

ISSUE NO. 4

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### OPEN SPACE

Riverside County's present General Plan has designated thousands of acres of land "open space". As shown in the accompanying tables, the designations encompass 91 percent of all land in the unincorporated area, including 75 percent of all privately-owned land.

#### PRIVATE LAND

The designations on private land have been made without consulting the owners, or notifying them, and without inspecting their properties. The classifications are shown only on the County's Open Space and Conservation Map, which has been incorporated into the General Plan, and owners generally are unaware of them until they try to sell, develop, or rezone their land.

#### AFFECTED PROPERTY

Land designated open space "may include agricultural lands, parks and recreation areas, vegetation resources, wildlife resources, scenic highways, historic resources, energy resources, fire hazard areas, seismic/geologic hazard areas, slope areas, and other natural resources and hazards."

Candidates for open-space classification include "desert areas with lack of water and other services and poor access", "mountainous" areas, prime or long-term agricultural areas, areas having "State-classified" mineral resources, and "critical wildlife and vegetation conservation areas".

"Mountainous" areas are those deemed to contain slopes greater than 25 percent, even though some or much of the same land may be flat or have more gentle slopes. As shown in the accompanying drawing, moreover, land with a slope of 25 percent is hardly steep and mountainous.

#### INACCURACIES

The open-space designations are based on map reviews, not on-site observations. They reflect only generalized impressions of the land's characteristics.

The Open Space and Conservation Map deals with general areas, not individual properties. All of the land in a designated "open space" area tends to be subject to the same development restrictions, regardless of the different nature of individual parcels.

Flat lands in a "mountainous" area, for example, carry the same designation as steeply sloping land. And land that has never been cultivated, and may be unsuited physically or economically for growing crops, is nevertheless deemed to be farmland if it is in an "agricultural" area.

Thus, the burden of proof is on the affected landowners. It is up to each owner to learn of and challenge his open-space designation. Yet the effort and cost involved make these appeals impractical for most owners.

### DEVELOPMENT RESTRICTIONS

The open space designations supersede the density provisions of a property's land-use zoning. Regardless of zoning provisions, they limit residential use of the land to lots no smaller than 10 acres, or 20 acres in the case of "agricultural" land.

These lot-size requirements make the affected land essentially unusable economically. County regulations regarding dual access roads, underground utilities, and other public improvements, usually make development of the huge lots too expensive for use as individual homesites.

There is an economic loss, then, not only to the owners but also to the County. So long as the designations exist, the affected property cannot readily be sold nor put to significant economic use. The land's market value is therefore depressed, the property produces little tax or assessment revenue, and too few parcels can be created to make improvement-district financing of public improvements feasible.

### LACK OF COMPENSATION

In many or most cases, entire properties have been designated "open space". Yet the owners receive no property tax relief or other compensation.

Where only a portion of a property is affected, the owner may be allowed to develop the remainder. But he receives no density credits or other consideration as compensation for the "open space land" he has lost:

"Sites which are partially indicated as an open space or conservation land use retain that open space or conservation land use for that portion of the site so identified. The remainder of the site has its land use determined by the remaining steps of the Land Use Determination System."

### DEVELOPMENT REVIEW PROCESS

The determination of a property's open-space status is "Step One" in the County's current development review process. If a property has been designated "open space", the County will not accept a land-use application for that land. The open space designation must first be removed by General Plan Amendment, a costly procedure that few owners can afford.

This requirement is described as follows:

“If a specific land use is designated upon the Open Space and Conservation Map, that is the land use which is allowed under the General Plan for that site, and no further steps need to be consulted. When the identified land use may no longer be appropriate for the site in question, a general plan amendment can be filed with the County Planning Department and a fee paid to cover the cost of processing the application. If, following the general plan amendment process, the Board of Supervisors agrees that the site should no longer be designated as having an open space or conservation use, the Open Space and Conservation Map will be changed to reflect their decision, and the second, third, and fourth steps of the Land Use Determination System are consulted to determine appropriate land uses for the site in question.”

Thus, the open-space designations have the same force and effect as zoning designations. Worse, they prevent the submission of land-use applications for the County’s consideration unless they are first removed by General Plan Amendment.

#### APPEALS

Owners can request changes in their open-space designations only through a costly and time-consuming amendment process that offers little assurance of success. The County has made it clear that it will remove an open space designation only if it is shown to be in error (e.g., the land is not really in a “mountainous” or “agricultural” area, as defined by the staff, and should not have been placed on the Open Space Map to begin with).

The County has suggested that owners can “solve their open space problems” by filing Specific Plans along with their requests for General Plan Amendment. But there are relatively few large properties in the county that lend themselves to that “remedy”.

The vast majority of land ownerships consist of small holdings of from 10 to 80 acres that cannot readily be “assembled” into large projects and whose owners are not equipped to engage in such a risky and costly filing process. Also, land designated “open space” tends to be regarded as a “give-away” for which the owner receives little or no compensatory credit in Specific Plan negotiations.

For all practical purposes, then, few owners have any realistic chance for successful appeal. Their open-space land has simply been taken from them without compensation of any kind.

## IMPACTS

The open space designations needlessly destroy (1) the marketability and value of the affected land, (2) its financial borrowing capacity, and (3) the associated public tax and assessment base.

All of this damage is done, moreover, without producing significant environmental benefits:

1. The open space designations are at best premature and unnecessary.  
There can be no threat to environmental values until development actually occurs. The land is already open and undeveloped, and it will stay that way until and unless it is developed. There is no reason, then, for the County to take protective action until land-use applications are received.
2. The designations are largely useless as environmental protections.  
Human use of all of the land is permitted. Owners can roam freely over their entire properties, keep animals, construct access roads and trails, build structures, clear brush, remove trees, and otherwise put their land to rural uses.
3. The designations foster rural large-lot development of poor quality.  
The extremely low densities make it impossible financially to install and maintain adequate roads and other public improvements. Also, because of the nature of the huge lots, there is little incentive to impose CC&R's or other deed restrictions on the use of the land, and quality controls are lacking. The lots are far too large, moreover, for most people to keep up, and the affected areas become eyesores. Maintenance is neglected, buildings and fencing deteriorate, the lots become repositories for old car-bodies and other debris, and blight spreads. Over time, then, the open space areas tend to become unsightly wastelands, not attractive green-belts.

## MARKETABILITY

Through its open-space policies, the County has in effect created a huge inventory of prospective "10-acre lots" that are almost impossible to develop or sell and have little market value.

Potential buyers of the land are limited to:

1. People who want to live on the land (or farm it) and are not concerned that the property cannot be subdivided, and
2. Speculative investors who believe that the restrictions prohibiting subdivision will someday be removed.

Few other buyers are interested in acquiring open space parcels. It is the perceived ability to subdivide that creates buying interest. That is what sustains the land market and creates its values.

The market for the land is therefore exceptionally weak and the property has a correspondingly low value, particularly on a per-acre basis.

Nevertheless, the owners must continue to maintain their land and pay their property taxes and other assessments, or lose their property by default.

### STATE LAW

It has been claimed that the present open space designations are required by State law. But that is not the case. The designations not only are not required, they are arguably illegal.

As one land-use attorney has put it: "It appears that the County has been attempting to effect a re-zoning of substantial portions of Riverside County through the guise of the open space and conservation map without following the procedures required by the Government Code of the State of California and the ordinances of the County of Riverside."

State law merely says that a General Plan must include long-range goals, plans, and policies for acquiring, managing and preserving open space. Implementing details are left to the discretion of local jurisdictions.

The only specific requirement is that there be "an inventory of privately and publicly owned open space land." But this inventory is not supposed to have any regulatory function. In particular, it is not intended to constitute land-use zoning, nor supplant a property's zoning. Its purpose is simply to provide planning information.

Riverside County, however, has made its Open Space and Conservation Map mandatory rather than informational. The Map is not the simple inventory the law envisions. It is a land-use map that restricts property uses and densities in the same manner as a zoning map, and that is not what State law intends (or permits).

### ZONING DESIGNATIONS

The open-space designations duplicate the zoning process, and are therefore redundant. Although open-space informational maps perhaps should be consulted in arriving at zoning decisions, they must not in themselves constitute zoning.

The County's normal zoning and development controls provide ample regulatory protection, and adding another layer is superfluous. The current General Plan notes, in fact, that there is extensive zoning protection within which to "carry out the objectives and policies of the Open Space and Conservation Plan." It goes on to list 13 zoning classifications that provide this protection.

### CONCLUSION

The present open-space designations go well beyond the intent and requirements of State law. As a consequence, they are doing needless economic damage to the County as well as to the many affected property owners.

The designations are unnecessary because:

1. There can be no threat to open-space values until and unless development actually occurs, and
2. Those values are adequately protected in any event by the County's zoning designations.

Corrective Action. Indicated solutions are as follows:

1. Make the Open Space and Conservation Map informational rather than mandatory, in keeping with the intent of State law, and discontinue its regulatory function.

It is the Land-Use Element of a General Plan that establishes permissible land uses. Other elements of the Plan, including the Open Space Element, are intended only to provide supplementary information and policy guidance. The Open Space Element, including the Open Space and Conservation Map, must therefore be used solely for informational purposes, not land-use regulation.

2. Void the present open-space designations, on the grounds that they are duplicative and unnecessary.
3. As State law contemplates, plan to acquire open-space land over time through dedications, easements, exchanges, donations, and purchases, as opportunities arise.

In requiring General Plans to have an Open Space Element, the State is simply saying that (1) open space is a valuable resource which ought to be conserved to the extent practicable, (2) Cities and Counties should therefore have policies and plans for achieving that

objective, and (3) land-use approvals should consider whether the land involved is of such character that some of it ought to be preserved as open space.

4. Defer open-space zonings (or designations) until land is dedicated to that use by its owner, incident to the approval of his Specific Plan or tract map. Only at that time can all of the necessary facts be brought to light, and a proper analysis made. A property's marketability and value must not be limited by the County until and unless there is strong public reason to do so.
5. Acquire private property for open space primarily by requesting land dedications during the development review process.

Within reason, owners are willing to set aside as open space whatever land the County wishes to preserve, provided they are "made whole" economically either through cash payments or non-cash compensation (e.g., through offsetting density increases, development assistance, public improvements, land exchanges, etc.)

6. To make density compensation possible, permit "clustered" development on all properties, large or small. Ensure, however, that the amount of land requested by the County for open space is not so great that the compensatory densities required would be excessive from a marketability standpoint.
7. Have the open-space land dedicated to some appropriate public or quasi-public entity for perpetual ownership and maintenance.

Non-cash Compensation. It is common for cities and counties to secure land dedications in return for non-cash compensation. Typically, the process is as follows:

1. The applicant submits his development plan for staff review.
2. If justified, the staff asks that specific portions of the property be set aside for open space, wildlife conservation, or particular public uses.
3. The applicant analyzes the financial impacts of the dedication request, and asks for density increases or other development concessions on his remaining property to offset the value of the land lost.
4. Negotiations ensue until agreement is reached.



This has to be done on a case-by-case basis because each dedication involves different values and has different financial consequences. Some dedicated land may be especially valuable because of its location, views, or low development costs. In other cases, the same amount of land may have much less value because of its inherent development limitations.

In the case of density compensation, owners must be allowed enough additional density on their remaining land to preserve the net value of their property and avoid any net decrease in the County's tax base. The value of the land following the dedication must be the same as it was before the dedication. It is value that counts, not acreage.

LAND USE IN THE UNINCORPORATED AREA  
OF RIVERSIDE COUNTY

<u>Land Use</u>	<u>Square Miles</u>	<u>Percent of Total</u>
Public land designated open space	4,296.2	63.2
Private land designated open space	<u>1,860.7</u>	<u>27.4</u>
Subtotal, open space	6,156.9	90.6
 Private land in adopted Specific Plans, zoned for residential use, or otherwise not designated open space	          <u>639.5</u>	          <u>9.4</u>
Total, unincorporated area	6,796.4	100.0

Breakdown of private land:

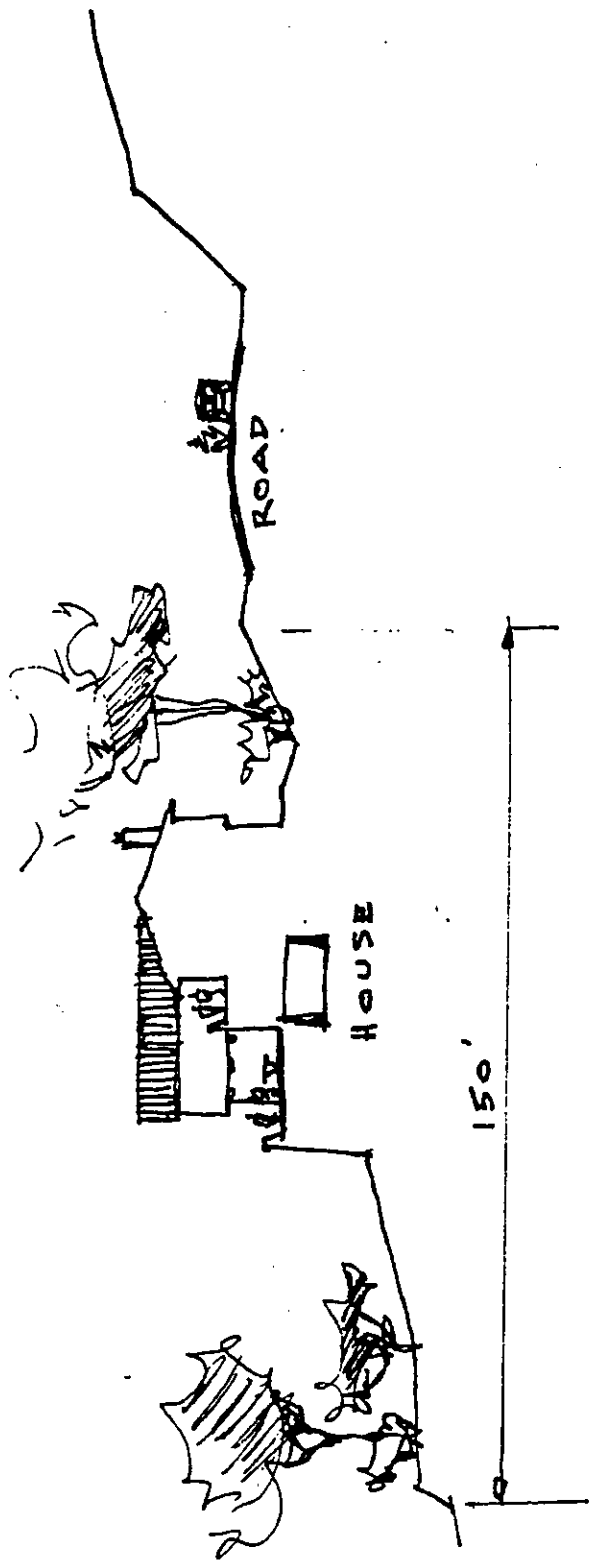
Open space	1,860.7	74.4
Other	<u>639.5</u>	<u>25.6</u>
Total	2,500.2	100.0

Sources: Riverside County Planning Department (open-space allocations); Housing Lands Inventory Addendum, 1985, Housing Element, Riverside County Comprehensive General Plan.

STATUS OF PRIVATELY-OWNED LAND  
IN THE UNINCORPORATED AREA  
OF RIVERSIDE COUNTY

<u>Status</u>	<u>Square Miles</u>	<u>Percent of Total</u>
Designated open space:		
Water resources and flooding	11.0	.4
Sensitive desert land	283.4	11.3
Mountainous land	970.1	38.8
Agricultural land	596.2	23.8
Subtotal, open space	<u>1,860.7</u>	<u>74.3</u>
Developable land:		
Adopted Specific Plans	59.2	2.4
Rancho Villages	5.9	.2
Other land presently zoned for residential use	343.0	13.8
Remaining land potentially available for urban uses (i.e., not designated open space)	231.4	9.3
Subtotal, developable land	<u>639.5</u>	<u>25.7</u>
Total	2,500.2	100.0

Sources: Riverside County Planning Department (open-space allocations); Housing Land Inventory Addendum, 1985, Housing Element, Riverside County Comprehensive General Plan



ROAD

HOUSE

150'

24% GRADE