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ARIZONA CORPORATION COMMISSION

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EXECUTIVE SECRETARY

SECURITIES DIVISION
(602) 542-4242
(602) 255-2600
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February 18, 1992

Fred A. Farsjo, Esq.
Gabroy, Rollman & Bosse, P.C.
2195 E. River Road, Suite 201
Tucson, Arizona 85718

RE: Loma-Sabino Exchange Program
A.R.S. § 44-1801(15) and (22)

Dear Mr. Farsjo:

On the basis of the facts set forth in your letter of January 24, 1992, and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona (the "Act") should the transaction take place as set forth in your letter.

As this position is premised upon the facts set forth in your letter, it should not be relied on for any other set of facts or by any other person. Please also note that to the extent that the transaction does not take place as set forth in your letter of January 24, 1992 and the statements in the Exchange Package, or a material change in circumstances would cause these interests to be deemed "securities" for purposes of the Act, then the anti-fraud provisions of the Act would be applicable ab initio.

We have attached a photocopy of your letter. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

DEE RIDDELL HARRIS
Director of Securities

DRH:MGB:wjw

Attachment

LAW OFFICES OF

GABROY, ROLLMAN & BOSSÉ, P. C.

STEVEN L. BOSSÉ
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TELEPHONE
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January 24, 1991

VIA FEDERAL EXPRESS

Arizona Corporation Commission
Securities Division
234 North Central Avenue
Phoenix, Arizona 85004

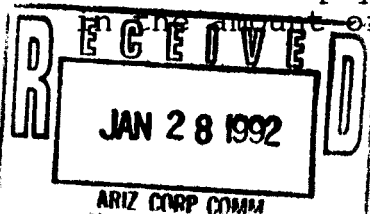
Attention: Sandra J. Forbes
Assistant Director for Law and Policy

Re: No Action Letter for Loma-Sabino Exchange Program

Dear Ms. Forbes:

This office, on behalf of the Board of Directors of Loma-Sabino Homeowners Association, Inc., is requesting that the Securities Division of the Arizona Corporation Commission issue a "no action" letter that the proposed Exchange Program between the Loma-Sabino Cabin Owners and the United States Forest Service ("U.S.F.S.") either does not involve the sale or exchange of a security and/or is exempt under the provisions of Title 44 of Arizona Revised Statutes. I spoke with Mike Burton of your office who indicated that the Division has the authority to issue such a "no action" letter pursuant to the powers granted under A.R.S. § 44-1821(B). To help with your determination, we have enclosed the following:

1. Copy of the Loma-Sabino Exchange Package;
2. Copy of the enclosure letter to be sent by the Board of Directors of Loma-Sabino Homeowners Association, Inc. when the Exchange Package is ultimately delivered to the Cabin Owners;
3. Draft of the Account Reconciliation and Election Form;
4. Notice of Revocation Form; and,
5. A check made payable to the Arizona Corporation Commission in the amount of \$200, pursuant to A.R.S. § 44-1861(C).



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Without reiterating statements in the Exchange Package, the essence of the transaction in question involves a group of Cabin Owners who hold Term Special Use Permits for their cabins on Mt. Lemmon who wish to acquire a patent to the land on which their cabins sit. Because the U.S.F.S. will not sell them the land directly, they are forced to combine for the purpose of acquiring parcels which will ultimately be exchanged to the U.S.F.S. for the land beneath their cabins.

Although the Participants in the Exchange Program will temporarily own second beneficial interest in Junior Trust Agreements, it is anticipated that once the exchange process and the subdivision process have been completed the Cabin Owners will ultimately receive their Lots from the land trust.

We are of the opinion that this transaction (i) does not involve the sale or exchange of a security as defined under the provisions of A.R.S. §§ 44-1801(15) and (22); (ii) is exempt under the provisions of A.R.S. § 44-1847 due to the involvement of U.S.F.S. and the Arizona Department of Real Estate in the exchange; or (iii) is a transaction which, because of its limited nature and special terms and conditions, does not affect the public interest and would not require registration pursuant to your rules and regulations.

1. A.R.S. §§ 44-1801(15) and (22). According to A.R.S. § 44-1801(22), a security does include a "real estate investment contract." The Exchange Program set forth in the Exchange Package obviously does not fit within the definition of a real estate investment contract as defined under A.R.S. § 44-1801(15).

"Real estate investment contracts" generally involve a situation where an investor is obtaining an interest in real property and in conjunction therewith is being put into some sort of rental pool controlled by the promoter for the purpose of making economic gain on his unit. See Lower v. Ford Hill Investment Co., 192 Colo. 125, 556 P.2d 1201 (Colo. 1976).

Such an investment pool is not found in the Exchange Program. Although the Exchange Program will be indirectly controlled by the Board of Directors and the exchange broker, the Board of Directors is ultimately controlled by the Participants due to the fact that they can terminate the tenure of any member pursuant to the terms of the Bylaws and Articles of the Association.

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What each Participant in the Exchange Program is intending to receive if the exchange process and subdivision process can be completed, is a deed to a Lot on Mt. Lemmon. The interest Participants receive in the Exchange Program, by definition, does not qualify as a security under A.R.S. § 44-1801(22).

2. Exemption Under A.R.S. § 44-1847. A.R.S. § 44-1847 exempts transactions which may involve securities if the Division determines that registration of the securities is nonessential to the public interest or for the protection of investors by reason of authority inferred by law upon an agency of the State and power in such agency to regulate or supervise the issuance of securities of, or the business conducted or to be conducted by, the issuer of securities or any class or classes of issuers of the securities. In the Exchange Program, there are a number of different governmental agencies that will be involved regulating and supervising the exchange process as well as the subdivision process.

The exchange process will obviously be ultimately regulated and supervised by the U.S.F.S. Environmental assurance studies, BLM surveys and appraisals will all need to be reviewed and approved by the U.S.F.S. Although they are not an agency of the State of Arizona, the intent of A.R.S. § 44-1847 would obviously apply not only to a State agency, but also to a federal agency such as the U.S.F.S.

What the Participants in the Exchange Program will ultimately receive are Lots. The subdivision and transfer of lots in the State of Arizona is controlled by the Arizona Department of Real Estate. As you can tell from Exhibit D to the Exchange Package (the letter dated June 24, 1991, from Roy Tanney, Director of Subdivisions for the Arizona Department of Real Estate to Norvel O. Tyler, President of Federal Land Exchange, Inc. ("FLEX")), the Arizona Real Estate Department feels that this transaction will be exempt under their rules and regulations, but before a Special Order of Exemption can be obtained from the Arizona Real Estate Department, the steps referred to in that letter must be complied with.

The Board of Directors will have to comply with the requirements in the letter and will obviously be working closely with the Department of Real Estate. We feel that the Arizona Department of Real Estate is better suited in this instance to protect the interest of the Participants in the Exchange Program.

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3. Registration is Not Essential for Public Interest or Protection of Investors. This Exchange Program is a unique situation. Due to quirks in federal law and/or regulations, an individual Cabin Owner cannot purchase his land directly from the U.S.F.S. The Cabin Owners are forced to unite to acquire Exchange Property in order to effectuate their ultimate goal which is privatization of the real property upon which their cabins sit.

Over 90% of the existing Cabin Owners have already decided that they would like to participate in the program. Although they have been informed of the risks set forth in the Exchange Package over the months of research and work on the Exchange Program, they still want to go forward with the Program.

One of the hurdles to the Exchange Program is all of the ancillary costs which the Cabin Owners will incur in completing the exchange process as well as the subdivision process. To add needless cost to modify the Exchange Package and qualify, if possible, the Exchange Program as an exempt security and register for such exemption, may cause total frustration with the Exchange Program.

For the above reasons, we respectfully request that the Arizona Corporation Commission issue a "no action" letter indicating that either the interest being received by the Participants under the Exchange Program is not a security under the definitions of A.R.S. §§ 44-1801(15) and (22), or if it is determined that the interest being retained by the Participants is a security, that registration of those securities is not required because such registration is not essential to the public interest or for the protection of the Participants.

If you need any additional information with regard to this request, please do not hesitate to contact the undersigned.

Sincerely,

GABROY, ROLLMAN & BOSSÉ, P.C.


Fred A. Parsjo

FAF/mj:f:\lomasabino\acc.ltr
Enclosures

cc: Loma-Sabino Homeowners Association, Inc.