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**Subject:** FW: LUC denies challenge on Pu'unoa farming lots  
**Date:** Friday, March 23, 2007 1:50:18 PM  
**Attachments:**

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-----Original Message-----

**From:** Charlee Abrams [mailto:kksp@juno.com]  
**Sent:** Monday, February 20, 2006 8:33 AM  
**To:** labrams@kauairentals.com  
**Subject:** LUC denies challenge on Pu'unoa farming lots

LUC denies challenge on Pu'unoa farming lots  
By VALERIE MONSON, Staff Writer

Sunday, February 19, 2006 10:37 AM

KAPALUA – A hui of Hawaiian families trying to prove that new owners of agricultural lots in the West Maui Mountains aren't farming their land as required by law will take their case to the Hawaii Supreme Court.

The state Land Use Commission on Friday denied their claim. By a 6-0 vote, the commission accepted a modified report by a hearings officer that rejected the arguments offered by Kuleana Ku'ikahi that the owners of the 5-acre lots in the Pu'unoa subdivisions were not farming and not complying with state land-use laws.

Before approving the report, commissioners removed all language submitted by hearings officer M. Casey Jarman related to county enforcement.

Richard McCarty, the attorney for Kuleana Ku'ikahi, said after the meeting that he will ask the Supreme Court to reverse the decision, particularly because the LUC would not allow Jarman to consider related issues in determining the impact on farming activities, such as water, access and Hawaiian cultural matters in making her ruling.

"We think evidence should have been taken on those issues," said McCarty. "The good thing that came out of this hearing is that it says that if you don't use your ag land for proper ag purposes, then anybody can bring it to the attention of the LUC."

Owners of the Pu'unoa lots were relieved at the commission decision.

"We won!" a woman cried in a soft whisper as the audience finally realized what the commission had done.

Attorney Blaine Kobayashi, who represented several of the landowners, was pleased for his clients.

“It removes the uncertainty of what they’re doing on their land, what they’ve proposed and what has been approved by the county,” said Kobayashi.

But McCarty didn’t seem convinced that the ruling would necessarily result in more agricultural activity. He pointed to the neighboring ag subdivisions at Launiupoko where the amount of “farming” being conducted on the million-dollar lots has been questioned.

“There’s been no restraint at Launiupoko,” said McCarty. “There will probably be no restraint on subsequent ag subdivisions, either. These subdivisions are being put in place by the same developers.”

The issue raised by Kuleana Ku’ikahi has underlined the changing face of Maui and the growing disconnect between state requirements that agricultural lands be protected and the market for large lots for small estates.

Less than 10 years ago, the 5,000 acres from the edge of Lahaina to Olowalu had mostly been covered by sugar cane under cultivation by Pioneer Mill. When the mill closed down, the lands were sold to local investment groups, represented by the West Maui Land Co., a partnership headed by real estate investors Peter Martin and James Riley.

West Maui Land planned three large-lot subdivisions, including one – the 433-acre Mahanalua Nui – which was allowed smaller 2-acre lots because preliminary subdivision approval was granted before the County Council revised the agricultural subdivision law.

Two subsequent subdivisions, Makila Plantation comprising 4,500 acres and Puunoa with 235 acres, were required to include larger lots up to a minimum of 40 acres under the standards designed to maintain land in ag use.

At Mahanalua Nui, the 150 lots on the slopes above Launiupoko Wayside Park appears to be a community of mostly large homes and well-kept yards, rather than farm lots. Under the state law, Hawaii Revised Statutes 205, all of the houses built are allowed only as “farm dwellings” in support of some type of farming activity.

Some owners are farming. But McCarty and members of Kuleana Ku’ikahi argue that many are not.

The conflict developed six years ago when members of the Kapu family, who grow taro and live on kuleana lands in Kaua’ula Valley mauka of the Puunoa and Makila Plantations properties, began raising concerns about negative impacts the new landowners were having on water, access and their cultural practice of taro farming.

Their position won support from the State Historic Preservation Division, which recommended that the Puunoa developers establish a 300-yard setback from the Kaua’ula Stream and the new ag lots to “create a buffer between the new wealthy resident lifestyle . . . and the rural Hawaiian lifestyle the community wishes to perpetuate.”

But that recommendation was not followed. As more and more lots were sold, tensions increased between the Hawaiian families and the developers with both sides filing lawsuits and seeking restraining orders at one time or another.

Under previous county administrations, building permits on farm land were issued with no apparent attention to the state requirement that houses on agricultural land be incidental to a farming activity.

The Kaua'ula Valley families, organized under the umbrella of Kuleana Ku'ikahi, posed the issue to the LUC with a petition in 2002 seeking a determination of when a landowner seeking to subdivide agricultural land needs to show that agricultural activity will be taking place.

The families' hopes were raised when the administration of Mayor Alan Arakawa declared it will require that landowners seeking to build on agricultural land must show they will be involved in farming.

On behalf of Arakawa, who took office in January 2003, Planning Director Mike Foley told the LUC that "farm dwellings are permitted on agricultural lands. Residential districts are not."

Since then, the Planning Department has drawn up a policy that requires ag lot owners to submit "farm plans" showing that at least half of their property will be in agricultural use, which could include growing fruit trees or raising horses. To enable the new owners to get a start on their land, the county allows them to build a house without the farming activity in place. Before they can get a second building permit, however, owners must prove to the county that they're implementing their farm plan.

The LUC urged Kuleana Ku'ikahi and the developers to settle their differences through mediation, but when that failed two years ago, the Hawaiian families returned to the commission in mid-2004 to challenge what was happening on the 28 large lots carved out of the 230 acres of the Pu'unoa I and II subdivisions. During the contested case heard by Jarman in July, many of the new landowners told of their sincere intentions to conduct some sort of county-approved agricultural activity.

After the decision Friday, attorney Jim Geiger, who represented Kaua'ula Land Co. LLC – a development group that includes principals of West Maui Land – said the individual lot owners were, indeed, carrying out their plans.

"If you go through the subdivision, you see that people are engaged in agriculture," said Geiger. "Certainly the devil is in the details to what the meaning of agriculture is. In this case, there are varied forms, ranging from growing flowers to crops to livestock to ag conservation, all approved by the county."

McCarty said the reason his clients chose to focus on the Pu'unoa subdivisions, which are just getting started as opposed to the more developed Mahanalua Nui and Makila Plantations subdivisions, was because "the lands could be saved at Pu'unoa and there were a limited number of homeowners."

After reading Jarman's decision and order two months ago, McCarty wasn't surprised at the commission ruling and was already prepared to move ahead.

"This is just another step in the process," he said. "We're not faint-hearted. We're in this for the long haul."

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