

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF 1250 OCEANSIDES
PARTNERS REGARDING H.B. NO. 874, HD 2**

March 23, 2009

To: Chairperson Rosalyn Baker and Members of the Senate Committee on Commerce and Consumer Protection:

My name is Bob Toyofuku and I am presenting this testimony on behalf of 1250 Oceansides Partners (“Oceansides”) regarding H.B. No. 874, HD 2.

Oceansides opposes the current version of this bill because of the adverse impact on the Foundation that was created to benefit the community arising out of a settlement agreement on its residential real estate project on the Big Island. The Hawaii Board of Realtors have proposed amendments to HRS Chapters 501 and 502 embodied in this bill which are intended to prohibit private transfer fees required by a deed restriction or covenant.

All residential lots in Oceansides Hokuli’a project are subject to a transfer fee pursuant to a Settlement Agreement between Oceansides and various parties including the County of Hawaii. Pursuant to the Settlement Agreement Oceansides created a “tax exempt” foundation called the Hokuli’a Foundation which has the purpose of advancing within the Kona community the concepts of affordable housing, health care, education and Native Hawaiian culture. The Foundation receives funding from transfer fees consisting of a percentage of the gross sales price of all lots sold within Hokuli’a. These proceeds are then allocated to specific community benefit projects in the Kona area.

If this committee intends to pass this bill forward, we request that the following amendments be included in the Senate draft:

1. Adding a specific exemption for covenants that require transfer fees to be payable to not for profit organizations, entities exempt from tax under Section 501 (c) of the Internal Revenue Code, or other organizations organized to benefit the community in which the real estate is located; and

2. Adding a specific exemption from the prohibition against transfer fees for covenants recorded against real property prior to the effective date of this bill.

Oceansides also requests that it will need confirmation that an association such as the Hokuli'a Park and Cultural Sites Association falls within exemption (b) (2) on page 2 of this bill and/or that it is made clear in this bill and/or the committee report that it falls within the exemption provision.

Thank you for the opportunity to testify on this measure.