



A PASSION FOR GREAT PLACES®

April 9, 2011

The Honorable Alfred M. Pollard
General Counsel, Federal Housing Finance Agency
Fourth Floor
1700 G Street, NW
Washington, DC 20552

Subject: Proposed Rule on Private Transfer Fee Covenants

Dear Mr. Pollard:

We appreciate the opportunity to provide comments on the proposed rule on Private Transfer Fee ("PTF") Covenants (the "Proposed Rule") which was published in the Federal Register on February 8, 2011. We believe that the Proposed Rule if implemented as presently drafted would have significant adverse impacts that would be measured in terms of lost opportunities for individuals and communities. Moreover, we do not believe that the Proposed Rule has stated for the record a justification for these restrictions, especially in light of the benefits that Community-Benefits Fees confer on residential real estate. We respectfully urge that the Proposed Rule be revised as described below.

By way of background, DMB Associates, Inc., ("DMB") is a diversified real estate company and developer of master planned communities. DMB's projects include signature commercial properties, resort, recreational and primary home communities in California, Hawaii, Arizona and Utah. Communities that are sustainable, retain quality over time and which are developed within the context of their physical and social environment are key considerations that define the unique character of each of our communities. DMB also has a philosophy and culture of community engagement. We believe that only through an open and honest collaboration with relevant stakeholders will we be able to agree upon the approvals appropriate to meet our collective aspirations for each particular site.

DMB has used community-benefits fees ("Community-Benefits Fees") for years to fund resources and services to create communities where people want to live and that maintain their value over time. The Proposed Rule would unnecessarily limit homebuyers' ability to live in new communities that depend on Community-Benefits Fees, if Fannie Mae, Freddie Mac, or the Federal Home Loan Banks (the "Regulated Entities") have a role in their mortgages.

We urge that the Proposed Rule be revised to except Community-Benefits Fee covenants from the restrictions placed on the Regulated Entities. The key elements of Community-Benefits Fee covenants include:

- Transfer fees are directed solely to community associations and not-for-profit organizations (i.e., entities organized under Internal Revenue Code sections 501(c)(3), 501(c)(4), or 528). This



ensures that benefits serve a public purpose and do not inure to the benefit of private third parties;

- Transfer fee covenants are recorded, including disclosure of the amount of the transfer fee, its duration, and the purposes to which the funds will be used. In this way, homebuyers know what to expect in advance of purchasing a home, including: the amount of the transfer fee, who administers the funds generated by the fees, and how the transfer fees benefit the property. With this information the homebuyer can value the property and make purchase decisions accordingly; and
- Transfer fees are not assessed in the event of foreclosure, whether judicial or non-judicial, to avoid creating hardship or burdening banks and/or the American taxpayers.

Community-Benefits Fees Add Value To Properties And Should Be Exempted From The Proposed Rule

While DMB supports the Proposed Rule's restrictions that prevent the Regulated Entities from dealing in mortgages on properties that produce revenue streams for private, profit-seeking third parties, the Proposed Rule is unnecessarily restrictive-- effectively taking away homebuyers' freedom-to-contract with respect to Community-Benefits Fee covenants-- and imposing limitations that will restrict opportunities to add value, to the detriment of property owners and the public.

For example, the Proposed Rule would make it virtually impossible for a homebuyer to purchase property with a Community-Benefits Fee covenant if the property is more than 1,000 yards from a resource or service supported by the fee or if the amenity is available to the public at no cost. According to the Proposed Rule, such restrictions would help tie the value of transfer fee to the property subject to the transfer fee covenant. However, in our experience with some of DMB's larger projects, sites often are in many thousands of acres (the largest exceeds 28,000 acres), and DMB's smaller projects that are intentionally integrated into existing neighborhoods, amenities are often located more than 1,000 yards from a covenant-burdened property and/or be open to the public.

These amenities continue to provide value to the covenant-burdened properties even as they provide benefits to the larger community. Value is created in the covenant-burdened properties because the transfer fees fund services and resources that link our communities into broader neighborhoods through, e.g., the provision and maintenance of parks, transportation and affordable housing. These linkages avoid the isolated, "subdivision feel" of many master planned communities. Our larger projects also create value by funding improvements to, and stewardship of, distinctive, unique and highly valued environments at an ecosystem-wide level for the benefit of community residents, who live in and around the protected resource, and others. Moreover, in some cases, the creation of residential opportunities in a particular location, which may offer intrinsic community benefits, may require a significant, even region-wide contribution in the form of conservation lands, affordable housing, or environmental restoration. In each case, Community-Benefits fees adds value to the homebuyer's property.

Our communities' amenities increase and help to maintain the value of the homes located within them, notwithstanding the distance between the covenant-burdened property and the service or resource funded or whether the public may also benefit. For example, a review of our community, DC Ranch, which has Community-Benefits Fee funded parks and community events open to the public, maintains a higher "sale price per square foot" (\$214.14) as compared to the adjacent communities of Grayhawk and McDowell Mountain Ranch (no Community-Benefit Fees) (\$196.08 and \$185.17). Additionally, a

2009 survey by Robert Charles Lesser & Co. noted that at least five¹ of the ten top selling master planned communities in the country were those with Community-Benefits Fees.

We urge the FHFA not to disrupt the Community-Benefit Fees tool that we, our non-profit partners and others have used to create strong, healthy, and sustainable neighborhoods.

The Proposed Rule Is Not Properly Grounded In Fact

DMB is also concerned the Proposed Rule's policies and rationales are not properly supported by empirical data or evidence. The appropriate and legitimate use of Community-Benefits Fees can and does provide a significant benefit to property owners and supports public policy. Specifically, the preamble to the Proposed Rule raises concern about the proportionality of a PTF (or a Community-Benefits Fee) and the benefit derived without providing any evidence, data or information to support this concern.

Community-Benefits Fees typically are assessed either as a fixed fee or as a percentage of the sale price of the property (commonly ranging from .25% to 1%) and are utilized for a variety of purposes, including but not limited to supporting the community association and its residents, providing programs and events for residents of the community; preservation of open space and conservation of unique lands; environmental mitigation and protection of endangered species; affordable housing programs; transportation and transit facilities; and protection of archeological and historic features.

As framed above, Community-Benefits Fee covenant-funded activities provide a benefit to residents of the community in a way that is directly proportional when considered as a levy on purchasers into the community. Specifically, the Community-Benefits Fees covenants are recorded and disclosed, so that homebuyers can determine for themselves whether the price of the property is appropriate in view of all factors, including the Community-Benefits Fee covenant. Moreover, because the funds are administered by not-for-profit organizations, homebuyers can be assured that transfer fees will not inure to the benefit of a private third party. Providing property owners with the choice to live in a community that provides such benefits can only be provided, in many cases, by having a Community-Benefits Fee covenant.

Conclusion

We urge the FHFA to modify the Proposed Rule to allow for the continued use of Community-Benefits Fee covenants, as described above. A properly tailored exclusion for Community-Benefits Fee covenants would achieve this objective, allow individuals to make well reasoned decisions about the properties they wish to buy without undue restrictions, while allowing the FHFA to address the problematic uses of PTFs for private gain.

We appreciate the opportunity to provide comment and respectfully request revisions to the Proposed Rule as discussed herein.

Respectfully submitted,



Eneas A. Kane
Chief Executive Officer

¹ These communities include Cinco Ranch, Telfair, Daybreak, Vistancia, Sienna Plantation and Rancho Sahuarita.