

**MEMORANDUM
DEPARTMENT OF FACILITY SERVICES
COUNTY OF PLACER**

To: **BOARD OF SUPERVISORS**

Date: **JANUARY 27, 2009**

From:  **JAMES DURFEE / ALBERT RICHIE** 

Subject: **NATURAL TRADING COMPANY AGRICULTURAL CONSERVATION
EASEMENT ACQUISITION**

ACTION REQUESTED / RECOMMENDATION: It is recommended that your Board take the following actions associated with the acquisition of an Agricultural Conservation Easement on the 40± acre parcel located at 5841 Fruitvale Road in Newcastle, also known as APN 031-340-005, owned by Bryan Kaminsky and Caren Hamilton of the Natural Trading Company (NTC Property):

1. Delegate authority to the Director of Facility Services to execute an Agreement of Purchase and Sale and the Agricultural Conservation Easement (CE) in the form as approved by County Counsel between the County and Bryan Kaminsky and Caren Hamilton, for the acquisition of a CE over the NTC Property for \$665,000 based on the attached Material Terms whereby Close of Escrow is contingent on \$337,500 in funding from the California Department of Conservation (DOC) and the Placer Land Trust; and
2. Adopt the attached Resolution authorizing the Director of Facility Services, or his designee, to execute all documents and take all actions necessary to complete the transaction, disburse funds associated with this transaction and record the Deed of Agricultural Conservation Easement; and
3. Authorize the Director of the Planning Department, or his designee, to execute all documents, following approval by County Counsel, as necessary to receive funding in the amount of \$332,500 from the DOC Farmland Conservancy Grant Program (CFCP) and \$5,000 from the Placer Land Trust to assist with the acquisition of the CE on the NTC Property; and
4. Approve the attached Budget Revision canceling reserves in the amount of \$339,327 in the Open Space Fund and appropriate the funds for this transaction; and
5. Approve the addition of the property to the Master Fixed Asset List.

BACKGROUND: On November 4, 2008, your Board adopted Resolution 2008-337 authorizing the Director of the Planning Department to submit and execute all documents necessary to apply for \$332,500 in funding from CFCP. In addition, your Board directed Facility Services staff to return for approval to acquire the CE, including approval of the CE and the Agreement of Purchase and Sale. By acquisition of the CE on the NTC Property this property's conservation values (e.g., open space, stream environment zone, rock outcroppings and oak trees) and the agricultural productive capacity (the quality of agricultural soils) would be preserved in perpetuity. This acquisition has been unanimously supported by the County's Agriculture Commission and meets Placer Legacy goals by supporting an increasingly important segment of the County's agricultural economy – locally

grown and distributed fresh fruit and vegetables, promoting sales of locally grown produce, and helping create additional markets for agriculture.

On December 15, 2008, the CFCP notified Planning Department staff that Placer County was successful in its grant application for CFCP funds. This grant will fund approximately 50% of the \$665,000 CE purchase price. Staff has also received a commitment from Placer Land Trust for \$5,000 towards acquisition of the CE. Shortly thereafter, the CFCP informed staff that the State Department of Finance had suspended all funding for all bond related projects due to the State budget situation. Nevertheless, the CFCP has indicated its desire to continue work towards advancing this project so that the acquisition could move forward quickly if the budget issues are resolved. Therefore, your Board's approval is necessary to allow staff to proceed with acquisition of the CE and approval of the grant documents so that Close of Escrow could occur as soon as the suspension is lifted. Per the proposed terms of the Agreement of Purchase and Sale, Close of Escrow will not occur until funds from the County's funding partners (i.e., the DOC and the Placer Land Trust) totaling \$337,500 are deposited into escrow.

AGREEMENT OF PURCHASE AND SALE AND CONSERVATION EASEMENT: An Agreement of Purchase and Sale and a CE have been drafted and approved by County Counsel. Attachment A provides a summary of the Material Terms for both documents. Property Management staff developed the CE based on the CFCP's desired form, and an appraisal established the CE's value at \$665,000. This value is based primarily on the impact to the property value due to the following burdens that would be placed on the NTC Property through the recordation of the CE:

- Loss of three of the four Development Rights with no increase in allowable Development Rights from future zoning changes and/or other governmental actions that would result in an increase in residential density. As a result, the property will be limited to one legal parcel.
- Permanence of the CE results in some risk associated with uncertainty of future farming economics.
- Responsibilities associated with conformance to the terms of the CE.
- Some intrusion resulting in some loss to the owner's right to quiet enjoyment.

Through the elimination of development rights and protection of the Conservation Values, the CE promotes the economic viability of commercial farming by ensuring larger tracts of land are preserved and ensures that uses do not degrade the quality of the soils or surface/subsurface waters. Without these development rights, a commercial farm becomes the most viable economic use for the landowner. To provide flexibility in perpetuating this use, the CE allows for leasing to another farmer if the CE terms are complied with. In addition, the current owner intends to apply for Williamson Act tax credits requiring a qualifying agricultural use. Although not contractually obligated, the owners have demonstrated their commitment to implementation and expansion of organic farming as evidenced by recent physical site improvements and the property's certification as an organic farm with the California Certified Organic Farmers (CCOF). Your Board's approval of the recommendations listed above is necessary to complete this transaction. This acquisition has been publicly noticed in accordance with Government Code section 6063.

ENVIRONMENTAL CLEARANCE: The acquisition of this CE is categorically exempt from the California Environmental Quality Act pursuant to Section 15317. Section 15317 provides for the establishment of agricultural preserves or the acceptance of easements in order to maintain the open space character of an area.

FISCAL IMPACT: The total acquisition cost for this CE is estimated at \$676,827, including the purchase price, title and escrow costs and appraisal. The sources of funds for this acquisition include the Placer County Open Space Fund in the amount of \$339,327, the DOC grant in the amount of \$332,500 and the Placer Land Trust contribution in the amount of \$5,000. A budget revision is necessary to appropriate these funds for acquisition of the CE. On going maintenance and monitoring is estimated to cost \$1,000 annually. Given the program at this time, this would be a General Fund expense through the Planning Department budget

JD:AR:MR:LM:DB

ATTACHMENT: ATTACHMENT A - MATERIAL TERMS
RESOLUTION
BUDGET REVISION

cc: COUNTY EXECUTIVE OFFICE
PLANNING DEPARTMENT

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MATERIAL TERMS
NATURAL TRADING COMPANY AGREEMENT OF PURCHASE AND SALE AND
AGRICULTURAL CONSERVATION EASEMENT

AGREEMENT OF PURCHASE AND SALE (Agreement)

- 1) Property: The Property is described as the 40± acre parcel, referred to as Placer County Assessor's Parcel Number 031-340-005 located at 5841 Fruitvale Road in Newcastle, California (the "Property").
- 2) Agreement: Agreement of Purchase and Sale (the "Agreement") is made by and between the County of Placer (the "Steward") and Bryan Kaminsky and Caren Hamilton, husband and wife, as joint tenants (the "Landowner").
- 3) Purpose: The purpose of the Agreement is to provide for the purchase and sale of the easement estate to the Property as conveyed through the recordation of a "Deed of Agricultural Conservation Easement" from Landowner to Steward (the "Easement").
- 4) Purchase Price: Upon Close of Escrow, the Steward will pay the Landowner Six Hundred Sixty-Five Thousand, and No/100 Dollars (\$665,000.00) for the Easement.
- 5) Close of Escrow Date: Close of Escrow shall be March 31, 2009, or the fulfillment of the Conditions to Close Escrow whichever occurs first.
- 6) Conditions to Close: The Close of Escrow shall be conditioned on all of the following:
1) Steward's written acceptance of the condition of title and physical and environmental condition of the Property; and, 2) the deposit of funds into Escrow by Steward's funding partners, which shall total Three Hundred Thirty-Seven Thousand, Five Hundred and No/100 Dollars (\$337,500.00).
- 7) Closing Costs: Steward shall pay the costs of an ALTA standard policy of title with regional exceptions. Steward and Landowner shall each pay one-half (1/2) of the escrow fees, document preparation costs and other related closing costs. Steward and Landowner shall each pay its own legal and professional fees and fees of other consultants incurred with regard to this transaction.
- 8) Warranties: Landowner shall provide warranties that to the best of its knowledge the Easement Property is free of any Hazardous Materials and is unaware of any release or discharge of Hazardous Materials in, upon, on or below any portion of the Property, including, but not limited to, soils and ground or surface water in and around its Property.

AGRICULTURAL CONSERVATION EASEMENT (Easement)

- 1) Parties: The County of Placer (the "Steward") and the Bryan Kaminsky and Caren Hamilton, husband and wife, as joint tenants (the "Landowners").
- 2) Property: Approximately 40 acres of property located at 5841 Fruitvale Road in Newcastle (see Exhibit A) also described as APN: 031-340-005 (the "Property").
- 3) Conservation Values: The Property's agricultural productive capacity, the quality of its agricultural soils, its open space, and the long-term retention of the Stream Environment Zone and the oak tree and rock outcrops.

- 4) Purpose: The Purpose (the "Conservation Purposes") is to enable the Property to remain in agricultural use by preserving and protecting its soils, agricultural productive capacity, and agricultural viability, utility, character and values, and its open space for scenic value. It is also the Purpose of the Easement to protect the Conservation Values.
- 5) Rights Conveyed: The Steward will acquire and retire three (3) of the four (4) Development Rights associated with this Property. Neither Party can benefit from any increase in allowable Development Rights associated with the Property resulting from future zoning changes and/or other governmental actions that would result in an increase in residential density on the property.
- 6) Rights Retained: Landowner retains the right to use the Property for agricultural purposes, or to permit others to use the Property for agricultural purposes, in accordance with applicable law as long as the agricultural productive capacity and open space character of the Property are not thereby significantly impaired.
- 7) Permitted Activities:
 - a) The storage of agricultural products and byproducts is permitted so long as it is done in accordance with all applicable government laws and regulations.
 - b) The use of agrichemicals, including, but not limited to, fertilizers and biocides, in those amounts and with that frequency of application necessary to accomplish reasonable grazing and agricultural purposes. Such use shall be carefully circumscribed near surface water and during period of high ground water.
 - c) To control predatory and problem animals by the use of selective control techniques in accordance with established gaming laws, local, state and federal regulations.
- 8) Development Rights:
 - a) Limits land coverage (structures) for non-agricultural producing activities to 2 acres comprised of:
 - (1) Up to 0.95 acres for Agricultural Accessory Structures to five separate Agricultural Building Envelopes.
 - (2) Up to 1.05 acres for Residential Building Envelope for both primary and secondary dwelling units (the secondary dwelling unit shall not exceed 1,200 sq.ft. and must be limited to non-commercial residents). Maximum coverage shall not to exceed 40% of the 1.05-acre area, or 18,295 square feet for all residential related structures.
 - b) No farm labor housing without written permission. Any farm labor housing must be located entirely within an Agricultural Building Envelope.
 - c) Maximum of two stock ponds with total area not exceeding 20,000 square feet. Use limited to agricultural purposes and not used for commercial recreational fishing, or any jet/water skiing.
 - d) No resort structures, golf courses, non-residential swimming pools, public or commercial airstrips, commercial equestrian facilities, public or commercial helicopter pads, and any other non-agricultural recreational structures or facilities.

- 9) Affirmative Rights Conveyed to County:
- a) To identify, to preserve and to protect in perpetuity the Conservation Values as defined above.
 - b) To enter upon, inspect, observe, and study the Property for the purposes of identifying and monitoring agricultural and biological resources and the uses and practices regarding the Property to determine whether they are consistent with this Easement.
 - c) To prevent any activity or use of the Property that is inconsistent with the conservation of the Conservation Values and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.
 - d) Consistent with the Placer County Zoning Ordinance, to erect and maintain a sign or other appropriate marker in a prominent location on the Property, visible from a public road or other publicly accessible location, bearing information indicating that the Property is protected by Steward and describing the involvement of Steward and any funding partners that contribute to the acquisition of this Easement.
- 10) Monitoring: The Steward shall manage its responsibilities as holder of this Easement in order to uphold the Purpose of this Easement including annual monitoring. The Steward shall report to the Department of Conservation by June 30 of each year after the annual monitoring visit, describing method of monitoring, condition of the Property, stating whether any violations were found during the period, describing any corrective actions taken, the resolution of any violation, and any transfer of interest in the Property.
- 11) Enforcement: The Steward or Director of the Department of Conservation may take all actions that it deems necessary to ensure compliance with the terms, conditions, covenants, and Purposes of this Easement.
- 12) Perpetual Duration: The Easement shall run with the land in perpetuity. Every provision of this Easement that applies to the Landowner or the Steward shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear.

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Before the Board of Supervisors County of Placer, State of California

In the matter of: A Resolution authorizing the Director of Facility Services, or his designee, to execute all necessary documents to complete the acquisition of the Agricultural Conservation Easement over the approximately 40-acre property known as APN 031-340-005, located at 5841 Fruitvale Road in Newcastle CA between Bryan Kaminsky and Caren Hamilton and the County of Placer; and, to disburse County funds necessary to complete the transaction; and, to record the Deed of Agricultural Conservation Easement.

Resol. No: _____

The following RESOLUTION was duly passed by the Board of Supervisors of the County of Placer at a regular meeting held _____, 2009 by the following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

Chairman, Board of Supervisors

Attest: Clerk of said Board

WHEREAS, Bryan Kaminsky and Caren Hamilton are the owners of APN No. 031-340-005 comprised of approximately 40± acres, located at 5841 Fruitvale Road in Newcastle, California, as shown on Exhibit A (the "Property"); and

WHEREAS, Kaminsky and Hamilton desire to sell the an Agricultural Conservation Easement (CE) to the County of Placer for the purchase price of Six Hundred Sixty-five Thousand, and No/100 Dollars (\$665,000.00) (the "Purchase Price"); and

WHEREAS, this acquisition of a CE on said Property preserves this Property's conservation values (e.g., open space, stream environment zone, rock outcroppings and oak trees) and the agricultural productive capacity (the quality of agricultural soils) in perpetuity; and

WHEREAS, upon receipt of grant funds from the California Department of Conservation Farmland Conservancy Grant Program and the Placer Land Trust, the County desires to acquire the CE from Kaminsky and Hamilton for the Purchase Price, pursuant to the terms set forth in the Purchase and Sale Agreement; and

NOW THEREFORE, BE IT RESOLVED, that the Placer County Board of Supervisors does hereby authorize the Director of Facility Services, or his designee, to execute on behalf of the County all documentation necessary to acquire the CE; does hereby authorize the disbursement of County funds necessary to complete the transaction; and does hereby consent to the acceptance and recordation of the Deed of Agricultural Conservation Easement over said Property.

ATTACHMENT: RESOLUTION EXHIBIT A – PROPERTY MAP

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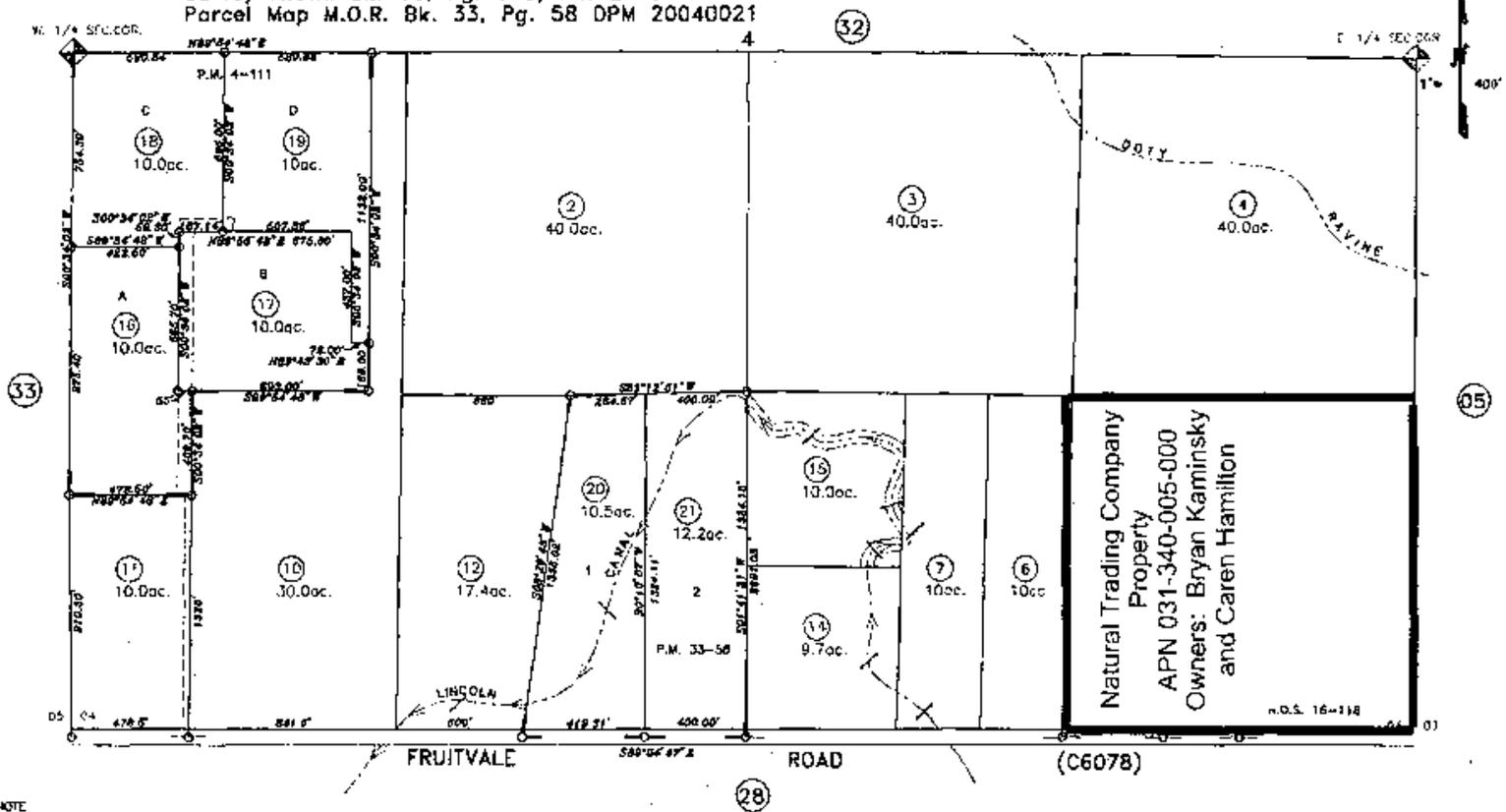
RESOLUTION EXHIBIT A
PROPERTY MAP

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S. 1/2 SEC. 4, T.12N., R.7E., M.D.B.&M.

31-34

Parcel Map M.O.R. Bk. 4, Pg. 111
Survey M.O.R. Bk. 16, Pg. 118, No. 2319
Parcel Map M.O.R. Bk. 33, Pg. 58 DPM 20040021



NOTE
All distances on curved lines are chord measurements.

NOTE
The map was prepared for assessment purposes only, and is not intended to illustrate legal building sites or establish precedents over local ordinances. Official information concerning size or use of any parcel should be obtained from recorded documents and local governing agencies.

Assessor's Map Bk.31 Pg.34
County of Placer, Calif.

12-21-2005 RNP
03-28-2002
Page Redrawn from Base Map Information.

NOTE
Assessor's Block Numbers Shown in Ellipses
Assessor's Parcel Numbers Shown in Circles.