

# LIFE OF THE LAND

*Ua Mau Ke Ea o Ka `Aina i Ka Pono*

*The Life of the Land is Perpetuated in Righteousness*

**76 North King Street, #203, Honolulu, Hawai`i 96817**

**(808) 533-3454 \* [henry.lifeoftheland@gmail.com](mailto:henry.lifeoftheland@gmail.com)**

---

Tuesday, July 23, 2007

RAYMOND YOUNG

DPP Project Manager

City and County of Honolulu Department of Planning & Permitting

650 So. King St.

Honolulu, HI 96813

DAVID CROCKETT

President of the Poamoho Estates, Unit 1, Community Association

65-1078 POAMOHO ST

WAIALUA Hawaii 96791

DAVID TAOGOSHI

Aiea Realty, Developer of Poamoho Estates, Unit 1 & 2

99-128 Aiea Hts Dr Ste 704

Aiea, HI 96701-3940

Phone: 808-487-7977

MIKE LYONS

Chair, North Shore Neighborhood Board

66-376 Haleiwa Road #A

Haleiwa, Hawai`i 96712

re: Poamoho Estates, Unit 1 (Enforcement Actions) and Unit 2 (Developer's Application for Kaala View Farm Lots TMK: 5-5-01:10 & 33 (84.68 acres) Agricultural Cluster)

Aloha Mr. Young, Mr. Crockett, Mr. Taogoshi and Mr. Lyons,

My name is Henry Curtis and I am Executive Director of Life of the Land, Hawai`i's own environmental and community action group advocating for the people and the `aina since 1970. Our mission is to preserve and protect the life of the land through sustainable land use and energy policies and by promoting open government through research, education, advocacy, and litigation.

Life of the Land has serious reservations regarding the existing policies at Poamoho Estates Unit 1 and the planned Poamoho Estates Unit 2. The outstanding issues include, but are not limited to:

- (1) Using agricultural land for non-agricultural purposes;
- (2) Using agricultural tax breaks for non-agricultural purposes;
- (3) Using agricultural lands for Gentlemen Estates and McMansions;
- (4) Using agricultural water for Gentlemen Estates and McMansions;
- (5) Interference with the Right-to-Farm by inappropriately and unlawful gates;
- (6) Lacking any type of agricultural language for lot owners on the proposed Poamoho Estates Unit 2;

- (7) Failing to enforce existing deed restrictions by the City and County of Honolulu;
- (8) Failing to enforce existing deed restrictions by the developer;
- (9) Failing to enforce existing deed restrictions by the Community Association
- (10) Allowing the developer to build Phase 2 with weaker conditions than Phase 1.

### **Gentleman Estates versus The Right To Farm**

What happens when you sell lots in an agricultural subdivision that have magnificent unobstructed view planes of the mountains and ocean? What happens when the lots are sold to those who like to live on Gentleman Estate versus those who want to engage in serious farming? This conflict is unfolding in the existing Poamoho Estates and the planned Kaala View Farm Lots, both located on Kaukonahua Road, mauka of Waialua.

Poamoho Estates is a 15-lot agricultural division located just makai of the University of Hawai'i's Poamoho Experimental Agricultural Station. Poamoho Estates was initially sub-divided in 1996, and the lots were sold in 1997-98, however many of the lots remain unoccupied, some have non-residential owners, several are for sale, and there are only two thriving farming operations, and one of them is for sale.

Al Santoro owns a house built in 2000 which has 3 bedroom and 2,665 square foot of floor space on 7 acres of land. His house is listed at \$3,950,000. The lots and houses for sale note that the land is AG-1 restricted agriculture while highlighting the great views and the locked gate.

### **Locked Gates**

The Poamoho Estates Community Association wants to be a gated community. This protects rich, unoccupied homeowners, but directly impedes customers buying agricultural products at the legitimate farm.

"A statement sent by the attorney representing the Poamoho Estates board said members of the association voted for the electric gate and that a majority agreed to the hours it would remain locked. ... Carving up large parcels of agriculture land goes against the sentiment of the North Shore community at large" said Antya Miller, executive director for the North Shore Chamber of Commerce. "The community wants to maintain open space and become more self-sufficient in supplying its food", Miller said. <sup>1</sup>

### **Hawai'i Bureau of Conveyances**

The Poamoho Estates, Unit I: Declaration of Covenants and Restrictions, was filed with the Hawai'i Bureau of Conveyances and recorded on Mar 05, 1996 (Document Number 96-030085). The document was submitted by Poamoho Venture LP. It states the obvious - the lots must be used for agriculture.

"3. Governmental Restrictions (a): No owner shall use his Lot, or any part thereof, for any purpose or in any manner inconsistent with the uses specified in Section 205-4.5, H.R.S., as the same shall be amended, or any successor statute thereto. It shall be a further condition that the use of any Lot shall be primarily in pursuit of an agricultural activity, and that the persons owning or occupying such Lot must actually derive income from such agricultural activity."

---

<sup>1</sup> Issue of locked gate divides residents By Eloise Aguiar, Honolulu Advertiser June 2, 2007  
<http://the.honoluluadvertiser.com/article/2007/Jun/02/bz/FP706020321.html>

"3. Governmental Restrictions ... (c) ... Failure on the part of any Owner to maintain and observe the Governmental Restrictions shall constitute grounds for the City and County of Honolulu to revoke or suspend any building permit issues by said agency."

"9. Powers and Responsibilities of Association. The following powers shall be vested in the Association which shall exercise said powers in accordance with its Bylaws: ... e) The enforcement of the Governmental and Non-Governmental Restrictions applicable to the Lots, including, without limitation, the Governmental Restrictions. Developer and the Owners recognize that the legal status of the subdivision and its continuing economic viability may be adversely affected by violations of the Governmental Restrictions. Accordingly, the Association is authorized and empowered to promulgate and implement policies, rules and procedures which it reasonably deems necessary or appropriate to monitor and enforce compliance by the Owners with the Governmental Restrictions."

"14. Binding Effect. All the terms and provisions of this Declaration shall inure to the benefit of and be binding upon the Developer, its successors and assigns, and upon the heirs, personal representatives, successors and interests and assigns of the interest of each Owner of any Lot in the Subdivision."

## **Right-to-Farm**

The Right-to-Farm laws, supported by farmers and environmental groups, such as Life of the Land, squarely put the law behind the farmers.

"The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands. The legislature shall provide standards and criteria to accomplish the foregoing." (Article XI, Section 3, Hawaii State Constitution)

"The preservation and promotion of farming is declared to be in the public purpose and deserving of public support." (HRS §165-3)

"Right to farm. No court, official, public servant, or public employee shall declare any farming operation a nuisance for any reason if the farming operation has been conducted in a manner consistent with generally accepted agricultural and management practices. There shall be a rebuttable presumption that a farming operation does not constitute a nuisance." (HRS §165-4)

"Agricultural uses and activities ... on lands classified as agricultural shall not be restricted by any private agreement contained in any deed, agreement of sale, or other conveyance of land recorded in the bureau of conveyances after July 8, 2003, that subject such agricultural lands to any servitude, including but not limited to covenants, easements, or equitable and reciprocal negative servitudes. Any such private restriction limiting or prohibiting agricultural use or activity shall be voidable" (HRS §205-4.6)

Findings and purpose. The legislature finds that when nonagricultural land uses extend into agricultural areas, farming operations often become the subject of nuisance lawsuits that may result in the premature removal of lands from agricultural use and may discourage future investments in agriculture. The legislature also finds that under the Hawaii State Planning Act, it is a declared policy of this State to "foster attitudes and activities conducive to maintaining agriculture as a major sector of Hawaii's economy." Accordingly, it is the purpose of this chapter to reduce the loss to the State of its agricultural resources by limiting the circumstances under which farming operations

may be deemed to be a nuisance. (HRS §165-1)

## **Land Use Commission**

"PURPOSE OF THE LAW In 1961, the Hawai'i State Legislature determined that a lack of adequate controls had caused the development of Hawai'i's limited and valuable land for short-term gain for the few while resulting in long-term loss to the income and growth potential of our State's economy. Development of scattered subdivisions, creating problems of expensive yet reduced public services, and the conversion of prime agricultural land to residential use, were key reasons for establishing the state-wide zoning system.

To administer this state-wide zoning law, the Legislature established the Land Use Commission. The Commission is responsible for preserving and protecting Hawai'i's lands and encouraging those uses to which lands are best suited.

FIFTEEN ACRE RULE: In an effort to streamline the decision-making process, the law was amended in 1985 to allow applicants for land use changes of 15 acres or less to apply directly to the counties." <http://luc.state.hi.us/about.htm>

## **Poamoho Estates Unit 2: Kaala View Farm Lots**

The developer noted that the land can grow anything. The University of Hawaii's Poamoho Experimental Agricultural Station is located between Units 1 & 2. "Mr. Nakano, the previous manager of the University of Hawaii's Poamoho Experimental Agricultural Station located on the adjacent lot once said that 'he believes that almost anything will grow on these properties because of its climate and rich soils.'" (Kaala View Farm Lots: Prior and Existing Use Conditions, pages 1-2)

The developer also noted that most of the lots in Unit 1 are not used for agriculture. The developer offered an unsubstantiated opinion without supporting documents: "We developed Poamoho Estates Unit 1, which was a subdivision of 15 five acre single family lots. We noticed that, for most of our buyers, five acres was too large a lot for a single family to manage and operate productively. ... a few of our buyers needed five acres and are utilizing the acreage because of their business (i.e. a plant rental nursery, an organic farm and fruit orchid)." ([Kaala View Farm Lots: Project Description, page 1](#))

The "organic farm and fruit orchid" is the unoccupied house listed for sale at a suggested price of \$3.95M

## **Poamoho Estates, Unit 2 will be McMansions**

The house size in Unit 1 varies considerable from small illegal squatter units to houses under 4000 square feet. with 1-3 bedrooms. The house pictured below with a sale price of \$3.95M has 3802 square feet.

For Unit 2, the houses will be 4,500 to 5, 000 square feet with four bedrooms. Each single family lot will have a house with approximately 4500+ square feet of floor space, on one or two stories. A typical example is one proposed house with two floors of 2325 sq feet per floor. The house will have: 4 bedrooms, 3 bathrooms, kitchen, living room, family room, dining room, a study, covered deck, skylight, atrium, foyer, porch, covered entry, utility room, storage/shop room, a two-car garage.

There are no documents that limit home owners to agricultural pursuits.

## Current Listings

(a) 65-277 Kaukonahua Rd Waialua HI 96791. Poamoho Pl. on 5 acs. w/ 180 degree sweeping OCEANVIEWS. Gated community of Poamoho Estates. New 2BR/1BA cottage with potential for LARGE home bring your architect to design your estate. AG exempt for 10 yrs w/requirements. ... Additional Rooms: Dining Room, Open Lanai ... Call Listor, Non Resident Owner ... Seller Financing Listing Courtesy: Debra L. Martin - Realtor Occupancy: Vacant ... For information on this property or to schedule a showing call please contact OahuRE.com Land: \$80,300 Improvements: \$100,000 Assessed Total: \$180,300 Building Style: 2 Bedroom Cottage Living Area: 865 [sq ft] Land: 218,192 [sq ft] [www.oahure.com/MLSNUM2620766P1](http://www.oahure.com/MLSNUM2620766P1)

(b) Kaukonahua Rd, Waialua, HI 96791 Location, Location Location!!! Build the home of your dreams on over 5 acres of spacious land overlooking Oahu's famous North Shore. Beautiful panoramic views of the ocean and Mt. Kaala can be yours in the gated community of Poamoho Estates. Short drive to famous North Shore beaches and the town of Haleiwa with shops and restaurants. Exact real property tax amount to follow in escrow. Paradise Real Estate. Land: \$707,300 Improvements: \$0 Land Use: Agricultural, Residential Sold Ratio: 0% Assessed Total: \$707,300 <http://www.oahure.com/MLSNUM2617679P4>

(c) 65200 POAMOHU ST, WAIALUA, HI 96791 \$3,950,000 Listing # 2622192  
3 Bedrooms 2 Full | 1 Partial Bathrooms 2,665 Est. Sq. Ft.

Executive style country estate and certified organic farm with unobstructed 360 degree views of ocean, mts., valleys, and fields. Exclusive gated community. Convenient to major shopping and only 30 min. from airport. Land Tenure: FS Lot Description: Clear, Rim Lot. Stories: Two View Description: City, Coastline, Garden, Mountain, Ocean, Sunrise, Sunset. Year Built: 2000. Seller's Representative: Marianne Abrigo Properties. Updated on June 13, 2007  
[www.idxre.com/idx/detail.cfm?cid=2849&pid=2622192&bid=8&st=2&return=1](http://www.idxre.com/idx/detail.cfm?cid=2849&pid=2622192&bid=8&st=2&return=1)



### 7+ Acre Executive Country Estate

Plantation-style villa with unobstructed 360 degree views of ocean, mountains, valleys and fields. Secure and private in an exclusive, gated community, it is rich in native Hawaiian lore as it borders the sacred Poamoho Valley. Sale includes custom designed home on 7+ acres with most furnishings included as well as a turnkey organic farm operation with processing facility, equipment and tools, fenced orchard with automated irrigation, and the ongoing fruit growing and distribution business with all of its contracts and markets. The product is in high demand and has an increasing income stream. Asking \$3,950,000. <http://www.homesandland.com/Listing.cfm?Zip=96791&ListingId=10090165>

Henry Curtis  
Executive Director