



October 13, 2010

Alford M. Pollard, Esq.
General Counsel
Federal Housing Finance Agency, 4th Floor
1700 G Street NW
Washington DC 20552

RE: GUIDANCE ON PRIVATE TRANSFER FEE COVENANTS (#2010-N-11)

Dear Mr. Pollard:

I am the Executive Director of the Lowcountry Open Land Trust, Inc., a South Carolina nonprofit corporation, which is qualified for exempt status under Section 501(c)(3) of the Internal Revenue Code. It has come to my attention that your agency is considering promulgating regulations which will eliminate private transfer fees on the sale of real property.

The Lowcountry Open Land Trust was formed in 1985 to protect and foster voluntary conservation of the irreplaceable lowcountry forests, farmland, open spaces, wildlife habitat and wetlands in the coastal South Carolina plain. To date, the Lowcountry Open Land Trust holds conservation easements on over 82,000 acres in South Carolina through 248 conservation easements.

Section 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder require grantee organizations such as the Lowcountry Open Land Trust to annually monitor properties subject to a conservation easement to ensure compliance with the terms of the easement. These annual monitoring expenses must, of course, be funded. Since conservation easements are perpetual, a perpetual funding source such as transfer fees is both logical and fiscally responsible. Beginning in 2000, the Lowcountry Open Land Trust conservation easements have included a transfer fee provision which enables the Lowcountry Open Land Trust to perpetually fund its stewardship obligation. Transfer fees in conservation easements allow the cost of long-term stewardship of conserved lands to run with the land. If these transfer fees are made illegal or invalid, the Lowcountry Open Land Trust and many other non-profit conservation organizations will be adversely impacted. For our land trust alone, prohibition of transfer fees would impact 160 conservation easements under our legal protection.

While I appreciate the public policy concerns relating to transfer fees being paid to private developers and other for-profit entities, those concerns do not apply to 501(c)(3) organizations which are subject to perpetual monitoring requirements under the Internal Revenue Code. Prohibition of transfer fees by FHFA regulations would contravene federal provisions and requirements under Section

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170(h) of the Internal Revenue Code. It is not acceptable for one arm of the federal government to take action that is contrary to the requirements of another arm of federal government.

Regarding the current use of private transfer fees, there is a clear distinction to be made between eleemosynary and for-profit use. The purposes for private developers and non-profits in using transfer fees are oppositional:

- Private developers and investors seek to securitize transfer fees to produce future income for their private benefit;
- Non-profit land trusts seek to secure on-going stewardship funding connected to conservation land protected for public benefit.

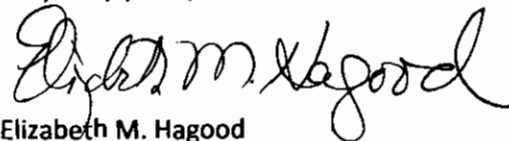
Any future FHFA regulations or guidance documents regarding the use of transfer fees should clearly distinguish between charitable and for-profit purposes.

As a non-profit land conservation organization in compliance with federal codes and created for charitable purposes, we respectfully submit the following provisions concerning Private Transfer Fees ("PTFs"):

- Exempt 501(c)(3) or 501(c)(4) organizations from prohibition on PTFs
- Extend the comment period through January 31, 2011 to ensure adequate and thorough review of the proposed change
- Support reasonable Community-Benefits Fee Standards that distinguish between charitable purpose (ie Community-Benefits fees) and abusive fees established for the private gain of the developer

Thank you for considering our serious objections to prohibiting the use of private transfer fees for land trusts. If you need further information, I encourage you to visit our website at <http://www.lolt.org/lolt> to learn more about our conservation efforts. To the extent that my testimony would be beneficial to your decision making process, I would be pleased to come to Washington and provide testimony as to the adverse impact that this proposed rulemaking would have on conservation organizations.

Very truly yours,



Elizabeth M. Hagood
Executive Director
Lowcountry Open Land Trust, Inc.