

WHAT HAPPENS TO THE EASEMENT WHEN I SELL THE LAND?

Open space easements run with the land and are binding on all successors in interest of the landowner. The Open Space Easement Ordinance (Section C13-47) requires the landowner/seller to provide disclosure and to ensure the buyer signs the disclosure prior to completing the transfer.

CAN AN OPEN SPACE EASEMENT BE TERMINATED?

An open space easement agreement may be terminated by filing a notice of nonrenewal with the Office of the Clerk of the Board of Supervisors. The landowner must give the County written notice of his/her desire not to renew the contract by October 1 (at least 90 days prior to the January 1 renewal date.) The contract will then terminate 9 years from the January 1 renewal date following the notice of nonrenewal. No approval by the County or the landowner is required for nonrenewal.

Under limited circumstances and conditions set forth in Government Code Section 51093, an open space easement agreement may be abandoned or cancelled. The Board of Supervisors must make specific findings under state law and the landowner must pay an abandonment fee as assessed by the Assessor, which is a valuation of the full cash value of the land as though it were free of the open space easement, multiplied by 25%.

WHAT ARE THE REQUIREMENTS DURING NONRENEWAL?

The open space easement remains in effect until the recorded nonrenewal termination date. Agreement compliance is required through the nonrenewal period and a Compatible Use Determination must still be obtained prior to the approval of any land development or building permit application.

GENERAL CONTRACT COMPLIANCE

The County may audit any restricted land for compliance with the open space easement agreement, Open Space Easement Act of 1974, and other state and local laws, regulations, ordinances and guidelines. County audits may include reviewing available documentation, such as aerial photographs, and contacting the landowner or manager to obtain additional information or documentation.

Department of Planning and Development
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Open Space Easements



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WHAT IS AN OPEN SPACE EASEMENT?

An open space easement restricts land in unincorporated Santa Clara County to open space and compatible uses for a minimum of 15 years, but does not require public access. The County established its Open Space Easement Program in 2006 - pursuant to the Open Space Easement Act of 1974 - to preserve and maintain open space lands, while allowing limited compatible uses and development. Restrictions are enforced through a rolling-term contract with the County of Santa Clara that automatically renews for an additional year on January 1 of each year. In return for the restriction, landowners may receive a property tax benefit, depending on how the easement affects the property value.

Landowners may apply to voluntarily exchange a Williamson Act contract for an open space easement (Government Code Section 51254) or may apply for an open space easement only.

IS THERE JUST ONE TYPE OF OPEN SPACE EASEMENT?

Landowners may apply for any of three types of open space easements. The Type I easement prohibits all development. The Type II easement allows a residence up to 1,000 square feet, but prohibits secondary dwellings. The Type III easement allows the limited development of uses on a maximum of 5% of the total parcel. Development is limited to 2 acres on parcels between 40 and 99 acres and is limited to 5 acres on parcels over 100 acres. The most appropriate type of easement for a parcel would depend upon the landowner's future plans for use and development.

WHAT ATTRIBUTES QUALIFY LAND FOR AN OPEN SPACE EASEMENT?

Essentially unimproved land, at least 20 acres in size, devoted to open space for the preservation of natural resources, such as plant and animal life, habitat for fish and wildlife species, rivers and streams, and banks of rivers and streams and watershed lands. Open space used for the managed production of resources, such as rangeland and agricultural lands, may also be eligible.

Although atypical, open space may also be for outdoor recreation with areas of outstanding scenic, historic or cultural value, areas particularly suited for park and recreation purposes, and areas that serve as links between major recreation and open space reservations, such as utility easements, banks of rivers and streams, trails, and scenic highway corridors.

WHAT USES ARE COMPATIBLE WITH OPEN SPACE LAND?

Uses that effectively preserve the natural or scenic character of the land. Such uses include single-family residences and residential accessory structures, agricultural employee housing, bed and breakfast inn, and various open space, agricultural, recreational, and utility uses.

WHAT IS DEVELOPMENT UNDER THE OPEN SPACE EASEMENT?

Development includes erecting or placing structures or objects on the land, grading or otherwise altering the land for non-agricultural purposes. Development does not include use of the land in its natural state for activities such as hunting, fishing, hiking or outdoor games or sports.

ARE THERE ANY RESTRICTIONS ON DEVELOPMENT?

95% of the parcel must be maintained in open space. Subdivision is not allowed under any type of open space easement.

While certain uses have been determined to be presumptively compatible with the open space use of the land, all use and development must comply with specific criteria. The applicable findings are outlined in the Open Space Easement Ordinance (Section C13-39) and "Guideline for Policies Governing the Exchange of an Existing Williamson Act Contract for an Open Space Easement." Compliance with the open space easement agreement is evaluated in an application for a Compatible Use Determination, which must be obtained prior to the approval of any land development or building permit application.

WHAT IS A COMPATIBLE USE DETERMINATION?

A Compatible Use Determination evaluates whether proposed uses and development are compatible with the open space use of the land, effectively preserve the natural or scenic character of the land, and do not impair the open space character of the land. This is an analytical process that involves balancing many factors and County development requirements, and is not limited to the calculation of development coverage on a parcel (maximum of 5%). Development proposals should maintain large, contiguous areas of open space and cluster development to the maximum extent possible, conserve the natural resources of the land, and minimize visual impacts and the need for grading and earthwork.