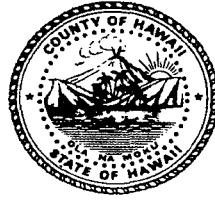


Harry Kim  
Mayor



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Faith "Faye" Yates

## County of Hawai'i

### LEEWARD PLANNING COMMISSION

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

NOV - 9 2018

Robert Triantos, Esq.  
Carlsmith Ball LLP  
P.O. Box 1720  
Kailua-Kona, HI 96745-1720

Dear Mr. Triantos:

**SUBJECT: Special Permit No. 1247 (Docket No. 04-000013)**  
**Applicant: RT's Service, LLC**  
**Request: To Allow the After-the-Fact Operation of a Motor Vehicle and Motorcycle Inspection Station; To Delete Condition No. 4 (Water Usage Calculations), and Condition No. 7 (Solid Waste Management Plan); and Time Extension to Complete Condition No. 5 (Secure Final Plan Approval) and Condition No. 6 (Secure and Finalize Permits to Convert Barn to Vehicle Repair Shop)**  
**Tax Map Key: 6-4-017:064 (portion)**

The Leeward Planning Commission, at its duly held public hearing on October 18, 2018, voted to approve the above-referenced request to amend Special Permit No. 1247 (Docket No. 04-000013) to allow the after-the-fact operation of a motor vehicle and motorcycle inspection station, to delete Condition No. 4 (Water Usage Calculations) and Condition No. 7 (Solid Waste Management Plan); and allow a time extension to complete Condition No. 5 (Secure Final Plan approval) and Condition No. 6 (Secure and Finalize Permits to Convert Barn to Vehicle Repair Shop). The project site is located on the west side of Kauakea Road, approximately 400 feet north of the Kauakea Road-Māmalahoa Highway (Highway 19) intersection, and abutting the Nani Waimea Subdivision, Pu'ukapu Homesteads, South Kohala, Hawai'i.

Approval of this amendment is subject to the following conditions:

1. The applicant shall be responsible for complying with all of the stated conditions of approval.
2. Operation of the Facility shall be conducted in a manner that is substantially representative of plans and information contained within the Application for Amendment to Special Permit No. 1247, any supplemental material, and the representations made before the Leeward Planning Commission.

3. The life of the permit shall run with the current owner, David McCollough Trust, and shall cease upon sale or transfer of the property or sale or transfer of the business to a different owner.
4. The Inspection Station operation shall commence as of the date that the State Department of Transportation reinstates Inspection Station No. 360.
5. Within one year of the effective date of this amended permit, the applicant, successors or assigns shall secure Final Plan Approval for all uses within the special permit area from the Planning Director in accordance with Chapter 24-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing structures, fire protection measures, parking stalls, and other improvements associated with the permitted uses. Landscaping shall also be indicated on the plans for the purpose of mitigating any adverse noise and visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements). Buffer yard landscaping along the perimeter of the 1.647-acre permit area shall conform to the standards for separation of a residential zone from an industrial zone as provided for in Planning Department Rule No. 17. This buffer can be achieved with existing or new earthen berms, opaque fencing and/or landscaping.
6. Building, plumbing and electrical permits shall be secured and finalized to convert the barn into a vehicle repair shop within one year from the effective date of this amended permit. The vehicle repair shop shall only be used for performing motor vehicle and motorcycle inspections, and repair of tow trucks, emergency service vehicles and the applicant's personal vehicles. The vehicle repair shop shall not be used for repairing client's vehicles.
7. Hours of operation for the Inspection Station shall be limited to the hours of 8:00 a.m. to 10:00 a.m., Monday through Friday, and inspections shall be conducted by appointment only.
8. The applicant, successors, or assigns shall maintain a valid Solid Waste Management Permit from the State Department of Health (DOH) until operation of the Facility permanently ceases.
9. No exterior signs identifying or advertising the proposed operation will be permitted on the subject property or any of its structures.

10. All development-generated runoff shall be disposed of onsite and shall not be directed toward any adjacent properties.
11. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control of the Hawai'i County Code.
12. 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 – State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
13. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of this permit. The report shall include, but not be limited to, the status of the development and the extent to which the conditions have been satisfied. 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.
14. If it is discovered by the Planning Department through investigation of the property or internet, as a result of a complaint, that additional unpermitted uses are occurring on the property, the Planning Director may initiate enforcement action and shall refer the matter to the Planning Commission for review. Advertising or other information from the internet shall constitute prima facie evidence that an unpermitted use is operating on the property. The burden of proof shall be on the applicant to establish that the alleged unpermitted uses are not occurring on the property. Upon appropriate findings by the Planning Commission that the applicant is operating an unpermitted use, the Commission may either amend the permit to add the unpermitted use or revoke the permit.
15. Comply with all applicable County, State and Federal laws, rules and regulations and requirements.
16. If the applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the Planning Commission for appropriate action.

Robert Triantos, Esq.  
Carlsmith Ball LLP  
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Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke the permit.

*[Note: Ramseyer version available upon request.]*

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

Approval of this permit is based on the reasons given in the attached Findings Report.

Should you have any questions, please contact Maija Jackson of the Planning Department at 961-8159.

Sincerely,



Keith F. Unger, Chairman  
Leeward Planning Commission

LRT'sserviceAmendSPP1247lpc  
Enclosure: PC Findings Report

cc w/enclosures:      Department of Public Works  
                                 Department of Water Supply  
                                 County Real Property Tax Division - Hilo  
                                 Department of Land & Natural; Resources-HPD  
                                 Department of Environmental Management  
                                 State Land Use Commission  
                                 DOT-Highways, Honolulu  
                                 State Department of Health  
                                 Planning Department - Kona  
                                 GIS Section

**COUNTY OF HAWAI‘I**  
**PLANNING COMMISSION FINDINGS**

**RT’S SERVICE, LLC**

**AMENDMENT TO SPECIAL PERMIT NO. 1247 (SPP 1247)**

At their October 18, 2018 meeting, the Leeward Planning Commission (LPC) recommended the following changes to the Planning Director’s recommendation:

- Amend Condition No. 4 to state, “*The Inspection Station operation shall commence as of the date that the State Department of Transportation reinstates Inspection Station No. 360.*” This change to Condition No. 4 was suggested by the Applicant at the hearing.
- Add a new condition to state, “*If it is discovered by the Planning Department through investigation of the property or internet, as a result of a complaint, that additional unpermitted uses are occurring on the property, the Planning Director may initiate enforcement action and shall refer the matter to the Planning Commission for review. Advertising or other information from the internet shall constitute prima facie evidence that an unpermitted use is operating on the property. The burden of proof shall be on the applicant to establish that the alleged unpermitted uses are not occurring on the property. Upon appropriate findings by the Planning Commission that the applicant is operating an unpermitted use, the Commission may either amend the permit to add the unpermitted use or revoke the permit.*” This added condition was recommended by the Planning Director at the hearing and is similar to a condition that was in the original 2004 Special Permit.

**Based on the preceding and following considerations, the LPC voted to approve the amendments to Special Permit No. 1247 to allow the after-the-fact operation of a motor vehicle and motorcycle inspection station; to delete Condition No. 4 (Water Usage Calculations) and Condition No. 7 (Solid Waste Management Plan); and request a time extension to complete Condition No. 5 (Secure Final Plan Approval) and Condition No. 6 (Secure and Finalize Permits to Convert Barn to Vehicle Repair Shop).** The property is located along the west side of Kauakea Road, approximately 400 feet north of the Kauakea Road-Māmalahoa Highway (Highway 19) intersection, and abutting the Nani Waimea Subdivision, Pu‘ukapu Homesteads, South Kohala, Hawai‘i, TMK: 6-4-017: Portion of 064.

Special Permit No. 1247 (SPP 1247) was issued in 2004 to allow office and storage uses for investigative/collection services, a towing service, and short term parking for repossessed or disabled vehicles on approximately 14,273-square foot portion of a 5.006-acre parcel in the State Land Use Agricultural District. The permit was amended in 2017 to expand the permit area from 14,273-square feet to 1.647 acres. The Applicant has submitted an Application to request the following amendments to SPP 1247: 1) allow the after-the-fact operation of a motor vehicle and motorcycle inspection station within the existing shop; 2) delete Condition Nos. 4 and 7 related to water usage and a solid waste management plan; and 3) grant a one-year time extension to comply with Condition Nos. 5 and 6 related to securing final plan approval, and securing and finalizing permits to convert the barn to a vehicle shop.

According to the applicant, he has operated Inspection Station No. 360 (Inspection Station) in the shop for the past 15 years and in February 2018 obtained State certification to include motorcycle inspections. The State Department of Transportation (SDOT) has temporarily

suspended Inspection Station No. 360 until SPP 1247 has been amended to allow its operation. The Inspection Station would operate by appointment only, between the hours of 8:00 a.m. to 10:00 a.m., Monday through Friday, and would be staffed by two existing employees who are certified by the SDOT as safety inspectors. The Applicant anticipates between 11 to 20 motor vehicles and 1 to 5 motorcycles would be inspected at the shop per month.

The Applicant is requesting to delete Condition No. 4 because by letter dated June 13, 2018 (Exhibit 2b of Application), the Department of Water Supply (DWS) confirmed that since water is not required to support the Special Permit uses, water usage calculations are not required and the existing 5/8-inch meter assigned to the property is adequate. This determination by DWS is based on information provided by the Applicant (Exhibit 2a of Application), specifically that employees at the shop will utilize the bathroom in the adjoining farm dwelling, and the toilet and sink (bathroom) which were removed from the existing shop will not be reinstalled in the future. The Applicant indicates they will work with the Fire Department to address any fire flow requirements since DWS informed the Applicant the existing 4-inch waterline within Kauakea Road is inadequate of providing the required minimum 2,000 gallons per minute fire protection at the site to support the land uses permitted by the Special Permit.

The Applicant is requesting to delete Condition No. 7 because the Applicant provided an updated Solid Waste Management Plan to the Department of Environmental Management (DEM), and by letter dated April 19, 2018, the DEM approved the Plan. The Applicant provided a copy of the approval letter to the Planning Department on April 30, 2018 (Exhibit 3 of Application).

The Applicant is requesting a one-year time extension to comply with Condition Nos. 5 and 6. The deadline to secure Final Plan Approval and secure and finalize building, electrical and plumbing permits for conversion of the barn to a shop was September 6, 2018. The Applicant retained architect Aaron Spillman to prepare the as-built plans for the barn to shop conversion and plan approval site plans. However, the Applicant was recently informed by Mr. Spillman that due to his current workload, he will not be able to complete the work by the deadline. In late July-early August, the Applicant retained architect Paul Bleck who is now working on the plans. Therefore, the Applicant is requesting a one-year time extension to September 6, 2019 comply with Condition Nos. 5 and 6.

RT's Service, LLC is comprised of two separate divisions known collectively as the "Facility":

- RT's Services provides collection, investigative, process services and collateral recovery (repossession) service throughout the mainland, Hawai'i and Guam, and includes the certified Motor Vehicle and Motorcycle Inspection Station No. 360.
- Tow Guys provides transportation needs and emergency roadside assistance such as lockouts, jump starts, fuel, tire changing, and towing to repair shops. Maintenance/service repairs to the towing and emergency assistance vehicles are conducted in the shop structure. No repairs to towed vehicles are conducted on the property and this operation does not involve any on-site client traffic. As the exclusive towing contractor for the County of Hawai'i Police Department, it supports police operations in South Kohala, North Kohala, and Hāmākua districts. This operation utilizes a total of five (5) towing and emergency assistance vehicles that are stored on-site. The operation also provides short-term parking for repossessed

vehicles and damaged vehicles that are awaiting transport to Oahu or to maintenance and repair shops on the island.

The Facility consists of a 3,591 square feet shop building (currently permitted as a barn) and 672 square feet office trailer, and gravel parking and is partially hog wire fenced. The Facility employs six full-time employees.

The Application also included a request for a one-year time extension to comply with Condition No. 8 (secure DOH Solid Waste Management Permit); however by letter dated September 10, 2018 (Planning Department Exhibit 2), the Applicant withdrew this request because on August 23, 2018 the DOH issued Solid Waste Management Permit No. ST-0005-18.

**The criteria for granting the requested time extensions to comply with Condition Nos. 5 and 6 are as follows:**

- 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.
- Granting of the time extension would not be contrary to the General Plan or Zoning Code.
- Granting of the time extension would not be contrary to the original reasons for the granting of the permit.

The Applicant has knowingly placed the Commission and this Department in the awkward position of recognizing the appropriateness of the baseyard and inspection operations upon the subject property, as further discussed below, but with the knowledge that there was deliberate misrepresentations to the County over 15 years and failure to comply with the conditions of approval that the Applicant had agreed to when given the privileges afforded through his Special Permit. But rather than being punitive by recommending denial of the time extensions, the Director recommends granting a one-year time extension from the effective date of this amended permit so that the goal of providing a safe structure that meets Fire and Building codes can be achieved for the sake of the employees and Inspection Station clients. The applicant has been repairing tow trucks and emergency service vehicles used for the business and performing motor vehicle inspections in a structure that does not meet Building Code for these uses. When SPP 1247 was originally granted in 2004, it contained a condition requiring the applicant to comply with all Federal, State, and County rules, regulations, requirements and laws. The structure being used as a shop was permitted by the Building Division in 1999 as a 1,822-square foot metal barn with no plumbing. Since that time the applicant has installed a bathroom and enlarged the structure to its current size of 3,591 square feet, all without any building, electrical or plumbing permits. In June 2015, Planning Department staff notified the applicant's former attorney that permits were needed from the Building Division to convert the barn into a shop. Thus, the applicant has known for at least 3 years that permits were needed to convert the barn to a shop. Additionally, when SPP 1247 was originally granted in 2004 it contained a condition requiring the applicant to secure Final Plan Approval for the uses approved by the permit. Thus, the applicant has known for 14 years that Final Plan Approval was required for these uses but has never secured Final Plan Approval.

The Application indicates the applicant has been conducting safety inspections on the property for 15 years, yet all previous representations made by the applicant to the Planning Department and Planning Commission since the permit was originally issued indicated there would be no customer traffic to or from the subject property. The Planning Director is concerned that had it not been for a complaint, the applicant would likely have continued to operate the Inspection Station without proper permits.

Based on the applicant's poor track record of complying with conditions of his permit in a timely manner, the Director was inclined to recommend denial of adding a new use to the permit (Inspection Station). Instead, the Planning Director recommended approval of adding the Inspection Station use to the permit with a condition that all required permits from the Building Division be secured and finalized for the barn to shop conversion and Final Plan Approval be secured prior to reestablishing the Inspection Station use on the property. The Planning Commission did not agree with this condition and instead allowed the Inspection Station to commence operation as of the date that the State Department of Transportation reinstates Inspection Station No. 360.

**The criteria for amending a Special Permit to add a new land use, such as the Inspection Station, are based on Rule 6-7 in the Planning Commission Rules.** Rule 6-7 states that the Planning Commission shall not approve a Special Permit unless it is found that the proposed use (a) is an unusual and reasonable use of land situated within the Agricultural District, and (b) the proposed use would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended.

**The proposed Inspection Station is an unusual and reasonable use of land situated within the State Land Use Agricultural District and would promote the effectiveness and objectives of Chapter 205, HRS, as amended.** The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands for those uses to which they are best suited in the interest of the public welfare of the people of the State of Hawai'i. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. The facility is unusual in that it is not agricultural in nature, but is reasonable in that it has and will continue to provide a needed service to the Waimea community. The property is classified as Prime Agricultural Lands by the Agricultural Lands of Significance to the State of Hawai'i (ALISH) and the Land Study Bureau Soil Rating is "Fair". The property has livestock paddocks on it and the applicant is claiming an agricultural dedication of pasturing for property tax purposes.

**In addition to the above listed criteria, the Planning Commission shall also consider the criteria listed under Section 6-3(b)(5) (A) through (G). In considering the criteria, the Planning Director recommends the following:**

**(A) Such Inspection Station use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.** The subject request is considered an unusual and reasonable use of agricultural land and the proposed use will not adversely affect the use of the County's prime agricultural lands since over two thirds of the property will be retained for agricultural uses and the Inspection Station activity will occur within an existing structure.

**(B) The desired Inspection Station use would not adversely affect surrounding properties.**



Adjacent lands to the north and south of the property are zoned A-5a and are in residential and agricultural use. Lands adjacent to the east are zoned A-40a. Located to the west is the Nani Waimea Subdivision, with sixty (60) 8,000 to 9,000-square foot lots zoned A-1a. The closest dwellings are located on the adjoining properties to the south and west about 120 feet from the Facility. The Facility is well screened from surrounding properties and Kauakea Street by earthen berms and landscape hedges. The Planning Department has not received complaints related to traffic due to operation of the Inspection Station over the past 15 years. Thus, if the Inspection Station continues to operate during the limited business hours of Monday through Friday, from 8:00 a.m. to 10:00 a.m., the amount of traffic should not increase.

According to Planning Department Rule No. 17 (Landscaping Requirements), in order to exclude all visual contact and reduce noise and dust intrusion between industrial and residential uses, a landscape buffer is required that is opaque from the ground to six (6) feet in height and intermittent from six (6) feet to at least twenty (20) feet in height. To meet this standard, the applicant may need to install additional landscaping or earthen berms, as needed, so that the permit area is completely screened from surrounding properties. With these mitigative measures in place, adverse noise, visual and traffic impacts upon adjoining properties will be effectively minimized.

**(C) Such Inspection Station use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection.** Access to the property from the Māmalahoa Highway is provided by Kauakea Street, a private roadway owned by the Kauakea Community Association Inc. The road has a pavement width of 16 feet within a 50-foot wide right-of-way. To comply with a previous permit condition, the applicant has resurfaced Kauakea Road from the highway to the property's driveway. That portion of the Māmalahoa Highway fronting Kauakea Street is maintained by the County of Hawai'i. County water is available to the property and according to a 2009 memo from the Department of Water Supply (DWS), the applicant has installed a backflow prevention assembly at the existing water meter. According to the DWS, the existing 4-inch waterline in Kauakea Street is inadequate of providing the required minimum 2,000 gallons per minute fire protection for the existing business. Therefore, the DWS recommends the applicant contact the Fire Department for any fire protection requirements or alternatives. The applicant requests to delete Condition No. 4 related to water usage. The Director is supportive of deleting this condition since the DWS has confirmed with the applicant that the uses permitted by the Special Permit do not require water. Condition No. 8 required that the applicant secure a Solid Waste Management Permit from the State Department of Health (DOH). On August 23, 2018 the DOH issued Solid Waste Management Permit No. ST-0005-18, which expires on August 22, 2021. The Director recommends modifying Condition No. 8 to ensure the applicant maintains a valid Solid Waste Management Permit from DOH while the business is in operation. The Director supports the applicant's request to delete Condition No. 7 because the applicant provided an updated Solid Waste Management Plan to the Department of Environmental Management (DEM), and by letter dated April 19, 2018, the DEM approved the Plan. The applicant recently removed an unpermitted sink and toilet from the shop and has indicated they will not be reinstalled. The applicant proposes to have the employees use

the bathroom in the farm dwelling, which is served by an existing cesspool. Electricity and telephone services are available to the site. Police and fire services are available in Waimea, approximately three miles from the property. Thus the requested use will not burden public agencies to provide additional services.

**(D) Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established.** In the 1960's and 1970's, the State's agricultural district boundaries and regulations were established and subsequently amended pursuant to HRS Chapter 205. However, no significant changes in the Land Use District Boundaries have been made since the 1960's to keep up with population growth and demand for services in the Waimea area. The project site and surrounding areas are designated for agricultural uses by both State and County land use laws. However, through the issuance of a Special Permit, various "non-agricultural" services and uses may be established. The Planning Director supports the issuance of a Special Permit for a limited time period in order to compensate for the lack of readily available industrial-zoned parcels for fee or lease. Unique conditions have arisen in this particular area of South Kohala with the existence of industrial-zoned lands and the inability of the landowner to develop these lands due to the lack of support facilities such as County water. 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.

**(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district.**

Soils within the project site and surrounding area are agriculturally productive. 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. The Inspection Station activity will occur within an existing structure within the 1.647-acre permit area, but the majority of the property, approximately two thirds, will be retained for agricultural uses.

**(F) The Inspection Station use will not substantially alter or change the essential character of the land and the present use.** The essential character of the land in this area is rural and agricultural. The property has been used for over 15 years by the applicant for the business, therefore permitting the Inspection Station will not substantially alter the essential character of the land. No additional buildings will be constructed for the Inspection Station.

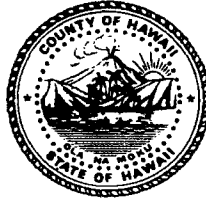
**(G) The request to add an Inspection Station to the Special Permit will not be contrary to the General Plan and South Kohala Community Development Plan (CDP).** The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County. The property is located in an area identified as Important Agricultural Land in the LUPAG Map. Important Agricultural Lands are those with better potential for sustained high agricultural yields because of soil type, climate, topography, or other factors. Ideally, the Inspection Station

would be more appropriate in a commercial or industrial zoned area. However, the applicant's business has been operating with a series of Special Permits for the past 15 years and the current request to add the Inspection Station use is considered an accessory use to the other services the business provides.

**The Inspection Station use is not contrary to the objectives sought to be accomplished by Chapter 205A, Hawai'i Revised Statutes, relating to coastal zone management program.** The property is located over 5 miles from the shoreline and is outside of the Special Management Area. There is no designated public access to the shoreline or mountain areas that traverses the property. Thus, the proposed use will not adversely impact any recreational resources, including access to and along the shoreline, scenic and open space nor visual resources, coastal ecosystems, and marine and coastal resources. Further, the property will not be affected by any coastal hazards or beach erosion. Therefore, the proposed use is not contrary to the objectives of Chapter 205A, Hawai'i Revised Statutes.

Lastly, this approval is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements in connection with the approved use, prior to its commencement or establishment upon the subject properties. Additional governmental requirements may include the issuance of building permits, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.

Harry Kim  
Mayor



Keith F. Unger, Chair  
Collin Kaholo, Vice Chair  
Nancy Carr Smith  
Scott Church  
Perry Kealoha  
Barbara Nobriga  
Oliver "Sonny" Shimaoka

## County of Hawai'i

### LEEWARD PLANNING COMMISSION

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

SEP - 6 2017

Robert D. Triantos, Esq.  
Carlsmith Ball LLP  
P.O. Box 1720  
Kailua-Kona, HI 96745-1720

Dear Mr. Triantos:

**SUBJECT: Special Permit No. 1247 (Docket No. SPP-04-000013)**  
**Applicant: RT's Service, LLC**  
**Request: Delete the Life of the Permit, Increase the Days and Hours of Operation, Increase the Number of Stored Vehicles from 20 to 135, and Increase the Permit Area from 14,273 Square Feet to 1.647 Acres**  
**Tax Map Key: 6-4-017:por. 064**

The Leeward Planning Commission, at its duly held public hearing on August 17, 2017, voted to approve the above-referenced request for an amendment to Special Permit No. 1247 increasing the days and hours of operation to 24 hours a day, 7 days a week, increase the maximum number of stored vehicles to 135 vehicles, expand the permit area to 1.647 acres and change the life of the permit to run with the current owner as stated in the condition. The project site is located along the west side of Kauakea Road, approximately 400 feet north of the Kauakea Road-Māmalahoa Highway (Highway 19) intersection and abutting the Nani Waimea Subdivision, Pu'ukapu Homesteads, South Kohala, Hawai'i.

Approval of these amendments is subject to the following conditions:

1. The applicant shall be responsible for complying with all of the stated conditions of approval.
2. Operation of the Facility shall be conducted in a manner that is substantially representative of plans and information contained within the Application for Amendment to Special Permit No. 1247, any supplemental material, and the representations made before the Leeward Planning Commission.

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SEP - 6 2017

3. The life of the permit shall run with the current owner, David McCollough Trust, and shall cease upon sale or transfer of the property or sale or transfer of the business to a different owner.
4. The applicant shall submit the anticipated maximum daily water usage calculations as recommended by a professional engineer licensed in the State of Hawai'i to the Department of Water Supply within 180 days from the effective date of this amended permit. The applicant shall pay a water commitment fee and install a larger or additional water meter to serve the proposed development if required by the Department of Water Supply.
5. Within one year of the effective date of this amended permit, the applicant, successors or assigns shall secure Final Plan Approval for the expanded operation from the Planning Director in accordance with Chapter 24-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and/or proposed structures, fire protection measures, parking stalls, and other improvements associated with the proposed use. Landscaping shall also be indicated on the plans for the purpose of mitigating any adverse noise and visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements). Buffer yard landscaping along the perimeter of the 1.647-acre permit area shall conform to the standards for separation of a residential zone from an industrial zone as provided for in Planning Department Rule No. 17. This buffer can be achieved with existing or new earthen berms, opaque fencing and/or landscaping.
6. Building, plumbing and electrical permits shall be secured and finalized to convert the barn into a vehicle repair shop within one year from the effective date of this amended permit. The vehicle repair shop shall be used for repair of tow trucks, emergency service vehicles and the applicant's personal vehicles. The vehicle repair shop shall not be used for repairing client's vehicles.
7. An updated Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval within ninety (90) days of the effective date of this amendment and the applicant shall provide a copy of the approval letter to the Planning Department.
8. Within ninety (90) days of the effective date of this amended permit, the applicant shall provide to the Planning Department either a Solid Waste Management Permit issued by the State Department of Health (DOH) or a letter from DOH indicating that a permit is not required for operation of the Facility.

9. No exterior signs identifying or advertising the proposed operation will be permitted on the subject property or any of its structures.
10. All development-generated runoff shall be disposed of onsite and shall not be directed toward any adjacent properties.
11. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control of the Hawai'i County Code.
12. 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 – State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
13. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of this permit. The report shall include, but not be limited to, the status of the development and the extent to which the conditions have been satisfied. 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.
14. 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 permit may be suspended or revoked.
15. Comply with all applicable County, State and Federal laws, rules and regulations and requirements.
16. If the applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the Planning Commission for appropriate action.

Robert D. Triantos, Esq.  
Carlsmith Ball LLP  
Page 4

Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke the permit.

*[Note: Ramseyer version available upon request.]*

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

Approval of this amended permit is based on the reasons given in the attached Findings Report.

Should you have any questions, please contact Maija Jackson of the Planning Department at (808) 961-8159.

Sincerely,



Keith F. Unger, Chairman  
Leeward Planning Commission

LRT'sServiceAmendSPP1247|pc  
Enclosure: PC Findings Report

cc: Department of Public Works  
Department of Water Supply  
County Real Property Tax Division - Hilo  
Planning Department – Kona  
State Land Use Commission  
Department of Land & Natural Resources-HPD  
DOT-Highways, Honolulu  
Department of Environmental Management  
GIS Section

**COUNTY OF HAWAI‘I**  
**PLANNING COMMISSION FINDINGS**

**RT’S SERVICE, LLC**

**AMENDMENT TO SPECIAL PERMIT NO. 1247 (SPP 1247)**

At their August 17, 2017 meeting, the Leeward Planning Commission (LPC) recommended the following changes to the Planning Director’s recommendation:

- Amend Condition No. 3 to state that, “*The life of the permit shall run with the current owner, David McCollough Trust, and shall cease upon sale or transfer of the property or business to a different owner*”. The Director’s recommended condition language did not specify that the permit ceases when the business is sold or transferred.

Based on the preceding and following considerations, the LPC voted to approve the amendments to Special Permit No. 1247 to increase the days and hours of operation to 24 hours a day, 7 days a week, increase the maximum number of stored vehicles to 135 vehicles, expand the permit area to 1.647 acres, and change the life of the permit to run with the current owner as stated in the condition. The property is located along the west side of Kauakea Road, approximately 400 feet north of the Kauakea Road-Māmalahoa Highway (Highway 19) intersection, and abutting the Nani Waimea Subdivision, Pu‘ukapu Homesteads, South Kohala, Hawai‘i, TMK: 6-4-017: Portion of 064.

Special Permit No. 1247 was issued on October 19, 2004 to allow office and storage uses for investigative/collection services, towing service, and short term parking for repossessed or disabled vehicles on approximately 14,273 square feet of a 5.006-acre parcel. The applicant requests the following amendments to the permit:

- Delete Condition No. 2 in order to remove any time limit on the permit life so that the operation can remain on the property in perpetuity.
- Amend Condition No. 6 to extend the hours of operation to 24 hours, 7 days a week in order to allow for the 24-hour tow schedule required by the County Police Department. Current hours of operation for the office are between 6:30 a.m. and 4:30 p.m., Mondays through Fridays.
- Increase the number of vehicles that can be kept in the storage facility from the current level of 20 vehicles to 135 vehicles at any one time, including any operational towing and emergency assistance vehicles.
- Increase the permit area within the 5.006-acre parcel from 14,273 square feet to 1.647 acres.

RT’s Service, LLC is comprised of two separate divisions known collectively as the “Facility”:

- RT’s Services provides collection, investigative, process services and collateral recovery (repossession) service throughout the mainland, Hawai‘i and Guam. This operation does not generate any on-site client traffic.
- Tow Guys provides transportation needs and emergency roadside assistance such as lockouts, jump starts, fuel, tire changing, and towing to repair shops. Maintenance/service repairs to the towing and emergency assistance vehicles are conducted in the shop structure. No repairs to towed vehicles are conducted on the property and this operation does not involve any on-site client traffic. As the exclusive towing contractor for the County of Hawai‘i Police Department, it supports police operations in South Kohala, North Kohala, and Hāmākua districts. This



operation utilizes a total of five (5) towing and emergency assistance vehicles that are stored on-site. The operation also provides short-term parking for repossessed vehicles and damaged vehicles that are awaiting transport to Oahu or to maintenance and repair shops on the island.

The Facility consists of a 3,591 square feet shop building (currently permitted as a barn) and 672 square feet office trailer, and gravel parking and is partially hog wire fenced.

The criteria for approving a Special Permit are based on Rule 6-7 in the Planning Commission Rules. Rule 6-7 states that the Planning Commission shall not approve a Special Permit unless it is found that the proposed use (a) is an unusual and reasonable use of land situated within the Agricultural District, and (b) the proposed use would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended.

**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 Chapter 205, HRS, as amended.** The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands for those uses to which they are best suited in the interest of the public welfare of the people of the State of Hawai'i. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. The facility is unusual in that it is not agricultural in nature, but is reasonable in that it has and will continue to provide a much needed towing and vehicle storage service for the North Kohala, South Kohala, and Hāmākua districts. The property is classified as Prime Agricultural Lands by the Agricultural Lands of Significance to the State of Hawai'i (ALISH) and the Land Study Bureau Soil Rating is "Fair". The property has livestock paddocks on it and the applicant is claiming an agricultural dedication of pasturing for property tax purposes.

In addition to the above listed criteria, the Planning Commission shall also consider the criteria listed under Section 6-3(b)(5) (A) through (G).

**(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.** The subject request is considered an unusual and reasonable use of agricultural land and the proposed use will not adversely affect the use of the County's prime agricultural lands since over two thirds of the property will be retained for agricultural uses.

**(B) The desired use would not adversely affect surrounding properties.**

Adjacent lands to the north and south of the property are zoned A-5a and are in residential and agricultural use. Lands adjacent to the east are zoned A-40a. Located to the west is the Nani Waimea Subdivision, with sixty (60) 8,000 to 9,000 square foot lots zoned A-1a. The closest dwellings are located on the adjoining properties to the south and west about 120 feet from the proposed expanded permit area.

The proposed expanded permit area is well screened from surrounding properties and Kauakea Street by earthen berms and landscape hedges. Along the southern boundary of the subject property is a 25-foot high earthen berm to which reduces noise and visual impacts on the adjoining property to the south. The adjoining property to the

north is buffered by the existing farm dwelling and landscaping. Ironwood trees front a portion of the subject property along Kauakea Street to partially obscure the location of the modular office building, shop and parking area.

According to Planning Department Rule No. 17 (Landscaping Requirements), in order to exclude all visual contact and reduce noise and dust intrusion between industrial and residential uses, a landscape buffer is required that is opaque from the ground to six (6) feet in height and intermittent from six (6) feet to at least twenty (20) feet in height. To meet this standard, the applicant may need to install additional landscaping or earthen berms, as needed, so that the permit area is completely screened from surrounding properties.

There will continue to be no client traffic to the site. The remainder of the property will remain in residential and agricultural use. With these mitigative measures in place, adverse noise and visual impacts upon adjoining properties will be effectively minimized.

**(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection.** Access to the property from the Māmalahoa Highway is provided by Kauakea Street, a private roadway owned by the Kauakea Community Association Inc. The road has a pavement width of 16 feet within a 50-foot wide right-of-way. To comply with a previous permit condition, the applicant has resurfaced Kauakea Road from the highway to the property's driveway. That portion of the Māmalahoa Highway fronting Kauakea Street is maintained by the County of Hawai'i. County water is available to the property and according to a 2009 memo from the Department of Water Supply (DWS), the applicant has installed a backflow prevention assembly at the existing water meter. According to the DWS, the existing 4-inch waterline in Kauakea Street is inadequate of providing the required minimum 2,000 gallons per minute fire protection for the existing business. Therefore, the DWS recommends the applicant contact the Fire Department for any fire protection requirements or alternatives. There is some discrepancy about whether a solid waste management permit from the Department of Health is required for the business because the applicant does not dismantle vehicles on the property, which requires a DOH permit, but instead stores the vehicles for removal at a later date. In a May 8, 2015 memo, the State Department of Health (DOH) - Solid and Hazardous Waste Branch indicated a solid waste management permit would be required for the applicant's business. The County Department of Environmental Management- Solid Waste Branch (DEM) also inquired whether a DOH permit would be required for the operation. However, the applicant has indicated that based upon consultation with DOH, a solid waste permit will not be required. To ensure that any necessary permits from DOH are secured for the facility, the Planning Director recommended a condition be added for the applicant to provide the Planning Department a copy of the permit or a letter from DOH stating a permit is not needed. Although the DEM approved a solid waste management plan for the operations in 2010, the Director recommended the applicant submit a new solid waste management plan to the County DEM for the expanded operation. Wastewater disposal for the existing dwelling is by a cesspool. Electricity and telephone

services are available to the site. Police and fire services are available in Waimea, approximately three miles from the property. Thus the requested use will not burden public agencies to provide additional services.

**(D) Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established.** In the 1960's and 1970's, the State's agricultural district boundaries and regulations were established and subsequently amended pursuant to HRS Chapter 205. However, no significant changes in the Land Use District Boundaries have been made since the 1960's to keep up with population growth and demand for services in the Waimea area. The project site and surrounding areas are designated for agricultural uses by both State and County land use laws. However, through the issuance of a Special Permit, various "non-agricultural" services and uses may be established. The Planning Director supports the issuance of a Special Permit for a limited time period in order to compensate for the lack of readily available industrial-zoned parcels for fee or lease. Unique conditions have arisen in this particular area of South Kohala with the existence of industrial-zoned lands and the inability of the landowner to develop these lands due to the lack of support facilities such as County water. 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.

**(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district.**

Soils within the project site and surrounding area are agriculturally productive. 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. With the expansion of the permit area to 1.647 acres, the majority of the property, approximately two thirds, will be retained for agricultural uses.

**(F) The use will not substantially alter or change the essential character of the land and the present use.** The essential character of the land in this area is rural and agricultural. The property has been used for over 15 years by the applicant for the business, therefore it is unlikely the expansion of the operation will substantially alter the essential character of the land. No additional buildings will be constructed for the expanded operation.

**(G) The request will be contrary to the General Plan and South Kohala Community Development Plan (CDP).** The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County. The property is located in an area identified as Important Agricultural Land in the LUPAG Map. Important Agricultural Lands are those with better potential for sustained high agricultural yields because of soil type, climate, topography, or other factors. The request to expand the operation and eliminate the permit life is somewhat contrary to the LUPAG designation in that an additional 1.32 acres will be removed from agricultural use. Ideally, the business would be more appropriate in an industrial-zoned area. The business

has been operating with a series of Special Permits that had limited time frames for the past 15 years in order to provide the applicant time to relocate to an industrial-zoned property.

Currently the LUPAG Map identifies a strip of Industrial south of Waimea town near the airport on both sides of Māmalahoa Highway. A 24-acre area owned by one landowner located in this area was rezoned to Light Industrial- 20,000 square feet (ML-20) in 1992 but the area has not been developed because of lack of County water. There is a water line but it is too small to support industrial uses. Therefore, this area that is slated for industrial development in the General Plan has sat for 25 years undeveloped.

Since the approval of Special Permit No. 1247, the South Kohala Community Development Plan (CDP) was adopted by the Hawai'i County Council in 2008. The CDP identifies the subject property within an area of "small farms and ranches", which falls under the "Small Farms and Ranches Preservation Program." Additionally, the CDP map for Waimea designates an area for industrial land uses near Waimea airport, similar to the LUPAG Map. The CDP also states "Encourage the development of a regional industrial park at Kawaihae and centralize limited industrial activities in Waimea."

Given that there is no viable location for service-oriented industrial uses in the Waimea area identified on our plans, the Planning Commission has approved several Special Permits over the years scattered throughout Waimea on very good farm land. In the beginning they were limited to a 5-year permit life but recently no permit life has been placed on these permits. Most of these Special Permits are for auto mechanical repair and auto body work at a smaller scale than the applicant's current operation.

Because the amendment request is inconsistent with the CDP and General Plan LUPAG Map, the Planning Director did not support a perpetual permit for this business at the subject property. It is possible that in the future the lands near the Waimea airport slated for industrial development will become viable.

However, in recognition that the applicant's business provides a needed service in North and South Kohala, and the northern part of Hāmākua, which requires that the business be centrally located to serve these communities, the Planning Director recommended a permit life that runs with the landowner, which will cease when the property is transferred or sold to a different owner. This will allow the business to continue to operate and expand until the landowner permanently closes his business.

**The proposed use is not contrary to the objectives sought to be accomplished by Chapter 205A, Hawai'i Revised Statutes, relating to coastal zone management program.** The property is located over 5 miles from the shoreline and is outside of the Special Management Area. There is no designated public access to the shoreline or mountain areas that traverses the property. Thus, the proposed use will not adversely impact any recreational resources, including access to and along the shoreline, scenic and open space nor visual resources, coastal ecosystems, and marine and coastal resources. Further, the property will not be affected by any coastal hazards or beach erosion. Therefore, the proposed use is not contrary to the objectives of Chapter 205A, Hawai'i Revised Statutes.

Lastly, this approval is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements in connection with the approved use, prior to its commencement or establishment upon the

subject properties. Additional governmental requirements may include the issuance of building permits, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.

William P. Kenoi  
Mayor



Duane Kanuha  
Director

Joaquin Gamiao-Kunkel  
Deputy Director

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
Kailua-Kona, Hawai'i 96740  
Phone (808) 323-4770  
Fax (808) 327-3563

**County of Hawai'i**  
PLANNING DEPARTMENT

East Hawai'i Office  
101 Pauahi Street, Suite 3  
Hilo, Hawai'i 96720  
Phone (808) 961-8288  
Fax (808) 961-8742

July 1, 2016

Mr. David McCollough  
P.O. Box 1581  
Kamuela, HI 96743

Dear Mr. McCollough:

**Application to Amend Special Permit No. 1247**  
**Applicant: RT's Service, LLC**  
**Subject: Request to Withdraw Application**  
**Tax Map Key: 6-4-017: portion of 064**

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Thank you for your email dated June 28, 2016 requesting to withdraw the subject application. Based on this request, we will withdraw the application you submitted on January 7, 2015 to amend Special Permit No. 1247 to remove the permit life, increase the number of vehicles stored on-site and extend the hours of operation. Since the life of this permit expired in January 2015, if you would like to continue to operate the business you will need to submit a new application to amend Condition No. 2 of the Special Permit in order to extend the permit life.

If you have any questions, please feel free to contact Maija Jackson at (808) 961-8159.

Sincerely,

  
DUANE KANUHA  
Planning Director

MJJ:mad  
P:\wpwin60\Maija\Letters\Acknowledge\LMcCollough-SPP1247Withdraw.doc

cc w/email: ✓Mr. Gilbert Bailado, GIS Section  
Leeward Planning Commission

**Camero, Tracie-Lee**

2016 JUN 28 AM 7 10

**From:** Jackson, Maija  
**Sent:** Tuesday, June 28, 2016 1:18 PM  
**To:** Camero, Tracie-Lee  
**Subject:** FW: Special Permit

PLANNING DEPARTMENT  
COUNTY OF HAWAII

Tracie- Please intake for 2015 Amendment to SPP 1247. Thanks.

**From:** RT's Service [mailto:rtservice@hawaiiintel.net]  
**Sent:** Tuesday, June 28, 2016 12:23 PM  
**To:** Jackson, Maija <Maija.Jackson@hawaiicounty.gov>  
**Subject:** RE: Special Permit

Hi Maija,

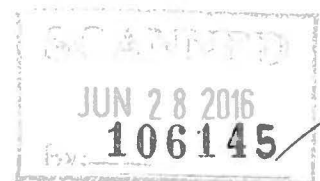
Can you please forward this to Duane Kanuha?

Thanks,  
David

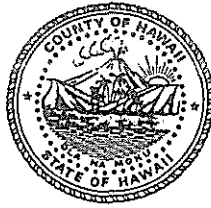
Hi Duane,

Please withdrawal previous special use application. We will apply to amend current permit to expand operations.

Thank you very much,  
David McCollough



Harry Kim  
Mayor



**County of Hawaii**  
**PLANNING COMMISSION**

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

October 19, 2004

Mr. Gregory Mooers  
P.O. Box 1101  
Kamuela, HI 96743

Dear Mr. Mooers:

Special Permit Application (SPP 04-013)

Applicant: RT's Service, LLC

Request: Office and Storage Uses for Investigative and Collection Services, Towing Service, and Short Term Parking for Repossessed or Disabled Vehicles

Tax Map Key: 6-4-17:portion 64

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The Planning Commission at its duly held public hearing on October 1, 2004, voted to approve the above-referenced application. Special Permit No. 1247 is hereby issued to allow office and storage uses for investigative/collection services, towing service, and short term parking for repossessed or disabled vehicles on approximately 14,273 square feet of land within the State Land Use Agricultural District. The property is located along the west side of Kauakea Road, approximately 400 feet north of the Kauakea Road-Mamalahoa Highway (Highway 19) intersection, and abutting the Nani Waimea Subdivision, Puukapu Homesteads, South Kohala, Hawaii.

Approval of this request is based on the following:

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 Chapter 205, Hawaii Revised Statutes (HRS), as amended. 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 has provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural District. 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

*MD*  
961888  
OCT 19 2004



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

The land on which the proposed use will be located is classified as "C" or "Fair" for agricultural productivity by the Land Study Bureau. The Agricultural Lands of Importance to the State of Hawaii (ALISH) Map identifies the property as "Prime Agricultural Lands. While the property contains agriculturally productive soils, the project site includes an existing farm dwelling, fenced paddocks, dog kennel, barn and mobile/modular office structure. According to the applicant, the area to be utilized for the proposed use will encumber approximately 14,273 square feet within the larger 5.006-acre parcel. It is not anticipated that the proposed use will displace any agricultural activity or diminish the agricultural potential of the area. Thus, this request is not contrary to the objectives of the State Land Use Law for the Agricultural District.

The request will conform to, among others, the Land Use and Economic elements of the General Plan and is not contrary to the goals, policies and standards of the General Plans. The proposed use includes the administrative functions of RT's Services, Inc. and the investigative and collection service that will not involve frequent visitations by the general public. The applicant's towing and emergency response operations is not significant in terms of use that would draw into question its appropriateness in an Agricultural-zoned district. 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 its subsequent use is dependent upon the receipt of a service call. Therefore, the limited nature of the proposed use is consistent with the goals, policies and standards of the General Plan.

The LUPAG Map identifies 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. The applicant has investigated the availability and feasibility of locating the proposed uses to Industrial-zoned areas both within the Waimea area and in Kawaihae. 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. Certain lands within the Kawaihae area owned by the Department of Hawaiian Home Lands are also zoned for industrial uses, but leasing of these lands is dependent upon its subdivision into appropriately-sized parcels. 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 Hawaii. This approval recommendation with a five (5)-year life of the permit is in recognition of the service the applicant provides to the residents of this area and the unavailability of Industrial-zoned lands that can readily accommodate the proposed use.

The desired use will not adversely affect surrounding properties or substantially alter or change the essential character of land and its present use. The proposed uses will be restricted to a 14,273 square-foot portion of the roughly 5-acre parcel. The project site includes the existing farm dwelling, dog kennel, barn and mobile/modular office structure. Adjacent lands to the north and south of the property are zoned A-5a. Lands adjacent to the east are zoned A-40a. Located to the west is the Nani Waimea Subdivision, with sixty 8,000 to 9,000 square foot lots zoned A-1a. Due to the limited nature of the proposed use and no customer traffic to the site, it is not anticipated that the use will adversely impact surrounding properties. Hours of operation are 6:30 a.m. to 4:30 p.m. Mondays through Fridays, although emergency roadside assistance will be provided off-site on a 24-hour basis. The remainder of the property will remain in residential and agricultural use. Conditions of approval will be included to limit office hours to the specified times. These recommended conditions will ensure that the scope of the proposed uses does not exceed the representations of the applicant and mitigative measures being recommended by the Planning Director. It is not anticipated that the proposed uses will 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, since towed vehicles are typically taken directly to repair shops and not delivered to the site. The applicant's collection and investigative services are primarily utilized by mainland banks and other financial institutions and typically involve contact by mail or phone. The services to be provided will not be dependent upon frequent visitations by the general public.

The project site is situated more than 30 feet from Kauakea Street and approximately 100 feet to the nearest adjoining property to the south. Along the southern boundary of the subject property is a 25-foot high earthen berm to reduce noise and visual impacts on the adjoining property to the south. The adjoining property to the north is buffered by the existing farm dwelling. Per the site plan submitted by the applicant, Nani Waimea Subdivision, which abuts the rear or west of the property, is situated about 340 feet from the project site. This distance should provide for adequate noise and visual mitigation. Ironwood trees front a portion of the subject property along Kauakea Street to partially obscure the location of the modular office building. With these mitigative measures in place, adverse noise and visual impacts upon adjoining properties will be effectively minimized. The opaque fencing will also visually preserve the existing agricultural character of remainder of the subject property and surrounding area.

The proposed use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. 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. That portion of the Mamalahoa Highway fronting Kauakea Street is maintained by the County of Hawaii. The applicant is in agreement with the

Department of Public Works' (DPW) recommendation to resurface Kauakea Road from Mamalahoa Highway to the property's driveway. A condition of approval will be included to reflect the DPW's recommendation to require the resurfacing of Kauakea Road from the highway to the property. According to the Department of Water Supply, "the existing 4-inch waterline in Kauakea Street does not provide the 2,000 gallons per minute fire-flow requirement for the proposed use. However, should this special permit application be approved, the applicant shall install a backflow preventer (reduced pressure type) by a licensed contractor on the applicant's property just after the meter." All other essential utilities and facilities are available to support the proposed use.

Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established. The project site and surrounding areas are designated for agricultural uses by both State and County land use laws. However, through the issuance of a Special Permit, various "non-agricultural" services and uses may be established. The Planning Director supports the issuance of a Special Permit with a limit on its duration of not more than 5 years in order to compensate for the lack of readily available Industrial-zoned parcels for fee or lease. Unique conditions have arisen in this particular area of South Kohala with the existence of Industrial-zoned lands and the inability of the landowners to develop these industrial subdivisions due to the absence of a market or the lack of support facilities. 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.

The land upon which the proposed use is sought is suited for the uses permitted within the district. Soils within the project site and surrounding area are agriculturally productive. 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. The applicant states that the proposed use will be primarily limited to an area that is already developed. The proposed use will not require that an excessive amount of agricultural lands be encumbered, as only a 14,273 square-foot portion of the 5-acre parcel will be utilized.

The request is consistent with the objectives and policies as provided by Chapter 205A, HRS, and Special management Area guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure. The project site is not located near a shoreline; therefore the property will not be affected by any coastal hazards or beach erosion. There are no identified recreational resources, historic resources, public access to the shoreline or mountain areas, scenic and open space preserves, coastal ecosystems, marine resources or other natural and environmental resources in the area. Because the property has been previously used for a trucking business, it is not anticipated that endangered or threatened candidate species of flora or fauna are located

within the property, nor has the area been identified as a significant botanical or biological habitat. According to the applicant who resides on the fully developed property, here is no evidence of any traditional and customary Native Hawaiian rights being practiced on the site, nor existence of known valued cultural, historical or native resources in the area. Thus, it is not anticipated that the proposed request will have any adverse impact on cultural or historical resources in the area.

No archaeological study or floral and faunal studies of the site were conducted. The applicant did not identify the exact number, height and type of individual species of trees, flowers, and vegetation on the property. However, the applicant stated that there is an ironwood tree hedge along Kauakea Road behind the modular office structure on the east side of the property. There is an ironwood tree hedge along 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 12 to 15 foot-high grass berm with another ironwood hedge planted outside of the berm to completely shield the property from the Nani Waimea Subdivision. The south side of the property has a 25-foot high hill/berm that makes the entire parcel invisible from the Mamalahoa Highway. Given the use of the property for a former trucking operation and a home site, it is not anticipated that endangered species of plants or animals or archaeological sites are located within the property.

Based on these considerations, the approval of the request to allow an office and storage uses for investigative/collection services, towing service, and short term parking for repossessed or disabled vehicles on approximately 14,273 square feet of land with an operational life for the secure storage area of five (5) years, would be supportive of the objectives sought to be accomplished by the Land Use Law and Regulations.

The request is approved with the following conditions. Should any of the conditions, however, not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke the permit.

1. The applicant shall be responsible for complying with all of the stated conditions of approval.
2. The life of the permit shall not exceed a period of five (5) years from the effective date of this permit, or until industrially-zoned lands become available in the Waimea area, whichever comes first. Should industrial-zoned lands become available in Waimea, the applicant shall have one year to relocate, but the permit life shall not exceed five (5) years.
3. Prior to construction, the applicant, successors or assigns shall secure Final Plan Approval for the proposed project from the Planning Director in accordance with

Chapter 24-2-70, Chapter 25 (Zoning Code), Hawaii County Code. Plans shall identify all existing and/or proposed structures, fire protection measures, parking stalls, and other improvements associated with the proposed use. Landscaping shall be included in the development plans to mitigate any potential adverse noise or visual impacts to adjacent properties in accordance with the Planning Department's Rule No. 17 (Landscaping Requirements).

4. As recommended by the Department of Public Works and agreed to by the applicant, Kauakea Road shall be resurfaced from the Mamalahoa Highway to and including the project site's access driveway, prior to the establishment of the proposed use.
5. No exterior signs identifying or advertising the proposed operation 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. The applicant shall continue to make a good faith effort to find a suitable alternative site.
8. 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 – State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
9. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of this permit. The report shall include, but not be limited to, the status of the development and the extent to which the conditions have been satisfied. 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.
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 permit may be suspended or revoked.

12. Comply with all applicable laws, rules and regulations of the affected agencies, including the Department of Public Works and Department of Water Supply.
13. An initial extension of time for the performance of conditions 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).

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.

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

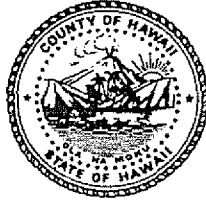
Sincerely,



Fred Galdones, Chairman  
Planning Commission

Lrt's01pc

cc: Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
Planning Department - Kona  
State Land Use Commission  
Department of Land & Natural Resources-HPD/Kona  
Rodney Haraga, Director/DOT-Highways, Honolulu  
RT's Service, LLC



## County of Hawai'i

### PLANNING COMMISSION

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

January 11, 2010

Mr. Gregory R. Mooers  
P.O. Box 1101  
Kamuela, HI 96743

Dear Mr. Mooers:

Special Permit No. 1247 (PD Docket No. 04-000013)  
Applicant: RT's Service, LLC  
Request: 10-Year Time Extension to Condition No. 2 (Life of Permit)  
Tax Map Key: 6-4-17:portion of 64

The Leeward Planning Commission at its duly held public hearing on December 9, 2009, voted to approve the above-referenced request for an amendment to Condition No. 2 (life of permit) of Special Permit No. 1247, which allowed the establishment of an office and storage uses for investigative/collection services, a towing service, and short term parking for repossessed or disabled vehicles on approximately 14,273 square feet of land in the State Land Use Agricultural District. The property is located along the west side of Kauakea road, approximately 400 feet north of the Kauakea road and Māmalahoa Highway (Highway 19) intersection, and abutting the Nani Waimea Subdivision, Pu'ukapu Homesteads, South Kohala, Hawai'i.

Approval of this request is based on the following:

Special Permit No. 1247 was approved October 1, 2004 to allow office and storage uses for investigative/collection services, towing service, and short term parking for repossessed or disabled vehicles on approximately 14,273 square feet of land.

The applicant is requesting a 10-year time extension to Condition No. 2 (life of the permit) to allow the continued operation of RT's Service LLC.  
Condition No. 2 states:

"The life of the permit shall not exceed a period of five (5) years from the effective date of this permit. Should industrial-zoned lands become available in Waimea, the applicant shall have one year to relocate."



**The amendment request 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.** The applicant has been operating RT's Service LLC at the current location since April of 2002. The applicant has made efforts to find suitable alternative sites for the business without success because of the lack of industrial zoned lands available in the Waimea area. Special Permit No. 1247, approved October 1, 2004, had a 5-year permit life which recently concluded. The applicant is requesting a 10-year time extension to the life of the permit to continue operating at its current location. The Planning Department has not received any complaints regarding the business since the approval of Special Permit No. 1247.

The intension of the limited life of the permit and the requirement for the applicant to make efforts to find an alternative site is to have the applicant eventually relocate the business to a properly zoned industrial area. At this time, there are no developed industrial zoned areas available in the Waimea area.

The Planning Director is recommending that the applicant be allowed to operate for another 5-year period at the current location. At the end of the 5-year period, the applicant will be required to come before the Planning Commission for an additional time extension if they choose to continue the business at this location. The Planning Commission can review if there are any available industrial sites for relocation at that time. If there are industrial sites available, the Planning Commission can decide to have the applicant relocate the business instead of granting an additional extension of time to continue at the current location.

**Granting of the amendment request would not be contrary to the original reasons for the granting of the permit.** The request to allow the continued operation of RT's Service LLC at its current location would not be contrary to the original reasons for granting the permit. The use would continue to be 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. Additionally, the proposed use will not adversely affect the preservation and agricultural use of the County's prime agricultural lands, and is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations. The proposed use will not require an excessive amount of agricultural lands to be encumbered, as only a 14,273 square-foot portion of the 5-acre parcel will continue to be utilized for the business. The continued use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and police and fire protection. Lastly, the Planning Department has not received any letters of opposition regarding the amended request.

Since the approval of Special Permit No. 1247, the South Kohala Community Development Plan was adopted by the Hawai'i County Council by Ordinance No. 08 159. The plan identifies the property within an area of "small farms and ranches", which falls under the "Small Farms and Ranches Preservation Program." Although the request is inconsistent with the plan, it is recommended that a five (5)-year time extension be approved based on the small amount of available industrial zoned land in South Kohala, the low impact of the use to surrounding properties, and the need for these types of services in North and South Kohala, and the northern part of Hamakua, which requires that the business be centrally located to serve these communities.

**Approval of this amendment request would not be contrary to the General Plan or the Zoning Code.** The amendment request would not be contrary to the General Plan or the Zoning Code. The request will continue to be consistent with the Land Use and Economic Elements of the General Plan. The granting of this request at this particular location will provide a convenient service to the growing community.

The LUPAG Map identifies the area in the vicinity of the Waimea-Kohala Airport and the area of the previous Gary's Automotive business as the only areas designated for Industrial-related uses within the Waimea area, which are undeveloped at this time.

Certain lands within the Kawaihae area owned by the Department of Hawaiian Home Lands are also zoned for industrial uses, but leasing of these lands is dependent upon its subdivision into appropriately-sized parcels. 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. This amendment approval recommendation with a five (5)-year permit life is in recognition of the continued service the applicant provides to the residents of this area and the unavailability of Industrial-zoned lands that can readily accommodate the proposed use.

Lastly, the applicant has previously received approval of a Special Permit to allow the establishment of an office and storage uses for investigative/collection services, towing service, and short term parking for repossessed or disabled vehicles in compliance with the Zoning Code.

Based on the above considerations, the Planning Director is recommending approval for the amendment request for a 5-year time extension to Condition No. 2 (life of the permit) of Special Permit No. 1247. Approval of the request is subject to the following conditions (material to be added is underlined and material to be deleted is bracketed and struck through):

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

2. The life of the permit shall not exceed a period of five (5) years from the effective date of this ~~[permit]~~amendment. ~~[Should industrial-zoned lands become available in Waimea, the applicant shall have one year to relocate.]~~
3. Prior to any new construction, the applicant, successors or assigns shall secure Final Plan Approval for the proposed project from the Planning Director in accordance with Chapter 24-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and/or proposed structures, fire protection measures, parking stalls, and other improvements associated with the proposed use. Landscaping shall be included in the development plans to mitigate any potential adverse noise or visual impacts to adjacent properties in accordance with the Planning Department's Rule No. 17 (Landscaping Requirements).
4. ~~[As recommended by the Department of Public Works and agreed to by the applicant, Kauakea Road shall be resurfaced from the Mamalahoa Highway to and including the project site's access driveway, prior to the establishment of the proposed use.]~~ A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval within ninety (90) days of the effective date of this amendment.
5. No exterior signs identifying or advertising the proposed operation 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. The applicant shall continue to make a ~~[good]~~good faith effort to find a suitable alternative site.
8. 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 – State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
9. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of this permit. The report shall include, but not be limited to, the status of the development and the extent to which the conditions have been satisfied. 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.

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 permit may be suspended or revoked.
12. Comply with all applicable laws, rules and regulations of the affected agencies, including the Department of Public Works and Department of Water Supply.
13. ~~[An initial extension of time for the performance of conditions 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).]~~If the applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the Planning Commission for appropriate action.

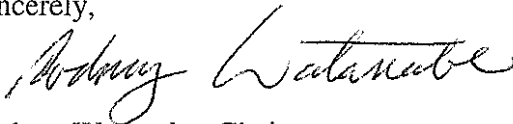
Should any of the conditions, however, not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke the permit.

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

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

Sincerely,



Rodney Watanabe, Chairman  
Leeward Planning Commission

Lit'sservicespp1247PC

cc: RT's Service, LLC  
Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
Planning Department - Kona  
State Land Use Commission  
Department of Land & Natural Resources-HPD  
DOT-Highways, Honolulu  
Mr. Gilbert Bailado ✓