

CLARK COUNTY STAFF REPORT

DEPARTMENT: Public Works

DATE: Oct. 30, 2018

REQUESTED ACTION: Approve and authorize the County Manager to sign a purchase and transfer agreement with Columbia Land Trust for Clark County to acquire the 105-acre Lower Daybreak property.

Consent
 Hearing
 County Manager

BACKGROUND

In July 2018, the Clark County Council authorized a grant agreement with the Washington State Recreation and Conservation Office for Clark County to acquire the Lower Daybreak property by donation from the Columbia Land Trust. The donated value of the land will be used as Clark County's local match for construction of initial public access and recreational improvements.

The Columbia Land Trust acquired the site in 2002 under a memorandum of understanding with Clark County to preserve future park opportunities. The memorandum requires Columbia Land Trust to donate the property at such time as the county requests.

COUNCIL POLICY IMPLICATIONS

Approval of the purchase and transfer agreement confirms existing county policy established through previous council actions for this property. An appraisal and a review appraisal have been completed confirming the land value. Once due diligence studies are completed, the council will be requested to accept deed to the property.

ADMINISTRATIVE POLICY IMPLICATIONS

None.

COMMUNITY OUTREACH

The Parks, Recreation and Open Space Plan and the Conservation Areas Acquisition Plan prioritize acquisition of the Lower Daybreak Property and development of initial recreational improvements in six-year capital plans. A Lower Daybreak Master Plan was completed with extensive public input, and the Clark County Council adopted the plan in June 2010. The proposed recreational improvements are a subset of the facilities proposed in the Lower Daybreak Master Plan. As more resources become available, additional improvements will be developed.

BUDGET IMPLICATIONS

The memorandum of understanding with Columbia Land Trust stipulates the county will provide Columbia Land Trust \$5,000 in compensation for holding the property. Compensation will be provided at such time as the county accepts deed to the property.

YES	NO	
X		Action falls within existing budget capacity.
	X	Action falls within existing budget capacity but requires a change of purpose within existing appropriation

PW18-121

X	Additional budget capacity is necessary and will be requested at the next supplemental. If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager.
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BUDGET DETAILS


NA

Local Fund Dollar Amount	\$5,000
Grant Fund Dollar Amount	NA
Account	Conservation Futures 3085
Company Name	Columbia Land Trust


DISTRIBUTION:

Council staff will post all staff reports to the county website, www.clark.wa.gov/the-grid.

Attachments: Map of Lower Daybreak Property
Purchase and transfer agreement
Memorandum of understanding with Columbia Land Trust

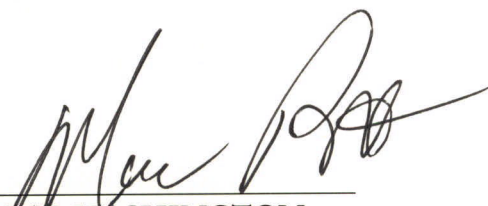


Kevin Tyler
Lands Manager



Ahmad Qayoumi, PE
Interim Public Works Director/County Engineer

Primary Staff Contact: Patrick Lee, Ext. 4070


APPROVED: _____
CLARK COUNTY, WASHINGTON
CLARK COUNTY COUNCIL

DATE: 10-30-18

SR# 177-18



PARCEL MAP

Project: Lower Daybreak Acquisition/Development (16-1996)

Program: Aquatic Lands Enhancement Account

Sponsor: Clark County



DW 02-20

MEMORANDUM OF UNDERSTANDING

Clark County and the Columbia Land Trust hereby make the following agreement regarding the acquisition and management of real property.

RECITALS:

1. The Parties:

The parties to this agreement are Clark County, Washington, [acting by and through Vancouver-Clark Parks and Recreation] (hereafter referred to as the County), and the Columbia Land Trust, a nonprofit corporation organized under the laws of the State of Washington, with its principal place of business in Vancouver, Washington. The Columbia Land Trust is a nonprofit nature conservancy corporation as that term is defined by RCW 64.04.130. The primary purpose of the Columbia Land Trust is to conserve natural resources and open space for the benefit of the public, consistent with its corporate charter, tax-exempt status and acquisition policies.

2. The Property:

The real property which is the subject of this agreement consists of approximately 112 acres. The property is located along the south-side of the East Fork of the Lewis River, immediately downstream of the Daybreak Bridge. The legal description of the property is attached to this agreement as "Appendix A", and is hereby incorporated by reference. For information purposes only, the Grantors of the property were Ab Dulazia Al Ibrahim, his spouse, Walid Ibrahim, and Range Site, Inc. (hereafter referred to as the Grantors).

The property meets the acquisition criteria of the County, as follows: natural, recreational, educational, scenic, water, habitat, wildlife, and forest values. A copy of the County's Open Space Commission Report is attached to this agreement as "Appendix B", and is hereby incorporated by reference.

3. The Intention:

The County intends to acquire title to the property consistent with its plans and goals to provide open space and recreation lands. The County desires to defer the acquisition of title in order to maximize its opportunities to obtain grants and other funds. Pending acquisition of title, the County desires to have title held by the Columbia Land Trust. During the interim period, the County may desire to use, develop and manage the property consistent with its park management and development plans.

The Columbia Land Trust is willing to acquire and hold title to the property on an interim basis and to convey the property to the County upon request. The Columbia Land Trust is willing to use an expedited due diligence and review process. The Columbia Land Trust will receive compensation for its services.

In consideration for the Columbia Land Trust accepting title to the property, holding title to the property, agreeing to convey the property to the County upon request, and allowing the County access to the property, the County agrees to pay the Columbia Land Trust a fee of Five Thousand and No/100 Dollars (\$5,000.00) compensation for the above mentioned services. The fee is payable in the full amount upon acquisition of title from the Grantor(s).

Upon the request of the County, the Columbia Land Trust will transfer title to the property to the County.

AGREEMENTS:

4. The Columbia Land Trust agrees to accept title to the property from the Grantors, subject to the following terms and conditions:

- a) The County, the Columbia Land Trust, and the Grantors shall have negotiated a property transfer/purchase agreement;
- b) The Columbia Land Trust and the Grantors shall have executed the property transfer/purchase agreement;
- c) The County and the Columbia Land Trust shall have executed this Memorandum of Understanding;
- d) The Columbia Land Trust shall have reviewed and approved a phase 1 environmental assessment;
- e) The Columbia Land Trust shall have reviewed and approved a preliminary title report and commitment for title insurance;
- f) The Columbia Land Trust shall have reviewed and approved a survey and legal description;
- g) The County, or Sellers (as specified in the executed Purchase & Sale Agreement) shall pay all escrow fees and closing costs, including, but not limited to, recording fees, taxes and title insurance premiums;

- h) The County shall have deposited funds in escrow sufficient to pay the purchase price and closing costs;
- i) The Columbia Land Trust shall provide Grantors, upon request, documentation of its charitable status and will acknowledge receipt of any charitable donation;
- j) The County acknowledges that in accepting title the Columbia Land Trust is not acting as a Trustee, nor in a fiduciary capacity for the County.

5. Subsequent transfer:

The Columbia Land Trust agrees to transfer title to the County upon request or at the expiration of the five-year period commencing on the date of this agreement. The County agrees to pay all transaction and closing costs for the subsequent transfer.

Upon expiration of the five year period described above, the parties may execute a new agreement for an additional five-year period.

6. Compensation:

Columbia Land Trust will donate the property to Clark County.

7. County Use Rights:

During the period the Columbia Land Trust holds title to the property, the County and its officers, employees, agents, and contractors shall have the right to enter, use, improve, preserve, protect, maintain, manage, study, and inspect the property, and the duty to enforce all state and local laws, including parks and recreation plans, programs and regulations.

The County shall have the right to allow public access for recreational purposes, provided that the County regulates and enforces public conduct on the property, consistent with state and local laws, and park regulations.

The County agrees to inspect, maintain, and protect the physical attributes, conservation values, title, and quiet possession of the property. The County shall notify the Columbia Land Trust of any and all actual or threatened damage to the property which the County discovers.

The Columbia Land Trust shall notify the County of any and all claims, suits, actions, notices, violations, or proceedings affecting the property.

8. Use Rights:

The Columbia Land Trust agrees not to make any use of the property which would be inconsistent with park, open space, conservation, and recreational values. The Columbia Land Trust Agrees to only make such use of the property that will qualify it for the limitation of liability provided by RCW 4.24.210.

9. Indemnity:

The County agrees to defend, indemnify, and hold harmless the Columbia Land Trust and its directors, officers, employees, volunteer workers, agents, and contractors from and against any and all claims, suits, actions, proceedings, citations, or notices of violation pertaining to the property or arising out of the use thereof by any person. Indemnity shall extend to all monetary damages, costs, attorney's fees, and civil penalties whether imposed by judgment, settlement, or consent.

The County agrees to defend, indemnify, and hold harmless the Columbia Land Trust and its directors, officers, employees, volunteer workers, and agents from and against any and all claims, suits, actions, or proceedings arising out of ownership, title, or possession of the property, including but not limited to quiet title, adverse possession, slander of title, boundary disputes, trespass, nuisance, liens, or encumbrances.

The County agrees to defend, indemnify, and hold harmless the Columbia Land Trust and its directors, officers, employees, volunteer workers, agents and contractors from and against (a) all costs of preparation and implementation of any closure, remedial or other plans required by any governmental authority for environmental cleanup of the property and (b) all claims, suits, actions, proceedings, judgments, orders, liens, fines, penalties, contribution, damages, and liabilities relating to the presence of hazardous materials on the property. "Hazardous materials" means any chemical, compound, material, mixture, or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to the Comprehensive Environmental Response Compensation Liability Act (42 USC, section 9601 et. seq.) or pursuant to the Washington Model Toxics Control Act (RCW 70.105.010 et. seq.). The indemnity of this subparagraph shall not include any release of hazardous materials by the Columbia Land Trust or its directors, officers, employees, volunteer workers, agents or contractors.

The Columbia Land Trust shall give prompt notice to the County of any circumstances which may give rise to the defense, indemnity and hold harmless provisions of this paragraph and shall cooperate fully with the County.

The Columbia Land Trust agrees to defense by the Clark County, Prosecuting Attorney, or such competent private counsel as the County shall hire. Indemnity shall include the costs and attorneys fees, if any, incurred by the Columbia Land Trust in defending any matter prior to the County assuming its duty to defend the Columbia Land Trust.

In any dispute or action between the County and the Columbia Land Trust arising out of this agreement or the relationship created thereby, each party shall bear its own costs and attorney's fees.

10. Property Taxes:

The Columbia Land Trust shall file an annual request for property tax exemption with the Department of Revenue, based upon the expected use of the property for open space, conservation, or public recreation. In the event that the property tax exemption is not granted, the County agrees to reimburse the Columbia Land Trust for any and all property taxes which are levied on the property during the period of ownership by the Columbia Land Trust.

11. Liens:

The Columbia Land Trust agrees not to engage in any conduct or omission which would result in the existence of liens or encumbrances being imposed upon the property during the time the Columbia Land Trust holds title to the property.

12. General Provisions:

a. Names, addresses and notices:

All notices and correspondence shall be addressed to the parties, as follows:

COLUMBIA LAND TRUST
1351 Officers' Row
Vancouver, WA 98661
(360) 696-0131

CLARK COUNTY
c/o Vancouver-Clark Parks
P.O. Box 1995
Vancouver, WA 98666-1995

All notices shall be served by personal delivery or upon mailing by U.S. first class mail. Either party may change its address upon written notice to the other party.

b. Counterparts:

The parties may execute this agreement in two or more counterparts, which shall, in the aggregate, be signed by the authorized agents for both parties, and

each counterpart shall be deemed an original instrument as against the party who signed it.

c. Amendments:

This Agreement constitutes the entire agreement between the parties. Any amendment to this Agreement shall be in writing and signed by both parties.

d. Successors and assigns:

The terms of this agreement shall be binding upon each of the parties and their respective successors and assigns.

e. Mediation:

In the event of a dispute between the parties, they shall refer the matter to mediation prior to the institution of any legal action or proceeding.

EXECUTED on the 29 day of January, 2002

Attest:

Arvin Richards
Clerk to the Board

BOARD OF COMMISSIONERS FOR
CLARK COUNTY, WASHINGTON

By: _____
Betty Sue Morris, Chair

APPROVED AS TO FORM ONLY:
Art Curtis, Prosecuting Attorney

By: *Art Curtis*

By: _____
Craig Pridemore, Commissioner

By: *Judie Stanton*
Judie Stanton, Commissioner Chair

COLUMBIA LAND TRUST

By: *M. Sub for*
Kathy Dietrich, President
Authorized Agent

PROPERTY TRANSFER/PURCHASE AGREEMENT

Clark County and Columbia Land Trust hereby make the following agreement regarding the transfer of interest in real property.

RECITALS:

1. The Parties:

The parties to this agreement are Clark County, a political subdivision of the State of Washington, hereafter referred to as County, and Columbia Land Trust, a nonprofit corporation organized under the laws of the State of Washington, with its principal place of business in Vancouver, Washington, hereafter referred to as Land Trust. Columbia Land Trust is a nonprofit nature conservancy corporation as that term is defined by RCW 64.04.130. The primary purpose of the Land Trust is to conserve natural resources and open space for the benefit of the public, consistent with its corporate charter, tax-exempt status and acquisition policies.

2. The Property:

The real property which is the subject of this agreement consists of approximately 106 acres known as "West Daybreak". The property is located along the south side of the East Fork of the Lewis River, immediately downstream of the Daybreak Bridge. A full legal description of these parcels is attached to this agreement as "Exhibit A", and is hereby incorporated by reference. The parcels were acquired for conservation purposes using Conservation Futures Fund revenue.

3. The Parties' Mutual Interest in the Property

On January 19, 2002, County and Land Trust executed a Memorandum of Understanding regarding the Property, and on June 19, 2007 signed an Amendment to that MOU. The County intended to acquire title to the Property, using Conservation Futures Fund revenues, consistent with its plans and goals to provide open space and recreation lands along the East Fork Lewis River. The County desired to defer the acquisition of title in order to maximize its opportunities to obtain grants and other funds. Pending acquisition, the County desired to have title held by the Land Trust.

Land Trust was willing to acquire and hold title to the Property on an interim basis and to convey the Property to the County upon request.

The amended Memorandum of Understanding included a sunset date of June 19, 2012. However, County and Land Trust acknowledge that, by mutual

Agreement to Transfer Interest in Real Property

agreement, the Parties continued to honor the terms of the MOU as if it were extended on a year to year basis. Parties continue to honor said terms.

4. Land Trust agrees to transfer title of the Property to the County, subject to the following terms and conditions:

- a) County and Land Trust have executed this property transfer/purchase agreement;
- b) Land Trust shall furnish any legal and due diligence documents in the Land Trust's possession to County related to the January 29, 2002, County and Land Trust executed Memorandum of Understanding;
- c) Land Trust shall furnish County all annual inspection and management reports regarding the Property prepared by Land Trust during the time Land Trust held title to Property
- d) Land Trust shall transfer title by bargain and sale deed;
- e) The County will purchase title insurance in the full fair market value of the Property; and
- f) The County shall pay all escrow fees and closing costs, including, but not limited to, recording fees, taxes and title insurance premiums.

5. Compensation:

County agrees to pay Land Trust \$5,000 consideration for the Land Trust holding title to the property for an extended period of time, consistent with Provision 5 of the original MOU.

6. Indemnity:

County agrees to reimburse, save, indemnify, protect, defend and hold harmless the Land Trust and its officers, directors, employees and agents from and against any and all claims, losses, liabilities, costs, damages and expenses (including reasonable attorneys' fees at trial, including any trial or proceedings in bankruptcy and on any appeal or review) incurred by the Land Trust or the other indemnified parties arising in any manner out of the operations or activities of the County after the Closing. The indemnity obligations set forth in this Section 6 shall survive Closing and the recordation of the deed conveying the Property to the County.

7. General Provisions:

a. Names, addresses and notices:

All notices and correspondence shall be addressed to the parties,
as follows:

COLUMBIA LAND TRUST
850 Officers' Row
Vancouver, WA 98661
(360) 696-0131

CLARK COUNTY
Legacy Lands Coordinator
Public Works Operations Center
4700 NE 78th Street
Vancouver, WA 98665
(564) 397-4070

b. Counterparts:

The parties may execute this agreement in two or more counterparts, which shall, in the aggregate, be signed by the authorized agents for both parties, and each counterpart shall be deemed an original instrument as against the party who signed it.

c. Amendments:

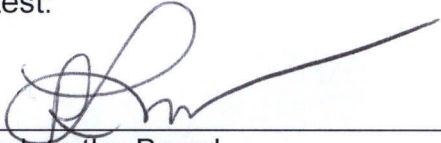
This Agreement constitutes the entire agreement between the parties. Any amendment to this Agreement shall be in writing and signed by both parties.

8. Choice of Law, Jurisdiction and Venue:

This agreement is governed by the law of the State of Washington. The Superior Court of Clark County, State of Washington, and this Agreement shall be governed by Washington law. The prevailing party in a lawsuit to enforce the terms of this Agreement shall be entitled to recover from the other its reasonable attorney's fees and costs.

EXECUTED on the 30th day of October, 2018.

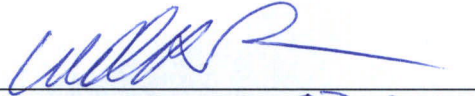
Attest:



Clerk to the Board


APPROVED AS TO FORM ONLY:

Anthony F. Golik, Clark County Prosecuting Attorney

By: 

~~Amanda Migchelbrink~~ *Bill Rodgers on Behalf of Amanda Migchelbrink*
Deputy Prosecuting Attorney

CLARK COUNTY

By: 
Shawn Hennessee
County Manager

Date: 10-30-18

COLUMBIA LAND TRUST

By: 
Dan Roix, Conservation Director

Date: _____



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CLARK COUNTY
WASHINGTON

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PUBLIC WORKS
COUNTY SURVEYOR'S OFFICE

EXHIBIT "A"
LEGAL DESCRIPTION OF COMBINED PARCELS

A parcel of land lying in the southwest quarter of Section 20 and southeast quarter of Section 19, Township 4 North, Range 2 East of the Willamette Meridian in Clark County, Washington, being more particularly described as follows:

Beginning at the point of intersection of westerly right of way of NE 82nd Ave and northerly right of way of NE 259th St, Thence westerly along said northerly right of way line, being also the southerly line of APN's 225383000, 225396001, 225396000, and east and south line of APN 225219000, to the easterly line of APN 225162005,

Thence northwesterly along the southerly lines of APN's 225219000, 225204000, 225189000, and 225220000 to the west line of said APN 225220000,

Thence north, along said west line to the center of the East Fork of the Lewis River,

Thence easterly along the centerline of said east fork, being also the northerly line of APN's 22522000202, 225189000, 225219000, 225396000, and 225383000, to the southwesterly line of APN 225451000,

Thence southeasterly along said southwesterly line to the southwest corner of said Parcel, Thence easterly along the southerly line of said Parcel to the westerly right of way line of NE 82nd Ave.,

Thence south along said westerly right of way line to the Point of Beginning.

Excepting therefrom following described parcel: Beginning at the southeast corner of APN 225396-000, being also a point on the northerly right of way line of NE 259th Street, as described in that Statutory Warranty Deed between Range Site, Inc. as Grantor and Columbia Land Trust as Grantee, recorded March 7, 2002 under Auditor's File No. 3435749, records of Clark County Washington,

Thence North 236.44 feet along the East line of said parcel,

Thence North 88°50' West 200 feet,

Thence South 214.16 feet to the northerly line of the Right of Way of NE 259th Street,

Thence easterly along said right of way line to the Point of Beginning.

