

CITY OF OAKLAND

AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 OCT 15 PM 3:11

Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: October 27, 2009

RE: **Ordinance Authorizing The Purchase Of 3508 Butters Drive, A
14,567 Square Feet Lot Located In The Butters Canyon, From Victor
Van, Et Al., For One Hundred Fifty Thousand Dollars (\$150,000)
Plus Closing Costs Not To Exceed Ten Thousand Dollars (\$10,000)
From Measure DD Funds**

SUMMARY

An Ordinance has been prepared authorizing the City Administrator, or his designee, to negotiate and execute a Purchase And Sale Agreement for the purchase of 3508 Butters Drive (APN # 029-1167-011) consisting of about 14,567 square feet of land located in Butters Canyon ("Property"), from Victor Van, et al, for \$150,000 plus closing costs not to exceed \$10,000 from Measure DD funds.

On November 5, 2002, the voters of the City passed Measure DD that authorized the City to sell bonds to provide funds for the restoration and preservation of creeks and acquisition of watersheds. The Measure DD funds are available under the Watershed Improvement Program's Watershed Acquisition Project for the purchase of the Property.

A July 20, 2004 City Council report established Butters Canyon as a top priority for purchase under the Watershed Acquisition Program. City Council Resolution No. 78750 C.M.S. authorized staff to move forward with the purchase of properties in Butters Canyon.

The owners of the Property, as tenants in common, include:

1. Victor Van, an unmarried man as to undivided 50% interest in the Property,
2. Loi Khanh Cao, an unmarried man as to undivided 12.50% interest in the Property,
3. Eric Huynh, an unmarried man as to undivided 12.50% interest in the Property,
4. Minn H. Lee and Quyn H. Lee, husband and wife as to undivided 25 % interest in the Property,

The individual owners will hereinafter be referred to collectively as the "Owners".

The Owners have agreed to sell the Property to the City for the appraised value of \$150,000 with the City paying closing costs not to exceed \$10,000. Staff recommends the adoption of this Ordinance authorizing the City to purchase the Property.

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FISCAL IMPACT

The fiscal impact to the City includes:

1. Purchase of the Property. The cost to purchase the Property is \$150,000 plus estimated closing costs not to exceed \$10,000. Funds to purchase the Property are available in the Measure DD 2003A Capital Improvement Fund (5320), Capital Projects Watershed Org. (92240), Watershed Acquisition Series A-DD – Creeks and Waterways Project (C244910).
2. Maintenance Cost. The estimated annual cost for fire abatement maintenance is about \$1,000 per year. Funds to maintain this Property are available under the Oakland Wildfire Assessment District. The City is exempt from property taxes.

BACKGROUND

On November 5, 2002, the voters of the City of Oakland passed Measure DD, the Oakland Trust for Clean Water and Safe Parks. Measure DD provides a total of \$4.5 million for Watershed Acquisitions. Watershed and Stormwater Management is administering these funds for acquiring creekside properties of high aesthetic, habitat and/or water quality protections value.

On July 20, 2004, the City Council passed Resolution No. 78750 C.M.S. authorizing the use of Measure DD funds for City acquisition of parcels in Butters Canyon on Peralta Creek. The City has already purchased three properties in Butters Canyon using Measure DD funds. Together with the City's purchases, the Butters Canyon Conservancy (formerly known as the Butters Land Trust) owns title or conservation easements for seven other properties within Butters Canyon. Since 2002, the Butters Canyon Conservancy has been mobilizing citizens to protect these lands from development. With the acquisition of the Property, approximately 1600 linear feet of open creek will be protected in the Canyon.

The Property (shown on the Aerial Map and Tax Assessors' Map attached to the Ordinance as *Exhibit "A"*) is located at the uppermost end of Butters Canyon. This is the beginning section of Peralta Creek and continues for one-half mile downstream from the Property. The Property consists of native riparian and bay woodlands habitat, which contributes significantly to the biological resources and water quality attributes of Butters Canyon.

KEY ISSUES AND IMPACTS

The key issue is whether the City should purchase the Property for the purchase price (\$150,000) plus closing costs not to exceed \$10,000. Staff recommends the passage of this Ordinance to authorize the City to purchase the Property for the following reasons:

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1. The total purchase price of \$150,000 is consistent with the in-house appraised fair market value (\$145,000), as of August 4, 2009
2. Funding required for property acquisition, closing costs and related maintenance costs is available under the Measure DD 2003A Capital Improvement Fund (Fund 5320) Watershed Acquisitions Creeks and Waterways Project (C244910).
3. The purchase of this Property for open space will achieve the objectives of the City's voter supported Measure DD to preserve watershed lands, protect downstream water quality, provide flood storage and protection, and reduce impacts to downstream infrastructure and other properties.

PROJECT DESCRIPTION

The Property, located within Butters Canyon, extends along a one-half linear mile section of Peralta Creek between Robinson and Brunell Drives. This portion of Butters Canyon (characterized with headwater riparian habitat) is home to a wide range of wildlife and plant species. After the purchase, the Property will continue to remain open space.

ENVIRONMENTAL IMPACTS

After the purchase, the Property will continue to remain open space. The project is exempt under California Environmental Quality Act (CEQA), Section 15325 (Transfers of Ownership of Interest in Land to Preserve Existing Natural Conditions and Historical Resources). A Notice of Exemption and an Environmental Declaration (California Fish and Game Code Section 711.4) will be filed and recorded in the Recorder's Office, Alameda County.

SUSTAINABLE OPPORTUNITIES

Economic: Acquisition of the Property by the City contributes to efforts to protect open space. The project will establish a scenic resource that provides quality of life benefits for local and regional residents.

Environmental: The project will protect Peralta Creek. Water quality will be improved and intact wildlife habitat will be protected.

Social Equity: The project will protect an open space resource that can be accessed freely by the public. Located on a bike throughway, a preserved Butters Canyon will improve the social connections between the upstream and downstream neighborhoods.

DISABILITY AND SENIOR CITIZEN ACCESS

Disabled and senior citizens will have access to the Property in accordance with any existing ordinance.

RECOMMENDATION AND RATIONALE

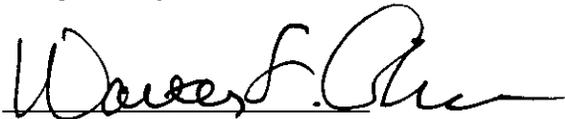
Staff recommends that the City Council approve the Ordinance authorizing the City Administrator to enter into and execute a Purchase and Sale Agreement with the Owners causing the acquisition of the Property for the following reasons:

1. Promote preservation strategies. Butters Canyon is a top priority for purchase under the Watershed Acquisition Program. The purchase of the Property is consistent with the City Council Resolution No. 78570 C.M.S. and accomplishes the objectives of Measure DD.
2. Availability of funds for the purchase of the Property. The available funds from Measure DD will cover the cost of acquisition. The available funds from Oakland Wildfire Assessment District will cover the costs to maintain the Property.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council approve the Ordinance.

Respectfully submitted,



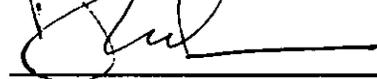
Walter S. Cohen, Director
Community and Economic Development Agency

Reviewed by: Gregory Hunter, Deputy Director
Economic Development and Redevelopment

Reviewed by: Frank Fanelli, Manager
Real Estate Services

Prepared by: Edwin Kawamoto

APPROVED AND FORWARDED TO THE
PUBLIC WORKS COMMITTEE



Office of the City Administrator

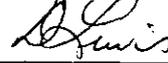
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FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 OCT 15 PM 3:11
NOTICE AND DIGEST

AN ORDINANCE AUTHORIZING THE PURCHASE OF 3508 BUTTERS DRIVE, A 14,567 SQUARE FEET LOT LOCATED IN THE BUTTERS CANYON, FROM VICTOR VAN, ET AL., FOR ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000) PLUS CLOSING COSTS, NOT TO EXCEED TEN THOUSAND DOLLARS (\$10,000) FROM MEASURE DD FUNDS

This Ordinance authorizes the City Administrator to purchase 3508 Butters Drive, a 14,567 square feet lot in Butters Canyon,



FILED
 INTRODUCED BY COUNCIL MEMBER
 OFFICE OF THE CLERK
 OAKLAND

2009 OCT 15 PM 3:12

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

AN ORDINANCE AUTHORIZING THE PURCHASE OF 3508 BUTTERS DRIVE, A 14,567 SQUARE FEET LOT LOCATED IN THE BUTTERS CANYON, FROM VICTOR VAN, ET AL., FOR ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000) PLUS CLOSING COSTS NOT TO EXCEED TEN THOUSAND DOLLARS (\$10,000) FROM MEASURE DD FUNDS

WHEREAS, on November 5, 2002, the voters of the City passed Measure DD, which authorized the City to sell bonds to fund the restoration and preservation of creeks and acquisition of watersheds in Oakland; and

WHEREAS, on December 20, 2005, the Oakland City Council passed Resolution No. 79646 C.M.S adopting the Prioritized Watershed and Acquisition Project List, which included and ranked the Butters Drive property high in terms of priority for acquisition; and

WHEREAS, the purchase of the property at 3508 Butters Drive (APN#029-1167-011), Oakland, CA (the "Property") for open space will achieve the objectives for Measure DD, to preserve watershed lands, provide flood storage and protection, and reduce impacts to downstream infrastructure and other properties; and

WHEREAS, Measure DD funds are available under the Watershed Improvement Program's Watershed Acquisition Project to cover the purchase price (\$150,000) and closing costs (not to exceed \$10,000) for the Property, consisting of approximately 14,567 square feet of land, as shown on the Aerial Map and Tax Assessor's Map attached hereto as Exhibit A; and

WHEREAS, the owners of the Property, as tenants in common, include:

1. Victor Van, an unmarried man as to undivided 50% interest in the Property,
2. Loi Khanh Cao, an unmarried man as to undivided 12.50% interest in the Property,
3. Eric Huynh, an unmarried man as to undivided 12.50% interest in the Property,
4. Minn H. Lee and Quyn H. Lee, husband and wife as to undivided 25 % interest in the Property, and

the individual owners will hereinafter be referred to collectively as the "Owners"; and

WHEREAS, the Owners have agreed to sell the Property for the fair market value of \$150,000 plus closing costs not to exceed \$10,000; and

WHEREAS, the requirements of CEQA, the CEQA Guidelines as prescribed by the Secretary of Resources, and the provisions of the Environmental Review regulations of the City of Oakland have been satisfied; now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. The City Administrator, or his designee, is authorized to enter into an Agreement to purchase the Property, consistent with this ordinance.

Section 2. The funding for the acquisition of the Property plus the payment for the closing costs will be from Measure DD 2003A Capital Improvement Fund (5320) Watershed Acquisitions Creeks and Waterways Project (C244910).

Section 3. The Manager of Real Estate Services or other City Administrator Designee is authorized to negotiate, execute, amend, extend all agreements, and to take all other necessary actions to complete the acquisition of the Property from the Owner.

Section 4. The Agreement to purchase shall be approved as to form and legality by the City Attorney's Office and a copy shall be filed with the Office of the City Clerk.

Section 5. The City Council has independently reviewed and considered this environmental determination and the Council finds and determines that this action complies with CEQA because this action on the part of the City is exempt from CEQA pursuant to Section 15325 (Transfer of ownership of interest in land to preserve existing natural condition and historical resources) of the CEQA guidelines, and the Council directs the City Administrator to file a Notice of Exemption and an Environmental Declaration (under California Fish and Game Code Section 711.4) with the County of Alameda.

Section 6. This Ordinance shall become effective immediately upon final adoption if it receives six or more affirmative votes; otherwise, it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____

Exhibit "A": Tax Assessor's Map of 3508 Butters Drive (APN #029-1167-011)

Code Area No.17-001

Assessor's Map 29.

7447

Plat of the part of the Rancho San Antonio finally confirmed to Antonio Maria Peralta Etal. (PAT. BKA Pg. 669)
Scale 1 in = 60 ft.

Lot Numbers are not Official.

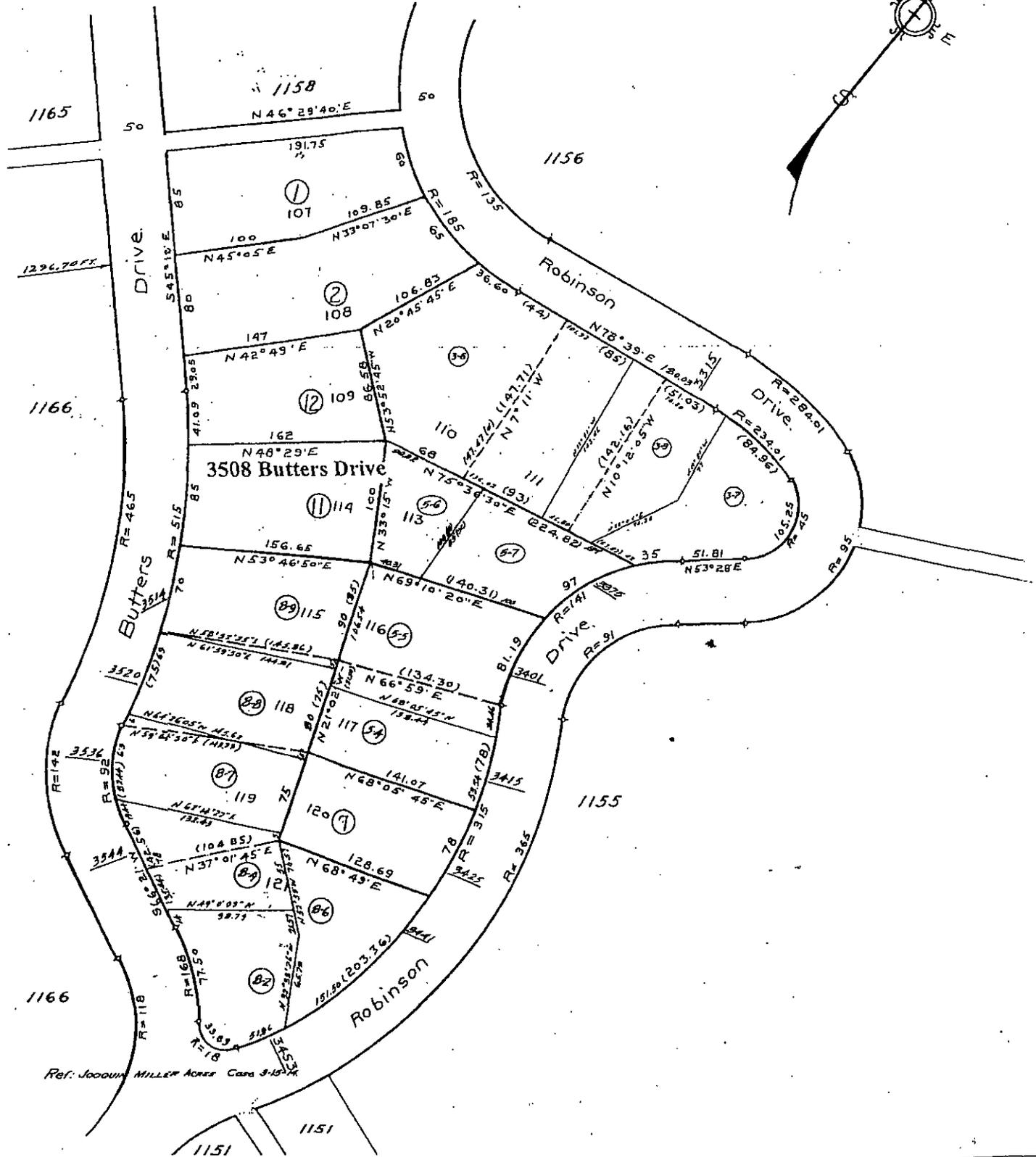
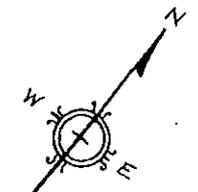
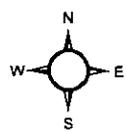


Exhibit "A": Aerial Map of 3508 Butters Drive



Legend

-  Selected Features
-  Contours
-  City Facilities Footprint
-  Parcels
-  Major Sts
-  Streets
-  Water
-  Land



It is imperative that you obtain BOTH the Zoning and General Plan designations for the property(s) you are searching for.

Questions? Contact a planner at (510)238-3911.

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