



**PROPERTY
OWNERS
ASSOCIATION
OF
RIVERSIDE
COUNTY**

THE URGENT NEED FOR REFORM

**A CRITIQUE OF THE LAND-USE POLICIES
OF RIVERSIDE COUNTY**

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THE CASE FOR REFORM

People who own vacant land in Riverside County find it increasingly difficult to develop their property. As a consequence, raw land throughout the county has lost much of its marketability and value, and the public tax base it represents has been dissipated.

This situation has come about through a combination of improper open-space designations, unrealistic restrictions on development densities, untenable public-improvement requirements, the lack of a workable system for financing the public infrastructure, a decline in rural land-use quality as the result of forced "four-by-fouring", the impact of economically destructive wildlife conservation efforts, unwarranted interference with City annexations, and unjustified fees and assessments that drive down land values and threaten the ability of property owners to retain their land.

Open Space Designations

Seventy-five percent of all privately-owned land in the unincorporated area of Riverside County has been declared "open space".

The designations limit residential use of the land to lots no smaller than 10 acres, or 20 acres in the case of "agricultural" land. This makes the affected property essentially unusable and unmarketable. Few prospective buyers are interested in acquiring parcels of ten or twenty acres that can never be subdivided. Because the County requires dual access roads, underground utilities, and other costly public improvements, the huge lots are also too expensive usually to develop as individual homesites.

The County's open-space designations were made without notifying the owners, and are based on map reviews rather than on-site inspections. They reflect generalized assumptions regarding the land's slope and terrain, its "environmentally sensitive" character, its unique exposure to fire or other hazards, its potential "mineral resources", or its physical suitability for agricultural use.

The designations are not required by State law. 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 function. In particular, it is not intended to constitute land-use zoning.

Riverside County, however, has made its Open Space and Conservation Map mandatory, rather than advisory. As a result, it is a land-use map that restricts property uses and densities in the same manner as a zoning map. It therefore violates State zoning laws.

Also, by making the land all but worthless, the open-space designations violate the Fifth Amendment to the U.S. Constitution. That Amendment prohibits the "taking" of private property for open-space use or any other public purpose without compensation.

Agricultural Land

City and County planners tend to treat agricultural land as though it were public parkland instead of a private business asset. Farmers and ranchers are expected to keep their land in agricultural use for the enjoyment of the general public whether or not their enterprises remain profitable. The land is classified as "agricultural open space", effectively prohibiting its conversion to urban uses.

Large-Lot Zoning

Thousands of additional acres of private land have been rendered useless by large-lot zoning. Under that zoning, minimum lot sizes allowed by the Cities and the County range from a half acre to twenty acres, with two to five acres being a common requirement.

The market demand for these large lots is limited. Because of their high development costs and correspondingly high price, there are relatively few prospective buyers. Also, many who can afford the price are not interested in maintaining that much property. Thus, on both grounds, the market for the lots is small.

Except in those few places where a demand exists for expensive "equestrian" homes, large-lot zoning makes development impossible financially. Not enough homes can be built on a given parcel of land to support the cost of the required public improvements (i.e., improvement costs cannot be "spread" over enough homes to keep the cost-per-home affordable).

The cost of creating the oversized lots is particularly great. Each lot must be of the minimum size specified, necessitating long road and utility "runs". The zoning does not permit cost-saving measures such as lot-size averaging or development "clustering".

Either because of open-space designations or large-lot zoning, then, most vacant land in the county cannot be developed.

As a consequence, its marketability and value have largely been destroyed, along with the associated public tax base.

City Growth

The County's Local Agency Formation Commission (LAFCO) has been permitting residents of unincorporated areas to form "Communities of Interest". These semi-autonomous communities have been given wide latitude in setting their own land-use policies. Their principal purpose has been to thwart annexations by Cities, and "preserve rural lifestyles" through large-lot zoning.

Cities that become surrounded by these "communities" or other areas of low density find themselves unable to grow. Most large-lot areas have low values, especially on a per-acre basis. They therefore lack the tax and assessment bases necessary to support the cost of extending City roads and other infrastructure into or through those areas.

"Communities of Interest", moreover, are able legally to block City annexations, or at least delay them.

All of this works to the detriment of the county's economic development, and denies legitimate annexation opportunities to people who own undeveloped land.

Density Allowances

At one time, local governments financed, built, and maintained the access roads, sewer and water systems, schools, parks and other public facilities necessary to support residential development. These public improvements usually were financed by issuing "municipal" bonds.

Because of their financing responsibilities, local governments recognized the need for adequate development densities. They knew that new development had to produce enough tax or assessment revenue annually to pay the debt service on the bonds. They also knew that the financial burden on each benefited parcel had to be kept affordable. Otherwise, annual revenue collections would fall short and the bonds would go into default.

Density was therefore viewed as a financing imperative. Densities permitted for a particular residential area or development project were those deemed necessary to "carry" the cost of the required public improvements at a supportable charge per parcel.

All of this has changed. Responsibility for making public improvements has been shifted almost entirely to private

property owners. As a result, Government has lost sight of the relationship that must exist between densities and costs, and it no longer bases density allowances on cost-recovery requirements.

Public Improvements

It is futile and counterproductive for the County and the Cities to require property owners to install and maintain costly public improvements while denying them enough density to recover those costs. But that is precisely what the local governments have been doing.

In Riverside County, every residential development (large or small) is expected to make whatever public improvements the City or County desires, including "off site" improvements that serve the general public. Yet the cost of doing this is not considered in setting permissible densities.

Consequently, most of the county's vacant land has become zoned for residential densities that are too low to support the cost of creating and maintaining an adequate public infrastructure.

Infrastructure Financing

Riverside County has no centralized mechanism for planning, financing, and installing its public infrastructure. Instead, as noted, each individual development project is expected to construct its own "on-site" and "off-site" public improvements.

As a result:

1. There is no effective way of making system improvements gradually.
2. Public facilities serving more than a single development cannot readily be financed.
3. Financing expense is excessive.
4. Development costs are high and unpredictable, and
5. Many prospective projects, especially smaller ones, are rendered infeasible financially and cannot proceed.

Historically, the county's infrastructure has been put in place gradually in response to growing demands. Roads have been widened and improved periodically to meet the needs of increased traffic, and other public facilities have been constructed, enlarged, or modernized from time to time to meet changed conditions.

Under current financing methods, however, progressive improvements of this kind are all but impossible. Because future money availability is not assured, developers are required to put in "ultimate" improvements at the outset.

This inability to install improvements over time in economic phases adds materially to project costs, increases financial risk, depresses land values, and diminishes the public tax base.

Total costs are also higher than they need be. When capital improvements were financed by the infrastructure agencies themselves, interest expense was relatively low. Under present procedures, financing is by commercial loans or bonds issued by small limited-purpose improvement districts, and interest charges are therefore greater.

Because each project must "stand alone", moreover, there is no organized way for it to share costs with other developments and other beneficiaries. Also, there is no limit on the amount of "off-site" cost that a particular project can be asked to bear.

Public improvements, then, currently must be installed largely on a project-by-project basis, at great inefficiency, high cost, and high risk.

"Four-by-Fouring"

Although large-lot zoning usually makes conventional residential development impractical, it does not necessarily rule out other land uses that are less costly (and less attractive). If they are not allowed enough density to make normal development possible, property owners may still be able to :

1. Produce unimproved parcels for sale to investors.
2. Offer large-lot homesites on unpaved (or minimally-paved) "private" streets, or
3. Split their parcels into four or fewer pieces for sale as unimproved rural homesites.

These forms of land marketing are referred to as "lot-sale programs", and the development process is termed "four-by-fouring". The lots are created through parcel-map land divisions rather than tract maps, and typically require only minimal public improvements.

Almost without exception, however, "four-by-fouring" leads

to low-grade development with lasting impacts on area quality and property values:

1. Public improvements and services in the affected areas are inadequate.
2. The local tax base is incapable of producing enough revenue annually to maintain roads and other elements of the public infrastructure.
3. The lots produced are far too large for most buyers to keep up, and they gradually become cluttered with old car bodies and other unsightly material.
4. Property owners disposing of their land through "four-by-fouring" have little incentive to impose CC&R's or other quality controls on the subsequent use of the land, and area residents have little or no investment protection.
5. As time passes, "junk" development spreads, the affected areas increasingly become eyesores, the road system deteriorates, property values decline, the tax base shrinks, and the blight becomes permanent.

Conservation Costs

There is agreement nationally that endangered wildlife should be saved from extinction. The only issue has been who will bear the cost.

It is a long-standing principle of public conservation efforts that he who benefits shall pay. In the case of wildlife protection, the beneficiary is the general public. Federal and State Endangered Species Acts make it clear that the programs are for the benefit of society at large.

Society at large should therefore bear the cost. But neither the Federal, State, nor local taxpayers have shown much inclination to do so. As might be expected, too, the "environmental community" has not offered to help.

Government's "solution", then, has been to shift the cost to those who happen to own the vacant land. Although the owners of this land can hardly be regarded as beneficiaries, they nevertheless are forced to "pay" for the conservation program, either directly or indirectly:

1. The Government in effect "seizes" their land by imposing uneconomic restrictions on its use, or

2. The Government requires them to pay "mitigation" fees in order to develop their land, even if no endangered species are present, or
3. The Government refuses to allow them to develop their land unless they buy "replacement habitat" elsewhere and donate it to public conservation use, or
4. The Government demands that they buy "conservation" rights or credits from other property owners in order to use their land, or
5. Through land-use restrictions, fee requirements, or other development constraints, the Government drives down the value of their land so that it can be acquired for conservation purposes at an artificially low price.

These actions are unconscionable. They violate the Fifth Amendment's prohibition against "taking" private property without fair compensation. They also violate court rulings regarding "mitigation" fees. The courts have held that, to be legal, a mitigation fee must relate directly to the adverse effects that the property's development will have on the community. The fee cannot be charged simply to raise money, yet that is what is happening in Riverside County.

Unbridled Expansion

Initially, wildlife conservation nationally focused on unique animals that the public holds in high esteem. As the programs have grown, however, and governmental staffs have flourished, all sorts of minor animals, rodents, insects, and vegetation have been added to the list, often on questionable scientific grounds. The programs have also been expanded to include obscure species and subspecies that are deemed to be "threatened" or "sensitive", rather than "endangered".

As a matter of law, moreover, the "listed" species must be protected regardless of cost, and anyone harming them, even accidentally, is subject to fine or imprisonment.

Needless to say, it is difficult or impossible to sell land that is even suspected of harboring a protected species. Land that has been earmarked simply for "study" or lies in or near an area that is believed to have "habitat value", is properly viewed as tainted by the real estate market.

The conservation programs are controlled by "environmentalists" who have shown little awareness of the economic

consequences of their actions, and little concern for the legitimate interests of the people who own the land. As a result, land values throughout the county are under growing threat, as is the public tax base.

Fees and Assessments

Land value is a "residual" figure. It is the amount a builder can afford to pay for land after all other costs, including governmental charges, are taken into account. As governmental fees rise, then, land values decline.

Although the fees ostensibly are paid by builders and developers, people who own undeveloped land are the ones who ultimately "pay". Competitive market conditions usually make it easier to offset the charges by driving down land prices rather than raising home prices.

In addition to various development, mitigation, and building fees that depress land values indirectly, public agencies in Riverside County have been levying special assessments on vacant land, directly affecting its value.

The special assessments are based on the questionable premise that owners of vacant land derive substantial indirect economic benefit from whatever urban program is being funded. These annual assessments, for example, include water "stand-by" charges on property that cannot presently be developed, has no water service, and is unlikely to require water service in the foreseeable future.

The special assessments are designed to circumvent the tax limitations of Proposition 13, and often exceed ordinary property taxes.

In addition to making a property more difficult to sell, and depressing its value, the assessments also threaten the owners' ability to keep the land. Most undeveloped land in the county consists of relatively small individual parcels whose owners have limited financial resources. With no near-term prospect of earning income from their land, many owners are hard-pressed to pay the assessments and stand to lose their property by default.

Effects

A continuation of these damaging land-use policies will:

1. Further erode private property rights and the legal protections associated with land ownership.

2. Destroy many millions of dollars' worth of potential land value, constrict the public tax base, slow the growth of public revenue, and create increasing fiscal difficulties for local governments.
3. Hinder the Cities and the County in their expensive efforts to accommodate growth and protect the environment.
4. Destroy the residential quality and potential of much or most of the county's undeveloped land.
5. Prevent the expansion of some or many of the cities.
6. By creating a shortage of buildable land, drive up home prices markedly, thereby denying housing opportunities to young families, single parents, the elderly, and minorities.
7. By destroying the county's growth potentials, reduce job opportunities and consumer purchasing power, thus depressing the local economy.

Residential development is the principal force sustaining the county's economic growth. It creates demands for building services, retail sales outlets of all kinds, banking and other financial services, schools, governmental services, and a host of other supporting activities. As the local population grows, the expansion generates a labor pool that attracts manufacturing industries from outside the area. Directly and indirectly, moreover, it is residential development that provides local government with most of its operating revenue (property taxes, sales taxes, development fees, and State and Federal funding contributions that are based on population).

The reverse, of course, is also true. Land-use policies that discourage residential growth lead inevitably to a decline in an area's economic well-being.

Policy Changes

The policy changes required are as follows:

1. As State law envisions, make the County's Open Space and conservation Map informational rather than regulatory.

2. Defer open-space assignments (i.e., zonings) until land is dedicated to that use by its owner, incident to the approval of his or her land-use application.
3. Discontinue zoning land for single-family residential lots larger than 7,200 sq.ft. unless bigger lots are requested and justified by the property owner.
4. In setting permissible densities, allow each development project enough density to recover the cost of its required public improvements at a supportable charge per dwelling unit.
5. In rural areas, especially, ensure that density allowances are great enough everywhere to make attractive "planned" development feasible economically, and more profitable than destructive "four-by-fouring".
6. To avoid creating shortages of buildable land, and keep land prices and home prices competitive, encourage ample zonings (and rezonings) of land at densities necessary to make conventional residential development possible in the lower and moderate price ranges.
7. To avoid dissipating the county's inventory of developable land, and reducing the public tax base, confine future land acquisitions for wildlife conservation entirely or mainly to publicly-owned land.
8. To avoid the needless destruction of land marketability and value, ensure that no "planning area" or "study area" boundaries are drawn for wildlife conservation purposes.
9. Because of its special importance, exempt agriculture from the provisions of the wildlife conservation program.
10. If private land must be acquired for open space, wildlife conservation, or other public uses, acquisition emphasis should be on methods that do not diminish the public tax base. To ensure that property owners are "made whole" economically, preference should be given to land exchanges, ground leases, and land dedications in return for density compensation.

11. Under density compensation arrangements, property owners should be allowed sufficient additional density on their remaining land to offset the value of the property they have lost as the result of the requested land dedications.
12. To avoid premature impacts on land values, private property should not be acquired involuntarily for open space or conservation purposes prior to the receipt of a development application. No harm can come to wildlife species or open space vistas until and unless development actually occurs.
13. Any acquisitions of private land for open space or conservation use should be handled expeditiously as a routine part of the established development review process, and be subject only to local review and approval.
14. The cost of open space or conservation programs should be borne by their beneficiaries, namely the general public, and not by those who happen to own the land. Property owners must not be required to pay "mitigation fees" or buy habitat land or development rights in order to make use of their holdings, and their property must not be "taken" by regulatory means without compensation.
15. As outlined in our separate paper on the subject, ("Planning, Financing, and Installing the Public Infrastructure"), a countywide process should be established for financing "off-site" public improvements. There is a need for a comprehensive mechanism that will:
 - a. Serve multiple improvement purposes (roads, sewers, water, drainage, flood control, schools, police, fire, parks, etc.)
 - b. Permit the phasing of improvements over time, based on system-wide priorities.
 - c. Render smaller developments more feasible.
 - d. Minimize financing expense.

- e. Spread cost recovery broadly, both geographically and over time.
- f. Share infrastructure costs more equitably between present and future residents, facility users, and other beneficiaries.
- g. Draw on Federal, State, and County resources for financial assistance, particularly in funding "common" works and facilities.
- h. Set limits on the financial obligations of individual development projects for public improvements.
- i. Supplant, or incorporate, present agency exactions and development fees.
- j. Restore the traditional responsibilities and authorities of the infrastructure agencies for planning, financing, and constructing their own system improvements.