

**CITY OF OAKLAND**  
**AGENDA REPORT**

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2007 AUG 29 AM 11:28

TO: Office of the City Administrator  
ATTN: Deborah Edgerly  
FROM: CEDA-Real Estate Division  
DATE: September 11, 2007

RE: **Ordinance Authorizing the City Administrator to Negotiate and Execute 1) an Agreement to Acquire an Easement on a Portion of a Parcel of Land From Friendly Transportation Company to Construct a Section of Bay Trail Along the Oakland Tidal Canal at Alameda Avenue, For \$30,000 Plus Customary Closing Costs to be Funded From Measure DD, and 2) a Right of First Refusal For Friendly Transportation Company to Purchase Future Surplus City Land, if Any, Remaining From the Proposed 42<sup>nd</sup> Ave. and High Street Widening Project, Extending From 8<sup>th</sup> Street to Howard Street, at Fair Market Value, Subject to Applicable State and City Statutes**

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**SUMMARY**

The City of Oakland has an opportunity to move forward with acquiring a 3,074 square foot easement over a section of land for a portion of the Bay Trail along the Oakland Tidal Canal at the foot of Alameda Avenue. A Purchase and Sale has been negotiated for a Grant of Easement for the Bay Trail Segment from Friendly Transportation Company in the amount of \$30,000, plus a Right of First Refusal to purchase surplus City land resulting from the proposed 42<sup>nd</sup> Avenue and High Street widening project. Land required for the street widening project will result in further acquisition of other Friendly Transportation Company owned lands and as a result any surplus lands could be applied to mitigate those takings. Alternatively, Friendly Transportation Company may offer fair market value for those surplus properties.

It is recommended that the City Council approve this Ordinance to acquire this access easement for the Bay Trail.

**FISCAL IMPACT**

The approval of the Easement acquisition will not require any funds from the City's General Purpose Fund (1010) as funds from Measure DD previously approved by the voters in November 2002 will provide for the acquisition cost, including customary Title and Escrow fees. These funds will be allocated from Measure DD Fund (5320) Capital Improvement – Project Management Organization (92270), Acquisition of Right of Way Account (57111), and U.S. Audio Trail DD Project (C244010).

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## **BACKGROUND**

The City continues to acquire shoreline property, from San Leandro Bay to Jack London Square, as part of Oakland's portion of the Bay Trail as set forth by the San Francisco Bay Trail legislation.

Oakland's portion of the Bay Trail transverses both private lands and federal government lands, and crosses several regulatory jurisdictions such as the U.S. Army, United States Coast Guard, County of Alameda and the Port of Oakland. Ongoing access right negotiations for this trail are simultaneously being conducted with both private and governmental agencies.

## **KEY ISSUES AND IMPACTS**

The Grant of Easement Agreement will result in a mutually agreeable understanding and provides for complementary considerations between the City and Friendly Transportation. Friendly Transportation Company owns land needed by the Bay Trail project as well as land needed for the 42<sup>nd</sup> Avenue and High Street Widening Project. The proposed widening project should be moving forward over the next 2 to 3 years and Friendly Transportation Company has expressed interest in entering into this agreement, and has also expressed an interest in acquiring, at fair market value, surplus remnant parcels from the widening project which will be adjacent to its current holdings. Such acquisition would be subject to State and City statutes and Council approval. The advantage to offering a First Right of Refusal for remnant parcels from the widening project is that if sold, the City would not have to maintain the remnants resulting from the street project. These remnant parcels are generally less than 5,000 sq. ft. or potentially contaminated with hazardous materials from prior users and may not support any building or construction as conveyed, except to abutting property owners.

## **PROJECT DESCRIPTION**

Approval of the Ordinance will allow the City to make an easement acquisition for a portion of the Bay Trail, and may resolve some issues with respect to surplus City lands resulting from the 42<sup>nd</sup> and High Street Widening Project. Acquisition of this trail segment will provide public and recreational access to waterfront areas and enhance the quality of life for Oakland and Bay Area residents. Public use of this path will not generate any new or significant traffic issues, but enhance and complement the quality of life for residents.

Staff has conducted a market analysis and has found that the negotiated \$30,000 acquisition price is well within the range of value for similar type land in this location along the shoreline. All necessary permits required from regulatory agencies will be obtained by the City to build the trail and make improvements for trail purposes. The Easement for the Bay Trail shall remain in effect as long as the easement is required for the trail purposes.

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The property as a portion of the Bay Trail is exempt under California Environmental Quality Act (CEQA), Section 15316 (Transfer of Ownership of Land in Order to Create Parks), Section 15317 (open space contracts or easements) and Section 15325 (Transfers of Ownership of Interest in Land to Preserve Existing Natural Conditions and Historical Resources) of the CEQA guidelines. 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:* There are no economic opportunities associated with the acquisition of the easement.

*Environmental:* The area within the easement will be open space dedicated for use to the Bay Trail. There will be no environmental issues arising from the acquisition of easement by the City.

*Social Equity:* Social benefits flow from allowing public access to waterfront lands that previously were inaccessible.

### **DISABILITY AND SENIOR CITIZEN ACCESS**

The Bay Trail will enable disabled and senior citizens access to water front property and trails previously inaccessible.

### **RECOMMENDATION AND RATIONAL**

Staff recommends approval of the Ordinance to execute a Purchase and Sale Agreement for the easement acquisition of this segment of the Bay Trail. The purchase price shall be \$30,000 with a Right of First Refusal as additional consideration for those surplus properties that are acceptable to Seller and subject to City Council approval. Seller shall pay Fair Market Value for any acquired surplus properties. Friendly Transportation Company shall have until December 31, 2010 to exercise the Right of First Refusal for suitable surplus properties made available by the City by the proposed 42<sup>nd</sup> Avenue and High Street widening project, subject to State and City statutes.


### **ALTERNATIVE RECOMMENDATION**


The alternative is to exercise the right of Eminent Domain by the City to acquire this Bay Trail segment from Friendly Transportation Company. Generally, the costs incurred to proceed with an Eminent Domain Action would exceed the Fair Market Value of the proposed easement.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff requests that the City Council approve the Ordinance providing for the Purchase of a segment of the proposed Bay Trail by an acquisition of an Easement, and for the granting of the Right of First Refusal to Seller to acquire surplus City properties that may result from the 42<sup>nd</sup> Ave. and High Streets widening project. Approval of the Ordinance will further implement Measure DD and Bay Trail policy.

Respectfully submitted,

  
\_\_\_\_\_  
Claudia Cappio  
Development Director, Community and  
Economic Development Agency

  
\_\_\_\_\_  
Gregory Hunter, Deputy Director,  
Redevelopment and Economic  
Development, Community and  
Economic Development Agency

Reviewed by;  
Frank Fanelli, Manager,  
CEDA-Real Estate

Prepared by:  
Ronald M. Basarich, Real Estate Agent

APPROVED AND FORWARDED TO THE  
FINANCE & MANAGEMENT COMMITTEE:

  
\_\_\_\_\_  
Office of the City Administrator

Item: \_\_\_\_\_  
Finance and Management Committee  
September 11, 2007

# EXHIBIT A

## EASEMENT "A" – LEGAL DESCRIPTION

THAT LAND, located in the City of Oakland, County of Alameda, State of California, described more fully as follows:

**BEGINNING** at the intersection of the southerly right-of-way line of Alameda Avenue and the westerly right-of-way line of High Street;

Thence westerly along the southerly right-of-way of Alameda Avenue, the bearing of which is taken as North 89° 20' West for the purposes of this description, 1736.27 feet;

Thence leaving said right of way North 00° 31' East, 25 feet to the intersection with a line parallel with and 25 feet northerly measured perpendicular to the said southerly line of Alameda Avenue;

Thence parallel with said southerly right-of-way line of Alameda Avenue, North 89° 29' West, 225.18 feet to the easterly line of the Tidal Canal as shown in that certain *Record of Survey #1245*, filed July 28, 1994 in book 18 of Records of Survey upon pages 63 to 66 (inclusive), Alameda County Records;

Thence along the easterly line of said Tidal Canal, South 51° 11' 13" East, 42.82 feet;

Thence, continuing along said easterly line of said Tidal Canal, South 49° 13' 13" East 113.66 feet to the intersection with an east/west line parallel with and 75 feet southerly measured perpendicular to the said southerly line of Alameda Avenue. Said point being the **TRUE POINT OF BEGINNING** of this description.

**THENCE FROM SAID TRUE POINT OF BEGINNING**, South 89° 29' East, along the north westerly line of EASEMENT "A" (said Easement being hereby made a part of this description), 20.95 feet.

Thence North 47° 27' 24" West 45.44 feet;

Thence North 40° 33' 36" West, 92.30 feet, more or less to the Centerline of Alameda Avenue as said street is shown upon the aforementioned *Record of Survey #1245*

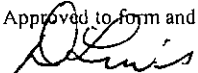
Thence South 89° 29' West, along said centerline of Alameda Avenue or a direct extension thereof, 46.89 feet, more or less, to the easterly limits of the Tidal Canal as shown upon *Record of Survey #1245*.

Thence continuing southeasterly along said easterly line of said Tidal Canal South 51° 11' 13" East for a distance of 42.82 feet;

Thence, continuing southeasterly along said easterly limits of the Tidal Canal, South 49° 13' 13". East , 113.66 feet, more or less, returning to the *True Point of Beginning*.

Having an area of 3,057 square feet (0.07 acres) more or less.

END OF DESCRIPTION



FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2007 AUG 29 AM 11:28  
**OAKLAND CITY COUNCIL**

**ORDINANCE NO. \_\_\_\_\_ C. M. S.**

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**ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE 1) AN AGREEMENT TO ACQUIRE AN EASEMENT ON A PORTION OF A PARCEL OF LAND FROM FRIENDLY TRANSPORTATION COMPANY TO CONSTRUCT A SECTION OF BAY TRAIL ALONG THE OAKLAND TIDAL CANAL AT ALAMEDA AVENUE FOR \$30,000 PLUS CUSTOMARY CLOSING COSTS TO BE FUNDED FROM MEASURE DD, AND 2) A RIGHT OF FIRST REFUSAL FOR FRIENDLY TRANSPORTATION COMPANY TO PURCHASE FUTURE SURPLUS CITY LAND, IF ANY, REMAINING FROM THE PROPOSED 42<sup>ND</sup> AVE. AND HIGH STREET WIDENING PROJECT, EXTENDING FROM 8<sup>TH</sup> STREET TO HOWARD STREET, AT FAIR MARKET VALUE, SUBJECT TO APPLICABLE STATE AND CITY STATUTES**

**WHEREAS**, the Oakland Trust for Clean Water and Safe Parks was passed on November 5, 2002, with 80% voter approval; and

**WHEREAS**, Measure DD provides funds for the Waterfront Trail Acquisition; and

**WHEREAS**, the Measure DD 2003A Bond sale in August 2003 provided \$70.5 million for Measure DD projects; and

**WHEREAS**, funds in the amount of \$1.1 million was previously appropriated into project C244010 (U.S. Audio trail), of which this acquisition is a part; and

**WHEREAS**, Friendly Transportation Company is the owner of a parcel of land located on Alameda Avenue and the Oakland Tidal Canal (APN 033-2250-013-01), which is integral to completion of the Bay Trail; and

**WHEREAS**, the necessary property rights have been appraised and an offer to acquire the property rights at their appraised fair market value has been made to the property owner; and

**WHEREAS**, the property owner has agreed to sell to the City an easement across a portion of the parcel of land at its fair market value of \$30,000; and

**WHEREAS**, Seller has requested as additional consideration, a "Right of First Refusal," to expire on December 31, 2010, to purchase, for fair market value, any surplus property remaining following the 42<sup>nd</sup> Avenue and High Street Widening Project; and

**WHEREAS**, the property to be acquired under the Easement for the Bay Trail shall be held by the City of Oakland as Open Space dedicated to Bay Trail usage exclusively; and

**WHEREAS**, the requirements of the California Environmental Quality Act (“CEQA”) the CEQA guidelines as prescribed by the Secretary of Resources, and the provisions of the Environmental Review Regulation 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 her designee, is authorized to negotiate and execute a Purchase and Sale Agreement to acquire an Easement on a portion of real property located on Alameda Avenue and the Oakland Tidal Canal (APN 033-2250-013-01), the legal description of which is set forth in Exhibit “A”; attached hereto and incorporated herein, from Friendly Transportation Company for a total amount not to exceed \$30,000, plus customary closing costs not to exceed \$2,000.

**Section 2.** The funds for the acquisition of the necessary property rights will be allocated from Measure DD Fund (5320), Capital Projects – Project Management Organization (92270), Acquisition of Right of Way Account (57111), U.S. Audio Trail DD Project (C244010).

**Section 3.** The Manager of Real Estate Services or such other City Administrator designee is hereby authorized to negotiate and execute all agreements and take all other actions as may be required to carry out the intent of the terms of the Purchase and Sale Agreement and this Ordinance.

**Section 4.** That 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 15316 (transfer of ownership of land in order to create parks), Section 15317 (open space contracts or easements) and Section 15325 (transfer of ownership of interest in land to preserve existing natural conditions and historical resources) of the CEQA guidelines, and Council directs the City Administrator to file a Notice of Exemption and an Environmental Declaration (CA Fish and Games Code Sec. 711.4) with the County of Alameda.

**Section 5.** The City Council approves granting a “Right of First Refusal” to Friendly Transportation Company to acquire remnant surplus land at fair market value resulting from the 42<sup>nd</sup> Avenue and High Street Widening Project, subject to applicable State and local statutes, and such “Right of First Refusal” shall expire on December 31, 2010.

**Section 6.** In accordance with the requirements of the City Charter Article IV, the Purchase and Sale Agreement and other agreements shall be approved as to form and legality by the City Attorney’s Office prior to execution and a copy shall be filed with the Office of the City Clerk.

**Section 7.** This Ordinance shall take effect 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, \_\_\_\_\_, 2007  
PASSED BY THE FOLLOWING VOTE:

AYES      BROOKS, BRUNNER, CHANG, NADEL, REID, QUAN, KERNIGHAN, AND  
            PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_  
**LA TONDA SIMMONS**  
City Clerk and Clerk of the Council  
of the City of Oakland, California



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## NOTICE AND DIGEST

**ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE 1) AN AGREEMENT TO ACQUIRE AN EASEMENT ON A PORTION OF A PARCEL OF LAND FROM FRIENDLY TRANSPORTATION COMPANY TO CONSTRUCT A SECTION OF BAY TRAIL ALONG THE OAKLAND TIDAL CANAL AT ALAMEDA AVENUE, FOR \$30,000 PLUS CUSTOMARY CLOSING COSTS TO BE FUNDED FROM MEASURE DD, AND 2) A RIGHT OF FIRST REFUSAL FOR FRIENDLY TRANSPORTATION COMPANY TO PURCHASE FUTURE SURPLUS CITY LAND, IF ANY, REMAINING FROM THE PROPOSED 42<sup>ND</sup> AVE. AND HIGH STREET WIDENING PROJECT, EXTENDING FROM 8<sup>TH</sup> STREET TO HOWARD STREET, AT FAIR MARKET VALUE, SUBJECT TO APPLICABLE STATE AND CITY STATUTES.**

The acquisition of this property for Trail purposes will serve to open another link in the Bay Trail Project to benefit the Public's access to Bay waters.