

Reflections on Real Estate

A Quarterly Publication from Souza Realty & Development

Summer 2006

Under All (Including the Critters) is the Land Exploring the Impact of Habitat Conservation Plans

By Julie Collins

Wildlife conservation is but one type of regulatory control impacting land agents. To explore this topic further, we talked to Jim Gwerder, a Vice President at Souza Realty & Development in Tracy, CA. Jim's work at Souza encompasses many activities, including managing valuation projects and the firm's own cattle ranching properties. But it was his active involvement and knowledge of conservation easements and habitat conservation planning that prompted us to contact him. Jim represented property owner interests in a major three-county biodiversity study, as well as for the subsequent development of the proposed East Contra Costa County Habitat Conservation Plan/Natural Communities Conservation Plan (HCP/NCCP). His knowledge of endangered

species issues and their implications upon landowners and developers is extensive, while his own work as a real estate broker provides a valuable perspective for all land agents.

The 1973 passage of the Endangered Species Act (ESA) ushered in a new era of wild-conser-provid-federal tion for fac ing threat of tion, as the habi- Kit Fox tants that sustain them. Under the Act, landown-ers risk federal prosecution if they kill a protected species, even if it is the unintentional result of something as



Kit Fox

life vation, ing protec- animals the extinc- well as tats that

elementary as running a tractor through a field that harbors, for example, an endangered butterfly.

To help resolve this problem, Congress amended the ESA in 1982 and authorized "incidental take" provisions through the development and implementation of Habitat Conservation Plans (HCPs). Incidental take permits were first issued with the San Bruno Mountain HCP for the San Francisco Bay area, which began as a classic legal conflict between land developers and environmentalists, but emerged into an effort to resolve the conflict through negotiation and compromise.

Since the San Bruno Mountain plan, both the number of HCPs and the size

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Staff Notes

John P. Palmer has been hired by Souza Realty & Development as Project Manager of Land Planning and Development. John will coordinate and oversee the entitlement and development of various residential, commercial, and industrial projects throughout San Joaquin and Stanislaus Counties. John will also provide consultant services, helping property owners, developers and builders gain land use entitlements.

John graduated from the University of California, Davis in 1994 with a Bachelor of Science in Environmental Toxicology and obtained a Master's in

Public Administration from California State University, Stanislaus in 2001. John's experience has included Quality Control Analyst for Dexter Aerospace, working in the Water Quality Laboratory for the City of Tracy Public Works Department, and as a planner in the City of Tracy Development and Engineering Service Department. As a planner for the City of Tracy, John was directly involved in numerous residential, commercial and industrial projects. Through his experience with the city, John has extensive knowledge and understanding of the city's development

and planning processes. John also served as a board member for the City of Tracy's Mid-Manager Bargaining Unit.

In 2005, John went to work in the private sector for J.B. Anderson Land Use Planning. During his tenure with J.B. Anderson, John worked on numerous development projects throughout San Joaquin, Stanislaus, Merced, and Contra Costa Counties.

John and his family live in Tracy and are active members of the community. John recently was selected as a member of the Tracy Tomorrow and Beyond committee.

HCPs continued

and complexity of the areas they cover have increased. Some HCPs are for 1,000 acres or less, while the largest covers more than 1,000,000 acres. Today, there are 415 active, approved HCPs in the U.S., covering approximately 41 million acres.

IMPLICATIONS TO LANDOWNERS, DEVELOPERS

Since wildlife protection laws place more land under government control, landowners are often resistant to HCPs and related initiatives. While landowners aren't interested in breaking federal laws, it's not surprising that many prefer to retain unrestricted rights to their property. At a minimum, however, they want assurances that they'll receive a fair price if they do decide to sell.

Likewise, developers also encounter complications and frustrations complying with wildlife protections. The costs of meeting their mitigation requirements—actions that must be taken to address the potential adverse effects of their development activities—can be significant. Mitigation measures may include habitat preservation (via acquisition or conservation easements), restoration of degraded habitat, creation of new habitat, restrictions on access, or other actions. Furthermore, the process of defining these requirements and gaining approvals from regulatory authori-

ties (sometimes at several different state and federal wildlife agencies) adds delays, making it extremely difficult to conduct accurate long-range planning.

THE CONTRA COSTA COUNTY PLAN

It's fair to say that some HCPs have not been effective in accomplishing their intended goals. In an effort to learn from past mistakes, the East Contra Costa County HCP/NCCP is extremely comprehensive and complex. From Jim Gwerder's perspective, one of the primary goals was to create a program that would streamline the development process and fairly compensate landowners. The draft plan, released last September, is still undergoing final revisions, with approval expected within the next several months. It's a 30-year plan that addresses habitat and species conservation and recovery within about 175,000 acres.

Recommendations for Land Agents
 Since Jim Gwerder works actively as a land agent in an area strongly impacted by habitat conservation issues and represents the interests of landowners on their HCP stakeholder panel, we asked him about the impact of their plan and what advice he'd give other land brokers facing similar situations.

"First," says Gwerder, "it's a good idea to learn something about biology, including

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Reflections on Real Estate is published quarterly by Souza Realty & Development. SR&D is a family-run real estate firm specializing in development, development consulting, land and commercial brokerage, and land valuation.

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Recent Land & Ranch Sales

Below are a sampling of land sales that have occurred since our last newsletter. Note that this information has been extracted from the Multiple Listing Service and public records and has not been verified for accuracy. If you have any questions regarding these sales, please contact our office.

CONTRA COSTA COUNTY			ALAMEDA COUNTY		
ACRES	PRICE		ACRES	PRICE	
810 Wilbur Ave., Antioch	3.00	1,100,000	15612 Kelso Rd., Byron	5.00	705,000
65 Quail Ln., Martinez	4.98	850,000	Palomares Rd., Castro Valley	14.98	550,000
195 Eagle Ln., Brentwood	5.00	1,350,000	221 E. Vineyard Ave., Livermore	17.46	1,600,000
140 Easy St., Knightsen	5.06	515,000	1073 Happy Valley Rd., Pleasanton	32.00	5,750,000
6135 Morgan Terr. Rd., Clayton	8.04	600,000	Mines Rd., Livermore	40.82	500,000
Tule Ln., Knightsen	9.44	660,000	10345 Cull Canyon Rd., Castro Valley	60.87	1,999,000
620 Sellers Ave., Brentwood	10.00	1,700,000			
Hampton Rd., Martinez	10.06	450,000	TRACY AREA		
2310 Eden Plains Rd., Knightsen	11.00	980,000	ACRES	PRICE	
Hampton Rd., Martinez	21.64	925,000	Linne Rd.	2.00	425,000
7777 S. Bruns Rd., Byron	30.89	925,000	25267 S. Lammers Rd.	2.17	540,000
3530 Bixler Rd., Byron	46.79	2,300,000	S. Lehman Rd.	8.54	400,000
			Banta Rd.	9.74	450,000
SANTA CLARA COUNTY			Homestead Rd.	11.00	410,000
ACRES	PRICE		3102 W. Berry Ave.	43.00	800,000
48950 Mines Rd.	38.41	379,000	989 E. Critchett Rd.	50.00	1,230,000
Mines Rd.	751.04	525,000	33667 S. Greenwood Rd.	196.79	2,185,000

Contra Costa County is comprised of 470,400 acres, with 147,859 of these acres allocated to farmlands and harvested cropland. In 2001, the total gross value of agricultural products and crops reached \$97,515,400.

*Contra Costa County website
 (co.contra-costa.ca.us)*

Properties For Sale

±1,368 ACRES
SUNOL RIDGE
ALAMEDA COUNTY
\$9,300,000



±190 ACRES
ARMSTRONG ROAD
BYRON
\$1,900,000



HCPs continued

what species and habitats are in your area and the general requirements for them. Land brokers will probably need to bring a biologist to the property,” he says, “then take this report to the wildlife agency administering the HCP in order to get it approved.”

“Even without an HCP,” continues Gwerder, “these types of properties present a specialized situation. If a land broker was serving an area that included endangered species habitats, it would be important to become knowledgeable on the many issues associated with these unique properties. Also, understanding biology and the distinct requirements of conservation properties makes you more effective in selling them, because you’ll be better able to articulate the specific benefits of that particular piece of land.” Taking this logic a step further, Gwerder suggests that a land broker with expert knowledge about HCPs could farm their services in the same way they cultivate any other niche market.

“Secondly,” continues Gwerder, “you have to understand that the value components in a mitigation property are very different than for, say, a straightforward agricultural production property. If there’s a conservation easement attached to the land, there will be constraints on use and the income it can produce.”

On the other hand, if a property is highly attractive for conservation

purposes, Gwerder suggests that you may want to market it to for-profit conservation groups. “These organizations will take that land and create a mitigation bank, getting federal and/or state wildlife agencies to sign off on the land as being acceptable to mitigate the impacts on several different types of species,” says Gwerder. Subsequently, the conservation group turns around and sells these credits to land developers needing to meet mitigation requirements.

The bank is credits, for specific purposes. example,” Gwerder, oper may mitigate five acres of burrowing owl habitat. He can buy *credits* (not the actual land) through the mitigation bank in order to satisfy his development requirements. Once the bank has been depleted of all its credits, it ceases to serve this purpose.”



Red Tailed Hawk

Other times, Gwerder explains, a property that seems to hold strong potential for conservation mitigation will fool you. “For example,” he says, “I have a 43-acre listed property that’s next to a waterway. It’s completely land-locked and well over half of it is wetlands. Biologists who have evaluated the

site are in some disagreement as to whether the property is ‘too wet’ to allow for wetlands enhancement and creation as called for in our HCP. Whether working through an HCP process or on a case-by-case basis, often developers needing to mitigate wetlands impacts must create them through restoration processes, not simply preserve existing wetlands.”

ATTEMPTING TO FORGE WIN-WIN SOLUTIONS

For many in the land business, habitat conservation plans have come to be viewed as the best approach to the challenges of wildlife preservation. To be sure, HCPs do create constraints not present in other land transactions. But at a minimum, these plans provide an opportunity to develop better, workable solutions for all affected parties, including endangered species. Developers get one-stop-shopping for determining mitigation requirements and gaining approvals; the associated costs may still be high, but at least developers know what they’re dealing with and can plan around them. Landowners, on the other hand, have a better chance of receiving fair compensation for their land. And land agents have an opportunity to serve both landowners and developers as each strives to meet their respective goals.

Article courtesy of REALTORS Land Institute, an organization of professionals specializing in land brokerage, leasing, sales, development, and management of all land types.

SPECIALIZING IN

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RETURN SERVICE REQUESTED

Interest Rates

By Rich Davidson

As you can see, virtually all of the interest rate indexes have continued to increase. The Federal Reserve continues to increase its short term federal funds target rate, the rate member banks are charged on overnight borrowings between banks. This makes short term borrowing, such as construction financing, more expensive. The Fed has now raised the Federal Funds rate by 1/4 percent at each of its past 16 policy meetings from June of 2004 when the rate was a 46 year low of one percent.

The Federal Reserve seems to be growing uncomfortable with rising prices. They are saying they don't mind raising interest rates to combat inflation.

Longer term rates have increased as well. However, it is anticipated that when the Fed signals a pause in its strategy of raising short term interest rates, 10 year treasury bonds are likely to rally, lowering interest rates. Apparently there is a lot of money overseas waiting to be invested in treasuries once the Fed pauses in increasing rates.

The Conference Board's consumer-

confidence index reached a four year high in April to 109.8 but then fell back in May to 103.2 indicating that consumers are growing concerned about the

economy and job prospects. Consumers' overall assessment of current conditions eased but remains favorable.

RECENT LOAN CLOSINGS

1. \$10,800,000 debt and equity construction for residential development in East Bay.
2. \$10,600,000 permanent mortgage for existing assisted living project in East Bay.
3. \$2,000,000 financing secured by profits from future sale of Apartments in South Bay.

ACTIVE REAL ESTATE CONSULTING ASSIGNMENTS

1. \$5,100,000 construction loan for apartment development in Bremerton, WA.
2. \$1,000,000 land loan in Solano County.

If I can be of any assistance with your real estate financing needs, please do not hesitate to call me at (650) 579-3995. My email address is rdavidson@redcofinance.com.

KEY INTEREST RATES & INDICES
June 7, 2006

INDEX	CURRENT RATE	CHANGE FROM 3/2/06	NOTES
Bank Prime	8.00%	+0.50%	Last change: 5/10/06
1 Yr. Treasury	5.08%	+0.34%	
5 Yr. Treasury	4.97%	+0.30%	
10 Yr. Treasury	5.02%	+0.38%	
30 Yr. Treasury	5.09%	+0.47%	
LIBOR (1 Mo.)	5.15%	+0.49%	
LIBOR (6 Mo.)	5.38%	+0.39%	
LIBOR (1 Yr.)	5.47%	+0.34%	
6-Month CD	5.31%	+0.38%	
Freddie Mac 60 day	6.49%	+0.37%	30 year fixed rate
12 Month Treasury Average	4.282%	+0.53%	T average
11 th District Cost of Funds	3.759%	+0.41%	Fund Cost
Consumer Price Index	201.5 (Apr.)		Up 3.5% from year ago
Federal Funds Rate	5.0%	+0.50%	Last change: 5/10/06
Dow Jones Industrial Avg.	10,930.90		Up 1.99% YTD
Consumer Confidence Index	103.2 (May)		Up from 101.7 (Feb.)