



Via Email

April 8, 2011

Mr. Alfred M. Pollard
General Counsel
Attn: "Comments/RIN 2590-AA41.Federal Housing Finance Agency"
Federal Housing Finance Agency
1700 G Street NW, Fourth Floor
Washington, DC 20552

*Re: Public Comments Guidance 011 Private Transfer Fee Covenants Regulatory
Identification Number (RIN) 1.590-A,441*

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. We note that the Rule is now to be applied prospectively. However, in order to avoid a technical problem, we believe the prospective language of the Rule should be changed to read as follows:

"§ 1228.3 Prospective application and
effective date.

This part shall apply only to
mortgages on properties encumbered by
private transfer fee covenants created on
or after February 8, 2011. **Encumbered shall include any legal
obligation to impose the transfer fee covenant on the subject
property.**

The reason this language is requested is to clarify what "encumbers means". The facts surrounding are particular situation are that we are participants in a large, 8000 mixed-unit project in Roseville, California which is just outside Sacramento, California. As a result of various lawsuits, an agreement was reached which included a legally binding obligation to impose a private transfer fee on the property. This obligation was created in 2005 and has been imposed on over 2000 units. The mechanics are that the Transfer Fee Covenant Agreement is in escrow with binding instructions to the Title Company to record the Covenant as Final Maps are recorded. This procedure was used to assure that the Covenant only recorded against the property that would be subject to the fee. In California, the obligation to impose the Transfer Fee Covenant is legally binding on all Parties and encumbers the Property as anyone buying the property with notice of the obligation would take the Property subject to the obligation. The proposed language simply clarifies that legal obligation.

To simplify matters, following are the comments we have previously submitted for consideration:

'In February of 2004, the City of Roseville approved the West Roseville Specific Plan that allowed for the construction of approximately 8,000 dwelling units on 3,162 acres along with significant industrial commercial and retail development. Lawsuits in both State and Federal Court were then filed by environmental interest objecting on the grounds that the project did not adequately mitigate against the impacts of converting open space to developed property.

After years of litigation, a resolution was reached between the City, the developers and the environmentalists. The resolution required that the developers acquire additional open space land for preservation and to advance \$10,000,000.00 to be used to acquire additional Open Space. In addition, the developers were required to impose a transfer fee on their property. The fee is 0.5% of the sales price on the resale of units. All of the money went to the Placer Land Trust (a well respected 501 C.3 organization). The vast amount of the money (about 95%) was to be used by the Land Trust to acquire additional Open Space in the immediate area of the Project (a small portion of the fees was allowed to be used for administrative and oversight costs). The transfer fee has a 20 year life and it was estimated that over that period of time the Land Trust would receive approximately \$50,000,000. The transfer fee is "of record", clearly identified in the Sale documents, and generally known throughout the community. To assure the Trust is operating as intended, an oversight committee consisting of the City of Roseville and representatives of the Sierra Club and the Audubon Society monitor the conduct of the Trust.

As of today, over 2,000 homes have been built and sold within the project. It is estimated that 90% of those homes have had mortgages that were sold ultimately to Fannie Mae or Freddie Mac.

If the proposed Guidance goes into effect the following results will be **inevitable**:

1. The value of the existing homes will drop dramatically as construction will halt on the balance of the project. Many of the promised amenities will not be installed and the project will take on a "ghost town" appearance.

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2. The balance of the project will not be able to be built because the primary purchaser of the mortgages will not be in the market.
3. The developer and merchant homebuilders will default on the Bank loans because there is no market for the mortgages on the homes that they would build.
4. The developer and merchant homebuilders will not pay the existing bonded indebtedness which means that the bonds will fail.
5. Hundreds of people will lose their jobs when construction ceases and it will be hard, if not impossible, for them to find employment in the existing job market.

It needs to be remembered that in this situation, the developer is not in a position to eliminate the transfer fee. The transfer fee is an obligation to the Land Trust pursuant to the litigation settlement, not to the Developer or any entity over which the Developer has control. Therefore, the Guidance, as proposed, would not give the Developer the ability to resolve the issue. If the payments were being made to the Developer, then the Developer could eliminate the issue. That is not the case here.

Whatever limited impact the transfer fee has on the liquidity of the homes within the project (to our knowledge there is no evidence of any impact on the liquidity of the homes), it will pale in comparison to the problems the proposed Guidance will have on the existing homes, the area and the hundreds of people who currently work on or as a result of the project.

In conclusion, if the transfer fee concept has been abused in other projects then Guidance directed to address the specific abuse should be considered. The fact is that the transfer fee concept has not been abused in the West Roseville Specific Plan. It was structure to provide a long-term benefit to the homebuyers within the project; it was limited in time and scope; it was fully disclosed; and the Land Trust administering the program has an Oversight Committee to assure that the intent of the program is being carried out. Regulation of this program is not only not needed, it will result in catastrophic impacts to over 2,000 homeowners and to the region.

Sincerely,



James C. Ghielmetti
Chief Executive Officer