



Secondary Land Use

Utility Rights of Way in Southern California

In addition to the increasing cost of available land, the growing scarcity of developable acreage in Southern California has increased development on real estate parcels that were previously considered marginal or undevelopable.

BY MILES ANDERSON

California, which boasts eight of the top 50 American cities, is the most populated and one of the fastest growing states in the nation. The California Department of Finance projects that California's population will grow to over 40 million by 2012 and surpass 50 million by 2036.

The growth of California's population has impacted more than our crowded freeways. "A growing population requires new roads, houses, services and workplaces," noted Hoonie Kang, Partner at Los Angeles based Kearny Real Estate Company. "While these requirements benefit the state in many ways, they have also created an environment of excess demand for the limited supply of real estate available. The imbalance in the real estate market has led to a land shortage in Southern California, which over time, has significantly escalated prices and limited many types of new development."

SECONDARY APPLICATIONS

Secondary land use refers to the practice of using a fixed real estate asset to accommodate an application beyond its primary function. By definition, it can only occur in instances where the primary function does not fully consume the utility of the real estate that supports it, and where the secondary application does not prohibit or unduly interfere with the primary function.

Any "mixed-use" development has a secondary land use component in its combination of varying property types to maximize yield from a fixed amount of real estate. Outside the commercial realm, public utility easements like electric utility corridors and rail ROW's are some of the best examples of land that appear to have the physical capacity to support secondary real estate uses, although there are a number of other property types that fit this category as well.

Secondary land use cannot occur in instances where the primary use ceases to be operative, like in the case of abandoned easements which would more appropriately be defined as “reuses.” Additionally, secondary land use does not refer to secondary applications that consume little or no real estate, like housing fiber optic cable, wireless transceivers or pipelines.

SUPPLEMENTING DWINDLING LAND SUPPLY

Infill development, the process of developing vacant or underutilized parcels within existing urban areas that are already largely developed, is actively underway throughout Southern California as a means to supplement the dwindling supply of land.

“There simply isn’t much developable acreage left in Southern California; what is left are challenging properties that are either not worth developing or that provide significant barriers to profitability,” said Bob Drury, Partner at Santa Ana-based Red Mountain Development.

Infill development is critical to urban culture in the face of an expanding population base because, if done successfully, it makes existing cities more livable, creates benefits for its citizens, government and the economy, and channels economic growth into existing urban and suburban communities.

When taking inventory of the urban landscape in Southern California for potential infill development sites, one of the few remaining untapped sources of largely undeveloped and underutilized land are utility rights of way (ROW). ROW’s represent literally thousands of acres of underutilized acreage in the Los Angeles Basin.

Robert Swayze, Economic Development Bureau Chief of Long Beach Economic Development puts utility ROW’s into the context of infill development. “An issue for many cities in the county is the lack of developable land. Underutilized land — such as utility right of ways — offer terrific opportunities for cities in a variety of ways, such as economic development, green space, recreation, etc. When land was a plentiful commodity, you could adopt a more expansive land use policy, but with an increasingly limited availability, land use moves right to the head of the line in terms of strategic decisions for municipalities. Making better use of right of way will require more creative and enterprising concepts.”

As our population grows denser, a growing number of social and economic factors will increase pressure on utilities to identify and evaluate coherent land use strategies for their underutilized ROW’s. The use of utility ROW’s in urban areas to support real estate

applications that service surrounding areas can help impede urban sprawl and conserve natural resources at the periphery.

The flipside of secondary land use on utility ROW’s is the potential risk of dedicating utility ROW for commercial use in the face of an uncertain future. In addition to requiring more real estate, a growing population will inevitably require more power. New demand, technologies and directives can all affect the way utility ROW’s are used and configured to efficiently transmit power. Secondary land uses on ROW’s can potentially limit options and cause a utility to pursue a course that is less than optimal.

Although secondary land use on utility ROW’s has many tangible benefits, and the decision to allow real estate applications on ROW’s is frequently an easy one to make, the difficulty comes in determining what uses and level of utilization will be optimal.

In the past, passive uses have prevailed on ROW’s since these are the most compatible with power transmission. They also generate the least economic and social value. The uses that are currently demanded in cities are generally higher-impact applications that often involve the construction of improvements and greater and longer term utilization of real estate.

While allowing more substantial infill development on utility ROW’s promotes urban functionality and efficiency, the demand for more power to fuel and sustain growth must not be discounted. Today, many of the answers about secondary land use on utility ROW are not within reach, but certainly the questions surrounding this issue are becoming increasingly clear.



Southern California Edison has 60 acres of right of way in Unincorporated San Bernardino County.



Southern California Edison right of way in Rancho Cucamonga, CA

SOCIAL AND ECONOMIC VALUE

Utility ROW's are a practical venue for a number of critical applications often demanded by and necessary to the surrounding community. In mature urban markets, many of these uses are typically unable to compete against more profitable applications for scarce real estate and are pushed to outlying areas. While these uses may not be the most profitable, displacing critical applications from the population base can be a recipe for increased congestion, pollution, inefficiency and blight in an already stressed urban environment.

Secondary land use has existed on utility corridors for decades, however the social and economic value of utility ROW's has yet to be assessed from a real estate perspective, let alone exploited. Historically, utilities have not viewed ROW's as income producing assets; the massive expanses of land require extensive maintenance and security and thus, have been primarily an operational expense.

The private sector has always found cost-effective alternatives to utility ROW's, so until recently, there was no significant demand to put this land into play. Without commercial demand, utilities did not generally consider secondary land uses based on financial benefit, so their goals were focused on reducing maintenance, gaining goodwill by providing public benefit uses like parks and recreation areas, and promoting uses with the greatest degree of operational flexibility.

Craig Luna, Manager of Real Estate for the Los Angeles Department

of Water and Power (LADWP) explained their position on secondary land use. "DWP has maintained an ongoing secondary land use program for over 30 years...The basic objective is to derive additional benefits from our real property holdings over and above the primary use of that property, which is to provide safe and reliable water and energy services to the Department's 3.9 million customers—the residents, businesses, institutions, and governmental entities of the City of Los Angeles. Those benefits can comprise additional revenues, as well as other allowable uses of our rights of way such as recreational purposes."

In terms of commercial applications, agricultural land and nurseries represent the most significant incumbent uses on utility ROW's in Southern California. Despite the considerable acreage that they consume, their benefit to both the utility and the surrounding community is increasingly in question. With land in high demand, LADWP is currently pursuing a "reevaluation of our already ongoing program to see where we can make improvements and determine whether the current program is providing the best return to our ratepayers and stakeholders," noted Luna.

There is no way for utilities to steer clear of the secondary land use issue since utility ROW's are highly visible to the urban population. And because they transect a densely populated environment, they tend to draw attention and constant interest from passersby. Luna elaborated, "Because the Department's real property interests and corridors cover a widespread geographic area, we have received inquiries from a diverse group, including other public agencies, adjacent owners and private parties for all types of uses."

At the end of the day, the key lies in identifying an appropriate level and type of secondary land use on utility ROW's – one that provides for the maximum social benefit, economic returns and operational functionality. "The challenge for the Department and other public agencies with diverse real estate portfolios is achieving a balance between public and private interests in using our property, while maintaining the integrity of our facilities and guaranteeing their long term availability into the future," added Luna.

LEVELS OF SECONDARY LAND USE

Ultimately, the amount and types of uses and development that will occur on utility ROW's will be defined by the utilities, however policy must be logical and reasonably administered to pass public scrutiny. While outside influences will affect secondary land use policy to some degree, utilities will always design policy to balance financial, operational and social objectives.

In examining secondary land use practices and policy among several utilities, there are clearly defined levels of secondary land use.

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Obviously, the most conservative approach is to prohibit any secondary land use on utility ROW's. This position is hard to justify without supporting rationale, and none of the major utilities we spoke with actually advocate this strategy.

A slightly more liberal policy is to permit limited secondary land uses under license agreements with cancellation provisions. These arrangements limit the types of uses that will occur and typically preclude improvements from being constructed, so rents generated are subsequently nominal.

The Orange County Water District (OCWD) pursues a conservative secondary land use policy. “We use a lot of OCWD's land for lease purposes from duck/pheasant hunting, fishing concessions, golf (driving ranges over water), dog training (Prado Dam), sand and gravel operations, nurseries, etc. These all appear to be profitable and good use, and they provide security for our facilities,” noted Wes Bannister, board member of OCWD.

A more aggressive approach to the OCWD model is to grant short to moderate term leases as Hydro One has done. In 2002, the province of Ontario assumed ownership of close to 50,000 acres of transmission corridor lands. Hydro One's operations are more complicated than most since they handle both electric lines and gas pipelines on the same ROW's.

To effectively manage and optimize the benefit of hydro corridors, Ontario conducted a comprehensive study and developed a hierarchy of uses for their corridors. Their public use principles hierarchy states:

- New linear public uses have top priority
- New provincial/inter-regional uses have priority over local uses
- New non-linear public infrastructure uses have priority over private
- Non-linear recreational uses have priority over private where same practice exists
- Multi-use corridors are preferred
- Interim uses are permitted
- Local public uses considered at market value
- New recreational uses with local limited revenue potential will be charged \$1/year plus property taxes/maintenance

“In developing our program, we first went to all of the affected municipalities and asked them to submit land use proposals,” said

Patrick Grace of Ontario Realty Corporation. “We received 35-40 replies and are currently evaluating and prioritizing them. Hydro One limits commercial uses to five-year terms, although we haven't had occasion to move anyone yet. Our main concern is ensuring that we do not disrupt any of our longitudinal uses, or allow any secondary uses to block our corridors. We are not done with the evaluation process, but we are moving forward.”

“In the past, Ontario Hydro allowed a car dealership, a Home Depot, and a Wendy's/Tim Horton's. It comes down to the fact that there is no new land, and while we strive to accommodate several uses on the corridors, we must be careful to ensure that we do not block these corridors,” added Grace. “The primary purpose of this land is the distribution of power.”

One of the most progressive secondary land use programs identified is from Southern California Edison's (SCE). There are a multitude of



Edison Park in Huntington Beach, CA



Vault Self Storage in Orange County, CA

secondary land uses on SCE ROW's in the Los Angeles Basin, including golf courses, parks, playgrounds, horse stables, amusement parks, agricultural land, self storage facilities, retail stores, public recreation facilities, truck parking, auto storage, RV storage and nurseries. In 2001, SCE issued a Request for Proposal (RFP) soliciting a single developer to construct and operate 22 self-storage projects underneath SCE power lines.

Self-storage facilities generally have a high building to land ratio and involve significant construction and permanent structures. Tustin-based development firm RHC Properties won the RFP and is currently developing a number of properties. To date, they have completed two facilities, and a third is slated to open in July 2007 under the trade name Vault Self Storage (www.vaultstorage.com).

Richard Hall, President of RHC Properties explains some of the challenges and benefits that RHC has dealt with in undertaking this project. "This is a challenging endeavor in a number of ways. Entitlement has been a major challenge, and you have to understand that SCE's primary objective is the delivery of power, so certain safeguards must be built into every project. We have to ensure that there are specific clearances from lines and towers, and we must provide access and design our projects in such a manner as to not interfere with SCE's primary operations," said Hall.

"Not every developer is suited to this type of development, as it requires someone who is willing to accept a great deal of risk. Additionally, they need to dedicate significant time and effort to see this process through, and most importantly, they must be flexible," noted Hall. "All in all, SCE has been great to work with. I feel that we are collectively doing something positive for SCE, the community and for the ratepayers."

THE BENEFITS

Before we can fully understand and evaluate approaches to secondary land use on utility ROW's, it is important to identify the risks and benefits. Almost any secondary land use application can provide some level of benefit to users and the surrounding community. At a minimum, uses that are housed on ROW's effectively free up unencumbered sites for higher and better uses, and thereby promote a more efficient urban model.

Ed Pullen, General Manager of Manheim Auto Auctions provides a good example of this, as he leases SCE right of way for automobile storage. He notes, "We lease a right of way site for vehicle storage. We chose the site because of its proximity to our physical location and cost use requirements. There really isn't much available land in our part of town, and the alternative was to commute from a much further distance."

On a larger scale, Jerry Wood, Director of Transportation and Engineering for the Gateway Cities Council of Governments (and one of the architects of the Interstate 710 expansion project), explained how ROW's can be used to support freeway expansion. "The I-710 freeway is bordered over much of its length by Edison and DWP power lines and easements. In cooperation with these two utility companies, the expansion and improvements to the freeway cannot proceed without some encroachment into these adjacent utility corridors. The alternative will involve significant property impacts that would affect businesses and homeowners who border the freeway opposite these two utility corridors."

Wood expanded further, "In some cases, it will not make any difference to these other properties, as the new ramps or freeway lanes must traverse these adjacent utility corridors. Hopefully, solutions can be developed as we work closely with these other agencies to ensure that, however their facilities are impacted, the costs to mitigate can be developed and borne by the freeway improvement project. This will take unprecedented cooperation and creativity."

"Also, the adjacency of the transportation corridor with the utility corridor makes it efficient to use these energy corridors for projects that would benefit the region. Once again, it would take a cooperative and creative approach to do this. However, with the need to expand transportation facilities, the joint use and cooperation between transportation and utility corridors is a good idea and would ultimately benefit the traveling public and utility customers as well."

THE RISKS

Secondary land use on utility corridors has the potential to support development, increase parkland and recreational venues and enhance host communities by providing a variety of income producing commercial and public benefit uses. By the same token, whatever the secondary use, there is risk involved with occupying ROW for purposes other than the transmission of power.

The foremost concern in any secondary land use application on a utility ROW involves comprehending how it will affect the primary use, both now and, more critically, in the future when operational objectives may change, population may shift and technological requirements may evolve.

There are a number of areas that should be thoroughly investigated prior to considering any potential secondary land use. These include:

- **Compatibility:** understanding how the use will affect utility infrastructure, its operation, access and adjacencies
- **Financial Benefit:** cost to utility in lost opportunity, or other indirect costs, versus income/savings generated
- **Entitlement Risk:** risk involving zoning designations that require re-entitlement prior to allowing a constructive use other than power transmission
- **Liability:** potential for legal complications arising from the proposed use
- **Exit Strategy:** strategy to reacquire the ROW if required for future operations

When considering these and other pertinent factors, the best way to manage secondary land use is to follow Ontario Hydro One's model and develop a detailed policy that includes research and input from various stakeholders. This policy will identify suitable uses and ensure management decisions are not made arbitrarily and without consideration for the long-term operational and financial objectives of the utility.

Development of an effective policy requires extensive research, discussion and coordination with various departments of the utility, local government and other stakeholders.



DSC Logistics in Mira Loma, CA

SOCIAL AND FISCAL RESPONSIBILITY

Despite the many challenges, efficient secondary land use of utility ROW's is becoming a matter of social and fiscal responsibility. This is not to say that any one strategy has proven better than another, but only that some coherent strategy is necessary to efficiently utilize a scarce and demanded resource. Given current conditions in many urban areas, the failure to effectively utilize utility ROW's is tantamount to waste.

Increasing attention on public utility corridors for real estate value is a byproduct of a growing urban population. The most effective means to manage this demand is in development of a workable formula that can help the utility realize income, goodwill and economic benefit, where a user/developer can use/develop profitable projects, and cities and local communities can benefit.

"Urbanization and competition for space are something we all feel in Southern California," noted Mark Rogers, President of TRG Land, Inc. "Demand for open space and utilitarian land uses and services compete with the demand for housing, office, and retail. Innovation and economizing space are at an all time high, and innovators like SCE and RHC Communities that capture opportunities to make use of overlooked resources like utility right of ways help to reduce these pressures."

Robert Swayze agreed, "The first step is always bringing the issue to the forefront -- and then letting creative minds craft new solutions for a new era." ●