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SIERRA CLUB

April 8, 2011

Mr. Alfred Pollard
Federal Housing Finance Agency
1700 G. Street, NW
Washington, DC 20552

RE: RIN 2590-AA41 – Proposed Rule on Private Transfer Fees

Dear Mr. Pollard,

We appreciate the opportunity to comment on the Federal Housing Finance Agency's (FHFA) proposed Rule on Private Transfer Fee covenants (PTFs). While we share FHFA's concerns with certain abusive practices, the Sierra Club firmly believes that community- benefits fees provide important community services, infrastructure, affordable housing and environmental benefits and should not be restricted.

In addition, Sierra Club's Green Transportation Campaign seeks to reduce vehicle miles traveled by supporting the development of transportation choices and livable communities. Transfer fees must continue to play a role in achieving these two critical goals.

Communities, governmental agencies (acting in the proprietary and governing capacity), non-profit organization, and developers across the country have worked together to create livable communities funded by community benefits fees. These fees better connect Americans to homes, work, shopping and recreation in ways that can help reduce the need to drive and therefore reduce our dependence on oil. They also ensure that these communities are options for all individuals and family of all income groups. Additionally, the ability to preserve important environmental features, including sensitive habitats, both inside communities and outside of a particular community is an important goal and provides significant benefits to both the properties providing the funding transfer fees and the surrounding community.

From our perspective, some of the most compelling uses of the transfer fees involve infrastructure such as open-space, affordable housing or transit services that may benefit not just the owners of a property burdened by a transfer fee, but the public at large. We are concerned that these shared benefits would be precluded under the "direct benefit" test, as it would require that the benefits flow exclusively to the property providing the transfer fee or the benefit is reimbursed by a user fee imposed on the public.

We are also concerned that the direct benefits test as applied to a non profit organization would conflict with the Internal Revenue Code (IRC) which requires that such entities serve a public interest.

We believe that the rule can be modified to address the need to protect the Government Sponsored Entities without undermining the use of transfer fees for legitimate community benefits, and we urge you to do so. We strongly recommend that you make the following changes to the Proposed Rule:

- Eliminate the new “direct benefit” test with respect to nonprofit organizations including IRC section 528 community associations.
- Modify the rule to make clear exceptions from the Proposed Rule for community-benefit fees paid to certain categories of entities (e.g. nonprofit organizations including IRC section 501 (c)(3) and 501 (c)(4) entities and 528 community associations), to conform the Proposed Rule to longstanding Internal Revenue Service (IRS) law, regulations, and regulatory interpretations;
- Modify the date of the Final Rule's applicability until 120 days following the issuance of any final rule, to permit projects that are in progress to adapt to new requirements and avoid disrupting expectations and the housing finance market.

In sum, we urge that the final rule eliminate the “direct benefits” test and ensure that properly designed transfer fees can continue to support open space for public use, affordable housing, transit to achieve livable communities and help move America beyond oil.

Sincerely,

Ann Mesnikoff
Director, Green Transportation Campaign
Sierra Club

John Holtzclaw
Volunteer Co-Lead, Green Transportation Campaign
Sierra Club