

September 29, 2010

The Honorable Alfred M. Pollard
General Council
Federal Housing Finance Agency
1700 G Street NW, 4th Floor
Washington, D.C. 20552

Re: Public Comments on "Guidance on Private Transfer Fee Covenants"
(No. 2010-N-11 Federal Housing Finance Agency)

Dear Mr. Pollard:

The Highlands Council is a 501(c)(4) organization formed in 2003 to provide community facilities, events and services to our community of approximately 3,000 homes at Issaquah Highlands, in King County, Washington. We strongly oppose the Federal Housing Finance Agency's Notice of Proposed Guidance on Private Transfer Fee Covenants published in the *Federal Register* on August 16, 2010. Our funding comes primarily from residential transfer fees (0.25%) under our recorded Covenant for Community. Use of these transfer fees by our community should continue to be allowed and not banned as proposed in the current draft of the Guidance.

In a nutshell, "don't throw the baby out with the bath water."

The Highlands Council fees do not go to the developer and do not form part of any offsite income stream or security. Rather, all of the funds go to our 501(c)(4) organization for use in a manner which provides benefit to Issaquah Highlands and the greater community of which it is a part. The services provided by this funding protect the values of homes in our community, which is a considerable additional benefit for the individuals purchasing a home in our community.

None of the problems cited in the proposed Guidance are applicable at Issaquah Highlands:

- No homeowner has claimed "surprise" at the transfer fee. The Covenant for Community is recorded and clearly discloses the transfer fee.
- No evidence that the transfer fees have hindered resales. In fact, people buy at Issaquah Highlands because of the community amenities which are funded by the transfer fee.
- No realtor has even claimed the transfer fee is a hindrance to conveyances or his/her earning a commission, let alone actually interfered with a potential sale.

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The transfer fees allow us to build a true community consistent with our Mission:

The Mission of the Highlands Council is to foster the development of a vibrant and caring community committed to service, inclusiveness, life long learning and well-being.

The Highlands Council uses the transfer fees to:

- Own and operate a community hall, with community meeting rooms, a community kitchen, and facilities for group meetings of all sorts, weddings, birthday parties and similar community activities.
- Own and operate community parks, including sport courts, bark (dog) parks and play lot areas.
- Hold community festivals and events (Green Halloween and Harvest Festival; Highlands Day; volunteer appreciation events; Easter egg hunt; seasonal events).
- Publish the Community Newsletter, *Connections*.

Ironically, the proposed Guidance would bring about the very negative consequences you claim to want to eliminate. To compensate for the loss of transfer fee income, new special assessments, or substantial increases in base assessments, would “increase costs” (or at least simply shift them), “limit property transfers,” and “represent dramatic, last minute, non-financeable out of pocket costs.”

The elimination of our transfer fees would reduce Highlands Council operating budget by approximately \$120,000 next year, and in a significant amount each year thereafter. This reduction means our homeowners will face higher association assessments, a reduction in the services that attracted them to our community in the first place, or both. Additionally, this loss of transfer fee income substantially increases the likelihood of special assessments, which often are a significant and unanticipated financial burden on our homeowners. It is far better in our opinion to have a known small percentage paid at the time of purchase than to face an ongoing and unpredictable stream of base assessment increases and/or special assessments.

Our transfer fees are used exclusively to enhance the community where the fees are generated and should be excluded from any prohibition on financing of properties where transfer fee covenants are recorded. We understand there may be a good policy reason to prohibit the type of fees that are paid at closing directly to a third party that makes no investment in the association and serve no other purpose than to enrich the fee recipient at the expense of homebuyers. We do not understand, nor do we support, a prohibition on fees clearly providing a benefit to the community that generates them.

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HIGHLANDS COUNCIL

BUILDING COMMUNITY AT ISSAQUAH HIGHLANDS

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Therefore, Highlands Council respectfully requests either that FHFA (a) withdraw the proposed Guidance, or (b) adopt an exemption from any prohibitory rule along the following lines:

Transfer fees are allowed when charged by an owner's association or other nonprofit organization and used exclusively to support community, cultural, educational, charitable, recreational, environmental, conservation or other similar activities providing benefit to the real property that is subject to the transfer fee covenant.

Finally, we believe state Legislatures are the appropriate level of government to deal with transfer fees. Property law and the practices governing real estate transactions are in the purview of state government. State governments are familiar with local real estate markets and are, therefore, better able to craft solutions to policy problems appropriate to housing in that state.

Over 20 states have enacted or have pending legislation to deal with transfer fees. The use of transfer fees and the dire consequences of a blanket prohibition such as FHFA has proposed is too broad a topic to approach simply as a secondary lending matter. Consequently, we do not believe there is a federal lending issue that needs to be addressed, and certainly no common solution applicable in all states that can or should be adopted by federal lending agencies. The Federal Housing Finance Agency should allow the individual states to address the important role transfer fees can play.

Perpetual income streams or payments not providing benefit to the community do not serve the purposes of the community. However, transfer fees as used by the Highlands Council (and similar organizations) are vital, entirely appropriate, and in the public interest.

Thank you for your consideration.

Very truly yours,

HIGHLANDS COUNCIL,
a Washington nonprofit corporation and 501(c)(4) organization

By: *Vicki L. Stier*

Name: *VICKI L. STIER, EXECUTIVE DIRECTOR*

On behalf of the board of Trustees