

Purchase of Agricultural Conservation Easement (PACE) Program

Guidelines



MARCH 3, 2021





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Introduction

San Diego county's climate supports a year-round growing season that allows for a variety of small farms and diverse crops. In 2019, San Diego county was ranked among the top 10 agricultural counties in California, contributing over \$1.79 billion to the local economy. The County of San Diego (County) recognizes preservation of this valuable and unique local resource is essential when planning for the County's future.

In 2011, a comprehensive update of the San Diego County General Plan sought to balance the County's future growth with its diverse natural resources. The Purchase of Agricultural Conservation Easement (PACE) Program was included as part of the update, which focused on maintaining rural and semi-rural character in certain communities within the unincorporated county. The PACE Program compensates participating agricultural property owners for placing a permanent agricultural conservation easement on selected properties. These easements commit the land to agricultural uses. In 2021, an update to the PACE Program was directed to provide an opportunity for a larger group of agricultural landowners to participate and to support the County's commitment to climate action planning and sustainability. The update includes expansion of the eligibility criteria, modifications to the criteria staff use for ranking PACE applications received, and other implementation changes to reflect current regulations and best practices.

The PACE Program has the following goals:

1. Promote the long-term preservation of agriculture in the unincorporated area;
2. Establish criteria for the selection of agricultural conservation easements and protocols for the long-term monitoring of easements;
3. Establish a PACE mitigation bank as a mitigation option for development projects impacting agricultural resources; and
4. Satisfy General Plan Implementation Measure 5.3.1.F (Purchase of Agricultural Conservation Easements) and greenhouse gas (GHG) emissions reduction targets.

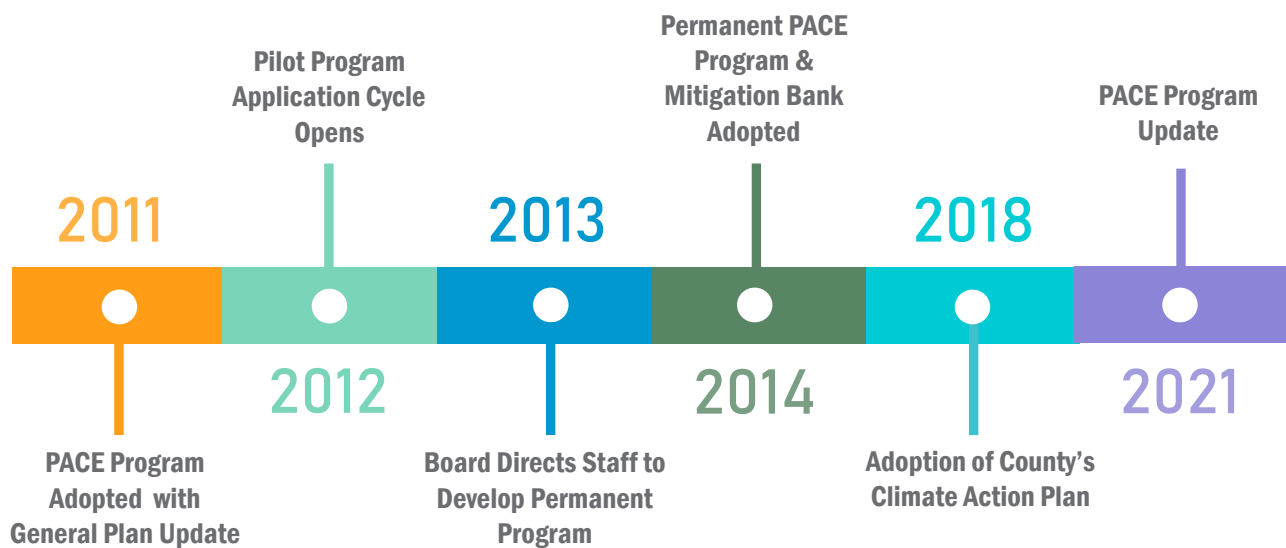


Figure 1: PACE Program Timeline

Program Update

On February 14, 2018 (1), the Board adopted the County’s Climate Action Plan (CAP) which established GHG emissions reduction targets for 2020 and 2030 for County operations within the unincorporated areas. The CAP includes 26 measures which rely upon enhancing several existing County programs and new initiatives to be undertaken by the County.

CAP Measure T-1.2 (Acquire Agricultural Easements) directed the County to expand the PACE Program eligibility to no longer require a realized density reduction under the 2011 General Plan Update to increase availability of eligible agricultural properties and expand the acquisition of PACE easements. While the CAP is no longer in effect, increased acquisition of agricultural easements by the County under the PACE Program reduces GHG emissions by relinquishing future development potential and thus a reduction in transportation, energy use, waste, and water consumption. The updates to the PACE Program will allow the County to further contribute to local agricultural preservation and local GHG emissions reductions.

The update to the PACE Program includes an easement monitoring component, an expansion of the eligibility requirements, and changes to the ranking criteria used for easement selection to include additional considerations such as contribution as a wildlife buffer, contribution to GHG emissions reductions, and compatibility with land use patterns.

Easement Monitoring

The PACE Program includes a monitoring component, which allows the County to ensure the agricultural, open space, and scenic values of each property are preserved through compliance with the permitted and prohibited activities outlined in Exhibits B and C of the recorded PACE easement. A sample easement can be found in Appendix B. The monitoring program runs on a repeating 5-year cycle which includes ownership review, offsite inspections, and onsite inspections as outlined below. Onsite inspection during easement preparation in Year 1 includes an appraisal by the County’s contracted third-party appraiser and appraisal report to be used as the baseline conditions for the PACE easement.

Table 1: PACE Easement Monitoring Methods and Timeline

Year 1	Year 2	Year 3	Year 4	Year 5
Onsite Inspection	Ownership Review	Offsite Inspection	Offsite Inspection	Offsite Inspection

Program Implementation

The following framework is provided to guide the implementation of the PACE Program and provide PACE Program participants with an understanding of the easement acquisition process. Typically, the timeline from application to easement acquisition averages 8 to 15 months. The overall length of the process varies based on the number of applications received and is dependent upon the constraints of each property.

Application Cycle

A PACE application form is posted on the County's website (www.sandiegocounty.gov/pds/advance/PACE.html) and made available in print format 14 days prior to the beginning of all PACE application periods. Launch of PACE application periods 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 information about the property owner, subject property, and agricultural activities. All information collected is analyzed to determine PACE Program eligibility and to rank the property for selection.

Eligibility Requirements

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

1. The property must have active agriculture¹ (farming and/or ranching) for a minimum of two years immediately prior to applying to the PACE Program; and
2. The property must be zoned as A70, A72, RR, S90, or S92².

At the close of each PACE application period, all applications are cataloged and screened for eligibility. To preserve local agriculture in perpetuity, it is important that the lands acquired under the PACE Program remain viable for agricultural use. Requiring PACE Program participants to have actively farmed and/or ranched land on their property for a minimum of two years prior to applying to the PACE Program ensures properties are actively engaged in agricultural activities, which increases the likelihood that properties continue to be used for agriculture in the future.

Ranking Criteria

PACE Program ranking criteria utilize information provided in the application and GIS analyses to ensure that PACE Program funds are allocated to properties important for the preservation of agriculture in the unincorporated county. All eligible PACE applications will be ranked according to the criteria described below:

1. Agricultural importance of a property pursuant to the County's Local Agricultural Resources Assessment (LARA) Model.
2. Contribution as a wildlife buffer between Multiple Species Conservation Plan (MSCP) priority acquisition areas and/or existing preserved lands and development areas.
3. Contribution to achieving the County's GHG emissions reduction goals.
4. Compatibility with land use and development patterns using Vehicle Miles Traveled (VMT) efficiency data to support housing initiatives.
5. Contribution to the preservation of wildlife habitat and connectivity through voluntary best-management practices.

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

¹Agriculture: Shall mean the production of goods such as food, fibers or feed by the systematic growing and harvesting of plants, animals and other life forms. Typical forms of agriculture include cultivation of land and raising of livestock. (The Zoning Ordinance, San Diego County, Section 1100)

²To determine Zoning, please generate a Property Summary Report for the property.

Easement Selection

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

1. Cost of easement relative to total Board allocations and appropriations available and anticipated funding.
2. Availability of time-sensitive matching funds such as state, federal or private contributions.
3. Consistency with County plans and policies.
4. Urgent situations that threaten a property with high agricultural importance.

Easement Valuation and Provisions

Properties participating in the PACE Program are appraised by an independent third-party appraiser to determine the agricultural easement value. The appraiser selected is on the County's approved list of qualified appraisers for this specialty purpose. 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 PACE Program utilizes a traditional appraisal process to determine agricultural conservation easement values. Under the traditional appraisal valuation approach, appraisers estimate the current fair market value of the property then subtract an estimate of the property's value with the PACE easement to determine the value of the easement itself. The County's Department of General Services (DGS), Real Estate Services Division, conducts the appraisal reviews, approves the easement values, and coordinates the acquisitions.

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 source's eligibility requirements.

Easement Provisions

Agricultural conservation easement contracts contain provisions that limit uses and activities that are inconsistent with continued commercial agriculture, and permit agricultural uses, structures, and related enterprises. A standardized agricultural conservation easement document is utilized for the County's PACE Program. However, in cases where funding partnerships and/or unique circumstances require specific easement language/terms, allowances will be made to alter the document. Monitoring and enforcement provisions are included in all easement agreements to ensure the land complies with the terms of the easement.

Easement Acquisition

After easement contracts have been finalized and approved by the property owner, the DGS Director approves execution of finalized easement agreements, if the easement value is less than \$500,000. A hearing before the Board of Supervisors (Board) is required to execute all finalized easement agreements when the easement value is greater than \$500,000. 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.

Average Time to Complete PACE Easement Acquisition Process = 8 to 15 Months



Application Period

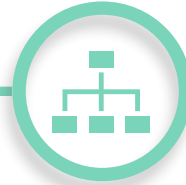
The PACE Program process begins with a 45-day application cycle to allow all willing participants to apply via the application included on the PACE website.

Time to Complete: 45 Days

Application Review & Ranking Period

Staff reviews each application for eligibility and ranks them according to the ranking criteria. After the applications have been ranked, staff notifies each property owner selected to participate in the program.

Time to Complete: 15 Days



Property Evaluation

The property value is evaluated through a title report and third-party appraisal. This information is reviewed and is used to determine the cost of the easement that will be paid to the owner.

Time to Complete: Up to 90 Days



Easement Offer & Contract Preparation

The Department of General Services will extend an offer at the cost of the easement valued by the appraiser. The owner has up to 30 days to accept or decline the offer.

Time to Complete: Up to 45 Days



Contract Execution & Open Escrow

If the easement is valued at $\leq \$500,000$, the Director of the Department of General Services may approve the contract and open escrow.

If the easement is valued at $> \$500,000$, approval authority transfers to the Board of Supervisors and a hearing will be scheduled to receive a decision.

Time to Complete:

Less than or equal to \$500,000 = 5 days

More than \$500,000 = Up to 90 Days



Close Escrow

If the property owner does not have a loan on the property, escrow will continue without separate approval and typically takes 45 days.

If the property owner does have a loan on the property, they will need to obtain written approval (i.e., Subordination Agreement) from their mortgage lender before proceeding. This process may add up to 6 months.

Time to Complete:

No Loan = 45 days

With Loan = Up to 180 Days



PACE Mitigation Bank

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

Agricultural Mitigation Needs

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. Under the PACE mitigation program, applicants of projects that require agricultural mitigation may choose to purchase PACE mitigation credits.

PACE Mitigation Credits

Agricultural lands permanently protected under the PACE Program on or after September 17, 2014, may 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.

How to Use PACE Mitigation Credits

Project Review

During discretionary project review, the CEQA Significance Guidelines are used to determine whether there is a significant impact to agriculturally viable land identified as an important agricultural resource. If impacts exist, the PACE Mitigation Bank may be selected as an agricultural mitigation tool to satisfy project conditions. The PACE Program Manager will determine whether there are sufficient credits available for purchase to mitigate those impacts.

Mitigation Credit Fee

Each PACE credit is equivalent to one acre of mitigation. The cost of one credit is \$3,827. This cost is based on the aggregate easement value per acre for all PACE easements acquired, 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. Every three years, staff will assess the need for adjustments to the PACE mitigation credit. The mitigation credit fee adjustment will reflect changes in the average easement value per acre over the preceding three-year period.

Mitigation Credit Payment

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.

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 PACE Program. PACE Trust Fund revenue may be used as follows:




▶ Purchase of Agricultural Conservation Easement (PACE) Program Guidelines

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.

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A photograph of a large indoor nursery or greenhouse. The foreground and middle ground are filled with rows of potted Zebra Haworthia plants, which have thick, pointed leaves with prominent white horizontal stripes and small white spots. The plants are arranged in long, curved rows that recede into the distance. The background shows the high, industrial-style ceiling of the building, constructed with a network of white steel beams and translucent panels that allow natural light to filter in. The overall atmosphere is bright and airy, typical of a large-scale plant cultivation facility.

Appendices

Appendix A: Frequently Asked Questions

1. What is the PACE Program?

The Purchase of Agricultural Conservation Easement (PACE) Program compensates willing agricultural property owners for placing a perpetual easement on their property that limits future uses to agriculture. The purpose of the PACE Program is to support and maintain a viable and long-term agricultural industry and sustainable agricultural land uses in the unincorporated county that serve as a beneficial resource and contributor to the county's rural character and open space network.

2. How was the PACE Program established?

- August 3, 2011 (1), the Board directed staff to develop a pilot PACE Program.
- December 4, 2013 (3), 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; 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.
- September 17, 2014 (1), the Board approved budget appropriations of up to \$1.5 million to fund the acquisition of PACE properties. An ordinance amending the San Diego County Administrative Code to add a permit fee for PACE Mitigation Credits was also approved. The PACE Mitigation Program was incorporated into the County's CEQA Guidelines for Determining Significance for Agricultural Resources and the Land Use and Environmental Group's (LUEG) Conditions Manual and an interest-accruing trust fund for the PACE mitigation program was established.

3. How does this compare to the Williamson Act?

While both the PACE Program and the Williamson Act share a goal of maintaining lands in agricultural use, there are a couple distinct differences:

1. Williamson Act contracts apply to agricultural preserves of at least 100 acres, while the PACE Program does not have a minimum size requirement.
2. The PACE Program preserves agricultural land in perpetuity, while the Williamson Act contracts have a minimum term of 10 years and can be cancelled.

4. Which Board Policies, General Plan components, and Climate Action Plan Measures are related to the PACE Program?

- Board Policy I-133: Support and Encouragement of Farming in San Diego County
- Conservation Policy COS-6.4: Support the acquisition or voluntary dedication of agriculture conservation easements and programs that preserve agricultural lands.
- General Plan Implementation Measure 5.3.1.F: Purchase of Agricultural Conservation Easements. Develop and implement Purchase of Agricultural Conservation Easement (PACE) Program.
- Climate Action Plan Measure T-1.2: Acquire Agricultural Easements

5. How does the PACE Program benefit the community?

Through the preservation of local agricultural land, the PACE Program provides a beneficial resource by maintaining rural and semi-rural community character. It supports the economic competitiveness of agriculture and makes agricultural lands more affordable for future agricultural landowners. Active agriculture supports the longevity of local agriculture and upholds rural/semi-rural community character in the unincorporated county. County staff updated the PACE Program to expand eligibility requirements to reach more local farmers.

6. How is the PACE Program funded?

Historically, the Board allocates funds of \$1.5M/year for acquisitions, administrative costs, Title Report fees, appraisals, and easement monitoring. The Board also allocates \$410,000/year from the CAP Fund to support the expanded PACE Program. The PACE Program is also funded through the PACE Mitigation Bank funds and any carryover funds from the previous year or unspent consultant funds.

7. How do I determine whether my property is eligible for the PACE Program?

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

1. The property must have active agriculture (farming and/or ranching) for a minimum of two years immediately prior to applying to the Program.
2. The property must be zoned as A70, A72, S90, or S92. To determine Zoning, please generate a Property Summary Report for the property.

8. What were the eligibility requirements in the 2014 PACE Program Guidelines?

In addition to the eligibility requirements below, properties must not have any land use violations to be eligible for participation in the PACE Program.

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

9. What were the ranking criteria in the 2014 PACE Program Guidelines?

All eligible applications were evaluated by the below criteria and ranked on a weighted scale relative to:

1. Degree by which the property was impacted by density reductions under the General Plan Update adopted August 3, 2011 (1).
2. Agricultural viability of a property pursuant to the County of San Diego Local Agricultural Resources Assessment (LARA) Model.
3. Degree by which the property would contribute to assemblage of the Multiple Species Conservation Program (MSCP).

10. What is the LARA model?

The Local Agricultural Resources Assessment (LARA) Model, outlined in the County's Guidelines for Determining Significance for Agricultural Resources, measures the agricultural viability of a property based on the following factors: water, climate, soil quality, surrounding land uses, land use consistency, and topography.

11. How are the PACE easement values determined?

The PACE Program uses an appraisal process to determine agricultural conservation easement values by:

1. Estimating the fair market value of the unencumbered property.
2. Subtracting an estimate of restricted value with the conservation easement.

For example:

\$500,000	Estimated fair market value of the unencumbered property
- \$375,000	Estimated restricted value with the conservation easement
= \$125,000	Estimated market value of the proposed conservation easement

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.

12. How long does the PACE easement acquisition process take?

The approximate time from applying to easement acquisition is 8-15 months. Details can be found on page 8 of these guidelines.

13. How will the easement be paid out?

When the easement is recorded, the County Department of General Services issues a one-time payment for the cost of the easement.

14. Will the easement be taxed?

Yes, the value of the PACE easement will be taxed like income, based on the amount of money received. In order to determine the exact tax implications, applicants are advised to consult an accountant to determine income taxes on real estate. The PACE easement may also decrease the property tax assessment of that individual property, but it is up to the property owner to request a reassessment with the County's Assessor's Office.

15. Can a participating PACE property terminate its easement?

An easement can only be terminated by a binding arbitration proceeding to evaluate whether the purpose of the easement remains viable, and the amount of the compensation the County shall be entitled from any sale, exchange, or conversion of the property. Costs of the arbitration, reappraisal of the property, and all administrative fees must be paid by the requesting party. According to Board Policy I-133: Open Space Easement Vacations, a Board hearing is required as well.

16. What is the development potential for land with agriculture?

Development potential is determined based on a number of factors, including the total acreage of the property, legal-lot status, and the General Plan Designation. Under the General Plan, agricultural use can occur in Semi-Rural Residential and Rural Lands land use categories with the following maximum density:

Designation	Maximum Density
Semi-Rural 0.5 (SR-0.5)	1 unit per 0.5, 1, or 2 gross acres
Semi-Rural 1 (SR-1)	1 unit per 1, 2, or 4 gross acres
Semi-Rural 2 (SR-2)	1 unit per 2, 4, or 8 gross acres
Semi-Rural 4 (SR-4)	1 unit per 4, 8, or 16 gross acres
Semi-Rural 10 (SR-10)	1 unit per 10 or 20 gross acres
Rural Lands 20 (RL-20)	1 unit per 20 gross acres
Rural Lands 40 (RL-40)	1 unit per 40 gross acres
Rural Lands 80 (RL-80)	1 unit per 80 gross acres

Appendix B: Sample PACE Easement

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, (“County”).

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:

(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, County 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 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 County 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 County; the parties shall bear their own expenses, including attorney's fees, individually.

7. County's Remedies. If County determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, County 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 County, 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, County 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 County, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Protected Values, County may pursue its remedies under this section without waiting for the period provided for cure to expire. County'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 County's remedies at law for any violation of the terms of this Easement are inadequate and that County shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which County 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. County'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 County'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 elected officials, 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.

9.1. County Not Operator. Nothing in this Easement shall be construed as giving any right or ability to County 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 _____ Development Rights associated with the Property.

i. The _____ (#) Development Right retained by Grantor shall apply and relate to the existing residential improvements on the Property, which consists of _____ (#) 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 that exceed the _____ (#) retained Development Right except as expressly provided in section 3 of Exhibit B hereto; Or

ii. In the case where there is no current residence, the Grantor retains _____ (#) Development Right for _____ (#) future residence. Grantor reserves the right to construct, maintain, use, repair, and replace the potential one (1) future residence on the Property with approval of appropriate governmental agencies and in conformity with sections 1 and 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 that exceed the _____ (#) retained Development Right except as expressly provided in section 3 of Exhibit B hereto.

(b) The remaining balance of the Development Rights and any other development or similar rights that may be or become associated with the Property are hereby extinguished.

12. Termination. If circumstances arise in the future which render the purpose of this Easement impossible to accomplish, this Easement can only be terminated, extinguished, or vacated (collectively, a “Termination”), whether in whole or in part, by an action by the County Board of Supervisors (“Board”) in the same manner as is prescribed for the vacation of public service easements in Part 3 of Division 9 of the Streets and Highways Code, upon consideration of an arbitrator’s decision, and conditioned upon receipt of compensation, as described below; and all discretionary decisions related to the approval shall remain in the sole discretion of the County Board of Supervisors. As a condition precedent to the County Board of Supervisors’ consideration of a requested Termination of this Easement, the proposed Termination shall be submitted by the Grantor or the current owner of the Property, or the County to an arbitration proceeding to evaluate: (i) whether a Termination should be recommended to the County of San Diego’s Board of Supervisors because the purpose of the Easement no longer remains viable, and (ii) the amount of the compensation to which County shall be entitled. The requesting party shall pay the costs of the arbitration.

a) Determining whether the requested Termination should be recommended to the Board due to the non-viability of the Easement shall include, but not be limited to, consideration of: i) whether the Termination is in the public interest; ii) whether the Termination is likely to result in the removal of adjacent lands from commercial agricultural production; iii) whether the Termination is for an alternate use that is consistent with the applicable provisions of the County general plan; iv) whether the Termination will result in discontinuous patterns of urban development; v) whether the conservation purposes can no longer be achieved; vi) whether there is no other available land that is suitable for the use to which it is proposed that the restricted land be put to, or that development of the restricted land would provide more contiguous patterns of urban development than development of proximate unrestricted land; vii) whether the County purchased the Easement to reduce greenhouse gas emissions to meet the requirements of the County’s Climate Action Plan; viii) whether the requesting party is offering alternative land to be restricted in lieu of the Easement; and ix) whether the proposed termination would comply with the California Environmental Quality Act and would not have a significant impact on the environment.

b) The amount of compensation shall be determined, unless otherwise provided by California law at the time, in accordance with section 13 and must be paid to the County no later than the date of any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to or four (4) years from the date of the Board’s decision to approve a Termination of the Easement, whichever is earlier.

13. Compensation. This Easement constitutes a real property interest immediately vested in County. 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, as determined by a qualified MIA appraiser from the County’s approved appraisal list, 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 County agree that the ratio of the value of the Easement to the value of the Property unencumbered by the Easement is _____ percent (_____%). This ratio shall remain constant. Grantor or current owner of the Property requesting the termination of the Easement shall pay for the cost of the appraisal.

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

15. Assignment of County's Interest. County 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 County. Any such amendment shall be consistent with the purposes of this Easement and with the County'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 County 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.

(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) No 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.

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 County; further provided, however, that such agricultural uses shall not result in significant soil degradation or sediment erosion, pollution or degradation of the stormwater conveyance system or 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 County 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 County 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 County’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 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 stormwater conveyance systems and surface water and during periods of high ground water and consistent with applicable laws including but not limited to Section 67.801 et seq. of the San Diego County Code of Regulatory Ordinances (SDCCRO) and San Diego Regional Water Quality Control Board Order No. R9-2016-004 and R9-2016-005 General Waste Discharge Requirements for Discharges from Commercial Agricultural Operations for Dischargers.

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 County 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, County, in its sole discretion, may also approve signs related to any such commercial or industrial uses approved by County.

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.

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 County, 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 or sediment erosion.

9. Water Quality Degradation. Ranching, agricultural or other uses, otherwise permitted under this Easement, which result in 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 County.

