RANCHO MISSION VIEJO

October 14, 2010

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

Attn: Public Comments "Guidance on Private Transfer Fee Covenants"

Dear Mr. Pollard:

Thank you for providing Rancho Mission Viejo (RMV) with the opportunity to comment on the proposed guidance "Guidance on Private Transfer Fee Covenants". RMV has carefully reviewed the proposed Guidance and offers the following comments for your consideration.

RMV consists of approximately 22,815 acres located in Southern Orange County, California and has been owned by the Avery/O'Neill/Moiso family since 1882. Each generation has been guided by a set of values: manage the land thoughtfully; honor family, friends and community; and make your handshake your word. These values guided the family as they developed portions of the ranch into award winning planned communities, such as Ladera Ranch, and agreed to preserve other portions of the ranch as permanent open space/habitat for endangered species.

Our latest effort to provide housing for the many people that seek to live in Orange County, while at the same time continue to protect the many wildlife resources that make the ranch their home is called the Ranch Plan. The Ranch Plan will develop a further 25% while setting the remaining 75% aside as a Habitat Reserve under a federally approved Habitat Conservation Plan (the Southern Subregion Habitat Conservation Plan [SSHCP] approved by U.S. Fish and Wildlife Service on January 10, 2007). Thirty-two species, including seven federally listed species, are covered by the SSHCP.

28811 ORTEGA HIGHWAY • P.O. BOX 9 • SAN JUAN CAPISTRANO, CA 92693 • (949) 240-3363 • FAX (949) 248-1763

A key feature of RMV's financial planning for the Ranch Plan is the use of transfer fees. Under the Ranch Plan, transfer fees will be used for two purposes:

(1) To fund a private foundation. The private foundation, Rancho Mission Viejo Land Trust (RMVLT), is 501 (c) (3) non profit corporation established to receive, manage and disburse funds for the benefit of the RMV Habitat Reserve.
(2) To fund a Community Service Organization (CSO). The CSO is independent 501 (c) (4) non profit public benefit corporation established to foster a unique community lifestyle through the implementation of enrichment/recreational/volunteer programs and events.

FHFA's concerns that private transfer fees are 1) used to fund purely private continuous streams of income for select market participants either directly or through securitized investment vehicles and 2) are not proportional or related to the purposes for which fees were to be collected are unfounded and not illustrative of the manner that private transfer fees are used for the following reasons (see below for a detailed explanation of these reasons):

(1) Transfer fees are used to support public benefits that would not otherwise exist or require alternative sources of funding such as taxes.
(2) Transfer fees are proportional to, and directly related to the purposes for which they are collected.

Reasons in Support of an Exclusion

- Private Foundation Example

Federal Endangered Species Act (FESA) regulations require that habitat conservation plans identify monitoring and adaptive management actions for each of the species covered by the plan. The SSHCP includes an adaptive Habitat Reserve Management and Monitoring Plan (HRMP). The projected costs for the HRMP tasks are set forth in SSHCP through the year 2031 and vary from a low of $246,720 to a high of $860,360 per year. See Table 1 below for these specific costs and Table 2 (attached) for all other years.

Table 1
Adaptive Monitoring & Management Costs
Lowest & Highest Projected Years

MONITORING TASKS	2008	2013
Arroyo Toad		60,000
Southwestern Pond Turtle		
Western Spadefoot Toad		
Threespine Stickleback		
Arroyo Chub		
Riverside Fairy Shrimp	2,400	
San Diego Fairy Shrimp	2,400	
Coulter's Saltbush		6,000
Many-stemmed Dudleya		6,400
Southern Tarplant		6,000
Thread-leaved Brodiaea		4,800
Vegetation/Wildlife Plots		99,200
Habitat Linkages/Corridors		35,000
Data Analysis/Report Preparation	1,920	72,960
Subtotal Monitoring Costs	**6,720**	**290,360**
OTHER SUPPORT TASKS		
5-year Vegetation Mapping		
5-year Management Action Plan (MAP) Preparation	50,000	100,000
Science Panel General Services	50,000	50,000
Science Panel MAP-related Services	50,000	100,000
Subtotal Other Support Tasks	**150,000**	**250,000**
ADAPTIVE MANAGEMENT TASKS		
Invasive Plant Species Controls	20,000	170,000
Invasive Animal Species Controls	20,000	50,000
Immediate Stressor-related AMP Actions		
Subtotal Adaptive Management Costs	**40,000**	**220,000**
Administrative Costs	**50,000**	**100,000**
TOTAL ANNUAL AMP COSTS	**246,720**	**860,360**

FESA regulations further require that specific programs and resources be identified that will generate sufficient funding for implementation of the HRMP. Three programs/resources were identified in the SSHCP; 1) $700,000 from the Ladera Land Conservancy, 2) $3 million from Santa Margarita Water District (a plan participant and permittee under the SSHCP) and 3) the RMV Benefit Fee Program. The RMV Benefit Fee Program is further described as follows:

> *RMV will establish a program whereby a fee will be collected for the benefit of RMV's Habitat Reserve Lands ("Benefit Fee") upon the initial sale of any developed residential parcel located within the developable portion of the Ranch Plan area ... the Benefit Fee obligation will be established through the recordation of a fee agreement that binds and encumbers each residential parcel within the relevant portion of the Ranch Plan project area. Per the recorded fee agreement, the amount of the individual Benefit Fee shall be equal to a fixed percentage of the total consideration identified in the contract for the sale of the residential unit. RMV has committed to the establishment of a Benefit Fee percentage equal to not less than 0.324% of the contract consideration price.*

RMVLT is the recipient of the funds generated by the RMV Benefit Fee. Through contracts with qualified individuals or firms, funds in an Operating Account are spent on the monitoring and management tasks set forth above. These tasks monitor and manage the habitat of 32 at risk species including seven that are federally listed. Funds are also placed in an Endowment Account and a Changed Circumstances Account. The endowment account is intended to generate sufficient income over time to support the perpetual monitoring and management of the RMV Habitat Reserve in addition to certain monitoring on adjacent County of Orange lands in the Habitat Reserve. The changed circumstances account is required by FESA regulations to deal with those circumstances beyond the expectations of the SSHCP. An annual report submitted to the U.S. Fish and Wildlife Service contains a detailed reporting on the status of each account, which monitoring and management tasks were implemented and whether a changed circumstance occurred. Therefore, federal oversight of the SSHCP and its associated fee program exists.

Thus the RMV Benefit Fee, a private transfer fee:

(1) Supports a public benefit that would not otherwise exist or require alternative sources of funding such as taxes.

In the introduction to the Endangered Species Act of 1973 (Act), Congress recognized that endangered and threatened species of wildlife and plants "are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people." Habitat Conservation Plans (HCPs) under section 10(a) (1) (B) of the Act provide for partnerships with non-Federal parties to conserve the ecosystems upon which listed species depend, ultimately contributing to their recovery.[1] RMV has entered into such a partnership to contribute to the recovery of seven listed species and conserve the ecosystems of an additional 25 at risk species, a direct public benefit to the Nation and its

[1] http://www.fws.gov/endangered/what-we-do/hcp-overview.html

people. Without the RMV Benefit Fee supporting the implementation of the HRMP, this public benefit would not exist.

(2) Is proportional to, and directly related to the purpose for which the fees are collected.

As described above, the RMV Benefit Fee is collected for the benefit of the RMV Habitat Reserve, more specifically the monitoring and management of the 32 covered species. The data in Table 2 (attached) is excerpted from the SSHCP and shows the relationship between the RMV Benefit Fee and the HRMP costs for the highest year, 2013. Thus it can be seen that the RMV Benefit Fee, a one time fee collected at the time of the initial sale of any residential parcel that will be fully disclosed to the buyer as required by California Civil Code Section 1085.5, is directly proportional to the costs of implementing the HRMP.

- Community Service Organization Example

The second element of RMV's financial planning for the Ranch Plan's use of transfer fees is to fund a Community Service Organization (CSO). The CSO will be an independent 501 (c) (4) non profit public benefit corporation established to foster a unique community lifestyle through the implementation of enrichment, recreational and volunteer programs and events for the residents. RMV has used transfer fees for this purpose on prior development projects. For example, in Ladera Ranch, an RMV developed master planned community located in southern Orange County, California, the CSO is called LARCS.

LARCS was established ten years ago as a service to the residents of Ladera Ranch. The benefits that LARCS provides its residents include sponsoring several large scale and very popular annual events .i.e., 4th of July Fireworks, seasonal concerts and themed contests that foster community spirit and neighborhood connections. Through these resident connections, LARCS fosters almost fifty (50) different clubs each with a unique focus ranging from tennis to cooking to fellowship to wounded veterans. LARCS hosts/maintains an exclusive intranet site, "Ladera Life", and publishes a quarterly magazine "Roots and Wings" that connect every home with information regarding instructional/recreational programs and sports leagues operated by local organizations usually hosted at Ladera Ranch facilities. A copy of the most recent publication is attached. All of these activities including the on-site LARCS staff provide Ladera Ranch residents a unique lifestyle and sense of community.

LARCS is funded through a Community Enhancement Fee or CEF that is assessed on first time sales and resales of residential homes in Ladera Ranch. The CEF is disclosed on multiple occasions including the purchase agreement, public report and disclosure statement for initial sales and on the title report for resale properties as required by California Civil Code Section 1085.5. A sample of the disclosure statement is attached as

Exhibit 1. All revenue received from these CEFs is used solely for the benefit of Ladera Ranch residents. According to the 2009 fiscal year financial report, LARCS collected $1,123,013.00 in revenue from CEF's, interest, and sponsorships. From the revenue collected 54% was spent on community services, programs and staffing, 27% was placed into savings and an annuity for future use, leaving only 19% for operations and administration. Thus the LARCS CEF: 1) supports a public benefit that would not otherwise exist or require alternative sources of funding such as taxes, and 2) is proportional to, and directly related to the purpose for which the fees are collected. It should be noted that CEFs are not collected from the banks during the foreclosure process on homes in Ladera Ranch.

It has been our experience with Ladera Ranch that residents are attracted to and purchase their home in Ladera Ranch because of the unique lifestyle LARCS provides the community. In addition, resale values of homes within Ladera Ranch exceed those in surrounding communities due in large part to the programs, clubs, events and community fostered by LARCS. Our goal is to duplicate these results in the Ranch Plan and develop a community with both a strong sense of self identification and regional market recognition. Our ability to use transfer fees to fund services and amenities for the sustained life of the project – such as community-based transit systems to connect to regional transportation, local healthcare and education, and community recreation – is key to this goal.

Conclusion

In this letter of comment, we have demonstrated that FHFA's concerns that private transfer fees are 1) used to fund purely private continuous streams of income for select market participants either directly or through securitized investment vehicles and 2) are not proportional or related to the purposes for which fees were to be collected are unfounded and not illustrative of the manner that private transfer fees are used. Furthermore, we have provided examples to demonstrate that:

- Transfer fees are used to support public benefits that would not otherwise exist or require alternative sources of funding such as taxes, and
- Transfer fees are proportional to, and directly related to the purposes for which they are collected.

For these reasons, RMV respectfully requests that FHFA revise the Guidance to exclude mortgages on properties encumbered by transfer fee covenants if the covenant provides for a public benefit in the form of 1) management and monitoring of land and/or wildlife species for conservation purposes and 2) community services and amenities.

Thank you again for the opportunity to comments on the proposed guidance "Guidance on Private Transfer Fee Covenants". Should you have any questions regarding our comments, I can be reached at lcoleyeisenberg@ranchomv.com or (949) 24-3363 Ext 297.

Sincerely,

Laura Coley Eisenberg
Vice President, Open Space & Resource Management

Table 2
Benefit Fee Funding for Adaptive Monitoring & Management Costs
Highest Projected Year - 2013

Operating Account	
Elapsed Year	6
New Home Price	$820, 000
New Homes sold	900
Benefit Fee (0.314%)	$2,317,000
Other Funding	
• LandCo Funding	0
• SMWD Contribution	250,000
• Transfer from Endowment Account	0
Expenditures	
• HRMP Expenses	760,000
• Admin Costs	100,000
• HRMP Expenses (Adj. for inflation)	907,000
• Admin Costs (Adj. for inflation)	119,000
• Aggregate Expenses (Adj. for inflation -3%)	1,027,000
Net Annual Income/Expenses	1,540,000
Pre-ROI (Interest)Carry Forward	1,656,000
Money Market Int. on Carry Forward	50,000
Net Annual Balance	1,706,000
Transfer to Endowment Account	1,587,000
Year End Operating Account Balance	119,00
Changed Circumstances Account[2]	
Benefit Fee (0.01% of New Home Price)	74,000
Expenditures	0
Net Annual Income/Expenses	74,000
Pre-ROI (Interest)Carry Forward	290,000
ROI (Interest) on Carry Forward (5.90%)	13,000
• Inflation Offset Portion (3.0%)	6,000
• Usable Portion (2.9%)	6,000
Transfer to Endowment Account	0
Year End Changed Circumstances Account Balance	0
Endowment Account[3]	
Income	
• From Operating Account	1,482,000

[2] FESA regulations mandate the creation and maintenance of a Changed Circumstances Account.

[3] It should be noted that the SSHCP management and monitoring obligations are perpetual thus the need to establish a non-wasting endowment.

• From Changed Circumstances Account	0
Expense	
• To Operating Account	0
New Annual Income/Expense	1,587,000
Pre-ROI (Interest)Carry Forward	7,483,000
ROI (Interest) on Carry Forward (5.90%)	441,000
Inflation Offset Portion (3.0%)	224,000
Usable Portion (2.9%)	217,000
Year-End Endowment Account Balance	7,924,000
Operating Account + Changed Circumstanced Account + Endowment Account	**8,347,000**

EXHIBIT 1

LADERA RANCH
ACKNOWLEDGMENT AND DISCLOSURE
REGARDING COMMUNITY ENHANCEMENT FEE

The undersigned (*"Buyer"*) is purchasing a Lot or Condominium (the *"Property"*) in the ____________________ neighborhood (*"Neighborhood"*) of the Ladera Ranch master planned community from ____________________________________ (*"Neighborhood Builder"*). Buyer acknowledges, understands and accepts the following:

A Community Enhancement Fee Agreement (*"Agreement"*) was recorded against the Property. The Agreement is between Neighborhood Builder and Ladera Ranch Community Services (*"LARCS"*) and binds all owners of the Property now and in the future. LARCS is a nonprofit corporation formed to provide community services to the Neighborhood and other neighborhoods in Ladera Ranch that are subject to other community enhancement fee agreements, promote social welfare and foster a sense of community in Ladera Ranch by coordinating and sponsoring various community and neighborhood activities and programs. LARCS is a community service organization as defined in California Civil Code Section 1368(c)(2)(B). The Fee, defined below, is not a "transfer fee" subject to California Civil Code Section 1098.

The Agreement obligates Buyer and Neighborhood Builder to pay a community enhancement fee (*"Fee"*) to LARCS upon the initial sale of the Property and the parties involved in any subsequent transfer of the Property to pay a Fee in connection with each subsequent transfer, unless the transaction falls under the definition of transactions that are not treated as a "Transfer" in the Agreement (an *"Exempt Transfer"*). The obligation to pay the Fee is imposed on both parties involved in the transfer of the Property (i.e., the buyer and the seller); however, each time the Property is transferred, the parties can decide between themselves whether one party will pay the Fee or if they will divide the payment of the Fee between them. For example, Buyer and Neighborhood Builder may agree that Buyer shall pay the Fee on the initial sale, but on any subsequent transfer of the Property the parties may decide that they should split the Fee or that the seller should pay the Fee. LARCS has complete discretion in determining how to use the Fee.

The Fee is calculated as a percentage of the purchase price paid on any transfer of the Property (other than Exempt Transfers). The Agreement gives LARCS the right to sue the parties involved in a Transfer if the Fee is not paid. In addition, LARCS has the right to direct LARMAC to deny recreation facilities use keys to the new owners of the Property if the Fee is not paid. Therefore, it is very important that Buyer and each subsequent seller of the Property informs the seller's real estate agent and buyer's real estate agent, if any, the buyer or other transferee and the escrow agent of the obligation to pay the Fee and to make sure that the Fee is paid in accordance with the Agreement.

The Fee for the initial transfer from Neighborhood Builder to Buyer is one-eighth (0.125) of one percent (1%) of the purchase price of the Property (i.e., 0.00125 multiplied by the purchase price) and it must be paid no later than close of escrow. Before close of escrow, Buyer will be provided with a calculation of the exact amount of this Fee based on the purchase price. Since the Fee is based on a percentage of the purchase price, if the purchase price is changed before close of escrow for the sale to Buyer, the amount of the Fee will change.

The Fee for subsequent transfers of the Property is one-fourth (0.25) of one percent (1%) of the purchase price of the Property (i.e., 0.0025 multiplied by the purchase price). The transferee can elect to have the Fee paid either (i) in one lump sum on or before the closing or effective date of the Transfer, or (ii) in installments over a period of time set by LARCS which is at least seven years long. LARCS will administer the installment payment plan and may require the new owner of the Property to execute a promissory note outlining the terms of the installment payment plan.

LARCS has the right to unilaterally amend the Agreement for several reasons, including to conform to future changes in applicable law and to terminate the Agreement. The obligation to pay the Fee will continue until the Agreement is terminated. Buyer acknowledges that DMB Ladera, LLC, Neighborhood Builder, LARCS and their representatives have advised Buyer of Buyer's rights and obligations under the Agreement. Buyer acknowledges that Buyer has considered the possible effect of such matters in Buyer's decision to purchase the Property.

Acknowledged, understood and accepted by Buyer:

Date: ______________________________ ______________________________

Unit/Lot No. _____ of Tract No. _________ ______________________________