CTOD CENTER FOR TRANSIT-ORIENTED DEVELOPMENT

October 15, 2010

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

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

Dear Mr. Pollard:

I am writing on behalf of the Center for Transit-Oriented Development (CTOD) to respond to the Federal Housing Finance Agency's request for comments on proposed guidance No. 2010-N-11 related to private transfer fees. While CTOD appreciates the opportunity to provide comments, we urge you to modify the proposed guidance so that it does not eliminate an effective method of achieving significant community benefits.

This proposed guidance would affect not only transfer fees that solely increase private gain, but would also effectively prohibit the use of transfer fees that benefit the community at large, for purposes such as funding affordable housing and transit service. For this reason, we urge you to revise the language in this proposal to only limit the use of private transfer fee covenants that exclusively benefit private entities.

The Center for Transit-Oriented Development (CTOD) provides technical assistance to developers, transit agencies, communities, and investors interested in pursuing improved linkages between transit investments and existing as well as new development. Transit-oriented development (TOD) is increasingly an important part of regional and local strategies to promote sustainable land use patterns that reduce greenhouse gas emissions and provide households with more affordable lifestyles through lower transportation costs. From our work across the U.S., we are aware that both transit agencies and affordable housing providers are facing severe funding shortages, resulting in decreased transit service and fewer affordable units being built. These cut-backs are happening around the country despite the increasing need for affordable access to jobs and housing.

Transit benefit transfer fee covenants are critical to the feasibility of many TOD projects undertaken by transit agencies. In the San Francisco Bay Area, they have been recorded for five upcoming residential developments in the BART service area: Fruitvale, San Leandro, MacArthur, Pleasant Hill, and West Dublin/Pleasanton. The covenants will affect more than 1,409 homes (affordable and for-sale) to be built around BART transit stations. Under these covenants, owners of TOD residential units will pay a transfer fee that goes towards maintaining and improving their neighborhood transit service, its station, and TOD improvements. The transfer fee percentage ranges from 1.5% to 2%; and, the covenant lasts for as long as the transit station operates near fee-paying homes.

Banning transit benefit fees would eliminate more than $21 million in funding (net present value) necessary to the development of TOD around or near transit stations.

We urge the FHFA to revise the Proposed Guidance. As drafted, it fails to distinguish **community fees that are proportional and related to benefits** that fee-paying homeowners enjoy from **private fees that are unrelated to the fee-paying land**. Private transfer fees are captured by unrelated third parties who fail to reinvest in the fee-paying community. Unlike private transfer fees, community fees pay for benefits enjoyed by fee-paying homeowners.

Most surveys in transit literature demonstrate causality between property value enhancement and proximity to transit stations. For example, in San Diego, one recent study found that light rail stations added more than 18% in resale value to neighboring condominiums.[1] Other recent studies have found that, unlike highway infrastructure, the negative impacts associated with proximity to transit stations (traffic, noise, etc.) are outweighed by the positive impacts.[2] In these cases, where transit proximity generates increased property value of up to 18%, a transfer fee of 2% is reasonable, proportionate, and fair.

With regard to affordable housing, there are many U.S. communities, including Martis Camp, CA; Summit County, CO; Teton County, WY; and Plum Creek, ME that have used transfer fees to generate funding for affordable housing projects. With high unemployment rates and scarce resources for financing housing projects, now is not the time to restrict the use of viable funding sources for affordable housing.

The FHFA's concerns about the use of private transfer fees could be addressed in a way that does not also threaten the use of fees that provide direct community benefits. This guidance as written could

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[1] *Land Value Impacts of Rail Transit Services in Los Angeles County*, by Robert Cervero and Michael Duncan, National Association of Realtors and the Urban Land Institute, June 2002; See also *Rail Transit's Added Value: Effects of Proximity to Light and Commuter Rail Transit on Commercial Land Values in Santa Clara County, California, by Robert Cervero and Michael Duncan*, Institute of Urban and Regional Development, June 2001)

[2] See Mineta Transportation Institute, "Literature Review," *Effect of Suburban Transit-Oriented Development on Residential Property Values*, MTI Report 08-07 authored by Drs. Shishir Mathur and Christopher Ferrell, June 2009, p. 5.

inhibit the ability of cities and regions around the U.S. to finance community projects that promote a sustainable, affordable standard of living, improve job access, and reduce household transportation costs through increased transit availability. Please reject this proposal as currently written and work with partners in the community development field to develop revised language that would not have such negative consequences.

Sincerely,

John Robert Smith
President and CEO
Reconnecting America

Dena Belzer
President
Strategic Economics

Scott Bernstein
President
Center for Neighborhood Technology