



ENABLING ACT

(Section 35100)

As of January 1, 2016

Santa Clara County Open Space Authority

Enabling Act

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CHAPTER 1. General Provisions

§ 35100. Citation of division

This division shall be known and may be cited as the Santa Clara Valley Open-Space Authority Act.

§ 35101. Legislative findings and declarations

The Legislature hereby finds and declares all of the following:

(a) In Santa Clara County, open-space preservation and creation of a greenbelt are immediate high priorities needed to counter the continuing and serious conversion of these lands to urban uses, to preserve the quality of life in the county, and to encourage agricultural activities.

(b) In order to deal in an expeditious manner with the current serious loss of these properties, the county needs to develop and implement a local funding program involving properties occupied for urban purposes which give rise to the need for open-space preservation that goes significantly beyond current existing funding that is not adequate to resolve these losses.

(c) It is in the public interest to create the Santa Clara Valley Open-Space Authority so that local open-space preservation and greenbelting decisions can be implemented in a timely manner to provide for the acquisition and maintenance of these properties.

(d) All persons owning developed parcels enjoy the privilege of using, and benefit from, the availability of open space.

§ 35102. "Agricultural activity"

"Agricultural activity" has the same meaning as "agricultural activity, operation, or facility, or appurtenances thereof" as defined in subdivision (e) of [Section 3482.5 of the Civil Code](#).

§ 35103. "Authority"

"Authority" means the Santa Clara Valley Open-Space Authority created pursuant to this division in the County of Santa Clara.

§ 35105. "County"

"County" means the County of Santa Clara.

§ 35106. "Governing board"

"Governing board" means the governing body of the authority.

CHAPTER 2. Creation of the Open-Space Authority

§ 35120. Creation and jurisdiction

The Santa Clara Valley Open-Space Authority is hereby created on February 1, 1993. The maximum jurisdiction of the authority shall include all areas within the county, except those areas of the county presently within the boundaries, including the sphere of influence, of the Midpeninsula Regional Open-Space District. Each city situated within the maximum jurisdictional boundaries shall pass a resolution stating its intent to be included within the authority's jurisdiction by January 15, 1993. These resolutions shall be transmitted to the board of supervisors. A city that fails to pass that resolution or which formally states its intent to not participate shall be excluded from the authority's jurisdiction. The creation of the authority is not subject to review by the Santa Clara County Local Agency Formation Commission.

§ 35121. Detachment of territory annexed to city outside authority; Inclusion of city outside authority's jurisdiction

(a) If, after the establishment of the authority's boundaries pursuant to Section 35120, territory within the authority is annexed to a city which is outside the authority, that territory may be detached from the authority pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with [Section 56000](#)) of Title 5 of the [Government Code](#)).

(b) If, after the establishment of the authority's boundaries pursuant to Section 35120, a city which is outside the authority's jurisdiction desires to be included within the authority's jurisdiction, the city shall adopt a resolution as provided in Section 35120. Following the adoption of the resolution, the territory within the city may be annexed to the authority pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with [Section 56000](#)) of Title 5 of the [Government Code](#)). If the authority levies a special tax or an assessment and proposes to extend that special tax or assessment to the territory proposed to be annexed, the annexation shall not be complete until the authority complies with the procedures for levying the special tax or the assessment in that territory, including notice, hearing, and an election, in that territory, when required.

§ 35122. Annexation of contiguous territory

Notwithstanding Section 35120, after the establishment of the authority's boundaries, the boundaries of the authority may be altered by the annexation of contiguous territory, in the unincorporated area of a neighboring county, pursuant to the annexation process in the Cortese-Knox-Hertzberg Local Government Reorganizing Act of 2000 (Division 3 (commencing with [Section 56000](#)) of Title 5 of the [Government Code](#)). The board of supervisors of the neighboring county shall pass a resolution stating its intent to be included within the authority's jurisdiction before any territory in that county may be annexed to the authority

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§ 35123. Vacancies

(a) Commencing in 2008, the elections of members of the governing board shall be held during the statewide election in November of the year that the term expires.

(b) The elections and the terms of office of the members of the governing board shall be determined pursuant to the Uniform District Election Law (Part 4 (commencing with Section 10500) of Division 10 of the Elections Code).

(c) Any vacancy in the office of a member of the governing board shall be filled pursuant to Section 1780 of the Government Code.

§ 35124. Compensation of interim board members

Each member of the governing board may receive compensation in the amount of seventy-five (\$75) for attending each meeting of the governing board, not to exceed two meetings in any calendar month, together with any actual and necessary expenses incurred in the performance of his or her official duties required or authorized by the governing board. The determination of whether a member's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code. Reimbursement for expenses is subject to Section 53232.2 and 53232.3 of the Government Code.

CHAPTER 3. Administration

§ 35130. Governing board; Meetings; Expenses

At the first governing board meeting in January, the governing board shall select a chairperson, who shall preside at all meetings, and a vice chairperson, who shall preside in the absence of the chairperson. In the event of the absence of the chairperson and the vice chairperson, the members present, by an order entered into the minutes, shall select one of the members present to act as chairperson pro tempore, who while so acting, has all of the authority of the chairperson.

§ 35131. Adoption of rules

The governing board shall adopt rules for its proceedings consistent with state law.

§ 35132. Quorum

A majority of the members of the governing board constitute a quorum for the transaction of business. All official acts of the authority require the affirmative vote of a majority of the members of the governing board, unless otherwise provided in this division.

§ 35133. Acts of authority; Motion, resolution or ordinance

The acts of the authority shall be expressed by motion, resolution, or ordinance of its governing board.

§ 35134. Conducting meetings

All meetings of the governing board shall be conducted pursuant to Chapter 9 (commencing with [Section 54950](#)) of Part 1 of Division 2 of Title 5 of the Government Code.

§ 35135. Duties of governing board

The governing board shall do all of the following:

(a) Adopt an annual budget following the public hearing required under Section 35136, hire an independent staff of its own, and fix the compensation of its officers and employees.

(b) Adopt an administrative code, by ordinance, which prescribes the powers and duties of the authority officers, the method of appointment of the authority's employees, and methods, procedures, and systems of operation and management of the authority.

(c) Cause a postaudit of the financial transactions and records of the authority to be made at least annually by a certified public accountant.

(d) Do any and all things necessary to carry out the purposes of this division.

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§ 35136. Adoption of annual budget; Public inspection

(a) Notice of the time and place of the public hearing for the adoption of the annual budget shall be published pursuant to [Section 6061 of the Government Code](#), and shall be published not later than 30 days prior to the date of the hearing.

(b) The proposed annual budget shall be available for public inspection at least 30 days prior to the hearing.

§ 35137. Inclusion of employees in Public Employees' Retirement System

The authority may enter into a contract with the Board of Administration of the Public Employees' Retirement System to include the employees of the authority in that retirement system who are eligible for membership therein, and the employees shall be entitled to the same benefits as state employees pursuant to Part 5 (commencing with [Section 22750](#)) of [Division 5 of Title 2 of the Government Code](#).

CHAPTER 4. Powers and Functions

§ 35150. Adoption of seal

The authority may adopt a seal and alter it at its pleasure.

§ 35151. Power to sue and be sued

The authority may sue and be sued, except as otherwise provided by law, in all actions and proceedings, in all courts and tribunals of competent jurisdiction.

§ 35152. Powers regarding property

(a) The authority may take by grant, appropriation, purchase, gift, devise, condemnation, or lease, and may hold, use, enjoy, and lease or dispose of real and personal property of every kind, and rights in real and personal property, within or without the authority's jurisdiction, necessary to the full exercise of its powers. The authority may accept and hold open-space easements and purchase development credits wherever the authority may acquire real property.

(b) Priority for open-space acquisition should be focused on those lands closest, most accessible, and visible to the urban area. The remote ranchlands east of the westernmost ridgeline of the Diablo Range shall be acquired as permanent open space only through conservation easement purchases or the granting of lands or conservation easements by owners to the authority.

(c) Lands subject to the grant of an open space easement executed and accepted by the authority in accordance with this division are enforceably restricted within the meaning of [Section 8 of Article XIII of the California Constitution](#). An easement or other interest in real property may be dedicated for open-space purposes by the adoption of a resolution by the governing board, and any interest so dedicated may be conveyed only as provided in this section.

(d) The authority shall not validly convey an interest in any real property actually dedicated and used for open-space purposes without the consent of a majority of the voters of the authority voting at a special election called by the governing board and held for that purpose. Consent need not first be obtained for a lease of any real property for a period not exceeding 25 years if that real property remains in open-space or agricultural use for the entire duration of the lease.

§ 35153. Eminent domain

The authority may exercise the right of eminent domain to take any property necessary or convenient to accomplish the purposes of this division, except that it shall not take lands in active ranching, lands in agricultural production, lands in timberland production zones that are not threatened by imminent conversion to developed uses, or lands without the authority's jurisdiction. Furthermore, the authority shall not acquire any interest in real property by eminent domain unless the real property is contiguous to real property that is already owned by a public agency for open-space use. For purposes of this section, "owned" includes a lease or other contractual commitment to which the public agency is a party, to maintain the property in open-space use for a term of at least 25 years. The right of eminent domain may only be exercised upon the approval of a four-fifths vote of the governing board. If the property owner objects to the acquisition of his or her property by eminent domain, the property owner may, within 30 days of the governing board's

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vote, file a written objection with the legislative body of the city or county in which the property is located. If the property is located in more than one city or in the county and one or more cities, the property owner shall file his or her objection with the legislative body of the city or county that includes the larger portion of the property. If the property owner files a timely written objection, the legislative body shall consider the objection at a public hearing to be held within 45 days of its receipt. If the legislative body of a city upholds by a two-thirds vote, or the legislative body of a county upholds by a majority vote, the objection by determining that the acquisition is not in the best interests of the public within the authority's jurisdiction, the authority shall not exercise its right of eminent domain on that property.

§ 35154. Exchange of dedicated property

The authority may, upon a four-fifths vote of the governing board and after holding a public hearing pursuant to [Section 6061 of the Government Code](#), exchange any real property dedicated and used for open-space purposes for real property that the governing board determines to be of equal or greater value and is necessary to be acquired for open-space purposes.

§ 35155. Maintenance of acquired property

All property acquired by the authority shall be properly maintained in a reasonable fashion consistent with the natural conditions existing upon the properties, and those properties immediately surrounding it. This maintenance obligation does not hold the authority to a higher standard of care, but is simply a statement of a basic function of the authority.

§ 35156. Development of property; Utilization fees

The authority may plan, adopt, lay out, plant, develop, and otherwise improve, extend, control, operate, and maintain lands, trails, natural areas, and other facilities for public recreation or agricultural activities. The authority may impose fees for the utilization of its properties which do not exceed the cost of providing services.

§ 35157. Claims against authority for money or damages

All claims for money or damages against the authority are governed by Division 3.6 (commencing with [Section 810](#)) of [Title 1 of the Government Code](#), except as provided in this division or by other statutes or regulations expressly applicable to this division.

§ 35158. Acceptance of funds or donations; Government grants

The authority may accept funds or donations from any public or private source for the purposes of acquisition of open-space lands or for projects which are in furtherance of the authority's open-space or greenbelting objectives within its jurisdiction. The authority may seek government grants and private donations.

§ 35159. Contracts for services, supplies or construction; Bidding

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(a) The governing board may contract with any person or public agency for any services, supplies, equipment, or materials, or for the construction or completion of any building, structure, or improvement.

(b)

(1) Notwithstanding any other laws, a contract for any supplies, equipment, or materials, that exceeds twenty-five thousand dollars (\$25,000) shall be contracted for and let to the lowest responsible bidder. If two or more bids are the same and the lowest, the governing board may accept the one it chooses. A contract of seventy-five thousand dollars (\$75,000) or less may be let by informal bidding procedures, but a contract of more than seventy-five thousand dollars (\$75,000) shall be let by formal bidding procedures.

(2)

(A) This subdivision shall not apply to contracts for services, including, but not limited to, planning, consulting, legal, or appraisal services, or to contracts for services authorized to be procured pursuant to Chapter 10 (commencing with *Section 4525*) of *Division 5 of Title 1 of the Government Code*, if the governing board awards the contract to the most responsible and qualified bidder.

(B) For purposes of this subdivision, "most responsible and qualified bidder" means the bidder deemed by the governing board that best fits the needs of the service contract or meets the criteria prescribed in subparagraph (C).

(C) In determining the most responsible and qualified bidder, the governing board may use criteria, including, but not limited to, all of the following:

(i) Experience of the bidder as a firm, including past performance of the firm on contracts of similar size and scope.

(ii) Experience and qualifications of personnel employed by the bidder.

(iii) Demonstrated understanding of the scope of the service, including schedule and plan to accomplish the service.

(iv) Best overall financial return to the governing board on the contract.

(v) In addition, for purposes of this paragraph, a responsible bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, and experience to satisfactorily perform the work or provide the goods required.

(c) The notice inviting bids shall set a date for the opening of bids. The first publication or posting of the notice shall be at least 10 days before the date of opening the bids. For purposes of contracts requiring formal bidding, notice shall be published at least twice, at least five days apart, in a newspaper of general circulation in the authority, or if there is none, it shall be posted in at least three public places in the authority. The notice shall distinctly state the nature of the contract.

(d) The governing board may reject any bids. If the governing board rejects all bids, it may either readvertise or adopt a resolution, by four-fifths vote, declaring that the contract can be performed more economically by the employees of the authority or obtained at a lower price on the open market. Upon adoption of the resolution, the governing board may undertake the project without further complying with subdivisions (b) and (c).

(e) If bids are not received, the governing board may undertake the project without further complying with subdivisions (b) to (d), inclusive.

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(f) In the case of an emergency, the governing board may adopt a resolution by a two-thirds vote of all the members of the governing board declaring that the public interest and necessity demand immediate expenditure of public money to safeguard life, health, or property. The governing board may expend any sum required in the emergency without submitting the expenditure to bid.

For the purpose of this subdivision, "emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Emergency includes a fire, flood, earthquake, or other soil or geologic movements, as well as a riot, accident, or sabotage.

CHAPTER 5. Funding

§ 35170. Legislative intent; Supplementation of local revenues

The Legislature, by the enactment of this chapter, intends that the authority use any funds provided by this chapter to supplement existing local revenues being used for open-space acquisition, preservation, or maintenance purposes. The county and the cities within the jurisdiction of the authority are further encouraged to maintain their existing commitment of local funds for these purposes.

§ 35171. Review and assessment of needs related to open--space lands; Plan for expenditure of revenues

(a) The authority shall review and assess the needs for acquisition, preservation, or maintenance of open-space lands. As part of this review and assessment, the authority shall solicit proposals from the cities in the county within the boundaries of the authority and from a citizens' advisory committee, the membership of which shall be determined by the authority based upon criteria which provides a broad representation of interests within the authority's jurisdiction. The membership of the citizens' advisory committee shall reflect the cultural and ethnic diversity of the population within the authority's jurisdiction. The authority shall adopt a procedure for evaluating these proposals in consultation with the cities and the citizens' advisory committee in the authority's jurisdiction. The entity submitting any proposal shall consider the impact the proposal may have on the availability of affordable housing.

(b) Based on the evaluation, the authority shall prepare a plan for the expenditure of the revenues expected to be derived from funding provided for this division, together with other federal, state, local, and private improvements, and funding.

(c) In addition to acquisition, preservation, or maintenance of open-space lands, the expenditure plan shall also include projections of revenues likely to be available in the next five years for capital, maintenance, and operational purposes. The expenditure plan shall establish general areas for acquisition without identifying specific parcels, and shall be periodically reviewed and amended. Before adoption or amendment of an expenditure plan, the authority shall conduct public hearings on that plan. No expenditure for open-space lands shall occur until the initial expenditure plan is approved.

§ 35172. Special tax

The authority may impose a special tax pursuant to Article 3.5 (commencing with [Section 50075](#)) of Chapter 12 of Part 1 of Division 1 of Title 5 of the Government Code. The special taxes shall be applied uniformly to all taxpayers or all real property within the authority, except that unimproved property may be taxed at a lower rate than improved property.

§ 35173. Assessment levy

The authority may levy assessments pursuant to the Improvement Act of 1911, Division 7

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(commencing with Section 5000), the Improvement Bond Act of 1915, Division 10 (commencing with Section 8500), and the Municipal Improvement Act of 1913, Division 12 (commencing with [Section 10000](#)) of the [Streets and Highways Code](#).

§ 35174. Indebtedness

The authority may incur indebtedness to finance capital improvements pursuant to Chapter 4 (commencing with [Section 43600](#)) of [Division 4 of Title 4 of the Government Code](#).