

CONSERVATION

FRONTIERS

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Lupine in bloom at Waddle Ranch, looking north towards Castle Peak, Nevada/Placer

PHOTO COURTESY OF OLOF AND ELIZABETH CARMEL OF CARMEL GALLERY-DOWNTOWN TRUCKEE

This Issue

Using Real Estate Transfer Fees to Deliver Community Projects

Several land trusts are utilizing a new funding tool for land conservation and management. Known as a real estate transfer fee, it is imposed when a house is sold within a residential development. While land trusts have no power to impose the fee, they are the frequent recipient of the fees to expend for certain purposes as defined in each individual agreement. And while the agreements vary, each has the potential to provide a long-term, multi-million dollar resource for conservation purposes over the course of several years or decades.

Introduction

In the last four years, several California land trusts have become the recipients of a long-term revenue stream for acquisition, restoration, management, trail construction and other capital improvements from new residential developments. The source of these revenues is a new funding tool: real estate transfer fees.

The fees can generate hundreds of million of dollars over time for conserving scenic, farm and natural lands and providing parks and other outdoor opportunities. For example, transfer fees on two develop-

ments within Placer County will generate up to \$200 million over the next 20 years for conserving vernal pools and habitat, restoring forests, and maintaining trails.

The real estate transfer fee can serve as an important new tool for meeting the unprecedented population growth challenge and related infrastructure development confronting California today. Most fees have been established as a cost-effective alternative to resolving development disputes although some fees have been structured through voluntary agreements. In either case, local communities



The East fork of Martis Creek flows through Waddle Ranch, Nevada/Placer



The misnamed Dry Lake provides an important stop-over for thousands of migrating waterfowl and other birds, Nevada

Real estate transfer fees are a very valuable tool to help balance residential growth with attractive communities and conservation of natural and farm lands.

can utilize the fee to provide valuable public benefits ranging from conservation to affordable housing to development of parks and trails. And land trusts can play a critical role in this process.

A Closer Look at Real Estate Transfer Fees

In 2004, environmentalists sued the project developer and City of Roseville over a

development plan for 8,400 new homes on the city's last large expanse of vacant land under provisions of the Clean Water Act and Endangered Species Act. In 2005, the project developer and city agreed to a legal settlement that allowed the development in exchange for the preservation of nearly 6,000 acres of open space.

The funding needed to purchase the open space will come from a ½ of 1%

fee on each home sale. Over the next 20 years, each time a home is sold within the development area, the fee is imposed. If a home sells for \$500,000, for example, the fee is \$2500. The fee goes to the non-profit Placer Land Trust which then purchases and manages the open space lands consistent with the habitat-related goals of the program.

A second transfer fee has been created in northern Placer County, near Lake Tahoe. In 2004, a coalition of environmental groups took legal action against the Martis Valley Community Plan which called for extensive development and road expansion through 6,500 acres of sensitive open space. Two years later, all parties reached a settlement that prevented development in the most environmentally sensitive areas of Martis Valley, and provided \$100 million for land conservation, habitat restoration, forest management and workforce housing.

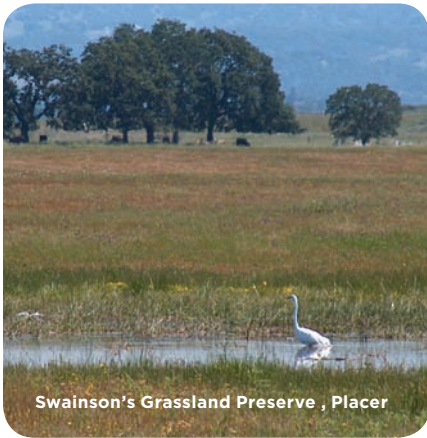
The funds will be raised through a 1% transfer fee on each home resold within the plan area over the next 25 years. Parties involved in the settlement approached the Truckee-Donner Land Trust to be the fee beneficiary and steward of the protected lands. Thus, TDLT receives the fees and expends it for the purposes authorized in the settlement.

Real estate transfer fees have since been negotiated for land conservation in other areas of California, including the Central Valley, where the Sequoia Riverlands Trust will be the recipient of fees to protect important farmland.

Anatomy of the Real Estate Transfer Fee

What is the Fee? The fee is a cost associated with each sale of a house and is recorded on the title of each affected house in the form of a covenant for the duration identified. Real estate transfer fees are not annual assessments, such as those derived from Quimby Act or lighting and landscaping acts, but rather are assessed each time the house sells.

What is the Purpose of the Fee? The fee is used to fund certain projects identified by the community or project developers as needed to offset certain impacts caused by the project or to provide desirable public benefits. Land conservation and affordable housing have been the most common uses for the fee in California.



How Much is the Fee? The fee is calculated as a percentage of the sale price of the house. The percentage is determined at the time the fee is created and applies to subsequent qualified sales.

What Sales Qualify? Considerable variations exist for which sales qualify for fee assessment. For example, the original sale of a house has not been assessed in most cases, but the fee does apply to all subsequent sales. A time limit can be imposed so that only sales of the house within the time limit have the fee assessed. If the fee has a 20 year term, for example, one house may be sold three times and assessed three fees while another house is not sold and, consequently, has no fee.

Who Pays the Fee? Considerable discretion exists for who pays the fee. Either the seller or buyer of a house can pay the fee or they can each pay some proportion.

Who Can Impose the Fee? In known cases relating to resource conservation, the local government and other involved parties agreed to the fee. It is incorporated as a condition of permit issuance and imposed by the project developer. In other instances, project developers have voluntarily entered into agreements with designated non-profits to unilaterally impose the fee on their own projects to provide certain public benefits. Most notably, Lennar Homes has voluntarily worked with Lennar Community Housing Foundation to provide affordable housing funding through real estate transfer fees.

What is the Land Trust's Role? In the fee agreements that involve conservation, the local land trust was the organization chosen to accomplish the fee's purpose, such as implementing land acquisition, restoration, management or capital

improvement activities. In accordance with the purposes of the fee, the land trust conducts its typical activities of working on a voluntary basis with landowners who own lands with particular resources values and who are interested in selling fee title or a conservation easement. The land trust may also be responsible for the long-term stewardship or management of the resources and any improvements, such as a trail system. The land trust has certain reporting requirements and, in some cases, may work with a governing body that holds the authority to disperse the fees.

The land trust does not have to be a party to the dispute to be named as recipient of the fee. However, the land trust will want to assure that the fee is well-constructed and is sufficient to meet any commitments the land trust is accepting.

Opportunities and Challenges

New residential development will explode as California's population growth is expected to fill three Los Angeles-size cities in the next thirty years. Will we be overwhelmed by the growth and transform California into an endless series of subdivisions and roads? Or, will conservation keep pace with growth as we find a way to protect our scenic hillsides, rich farmlands, flowing creeks, and provide parks and outdoor opportunities for ourselves and future generations?

Real estate transfer fees are a valuable tool helping to balance residential growth with attractive communities and conservation of natural and farm lands. Transfer fees are also a useful tool to prevent or resolve litigation surrounding land conversion for development. Local communities, business interests and conservationists can advocate for the use of transfer fees to help assure that their community's

The Law of Transfer Fees



In 2007, the Governor signed the first State law recognizing real estate transfer fees.

Assembly Bill 980 (Calderon) is codified in Civil Code Sections 1098, 1098.5, and 1102.6e, and moves California towards a reasoned and rationale approach to regulating usage of transfer fees by mandating certain disclosures. The bill was sponsored by the California Association of Realtors and

supported by the California Council of Land Trusts, Planning and Conservation League and Sierra Club, and took effect January 1, 2008.

The new law assures accountability by the fee recipient through disclosure of specific details about the transfer fee to buyers past, present and future including amount, term (if applicable), and purpose for which the fee will be used. The bill requires the recipient of the fee (e.g., land trust) to file this information with the county recorder. Land trusts that currently receive funds from a transfer fee have one year to file the required documentation.

In addition, the new law assures disclosure to prospective buyers by requiring the fee recipient to provide a fee disclosure statement at the same time as existing disclosure statements already regulated by law that includes important information regarding fee calculation and payment.

Visit www.calandtrusts.org for complete text of this new law.

future includes housing and important scenic, natural and farm lands.

In addition to the challenge of meeting the housing demand, we must also meet a challenge to eliminate real estate transfer fees. Realtors have already attempted to eliminate the fee through legislation in 2007 – removing even the choice of using the tool from local communities. Builders and a number of conservation and environmental organizations joined together to turn back legislative efforts to eliminate or unreasonably restrict the fee.

Land trusts have several strong roles to play. Through the California Council of Land Trusts, land trusts are engaged at a policy level to ensure these fees remain a viable resource for land and water conservation. At the local level, land trusts can provide information about the transfer fee tool which provides cost-effective solutions to resolve disputes and lasting value for the future of the community. Additionally, land trusts'

purpose and expertise make them a strong choice to deliver the public benefits of the fee – that is, protecting scenic, natural and farm lands and creating outdoor opportunities for the local community.

Real estate transfer fees may not always be the solution, but they are a worthy addition to the conservation toolbox.

To Learn More

More information, including a complete case study, relevant law, and sample agreements and forms, is available at www.calandtrusts.org. You can also contact these land trusts to learn more about their experiences:

- **Placer Land Trust** – www.placerlandtrust.org or call 530-887-9222.
- **Sequoia Riverlands Trust** – www.sequoiariverlands.org or call 559-738-0211.
- **Truckee Donner Land Trust** – www.tdlandtrust.org or call 530-582-4711. ■

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The statewide voice for more than 150 land trusts, the California Council of Land Trusts is a collaboration of land trusts delivering policy solutions and speaking for the conservation of special lands and waters throughout California.

The Council helps land trusts protect the natural areas and farmlands important to the state and local communities by increasing the resources and tool available to conserve and steward land.

We leverage our expertise in policy and stewardship to advocate for the most effective ways to ensure that local places of value and importance are protected and stay protected for the benefit and enjoyment of Californians.

We work to inspire awareness, vision and commitment among California's leaders and communities to protect the Golden State's natural heritage.

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case study

Placer Land Trust and the West Roseville Specific Plan

SCOPE OF SETTLEMENTS: The settlements between conservationists, local government, federal agencies and developers allows for the 2,436-acre Westpark/Fiddymont Ranch to include 8,390 homes, a regional sports park, a “village center”, miles of recreational trails and several new schools. The project impacts sensitive habitat within Placer County, particularly vernal pool grasslands.

For this reason, the agreement requires developers to preserve two acres of vernal pool critical habitat in Placer County for each acre developed. The agreement is front-loaded to protect thousands of acres of vernal pool grasslands within the first five years of the development project. Of the 4,500 acres of grasslands that must be protected under the agreement, at least 3,835 acres of that total must be “critical habitat” for vernal pool species recovery.

Conservation costs will be covered by a real estate transfer fee, expected to generate up to \$85 million over the next 20 years. However, the settlement calls for developers to provide over \$35 million in no-interest loans against future conveyance fee income to the Placer Land Trust to immediately begin preservation efforts. This has already resulted in the protection of 2,119 acres of vernal pool grasslands, including 1,084 acres on three parcels in the path of future development. Placer Land Trust must start repaying the loan once fees are conveyed to the Trust, but about \$18 million won't be paid back until the Trust has finished buying the critical habitat.

Finally, the settlement also requires developers to pay the land trust \$661,380 for land management for three years, plus \$350,000 for two studies to examine the cumulative losses of vernal pool grasslands within the Central Valley, and the biological viability of small vernal pool preserve areas that are surrounded by development.

Visit www.calandtrusts.org to download a complete copy of this Community Benefit Conveyance Fee Agreement.