SONOMA ~ MARIN
SMART
AREA RAIL TRANSIT

SMART
750 Lindaro Street, Suite 200
San Rafael, CA 94901
415-226-0880

October 11, 2010

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

Attention: Public Comments
Re: Guidance on Private Transfer Fees Covenants [No. 2010-N-11]

Dear Mr. Pollard,

The following comments are submitted to the Federal Housing Finance Agency (FHFA) regarding the "Guidance on Private Transfer Fees" and the Notice of Proposed Guidance as filed in the Federal Register (Vol. 75 No. 157 on Monday, August 16, 2010).

The Sonoma-Marin Area Rail Transit (SMART) District is a regional transportation district created in 2003 by the State of California. In 2008, the voters of the District approved a ¼ cent sales tax to fund the construction and operation of a 70-mile commuter rail and adjacent bicycle and pedestrian pathway. The rail system will have fourteen stations across twelve jurisdictions and the District is governed by a twelve member Board of elected officials from those jurisdictions.

One of the critical elements defined in the full SMART District funding plan is the ability to form Benefit Assessment Districts and adopt Developer Impact Fee programs at appropriate locations along the SMART service corridor. Without the opportunity to create localized revenue streams such as those just mentioned, the SMART District may not be able to complete the full construction or provide ongoing rail operations of the voter-approved system. And without the completion of the SMART system, many communities within the District will not have affordable basic access to services like health care or advanced education.

Locating homes and jobs within close proximity to transit and rail stations has been shown to greatly benefit employees, the residents of those homes, and the owners of those properties. FHFA should be concerned not just about the price of a particular home to the homeowner, but also with the transportation costs associated with the location of that home. Recent experiences in portions of the SMART District suggest that foreclosure and unemployment rates are higher in communities that are located far from employment centers with the only transportation option being the private automobile. With the volatility of fuel prices and the expense of automobile ownership, location of properties near transit and rail stations has actually been shown to decrease the combined costs of homeownership and transportation. That reduction in those combined costs is a direct benefit to the individual home owner. In addition, recent studies have shown that homes located in proximity to transit services have actually retained their value proportionally more than homes not located near transit (*Capturing the Value of Transit*, November 2008, Center for Transit-Oriented Development/U.S. Department of Transportation). That maintained (or increased) home value is a direct benefit to the individual homeowner.

Completely eliminating the ability to utilize traditional community-benefits fees, in an effort to eliminate the more recently developed benefit fees for private developers or investors, would be a mistake. It would mean that some communities will be deprived of access to public transit, for example, and would be less likely to achieve their greenhouse gas reduction goals or “livability” dreams.

While the SMART District shares FHFA’s concerns about abuses of transfer fees for personal gain, and applauds the FHFA for trying to address those concerns, I urge the FHFA to not adopt the proposed guidance on private transfer fee covenants (No. 2010-N-11). Instead, please consider providing guidance in a subsequent rulemaking to regulate, rather than prohibit, the use of transfer fees. Such guidance should differentiate between transfer fees that render benefit to the affected property and homeowners and those that only accrue value to unrelated third parties.

Thank you for your consideration of this critical matter.

Sincerely,

Lillian Hames

Lillian Hames
General Manager

Cc: Senator Barbara Boxer
Senator Dianne Feinstein
Congressman Mike Thompson
Congresswoman Lynn Woolsey

COMMENTS: Submit comments to FHFA using any one of the following methods:

- E-mail: regcomments@fhfa.gov. Please include "Guidance on Private Transfer Fee Covenants, (No. 2010-N-11)" in the subject line of the message.
- Mail/Hand Delivery: Alfred M. Pollard, General Counsel, Federal Housing Finance Agency, Fourth Floor, 1700 G Street NW., Washington, DC 20552, ATTENTION: Public Comments "Guidance on Private Transfer Fee Covenants, (No. 2010-N-11)".
- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Peggy K. Balsawer, Assistant General Counsel, (202) 343-1529 (not a toll-free number), Federal Housing Finance Agency, Office of General Counsel, Fourth Floor, 1700 G Street NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comment on all aspects of the proposed guidance, including comments on which actions by FHFA would be most appropriate to address the concerns posed by private transfer fees. The comment period will end on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Copies of all comments will be posted on FHFA's Internet web site at http://www.fhfa.gov. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing