

receiver areas and to create equitable standards for approval of transferred densities or floor area.

The principal drawback of TDR is that it is entirely market-dependent. Private sector interest is likely to wax and wane with economic fluctuations. Therefore, it cannot be applied as a single solution incentive.

#### **5.4.8 Severe Development Restrictions**

The most significant court challenge of development restrictions involved Lucas vs. The State of California. In 1986, The State of California attempted to improve public access and visitor appreciation of its beaches by prohibiting development within 40 feet of the farthest landward extent of the coastline, based on old coastal photographs. A developer, David Lucas, found his lots to be completely within the setback zone, and sued the State for compensation, alleging an illegal takings. After several years and appeals, the US Supreme Court eventually found for Mr. Lucas, and The State purchased the lots from him for \$1.5 million. While a loss to the environmental movement, a closer reading of the Supreme Court decision makes it apparent that the Court ruled strictly on the basis of economic issues. The State of California regulation was based on improving the tourism industry, not in improving public safety. Two aspects of the Court's decision are worthy of consideration in Riverside County. First, the Court differentiated between a taking that eliminated all value, verses regulations that only diminish value. Diminution does not necessarily require compensation. Second, the Court indicated that taking of a property to prevent harm does not require compensation. It is in the government's mission to protect the health, safety, and welfare of its citizens. Development prohibition based on natural hazards may be required under this mission.

While it is a difficult course to steer, there are a few steps to take to fall within the decision in the Lucas Case:

- do not eliminate all economic value of a property;
- identify other, more appropriate land uses based on public safety considerations;
- work with adjoining property owners to transfer development rights from impacted properties to less impacted properties;
- be prepared to defend a more public utilization of the property based also on public safety considerations; and,
- be very accurate and forth right with the basis for the hazard delineation

#### **5.4.9 Property Acquisition**

Perhaps one of the most far-reaching solutions to promote safer development is to prohibit development through public acquisition of unsafe properties. Parcels thus acquired could be turned to public uses that are more in harmony with the natural hazards inherent in the property. Open space and habitat protection are ideal uses for properties in high wildfire, floodplain, landslide, or active fault hazard zones. While initially more expensive, the costs associated with property acquisition will be less than the costs of the disaster after the natural hazard event occurs.