



September 23, 2010

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

**RE: Guidance on Private Transfer Fee Covenants (No. 2010-N-11)**

Dear Mr. Pollard:

The undersigned national, state, regional, and local conservation groups appreciate the opportunity to comment on the proposed guidance. For your reference, the Natural Resources Defense Council is a national, nonprofit environmental organization serving 1.3 million members and activists. Audubon California speaks on behalf of over 150,000 California members and supporters to advance wildlife conservation and environmental education. Endangered Habitats League is southern California's only regional conservation group, dedicated to ecosystem protection and sustainable land use for all the region's inhabitants. Laguna Greenbelt, Inc., Friends of Harbors, Beaches and Parks, Hills for Everyone, Back Country Land Trust, Tejon Ranch Conservancy, and Preserve Wild Santee work to protect or manage natural resources in a variety of locations in San Diego, Orange, Kern, and Los Angeles Counties. Our organizations do not currently receive transfer fees as part of their funding.

Our groups believe that private transfer fee (PTF) covenants provide an irreplaceable tool for natural resource conservation that benefits the assessed community. We urge the Federal Housing Finance Agency (FHFA) to revise the proposed guidance by providing more narrowly tailored standards that preserve the benefits of PTFs for existing and future resource conservation programs – as well as for other important

community and homeowner association purposes – while eliminating the abuses identified by the FHFA. We also ask that the FHFA extend the comment deadline for the proposed guidance to January 31, 2011 to ensure full public disclosure and discourse on this important issue.

### The Critical Importance of Community-Benefits PTFs

Community-benefits PTFs typically fund community programs or provide unique enhancements to the community and its surroundings. The typical community-benefits PTF is recorded in the chain of title to a property as a deed restriction or covenant that requires the payment of a sum (typically ranging from ¼ to 1 percent) to a non-profit organization upon the sale of the property. The deed restriction discloses to sellers and purchasers who receives the fee and how long the assessment remains in effect. PTFs in California are subject to strict notice and disclosure requirements. (*See, e.g., California Civil Code Section 1098 et seq.*)

It is essential that non-profits continue to have access to community-benefits PTFs as a long-term revenue source to fund specific programs that benefit the community subject to the fees. Examples of the uses of community-benefits PTFs include the purchase of important surrounding open space; restoration of habitat; stewardship of conserved land; affordable housing; transit; community centers; and education programs. Some of our organizations have direct experience with community-benefits PTFs that fund the stewardship of conserved habitat and other valuable environmental and community programs, and we know what a vital need this serves in sustaining the quality of life in our communities. Without community-benefits PTFs, the ability to provide a long-term source of funding for these critical needs would be drastically reduced.

### PTF Reform

We agree there is a need to end the irresponsible use of PTFs, including the use of PTFs as a private funding stream that only benefits developers and investors and not the residents of a given community. The use of non-community-benefits PTFs in the form utilized by Freehold Capital Partners is substantially different from programs described above. The PTF method advocated by Freehold solely benefited the original owner, developer, or investor without any attendant benefit to the community and its environment, while the methods utilized by community-PTFs are designed to have an opposite and beneficial effect.

### Action Requested

The FHFA should narrow the proposed blanket guidance, which fails to distinguish between legitimate community-benefits fees and those that solely enrich private financial interests. Specifically, the FHFA should:

1. Continue to support homeowners with community-benefits fees that accrue to a non-profit or homeowners organization;

2. Continue to allow communities to benefit from PTFs that support community services, schools, affordable housing, and natural resource conservation;
3. Implement Community-Benefits Fee Standards that distinguish between legitimate community-benefits fees and abusive fees with no benefit to the community or its environment; and
4. Delay the guidance to allow more time for a full analysis of implications and unintended consequences, by extending the comment period to January 31, 2011.

In conclusion, we should preserve community-benefits PTFs that are an appropriate method to fund important community benefits and which represent a funding method that connects the assessed community with the benefit conferred in a manner tailored to the specific needs of the community and its surroundings.

Thank you for considering our views. If you have any questions, please contact Dan Silver of Endangered Habitats League at 8424 Santa Monica Blvd., Suite A 592, Los Angeles, CA 90069 or at (213) 804-2750.

Sincerely,

Dan Silver, MD  
Executive Director  
*Endangered Habitats League*

Jean Watt  
President  
*Friends of Harbors, Beaches and Parks*

Van K. Collinworth  
Executive Director  
*Preserve Wild Santee*

Claire Schlotterbeck  
Executive Director  
*Hills for Everyone*

George Barnett  
President  
*Back Country Land Trust of San Diego County*

Elisabeth M. Brown, PhD  
President  
*Laguna Greenbelt, Inc.*

Joel Reynolds  
Senior Attorney and  
Director, Urban Program  
*Natural Resources Defense Council*

Graham Chisholm  
Executive Director and  
Vice President  
*Audubon California*

Tom Maloney  
Executive Director  
*Tejon Ranch Conservancy*