

James A. Kraft
Senior Vice President, General Counsel & Secretary

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October 8, 2010



Via Email regcomments@fhfa.gov and US Mail

Alfred M. Pollard, General Counsel

Federal Housing Finance Agency

Fourth Floor

1700 G Street, NW

Washington, DC 20552

Attention: Public Comments "Guidance on Private Transfer Fee Covenants, No. 2010-N-11"

RE: Public Comments "Guidance on Private Transfer Fee Covenants, No. 2010-N-11"

Dear Mr. Pollard:

Thank you for the opportunity to provide comments and feedback on the Federal Housing Finance Agency's (FHFA) draft guidance on private transfer fee covenants made available on August 10, 2010. Plum Creek owns approximately seven million acres across seventeen states and is the largest and most geographically diverse private landowner in the nation. Like many businesses, Plum Creek's business has been negatively impacted by the lack of stability in the nation's housing and housing finance markets. Plum Creek has reviewed and evaluated the recent draft Guidance issued by FHFA (the "Guidance") and we are writing to you because we have significant concerns.

Plum Creek is urging FHFA to revise the proposed Guidance to exempt all existing and future transfer fees covenants which support cultural, educational, charitable, recreational, environmental conservation or other similar activities benefitting the real property affected by the covenant or the community of which the property is a part.

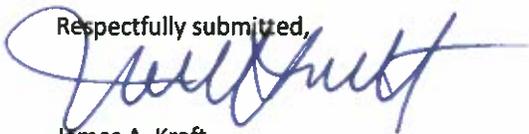
Recently, transfer fee covenants have been used by some parties as a mechanism for producing an ongoing income stream for the covenanting landowner or developer. However, transfer fee covenants are also widely used for a variety of beneficial, legitimate community purposes. Consider, for example, that the Maine Land Use Regulation Commission, a state-wide governing body, following a rigorous, multi-year approval process, conditioned its unanimous land use approval of a Plum Creek project, by requiring Plum Creek to impose a transfer fee covenant on nearly 17,000 acres. The transfer fee is to be used to finance three community goals: subsidizing construction of affordable housing in the community; enhancing community recreation (*e.g.* construction of trails, trailhead parking areas and boat launches); and protection of wildlife (*e.g.* funding loon nesting programs and helping to control the spread of invasive species). The transfer covenant will be clearly disclosed on the title to the affected property and the fee will be distributed to fund work by state agencies and non-profit organizations. Plum Creek will pay a 2% transfer fee on the initial sales. Subsequent transfers will be subject to ½% transfer fee. Based upon the transfer fee covenant, Plum Creek agreed to prefund One Million Dollars of trail work that would have otherwise been funded over a series of years by the transfer fee, so that Bureau of Parks & Lands Maine Department of Conservation (the agency directing the trail work) can begin the community trail work even before the lot sales begin. Reimbursement of this prefunded

amount was to be paid over time as lots are sold and the transfer fees are paid. This type of community benefit transfer fee is extremely common. Community benefit fees have been used to fund non-profits, to purchase conservation lands, to provide land stewardship, to fund infrastructure and affordable housing. None of these community benefit programs, which both directly and indirectly benefit the property owner, will be possible if the FHFA Guidance is adopted as written.

While well-intentioned, because the FHFA Guidance treats all private transfer fees alike, it has significant unintended consequences. The proposed Guidance would cause unintended detrimental impacts because: (a) the Guidance does not distinguish between those transfer fee covenants used to enhance community investment, or provide a public benefits from those that simply provide an annuity to private third parties; (b) the Guidance does not distinguish those which provide clear record notice from those which do not; and (c) the Guidance does not distinguish those transfer fee covenants which are ordered as a condition of receiving governmental approvals for a project from those which are imposed without public scrutiny. If the FHFA's Guidance is adopted in its present form, the FHFA will be eliminating a transformative tool that has benefitted homeowners, communities, public entities and charitable programs. This disservice can be avoided by crafting the Guidance to more carefully distinguish between transfer fee which provide a public benefit from those which are designed to create an income stream to benefit solely the property developer and investors.

We respectfully request that revise the proposed Guidance to exempt all existing and future transfer fees covenants which support cultural, educational, charitable, recreational, environmental, conservation or other similar activities benefitting the real property affected by the covenant or the community of which the property is a part, regardless of whether those are paid to nonprofits, or to government agencies, or other organizations which have pre-funded such community benefits.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "James A. Kraft", written over the typed name.

James A. Kraft

Senior Vice President, General Counsel and Secretary