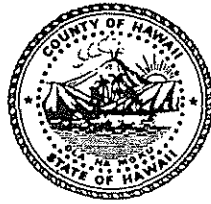


Harry Kim
Mayor



Geraldine M. Giffin
Chairperson

County of Hawaii

PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

CERTIFIED MAIL

7000 0600 0024 2903 6847

April 11, 2002

Roy A. Vitousek, III, Esq.
Cades Schutte Fleming & Wright
75-170 Hualalai Road, Suite B-303
Kailua-Kona, HI 96740

Dear Mr. Vitousek:

Special Permit (SPP 00-041)
Applicant: RT'S Service, Inc.
Request: Establish an Office and Secured Storage Area
Tax Map Key: 6-4-17:Portion of 64

Attached is a certified copy of the Findings of Fact, Conclusions of Law, and Decision and Order adopted by the Planning Commission for the subject property.

Should you have questions regarding the above, please contact Alice Kawaha at 961-8288.

Sincerely,

Geraldine M. Giffin, Presiding Officer
Planning Commission

Att.

xc w/att: West Hawaii Office
Mr. Gregory R. Mooers
Mrs. Janet Gaylord (Certified Mail - 7000 0600 0024 2903 6830)
Thomas Yeh, Esq. (Certified Mail - 7000 0600 0024 2903 6823)
John and Mona Wood (Certified Mail - 7000 0600 0024 2903 6816)

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APR 12 2002

BEFORE THE PLANNING COMMISSION
OF THE COUNTY OF HAWAII

I hereby certify that this is a true copy from the
records of the ^{Planning Commission} Board of Appeals, County of Hawaii

Sharon M. Kame
Custodian of Records, ^{Planning Commission} Board of Appeals,
County of Hawaii

Date: APR 12 2002

In the Matter of the Special Permit of
RT'S SERVICE, INC.

SPP 00-041

For the development of an office and a
secure storage area on a portion of the
Kauakea Subdivision, Puukapu Homesteads,
South Kohala, Hawai'i, TMK (3) 6-4-17:64

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND
APPROVAL OF SPECIAL PERMIT
APPLICATION SPP NO. 00-041**

Hearing: November 30, 2001
Time: 9:00 a.m.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW AND
APPROVAL OF SPECIAL PERMIT APPLICATION SPP NO. 00-041**

APPLICANT RT'S SERVICE, INC. ("RT's" or "Applicant"), is seeking a special permit under Chapter 205 of the Hawai'i Revised Statutes ("HRS") and Rule 6 of the Hawai'i County Planning Commission Rules of Practice and Procedure ("HCPC Rules"), for the development of an office and a secure storage area on a portion of the Kauakea Subdivision, Puukapu Homesteads, South Kohala, Hawai'i, TMK (3) 6-4-17:64 ("RT's application").

The Hawai'i County Planning Commission ("Planning Commission" or "HCPC"), having reviewed the respective pleadings and exhibits submitted in this matter; having conducted a site inspection; and having heard and considered the arguments of the parties, makes the following findings of fact and conclusions of law.

RT's Proposed Findings of Fact, Conclusions of Law and Approval of Special Permit Application SPP No. 00-41, submitted to the HCPC on November 16, 2001, has been considered by this Planning Commission and is hereby adopted except to the extent that the proposed Findings of Fact of RT's at ¶'s 48, 65, 77, 84, 120, 121, 122, 132, 133, 137, 146, 153, and 164, have been rejected by the Planning Commission and replaced by the present findings, and the proposed conditions of Approval of RT's at ¶'s 2, 3, 4, 5 and 9, have also been rejected by the Planning Commission and replaced by the present Conditions of Approval.

I. FINDINGS OF FACT

The Parties

Applicant RT's Service, Inc.

1. Applicant RT's is a Hawai'i corporation. RT's is a family corporation with Arte McCollough serving as its president, and David McCollough serving as its vice president. RT's

BEFORE THE PLANNING COMMISSION

OF THE COUNTY OF HAWAI'I

In the Matter of the Special Permit of

RT'S SERVICE, INC.

For the development of an office and a secure storage area on a portion of the Kauakea Subdivision, Puukapu Homesteads, South Kohala, Hawai'i, TMK (3) 6-4-17:64

SPP 00-041

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND
APPROVAL OF SPECIAL PERMIT
APPLICATION SPP NO. 00-041**

Hearing: November 30, 2001

Time: 9:00 a.m.

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I. FINDINGS OF FACT

The Parties

Applicant RT's Service, Inc.

1. Applicant RT's is a Hawai'i corporation. RT's is a family corporation with Arte McCollough serving as its president, and David McCollough serving as its vice president. RT's

has three divisions: an investigative and collection agency (RT's Service); a towing and service division (Tow Guys); and a parking business (Big Island Parking).

2. The investigative and collection agency, RT's Service, provides collection, investigative, process service, and collateral recovery (repossession) service throughout the mainland, Hawai'i, and Guam. Major clients are mainland banks, financial institutions, credit corps., local banks, credit unions, and attorneys.

3. Tow Guys is a service business that provides transportation needs and emergency roadside assistance. This division services vehicle owners in distress with a wide variety of services such as lockout assistance, jump starts, fuel, tire-changing, duplicate keys and towing to repair facilities. Repairs are not carried out by Tow Guys or RT's at its base yard.

4. Big Island Parking provides short term parking for repossessed vehicles and damaged vehicles, awaiting transport to Oahu or to maintenance and repair facilities on the Island of Hawai'i.

5. RT's has been in continuous operation in the Waimea area since 1984. Through its three subsidiaries, RT's is providing employment to 10 employees State wide.

6. The property that RT's is applying for a special permit on, TMK (3) 6-4-17:64 (the "**Property**"), is owned in fee by David and Lisa McCollough, husband and wife. David McCollough's home is located on the subject Property, along with a dog kennel, fenced paddocks, a barn, and a mobile modular office building currently used for office space by RT's.

7. The Property was purchased by David and Lisa McCollough from the Miranda family in 1998. Mr. Melvin Miranda operated a trucking business on the subject Property under Special Permit No. 695 issued September 19, 1989. The fact that Mr. Miranda's business operations were allowed on the subject Property was a major factor in David McCollough's decision to purchase the Property.

8. RT's is represented by Roy A. Vitousek III of Cades Schutte Fleming & Wright A Limited Liability Law Company.

Intervenors Thomas W. Wilson and Michelle Noe Noe Wong Wilson

9. Intervenors Thomas W. Wilson and Michelle Noe Noe Wong Wilson (the "**Wilson's**") filed a petition for standing in the contested case hearing on RT's application for SPP 00-041 on September 26, 2000. The Planning Commission considered the Wilsons' petition in a hearing held on November 30, 2000, and voted to admit the Wilsons as a party to the proceeding.

10. The Wilsons reside in Hilo, Hawai'i, and own land in the same subdivision (the Kauakea Subdivision) as the subject Property.

11. The Wilsons allege that they are, and will be, adversely affected by RT's current and proposed activities on the subject Property. Specifically, the Wilsons allege that dust, noise, and traffic into and out of the Property, caused by RT's use of the Property, will drive down the value, and disrupt the Wilsons' enjoyment of their property.

12. The Wilsons' also allege that the visual impact of RT's use of its Property does and will drive down the value, and disrupt the Wilsons' enjoyment of their property.

13. The Wilsons presently use their land in the Kauakea Subdivision to raise cattle. The Wilsons have no home, or residential structure built on their land in the Kauakea Subdivision. The Wilsons have testified that they desire to build a home on and move to their land in the Kauakea Subdivision at some point in the future.

14. The Wilsons are represented by their attorney, Thomas L.H. Yeh of Tsukazaki Yeh & Moore.

Intervenors Robert and Janet Gaylord

15. Intervenors Robert and Janet Gaylord filed a petition for standing in the contested case hearing on RT's application for SPP 00-041 on September 26, 2000. The Planning Commission considered the Gaylords' petition in a hearing held on November 30, 2000, and voted to admit the Gaylords as a party to the proceeding.

16. Although noticed of the hearings subsequent to November 30, 2000 on RT's Application for SPP 00-041, Janet Gaylord has not appeared at any of the noticed hearings.

17. By letter dated April 18, 2001, Janet Gaylord expressed her continued support of the Wilsons' position in the contested case hearing on RT's application for SPP 00-041, by the same letter Janet Gaylord also expressed her continued opposition to RT's application for SPP 00-041.

Intervenors John and Mona Wood

18. Intervenors John and Mona Wood filed a petition for standing in the contested case hearing on RT's application for SPP 00-041 on October 4, 2000. The Planning Commission considered the Woods' petition in a hearing held on November 30, 2000, and voted to admit the Woods as a party to the proceeding.

19. By letter dated June 1, 2001, John and Mona Lisa Wood, withdrew themselves from the contested case hearing concerning RT's application for SPP 00-041.

The County of Hawai'i Planning Department

20. The County of Hawai'i Planning Department ("**Planning Department**") is a department of the County of Hawai'i government and is a party to this contested case hearing pursuant to HCPC Rule 4-7(a).

21. The Planning Department is represented by the Planning Director Christopher Yuen, and by Deputy Corporation Counsel Patricia O'Toole.

Description of the Property and Surrounding Area

22. The Property is located in the Kauakea Subdivision, along the west side of Kauakea Street and approximately 380 feet north of its intersection with Mamalahoa Highway, Puukapu Homesteads 2nd Series, North Kohala, Hawai'i, TMK 6-4-17: Portion of 64.

23. The Property is roughly rectangular in shape and is approximately 5.0063 acres in size. The subject Property is one of the five, 5+ acre agricultural lots in the Kauakea Subdivision.

24. The Property is currently improved with David McCollough's homesite - a single family dwelling, fenced paddocks, a dog kennel, a barn, and a mobile modular office building used for office space by RT's.

25. The remainder of the Property is open pasture land.

26. The area on the Property where RT's proposes to conduct the activity requiring the special permit (the "**Project Site**"), consists of roughly 21,400 square feet, or about a half acre of the five acre Property.

27. The Project Site is situated within the eastern portion of the Property.

28. The soil on the Property consists of well-drained, very fine sandy loams that formed in volcanic ash. Permeability is moderately rapid, runoff is slow and the erosion hazard is slight.

29. Adjacent lands to the north and south of the Property are zoned Agriculture 5-acre (A-5a); lands to the east are zoned A-40a; and to the west is the Nani Waimea Subdivision, zoned A-1a, but containing sixty 8,900 square foot lots.

30. The nearest structures to the Project Site are homes in the Nani Waimea subdivision to the west.

31. The property immediately south of the subject Property in the Kauakea Subdivision is owned by Mr. Richard "Ricky" Kamimura. The property immediately north of the subject Property in the Kauakea Subdivision is owned by Mrs. Gaylord.

32. The property immediately north of Mrs. Gaylord's property in the Kauakea Subdivision is owned by the Wilsons.

33. RT's has planted an ironwood tree hedge along Kauakea Street behind the modular office structure on the east side of the Property.

34. RT's has also planted a hibiscus hedge in the fence line separating the house from the barn storage area on the north side of the proposed storage area.

35. On the west side of the Property facing Nani Waimea Subdivision there is a mock olive hedge.

7-01096

36. The south side of the Property has a 25 foot high hill/berm that makes the entire parcel invisible from Mamalahoa Highway but for a top portion of David McCollough's house.

37. There is no evidence of any valued cultural, historical, or natural resources on the Project Site or the Property.

38. An archaeological study was not conducted. However, due to former and existing agricultural activities and the development of a home site on the Property and more specifically the Project Site, significant archaeological sites are not anticipated to be located on the Project Site or the Property.

39. Further, for the same reason, there is no evidence that endangered or threatened candidate species of flora or fauna are located within the Project Site or the Property.

Land Use Designation

40. The Property is in the State land use "Agricultural" district.

41. The General Plan Land Use Pattern Allocation Guide ("LUPAG") Map designates the Property as "Extensive Agriculture."

42. The current County Zoning designation for the Property is Agriculture 5-acre (A-5a).

43. The Agricultural Lands of Importance to the State of Hawai'i ("ALISH") Map identifies the Property as "Prime" agricultural lands

44. The subject Property is not within the Special Management Area of the County of Hawai'i as such term is defined under HRS Chapter 205A.

45. Land use within the Property is not defined or classified by the Waimea Design Plan.

46. There are no known drainage channels within the Property and the area is designated "X" or outside the 500-year flood plain by the FIRM maps. Thus RT's proposed use would not block any known drainage channels.

Description of the Proposed Project

47. On or about August 31, 2000, RT's submitted an application for a special permit to establish an office and secured storage area on a portion of the Property.

48. RT's operations on the Project Site would utilize a mobile/modular office that will house the three members of the administrative staff for RT's various businesses. RT's would utilize the existing barn structure on the Property for RT's vehicles and towing equipment, and a secured storage area in the Project Site for short-term parking of damaged or repossessed vehicles awaiting transport to Oahu or to repair facilities on the Island of Hawai'i.

49. The nature of RT's business is such that it does not generate substantial customer traffic to the Property.

50. The clients for the investigative and collection service are banks and other financial institutions mainly on the mainland, that have only written or phone contacts with RT's.

51. The normal area serviced by RT's towing division (Tow Guys) is all of Waimea, and North and South Kohala, down the Hamakua Coast to Ka'awali'i Gulch, down the Kona Coast to the area of the Hilton on Kaahumanu Highway, and down the upper road to Kona to the Pu'u Wa'awa'a area.

52. Little customer traffic is generated by the towing division that goes to the customer to provide roadside assistance or towing services.

53. Any vehicles that may be brought to the Project Site are only on a short-term basis, awaiting instructions to tow the vehicles to a repair facility.

54. The parking business (Big Island Parking) is for the short-term parking of repossessed vehicles that are awaiting shipment to Oahu or other destinations as determined by the legal owners. Little customer traffic is generated by this aspect of RT's business either.

55. Normal business hours of operation for RT's are from 6:30 a.m. to 4:30 p.m., Monday through Friday, although emergency roadside assistance is provided off-site on a continuous basis.

56. The operation of RT's business on the Property will provide jobs for 5 people in the Waimea area and an additional 5 employees of RT's various businesses State wide.

57. In testimony during the contested case proceedings, the Applicant stated that their emergency response/towing operations receive an average of about 7 to 8 calls per day or roughly 2,500 calls per year.

58. Considering the overall operations of the Applicant, the Planning Commission and Planning Director do not anticipate that the proposed uses will create an excessive amount of traffic to the subject Property since a significant percentage of these calls are given to tow drivers that are already on the road.

59. Furthermore, the great majority of towed vehicles are not delivered to the subject Property. These towed vehicles are typically taken directly to repair shops. The secure storage area will primarily accommodate repossessed vehicles and those towed vehicles awaiting towing instructions to a repair shop.

60. The Project Site which entails the proposed office and secure storage area will be restricted to a 21,400 square-foot portion or 1/10 of the roughly 5-acre parcel.

61. Since the roughly half-acre Project Site also includes the existing farm dwelling and driveway, the Applicant estimates that the land area to be actually used for office and secure storage is closer to 13,500 square feet.

62. The Project Site is situated approximately 30 feet from Kauakea Street and a minimum of 50 feet to the nearest adjoining properties.

63. Since the existing farm dwelling and driveway is also included with the Project Site, the office and secure storage area will occur at least 110 feet from the nearest adjoining property.

64. RT's has planted an ironwood tree hedge along Kauakea Street behind the modular office structure on the east side of the Property. RT's has also planted a hibiscus hedge in the fence line separating the house from the barn storage area on the north side of the proposed storage area. On the west side of the Property facing Nani Waimea Subdivision, there is a mock olive hedge that RT's will supplement with additional plantings. A mock olive hedge will be planted on the west side of the barn/storage area to shield it from view from the neighboring properties. The south side of the Property has a 25 foot high hill/berm that makes the entire parcel invisible from Mamalahoa Highway, but for a top portion of David McCollough's house.

65. The balance of the Property, some four and a half acres, will remain available for agricultural uses.

66. Access to the Property is from Mamalahoa Highway via Kauakea Street, a paved 16 foot wide pavement within a 50 foot wide right-of-way.

67. Water is provided by the Department of Water Supply's system.

68. Police and Fire services are available from the Waimea Police and Fire Stations approximately 3 miles away from the Property.

69. Sewage disposal is by cesspool.

70. All essential utilities and services are available to the Property, including phone and electrical service.

The Zoning History of and Activity Conducted on the Property

71. Ordinance No. 889 was enacted by the County of Hawai'i County Council ("**County Council**") in 1983. Ordinance No. 889 amended the Zoning Code as codified in the Hawai'i County Code Ch. 25 by rezoning the Kauakea Subdivision from A40a to A5a. The County Council's approval of the zoning change was subject to a number of conditions, including Condition (H), which states:

(H) restrictive deed covenants for each lot shall be recorded with the Bureau of Conveyances together with any recordation of final subdivision plat maps. The covenants shall include a mandatory agricultural use provision for each lot as previously defined in Condition C. The covenants shall require all dwellings to meet the definition of farm dwelling below. Furthermore the covenant shall restrict the area devoted to all dwellings to a maximum of one-half acre per lot. "Farm dwelling" as used herein means a single-family dwelling located on and in connection with a farm or where agricultural activity provides income to the

family occupying the dwelling. The remaining portion of the lot shall be used for agricultural purposes only. The restrictive covenants contained herein shall run with the land and shall be incorporated into any deed, lease, agreement of sale, mortgage, or other instrument of conveyance executed for the subject property(ies);

72. On September 21, 1984, after the passage of Ordinance No. 889, and pursuant to the requirement of Condition (H) of Ordinance No. 889, the then developer of the Property submitted a Declaration of Covenants, Conditions, and Restrictions on Agricultural Lands ("Property CC&R") at the Bureau of Conveyances of the State of Hawai'i, in Liber 18159, Page 611.

73. In or about 1985 Mr. Melvin Miranda began a trucking and hauling operation on the Property.

74. In or about 1989 Mr. Melvin Miranda applied to the Planning Commission for a special permit to conduct his hauling and trucking operation on the Property.

75. Mr. Miranda's application for special permit was opposed by the Planning Department due to its interpretation that Ordinance No. 889 prohibited the use requested by Mr. Miranda. Although opposed by the Planning Department and others in the Waimea community, the Planning Commission, on September 19, 1989, granted Mr. Miranda a two year special permit to operate his trucking business on the subject Property under Special Permit No. 695.

76. Mr. Miranda discontinued his trucking and hauling operation on the Property after the Planning Department on September 17, 1990, issued an enforcement letter requiring Mr. Miranda to immediately cease his operations under Special Permit No. 695 due to Mr. Miranda's non compliance with the permit's conditions.

The Application Process

77. In or about mid 1998 RT's decided that it needed a property in the South Kohala area from which RT's could conduct its various business operations.

78. RT's investigated purchasing other properties in and around the Waimea, Hawai'i area from which RT's could conduct its various activities. Due to zoning and use restrictions throughout the Waimea area RT's could not find a suitable location from which to conduct its operation.

79. RT's testified that they have investigated the availability and feasibility of locating the proposed uses to Industrial-zoned areas within both the Waimea and Kawaihae areas.

80. While Waimea area lands owned by Parker Ranch in the vicinity of Gary's Automotive are zoned for Industrial uses, Parker Ranch has disclosed that they are not able to proceed with the development of their industrial subdivision until the market conditions improve.

81. Certain lands within the Kawaihae area that are owned by the Department of Hawaiian Home Lands are also zoned for industrial uses, but leasing of these lands are dependant upon its subdivision into appropriately-sized parcels.

82. The Department of Hawaiian Home Lands has indicated that their inability to subdivide these lands into smaller parcels is due to the unavailability of additional water commitments from the County of Hawai'i.

83. On or about November 30, 1998, David and Lisa McCollough purchased the Property.

84. The Property was purchased by David and Lisa McCollough from the Miranda family. The fact that Mr. Miranda's business operations on the Property were granted a special permit by the Planning Commission was a major factor in David McCollough's decision to purchase the Property.

85. The Miranda family, as owners of the Property previous to the McColloughs, had left the Property in a general state of disrepair. At the time of the McCollough's purchase, the Property contained rusted trucks, abandoned fuel tankers, tractor parts, tack sheds and overgrown vegetation.

86. In the process of preparing the Property for RT's operations, RT's removed the rusting trucks, abandoned fuel tankers, tack sheds and landscaped the entire Property.

87. RT's hired Gregory R. Mooers to apply to the Planning Commission for a special permit to allow RT's use of the Property.

88. On August 31, 2000, the present special permit application SPP 00-041 ("**RT's application**") was submitted.

89. The Wilsons filed to intervene in the special permit proceedings on September 26, 2000. The Wilsons' in their Petition for Standing stated *inter alia* that both the Wilsons' and RT's properties are "governed by the [same] Declaration of Covenants, Conditions and Restrictions" and thus those covenants gave the Wilsons standing as an interested party.

90. The HCPC granted the Wilsons' Petition for Standing on October 3, 2000 and thus the special permit proceedings became a contested case hearing under HCPC Rule 4.

91. On or about December 26, 2000, pursuant to HCPC Rule 3, the Wilsons' filed with the Planning Commission a Petition for Declaratory Ruling as to the applicability of Hawai'i County Ordinance No. 889 and whether Ordinance No. 889 prevented the Commission from granting a special permit to RT's (the "**Wilsons' Petition**") for SPP 00-041. In their Petition, the Wilsons contended that the phrase "agricultural purposes only" (emphasis added) restricted the use of all lands within the Kauakea Subdivision to agricultural use only.

92. On January 19, 2001 the HCPC decided to hear the Wilsons' Petition as a preliminary matter in the HCPC's consideration of RT's application for SPP 00-041. The HCPC scheduled a hearing concerning the issues raised by the Wilsons' Petition on March 2, 2001.

93. The only issues considered in this March 2, 2001 hearing before the HCPC was the Wilsons' contention that Ordinance No. 889 restricted the use of all lands within the Kauakea Subdivision to agricultural purposes and farm dwellings only, and therefore the HCPC had to reject RT's application because the special permit would permit a non-agricultural use on the Property.

94. RT's, advocated that the Wilsons' argument should fail because: (1) according to a strict construction, Ordinance No. 889 should be interpreted to include purposes which are permitted by a special permit; (2) the County Council did not have the authority to abolish the special permit process for landowners in the Kauakea Subdivision; and (3) even assuming *arguendo* that Ordinance No. 889 could be interpreted to preclude the HCPC from issuing a Special Permit for land in the Kauakea Subdivision, Ordinance No. 889 would nonetheless be preempted by HRS § 205-6 (1993).

95. The Planning Commission by written order issued March 5, 2001 denied the Wilsons' Petition. In its written order the Commission stated that "Ordinance No. 889 does not prevent RT's Service, Inc. from proceeding with the special permit application provided it does not involve the use of more than ½ acre of the property."

96. On April 4, 2001, the Wilsons appealed the HCPC's ruling on the Wilsons' Petition pursuant to HRS § 91-14 (the "Agency Appeal"). The Agency Appeal, Civil No. 3CC01-1-0174, was dismissed by the Circuit Court of the Third Circuit on August 1, 2001 since the Planning Commission's March 5, 2001 written order was interlocutory in nature.

97. Concurrent with the Agency Appeal, the contested case hearing concerning RT's application for SPP 00-041 continued with contested case hearings before the Planning Commission on April 20, 2001, August 24, 2001, September 28, 2001 and a rescheduling hearing on October 19, 2001.

98. Currently RT's conducts its secured storage operation of repossessed and damaged cars on a property located in the town of Waimea at TMK (3) 6-4-006:026 ("Parcel 26").

99. RT's was informed by the Planning Director on June 27, 2000 that RT's use of Parcel 26 as a secured storage area violated the zoning applicable to Parcel 26.

100. RT's has appealed the Planning Director's June 27, 2000 decision to the County of Hawai'i Board of Appeals (the "BOA"), in the appeal BOA 01-16.

101. RT's has testified that if RT's application for SPP 00-041 is granted, RT's will consolidate its operation by moving its secured parking operation from Parcel 26 to the subject Property. Furthermore, beyond ceasing its use of Parcel 26, RT's has testified that it will withdraw its present appeal BOA 01-16, if RT's application for SPP 00-041 is granted.

HCPC Rule 6-3

102. The use proposed by RT's application for SPP 00-041 complies with the special permit guidelines set forth in HCPC Rule 6-3 and HRS § 205-6 as amended. The following

Findings of Fact compare the evidence on the record in the contested case hearing to the specific guidelines of Rule 6 of the HCPC Rules. Therefore, the findings in this section may repeat and apply the findings in the previous sections.

The proposed use is an unusual and reasonable use of land situated within the State Land Use Agricultural District and would promote the effectiveness and objectives of HRS Chapters 205 as amended.

103. In recognizing that lands within the agricultural districts may not be best suited for agricultural activities and yet classified as such; and in recognition that certain types of uses may not be strictly agricultural in nature, yet reasonable in such districts; the Legislature by HRS Chapter 205 has provided for the special permit process to allow certain unusual and reasonable uses within the Agricultural District.

104. In addition, the State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare of the people of the State of Hawai'i.

105. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use.

106. The Property on which the proposed office use and secure storage area will be located is classified as "C" or "Fair" for agricultural productivity by the Land Study Bureau.

107. The Agricultural Lands of Importance to the State of Hawai'i (ALISH) Map identifies the subject Property as "Prime" agricultural lands.

108. While the subject Property does contain agriculturally productive soils, the Project Site itself is defined as a contiguous 21,400 square-foot area that includes an existing farm dwelling and barn structure along with a driveway.

109. According to the Applicant, the area to be utilized for the office and secure storage area will encumber approximately 13,500 square feet within the larger 21,400 square-foot Project Site that is substantially improved to accommodate uses associated with the existing farm dwelling and barn.

110. Therefore, establishing an office and secure storage area within the 21,400 square foot Project Site will not encumber a significant amount of additional agricultural lands beyond that already committed to the existing farm dwelling and barn uses.

111. It is determined that the proposed use is an unusual and reasonable use of lands situated within the Agricultural District and will not be contrary to the objectives of Chapter 205, HRS, as amended.

The desired use will not adversely affect surrounding properties or substantially alter or change the essential character of land and its present use.

112. According to the Application and testimonies presented during the contested case hearing, the proposed office and secure storage area will be restricted to a 21,400 square-foot portion of the roughly five (5) acre parcel.

113. Since the roughly half-acre project site also includes the existing farm dwelling and driveway, the Applicant estimates that the land area to be actually used for office and secure storage is closer to 13,500 square feet.

114. The Project Site is situated approximately 30 feet from Kauakea Street and a minimum of 50 feet to the nearest adjoining properties.

115. Since the existing farm dwelling and driveway is also included with the Project Site, it is anticipated that the office and secure storage area will occur at least 110 feet from the nearest adjoining property.

116. Along the southern boundary of the Property is a 25-foot high earthen berm that is effective in mitigating noise and visual impacts on the adjoining property to the south.

117. The adjoining property to the north is also buffered by the existing farm dwelling and dog kennel. Nani Waimea Subdivision, which abuts the rear of the Property, is situated about 360 feet from the Project Site.

118. This distance should provide for adequate noise and visual mitigation. Ironwood trees front a portion of the Property along Kauakea Street to partially obscure the location of the modular office building.

119. Beyond these existing mitigating factors and to ensure that noise and visual impact are minimized to the maximum extent possible, the Planning Commission is requiring that all company vehicles of RT's, as well as all towed and stored vehicles will be required to be located inside the secured storage portion of the Project Site.

120. In addition, no more than four (4) of the Applicant's personal vehicles will be permitted outside of this secured storage portion of the Project Site in order to provide the Planning Department with some measure of control over which vehicles are personal, which are towed, and which are stored; especially when a complaint is filed.

121. With these mitigative measures in place, adverse noise and visual impacts upon adjoining properties will be effectively minimized. The secured storage portion of the Project Site will also visually preserve the existing agricultural character of remainder of the subject Property and surrounding area.

122. Normal business hours for the office are from 6:30 a.m. to 4:30 p.m., Mondays through Fridays, although emergency roadside assistance is provided off-site on a 24-hour basis.

123. In addition, the Applicant has a total of five (5) tow and emergency assistance vehicles. Conditions of approval recommended by the Planning Director are to limit office hours to the specified times and to limit company vehicles to no more than five and stored vehicles to no more than fifteen.

124. These recommended conditions by the Planning Director will ensure that the scope of the proposed office and secure storage use do not exceed the representations of the Applicant and mitigative measures being recommended by the Planning Director.

125. In testimony during the contested case proceedings, the Applicant stated that their emergency response/towing operations receive an average of about 7 to 8 calls per day or roughly 2,500 calls per year.

126. Considering the overall operations of the Applicant, the Planning Director does not anticipate that the proposed uses will not create an excessive amount of traffic to the Property since a significant percentage of these calls are given to tow drivers that are already on the road.

127. Furthermore, all towed vehicles are not delivered to the Property. These towed vehicles are typically taken directly to repair shops. The secure storage area will primarily accommodate repossessed vehicles and those towed vehicles awaiting towing instructions to a repair shop.

128. The Applicant's collection and investigative services are primarily utilized by banks and other financial institutions and typically involve contact by mail or phone. An assessment of the Applicant's operations finds that the services to be provided will not be dependent upon frequent visitations by the general public.

The proposed use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection.

129. Access to the Property from the Mamalahoa Highway will be provided by Kauakea Street, a privately maintained roadway having a pavement width of 16 feet within a 50-foot wide right of way.

130. That portion of the Mamalahoa Highway fronting Kauakea Street is maintained by the County of Hawai'i. The Department of Public Works has indicated concerns regarding the existing pavement width of Kauakea Street and its geometric and sight distance inadequacies for the types of vehicles to be utilized by the Applicant's operations.

131. The Planning Director is recommending that if deemed necessary by the Department of Public Works that Applicant will improve the width of Kauakea Street to a minimum width of 20 feet from its intersection with the Mamalahoa Highway to and including the Property's access driveway to Kauakea Street. The Planning Director has recommended that all improvements to Kauakea Street that may be recommended shall be installed prior to commencing the office and secure storage operations.

132. The Planning Commission, based on its site inspection of the Property, and the conditions of this Special Permit, does not find it necessary to require the Applicant to improve the width of Kauakea Street.

133. All other essential utilities and facilities, including electricity, water, telephone and wastewater disposal, are available to support the proposed use.

Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established.

134. The Planning Commission is approving the issuance of this special permit to RT's for the proposed office use, investigative/collection service and towing operation based on findings that these uses by RT's are insignificant in size and scope and do not compromise the intent and purpose of the current zoning.

135. A total of three people will occupy the office which will not be dependent upon frequent visitations by the public. While tow vehicles will be utilized, it will be no different than a person bringing his or her company vehicle home. The County does not consider this type of activity a violation of zoning laws.

136. The Planning Commission is approving the issuance of a Special Permit for the project with a absolute limit on its duration of not more than two (2) years in order to compensate for the lack of readily available Industrial-zoned parcels for fee or lease. This Special Permit will be non-renewable.

137. Unusual conditions have arisen in this particular area of South Kohala with the existence of Industrial-zoned lands, but the inability of the landowners to develop these industrial subdivisions due to the absence of a market or the lack of support facilities.

138. The special permit then becomes an appropriate vehicle to sustain these industrial-types of uses until such time these industrial subdivisions are developed and made available.

139. The Planning Director believes that the criteria for approval of a special permit have been met and potential adverse impacts to adjoining properties and surrounding areas sufficiently mitigated.

140. The Planning Director believes that this recommendation strikes the best compromise between the needs of the Applicant and the community and the concerns of affected adjoining property owners.

141. Likewise, the Planning Commission believes that the criteria for approval of a special permit have been met and potential adverse impacts to adjoining properties and surrounding areas sufficiently mitigated.

The land upon which the proposed use is sought is suited for the uses permitted within the district.

142. As previously mentioned, soils within the project site and surrounding area are agriculturally productive.

143. However, the special permit process, established by the Legislature, allows the Planning Commission to consider the establishment of non-agricultural uses upon these Agriculturally-designated lands, provided the objectives of Chapter 205, HRS, are promoted.

144. The Applicant has demonstrated that the proposed office and secure storage use will be primarily limited to an area that is improved with a farm dwelling, barn and driveway. The proposed use will not require that an excessive amount of agricultural lands be committed to the proposed use. Approximately 4-1/2 acres within the 5-acre Property remains available for potential agricultural uses.

145. Furthermore, given the temporary nature of the proposed use, the vast majority of the Project Site, exclusive of the existing dwelling, barn and driveway improvements, could be returned in two (2) years to a state that could be cultivated.

The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans.

146. The proposed office use, which will accommodate three administrative employees, is insignificant in terms of impacts to the County's long-range land use policies, its public facilities or the character of the surrounding area.

147. The proposed office functions will include the administrative functions of RT's Services, Inc. and the investigative and collection service that will not involve frequent visitations by the general public.

148. The Applicant's towing and emergency response operations, involving the use of five (5) company vehicles, is not significant in terms of use that would draw into question its appropriateness in an Agricultural-zoned district.

149. Typically, the tow vehicles are on the road during the day responding to calls and being directed to subsequent service calls by the office. The tow vehicles are then returned to the Project Site after normal working hours where their subsequent use is dependent upon the receipt of a service call.

150. Therefore, given the limited nature of the proposed use, the Planning Commission finds that the proposed office, towing and investigative collection operations are consistent with the goals, policies and standards of the General Plan.

151. However, the proposed secure storage area, at face value, is not consistent with the General Plan's Land Use Pattern Allocation Guide (LUPAG) Map that defines the Property and its immediately surrounding area for Extensive Agricultural uses. The secure storage area is typical of uses permitted on Industrial-zoned lands.

152. While the proposed secure storage area is not consistent with the land use pattern depicted by the LUPAG Map, one must also consider the various goals, policies and standards of the General Plan in order to render a proper assessment of the request against the County's long-range land use policies.

153. The proposed secure storage area use is consistent with the following goals and policies of the General Plan:

Economic Element:

- Provide residents with opportunities to improve their quality of life.
- The County shall provide an economic environment which allows new, expanded, or improved economic opportunities that are compatible with the County's natural and social environment.
- The County of Hawai'i shall strive for an economic climate which provides it residents an opportunity for choice of occupation.

Land Use Element:

- Designate and allocate land uses in appropriate proportions and mix in keeping with the social, cultural, and physical environments of the County.
- Protect and encourage the intensive utilization of the County's important agricultural lands.
- The county shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

Industrial Sub-element.

- Designate and allocate industrial areas in appropriate proportions and in keeping with the social, cultural, and physical environments of the County.
- It shall be the policy of the County to achieve a broader diversification of local industries by providing opportunities for new industries and strengthening existing industries.

154. The LUPAG Map identified the area in the vicinity of the Waimea-Kohala Airport and Gary's Automotive as the only area designated for Industrial-related uses within the Waimea area.

155. During the contested case proceedings, the Applicant testified that they have investigated the availability and feasibility of locating the proposed uses to Industrial-zoned areas both within the Waimea area and in Kawaihae.

156. While lands owned by Parker Ranch in the vicinity of Gary's Automotive are zoned for Industrial uses, Parker Ranch has disclosed that they are not able to proceed with the development of their industrial subdivision until the market conditions improve.

157. Certain lands within the Kawaihae area that are owned by the Department of Hawaiian Home Lands are also zoned for industrial uses, but leasing of these lands are dependant upon its subdivision into appropriately-sized parcels.

158. The Department of Hawaiian Home Lands has indicated that their inability to subdivide these lands into smaller parcels is due to the unavailability of additional water commitments from the County of Hawai'i.

159. Testimony presented by the Intervenors during the contested case proceedings detailed their efforts in identifying areas within the old Pioneer Lumber Mill site and surrounding area in Kawaihae as possible sites for the applicant's operations. This particular area of Kawaihae is situated on Hawaiian Home Lands and is zoned for Industrial uses.

160. The old Pioneer Lumber Mill site is approximately 6.5 acres in size with other properties ranging in size from 2 acres to in excess of 20 acres.

161. The County is aware of portions of larger parcels of land being leased or sub-leased by landowners in the absence of subdivision approval. The County of Hawai'i Subdivision Code specifies, in part, that land shall not be offered for lease until Final Subdivision Approval of the proposed subdivision is granted by the Planning Director.

162. While leasing of lands without Final Subdivision Approval may be a common practice, it is a practice that is not permitted by the Subdivision Code and will not be a practice that the County will direct the Applicant to pursue.

163. This approval comes with a two (2)-year, non renewable life to the special permit which is in recognition of the service the Applicant provides to the residents of northern Hawai'i and the unavailability of Industrial-zoned lands that can readily accommodate RT's secure storage operations.

164. We feel that this is a reasonable approach that will preserve the secure storage services that the Applicant provides to the community while not compromising the County's long-range land use policies for agricultural uses within this portion of Waimea.

165. To the extent that any of these findings of fact constitute conclusions of law, they shall be considered and construed as such.

II. CONCLUSIONS OF LAW

1. Petitions for Standing in Contested Case Hearing were granted by the Planning Commission in its meeting of November 30, 2001 to the following parties:

- a. Thomas W. Wilson and Michelle Noe Noe Wong Wilson.

b. Robert and Janet Gaylord; and

c. John and Mona Wood.

Ordinance No. 889

2. A special permit is required for RT's proposed use of the Property.

3. This Planning Commission has jurisdiction over this request for a special permit pursuant to HRS § 205-6, as RT's proposed use of the Property involves less than 15 acres of land.

4. By its own language, Ordinance No. 889 does not prevent RT's Service, Inc. from proceeding with the special permit application provided RT's proposed use does not involve the use of more than a ½ acre of the Property.

5. RT's application for SPP 00-041 does not involve use of more than a ½ acre of the Property, thus, Ordinance No. 889 does not prevent RT's from applying for a special permit under HRS § 205-6 and HCPC Rule 6.

Special Permit Criteria

6. The Planning Commission may approve a special permit for RT's proposed use of the Property only upon making the findings required under Rule 6 of the HCPC Rules and HRS § 205-6.

7. Under HCPC Rule 6-6(a) and HRS § 205-6, the Planning Commission must not approve a special permit unless it is found that the proposed use is an unusual and reasonable use of land situated within the Agricultural district.

8. Under HCPC Rule 6-6(b) and HRS § 205-6, the Planning Commission must not approve a special permit unless it is found that the proposed use would promote the effectiveness and objectives of Chapter 205, HRS as amended.

9. Under HCPC Rule 6-6 the Planning Commission must not approve a special permit unless it considers the criteria listed under HCPC Rule 6-3(b)(5)(A) through (G).

10. The use proposed by RT's in its application for special permit SPP 00-041, is a unusual and reasonable use of the Property and will promote the effectiveness and objectives of Chapter 205, HRS as amended.

11. The use proposed by RT's in its application for special permit SPP 00-041, meets and satisfies the criteria for a special permit listed under HCPC Rule 6-3(b)(5)(A) through (G).

12. RT's Proposed Findings of Fact, Conclusions of Law and Order, submitted to the HCPC on November 16, 2001, have been considered by this Planning Commission and are hereby adopted except to the extent that the proposed Findings of Fact of RT's at ¶'s 17, 48, 49, 52, 54, 65, 71, 73, 76, 77, 84, 94, 120, 121, 122, 123, 132, 133, 137, 142, 146, 153, and 164,

have been rejected and/or modified by the Planning Commission and replaced by the present findings, and the proposed Conditions of Approval of RT's have also been rejected and/or modified by the Planning Commission and replaced by the present Conditions of Approval.

13. To the extent that any of the conclusions of law constitute findings of fact, they shall be considered and construed as such.

III. APPROVAL OF SPECIAL PERMIT APPLICATION SPP NO. 00-041

In accordance with the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED by the Planning Commission that the application of RT's Service, Inc., SPP 00-041, for a special permit to establish an office and secure storage area on 21,400 square feet of land on a portion of the Kauakea Subdivision, Puukapu Homesteads, South Kohala, Hawai'i, TMK (3) 6-4-17:64, is approved subject to the following conditions:

1. The Applicant shall be responsible for complying with all of the stated conditions of approval.

2. The Special Permit shall not exceed a period of two (2) years from the date of the Special Permit's issuance by the Planning Commission. As a further condition of this approval, this Special Permit is nonrenewable.

3. The proposed office and secure storage area shall be established within one (1) year from the effective date of this permit. This time period shall include securing Final Plan Approval from the Planning Director. Plans shall identify existing and proposed structures and uses, driveway(s), landscaping, and other improvements associated with the proposed uses. Plans shall indicate the location of the proposed office and secure storage area for the purpose of mitigating any adverse noise or visual impacts to adjacent properties.

4. During the time that the Special Permit is in effect, the Applicant, at its own cost, shall repair and maintain that portion of Kauakea Street from its intersection with the Mamalahoa Highway to and including the Project Site's access driveway to Kauakea Street.

5. No exterior signs identifying or advertising the proposed office and secure storage operations will be permitted on the subject Property or any of its structures.

6. Operation of the office shall be limited to the hours between 6:30 a.m. and 4:30 p.m., Mondays through Fridays.

7. Company vehicles associated with the Applicant's operations shall be limited to no more than five (5) vehicles. The secure storage area shall accommodate no more than fifteen (15) stored vehicles at any given point in time, exclusive of the Applicant's personal and company vehicles.

8. At any given point in time, during the life time of the Special Permit, no more than four (4) personal vehicles belonging to family members residing within the farm dwelling

situated on the Property shall be permitted outside of the secured storage area portion of the Project Site.

9. The Applicant shall comply with applicable laws, rules and regulations of State and County agencies for this proposed use.

10. Upon compliance with all conditions of approval and prior to the start of the operations, the Applicant shall provide, in writing, a final status report to the Planning Director.

11. If the Applicant fails to comply with the conditions of approval or is unable to resolve any public complaint(s), the Planning Director shall investigate and, if necessary, enforce the appropriate conditions. The Planning Director may, as part of any enforcement action, refer the matter to the Planning Commission for review. Upon appropriate findings by the Planning Commission, that the Applicant has failed to comply with the conditions of approval or has caused an unreasonable adverse impact on surrounding properties, the special permit may be suspended or revoked.

12. An initial extension of time for the performance of conditions within the permit, excluding Condition No. 2, may be granted by the Planning Director upon the following circumstances:

- A. 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 General Plan or Zoning Code.
- C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
- D. 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, Hawai'i, April 12, 2002.

PLANNING COMMISSION, COUNTY OF
HAWAII


GERALDINE M. GIFFIN, Chairperson