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To: Mike Weston, King City Manager
The City Council of the City of King City
Jaimie Fender, King City Mayor

From: Stephen F. Cook, Legal Counsel, Columbia Land Trust

Date: October 18, 2022

Subject: Kingston Terrace transportation planning and master planning

Columbia Land Trust continues to be concerned regarding the King City Transportation System Plan, and specifically Columbia Land Trust objects to the concept of extending Fischer Road across the property owned by Carla Bankston.

As you will recall, since 2009 a conservation easement held by Columbia Land Trust has conserved portions of the Bankston property, including the portion that would be impacted by the extension of Fischer Road. Columbia Land Trust has held and stewarded this conservation easement since 2011. The purpose of the conservation easement is to protect the important forested riparian habitat in this portion of the Tualatin River—habitat that extends onto other properties that would be impacted by an extension of Fischer Road via Alternatives 1, 2, and 3S. This easement prohibits activities on the property including roads, utilities, and other infrastructure to ensure that the land is conserved as habitat.

We encourage King City to select Alternatives 3N or 4 for the East-West transportation connection for the following reasons:

- **Alternatives 1, 2 and 3S, by crossing the Bankston easement property and neighboring property, would significantly harm the conservation values of those properties.**
- **Crossing the Bankston easement property would require taking a portion of the conservation easement by eminent domain; Columbia Land Trust cannot negotiate a reduction in the easement.**
- **Selecting alternatives 1, 2 or 3S would not comply with the condition Metro attached to its approval of the King City urban growth expansion regarding protection of the Bankston conservation easement.**
- **Alternatives 1, 2 and 3S, because they would involve building bridges, would be very costly.**
- **Alternatives 3N and 4 offer several advantages, in addition to avoiding harming the Bankston easement and other properties along the Tualatin River.**

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Columbia Land Trust conserves and cares for the nature of the northwest. Our job is to protect and defend the Bankston conservation easement and enforce the easement terms to prevent impacts to this important piece of conservation land. Consistent with the Metro condition of approval (Ordinance 18-1427, Exhibit C, Section E.8), the Land Trust will not support a transportation route that crosses the Bankston easement.

Below I address each point in more detail.

1. **Alternatives 1, 2, and 3S, by crossing the Bankston property and other properties along the Tualatin River, would significantly impact conservation values of those properties and of the river itself.** We concur with AKS Engineering's conclusion (memo dated August 8, 2022) that Alternative 4 would minimize riparian crossings, reduce overall impacts to wildlife corridors, could be shifted slightly to avoid impacts to upland forested impacts, and would completely avoid impacting the Bankston Easement.

2. **Columbia Land Trust cannot negotiate changes to the conservation easement to allow a Road Crossing.** King City staff and consultants made comments at the October 12, 2022, public meeting regarding the transportation plan and master planning process that indicated they believe that the Bankston conservation easement could be renegotiated to allow the road to pass through it and that therefore the City would not have to use its power of eminent domain. Columbia Land Trust and the landowner cannot voluntarily amend the easement to allow for the road crossing; the City would have to use its eminent domain power to take a portion of the land and the conservation easement.

Under state law, the federal tax code, the Land Trust Alliance's Standards & Practices and our accreditation requirements, the Bankston easement and other conservation easements held by Columbia Land Trust are permanent. They are real property interests assigned substantial value that run with the land; the Bankston easement will restrict the uses of that property and protect its conservation values whoever owns that property in the future. Land trusts cannot amend conservation easements to reduce their geographic scope or protection of conservation values, except for very limited circumstances. One of those rare exceptions is if government takes property subject to a conservation easement by condemnation.

3. **King City is placing insufficient emphasis on the condition Metro attached to its approval of the King City urban growth expansion plan regarding protection of the Bankston conservation easement.** The Metro condition expressly requires that King City protect, **to the maximum extent possible**, that portion of the Bankston property subject to the conservation easement. In its consideration of the different alternative routes for providing East-West vehicular connection, King City is not complying with Metro's condition by not adequately favoring routes that would not cross the Bankston property.

Here's the exact language of Metro's condition:

The Columbia Land Trust holds a conservation easement over portions of the Bankston property, which King City's concept plan identifies as the intended location for a key transportation facility serving the expansion area. King City shall work with the Columbia Land Trust to protect, to the maximum extent possible, the portion of the Bankston property covered by the conservation easement. (Exhibit C, Section E.8).

The standard set by Metro's condition is stringent: our view is that the standard is not that King City can extend Fischer Road across the Bankston property if it determines that doing so is less costly, or more effective, or in some overall sense most practical of the potential alternatives. King City can **only** comply with Metro's condition if it determines that extending the road across the Bankston property is the **only** possible approach. As shown by Alternative 4, it is **not** the only possible approach. If King City moves forward with Alternatives 1, 2, or 3S, King City is not protecting the property covered by the conservation easement to the "maximum extent possible" as it would be choosing to not adopt other possible approaches, and instead choosing to impact the Bankston property.

It is clear that it is possible to avoid impacting the Bankston property by adopting one of the other alternatives (3N or 4) that are already in discussion or developing further alternatives.

King City responded to community concerns about non-compliance with the Metro ordinance during the October 11 community meeting by stating that Metro's guidance was to provide funding to do a transportation analysis and they believed by doing that analysis, they are meeting the condition. We disagree. While an analysis is a critical step in evaluating possible alternatives, the analysis only goes to demonstrate that there are other alternatives that meet project needs and therefore demonstrate that it is **possible** to avoid the Bankston easement and thus comply with Metro's condition.

4. **We also feel Alternative 2 would be more costly than King City believes.** Crossing the Bankston property and neighboring properties would require the construction of bridges, which are very costly. Complying with Metro's condition, in the event crossing the Bankston property was the chosen approach, would still require engineering and building that crossing so as to minimize the impact on the conservation values of the Bankston property. Minimizing and mitigating for the environmental impacts of those bridges and crossing the other riverside properties would add to the cost of any bridge, as would dealing with the property owners, including Columbia Land Trust. This perspective was articulated in the August 8th memo from AKS Engineering whose analysis confirmed our understanding that cost estimates were low end estimates with important variables unaccounted for.

Without using more accurate rough order of magnitude costs, the different routes cannot be accurately compared.

5. **Alternatives 3N or 4 offer several advantages, without the disadvantages of the southern route across the Bankston easement and other environmentally sensitive properties.** We encourage King City, through its master planning process to truly evaluate the value, needs, and impacts of new transportation system improvements and provide a true cost, impact, and value comparison. This should include indirect costs to project elements including mitigation of environmental impacts, impacts to livability from loss of habitat and open space in King City, and ancillary impacts of unanticipated project costs that will be passed on the current and future homeowners.