

October 13, 2010

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

Attention: Public Comments

Re: Guidance on Private Transfer Fees Covenants, (No. 2010-N-11)

Dear Mr. Pollard,

Ballona Wetlands Conservancy (the “Conservancy”) and Playa Capital Company, LLC (“Playa Capital”) are compelled to submit these comments to the Federal Housing Finance Agency (“FHFA”) concerning the Notice of Proposed Guidance filed Monday, August 16, 2010 in Vol. 75, No. 157, of the Federal Register (the “NPG”) in which the FHFA proposes to Restrict Government-Sponsored Enterprises (“GSEs”) from investing in mortgages with private transfer fee covenants.

While we are aware of the practices that certain unscrupulous parties have undertaken with respect private transfer fees, a bluntly wielded ban against transfer fees is not an appropriate or well-conceived solution. We believe that a more focused effort may be undertaken to address the improper application of transfer fees, while preserving room for programs, like ours, which provide benefits to an unlikely consortium of the home builders and the environmental community, and indirectly, to the homebuyers and the general public.

**PERPETUAL FUNDING
FOR WETLANDS AND HABITAT MAINTENANCE**

The Conservancy is a California non-profit public benefit corporation that was organized for the purpose of operating and maintaining a 51-acre natural stormwater treatment system and wildlife habitat, consisting of a riparian corridor and freshwater marsh (the “Ballona Wetlands Improvements”) within and adjacent to the Playa Vista master-planned community. The Ballona Wetlands Improvements were constructed by Playa Capital as a result of the settlement of, and entry of a stipulated judgment in, the action titled *Friends of Ballona*

Wetlands v. California Coastal Commission (Los Angeles County Superior Court Case No. C525826)¹. The stipulated judgment also required the developer establish a mechanism pursuant to which the community would perpetually fund maintenance of the natural adornment that the Conservancy now shepherds.

The Conservancy was designed to be a cooperative entity managed by a four-member board of directors composed of one director appointed by each of the following: (a) the Friends of Ballona Wetlands, (b) Playa Capital, (c) a representative appointed by the councilperson for the local district of the Los Angeles City Council, and (d) a representative appointed by the Secretary of Land Resources for the State of California.

The Conservancy operates without public funding and maintains the Ballona Wetlands Improvements as a natural habitat area drawing native wildlife and migrating bird species which are, in turn, admired by the public. Funds for maintenance of the Ballona Wetlands Improvements are derived, in a large part, from transfer fees collected from home sellers in the Playa Vista development. Specifically, at the time residences are constructed in Playa Vista, the above-mentioned stipulated judgment requires Playa Capital to encumber each unit with a Community Enhancement Fee Agreement (a “CEFA”) – i.e., a recorded covenant that provides for payment of seventy-five hundredths of a percent (0.75%) of the gross sales price upon the close of escrow following each resale of a residential unit in Playa Vista.

The CEFA does not create a lien against either the property or the proceeds of sale. Instead, it establishes an unsecured covenant running with the land which binds each owner, individually, to pay the fee upon such owner’s resale of the property. Further, although no lien is created by the CEFA that would compete with mortgage liens, the CEFA nevertheless expressly states that conveyances resulting from foreclosure of a mortgage lien, or transfers in lieu thereof, are exempt transfers for purposes of the transfer fee.

In practice, the transfer fee is imposed with respect to each conveyance for which a Documentary Transfer Tax is payable to the City and County of Los Angeles in accordance with California Revenue and Tax Code Section 11911. The Conservancy’s use of the transfer fees was expressly authorized by the California legislature, as codified in California Civil Code § 1368(c)(2)(A), which permits the collection of a transfer fees “to fund or perform environmental mitigation or to restore or maintain wetlands or native habitat.”

AFFORDABILITY AND DIVERSE SOURCES OF FUNDS

Playa Vista, like many master planned communities, has many parallels to a small municipality. It has a centralized governing body in the form of a board of directors of the communities’ master association, Playa Vista Parks and Landscape Corporation (the “Community Association”), and its residents are bound by certain rules and regulations set out in a recorded set of covenants conditions and restrictions.

¹ The parties to the settlement included the petitioner and respondent in said action, as well as following real parties in interest: the State of California, the County of Los Angeles, the City of Los Angeles, the Southern California Gas Company, and Maguire Thomas Partners-Playa Vista (the predecessor-in-interest to developer Playa Capital).

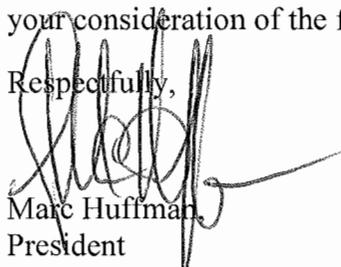
Like a city, the Community Association owns, operates and maintains streets, streetscapes, parks, recreation fields, a community pool, open space and other community facilities, and undertakes other roles that were once traditional municipal functions of City or County agencies. To fund its organization operations and facility maintenance obligations, the Community Association collects direct assessments. However, with each community improvement comes maintenance cost, replacement reserves and insurance costs. And as the costs mount on a finite population, the monthly assessments must rise accordingly. Incrementally, as the assessment rises, affordability of homes in the community suffers.

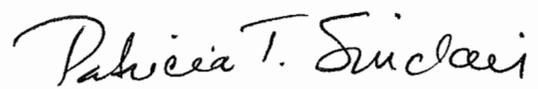
The use of transfer fees to fund the Conservancy's maintenance and operation of the Ballona Wetlands Improvements was a sensible solution to avoid loading this perpetual obligation onto the monthly Community Association assessments. In practice, it differs little from the diverse tax policies of the multi-tiered government (State, County and City) to which owners of property in Playa Vista project are subject – in that, the County collects both annual property taxes from the owners, as well as documentary transfer taxes at the time real property is conveyed. Further, as the Ballona Wetlands Improvements is a feature that adds property value to the home, it seems perfectly appropriate that the payment become due concurrently with the realization of the enhanced value (i.e., at the time of sale).

Contrary to the generalized statement in the NPG that affordability is negatively impacted by transfer fees, our fee has the opposite effect. Utilizing transfer fees to fund the operation and maintenance costs of the Ballona Wetlands Improvements effectively shifted a cost that would otherwise have increased the monthly association assessment – and hence the monthly costs of home ownership – to a closing cost of sellers at the time the home is resold.

Accordingly, we respectfully request that FHFA not prohibit investment by GSEs in financing homes subject to transfer fees to the extent those transfer fees are implemented for the benefit of the community, the environment or the public.

We appreciate your consideration of the foregoing.

Respectfully,

Marc Huffman,
President
Ballona Wetlands Conservancy


Patricia T. Sinclair,
Co-President,
Playa Capital Company, LLC

