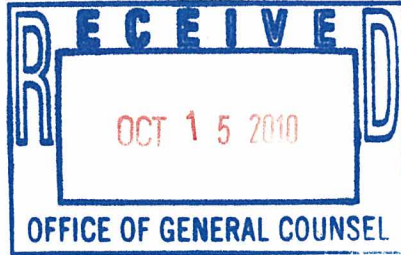




COMMUNITY BUILDERS



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October 7, 2010

Mr. Alfred M. Pollard
General Counsel
FEDERAL HOUSING FINANCE AGENCY
Fourth Floor
1700 G Street NW
Washington, DC 20552
Attention: "Public Comments Guidance on Private Transfer Fee Covenants (No. 2010-M-11)"

**Re: Public Comments Guidance on Private Transfer Fee Covenants
(No. 2010-M-11)**

Dear Mr. Pollard,

I am writing this letter both as a developer of residential, masterplanned communities for the past 30 years and as a visiting Professor of Law at Berkeley Law School (formerly Boalt) and as a member of the professional faculty at the Haas School of Business at the University of California. This letter is in response to the Federal Housing Finance Agency ("FHFA") Guidance on the use of government backed financing of mortgages for homes where private transfer fees exist. Based upon my experience, both as a developer and as a professor of real estate law and real estate development, I understand that this proposed guidance would have a serious adverse impact on millions of homeowners throughout the County and would have a devastating impact on residential real estate throughout the United States.

Speaking directly to my development experience, I am one of the developers of the West Roseville Specific Plan (a project on which we worked for 16 years) located in the City of Roseville, California. We believe that this proposed guidance would pose a significant obstacle to the purchase and sale of homes within our masterplanned community and countless other communities where such private transfer fees were lawfully established, and properly noticed to buyers and lenders and where such fees are paid to non-profit organizations for the direct benefit of the community. While much has been reported on the use of these types of fees, many of these fees, such as those in the West Roseville Specific Plan, are used for beneficial public purposes and often serve to lessen the cost of housing by spreading the burden of infrastructure, open space acquisition, and environmental preservation over a longer period of time, rather than saddling the initial buyer with the full cost. The unintended consequence of any such policy

would lead to an unfortunate restraint on alienation. A retroactive policy would punish buyers of homes within these communities by cutting off important and sometimes the only, source of financing for home purchases and sales, further exacerbating an already devastated housing market.

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 by a number of environmental organizations, 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 masterplanned communities, as well as several regional and national environmental organizations. 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 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 if 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 legacy 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.

As with any fee, tax or assessment there are cases of abuse, or misuse of an otherwise well intentioned vehicle for generating funding for important public benefit projects on a broad scale. New homes in California face a significant burden to provide for infrastructure, affordable housing, environmental mitigation and other public benefits. Many of these costs are incurred up front and paid for by the purchaser of the home, costs paid by one that benefit many. Transfer taxes, such as that employed in the West Roseville Specific Plan Project, create a broader source of funding the projects which provide broad public and social benefits. Were it not for these fees, these costly projects would otherwise go unfunded, or be added to the burden of new home buyers further increasing the cost of ownership and widening the affordability gap.

It is no secret that the housing market has experienced a decline that has not been seen since the Great Depression, and that while we may have seen some stabilization, it is a long way from recovery. Prohibiting the use of government backed mortgages, in any community with existing transfer fees, will definitely have a further negative effect, and in fact would all but shut down home sales within our Plan Area and cause irreparable damage to thousands of homeowners. We strongly urge the Federal Housing Finance Agency to reject any policy or guidance restricting lending within communities that contain transfer fees/taxes and that Fannie Mae, Freddie Mac and the Federal Home Loan Banks be allowed to continue to support loans within these communities.

We further strongly urge the FHFA to reject the directives within the guidance and leave unchanged the policy of government backed mortgages within all communities that meet the established guidelines. Absent a full rejection of the guidance we encourage the FHFA to exempt communities that use transfer fees for public benefit and similar beneficial use from any restrictions on government mortgages, and that communities that currently contain legally created, and properly notices transfer fees be exempt from any limitation on the use of government backed mortgages.

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

Sincerely,

William A. Falik
Managing Member