

1201 15th Street NW
Washington, DC 20005

T 800 368 5242 x8265
F 202 266 8333
dledford@nahb.org

www.nahb.org



October 15, 2010

Sent via electronic mail to RegComments@FHFA.gov

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

**Re: Comments by the National Association of Home Builders
Regarding Notice of Proposed Guidance on Private Transfer
Fee Covenants (No. 2010-N-11), 75 Fed. Reg. 49932**

Dear Mr. Pollard:

On behalf of the National Association of Home Builders, thank you for the opportunity to submit comments in response to the above-referenced Notice issued by the Federal Housing Finance Agency (FHFA) and published in the Federal Register on August 16, 2010.

The National Association of Home Builders (NAHB) is a Washington, D.C. based trade association whose mission is to enhance the climate for housing and the building industry. A federation of more than 800 state and local associations, NAHB has over 175,000 members who construct approximately 80 percent of the new homes built each year in the United States. NAHB's members are engaged in all facets of the building industry, including single family and multifamily housing, remodeling, and other aspects of residential and light commercial construction.

The Proposed Guidance would prohibit the housing government-sponsored enterprises (GSEs), specifically Fannie Mae, Freddie Mac and the Federal Home Loan Banks (FHLBanks), from purchasing or investing in mortgages encumbered by private transfer fee covenants or securities backed by such

mortgages. The Proposed Guidance would also extend to mortgages or securities acquired by the FHLBanks as collateral for advances. FHFA's prohibition would apply to all forms of private transfer fee covenants including both a third-party intermediary approach, in which the community involved does not receive benefits from the fee transfer, and transfer fees in which the community where the home is located does benefit.¹

NAHB believes that FHFA's guidance, as proposed, is applied too broadly and would unnecessarily impair the ability of significant numbers of existing homeowners and home buyers to obtain mortgage financing. Rather than improve mortgage market stability, FHFA's Proposed Guidance would severely impede home sales transactions as many homes would be ineligible for GSE-supported mortgage financing at a time when there are no funding alternatives for most prospective borrowers.

One of NAHB's primary concerns with the Proposed Guidance is that it would accord the same treatment to all types of private transfer fees. NAHB urges FHFA to reconsider its position on private transfer fees that are "beneficial" to the community. These "beneficial" fees have been utilized and accepted in the market for at least 15 years, and directly benefit the homeowners who pay them as well as the community in which those homeowners live. By contrast, a newer model of private transfer fees does not benefit the community (directly or indirectly) but rather benefits third party intermediaries and private parties, and is used to generate income for individuals or organizations other than those in the community where the property is located.²

There are significant differences between these models of private transfer fees, which impact their acceptance by homeowners and the community. Beneficial private fees typically involve transfers that are considerably smaller than the one percent-of-sales price assessments that characterize the non-beneficial programs. Property owners' associations that require one of these fees, typically mandate less than a \$500 flat transfer fee, or a fee that is less than $\frac{3}{4}$ of one percent of the property sales price.³ Without these private transfer fees, many property owners' associations may be forced to raise monthly and quarterly dues to fill their budget gaps, thus unexpectedly increasing the monthly housing costs of millions of Americans at a time when they can ill afford this increase.⁴

¹ See Proposed Guidance, 75 Fed. Reg. at 49932-49933.

² *Id.* at 49933 (covenants that create purely private continuous streams of income for select market participants).

³ See September 2010 Community Association Institute (CAI) [survey overview](#).

⁴ The 2010 Community Association Institute membership survey of a sample of over 1,200 communities indicates that over 600 of these communities, encompassing approximately 480,000 households, reported having used private transfer fee covenants that have community benefits. Extrapolating the sample size to include all communities with community

Such fees have been used to fund non-profits and organizations⁵ that help:

- preserve and maintain open space such as in the [Wolf Ranch](#) development in Colorado Springs, Colorado;
- provide for environmental mitigation and preservation such as the [Willow Glynn](#) communities in Elmore County, Alabama;
- provide for land conservation and sustainable building programs as was done in the [Tejon Ranch](#) development in southern California, which received Governor Schwarzenegger's Environmental and Economic Leadership Award (GEELA);⁶
- provide for protection of wildlife habitats and funding for affordable/workforce housing programs as was done in the [Martis Camp](#)⁷ development in Truckee, California;
- develop transit accessible housing as was done for the Transit Orient Development at the [West Dublin/Pleasanton Bay Area Rapid Transit \(BART\)](#)⁸ station;
- fund programs and activities, including educational, cultural, environmental, health and wellness, recreational programs and activities in the [SouthWood](#) community in Tallahassee, FL; and
- fund recreational and a children's center in the [Rancho Sahuarita](#) development in Tucson, Arizona.

NAHB has heard of no consumer regulatory concerns regarding the beneficial private transfer fee covenant model and is unaware of any problems in the mortgage financing system resulting from the establishment of such beneficial fees. Of the 17 states that have passed laws prohibiting transfer fees, most of those footnoted have exceptions from their transfer fee definition for fees paid to property owners' associations, realtor commissions, or those that benefit the community.⁹ NAHB urges the FHFA to reconsider its Proposed Guidance to

associations the CAI estimates that over 11,000,000 homes are encumbered with private transfer fees.

⁵ See, e.g., Hyatt & Stubblefield, P.C., Public Comments on "Guidance on Private Transfer Fee Covenants" dated September 29, 2010, Exhibit A (listing communities with private transfer fees).

⁶ See Appendix attached to these comments at 7–8, 9–12.

⁷ *Id.* at 12, 13–16.

⁸ *Id.* at 17 –34.

⁹ See CA. Civ. Code § 1098, 1102.6(e); Ariz. R.S. § 33-442 (2010); Del. Code Ann. Tit. 25, § 319; Fla. Stat. § 689.28; 765 Ill. ILCS 155(effective January 1, 2011); IA SF 2192 (to be codified at 558.48); Kan. Stat. Ann. § 58-3821; La. Rev. Stat. §§ 9:3131-9:3136; Md. Real Prop. Code Ann. § 10-708 (2010); Minn. Rev. Stat. §§ 513.73-513.76 (2010); Mo. Rev. Stat. 442.558; N.C. Sess. Law 2010-32, to be codified at Chap. 39A; Ohio Rev. Code § 5301.057 (2010); Ore. Rev. Stat. § 93.269 (2009); Tex. Prop. Code § 5.017; and, Utah Code Ann. § 57-1-46. Several states have pending legislation to regulate private transfer fee covenants.

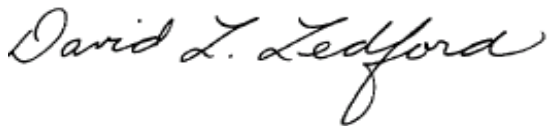
Mr. Alfred M. Pollard
General Counsel
October 15, 2010
Page 4 of 4

establish an exception for beneficial transfer fees so as to not undermine the viability of the well-established beneficial private transfer fee model in future developments as well as negatively impact the numerous existing developments already employing such covenants.

In summary, FHFA's Proposed Guidance will create more market instability, not less. Accordingly, NAHB urges FHFA not to prohibit Fannie Mae, Freddie Mac or the Federal Home Loan Banks from dealing in mortgages with properties that have private transfer fee covenants, where such fees are used to benefit (1) a property owners' association that manages the subdivision; (2) a nonprofit that meets Internal Revenue Code requirements; or (3) a government entity.

NAHB appreciates the opportunity to provide comments. Please contact me if there are questions concerning our letter.

Sincerely,

A handwritten signature in cursive script that reads "David L. Ledford".

David L. Ledford
Senior Vice President
Housing Finance and Land Development

Attachment – Appendix

These include: Alabama (Ala. S.B. 441); Hawaii (HI H.B. 1383); Michigan (H.B. 6402); New Jersey (N.J. A2861); and Pennsylvania (Pa. S.B. 1481).

**COMMENTS OF THE NATIONAL ASSOCIATION OF HOME BUILDERS
REGARDING NOTICE OF PROPOSED GUIDANCE ON PRIVATE
TRANSFER FEE COVENANTS (No. 2010-N-11)**

75 Fed. Reg. 49932

APPENDIX

APPENDIX TABLE OF CONTENTS

Press Release, Tejon Ranch Honored With California's Highest Environmental Award (October 1, 2009)	7
Case Studies – Tejon Ranch: Sharing in a Legacy of Conservation.....	9
Press Release, Mountain Area Preservation Foundation, Accountability to Truckee's General Plan and the Creation of Transfer Fees 2000-2002.....	13
Sierra Business Council, Conservation and Development Groups Reach Landmark Agreement on Martis Valley (March 29, 2006).....	15
San Francisco Bay Area Rapid Transit District, Transit Benefit Fee Agreement (March 10, 2006)	17

Tejon Ranch Honored With California's Highest Environmental Award

Thursday, October 01, 2009

FOR IMMEDIATE RELEASE

TEJON RANCH CONSERVATION AGREEMENT WINS GOVERNOR'S AWARD Historic conservation pact receives prestigious environmental honor

LOS ANGELES, Calif. (October 1, 2009) -- Governor Arnold Schwarzenegger today announced that the Tejon Ranch Conservation and Land Use Agreement has won the Governor's Environmental and Economic Leadership Award (GEELA) in recognition of the historic conservation pact signed by Tejon Ranch Company (NYSE: TRC) and America's leading conservation and environmental organizations.

The Governor's Award, California's highest and most prestigious environmental honor, recognizes individuals, organizations and businesses that have demonstrated exceptional leadership for voluntary achievements in conserving California's resources, protecting and enhancing the environment, and building public-private partnerships. Awards are given in ten categories. The landmark agreement is a winner in the Environmental and Economic Partnerships category.

Past winners of this prestigious award in that category include the Hearst Ranch Conservation Project and the Irvine Ranch Land Reserve Trust. Pardee Homes, one of Tejon Ranch's partners in the development of the community of Centennial, won in 2005 in the category of Sustainable Practices for its "Living Smart" green building program.

The unprecedented conservation pact is the largest private conservation agreement in California history and will permanently preserve up to 240,000 acres – 90% of the historic Tejon Ranch. That's nearly three times the size of the Hearst Ranch Conservation Project. The agreement protects and expands foraging habitat for the California condor, safeguards other threatened or endangered species such as the San Joaquin kit fox, the blunt-nosed leopard lizard and the Tehachapi slender salamander. It permanently protects an unbroken expanse of open space more than seven times the size of San Francisco, open space that's home to native grasslands, oak woodlands, Joshua trees and conifer forests.

The agreement between Tejon Ranch Company and Audubon California, Endangered Habitats League, Natural Resources Defense Council, Planning and Conservation League, and the Sierra Club, also created the Tejon Ranch Conservancy, an independent non-profit organization that recently concluded its first year overseeing continued stewardship of the conserved lands.

The award specifically recognizes Robert A. Stine, President and CEO of Tejon Ranch Company, and Eneas Kane, President and CEO of DMB Associates, Tejon Ranch's partner in its Tejon Mountain Village development, for their leadership in negotiating the Agreement.

"This historic agreement to protect a California treasure illustrates something that I have stressed since taking office — we can protect California's environment at the same time we pump up our economy," Governor Arnold Schwarzenegger said.

"The Tejon Ranch Conservation and Land Use Agreement is consistent with our vision to preserve California's legacy and provide for California's future, as the Agreement does both" said Robert A. Stine, Tejon Ranch Company's President and CEO. "This agreement is good for conservation, good for our company and good for California."

"Our company has deep history and experience in forging accords and settlements that work toward

long-term solutions with the environmental and conservation communities,” said Eneas Kane, President and CEO of DMB Associates, “and we are humbled to have been a part of one of the great conservation achievements in California history.”

Tejon Ranch is currently engaged in the development of the communities of Tejon Mountain Village and Centennial. Tejon Mountain Village, a mountain resort development in the Tehachapi Mountains is one of the greenest, most ecologically sensitive communities of its type ever proposed in California. Centennial, a master planned new town in northwest Los Angeles County, likewise places a strong emphasis on sustainability and environmental sensitivity, evidenced by the fact that Centennial will be the first major development in Los Angeles County to comply with both the state’s greenhouse gas reduction goals and the county’s green building ordinance. In addition to the aforementioned Pardee Homes, Tejon Ranch Company’s partners in the development of Centennial include Lewis Investment Company and Standard Pacific Homes.

About the Governor’s Environmental and Economic Leadership Award

The Governor’s Environmental and Economic Leadership Awards program was established in 1993. The award program is administered by the California Environmental Protection Agency and the Resources Agency in collaboration with the State and Consumer Services Agency, the California Department of Food and Agriculture, and the Business, Transportation and Housing Agency.

About Tejon Ranch

Tejon Ranch Company is listed on the New York Stock Exchange under the symbol TRC. Tejon Ranch is a diversified real estate development and agribusiness company, whose principal asset is its 270,000-acre land holding located approximately 60 miles north of Los Angeles and 30 miles south of Bakersfield. More information about Tejon Ranch Co. can be found online at www.tejonranch.com.

About DMB Associates

DMB Associates is Tejon Ranch’s partner in Tejon Mountain Village. DMB is one of the most respected real estate companies in the West, known for creating innovative communities that thoughtfully and responsibly address the environment. DMB’s business practices are predicated on creating truly great places and on forging lasting, mutually beneficial partnerships with stakeholders, municipalities, landowners and communities. In California, in addition to Tejon Mountain Village, DMB is partnering with Cargill in the proposed Saltworks development in Redwood City. Additional DMB communities in California include Martis Camp and Lahonton in the Lake Tahoe area, Santa Luz in Rancho Santa Fe, and Ladera Ranch and Rancho Mission Viejo in southern Orange County. More information about DMB Associates can be found online at www.dmbinc.com. ####

Tejon Ranch Contact: Barry Zoeller, Vice President Director of Corporate Communications (661) 663-4212 bzoeller@tejonranch.com

DMB Contact: Lauren Charpio Vice President, Communications (480) 367-7617
lcharpio@dmbinc.com



Tejon Ranch: *Sharing in a Legacy of Conservation*

On May 8, 2008, Tejon Ranch Co., its partner DMB Associates, and many of the nation's major environmental organizations, including The Sierra Club, Natural Resources Defense Council, Audubon California, the Planning and Conservation League and the Endangered Habitats League, announced one of the largest conservation and land use agreements in California history when they unveiled a landmark agreement on the future of Tejon Ranch.

Tejon Ranch is an invaluable piece of California's natural heritage. The 270,000 acre ranch is the largest contiguous private property remaining in California. Located approximately 60 miles north of Los Angeles, the ranch is biologically diverse and lies at the confluence of four major ecological regions; the Sierra Nevada, the Mojave Desert, the San Joaquin Valley and the Coastal Range. It is a haven for rare and endemic species, ancient oak trees, endangered California condors, rare native vegetation communities and intact watersheds and streams. All attributes which make it one of California's highest conservation priorities.

The unprecedented conservation agreement will provide for the permanent protection of 240,000 acres – approximately 90% – of this vast property. The area protected under the agreement is approximately 375 square miles or roughly eight times the size of San Francisco. The conserved lands will be overseen by a newly created independent non-profit conservancy, The Tejon Ranch Conservancy, that will benefit from a long-term funding commitment from the two planned communities on the property; Tejon Mountain Village and Centennial.



“When selecting DMB as our partner, we relied heavily on their creativity and experience in managing complex conservation alignments with the environmental community. Their long-term relationships with many key members of major environmental groups and their track-record of landmark conservation agreements puts them in a class all their own. Their role in getting to this agreement was invaluable and this should be seen as another of their truly remarkable conservation achievements.”

— BOB STINE, PRESIDENT AND CEO OF TEJON RANCH CO.

Partnership

The road to this landmark agreement was a long one. The property’s scale, biological diversity, and proximity to Los Angeles made it a high profile target for environmentalists and developers alike. In 2005, property owner Tejon Ranch Co. began the search for a like-minded partner to assist in bringing the disparate interests of the landowners, the environmental community and developers into long-term alignment. Tejon Ranch Co.’s due diligence involved the review of many potential partners. The company ultimately selected DMB, having recognized DMB’s deep history and experience in forging accords and settlements that work toward long-term solutions with the environmental and conservation communities.

The vast majority of the projects in which DMB has participated have resulted in long-term agreements designed to foster and fund major conservation efforts. “When selecting DMB as our partner, we relied heavily on their creativity and experience in managing complex conservation alignments with the environmental community. Their long-term relationships with many key members of major environmental groups and their track-record of landmark conservation agreements puts them in a class all their own. Their role in getting to this agreement was invaluable and this should be seen as another of their truly remarkable conservation achievements,” said Bob Stine, President and CEO of Tejon Ranch Co. Since its inception, DMB has been deeply committed to legacy planning and environmental stewardship. The Tejon Ranch agreement marks the company’s fourth major conservation achievement.



DC Ranch And The McDowell Sonoran Preserve

In 1994, the City of Scottsdale in Arizona unanimously approved planning and zoning for DMB's flagship community, DC Ranch. The same year, the Scottsdale City Council established the McDowell Sonoran Preserve. The vision for the Preserve consisted of purchasing 16,640 acres of land in and around the McDowell Mountain Range in North Scottsdale. A total of 4,600 of DC Ranch's 8,300 entitled acres fell within the Preserve's Recommended Study Boundary. These 4,600 acres were deemed essential to the Preserve by the City, as they included the peaks of the McDowell Mountain range that makes up the visual backdrop for the City of Scottsdale. Understanding the value of the land and the potential impact of development and preservation, DMB worked with city planners and the environmental community on an agreement that effectively allowed the City to purchase 2,675 acres of the valued property. To further demonstrate its support of conservation, DMB donated 1,918 acres to The Preserve and rezoned the community to create 672 additional acres of open space. When fully realized, the Preserve – whose vision was expanded by 19,460 acres in 1998 – will consist of 36,000 acres or 57 square miles of natural, public open space.

The Ranch Plan Settlement Agreement

The Ranch Plan, in Orange County, California, encompasses 24,000 acres adjacent to DMB's Ladera Ranch community. Together with the family who has owned the land since 1882, DMB is creating much needed housing for the region while preserving and enhancing the open land, habitat, species, and the local quality of life. In 2004, DMB, with its partner and historic landowner Rancho Mission Viejo, began working with the Sierra Club, the National Resources Defense Council, Endangered Habitats League, Sea and Sage Audubon Society, Laguna Greenbelt, and Orange County officials to reach an historic agreement that reduces development in key wildlife habitat areas, increases open space for wildlife and provides for the long-term management of the conserved ranch lands. The agreement effectively provides for 17,000 acres of the 24,000 acre property to be dedicated to open space, wildlife habitat, trails and continued ranching interests. Dan Silver, head of the Endangered Habitats League said of the agreement "This was truly the creation of a win-win solution. It was a win for the ecosystem, for the species, for historic ranching and for economic development." Bill Corcoran of the Sierra Club adds, "The agreement honors the aspirations of many local residents who sought permanent protection of key natural areas on Rancho Mission Viejo...and has resulted in a significant contribution to the long-term environmental health of Orange County.



"DMB's stewardship and leadership has been essential to the successful creation and growth of The McDowell Sonoran Preserve, one of the City of Scottsdale's most prized environmental treasures."

— SAM CAMPANA, FORMER MAYOR OF THE CITY OF SCOTTSDALE AND EXECUTIVE DIRECTOR OF AUDUBON ARIZONA

Martis Camp And Martis Valley Settlement Agreements

Martis Camp is a low-density community located on approximately 2,177 acres within the Martis Valley between Truckee and the north shore of Lake Tahoe in California. Beginning in 2003, Martis Valley had been the subject of one of the most contentious land use battles in California. Environmental groups rallied to challenge the Placer County General Plan in an effort to reduce development densities and require developer funding for conservation efforts. By 2004, a coalition of environmental advocates led by Sierra Watch filed a lawsuit to set aside the county's development plan for 25,000 acres in the valley. They also sued a number of significant landowners. DMB and its partner, Highlands Management, met with conservation and environmental advocates, which included Sierra Watch, League to Save Lake Tahoe, Mountain Area Preservation Foundation, Sierra Club and the Planning and Conservation League, to find a common ground on the Martis Camp development plan. These efforts ultimately resulted in the Martis Camp Agreement, which provided for reduced development in sensitive areas of the site, the donation of a 250 acre site at the north end of the property for affordable housing, and the creation of transfer fee designed to provide a revenue stream in perpetuity for the established conservancy, the Martis Fund. The Martis Fund was developed to manage the preserved lands, provide for future wildlife habitat protection and creation, and fund future work force housing in the County. Shortly after the Martis Camp agreement was established, the same environmental coalition reached settlement with other development interests in the County and set the stage for the permanent



protection of 5,000 acres in the Valley. "The [Martis Valley] agreement [between DMB Highlands, local officials and the conservation community] shows that housing interests and conservation interests can work together for a better community," said Stefanie Olivieri of the Mountain Area Preservation Foundation.

A Legacy Commitment

Each of the conservation agreements of which DMB has been a part share a common theme; seemingly disparate interests coming into long-term alignment to achieve shared goals. DMB and Tejon Ranch Co. formed a partnership and worked tirelessly through the negotiations with the members of the environmental organizations that make up the Resources Group. The result has been hailed as "one of the great conservation achievements in California history," by Joel Reynolds of the National Resources Defense Council.

DMB takes great pride in its long standing commitment to creating legacy communities with significant conservation elements funded by the economic engine of carefully planned development.



"We can do both...protect the environment and protect the economy at the same time, and Tejon Ranch is a perfect example of that."

— ARNOLD SCHWARZENEGGER,
GOVERNOR OF CALIFORNIA

Planning tomorrow. Together.

[Home](#)

MOUNTAIN AREA PRESERVATION FOUNDATION

Key MAPF Successes

[Preserving Truckee's
Small Town Character](#)

Accountability to Truckee's General Plan and the Creation of Transfer Fees 2000-2002

[Protecting Open Space](#)

[Current Activities](#)

In 2000, a large developer submitted a project proposal to the Town of Truckee for a luxury gated community and golf course on 600 acres northeast of Truckee's downtown that did not comply with the Town's open space requirements. Despite 2 years of public testimony and efforts to work with the developers, the project was approved in violation of Truckee's General Plan. MAPF filed a public interest lawsuit under CEQA that resulted in a negotiated settlement. In the final agreement, MAPF negotiated a .5% transfer fee on every house built and sold over 20 years that could generate \$20 million for the purchase open space. We also negotiated a .25% transfer fee in perpetuity for habitat restoration. This was the first time a transfer fee for conservation had ever been used in California.

Saving Martis Valley 1999-2005

MAPF initiated and represented the local voice in the effort to prevent the construction of thousands of homes and numerous golf courses in the beautiful Martis Valley. This large Sierra meadow is sprinkled with wetlands and surrounded by forest that serves as prime wildlife habitat.

In a collaborative effort of pooled resources, MAPF co-founded Sierra Watch, and together with the help of other conservation allies launched a campaign advocating for responsible planning and permanent protection of the Martis Valley. Expert biologists and land-use planners were recruited to identify conservation priority areas. The public was engaged and mobilized in support of saving the valley. Public interest lawsuits were filed. After winning the first lawsuit, the others were replaced by negotiation and reasoned compromise won the day.

The resulting Martis Valley Settlement Agreement provides permanent protection for thousands of acres of land, puts caps on future growth in the Valley, and sets forth transfer fees in perpetuity on each house constructed in the valley that has the potential to generate a \$100 million for the acquisition of additional conservation lands, habitat restoration and much-needed work force and affordable housing for Truckee.

Just last year, the Waddle Ranch on the east side of the valley was purchased as public open space in part with funds generated by the Settlement Agreement.

Affordable Housing-The Fight to Keep Our Firefighters, Teachers and Nurses Living Locally 2003-Present

MAPF became involved in the affordable housing issue back in 2003 when a developer made a parcel of land available for open space that was really better suited for affordable housing. MAPF worked with the local affordable housing advocates to get the zoning changed and affordable high-density housing built. Since that time, MAPF helped pass both residential and commercial affordable housing ordinances and make provisions for affordable housing a priority in its negotiations with developers, as was the case in the Martis Valley Settlement Agreement. We sit on the Town of Truckee's Housing Advisory Working Group and champion the cause against great odds in a town built on growth and the construction industry.

Town Council Approves Pedestrian Undercrossing April 23, 2009!

The Town of Truckee recently approved going forward with the Environmental Review Process necessary to construct a new tunnel under the Union Pacific railroad track on State Highway 89 South just for pedestrians and bikes. The tunnel could be completed in 3 years. Working together, The Family Resource Center, MAPF and the Truckee Trails Foundation made sure that local residents, mostly Latino, received the most current information available on various proposals being considered by the Town through two presentations made in the community that were translated.

Testimony of the local community before Town Council was key in getting approval for the stand-alone pedestrian tunnel and staving off pro-growth interests that wanted to construct an additional new vehicular tunnel (with pedestrian access added) that would open the door to pushing through 4 lanes of vehicle traffic to and from the ski resorts at Lake Tahoe and would have taken as much as 10 years to complete.

[Home page](#) | [About us](#) | [Contact us](#) | [Donate](#) | [Email Sign Up](#)

Copyright © 2009 MAPF. All Rights Reserved.

From YubaNet.com

REGIONAL

Conservation and Development Groups Reach Landmark Agreement on Martis Valley

Author: Sierra Business Council

Published on Mar 29, 2006 - 1:42:00 PM

Sierra conservation groups and a lead Martis Valley developer joined together today to announce an historic settlement agreement for the Tahoe-Truckee Region.

Under the agreement, developer DMB/Highlands, Mountain Area Preservation Foundation, and Sierra Watch resolve legal disputes over Siller Ranch and Hopkins Ranch development plans and establish a foundation for long-term collaboration on natural resource, open space, and workforce housing issues in the region. The agreement also creates a funding program that is projected to raise \$36 million for open space protection, \$18 million for habitat management, and \$18 million for workforce housing in the region over the next 25 years.

Parties to the agreement asserted their hopes that it will become a model for wider cooperation and collaboration between conservationists and developers in the region. All parties to the settlement agreement expressed their appreciation for the collaborative nature of the discussions.

Martis Valley lies between Truckee and North Lake Tahoe, with 25,000 acres falling under the jurisdiction of Placer County. While Placer County is not a formal party to the agreement, key County planning officials have proactively encouraged the parties to meet and find a collaborative resolution, and they have expressed support for the settlement agreement.

"DMB/Highlands, Sierra Watch, and the Mountain Area Preservation Foundation demonstrated a great commitment to discuss and resolve these issues," said Bruce Kranz, whose Supervisorial district includes Siller Ranch and Hopkins Ranch. "They have shown creativity in addressing some very thorny issues and their agreement will provide an opportunity for a long-term funding source that will support the County's long term goals for Martis Valley."

Other conservation and community groups expressing support for the settlement agreement include former Siller Ranch development opponents the League to Save Lake Tahoe, the Planning and Conservation League, and the Sierra Club.

"Sierra Watch commends DMB/Highlands for their creative and collaborative approach to difficult planning issues, and we thank Placer County officials for providing the umbrella leadership for making this all possible," David Welch of Sierra Watch. "After a long series of productive discussions, we have arrived at a resolution that is clearly in the best interests of the entire Tahoe-Truckee Region."

"The parties to this agreement share a lot of common goals," said Ron Parr of DMB/Highlands. "I think this agreement reflects a common vision for the future of the area. It permits limited, environmentally sensitive development. And it provides a large stream of funding to support long-term preservation of open space and natural habitats as well as desperately needed worker housing."

The agreement calls for DMB/Highlands, Mountain Area Preservation Foundation, and Sierra Watch to join together to manage a new conveyance fee, which the county hopes to convert to a public financing tool, that will be imposed on the sale and resale of homes and home sites at Siller Ranch. The fee is earmarked for open space preservation and habitat restoration, as well as the management and construction of workforce housing units. The fee is expected to raise more than \$72 million for these three purposes over the first twenty-five years.

For the 2,100 acre Siller Ranch site, the agreement envisions 120 acres of newly designated open space, a maximum of 653 housing units, and a single 18 hole golf course. The agreement commits the entire 280-acre Hopkins Ranch site to open space and workforce housing. The workforce housing development is envisioned as the product of a community design process. Final land use approvals will be sought from Placer County.

"This settlement was truly a collaborative process," said Eneas Kane of DMB/Highlands. "Our discussions have led to a revised plan that addresses all three of the major issues raised by the community. The conveyance fee will preserve potentially thousands of additional acres of open space, it will provide funds to restore natural habitats and money to build a significant number of homes for working families in the area. The money provided by this agreement and the programs that it will support are really the most important legacy of Siller Ranch."

"Open space preservation and workforce housing are huge issues in our community," said Stefanie Olivieri of the Mountain Area Preservation Foundation. "This agreement would never have happened without the goodwill and cooperation that Placer County, the landowner and the various conservation groups exhibited in voluntarily engaging in serious dialogue about these issues."

"This is a great example of how we all - conservationists, property owners, and elected officials - can work together to forge a new vision that will benefit the developer, Placer County, and the Tahoe-Truckee communities for many generations to come," said Kranz.

Frequently Asked Questions About Siller/Hopkins Ranch Collaborative Agreement

Q1: Where are Siller Ranch and Hopkins Ranch located?

A: The two ranches are located between the town of Truckee (to the North) and Lake Tahoe (to the South) just off Highway 267.

Q2: Who signed the agreement?

A: The landowner DMB Highlands Group, LLC and conservation groups, Sierra Watch and Mountain Area Preservation Foundation. Also expressing support for the agreement are the League to Save Lake Tahoe, Planning and Conservation League and the Sierra Club.

Q3: What are the basic components of the settlement agreement?

A: There are three main components: revisions to the Hopkins Ranch land use plan, revisions to the Siller Ranch land use plan, and the creation of a conveyance fee that will fund open space, habitat and workforce housing programs.

The agreement calls for the entire Hopkins Ranch site (280 acres) to be used for open space and workforce housing.

Siller Ranch will dedicated 120 additional acres to open space, eliminate a planned par 3 golf course, reduce home sites by 76 (down to 653), and make some other modifications to the land use plan.

A one percent conveyance fee will be charged on the sale and resale of Siller Ranch homes. Proceeds of the fee - totaling about \$72 million over twenty-five years - will be used to acquire open space, restore habitat, and fund workforce housing needs in the area.

Q4: How did all of this come about? How did these differing groups get together to settle their differences?

A: There was a willingness by all parties to simply sit down and discuss their differing points of view. County officials encouraged the groups to begin a dialogue. And once DMB Highlands, Sierra Watch and MAPF began to talk they learned that they have some important goals in common - in particular good planning, conserving important natural resources and addressing critical community issues. The result of this dialogue is a truly collaborative agreement that points the way toward long-term cooperation and collaboration between the groups.

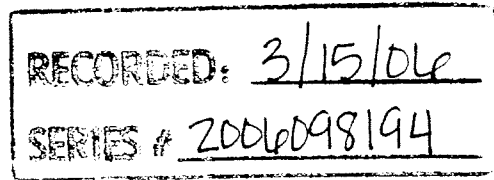
Q5: Exactly what is a conveyance fee and how is it imposed?

A: It is a fee that is charged on the sale and resale of lots, homes and home sites on the Siller Ranch. It totals one percent of the purchase price. The proceeds of the fee are expected to raise \$72 million over the first twenty-five years with \$36 million going for open space acquisition, \$18 million going for habitat management and \$18 million for workforce housing needs.

All parties to the agreement believe the conveyance fee will become the most important long-term legacy of the collaborative agreement. It is their hope the overall agreement will set the standard for future cooperation and collaboration between landowners, conservationists and elected leaders in the region.

© Copyright YubaNet.com

Recorded at the request of and
when recorded return to:
184/19-A
San Francisco Bay Area Rapid
Transit District
P. O. Box 12688
San Francisco, CA 94604-2688
Attn: Office of the General Counsel



**NOTICE TO ESCROW HOLDERS:
THIS AGREEMENT REQUIRES YOU
TO PAY A TRANSIT BENEFIT FEE TO BART
FROM THE PROCEEDS OF SALES OF CONDOMINIUMS**

**TRANSIT BENEFIT FEE AGREEMENT
(WEST DUBLIN CONDOMINIUMS)**

This TRANSIT BENEFIT FEE AGREEMENT (this "Agreement") is made and entered into as of March 10, 2006 (the "Effective Date"), by and between CREA/WINDSTAR DUBLIN 3.65 ACRES, LLC, a Delaware limited liability company ("Landowner"), and the SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a rapid transit district established under California Public Utilities Code Section 28500, et. seq. ("BART"), with reference to the following recitals:

RECITALS

A. Landowner is the owner of that certain real property, consisting of approximately 3.65 acres, located in the Town of Dublin, County of Alameda, California, described on Exhibit A attached hereto (the "Covered Property").

B. BART is the owner of certain real property located in the Town of Dublin, County of Alameda, California, more particularly described on Exhibit B attached hereto (the "BART Property"), which BART Property is in close proximity to the Covered Property.

C. BART owns and operates a rapid transit train system that serves parts of the San Francisco Bay Area. As mandated in Measure B, a ballot measure approved in November 1986, BART constructed a rail transit extension (the "Extension") from the BART Bay Fair station to the Castro Valley Station, and now intends to construct the West Dublin/Pleasanton Station along the Extension in the median of Interstate 580.

D. The Covered Property is a portion of a proposed transit-oriented development project planned by BART located along the Extension adjacent to the West Dublin/Pleasanton Station.

E. Landowner purchased the Covered Property from BART pursuant to a Purchase Agreement dated as of March 10, 2006 (the "Purchase Agreement"), between BART and Landowner, and Landowner plans to develop a residential condominium project upon the Covered Property (the "Project") as part of the transit-oriented development.

F. The existence of the Extension and the construction and operation of the West Dublin/Pleasanton Station will benefit the condominiums in the Project and enhance their enjoyment and value. In recognition of this, and as additional consideration to BART for the Covered Property, a percentage of the purchase price from the sale or re-sale of Condominiums on the Covered Property will be paid to BART pursuant to the provisions of this Agreement.

G. Capitalized terms used in this Agreement are defined in Section 16 below unless otherwise defined herein.

AGREEMENT

NOW THEREFORE, for mutual and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landowner and BART hereby agree as follows:

1. Benefit Fee.

(a) Upon each Transfer, BART shall be paid a fee equal to the Transit Benefit Fee Amount (each such fee a "Benefit Fee") by Owner on or before the closing or effective date of the Transfer. Each Owner, by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay a Benefit Fee to BART on account of the Transfer of the Condominium owned by the Owner. The Benefit Fee, together with late charges, interest, attorneys' fees, court costs, and other costs and expenses of collection, shall be a lien and charge upon the Condominium being Transferred.

(b) Notwithstanding Section 1(a) above, if (i) the Covered Property has not been converted to for-sale residential condominiums, or (ii) the Covered Property is being used as for-sale condominiums but fewer than ten percent (10%) of the individual condominium units constructed on the Covered Property have been Transferred to an Owner other than Landowner by the fifth (5th) anniversary of the Effective Date, then Landowner shall pay to BART a fee equal to two percent (2%) of the appraised value of the Covered Property within thirty (30) days after the expiration of such five (5) year

anniversary, and every five (5) years thereafter (i.e., on the tenth (10th), fifteenth (15th), twentieth (20th), etc. anniversaries of the Effective Date), until ten percent (10%) or more of the individual condominium units constructed on the Covered Property have been Transferred to an Owner other than Landowner. The appraisal shall be performed by an appraiser selected by BART and reasonably approved by Landowner; provided, however, that such appraiser shall have a minimum of ten (10) years experience conducting appraisals of properties similar to the Covered Property in Alameda County, California, and shall not have been engaged by BART to perform appraisals for BART during the five (5) year period immediately preceding such engagement (except, if applicable, for prior engagements performing the appraisal referenced in this Section 1(b)).

(c) BART and Landowner acknowledge and agree that Landowner (but no other Owner) may be entitled to a credit against amounts payable by Landowner to BART under Sections 1(a) and 1(b) hereof pursuant to the terms of Section 2.1 of the Purchase Agreement.

2. Obligation for Payment. The transferor and transferee in each Transfer are obligated to pay to BART the Benefit Fee on or before the closing or effective date of the Transfer. The obligation to pay the Benefit Fee for each Transfer is a joint and several obligation of the transferor and the transferee in each transaction and is not an obligation of any other Owner of a Condominium subject to this Agreement or any homeowners association for such Condominiums. The transferor and transferee in each transaction may, as a matter between themselves, allocate the obligation to pay the Benefit Fee in any manner they so choose.

3. Payment by Escrow Holder. The transferor and transferee shall, and hereby do, irrevocably instruct any Escrow Holder holding funds for a Transfer to pay the Benefit Fee to BART, at such place and in such manner as BART may instruct from time to time, from the proceeds of the Transfer at the close of escrow; provided, however, the failure of the Escrow Holder to do so shall not relieve the transferor or transferee of the obligation to pay the Benefit Fee. The transferor and transferee shall execute all documents reasonably requested by the Escrow Holder to confirm this instruction and effectuate such payment on or before the close of escrow. In addition, Landowner shall place in escrow, with any agreement by which it Transfers a Condominium, escrow instructions which specifically state, among other things, that the Escrow Holder shall pay the Benefit Fee to BART out of the proceeds of the sale at the closing. BART is hereby authorized as a third party beneficiary of any such escrow to submit a demand into escrow for payment of the Benefit Fee, which demand shall include (i) the amount of the Benefit Fee that is due or the formula for calculating the Benefit Fee, and (ii) a statement that the Benefit Fee is due on or before close of escrow for the Transfer.

BY ACQUIRING TITLE TO A CONDOMINIUM, EACH OWNER OF A CONDOMINIUM HEREBY IRREVOCABLY INSTRUCTS ANY ESCROW HOLDER HOLDING FUNDS FOR THE TRANSFER OF THE CONDOMINIUM TO PAY THE BENEFIT FEE TO BART FROM THE PROCEEDS OF SALE AS SET FORTH HEREIN

4. Information to Be Provided to BART. The transferor, transferee or Escrow Holder, whichever party transmits the Benefit Fee to BART, shall provide with the payment adequate information to enable BART to confirm that the amount of the Benefit Fee has been correctly calculated, which information shall include: (i) the name and address of the transferor; (ii) the name and address of the transferee; (iii) an identification of the Condominium being Transferred; (iv) the Purchase Price; (v) the amount of the Benefit Fee that is due and the formula for calculating same; (vi) the closing or effective date of the Transfer; (vii) the name, address and phone number of the Escrow Holder for the Transfer; and (viii) the name of the escrow officer.

5. Late Charges and Interest. The Benefit Fee shall be deemed delinquent if not paid within ten (10) days after the closing or effective date of the Transfer. If the Benefit Fee is not paid within ten (10) days after the closing or effective date of the Transfer, a late charge equal to five percent (5%) of the Benefit Fee shall be payable to BART in addition to the Benefit Fee and any other sums provided for herein. The late charge represents a fair and reasonable estimate of processing, accounting and other costs and expenses that BART will incur by reason of late payment of the Benefit Fee, the exact amount of which is extremely difficult and impracticable to ascertain. In addition to the late charge, a Benefit Fee not paid within thirty (30) days after the closing or effective date of the Transfer shall bear interest from such closing or effective date until paid at the lesser of ten percent (10%) per annum or the maximum rate allowed by law.

6. Remedies. BART shall be entitled to any and all rights and remedies available at law or equity in order to collect Benefit Fees and all other sums due to BART hereunder, including but not limited to specific performance and rights of lien.

7. Enforcement by Lien.

(a) Creation of Lien. Without limiting any other right or remedy, there is hereby created a claim of lien, with power of sale, on each and every Condominium to secure prompt and faithful performance of each Owner's obligations under this Agreement for the payment to BART of the Benefit Fees, together with late charges, interest, attorneys' fees, court costs and other costs and expenses of collection which may be paid or incurred by BART in connection therewith.

(b) Recordation of Lien. At any time after the delinquency, BART may file and record in the Office of the Alameda County Recorder a notice of default and claim of lien against the Condominium of a defaulting Owner. Such notice of default and claim of lien shall be executed and acknowledged by any officer of BART and shall contain substantially the following information: (1) the name of the defaulting Owner; (2) a legal description of the Condominium; (3) the total amount of the delinquency, including late charges, interest, attorneys' fees, court costs and other costs and expenses of collection; (4) a statement that the notice of default and claim of lien is made by BART pursuant to this Agreement; and (5) a statement that a lien is claimed and will be foreclosed against the Condominium. BART shall mail a copy of the notice of default and claim of lien to the

Owner of the Condominium at the address of the Condominium. Upon such recordation of a duly executed notice of default and claim of lien and mailing a copy thereof to the Owner, the lien claimed therein shall immediately attach and become effective.

(c) Foreclosure of Lien. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a deed of trust by exercise of a power of sale contained therein or in the manner provided by law for the enforcement of a judgment. If the lien is foreclosed in the manner provided by law for the foreclosure of a deed of trust by power of sale, the trustee for all purposes related thereto (including, but not limited to, the taking of all actions which would ordinarily be required of a trustee under a foreclosure of a deed of trust) shall be a title company or other neutral third party with prior trustee experience appointed by BART. BART shall have the power to bid at any foreclosure sale, trustee's sale or judgment sale, and to purchase, acquire, lease, hold, mortgage and convey any Condominium acquired at such sale subject to the provisions of this Agreement.

(d) Proceeds of Sale. The proceeds of any foreclosure, trustee's or judgment sale provided for in this Agreement shall first be paid to discharge costs of sale and other recoverable fees, costs and expenses and then the unpaid Benefit Fees and all late charges and interest thereon, and the balance, subject to the rights of any Mortgagee, shall be paid to the defaulting Owner. The purchaser at any such sale shall obtain title to the Condominium free from the sums or performance claimed but otherwise subject to the provisions of this Agreement; provided, no such sale or transfer shall relieve such Condominium or the purchaser thereof from liability for Benefit Fees or other payments or performance thereafter becoming due. All sums due and owing hereunder but still unpaid following any such sale or transfer shall remain the obligation of the transferor and transferee obligated to pay them.

(e) Cure of Default. Upon the timely curing of any default for which a notice of default and claim of lien was filed by BART, BART shall record an appropriate release of such lien in the Office of the County Recorder of Alameda County.

8. Binding Effect. Landowner and BART hereby declare that the Covered Property will be owned, held, and transferred subject to the reservations, rights, covenants, conditions and equitable servitudes contained in this Agreement. This Agreement is made pursuant to Section 1468 of the California Civil Code and is intended by the parties hereto to contain covenants running with the land and/or equitable servitudes binding on the Covered Property and the BART Property. The reservations, rights, covenants, conditions and equitable servitudes set forth in this Agreement shall (i) run with and burden the Covered Property and run with and benefit the BART Property in perpetuity or until such earlier time as the West Dublin/Pleasanton Station has been permanently closed; (ii) be binding upon all Owners and other Persons having or acquiring any interest in the Covered Property or any part thereof and their heirs, successors and assigns; (iii) inure to the benefit of and be binding upon Landowner and BART, and their respective successors and assigns, the Covered Property and the BART Property; and (iv) may be enforced by Landowner, BART and each Owner and their respective heirs, successors and assigns.

Landowner and BART hereby acknowledge and agree that (a) the obligation to pay a Benefit Fee upon the Transfer of any Condominium in which Landowner is not the transferor in such Transfer is not a personal covenant or obligation of Landowner, and (b) every act restrained or required by any covenant contained in this Agreement relates to the use, repair, maintenance or improvement of the Covered Property and/or the BART Property within the meaning of Section 1468 of the California Civil Code.

9. Acknowledgment of Benefit. Each Owner who acquires a Condominium, by such acquisition, agrees to and acknowledges that the existence of the Extension and the construction and operation of the West Dublin/Pleasanton Station in close proximity to the Project will benefit the Condominiums and enhance their enjoyment and value.

10. Mortgages.

(a) Rights of Beneficiaries. Nothing in this Agreement nor any amendment to or breach of this Agreement defeats or renders invalid the rights of the beneficiary under any Mortgage recorded in the Official Records of Alameda County encumbering any Condominium made in good faith and for value, provided that after the foreclosure or a transfer in lieu of foreclosure of any such Mortgage, such Condominium will remain subject to this Agreement.

(b) Effect of Foreclosure. No foreclosure of a Mortgage on a Condominium or a transfer in lieu of foreclosure shall impair or otherwise affect BART's right to pursue payment of any Benefit Fee due in connection with the Transfer of such Condominium from the transferor or a transferee obligated to pay it. No foreclosure or transfer in lieu thereof shall relieve such Condominium or the purchaser thereof from liability for any Benefit Fee thereafter becoming due or from the lien therefor.

11. Jurisdiction and Venue. Any Dispute under this Agreement shall be resolved by the Superior Court, subject to the rights of BART to non-judicially foreclose a lien. Venue for any action shall be Alameda County, California.

12. Amendment. BART has the right to unilaterally amend this Agreement for the following reasons: (i) correct typographical errors, (ii) conform this Agreement to law, lender guidelines or California Department of Real Estate requirements, (iii) reduce the Benefit Fee, or (iv) terminate this Agreement. Landowner has the right, after notice to and consultation with BART, to unilaterally amend this Agreement to conform this Agreement to law or California Department of Real Estate requirements. In addition, BART and at least fifty-one percent (51%) of the Owners of Condominiums in the Covered Property may amend this Agreement and such amendment shall apply to all of the Covered Property.

13. Notices. All notices required or allowed to BART and Landowner shall be in writing and shall be sent to the addresses shown beside the signatures of BART and Landowner below. All notices required or allowed to an Owner shall be in writing and shall be sent to the address of the Condominium owned by the Owner. BART and/or

Landowner may change its address for notice by giving notice to the other party. Notice may be delivered by personal delivery, a reputable overnight delivery service, or U.S. Mail sent certified with return receipt requested. Notices are effective on the earlier of the date received, the date of the delivery receipt, or the third day after postmarked, as applicable.

14. Assignment. BART may not assign all or any portion of its rights or delegate all or any portion of its duties and obligations under this Agreement except to another governmental entity which is the legal successor to BART.

15. Attorneys' Fees. The prevailing party in any Dispute shall be entitled to recover its reasonable attorneys' fees and court costs from the other party.

16. Definitions. As used herein, the following terms shall have the following meanings:

(a) "Affiliate" means any entity described by California Corporations Code section 150.

(b) "Agreement" means this Transit Benefit Fee Agreement.

(c) "Condominium" means a residential structure constituting an estate in real property as defined in California Civil Code Sections 783 and 1351(1), including any condominium which is a volume of real property that is not located entirely within a building (i.e., a "site" condominium).

(d) "Dispute" means any dispute arising under or related to this Agreement, including the amount, obligation to pay and any other issue concerning a Benefit Fee under this Agreement.

(e) "Escrow Holder" means any title company, trust company, or other Person serving as an escrow holder or agent for the Transfer of a Condominium.

(f) "First Mortgage" means a Mortgage with lien priority over all other Mortgages for such Condominium or other portion of the Covered Property.

(g) "Mortgage" means any mortgage or deed of trust or other conveyance of one or more Condominiums or other portions of the Covered Property to secure performance of an obligation, which will be reconveyed upon completion of such performance.

(h) "Owner" means the Person or Persons, including Landowner, holding record title to any Condominium or portion of the Covered Property, but excludes a mortgagee or beneficiary of a Mortgage.

(i) "Person" means a natural individual or any entity with the legal right to hold title to real property.

(j) "Purchase Price" means the total purchase price or other consideration given by the transferee to the transferor in a transaction resulting in a Transfer, including, but not limited to, the sum of actual cash paid, the fair market value of services performed or real and personal property delivered or conveyed in exchange for the Transfer, and the amount of any lien, mortgage, contract indebtedness, or other encumbrance or debt, either given to secure the purchase price, or remaining unpaid on the property at the time of the Transfer, but excluding any third-party cost or charge incurred by the transferor or the transferee in connection with the transaction.

(k) "Transfer" and "Transferred" means the sale, transfer, conveyance or exchange of a Condominium by an Owner to a transferee; provided, however, none of the following transactions shall constitute a "Transfer" under this Agreement:

(1) A transfer of an interest in a Condominium to secure the performance of an obligation, such as a Mortgage or a lien, which interest will be reconveyed upon the completion of such performance.

(2) A transfer of a Condominium resulting from a foreclosure (by judicial foreclosure or trustee's sale) by the beneficiary of a First Mortgage, or by an association (as defined in Civil Code section 1351(a)), or by an association described in a Public Report issued by the California Department of Real Estate for the Covered Property or any part thereof, or a transfer in lieu thereof.

(3) A transfer of a Condominium by an Owner to a revocable inter vivos trust that is not a change of ownership under California Revenue and Taxation Code Section 62(d).

(4) Any interspousal transfer (as defined in California Revenue and Taxation Section Code 63) or transfer between parents and any of their children (as defined in California Revenue and Taxation Code Section 63.1).

(5) Any other transfer that is not a change of ownership under the California Revenue and Taxation Code or is otherwise exempt from reassessment for real property tax purposes.

(6) Any transfer of real property to a public agency, entity or district, or a utility service provider.

(7) Any transfer of real property to an association (defined in Section 1351(a) of the California Civil Code) as common area (defined in Section 1351(b) of the California Civil Code).

(8) The rental or lease of a Condominium.

(9) Any transfer by an accommodation party as a part of a tax-deferred exchange under the Internal Revenue Code, if the transaction involves more than one Transfer solely because the Condominium is held/owned for an interim period (not to exceed 180 days) by the accommodation party (such that only one Transfer shall be deemed to have occurred and only one Benefit Fee shall be payable in connection therewith, and the accommodation party shall not have any liability for payment of such Benefit Fee).

(l) "Transit Benefit Fee Amount" shall mean the amount equal to two percent (2%) of the Purchase Price of the initial Transfer of each Condominium (the initial sale of a Condominium to an Owner other than Landowner) and one and one-half percent (1.5%) of the Purchase Price in each subsequent Transfer.

17. Miscellaneous. This Agreement: (i) shall be construed in accordance with the laws of the State of California; (ii) may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument; and (iii) shall bind and inure to the benefit of Landowner and BART and their successors and assigns. The Recitals set forth above and the exhibit attached hereto are incorporated herein by this reference. Except for the definitions in Section 16, the headings and captions of the paragraphs of this Agreement are for convenience and reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof. If any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or any remaining provision of this Agreement. No right or remedy will be waived unless the waiver is in writing and signed by the party claimed to have made the waiver. One waiver will not be interpreted as a continuing waiver. The parties hereto agree that the rule of contract construction that ambiguities are to be construed against the drafter shall not apply to this Agreement and that this Agreement shall be interpreted as though prepared by both parties. Each individual signing this Agreement on behalf of a party hereto represents and warrants that he or she is duly authorized to sign this Agreement on behalf of such party and that such party is bound by his or her signature.

IN WITNESS WHEREOF, the parties have executed this Transit Benefit Fee Agreement effective as of the date first set forth above.

"LANDOWNER"

CREA/WINDSTAR DUBLIN 3.65 ACRES, LLC,
a Delaware limited liability company

By: CREA/WINDSTAR DUBLIN-PLEASANTON, LLC,
a Delaware limited liability company,
its Managing Member

By: MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY,
a Massachusetts corporation,
its Managing Member


By: CORNERSTONE REAL ESTATE ADVISERS LLC,
a Delaware limited liability company,
its Authorized Agent

By: _____
Name: _____
Title: _____

Address: c/o Cornerstone Real Estate Advisers LLC
100 Wilshire Blvd., Suite 700
Santa Monica, CA 90401
Attn: Jim Gallagher, Vice President

"BART"

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT,
a rapid transit district

By: 
Name: Gregory P. O'Sherry
Title: Man's Property Development

Address: P. O. Box 12688
San Francisco, CA 94604-2688
Attn: Office of the General Counsel

IN WITNESS WHEREOF, the parties have executed this Transit Benefit Fee Agreement effective as of the date first set forth above.

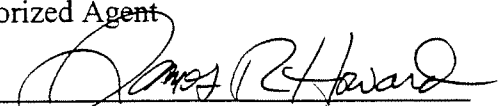
"LANDOWNER"

CREA/WINDSTAR DUBLIN 3.65 ACRES, LLC,
a Delaware limited liability company

By: CREA/WINDSTAR DUBLIN-PLEASANTON, LLC,
a Delaware limited liability company,
its Managing Member

By: MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY,
a Massachusetts corporation,
its Managing Member

By: CORNERSTONE REAL ESTATE ADVISERS LLC,
a Delaware limited liability company,
its Authorized Agent

By: 
Name: JAMES R HOWARD
Title: V.P.

Address: c/o Cornerstone Real Estate Advisers LLC
100 Wilshire Blvd., Suite 700
Santa Monica, CA 90401
Attn: Jim Gallagher, Vice President

"BART"

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT,
a rapid transit district

By: _____
Name: _____
Title: _____

Address: P. O. Box 12688
San Francisco, CA 94604-2688
Attn: Office of the General Counsel

STATE OF CALIFORNIA)
) ss:
COUNTY OF Los Angeles)

On March 10, 2006 before me, the undersigned, a Notary Public in and for said County and State, personally appeared James Howard, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Carolyn Zacharski
Notary Public



STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 200__ before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

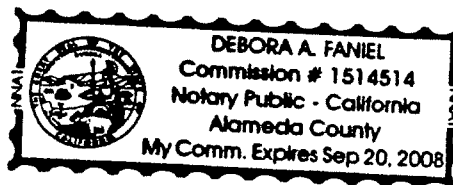
Notary Public

STATE OF CALIFORNIA)
) ss:
COUNTY OF Alameda)

On March 13, 2006 before me, the undersigned, a Notary Public in and for said County and State, personally appeared Jeffrey P. Ordway, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Debra A. Faniel
Notary Public



STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 200__ before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

EXHIBIT A

DESCRIPTION OF COVERED PROPERTY

REAL PROPERTY DESCRIPTION

(3.65 acres)

Real property in the City of Dublin, County of Alameda, State of California, described as follows:

Being a portion of Lot D as said lot is shown on that certain map entitled "Parcel Map, P.M. 4224", filed February 6, 1983 in Book 143 of Final Maps at Pages 6 and 7, in the Office of the Recorder of Alameda County, said portion being more particularly described as follows:

Beginning at the Northerly corner of said Lot D on the Westerly right of way line of Golden Gate Drive as shown on said map (143 M 6); thence Southerly along said Westerly right of way line South 20° 51' 45" West 310.00 feet to the general Northerly line of said Lot D; thence Easterly along said Northerly line the following three (3) courses: 1) North 69° 08' 16" East 15.00 feet; 2) North 24° 08' 15" East 63.64 feet; 3) North 69° 08' 15" East 380.00 feet to the point of beginning.

APN: 941-1500-046 (a portion)

EXHIBIT B

DESCRIPTION OF BART PROPERTY



ENGINEERS
SURVEYORS
PLANNERS

March 8, 2006
BKF Job. No.: 20005039-40

PROPERTY DESCRIPTION

DUBLIN PARCEL:

All that certain real property situate in the City of Dublin, County of Alameda, State of California, and described as follows:

BEING all of Parcel A as said parcel is shown on that certain map entitled "Parcel Map 2621", filed December 20, 1978, in Book 107 of Parcel Maps at Page 50, in the Office of the Recorder of Alameda County, and a portion of Lot D as said lot is shown on that certain map entitled "Parcel Map, P.M. 4224", filed February 6, 1983, in Book 143 of Final Maps at Pages 6 and 7, in the Office of the Recorder of Alameda County, being more particularly described as follows:

BEGINNING at the northwesterly corner of said Parcel A on the westerly right of way line of Golden Gate Drive (right of way varies) as shown on said map (107 PM 50) at a point on a curve, concave northerly, having a radius of 50.00 feet, from which the center bears North 69°08'15" East; THENCE easterly, southerly, and westerly along the northerly, easterly, and southerly line of said Parcel A the following seven (7) courses: 1) easterly along said curve through a central angle of 143°56'25", an arc distance of 125.61 feet; 2) leaving said curve on a non-tangent line North 72°10'41" East 380.69 feet; 3) South 21°05'30" East 220.51 feet; 4) South 76°42'44" West 8.35 feet; 5) South 49°45'36" West 27.56 feet; 6) South 71°24'00" West 125.00 feet; 7) South 72°30'01" West 302.00 feet; THENCE continuing along said southerly line of Parcel A and the southerly line of said Lot D South 83°33'19" West 61.96 feet; THENCE continuing along said southerly line of Lot D South 52°02'34" West 30.97 feet; THENCE leaving said southerly line North 16°09'21" West 72.00 feet; THENCE North 73°50'39" East 73.15 feet to the westerly line of said Parcel A; THENCE northerly along said westerly line North 20°51'45" West 183.45 feet to the POINT OF BEGINNING.

Containing an area of 2.578 acres, more or less.

PLEASANTON PARCEL:

All that certain real property situate in the City of Pleasanton, County of Alameda, State of California, and described as follows:

BEING a portion of the lands described in the Partnership Grant Deed to the San Francisco Bay Area Rapid Transit District, recorded April 14, 1987, as Series Number 87-101735, Official Records of Alameda County, said portion being more particularly described as follows:

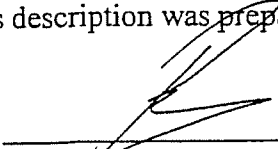
March 8, 2006
BKF Job No.: 20005039-40

COMMENCING at the most southerly corner of said lands on the northeasterly right of way line of Stoneridge Mall Road (63 foot wide right of way) as shown on that certain map entitled "Parcel Map 4184", filed March 27, 1985, in Book 152 of Parcel Maps at Page 69, Alameda County Records, at a point on a curve, concave southwesterly, having a radius of 810.00 feet, from which the center bears South 41°33'46" West; THENCE northwesterly along said northeasterly right of way line and along said curve through a central angle of 15°44'52", an arc distance of 222.63 feet to the POINT OF BEGINNING;

THENCE continuing along said northeasterly right of way and along said curve having a radius of 810.00 feet through a central angle of 12°35'14", an arc distance of 177.95 feet to the westerly line of said lands (87-101735 O.R.); THENCE leaving said northeasterly right of way line along said westerly line North 11°18'10" West 268.68 feet; THENCE leaving said westerly line North 78°41'50" East 174.11 feet; THENCE South 11°18'10" East 331.13 feet; THENCE South 25°48'54" West 35.80 feet to the POINT OF BEGINNING.

Containing an area of 1.258 acres, more or less.

This description was prepared for BKF Engineers.

By: 
Barry T. Williams, P.L.S. No. 6711
License Expires: 06/30/06

Dated: 3/8/06

k:\main\2000\20005039\descriptions\exh b desc.doc

