

**Drought-tolerant landscaping,** like that used at Santaluz in San Diego, California, is a way to reduce water use in dry climates.



SWA Group

**Easements and Covenants.** An easement is the right of one party to use another's property for a specific purpose, such as running a utility line or gaining access to a landlocked parcel. Unless an easement is created with a specific termination date, it survives indefinitely, regardless of the property's ownership. Only the beneficiary, or the party benefiting from the easement, can terminate it, typically at some cost to the property owner. Utility easements usually grant access for making repairs, and new development cannot interfere with that access. For example, if pavement or a building is constructed over an easement, the utility company has the right to make utility repairs with no obligation to restore any damage done to the property owner's improvements. Utility easements commonly prohibit any placement of structures, surface improvements, or large landscape materials within the easement right-of-way.

Easements have other purposes. Scenic easements have been developed as a mechanism to preserve undeveloped rural areas with great aesthetic value. Such easements are used to protect important views in the natural landscape. Conservation easements are applied to preserve areas of ecological, historic, or scientific significance. Air rights grant permission to develop in the air space over a property, as, for example, when a railroad allows construction of an office building over a railroad station.

Covenants, also called deed restrictions, are private restrictions that remain in force for all future property owners, usually restricting the activities or uses permitted on the property. Covenants typically extend beyond regulations enforceable by public authority, but they cannot supersede public regulations or be illegal under any existing laws. A property owner may create deed restrictions at any time. Once created, however, they remain in force unless all parties subject to the covenants agree to remove them. A title survey is the only reliable document for investigating easements and covenants; they do not show up on plats. Developers must carefully

review any easements and deed restrictions to ensure that none exist that will affect development.

**Utilities and Public Services.** Water, sanitary and storm sewers, electricity, gas, and telephone are critical factors in site selection. Before purchasing a site, a developer should always confirm the proximity of services and whether they are available to the site. For example, a water line adjacent to the site may be unavailable to that property because the line's capacity is already committed or because the jurisdiction restricts development by limiting access to utilities. A developer should never simply take the word of the property seller but should verify availability with each utility company. Developers should ask the following questions before putting an option on the site:

- How long will it take to obtain service?
- How much will it cost?
- When is payment due?
- When must application for service be made?
- Are public hearings involved? (Public hearings may cause delays and increase political risk.)
- Is the provision of service subject to any potential moratoriums?
- Are easements needed from any other property owners before service can be obtained?
- Is the service capacity adequate?

**Water and Sewerage.** Ideally, developers want to tap into an existing suitably sized public water main on or near the site because it costs less. Thus, a developer should determine whether it is possible to connect the proposed project with an existing system and where that connection can be made. This connection could affect the planning and staging of development. If such a connection is possible, available capacity should be ascertained.

Whether an existing water main will be sufficient to serve a proposed project depends on the development's