



# COUNTY OF SAN DIEGO

## LAND USE AGENDA ITEM

### BOARD OF SUPERVISORS

GREG COX  
First District

DIANNE JACOB  
Second District

DAVE ROBERTS  
Third District

RON ROBERTS  
Fourth District

BILL HORN  
Fifth District

**DATE:** August 6, 2014 and September 17, 2014

**01**

**TO:** Board of Supervisors

**SUBJECT:** PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS (PACE) PROGRAM MITIGATION COMPONENT AND PURCHASE OF EIGHT AGRICULTURAL CONSERVATION EASEMENTS IN BONSTALL, CAMPO, CREST-DEHESA, JAMUL, AND VALLEY CENTER (8/6/14-SET HEARING; 9/17/14 – HOLD HEARING) (DISTRICTS: 2 & 5)

### Overview

On December 4, 2013 (3), the Board of Supervisors (Board) received a report detailing the opportunities and challenges realized during the pilot phase of Purchase of Agricultural Conservation Easements (PACE) program and provided staff with the following direction:

- Pursue the acquisition of agricultural conservation easements on the remaining 16 top ranked PACE properties;
- Prepare a mitigation program as an expanded component of the PACE program;
- Establish the PACE program as a permanent County program;
- Provide for continuous funding through an annual General Fund appropriation in addition to funding through mitigation; and
- Periodically reopen the PACE application process to interested property owners.

In response to the Board's direction, County staff pursued the acquisition of agricultural conservation easements on the remaining 16 properties and secured "willing seller" letters from eight of the property owners (property data found in Table 1). Staff has updated the PACE Program Guidelines to establish PACE as a permanent County program and prepared a mitigation component for the Board's consideration. Implementation of the mitigation component requires adoption of a new mitigation credit fee, establishment of an associated trust fund, and an update to the County's California Environmental Quality Act (CEQA) Guidelines for Determining Significance for Agricultural Resources.

The easement acquisition request requires two steps. On August 6, 2014, it is requested that the Board set a hearing for September 17, 2014, and provide public notice for the hearing. If the Board takes the actions recommended for August 6, 2014, then on September 17, 2014, after making the necessary findings, staff requests that the Board: approve the purchase of agricultural

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easements for the eight properties, direct staff to implement the mitigation component of the PACE program, adopt the Form of Ordinance amending the County Administrative Code to establish a new fee for the PACE mitigation program, and establish an associated trust fund.

**Recommendation(s)**

**CHIEF ADMINISTRATIVE OFFICER**

**On August 6, 2014:**

1. Find, in accordance with Sections 15273, 15325(b) and 15061(b)(3) of the State CEQA Guidelines, that setting a hearing to purchase agricultural conservation easements over APNs 606-150-01, 128-211-01, 128-211-06, 128-212-01, 128-212-02, 519-110-22, 521-110-52, 189-021-10, 185-230-78, 185-230-79, 122-040-27, and 515-110-01; to establish a permanent PACE program with a mitigation component; and to establish the associated mitigation credit fee, are exempt from the provisions of the State CEQA Guidelines for the reasons stated in the Notice of Exemption.
2. Direct the Clerk of the Board to publish the required Notice of Intention to Purchase in accordance with Government Code Sections 25350 and 6063.
3. Set a hearing for September 17, 2014, at which time the Board may consider approving the purchase of agricultural easements over APNs 606-150-01, 128-211-01, 128-211-06, 128-212-01, 128-212-02, 519-110-22, 521-110-52, 189-021-10, 185-230-78, 185-230-79, 122-040-27, and 515-110-01.

**If on August 6, 2014, the Board takes the actions recommended in Items 1-3 above, then on September 17, 2014:**

1. Find that the proposed actions, to consider the purchase of agricultural easements over APNs 606-150-01, 128-211-01, 128-211-06, 128-212-01, 128-212-02, 519-110-22, 521-110-52, 189-021-10, 185-230-78, 185-230-79, 122-040-27, and 515-110-01; to establish a permanent PACE program with a mitigation component; and to establish the associated mitigation credit fee, are exempt from review under the CEQA pursuant to Sections 15273, 15325(b), and 15061(b)(3) of the State CEQA Guidelines for the reasons stated in the Notice of Exemption.
2. Approve the findings in Attachment E pursuant to the State CEQA Guidelines Section 15273(c).
3. Approve the real property contracts for the purchase of an agricultural conservation easements and authorize the Director of the Department of General Services to execute two copies of the agreement over:
  - a. APN 606-150-01 from Robert Shea for \$196,000;
  - b. APNs 128-211-01, 128-211-06, 128-212-01, and 128-212-02 from Cynthia Kinsman

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- for \$341,750;
- c. APN 519-110-22 from Nicanor Gonzalez III, Katrina Gonzales, and Jonathon F. Stirk for \$112,000;
  - d. APN 521-110-52 from Russell Walsh and Carolyn McGavock for \$62,500;
  - e. APN 189-021-10 from the Malek Mansour 1999 Trust for \$200,000;
  - f. APNs 185-230-78 and 185-230-79 from the John Hamilton Scudder Trust 03-25-91 for \$202,200;
  - g. APN 122-040-27 from Bagher and Ginger Bahardar for \$190,400; and
  - h. APN 515-110-01 from the Jeff and Edie Hawthorne Family Trust for \$15,000.
4. Authorize the Director of the Department of General Services, or designee, to execute all escrow and related documents necessary to complete the purchases.
  5. Adopt the Form of Ordinance entitled AN ORDINANCE AMENDING THE SAN DIEGO COUNTY ADMINISTRATIVE CODE TO ADD A PERMIT FEE RELATING TO THE PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS MITIGATION PROGRAM (Attachment C, on file with the Clerk of the Board).
  6. Direct the Chief Administrative Officer to implement the mitigation program as an expanded component of the PACE Program:
    - a. Incorporate the PACE mitigation program into the County’s CEQA Guidelines for Determining Significance for Agricultural Resources and the Land Use and Environmental Group’s (LUEG) Conditions Manual.
    - b. Establish an interest accruing trust fund for the PACE mitigation program.
  7. Refer to budget appropriations of up to \$1.5 million in Planning & Development Services, services and supplies, to fund the acquisition of PACE properties, based on Fiscal Year 2015-2016 General Purpose Revenue.

**Fiscal Impact**

Funds for this request are included in the Fiscal Year 2014-15 Operational Plan for Planning & Development Services. If approved, this request will result in a current year cost of \$1,319,850 for the purchase of the eight easements, and \$125,150 for related administration, title and escrow costs for a total of \$1,445,000. The funding source is Fiscal Year 2012-2013 (\$700,000) and Fiscal Year 2013-2014 (\$795,000) General Fund fund balance available. After acquisitions of the eight properties totaling \$1,445,000 there will remain \$50,000 in the PACE program. There will be no change in net General Fund costs and no additional staff years. Today’s action will

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also refer to the Fiscal Year 2015-16 budget the establishment of appropriations, up to \$1.5 million, for the Fiscal Year 2015-16 PACE program based on General Purpose Revenue.

### **Business Impact Statement**

By permanently preserving agricultural land and providing property owners compensation for conservation easements, the PACE program makes the continued use of agriculture more viable in the long term. The PACE program also supports continued agricultural uses in the county by creating more affordable properties for farmers.

### **Advisory Board Statement**

N/A

### **Background**

On August 3, 2011 (1), the Board directed staff to develop a pilot Purchase of Agricultural Conservation Easements (PACE) program as a component of the General Plan Update Implementation Plan. The PACE program is intended to promote the long-term preservation of agricultural land. The program is based on the framework of what is traditionally referred to as a purchase of development rights program. Under the PACE program, willing agricultural property owners in the unincorporated county are compensated for placing a permanent easement on their property that limits future uses and extinguishes future development potential. As a result, the agricultural land is preserved and the property owner receives compensation that can make its continued use for agriculture more viable.

In order to participate in the PACE program, a property owner must meet three eligibility requirements: 1) the property must have been actively farmed and/or ranched for a minimum of two years prior to applying for the program; 2) the property must have realized a density reduction as a result of the General Plan Update adopted by the Board on August 3, 2011 (1); and 3) the property must have had the ability to subdivide under the previous General Plan that was in effect prior to August 3, 2011. Program eligibility requirements were established and publically vetted during the General Plan Update process and reviewed by a PACE Advisory Group prior to implementation of the pilot program.

A total of 60 property owners applied during the pilot phase. All applications were reviewed and ranked based on the program eligibility. The density reduction realized as a result of the General Plan Update was the primary ranking factor. Additional ranking included the property's agricultural viability as well as its ability to contribute to assemblage of the Multiple Species Conservation Program (MSCP) habitat preserve. The ten highest ranking PACE applications were selected to move forward to the appraisal phase of the pilot program. The County acquired agricultural conservation easements over seven of the ten properties. The easements totaled 782 acres, which exceeded the pilot program's original goal of protecting 500 acres.

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1. PACE Easement Acquisitions

In addition to the highest ranking properties processed under the pilot phase, there were 16 properties which were deemed eligible for the PACE program but not processed for acquisition due to funding limitations. On December 4, 2013 (3), the Board directed staff to pursue the acquisition of agricultural easements over the remaining 16 top ranked properties with a combined acreage totaling 480.32 acres. The Board also referred to the Fiscal Year 2014-15 budget, the establishment of additional appropriations to fund the acquisitions of easements on these 16 properties. The Fiscal Year 2014-15 Operational Plan contains total funding of \$1,495,000, \$700,000 rebudget of the Fiscal Year 2012-2013 General Fund fund balance available and \$795,000 from Fiscal Year 2013-14, General Fund fund balance available.

County staff coordinated with the 16 eligible property owners and determined that ten property owners remained interested and eligible in moving forward with the program. An independent third-party appraiser conducted property-specific appraisals on each of the ten remaining properties. In determining the value of each easement, staff instructed the appraiser to apply the traditional appraisal valuation approach used by the State Department of Conservation in its California Farmland Conservancy Program. Under this approach, the appraiser used the sales comparison approach to estimate market value of the land as though it was unencumbered. Then, the appraiser estimated the property value with the agricultural conservation easement in place. Finally, the market value of the encumbered land was subtracted from the market value of the unencumbered land to arrive at the appraised value of the agricultural conservation easement. Based upon the appraised values and available funding, County staff secured “willing seller” letters from the owners of eight of the ten appraised properties and prepared a real property contract for the acquisition of these easements. As indicated in Table 1 below, owners for two of the ten appraised properties declined easement offers.

The total value of the eight easements proposed for acquisition is \$1,319,850, with \$125,150 for related administrative costs, for a total of \$1,445,000. The easements cover an area of 413.82 acres. (Refer to Table 1)

*Table 1: PACE Property Rankings  
(Shaded areas indicate property owner has accepted an easement offer)*

2. Ongoing PACE Program and Mitigation Component

On December 4, 2013 (3), staff presented the Board with a report detailing the opportunities and challenges realized during the PACE pilot phase including a discussion of incorporating an agricultural mitigation component into the PACE program. In response to staff’s report,

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the Board directed staff to:

- Establish the PACE program as a permanent County program,
- Prepare a mitigation program as an expanded component of the PACE program,
- Provide continuous funding through an annual General Fund appropriation in addition to funding through mitigation, and
- Periodically reopen the PACE application process to interested property owners.

a. Ongoing Program & New Application Process

Staff has updated the PACE Program Guidelines to establish PACE as ongoing program (Attachment B). All eligible applications received through the pilot phase of the PACE program have been exhausted, and staff recommends opening a new PACE application cycle in 2015. Upon receipt of new applications, staff will bring forward for Board consideration all eligible applications based on previously established ranking procedures and available funding. Additional application cycles will be conducted after all eligible applications received have been exhausted.

b. Annual General Fund Appropriation

Based on the acquisition and administrative costs realized to date, staff has established that an average of \$1.5 million would be required to fund each round of the PACE program. Therefore, staff recommends an appropriation of \$1.5 million to remain in-line with current acquisition levels. This funding and fees from PACE mitigation would be utilized for appraisals, easement acquisition, and administration of the PACE program. This action includes a recommendation to refer to budget, the establishment of appropriations of up to \$1.5 million in the Department of Planning & Development Services, services and supplies, to fund the acquisition of PACE properties, based on General Purpose Revenue. The amount is based on the average cost to acquire agricultural conservation easements during the PACE pilot phase.

c. Mitigation Component

Prior to and during development of the PACE program, there has been interest in exploring whether the PACE program could be expanded to serve as a mitigation tool for private development. With an expanded mitigation component, easement lands acquired by the County under the PACE program could be utilized as off-site mitigation for agricultural impacts resulting from private development projects. In response to Board direction, staff researched agricultural mitigation programs from other jurisdictions and developed a proposed County of San Diego agricultural mitigation program. The jurisdictions researched included the cities of Brentwood, Davis, Hughson, Lathrop, Manteca, Stockton, and Tracy, as well as the counties of Monterey, San Joaquin, Solano,

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Stanislaus, Sutter, and Yolo. Each jurisdiction has tailored its program to meet local needs. Requiring developers to negotiate and purchase an easement themselves (with agency approval) or pay an alternative fee to purchase mitigation credits is a common component of all the programs researched. Staff recommends utilizing a similar agricultural mitigation framework in San Diego County. Staff has coordinated development of this proposed agricultural mitigation with the Farm and Home Advisor, County Counsel, and the Departments of General Services and Agriculture, Weights and Measures.

Mitigation requirements for discretionary projects with significant impacts to agricultural resources are established and enforced through conditions of approval. Staff has detailed the framework of a new mitigation program option in the updated PACE Program Guidelines (Attachment B). The establishment of a PACE mitigation bank would provide applicants with an additional mitigation option beyond a traditional private party mitigation acquisition, which has historically been difficult for applicants to secure. The 413.82 acres of agricultural conservation easements acquired under this action would establish the initial PACE mitigation credit bank. Subsequent County purchases of easements would expand the mitigation credits available in the bank. Each acre of agricultural land permanently protected with an agricultural conservation easement under the County's PACE program would equate to one PACE program mitigation credit. Under this option, instead of purchasing real property in the form of agricultural conservation easements, discretionary project applicants that require agricultural mitigation through the CEQA review process could choose to purchase PACE program credits at a 1:1 ratio through the County's mitigation bank.

This action includes a recommendation to adopt an amendment to the County Fee Ordinance and to establish a trust fund. The establishment of a trust fund ensures the long-term viability of the PACE mitigation program. Any fees collected for the purchase of PACE mitigation credits would be deposited into this trust fund account and would be required to be utilized for the future purchase of easements, including any related appraisal, acquisition, and administrative costs. Agricultural mitigation fee rates researched in other jurisdictions range from \$2,500 to \$10,000 per acre, and vary widely as a result of local land and crop values. Staff recommends an initial mitigation credit cost of \$3,827 per acre based on appraised values in the current round of acquisitions, administrative costs, and a 10% acquisition cost adjustment. The 10% acquisition cost adjustment is intended to cover fluctuations in land values for future acquisitions and is consistent with similar mitigation programs researched in other jurisdictions.

*Table 2 PACE Mitigation Credit Fee*

Annually, staff will provide status reports on the overall PACE program in conjunction with annual PACE acquisition approvals by the Board. Every three years, as part of the

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annual status report, staff will recommend adjustments to the PACE mitigation credit fee for the Board's consideration. The mitigation credit fee would be adjusted to reflect changes in the average easement value per acre over the preceding three-year period.

Four actions are needed to implement the mitigation program. First, the Board must adopt an amendment to the County Administrative Code (Attachment C) to establish a fee for PACE mitigation credits. Second, a trust fund must be implemented to secure funds collected through the mitigation credit program. Third, staff must update the County's CEQA Guidelines for Determining Significance for Agricultural Resources to reflect that PACE program mitigation credits are available to offset agricultural impacts. Lastly, staff must update the LUEG Conditions Manual to include PACE mitigation credits as a condition of approval.

**Environmental Statement**

The acquisition of agricultural easements and establishment of a permanent PACE program are exempt from the provisions of the CEQA Guidelines in accordance with Sections 15061(b)(3) and 15325(b) because CEQA does not apply to transfers of ownership in land to preserve natural conditions, such as agriculture, and because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The amendment to the Administrative Code is exempt from the provisions of the CEQA Guidelines in accordance with Section 15723 because CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and other charges by public agencies which the public agency finds are for the purpose of meeting operating expenses, including employee wage rates and fringe benefits. See the Notice of Exemption and Findings for more information (Attachment E).

**Linkage to the County of San Diego Strategic Plan**

The requested action for acquisition of agricultural easements supports the Sustainable Environments Strategic Initiative in the County of San Diego's 2014-2019 Strategic Plan by implementing land use strategies that protect and promote our natural and agricultural resources.

Respectfully submitted,



SARAH E. AGHASSI  
Deputy Chief Administrative Officer

**ATTACHMENT(S)**

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A – Location Maps: Shea Property, Kinsman Property, Gonzalez and Stirk Property, Walsh and McGavock Property, Mansour Property, Scudder Property, Bahardar Property, and Hawthorne Property

B – PACE Program Guidelines

C –An Ordinance Amending the San Diego County Administrative Code to Add a Permit Fee Relating to the Purchase of Agricultural Conservation Easements Mitigation Program – Clean Copy

D – An Ordinance Amending the San Diego County Administrative Code to Add a Permit Fee Relating to the Purchase of Agricultural Conservation Easements Mitigation Program – Information Copy

E – Environmental Documentation

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**AGENDA ITEM INFORMATION SHEET**

**REQUIRES FOUR VOTES:**            Yes        No

**WRITTEN DISCLOSURE PER COUNTY CHARTER SECTION 1000.1 REQUIRED**  
    Yes        No

**PREVIOUS RELEVANT BOARD ACTIONS:**

July 17, 2013 (5), Purchase of Agricultural Conservation Easement Program  
December 4, 2013 (4), Report on the Purchase of Agricultural Conservation Easement Program

**BOARD POLICIES APPLICABLE:**

N/A

**BOARD POLICY STATEMENTS:**

N/A

**MANDATORY COMPLIANCE:**

On June 27, 2014, pursuant to Government Code Sections 65402 and 65566, Planning & Development Services made a finding of consistency with the General Plan, based on its preliminary review of the location, purpose, and extent of the proposed acquisitions

**ORACLE AWARD NUMBER(S) AND CONTRACT AND/OR REQUISITION NUMBER(S):**

N/A

**ORIGINATING DEPARTMENT:** Planning & Development Services

**OTHER CONCURRENCES(S):**    Department of General Services

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