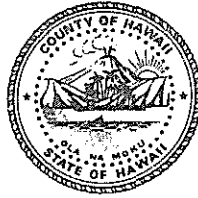


Harry Kim  
Mayor



## County of Hawai'i

### PLANNING COMMISSION

101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720-3043  
(808) 961-8288 • Fax (808) 961-8742

FEB 10 2005

Mr. Rod Imming  
75-346 Hualalai Road #B105  
Kailua-Kona, HI 96740

Dear Mr. Imming:

Special Management Area Use Permit Application (SMA 03-019)  
Request: 14-Unit Condominium Project and Related Improvements  
Applicant: Rod Imming  
Tax Map Key: 7-7-15:71 and 73

The Planning Commission at its duly held public hearing on January 21, 2005, voted to adopt the Hearing Officer's Report by Sandra Pechter Song, Esq., with modifications. Special Management Area (SMA) Use Permit No. 453 is hereby issued to allow the development of fourteen (14) condominium units within two 3-story buildings and a 2-story building, and related improvements. The property is located at the northwest corner of Kuakini Highway and Seaview Circle, Kona Seaview Lots Subdivision, Holualoa 4<sup>th</sup>, North Kona, Hawaii.

Attached is the adopted Hearings Officer's Report as modified by the Planning Commission.

This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Should you have any questions, please contact Norman Hayashi of the Planning Department at 961-8288.

Sincerely,

Fred Galdones, Chairman  
Planning Commission

Enclosure

cc/enc: Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
Planning Department - Kona  
Department of Land and Natural Resources/HPD-Kona  
Rodney Haraga, Director/DOT-Highways, Honolulu  
Ms. Alice Kawaha  
Mr. Robert Usagawa  
Plan Approval Section  
Francis L. Jung, Esq.  
Mr. Ralph L. Mesick  
Ivan Torigoe, Esq.  
Bobby Jean Leithead-Todd, Esq.

*Handwritten initials*  
066405

FEB 11 2005

BEFORE THE PLANNING COMMISSION

COUNTY OF HAWAII

In the Matter of the Application of )  
 ) SMA No. 453  
ROD IMMING )  
 ) FINDINGS OF FACT,  
For a Special Management Area Use Permit ) CONCLUSIONS OF LAW, AND  
to Allow the Development of Fourteen ) DECISION AND ORDER  
Condominium Units within Three Buildings, )  
and Related Improvements at Kona Seaview )  
Lots Subdivision, Holualoa 4<sup>th</sup>, North Kona, )  
Hawaii TMK: (3) 7-7-015:71 and 73. )  
\_\_\_\_\_ )

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND DECISION AND ORDER**

ROD IMMING ("Imming") filed an application for a Special Management Area Use Permit (originally referred to as SMA No. 03-019) to allow the development of fourteen condominium units within three buildings and related improvements at Kona Seaview Lots Subdivision, Holualoa 4<sup>th</sup>, North Kona, Hawaii, Tax Map Key: (3) 7-7-15: 71 and 73.

**FINDINGS OF FACT**

**Procedural Background**

1. This matter involves an application filed by Imming in December, 2003, for a Special Management Area Use Permit to allow the development of a condominium project, located on a 0.51 acre parcel of land situated at the northwest corner of Kuakini Highway and Seaview Circle, in the Kona Seaview Lots Subdivision, at Holualoa 4<sup>th</sup>, North Kona, Hawaii, designated by Tax Map Key No. (3) 7-7-015-071 and -073 (hereinafter, the "Development").

2. Imming is the owner-developer of the project.

3. On February 9, 2004, Mesick filed a petition to intervene in this proceeding.

Although Imming has objected to Mesick's standing, the Commission found that Mesick met the standing requirements under Rule 4-7 of the Planning Commission Rules of Practice and Procedure (hereinafter "Planning Commission Rules"), and admitted Mesick as a party to this proceeding on March 19, 2004.

4. This matter came on for contested case hearing before Sandra Pechter Song, (Hearing Officer appointed by the Planning Commission) on October 5, 2004, with Applicant, Rod Imming (hereinafter "Imming"), being represented by his counsel, Francis L. Jung, Esq. and with Imming present; the County of Hawaii Planning Department (hereinafter "Department") being represented by its counsel Bobby Jean Leithhead-Todd and with Norman Hayashi present on behalf of the Department; and Intervenor Ralph L. Mesick (hereinafter "Mesick") present and representing himself.

3. The Planning Commission reviewed the evidence presented in the Hearing Officer's report and the entire record in this proceeding on January 21, 2005, and by a five to zero vote approved the SMA Use Permit application.

#### Proposed Development

4. The Development consists of fourteen multi-family residential units situated in three buildings. Two buildings are planned to be three-stories in height, and one building is planned to be two-stories in height. All three buildings are designed to be less than 40 feet in height. Each of the units is planned to be two-bedroom, two bath residential units, with six units being approximately 1,171 square feet in size, and eight units ranging in size from 1,048 to 1070 square feet.

5. The total area to be graded for the Development is approximately 0.51 acre, with the total building area being approximately 15,520 square feet. TMK No: 7-7-015-071 is approximately 15,001 square feet in size, located on Seaview Circle, and TMK No: 7-7-015-073 is approximately 7,502 square feet in size, located adjacent to Parcel 71 on the corner of Seaview Circle and Kuakini Highway. Both parcels are presently vacant.

6. Eighteen off-street, covered parking spaces are proposed for the Development, with two of those spaces being compact spaces and one being a van-accessible space. The driveway connecting the Development to Seaview Circle will be designed and constructed in conformity with Chapter 22 of the Hawaii County Code and County Standard details R-37 and R-38.

7. Access to the Development site is proposed from Seaview Circle, a County maintained roadway that borders the west and south side of the Development. Seaview Circle, along the south side of the Development, consists of a 60-foot wide right-of-way, with approximately 22-foot wide pavement, without any improved shoulders. Seaview Circle along

the west side of the Development (proposed as the access point) consists of a 44-foot wide right-of-way, with 22-foot wide pavement, paved shoulders and swales.

8. Water is proposed to be provided to the Development through two, one-inch diameter water meters on Seaview Circle. A total of 50 equivalent units of water can be made available from the existing 8-inch and 6-inch waterlines within Seaview Circle to each of the two parcels of record.

9. Wastewater disposal for the Development is proposed by means of an aerobic on-site sewage treatment facility, with disposal tanks being installed six to eight feet below grade.

10. Electrical and telephone services are available to the Development site.

11. Police, fire and medical services are within a reasonable proximity to the Development site. Police services are available from the Kealakehe and Captain Cook stations, and fire protection is available from the Kailua-Kona, Kealakehe and Captain Cook stations. Kona Hospital is located approximately ten miles from the Development site.

12. The consolidation of TMK 7-7015:071 and 073 will be required to accommodate the Development.

#### Prior Development Plans

13. On April 30, 1990, Topliss filed a SMA Use Permit application for two, multi-story office buildings on the Development site. The Planning Commission denied the application on the ground that the development would have significant adverse effects and impacts on the existing highway system in the area of the development. On appeal, the Intermediate Court of Appeals reversed the Commission's decision. Topliss v. Planning Commission, 9 Haw. App. 377, 842 P.2d 648 (1993). The Court, however, remanded the case to the Commission to reconsider the application and determine whether the traffic generated by the development would or would not have a substantial adverse environmental or ecological effect on the coastal zone. If the traffic would not have such a substantial adverse effect, the Commission was ordered to approve the application without conditions relating to traffic.

14. There is was no evidence presented in the subject proceeding regarding any remand or reconsideration of the 1990 Topliss application by the Planning Commission.

### State and County Plans

15. The State land use designation for the Development site is Urban, the General Plan Land Use Pattern Allocation Guide (hereinafter "LUPAG") map designates the area for medium density urban use, and the Kona Regional Plan designates the area for Commercial Village use.

16. The County zoning designation for the Development site is Neighborhood Commercial (CN-7.5). Residential use is permitted within the Neighborhood Commercial zoned district.

17. The entire State of Hawaii lies within the Coastal Zone Management area, under the Coastal Zone Management Program, HRS Chapter 205A. The Coastal Zone Management Program is intended to guide and regulate public and private uses in the coastal zone area with respect to recreational resources, historic resources, public access to the shoreline, scenic and open space resources, coastal ecosystems, marine resources, economic uses, coastal hazards, managing development, public participation and beach access.

18. The Development site is situated within the Special Management Area (hereinafter "SMA"). The SMA is part of the Coastal Zone Management Program regulated by the County of Hawaii.

### SMA Use Permit Requirements

19. Commission Rule 9-11 C provides that a SMA Use Permit may only be granted if the Commission finds that:

1. The development will not have any substantial adverse environmental or ecological effect except as such adverse effect is minimized to the extent practicable and is clearly outweighed by public health, safety, or compelling public interest;
2. The development is consistent with the objectives and policies as provided by Chapter 205A, HRS, and the Special Management Area guidelines as contained herein; and
3. The development is consistent with the General Plan, Zoning Code and other applicable ordinances.

20. The objectives of HRS Chapter 205A are contained in HRS Section 205A-2. These are:

- (a) To provide coastal recreational opportunities accessible to the public;
- (b) To protect, preserve and, where desirable, restore natural and manmade historic and prehistoric resources that are significant in Hawaiian and American history and culture;
- (c) To protect, preserve and, where desirable, restore or improve the quality of coastal scenic and open space resources;
- (d) To protect valuable coastal ecosystems, including reefs, from disruption and minimize adverse impacts on all coastal ecosystems;
- (e) To provide public or private facilities and improvements important to the State's economy in suitable locations;
- (f) To reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, subsidence and pollution;
- (g) To improve the development review process, communications, and public participation in the management of coastal resources and hazards;
- (h) To stimulate public awareness, education and participation in coastal management;
- (I) To protect beaches for public use and recreation; and
- (j) To promote the protection, use and development of marine and coastal resources to assure their sustainability.

21. The policies of HRS Chapter 205A are contained in HRS Section 205A-2. These policies detail the methods of implementing each of the ten objectives of Chapter 205A.

22. The SMA guidelines for the review of all development proposed in the special management area, as contained in the Commission Rules and HRS Section 205A-26, require that all development shall be subject to reasonable terms and conditions set by the Planning Commission in order to ensure the following:

(a) Adequate access, by dedication or other means, to publicly owned or used beaches, recreation areas, and natural reserves is provided to the extent consistent with sound conservation principles;

(b) Adequate and properly located public recreation areas and wildlife preserves are reserved;

(c) Provisions are made for solid and liquid waste treatment, disposition, and management which will minimize adverse effects upon special management area resources; and

(d) Alterations to existing land forms and vegetation, except crops, and construction of structures shall cause minimum adverse effect to water resources and scenic and recreational amenities and minimum danger of floods, wind damage, storm surge, landslides, erosion, siltation, or failure in the event of earthquake.

23. The SMA guidelines also require that the Commission, where reasonable, should seek to minimize the following:

(a) Dredging, filling or otherwise altering any bay, estuary, salt marsh, river mouth, slough or lagoon;

(b) Any development which would reduce the size of any beach or other area usable for public recreation;

(c) Any development which would reduce or impose restrictions upon public access to tidal and submerged lands, beaches, portions of rivers and streams within the special management area and the mean high tide line where there is no beach;

(d) Any development which would substantially interfere with or detract from the line of sight toward the sea from the state highway nearest the coast; and

(e) Any development which would adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, or potential or existing agricultural uses of land.

## Environmental and Ecological Effects

### Scenic Vistas and Viewplanes

24. The properties immediately adjacent to the Development have been developed with apartments and condominiums. Single-family residences are located to the west of the Development site.

25. The shoreline, which is approximately 4,300 feet makai of the Development, cannot be seen from the Development.

26. The Development will not substantially affect or interfere with scenic vistas or viewplanes of nearby residents; nor, will it have an adverse impact on coastal recreational or visual resources to the shoreline and coastal ecosystems due to all of the existing buildings between the shoreline and the Development, and surrounding the Development.

### Air Quality and Noise and Structural Integrity

27. Air quality and noise in the area of the Development is most effected by emissions from natural and vehicular sources.

28. Construction of the improvements proposed by the Development, particularly during grubbing and grading, will be a source of short-term air and noise quality impacts.

29. Imming proposes to mitigate the short term impacts of construction dust and noise by regular watering of the Development site and by limiting the equipment operation to daytime hours.

30. There is no evidence to establish that there is any substantial adverse long-term air and noise quality impacts from a fourteen-unit multi-family residential complex.

31. Any short-term air and noise impacts caused by the Development during construction can be mitigated utilizing best management practices, and, thus, will not result in substantial adverse short term air and noise quality impacts.

### Drainage, Earthwork and Structural Integrity

32. Water and drainage runoff will be generated by the improvements proposed by the Development; however, a drainage system disposing of all runoff on-site, constructed in accordance with a drainage study prepared by a licensed civil engineer, will mitigate the impacts of drainage runoff.



33. Erosion may occur because of the grading and grubbing earthwork, but the impacts of such construction activity can be mitigated by submitting plans and obtaining an NPDES permit from the Department of Health, to control water pollution caused by construction activity. Performing all earthwork and grading in conformance with the County of Hawaii erosion and sediment control standards, under Chapter 10 of the Hawaii County Code, will also mitigate the impacts of soil erosion.

34. Mesick claims that in 1992, the vibration from the excavation during the construction of a neighboring building caused structural damage to the underground injection system in his building, the Kona Sunset Villas condominium, which is adjacent to the Development. Mesick is not an engineer, and acknowledges that the Kona Sunset Villas could not prove that the damage to its underground injection system was caused by the construction.

35. There is no evidence to establish that the construction of the Development will cause any substantial adverse structural damage to the adjoining or neighboring buildings.

#### Traffic

36. Although eighteen off-street parking spaces are being provided by the Development, the Development may have an impact upon the available on-street parking in the vicinity.

37. Seaview Circle, fronting the Development, is a public County road. The portion of Seaview Circle on the south side of the Development has a pavement width of 35 feet within a 60-foot wide right of way. There is no improved shoulder within this portion of the Seaview Circle. The portion of Seaview Circle on the west side of the Development has a pavement width of 22 feet within a 44-foot right of way. This portion of Seaview Circle has a paved shoulder and swale.

38. The County Department of Public Works (hereinafter "DPW") recommends that Imming provide full improvements to the entire frontage along Seaview Circle consisting of, but not limited to concrete curbs, gutters, and sidewalk, pavement widening, drainage improvements, including drywell and catch basin, and any relocation of utilities, meeting the approval of the DPW. DPW does not, however, specify the specific improvements to Seaview Circle that actually need to be made.

39. There is no evidence that the on-street parking that may be generated by the Development has any impact on the coastal zone's environment or ecology. Nor, is there any evidence that the use of Seaview Circle by the proposed Development has any impact upon the coastal zone's environment or ecology.

40. There is not a reasonable relationship or nexus between the improvements requested by the Department of Public Works for Seaview Circle and the interest protected by the SMA Law.

#### Valued Resources

41. The Development site has previously been grubbed and graded. Therefore, no formal archaeological survey, botanical survey and/or faunal study was submitted for this Development.

42. There are no known identified trails going through the Development site; nor, is the Development near the shoreline. Accordingly, the Development will not adversely impact fishing or coastal access.

43. Vegetation in the area of the Development consists primarily of introduced exotics, of various grasses and shrubs, including guinea grass and lantana. Based on the vegetation in the area and the fact that the Development site was previously graded, it is not likely that the Development will adversely impact any rare or endangered plant species.

44. Because the surrounding properties have been developed with structures, it is not likely there are any rare or endangered animal species on the Development site. Thus, the Development will not adversely impact any rare or endangered animal life on the Development site.

#### Valuable Cultural, Historical and Natural Resources Found in the Area

45. The Department of Land and Natural Resources, Historic Preservation Division (hereinafter "DLNR-HPD"), has opined that there are no historic properties present on the Development site because previous grubbing and grading has altered the land. Thus, DLNR-HPD believes that no historic properties will be affected by the Development.

46. There is no evidence of any traditional and customary Native Hawaiian rights being practiced on the Development site; nor, the existence of any known valued cultural, historical or native resources in the area.

47. If any unidentified historical sites or remains are encountered during construction, adverse impacts of such discovery can be mitigated by requiring as a condition of approval that Imming be required to stop construction, notify DLNR-HPD, and proceed with construction only upon receipt of an archaeological clearance from DLNR-HPD.

Consistency with SMA Objectives, Policies and Guidelines

48. The Development does not impact coastal recreational resources, historic resources, scenic and open space resources, coastal ecosystems, marine resources or coastal hazards. Public participation was allowed in this proceeding, and Mesick, as a neighboring property owner was granted intervention as a party to the proceeding. Conditions can be imposed to ensure that provisions are made for solid and liquid waste treatment, soil and sediment control, and reasonable access. As such, the Development is consistent with the SMA objectives, policies and guidelines.

Consistency with County General Plan and Zoning and Other County Ordinances

49. The County General Plan LUPAG map designation for the Development is Medium Density Urban, which allows village and neighborhood, commercial and residential and related uses. This designation allows for up to 35 units per acre.

50. The zoning for the Development is Neighborhood Commercial (CN-7.5). Multiple-family dwellings are permitted in the CN-zoned district provided that the project meets the maximum density of 1,260 square feet of land per rentable unit or dwelling unit. The Development meets this requirement.

51. The minimum parking requirement for a multiple-family residential project is 1¼ stalls per unit. Based on 14 units proposed by the Development, a minimum of 18 parking stalls is required. The Development meets the parking requirements of the Zoning Code.

52. The driveway for the Development will meet the requirements of Chapter 22 of the Hawaii County Code and the County engineering design standards.

53. The Development complements the goals, policies and standards of the Land Use and Housing (Multiple Residential) elements of the County General Plan, in that the proposed Development will add to the housing inventory for the district of North Kona. It will be in harmony with the character of the surrounding neighborhood and result in an intensity of land

utilization no higher than that permitted or as otherwise specified for the district in which the proposed Development occurs.

54. Although Although Messick claims that units within the development will not be affordable for the local market, the zoning of the subject property preceded affordable housing requirements. Hence there are no affordable housing requirements on this project. The SMA law does not authorize adding a new affordable housing condition to property already zoned and without this requirement.

### **CONCLUSIONS OF LAW**

1. The Development will not have any substantial adverse environmental or ecological effect, including any potential cumulative impacts.

2. The Development is consistent with the objectives, policies and special management area guidelines of Chapter 205A and the Planning Commission Rules.

3. The Development is consistent with the County General Plan, Zoning and other County regulations.

### **DECISION AND ORDER**

Based upon the preceding findings of fact and conclusion of law, the Planning Commission hereby approves the Special Management Area Use Permit application filed by Rod Imming to allow the development of fourteen condominium units within three buildings and related improvements at Kona Seaview Lots Subdivision, Holualoa 4<sup>th</sup>, North Kona, Hawaii TMK: (3) 7-7-15:71 and 73, subject to the following conditions:

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.

2. Construction of the proposed development shall be completed within five (5) years from the date of this permit. Prior to construction, the applicant shall secure Final Plan Approval from the Planning Director in accordance with Sections 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code. Plans shall identify all existing and proposed structures, landscaping, paved driveway access and parking stalls associated with the proposed development. Landscaping shall be provided as required by Planning Department Rule 17 (Landscaping Requirements).

3. Parcels 71 and 73 shall be consolidated prior to receipt of Final Plan Approval.

4. Access to Seaview Circle shall be on the west frontage only. The access shall include the provision of adequate sight distances, and meet with the approval of the Department of Public Works. The driveway shall conform to Chapter 22, Streets and Sidewalks, of the Hawaii County Code, and County Standard Details R-37 and R-38.

5. A drainage study shall be prepared and submitted to the Department of Public Works for review and approval prior to submittal of plans for Plan Approval review. Drainage improvements, if required, shall be constructed, meeting with the approval of the Department of Public Works prior to the issuance of a Certificate of Occupancy.

6. Applicant shall provide the Kona Sunset Villas AOA with written notice of any excavation or earthwork on the project, to be mailed or hand-delivered no less than two weeks before the start of the excavation or earthwork.”

7. During construction, measures shall be taken to minimize the potential of fugitive dust, runoff sedimentation and damage to the surrounding complexes. Such measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawaii.

8. A wastewater treatment system shall be installed, meeting the standards and requirements of the State Department of Health, prior to the issuance of a Certificate of Occupancy.

9. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of a Certificate of Occupancy.

10. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigation measures have been taken.

11. An Emergency Response Plan shall be submitted to the Hawaii County Civil Defense Agency for review and approval prior to the issuance of a Certificate of Occupancy.

12. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of this permit. The report shall include, but not be limited to, the status of the development and compliance with the conditions of approval. This condition shall remain in effect until all of the conditions of approval have been satisfied and the Planning Director acknowledges that further reports are not required.

13. All applicable laws, rules, regulations and requirements of other affected agencies, including the Department of Water Supply, relative to the provision of potable water, shall be followed.


14. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following conditions:

A. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.

B. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.

C. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

DATED: Hilo, Hawaii, FEB 10 2005

  
FRED GALDONES, CHAIRMAN  
PLANNING COMMISSION