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April 11, 2011

VIA E-MAIL AND U.S. MAIL

Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
Attention: Comments/RIN 2590-A411
1700 G Street, NW
Washington, DC 20552

Re: Notice of Proposed Rulemaking for Private Transfer Fees (RIN 2590-AA41)

Dear Mr. Pollard:

This letter is submitted on behalf of the Tejon Ranch Company ("TRC") and provides comments in response to the above-referenced Notice of Proposed Rulemaking for Private Transfer Fees (the "proposed rule") published in the Federal Register on February 8, 2001 (76 Fed-Reg-6702). Robert A. Stine, President and Chief Executive Officer of TRC, also submitted a comment letter dated April 5, 2011, and this letter supplements Mr. Stine's letter.

TRC is a member of the Coalition to Save Community Benefits and fully supports the letter of today's date submitted by the Coalition regarding the proposed rule. Together with the other members of the Coalition, TRC supports FHFA's restriction of transfer fee covenants that are used for private profit. However, TRC urges that the proposed rule be revised to clearly exempt "community benefit fees," that are payable to non-profit organizations. We write separately to request additional clarification of the grandfather provisions of the proposed rule to clearly exempt transfer fees that were contractually committed prior to the operative date, even if the fee covenant itself had not yet been recorded.

TRC is a publicly traded corporation whose principal asset is the 270,000 acre Tejon Ranch located along Interstate 5, approximately 60 miles north of Los Angeles and 30 miles south of Bakersfield, California. In June 2008, Tejon Ranch Company entered into the Tejon Ranch Conservation and Land Use Agreement (the "Ranch Agreement") with five of the nation's largest environmental resource organizations. The Ranch Agreement provides for a comprehensive, Ranch-wide conservation and land use plan for the Tejon Ranch property, including provision for the permanent conservation, through the grant of conservation easements, of approximately 90% of the land area of the Tejon Ranch. The Ranch Agreement allows for development,

subject to the public approval process, on the remaining approximately 10% of Tejon Ranch. A critical element of the plan for conservation of the Tejon Ranch property is the imposition of a private community benefit transfer fee imposed on residential property that may be developed in the future within Tejon Ranch.

The plan envisioned by the Ranch Agreement is, we believe, an excellent example of the appropriate use of community benefit transfer fees. The Ranch Agreement provides for a transfer fee equal to a modest one quarter percent (.25%) of the sales price of residential lot sales, with certain exceptions, that occur in any future development within Tejon Ranch. The transfer fee is payable to the Tejon Ranch Conservancy, a tax exempt charity under Internal Revenue Code Section 501(c)(3). Transfer fees received by the Conservancy are to be used for conservation planning and monitoring and enforcement of conservation easements held by the Conservancy in Tejon Ranch.

The community benefit transfer fee program envisioned by the Ranch Agreement is exactly the sort of transfer fee that should be excepted from the proposed rule. We are concerned however, that the rule as currently drafted could be read to prohibit investment in mortgages subject to these transfer fees. The difficulties in interpreting and administering the "direct benefit" test that would be created by the proposed rule are well addressed in the Coalition's letter, and we will not repeat them here. Suffice it to say that mortgage makers are not well positioned to make nuanced legal and factual judgments required to administer the direct benefit test as described in the proposed rule.

TRC requests your consideration of an additional issue, however, that arises out of the particular circumstances of the Ranch Agreement. As drafted, the proposed rule applies to any mortgages on properties encumbered by private transfer fee covenants "created" on or after February 8, 2011. In the case of Tejon Ranch, the commitment to impose the transfer fees was made in the Ranch Agreement entered into in May of 2008, and record notice of that commitment was recorded against the Tejon Ranch property shortly thereafter. However, in part because the proposed development projects have not yet been fully entitled, the transfer fee covenant itself has not yet been recorded. This situation creates possible confusion as to when the transfer fee covenant was "created". Similar situations could arise in the future if the parties to a grandfathered transfer fee covenant desire to amend the covenant to address non-substantive issues.

For these reasons, we encourage the FHFA to revise Section 1228.3 of the proposed rule to include an additional clarifying provision as follows:

> A private transfer fee covenant shall be considered to have been created prior to [the operative date] even if the covenant itself or an amendment to the covenant is recorded after that date, so long as either the covenant itself or a contractual agreement to impose the private transfer fee was entered into, and notice of such covenant or agreement was recorded against the encumbered property, prior to [the operative date], and such covenant or contractual agreement sets forth the amount and permitted use of the transfer fees.

We appreciate the opportunity to comment on the proposed rule. We reiterate TRC's support for FHFA's efforts to regulate abuses of private transfer fees and for the comments submitted by the Coalition for Community Benefits. With the proposed modifications suggested by the Coalition, we believe the rule would accomplish the FHFA's goals. At a minimum, TRC asks that the FHFA clarify the rule in the manner described above to make clear that the community benefit fee program provided in the Ranch Agreement would be exempt from application of the rule, as a contractual commitment to impose that the community benefit fee program was entered into and recorded against the property in 2008.

Very truly yours,

Harry O'Brien

HOB:mxc

cc: Robert A. Stine
Kathleen J. Perkinson