

CLARK COUNTY STAFF REPORT

DEPARTMENT: Environmental Services / Legacy Lands

DATE: November 17, 2015

REQUESTED ACTION: Authorize the recording of the attached conservation easement over Assessor's Tax Parcels #258467-000, #258468-000, #258469-000, #258470-000, #258441-000, and #258455-000 near La Center to protect conservation values associated with the East Fork of the Lewis River. Declare the properties surplus subject to recordation of the easement.

Consent Hearing County Manager

BACKGROUND

The six tax parcels were acquired for conservation purposes in May 1998 using Conservation Futures Fund revenue. The intent of the Paradise Bluff acquisition was to incorporate into the deed of each lot a surveyed and recorded conservation and public access easement over the lower two-thirds of the property in order to protect the natural resource values of the East Fork Lewis River and allow limited public access from the river. The lots could then be sold with a development envelope on the upper one-third of each lot, those portions abutting or proximate to NW Pacific Highway, to allow construction of one home on each.

The county has demarcated the conservation easement boundary as shown on Record of Survey Book 44, Page 5, attached to this report, but an easement has not yet been recorded. Easements have been recorded on four parcels now in private ownership (AP #s 258462-000, 258454-000, 258424-000 and 258453-000) in the Paradise Bluffs cluster.

The six subject parcels are scheduled for Auction by Realty Marketing/Northwest in the near future. Auction information states that the parcels will be sold subject to the conservation easement.

COUNCIL POLICY IMPLICATIONS

The action affirms prior policy.

ADMINISTRATIVE POLICY IMPLICATIONS

The action affirms policy. Should the agreement be executed, staff will need to record the conservation easement and ensure any purchase and sale agreements affecting the parcels include provisions requiring recordation of the easement, accepting the restrictions imposed by the easement and acknowledging the easement runs with the land.

COMMUNITY OUTREACH

No community outreach activities related to development of this agreement were undertaken.

BUDGET IMPLICATIONS

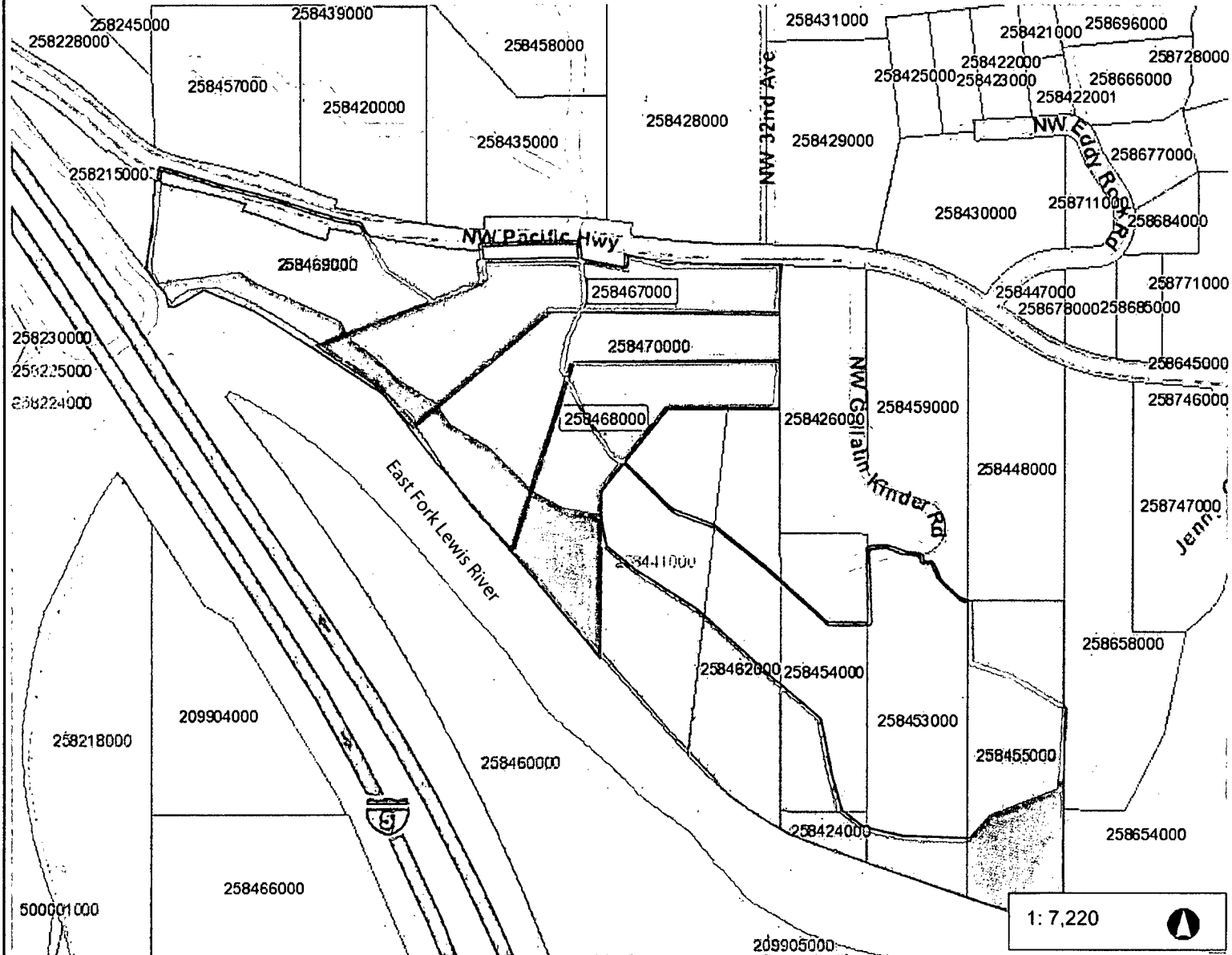
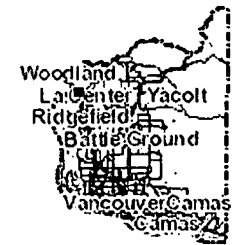
If the properties are successfully marketed, new revenue would be generated for the Road Fund and the Conservation Futures Fund. Minimum bids of \$ 75,000 per lot for five lots, and \$80,000 for the sixth lot have been established.



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Paradise Bluff Ownerships



Legend

County Lands by Owner

- Clark County
- Clark County (C/B)
- Environmental Services - CWP
- Environmental Services - LL
- Environmental Services - SW
- General Services
- General Services - Sheriff
- General Services - Fairgrounds
- General Services - Amphitheater
- General Services - Railroad
- Parks
- Public Works
- Public Works - Operations Center
- Treasurer

Public Lands

- USFS Boundary
- Military Reserve
- US Fish and Wildlife
- State Fish and Wildlife / other
- State Park
- State DNR
- Washington State University

Building Footprints

Notes:

- Columbia Land Trust
- Conservation Easement
- Public Access Area

NOTE - Easement and Access boundaries approximate (source: Record of Survey Octoeter 1998)

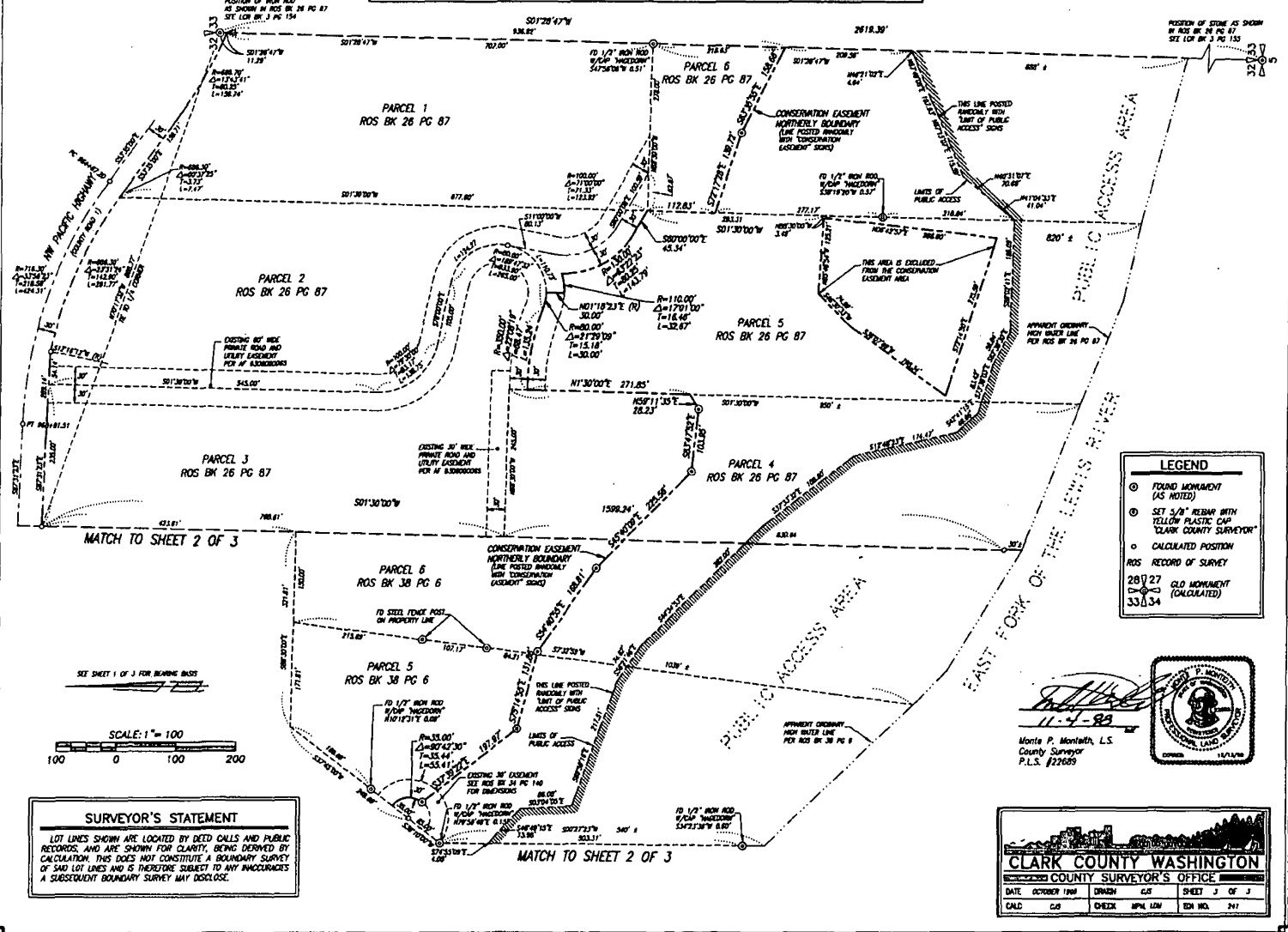


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Clark County, WA. GIS - <http://gis.clark.wa.gov>

This map was generated by Clark County's "MapsOnline" website. Clark County does not warrant the accuracy, reliability or timeliness of any information on this map, and shall not be held liable for losses caused by using this information.

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RECORD of SURVEY



DEED OF CONSERVATION EASEMENT

EN 15-65

THIS GRANT DEED OF CONSERVATION EASEMENT is made this 17th day of NOV., 2015 by Clark County, a political subdivision of the state of Washington located at 1300 Franklin Street, Vancouver, Washington, 98666 ("Grantor") for the benefit of the Citizens of Clark County ("Grantee")

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property in Clark County, Washington, inclusive of Assessor's Tax Parcel Serial Numbers 258469-000, 258467-000, 258468-000, 258470-000, 258441-000 and 258455-000 ("Subject Tax Parcels"), more particularly described in the Record of Survey Book 44, Page 5 (Record of Survey) attached hereto and incorporated by this reference; and

WHEREAS, the Record of Survey demarcates Conservation Easement and Public Access Area boundaries across ten (10) parcels; and

WHEREAS, the four (4) parcels currently in private ownership have already had this Easement placed upon them and recorded; and

WHEREAS, land within the Conservation Easement and Public Access Area boundaries (the "Protected Property") possesses natural, educational, recreational and open space values (collectively "Conservation Values") of great importance to the people of Clark County and the people of the state of Washington; and

WHEREAS, the Protected Property includes deciduous and coniferous forested slopes, lowland flood plain, and river frontage directly across from Paradise Point State Park that together create a high degree of habitat diversity; scenic viewshed and recreational values; and

WHEREAS, the specific Conservation Values of the Lewis River Greenway are documented in the Clark County Open Space Commission report ("Open Space Report"), the Clark County Comprehensive Parks Recreation and Open Space Plan, and the Clark County Conservation Areas Acquisition Plan; and

WHEREAS, Grantor originally purchased the Protected Property with Clark County Conservation Futures Funds in order to protect in perpetuity the Conservation Values, and

WHEREAS, Grantor intends, as owner of the Protected Property, to preserve and protect the Conservation Values of the Protected Property and to allow limited public access to the lowland portion of the Protected Property, both in perpetuity; and

WHEREAS, Grantor may sell or convey real property interests in the Subject Tax Parcels to a successor, said successor hereto referred to as "Owner"; and

inconsistent uses or activities, are inconsistent with the purposes of this Easement and shall be prohibited, except as expressly provided in paragraph 4 below:

- a. Subdivision. The legal or "de facto" subdivision of the Protected Property.
- b. Construction. The placement or construction of any buildings, structures, or other improvements of any kind, unless specifically approved by Grantee.
- c. Alteration of Land. Any alteration of the surface of the land, including without limitation, the excavation or removal of soil, sand, gravel, rock, peat, or sod, or as required by Grantee to protect Conservation Values.
- d. Erosion or Water Pollution. Any use or activity that causes, or is likely to cause, significant soil degradation or erosion or significant pollution of any surface or subsurface waters.
- e. Alteration of Water Courses. The draining, filling, dredging, or diking of wetland areas, or the creation of new wetlands, water impoundments, or water courses for any purpose except as deemed necessary by the Grantee to preserve or protect the Conservation Values of the Protected Property.
- f. Removal of Trees and Other Vegetation. The pruning, cutting down, or other destruction or removal of live and dead trees and other vegetation located in the Protected Property, except as provided in Paragraphs 4 e. and f. below.
- g. Waste Disposal. The dumping, storage or other disposal of rubbish, garbage, debris, unregistered vehicles, abandoned equipment, parts thereof, or other unsightly, offensive, or hazardous waste or material on the Protected Property.
- h. Utilities. The above ground installation of new utility systems or extensions of existing utility systems, including, without limitation, water, sewer, power, fuel, and communications lines and related facilities without written approval by the Grantee.
- i. Signs. The placement of any signs or billboards on the Protected Property except as provided under paragraph 4(d).
- j. Hunting. Hunting or trapping except to the extent approved by the Grantee as necessary to preserve or protect the Conservation Values of the Protected Property. Feral domestic mammals and individuals from the family Muridae of the order Rodentia (old world rats and mice) may be killed without approval of Grantee if done in a manner so as not to adversely impact the native plants and animals.
- k. Mining. The exploration for, or development and extraction of, minerals, and hydrocarbons on or below the surface of the Protected Property.
- l. Wildlife Disruption. The disruption of wildlife nesting activities.
- m. Introduced Vegetation. The introduction of nonnative wetland plants and nonnative invasive species on the Protected Property, except as deemed necessary by the Grantee to enhance the Conservation Values of the Protected Property.
- n. Overnight camping by the General Public

4. **Permitted Uses.** Grantor reserves for Owner its heirs, successors and assigns, any use of, or activity on, the Protected Property which is not inconsistent with the purposes of the Easement and which is not prohibited herein. Without limiting the generality of the foregoing,

provided in Paragraphs 4.b, 4.c, 4.d, and 4.e. Overnight camping shall not require prior notice. The purpose of requiring said notification is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Easement. Whenever notice is required, Owner shall notify Grantee in writing not less than fifteen (15) days prior to the date Owner intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgement as to its consistency with the purposes of the Easement.

- a. **Grantee's Approval.** Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within fifteen (15) days of receipt of Owner's written request therefore. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement. Grantee's approval may include reasonable conditions which must be satisfied in undertaking the proposed use or activity. If Owner must undertake emergency action to protect health or safety on the Protected Property, or must act by and subject to compulsion of any governmental agency, Owner may proceed with such action without Grantee's approval only if Owner notifies Grantee prior to undertaking such action and Grantee cannot provide its approval, with or without conditions, within such time as is reasonable under the circumstances.
- b. When Grantee's approval is required, and Grantee does not grant or withhold its approval in the time period and manner set forth herein, Owner may assume Grantee's approval of the permitted use or activity in question.
- c. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing either served personally or sent by certified mail, postage prepaid, addressed as follows:

TO OWNER:

County successor in interest in the Subject Tax Parcels pursuant to The Clark County Assessor's Records, at Owner's most recent address shown in the Assessor's Records.

TO GRANTEE:

Clark County Environmental Services
Legacy Lands Program
1300 Franklin Street
P.O Box 9810
Vancouver, WA 98666-9810

6. **Grantee's Remedies.** If Grantee determines that Owner is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Owner of such violation and demand corrective action sufficient to cure the violation and, where the

by Owner under emergency condition to prevent, abate, or mitigate significant injury to the property resulting from such causes.

7. **Access.** River access by the general public to the river bank and tideland area (Public Access Area described in the Record of Survey) shall be allowed. There will be no public access through the remainder of the property to the river, nor will there be a boat launch or overnight camping by the public. However, access will remain subject to easement rights of record. In order to protect the Conservation Values of the Protected Property, Grantee may post rules and regulations governing public access and use. Such rules shall not restrict the Owner from his use of the Protected Property as provided in Section 4 of this document.

8. **Costs and Liabilities.** Owner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, including the maintenance of adequate comprehensive general liability insurance coverage, except for material cleanup of the public access area as provided in subsection 2.d of this Easement.

a. **Indemnification.** Owner shall defend, indemnify, and hold harmless Grantor, Grantee, and its elected officials, officers, agents and employees from and against any claims, demands, actions, suits, judgments, losses, damages, injuries, penalties, fines, costs, or expenses, including attorneys' fees, ("Claims") arising from or relating to property damage or injury to people or things caused by the following:

- i. Negligent, intentional, or reckless actions or omissions by Owner;
- ii. Owner's failure to comply with any applicable federal, state, or local law, regulation ordinances, permits, directives, and judicial or administrative orders; and
- iii. Owner's failure to comply with the terms and conditions of this Easement. Owner also indemnifies Grantee its elected officials, officers, agents and employees for consequential damages, if any, Grantee incurs due to Owner's failure to comply with the terms and conditions of this Easement. Provided, however, this paragraph does not purport to indemnify Grantee against the liability for damages arising out of bodily injuries to person or damages caused by or resulting from the sole negligence of the Grantee, its elected officials, officers, employees and agents.

b. If Owner receives notice of any alleged property damage or injury to people or things, or any claim, demand, action, suit, judgment, loss, damages, injuries, penalty, fine, cost or expense that could reasonably give rise to its obligations pursuant to this Section 8, it shall notify Grantee promptly, shall keep Grantee fully informed about the matter and shall allow Grantee to provide its own defense in the matter, if Grantee so requests.

9. **Subsequent Transfer or Extinguishment.**

a. **Subsequent Transfers.** Grantor agrees to:

- a. The interpretation and performance of this Easement shall be governed by the Laws of the State of Washington.
- b. Liberal Construction. Any general rule of construction notwithstanding, this Easement shall be reasonably construed in favor of the grant to effect the purpose of This Easement and the Policy and Purpose of Chapter 84.34 RCW. If any provision 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 other 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 provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.
- d. Entire Agreement. This agreement sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements, related to the Easement all of which are merged herein. No alteration or variation of this instrument shall be binding unless contained in an amendment that complies with paragraph 9.b.
- e. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of the Owner's title in any respect.
- f. 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 shall continue as a servitude in perpetuity with the property.
- g. Termination of Rights and Obligations. The party's rights and obligations terminate upon transfer of the party's interest in the Easement of property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

TO HAVE AND TO HOLD unto Grantee, its successor and assigns forever. IN WITNESS WHEREOF Grantor and Grantee have set their hands on the day and year first above written.

GRANTOR: CLARK COUNTY

CLARK COUNTY BOARD OF COUNCILORS



David Madore, Chair

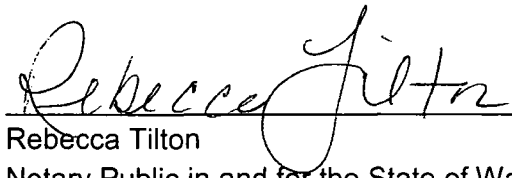
Jeanne E. Stewart, Councilor

Tom Mielke, Councilor

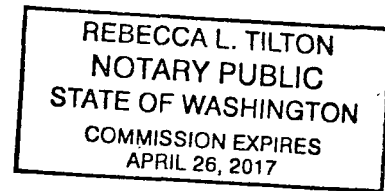
**STATE OF WASHINGTON
COUNTY OF CLARK**

I, Rebecca Tilton, Clerk of the Board of Clark County, Washington, Councilors and Notary Public in and for the State of Washington, do hereby certify that on this 17th day of NOV, 2015, personally appeared before me, Mark McCauley, to me known to be the Acting Clark County Manager, executed the within instrument and acknowledged that his signature was the free and voluntary act and deed for the uses and purposes herein mentioned.

GIVEN UNDER MY HAND AND OFFICIAL SEAL THIS 17th day of NOV, 2015.



Rebecca Tilton
Notary Public in and for the State of Washington



My appointment expires: ~~NOV~~ 4/26/17