September 7, 2012

Mr. Alfred Pollard
General Counsel
Federal Housing Finance Agency
FHFA OGC
400 Seventh Street SW, Eighth Floor
Washington, DC 20024

Sent via email: eminentdomainOGC@fhfa.gov

Subject: Comment letter on Federal Register Notice No. 2012-N-11, *Use of Eminent Domain to Restructure Performing Loans*

Mr. Pollard,

Per the Federal Register Notice No. 2012-N-11, we are submitting this written response to your request to receive input.

We believe that one cannot evaluate and comment on that topic without also considering the use of eminent domain as a response to loans that are in default and subject to active foreclosure proceedings. They are all part of a common universe and need to be considered as a whole.

On the topic of performing loans, we endorse the positions held by Mortgage Resolution Partners (MRP) of San Francisco and The American Federation of State, County and Municipal Employees (AFSCME). Local governments should be able to use eminent domain in this manner and any attempts to block them other than in the appropriate courts in the normal course of an eminent domain proceeding, would not only be unwarranted, but probably illegal, as has been more than adequately argued by other parties.

As to the basic right of local governments to use eminent domain for this kind of use, we feel that to question that right is approaching the point of legal absurdity. For anyone who has been involved even remotely in the legal machinations of eminent domain, it clear that local governments not only have the right to take such action (as long established by the U.S. Supreme Court), but we would argue that they have the obligation to do so.

It is our contention that local governments should use eminent domain to block foreclosures from being completed in their jurisdictions, if other efforts fail. We would advocate that local governments first attempt to take steps directly or indirectly to get the parties initiating foreclosures to disgorge their notes and mortgages on a voluntary basis. Failing that, we would advocate that the local government block those foreclosures by the taking of the notes and mortgages from lenders who do not willingly sell them to those local governments (or their proxies) in lieu of foreclosing on the homeowner.

In contrast to other conditions, a foreclosure proceeding only occurs as a result of a proactive effort on the part of a lender or their agent. Given that lenders have alternatives to foreclosure, putting in motion a foreclosure has to rest squarely on their shoulders. And we would argue that such a proceeding, in today's economic climate, actually constitutes an economic assault on the community that demands a protective response on the part of the local government.

Common sense tells us that a foreclosure is devastating to a homeowner. Less well known is the impact on communities. A 2007 study[1] by the Joint Economic Committee of the U.S. Senate concluded that "Foreclosures are costly – not only to homeowners, but also to a wide variety of stakeholders, including

[1] http://www.jec.senate.gov/archive/Documents/Reports/subprime11apr2007revised.pdf , & summarized in press release at http://www.jec.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=fa65b237-7e9c-9af9-7f02-295f11af9ecb&ContentType_id=66d767ed-750b-43e8-b8cf-89524ad8a29e

mortgage servicers, local governments and neighboring homeowners. The high costs of foreclosures – up to $80,000 for all stakeholders combined – present a strong incentive to prevent them."

Other studies have chronicled additional harm ranging from dramatic increases in crime in hard-hit neighborhoods, mental health degradation in children and adults impacted by foreclosures, and a clear and pervasive negative effect on the economic health and general welfare of our communities.[2] Therefore stopping foreclosures before they happen helps the whole community, financially and otherwise.

All of these negative factors run counter to the fundamental mandate of all governments to take care of the "health, safety and general welfare" of their populations. The current volume of foreclosures pervasively prevents them from fulfilling that mandate and therefore they need to respond with every tool at their disposal to mitigate that problem, including eminent domain if all else fails.

At the core of eminent domain is the right of governments to seize property when doing so is deemed in the public benefit. Public benefit includes the prevention of harm, and police and fire departments are just as much in the public interest as roads or any other public facility, and so building a police or fire station may necessitate the taking of private property wherein the fundamental mission is harm prevention.

Given the evidence of pervasive harm caused by foreclosures, prevention of foreclosures would be no less a benefit to the health, safety and general welfare of our citizens. Thus the use of eminent domain to prevent foreclosures is justifiable as a public benefit. In fact, since the use of eminent domain in this manner is not only legally viable and satisfies the criteria of public benefit, local governments would have a moral and legal obligation to use it for this purpose or they would be failing to live up to their fundamental mandate.

Our non-profit corporation, National Commonwealth Group, Inc., has published a book titled *Eminent Domain: How to use eminent domain to stop foreclosures, rescue homeowners and save communities* that goes into much greater detail on how local governments, working in conjunction with local non-profit organizations, can use eminent domain to specifically address the problem of foreclosures in their communities. In the book we provide more detail on the legal arguments for the use of eminent domain in this manner and put forth a detailed step by step strategy on how local governments and local non-profits can team to carry out a foreclosure prevention program.

We have prepared a free copy of that book for government organizations and officials that can be downloaded from this link:

http://www.eminent-domain.us/govtinfo/EminentDomainAndForeclosures8X11GovtCopy.pdf

In closing we would like to thank you and FHFA for the opportunity to provide input on this important matter. Should you have any questions or comments or need any additional information, please feel free to contact the undersigned at (650) 641-1246. Thank you.

Sincerely,

Michael Sauvante
Executive Director
National Commonwealth Group, Inc.
sauvante@commonwealthgroup.net

[2] http://www.nw.org/network/neighborworksprogs/foreclosuresolutions/reports/documents/7ForeclosureImpacts.pdf