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Reply to Truckee Office

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**VIA E-MAIL: regcomments@fnfa.gov
AND REGULAR MAIL**

Alfred M. Pollard, General Counsel
ATTN: Comments/RIN 2590-AA41
FEDERAL HOUSING FINANCE AGENCY
1700 G Street, N.W.
Washington, DC 20552

**Re: *Comments on Proposed FHFA Regulation Restricting Permissible Real Estate
Private Transfer Fee Covenants***

Dear Mr. Pollard:

Please accept the following comments on the proposed transfer fee covenant Regulation.

As a California real estate attorney, I represent several clients who have recorded transfer fee covenants. The covenants are all no more than one-half of one percent of the sales price. They all benefit our local (small town) community, with affordable housing, creek restoration and acquisition of nearby open space lands. None of the covenants my clients have recorded directly benefit the developer. Nor should they. I support the proposed prohibition against transfer fee covenants that directly benefit the developer.

I also appreciate that the proposed Regulation is to be prospective only. To make the Regulation retroactive would be disastrous for property owners with recorded covenants, who would be unable to finance their properties.

As the drafters of the proposed Regulation may know, California Civil Code section 1368(c) prohibits homeowner associations and "community service organizations" as defined, from receiving fees in connection with the transfer of title to property in a common interest (subdivision) development. In short, California law prohibits many of the transfer fees proposed to be regulated by the FHFA Regulation.

Below are some specific drafting recommendations for section 1228.1 (Definitions), designed to allow tax-exempt non-profit organizations to accept transfer fees and use those fees for the benefit of the owners of the encumbered properties or adjacent or contiguous properties.

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I find the definition of “direct benefit” confusing. That said, the word “exclusively” should be replaced with “primarily” in the definition of “direct benefit.” Any fee for improvements that purports to “exclusively” be a “direct benefit” to a property most certainly would benefit neighboring, but perhaps not “adjacent or contiguous” property, and because it does not “exclusively benefit” the encumbered property, the fee would be disallowed. Or in the alternative, perhaps you could develop language like: “A direct and significantly measureable benefit to the encumbered property or neighborhood or local community.”

The words “adjacent or contiguous property” seem unnecessarily restrictive and should be replaced with language that allows the benefit to be to property in “reasonable proximity” to the encumbered property. By way of example, our small mountain community relies heavily on transfer fees for the acquisition of open space and preservation of trails that are close to the subdivision but not always “adjacent or contiguous”—so the covenant would be impermissible.

Language slightly broader than proposed in the Regulation would allow these community benefits (that benefit the encumbered property) to continue.

1,000 Yards. If the Regulation must include a “not to exceed” limit (which I question), it should be three or four miles, not 1,000 yards. For example, I represent a client who is desirous of restoring approximately four miles of watershed upstream of a proposed subdivision. The stream is a major contributor of sediment into the Truckee River. The subdivision, just downstream, is a perfect fit for the subdivision property owners to pay a transfer fee to restore the upstream watershed and stream that runs through their subdivision. The “1,000 yards” limitation prohibits that.

I hope the Regulation drafters understand that local communities benefit from transfer fee covenant revenues.

California law mandates notice of transfer fee covenants, so purchasers acquire residential real estate with full knowledge of a recorded transfer fee covenant. Besides, the covenants are recorded. I personally know many buyers who eagerly purchased their burdened properties—proud to contribute to the community with their transfer fee payments.

Thank you for your consideration.

Very truly yours,

PORTER SIMON
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JLP/tc