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**VIA E-MAIL**

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

**Re: Public Comments, “Guidance on Private Transfer Fee Covenants  
(No. 2010-N-11)”**

Dear Mr. Pollard:

This letter serves as comments by Kennecott Land Company (“Kennecott”) to the Federal Housing Finance Agency’s (“FHFA”) proposed Guidance on Private Transfer Fee Covenants (No. 2010-N-11)(the “FHFA Guidance”).

Kennecott is the developer of a mixed use master planned development known as Daybreak located south of Salt Lake City, Utah. At full build out, Daybreak will have in excess of 20,000 residential units as well as over 14,000,000 feet of office, industrial and retail property that provide job opportunities for residents all integrated into a light rail served brown-field plan. Daybreak has been carefully and painstakingly planned and designed to meet smart growth and sustainable goals. Fundamental to this plan, Daybreak utilizes a Community Enhancement Fee equal to one-half percent of the sales price due upon the transfer or sale of residential units. The Community Enhancement Fees are paid to the Daybreak Community Council, a non-profit corporation for the express purpose of enhancing the greater Daybreak community including providing recreational facilities, amenities to residents, maintenance of common areas, and payment of owners’ association expenses. The Community Enhancement Fee directly benefits each unit owner in Daybreak, and runs with the land. Under the FHFA Guidance, Daybreak’s Community Enhancement Fee would be prohibited and the owners and residents of Daybreak would be forced to make fundamental changes to the assessment structure, drastically reduce levels of services and/or even eliminate community amenities. For the reasons below, Kennecott opposes the FHFA Guidance.

**A. The FHFA Guidance Unnecessarily Collapses Two Distinct Types of Fees**

Kennecott opposes the FHFA Guidance because it collapses two very different transfer fee covenants into one category and broadly prohibits both. Kennecott supports the prohibition of private transfer fees which are paid to a developer or other individual with no connection to the long-term benefit of the

community (referred to herein as “Private Transfer Fees”). Such Private Transfer Fees do not touch and concern the land, and do not benefit the community.

On the other hand, Kennecott supports and utilizes transfer fees that provide common amenities or are reinvested in the community (referred to herein as “Community Reinvestment Fees”). Community Reinvestment Fees touch and concern the land, provide a direct benefit to owners, and help provide the types of amenities which make planned developments such as Daybreak unique and attractive to homeowners.

Kennecott opposes the FHFA Guidance, as currently written, because it does not recognize the important benefits that Community Reinvestment Fees provide to homeowners and communities. Community Reinvestment Fees are reinvested in the communities and help fund important amenities within the communities which otherwise would not likely be funded by monthly homeowner’s association fees. The FHFA Guidance overlooks this important distinction and unnecessarily prohibits both kinds of fees, despite the valuable benefits Community Reinvestment Fees provide to communities like Daybreak.

**B. Individual States have Addressed Transfer Fees and Federal Regulation is Unnecessary**

Kennecott also opposes the FHFA Guidance because the State of Utah recently enacted legislation which prohibits new Private Transfer Fees while permitting Community Reinvestment Fees. The legislation was carefully analyzed with input from a wide range of stakeholders. The Community Reinvestment Fees are required to provide specific, enumerated benefits to the planned community. *See* Utah Code Ann. § 57-1-46. Additionally, under Utah law, the developer must provide a separate recorded notice of the Community Transfer Fee.

The regulation of transfer fees is a state-by-state issue, and the State of Utah has effectively regulated Private Transfer Fees and recognized the value of Community Reinvestment Fees. The FHFA Guidance is redundant and over-regulates an issue best left to individual states.

**C. Specific Impacts on Daybreak**

Daybreak accounts for a large percentage of the home sales in Utah in the past 5 years, with nearly 20% of all new home sales activity in the Salt Lake Metropolitan Statistical Area. It is a thriving and popular community, largely due to the exceptional amenities, community programs, and well-maintained common areas available to each homeowner. At present the community is home to over 8,000 residents living in 2,500 homes of all sizes and types. These important community benefits are for the most part funded by Daybreak’s Community Enhancement Fees.

The Daybreak plan accommodates many of the goals the smart growth movement shares with the administration such as brown-field redevelopment, sustainable land planning and land use, energy and water efficient buildings, a balance of jobs and housing with a mix of housing types and densities all linked with a network of transportation choices including light rail transit and numerous features that encourage walkability. It would be extremely unfortunate to arbitrarily withdraw the benefits Community Reinvestment Fees offer in the creation and ongoing viability of a very complex community like Daybreak that is contributing so much in transforming development patterns both locally and nationally away from sprawl and towards sustainable communities.

The FHFA Guidance would have significant and detrimental impacts on Daybreak. As drafted, the FHFA Guidance would force Daybreak to terminate the Community Enhancement Fee and in turn, drastically reduce the level of services and eliminate amenities to homeowners. This would also likely result in significantly higher homeowners' association fees. In sum, the FHFA Guidance would undermine many of the smart growth and sustainable goals Daybreak's residents have come to expect.

Kennecott recognizes that the FHFA Guidance is meant to protect consumers and help increase transparency of fees connected with purchasing and selling a home. However, as currently drafted, the FHFA Guidance will prohibit any Fannie Mae or Freddie Mac-backed mortgages on properties with any types of transfer fees. This will broadly harm potential homeowners and current homeowners in planned developments across the country, including Daybreak. Specifically, potential homeowners may be unable to finance a home in Daybreak, and current Daybreak homeowners may be unable to refinance their homes. Additionally, Daybreak homeowners will lose valuable amenities and may be required to pay higher homeowners' association fees to continue to enjoy the most basic amenities. The prohibition on Community Reinvestment Fees harms, rather than benefits, consumers, and will have broad and severe impacts in planned communities such as Daybreak.

Please feel free to contact me with any questions or to discuss Kennecott's concerns about the FHFA Guidance. Thank you for accepting comments on this issue.

Sincerely,



Jeff Stephenson

on behalf of

Ty McCutcheon

V.P. Community Development

Kennecott Land Company