

SB 235



NEIL AMBERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

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KEALI' S. LOPEZ
INTERIM DIRECTOR

EVERETT KANESHIGE
DEPUTY DIRECTOR

PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Wednesday, February 2, 2011
8:30 a.m.

TESTIMONY ON SENATE BILL NO. 235, RELATING TO DEFICIENCY JUDGMENTS.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND MEMBERS OF THE
COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify in support of Senate Bill No. 235, Relating to Deficiency Judgments. My name is Stephen Levins, and I am the Executive Director of the Office of Consumer Protection ("OCP"), representing the Department.

Senate Bill No. 235 seeks to prohibit a deficiency judgment against a mortgagor after a short sale of residential real property pursuant to a foreclosure by action or foreclosure by power of sale. The Department is in support of this measure because it believes it would benefit both borrowers and their lenders.

Short sales often are in the interest of both a defaulting borrower and their

lender. The borrower avoids foreclosure and the lender recoups more than it would have if the home were sold at auction. Currently, in Hawaii, lenders can receive a judgment against the borrower for the difference between the price that the home sold for in a short sale and the amount that the borrower owes on their loan. By eliminating the possibility of a deficiency judgment the homeowner would have more incentive to cooperate with a short sale and the lender would avoid unnecessary foreclosure costs.

One of the major incentives for a borrower to participate in a short sale is their belief that they would not be burdened with a deficiency judgment. In many short sales, this is already something that borrowers and their legal representatives negotiate with their lender. Consequently, codifying this requirement into law would not be a radical departure from many current practices existing in Hawaii and on the mainland. For example, just a few months ago, in October 2010, California Governor Arnold Schwarzenegger signed California Senate Bill No.931, which essentially had the same underlying purpose as this measure. That California Bill which became law on January 1, 2011 prohibits deficiency judgments on short sales on first mortgages.

Thank you for providing me with the opportunity to testify on Senate Bill No. 235. I will be happy to answer any questions that the committee members may have.



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Testimony to the Senate Committee on Commerce and Consumer Protection
Wednesday, February 2, 2011 at 8:30 a.m.

Testimony in opposition to SB 235, Relating to Deficiency Judgments

To: The Honorable Rosalyn Baker, Chair
The Honorable Brian Taniguchi, Vice-Chair
Members of the Committee on Commerce and Consumer Protection

We are Stefanie Sakamoto and Frank Hogan, Esq., and we are testifying on behalf of the Hawaii Credit Union League, the local trade association for 85 Hawaii credit unions, representing approximately 810,000 credit union members across the state.

The Hawaii Credit Union League is in opposition to SB 235, Relating to Deficiency Judgments. This bill would prohibit a court from entering judgment against a mortgagor after the mortgaged property is sold in a judicial or nonjudicial foreclosure sale. The Legislature last session in Act 162, created a task force to look at this issue and many others surrounding foreclosures of mortgages in Hawaii. Your task force has reached agreement on recommended legislation that would protect from deficiency judgments those mortgagors who are owner-occupants of the mortgaged property and who own no other real property.

Not all mortgagors are the same. Your task force's proposal recognizes the differing situations of mortgagors between those for whom the loss of their home need not be exacerbated by a deficiency judgment and those who own assets that should enable them to make good on their promise to repay their lenders.

Furthermore, the language in SB 235 is unclear as to whether it is intended to apply both to judicial and nonjudicial mortgage foreclosures. This lack of clarity, together with the apparent intent to bar all judgments for any deficiency, whether in a judicial or nonjudicial foreclosure, will have a negative effect on the willingness of lenders to lend in Hawaii. This will likely increase borrowing costs for future mortgagors.

Thank you for the opportunity to testify.

HAWAII CHAPTER


community
ASSOCIATIONS INSTITUTE

P.O. Box 976
Honolulu, Hawaii 96808

January 28, 2011

Honorable Rosalyn H. Baker
Honorable Brian Taniguchi
Commerce and Consumer Protection
415 South Beretania Street
Honolulu, Hawaii 96813

Re: SB 235/OPPOSE IN CURRENT FORM

Dear Chair Baker, Vice-Chair Taniguchi and Committee Members:

I chair the CAI Legislative Action Committee. CAI opposes this bill, in its current form.

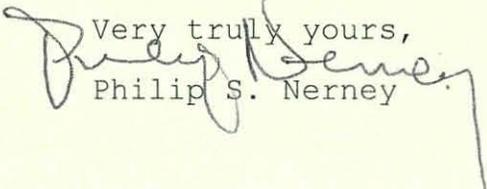
The bill expressly prohibits a deficiency judgment "for the unpaid balance of a mortgage debt after a short sale[.]" The problem is that condominium liens are foreclosed "in like manner" as mortgages and it is possible that the proposed language could be interpreted to prevent a condominium association from collecting unpaid amounts due to the association.

Thus, CAI respectfully requests that an amendment to SB 235 be considered. For example, one approach might be to add a sentence to the effect of: "Nothing herein shall affect the right of a condominium association to collect unpaid common expense assessments."

In passing, it is important to note that a short sale is a voluntary conveyance. The grantor and the grantee are jointly and severally liable for common expense delinquencies in a voluntary conveyance, per Hawaii Revised Statutes Section 514B-144(f).

The obligation to pay common expense assessments is an incident of owning a condominium. It is entirely separate and distinct from any mortgage transaction, and a lender's choice to compromise with a borrower should have no impact whatever on an association.

Very truly yours,


Philip S. Nerney

HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law

P.O. Box 4109

Honolulu, Hawaii 96812-4109

Telephone No.: (808) 521-8521

Fax No.: (808) 521-8522

February 2, 2011

Sen. Rosalyn H. Baker, Chair,
and members of the Senate Committee on Commerce and Consumer Protection
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **Senate Bill 235 (Deficiency Judgments)**
Hearing Date/Time: Wednesday, February 2, 2011, 8:30 A.M.

I am the attorney for the **Hawaii Financial Services Association** ("HFSA"). The HFSA is the trade association for Hawaii's financial services loan companies, which are regulated by the Hawaii Commissioner of Financial Institutions. Financial services loan companies make mortgage loans and other loans.

The HFSA **opposes** this Bill as drafted.

The purpose of this Bill is to prohibit deficiency judgment against a mortgagor after a short sale of residential real property pursuant to a foreclosure by action or foreclosure by power of sale.

This testimony is based, in part, on my role as the Vice Chairperson of the Hawaii Mortgage Foreclosure Task Force ("Task Force"). I served as a member of the Task Force as the designee of the HFSA. This testimony is also based on my experience as an attorney who has actively done foreclosures for nearly 33 years since 1978.

The Task Force, which was created by Act 162 of the 2010 Session Laws of Hawaii, issued its 2011 Preliminary Report to the Legislature.

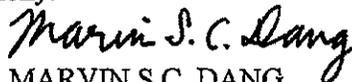
The issue of deficiency judgments is part of the recommendations of the Task Force and those recommendations are contained in other bills, such as Senate Bill 652. The recommendations of the Task Force are substantive and provide meaningful improvements to the non-judicial foreclosure process. The recommendations are the result of consensus by the 17 Task Force members who represented diverse, and in some instances opposing, interests.

The provisions in this Bill (Senate Bill 235) are not part of the Task Force's recommendations.

The HFSA believes that only the recommendations of the Task Force should be adopted by the Legislature. Any other issues can continue to be reviewed by the Task Force over the remainder of this year as the Task Force considers other recommendations for the 2012 Legislature.

We incorporate by reference the testimonies separately submitted by the Hawaii Bankers Association and the Hawaii Credit Union League opposing this Bill.

Thank you for considering our testimony.



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association



Mortgage Bankers Association of Hawaii
P.O. Box 4129, Honolulu, Hawaii 96812

January 31, 2011

The Honorable Rosalyn H. Baker, Chair and
Members of the Senate Committee on
Commerce and Consumer Protection
State Capitol, Room 229
Honolulu, Hawaii 96813

Re: Senate Bill 235 Relating to Deficiency Judgments

Chair Baker and Members of the Senate Committee on Commerce and Consumer
Protection:

I am Rick Tsujimura representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of real estate lenders in Hawaii. Our membership consists of employees of banks, savings institutions, mortgage bankers, mortgage brokers, and other financial institutions. The members of the MBAH originate the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation, it is related only to mortgage lending.

The MBAH opposes Senate Bill 235 Relating to Deficiency Judgments. The Mortgage Bankers Association of Hawaii strongly feels that these bills relating to the matter of foreclosures should be vetted as part of the mortgage foreclosure task force since both consumer and lender groups are represented and can work on the details of each bill to come to a consensus. We feel that the bills, as presented, have merit but include processes which may potentially cause harm to consumers and lenders.

Thank you for the opportunity to present this testimony.



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1000 Bishop Street, Suite 301B
Honolulu, HI 96813-4203

Presentation of the Committee on Commerce and Consumer Protection
Wednesday, February 2, 2011 at 8:30 a.m.
Testimony on SB 235 Relating to Deficiency Judgment

In Opposition

TO: The Honorable Chair Rosalyn H. Baker
The Honorable Vice Chair Brian T. Taniguchi
Members of the Committee

I am Gary Fujitani, Executive Director of the Hawaii Bankers Association (HBA), testifying in opposition to SB 235. HBA is the trade organization that represents all FDIC insured depository institutions doing business in Hawaii.

This bill prohibits deficiency judgment against a mortgagor after a short sale of residential real property pursuant to a foreclosure by action or foreclosure by power of sale.

Your Mortgage Task Force addressed the issue of deficiency judgment in its recommendations to this Legislature. The recommended legislation provides meaningful improvements for borrowers facing non-judicial foreclosure including the issue of deficiency judgments.

We incorporate by reference the testimonies separately submitted by the Hawaii Credit Union League and Hawaii Financial Services Association.

Thank you for the opportunity to provide our testimony.

A handwritten signature in black ink, appearing to read 'Gary Y. Fujitani', with a horizontal line extending to the right.

Gary Y. Fujitani
Executive Director

1001 Bishop Street, Suite 780
Honolulu, Hawaii 96813-3410
February 1, 2011

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
REGARDING SENATE BILL 235

Hearing Date : WEDNESDAY, February 02, 2011
Time : 8:30 a.m.
Place : Conference Room 229

Sen. Baker and Members of the Committee,

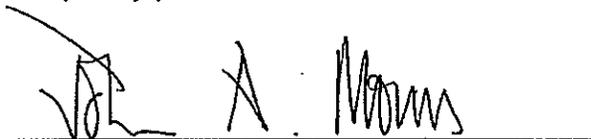
My name is John Morris and I am testifying on SB 235. I have been involved with condominiums since 1988, when I served as the first condominium specialist with the Hawaii Real Estate Commission (from 1988 to 1991). Since then, I have served as an attorney advising condominium associations and spent almost 20 years trying to collect delinquencies for them.

While this bill seems relatively clear, it is possible that it might be used as an argument to prohibit a homeowner association from obtaining a deficiency judgment following a short sale. Sometimes, associations agree to limit their recovery as a condition of releasing their lien, while reserving the right to pursue a deficiency judgment against a delinquent homeowner.

Since the intent of the bill appears to be limited to deficiency judgments based on the mortgage debt, it might eliminate future disputes if the committee report clearly states that the bill is not intended to apply to any deficiency judgment sought by an association following a short sale.

Please contact me at 523-0702 if you have any questions. Thank you for this opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read 'John A. Morris', written over a horizontal line.

John A. Morris

Senator Baker,

I am a Board member and long time owner at Kamole Beach Royale in Kihei.

I am writing in opposition to all legislation currently being considered which makes the collection of delinquent dues or other assessments more difficult, or impossible.

Legislative efforts have all been in the direction of providing a “break” or easing the burden for a person in trouble with their unit. But when this happens the burden is shifted to the others owners, who themselves may just be “holding on”.

Associations do not have a well of money to draw from. All the money we receive is from owners and is used to maintain the facility, take out the garbage, pay the light bill and many others, as well as to maintain the State Mandated Reserves. Board members volunteer their time and incur personal expenses.

THERE IS NO EXTRA MONEY for the Association to draw from. If someone does not pay their share the other owners need to make it up – it’s that simple. In other states, like Florida, where the foreclosure rate in some cases is 30% – 50% the remaining owners cannot pay the share of others and the whole process feeds on itself to put more people into trouble.

I sincerely and respectfully urge you to consider the real Impact on Associations and listen to organizations such as CAI and management Companies who understand the issues and problems with operating Condo’s.

Respectfully Submitted,

George Jacobson

Currently off Island 509-546-1754

January 31, 2011

Honorable Rosalyn H. Baker
Honorable Brian Taniguchi
Commerce and Consumer Protection
415 South Beretania Street
Honolulu, Hawaii 96813

Re: SB 235/OPPOSE IN CURRENT FORM
SB 652/OPPOSE
SB 1191/OPPOSE

Dear Chair Baker, Vice-Chair Taniguchi and Committee Members:

My name is Livit Callentine, and I serve as President of the Board of Directors of my AOA, Kehalani Gardens. I am taking the time to write to you today to express my deepest concern about the likely result to me and 131 other owners in my townhome neighborhood. Kehalani Gardens was approved and constructed to meet the affordable housing requirement for the Kehalani Project District in Central Maui. The majority of the owners are law-abiding and pay their association dues on time. However, for the growing fraction of owners who fail to pay their dues, I have the frustrating task of overseeing collection efforts. My own dues have been spent on legal fees we are required to attempt to collect on behalf of the AOA, and have subsequently increased when these attempts are less than successful.

I wish to impress on you the gravity of our situation by illustrating my own circumstances, which are typical of the working class members this AOA: I am employed as a professional planner for the County of Maui, Department of Planning. Though I have continued to advance professionally and gain valuable experience, over the past 3 years, not only have I not gotten a pay raise, I have been forced to take a pay cut, while my expenses have continued to rise. Because a dozen or so of my fellow residents are not paying their fair share of the cost to maintain the common elements, my dues are scheduled to increase by at least 18% this year. If my AOA dues continue to rise to cover these losses, I run the risk of being unable to pay my bills, and I too may have to choose between paying my mortgage and my association dues, which would only compound an already untenable situation for the rest of our members.

I have read and fully support the attached testimony submitted by Philip S. Nerney on behalf of the Hawaii Chapter of the Community Associations Institute. I call on you to amend SB 235, defeat SB 652 and SB 1191 so that working people like me, and communities throughout Hawaii, are not subject to unfair laws that if passed will ultimately erode the social fabric of the state.

Homeowners Associations are not financial institutions; we are working people, trying to live our lives and be good citizens.

Sincerely,



Livit Callentine
631 Meakanu Lane Apt 101
Wailuku, HI 96793
(808) 268-5568

Testimony for CPN 2/2/2011 8:30:00 AM SB235

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Al Denys

Organization: Individual

Address: c/o 3179 Koapaka St Honolulu, Hi

Phone: 306-9180

E-mail: adenys@hawaii.rr.com

Submitted on: 1/31/2011

Comments:

I am opposed to SB235 as it will preclude any association from collecting delinquent fees from owners who aren't paying their fair share of the associations expenses. This will result in higher costs for the other owners to take care of business and will require higher maintenance fees to pay for these shortcomings. Therefore I am against this Senate Bill and strongly recommend that it not be approved. Thank you.

warmest aloha,

Al Denys

Testimony for CPN 2/2/2011 8:30:00 AM SB235

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Clive B Davies

Organization: 49 Black Sand Beach Homeowners Assoc

Address: 68-1038 Honokaope Place, Kamuela,Hi 96743

Phone: 808 885 0675

E-mail: clivebd@aol.com

Submitted on: 1/28/2011

Comments:

The proposed bill adversely affects the ability of Homeowner Associations to recover unpaid dues and fees and unjustly penalizes the homeowners.

Testimony for CPN 2/2/2011 8:30:00 AM SB235

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Rory Enright

Organization: Princeville at Hanalei Community Association

Address: 4334 Emmalani Drive Princeville, HI 96722

Phone: 808.826.6687

E-mail: gen_mgr@pcaonline.org

Submitted on: 1/31/2011

Comments:

We oppose this bill. The proposed changes to this statute would make it impossible for the owner associations to collect dues on a foreclosed property. This unfairly puts additional financial burden on the other owners of the community to make up the difference.

Testimony for CPN 2/2/2011 8:30:00 AM SB235

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Eric M. Matsumoto

Organization: Mililani Town Association

Address: 95-303 Kaloapau St. Mililani, HI

Phone: 282-4324

E-mail: emmatsumoto@hotmail.com

Submitted on: 1/30/2011

Comments:

We oppose this measure because it does not differentiate between mortgage foreclosures and association foreclosures so associations would be precluded from collecting unpaid dues that all members must pay.

Testimony for CPN 2/2/2011 8:30:00 AM SB235

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Arthur A. Kluvo

Organization: Individual

Address: 94-1099 Heahea Street Waipahu, HI

Phone: 808-678-2029

E-mail: akluvo@gmail.com

Submitted on: 1/29/2011

Comments:

SB 235 would be detrimental to me. The maintenance fees of my condominium at AOA Cathedral Point would eventually rise if this bill passes.

Testimony for CPN 2/2/2011 8:30:00 AM SB235

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Larry Starratt

Organization: Individual

Address: 112 Walaka St. #403 Kihei, HI 96753

Phone: 520 548-0579

E-mail: starratt2@hotmail.com

Submitted on: 1/28/2011

Comments:

Based on the reasons of the CAI legislative action committee I strongly oppose SB652, SB235 and SB1191

Testimony for CPN 2/2/2011 8:30:00 AM SB235

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Linda Morabito

Organization: Individual

Address: 73-1387 Ili Ili Place Kailua Kona, HI 96740

Phone: 808-325-2038

E-mail: lindam@hmcmt.com

Submitted on: 1/28/2011

Comments:

Please include more community association or CAI members on this committee so that a fair solution can be arrived at.

Testimony for CPN 2/2/2011 8:30:00 AM SB235

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Gordon Langston

Organization: Individual

Address:

Phone:

E-mail: flashgordon10t@aol.com

Submitted on: 1/28/2011

Comments:

Member of the board of directors at Kahana Reef and I oppose the legislation.

Testimony for CPN 2/2/2011 8:30:00 AM SB235

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Lyndon Williams

Organization: Palette Community Association

Address: 92-1260 Umena st Kapolei, Hi

Phone: 672-3206

E-mail: Will.Lyndon@gmail.com

Submitted on: 1/28/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB235

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Tim Baier

Organization: Pearl Regency Home Owners Association

Address: Aiea, HI

Phone:

E-mail: timlid.baier@att.net

Submitted on: 1/29/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB235

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: John E Patton

Organization: Individual

Address: WAILUNA CONDO COMMUNITY Aiea

Phone:

E-mail: jpatton@uci.edu

Submitted on: 1/30/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB235

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Barry G Snowbarger

Organization: Villas at Ke Alaula

Address: Kailua-Kona

Phone: 8083251552

E-mail: snow.man@earthlink.net

Submitted on: 1/28/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB235

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Glen Hilton

Organization: Individual

Address:

Phone:

E-mail: glenhilton2@netscape.net

Submitted on: 1/31/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB235

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Debbie Smee

Organization: Individual

Address:

Phone:

E-mail: smee@charter.net

Submitted on: 1/28/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB235

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Fred Allen

Organization: Individual

Address: 5855 e Carson street Lakewood, Calif 90713

Phone: 562.497.0370

E-mail: fred@allentire.com

Submitted on: 1/29/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB235

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Earl Park

Organization: Individual

Address: 75-6009 Alii Dr., Unit H-2 Kailua Kona, Hawaii

Phone:

E-mail: parkj052@hawaii.rr.com

Submitted on: 1/29/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB235

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Timothy Baier

Organization: Individual

Address:

Phone:

E-mail: timlid.baier@att.net

Submitted on: 1/29/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB235

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Raymond D. Sauer

Organization: Individual

Address: 91967 Akaholo St, Ewa Beach, Hi.

Phone: (808) 6893700

E-mail: RDSauer@mac.com

Submitted on: 1/30/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB235

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Mary Martin

Organization: Individual

Address:

Phone:

E-mail: mmartin40@hawaii.rr.com

Submitted on: 1/30/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB235

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Barbara Carlson

Organization: Individual

Address: 333 Aoloa Streey Kailua, HI 96734

Phone: 808-772-4292

E-mail: teawanga24@yahoo.com

Submitted on: 1/31/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB235

Conference room: 229
Testifier position: oppose
Testifier will be present: No
Submitted by: JOE ALMEIDA
Organization: Individual
Address: 94-314 MAIAOHE PLACE
Phone: 623-7991
E-mail: J55547@AOL.COM
Submitted on: 1/31/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB235

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: Patrick J. Wardell

Organization: Individual

Address: 3833 L. Honoapiilani Rd Lahaina, HI

Phone: 808 3443755

E-mail: pwardell@uplink.net

Submitted on: 1/28/2011

Comments:

Testimony for CPN 2/2/2011 8:30:00 AM SB235

Conference room: 229

Testifier position: oppose

Testifier will be present: No

Submitted by: GARY M. YAKABU

Organization: Individual

Address:

Phone:

E-mail: gmyak@hawaiiantel.net

Submitted on: 1/31/2011

Comments: