FREEHOLD CAPITAL PARTNERS
900 Third Avenue | Fifth Floor | New York, NY | 10022

October 13, 2010

Alfred M. Pollard, General Counsel
Federal Housing Finance Agency
1700 G Street, N.W., Fourth Floor
Washington, D.C. 20552

Re: Notice of Proposed Guidance — No. 2010-N-11, Private Transfer Fee Covenants

Dear Mr. Pollard:

We are writing to you today on behalf of our approximately 6,000 developer-clients who utilize a type of private transfer fee (PTF) known as a *capital recovery fee*. In doing so we join the 1,777 respondents to date (representing 96.21% of the 1,925 respondents) who have urged the FHFA to reject the Proposed Guidance. In support of this request we comment as follows:

SYNOPSIS

The FHFA's Proposed Guidance questions whether or not private transfer fees burden homeowners, inhibit the orderly functioning of the real estate market, and adversely impact government sponsored enterprises (GSE). We believe that the evidence clearly demonstrates that the answers to these questions is emphatically, "No".

Opposition to PTFs centers around the inaccurate notions that, among other things, the (1) covenants make transferring the encumbered properties difficult; (2) parties to a real estate transaction are not even aware of the covenant running with the property; (3) fee recipients are making money on the backs of homeowners; and (4) fees are new and potentially as dangerous as the financial products that caused the housing meltdown. All of these contentions, however, are simply wrong.

t: 212.755.0070 | www.FREEHOLDCAPITALPARTNERS.com | f: 212.937.2332

PTFs have been around for decades, and currently cover an estimated 12 million homes. Even with this widespread usage, transactions have proceeded smoothly, with no evidence that PTFs have adversely affected these transactions. This lack of evidence of actual harm strongly suggests that the Proposed Guidance is unnecessary.

Realtors looking to preserve commissions, and title agencies looking to eliminate the potential for claims that cut into profits, lead the opposition to PTFs. While we understand that they are in business to make money, the financial interests of these industries cannot be placed above good public policy. Both groups' attacks are not only self-serving, but they lack any basis in reality, and should not be used as a basis for cutting off the important funding that PTFs provide for non-profits, homeowner associations, master planned communities and development projects nationwide.

Opponents of PTFs have argued that PTFs somehow increase the risk to the safety and soundness of the GSEs and that the fee provides no benefit to consumers. This contention is illogical, and demonstrates a fundamentally flawed understanding of the purpose of the fee and the benefits it provides. The reality is that capital recovery fees are one of the few fees that actually provide consumers with a benefit commensurate with the amount of the fee. Capital recovery fees lower home ownership costs by spreading development costs over time among those who benefit from the infrastructure. In addition, by selling off the future income stream that arises from PTFs, negative equity is reduced, development loans are paid down, failed projects are restarted, and, importantly, jobs are created.

Unlike the absence of a negative impact from the use of PTFs over the past several decades, adopting the Proposed Guidance will have an immediate and devastating impact. The Proposed Guidance will suppress the value of the estimated 12 million homes currently encumbered with a PTF and the owners of these homes will be left scrambling for buyers willing and able to obtain a non-conforming loan, which in today's market may mean no buyers at all. Considering that millions of homes have been bought and sold with a PTF, the evidence is not merely suggestive – it

is overwhelming: private transfer fees pose no threat to GSEs or the real estate market, but the Proposed Guidance does.

I.

OVERVIEW OF CAPITAL RECOVERY FEES

The debate surrounding capital recovery fees has been dominated by misperceptions and inaccuracies. To properly evaluate the fees' utility, these misperceptions and inaccuracies must be addressed:

A. Development Costs are Equitably Shared

Streets, utilities and similar capital improvements make up a significant portion of the expenses associated with development of a modern master-planned community. Traditionally, 100% of these embedded development costs have been absorbed by initial buyers coming into the community, who, as a result of embedded development costs, experience a higher purchase price, higher transaction costs and higher carrying costs. Currently, developers use capital recovery fees to spread the significant development costs incurred in connection with modern master-planned communities. ***As such, the fees clearly represent neither a windfall to the developer nor a "private source of income to unrelated third parties" with no corresponding benefit to the land.***[1]

By equitably spreading infrastructure costs that would otherwise be absorbed entirely by the initial buyer, a capital recovery fee reduces the sales price of the home, making it more affordable. As Julie Snyder, Policy Director for non-profit Housing California stated during the California debate over transfer fees, ***"Reconveyance financing ... helps keep home prices low by spreading costs over all beneficiaries of a project."*** The California Building Industry observed ***"You can't put all of the costs on home buyers and still sell at an affordable price."***[2]

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[1] Clearly streets, utilities, etc., provide ongoing benefits to the homeowners that use them. From a public policy perspective, there seems little rationale for drawing a distinction between a fee used solely for ongoing maintenance and one which pays for the underlying infrastructure itself. Both clearly benefit the land and the homeowner.

[2] Source: Builders, Realtors Square Off on Transfer Fees. May 16, 2007. Inman News.

B. Capital Recovery Fees Are Not Hidden

Reports that the fees are hidden are patently false. In reality, a capital recovery fee is created when the developer files a *Declaration of Covenant* in the public records, and all parties are made fully aware of the fee through the title commitment, *which is the same method used to disclose encumbrances such as HOA dues, assessments and other rights and obligations that bind the property*. The entity entitled to the fee wants their money and common sense suggests that a hidden fee will not be paid, particularly if unveiled at the eleventh hour. Freehold supports full, clear and early disclosure of PTFs and requires nothing less of those with whom we work. An important example of this is our recent agreement with Fidelity National Title Group (which includes Fidelity Title, Chicago Title, Alamo Title, Lawyers Title and Commonwealth Title), to obtain a separate signed disclosure for all transactions. In addition, several states have separate disclosure requirements.

C. Capital Recovery Fees Are An Important Financing Tool

The fee has been referred to as a "**Development Bond**" because the future revenue expected from the fee can be sold off to investors.[3] A typical capital recovery fee is generally 1% of the sales price, paid by the seller, for a term of 99 years.[4] ***When developers sell off this future income stream, they generate much-needed liquidity that they can use to reduce bank debt, reduce or eliminate negative equity, and restart failed projects - creating jobs.*** This interrupts the cycle of declining property values that leads to foreclosures, which in turn leads to further declines in property values and additional foreclosures. In sharp contrast, when failed projects are restarted, homeownership is made more affordable, loans are paid down, and jobs are created. This leads to a positive ripple effect that spreads throughout the entire community, interrupting the downward spiral the real estate sector finds itself in today.

[3] This process is similar to toll bonds being used to fund toll roads. Similar "development bonds" designed to reimburse infrastructure and development costs include PIDs, MUDs and Mello-Roos, all of which have been routinely sold with no meaningful defaults.

[4] This translates into 8-10 sales (8-10%) paid out over the 99-year term. Source: Statistical Information Office, U.S. Census Bureau, Washington, D.C.; Geographical Mobility by Tenure: 1987-2006.

To understand how a capital recovery fee can reverse the downward spiral, consider the following:

> A developer borrowed money from a community bank to finance a master planned subdivision. He installed streets, utilities and other infrastructure, using the money borrowed from the bank. When the housing market crashed, the project's value plummeted before a single home could be finished and sold. As a result, the project stalled and workers were laid off. The bank, stuck with an impaired loan, now has to set aside additional reserves, reducing the amount of money it can lend to Main Street. The developer is unable to find funding on commercially reasonable terms since (1) virtually all banks now have the same problem (and thus have no money to lend to the real estate sector) and (2) regulatory requirements have reduced the amount of real estate loans a bank can have outstanding (as a percentage of capital).
>
> Overcoming this lack of capital, the developer utilizes a private sector solution by deciding to finance the infrastructure costs in a different way - with capital recovery fees. The developer imposes a capital recovery fee on the property and sells the long-term revenue stream for an immediate capital injection that is used to repay the bank.[5]
>
> The bank resolves a troubled loan, freeing up capital that it can lend to other small businesses. The developer restarts the project now that the "negative equity" has been cured. Construction crews, electricians, surveyors, and other workers are hired, and can now pay their own bills. Demand for construction materials also increases. Homeowners buying into the development get a lower price up front, and save on transaction costs and interest expenses. 5% of the income stream over 99 years goes to non-profits operating within the community, providing important funding for clean air, clean water, open space, affordable housing and more.
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> ***All of this is accomplished at zero taxpayer expense.***

[5] The developer must pay the bank, because the bank's lien is superior to the capital recovery fee covenant.

Capital recovery fees will not solve all of our current real estate, lending and jobs issues. But given their potential to aid in economic recovery and job creation, and to resolve troubled real estate loans, while making homeownership more affordable, we should think long and hard before destroying one of the few solutions actually providing relief in this environment, particularly in the complete absence of any evidence of harm.

II.

SPECIFIC RESPONSE TO THE PROPOSED GUIDANCE

The following address specific concerns identified by FHFA in the Proposed Guidance.

1. … "PRIVATE TRANSFER FEE COVENANTS MAY INCREASE THE COSTS OF HOMEOWNERSHIP, THEREBY HAMPERING THE AFFORDABILITY OF HOUSING AND REDUCING LIQUIDITY IN BOTH PRIMARY AND SECONDARY MORTGAGE MARKETS"…

When you spread infrastructure costs across the life of the property, there is an immediate and continuing *savings* for homebuyers, because the price of the home is lower than it otherwise would be without the fee. When homebuyers pay less up front, they enjoy lower closing costs and pay less interest, which creates significant savings over the life of the average loan.

Studies have examined Mello-Roos and similar financing vehicles that reimburse infrastructure costs, as well as taxes and fees and the impact on consumers, and the evidence is clear: *The market adjusts the price of the home to reflect the existence of the fee.* Studies include:

- Residential Property Tax Capitalization by A. Quang Do (Dep. Of Fin. – Univ. of San Diego) and C.F. Sirmans (Center for Real Estate and Urban Economic Studies – Univ. of Ct.), which concluded that homebuyers will in fact discount the purchase price of a home encumbered by a fee.[6]

- The Economics of Private Transfer Fees by Ph.D. land economist Dr. Tom McPeak, which concluded, "This assumption [that that the seller will lower the sales price] is

[6] Exhibit A (http://www.coalitiontopreservecommunityfunding.org/studies/quang_study.pdf)

well-founded because economic theory suggests that buyers armed with the facts will not pay the same for a home with a transfer fee as they will pay for the same home without a transfer fee."[7]

- A Bill Analysis prepared for the California Senate Transportation and Housing Committee, which concluded:

> Another fee that the market will adjust to. Private transfer fees are one more line item on the escrow instructions. To the extent that the existence of such a fee impacts the value of the property, as long as the fee is fully disclosed the market will adjust to the fee. A homebuyer who knows that she must pay such a fee upon subsequent resale will pay the developer less for the home than for a comparable property. Likewise, future buyers will pay less to the seller.[8]

- William Fischel, Professor of Economics at Dartmouth College and author of Municipal Corporations, Homeowners and the Benefit View of Property Tax (2000), commenting on the premise that home prices will adjust to reflect all encumbrances and that home buyers can "vote with their feet," remarked, *"I have found that, once I explain the basic idea, most people say, of course, how could anyone think otherwise?"*[9]

We agree with Professor Fischel – *how could anyone think otherwise*? Even if there was evidence that a capital recovery fee increased the cost of homeownership (which we maintain does not exist), the value that developers create through the many significant capital improvements that benefit homeowners for generations to come, more than justifies the fee. In sharp contrast, one

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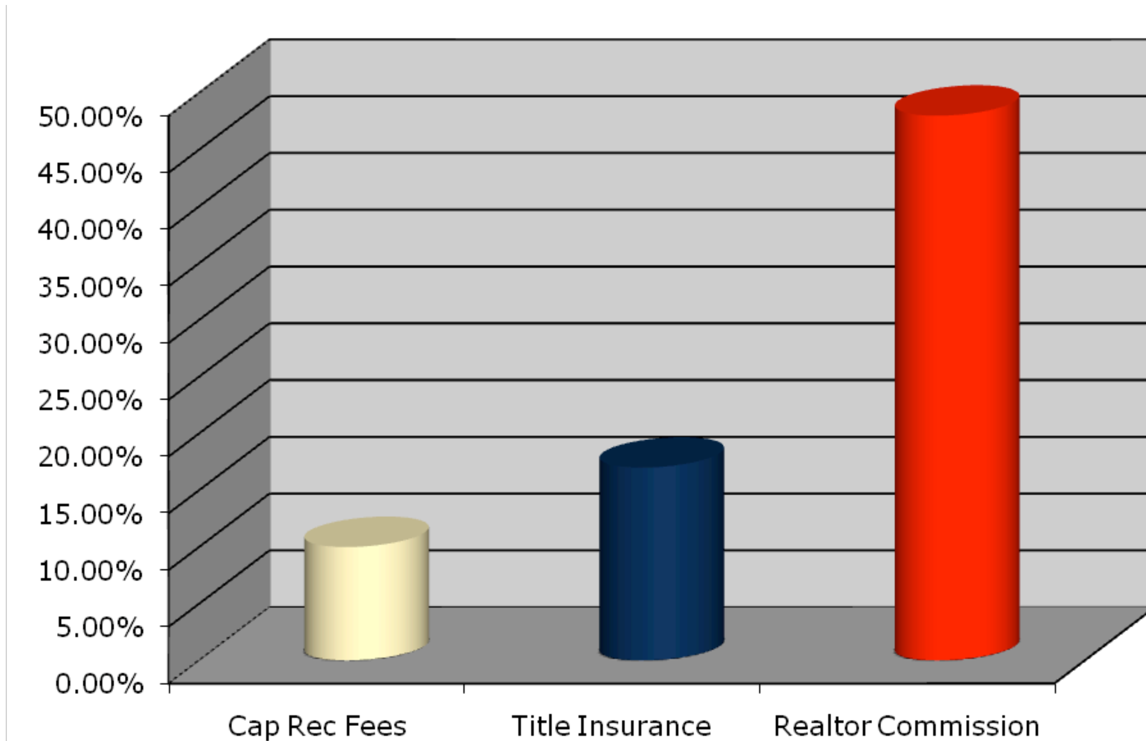
[7] Exhibit B.
[8] http://info.sen.ca.gov/pub/07-08/bill/sen/sb_0651-0700/sb_670_cfa_20070413_131835_sen_comm.html at ¶4.
[9] School Finance at p.6 (http://www.lincolninst.edu/subcenters/property-valuation-and-taxation-library/dl/fischel.pdf) See also p. 13 for discussion with approval of Quang study.

need look no further than the typical real estate commission and title insurance fee to find evidence of significantly more egregious fees which provide significantly less corresponding benefit to the homeowner. As such, it seems difficult to imagine the impetus for singling out a fee charged by the one group that invests the <u>most</u> in the project – in terms of time, money <u>and</u> creativity - *developers*.



COMPARISON OF CAPITAL RECOVERY FEES TO OTHER REAL ESTATE FEES
OVER THE LIFE OF THE TYPICAL TRANSFER FEE INSTRUMENT (99 YEARS)

Adopting the Proposed Guidance would create the very harm it seeks to avoid *(hampering affordability and reducing liquidity).* If adopted, the owners of the millions of properties with transfer fees will find themselves with property that is restricted to non-conforming loans, which will cause an immediate drop in the value of their property.

2. …"PRIVATE TRANSFER FEE COVENANTS MAY LIMIT PROPERTY TRANSFERS OR RENDER THEM LEGALLY UNCERTAIN, THEREBY DETERRING A LIQUID AND EFFICIENT HOUSING MARKET"…

An estimated 12 million properties are already encumbered with transfer fees, and have been bought and sold for decades without rendering property transfers legally uncertain. As such,

the overwhelming (indeed, indisputable) evidence is that private transfer fees do not interfere with property transfers.

The New York Bar Association, in FHFA comment 1076, agreed, writing: *"New York's transfer fees are not hidden and do not create any 'legal uncertainty' at any time during the sale process."* Other comments have mirrored the exact same finding. It is instructive to note that all transfer fees, including New York's widely-used condo and co-op "flip tax," HOA transfer fees, non-profit transfer fees, *and capital recovery fees*, are all created by the exact same means – a covenant filed in the public records. ***Since there is no such thing as a transfer fee that is imposed by any means other than a covenant filed in the real property records, the inescapable conclusion is that either all transfer fees are disclosed – or none are disclosed.***

For decades, Fannie Mae and Freddie Mac have routinely and repeatedly financed properties with private transfer fees, with no reported adverse impact. In sharp contrast, Fannie and Freddie (and taxpayers) have suffered billions in losses from acceding to the demands of the National Association of Realtors and the American Land Title Association (the two primary proponents of the Proposed Guidance) who repeatedly demanded lax lending standards and development of subprime loans in pursuit of higher profits.[10] *We understand why these two special interest groups want to be involved in the debate over how best to finance infrastructure and resolve the current crises – and why they urge policy-makers to protect their profits by banning this useful financing tool - but what we cannot understand is why they think that this is good public policy, or why their positions appear to have gained so much traction..*

3. …"THE FEE MAY DETRACT FROM THE STABILITY OF THE SECONDARY MORTGAGE MARKET, PARTICULARLY IF SUCH FEES WILL BE SECURITIZED"…

A capital recovery fee is not imposed in connection with a foreclosure and, therefore, has no impact on a foreclosing GSE. The fee is paid once, at closing, at which time the lender receives a

[10] For example, in 2003, the president of the National Association of Realtors, Cathy Whatley, testified before Congress in support of subprime lending, stating, ***"We support the development of such a [subprime] product, which would expand home purchase opportunities for more borrowers."*** What she clearly meant was, subprime loans will expand commissions for Realtors. http://banking.senate.gov/03_06hrg/061203/whatley.pdf @ *page 13*

title policy. By definition the fee cannot arise again until the next transfer of title, *at which time the lender is paid off*. Out of the billions in mortgage losses suffered by GSEs, no reported instance of a loss has been attributed to a private transfer fee.

It also is difficult to visualize a scenario where securitization of transfer fee income would have a negative impact on the stability of the secondary mortgage markets. Securitization simply dictates where the fee ends up. It does not change the risk profile to the lender.

4. … "PRIVATE TRANSFER FEE COVENANTS MAY EXPOSE LENDERS, TITLE COMPANIES AND SECONDARY MARKET PARTICIPANTS TO RISKS FROM UNKNOWN POTENTIAL LIENS AND TITLE DEFECTS"…

As a condition to acquiring a mortgage, both *lenders* and *secondary market participants* <u>require a title policy</u>. Thus "lenders" and "secondary market participants" have no exposure from a private transfer fee. ***This leaves the title insurance industry as the beneficiary of the proposed guidance.***

Freehold has entered into an agreement with Fidelity National Title, parent company of Fidelity Title, Chicago Title, Commonwealth Title, Alamo Title, Lawyers Title and Ticor Title. The Fidelity family of insurers covers an estimated 60% of the U.S. title insurance market. The stated purpose of the agreement is to establish *"a procedure by which property subject to a [Freehold] Covenant can be insured without undue risk to either property."* The agreement further provides that Fidelity (1) *"will not refuse to issue a Title Policy or close a transaction based solely on the existence of the [Freehold] Covenant"* and (2) will disclose the Covenant in a separate document, which the proposed insured will be required to sign. The agreement addresses concerns for title insurers, and Fidelity's suggested adjustments to Freehold's instrument and payment process have been made, thereby benefitting all title companies nationwide.

Private transfer fee covenants are not particularly unique or complicated, and they are fully transparent and traceable. Further, given the very nature of their business, title companies are readily equipped to indentify any encumbrances of record – a service for which they are typically

paid a substantial fee. While title companies could conceivably face claims that might arise from their own negligence in failing to discover a transfer fee covenant, those risks are no greater than the risks routinely assumed in connection with standard liens, judgments, assessments, homeowner association dues, and similar title commitment encumbrances. In addition, there is a complete absence of evidence of title claims having arisen from the existing pool of over 12 million properties with transfer fees.

What makes the title industry's opposition to a financing mechanism that can help homeowners, developers and lenders alike particularly self-serving is that title companies already enjoy monopolistic protections that allow them to pay out less than 5% of premium dollars in claims,[11] and 100% of those payments arise from the title company's own negligence. This industry hardly needs additional protection.

5. … "PRIVATE TRANSFER FEE COVENANTS MAY CONTRIBUTE TO REDUCED TRANSPARENCY FOR CONSUMERS BECAUSE THEY OFTEN ARE NOT DISCLOSED BY SELLERS AND ARE DIFFICULT TO DISCOVER THROUGH CUSTOMARY TITLE SEARCHES, PARTICULARLY BY SUCCESSIVE PURCHASERS"…

The following describes the process by which a capital recovery fee is created and disclosed.

A. <u>The Process</u>.

A developer creates a capital recovery fee by filing a "Declaration of Covenant" in the real property records. This process provides <u>notice</u> to all prospective buyers, and is <u>identical</u> to the long-standing process for assessing and disclosing homeowner association restrictions, dues and transfer fees. Unlike HOA dues and transfer fees, which can often be found inside lengthy HOA documents, a capital recovery fee covenant is virtually always filed as a separate stand-alone instrument, prominently styled, in bold 14-point font at the top of the very first page:[12]

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[11] See Eaton, Prof. David. **<u>The American Title Insurance Industry: How a Cartel Fleeces the American Consumer</u>.** NYU Press, 2007.

[12] Exhibit C.

NOTICE: THIS DOCUMENT MAY REQUIRE PAYMENT OF A FEE IN CONNECTION WITH A TRANSFER OF TITLE

When a buyer and a seller enter into a purchase agreement, the contract is receipted with the closing agent (typically a title company). **The title company then sends a title commitment to the buyer, where the transfer fee is disclosed.**

B. Right to Terminate

Virtually every earnest money contract allows the buyer to review the title commitment. *The buyer then has a period of time to withdraw from the transaction, without penalty.*

C. Additional Disclosure is Always Desirable

Although millions of transfer fee transactions are processed annually *with no evidence of inadequate disclosure or consumer harm*, additional disclosure is always welcome. A party imposing the fee will always want to take every reasonable step possible to ensure that the fee is easily discoverable by the title company. After all, if the fee is hidden, who will pay it, and who will buy it?

As discussed above, Freehold Capital Partners entered into a written agreement with Fidelity National Title Group (parent company of Fidelity Title, Commonwealth Title, Alamo Title, Chicago Title, Lawyers Title and Ticor Title, which together cover an estimated 60% of the U.S. title insurance market) which requires these title insurers to obtain a separate disclosure, signed by the buyer and seller.

D. The California Model

After extensive public debate and analysis, California rejected a proposed ban on private transfer fees, instead opting for a disclosure statute (Cal. Civil Code 1098.5). As a result of this new law not only is disclosure required, but the standard real estate contracts were revised:

- The standard Seller Property Questionnaire now requires disclosure of a transfer fee by the Seller and a buyer has the opportunity to terminate without penalty after review of this form.[13]

- The California Residential Purchase Agreement now includes a provision for a private transfer fee.[14]

E. Marketable Title Act

The title industry has suggested that the 99-year term of common transfer fee instruments presents challenges. However, this argument is a red herring:

1. In most states an abstract of the private transfer fee covenant must be re-filed within the period designated by the applicable states' **Marketable Record Title Act**, typically no more than 30 years, thus ensuring that the title reviewer does not have to search back for an unreasonable period of time.[15]

2. In today's modern information age, when a document is filed in the real property records it is indexed in a title plant, and will remain there until such time as the expiration date specified within the database (e.g. 99 years) has elapsed. The modern title plant tracks dates with virtually flawless precision.

F. Fee is Not Hidden in Complex Documents

Both Homeowner Associations and developers assess transfer fees through a covenant. In other words, the mechanism is exactly the same, except that a capital recovery fee document is a separate stand-alone document, whereas HOA covenants include a myriad of rules, regulations and fees. ***If a capital recovery fee is "hidden" then HOA transfer fees are even more hidden.***

As reiterated throughout our response, over 12 million homes have a transfer fee, and none of the concerns contemplated in the Proposed Guidance have materialized. More particularly, there is

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[13] Exhibit D.
[14] Exhibit E.
[15] Generally, these laws limit the duration of an encumbrance to a period of years.

no basis for asserting that private transfer fees are *"often not disclosed"* or that they are *"difficult to discover*". If the encumbrance is in the public records, it is neither more difficult nor less difficult than any other routine encumbrance of record. Nonetheless, to the extent concerns linger (despite overwhelming evidence that the concerns are unwarranted) additional disclosure lays the concerns to rest.

6. … "PRIVATE TRANSFER FEE COVENANTS MAY REPRESENT DRAMATIC, LAST-MINUTE, NON-FINANCEABLE OUT-OF-POCKET COSTS FOR CONSUMERS AND CAN DEPRIVE SUBSEQUENT HOMEOWNERS OF EQUITY VALUE"…

Capital recovery fees are typically paid by the seller. As such, it is not an *out of pocket cost* – it is a reduction in proceeds at the time of future sale. In addition, the fee is neither *dramatic* nor *last minute*, since the seller knows years in advance that the fee will be due at the time of sale.

Homeowners are not *deprived of equity* because they pay less for the home upfront. As shown in the studies cited above, it is undisputed that the market will adjust the price of the home to reflect the existence of the future fee obligation.

7. … "PRIVATE TRANSFER FEE COVENANTS MAY COMPLICATE RESIDENTIAL REAL ESTATE TRANSACTIONS AND INTRODUCE CONFUSION AND UNCERTAINTY FOR HOME BUYERS".

There is no evidence that private transfer fees have either complicated residential real estate transactions or introduced confusion and uncertainty into the process for the homebuyer. In fact, the evidence is overwhelmingly to the contrary and it strains credulity, and flies in the face of the evidence, to suggest that there has been any confusion over what is one of the simplest of fees to calculate.

8. … "THE RISKS AND UNCERTAINTIES FOR THE HOUSING FINANCE MARKET THAT ARE REPRESENTED BY THE USE OF PRIVATE TRANSFER FEE COVENANTS ARE NOT COUNTERBALANCED BY SUFFICIENT POSITIVE EFFECTS."

Again, opponents of PTFs have made bold assertions regarding *risks and uncertainties* for the housing finance market, but they have not offered any evidence to support their contentions. In fact, the evidence that does exist suggests a complete absence of risks and uncertainties: millions of homes across the country have been sold for decades with a transfer fee in place.

The counterbalancing positive effects resulting from the use of capital recovery fees are significant. The fee:

- Spreads infrastructure costs, thus making homeownership more affordable.
- Provides a source of financing that can reduce project indebtedness, eliminate negative equity, restart failed projects and create jobs.
- Provides important funding for non-profits, including funding for clean air, clean water, the environment, open space and more.
- Is paid by a seller who willingly assumed the obligation.

9. … "TO THE EXTENT THAT PRIVATE TRANSFER FEE COVENANTS BENEFIT UNRELATED THIRD PARTIES, ONE CANNOT CLAIM THAT A SERVICE OR VALUE IS RENDERED TO THE RELEVANT PROPERTY OWNER OR COMMUNITY"…

This is a fallacious argument that the special interest groups have pushed to protect their profits. They are not only wrong, but this argument seems misplaced in the context of guidance designed to address systemic risks to GSEs and the housing market.

Nonetheless, the "concern" does not apply to capital recovery fees. ***One cannot credibly argue that a developer is an "unrelated third party" who renders no value to the property owner or the community.*** Developers create master planned communities, investing millions of dollars in the process. Homeowners who live in the community clearly benefit from improvements that will last for generations to come – roads, wastewater lines, curbs, etc. It cannot be argued that these

homeowners do not benefit: they pay less up front for the home and they use the infrastructure regardless of the ultimate disposition of the fee.[16]

The argument that investors who provide the funding are somehow "*unrelated third parties who provide no benefit* is analogous to saying that paying toll road proceeds over to investors who bought the bonds that paid for the roads provides no benefit to the drivers. ***The fact that a developer creates the funding stream, and then sells the future income to investors, does nothing to alter the fact that the fee was assessed as a way to pay for the improvements that the homeowners will be using and benefitting from for decades to come.***

In addition to the upfront savings afforded the homeowner,[17] a capital recovery fee allocates 5% of the gross income to non-profits operating within the community from which the fee was derived. A strong charitable presence builds strong property values, thus clearly rendering yet another service to the *"relevant property owner or community."* This private income stream will generate billions of dollars for non-profits, clean air, clean water, open space and other uses within the community from which the fee originates.

Certain HOAs and non-profits have asked for an exemption for their fees, while expressing a willingness to carve everyone else out. In reality, the harm suggested by the FHFA's Proposed Guidance either exists or it doesn't exist. ***If the harm exists, it is not mitigated one iota based on the ultimate use of the fee. If the harm does not exist, then the Proposed Guidance is unnecessary.***

While their desire to stay out of the line of fire is understandable, there is little rational basis for banning fees payable for infrastructure while preserving fees to charities and HOAs. Such an approach would not only ignore the tremendous benefits developers provide in creating and

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[16] Even if the homeowner did not pay less up front, there seems little public policy justification for dictating how much a developer can charge for the benefits provided by developing a master planned community. If the total charges are not commensurate with the value provided, buyers will take their business elsewhere.

[17] From an economic perspective, if the homeowner receives a discount upfront, and if the amount the homeowner pays for the home is satisfactory to the homeowner, then it is difficult to identify a legitimate public policy issue that isn't resolved through disclosure such as that contemplated in H.R. 6332 (111th Congress).

developing common interest communities, but it would acknowledge that a property right can exist while simultaneously restricting ownership of this valuable property right to certain special classes.

10. … "EVEN WHERE SUCH FEES ARE PAYABLE TO A HOMEOWNERS ASSOCIATION, UNLIKE MORE TYPICAL ANNUAL ASSESSMENTS THEY ARE LIKELY TO BE UNRELATED TO THE VALUE RENDERED, AND AT TIMES MAY APPLY EVEN IF THE PROPERTY'S VALUE HAS SIGNIFICANTLY DIMINISHED SINCE THE TIME THE COVENANT WAS IMPOSED"…

It is true that a seller exiting a subdivision, and paying a transfer fee, will not benefit from that fee. However, this does not mean that the seller did not benefit. The economic reality is that the "value rendered" was acceptable to the seller at the time of purchase. In other words, the homeowner paid a purchase price that reflected the obligation to pay the future fee. *This holds true regardless of whether the fee is paid to an HOA or as a capital recovery fee.* It seems inappropriate for FHFA to try and renegotiate the economics of a transaction that was acceptable to the parties. Should FHFA set the sales price as well, dictate the amount of the HOA dues, or mandate any of the other economic realities of the transaction?

As to the fee being payable even if the value of the property drops significantly, clearly the fee drops pro-rata. The owner paid less up front, and thus received the benefit of a discounted price based upon the future fee obligation, which presumably contemplated a higher sales price. It can hardly be argued that having to pay a lower fee than bargained for, after having received a discount up front, is harmful to the buyer.

III.
CONCLUSION

Opponents of PTFs have offered conclusory and unsupported statements and passed them off as fact. The reality is that despite millions of home transactions with PTFs, there is not a scintilla of evidence that a private transfer fee causes any of the harm contemplated in the Proposed Guidance. In fact, the existence of millions of problem-free transactions over the past few decades is the strongest of all possible evidence that the guidance is unwarranted, and indeed could disrupt markets if adopted.

Some supporters of PTFs, clearly concerned that they will lose their own funding source, have urged FHFA to limit the guidance to a prohibition on fees imposed *"solely to benefit unrelated third parties, and where there is no corresponding benefit to the land."* Although understandable, there is no rational basis for carving out particular transfer fees through the Proposed Guidance, for two reasons:

- First, *a transfer fee either impairs real property transactions and threatens GSEs, or it doesn't.* The purpose of the fee is irrelevant.
- Second, despite the complete absence of any evidence that such a fee is actually being imposed, if such were to occur the courts would remove the encumbrance.

There also is the practical issue of how to decide whether or not a transfer fee benefits the land. This is a fact-based inquiry that would need to be undertaken on a property-specific basis.

PTFs are not the Wall Street enrichment fees that the special interest groups, looking to preserve their own profits, would have you believe. PTFs have been around for decades and, assertions to the contrary notwithstanding:

- the fee is fully disclosed;
- it is voluntarily paid;
- the market reflects the existence of the encumbrance;
- the appraisal reflects the encumbrance;[18]
- the lender receives a title policy; and
- the fee has been around for decades – with millions of homes, bought, sold and financed, *with no resulting harm.*

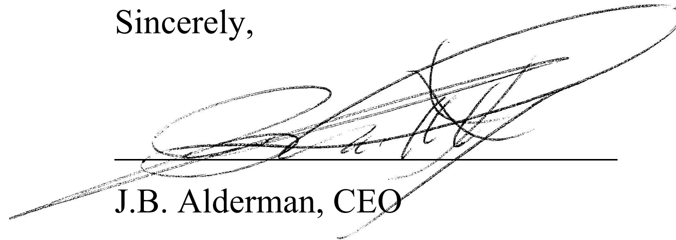
[18] The appraisal is based upon (1) encumbrances of record and (2) comparable sales – which means the other homes in the neighborhood, *which have the same fee*.

The only beneficiaries of the Proposed Guidance are the title industry (and their request is that policy-makers protect them from claims arising from their own negligence) and Realtors (concerned that sellers will ask the realtor to absorb the fee). Analysis of the comments reveals that 96.21% of respondents oppose the Proposed Guidance, and, if the Realtor "form letter" is treated as a single response, **opposition to the Proposed Guidance rises to 98.89%**.[19]

The reality is that PTFs represent a fair and equitable way to fund homeowner associations, generate long-term sustainable income for non-profits, spread infrastructure costs, and provide capital to pay down development loans, restart stalled projects and put Americans to work.

In summary, we urge the FHFA to not adopt the Proposed Guidance.

Sincerely,



J.B. Alderman, CEO

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[19] Calculated through comment 1,925.

I

Exhibit A

RESIDENTIAL PROPERTY TAX CAPITALIZATION: DISCOUNT RATE EVIDENCE FROM CALIFORNIA

A. QUANG DO* & C. F. SIRMANS**

***Abstract** - In spite of the voluminous literature on property tax capitalization, this paper is the first to derive a discount rate empirically. The paper uses an unique data set from a Mello–Roos Community Facility District (CFD), where taxes are expected to be totally capitalized into property values. Using a standard hedonic pricing model, the results show that buyers of homes within the CFD capitalize taxes into the prices of purchased properties at a discount rate of around four percent.*

INTRODUCTION

The empirical literature on the effects of property taxes on housing values finds that taxes are capitalized to some degree. The degree of capitalization, to a large extent, depends upon the rate used to discount the tax payments' stream. Past studies have assumed the discount rate to be between three percent and six percent. These studies include Oates (1969), Pollakowski (1973), Church (1974), King (1977), Reinhard (1981), Dusansky, Ingber, and Karatjas (1981), Richardson and Thalheimer (1981), Ihlanfelt and Jackson (1982), Lea (1982), Goodman (1983), and Yinger *et al.* (1988). Because the discount rate plays an important role in determining the degree of capitalization, it is imperative that we estimate the correct discount rate.

As pointed out by Yinger *et al.* (1988), previous studies estimating the housing pricing equation used either actual tax payments or a tax dummy variable. Hence, a discount rate was assumed in order to derive the degree of capitalization. The major problem with the literature has been an inability to accurately estimate the degree of tax capitalization, because these previous studies had to assume a value for the discount rate and test for the degree of capitalization based on that assumption. This problem is largely due to the fact that the discount rate and the degree of capitalization cannot be separately estimated. It is unavoidable, because the degree of capitalization represents the amount of discount relative to the present value of

* Department of Finance, San Diego State University, San Diego, CA 92182–0094.

** Center for Real Estate and Urban Economic Studies, University of Connecticut, Storrs, CT 06269–2041.

the property tax, all else equal. Therefore, either the discount rate or the degree of capitalization must be known or assumed.

Unlike previous studies, this paper uses a unique data set in which buyers are expected to fully capitalize taxes into housing values. This allows us to empirically determine the discount rate used by individuals to capitalize taxes into housing prices. Because there exists a discrepancy in the discount rate assumed in the previous literature, this paper takes an important step in resolving the issue. The housing transaction data are collected from a Mello–Roos Community Facilities District (CFD)[1] in San Diego county, where new homeowners are levied special taxes for the expansion of schools to accommodate the expected increase in the numbers of students that will move into the new development. Because the schools benefit homeowners in the CFD as well as in the surrounding area, the special taxes should thus be 100 percent capitalized into the purchased prices allowing us to empirically derive the implied discount rate. The 100 percent capitalization is further plausible by the fact that the amount of housing in the CFD is fixed by virtue of the buildable land and the approval of the plat map by the city planning commission. In addition, the CFD area from which part of the sample was drawn is considerably small and only consists of new subdivisions within a developed area. In addition, we are reasonably confident that average home buyer characteristics are constant from one area to the next.

The remainder of this paper is organized as follows. The next section presents the various aspects of the Mello–Roos Community Facilities Act as it relates to financing public infrastructure. Section 3 of the paper presents a theory on Mello–Roos tax capitalization. Section 4 provides a brief discussion of the data, the empirical methodology, and results of the paper. Finally, section 5 concludes the paper.

MELLO–ROOS INFRASTRUCTURE FINANCING

California's well-known Proposition 13 severely restricted local governments' ability to raise taxes for financing public infrastructure. This restriction, together with a significant reduction in federal grants, has hampered many California cities' efforts to construct much needed infrastructure to support their expanding populations. The passage of the Mello–Roos Community Facility Act of 1982, which took effect in the beginning of 1983, was aimed at partially solving the infrastructure financing problems in newly developed areas. The Act allows the establishment of a Community Facility District, where public service facilities can be financed by tax-exempt Mello–Roos bonds. In addition to school districts, other community projects allowed under the Act include the following: police protection including criminal justice facilities (*i.e.*, detention facilities, prisons, and juvenile halls); fire stations including ambulance and paramedic facilities; recreation facilities such as parks and community recreational centers; construction and maintenance of public roads and traffic light systems; public libraries; storm sewers and water mains; and other governmental facilities.

Since the Act became law in 1983, more than $3.2 billion in bonds have been issued to finance various public projects in the state of California (California Debt Advisory Board, 1991). The most common beneficiaries of Mello–Roos have been various school districts, primarily the K–12 facilities. As of March 1992, 302 Mello–Roos bonds have been issued, with the majority of these special tax bonds for projects located in Riverside, San Bernadino, and Orange coun-

ties. Of these $3.2 billion, nearly half are issued by cities (46 percent), 23 percent are by counties, and 20 percent are by school districts. The remaining are from public finance authorities (three percent), special districts (five percent), and redevelopment agencies (three percent). As of December 1991, a total of 226 Mello–Roos community facilities districts have been formed and more are expected.

The additional public facilities are needed to accommodate population growth due to the influx of new homeowners. These new residences are required to pay for these facilities by way of Mello–Roos special assessments.[2] To meet the principal and interest payments on the bond, homeowners in the CFDs are levied an additional amount on their total monthly mortgage payments. The amount of extra taxes is fixed according to the resolution establishing the CFD and for the duration of the bond term of maturity, which, according to the Act, must be 40 years or less.

MELLO–ROOS TAX CAPITALIZATION AND DISCOUNT RATES

The degree of property tax capitalization depends on the amount of taxes, the benefits from the taxes, and the discount rate. Previous studies have been unable to accurately estimate the degree of tax capitalization, because these studies must assume a value for the discount rate and test for the degree of capitalization based on that assumption. This problem cannot be avoided, largely due to the fact that the discount rate and the degree of capitalization cannot be separately estimated. Therefore, either the discount rate or the degree of capitalization must be known or assumed. In our sample, the impact of Mello–Roos payments on house prices is unique in that the marginal benefits are the same for both those paying and not paying the taxes. The special assessments are for the expansion and construction of a middle school and a high school to be utilized by all residences in the newly developed as well as the surrounding established area. Because there are no differences in the marginal benefits of paying the special taxes, it is expected that these taxes are fully capitalized into selling prices. A 100 percent capitalization implies that the selling price is reduced by the same amount as the present value of the taxes over the term of payments. For example, suppose house A and house B are both located within the same jurisdiction and are assumed to be similar in every aspect except the monthly payments for the Mello–Roos taxes. Further, assume that the additional tax on house A is $1 per month for 25 years and is discounted at three percent, all else equal; house A would sell for $210.88 less than house B. The amount of capitalization depends upon the discount rate. The before-tax present value of the Mello–Roos payment stream is

$$\text{MELLOROOS} = \{[(1 + i)^n - 1]/[i * (1 + i)^n]\}[\text{payment}]$$

where

payment = the Mello–Roos payment;
i = the discount rate; and
n = the duration of Mello–Roos payments.

The present value of the taxes is inversely related to the discount rate. A higher rate will result in a smaller discount in selling price. For an increase in discount rate from three percent to five percent, a $1 monthly Mello–Roos tax payment for 25 years will reduce the discount by $39.82. Therefore, the choice of discount rate is important, because the estimated degree of tax capitalization depends on the rate. Overstat-

ing the discount rate will lead to an overestimate of the degree of capitalization and *vice versa*.

DATA DESCRIPTION

The data were collected between March 1991 and April 1992 from a district located in the southwestern part of California's San Diego County, where property values remained relatively constant over the period. Only single-family detached residential dwellings are included in the data set. The total sample is comprised of 645 sold homes, with 289 coming from the area surrounding the CFD and 356 lying within the CFD. The out-of-CFD data are from the San Diego Board of Realtors' Multiple Listing Service (MLS). The remaining in-Mello–Roos CFD observations are obtained from the developer. The data contain the following information about each sold property: physical characteristics of the houses such as total square feet of the home, the age of the property, whether or not the property has a fireplace and/or garage, and lot size. Because we are reasonably certain that the areas from which the observations are collected are uniform with respect to incomes, population densities, and major public facilities, neighborhood variables are not included here.

The amounts of Mello–Roos assessments, which are based on the square footage of a house, are also collected for all sold homes within the CFD area. In addition, selling price, date of sale, and the property address are also collected for each home in the sample.

Descriptive statistics pertaining to the total sample are presented in Table 1. The mean sale price for the sample is $233,420. The mean age of the properties is 10.2 years with a standard deviation of 14.2 years, and the mean square footage is 1,751 with a standard deviation of 360. Table 1 also provides descriptive statistics for other variables including fireplace, garage, type of structure, lot size, and whether or not the property has a view. The means and standard deviations of housing attributes for single-family dwelling units surrounding the Community Facility District are also provided in Table 2.

MODEL SPECIFICATION

A traditional hedonic pricing model is used to estimate the effect of Mello–Roos taxes on single family homes:

1

$$SP_i = f(X_{ij}, \text{MELLOROOS}_i)$$

where SP_i is the price of the ith house. X_{ij} is the standard set of explanatory variables including:

- SF = total square footage of the house;
- AGE = age of the structure in years;
- LSZ = lot size in square feet;
- FP = a dummy variable indicating whether the property has a fireplace (FP equal to one if the house has a fireplace and zero otherwise);
- ST = number of stories;
- GAR = garage size (one-car, two-car, *etc.*);
- DMKT = number of days that property remained on the market prior to being sold;
- VU_i = whether the property has a view; and

TABLE 1
MEANS AND STANDARD DEVIATIONS OF HOUSING ATTRIBUTES FOR SINGLE-FAMILY DWELLING UNITS IN THE SAMPLE[a]

Variable Abbreviation	Variable Definition	Mean Value	Standard Deviation
SP	Selling price ($)	233420.09	32857.68
ST	Number of stories	1.58	0.49
AGE	Age (years)	10.48	14.20
DMKT	Market time (days)	75.98	81.51
SF	Total square footage (ft^2)	1750.96	359.87
GA	Number of garages	1.92	0.41
FP	Number of fireplaces	0.88	0.40
VU	View	0.38	0.48
LSZ	Lot size (ft^2)	6829.84	2978.54

[a]Total sample size is 645 homes.

TABLE 2
MEANS AND STANDARD DEVIATIONS OF HOUSING ATTRIBUTES FOR SINGLE-FAMILY DWELLING UNITS SURROUNDING THE CFD[a]

Variable Abbreviation	Variable Definition	Mean Value	Standard Deviation
SP	Selling price ($)	224381.85	34126.91
ST	Number of stories	1.24	0.43
AGE	Age (years)	23.39	12.15
DMKT	Market time (days)	83.49	69.99
SF	Total square footage (ft^2)	1590.99	362.78
GA	Garage size	1.82	0.59
FP	Number of fireplaces	0.81	0.53
VU	View	0.28	0.45
LSZ	Lot size (ft^2)	7965.03	3734.38

[a]Sample size of 289 homes.

$MELLOROOS_i$ = a dummy variable equal to one if property i is located in the special taxing district and zero otherwise.

These standard explanatory housing-price variables are consistent with previous studies on housing price determinants, such as that by Sirmans and Sirmans (1991). The expected influences of these explanatory variables on selling price are positive, with the exception of AGE and the DMKT that the house remained on the market. The Mello–Roos dummy variable ($MELLOROOS_i$) captures the effect of infrastructure financing. Because the taxes are expected to be totally capitalized into the purchase prices, this allows us to derive the implied discount rate.

EMPIRICAL RESULTS

Table 3 shows the results from estimating equation 1. All of the signs of the estimated coefficients are correct and significant with the exception of FP and ST. The variable capturing Mello–Roos taxes, namely, MELLOROOS, is of direct interest in this paper. The estimated coefficient of this variable is significantly negative. The empirical results are used to calculate the discount rate that buyers use to capitalize the Mello–Roos taxes into housing values.

In determining the appropriate func-

TABLE 3
REGRESSION RESULTS OF MELLO–ROOS TAX EFFECTS ON SELLING PRICE IN SINGLE-FAMILY HOMES[c]

Variables	Coefficient	*t*-Statistics
Constant	99659.223	18.83[a]
Age	−464.797	−5.46[a]
Market time	−26.167	−3.16[b]
Story	696.428	0.35
Square footage	69.402	25.14[a]
Garage	4614.255	2.66[b]
Fireplace	−804.211	−0.43
View	9179.812	6.71[a]
Lot size	2.029	7.87[a]
MELLOROOS	−13502.091	−5.61[a]
Adjusted R^2	0.75	
F-statistic	218.47	
Sample size	645	

[a] Significance at the .01 level.
[b] Significance at the .05 level.
[c] Dependent variable: selling price (SP_i).

tional form for equation 1, we conducted a Box–Cox test on both the linear model and the log-linear model. The results indicate that we cannot reject the reported linear functional form as a correct one. The resulting chi-squared test statistic (*i.e.*, likelihood ratios) for the linear functional form is 0.56. This indicates that the linear functional form is not rejected at the five percent significance level. The results are largely consistent with the functional form used in housing pricing literature. However, the Box–Cox test rejected the log-linear model. Hence, the results of the log-linear model are not included in this paper.[3]

Table 3 presents the results of the linear form estimation. Adjusted *R*-square values indicate that variations in the independent variables explain 75 percent of the differences in selling prices of the sample properties. Furthermore, the *F*-statistics also indicate that the estimated equations are well behaved and significant at 0.01 levels.

The coefficient −$13,502 is statistically significant at the one percent level ($t = -5.61$) indicating that homes in the special district sell for significantly less than surrounding houses. For the CFD examined in this paper, the mean Mello–Roos tax payment is $704.56 for the first year with a required two percent annual increase for 25 years. Using these facts, the actual payment stream of Mello–Roos taxes can then be calculated. Given the resulted capitalized amount of $13,502 and the actual payments, the before-tax discount rate is simply the internal rate of return which equals 4.03 percent[4]. Because the discount rate depends on the real interest rate and inflationary expectations, and the Mello–Roos tax is expected to be paid over a 25 year period, it is appropriate to point out that the average 30 year T-bond rate existing during the sample period was around eight percent.

Conclusions

The current tax capitalization literature finds that taxes are capitalized into property values to some degree. The degree of capitalization depends upon the rate used to discount the tax payment stream, which, in previous literature, has been assumed to be between three percent to six percent. This paper is the first to empirically determine the discount rate using a unique data set in which buyers are expected to totally capitalize taxes into housing values. The housing

transaction data are collected from a Mello–Roos CFD in San Diego county, where new homeowners are levied special (additional) taxes. In turn, these taxes are used for the expansion of a middle school and a high school to accommodate the expected increase in the number of students residing in the newly created CFD. Because the expansion of these two schools benefits homeowners in the CFD as well as in the surrounding area, the special taxes are expected to be 100 percent capitalized into the purchase prices. This allows us to empirically derive the implied discount rate. The results show that payments used to finance the CFD have a negative impact on housing values. Buyers of homes within these Mello–Roos community districts appear to use an average discount rate of about four percent to capitalize these taxes into the prices of purchased properties. During the period of March 1991 and April 1992, when the discount rate was derived, the average 30-year T-bond rate was around eight percent. This study takes an important step toward determining the actual discount rate used by individuals to capitalize taxes into housing prices.

ENDNOTES

We thank Gregory Gutierez and Jolene Tsurue Yamanuha for data collection. We are particularly grateful to David Ely and to the three anonymous referees for valuable insights and suggestions. The research support of the California Real Estate and Land Use Institute at San Diego State University is also greatly appreciated.

[1] Mello–Roos is the colloquial name for the Mello–Roos Community Facilities Act. The Act was co-authored by Senator Henry J. Mello of Monterey and then-Los Angeles Assemblyman Michael Roos and was enacted by the California legislature in its 1982 session. The Act enables local government agencies to assess special taxes in newly established CFDs, thus providing an alternative means to finance infrastructure in developing areas and areas undergoing rehabilitation. The law authorizes a form of municipal bond financing allowing developers and local governments to sell tax-exempt revenue bonds to build roads, fire stations, schools, sewage plants, and other such public facilities.

[2] Establishment of these CFDs is voted and approved by two-thirds of the landowners living within the proposed special districts. A provision in the Act allows one vote for each acre owned if the number of landowners is less than 12 (Connell, 1992; Raineri, 1987; and Fulton, 1991).

[3] Although we do not report the results, it is, noted that the log-linear form resulted in a similar discount rate and is statistically significant at the one percent level. Thus, the discount rate is robust with respect to the functional form of the model.

[4] There are three alternative ways to test the Mello–Roos tax effect: include a dummy variable for homes in and out of the tax district, discount the stream of payments at some discount rate and include this "present value" variable, and include the first year's tax payment. We chose to use the dummy-variable approach, because the second method requires an assumption about the discount rate, which we want to calculate from the results. Including the first year's payment as a variable makes the interpretation of the estimated coefficient difficult. Also, the third method is complicated by the fact that the tax payments are growing at a rate of two percent per year.

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Exhibit B

The Economics of Private Transfer Fee Covenants

By Dr. Tom McPeak, Ph.D.

As a Land Economist, I have always been fascinated by the allocation of land resources. One emerging area in this field is the use of private transfer fees (also called reconveyance fees) to allocate increasing development costs and fund infrastructure.

A private transfer fee is created when a real estate developer files a legal instrument (typically called a private transfer fee covenant) in the real property records. Unlike a government transfer tax (which simply adds to the cost of home ownership), private transfer fees are paid by parties who willingly assume the obligation, and who negotiate their price and terms accordingly.

From a typical developer's perspective, a private transfer fee represents an alternative to putting 100% of development costs onto the shoulders of first-time buyers. In addition, if the future income stream could be sold off, much needed liquidity would be brought to the project. In return, the developer can lower the sales price, pay down bank loans, and even restart failed projects (creating jobs).

From the buyer's perspective, the willingness to pay a fee in the future in return for a lower initial price will result in lower acquisition costs, reduced carrying costs, and reallocation of the savings (i.e. does the buyer pay down high interest credit card debt with the savings). In addition to the quantifiable savings, a buyer may consider intangible issues such as the portion of the transfer fee that goes to non-profits, and whether the Buyer can qualify for the lower priced home (with a transfer fee) but would be unable to qualify for the higher priced home (without a transfer fee). All of these variables go into the decision-making process and both buyer and seller make an economic decision based upon their respective perceptions of the market value of the trade. If these perceptions match, a bargain is struck and the transaction is *Pareto-efficient.*

The assumption is that the seller will lower the sales price. This assumption is well-founded because economic theory suggests that buyers armed with the facts will not pay the same for a home with a transfer fee as they will pay for the same home without a transfer fee. It would be illogical to argue otherwise. (Having said that, the illogical nature of this argument does not appear to have prevented organizations from making the argument.) As is often the case, economics lies at the heart of the decision. Realtors apparently see transfer fees as a threat to commissions and the title industry see transfer fees as a potential liability for which they will be held responsible. Each entity is responding in an economically predictable way by protecting its own interest.

The community benefits because a portion of the income from a private transfer fee covenant is virtually always allocated to a non-profit operating within the community. This provides long-term sustainable revenue for clean air, clean water, youth programs and other benefits to the community while reducing reliance on government funding. This builds stronger property values, which in turn protects and enhances the fee stream. (See charitable endowment program of Freehold Capital Partners at http://www.freeholdcapitalpartners.com)

Since the amount of the future fee stream is dependent on long-term sustainable value, it is in the developer's economic interest to take a longer-term view of the project. Simply stated, in lieu of accepting a lump sum and having no further economic interest in the project, developers imposing a private transfer fee covenant have a vested interest in ensuring that the project value remains as high as possible for as long as possible, and in fact investors looking to buy the future income stream would be expected to scrutinize the long-term merits of the project. This mutuality of interest benefits home buyers, taxing authorities, and the community in general.

When the parties to a transaction come away satisfied with the bargain they have made, it is referred to as a *Pareto-efficient* transaction. An economic system that is *Pareto-efficient* is an important metric for evaluating economic efficiencies and public policies. Private transfer fee covenants balance the needs of the buyer, the developer, and the community in a *Pareto-efficient* way by more efficiently restructuring the economics of the real estate transaction.

About Dr. Tom McPeak, Ph.D.: In 2000 I began teaching at one of the nation's top business schools, the Terry College of Business at the University of Georgia. I received my Ph.D. in Resource Development (Land Economics) from Michigan State University. I have studied private transfer fee covenants for several years.

A Balance Sheet Solution to the Economic Crisis

By Dr. Tom McPeak, Ph.D.

Real estate projects across the country have stalled, resulting in widespread unemployment.[1] It is not uncommon for a developer to owe $40 million on a project that was formerly appraised for $70 million, but which now appraises for $40 million. At these valuations the project is no longer economically viable, and both the lender and the borrower are in distress. As a result of the stalled project, both *direct* and *related* employment evaporate, property prices decline, government receipts drop, and taxpayer losses mount as banks fail.

Giving the borrower a $40 million loan, or an extension of an existing loan (a process cynically referred to within the industry as "extend, amend and pretend")[2], will not solve the problem because the project is simply not economically viable in the current environment. In addition, while a decline in value from $70m to $40m (continuing the example above) represents a 43% decline*, property values would have to increase 175% in order to restore the valuation to the prior level*, an unlikely event under even the most aggressive scenario, particularly given the current lack of price discovery.

The solution is to restore the balance sheet and restore economic viability. **Simply stated, project debt must be reduced to an economically viable level.** In the current market, this can be accomplished one of two ways: Increase the value of the project, or reduce the debt. As discussed, in the current environment the former is unrealistic. However, private transfer fee covenants successfully accomplish the latter, and it does so using the developer's own asset.

A private transfer fee covenant (also called a reconveyance fee covenant) assesses a "transfer fee" each time title to the real property transfers. Private transfer fees have been around for decades, and have been used to fund environmental initiatives, green space, and HOA dues. Recently developers have been utilizing transfer fees as a way to apportion development costs over time, instead of allocating development costs onto the first time buyers.

A developer imposing a transfer fee covenant has created a future income stream, in return for which the future payors enjoy the amenities and infrastructure installed by the developer as

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1 *Signs of Recovery Don't Extend to Jobs.* Wall Street Journal Online, Oct. 22, 2009. http://online.wsj.com/article/SB125613391710198857.html

2 See generally, Salmon, Felix. *Should Banks Extend and Pretend?* Reuters, Aug. 21st, 2009.

well as a lower sales price today.[3]

This future income stream has real value. If a developer carves out this future income stream and sells it for its present value, the proceeds can be applied to the real estate project, reducing the loan indebtedness[4] and restoring economic viability. **This is a balance sheet solution to a balance sheet problem.**

When economic viability is restored, the inverse of the destructive cycle of declining property values and diminishing jobs occurs. When a stalled project recovers economic viability, the impact on employment is immediate and sustainable. Likewise, when development loans are brought within conforming ratios, the project owner's balance sheet is restored, the lender's balance sheet is restored, lender confidence is increased, and lending activity resumes, all of which has a positive ripple effect within the economy.

A Manhattan-based company, Freehold Capital Partners (www.FreeholdCapitalPartners.com), has assembled a portfolio of private transfer fee covenants covering hundreds of billions of dollars worth of real estate projects across the United States. The sale of this portfolio of long-term asset-backed income streams would inject liquidity into the most troubled areas of the economy, create jobs, reduce lender exposure to commercial real estate debt, and restore the balance sheet of distressed real estate projects. More importantly, it would accomplish this using the developer's own asset, without creating additional debt, and it would benefit homebuyers in the form of a lower purchase price and associated transactional savings.

Private transfer fee covenants represent a fair and equitable way to apportion infrastructure costs. In addition, these instruments offer the opportunity for injecting liquidity into communities and lenders across the United States.

About Dr. Tom McPeak, Ph.D.: In 2000 I began teaching at one of the nation's top business schools, the Terry College of Business at the University of Georgia. I received my Ph.D. in "Resource Development" (Land Economics) from Michigan State University. I have studied private transfer fee covenants for several years.

[3] Criticism of private transfer fees as "just another fee that does not benefit the homeowner" ignores the economic reality that the market adjusts to all encumbrances, and it further ignores the savings that accrue to the homebuyer when that adjustment occurs.

[4] Since an existing lender's lien position is superior to the private transfer fee covenant, the lender must be at the closing table.

Exhibit C

NOTICE OF CONFIDENTIALITY RIGHTS. IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

NOTICE: THIS DOCUMENT MAY REQUIRE PAYMENT OF A FEE IN CONNECTION WITH A TRANSFER OF TITLE

Closing Information: Seller shall pay one percent (1%) of the Gross Sales Price (see ¶5 & ¶6). To obtain an Estoppel Letter (see ¶8) or contact Trustee for assistance with closing (see ¶10 & ¶14).

DECLARATION OF COVENANT

This Declaration of Covenant was designed to comply with Tex. Prop. Code §5.017.

STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS

COUNTY OF COLLIN

This Declaration of Covenant (this "Declaration") is made by **SAMPLE, LTD., A TEXAS LIMITED PARTNERSHIP**, whose mailing address is 100 Anywhere Street, Anywhere Texas 10001 (hereinafter "Declarant") for the purposes herein set forth as follows:

WITNESSETH:

WHEREAS, Declarant is the owner of that certain real property ("Property") located in Collin County, State of Texas, described as follows:

The real property described in Exhibit "A" attached hereto and incorporated herein for all purposes.

NOW THEREFORE, Declarant hereby declares that the Property shall be transferred, held, sold and conveyed subject to this Declaration and all matters set forth in this Declaration, which shall be deemed covenants running with the land and the title to the Property and shall be binding upon all parties having or acquiring any right, title or interest in the Property or any part thereof:

1. DEFINITIONS. In addition to words and phrases defined elsewhere in this Declaration, the following words when used in this Declaration shall have the following meanings:
   a. "Beneficial Interest" shall refer to an undivided ownership interest in the rights, interest, ownership and privileges in and to this Declaration, apportioned pursuant to section 17 and thereafter in accordance with section 18 or as otherwise provided herein.
   b. "Beneficiary" shall refer to the owner of a Beneficial Interest.
   c. "Closing Agent" or "Settlement Agent" shall have its customary meaning within the real estate industry, and generally shall refer to the party responsible for conducting and/or facilitating a closing of a conveyance of all or any portion of the Property; usually either a title company, attorney or escrow agent who prepares paperwork and

Exhibit D

Property Address: ______________________ Date: ____________

TITLE, OWNERSHIP AND LEGAL CLAIMS: **ARE YOU (SELLER) AWARE OF...**

22. Any other person or entity on title other than Seller(s) signing this form . . . . . ☐ Yes ☐ No

23. Leases, options or claims affecting or relating to title or use of the Property . . . . . ☐ Yes ☐ No

24. Past, present, pending or threatened lawsuits, mediations, arbitrations, tax liens, mechanics' liens, notice of default, bankruptcy or other court filings, or government hearings affecting or relating to the Property, Homeowner Association or neighborhood . . . . . ☐ Yes ☐ No

25. Any private transfer fees, triggered by a sale of the Property, in favor of private parties, charitable organizations, interest based groups or any other person or entity . . . . . ☐ Yes ☐ No

Explanation: ______________________

NEIGHBORHOOD: **ARE YOU (SELLER) AWARE OF...**

26. Neighborhood noise, nuisance or other problems from sources such as, but not limited to, the following: neighbors, traffic, parking congestion, airplanes, trains, light rail, subway, trucks, freeways, buses, schools, parks, refuse storage or landfill processing, agricultural operations, business, odor, recreational facilities, restaurants, entertainment complexes or facilities, parades, sporting events, fairs, neighborhood parties, litter, construction, air conditioning equipment, air compressors, generators, pool equipment or appliances, or wildlife . . . . . ☐ Yes ☐ No

Explanation: ______________________

GOVERNMENTAL: **ARE YOU (SELLER) AWARE OF...**

27. Ongoing or contemplated eminent domain, condemnation, annexation or change in zoning or general plan that apply to or could affect the Property . . . . . ☐ Yes ☐ No

28. Existence or pendency of any rent control, occupancy restrictions or retrofit requirements that apply to or could affect the Property . . . . . ☐ Yes ☐ No

29. Existing or contemplated building or use moratoria that apply to or could affect the Property . . . . . ☐ Yes ☐ No

30. Current or proposed bonds, assessments, or fees that do not appear on the Property tax bill that apply to or could affect the Property . . . . . ☐ Yes ☐ No

31. Proposed construction, reconfiguration, or closure of nearby government facilities or amenities such as schools, parks, roadways and traffic signals . . . . . ☐ Yes ☐ No

32. Existing or proposed Government requirements affecting the Property **(i)** that tall grass, brush or other vegetation be cleared; **(ii)** that restrict tree (or other landscaping) planting, removal or cutting or **(iii)** that flammable materials be removed . . . . . ☐ Yes ☐ No

33. Any protected habitat for plants, trees, animals or insects that apply to or could affect the Property . . . . . ☐ Yes ☐ No

34. Whether the Property is historically designated or falls within an existing or proposed Historic District . . . . . ☐ Yes ☐ No

Explanation: ______________________

STATUTORILY REQUIRED OR RELATED: **ARE YOU (SELLER) AWARE OF...**

35. Within the last 3 years, the death of an occupant of the Property upon the Property . . . . . ☐ Yes ☐ No

36. An Order from a government health official identifying the Property as being contaminated by methamphetamine. (If yes, attach a copy of the Order.) . . . . . ☐ Yes ☐ No

37. Whether the Property is located in or adjacent to an "industrial use" zone. (In general, a zone or district allowing manufacturing, commercial or airport uses.) . . . . . ☐ Yes ☐ No

38. Whether the Property is affected by a nuisance created by an "industrial use" zone . . . . . ☐ Yes ☐ No

39. Whether the Property is located within 1 mile of a former federal or state ordnance location. (In general, an area once used for military training purposes that may contain potentially explosive munitions.) . . . . . ☐ Yes ☐ No

Explanation: ______________________

Buyer's Initials (________) (________)
Seller's Initials (________) (________)
Reviewed by ________ Date ________

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Exhibit E

Property Address: ______________________ Date: ______________

G. **VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS:** Buyer (or Buyer's lender or loan broker pursuant to 3H(1)) shall, within **7 (or ☐ ________)** Days After Acceptance, Deliver to Seller written verification of Buyer's down payment and closing costs. (If checked, ☐ verification attached.)

H. **LOAN TERMS:**

(1) **LOAN APPLICATIONS:** Within **7 (or ☐ ________)** Days After Acceptance, Buyer shall Deliver to Seller a letter from lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in 3C above. (If checked, ☐ letter attached.)

(2) **LOAN CONTINGENCY:** Buyer shall act diligently and in good faith to obtain the designated loan(s). Obtaining the loan(s) specified above is **a contingency** of this Agreement unless otherwise agreed in writing. Buyer's contractual obligations to obtain and provide deposit, balance of down payment and closing costs **are not contingencies** of this Agreement.

(3) **LOAN CONTINGENCY REMOVAL:**

(i) Within **17 (or ☐ ________)** Days After Acceptance, Buyer shall, as specified in paragraph 14, in writing remove the loan contingency or cancel this Agreement;

OR (ii) (if checked) ☐ the loan contingency shall remain in effect until the designated loans are funded.

(4) ☐ **NO LOAN CONTINGENCY** (If checked): Obtaining any loan specified above is NOT a contingency of this Agreement. If Buyer does not obtain the loan and as a result Buyer does not purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.

I. **APPRAISAL CONTINGENCY AND REMOVAL:** This Agreement is (or, if checked, ☐ is NOT) contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the specified purchase price. If there is a loan contingency, Buyer's removal of the loan contingency shall be deemed removal of this appraisal contingency (or, ☐ if checked, Buyer shall, as specified in paragraph 14B(3), in writing remove the appraisal contingency or cancel this Agreement within **17 (or ________)** Days After Acceptance). If there is no loan contingency, Buyer shall, as specified in paragraph 14B(3), in writing remove the appraisal contingency or cancel this Agreement within **17 (or ________)** Days After Acceptance.

J. ☐ **ALL CASH OFFER** (If checked): Buyer shall, within **7 (or ☐ ________)** Days After Acceptance, Deliver to Seller written verification of sufficient funds to close this transaction. (If checked, ☐ verification attached.)

K. **BUYER STATED FINANCING:** Seller has relied on Buyer's representation of the type of financing specified (including but not limited to, as applicable, amount of down payment, contingent or non contingent loan, or all cash). If Buyer seeks alternate financing, (i) Seller has no obligation to cooperate with Buyer's efforts to obtain such financing, and (ii) Buyer shall also pursue the financing method specified in this Agreement. Buyer's failure to secure alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.

4. **ALLOCATION OF COSTS** (If checked): Unless otherwise specified in writing, this paragraph only determines who is to pay for the inspection, test or service ("Report") mentioned; it **does not determine who is to pay for any work recommended or identified in the Report.**

A. **INSPECTIONS AND REPORTS:**

(1) ☐ Buyer ☐ Seller shall pay for an inspection and report for wood destroying pests and organisms ("Wood Pest Report") prepared by ______________ a registered structural pest control company.

(2) ☐ Buyer ☐ Seller shall pay to have septic or private sewage disposal systems pumped and inspected ______________.

(3) ☐ Buyer ☐ Seller shall pay to have domestic wells tested for water potability and productivity ______________.

(4) ☐ Buyer ☐ Seller shall pay for a natural hazard zone disclosure report prepared by ______________.

(5) ☐ Buyer ☐ Seller shall pay for the following inspection or report ______________.

(6) ☐ Buyer ☐ Seller shall pay for the following inspection or report ______________.

B. **GOVERNMENT REQUIREMENTS AND RETROFIT:**

(1) ☐ Buyer ☐ Seller shall pay for smoke detector installation and/or water heater bracing, if required by Law. Prior to Close Of Escrow, Seller shall provide Buyer written statement(s) of compliance in accordance with state and local Law, unless exempt.

(2) ☐ Buyer ☐ Seller shall pay the cost of compliance with any other minimum mandatory government retrofit standards, inspections and reports if required as a condition of closing escrow under any Law. ______________.

C. **ESCROW AND TITLE:**

(1) ☐ Buyer ☐ Seller shall pay escrow fee ______________.
Escrow Holder shall be ______________.

(2) ☐ Buyer ☐ Seller shall pay for owner's title insurance policy specified in paragraph 12E ______________.
Owner's title policy to be issued by ______________.
(Buyer shall pay for any title insurance policy insuring Buyer's lender, unless otherwise agreed in writing.)

D. **OTHER COSTS:**

(1) ☐ Buyer ☐ Seller shall pay County transfer tax or fee ______________.

(2) ☐ Buyer ☐ Seller shall pay City transfer tax or fee ______________.

(3) ☐ ~~Buyer~~ ☒ Seller shall pay Homeowner's Association ("HOA") transfer fee ______________.

(4) ☐ ~~Buyer~~ ☒ Seller shall pay HOA document preparation fees ______________.

(5) ☒ Buyer ☐ ~~Seller shall~~ pay for any private transfer fee ______________.

(6) ☐ Buyer ☒ Seller shall pay the cost, not to exceed $ ______________, of a one-year home warranty plan, issued by ______________, with the following optional coverages:
☒ Air Conditioner ☐ Pool/Spa ☐ Code and Permit upgrade ☐ Other: ______________.
Buyer is informed that home warranty plans have many optional coverages in addition to those listed above. Buyer is advised to investigate these coverages to determine those that may be suitable for Buyer.

(7) ☐ Buyer ☒ Seller shall pay for ______________.

(8) ☐ Buyer ☐ Seller shall pay for ______________.

Buyer's Initials (________) (________)

Seller's Initials (________) (________)

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Reviewed by ________ Date ________

Untitled

Exhibit F

Common Myths About Private Transfer Fees

Synopsis: Private transfer fees (also called home resale fees, capital recovery fees and private transfer fee covenants) have been in the news a lot lately. In fact, a significant disinformation campaign has been waged by special interest groups seeking to preserve their outdated, anti-consumer fee structures at the expense of this important funding tool. Recently, Rep. Maxine Waters introduced HR 6260, which seeks to ban transfer fees. In contrast, Rep. Phil Gingrey introduced HR 6332, which provides for a national disclosure standard patterned after the successful California Statute (§1098.5), giving consumers a choice about how to finance infrastructure costs and, in the process, resolving negative equity, restarting failed projects, and creating jobs.

Myth: Transfer fees increase the cost of homeownership.
Truth: It lowers the cost of homeownership. The homeowner pays less up front, in return for agreeing to pay the fee at the time of a future sale. A homeowner that pays $245,000 instead of $250,000, and agrees to pay 1% at the time of a future sale, will likely save more in interest payments than the total transfer fee. Other savings include lower closing costs, including a reduced real estate commission, a reduced title insurance commission, etc., and the opportunity costs (does the homeowner use the savings to pay down credit card debt?)

The use of [transfer fee] financing serves to reduce the up-front costs of such projects and goals, which results in a more affordable home price to an initial buyer. Cal. Staff Analysis to AB 1574

Myth: Transfer fees are new.
Truth: Transfer fees have been around for decades. Homes across the country have transfer fees dedicated to a variety of uses, from HOA maintenance to charity to infrastructure reimbursement. Data suggests that between ten and twelve million homes nationwide currently have a transfer fee of some kind on them, with virtually no reported problems.

Myth: Transfer fees are hidden.
Truth: Homeowner associations put transfer fees in the exact same document as HOA dues. Developers go one step further, and use a stand-alone instrument (referred to as a private transfer fee covenant), with a bold header, easily identifiable by the title company. After all, if the fee is hidden, who will pay it?

Myth. Homeowners are stuck with the fee.
Truth: Every homeowner that pays the fee voluntarily agreed to do so (by buying the house), and negotiated their price accordingly. For those who prefer not to pay the fee, and who instead prefer to pay 100% of infrastructure costs up front, and to finance those costs, and to then pass these expenses along to the next buyer, numerous choices abound.

Myth: Only the initial buyer saves money. Future buyers will pay more.
Truth: Each buyer pays less up front, enjoys the transaction savings and interest savings, and can sell for less. When the fee expires, the home value will rise, because the encumbrance is removed.

Myth: Transfer fees run in perpetuity.
Truth: While it is true that certain transfer fees payable to non-profits have been imposed in perpetuity, capital recovery fees (imposed by developers to spread development costs), run for 99 years.

While 99 years is a long time, it is important to remember that the fee is only paid upon each sale (not annually). The typical home will sell 8-11 times in 99 years, generating 8-11% in fees. Compare this to other fees used to reimburse the developer (such as Mello-Roos fees) which charge an annual assessment for periods of 20-30 years, leading to a significant debt burden on the homeowner. Transfer fees are clearly a better choice.

Myth: Transfer fees steal equity.
Truth: This myth is particularly flawed. If John paid $245,000 for home with a transfer fee and sold it for $370,000 John has made the same as Bill, who paid $250,000 for a home without a transfer fee and sold it for $375,000.00.

While it is true John will pay a transfer fee at closing, John has saved money every month he has owned the home through a reduction in his monthly carrying costs. More importantly, John made a consumer choice to buy a home with the fee and pay less up front. Bill elected not to pay the fee, and made his purchase decision accordingly.

Myth: There is no guarantee the seller will lower the price.
Truth: This argument is particularly disingenuous (and flawed) because it pre-supposes that a seller can sell for whatever price they desire. Studies confirm that homes with a fee will sell for less than the same home without the fee. This makes sense. A buyer decides what the home is worth, based on all factors related to the home, and simply will not pay the same for a home with a transfer fee as they will pay for the same home without the fee. Would you?

Myth: Transfer fees can reduce sales activity because buyers won't have the cash to close.
Truth: The fee is almost always paid by the seller, which means the fee is a reduction at closing. This avoids a buyer showing up with insufficient cash to close. Transfer fees payable by the buyer are typically very small.

Myth: If there is a transfer fee, the Buyer gets less than full ownership.
Truth: First, a transfer fee is an encumbrance – it is not an ownership interest in the home. Second, few if any homes are sold free of encumbrances. There is an obligation to comply with subdivision restrictions, pay dues and assessments, grant easements to utility companies, etc., all of which are encumbrances against the land. In addition, most residential homes do not convey the mineral rights, oil rights, and, when it comes to commercial property, the air rights.

Myth: Opponents of transfer fees are looking out for homeowners.
Truth: Opposition comes almost exclusively from Realtors and the Title Industry. Although good people undoubtedly work as real estate agents and title insurance agents and the function they play in the marketplace is important, since the fees collected by members of the National Association of Realtors and the American Land Title Association are all based on the sale price of the home, those two organizations are more than a little conflicted and their criticism of these transfer fees lacks credibility. NAR members fear that a seller faced with a transfer fee will ask the real estate agent to take the fee out of their generally 5-6% commission (the NAR calls this a "commission-ectomy"). The title industry fears they will miss the fee, and have to pay a claim. These two special interest groups spend tens of millions each year to influence policy-makers.

Myth: When paid to the developer, the fee has no connection to the land.
Truth: Try owning a home with no streets, no water or sewer lines, no master planning, etc., all of which clearly benefit the land. A fee imposed to reimburse these costs is clearly connected to the land. Also, a portion of every fee is allocated back into the community, which further benefits the community and everyone who lives there.

Myth: A transfer fee does not benefit the community.
Truth: Transfer fees provide important funding not only for infrastructure, but also for community associations and non-profit uses. Developers who create the funding and sell it off to investors (which is why capital recovery fees have been referred to as "development bonds") can bring out-of-state dollars into the community, which restores project viability and avoids bank failures. This creates (or saves) jobs, and has a positive ripple effect.

Myth: A transfer fee interferes with marketability (restrains alienation).
Truth: Transfer fees have been around for decades, and there is no evidence that even hints at an impairment to marketability. The market adjusts the sales price to reflect the fee, just as it does for HOA dues, taxes, easements, etc.

Myth: A transfer fee can cloud title.
Truth: A transfer fee is an encumbrance of record, handled just like any other encumbrance. Tens of millions of home sales with transfer fees have occurred over the past few decades, problem-free.

Myth: FHA has said that transfer fees violate FHA's prohibition on covenants that restrict sales proceeds.
Truth: A letter to that effect was issued, but we believe it is in error. If a transfer fee renders a home FHA-ineligible then over ten million homes with transfer fees would be FHA ineligible.

Myth: Only homeowners pay transfer fees.
Truth: Transfer fees are routinely imposed on commercial projects as a way to pay for capital improvements.

Myth: It's a way for greedy developers to make money.
Truth: A capital recovery fee reimburses the developer for millions of dollars in capital expenditures for improvements such as streets, roads, etc. In return, the developer lowers the sales price, and can even sell off the fee to help finance the project. *Reimbursement of an expense is not a windfall.* In addition, every capital recovery fee covenant allocates a portion of the income stream back into the community, providing long-term sustainable funding for clean air, clean water, the environment, etc.

Myth: This is some sort of exotic Wall Street deal like the ones that caused all the trouble.
Truth: The use of capital recovery fees, and the ability of developers to sell their rights to those fees, is a plain vanilla transaction that is fully documented and transparent. Furthermore, by pulling some of the cost of infrastructure out of the initial and future purchase price for the home, it helps to ensure that homeowners do not over-extend themselves. It is such over-extension, and real estate agents and mortgage brokers constantly pushing the homebuyer to get into loans that sounded too good to be true, in order to allow them to buy more house than they can afford, that helped push the economy to the brink. The future of home buying will be about value and about staying within one's means. Utilizing capital recovery fees helps to achieve such goals.

As to the investment potential of the future income stream, it is a low-risk collateralized obligation that does not depend upon anything other than for the property to sell. Over eight billion in bonds have been sold backed by fees assessed to reimburse developers for infrastructure costs, with zero defaults.

When you cut through the myths, the reality is that transfer fees are used for a variety of purposes that benefit the public, including:

- To lower the cost of homeownership by spreading infrastructure costs, thereby reducing the initial purchase price. Consumers then save on transaction costs and monthly interest costs.
- To reduce or eliminate negative equity by selling off a “development bond” as a way to finance development projects. **This reduces bank stress, restarts failed projects and creates jobs.**
- By homeowner associations as a way to reduce quarterly or annual dues.
- To non-profit uses such as libraries, medical clinics, affordable housing, the arts environmental initiatives and development concessions, such as open space, parks, etc. Over $60 billion in transfer fee income to non-profits is estimated to occur within the next 99 years.

Summary: In the end, it is about giving consumers a choice about the things we want (such as streets, utilities, clean air, clean water, open space, parks, etc.) and how we elect to pay for them.