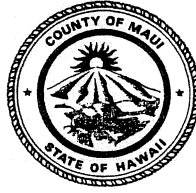


ALAN M. ARAKAWA  
Mayor



BRIAN T. MOTO  
Corporation Counsel

**DEPARTMENT OF THE CORPORATION COUNSEL**  
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July 28, 2006

MEMO TO: Jo Anne Johnson, Councilmember

F R O M: Jesse K. Souki, Deputy Corporation Counsel

SUBJECT: Kuleana Ku'ikahi Case Update

The purpose of this memorandum is to respond to your memorandum, dated November 29, 2004, requesting legal advice. In a follow-up telephone conversation on May 2, 2006, you conveyed that you would like to know the status of Kuleana Ku'ikahi, LLC v. County of Maui, Civil No. 02-1-0512(3) ("Kuleana I") and Kuleana Ku'ikahi, LLC v. State of Hawaii Land Use Commission, Civil No. 06-1-0152(1) ("Kuleana II").

The first case, Kuleana I, was pending before Judge Joseph Cardoza of the Circuit Court of the Second Circuit. The plaintiff alleged, among other things, that the Department of Public Works and Waste Management<sup>1</sup> and its then director, David C. Goode, wrongfully disregarded the recommendations of the State Historic Preservation Division, Department of Land and Natural Resources, concerning the historical and cultural aspects of lands proposed to be subdivided, and that Director Goode gave final plat approval to the Pu'unoa I subdivision without imposing the recommended protection of a buffer zone necessary to protect the Kauaula Stream area.<sup>2</sup> This case was voluntarily dismissed without prejudice by the plaintiff, with the understanding that similar issues were already before the State Land Use Commission ("LUC").

<sup>1</sup> The department was renamed the Department of Public Works and Environmental Management pursuant to a Charter amendment approved in 2002.

<sup>2</sup> Amended Complaint, Kuleana I, ¶ 27 (Feb. 4, 2003).

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The second case, Kuleana II, is an appeal currently pending before Judge Joel August of the Circuit Court of the Second Circuit. Petitioner's Notice of Appeal was filed on April 26, 2006.<sup>3</sup>

Petitioner appeals from the Findings of Fact, Conclusions of Law, and Decision and Order filed by the LUC on April 10, 2006 in LUC Docket No. DR04-30 (In the Matter of the Petition of Kuleana Ku'ikahi, LLC, for a Declaratory Order to Address Certain Controversies and Uncertainties Involving Lands at Puehuehuiki, Pahoia, Polanui, Lahaina, Maui, Hawaii).

In its Findings of Fact, Conclusions of Law, and Decision and Order, the LUC concluded that the Petitioner "failed to meet its burden of proof that the present and proposed uses of agricultural lands on the Property are not in conformity with and are in direct violation of applicable State laws, rules, and regulations pertaining to the uses of agricultural lands and subdivisions...."<sup>4</sup> The LUC also concluded, among other things, that: Chapter 205, Hawaii Revised Statutes, does not prevent an owner from leaving land vacant and, therefore, that owners of certain lots in the Pu'unoa I and II Subdivisions were not in violation of Chapter 205; a pasture, a nursery, a horse stable, a sod farm, and raising roosters on certain properties are permitted under Chapter 205; and farm plans filed with, and approved by, the Planning Director are evidence of an owner's intended use of property in the State-designated Agricultural District.<sup>5</sup>

Jane Lovell, Deputy Corporation Counsel, is representing the County of Maui in Kuleana II. A copy of your November 29, 2004 memorandum has been submitted to Ms. Lovell for her information. Upon adequate prior notice, Ms. Lovell is

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<sup>3</sup> Notice of Appeal to the Circuit Court, Kuleana II (Apr. 26, 2006).

<sup>4</sup> Findings of Fact, Conclusions of Law, and Decision and Order, LUC Docket No. DR04-30, at 31-32 (Apr. 10, 2006).

<sup>5</sup> *Id.* at 28-30.

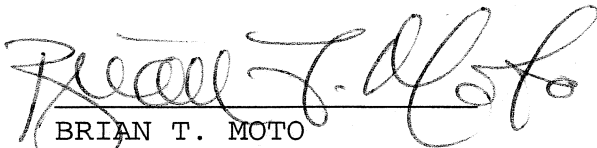
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available to provide further information or status reports on  
Kuleana I and Kuleana II.

Please call if further clarification is needed.

cc: Jane Lovell, Deputy Corporation Counsel  
Cindy Young, Deputy Corporation Counsel  
Michele White, Legal Assistant  
S:\ALL\Advisory\JKS\Johnson Kauaula Update.doc

APPROVED FOR TRANSMITTAL:

  
BRIAN T. MOTO  
Corporation Counsel