205A, Hawaii Revised Statutes, allows the exemption of "construction of a single-family residence that is less than seven thousand five hundred square feet of floor area...." from the requirement to obtain an SMA permit. The approved plans that accompanied the exemption clearly showed and stated a first floor gross area of 3,728 square feet, a second floor gross area of 3,567 square feet, a covered entry area of 100 square feet, and covered access doors of 88 square feet, totaling 7,483 square feet. These plans did not state nor clearly show

Napili Bay Beach House LLC
Attn: Greg Brown
December 2, 2021
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the additional floor area between the first and second floors that are apparently for equipment maintenance and access, with the Lahaina-side area accessed from Stair One being approximately seven feet high and comprised of approximately 370 feet. These plans also did not state nor clearly show the additional floor area of the elevator machine room on the roof next to the elevator shaft, which is approximately 100 square feet.

With the clear depiction of this approximately 470 square feet of floor area, the structure would not have qualified for a SMA exemption and would have required an SMA permit. These concerns were conveyed to your counsel via telephone conversations and meetings as well as via email dated July 14, 2021. If this excess square footage is not corrected, then the Department must rescind the SMA exemption and pursue enforcement, which could include issuing a Notice of Violation with the imposition of fines.

B 2020/0448

On October 1, 2019, the Department signed-off on the building permit for the subject single-family dwelling, after the SMA exemption was issued. The permit was issued by the Department of Public Works on May 19, 2020.

The property is zoned Napili Bay Civic Improvement District which, at the time, had a height limit of two stories; "story" is defined in Section 19.04.040, Maui County Code. The approval was granted because the two main floors each count as one story, and the stairwells and elevator shaft each count as one story. However, the plans were not clear enough to count the two areas described above – the area between the first and second floors with a height of approximately seven feet and the elevator machine room on the roof – as additional stories.

Upon further review and verification through inspections of the structure, it is clear that these each count as a story, making the structure four stories, which exceeds the number of stories allowed by the zoning and invalidates the Department's sign-off on the building permit. It should be noted that the Department's sign-off would also be invalidated if the SMA exemption is rescinded. If these additional stories and the square footage are not corrected, then the Department must rescind its sign-off of the building permit and pursue enforcement, which will include issuing a Notice of Warning and if not resolved, a Notice of Violation with the imposition of fines. The Department will request that the Department of Public Works revoke the building permit concurrent with the issuance of a Notice of Violation.

Please respond to this letter within seven days of its date with a description and timeline of how you will correct the square footage and stories of this structure. If you do not provide a sufficient and timely response, the Department will proceed as described above.

Napili Bay Beach House LLC
Attn: Greg Brown
December 2, 2021
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Please feel free to contact me if you have any questions or require additional information.

Sincerely,



MICHELE MCLEAN, AICP
Planning Director

xc: Mayor Michael P. Victorino
Moana Lutey, Corporation Counsel
Rowena Dagdag-Andaya, Public Works Director
Jordan Hart, Deputy Planning Director
James Buika, Lead Shoreline Planner
Melissa Tokushima, Zoning Inspector II
Renee Segundo, Supervising Building Plans Examiner
Jeffrey Ueoka, Counsel

MCM:atw

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