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OF RIVERSIDE COUNTY

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A Critique

THE OPEN-SPACE POLICIES OF
RIVERSIDE COUNTY

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THE OPEN-SPACE POLICIES OF RIVERSIDE COUNTY

Riverside County has declared thousands of acres of privately-owned land permanent open space, restricting its use generally to minimum lots of ten acres and severely depressing its marketability and value.

In what seems to be a clear misreading of State law, the County has made its Open Space Map mandatory rather than advisory. The Map is not the simple inventory that the law envisions. Rather, it is a land-use map that restricts property uses and densities in the same manner as a zoning map.

The County's open-space policies are therefore excessive. They go well beyond the intent and requirements of State law, and amount to improper land-use zoning.

State Law

The County claims that its open-space policies are dictated by State law. But the 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 lands". But this inventory is not supposed to have any regulatory purpose. It is intended only to provide planning information.

To avoid misinterpretations, the open space policies of San Diego, Orange, and Los Angeles Counties, for example, contain the following clarifications:

San Diego County

"The Open Space Plan is not a land-use plan."

"It is not the intent of this plan for it to be interpreted as a zoning ordinance."

"It is not the intent of the Open Space Element to increase or decrease the density of development permitted by the Land Use Element or zoning applicable to the property."

Orange County

"The Open Space/Conservation Program Map does not designate land use; rather it identifies broad open space areas and corridors with physical, cultural or economic attributes which require consideration at subsequent levels of planning."

Los Angeles County

"It is specifically not the intent of the Conservation and Open Space Element to preclude reasonable use of private property in these areas, but to ensure that where development takes place, identified natural resources are protected and natural hazards are avoided or appropriately mitigated."

Effects

Through its open-space policies, Riverside County has in effect created a huge inventory of ten-acre lots that are difficult to sell and have little value.

There is essentially no "end-use" market for land designated "open space". Prospective users of the property are limited to the few people who are interested in buying a ten-acre parcel to live on, and who can afford to pay for the utilities systems and access roads needed to serve only their own residences.

There is a market, of course, for ordinary 10-acre investment parcels. But few buyers are interested in "open space" parcels that can never be subdivided. It is the ability to subdivide that sustains the land market and creates its values.

The County has therefore denied the affected owners any reasonable economic use of their land. Prospective buyers are limited almost entirely to speculators who believe that the open-space designations may some day be removed, and it is hardly in the public interest to foster such speculation.

Liquidity and Financing. A principal objective of most anyone who owns real estate is to protect the "liquidity" of his or her investment. Owners must be able to sell their properties freely, if and when the need arises, at other than "distress" prices. Yet, the County's open space assignments have made the affected land largely unsaleable.

Also, some or many of the "open space" properties have loans against them. So, now that the value of the land has been impaired, lenders can be expected to begin "calling" their loans or requiring the owners to post additional collateral. And new loans, of course, are difficult if not impossible to arrange.

Tax Base. Declaring land "open space" has not yet resulted in much loss of property-tax revenue. But, unless the nature of the designations is changed, they will increasingly limit the growth of the County's tax base.

The fact that there are tax consequences is acknowledged in the open-space policies of San Diego County:

"It is the intent of this plan that the County Assessor and the Board of Equalization recognize that the open space restrictions as set forth in this plan will have an effect on the value of land and therefore this Open Space Plan should be an important consideration in assessment proceedings."

As development pressures continue to mount throughout the county, values are certain to rise, and probably sharply. The rate of turnover of land ownership is also likely to increase. Consequently, even land that has some development limitations can be expected to produce more and more tax revenue---provided it is not consigned prematurely to "open space".

Compensation

There are no provisions in the County's open-space policies for compensating affected property owners. In many cases, entire properties have been declared "open space" without tax relief or other recompense.

Where only a portion of a property is affected, the owner may be permitted to develop the remainder. But he receives no density-transfer credit or other consideration to compensate for his loss of the open-space land.

This unfair treatment of the property owners cannot continue. If people are required to put some of their buildable land into economically unusable open space, or provide land for public use, they must be compensated for it.

Open space can be preserved properly only by buying it, obtaining lease rights to it, or permitting density transfers. Obviously, the latter course is the easiest and least costly. Within reason, owners are willing to set aside as open space whatever land the County wishes to see preserved, provided they can offset their economic loss by increasing densities elsewhere on their property.

It is customary for cities and counties to grant density-transfer credits of this kind. Typically, the process is as follows:

1. The applicant submits his development plan for staff review.
2. If justified, the staff asks that portions of the property be set aside for open space or particular public uses.

3. The applicant analyzes the financial impacts of the request, and asks for specific density increases elsewhere on his property to offset the value 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. For example, some dedicated land may be especially valuable because of its location, views, or low development costs. In other cases, the same amount of dedicated land may have much less value because of its inherent development limitations.

Practices of Other Counties

The general practice of other counties is not to declare property "open space" until land-use applications are received or particular acquisitions are made.

Generally, the owner receives compensation for the land, either through density-transfer credits, land exchanges, property tax relief, or cash payments, depending on the circumstances.

The following excerpts from the open-space policies of San Diego, Orange and Los Angeles Counties are illustrative.

San Diego County

"Open Space easements may be acquired from property owners willing to relinquish certain rights to construct improvements on their land as provided by Chapter 6.5, Section 51050 et seq. of the Government Code and Board of Supervisors' Policy I-37."

"The lands included in the easement are assessed based upon their restricted use rather than their market value."

"(In the case of planned residential developments) the goals and objectives can best be attained if 40 percent of the total private land...is retained in open space."

"It is specifically intended that the developer be given the right to develop the remaining percentage of his property at a sufficiently higher density so as to compensate for the loss of density created by the open space requirement."

Orange County

"In general, open space areas are offered by landowners for dedication to the County or the County's designee

as part of the overall development process."

"Implementation of this program occurs either through the negotiation of the fee or easement dedications of open space, followed by the expeditious handling/processing of open space dedications, through the purchase of open space lands, or through donation of open space lands."

"(Offers of dedication) shall be made no later than recordation of a final map or application of building permits when no subdivision is required."

Los Angeles County

"Recommended open space includes proposed national, State and regional parks and recreation areas. These recommended areas are based on current Federal, State, City and County proposals; acquisition is subject to available funding."

"For purposes of the General Plan, open space designations are defined as privately owned lands which have been set aside for permanent open space as part of a larger land development proposal."

"Commitment of such lands to long term open space use is typically assured through deed restrictions or dedication of construction rights, secured at the time of development permit approval."

"Within dedicated open space areas, standards and conditions for use are specifically set forth as conditions of the zoning permit or subdivision tract map."

"Open space easements are cooperative agreements negotiated between landowners and governmental agencies or non-profit conservation groups permitting regulated public use of private property where full fee acquisition costs are prohibitive."

"Open space easements are granted for a minimum of ten years and property assessments are adjusted downward as compensation for restrictions contained in the contract."

Thus, these other counties acquire open-space land over time, as State law contemplates, through dedications, easements, exchanges, donations, and purchases, and they compensate the owners accordingly.

Public Interest

Riverside County's open space designations are not needed to protect the public interest. They duplicate the zoning process, and are therefore redundant.

The affected land is already open and undeveloped, and it will stay that way until its zoning is changed and/or development is authorized. Thus, no open space values are threatened, and cannot be until land-use applications are submitted and acted upon.

Action

In requiring that General Plans have an open space element, the State is simply saying the (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.

Thus, open-space policies need to be taken into account in arriving at zoning decisions, but they are not intended in themselves to constitute zoning.

Putting land into an open space "zone" severely limits its marketability and worth. So long as the designation exists, the affected property cannot readily be sold nor put to greater use. Thus, there is an economic loss to the owner (and to the County), either actually or potentially, and the allocations must therefore be made with care. Yet this degree of care cannot readily be exercised until the County receives a land-use application from the property's owner. Only then can all of the necessary facts be brought to light, and a full analysis made.

It is illogical, moreover, to limit a property's marketability and value, and its tax-producing capabilities, before there is any good reason to do it. It may be years before an owner is ready to file a land-use application, and he may never file.

Meanwhile, the County's zoning and development controls provide ample regulatory protection, and adding another layer is superfluous. The Open Space Map should therefore be made advisory only. Actual open space designations should be deferred until:

1. Land is dedicated to that use by its owner, incident to the County's approval of a Specific Plan or tract map.

2. The County negotiates an easement with the owner under the California Open Space Easement Act, or
3. The County acquires land for open space use through donation, purchase, or property exchange.

Developable land is a scarce and valuable commodity. It must therefore not be consigned to open space or public use without compensation to the owner. Density-transfer credits should be given as compensation for any value loss resulting from a dedication, and development clustering should be allowed in order to make efficient use of the remaining property.

The General Plan should therefore contain a policy statement similar to the following:

1. If, at the County's request, the developer dedicates to open space, conservation, or public uses land that would otherwise be developable physically under the County's hillside or other development standards, he may develop the remainder of his property at a density sufficient to offset the loss in value resulting from those dedications.
2. To encourage these dedications, and make compensatory density transfers possible, "clustering" of land uses will be allowed provided the resulting lot sizes meet the County's minimum residential standards.

A policy expression of this kind is needed not only to ensure fair treatment for the property owners but also to preserve the tax base. If owners are regularly denied the use of portions of their property without adequate compensation, the area's land values will suffer and so will the County's tax and assessment resources.