



Policy Type: Board

Category: Land Use

Policy Name: Eminent Domain Policy - Board Policy 7.3

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7.3 EMINENT DOMAIN POLICY (Adopted 3-6-90)

The Santa Clara County Board of Supervisors supports a policy of acquiring property for parks, recreation and open space purposes. Generally, the Board will pursue that policy by acquiring real property from willing sellers.

- (A) It is a policy of the Board to utilize eminent domain to acquire land for parks and recreation purposes only when any one or more of the following situations occur:
- (1) Whenever the action would serve the convenience and mutual interests of both a consenting seller and the County.
 - (2) When any property is threatened by imminent conversion to developed uses.
 - (3) When property other than property in active ranching, agricultural production or timberland production zones is planned for sale other than to family members and co-owners.
 - (4) When impasse has been reached after good faith mutual negotiations on price or terms, and the property is necessary to the County's acquisition program, and there is no feasible alternative.



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- (5) To acquire trails and trail easements only in non-rural areas located within city boundaries, including unincorporated areas within those boundaries, and any areas bordering the San Francisco Bay.

- (B) When a property owner, as provided in the provisions of the new Open Space Authority, files a timely appeal to an eminent domain action contemplated by the Authority, the Board of Supervisors sitting as the appeals Board to that action will utilize this policy as a guide together with California law, statutes and local ordinances in determining that the acquisition is not in the best interest of the public.

- (C) Subdivision will normally be evidence of intent to develop and sell. It is recognized that subdivision can be done for purposes other than immediate sale. The property owner can avoid forced eminent domain by certifying that the subdivided property is not for sale other than among family members or co-owners and giving the County a right of first refusal for a period of five (5) years. However, this right of first refusal shall not apply to sales among family members and co-owners.

- (D) If a portion of the property is offered for sale, only that portion, not the entire property, can be acquired by eminent domain. Except as provided in (A)(4) above, a seller can withdraw the property from the market within thirty (30) days after the County's staff has given written notice of its intent to pursue eminent domain. In this case, the property owner will give the County a five (5) year right of first refusal.

- (E) The property owner in any eminent domain proceeding may request all cash, deferred payment or combination thereof.



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- (F) For the purposes of this policy, the following definitions shall be used:
- (1) "Developed uses" -- commercial, industrial or multiple residential uses.
 - (2) "Family member" -- any immediate family member or any other family member named in a legal will or document that would give them legal interest in the property.
 - (3) "Planned for sale" -- posting of signs, listing with a real estate broker or written confirmation by the owner of an intent to sell.
 - (4) "Open space authority" -- Santa Clara County Open Space Authority Act of 1989, Chapter 1287, Public Resources Code Section 35100-35183.
- (G) This policy may be amended only by the Board of Supervisors following public hearing by the Planning Commission and the Parks and Recreation Commission. California law prevails in the interpretation of the policy. These policies are an element of a comprehensive Acquisition Policy for purchase of park lands and are not intended to be imposed on any other County function. Application of these policies is not intended to give rise to private rights or causes of action in individuals or other persons.
- (H) The right of first refusal procedure shall be based on the following:
- (1) The party desiring to sell any portion of the covered property in response to a bona fide offer shall give written notice to the County, specifying the property to be sold and the price and terms in the offer.



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- (2) Within sixty (60) days after the later of the date of the notice or the removal of any contingencies in the offer, so that the sale would otherwise become final, the County shall have the right to complete the purchase of the property covered by the offer at the price set therein.
- (3) If the County does not so purchase the property, the owner may complete the sale only to the offering party on terms at least as favorable to the seller as those contained in the offer.
- (4) Failure of the County to exercise its right to purchase the property offered does not affect its right of first refusal on any portion of the property covered by the right which is not sold pursuant to the offer.
- (5) Neither the existence of the right of first refusal nor the failure to exercise the right of first refusal shall preclude the County from using Eminent Domain to acquire the covered property, if such action is otherwise consistent with this policy.

Related Policies

None.

Related Forms and Information

None.

History

Date	Changes Made
2/10/2014	Policy Uploaded. (Kyle Larson)



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3/06/1990	Policy Adopted.
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