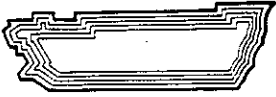


## WILDLIFE CONSERVATION



# PROPERTY OWNERS ASSOCIATION OF RIVERSIDE COUNTY

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Contrary to popular belief, there is no "growing shortage" of open-space land in Riverside County. As shown in Table 1 on the next page, 6,157 square miles of unincorporated area, or 4 million acres, have officially been designated "open space" and are not available for development.

This vast open-space preserve encompasses more than 90 percent of all land in the unincorporated area. And, as indicated in Table 2, the existing preserve includes 75 percent of all privately-owned land.

Thus, claims that even more private property must be acquired for habitat protection deserve to be met with skepticism.

It must be recognized that under current zoning restrictions less than 10 percent of all land in the unincorporated area can be put to urban use. Good buildable land is therefore in short supply, and its scarcity is one of the principal obstacles preventing the construction of lower-priced housing. It is essential, then, that property owners not be deprived of the use of this remaining land, and that the County not be forced to take more property off its tax roles, unless it is absolutely necessary to do so.

Therefore, in weighing proposals to list particular wildlife species as "endangered" or "threatened", the County should demand conclusive proof that:

1. The listing is thoroughly justified on objective scientific grounds, and
2. The only possible solution is to acquire more privately-owned land.

### "Study Areas"

In responding to the listing of the Stephens Kangaroo Rat, the County established ten habitat "Study Areas". The Areas cover 81,000 acres of land, of which 57,000 acres are privately owned.\*

\* - specific boundaries are defined in County Ord. No. 663.5, and shown on maps of the Riverside County Habitat Conservation Agency.

Table 1

LAND USE IN THE UNINCORPORATED AREA  
OF RIVERSIDE COUNTY

<u>Land Use</u>	<u>Square Miles</u>	<u>Percent of Total</u>
Public and private land designated open space:		
Water resources and flood control Preservation of wildlife and vege- tation	181.8 46.6	2.7 .7
Sensitive desert land	2,120.4	31.2
Mountainous areas	1,865.1	27.4
Parks and forests	1,270.7	18.7
Agricultural uses	661.2	9.7
Mineral-resource preservation and management	11.0	.2
Stringfellow hazardous waste disposal site	.1	-
Subtotal, open space	<u>6,156.9</u>	<u>90.6</u>
Developable land:		
Adopted Specific Plans	59.2	.9
Rancho Villages	5.9	.1
Other land presently zoned for resi- dential use	343.0	5.0
Remaining land potentially available for urban uses (i.e., not desig- nated open space)	<u>231.4</u>	<u>3.4</u>
Subtotal, developable land	<u>639.5</u>	<u>9.4</u>
Total, unincorporated area	6,796.4	100.0

Sources:

Riverside County Planning Department (open-space  
allocations); Housing Lands Inventory Addendum,  
1985, Housing Element, Riverside County Compre-  
hensive General Plan

Table 2

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)	<u>231.4</u>	<u>9.3</u>
Subtotal, developable land	<u>639.5</u>	<u>25.7</u>
Total	2,500.2	100.0

Source: Same as Table 1

Although adjustments are being made in Area boundaries as the result of continuing biological evaluations, all private property within a Study Area is subject to possible acquisition. Also, no land can be developed if it would cause a "significant loss of occupied habitat, significant loss of potential habitat, significant loss of movement corridors, significant loss of buffer areas, (or) increased significant management difficulties."\*

A similar approach is contemplated if more species are listed. Under the County's Multispecies Habitat Conservation Strategy, thousands of acres of additional land could be assigned to study areas or other prospective preserves.\*\*

There are at least three things wrong with this approach:

1. Establishing study areas destroys the marketability and value of the affected land, along with the related public tax base.
2. Unless the County intends to buy the preserve land promptly, and has the necessary money on hand to do so, establishing the study areas probably amounts to an unlawful "taking" of private property for public use without compensation, and
3. Public money in the large amounts necessary to buy substantial acreages of privately-owned "habitat" land is simply not available and probably never will be.

Because land markets are highly sensitive, drawing study-area boundaries makes the affected land unmarketable. Few prospective buyers are interested in land that:

1. Might or might not be developable for some unknown use, to some unknown extent, and at some unknown time, and
2. Might or might not be acquired by the County as a wild-life preserve to some unknown extent, at some unknown time, and at some unknown price.

Given these uncertainties, bonafide end-use buyers have no reasonable basis upon which to arrive at prudent purchase decisions, and they are unlikely to make offers for study-area land.

\* - Final EIR, Riverside County K-Rat Habitat Conservation Program, March, 1990.

\*\* - One source estimates that as many as 410,000 acres might ultimately be involved.

Although there could be some speculative interest in buying the land at "distress" prices, it is hardly in the public interest for the County to create a situation that appeals only to land speculators. Thus, for all practical purposes, establishing study areas renders the affected land worthless.

For this reason, the present concept quite likely violates the "takings" clause of the Fifth Amendment to the U.S. Constitution, and, if so, it exposes the County to potential successful lawsuits and damage claims.

This problem might not arise if the County bought the land quickly. Owners of the acquired land presumably would receive fair-market compensation, and the value-depressing "cloud" would be removed from the rest of the properties. But the County is unlikely ever to be able to buy all of the land promptly enough to avoid running afoul of the "takings" clause.

#### Funding Difficulties

Under the K-rat program, the County and the participating Cities have imposed a mitigation fee of \$1,950 per acre on new development within the historic range of the rat. They also look to other money sources:\*

"Additional funding (will) be raised through local, State, and Federal funding resources as well as voluntary contributions. These funding sources include State and Federal funding secured through existing programs such as the Land and Water Conservation Funding Act of 1965, the California Wildlife Conservation Fund/ Proposition 70, and the Environmental License Plate Fund. Other potential funding sources include special legislation, grants from wildlife and conservation foundations, local discretionary funds for wildlife and open space, and other contributions."

The County's fund-raising efforts began in December 1988, and as of March 1992, have yielded only \$26.5 million, all of it from developer mitigation fees and a \$500,000 State grant.

Thus far, the Habitat Conservation Agency has bought 1,000 acres of privately-owned land for \$3 million, and has received another 1,200 acres free from the State and the Metropolitan Water District of Southern California.

\* - Final EIR, Riverside County K-Rat Habitat Conservation Program, March, 1990.

The Agency has set aside \$2.5 million to cover its operating and maintenance expense, leaving \$21 million for additional land purchases.

Just how much land remains to be bought is unknown. Much depends on whether additional "endangered" species are listed and what the land requirements are of the Multispecies Habitat Conservation Strategy. A total of 100,000 acres, however, appears to be a modest estimate.

The 1,000 acres that have been bought so far cost only \$3,000 an acre. But, even if the Agency could buy the rest of its land at the same low price, it would have to raise \$300 million in order to acquire 100,000 acres of privately-owned land. And if the average purchase price reached a moderate figure of only \$10,000 per acre,\* the 100,000 acres would cost \$1 billion.

The Agency's prospects of raising substantially more money than it already has are not bright, and raising as much as even \$300 million is out of the question, let alone \$1 billion.

Thus, despite the relatively low value of much of the study-area land, its market price is still higher in many or most cases than the Agency can afford, and prices are likely to continue to increase faster than the Agency's buying ability.

Even if the Agency had the financial resources necessary to acquire substantial amounts of privately-owned land, it could take years to go through the purchase and condemnation process. In the meantime, the affected land would remain under a "cloud" and essentially off the tax rolls.

The Agency's land-buying program, then, is neither feasible financially nor desirable, and should be abandoned.

#### Recommended Approach

Rather than trying futilely to purchase enough private land to support its program, the Agency should seek to obtain whatever private land it needs primarily through free dedications.

The only workable solution would seem to be for the Agency to:

1. Delete all private property from published "study areas".

\* - The EIR notes that raw-land prices in Riverside County in 1989 ranged from \$3,000 to \$85,000 per acre.

2. Maximize the use of public land for wildlife conservation purposes.
3. Conserve its scarce financial resources by confining its purchases of privately-owned land to exceptional properties that are offered for sale voluntarily by their owners.
4. Acquire other privately-owned habitat land by negotiating open-space dedications with the owners during the development review process (there can be no threat to wildlife until development actually occurs, thus earlier protection is unnecessary).
5. During the development review process, ask the applicant to set aside a reasonable amount of land as open space for wildlife preservation and other public purposes.
6. In return, ask the County to allow enough density on the remaining land to offset the value (not necessarily the acreage) of the land dedicated to permanent open space.
7. Have the open-space land dedicated to the Habitat Agency, the Parks Department, the Nature Conservancy, or some other appropriate entity for perpetual ownership and maintenance.
8. Ask the County to give its planning staffs the latitude necessary to negotiate these private land dedications and the offsetting density compensation, and
9. Request that the General Plans of the Cities and the County be amended to add the following provisions:
  - a. "If, upon request, the developer dedicates land to open space, wildlife conservation, or public use, the remainder of the property may be developed at a sufficiently greater density to offset the loss in value resulting from that dedication."
  - b. "To encourage these dedications and make compensatory density transfers possible, 'clustering' of land uses will be allowed provided the resulting sizes of residential lots meet the County's (or City's) minimum urban standards."

- c. "The amount of land requested for dedication will not be so great as to result in compensatory densities on the remaining land that would be excessive from a marketability standpoint."

This procedure could be put in place quickly simply by permitting density transfers, clustered development, and density compensation. There would be no need for the County to stop development, destroy its tax base, or waste its scarce financial resources by needlessly buying land.

There would have to be assurance, of course, that the property owner or developer would not be forced to give up so much land that the off-setting densities granted would be excessive from a marketability standpoint. But, so long as that requirement were met, property owners and developers would have little reason to oppose the arrangement.

This approach, moreover, is not new. It is the way that land dedications traditionally have been negotiated. Riverside County itself employed the procedure prior to the adoption of its present General Plan, and the concept is tried and true.

In the final analysis, the only practical way of protecting endangered species is by allowing multiple uses of the affected land so that costs can be shared. On public land, for example, the protection of endangered species must go hand-in-hand with money spent to create other public benefits such as recreation, flood control, water supply, wilderness preservation, and so on. Only through multi-use concepts of this kind can there ever be enough public money to go around.

For the same reason, wildlife protection on private land can be achieved only in conjunction with private development. It is the value created by development that makes the protection feasible economically.

These are the directions, then, that the Agency's program must take; there is no other practical approach.