

# Westpark Associates

COMMUNITY BUILDERS

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April 5, 2011

Via Email (RegComments@fhfa.gov) Only

Mr. Alfred M. Pollard

General Counsel

FEDERAL HOUSING FINANCE AGENCY

Fourth Floor

1700 G Street NW

Washington, DC 20552

Attention: "Comments/RIN 2590-AA41, Federal Housing Finance Agency"

**Re: Public Comments Guidance on Private Transfer Fee Covenants  
Regulatory Identification Number (RIN) 2590-AA41**

Dear Mr. Pollard:

We previously provided comments in opposition to the proposed FHFA Guidance on Private Transfer Fee Covenants (No. 2010-M-11). We have reviewed the proposed rule noticed in the Federal Register on Tuesday, February 8, 2011 which would amend Chapter XII of Title 12 of the Code of Regulations by adding a new Part 1228 to Subchapter B regarding the acquisition or taking interest in mortgages on properties containing certain private transfer fees. We appreciate the level of attention paid to the comments letters received by FHFA on the proposed guidance and in particular the concern to upsetting markets by applying the new rule only on a prospective basis. We support that portion of the proposed rule.

As a means of background on our interest in this issue, we are the developers of a portion of the West Roseville Specific Plan (the "WRSP") (a project on which we worked for 16 years) located in the City of Roseville, California. The West Roseville Specific Plan contains approximately 8,800 homes which in the future will be home to more than 22,000 residents. The plan area consists of the Westpark and Fiddymont Farm neighborhoods that, in addition to homes, will provide local shopping, employment, recreation and schools to its residents when the community is built out. The master planned community was approved in 2004 and its first residents moved-in in 2006. The plan provides for a variety of housing type for all income levels, including a substantial affordable housing component and contains a variety of designs including compact residential designed homes, located in and around the Village Center, apartment homes and traditional single family homes. New home sales and construction as well as the resale of existing homes are ongoing with most, if not all, of the buyers of these homes utilizing some form of government backed financing.

In 2004, as a result of a legal challenge, the developers of the property entered into a settlement agreement that provided for, among other things, an open space conveyance fee of 0.5% of the sales price on resale homes within the community. This conveyance fee is to be paid to a regional non-profit land trust, the Placer Land Trust, for the acquisition of open space and habitat as well as providing for operation and maintenance cost related to the preservation of land within Placer County. The open space preservation is of direct benefit to the homeowners and the master planned communities and also provides significant community-wide benefit in preserving open space and sensitive environmental properties in perpetuity. This direct benefit not only enhances the environment, but also directly contributes to increasing the underlying value of the Property which is subject to the conveyance fee. The fee is in place for twenty (20) years from the first sale of the home and is collected upon the first resale, and then again with each transfer until the fee sunsets. The fee is evidenced by a covenant running with the land which clearly articulates the benefit to the burdened property and contrary to the assertion in the Notice of Proposed Rule Making, this covenant is directly enforceable under California law. The funds are collected by a title company at the time escrow closes and are transferred directly to the Placer Land Trust. The developers never receive any of these conveyance fees.

The existence and details of the conveyance fee are recorded against all properties subject to the payment of the fee and are included as an exception to title in all title reports issued to purchasers of homes within the West Roseville Specific Plan. Every buyer in the Roseville Specific Plan area has clear notice of the conveyance fee. An oversight committee consisting of the City and representatives of the Sierra Club and the Audubon Society serve to ensure the intent and purpose of this fee is carried out by Placer Land Trust and that expenses are appropriate and consistent with the preservation of open space within Placer County.

As a result of this conveyance fee, to date, the Placer Land Trust has been able to acquire 2,084 acres of land, much of which is considered habitat for endangered or threatened species, with the goal of preserving 4,900 acres within Placer County. This relatively small fee paid for at the time a home is sold is providing a lasting public benefit for the community and preserving open space for the useful enjoyment of West Roseville Specific Plan residents as well as all residents of the County.

Under the terms of the proposed rule the above described program to fund long term acquisition and maintenance of open space and sensitive habitat could not be funded with the use of a transfer fee because the open space to be acquired would not meet the definition of "Adjacent of contiguous property" as defined in the proposed rule. In the case of the WRSP the transfer fee provides funding for the acquisition of open space of local, regional, statewide and national importance. The approach is to acquire land in sensitive areas while steering urban growth nearer existing urban centers. It provides a revenue source for local based land trust to compete in the speculative real estate market while providing a community wide benefit, including a direct benefit of open space protection and environmental enhancement to the homeowners within the WRSP. In addition to the environmental benefits this program provides, it also was the vehicle that allowed the project to move forward and develop providing housing opportunities and new household formation. The WRSP provides needed housing in a region projected to grow by nearly 1,000,000 people over the next 20 years, and had this community not

been able to move forward it would have affected the affordability and availability of housing for the overall region. Settlement of the environmental litigation provided a clear benefit to these residents in the form of housing that fit their needs and lifestyle at values within reach. We respectfully suggest that the condition of contiguity or adjacency in the proposed rule in measuring the benefit to a resident of a community containing a transfer fee does not appropriately measure the benefit received. In addition, its narrow constraints do not in any way enhance the financial integrity of the mortgage markets overseen by the FHFA.

We support the decision by FHFA to look at the use of private transfer fees prospectively and not affect local markets where these fees are used for great public benefit. We do encourage FHFA to reconsider allowing the use of private transfer fees by non-profit entities for open space acquisition and expand the definition of "Adjacent or contiguous property" to include land within an area that is geographically or hydrologically connected, or has similar habitat value so that preservation activities occur where it maximizes environmental benefit for the affected homeowners and the neighboring community. The 1000 yard limitation in the definition of adjacent or contiguous while serving as an arbitrary "bright line," it ignores critical environmental and habitat considerations.

Thank you for your consideration and I would be glad to answer any questions you may have.

Sincerely,

A handwritten signature in black ink that reads "William A. Falik". The signature is written in a cursive, flowing style.

William A. Falik  
Managing Member