



Purchase of Agricultural Conservation Easement (PACE) Program



County of San Diego
Planning & Development Services
September 2014

PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT (PACE) PROGRAM

Table of Contents

I.	Pilot Phase Overview	1
	A. Pilot Phase Application Periods	1
	B. Pilot Phase Acquisition History.....	1
II.	Purpose and Intent	2
III.	Administration and Modification.....	3
	A. Program Administration.....	3
	B. Program Modification	3
IV.	Program Structure and Implementation	3
	A. Eligibility Requirements.....	3
	B. Application Process.....	4
	C. Property Ranking	4
	D. Easement Selection	5
	E. Easement Valuation and Provisions.....	5
	F. Easement Acquisitions	6
V.	PACE Mitigation Program.....	6
	A. Agricultural Mitigation	6
	B. PACE Mitigation Bank and Credits.....	7
	C. PACE Trust Fund	8
Appendices		
	A. Appendix A: PACE Program Application	9
	B. Appendix B: Sample PACE Agricultural Conservation Easement Contract...	10

PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT (PACE) PROGRAM

I. Pilot Phase Overview

On August 3, 2011 (1), the Board of Supervisors (Board) directed staff to develop a pilot Purchase of Agricultural Conservation Easement Program (PACE Program) as a component of the County's General Plan Implementation Plan. Under the PACE Program, willing agricultural property owners are compensated for placing a permanent conservation easement on their agricultural property that limits future uses to agriculture and extinguishes future development potential. As a result, agricultural land is preserved and the compensation received makes the property's continued use more viable over the long term.

The Program is intended to promote the long-term preservation of agricultural land in the County, while compensating agricultural property owners for perceived equity loss resulting from the County's General Plan Update. The Program is based on the framework of what is traditionally referred to as a "purchase of development rights" program. The Program was initially implemented on a limited scale as a pilot project, but is now a permanent County program with the goal of preserving agricultural resources throughout the unincorporated area of San Diego County.

A. Pilot Phase Application Periods

A primary challenge in implementing the pilot phase was developing public awareness and assessing overall interest in Program participation. County staff implemented a marketing effort in Fall 2011 to overcome these challenges. Over 7,000 notices were mailed to potentially eligible property owners. These notices also invited property owners to participate in an online survey. Data collected from the surveys were used to assess Program interest and evaluate preliminary property data from potential applicants. Marketing efforts also

included the development of a PACE webpage and establishment of an informational hotline that fielded over 500 calls.

A formal PACE application period for the pilot phase was held from January 16, 2012, through March 1, 2012. All eligible property owners were invited to participate in the pilot phase, and a total of 60 property owners applied. Table 1 summarizes the property characteristics of the applications received.

Table 1 – PACE Pilot Program Data

# of Applications Received	60
# of Ranching Properties	5
# of Agricultural Properties	51
# of Ranching and Agricultural Properties	4
Average Parcel Size	81 acres
Total Acreage Eligible for PACE	1,870 acres
Average Density Reduction (Dwelling Units)	6.3 DU
Average Density Reduction (%)	64%

B. Pilot Phase Acquisition History

The Board allocated \$2 million to implement the PACE pilot phase in the Fiscal Year 2012-2013 Operational Plan. On July 17, 2013 (5), the Board approved the acquisition of five agricultural conservation easements covering a total area of 738 acres for \$1,694,000, plus \$212,000 for expenses related to appraisals and administrative costs, for a total of \$1,906,000.

The Board allocated an additional \$620,000 in Fiscal Year 2013-2014 to extend easement offers to the three remaining properties from the pilot phase. These three properties, which ranked eighth, ninth, and tenth among the top ten PACE properties,

PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT (PACE) PROGRAM

were appraised but were not extended offers in the initial phase due to funding limitations. With the additional funding provided by the Board, agricultural conservation easement offers were extended to the three property owners in August 2013. Only one owner of a 44-acre property accepted the County's offer. The other two owners elected to not participate in the PACE Program.

In total, the PACE pilot phase permanently protected 782 acres of ranch and farmland through the acquisition of agricultural conservation easements exceeding the pilot phase acquisition goal of 500 acres.

On December 4, 2013, (3) the Board received a report and presentation from staff detailing the opportunities and challenges realized during the pilot phase's implementation as well as an analysis of Program demand and property characteristics of interested Program participants. In response, the Board directed staff to pursue the acquisition of 16 remaining properties deemed eligible for participation during the pilot phase of the Program but not processed for acquisition due to funding limitations. In addition, the Board directed staff to:

- 1) Establish PACE as a permanent County program;
- 2) Provide for continuous funding of the PACE Program through annual General Fund appropriations in addition to funding through mitigation;
- 3) Periodically reopen the PACE application process to interested property owners; and
- 4) Prepare a mitigation program as an expanded component of the PACE Program.

In response, the Program Guidelines have been updated to implement PACE as a permanent program and to include the

mitigation component as part of the PACE Program.

On September 17, 2014, the Board will consider acquisition of agricultural conservation easements from eight of the remaining 16 eligible property owners. The value of the eight easement acquisitions is \$1,319,850, with \$125,150 for related administrative, title, and escrow costs, for a total of \$1,445,000. The easements totaled 413.82 acres.



II. Purpose and Intent

The purpose and intent of the Program is to:

- 1) Promote the long-term preservation of agriculture in the County of San Diego;
- 2) Establish provisions for the acquisition and long-term oversight of agricultural conservation easements;
- 3) Establish an additional mitigation measure for development projects impacting agricultural resources; and
- 4) Satisfy General Plan Implementation Measure 5.3.1.F.

III. Administration and Modification

A. Program Administration

The Program is administered by PDS. A PDS staff person is assigned management responsibility of the PACE program. Additional staff support on an as-needed basis is provided from the Department of General Services, Real Estate Services Division, to assist with easement valuations, County Counsel for easement review and Program modifications, and Geographic Information Systems (GIS) and administrative staff for as needed Program support and administration.

B. Program Modifications

The County of San Diego PACE Program is based on other successful PACE Programs but is customized to account for the unique characteristics and objectives of the San Diego region. It is likely that in implementing the Program, opportunities for improved effectiveness and continuous improvement will be identified. The PDS Director may make administrative adjustments to the Program as necessary for effective implementation and provide recommendations to the Board for more significant Program changes. Staff will provide status reports to the Board on the overall Program on a regular basis in conjunction with annual requests for PACE acquisition approvals.

IV. Program Structure and Implementation

The following framework is provided to guide the implementation of the Program and provide Program participants with an understanding of the easement acquisition process. Typically, the timeline from application to easement acquisition averages 12 months or less. The overall length of the process varies based on the

number of applications received and whether or not mortgage lender approval is needed.

A. Eligibility Requirements

To be eligible for participation in the Program, properties must satisfy all of the eligibility requirements listed below:

- 1) The property must have been actively farmed and/or ranched for a minimum of two years prior to participating in the Program.
- 2) The property must have realized a density reduction as a result of the General Plan adopted by the Board on August 3, 2011.
- 3) The property must have had the ability to subdivide under the previous General Plan (in effect prior to August 3, 2011).

Setting minimum eligibility standards allows the Program to stay focused on acquiring those properties that best support the Program objectives. It also helps property owners understand what properties are most appropriate for the Program.

Because the Program is intended to preserve lands for long-term agricultural use, it is important that the lands brought under the Program remain viable for agricultural use. Requiring Program participants to have been actively farmed and/or ranched for a minimum of two years prior to participating in the Program ensures properties are actively engaged in agricultural activities, which increases the likelihood that properties continue to be used for agriculture in the future.

Because the Program is associated with implementation of the General Plan, Program participation is also limited to properties that received density reductions under the General Plan Update and had

PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT (PACE) PROGRAM

viable subdivision potential under the previous General Plan (in effect prior to August 3, 2011). Properties that were unable to obtain subdivision entitlements under the previous General Plan (in effect prior to August 3, 2011), by virtue of parcel size, are not eligible to participate in the Program.

A list of potentially eligible property owners containing the assessor's parcel number and addresses is available on the Program webpage at:

<http://www.sdcountry.ca.gov/pds/advance/PACE.html>.

The Program eligibility list is updated as needed. Property owners who believe their property may have been omitted from the eligibility list in error are encouraged to contact PDS and request a property-specific eligibility analysis.

B. Application Process

A PACE application form is posted on the County's website and made available in print format 14 days prior to the beginning of all PACE application periods. Launch of PACE application periods are coordinated with Communications Office staff to ensure they are publicized through multiple media sources.

The PACE application acceptance period is 45 days and all interested property owners must submit a PACE application during this period. The PACE application requests basic demographic information about the property owner and subject property. All information collected will be analyzed to determine Program eligibility and rank the property. A sample application is found in Appendix A.

It is anticipated that Program demand will exceed available funding. Therefore, application cycles will be conducted on an as-needed basis. Staff will monitor the need to open the application process and conduct

future application cycles based on Program demand, funding availability, and the number of eligible applications awaiting acquisition.



C. Property Rankings

At the close of each PACE application period, all applications are cataloged and screened for eligibility. Within 45 days of cataloging and screening, PDS staff will analyze and rank all eligible applications pursuant to the weighted scale described below:

- 1) Degree by which a property was impacted by density reductions under the General Plan Update.
- 2) Agricultural viability of a property pursuant to the County of San Diego Local Agricultural Resources Assessment (LARA) Model.
- 3) Degree by which preservation of the property would contribute to assemblage of the Multiple Species Conservation Plan (MSCP).

Program ranking criteria utilize information provided in the application process and GIS analysis to ensure that Program funds are allocated to properties most important for the preservation of agriculture in the County.

D. Easement Selection

Agricultural conservation easement selection decisions are based on the weighted ranking criteria identified above and any additional factors determined by Program staff. Additional factors may include, but are not limited to:

- 1) Cost of easement relative to total Board allocations and appropriations.
- 2) Availability of time-sensitive matching funds such as state, federal or private contributions.
- 3) Proximity to other land subject to conservation easements.
- 4) Consistency with County plans and policies.
- 5) Urgent situations that threaten a property with high agricultural importance.

Easement acquisition offers are made in ranked order. When a property owner chooses not to participate in the Program, the next highest ranking property owner is notified and the process is repeated as necessary.

E. Easement Valuation and Provisions

Properties participating in the Program are appraised by an independent third party appraiser to determine the agricultural easement value. Property owners are provided with a copy of their appraisal report and presented with a draft agricultural conservation easement contract prior to completing a “willing seller letter” and moving forward with formal easement acquisition proceedings. Property owners are given a 14-day “due diligence” period to review and accept or decline the easement purchase price and terms of the agricultural conservation easement contract.

Appraisal Method

The Program utilizes a traditional appraisal process to determine agricultural conservation easement values. Easement acquisitions utilizing state or federal funding require use of this appraisal valuation method. Opportunities to leverage outside funding sources will be pursued during the easement valuation phase based on the selected properties and their ability to meet outside funding sources eligibility requirements.

Under the traditional appraisal valuation approach, appraisers estimate fair market value of the unencumbered property then subtract an estimate of restricted value to determine the value of the easement. The State of California’s, *California Farmland Conservancy Program – Guidelines for the Preparation of Agricultural Conservation Easement Appraisals* were used to guide the County’s PACE Program appraisal process. The County’s Department of General Services, Real Estate Services Division, coordinates the easement valuation and appraisal processes.

It is important to note that in some cases local appraisers, by default, consider a property’s subdivision build out as its highest and best use when determining fair market value. Subdivision build out as the highest and best use will only be acceptable when supported by data from the marketplace. Unsupported or over speculative assumptions will not be accepted. Subdivision build out values must also factor all development and subdivision costs, including permitting, surveys, studies infrastructure, etc.

Easement Provisions

Agricultural conservation easement contracts contain provisions that limit uses and activities that are inconsistent with

continued commercial agriculture, and permit agricultural uses, agricultural structures and related agricultural enterprises. A standardized agricultural conservation easement document is utilized for the County's Program. However, in cases where funding partnerships and/or unique circumstances require specific easement language/terms, allowances shall be made to alter the document. A sample easement document has been included in Appendix B. Monitoring and enforcement provisions will be included in all easement agreements to ensure the land complies with the terms of the easement.

F. Easement Acquisition

After easement contracts have been finalized and approved by the property owner, a Board letter is docketed that requests authorization from the Board of Supervisors to execute all finalized easement agreements. The Board letter process follows all established docketing, noticing, and acquisition procedures. This process can take two to four months to complete. Properties for which outside funding is being pursued will be processed on an independent track and brought before the Board as the funding agreements are finalized with the partnering funding agencies.



IV. PACE Mitigation Program

Prior to and during the development and implementation of the pilot phase of the

PACE Program, interest was expressed in expanding the PACE Program to serve as a mitigation tool for private development with impacts to agricultural resources. On December 4, 2013, the Board of Supervisors directed staff to prepare a mitigation program as an expanded component of the PACE Program. In response to this direction, staff researched agricultural mitigation programs in other jurisdictions and customized an agricultural mitigation program for San Diego County. Staff presented the mitigation program framework at the September 17, 2014 Board hearing and requested authorization to formally implement it through establishment of an interest accruing trust fund, updates to the County's California Environmental Quality Act (CEQA) Guidelines for Determining Significance for Agricultural Resources, and Land Use and Environmental Group (LUEG) Conditions of Approval Manual.

The following framework is provided to guide implementation of the mitigation program and inform Program participants.

A. Agricultural Mitigation

The County's CEQA Guidelines for Determining Significance for Agricultural Resources establish significance thresholds for impacts to agricultural resources, define agricultural resources, and identify suitable mitigation measures for private development projects that convert agricultural lands to non-agricultural uses. When a project's impacts exceed the thresholds established in the County's CEQA Significance Guidelines, mitigation measures are implemented to lessen, avoid, or compensate for impacts to agricultural resources. Pursuant to the County's CEQA Significance Guidelines, agricultural land mitigation must be at a 1:1 ratio (one acre of mitigated land per acre of agricultural land converted to any other land use). Suitable

PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT (PACE) PROGRAM

mitigation measures identified in the CEQA Significance Guidelines include onsite preservation, compatibility buffers, design considerations, limited building zones, and off-site agricultural conservation easements.

The establishment of a PACE mitigation bank will provide applicants with an additional mitigation option beyond acquisition of a traditional private party off-site agricultural conservation easement, which has historically been difficult for applicants to secure. Under the PACE mitigation program, instead of purchasing real property in the form of agricultural conservation easements, applicants of discretionary projects that require agricultural mitigation may choose to purchase PACE mitigation credits from the County's PACE mitigation bank. The LUEG Conditions of Approval Manual and the County's California Environmental Quality Act (CEQA) Guidelines for Determining Significance for Agricultural Resources have been updated to include the purchase of PACE mitigation credits as an agricultural mitigation measure.

B. PACE Mitigation Bank and Credits

All agricultural lands permanently protected under the PACE Program on or after September 17, 2014, combine to form the County's PACE mitigation bank. Applicants may purchase PACE mitigation credits to mitigate for agricultural impacts at a 1:1 ratio, as required by the County's CEQA Significance Guidelines for Agricultural Resources. PACE mitigation credits must be purchased prior to approval of any final subdivision map, or issuance of any building permits. A condition of approval requiring purchase of PACE mitigation credits can be found in the LUEG Conditions of Approval Manual.

Each PACE credit is equivalent to one acre of mitigation. The cost of one credit is

\$3,827. This initial cost is based on the aggregate easement value per acre for all PACE easements acquired on or before September 17, 2014, plus an additional 10% for administrative costs and a 10% acquisition cost adjustment. The 10% acquisition cost adjustment is intended to cover fluctuations in land values for future acquisitions. The agricultural mitigation credits or in-lieu fees researched in other jurisdictions ranged from \$2,500 to \$10,000 per acre, and included administrative costs and land value offsets in line with the County's mitigation program. The wide range of fees in other jurisdictions is largely attributed to local land and crop values. Every three years, staff will recommend adjustments to the PACE mitigation credit as part of an annual status report to the Board. The mitigation credit fee adjustment will reflect changes in the average easement value per acre over the preceding three-year period.

Table 3 – PACE Mitigation Credit Fee

Components*	Costs
Easement Value Per Acre	\$3,189
Administrative Costs (10%)	\$319
Acquisition Cost Adjustment (10%)	\$319
TOTAL	\$3,827

*All cost components are subject to change with each application period.

The cost of mitigation credits shall be determined by the fee in effect on the date the final subdivision map is filed, the vesting tentative map application is deemed complete, or the date the building permit is issued, as applicable. Applicants must have an approved discretionary project with a condition of approval requiring agricultural mitigation in order to purchase PACE mitigation credits. Purchase of PACE mitigation credits is nonrefundable and nontransferable.

C. PACE Trust Fund

All funds collected under the PACE mitigation program are deposited into an interest bearing trust fund established specifically for the purposes of the Program. PACE Trust fund revenue may be used as follows:



- 1) To pay for the future acquisition of PACE agricultural conservation easements that will be added to the PACE mitigation bank.
- 2) To pay for real estate transaction costs related to the acquisition of PACE agricultural conservation easements.
- 3) To pay for the ongoing monitoring and administrative costs related to the ongoing stewardship of PACE conservation easements.
- 4) To provide a contingency for unexpected transaction costs or future legal costs required to maintain the terms of a PACE agricultural conservation easement.

PDS maintains a registry of each mitigation credit purchase that includes the date of purchase, amount purchased, Assessor's Parcel Number, associated discretionary project, and name of applicant. PDS staff will also present to the Board an accounting of all PACE mitigation credit fees paid into and withdrawn from the PACE Trust Fund at the time when future PACE acquisitions are brought to the Board for consideration. In addition to the items identified above, this accounting also includes the source and amount collected, beginning and ending balance of the Trust Fund, interest earned during the prior fiscal year, amounts expended from the Trust Fund, and the acquisitions for which such expenditures were made.



PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT (PACE) PROGRAM

APPENDIX A

	SAN DIEGO COUNTY PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT (PACE) PROGRAM APPLICATION	
APPLICANT INFORMATION		
Land Owner Name(s):		
Mailing Address:		
City:	State:	ZIP Code:
Phone:	Email:	Best time to contact:
PROPERTY INFORMATION		
How many parcels of land do you want to preserve under the easement?		Total Acreage:
Address of property proposed for preservation:		
City:	State:	ZIP Code:
Assessor's Parcel Number(s) :		
Is any of the land currently under a Williamson Act Contract?		
AGRICULTURAL/RANCHING OPERATION INFORMATION		
Type of Agricultural Operation: Agriculture Ranching (please circle)		
Primary agriculture produced on property:		How many acres:
Types of livestock ranched on property:		Total number of livestock:
Has your property been engaged in agricultural or ranching operation for a minimum of two years prior to applying to the Program?		
How is water provided to your agricultural/ranching operation?: metered service well both (please circle)		
Do you rent/lease any of your property out for agricultural/ranching production?		
Tenant Farmer/Rancher Name:		Phone:
OWNERSHIP INFORMATION		
Are there any mortgages or liens against the property in this application? : YES NO- Owner in Fee (please circle)		
Mortgage Lender's Name:		
Mailing Address		Phone:
City:	State:	Zip Code:
DISCOUNTING INFORMATION		
Property owners willing to accept less than full easement value may voluntarily discount their easements to increase the likelihood of easement acquisition. In cases where Program demand exceeds available funding, discounting has proven to be a successful tool to maximize Program funds and increase the overall acreage acquired. A number of PACE Programs throughout the nation use a discount method.		
Are you interested in discounting?: Yes No (please circle)		
What level of discount would you be willing to accept? (e.g., 5%, 10%, etc.):		
<i>Please note: your response is non-binding; you may choose to revise or withdraw your offer to discount at a future date</i>		
SIGNATURES		
I/we do hereby verify that I/we have reviewed the application. I/we further verify that the application correctly and accurately depicts the condition of the land and that such statements are true and correct to the best of my/our knowledge, information and belief. These statements are being given by me/us to solicit official action on the part of the County of San Diego Purchase of Agricultural Conservation Easement Program.		
Signature of applicant:		Date:
Signature of co-applicant (if applicable):		Date:
Signature of co-applicant (if applicable):		Date:
Signature of co-applicant (if applicable):		Date:

PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT (PACE) PROGRAM

APPENDIX B SAMPLE PACE AGRICULTURAL CONSERVATION EASEMENT (Not for execution)

THIS DEED OF AGRICULTURAL CONSERVATION EASEMENT (the "Easement") is made by _____ ("Grantor"), to the County of San Diego, ("Grantee").

WITNESS THAT:

WHEREAS, Grantor is the owner in fee simple of that certain real property in San Diego County, California, comprising County of San Diego Assessor's Parcel Nos. xxx-xxx-xx, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, the Property possesses significant agricultural, open space and scenic values of great importance to Grantor, the people of San Diego County and the people of the State of California; and

WHEREAS, Grantor and County intend that the Property be maintained in agricultural production by the maintenance of the agricultural values thereof and that the open space and scenic values of the Property be preserved by the continuation of the agricultural and ranching uses that have proven historically compatible with such values; and

WHEREAS, the County of San Diego supports and encourages farming (Policy I-133) and the protection and preservation of agricultural land uses and agricultural land; and

WHEREAS, Grantor intends, as owner of the Property, to convey to County the right to preserve and protect the agricultural, and to the extent consistent with agricultural values, the open space, and scenic values of the Property in perpetuity; and

WHEREAS, County intends, by acceptance of the grant made hereby, forever to honor the intentions of Grantor to preserve and protect the agricultural, open space, and scenic values of the Property in perpetuity;

NOW, THEREFORE, for good and valuable consideration, in consideration of the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of California including, inter-alia, sections 815-816 of the California Civil Code, Grantor does hereby voluntarily grant to County an Agricultural Conservation Easement in gross in perpetuity over the Property of the nature and character and to the extent hereinafter set forth.'

1. Purpose. It is the purpose of this Easement to enable the Property to remain in agricultural uses (as defined in Exhibit B, section 2), by preserving and protecting in perpetuity its agricultural values, character, use and utility, and by preventing any use or condition of the Property that would significantly impair or interfere with its agricultural values, character, use or utility. To the extent that the preservation of the open space and scenic values of the Property is consistent with such use, it is within the purpose of this Easement to protect those values.

2. Affirmative Rights and Interests Conveyed. To accomplish the purpose of this Easement, the following rights and interests are conveyed to County by this Easement:

PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT (PACE) PROGRAM

(a) To identify, to preserve and to protect in perpetuity the agricultural values, character, use and utility, including the agricultural productivity, vegetation, soil and water quality, and the open space and scenic values of the Property. (The agricultural values, character, use and utility, and the open space and scenic values of the Property are hereinafter referred to collectively as "the Protected Values".)

(b) To enter upon, inspect, observe, and study the Property for the purposes of (i) identifying the current condition of, uses and practices thereon, and the baseline condition thereof; and (ii) monitoring the uses and practices to determine whether they are consistent with this Easement. Such entry shall be permitted upon prior notice to Grantor, and shall be made in a manner that will not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.

(c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement, and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent condition, activity or use. However, it is the intention of the Grantor and County that this Easement not limit Grantor's discretion to employ their choices of farm and ranch uses and management practices so long as those uses and practices are consistent with the purpose of this Easement.

3. Uses and Practices. County and Grantor intend that this Easement shall limit the uses of the Property to agriculture, residential use associated with the agricultural use of the Property, and the other uses which are described herein. Examples of uses and practices which are consistent with the purpose of this Easement and which are hereby expressly permitted, are set forth in Exhibit B, attached hereto and incorporated herein by this reference. Examples of uses and practices which are inconsistent with the purpose of this Easement, and which are hereby expressly prohibited, are set forth in Exhibit C, attached hereto and incorporated herein by this reference. The uses and practices set forth in Exhibits B and C are not necessarily exhaustive recitals of consistent and inconsistent activities, respectively. They are set forth both to establish specific permitted and prohibited activities, and to provide guidance in determining the consistency of other activities with the purpose of this Easement.

4. Baseline Data. In order to establish the present condition of the Protected Values, Grantee has examined the Property and prepared a report (the "Baseline Documentation Report"), prepared by and dated _____ containing an inventory of the Property's relevant features and conditions, its improvements and its natural resources (the "Baseline Data"). A copy of the Baseline Documentation Report has been provided to Grantor, and another shall be placed and remain on file with County. The parties intend that the Baseline Data shall be used by County to monitor Grantor's future uses of the Property, condition thereof, and practices thereon. The parties further agree that, in the event a controversy arises with respect to the condition of the Property or a particular resource thereof, the parties shall not be foreclosed from utilizing any other relevant document, survey, or report to assist in the resolution of the controversy. Grantor and County recognize that changes in economic conditions, in agricultural technologies, in accepted farm and ranch management practices, and in the situations of Grantor may result in an evolution of agricultural uses of the Property, provided such uses are consistent with this Easement.

5. Reserved Rights. Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved: (i) all right, title, and interest in and to all tributary and non-tributary water, water rights, and related interests in, on, under, or appurtenant to the Property, provided that such water rights are used on the Property in a manner consistent with the purpose of this Easement and in accordance with applicable law; and (ii) all right, title, and interest in

PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT (PACE) PROGRAM

subsurface oil, gas and minerals; provided that the manner of exploration for, and extraction of any oil, gas or minerals shall be only by a subsurface method, shall not damage, impair or endanger the Protected Values, shall be in accordance with applicable law, and shall be approved by Grantee prior to its execution.

6. Mediation. If a dispute arises between the parties concerning the consistency of any proposed use or activity with the terms of this Easement, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may refer the dispute to mediation by request made in writing upon the other. Within thirty (30) days of the receipt of such a request, the parties shall select a single trained and impartial mediator. If the parties are unable to agree on the selection of a single mediator, then the parties shall, within fifteen (15) days of receipt of the initial request, jointly apply to the American Arbitration Association for the appointment of a trained and impartial mediator with relevant experience in real estate, and conservation easements. Mediation shall then proceed in accordance with the following guidelines:

(a) Purpose. The purpose of the mediation is to: (i) promote discussion between the parties; (ii) assist the parties to develop and exchange pertinent information concerning issues in the dispute; and (iii) assist the parties to develop proposals which will enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or de facto modification or amendment of the covenants, terms, conditions, or restrictions of this Easement.

(b) Participation. The mediator may meet with the parties and their counsel jointly or ex parte. The parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of the parties with settlement authority will attend mediation sessions as requested by the mediator.

(c) Confidentiality. All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the parties or their respective counsel. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceeding or construed as an admission of a party.

(d) Time Period. Neither party shall be obligated to continue the mediation process beyond a period of ninety (90) days from the date of the selection or appointment of a mediator or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in mutually agreeable resolution of the dispute.

(e) Costs. The cost of the mediator shall be borne equally by Grantor and Grantee; the parties shall bear their own expenses, including attorney's fees, individually.

7. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use, condition or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Protected Values, including damages for any loss thereof, and to require the restoration of the Property to the condition that existed prior to any such injury. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Protected Values, Grantee may

PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT (PACE) PROGRAM

pursue its remedies under this section without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Any violation of this easement may be enforced pursuant to San Diego County code of Regulatory Ordinances ("SDCCRO") section 87.112.

7.1 Costs of Enforcement. Any costs incurred by County in enforcing the terms of this Easement against Grantor may include enforcement of SDCCRO section 87.112 and include without limitation, administrative costs, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement, shall be borne by Grantor. If Grantor prevails in any action to enforce the terms of this Easement, Grantor's administrative costs, costs of suit, including, without limitation, attorneys' fees, shall be borne by County.

7.2 Grantee's Discretion. Any forbearance by County to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by County of such term or of any subsequent breach of the same or any other term of this Easement or of any of County's rights under this Easement. No delay or omission by County in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

7.3 Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle County to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to any person or to the Property resulting from such causes.

8. Costs and Taxes. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property. Grantor shall pay any and all taxes, assessments, fees and charges levied by competent authority on the Property or on this Easement. It is intended that this Easement constitute an enforceable restriction within the meaning of Article XIII section 8 of the California Constitution and that this Easement qualify as an enforceable restriction under the provisions of California Revenue and Taxation Code section 402.1.

9. Hold Harmless. Grantor shall hold harmless, indemnify, and defend County and its directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (a) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except to the extent of the adjudicated proportionate fault of any of the Indemnified Parties; and (b) the obligations specified in section 8.

PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT (PACE) PROGRAM

9.1. Grantee Not Operator. Nothing in this Easement shall be construed as giving any right or ability to Grantee to exercise physical or managerial control of the day to day operations of the Property, of Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, or the Carpenter Presley Tanner Hazardous Substance Account Act, California Health and Safety Code sections 25300-25395, or any other federal, state, or local law or regulation making operators of property responsible for remediation of contamination.

10. Access. No right of access by the general public to any portion of the Property is conveyed by this Easement.

11. Development Rights. The parties acknowledge that under currently applicable zoning regulations of the County of San Diego the Property is so classified that upon receipt of required government approvals the Property could be developed to a density of up to _____ (fill in) single family residential dwelling units ("the Development Rights") The parties agree to deal with the Development Rights as follows:

(a) Grantor retains one (1) of the xxxx one-hundredths (x.xx) Development Rights associated with the Property. The Development Right retained by Grantor shall apply and relate to the existing residential improvements on the Property, which consists of x residences. Grantor reserves the right to maintain, use, repair, and replace the existing improvements on the Property with approval of appropriate governmental agencies and in conformity with section 3 of Exhibit B and all other applicable provisions of this Easement. The Development Right retained by Grantor shall not be used to support or enable the creation of any additional residential uses or units on the Property except as expressly provided in section 3 of Exhibit B hereto.

(b) The balance of the xx one-hundredth (x.xx) Development or similar rights associated with the Property, and any other development or similar rights that may be or become associated with the Property are hereby extinguished.

12. Extinguishment. If circumstances arise in the future which render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by a binding arbitration proceeding to evaluate whether the purpose of the easement remains viable, and the amount of the compensation to which Grantee shall be entitled from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment. Such amount shall be determined, unless otherwise provided by California law at the time, in accordance with section 13.

13. Compensation. This Easement constitutes a real property interest immediately vested in Grantee. For the purpose of section 13, the parties stipulate that the Easement has a fair market value determined by multiplying (i) the fair market value of the Property by (ii) the ratio of the value of the Easement at the time of this grant to the value of the Property, unencumbered by the Easement, at the time of this grant. The values of the Property shall exclude any amounts attributable to improvements on the Property. For the purposes of this section, Grantor and Grantee agree that the ratio of the value of the Easement to the value of the Property unencumbered by the Easement is .___ (_____). This ratio shall remain constant.

14. Condemnation. Should all or part of the Property be taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by the Easement, Grantor and Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in

PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT (PACE) PROGRAM

accordance with the proportionate values of Grantor's and Grantee's interests as specified in section 14, unless otherwise provided by applicable law. All expenses incurred by Grantor and Grantee in such action shall be first paid out of the recovered proceeds.

15. Assignment of Grantee's Interest. Grantee may assign its interest in this Easement only to a "qualified organization", within the meaning of section 170(h) of the Internal Revenue Code, as amended, or any successor provision, and which is authorized to acquire and hold conservation easements under California law.

16. Amendment of Easement. This Easement may be amended only with the written consent of the Grantor and the Grantee. Any such amendment shall be consistent with the purposes of this Easement and with the Grantee's easement amendment policies, and shall comply with section 170(h) of the Internal Revenue Code, or any regulations promulgated in accordance with that section, and with section 815 et seq. of the Civil Code of California, or any regulations promulgated there under. No amendment shall diminish or affect the perpetual duration or the Purpose of this Easement or the rights of the Grantee under the terms of this Easement.

17. Applicable Law. All uses, practices, specific improvements, construction or other activities permitted under this Easement shall be in accordance with applicable law and any permits or approvals required thereby.

18. General Provisions.

(a) Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of California.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of the California Conservation Easement Act of 1979, as amended. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

(e) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Joint Obligation. The obligations imposed by this Easement upon Grantor shall be joint and several.

(g) Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

(h) Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT (PACE) PROGRAM

(i) Future Conveyance. Grantor agrees that reference to this Easement will be made in any subsequent deed or other legal instrument by means of which Grantor conveys any interest in the Property (including but not limited to a leasehold interest).

(j) Not Governmental Approval. No provision of this Easement shall constitute governmental approval of any specific improvements, construction or other activities that may be permitted under this Easement.

IN WITNESS WHEREOF, Grantor has executed this Deed of Agricultural Conservation Easement this _____ day of _____, 2010.

Grantor:
Name on Title Report

By: _____
Grantor

Accepted by Grantee:
COUNTY OF SAN DIEGO

By: _____
Grantee

[Notarization of Grantor's and Grantee's signatures]

PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT (PACE) PROGRAM

EXHIBIT A

All that certain real property situated in the County of San Diego, State of California, described as follows:

[Insert Property Legal Description]

EXHIBIT B PERMITTED USES AND PRACTICES

The following uses and practices, though not necessarily an exhaustive recital of consistent uses and practices, are expressly permitted as set forth herein.

1. Residential Use. To reside on the Property.

2. Agriculture. To engage in agricultural uses of the Property in accordance with sound, generally accepted agricultural practices that do not threaten or degrade significant natural resources. For the purposes of this Easement "agricultural uses" shall be defined as: breeding, raising, pasturing, and grazing livestock of every nature and description for the production of food and fiber; breeding and raising bees, fish, poultry, and other fowl; planting, raising, harvesting, and producing agricultural, aquacultural, horticultural, and forestry crops and products of every nature and description; and the processing, storage, and sale, including direct retail sale to the public, of crops and products harvested and produced principally on the Property, provided that the processing, storage, and sale of any such crops or products that are not food or fiber shall require the consent of Grantee; further provided, however, that such agricultural uses shall not result in significant soil degradation, significant pollution or degradation of any surface or subsurface waters, and that all uses and activities are consistent with applicable laws.

3. Improvements and Facilities.

(a) Maintenance and Repair of Existing Improvements and Facilities. To maintain and repair existing structures, housing, fences, corrals, roads and other improvements and facilities on the Property.

(b) Construction of Additional Improvements and Facilities. Additional improvements and facilities accessory to the residential use of the Property, and additional structures, housing, roads, and other improvements and facilities reasonably necessary to the agricultural uses of the Property, shall be permitted, provided that Grantor obtain the express written approval of Grantee for the construction of structure, housing, road, or other improvements and facilities, including the size, function, capacity and location, which consent should not be unreasonably withheld, and that such construction is made in accordance with applicable laws. Grantor shall provide Grantee written notice of Grantor's intention to undertake any such construction, together with information on its size, function, capacity and location, not less than forty-five (45) days prior to the commencement thereof. Additional fencing and corrals deemed by Grantor to be reasonably necessary to ranching and agricultural activities may be constructed without Grantee's consent.

(c) Replacement of Improvements and Facilities. In the event of destruction, deterioration or obsolescence of any structures, housing, fences, corrals, roads, or other improvements and facilities, whether existing at the date hereof or constructed subsequently pursuant to the provisions of this section, Grantor may replace the same with structures, housing, fences, corrals, roads, or other improvements and facilities of similar size, function, capacity and location.

4. Water Resources and Impoundments. To develop and maintain such water resources on the Property as are necessary or convenient for ranching, agricultural, irrigation, and residential uses in a manner consistent with the purpose of this Easement, provided that the creation, alteration or

PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT (PACE) PROGRAM

enlargement of any water impoundment shall not damage, impair or interfere with the Protected Values and that all such water resources shall be developed in accordance with applicable laws.

5. Agrichemicals. To use agrichemicals, including, but not limited to, fertilizers and biocides, in those amounts and with that frequency of application necessary to accomplish reasonable grazing and agricultural purposes. Such use shall be carefully circumscribed near surface water and during periods of high ground water.

6. Predator Control. To control predatory and problem animals by the use of selective control techniques.

7. Recreational Uses. To utilize the Property for recreational or educational purposes, (including, without limitation, hiking, horseback riding, hunting and fishing) that require no surface alternation or other development of the land.

Exhibit C Prohibited Uses and Practices

The following uses and practices, though not necessarily an exhaustive recital of inconsistent uses and practices, are inconsistent with the purposes of this Easement and are expressly prohibited upon or within the Property:

1. Impairment of Protected Values. The impairment of the Protected Values, except as otherwise provided herein.

2. Commercial or Industrial Use. The establishment and conduct of commercial or industrial uses or the construction, placing, or erection of any signs or billboards; provided, however, that neither ranching, agriculture, nor the production or processing of food and fiber products as contemplated by the provisions of Exhibit B, shall be considered prohibited commercial or industrial uses. Further provided, however, that Grantee shall have the right in its sole discretion to approve the establishment and conduct of non-agricultural commercial and industrial uses or activities which are compatible with the Protected Values of the Property and which are ancillary and subordinate to the agricultural uses of the Property. Notwithstanding the prohibition above on the placing or erecting of signs, Grantee, in its sole discretion, may also approve signs related to any such commercial or industrial uses approved by Grantee.

3. Construction. The construction, reconstruction, or replacement of structures, housing, roads and other improvements and facilities except as provided in section 11 (a) of this Easement and section 3 of Exhibit B.

4. Subdivision. The division, subdivision, or de facto subdivision of the Property, provided, however, that a lease of a portion of the Property for agricultural use shall not be prohibited by this section.

5. Motorized Vehicles. The use of motorized vehicles, except by Grantor or others under Grantor's control for agricultural, ranching or attendant residential use of the Property. Any use of motorized vehicles off of roadways is prohibited except when necessary for agricultural and ranching purposes.

PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT (PACE) PROGRAM

6. Tree Cutting. The harvesting or removal of trees; provided, however, that Grantor shall have the right to (i) cut or collect firewood for the heating of ranch and residential facilities on the Property; and (ii) cut or remove trees as reasonably necessary to control insects and diseases, prevent personal injury and property damage, and to allow construction or repair of residential or agricultural facilities. Grantor may also develop and, with the express prior written approval of Grantee, implement a long-range plan for the growing and/or harvesting of trees in a manner that is consistent with the purpose of this Easement.

7. Dumping. The dumping or other disposal of wastes, refuse or debris on the Property, except for organic material generated by permitted agricultural uses on the Property; provided, that any such dumping or disposal of organic material shall be in accordance with applicable law and generally accepted agricultural management practices. No trash, refuse, vehicle bodies or parts, rubbish, debris, junk, waste, or hazardous waste shall be placed, stored, dumped, buried, or permitted to remain on the Property except as reasonably required for the use of the Property for agricultural purposes, and in accordance with applicable law.

8. Soil Degradation. Ranching, agricultural or other uses, otherwise permitted under this Easement, which result in significant degradation of soil quality.

9. Water Quality Degradation. Ranching, agricultural or other uses, otherwise permitted under this Easement, which result in significant degradation of water quality.

10. Surface Alteration or Excavation. Any alteration of the general topography or natural drainage of the Property including, without limitation, the excavation or removal of soil, sand, rock, or gravel, except as may be required for uses on the Property incidental to agricultural uses permitted herein, provided that such materials are taken only from locations and in amounts approved by Grantee.