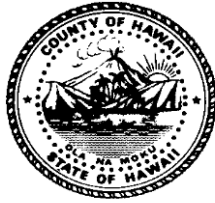


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## County of Hawai'i

### LEEWARD PLANNING COMMISSION

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

November 12, 2021

Ms. Katherine Luga  
Carlsmith Ball LLP  
121 Waiānuenue Avenue  
Hilo, HI 96720  
VIA EMAIL

Dear Ms. Luga:

**SUBJECT: Special Permit Application No. PL-SPP-2021-000001  
Special Permit No. SPP 1247 (Docket No. SPP 04-000013)  
Applicant: RT's Service, LLC  
Request: Amendment to Condition No. 3 (Life of Permit), Condition No. 6  
(Secure and Finalize Building Permits), and Condition No. 7  
(Hours of Operation for Inspection Station) of Special Permit  
No. SPP 1247  
Tax Map Key: (3) 6-4-017:064 (por.)**

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This letter supersedes the previously sent letter dated November 8, 2021, with the hearing date corrected. We apologize for the confusion it may have caused.

The Leeward Planning Commission, at its duly held public hearing on October 21, 2021, voted to approve the above-referenced request to amend Condition Nos. 3, 6, and 7 of Special Permit No. SPP 1247. The property is located at 64-5223 Kauakea Road, approximately 400 feet north of its intersection with Māmalahoa Highway, 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 McCullough and John Roth, partners under the Hawai'i Civil Union Act and Mark and Dianna Farias, a married couple, 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 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 two years 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 8:00 a.m. to 4:30 p.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.
17. 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.]*

Ms. Katherine Luga  
Carlsmith Ball LLP  
November 12, 2021  
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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 amendment is based on the reasons given in the enclosed Findings Report.

Should you have any questions, please contact Jessica Andrews of the Planning Department at (808) 961-8155 or by email at [Jessica.Andrews@hawaiicounty.gov](mailto:Jessica.Andrews@hawaiicounty.gov).

Sincerely,

/s/ Michael Vitousek

Michael Vitousek, Chairman  
Leeward Planning Commission

\\COH01\planning\public\wp60\PC\PCC2021-4\LRT'sServiceAmendSPP1247PL-SPP-2021-0011pc (Corrected)

Enclosure: Planning Commission Findings

cc w/encl. via email: Mr. David McCollough  
State Department of Transportation  
State Department of Health, Solid Waste Division  
GIS Section

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

**RT’S SERVICE, LLC**

**AMENDMENT TO SPECIAL PERMIT APPLICATION NO. 1247 (SPP 1247) PL-SPP-2021-000001**

Based on the following findings, the requested Amendment to Condition No. 3 (life of permit), Condition No. 6 (secure and finalize building permits) and Condition No. 7 (hours of operation for inspection station) of Special Permit No. 1247, which was issued in 2004 to allow office space and storage uses for investigative/collection services, a towing service, and short-term parking for repossessed or disabled vehicles on an approximately 14,273 square feet portion of a 5.006-acre parcel situated within the State Land Use Agricultural District is hereby **approved by the Planning Commission**. The subject property is located at 64-5223 Kauakea Road, approximately 400 feet north of the intersection with Māmalahoa Highway, Pu‘ukapu Homesteads, South Kohala, Hawai‘i, TMK: (3) 6-4-017:064 (por).

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 an 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 requested the following amendments to SPP 1247: 1) amend Condition number 3 so that the life of the permit runs with the current owner; 2) amend Condition number 6 to provide an additional two years to complete building permits; and 3) amend Condition number 7 to extend the hours of operation for the Inspection Station.

The previous owner, David McCollough, Trust, has conveyed the legal title to the property to David McCollough, John Roth, Mark Farias and Dianna Farias. The change in ownership is documented by the Trustee’s Limited Warranty Deed, dated February 7, 2020, recorded in the Bureau of Conveyances of the State of Hawaii in Document No. A-73450693. David McCollough continues to be a current owner of the subject property and is the sole managing member of RT’s Service, LLC, the operator of the facility. As such, the applicant proposes to amend Condition No. 3 to reflect the change in ownership.

In 2018, the applicant began the process of securing a building permit for the existing shop structure and the existing prefabricated office trailer. Unforeseen delays occurred as a result of the initial project architect’s inability to complete “as-built” plans. Subsequently, the applicant was able to submit an application for a building permit, A2021-BK01063, filed with the Department of Public Works on June 10, 2021. The description of work for this building permit is recorded as an as-built alteration/change of use to convert the existing barn to an automotive shop with an additional two storage rooms and a closet. The applicant has also filed a request for a two-year administrative time extension to the Final Plan Approval, PLA-19-001674 (from July 25, 2021 to July 25, 2023).

Previously, the State Department of Transportation (HDOT) temporarily suspended Inspection Station No. 360 until SPP 1247 was amended to allow its operation. However, since the most recent amendment was approved, the applicant has been unable to reinstate its Inspection Station as the previously proposed hours of operation, between 8:00 am and 10:00 am, do not comply with the HDOT’s administrative rules. As such, the applicant is requesting an amendment to Condition No. 7 to extend the Inspection Station hours of operation to be between

8:00 am to 4:30 pm, Monday through Friday. The Inspection Station will operate by appointment only and would be staffed by two existing employees who are certified by the HDOT as safety inspectors. The applicant anticipates approximately 30 motor vehicles would be inspected at the shop per month.

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 one of the towing contractors 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 criteria for granting the requested time extension to comply with Condition No. 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 Director recommends granting a two-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 previously 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. In order to comply with Condition No. 6, the applicant has submitted as-built plans for a building permit, A2021-BK01063, to convert the existing barn into an automotive shop. However, due to unforeseen delays that were beyond the control of the applicant, the building permit process has not yet been completed.

**The criteria for amending a Special Permit, such as the requested amendments to the existing use, 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 requested amendments to the existing use are 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 requested amendments to the existing 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 business activity will occur within an existing structure.

**(B) The requested amendments to the existing 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. If the Inspection Station operates during the business hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, the amount of traffic should not significantly 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) The requested amendments to the existing 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 previous comments from 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 previously recommended that the applicant contact the Fire Department for any fire protection requirements or alternatives. 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. 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 requested amendments to the existing 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 lands designated Agricultural, 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 requested amendments to the existing 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 18 years by the applicant for the business, therefore providing for a time extension to secure and finalize building permits will not substantially alter the essential character of the land.

**(G) The requested amendments to the existing use 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 applicant's business 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 18 years and the current request does not alter the extent of the business operation.

**The requested amendments to the existing 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.