

CLARK COUNTY STAFF REPORT

DEPARTMENT: Public Works / Clean Water, Parks and Lands divisions

DATE: Oct. 17, 2017

REQUESTED ACTION: Authorize the Interim County Manager to accept a Statutory Warranty Deed and execute a Purchase and Sale Agreement from Wayne Berry for the joint purchase of 9 acres of land by Public Works' Clean Water and Parks and Lands divisions.

Consent Hearing County Manager

BACKGROUND

The 9-acre property (zoned R1-10) at 1014 NW 149th St. is a suitable location for a joint project. The property's south 4.5 acres will be used for a future neighborhood park. The north 4.5 acres has areas of wetlands and will be used to improve water quality in the area.

Purchase of park property in this area has been identified as a priority for 2017 in the Clark County Parks, Recreation and Open Space Plan. Until future funding is secured for park development, this property will be cleaned up, fenced and signed for public use as a neighborhood green space. The purchase price was based on an appraisal.

COUNCIL POLICY IMPLICATIONS

None. The Park Impact Fee District 10 acquisition account and the Clean Water Program have sufficient acquisition funds for the \$900,000 purchase price and related costs.

ADMINISTRATIVE POLICY IMPLICATIONS

None.

COMMUNITY OUTREACH

The Parks, Recreation and Open Space plan broadly identifies acquisition opportunities in this area. An extensive public outreach effort was conducted in 2015 before the Board of County Councilors approved the plan update. The Parks Advisory Board voted to support this purchase for future park use.

BUDGET IMPLICATIONS

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.
	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.

PW17-116

BUDGET DETAILS

Local Fund Dollar Amount	\$900,000.00
Grant Fund Dollar Amount	N/A
Account	PIF District 10 Acquisition Account (\$700,000.00) Clean Water Fund Account (\$200,000.00)
Company Name	N/A

DISTRIBUTION:

Board staff will post all staff reports to The Grid. <http://www.clark.wa.gov/thegrid/>
Please call Paulette Matison on ext. 4975 when ready for pick up.

Attachments:

- Deed, Agreement, Resolution and Map

Bill Bjerke
Parks and Lands Division Manager

Heath H. Henderson

Heath H. Henderson, PE
Public Works Director/County Engineer

Dean Boening

Dean Boening
Clean Water Division Manager

Primary Staff Contact: Bill Bjerke, ext. 1656

Maureen

APPROVED:
CLARK COUNTY, WASHINGTON
BOARD OF COUNTY COUNCILORS

DATE: OCT 17, 2017

SR# 211-17



APPROVED: _____
Jim Rumpeltes, Interim County Manager

DATE: _____

Recording requested by:
Clark County Parks
4700 NE 78th Street
Vancouver, WA 98665

Document Title: Statutory Warranty Deed
Grantor: Wayne Berry
Grantee: Clark County, Washington
Legal Description: #26 of Sec 22 T3N R1E WM
Additional Legal Description is attached as Exhibit "A"
Serial #: 185418-000
Project: Parks District 10 Acquisition
WO #: 012010

STATUTORY WARRANTY DEED

THE GRANTOR, **WAYNE BERRY, a married man as his separate estate** for and in consideration of valuable consideration as set out in part below, conveys and warrants to **CLARK COUNTY, a political subdivision of the State of Washington**, the following described real estate situated in the County of Clark, State of Washington.

The West half of the Southwest Quarter of the Northwest Quarter of Section 22, Township 3 North, Range 1 East of the Willamette Meridian;

Except the East ten acres thereof;

Except the North 150 feet of the West 290.4 feet of that portion lying east of the East line of the County road, as conveyed to Charles W. Keller et ux, by deed recorded in Volume 426, Page 87, under Auditor's File No. F 85857, records of said county;

Except Public Roads.

The Grantor represents and warrants that they are not aware of any hazardous or toxic waste, substance or material on or under the subject property.

NOTE: It is understood and agreed that the delivery of this deed is hereby tendered and the terms and obligations hereof shall not become binding upon Clark County, Washington, until this document is accepted and approved by the Clark County Board of County Council.

CONSIDERATIONS: Nine Hundred Thousand and No/100 Dollars (\$900,000.00).

Statutory Warranty Deed
Serial #: 185418-000
Project: Parks District 10 Acquisition
WO #: 012010

Dated this 15th day of September, 2017.

Wayne Berry
Wayne Berry

Accepted on behalf of Clark County
Clark County, Washington

Jim Rumpeltes
Jim Rumpeltes
Interim County Manager

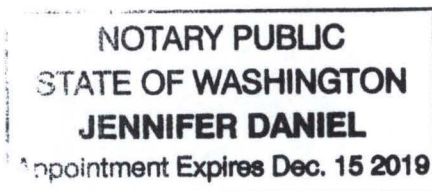
STATE OF WASHINGTON

COUNTY OF CLARK

I hereby certify that I know or have satisfactory evidence that Wayne Berry is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: 9-15-17

Jennifer Daniel
Notary Public in and for the State of WA
Residing at Vancouver
My commission expires: 12-15-19



REAL ESTATE PURCHASE AND SALE AGREEMENT

On this 15th day of September, 2017, **Wayne Berry, a married man as his separate estate**, hereinafter referred to as "Seller", and the **Clark County, a political subdivision of the State of Washington**, hereinafter referred to as "Purchaser", hereby agree as follows:

Seller agrees to sell real property and Purchaser, subject to the contingencies set forth herein, agrees to buy real property located in Clark County, Washington, commonly known as 1014 NW 149th Street, Vancouver, WA 98685, Vancouver, Washington (#26 of Sec 22 T3N R1E WM, tax parcel number 185418-000), more fully described as follows:

The West half of the Southwest Quarter of the Northwest Quarter of Section 22, Township 3 North, Range 1 East of the Willamette Meridian;

Except the East ten acres thereof;

Except the North 150 feet of the West 290.4 feet of that portion lying east of the East line of the County road, as conveyed to Charles W. Keller et ux, by deed recorded in Volume 426, Page 87, under Auditor's File No. F 85857, records of said county;

Except Public Roads.

1.) Purchase Price: The total purchase price shall be Nine Hundred Thousand and 00/100 Dollars (\$900,000.00), which is based on an independent appraisal. The purchase price shall be payable in cash at closing.

2.) Earnest Money: Purchaser herewith delivers to Clark County Title Company (hereinafter "escrow agent" or Title Company") its check/warrant in the sum of Five Thousand and No/100 Dollars (\$5,000.00) as earnest money. Upon closing the earnest money shall be applied against the purchase price. It is understood and agreed that if the Purchaser's pre-closing due diligence reports disclose items that are not acceptable the earnest money will be refunded to the Purchaser. The parties instruct Closing Agent to: (1) provide written verification of receipt of the Earnest Money and notice of dishonor of any check to the parties and Licensees at the addresses and/or fax numbers provided herein; and (2) commence an interpleader action in the county in which the Property is located within 30 days of a party's demand for the Earnest Money unless the parties agree otherwise in writing. The parties authorize the party commencing an interpleader action to deduct up to \$250.00 for the costs thereof.

3.) Title: The property shall be conveyed by means of a Statutory Warranty Deed, free and clear from all liens, encumbrances and encroachments, subject only to exceptions numbers 4-7 as shown on Schedule "B", Clark County Title Company Preliminary Title Report Number CL7335, dated April 14, 2017, attached hereto. Item Numbers 1-3 and 8 are to be released prior to closing; Purchaser will assist Seller in obtaining the release of these items. The title insurance commitment shall evidence the Seller's ability to deliver title at closing as set forth in paragraph 5 below. A final title insurance policy will be provided at closing at the expense of the Purchaser.

4.) **Condition of Title:** Seller hereby agrees that from and after the date hereof until the closing of the sale of the property, it will take no action that will adversely affect title of the property. Seller shall disclose all liens, easements or other encumbrances on the real property within 20 days after the effective date of this Agreement. Seller shall, within 30 days of the effective date of this Agreement, provide Purchaser with copies of all environmental studies or analysis that have been done on the property.

5.) **Closing and Prorations:** Purchaser shall pay settlement fees, including real estate excise tax, escrow fees, recording fees, and title insurance. Real property taxes shall be prorated as of closing.

6.) **Closing of Sale:** The sale shall be closed in the office of Clark County Title Company on January 2, 2018. "Closing" means the date on which all documents are recorded and sale proceeds are available to the Seller. If closing does not occur on or before said date for any reason other than Seller's breach of this Agreement, then either party shall have the right to terminate this Agreement by written notice to the other party.

7.) **Possession:** Purchaser shall be entitled to possession of the property (and all existing keys to locks, alarms and any portable control devices for accessing property) at time of closing, unless otherwise agreed to herein.


8.) **Section 1031 Like-Kind Exchange:** If either Purchaser or Seller intends for this transaction to be a part of a Section 1031 like-kind exchange, then the other party agrees to cooperate in the completion of the like-kind exchange so long as the cooperating party incurs no additional liability in doing so, and so long as any expenses (including attorneys' fees and costs) incurred by the cooperating party that are related only to the exchange are paid or reimbursed to the cooperating party at or prior to Closing. Notwithstanding the Assignment paragraph of this Agreement, any party completing a Section 1031 like-kind exchange may assign this Agreement to its qualified intermediary or any entity set up for the purposes of completing a reverse exchange.

9.) **Access:** Purchaser and its architects, engineers, and other agents or designees shall have reasonable access to the property for the purpose of making any investigation, test or survey reasonably related to the purchase of the property.

10.) **Default:** In the event Purchaser fails, without legal excuse, to complete the purchase of the Property, the following provision shall apply:

The Earnest Money shall be forfeited to the Seller as the sole and exclusive remedy available to Seller for such failure.

11.) **Disclosures in Form 17 or 17C:** Purchaser waives the right to receive a Seller Disclosure statement pursuant to RCW 64.06.010. Seller represents that no answer to any question in the "Environmental" section of the Seller Disclosure statement would be "yes."* Purchaser maintains the right to bring any and all claims permitted under the common law, including fraudulent concealment

* Other than item "D".


12.) Contingencies:

A. Purchaser will arrange and pay for a Level-1 Environmental Site Assessment to be ordered within 15 days of signing this Agreement. This acquisition is subject to the conditions revealed by this report being satisfactory to the Purchaser. In the event that the environmental conditions are not satisfactory, the Purchaser has the option to rescind this offer.

B. Seller may remove any structures *or portions of structures* from the property prior to closing. *UB*

C. Seller may remove the two English walnut trees and/or black walnut tree from the property prior to closing. *or any portions thereof UB*

D. Seller may place one non-metal memorial, up to 12"x12", at grade near one of the mature fir trees on the property which will be kept by the Purchaser after closing. Seller will be responsible for any theft, vandalism or maintenance of the memorial.

E. The Clark County Parks & Lands and Clean Water Divisions are purchasing this property for a joint project. The south 4.5 acres of the property will be used for a future neighborhood park. The north 4.5 acres has areas of wetlands and will be used by the Clean Water Program to improve stormwater quality. The property will always remain in county ownership for recreation and clean water purposes.

13.) Conditions: Prior to vacating the property, Seller will remove all personal belongings and trash from the site. It is the responsibility of the Seller to notify all utility companies that the property has been sold and to transfer service into Clark County's name upon vacating the property.

14.) Hazardous Substances: Seller represents and warrants that they are not aware of any hazardous substances or toxic waste, substance, or materials on or under the subject property. Seller agrees to indemnify and hold Purchaser harmless from any and all expenses incurred as a result of any hazardous or toxic wastes that existed as of or prior to closing in violation of Seller's representations herein.

15.) County Council Approval: It is mutually understood and agreed that this offer and acceptance and closing is specifically conditioned upon approval by the Clark County Board of County Council.

16.) Continuation and Survival of Representations and Warranties: All representations and warranties by the respective parties contained in this Agreement or made in writing pursuant to this Agreement are intended to and will remain true and correct as of the time of closing, will be deemed to be material and will survive the execution and delivery of this Agreement and the delivery of the Deed and transfer of title for a period of three years thereafter. Such representations and warranties, however, are not assignable and do not run with the land, except as may be expressly provided herein.

17.) Seller's Obligations-Certification of Nonforeign Status: Seller warrants that Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1954, as amended, and that such warranty will be true as of the closing date. Seller shall deliver to Purchaser at closing a Certificate of Nonforeign Status, in a form reasonably

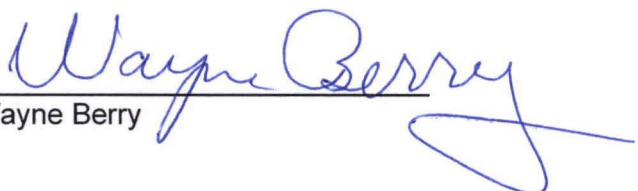
acceptable to Purchaser, setting forth Seller's address and United States taxpayer identification number and certifying that Seller is not a foreign person as so defined.
Agreed, Accepted and Acknowledged:

Purchaser:

Clark County, Washington

By: 
Jim Rumpeltes
Interim County Manager

Seller:


Wayne Berry

Approved as to form only:

Anthony F. Golik
Prosecuting Attorney

By: 
Amanda Migchelbrink

CLARK COUNTY, WASHINGTON
RESOLUTION NO. 2017-10-06

IN THE MATTER OF ACCEPTANCE OF STATUTORY WARRANTY DEED TO CLARK COUNTY

WHEREAS, the Board of County Councilors, Clark County, WA is in regular session this 17th day of October, 2017, and

WHEREAS, it appears in the best interest of Clark County the following is hereby accepted:

<u>Document</u>	<u>Data</u>	
Statutory Warranty Deed	FROM:	Wayne Berry
	TO:	Clark County, Washington
	CONSIDERATION:	\$900,000.00

NOW THEREFORE, IT IS HEREBY RESOLVED that the hereinabove mentioned document(s) be recorded and filed.

IT IS FURTHER RESOLVED that copies of this resolution be filed with the County Auditor, County Engineer, and in the records of the County Council.

BOARD OF COUNTY COUNCIL
CLARK COUNTY, WASHINGTON



Marc Boldt, Chair


Jeanne E. Stewart, Councilor

Julie Olson, Councilor

John Blom, Councilor

Eileen Quiring, Councilor

ATTEST:

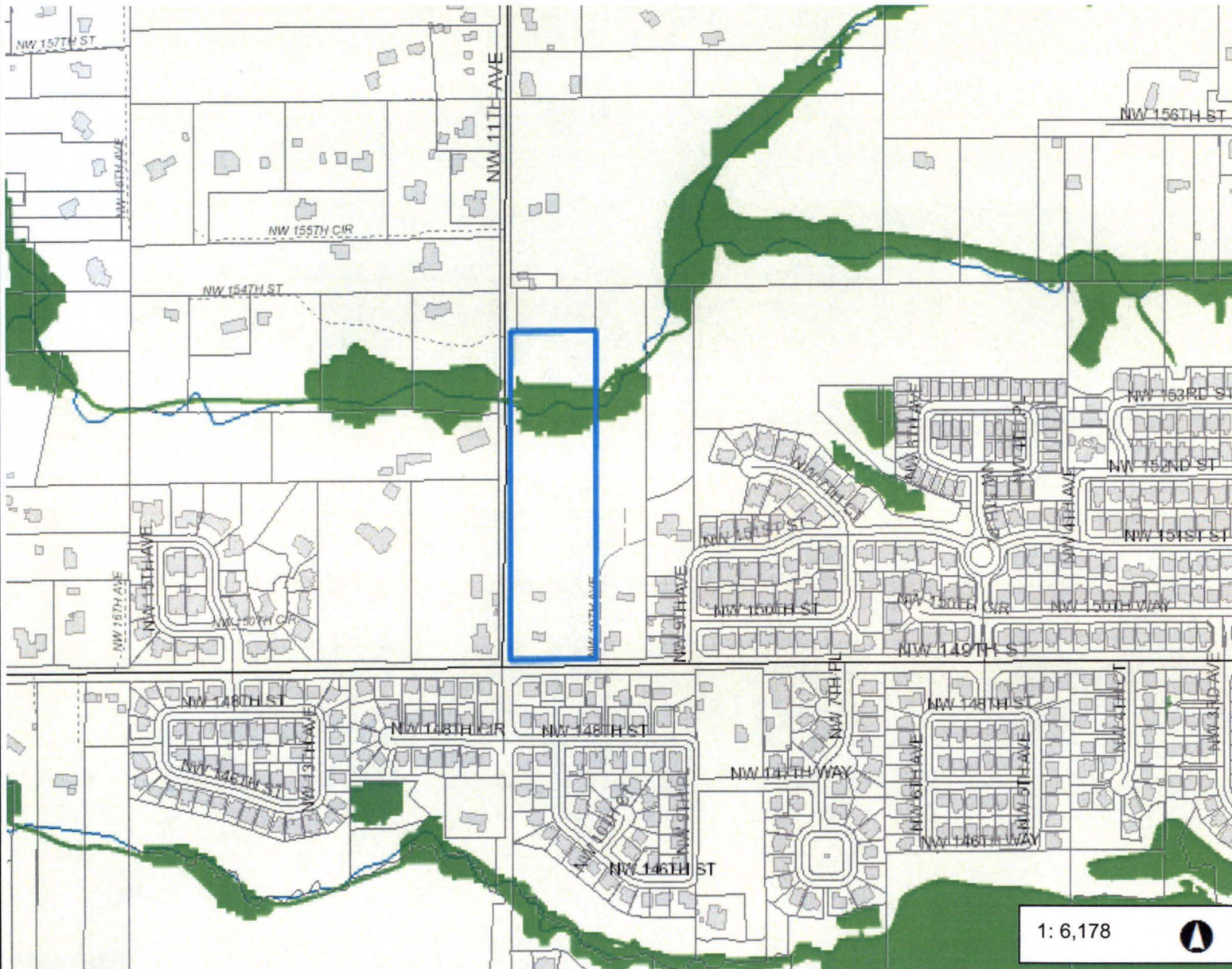


Clerk of the Board





185418000 - 1014 NW 149th

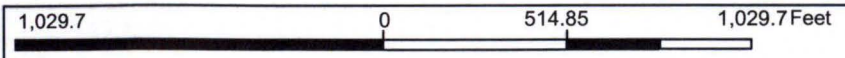


Legend

- Building Footprints
- Taxlots
- Wetlands Presence
- Cities Boundaries
- Urban Growth Boundaries

Notes:

1: 6,178

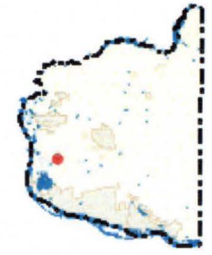


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Clark County, WA. GIS - <http://gis.clark.wa.gov>

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Wayne Berry Property 185418000 9 acres



Legend

- Building Footprints
- Taxlots
- Roads
- ImageOrtho
 - Red: Band_1
 - Green: Band_2
 - Blue: Band_3
- Cities Boundaries
- Urban Growth Boundaries

Notes:

1: 2,711



451.9 0 225.95 451.9 Feet

WGS_1984_Web_Mercator_Auxiliary_Sphere
Clark County, WA. GIS - <http://gis.clark.wa.gov>

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