

## 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

October 6, 2008

Greenwell Farms Inc.  
P.O. Box 248  
Kealahou, HI 96750

Gentlemen:

Special Permit Application (SPP 08-000061)

Applicant: Greenwell Farms Inc.

Request: To Allow the Construction of Ten Farm Worker Housing

And Support Facilities to Accommodate a Total of 50 Seasonal Workers

Tax Map Key: 8-1-4:por 75

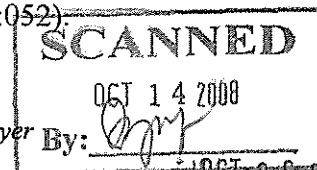
The Planning Commission at its duly held public hearing on September 19, 2008, voted to approve the above-referenced application to allow the establishment of seasonal farm worker housing for up to 50 workers on 2 acres of land situated within the State Land Use Agricultural District. The area involved is a part of the existing Greenwell Farms located along the makai side of Mamalahoa Highway, approximately 2,500 feet south of the Mamalahoa Highway – Halekii Street intersection, Kealahou, South Kona, Hawaii.

Approval of this request is based on the following:

The applicant, Greenwell Farms Inc., is requesting a Special Permit to establish seasonal farm worker housing for up to 50 workers on a 2-acre portion of 104.8 acres of land, and to allow all workers housed on the site to work at various farms throughout the Kona coffee belt that the applicant has contracted with to provide farm labor.

On September 6, 2007, a Farm Employee Housing Agreement (FEHA) was executed between the County of Hawaii and Kalukalu Properties to allow the construction of three structures to provide living spaces for up to 20 farm workers. The Agreement required that these farm workers work only on the subject property and on the contiguous property owned by Kalukalu Properties (TMK 8-1-004:052).

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The applicant's request includes the construction of up to ten additional structures to house 30 additional workers. Combining this request with the structures allowed with the FEHA, a total of thirteen structures will be located on the 2-acre site. The facilities will be designed to meet the housing standards of the US Department of Labor and Industrial Relations H2A Visa Worker Program, which requires a minimum of 50 square feet of floor space per occupant for sleeping purposes or 100 square feet of floor space per occupant in a room where workers cook, live and sleep.

The applicant manages about 35 acres of coffee trees on the subject property, and intends to increase operations on this property and surrounding lands held by the Greenwell family. In addition, the applicant currently has farm management and harvesting contracts with more than ten Kona area coffee farmers and plans to enter into additional contracts with third party growers. In order to carry out these contracts the applicant needs to expand its housing facilities to accommodate a total of 50 workers and eliminate the restriction in the FEHA that the workers cannot work off-site. The definition of "farm dwelling" in HRS, Chapter 205-4.5(a)(4) requires that farm employee housing be located on the same farm where the employees work. Therefore, a special permit is required to allow the applicant's request. Upon approval of this special permit the FEHA will no longer be relevant and will, therefore, be severed.

The grounds for approving a Special Permit are based on Planning Commission Rule 6-6. It 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 or Rural District, whichever the case may be; and (b) the proposed use would promote the effectiveness and objectives of Chapter 205, Hawaii 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 objective of Chapter 205, Hawaii Revised Statutes (HRS), as amended. The intent of the State Land Use Law and objective of HRS Chapter 205 for the Agricultural district is to preserve or keep lands of high agricultural potential in agricultural use. In recognizing that lands within the agricultural districts might not be best suited for agricultural activities and yet classified as such, and in recognition that certain types of uses might 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. The proposed use is considered unusual since it is a residential use within the Agricultural District. However, it is a reasonable use as the seasonal farm worker housing will allow the existing coffee farm to remain productive by providing a labor force during harvesting season, and will allow the applicant to expand its operations by providing farm labor to other coffee farms throughout the Kona area.

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 State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands in the state for those uses to which they are best suited in the interest of the public health and welfare of the people of the State of Hawaii. The proposed housing will not adversely affect the preservation and agricultural use of the County's prime agricultural lands because the property is not considered important or prime agricultural land. A major limitation to the growth of the Kona coffee industry is the lack of local farm labor to manage the farms and harvest the coffee. To address this deficiency an immigrant farm labor force is used; however there is not sufficient housing to accommodate these seasonal workers. Use of the site for worker housing would help to preserve and expand the operation of the existing farm and the Kona coffee industry in general by providing much needed housing for these immigrant laborers.

(B) The desired use would not adversely affect surrounding properties. Surrounding properties to the west and south are leased by the applicant and in agricultural uses. The closest neighbors that have the potential to be affected by the seasonal farm worker housing are located to the north of the permit site. However, these residences and commercial buildings are over 275 feet from the permit site. Conditions of approval will mitigate any potential impacts to surrounding properties by requiring the applicant to provide landscaping to create a noise buffer and visually screen the permit site from neighbors. In addition, the applicant will implement and oversee "house rules" as described in the application to reduce noise impacts. To reduce traffic impacts the applicant will transport workers to and from off-site farms in seven passenger vans, and provide on-site parking for one personal vehicle per housing unit. With implementation of the above-mentioned conditions, it is not anticipated that the project will adversely impact surrounding properties.

(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 site is via several farm roads on the subject property which intersect with Mamalahoa Highway, a State owned and maintained highway. The amount of traffic generated by the proposed use will be minimal; therefore no improvements will be needed on Mamalahoa Highway due to the proposed request. The applicant has executed an agreement with the County Water Board and other parties to provide water to the site. In addition, a condition of the permit requires the applicant to meet the potable water requirements of the site to the satisfaction of the Department of Water Supply by either reducing potable water use within the property by providing private rainwater catchment or developing a non-potable water well. Wastewater will be disposed of into individual

wastewater systems meeting the requirements of the Department of Health. All other services and utilities are available to the project site. Based on the above, the requested use will not burden public agencies to provide additional services and the applicant has met this criterion.

(D) Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established.

The permit 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 and have been established. Farm employee housing is a permitted use in the Agricultural District as long as the employees work on the land where the housing is located. In this case a special permit is needed because the applicant will be providing housing for employees working on-site and off-site at other coffee farms throughout Kona. In the past Kona coffee farms have relied on local labor during harvest season but due to a more diversified economy in Kona, local workers are no longer seeking farm labor opportunities. This has caused Kona coffee farmers to hire immigrant farm labor. Generally farm labor housing throughout Kona has been substandard so there is a need to provide safe and sanitary housing for these laborers.

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

The permit site is currently part of an active coffee farm. An old farm dwelling, carport, shed and forty (40) coffee trees will be removed in order to construct the farm worker housing. However, the applicant will plant new coffee trees elsewhere on the property to replace the trees that are removed.

(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 is agricultural. The seasonal farm worker housing will help to maintain the essential character of the land by providing a labor force for the existing coffee farm. The proposed structures will be similar in character to the three farm worker housing structures constructed in 2007. Therefore, the proposed use will not change the essential character of the land.

(G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans. 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 permit site is located in an area identified as Low and Medium Density Urban in the General Plan, which allows for multiple family residential and related functions up to 35 units per acre. The proposed use is consistent with the General Plan LUPAG Map, and supports the following goals and policies of the Housing, Land Use and Economic elements of the General Plan:

Housing

- Support the construction of housing for minimum wage and agricultural workers.

Land Use: Agricultural

- Farm labor housing projects shall be developed in a manner that minimizes the use of important agricultural lands and is consistent with the character of surrounding land uses.

Economic Element

- Strive for diversification of the economy by strengthening existing industries and attracting new endeavors.

The proposed request will strengthen the operation of the existing coffee farm, as well as the Kona coffee industry as a whole by providing safe and sanitary housing for farm laborers that will work on farms throughout the Kona coffee belt. Based upon this information, the applicants request is consistent with the goals and objectives of the General Plan.

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 property is located over a mile from the nearest shoreline and therefore will not likely be affected by coastal hazards and beach erosion or negatively affect coastal ecosystems, marine resources, public access to the shoreline, and shoreline recreational resources. An archaeological assessment survey of the property found no historic sites and the DLNR-SHPD concurred with this determination. The applicant has stated that there is no public access to the mountains that traverses the property and no view planes or scenic resources that will be impacted by the project. Additionally, no evidence exists of any traditional and customary Native Hawaiian rights being practiced on the site. Thus, the proposed request is consistent with the objectives of HRS, Chapter 205A.

Based on the above, the approval of the request to establish seasonal farm worker housing would support the objectives sought to be accomplished by the Land Use Law and Regulations. Approval of this request is subject to the following conditions:

1. The applicant(s), its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. The applicant shall design and construct the seasonal farm worker housing units to comply with the US Department of Labor and Industrial Relations H2A Visa Worker Program, which requires a minimum of 50 square feet of floor space per occupant be provided in each room used for sleeping purposes and 100 square feet of floor area be provided in a room where workers cook, live and sleep. A maximum of 50 workers shall be housed on the 2-acre permit site.
3. The seasonal farm worker housing units shall be used only to provide shelter to person(s) employed full-time (can be seasonally) in the agricultural or farm-related activity on the subject property or on properties in North or South Kona which the applicant, its successors or assigns have contracted with to provide farm labor. The applicant shall document the employment status of each occupant and provide it to the Planning Department upon request.
4. The seasonal farm worker housing units shall not be used for any other purpose, such as an apartment building, boarding house, vacation rental or any other rental-income producing activity.
5. Prior to the issuance of a water commitment by the Department of Water Supply, the applicant shall submit the anticipated maximum daily water usage calculations prepared by a professional engineer licensed in the State of Hawaii. Upon approval of the water usage calculations, the applicant shall ensure that sufficient potable water service is provided to the seasonal farm worker housing to the satisfaction of the Department of Water Supply. This can be achieved by executing the Well Bond and fulfilling the requirements referred to in the agreement executed on April 12, 2007 between William N. Greenwell/Ethelyn Jean Greenwell (Greenwell's), 1250 Oceanside Partners and the Water Board, or reducing potable water usage within the property by providing private rainwater catchment or developing a non-potable water well. This condition shall be completed prior to Final Plan Approval.
6. Construction of the proposed seasonal farm worker housing shall be completed within five (5) years from the effective date of this permit. Prior to construction, the applicant, successors or assigns shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-

2-70, Chapter 25 (Zoning Code), Hawaii County Code. Plans shall identify all existing and/or proposed structures and vehicle access associated with the proposed development. Landscaping shall also be indicated on the plans for the purpose of mitigating any adverse noise or visual impacts to adjacent properties. The applicant shall retain or provide enough vegetation to screen the housing structures from Mamalahoa Highway and surrounding properties that are under other ownership.

7. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
8. The method of sewage disposal shall meet the standards and requirements of the State Department of Health.
9. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to Final Plan Approval.
10. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources - State Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-HPD when it finds that sufficient mitigative measures have been taken.
11. Any new construction within Flood Zone "AE" shall be subject to the requirements of Chapter 27, Flood Control of the Hawaii County Code.
12. The applicant shall finalize all outstanding building permits on the property prior to Final Plan Approval.
13. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
14. The seasonal farm worker housing shall be constructed and operated in substantial conformance with representations made in the application and to the Planning Commission.
15. Upon compliance with applicable conditions of approval and upon completion of construction for any portion of the development, the applicant shall submit a status report, in writing, to the Planning Director.

16. 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 applicants, 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).

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

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.

Please submit a metes and bounds description (written and map) of the Special Permit area to the Planning Department prior to Final Plan Approval.



Greenwell Farms, Inc.

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

Sincerely,



Rodney Watanabe, Chairman  
Planning Commission

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cc: Mr. Jeff Melrose  
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