Office of the Mayor
City & County of San Francisco

Gavin Newsom

October 13, 2010

Alfred M. Pollard, General Counsel
Federal Housing Finance Agency, Fourth Floor
1700 G Street, NW
Washington, DC 20590

RE: Guidance on Private Transfer Fee Covenants (No. 2010-N-11) – Oppose Unless Amended

Dear Mr. Pollard:

The following comments are submitted to the Federal Housing Finance Agency ("FHFA") regarding the Guidance on Private Transfer Fees and the Notice of Proposed Guidance as filed in the Federal Register, Vol. 75 No. 157. As it is currently proposed, the City opposes the guidance unless amended. If adopted, the proposed FHFA guidance would have significant unintended consequences on large redevelopment efforts and the creation of affordable housing and other community benefits in San Francisco. The proposed FHFA guidance, which would appropriately eliminate the use of private transfer fees to generate income for a private developer or landowner, would also effectively eliminate the use of any transfer fees nationwide, even if these fees were used for community benefits. Transfer fees, when properly used, are an important tool for providing critical community benefits without raising taxes. The City agrees with FHFA that transfer fees intended primarily for private gain should be regulated, but the proposed guidance goes too far. The proposed guidance does not distinguish private-benefit fees from fees used to fund public benefits, including affordable housing, parks and open space, waterfront infrastructure improvements and other benefits of critical importance to the City.

The proposed FHFA guidance would prohibit federally backed or purchased mortgages on properties subject to a transfer fee covenant, regardless of the purposes for which the fees would be used. The guidance would expressly restrict Fannie Mae, Freddie Mac and the Federal Home Loan Banks from investing in mortgages on properties with private transfer fee covenants. The guidance would also cover mortgages and securities purchased by the Federal Home Loan Banks or acquired as collateral for advances, and mortgages and securities purchased or guaranteed by the aforementioned.

The proposed guidance does not differentiate between traditional community-benefits fees and the more recently developed use of transfer fees for private gain. Because a high percentage of residential mortgages (by some estimates 90%) are insured or backed by the federal government, the proposed guidance would effectively preclude the use of transfer fees for community benefits, removing a critical tool for building and revitalizing communities. In addition, greater demand would be placed on already strapped federal, state and municipal funding sources to replace this lost funding opportunity.

City and County of San Francisco Concerns

The City has recently been exploring how transfer fees could be used to provide for critical community benefits in this difficult economic climate. Below are just a few examples creative strategies that would be prohibited by the proposed guidance.

Proposed Affordable Housing Ordinance. The current economic climate has slowed the development of new residential and commercial projects in San Francisco, but the City's need for affordable housing continues to grow. In order to balance the interests of the City in stimulating new commercial and residential development and the associated jobs and tax revenues with the City's long-term interest in developing affordable housing, the City is currently considering legislation that would permit commercial and residential developments to defer a portion of their affordable housing obligations under existing City requirements in exchange for recording a 1% affordable housing transfer fee restriction on the property. This fee would be

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paid into the City's affordable housing fund at every future transfer of the property. Permitting developers to defer a portion of their existing affordable housing obligations will improve the financial viability of many stalled projects by reducing the upfront capital required to construct these projects. The City's proposed affordable housing transfer fee legislation will shorten the period of economic recovery within the City and will help spur job creation and tax revenues sooner than would be otherwise the case under the City's existing rules.

Treasure Island and Park Merced Projects. The redevelopment of the former Naval Station Treasure Island and the Park Merced project are two large-scale, mixed-use public-private partnerships that contemplate using transfer fees to fund construction and ongoing maintenance of parks and open space areas.

The development plans for Treasure Island include up to 8,000 new homes, 30% of which will be offered at below-market rates, up to 500 hotel rooms, a 400-slip marina, retail and entertainment venues and 300-acres of new parks and open space. Treasure Island is a compact mixed-use transit-oriented development clustered around a new ferry terminal and is designed to prioritize walking, biking and public transit. The development plans also include cutting-edge green building standards and best practices in low-impact development, and is projected to be the most environmentally sustainable large development project in U.S. history. Over the life of this $6 billion dollar project, 2,000 annual construction and 3,000 permanent jobs will be created, many of which will be focused on the development of green technologies. The infrastructure costs to prepare the land for development and provide the associated public benefits are significant. Even with the infusion of upfront private capital coupled with public financing tools such as tax-increment financing and Mello-Roos Community Facilities District bonds, there is still a potential gap to fund the planned park system's complete build-out and the ongoing maintenance of these new parks. Transfer fees at Treasure Island would help to bridge that gap and ensure that a world-class park system is built and maintained without impacting the City's general fund or imposing new taxes on City residents.

The $1.2 billion, privately-funded Park Merced project will include approximately 5,700 new homes, an expansion of light rail transit improvements as well as other transportation enhancements for the area along with neighborhood-serving retail and office space, new publicly accessible open spaces including new pedestrian and bike paths, athletic fields, a new organic farm and community gardens. The use of transfer fees is contemplated to fund both upfront construction costs for public open space as well as ongoing maintenance of these publicly accessible open space facilities.

Port of San Francisco Waterfront Improvements. The Port of San Francisco also has plans underway to use transfer fees at its development opportunity sites to fund critical pier infrastructure repairs and improvements for public access to the waterfront. Almost $1 billion of the Port's 10-year, $1.5 billion capital plan is unfunded. It is critical that the Port be able to take advantage of alternative sources of funding such as transfer fees to finance both its immediate capital needs and the development of public amenities on the waterfront.

Requested Action

The City respectfully requests that FHFA (1) not adopt the proposed guidance, or (2) revise the guidance to include an exception for transfer fees that are to be paid to a non-profit organization, homeowners association or governmental entity for the purpose of providing community benefits.

In addition, in order to ensure that members of the public and lawmakers have a full and fair opportunity to be heard on this major change in policy, the City requests that the comment period be extended to January 30, 2011.

Sincerely,

Gavin Newsom
Mayor