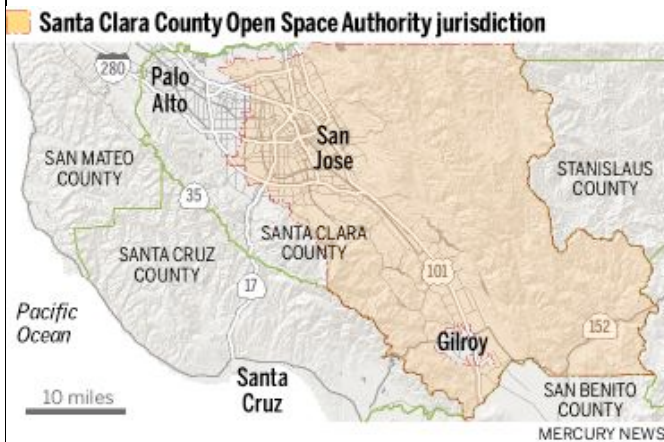


## Costly mistake: Santa Clara County open space agency to pay landowners back for fee ruled illegal

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Mercury News

Posted: 05/27/2009 06:03:58 PM PDT

Updated: 05/27/2009 10:29:56 PM PDT



The check's almost in the mail.

In a rare government refund, roughly two-thirds of property owners in Santa Clara County are expected to be eligible to receive as much as \$130 each later this year to end a long-running legal battle between a taxpayer group and a San Jose agency that purchases land for parks and wildlife.

Last July, \$57 million became available when the California Supreme Court struck down a \$20 per-

parcel fee put in place in 2001 by the Santa Clara County Open Space Authority, saying passage of the fee required two-thirds approval by the voters in the district.

What's under way now is the property tax version of putting the toothpaste back in the tube.

The open space agency's board is expected to approve a settlement today requiring it to tell the owners of all 321,000 parcels that were improperly assessed the fee that they can have their money back.

Eligible for a check is anyone who owned a house, apartment building or business property between 2002 and 2008 located within the open space authority's boundaries, which include all of San Jose, Campbell, Milpitas, Morgan Hill and Santa Clara, as well as much of unincorporated Santa Clara County.

"It's their money. If they want it back, they are entitled," said Patrick Congdon, general manager of the open space authority. "I'm disappointed, but the court has ruled."

Gilroy is not included, because the city did not join the district when it was formed in 1994. Nor are Los Gatos, Saratoga, Palo Alto, Cupertino, Sunnyvale and other cities that are in an adjacent open space agency, the Midpeninsula Regional Open Space District.

Environmentalists plan to urge residents not to apply for the refund so the district can keep as much of the money as possible. The fee made up two-thirds of the agency's \$12 million annual budget.

"This is a really easy, what I would call a no-brainer, for open space," said Melissa Hippard, director of the Sierra Club's Loma Prieta chapter,

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based in Palo Alto. "The agency really needs the money. Here's a perfect opportunity to do something special for open space in your own backyard."

The agency has preserved 14,494 acres since the mid-1990s for hiking, biking, horse-riding and wildlife habitat, including land around Calero Reservoir, adjacent to Alum Rock Park and near Henry Coe State Park. It also has made grants to cities for bike paths and urban parks.

But most of that land was purchased with state bond money, or an earlier \$12-per-parcel assessment that was not overturned by the court. Because taxpayer lawsuits froze the other funding, the agency hasn't been able to build trails or hire rangers to patrol much of it, and about three-quarters remains closed to the public.

To return the money to Silicon Valley landowners, the open space agency will hire a claims manager to send letters in July to the owners of all 321,000 parcels in the district.

The owners then will have 90 days to ask for a refund. A typical property owner who owned a home all six years the fee was collected, from the 2002-03 fiscal year to the 2007-08 fiscal year, would get \$130. Those who owned property for part of that period would be eligible for slightly more than \$20 for each year.

The agency also plans to set up a toll-free phone number and Web site by the end of next month. And it plans to use county assessor's records, and vast databases run by the U.S. Postal Service and Lexis-Nexis, to help track down former landowners who paid the fee and moved.

If a property owner who paid the fee died, his or her estate can apply for the refund.

"People are going to have the right to get their refund. That's why we filed the lawsuit," said Doug McNea, president of the Silicon Valley Taxpayers Association, which sued in 2002. "We pushed for people to get proper notification. We're satisfied."

McNea's group won its argument that the fee, technically a benefit assessment that was approved by mail-in ballot in 2001, violated Proposition 218, a state law designed to require more government fees to meet the two-thirds vote threshold.

Checks will go out in the mail by October or November, said Bill Parkin, general counsel for the open space agency.

"It's going to be a pretty simple process for folks," he said. "They will check boxes on the number of years they paid the assessment. We won't require canceled checks or anything like that. We have the assessor's database to cross-check the claims."

Over the six years it collected the fee, the open space agency amassed \$51 million, plus another \$6 million in interest. Under the settlement agreement and prior case law, the agency will keep the \$6 million. Another \$7.4 million will go to pay the legal bills of Tony Tanke, a Davis attorney who represented the taxpayer group for seven years.

Typically, in most class action claims, only about one-third of eligible people bother to turn in award forms. With the rough economy, however, both sides in this case expect that number to be higher.

After the refunds, the agency's budget will have a gaping hole. In a future election, 2012 or later, the agency probably will place a sales or property tax on the Santa Clara County ballot and seek two-thirds approval, said Congdon.

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world. We hear that more and more, that people want to get away from the asphalt, and get up into the hillsides and walk in a meadow," he said. "It's something they've lost."

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