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April 6, 2022

Via First Class U.S. Mail

To: City of King City
Mayor Fender and City Council
15300 SW 116th Ave.
King City, OR 97224

CC: Washington County Board of Commissioners
Kathryn Harrington, Chair
155 N. First Ave., Suite 300
Hillsboro, OR 97124

Metro Council
Lynn Peterson, President
600 NE Grand Ave.
Portland, OR 97232-2736

Clean Water Services
Diane Taniguchi-Dennis, CEO
2550 SW Hillsboro Hwy.
Hillsboro, OR 97123

RE: King City Draft Transportation System Plan

Dear Mayor and Members of the City Council:

This firm represents the Rivermeade Community Club (“Rivermeade”), an Oregon 501(c)(7) nonprofit organization founded in 1953 and composed of about 55 families totaling approximately 135 people, some of which are second and third generation Rivermeade residents, who reside in the eastern portion of the 528-acre Kingston Terrace area that has been recently brought into the Metro Urban Growth Boundary (UGB) east of King City. Rivermeade became an established community in 1948 and over the last seven decades has matured into a unique and vibrant neighborhood that has its own elected officials, holds regular meetings to discuss issues important to the community, hosts community events, and generously donates each year to 501(c)(3) nonprofit organizations.

As you know, King City is in the process of drafting a new Transportation System Plan (TSP) for the City, which will include Rivermeade.¹ Although a draft TSP has not yet been made available to the public, the City has posted on its website a variety of TSP-related documents, including a Proposed Multimodal Network Map and Draft Long-Range Capital Project List. Rivermeade has serious concerns about certain roadways that are proposed in this document. This letter, and the attached analysis by Professional Transportation Engineer Chris Clemow of Clemow & Associates, LLC (Exhibit 1), outlines those concerns and explains why two of the east-west roadways proposed to run through the Rivermeade neighborhood should not

¹ The City is also in the process of creating a master plan for the Kingston Terrace area, including amendments to the City’s comprehensive plan and land use regulations. To the extent that that process involves consideration of the proposed roads, the arguments in this letter against those roads apply equally to that process as well, not just the adoption of the TSP.

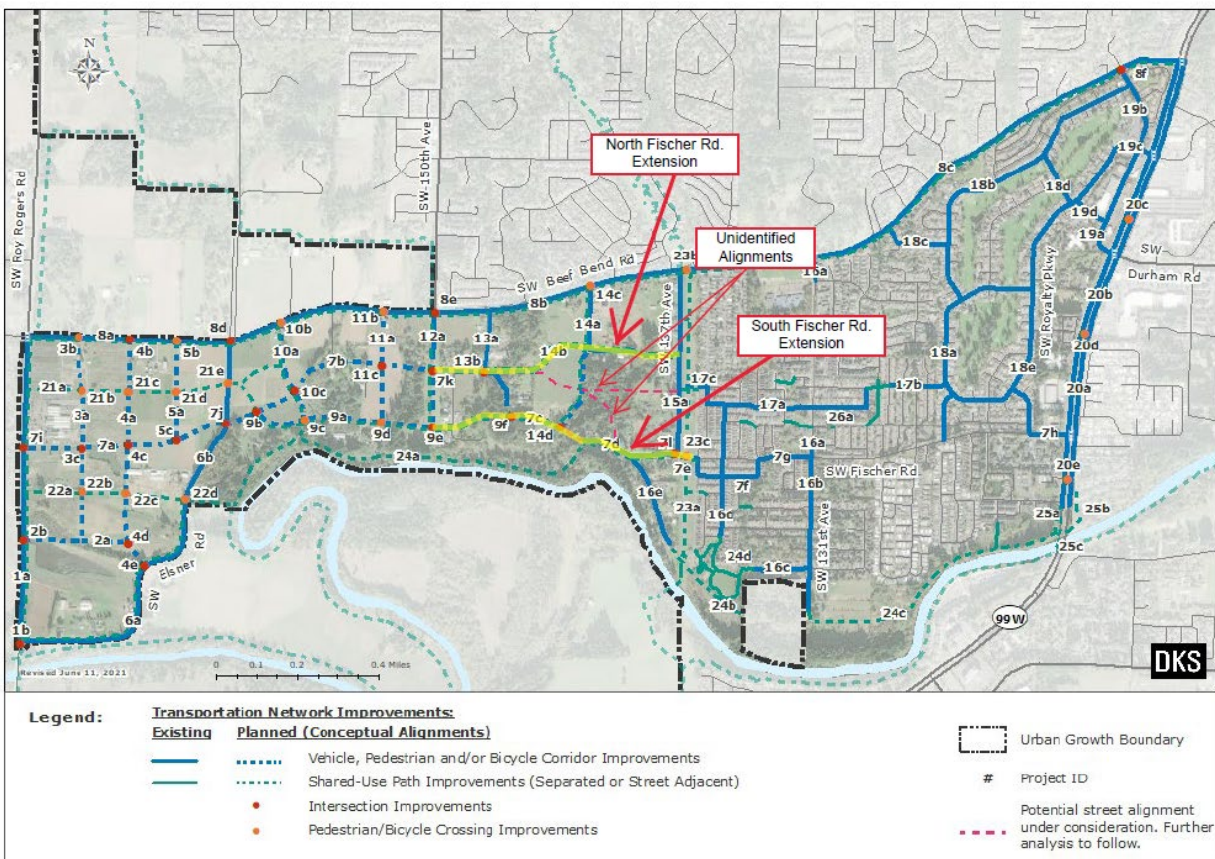
be adopted in the City’s final TSP – the City’s existing TSP materials lack any transportation modeling information or operations analysis necessary for justification of the proposed east-west roads, the proposed southern east-west road unquestionably violates the specific terms of the Metro ordinance that brought the area into the UGB in the first place, and both proposed east-west roads violate numerous state, regional and local approval standards. Both simply must be removed.

I. Overview

A. King City’s Draft Long-Range Capital Project List

The City’s Proposed Multimodal Network Maps and Draft Long-Range Capital Project List proposes a network map and list of transportation projects that include street improvements and extensions, new streets, and new pedestrian and cycling facilities. Rivermeade is particularly concerned with the transportation projects that are proposed in their neighborhood – the eastern portion of the Kingston Terrace area, which extends from SW 137th Ave. east to SW Myrtle Ave. and is bound by SW Beef Bend Rd. to the north and the Tualatin River to the south. Specifically, the concern is with two proposed roads that would run east to west through the neighborhood. Confusingly, the City’s draft project list identifies both of these proposed roads as part of the “SW Fischer Rd. extension”. For clarity, we refer to the proposed northern road between SW 137th Ave. and SW 150th Ave. as the “North Fischer Rd. Extension” and the proposed southern road between SW Cordelia Terrace and SW 150th Ave. as the “South Fischer Rd. Extension”. These proposed roads are identified and highlighted in yellow on the map below. Rivermeade is also concerned with the two segments of “potential street alignments” (dotted red lines) that are unidentified in the draft project list.

FIGURE 7: DRAFT ASPIRATIONAL PROJECTS

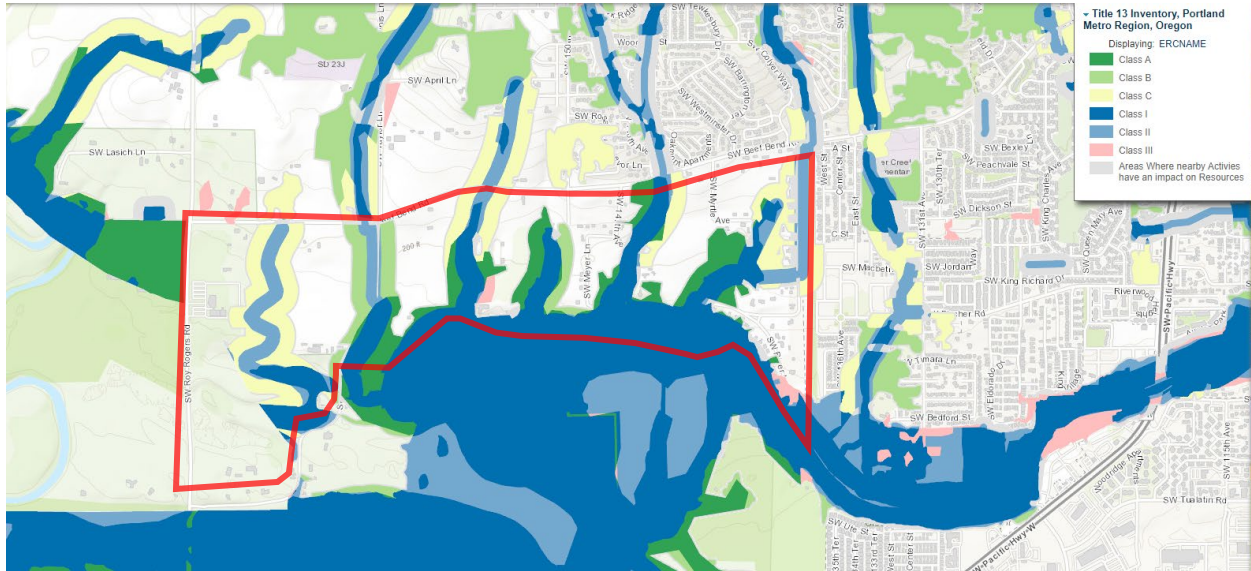


B. Current Conditions

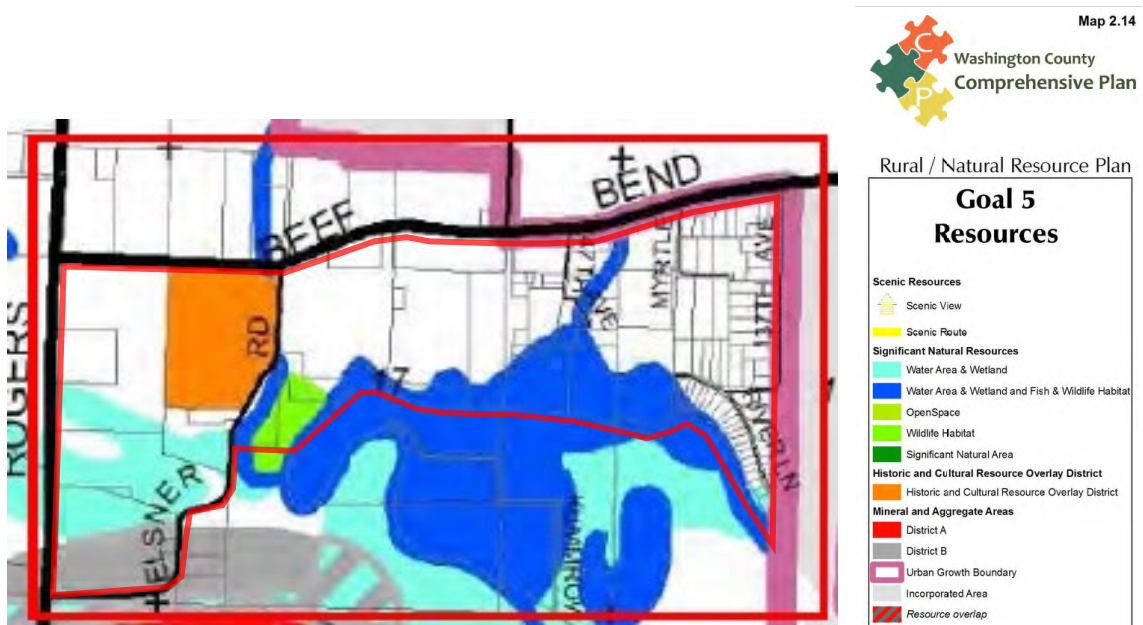
The eastern portion of the Kingston Terrace area is currently developed with low density residential uses, including Rivermeade, and an airport (Meyer’s Riverside Airport) and has several development restraints, including natural streams in steep eroding ravines that run north to south into the Tualatin River, as well as the Tualatin River itself, all of which contain sensitive and essential fish and wildlife and streamside habitat. Of critical importance is the Bankston Family Nature Preserve (located near project #7d on the above map), a 12-acre riverside property that contains important habitat and wetlands and is protected from development – the development of roads specifically – by a conservation easement held by the Columbia Land Trust.

Metro’s Title 13 Resources Inventory, below, identifies Class A, B and C Upland Wildlife Habitat and Class I, II and II Riparian Wildlife Habitat throughout the Kingston Terrace area, and particularly in the Rivermeade neighborhood where the east-west roads are proposed. The King City Concept Plan, however, recognizes that it is possible not all wetlands in the area are known, because, as the plan states on page 15, there has been no detailed wetland inventory undertaken yet for the area. Under Statewide Planning Goal 5, King City must complete a local

wetland inventory (LWI) identifying all significant wetlands in the UGB expansion area and adopt a program to protect those wetlands.²

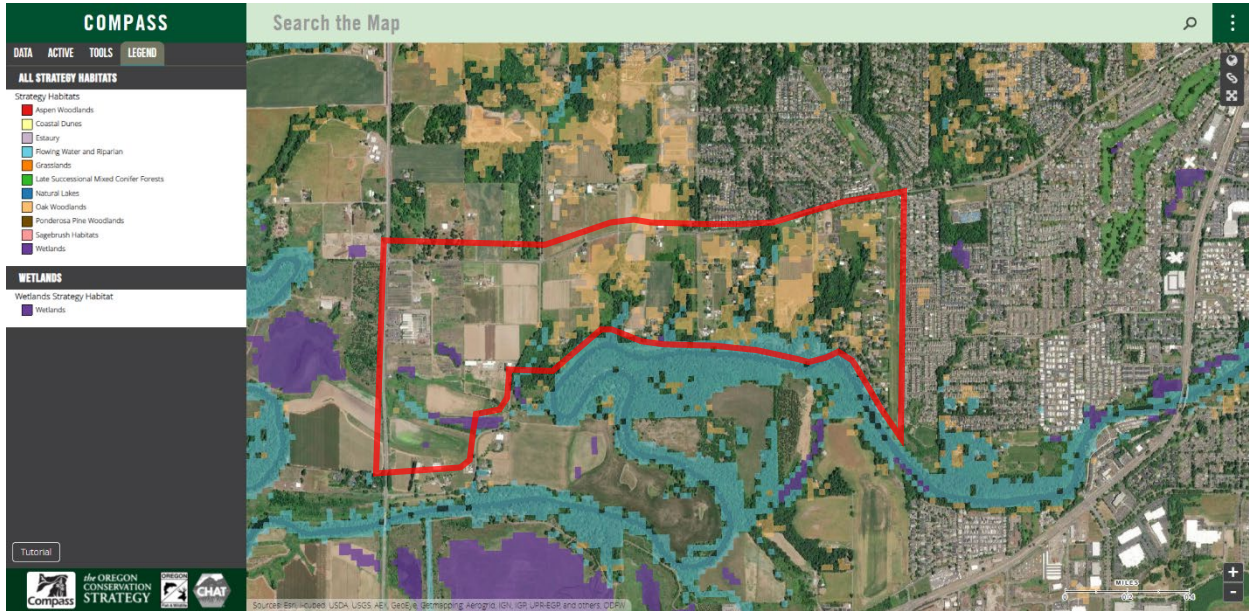


Washington County’s Goal 5 Resources Inventory also identifies the area as having water areas and wetlands and fish and wildlife habitat in the area the east-west roads are proposed:

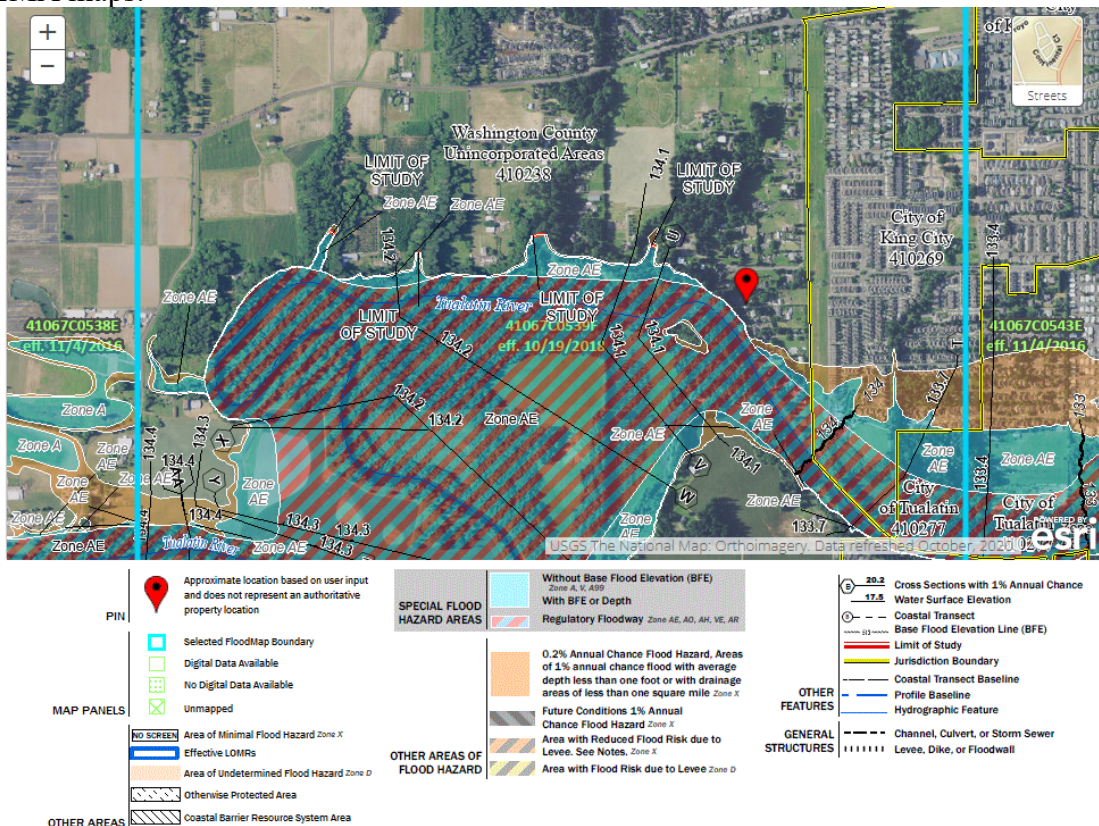


² See OAR 660-023-0100.

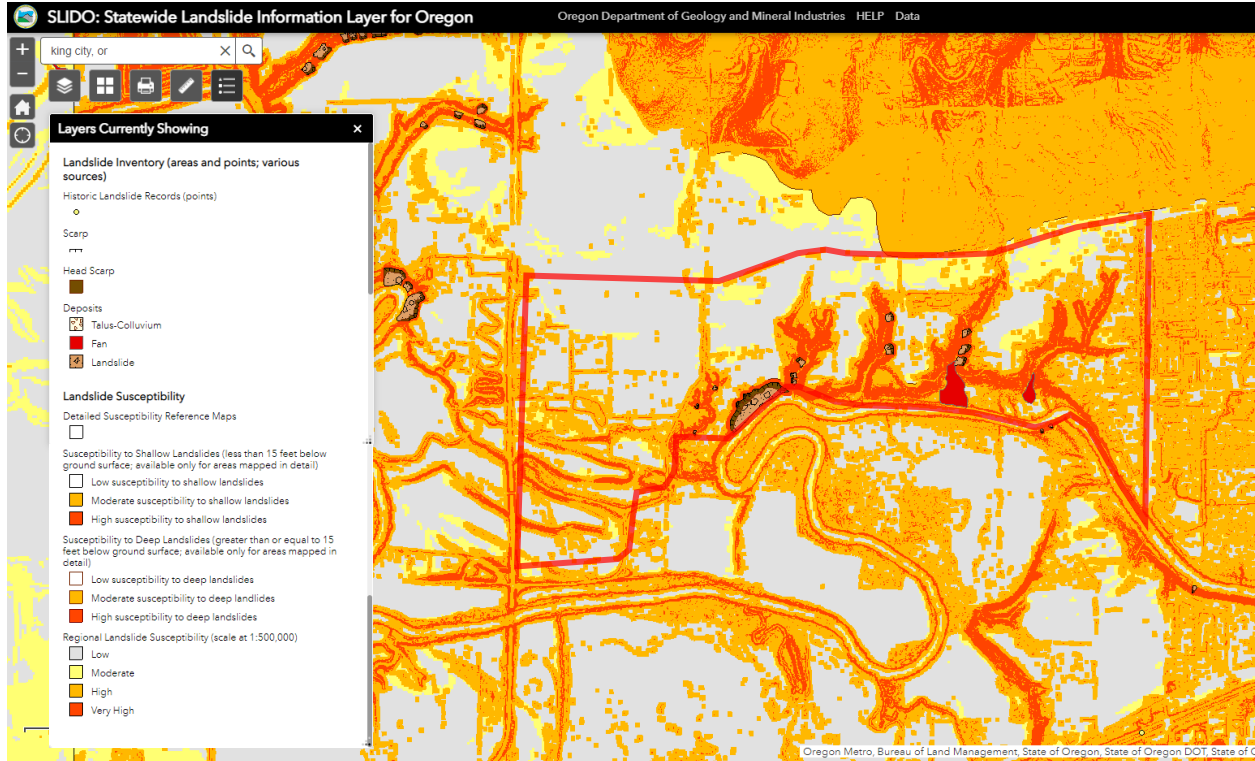
The Oregon Conservation Strategy map also identifies oak woodlands, flowing water and riparian, and wetlands strategy habitats in the area:



Land along the Tualatin River is within the floodway and 100-year floodplain as shown on FEMA maps:



Many of the drainages in the neighborhood flow through deep, eroding ravines. DOGAMI has inventoried a history of and very high potential for future landslides in areas where the east-west roads are proposed:



The neighborhood also contains other important land resources that would be affected by the proposed roads. Approximately 13 acres of the Bankston Property are under a conservation easement held by the Columbia Land Trust.

Figure 7. Bankston Family Trust Conservation Easement



Source: DOWL

In 2017, the stewards of the easement in coordination with Tualatin Soil and Water Conservation District undertook an extensive stream restoration project that involved the planting of approximately 14,000 native trees, shrubs and other plants on the property in order to restore it to its natural riparian state.³ The restored site provides important habitat for deer, coyotes, bald eagles, red-tailed hawks, herons, beavers and other wildlife.

The easement itself (Exhibit 2) describes the property's significant natural, scenic and open space conservation values that are worthy of protection:

- “• Forest and forested wetland provides wildlife habitat for birds and animals.
- “• Several creeks cross the property that provide clean cool water to the Tualatin River and habitat for small fish and amphibians.
- “• Riparian forest and floodplain is planted with alder, maple and other trees and shrubs that shade the river and hold the soil from eroding into the river. In addition the floodplain holds water during high water periods, allowing it to slowly filter back into the river system.
- “• Property provides views of undeveloped natural area from the Tualatin River for river users.”

The stated purpose of the easement is “to preserve and protect *in perpetuity*” the conservation values of the property by prohibiting activities that significantly impair or interfere with those values. To achieve this protection in perpetuity, the easement expressly **prohibits new roads** from being constructed in the easement area:

2. PROHIBITED USES

2.8 Roads and trails. No new roads shall be constructed. Existing trails may be maintained or improved, and new trails may be constructed as allowed in Section 4.6.

The easement also prohibits the placement and construction of any structures or other improvements, including roads, under section 2.6; prohibits the alteration of land under section 2.11; prohibits any uses or activities that will cause or are likely to cause significant soil degradation or erosion or significant pollution of surface or subsurface waters under section 2.14; and prohibits the removal of trees and other vegetation within the easement area under section 2.19.

It is clear that the easement unequivocally prohibits the development of at least the South Fischer Rd. Extension which is proposed to cross the easement.

³ <https://www.jointreeforall.org/bankston>.

Metro Ordinance 18-1427, which added the Kingston Terrace area to the UGB, also has a condition of approval that “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 3 (Metro Ordinance 18-1427, Exhibit C). The proposed South Fischer Rd. extension (and possibly the other potential road alignment too) will cross the conservation easement, which certainly does not protect the property “to the maximum extent possible”.

Further, Metro’s Urban Growth Management Functional Program (UGMFP) section 3.07.340 requires cities to encourage landowners to protect streams and riparian corridors, like those on the Bankston Property, through voluntary conservation easements and other incentive programs. This is exactly what the Bankstons have done on their property. If the City condemns portions of the Bankston conservation easement for a new road, the City will directly violate this UGMFP requirement.

Meyer’s Riverside Airport, which is a small, private use airport, is also located within the area. State law recognizes the continued operation and vitality of airports as matter of state concern and provides certain protections for airport uses. ORS 836.600 *et seq.* The draft transportation project list proposes roads that will cross the airport property and runway that may contravene state statutory requirements.



King City is currently separated from the Kingston Terrace expansion area by a Bonneville Power Administration (BPA) and Portland General Electric (PGE) transmission line corridor, which contains both high-voltage electrical transmission lines and towers and smaller distribution lines and poles. These entities have rules for what may be developed within the corridor and where that development may occur. The east-west roads are proposed to cross this corridor and the City must consider any restrictions imposed by BPA or PGE on the development of roads in the corridor.



The corridor also contains an underground petroleum pipeline. The City must determine whether it is safe and feasible for the proposed east-west roads to be developed over the pipeline, especially given its proximity to the Tualatin River and other sensitive areas.



II. Analysis of State, Regional and Local Standards

The adoption of King City's TSP is governed by the Transportation Planning Rule (TPR) at OAR 660-012. The TPR requires the City's TSP to be consistent with the Oregon Transportation Plan (OTP) and Metro's Regional Transportation Plan (RTP). OAR 660-012-0015(3)(a). Statewide Planning Goal 2 (Land Use Planning) requires that the City's TSP comply with regional plans adopted under ORS chapter 268. Under ORS chapter 268, Metro has

adopted its Regional Framework Plan (RFP) and its component functional plans – the Urban Growth Management Functional Plan (UGMFP) and the Regional Transportation Functional Plan (RTFP). The City’s TSP must be consistent with the RFP, UGMFP and RTFP. The City’s TSP must also be compliant with the Statewide Planning Goals and the City’s acknowledged comprehensive plan. ORS 197.175(2)(a); OAR 660-012-0025(2). Why the proposed roads of concern are inconsistent with each these documents and why the City should eliminate the them from its consideration or find alternative alignments, is discussed below.

A. Oregon Transportation Plan (OTP)

King City’s TSP must be consistent with the goals and policies of the Oregon Transportation Plan (OTP), which represents a state-level body of information and policy guidance that speaks directly to the state’s interests in transportation planning from the highest transportation planning authority in the State of Oregon.⁴ OAR 660-012-0015(3)(a). Based on the available information, the City’s draft TSP and the proposed roads of concern in particular are inconsistent with several of these high-level goals and policies of the OTP and must be removed from consideration by the City.

1. Goal 1 – Mobility and Accessibility: “To enhance Oregon’s quality of life and economic vitality by providing a balanced, efficient, cost-effective and integrated multimodal transportation system that ensures appropriate access to all areas of the state, the nation and the world, with connectivity among modes and places.”

This goal requires transportation systems to be efficient and cost-effective. The OTP explains that because building new infrastructure can be very expensive and funding is limited, the construction of new roads must be strategic and emphasis must be on less costly solutions, to include maintaining and improving existing facilities. The City’s proposed road network may be an ambitious vision of how the City would like its transportation system to be in an ideal world with no topographical restraints and unlimited resources and funding, but it fails take into consideration whether that can realistically be achieved, financially or otherwise. The City’s focus should be on developing a transportation system that is efficient and cost-effective, which means avoiding development of roads in areas that will require expensive engineering like the proposed east-west roads that will cross several deep ravines and wildlife habitat.

Strategy 1.1.4 – “In developing transportation plans to respond to transportation needs, use the most cost-effective modes and solutions over the long term, considering changing conditions and based on the following:

- “• Managing the existing transportation system effectively.
- “• Improving the efficiency and operational capacity of existing transportation infrastructure and facilities by making minor improvements to the existing system.

⁴ *Columbia Pacific Building Trades Council v. City of Portland*, 76 Or LUBA 15 (2017).

- “• Adding capacity to the existing transportation system.
- “• Adding new facilities to the transportation system.”

The City’s proposed transportation system is not cost-effective. The proposed east-west roads proposed to cross several deep ravines and environmentally sensitive habitats will require expensive engineering work and likely permitting. Moreover, the City has not demonstrated that there is any need for the proposed roads Rivermeade is concerned about, and if there is a need, why cost-effective improvements to existing roads like SW Beef Bend Rd. could not fulfill that need.

2. Goal 2 – Management of the System: “To improve the efficiency of the transportation system by optimizing the existing transportation infrastructure capacity with improved operations and management.”

This goal demands optimization of the *existing* transportation infrastructure, which can enhance capacity at generally less cost than adding new infrastructure. The draft TSP fails to consider that optimizing existing SW Beef Bend Rd. by enhancing its capacity could meet the City’s needs without the need to develop new east-west roads in the Kingston Terrace area.

Strategy 2.1.5 – “To increase efficiencies, use value engineering, that is, a systematic review process used to analyze a project’s design and make recommendations to improve the design and reduce overall costs. Use other innovative techniques to deliver transportation projects more efficiently.”

The City’s proposed road network is neither cost-effective nor efficient. Many of the proposed roads cross riparian habitat, streams and deep, eroding ravines and will require expensive engineering work and likely Department of State Lands (DSL) removal/fill permits. Moreover, increased runoff from roadway surfaces will exacerbate continued erosion that is occurring in the ravines. Avoiding constructing roads in these areas and focusing on improving the capacity of SW Beef Bend Rd. will greatly reduce overall costs, consistent with this strategy.

3. Goal 3 – Economic Vitality: “To promote the expansion and diversification of Oregon’s economy through the efficient and effective movement of people, goods, services and information in a safe, energy efficient and environmentally sound manner.”

This goal demands promoting the state’s economy through efficient and effective transportation in an *environmentally sound manner*. Developing the proposed roads in riparian habitat, streams, wildlife habitat, wetlands and which can damage these resources with increased, toxic runoff from roadway surfaces and increased erosion from runoff, certainly does not promote the state’s economy in an environmentally sound manner.

4. Goal 4 – Sustainability: “To provide a transportation system that meets present needs without compromising the ability of future generations to meet their needs from the joint perspective

of environmental, economic and community objectives. This system is consistent with, yet recognizes differences in, local and regional land use and economic development plans. It is efficient and offers choices among transportation modes. It distributes benefits and burdens fairly and is operated, maintained and improved to be sensitive to both the natural and built environments.”

This goal calls for balancing environmental, economic and community objectives in providing a transportation system that is sensitive to the natural and built environments. Two of the goal’s specific objectives are to “protect air and water quality from pollutants” and to “use maintenance and construction practices that are compatible with native habitats and species and which consider habitat fragmentation concerns”. The goal underscores “aesthetic and environmental values” as a way to “maintain Oregon as a prosperous place to visit, live, work and play.” And recognizes the importance of working with other agency plans like the Oregon Conservation Strategy in developing a transportation system. Developing the proposed roads across riparian habitat, streams, wildlife habitat, wetlands, and other strategy habitats identified on the Oregon Conservation Strategy’s map (above), will damage these resources, cause increases in toxic runoff from roadway surfaces, fragment habitat, and eschew environmental values, and does not consider the Oregon Conservation Strategy, which is certainly not compatible with the goal.

Policy 4.1 – Environmentally Responsible Transportation System: “It is the policy of the State of Oregon to provide a transportation system that is environmentally responsible and encourages conservation and protection of natural resources.”

Developing the proposed roads in identified riparian habitat, streams, wildlife habitat, wetlands will damage these resources and cause increases in toxic runoff from roadway surfaces and increased erosion from runoff. Not to mention that the proposed South SW Fischer Rd. extension will cross the Bankston property’s conservation easement, which was expressly created to conserve and protect the unique and important environmental resources on the property and expressly prohibits roads, which would destroy those resources. The City’s proposed road network neither encourages conservation nor protection of these natural resources, in fact, it does the exact opposite; it is environmentally irresponsible and completely inconsistent with this policy.

Strategy 4.1.1: “Practice stewardship of air, water, land, wildlife and botanical resources. Take into account the natural environments in the planning, design, construction, operation and maintenance of the transportation system. Create transportation systems compatible with native habitats and species and help restore ecological processes, considering such plans as the *Oregon Conservation Strategy* and the *Oregon Plan for Salmon and Watersheds*. Where adverse impacts cannot reasonably be avoided, minimize or mitigate their effects on the environment. Work with state and federal agencies and other stakeholders to integrate environmental solutions and goals into planning for infrastructure development and provide for an ecosystem-based mitigation process.”

The City's proposed transportation system does not take into account the natural environment – the proposed roads cross riparian habitat, streams, wildlife habitat, and wetlands without regard to those resources. Developing roads in these areas is not compatible with native habitats and species; it destroys them. The proposed transportation system also does not consider the Oregon Conservation Strategy, which identifies several strategy habitats – oak woodlands, flowing water and riparian, and wetlands – in the area, which the roads of concern are proposed to be constructed. The City's plan makes no effort to acknowledge these adverse impacts or to explain why those impacts cannot reasonably be avoided.

Strategy 4.1.3: "Evaluate the impact of geological hazards and natural disasters including earthquakes, floods, landslides and rockfalls, on the efficiency and sustainability of the location and design of new or improved transportation facilities as appropriate."

The City's proposed east-west roads will cross several streams that flow north to south into the Tualatin River and that are situated in deep ravines with a history of and high susceptibility to landslides and erosion. The City has made no effort to consider the impact of these hazards on the location of the proposed roads.

Strategy 4.1.4: "Work collaboratively to streamline permit procedures and gain efficiencies to transportation system improvements while meeting or exceeding environmental benefits or regulations."

Constructing east-west roads across streams, riparian and wildlife habitat, and wetlands will likely require DSL permits and the City has not shown that it is even feasible to obtain such permits or meet applicable environmental regulations. The proposed roads certainly do not secure any environmental benefits; rather, they will undoubtedly cause environmental harm.

Strategy 4.1.6: "To determine the most cost-effective investments, consider using life-cycle costs in transportation maintenance, purchase of equipment, selection of materials, and design and engineering of infrastructure where appropriate."

Development of the proposed east-west roads across streams and deep ravines will require expensive engineering. The City has not considered whether this is a cost-effective investment, and it is not. A more cost-effective investment would be avoiding roads in these areas altogether.

Strategy 4.1.7: "To accomplish environmental stewardship and increase efficiencies, use environmental management systems."

The City's proposed roads do not accomplish environmental stewardship because they will destroy habitat, inconsistent with this strategy.

Policy 4.3 – Creating Communities

Strategy 4.3.4: “Promote transportation facility design, including context sensitive design, which fits the physical setting, serves and responds to the scenic, aesthetic, historic and environmental resources, and maintains safety and mobility.”

The City’s proposed transportation network does not fit the physical setting of the Kingston Terrace area. While it may represent the City’s ideal transportation network if no environmental resources or hazard areas were present, it does not reflect the realities of the land – the proposed east-west roads cross several streams with deep ravines, as well as riparian and wildlife habitat. The proposed road network does not respond to these environmental resources, it dominates them.

5. Goal 5 – Safety and Security: “To plan, build, operate and maintain the transportation system so that it is safe and secure.”

This goal commands that the City plan its transportation system so that it is safe and secure, which the OTP explains involves reducing the system’s exposure to dangers, including natural disasters like landslides. The east-west roads are proposed to cross areas of mapped historic landslides and areas of high and very high susceptibility for future landslides and the City has not explained how this reduces the transportation system’s exposure to those dangers; and it does not. It is tautological that building roads in known hazard areas increases exposure to those hazards. The City can only reduce the transportation system’s exposure to those hazards by avoiding those areas altogether.

Policy 5.1 – Safety

Strategy 5.1.3: “Ensure that safety and security issues are addressed in planning, design, construction, operation and maintenance of new and existing transportation systems, facilities and assets.”

The City’s proposed transportation network does not address the safety issue that is known historic landslides and very high susceptibility for future landslides in area that the proposed east-west will cross.

6. Goal 6 – Funding the Transportation System: “To create a transportation funding structure that will support a viable transportation system to achieve state and local goals today and in the future.”

This goal recognizes that for transportation funding, it is essential to maximize existing resources, invest strategically and consider return on investment when planning a transportation system. OAR 660-012-0040(1) requires that the TSP include a transportation financing program, which includes a list of planned transportation improvements and their estimated costs. The City must evaluate the high costs associated with building and maintaining roads across the ravines

and areas of high susceptibility to landslides. The City should conclude that those high costs cannot be justified for neighborhood low-volume streets. Such investments are neither strategic nor cost-effective.

Policy 6.2 – Achievement of State and Local Goals

Strategy 6.2.2: “Make strategic investments that respond to capacity, safety, operational and maintenance issues for airports, bicycle and pedestrian facilities, highways and roadways, intermodal connections, public transportation, ports and waterways and rail.”

Again, building the proposed east-west roads is not a strategic investment for the City because it does not respond to the safety concerns of building roads in hazardous landslide areas.

Strategy 6.2.3: “Give funding priority to programs and projects that use resources efficiently. Systematically examine the alternatives to major investments and consider the return on investment. Return on investment considers short and long-term benefits and includes not only direct benefits but also indirect benefits such as public safety, accessibility, mobility and the environment.”

The City has not examined any alternatives to the proposed transportation system network it proposes and has not considered the return on investment given the high-costs and safety issues of building roads in landslide areas and through environmentally sensitive areas. The City should conclude that the high costs and difficulty of building and maintaining roads in these areas cannot be justified for low-volume neighborhood roads.

Strategy 6.2.4: “In funding decisions, balance the interests of beneficiaries, economic benefits and environmental and land use goals.”

Because the TPR requires the City’s TSP to have a financing program that lists the planned transportation improvements and estimate their costs, the City has to determine what projects it wants to fund and under this strategy, has to balance competing values, including beneficiaries, economic benefits and environmental and land use goals. The environmental impacts and high costs of constructing roads across riparian and wildlife habitats, wetlands and streams and deep ravines outweigh whatever benefit those roads would provide, economic or otherwise. Because the City has not justified a need for the east-west roads, as explained in Chris Clemow’s letter (Exhibit 1), it is impossible to tell what benefits there are, if any, of the roads.

7. Goal 7 – Coordination, Communication and Cooperation

Policy 7.3 – Public Involvement and Consultation

Strategy 7.3.1: “In all phases of decision-making, provide affected Oregonians early, open, continuous, and meaningful opportunity to influence decisions about proposed transportation activities. * * *”

The City should meaningfully consider Rivermeade’s concerns about the proposed east-west roads that will adversely impact their neighborhood and decide that such roads are not necessary to achieve the City’s transportation goals nor are they consistent with the OTP.

B. Metro Regional Transportation Plan (RTP)

The City’s TSP must be consistent with the goals and objectives of Metro’s Regional Transportation Plan (RTP). OAR 660-012-0015(3)(a). The proposed east-west roads are inconsistent with several of the RTP’s goals and objectives and should not be included in the City’s TSP.

1. Goal 5: Safety and Security – “People’s lives are saved, crashes are avoided and people and goods are safe and secure when traveling in the region.”

Objective 5.3 Preparedness and Resiliency – “Reduce the vulnerability of regional transportation infrastructure to natural disasters, climate change and hazardous incidents.”

As explained above, the east-west roads of concern are proposed to cross several streams which are located in deep, eroding ravines and which DOGAMI has identified as having a history of and very high potential for future landslides and erosion. Developing roads in these areas is hazardous and increases the vulnerability of transportation infrastructure to natural disasters and hazardous incidents, inconsistent with this objective.

2. Goal 6: Healthy Environment – “The greater Portland region’s biological, water, historic and cultural resources are protected and preserved.”

Objective 6.1 Biological and Water Resources – “Protect fish and wildlife habitat and water resources from the negative impacts of transportation.”

As explained above and throughout, the City proposes east-west roads to be developed in and across riparian and wildlife habitats, wetlands and streams which will negatively impact these resources, inconsistent with this objective.

Objective 6.2 Historic and Cultural Resources – “Protect historic and cultural resources from the negative impacts of transportation.”

Although not specifically within the area Rivermeade is concerned about, the City has recognized in its draft TSP documents that the Gustav Plieth farm complex, which is listed on the National Register of Historic Places, is within the planning area. Washington County’s Goal 5 Inventory also identifies that property as a cultural resource (orange on the above Washington

County Goal 5 Inventory map). The City proposes roads that will cross the Gustav Plieth property, inconsistent with this objective.

Objective 6.3 Green Infrastructure – “Integrate green infrastructure strategies in transportation planning and design to avoid, minimize and mitigate adverse environmental impacts.”

The “greenest” form of infrastructure that the City can integrate into its transportation plan is no infrastructure at all in riparian and wildlife habitat. The City should avoid development of the east-west roads in and across riparian and wildlife habitats, wetlands and streams to avoid and minimize adverse impacts to these environmental resources.

Objective 6.4 Light Pollution – “Minimize unnecessary light pollution to avoid harm to human health, farms and wildlife, increase safety and improve visibility of the night sky.”

Constructing roads in this area will involve the installation of street lighting where none currently exists. The resulting light pollution will harm human health and the wildlife in this area and diminish visibility of the night sky, inconsistent with this objective.

Objective 6.5 Habitat Connectivity – “Improve wildlife and habitat connectivity in transportation planning and design to avoid, minimize and mitigate barriers resulting from new and existing transportation infrastructure.”

The City’s proposed east-west roads will diminish wildlife and habitat connectivity of the drainages that run north to south and into the Tualatin River. The City should avoid planning east-west roads that cross these habitat connectivity corridors consistent with this objective.

3. Goal 7: Healthy People – “People enjoy safe, comfortable and convenient travel options that support active living and increased physical activity, and transportation-related pollution that negatively impacts public health are minimized.”

Objective 7.2 Clean Air – “Reduce transportation-related air pollutants, including criteria pollutants and air toxics emissions.”

Objective 7.3 Other Pollution Impacts – “Minimize air, water, noise, light and other transportation-related pollution health impacts.”

The City proposes a transportation system that contains a dense network of new roads and has not justified the need for these new roads. The new roads will cause transportation-related pollution, including increased toxic runoff into streams that flow into the Tualatin River, increased air and noise pollution from vehicle travel, and light pollution from new street lights. The City should reconsider its ambitious proposed transportation network and only include roads are justified to be necessary to serve the expansion area, consistent with this goal and these objectives.

4. Goal 8: Climate Leadership – “The health and prosperity of people living in the greater Portland region are improved and the impacts of climate change are minimized as a result of reducing transportation-related greenhouse gas emissions.”

Objective 8.1 Climate Smart Strategy Implementation – “Implement policies, investments and actions identified in the adopted Climate Smart Strategy, including coordinating land use and transportation; making transit convenient, frequent, accessible and affordable; making biking and walking safe and convenient; and managing parking and travel demand.”

Objective 8.2 Greenhouse Gas Emissions Reduction – “Meet adopted targets for reducing transportation-related greenhouse gas emissions.”

Objective 8.3 Vehicle Miles Traveled – “Reduce vehicle miles traveled per capita.”

Objective 8.5 Energy Conservation – “Reduce transportation-related consumption of energy and reliance on sources of energy derived from petroleum and gasoline.”

Objective 8.6 Green Infrastructure – “Promote green infrastructure that benefits both climate and other environmental objectives, including improved stormwater management and wildlife habitat.”

This goal and each of its objectives call for reducing transportation-related greenhouse gas emissions. Adopting the City’s proposed transportation network which calls for a dense network of new roads in the expansion area will lead to increases in greenhouse gas emissions, inconsistent with this goal and its objectives. As stated above, the “greenest” form of infrastructure that the City can integrate into its transportation plan is no infrastructure in riparian and wildlife habitats. The City should avoid development of the east-west roads in and across riparian and wildlife habitats, wetlands and streams to avoid and minimize adverse impacts to these environmental resources.

5. Goal 10: Fiscal Stewardship – “Regional transportation planning and investment decisions provide the best return on public investments.”

Objective 10.1 Infrastructure Condition – “Plan, build and maintain regional transportation assets to maximize their useful life, minimize project construction and maintenance costs and eliminate maintenance backlogs.”

The City should consider the high costs associated with building and maintaining roads across the steep ravines and areas of high susceptibility to landslides in the area and conclude that that construction costs of such roads are not justified for low-volume neighborhood streets, nor will they provide the best return on public investments or minimize project construction and maintenance costs, consistent with this goal and objective.

6. Goal 11: Transparency and Accountability – “Regional transportation decisions are open and transparent and distribute the benefits and burdens of our investments in an equitable manner.”

Objective 11.1 Meaningful Public and Stakeholder Engagement – “Engage more and a wider diversity people in providing input at all levels of decision-making for developing and implementing the plan, particularly people of color, English language learners, people with low income and other historically marginalized communities.”

Objective 11.2 Performance-Based Planning – “Make transportation investment decisions using a performance-based planning approach that is aligned with the RTP goals and supported by meaningful public engagement, multimodal data and analysis.”

This goal and its objectives call for the City to ensure that its transportation decisions are open and transparent and that public engagement is meaningful. The City must consider Rivermeade’s concerns about the proposed east-west roads that will adversely impact their neighborhood and should decide that such roads are neither necessary to achieve the City’s transportation goals nor are they consistent with the RTP’s goals.

C. Metro Regional Framework Plan (RFP)

Statewide Planning Goal 2 (Land Use Planning) requires that the City’s TSP comply with regional plans adopted under ORS chapter 268. Under ORS chapter 268, Metro has adopted its Regional Framework Plan (RFP) and its component functional plans – the Urban Growth Management Functional Plan (UGMFP) and the Regional Transportation Functional Plan (RTFP). The City’s TSP must be consistent with the RFP, UGMFP and RTFP. Each is discussed below.

1. Chapter 1 – Land Use:

Policy 1.10.1 – “Support the identity and functioning of communities in the region through:

“* * *

“c. Ensuring that incentives and regulations guiding the development and redevelopment of the urban area promote a settlement pattern that:

“* * *

“viii) Avoids and minimizes conflicts between urbanization and the protection of regionally significant fish and wildlife habitat.”

The City’s proposed east-west roads do not promote a settlement pattern that avoids and minimizes the conflicts between the City’s urbanization goals and the protection of fish and

wildlife habitat. Rather, the proposed roads will exacerbate the conflict by constructing roads that cut through such habitat, inconsistent with this policy.

Policy 1.16.2 – “Take measures in order to protect and improve the region’s existing residential neighborhoods, by:

“a. Protecting residential neighborhoods from air and water pollution, noise and crime.”

The City’s proposed transportation network does not protect or improve the area’s existing residential neighborhoods because it introduces east-west roads that cross several streams that flow into the Tualatin River which will be harmed by pollution from street runoff. Additional roads in these residential neighborhoods will also increase air pollution and noise from vehicle traffic.

2. Chapter 2 – Transportation:

This chapter provides the same objectives as the RTP. Rivermeade’s responses to the inconsistencies of the City’s proposed transportation system with the goals and policies of the RTP in the preceding section are incorporated herein.

3. Chapter 3 – Nature in Neighborhoods:

Policy 3.2.6 – “Seek to avoid fragmentation and degradation of components of the Regional System [of Parks, Natural Areas, Open Spaces, Fish and Wildlife Habitats, Trails, and Greenways] caused by new transportation and utility projects. If avoidance is infeasible, impacts shall be minimized and mitigated.”

This policy requires the City’s TSP to seek to avoid fragmentation and degradation of natural areas, open spaces and fish and wildlife habitats caused by new transportation projects. The City has not sought to avoid such fragmentation and degradation of any of these resources by proposing east-west roads in the planning area that cross these resource areas and the Bankston conservation easement specifically; in fact, they do exactly the opposite. The City should remove the proposed east-west roads and, if new roads in the area are necessary, consider the development of north-south roads that avoid natural areas, open spaces, fish and wildlife habitats and the conservation easement, consistent with this policy.

Policy 3.2.8 – “Protect Fish and Wildlife Habitat to achieve the following objectives:

“a. Performance objectives:

“i) Preserve and improve streamside, wetland, and floodplain habitat and connectivity;

“ii) Preserve large areas of contiguous habitat and avoid habitat fragmentation;

“iii) Preserve and improve connectivity for wildlife between riparian corridors and upland wildlife habitat; and

“iv) Preserve and improve special habitat of concern, including native oak habitats, native grasslands, wetlands, bottomland hardwood forests, and riverine islands.

“b. Implementation objectives:

“i) Increase the use of habitat-friendly development throughout the region; and

“ii) Increase restoration and mitigation actions to compensate for adverse effects of new and existing development on ecological function.”

This City’s proposed transportation network fails to meet any of these performance and implementation objectives regarding the protection of fish and wildlife habitat. Specifically, the City’s proposed east-west roads that will cross fish and wildlife habitat do not preserve and improve streamside habitat and connectivity; do not preserve large areas of contiguous habitat or avoid habitat fragmentation (they divide existing large areas of contiguous habitat and cause fragmentation, especially with regard to the 13-acre Bankston conservation easement that has recently been restored with 14,000 new native plantings); do not preserve or improve wildlife connectivity between riparian corridors (Tualatin River) and upland wildlife habitat (north-south streams); and do not preserve and improve special habitats of concern (see Oregon Conservation Strategy map, above, identifying native oak woodlands, flowing water and riparian, and wetlands strategy habitats in the area the east-west roads are proposed). The proposed east-west roads are not habitat-friendly development because they will destroy and fragment habitat, inconsistent with this policy. Any new roads should be north-south oriented to avoid construction in fish and wildlife habitat, consistent with these policies.

4. Chapter 4 – Watershed Health and Water Quality:

Policy 4.3.1 – “Protect, enhance, and restore the water quality of the region by:

“a. Implementing and coordinating watershed-wide planning.

“b. Promoting the protection of natural areas along waterways and encouraging continuous improvement of water quantity and quality through liaison with agencies that influence changes along streams, rivers and wetlands in the Metro region.

“c. Establishing and maintaining vegetative corridors along streams.

“d. Encouraging urban development practices that minimize soil erosion.

“e. Implementing best management practices (BMPs).

“f. Establishing standards to conserve, protect, and enhance riparian fish and wildlife habitat.

“g. Protecting wetlands values with sufficient buffers to maintain their water quality and hydrologic function.”

The City’s draft transportation network, and its proposed east-west roads in particular, do not promote the protection of natural areas along waterways, because it proposes roads that will be constructed in and across the natural areas along the streams in the planning area. The City must establish and maintain vegetative corridors along these streams, in which no development should occur. The City’s draft transportation network does not encourage an urban development practice that minimizes soil erosion because it proposes roads across deep ravines that have a history of and high potential for future erosion. The development of additional roads in these areas will increase stormwater runoff from roads which will, in turn, exacerbate erosion. The City must amend its draft transportation plan to be consistent with these policies.

Policy 4.4.1 – “Encourage the following regional policies for stormwater management by:

“a. Ensuring that as development and redevelopment occur increases in stormwater runoff are avoided to the maximum extent practicable.

“b. Managing stormwater so that runoff is retained as close as practicable to the site at which development or redevelopment occurs, in a manner that avoids negative quality and quantity impacts on adjacent streams, wetlands, groundwater and other water bodies.

“c. Ensuring that, to the maximum extent practicable, the quality of stormwater leaving a site after development is equal to or better than before development.

“d. Ensuring that, to the maximum extent practicable, the quantity of stormwater leaving a site after development is equal to or less than before development.

“e. Ensuring that stormwater quantity and quality issues are addressed during design of transportation facilities.

This policy directs the City to ensure that development of its transportation system will avoid increases in stormwater runoff to the maximum extent practicable. Development of the proposed east-west roads will increase toxic stormwater runoff to the streams that they cross, which will directly adversely impact those streams and the Tualatin River. The City’s proposal is inconsistent with this policy.

Policy 4.5.1 – “Promote the incorporation of natural watershed systems into future planning and design processes and balance their contributions to environmental improvement with recreational and other uses.”

This policy instructs the City to incorporate the natural watershed system which are the streams flowing north to south into the Tualatin River into its TSP and balance their contribution

to environmental improvement with transportation uses. The City has not shown any need for the proposed east-west roads that would justify crossing and negatively impacting the streams in the area, inconsistent with this policy.

Policy 4.5.2 – “Address the interrelatedness of greenspace protection, land use, transportation and water resources management issues.”

The City has not addressed the interrelatedness of these issues in justifying its proposed east-west roads, inconsistent with this policy.

5. Chapter 5 – Regional Natural Hazards:

Policy 5.2.3 – “Encourage the avoidance of floodplain development and other non-structural flood mitigation measures instead of using levee and dike construction and other structural flood mitigation techniques.”

Policy 5.3.2 – “Encourage local governments to limit development in the areas of greatest landslide hazard, except where development contributes to mitigation of the hazard. Such development should include appropriate safeguards and facilitate disaster response in the event it becomes necessary.”

The City’s proposed transportation network proposes the development of roads that may be within the floodplain of the Tualatin River and that are in areas of historic and very high potential for future landslides, inconsistent with these policies. The development of the east-west roads will not contribute to the mitigation of these landslide hazards; rather, it will exacerbate it by increasing stormwater runoff from such roads which will cause increased erosion.

D. Metro Urban Growth Management Functional Plan (UGMFP)

Statewide Planning Goal 2 requires the City’s TSP to be consistent with Metro’s UGMFP, a regional plan adopted under ORS chapter 268.

1. Title 3: Water Quality and Flood Management:

3.07.310 Intent – “To protect the beneficial water uses and functions and values of resources within the Water Quality and Flood Management Areas by limiting or mitigating the impact on these areas from development activities and protecting life and property from dangers associated with flooding.”

3.07.320 Applicability:

“(a) Title 3 applies to:

“(1) Development in Water Quality Resource and Flood Management Areas.

“(2) Development which may cause temporary or permanent erosion on any property within the Metro Boundary.”

As part of the UGB expansion approval, the City was required to identify its water quality resource areas, flood management areas, and habitat conservation areas that would be subject to performance standards under Metro Titles 3 and 13. MC 3.07.1110(c)(5). To date, Rivermeade has been unable to locate any maps developed by the City showing these areas, however, we assume for purposes of this letter that the City’s maps are the same or substantially similar to Metro’s Title 13 map (above) showing mapped riparian and wildlife habitat in the UGB expansion area. Accordingly, Metro Title 3 applies to the City’s development of roads in the UGB expansion area.

3.07.340 Performance Standards:

“* * *

“(b) Water Quality Performance Standards.

“(1) The purpose of these standards is to: 1) protect and improve water quality to support the designated beneficial water uses as defined in Title 10, and 2) protect the functions and values of the Water Quality Resource Area which include, but are not limited to:

“(A) Providing a vegetated corridor to separate Protected Water Features from development;

“(B) Maintaining or reducing stream temperatures;

“(C) Maintaining natural stream corridors;

“(D) Minimizing erosion, nutrient and pollutant loading into water;

“(E) Filtering, infiltration and natural water purification; and

“(F) Stabilizing slopes to prevent landslides contributing to sedimentation of water features.”

“(2) Local codes shall require all development in Water Quality Resource Areas to conform to the following performance standards:

“(A) The Water Quality Resource Area is the vegetated corridor and the Protected Water Feature. The width of the vegetated corridor is specified in Table 3.07-3. At least three slope measurements along the water feature, at no more than 100-foot increments, shall be made for each property for which development is proposed. Depending on the width of the property, the width of the vegetated corridor will vary.

“(B) Water Quality Resource Areas shall be protected, maintained, enhanced or restored as specified in Section 3.07.340(b)(2).

“(C) Prohibit development that will have a significant negative impact on the functions and values of the Water Quality Resource Area, which cannot be mitigated in accordance with subsection (2)(F).

“(D) Native vegetation shall be maintained, enhanced or restored, if disturbed, in the Water Quality Resource Area. Invasive nonnative or noxious vegetation may be removed from the Water Quality Resource Area. Use of native vegetation shall be encouraged to enhance or restore the Water Quality Resource Area. This shall not preclude construction of energy dissipaters at outfalls consistent with watershed enhancement, and as approved by local surface water management agencies.

“(E) Uncontained areas of hazardous materials as defined by DEQ in the Water Quality Resource Area shall be prohibited.

“(F) Cities and counties may allow development in Water Quality Resource Areas provided that the governing body, or its designate, implement procedures which:

“(i) Demonstrate that no practicable alternatives to the requested development exist which will not disturb the Water Quality Resource Area; and

“(ii) If there is no practicable alternative, limit the development to reduce the impact associated with the proposed use; and

“(iii) Where the development occurs, require mitigation to ensure that the functions and values of the Water Quality Resource Area are restored.

“(G) Cities and counties may allow development for repair, replacement or improvement of utility facilities so long as the Water Quality Resource Area is restored consistent with Section 3.07.340(b)(2)(D).

“(H) The performance standards of Section 3.07.340(b)(2) do not apply to routine repair and maintenance of existing structures, roadways, driveways, utilities, accessory uses and other development.

“(3) For lots or parcels which are fully or predominantly within the Water Quality Resource Area and are demonstrated to be unbuildable by the vegetative corridor regulations, cities and counties shall reduce or remove vegetative corridor regulations to assure the lot or parcel will be buildable while still providing the maximum vegetated corridor practicable. Cities and counties shall encourage landowners to voluntarily protect these areas

through various means, such as conservation easements and incentive programs.

“* * *

“(6) Cities and counties shall apply the performance standards of this title to Title 3 Wetlands as shown on the Metro Water Quality and Flood Management Areas Map and locally adopted Water Quality and Flood Management Areas maps. Cities and counties may also apply the performance standards of this title to other wetlands.”

The City proposes the development of east-west roads that will cross protected Water Quality Resource Areas. Accordingly, the City must apply the water quality resource standards in the above section. The above section requires that the City prohibit development that will have a significant negative impact on the functions and values of the Water Quality Resource Area, and that cannot be mitigated. The City has not shown how the development of its proposed roads in these areas will impact those resources or how any significant negative impacts will be mitigated. Moreover, the City may only allow development in Water Quality Resource areas if no practicable alternatives to the east-west roads exist which will not impact the Water Quality Resource areas. To that end, Professional Transportation Engineer Chris Clemow has prepared a letter explaining that an alternative to the two proposed east-west roads could be one east-west road south of and parallel to SW Beef Bend Rd. that avoids or minimizes crossing over the protected drainages. Exhibit 1. The City has also not shown any justification that the proposed east-west roads are needed. It is possible that the north-south roads running from SW Beef Bend Rd. to access the UGB expansion area and outside of the Water Quality Resource areas would satisfy the City’s transportation needs without the need for the proposed east-west roads that cross the Water Quality Resource areas. The City must demonstrate that for the east-west roads, there are no practicable alternatives, and the City has not done that.

Further, this section requires the City to encourage landowners to voluntarily protect areas on their properties that are within Water Resource Quality areas through conservation easements and the like. The Bankstons have done just that with a conservation easement that prohibits the development of new roads in the easement area. If the City adopts the South SW Fischer Rd. extension and proposes to condemn portions of the Bankston conservation easement for the new road, the City will directly violate this UGMFP requirement. Moreover, it is uncertain that the City would even be able to acquire property for the proposed roads in a condemnation action. In exercising its eminent domain authority, the City is required to first determine that the proposed roads are necessary and that they will be located in a manner which will be the “most compatible with the greatest public good and the least private injury.” ORS 35.235(2). For one, the City has not yet provided any justification of necessity for the proposed east-west roads. Two, it is doubtful that any public benefits that might result from the roads would outweigh the injury to the Bankstons and holders of the conservation easement, Rivermeade, and the community at large. Building the east-west roads will destroy or damage protected natural resources in the area, undermine the public’s confidence in utilizing conservation methods and the like to protect important natural resources on their properties, and may be financially infeasible, or at the least would not be a good return on the City’s investment,

given that low-volume neighborhood traffic may not be able to justify the high costs and difficulty of engineering, permitting, constructing and maintaining the roads in and across high hazard areas like the stream ravines. It is hard to imagine that the proposed roads would be compatible with the greatest public good and the least private injury under these circumstances.

2. Title 12 – Protection of Residential Neighborhoods

3.07.1210 Purpose and Intent – “Existing neighborhoods are essential to the success of the 2040 Growth Concept. The intent of Title 12 of the Urban Growth Management Functional Plan is to protect the region’s residential neighborhoods. The purpose of Title 12 is to help implement the policy of the Regional Framework Plan to protect existing residential neighborhoods from air and water pollution, noise and crime and to provide adequate levels of public services.”

The City’s proposed transportation network does not protect or improve the area’s existing residential neighborhoods because it introduces east-west roads that cross several streams that flow into the Tualatin River which will be harmed by pollution from street runoff. Additional roads in these residential neighborhoods will also increase air pollution and noise from vehicle traffic.

3. Title 13 – Nature in Neighborhoods

3.07.1310 Intent – “The purposes of this program are to (1) conserve, protect, and restore a continuous ecologically viable streamside corridor system, from the streams’ headwaters to their confluence with other streams and rivers, and with their floodplains in a manner that is integrated with upland wildlife habitat and with the surrounding urban landscape; and (2) to control and prevent water pollution for the protection of the public health and safety, and to maintain and improve water quality throughout the region. * * *”

The City’s proposed east-west roads are inconsistent with the purposes of Metro’s Title 13 Nature in Neighborhoods program. The proposed roads do not conserve a continuous ecologically viable streamside corridor system because they require construction within that system and fragment habitat. The proposed roads will also cause increased runoff to streams that flow into the Tualatin River, which will exacerbate erosion and negatively impact water quality, to the detriment of the public’s health and safety.

E. Metro Regional Transportation Functional Plan (RTFP)

Statewide Planning Goal 2 requires the City’s TSP to be consistent with Metro’s RTFP, a regional plan adopted under ORS chapter 268.

1. Title 1: Transportation System Design

3.08.010.A. Purpose – “The Regional Transportation Plan establishes an outcomes-based framework that is performance-driven and includes policies, objectives and actions that direct future planning and investment decisions to consider economic, equity and environmental objectives. The principal performance objectives of the RTP are * * * efficient management to maximize use of the existing transportation system; * * * reducing vehicle miles traveled and resulting emissions; and promoting environmental and fiscal stewardship and accountability.”

The City has not met principal performance objectives of the RTP. The City has not shown that it will use efficient management to maximize the use of the existing transportation system in meeting the City’s transportation needs. It very well could be that improvements to existing SW Beef Bend Rd. and existing north-south roads coming off of SW Beef Bend Rd. would be enough to satisfy the City’s transportation needs, but none of that work has been shown. The City’s draft transportation network will add several new roads to the Kingston Terrace area, which will increase vehicle miles traveled in the City’s system and result in increased emissions, inconsistent with the purpose of Title 1. The City’s draft plan also does not promote environmental and fiscal stewardship and accountability because it proposes roads that will cut through and impact protected sensitive environmental habitat and require expensive engineering and permitting to construct roads that cross deep, eroding ravines that cannot be justified for low-volume neighborhood streets.

3.08.110.C. Street System Design – “To improve connectivity of the region’s arterial system and support walking, bicycling and access to transit, each city and county shall incorporate into its TSP, to the extent practicable, a network of major arterial streets at one-mile spacing and minor arterial streets or collector streets at half-mile spacing considering the following:

- “1. Existing topography;
- “2. Rail lines;
- “3. Freeways;
- “4. Pre-existing development;
- “5. Leases, easements or covenants in place prior to May 1, 1995; and
- “6. The requirements of Titles 3 and 13 of the Urban Growth Management Functional Plan (UGMFP).
- “7. Arterial design concepts in Table 2.6 and Figure 2.11 of the RTP.
- “8. Best practices and designs as set forth in Green Streets: Innovative Solutions for Stormwater, Street Crossings (2002) and Trees for Green Streets: An Illustrated Guide (2002), Creating Livable Streets: Street Design Guidelines for 2040 (2nd Edition, 2002), and state or locally-

adopted plans and best practices for protecting natural resources and natural areas.”

This section requires collector streets be spaced at half-mile intervals, to the extent practicable. The spacing between SW Beef Bend Rd. and the proposed North SW Fischer Rd. collector extension is approximately 0.16 of a mile. The spacing between the proposed North and South SW Fischer Rd. collector extensions is approximately 0.22 of a mile. The distance between SW Beef Bend Rd. and the Tualatin River is less than half a mile. So under this section, no east-west collector streets south of SW Beef Bend Rd. are even required.

In developing its transportation network, this section requires that the City consider existing topography, which includes the streams in deep, eroding ravines and riparian and wildlife habitat that the east-west roads are proposed to cross; pre-existing development, which includes the residential neighborhoods that will be impacted by the proposed roads, as well as Meyer’s Riverside Airport which the roads are proposed to cross; the requirements of Titles 3 and 13 of the UGMFP (discussed above and herein incorporated); and state and locally-adopted plans and best practices for protecting natural resources and natural areas (discussed throughout this letter and herein incorporated). The City has failed to consider these elements in the design of its proposed transportation network, which lays out east-west roads without concern for the existing neighborhoods, airport, streams and habitat that will be negatively impacted by their development.

2. Title 2: Development and Update of Transportation System Plans

3.08.210 Transportation Needs

“A. Each city and county shall update its TSP to incorporate regional and state transportation needs identified in the 2035 RTP and its own transportation needs. The determination of local transportation needs shall be based upon:

- “1. System gaps and deficiencies identified in the inventories and analysis of transportation systems pursuant to Title 1;
- “2. Identification of facilities that exceed the Deficiency Thresholds and Operating Standards in Table 3.08-2 or the alternative thresholds and standards established pursuant to section 3.08.230;
- “3. Consideration and documentation of the needs of youth, seniors, people with disabilities and environmental justice populations within the city or county, including minorities and low-income families.

“B. A city or county determination of transportation needs must be consistent with the following elements of the RTP:

- “1. The population and employment forecast and planning period of the RTP, except that a city or county may use an alternative forecast for the city or county, coordinated with Metro, to account for changes to comprehensive plan or land use regulations adopted after adoption of the RTP;

- “2. System maps and functional classifications for street design, motor vehicles, transit, bicycles, pedestrians and freight in Chapter 2 of the RTP; and
- “3. Regional non-SOV modal targets in Table 3.08-1 and the Deficiency Thresholds and Operating Standards in Table 3.08-2.

“C. When determining its transportation needs under this section, a city or county shall consider the regional needs identified in the mobility corridor strategies in Chapter 4 of the RTP.”

In the first place, the City has not determined its local transportation needs and so Rivermeade is unable to tell if these standards are met. The City must determine its needs before committing to its draft transportation network map and project list and make those determinations available to the public for review before adoption of the TSP.

F. Metro Ordinance 18-1427

Metro Ordinance 18-1427 added the Kingston Terrace expansion area to the UGB. As part of that approval, the ordinance contains the following 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.” Metro Ordinance 18-1427, Exhibit C, Sec. (E)(8) (Emphasis added).

The proposed South SW Fischer Rd. extension will cross the Bankston property’s conservation easement, requiring the removal of native vegetation and wildlife habitat that has recently undergone extensive restoration, and so it does not protect the portion of the property covered by the easement “to the maximum extent possible”, a high bar. The proposed road violates the clear terms of the ordinance and cannot be adopted.

G. Statewide Planning Goals

The City’s TSP must be supported by findings of compliance with applicable statewide planning goals. ORS 197.175(2)(a); OAR 660-012-0025(2).

- 1. Goal 2 – Land Use Planning: Establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

Goal 2 requires that the local TSP comply with “regional plans adopted under ORS 268.” Pursuant to its authority under ORS chapter 268, Metro has adopted several regional plans (discussed above), including the RFP and its components, which include two functional plans,

the UGMFP and the RTFP. Compliance with those documents is discussed above and herein incorporated.

2. Goal 5 – Natural Resources: Protect natural resources and conserve scenic and historic areas and open spaces.

The Goal 5 administrative rule requires the City to inventory and adopt programs to protect Goal 5 resources. Under these rules, the City is required to apply Goal 5 and the requirements in OAR chapter 660, division 23, when considering a “post-acknowledgment plan amendment,” which includes the adoption of a TSP, if the amendment affects a Goal 5 resource. OAR 660-023-0250(3). Under OAR 660-023-0040, the City must analyze “the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use.” OAR 660-023-0040(1). *Central Oregon Landwatch v. Deschutes County*, 294 Or App 317, 318-19 (2018).

Metro and Washington County have inventoried significant Goal 5 resources in the Kingston Terrace area (see county’s and Metro’s inventory maps above). The proposed roads could be conflicting uses with regard to the inventoried Goal 5 resources in the area, and so the City must address the requirements of Goal 5 and the Goal 5 rule at OAR 660-023. *Pekarek v. Wallowa County*, 36 Or LUBA 494, 498 (1999) (where a plan or zoning ordinance amendment affects inventoried Goal 5 resources, the local government must apply the requirements of the Goal 5 rule and determine that the rule is satisfied); *see also Palmer v. Lane County*, 29 Or LUBA 436, 438-47 (1995) (reviewing adequacy of local government’s Goal 5 analysis). The City has not done this.

3. Goal 6 – Air, Water and Land Resources Quality: Maintain and improve the quality of the air, water and land resources of the state.

Goal 6 requires that all discharges, including noise, water and air pollution, from future development shall not violate or threaten to violate applicable state or federal environmental quality statutes, rules and standards. The proposed roads will cross five streams that are downcutting and eroding due to increased stormwater runoff from developing areas to the north of the planning area. Those streams and sediment from erosion empty into the Tualatin River. The proposed roads in the planning area will increase stormwater runoff and exacerbate the current rates of erosion, which will contribute to increased water pollution. The vehicle travel on the proposed roads will also contribute to increased emissions and air pollution. The City must determine whether the discharges associated with the proposed roads would violate or threaten to violate any state or federal legal requirements, such as those under the federal Clean Air Act and Clean Water Act. *Home Builders Association v. City of Eugene*, 59 Or LUBA 116, 146 (2009) (Goal 6 implicated if petitioner establishes there is “some minimal basis” for suspecting that an amendment will have impacts on water quality that would threaten to violate applicable standards); *Graser-Lindsey v. City of Oregon City*, 74 Or LUBA 488, 513 (2016), *aff’d*, 284 Or App 314, 397 P3d 1007 (2017) (local government must show it is reasonable to expect that applicable state and federal environmental quality standards can be met); *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA 372, 406, *aff’d*, 130 Or App 406, 882 P2d 1130

(1994) (the city must consider cumulative impacts of waste and process discharges from uses to be established by a plan amendment and the existing discharges from existing sources). The City has not done this.

4. Goal 7 – Natural Hazards: Protect people and property from natural hazards.

Goal 7 requires the City to evaluate risks to public safety from natural hazards and to avoid or prohibit development in areas where that risk cannot be mitigated. *Citizens for Renewables v. Coos County*, __ Or LUBA __ (LUBA No. 2020-003, Feb 11, 2021). The proposed east-west roads will cross deep ravines with history of and very high potential for landslides (see DOGAMI map above). The City’s Concept Plan acknowledges that the ravines the proposed roads will cross are “downcutting and eroding significantly”. Constructed roads in these areas will increase stormwater runoff which will, in turn, cause additional erosion and increase landslide potential, which poses a risk to public safety. The City has not explained how this risk can or cannot be mitigated.

5. Goal 10 – Provide for the housing needs of citizens of the state.

Goal 10 requires that local plans shall encourage the availability of adequate numbers of needed housing. The City’s TSP must consider whether its proposed roads adversely impact existing housing stock in the Kingston Terrace area.

6. Goal 12 – Transportation: Provide and encourage a safe, convenient and economic transportation system.

This goal requires that TSPs shall:

“(1) consider all modes of transportation including mass transit, air, water, pipeline, rail, highway, bicycle and pedestrian;

“(2) be based upon an inventory of local, regional and state transportation needs;

“(3) consider the differences in social consequences that would result from utilizing differing combinations of transportation modes;

“(4) avoid principal reliance upon any one mode of transportation;

“(5) minimize adverse social, economic and environmental impacts and costs;

“(6) conserve energy;

“(7) meet the needs of the transportation disadvantaged by improving transportation services;

“(8) facilitate the flow of goods and services so as to strengthen the local and regional economy; and

“(9) conform with local and regional comprehensive land use plans. Each plan shall include a provision for transportation as a key facility.”

The City must show that its TSP complies with this Goal 12 and it has not done so. Specifically, the City has not inventoried its transportation needs; its draft transportation network map and project list does not minimize adverse social, economic and environmental impacts and costs, and does not conform to local and regional comprehensive land use plans.

The Transportation Planning Rule (TPR) at OAR 660-012 implements Goal 12. OAR 660-012-0015(3)(a) requires local TSPs to establish a system of transportation facilities and services adequate to meet identified local transportation needs and to be consistent with regional and state TSPs. The City has not identified its local transportation needs, so it is impossible to determine whether its draft transportation network is adequate to meet any needs. Consistency with regional and state TSPs (i.e., OTP, RTP, etc.) is addressed above and incorporated herein.

OAR 660-012-0020(2) sets forth the required elements of TSPs. One of those required elements is a determination of transportation needs as provided in OAR 660-012-0030. The City has not determined its transportation needs or prepared any of the other required elements of TSPs in OAR 660-012-0030.

OAR 660-012-0030 requires the City's TSP to identify transportation needs relevant to the planning area based upon population and employment forecasts and distributions that are consistent with the acknowledged comprehensive plan and measures adopted pursuant to OAR 660-012-0045 to encourage reduced reliance on the automobile. The City has not done this.

OAR 660-012-0025(2) requires that TSPs comply with applicable statewide planning goals and acknowledged comprehensive plan policies and land use regulations. The City has not demonstrated compliance with the applicable goals, acknowledged plans or land use regulations. We address compliance with the goals in this section and those responses are incorporated herein. Consistency with the City's comprehensive plan is addressed below and is herein incorporated.

OAR 660-012-0035 requires the City to evaluate and select transportation system alternatives. Evaluation and selection of alternatives must be based upon the transportation system's consistency with state and federal standards for protection of air, land and water quality including the State Implementation Plan under the Federal Clean Air Act and the State Water Quality Management Plan, and the minimization of adverse economic, social, environmental and energy consequences, among other standards. OAR 660-012-0035(3). Chris Clemow's letter (Exhibit 1) explains that an alternative to the two proposed east-west roads could be one east-west road south of and parallel to SW Beef Bend Rd. that avoids or minimizes crossing over the protected drainages. The City must consider alternatives to the east-west roads in its required analysis.

OAR 660-012-0060 provides rules for amendments to functional plans, acknowledged comprehensive plans and land use regulations (including zone changes) that would significantly affect existing or planned transportation facilities. Because the TSP will significantly affect

existing transportation facilities, the City must put in place measures provided in OAR 660-012-0060(2).

To sum, the City has not complied with Goal 12 or the TPR.

H. King City Comprehensive Plan

The City's TSP must be supported by findings of compliance with acknowledged comprehensive plan policies. OAR 660-012-0025(2).

Open Spaces, Scenic and Historic Areas, and Natural Resources – Goal 5: To conserve open space and protect natural and scenic resources.

Ecologically and Scientifically Significant Natural Areas:

Policy: “The City will coordinate with other jurisdictional entities to protect fish and wildlife habitats by managing riparian habitat impacts, controlling erosion, and by requiring that areas of standing trees and natural vegetation along natural drainage ways, wetlands, and rivers be maintained to the maximum extent possible, while allowing the use of private property as permitted by the Comprehensive Plan.”

This policy binds the City to require that trees and natural vegetation along natural drainage ways, wetlands and rivers be maintained “*to the maximum extent possible.*” Again, “to the maximum extent possible” is a very high bar. The proposed east-east roads are inconsistent with this policy. The east-west roads that are proposed to cross these areas and whose construction will necessarily involve the removal of trees and natural vegetation along watercourses, does not maintain that vegetation “to the maximum extent possible” and so must be removed from the City's consideration or realigned away from these resources.

Water Areas, Wetlands, Watersheds and Groundwater Resources:

Policy: “The City shall protect wetlands and water resources by directing development within the City away from sensitive areas and by requiring public sanitary sewer service for all new residents.”

The proposed east-west roads that cross multiple drainages in the planning area violate this policy that requires that the City “*shall*” direct development away from sensitive water areas, wetlands and watersheds.

Air, Water and Land Resource Quality – Goal 6: To maintain and improve the quality of the air, water, and land resources of the state.

Sensitive Lands:

Policy: “Within the City's UPA, the City will work with other jurisdictional entities to:

“a. Maintain the integrity of sensitive land by minimizing erosion, promoting bank stability, and enhancing water quality;

“b. Protect and enhance fish and wildlife habitat;

“c. Preserve scenic quality and recreational potential;

“d. Require construction practices and stream channel improvements in accord with Unified Sewerage Agency’s [now Clean Water Services] drainage management program;

“e. Require construction practices and stream channel improvements to comply with all applicable state and federal requirements, including the Federal Emergency Management Agency’s flood insurance program.”

The proposed east-west roads will involve the removal of important streamside vegetation, including native vegetation on the Bankston Property that has undergone extensive restoration, which will exacerbate erosion of the deep ravines in which the streams are located, further destabilize the banks of the those streams and harm water quality from the increased sediment that will enter the streams from erosion. The proposed roads also do not protect, much less enhance fish and wildlife habitat because they will be constructed in that habitat, and a network of roads in the area does not preserve the scenic quality of these sensitive lands, inconsistent with this policy.

Air Quality:

Policy: “The City is committed to assure that all development:

“• Complies with DEQ air quality standards;

“• Complies with the State Transportation Planning Rule which calls for reducing vehicle miles traveled;

“• Preserves existing trees to the maximum extent possible; and

“• Plants new trees in landscape areas to assist in maintaining air quality.”

The City proposes an ambitious transportation system that contains a dense network of new roads that does not take into account the goal of reducing vehicle miles traveled. The new roads will increase transportation-related air pollution from vehicle travel.

Water Resources:

Policy: “The City will also endeavor to preserve the water quality in the City and UPA by coordinating with other jurisdictional entities in:

- “• Limiting the removal of natural vegetation along river and stream banks, particularly along river and stream banks in significant natural areas.
- “• Develop standards for connections to public drainageways to reduce volumes of chemicals and sediments reaching stream systems.
- “• Comply with DEQ water quality standards through enforcement of USA regulations within the Intergovernmental Agreement.”

The proposed east-west roads will involve the removal of natural vegetation along the streams and ravines they cross, including on the restored Bankston Property, inconsistent with this policy. Removal of natural vegetation will lead to increased erosion in the deep ravines, exacerbating sediment pollution, as well as toxic runoff from roadway surfaces.

III. Conclusion

The City’s proposed transportation network map and project list, and the proposed extensions of SW Fischer Rd. in particular, are inconsistent with or do not comply with several applicable goals, policies, objectives and standards in governing documents related to the protection of waterways and habitat. Respectfully, there is no conceivable way that the proposed roads can meet those standards if they are to be constructed in those protected areas. The proposed east-west roads should be removed from the City’s consideration in adopting its TSP.

Thank you for your consideration.

Very truly yours,



Sarah C. Mitchell

SCM:scm

CC: Clients

Enclosures:

Exhibit 1 – Chris Clemow, PE, PTOE, Letter

Exhibit 2 – Bankston Property Conservation Easement

Exhibit 3 – Metro Ordinance 18-1427, Exhibit C



April 5, 2022

Sarah Mitchell
Kellington Law Group PC
PO Box 159
Lake Oswego, OR 97034

Re: King City Transportation System Plan (TSP) Evaluation – King City, Oregon
TSP Evaluation

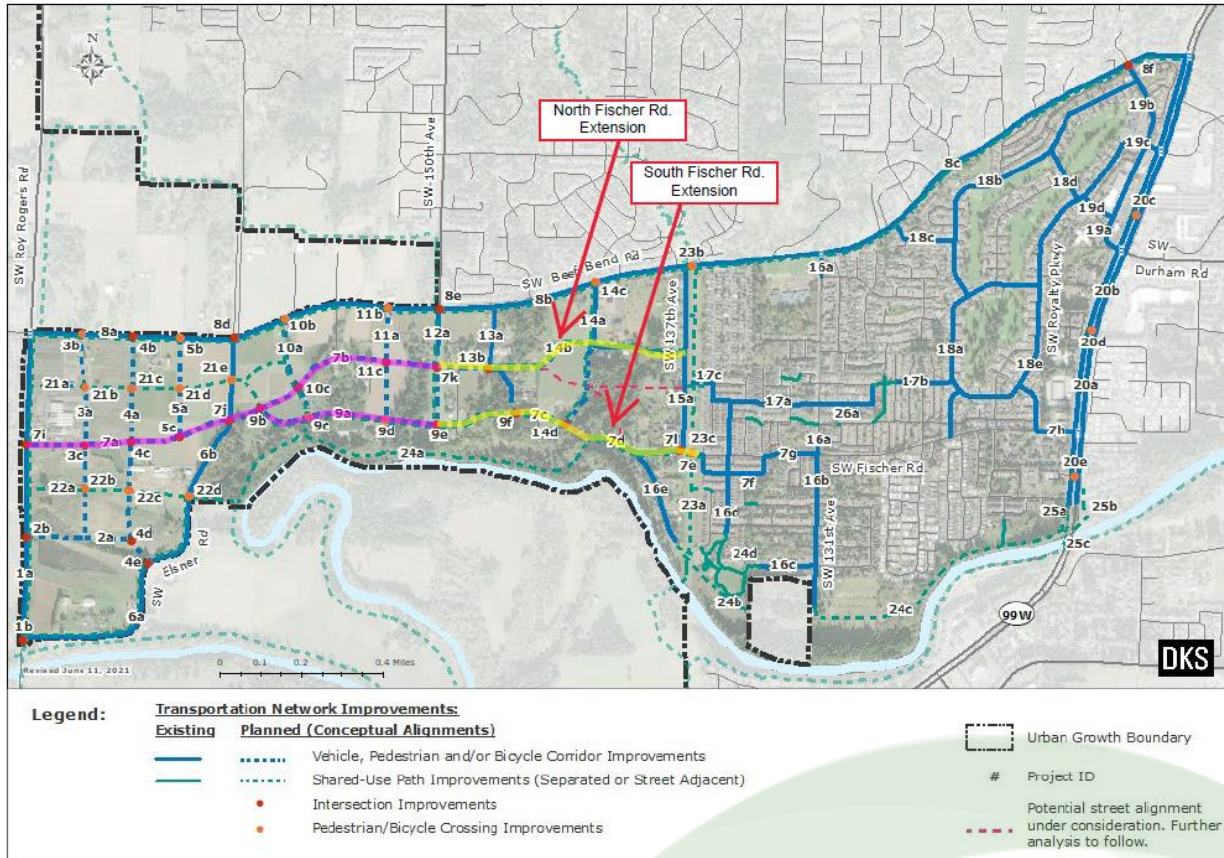
C&A Project Number 20211103.00

Dear Ms. Mitchell,

Materials in this letter present an evaluation of the draft King City Transportation System Plan (TSP) and the impacts resulting from the proposed two new roadway systems: (1) extension of SW Fischer Road between SW 137th Avenue and SW Roy Rogers Road and (2) a new road between SW 137th Avenue and SW Elsner Road, with particular focus on the sections of those roadways between SW 137th Avenue/SW Cordelia Terrace and SW 150th Avenue. Both of these proposed roadways are referred to as part of the “SW Fischer Rd. extension” on the City’s Draft Long-Range Capital Project List.

For clarity, this letter refers to the proposed northern east-west roadway between SW 137th Avenue and SW 150th Avenue as the “North Fischer Rd. Extension” and the proposed southern east-west roadway between SW Cordelia Terrace and SW 150th Avenue as the “South Fischer Rd. Extension”. The proposed roadways of concern are highlighted in yellow on the below map:

FIGURE 7: DRAFT ASPIRATIONAL PROJECTS



Background

The draft King City Transportation System Plan (TSP) contemplates a significant amount of development occurring south of SW Beef Bend Road, including the proposal to move the town center from the east side of the city to the west. Between these areas are the Beef Bend, Central, and Rural Character Neighborhoods that are currently developed with large lot residential development, as well as an airport. The City anticipates these neighborhood areas will remain low-density residential but that redevelopment will occur over the planning period to include a mix of more dense residential development.

Materials contained in the September 2020 Land Use Assumptions Report for the King City Beef Bend South area and the June 11, 2021 Proposed Multimodal Network Maps and Draft Long-Range Capital Project List generally assume SW Fischer Road will be extended in an easterly direction from SW Roy Rogers Road to SW 150th Avenue (pink on the above map). As this area is already developing or has development plans, including those for the new town center, this portion of the SW Fischer Road extension and alignment may be necessary to support the amount of TSP-contemplated development.

The sub-area bounded by SW Beef Bend Road to the north, the Tualatin River to the south, SW 150th Avenue to the west, and SW 137th Avenue to the east, is anticipated to remain low-density residential but will redevelop to a higher density over the planning period. As such, the draft plan to extend *two* east-west collector roadways – the North Fischer Rd. Extension and the South Fischer Rd. Extension – through this area from 137th Avenue to 150th Avenue appears to lack justification.

The SW Fischer Rd. extensions not only appear to lack technical justification, the proposed alignments suffer from significant impediments. There are existing topographical constraints due to the presence of drainages that are characterized by steep ravines running north to south, we are advised that there are sensitive fish and wildlife habitats that would be severely impacted, and there is a general lack of 'development/public support' for both roadways.

Issues

In the sub-area, the available TSP documentation does not assume any commercial, employment, or institutional uses. The materials assume only residential development that includes residential densities ranging from 8-24 dwelling units per acre and multi-family dwellings ranging from 0-30% of the housing mix depending on location.

The TSP documentation identifies conceptual roadway alignments, general project identification, and potential funding sources. The materials do not contain any transportation modeling information or operations analysis which are essential to determining the need for, and alignment of, east-west collector roadways between 137th and 150th which are identified as Project #7 – SW Fischer Road Corridor Extension/Improvements from SW Roy Rogers Road to OR 99W (South Fischer Rd. Extension), and Project 14 – SW Myrtle Avenue Corridor Extension/Improvements from SW Beef Bend Road to the SW Fischer Road extension and SW 147th Avenue to SW 137th Avenue (North Fischer Rd. Extension).

Because the sub-area is only anticipated to generate neighborhood residential traffic, versus commercial, the predominant travel pattern will be to/from the north to SW Beef Bend Road, versus traveling east-west. Ultimately, most neighborhood traffic will be destined to Highway 99W and areas further to the north and east, noting that SW Beef Bend Road is the most direct connection to Highway 99W for all of the land area west of 137th. Additionally, because a less auto-centric town center is contemplated to be developed to the west, there is no need to construct *two* east-west collector roadways through the residential areas to accommodate auto uses.

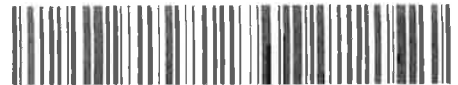
Considering the topographic constraints limiting the development of the area west of 137th and immediately north of the Tualatin River – primarily the environmentally-sensitive drainages and deep ravines that run north-south, which make constructing and maintaining east-west collector roadways expensive and difficult – and the lack of a demonstrated need for east-west roadways in the area between SW 137th Avenue and SW 150th Avenue, no new east-west roadways should be constructed within that area. Alternatively, if a need can be shown, a new east-west collector roadway should be aligned north of the proposed North Fischer Rd. Extension to reflect the service needs of the population primarily to be served, avoid out-of-direction travel that the South Fischer Rd. Extension perpetuates and encourages, and to avoid sensitive environmental areas.

To support long-term transportation planning goals, if an appropriate transportation analysis determines that any new roadway(s) must be constructed in the area immediately west of the existing SW Fischer Road, then any such roadway(s) must be constructed in the area to be served – which is the area where dense new urbanization and the new town center is planned and should avoid the existing low-density residential areas. Any new roadway(s) should also avoid topographic constraints to the greatest extent possible; i.e., cuts and fills, and any unnecessary environmental impacts the region is committed to preserving.

Sincerely,



Christopher M. Clemow, PE, PTOE
Transportation Engineer



01439104200901109660210218
I, Richard Hobermicht, Director of Assessment and
Taxation and Ex-Officio County Clerk for Washington
County, Oregon, do hereby certify that the within
instrument of writing was received and recorded in the
book of records of said county.
Richard Hobermicht, Director of Assessment and
Taxation, Ex-Officio County Clerk



105
HO
31
After recording, return to:
Virginia Bowers
Three Rivers Land Conservancy
P.O. Box 1116
Lake Oswego, OR 97035
Lawyers Title

CONSERVATION EASEMENT AGREEMENT

THIS CONSERVATION EASEMENT AGREEMENT ("**Agreement**") is made this 17 day of December, 2009, between Charlene Bankston ("**Owner**"), and Three Rivers Land Conservancy, an Oregon nonprofit corporation ("**Conservancy**"). * Rerecorded at the request of Three Rivers Land Conservancy to correct Exhibit C (conservation map) previously recorded 12-24-09 as 2009-110966

- A. **Owner.** Owner is the sole owner in fee simple of certain real property in Washington County, Oregon, more particularly described in attached Exhibit A (property legal description) (the "**Property**"). Owner desires to place a conservation easement over a portion of the Property legally described in attached Exhibit B (legal description of protected property) (the "**Protected Property**") and shown in attached Exhibit C (conservation easement map). (conservation easement map).
- B. **Three Rivers Land Conservancy.** The Conservancy is a land conservation organization dedicated to preserving land serving Washington, Clackamas and Multnomah Counties and is a publicly supported, tax-exempt nonprofit organization, qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended, (the "**IRC**") and all regulations promulgated thereunder.
- C. **Conservation Values.** Owner has agreed to grant to the Conservancy a conservation easement over the Protected Property. The Protected Property has certain natural, scenic and open space qualities of significance, including but not limited to:
 - Forest and forested wetland provides wildlife habitat for birds and animals.
 - Several creeks cross the property that provide clean cool water to the Tualatin River and habitat for small fish and amphibians.
 - Riparian forest and floodplain is planted with alder, maple and other trees and shrubs that shade the river and hold the soil from eroding into the river. In addition the floodplain holds water during high water periods, allowing it to slowly filter back into the river system.
 - Property provides views of undeveloped natural area from the Tualatin River for river users.

Collectively, these natural, scenic, and open space qualities of the Protected Property, as well as the purposes described below in Paragraph D, comprise its "**Conservation Values.**" The Conservation Values are not likely to be adversely affected to any substantial extent by the continued use of the Protected Property as described above or as

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authorized below or by the use, maintenance, or replacement of those structures and improvements that presently exist on the Protected Property or that are authorized below.

- D. **Conservation Purposes.** The purpose of this Easement is to preserve and protect in perpetuity the Conservation Values of the Protected Property by confining the development, management and use of the Protected Property to activities that are consistent with the preservation of the Conservation Values, by prohibiting activities that significantly impair or interfere with these Conservation Values, and by providing for remedies in the event of any violation of this Easement. Furthermore, the conservation purposes of this easement are for:
- “The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem”, and as defined in IRC § 170(h)(4)(A)(ii) .
 - “The preservation of certain open space ... where such preservation is (I) for the scenic enjoyment of the general public”, and as defined in IRC § 170(h)(4)(A)(iii).
- E. **Conservation Policy.** Preservation of the Protected Property will further governmental policies established by, among other things, ORS 271.715 et seq., which permits the creating of conservation easements for the purposes of retaining or protecting natural, scenic, and open space values of real property, ensuring its availability for forest, recreational, or open space use, and protecting natural resources.
- The Healthy Streams Plan developed by Clean Water Services and adopted by Washington County in 2005 acknowledges Tualatin River as a water quality limited stream (as designated by Oregon Dept. of Environmental Quality) and promotes the shading and protection of the mainstem and its tributaries in order to improve the overall health of the Tualatin River Basin.
 - Washington County’s Floodplain and Drainage Hazard Development Area limits development within the Property’s floodplain. Under the County’s Rural/Natural Resource Plan Element Policy 10, Fish And Wildlife Habitat states that it is the policy of Washington County to protect and enhance Significant Fish and Wildlife Habitat and under Policy 11, Significant Natural Areas states that it is the policy of Washington County to protect and enhance Significant Natural Areas. The Significant Natural Resources Map identifies the Property as being located within a “Water Areas, Wetlands and Fish & Wildlife Habitat Area”.
- F. **Grant Funding.** This Easement is acquired in part with a grant from Clean Water Services (“**District**”), a county service district responsible for managing the surface water system in the urban portions of the Tualatin River Basin and is subject to the Clean Water Act and the Endangered Species Act. District’s Healthy Streams Plan identifies protection of undisturbed healthy stream corridor lands as a high priority. District is a third-party beneficiary of certain rights under this Easement.

NOW, THEREFORE, Owner and Conservancy agree as follows:

1. GRANT OF CONSERVATION EASEMENT: GENERAL PROVISIONS

- 1.1 Grant. Pursuant to the laws of the State of Oregon and in particular Oregon Revised Statutes 271.715 et seq. and in consideration of the facts recited above and the mutual covenants contained herein, Owner hereby grants, conveys and warrants to the Conservancy and its successors and assigns a perpetual conservation easement over the Protected Property (the "**Easement**").
- 1.2 Qualified conservation contribution. It is intended that this grant shall constitute a "qualified conservation contribution" within the meaning of IRC § 170(h)(1) and any applicable tax laws of the State of Oregon, and the provisions of this Easement shall be construed and applied accordingly.
- 1.3 Baseline documentation. The Conservation Values of the Protected Property are further documented in an inventory of the Conservation Values and relevant features of the Protected Property, dated 12/17/09, on file at the offices of Conservancy and incorporated into this Easement by this reference ("**Baseline Documentation**"). The Baseline Documentation consists of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Protected Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement. The parties intend that the Baseline Documentation shall be used by the Conservancy to monitor Owner's future use of the Protected Property, the condition of the Protected Property and practices thereon. The parties further agree that, in the event a controversy arises with respect to the condition of the Protected Property or a particular resource thereof, the parties shall not be foreclosed from utilizing any other relevant document, survey or report to assist in the resolution of the controversy.
- 1.4 Resource management plan. Owner and Conservancy shall restore, enhance and maintain the Conservation Values and natural attributes of the Protected Property as described in the Resources Management Plan dated 12/17/09 (the "**Management Plan**"). The Management Plan is intended to be a flexible document which the parties may revise and update periodically over time to best manage the Conservation Values, but it does not and shall not confer any rights inconsistent with the provisions of this Easement. The Management Plan shall be subject to the terms of this Easement. Any conflict between a provision or provisions of this Easement and the Management Plan shall be resolved in favor of this Easement.
- 1.5 Changed circumstances. Owner and Conservancy acknowledge that in the future conditions may change in the areas neighboring the Property, including, without limitation, increased development, land use and zoning changes. Owner and Conservancy further acknowledge that such future conditions may result in various hardships to Owner by virtue of the restrictions contained in this Easement, including without limitation, restrictions on the ability to develop the Protected Property. However, Owner and Conservancy expressly intend that this Easement continue in perpetuity regardless of such changed conditions or circumstances and regardless of hardship, whether such hardship is economic or otherwise.

2. PROHIBITED USES

Any use of, or activity on, the Protected Property that compromises the purposes of this Easement is prohibited, and Owner acknowledges and agrees that it will not conduct, engage in or permit any such use or activity. Without limiting the generality of the foregoing sentence, the following uses of, or activities on, the Protected Property, though not an exhaustive list, are inconsistent with the purpose of this Easement and shall be prohibited, except as expressly permitted under Sections 3 or 4 of this Easement and except as Conservancy may allow in its sole discretion:

- 2.1 Industrial and commercial activity. No industrial or commercial use of the Protected Property is allowed.
- 2.2 Agricultural activities. Agricultural activities of any kind are prohibited, including without limitation the establishment and maintenance of a livestock corral, row crops, haying, grazing or pasture uses, except as may be specifically allowed by the Conservancy in its sole discretion to preserve, protect or enhance the Conservation Values, and except as allowed in Sections 4.3 and 4.4. The site may not be used to exercise or train any domestic animal or livestock.
- 2.3 Domestic, exotic or farm animals. No domestic, exotic, or farm animals of any kind are allowed on the Property unless expressly permitted in writing by Conservancy in its sole discretion and consistent with preservation, protection, and/or enhancement of the Conservation Values, except for dogs under supervision of Owner.
- 2.4 Residential development. Residential use or development is not allowed.
- 2.5 Subdivision. The legal or "de facto" partition, subdivision or other land division of the Protected Property or any portion thereof is prohibited.
- 2.6 Structures and improvements. The placement or construction of any buildings, structures, or other improvements of any kind is prohibited including, without limitation, gazebos, tree houses, roads, and parking areas, except as allowed under Section 4.5.
- 2.7 Utilities. No installation of above- or below-ground new utility systems or extensions of existing utility systems, including, without limitation, wells, water, sewer, septic systems and septic drain fields, power, fuel, and communication lines and related facilities. Notwithstanding the above, new utility systems may be installed upon portions of the Property to support the Conservation purposes of this Easement with the express written permission of the Conservancy. Such permission may be granted or withheld at the Conservancy's sole discretion.
- 2.8 Roads and trails. No new roads shall be constructed. Existing trails may be maintained or improved, and new trails may be constructed as allowed in Section 4.6.
- 2.9 Outdoor lighting. In order to minimize sky glow or light pollution originating from the Protected Property, and/or to minimize interference with the Conservation

Values, no outdoor lighting shall be allowed within the Protected Property and any new outdoor lighting within the Property that affects the Protected Property shall be designed to minimize sky glow and light pollution. Specifically, outdoor lighting shall be directed downward and shielded, or specifically directed to walls, landscape elements or other similar features, so that light does not shine on the Protected Property. Additionally, outdoor lighting shall be installed so that lights do not blink, flash or be of unusually high intensity or brightness.

- 2.10 Signs. The placement of commercial signs, billboards, or other advertising material on the Protected Property is prohibited, except as provided in Section 3.1.
- 2.11 Alteration of land. The alteration of the surface of the land is prohibited, including, without limitation, the excavation, fill or removal of soil, sand, gravel, rock, peat or sod, except to the minimum extent necessary to construct structures allowed in Section 4.5.
- 2.12 Alteration of water courses. The draining, filling, dredging, ditching or diking of wetland areas, the alteration or manipulation of ponds and water courses, or the creation of new wetlands, water impoundments, or water courses is prohibited, except to restore or enhance wildlife habitat or native biological communities or to improve or enhance the function and quality of existing wetlands in accordance with the Management Plan approved by the Conservancy under Section 1.4.
- 2.13 Mining. The exploration for, or development and extraction of, minerals and hydrocarbons on or below the surface of the Protected Property is prohibited.
- 2.14 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 is prohibited.
- 2.15 Waste disposal. The disposal or storage of trash, rubbish, garbage, debris, vehicles, abandoned equipment, parts thereof or other unsightly, offensive, or hazardous waste or material is prohibited.
- 2.16 Hunting. No hunting or trapping, except to the extent determined necessary by the Conservancy, in its sole discretion, to preserve, protect or enhance the Conservation Values of the Protected Property.
- 2.17 Wildlife disruption. The disruption of wildlife breeding, foraging and nesting activities is prohibited.
- 2.18 Pesticides. No pesticides may be used on the Protected Property except as deemed necessary by the Conservancy to preserve, protect or enhance the Conservation Values of the Protected Property.
- 2.19 Removal of trees and other vegetation. No pruning, cutting down, or other destruction or removal of live or dead trees and other vegetation located on the Protected Property, except as follows:

- Invasive trees and vegetation as listed in the Oregon Department of Agriculture's Noxious Weed List or the Portland Nuisance Plant List may be removed to preserve, protect or enhance the Conservation Values of the Protected Property.
 - As reasonably required to control outbreaks of disease, insects and for fire control, trail maintenance, or to remove a tree creating a hazard to life or property.
 - The removal of dead or downed wood for personal use by Owner.
- 2.20 Non-native or invasive vegetation. The intentional introduction on the Protected Property of noxious weeds or invasive species, as listed on the Oregon Department of Agriculture's Noxious Weed List or the Portland Plant List under the Nuisance or Prohibited Plant sections(or, if such Lists are no longer published, such other publication approved by the Conservancy), is prohibited.
- 2.21 Harvesting of native plants. No commercial gathering, picking, taking or harvesting of native plants, or any parts thereof except for research, education or documentation/identification purposes, except as allowed under Section 4.4 and in accordance with the Management Plan. Limited personal use of native plants by Owner is allowed in accordance and to the extent permitted by applicable law.
- 2.22 Off-road vehicles and excessive noise. The operation of motorcycles, dune buggies, snowmobiles, or any other type of off-road motorized vehicles or the operation of other sources of excessive noise pollution is prohibited with the exception of those uses for the protection of the Protected Property or in connection with any activity or construction specifically permitted under the terms of this Easement.
- 2.23 Use of firearms. No discharge of firearms, bows and arrows, air guns, slingshots, paintball guns and similar devices.
- 2.24 Fires. No fires of all forms except prescribed fire as directed by the Conservancy as necessary to preserve, protect and enhance the Conservation Values and except as allowed in Section 4.5.
- 2.25 Fireworks. Use of all forms of fireworks within the Protected Property is prohibited, and fireworks shall not be used on the Property outside the Protected Property if such fireworks could endanger or adversely affect the Conservation Values.

3. SPECIAL MANAGEMENT PROVISIONS

Owner and Conservancy shall comply with the following special management provisions.

3.1 Signs no larger than two feet by three feet in size are allowed, placed in locations mutually agreed upon by Owner and Conservancy, and for one or more of the following purposes only:

- To state the name of the Property.
- To advertise the sale of the Property.
- To post signs as necessary to discourage trespassing.
- To further the Conservation Values outlined in the Management Plan then-in effect.
- To identify the land as protected by a conservation easement.
- Interpretive and informational signs for educational or recreational purposes in conjunction with an approved activity on the Protected Property.

3.2 Herbicides. Herbicides may be used on the Protected Property as described in the Management Plan deemed reasonably necessary by Owner or Conservancy to preserve, protect or enhance the Conservation Values of the Protected Property provided they are applied safely and in accordance with applicable handling instructions, under appropriate conditions, and in accordance with all laws.

4. OWNER'S AFFIRMATIVE RIGHTS

4.1 General. Owner reserves for itself and its personal representatives, heirs, successors and assigns, all rights accruing from ownership of the Protected Property, including the right to engage in, or permit or invite others to engage in, any use of, or activity on, the Protected Property that is not inconsistent with the purposes of the Easement and that is not otherwise prohibited by this Easement. Owner may not, however, exercise these rights in a manner that would adversely impact the Conservation Values of the Protected Property. Additionally, the Owner must give notice to the Conservancy before exercising any reserved right that might have an adverse impact on the Conservation Values of the Protected Property.

4.2 Right to convey. Owner may sell, give, lease, bequeath, devise, mortgage or otherwise encumber or convey the Protected Property subject to this Easement. Owner agrees to (a) incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest (subject in any event to the prohibition on land division in Section 2 above); (b) describe this Easement in and append it to any executory contract for the transfer of any interest in the Protected Property; and (c) give written notice to Conservancy of the transfer of any interest in all or a portion of the Protected Property within fifteen (15) days prior to closing. Such notice to Conservancy shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative. The enforceability or

validity of this Easement shall not be impaired or limited by any failure of the Owner to comply with this paragraph.

- 4.3 Agricultural use. Small scale farming is allowed with approval of Conservancy. Agricultural plantings allowed shall require shade, be non-invasive and not be detrimental to the Conservation Values of this Easement. Total area to be farmed shall not exceed 10,000 square feet in total. At least sixty (60) days prior to planting, a planting plan shall be provided to Conservancy for their review and approval identifying the type of plants, location, and other details as needed. No tree cutting, terracing or use of heavy equipment will be allowed associated with this use. Approval shall not be unreasonably withheld.
- 4.4 Harvesting of Native Plants. Owner may harvest certain native plants for commercial uses with written permission of Conservancy. Owner shall submit a plan for harvesting, planting or propagating native plants which will become part of the Management Plan, if approved. The plan shall include the names of the plants, quantities and location on the Protected Property. Owner shall ensure that any plants removed are either replanted or self-propagating so that the harvest is sustainable over the long term.
- 4.5 Minor structures and fences. Owner reserves the right to install and maintain up to three wooden benches, one observation blind (4'x4'x6' in size), a small shelter (which has a roof and supporting structure but no walls and is less than 200 square feet), bridges and culverts (to replace existing culverts), on the Protected Property. A small dock may be built to replace the existing river access, if allowed by state agencies. One fire ring may be built to be used for camp fires for educational purposes. All structures must be designed and located to blend with the natural surroundings and complement the natural features of the land. Owner shall obtain all necessary permits and approvals for such structures. Existing fences may be maintained, improved, replaced or removed by Owner. Owner may construct additional fences and maintain, improve, replace or remove fences to mark boundaries, to secure the Protected Property, or as needed in carrying out activities permitted by this Easement. Bridges and culverts may require additional permitting. The specific location and design of these structures must first be approved in writing by the Conservancy, which shall not unreasonably withhold such approval. Fencing adjacent to stream buffers or other wildlife habitat areas shall be designed to allow the passage of wildlife. Designs must incorporate openings appropriately sized and spaced to accommodate passage of wildlife common to urban Washington County (common mammals needing access to streams in urban Washington County include but are not limited to: deer, beaver, coyote, muskrat, rabbit, raccoon and skunk).
- 4.6 Trail construction. Owner may maintain, renovate, expand, or add trails or replace existing trails to serve the existing residential use, for recreational use by the public, or for fire protection provided that the trails are located and designed in a manner to prevent soil erosion and prevent damage to fragile plant communities, wildlife habitat and water quality of the creek. The design and location of any renovation, expansion or replacement of trails shall be subject to the prior written approval of the Conservancy, except that small foot paths (less

than 3 feet wide) that do not require tree cutting do not need Conservancy approval. Trail improvements may not adversely impact the Conservation Values of the Protected Property.

- 4.7 Recreational and educational uses. The Protected Property may be used for hiking, cross-country skiing, low-impact tent camping, nature observation or study, and other similar recreational and educational programs or activities, provided that such activities are conducted in a manner and intensity that do not adversely impact the Conservation Values.
- 4.8 Stewardship activities. Owner may establish, reestablish, or maintain vegetation through seedlings, planting or natural succession and remove invasive plant species on the Protected Property provided such activities are in accordance with the Management Plan. Nothing in this Easement shall be construed to require the Owner to replant or reforest any part of the Protected Property, unless such work is required as a result of Owner's failure to comply with the terms of this Easement.

5. CONSERVANCY'S RIGHTS

To accomplish the purposes of this Easement, the Conservancy and District pursuant to the third party right of enforcement granted in Section 5.3, shall have the following rights and remedies in addition to all other rights and remedies granted in this Easement, in equity or at law:

- 5.1 Right to enter. The right to enter the Protected Property at reasonable times and in a reasonable manner in order to: (a) inspect the Protected Property and to monitor compliance with the terms of this Easement; (b) obtain evidence for use in seeking judicial or other enforcement of this Easement; (c) survey or otherwise mark the boundaries of all or part of the Protected Property if necessary to determine whether there has been or may be a violation of this Easement; and (d) otherwise exercise its rights under this Easement. In order to enter and access the Protected Property, the Conservancy has a right of access over the following: Access Easement along the driveway from Myrtle Avenue to the conservation easement.
- 5.2 Right to bring groups on property. The Conservancy is allowed to bring persons or groups onto the Protected Property for educational, scientific and biological purposes to observe and study on the Protected Property. Conservancy shall have the right to hold up to four site tours per year, provided that Conservancy shall make prior arrangements with Owner and agree to abide by any reasonable restrictions on access required by Owner. Conservancy shall provide Owner written or oral notice of this activity not less than thirty (30) days in advance of a proposed site tour. Owner shall respond within ten (10) days of receiving notice, and approval shall not be unreasonably withheld.
- 5.3 Right of enforcement. The Conservancy has the right to prevent or remedy violations of this Easement through appropriate judicial action brought against Owner or any other responsible party in any court of competent jurisdiction. District is an intended third party beneficiary of this Easement and, pursuant to

ORS 271.715, District is hereby granted a third party right of enforcement. As such, District may exercise all of the rights and remedies provided to Conservancy herein, and is entitled to all of the indemnification provided to Conservancy in the Easement. District shall have all the rights of Conservancy hereunder, provided that it shall be the primary obligation of Conservancy to enforce this Conservation Easement, and District shall institute an enforcement action only in the event that Conservancy fails to do so. The Conservancy shall provide District copies of all monitoring reports, required notices, requests for approval, and notices of delinquency. District is entitled to copies of any other communication between Conservancy and Owner at its request.

- 5.4 Notice. Neither Conservancy nor District may initiate judicial action until Owner has been given notice of the violation, or threatened violation, of this Easement and a reasonable opportunity, not to exceed thirty (30) days, to correct the situation. This provision shall not apply if, in the sole discretion of the Conservancy or District, immediate judicial action is necessary to prevent or mitigate significant damage to the Protected Property or if reasonable, good faith efforts to notify Owner are unsuccessful.
- 5.5 Remedies. Remedies available to the Conservancy in enforcing this Easement include without limitation the right to request temporary or permanent injunctive relief for any violation or threatened violation of this Easement, to require restoration of the Protected Property to its condition at the time of this conveyance (except for modifications or improvements allowed to be made by Owner pursuant to Sections 3 and 4) or as otherwise necessitated by a violation of this Easement, to seek specific performance or declaratory relief, and to recover damages resulting from a violation of this Easement or injury to any of the Conservation Values. These remedies are cumulative and are available without requiring the Conservancy to prove actual damage to the Conservation Values when seeking specific performance. The Conservancy and Owner also recognize that restoration, regardless of cost, may be the only adequate remedy for certain violations of this Easement. The Conservancy is entitled to seek expedited relief, ex parte if necessary, and shall not be required to post any bond applicable to a petition for such relief.
- 5.6 Costs of enforcement. The costs of restoration necessitated by acts or omissions of Owner, its agents, employees, contractors, family members, invitees or licensees in violation of the terms of this Easement, and Conservancy's reasonable enforcement expenses, including attorneys' and consultants' fees, shall be borne by Owner, whether or not Conservancy initiates or completes a judicial proceeding. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the bankruptcy laws of the United States) is instituted to enforce the terms and provisions of this Easement, the prevailing party shall be entitled to recover its attorney fees, consultant fees and all other fees, costs and expenses actually incurred and reasonably necessary in connection with such controversy, as determined by the court at trial or on any appeal or petition for review, in addition to all other amounts provided by law.

- 5.7 Discretionary enforcement. Enforcement of the terms of this Easement is at the discretion of the Conservancy. The Conservancy does not waive or forfeit the right to take any action necessary to ensure compliance with the terms of this Easement by any delay or prior failure of the Conservancy in discovering a violation or initiating enforcement proceedings.
- 5.8 Acts beyond Owner's control. The Conservancy may not bring any action against Owner for any changes to the Protected Property resulting from causes beyond Owner's control, such as changes caused by fire, flood, storm natural deterioration or the unauthorized acts of persons other than Owner or Owner's agents, employees, contractors, family members, invitees or licensees or resulting from reasonable actions taken in good faith under emergency conditions to prevent or mitigate damage resulting from such causes, provided Owner gives Conservancy notice prior to any actions taken, except in the case of imminent danger to life or property outside the Easement, in which case Owner may take reasonable actions to prevent such damage and notify Conservancy at the earliest opportunity. Owner shall take reasonable steps to prevent trespassing, but this Agreement does not create an obligation on the part of Owner to take extraordinary measures to prevent trespassing or to erect fences or monitoring devices along the Protected Property boundaries unless expressly required by this Easement or otherwise agreed to in writing by Owner. In the event the terms of this Easement are violated by acts of trespassers, Owner agrees, at Conservancy's option, to join in any suit, to assign its right of action to Conservancy or to appoint Conservancy its attorney in fact, for the purpose of pursuing enforcement action against the responsible parties. Conservancy shall have the right to pursue enforcement actions against the responsible parties even if Owner declines to do so.
- 5.9 Ecosystem credits. District shall retain all rights to create, use, and/or sell any ecosystem credits generated by District-funded restoration and enhancement. This includes, but is not limited to, wetland, fish habitat, and water quality credits.

6. NOTICE AND APPROVAL

- 6.1 Owner. Several provisions of this Easement require Owner to notify Conservancy and to receive Conservancy's written approval prior to undertaking certain permitted uses and activities within the Protected Property. The purpose of requiring Owner to notify Conservancy prior to undertaking these permitted uses and activities is to afford Conservancy an adequate opportunity to ensure that the use or activity in question is designed and carried out in a manner consistent with the purposes of this Easement. Whenever such notice is required, Owner shall notify Conservancy in writing not less than ninety (90) days prior to the date Owner intends to undertake the use or activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Conservancy to make an informed judgment as to its consistency with the purposes of this Easement

- 6.2 **Conservancy.** Several provisions of this Agreement require Conservancy to give notice to Owner prior to undertaking certain activities within the Protected Property, unless otherwise specifically provided. Whenever such notice is required, Conservancy shall notify Owner in writing not less than thirty (30) days prior to the date Conservancy intends to undertake the use or activity in question, unless otherwise provided for by this Agreement.
- 6.2 **Approval.** When approval by one of the parties is required under this Agreement, except as expressly provided otherwise in this Agreement, such approval shall be granted or denied in writing within forty-five (45) days of receipt of a written request for approval, and such approval shall not be unreasonably withheld. Failure to expressly deny or to grant consent (or conditional consent) within such 45-day period shall be deemed denial.
- 6.3 **Addresses.** Any notice, demand, request, consent, approval, or communication the parties desire or are required to give to the other shall be in writing and either served personally (including by overnight delivery by reputable carrier, such as USPS, FedEx or UPS) or sent by first class mail, postage prepaid, addressed as follows:

To Owner: Charlene Bankston
16385 SW Myrtle Ave.
Tigard, OR 97224

To Conservancy: Three Rivers Land Conservancy
1675 South Shore Blvd. (For personal delivery)
P.O. Box 1116 (For mail delivery)
Lake Oswego, OR 97034

or to such other address as either party designates by written notice to the other.

7. EXTINGUISHMENT, CONDEMNATION AND SUBSEQUENT TRANSFER

- 7.1 **Extinguishment.** If circumstances arise in the future that render the purposes of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court having jurisdiction. The amount of the proceeds to which Conservancy shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be determined, in accordance with Section 7.2 of this Easement unless a different apportionment method is then in effect under Oregon law.
- 7.2 **Valuation.** This Easement constitutes a real property interest immediately vested in Conservancy, which, entitles the Conservancy to a portion of any proceeds of a sale, exchange or involuntary conversion of the Protected Property or any part thereof, following extinguishment of the Easement as provided in Section 7.1 or condemnation in accordance with Section 7.3, in an amount equal to the fair market value of this Conservation Easement at the time of the extinguishment (as determined by competent appraiser). Such proceeds shall not be less than the

amount determined by multiplying all proceeds from such subsequent sale, exchange or involuntary conversion by the ratio of the value of this Conservation Easement as of the date of this Easement to the value of the Protected Property as a whole as of the date of this Easement, without deduction for the value of the Conservation Easement.

- 7.3 Condemnation. If all or any of the Protected Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Owner and Conservancy shall act jointly to recover the full value of their interests in the Protected Property subject to the taking or in lieu purchase and all direct or incidental damages resulting from the taking or in lieu purchase. All expenses reasonably incurred by Owner and Conservancy in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Conservancy shall be entitled to a portion of the remaining recovered proceeds (including, for the purposes of this paragraph, proceeds from any lawful sale of the Protected Property unencumbered by the restrictions hereunder) at least equal to the amount described in Section 7.2 above on the date of taking or in lieu purchase.
- 7.4 Application of proceeds. Conservancy shall use any proceeds received under the circumstances described above in Section 7 in a manner consistent with the Conservation Purposes or as otherwise permitted by the Internal Revenue Code governing Qualified Conservation Easements or governing tax exempt organizations.
- 7.5 District's share of proceeds. In the event of condemnation, extinguishment or other transfer of the Easement pursuant to Section 7, District is entitled to \$17,615 of any proceeds attributed to the value of the Easement.

8. GENERAL PROVISIONS

- 8.1 Public access. Nothing in this Easement gives the general public a right to enter upon or use the Protected Property where no such right existed prior to the conveyance of this Easement.
- 8.2 Costs, legal requirements, liabilities and insurance. Owner retains all responsibilities and shall bear all costs and liabilities of any kind, including the payment of all taxes and assessments, related to the ownership, operation, upkeep, and maintenance of the Protected Property.
- 8.3 Insurance coverages. Conservancy shall maintain liability insurance covering the Conservancy's activities on the Protected Property. Such insurance shall provide coverages not less than \$1 million per occurrence, subject to a \$2,000,000 annual limit, and worker's compensation insurance in the statutorily required amount. Conservancy agrees that Owner shall be named an additional insured on all liability policies carried by Conservancy covering Conservancy's activities on the Protected Property.

- 8.4 Taxes. Owner shall pay when due all taxes, assessments, fees, charges of whatever description levied on or assessed against the Protected Property by competent government authority (collectively "**Taxes**"), including any Taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Conservancy with satisfactory evidence of payment upon request.
- 8.5 Representations and warranties. Owner represents and warrants that, after reasonable investigation and to the best of Owner's knowledge:
- 8.5.1 There has been no release, dumping, burying, abandonment or migration from off-site on the Protected Property of any substances, materials, or wastes that are hazardous, toxic, dangerous, or harmful or are designated as, or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful ("Hazardous Materials") and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute, or ordinance, including without limitation the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA") (collectively, "**Environmental Laws**");
- 8.5.2 Neither Owner nor Owner's predecessors in interest have disposed of any Hazardous Materials on the Protected Property that have migrated off-site,
- 8.5.3 There is no pending or threatened litigation affecting the Protected Property or any portion thereof. No civil or criminal proceedings have been instigated or are pending against Owner or its predecessors by government agencies or third parties arising out of alleged violations of Environmental Laws, and neither Owner nor its predecessors in interest have received any notices of violation, penalties, claims, demand letters, or other notifications relating to a breach of Environmental Laws.
- 8.5.4 There are no encumbrances, severed mineral interests, or other rights, estates, restrictions, conditions, easements and rights of way affecting the Protected Property other than what is shown of record.
- 8.6 Control. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Conservancy to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of Owner's activities on the Protected Property, or otherwise to become an owner or operator with respect to the Protected Property within the meaning of CERCLA.
- 8.7 Indemnification.
- 8.7.1 Indemnification of Conservancy. Owner shall hold harmless, defend, and indemnify Conservancy and Conservancy's officers, directors, contractors, agents, and employees, against all claims, demands, actions, and suits (including all attorneys fees and costs incurred through trial, on appeal or petition for review) brought against any of them arising from the exercise by Owner of its rights or responsibilities hereunder. Owner shall not be

responsible under this Agreement for the acts or omissions of third parties, other than Owner's officers, directors, contractors, agents, employees, subcontractors, family members, invitees, guests, or trespassers that Owner could have reasonably anticipated and have reasonably prevented.

- 8.7.2 Indemnification of Owner. Conservancy shall hold harmless, defend, and indemnify Owner, and Owners' officers, directors, contractors, agents and employees, against all claims, demands, actions, and suits (including all attorneys fees and costs incurred through trial, on appeal or on petition for review) brought against any of them arising from the exercise by Conservancy of its rights or responsibilities hereunder. Conservancy shall not be responsible under this Agreement for the acts or omissions of third parties, other than Conservancy's officers, directors, contractors, agents, employees, subcontractors, invitees, and guests, except to the extent the acts or omissions of third parties are caused by the negligence of Conservancy or its officers, directors, contractors, agents, and employees, subcontractors, invitees, and guests.
- 8.8 No waiver of immunities: Nothing herein shall be construed to constitute a waiver by any of the parties hereto of any and all statutory immunities as may be provided by state and federal recreational use immunity statutes and by similar state and federal statutes providing immunity to encourage the public use of privately and/or publicly held lands. Further, Owner and Conservancy claim all the rights and immunities against liability for injury to the public to the fullest extent of the law under any and all applicable provisions of the law.
- 8.9 Assignment. Conservancy shall have the right to assign, either wholly or partially, its right, title and interest hereunder, with prior approval of District, to any organization described in both IRC §§ 170(h)(3) and 2522(a) and the applicable regulations promulgated thereunder, and be authorized to acquire and hold conservation easements under ORS 271.715 (or any successor provision(s) then applicable) and any such assignee shall have like power of assignment. Approval shall not be unreasonably withheld. If the Easement is transferred or assigned by Conservancy without District's consent, District may require that District funds shall be repaid by Conservancy with interest due and payable from the effective date of the District Grant Agreement at the rate provided for in ORS 82.010, as may be amended from time to time. As a condition of such transfer, Conservancy shall require that the transferee exercise its rights under the assignment consistent with the purposes of this Easement. Conservancy shall notify Owner in writing, at Owner's last known address, in advance of such assignment.
- 8.10 Succession. If at any time it becomes impossible for Conservancy to ensure compliance with the covenants, terms, conditions and restrictions contained in this Easement or Conservancy ceases to exist or to be a qualified organization under IRC §§ 170(h) and 2522(a) (or any successor provision then applicable) or to be authorized to acquire and hold conservation easements under ORS 271.715 (or any successor provision(s) then applicable), then Conservancy's rights and obligations under this Easement shall become vested in and binding upon District.

- 8.11 Amendment. Under appropriate circumstances, this Easement may be modified or amended provided that Owner and Conservancy obtain District's written consent. However, no amendment or modification will be allowed if, in the sole and exclusive judgment of the Conservancy, it: (i) does not further the purposes of this Easement, (ii) will adversely impact the Conservation Values protected by this Easement, (iii) affects the perpetual duration of the Easement, or (iv) affects the validity of the Easement under Oregon law or the IRC or the status of the Conservancy under IRC §§ 501(c)(3) and 170(h). Any amendment or modifications must be in writing, signed by Conservancy and Owner, and recorded in the same manner as this Easement. At Conservancy's option, Owner, if Owner is requesting the amendment, shall pay Conservancy staff and legal time to process any such amendment.
- 8.12 Ambiguities. If any provision in this Easement is found to be ambiguous, an interpretation consistent with the Conservation Values that would render the provision valid shall be favored over any interpretation that would render it invalid. The parties acknowledge that each party and its counsel have reviewed and revised this Easement and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Easement.
- 8.13 Mediation. If a dispute arises out of or relates to this conservation easement, or the breach thereof, and if the dispute cannot be settled first through negotiation, the parties agree to make a good faith effort to settle the dispute by mediation before resorting to arbitration, litigation, or some other dispute resolution procedure. Either party may request mediation in writing to the other. Within twenty (20) days after the giving and receiving of such notice, the parties shall select a single trained and impartial mediator. If the parties are unable to agree on the selection of a single mediator, then the parties shall, within thirty (30) days of receipt of the initial request, jointly apply to the American Arbitration Association for the appointment of a trained and impartial mediator with relevant experience in real estate and conservation easements. Mediation shall then proceed in accordance with the following guidelines: (a) Purpose. The purpose of the mediation will be to: (i) promote discussion between the parties; (ii) assist the parties in developing and exchanging pertinent information concerning issues in the dispute; and (iii) assist the parties in developing proposals that will enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or de facto modification or amendment of the terms, conditions, or restrictions of this Easement. (b) Participation. The mediator may meet with the parties and their counsel jointly or ex parte. The parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of the parties with settlement authority will attend mediation sessions as requested by the mediator. (c) Confidentiality. All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the parties or their respective counsel. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceeding or construed as an admission of a party. (d) Time Period. Neither

party shall be obligated to continue the mediation process beyond a period of ninety (90) days from the date of the selection or appointment of a mediator or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in mutually agreeable resolution of the dispute. (e) Costs. The cost of the mediator shall be borne equally by Owner and Conservancy; the parties shall bear their own expenses, including attorney's fees, individually. Nothing in this paragraph will prevent a party from resorting to a court of competent jurisdiction in those instances when injunctive relief may be appropriate.

- 8.14 Recording. Conservancy shall record this instrument in a timely fashion in the official records of Washington County, Oregon, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Easement.
- 8.15 Controlling law. The interpretation and performance of this Easement shall be governed by the laws of the State of Oregon.
- 8.16 Liberal construction; recitals. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement shall be favored. The recitals set forth at the beginning of this Agreement are intended to be contractual.
- 8.17 Severability. If any provision of this Easement is found to be invalid, the remainder of the provisions of this Easement shall not be affected.
- 8.18 Entire agreement. This instrument sets forth the entire agreement of the parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Protected Property. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment approved by both parties.
- 8.19 No forfeiture. Nothing contained in this Easement will result in a forfeiture or reversion of Owner's title in any respect.
- 8.20 Successors and assigns. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.
- 8.21 Termination of rights and obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

9. SCHEDULE OF EXHIBITS

Exhibit A: Legal Description of Property Subject to Easement.

Exhibit B: Legal Description of Easement

Exhibit C: Conservation Easement Map

TO HAVE AND TO HOLD unto Conservancy, its successors, and assigns forever.

IN WITNESS WHEREOF, the undersigned Owner has executed this instrument this 17th day of December, 2009.

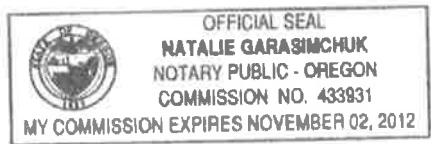
OWNER

Charlene Bankston
Charlene Bankston

STATE OF OREGON)
) ss.
COUNTY OF Washington)

Acknowledged before me this 17th day of December 2009, by _____
Charlene Bankston

Natalie Garasimchuk
Notary Public for the State of Oregon
My Commission Expires: 11/2/2012



The Three Rivers Land Conservancy hereby accepts the above Conservation Easement.

THREE RIVERS LAND CONSERVANCY, an Oregon nonprofit corporation

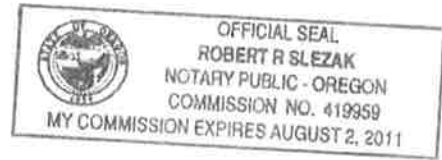
By: [Signature]
Dave Beckett, President

Dated: 12-17-2009, 2009

STATE OF OREGON)
) ss.
COUNTY OF Clackamas)

Acknowledged before me this 17 day of December, 2009, by Dave Beckett
the President of Three Rivers Land Conservancy, an Oregon nonprofit corporation, on behalf of
such entity.

[Signature]
Notary Public for the State of Oregon
My Commission Expires: Aug 2, 2011



Clean Water Services hereby accepts the above Conservation Easement.

Dated: 12-21-09

CLEAN WATER SERVICES

By: [Signature]
General Manager or Designee

Exhibit A: Legal Description of Property Subject to Easement.

Parcel 3, Partition Plat No. 2001-016, Washington County, Oregon.

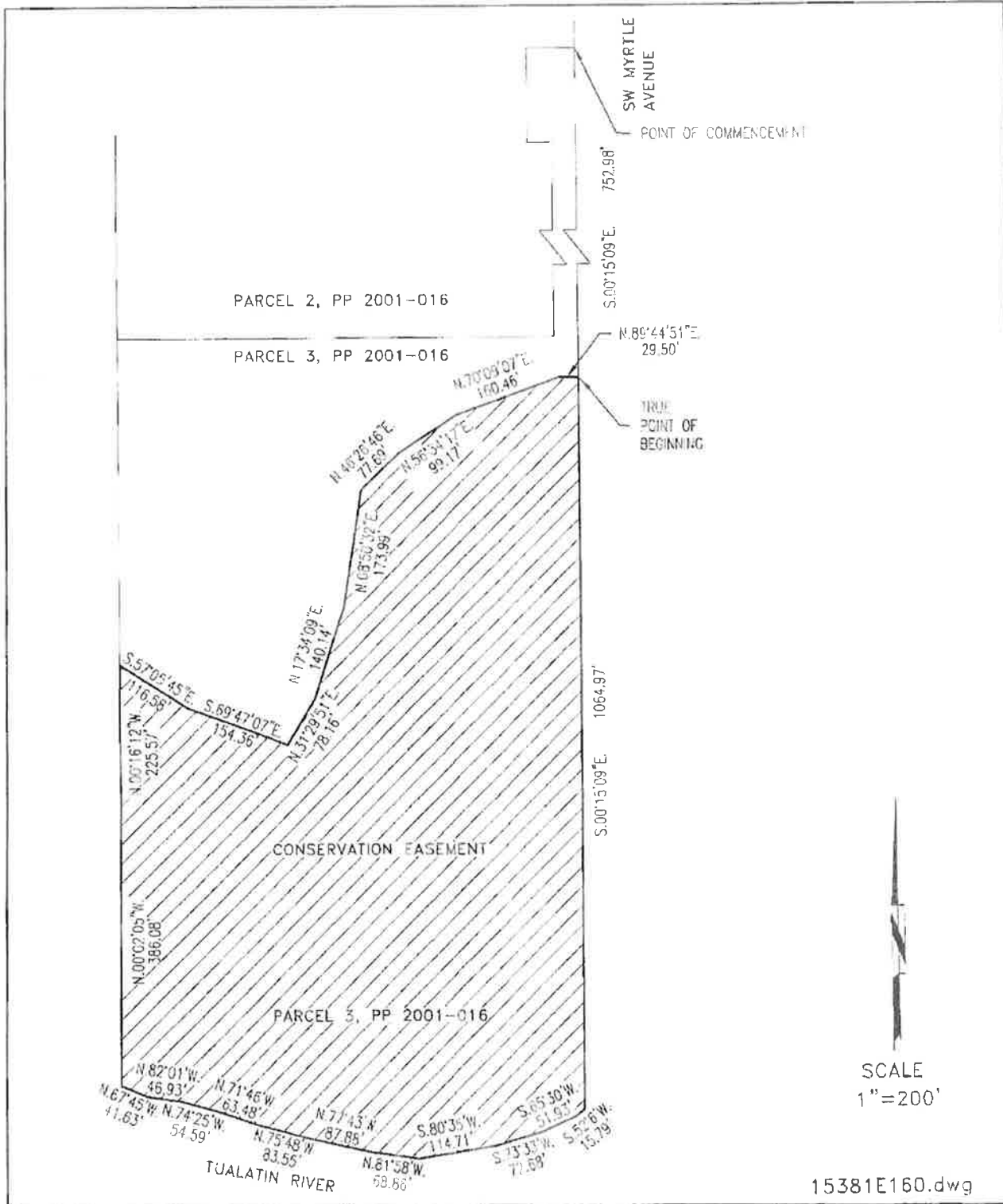
Exhibit B: Legal Description of Easement

A tract of land being a portion of Parcel 3, Partition Plat 2001-016, Washington County Plat Records, and situated in the southwest one-quarter and the northwest one-quarter of Section 16, Township 2 South, Range 1 West, Willamette Meridian, Washington County, Oregon, said tract being more particularly described as follows:

Commencing at the most northeastly corner of Parcel 3, Partition Plat 2001-016, thence along the easterly line of said Parcel 3, S.00°15'09"E., 752.98 feet to the True Point of Beginning; thence continuing along said easterly line, S.00°15'09"E., 1064.97 feet to the northerly line of the Tualatin River; thence along said northerly line the following courses: S.52°06'00"W., 15.79 feet; S.65°30'00"W., 51.93 feet; S.73°33'00"W., 72.68 feet; S.80°35'00"W., 114.71 feet; N.81°58'00"W., 68.86 feet; N.77°43'00"E., 87.88 feet; N.75°48'00"W., 83.55 feet; N.71°46'00"W., 63.48 feet; N.74°25'00"W., 54.59 feet; N.82°01'00"W., 46.93 feet; N.67°45'00"W., 41.63 feet to the westerly line of said Parcel 3; thence along said westerly line, N.00°02'05"W., 386.08 feet; thence N.00°16'12"W., 225.57 feet; thence leaving said westerly line, S.57°05'45"E., 116.58 feet; S.69°47'07"E., 154.36 feet; N.31°29'51"E., 78.16 feet; N.17°34'09"E., 140.14 feet; N.08°50'32"E., 173.99 feet; N.46°26'46"E., 77.69 feet; N.56°34'17"E., 99.17 feet; N.70°09'07"E., 160.46 feet; N.89°44'51"E., 29.50 feet to a point on the easterly line of said Parcel 3 and the True Point of Beginning.

Contains 12.82 acres, more or less.

Basis of Bearings is Partition Plat 2001-016, Washington County Plat Records



MAY 2009	DB/BH	<h2>Bankston Conservation Easement</h2> <p>A portion of Partition Plat No. 2001-016, Washington County Partition Plat Records</p> <p>Located in the SW 1/4 of the NW 1/4 and the NW 1/4 of the SW 1/4 of Section 16, T 2 S, R 1 W, W.M. Washington County, Oregon</p>	15381
Field 06/22/2009	DCB		Project No.
Calculated 06/22/2009	DCB		001-001-SM
Drawn 06/25/2009	DLI		File No.
Checked By			1 OF 1
17255 SW Boones Ferry Rd Lake Oswego, Oregon 97036 Phone: (503) 835-8818 FAX: (503) 836-5395		Sheet No.	

Conditions of Approval on Land Added to UGB

A. Comprehensive planning in the four UGB expansion areas:

1. Within four years after the date of this ordinance, the four cities shall complete comprehensive planning consistent with Metro code section 3.07.1120 (Planning for Areas Added to the UGB).
2. The four cities shall allow, at a minimum, single family attached housing, including townhomes, duplexes, triplexes, and fourplexes, in all zones that permit single family housing in the expansion areas.
3. The four cities shall explore ways to encourage the construction of ADUs in the expansion areas.
4. As the four cities conduct comprehensive planning for the expansion areas, they shall address how their plans implement relevant policies adopted by Metro in the 2014 regional Climate Smart Strategy regarding: (a) concentrating mixed-use and higher density development in existing or planned centers; (b) increasing use of transit; and (c) increasing active transportation options. The cities shall coordinate with the appropriate county and transit provider regarding identification and adoption of transportation strategies.
5. As the four cities conduct comprehensive planning for the expansion areas, they shall regularly consult with Metro Planning and Development staff regarding compliance with these conditions, compliance with the Urban Growth Management Functional Plan, compliance with the state Metropolitan Housing Rule, and use of best practices in planning and development, and community engagement. To those ends, cities shall include Metro staff in advisory groups as appropriate.
6. At the beginning of comprehensive planning, the four cities shall develop – in consultation with Metro – a public engagement plan that encourages broad-based, early and continuing opportunity for public involvement. Throughout the planning process, focused efforts shall be made to engage historically marginalized populations, including people of color, people with limited English proficiency and people with low income, as well as people with disabilities, older adults and youth.

B. Citywide requirements (for the four cities):

1. Within one year after the date this ordinance is acknowledged by LCDC (excluding any subsequent appeals), the four cities shall demonstrate compliance with Metro code section 3.07.120(g) and ORS 197.312(5) regarding accessory dwelling units. In addition to the specific requirements cited in Metro code and state law, cities shall not require that

accessory dwelling units be owner occupied and shall not require off street parking when street parking is available.

2. Before amending their comprehensive plans to include the expansion areas, the four cities shall amend their codes to ensure that any future homeowners associations will not regulate housing types, including accessory dwelling units, or impose any standards that would have the effect of prohibiting or limiting the type or density of housing that would otherwise be allowable under city zoning.
3. Before amending their comprehensive plans to include the expansion areas, the four cities shall amend their codes to ensure that any future homeowners associations will not require owner occupancy of homes that have accessory dwelling units.
4. The four cities shall continue making progress toward the actions described in Metro Code section 3.07.620 (Actions and Investments in Centers, Corridors, Station Communities, and Main Streets).
5. Cities shall engage with service providers to consider adoption of variable system development charges designed to reduce the costs of building smaller homes in order to make them more affordable to purchasers and renters.
6. For at least six years after this UGB expansion, the four cities shall provide Metro with a written annual update on compliance with these conditions as well as planning and development progress in the expansion areas. These reports will be due to the Metro Chief Operating Officer by December 31 of each year, beginning December 31, 2019.

C. Beaverton:

1. Beaverton shall plan for at least 3,760 homes in the Cooper Mountain expansion area.
2. The expansion area shall be designated Neighborhood on the 2040 Growth Concept map.
3. The city may propose the addition of Corridors for depiction on the 2040 Growth Concept map as an outcome of comprehensive planning for the area.

D. Hillsboro:

1. Hillsboro shall plan for at least 850 homes in the Witch Hazel Village South expansion area.
2. The expansion area shall be designated Neighborhood on the 2040 Growth Concept map.

3. The city may propose the addition of Corridors for depiction on the 2040 Growth Concept map as an outcome of comprehensive planning for the area.

E. King City:

1. King City shall coordinate with Washington County and the City of Tigard as it engages in its work on a Transportation System Plan, other infrastructure planning, and comprehensive planning.
2. Before amending the King City comprehensive plan to include the expansion area, King City shall conduct additional market analysis to better understand the feasibility of creating a new mixed-use town center.
3. Pending the results of the market analysis of a new town center, King City shall plan for at least 3,300 homes in the Beef Bend South expansion area. If the market analysis indicates that this housing target is infeasible, King City shall work with Metro to determine an appropriate housing target for the expansion area.
4. The expansion area shall be designated Neighborhood on the 2040 Growth Concept map.
5. Pending the results of the market analysis of a new town center, Metro will work with King City to make necessary changes to the 2040 Growth Concept map.
6. Prior to amending the King City comprehensive plan to include the expansion area, King City shall complete a Transportation System Plan for the city.
7. Prior to amending the King City comprehensive plan to include the expansion area, King City shall amend its code to remove barriers to the construction of accessory dwelling units, including:
 - a. Remove the requirement that accessory dwelling units can only be built on lots that are at least 7,500 square feet, which effectively prohibits construction of accessory dwelling units in the city.
 - b. Remove or increase the requirement that accessory dwelling units be no bigger than 33 percent of the square footage of the primary home so that an accessory dwelling unit of at least 800 square feet would be allowable.
8. 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.

9. To reduce housing costs, King City shall, in its comprehensive planning, explore ways to encourage the use of manufactured housing in the expansion area.

F. Wilsonville:

1. Wilsonville shall plan for at least 1,325 homes in the Advance Road expansion area.
2. The expansion area shall be designated Neighborhood on the 2040 Growth Concept map.
3. The city may propose the addition of Corridors for depiction on the 2040 Growth Concept map as an outcome of comprehensive planning for the area.

G. West Union Village Property:

1. There shall be no change of use or intensification of individual uses on any portion of the 4.88-acre property until Urban Reserve Area 8F has been brought into the UGB and the City of Hillsboro has adopted comprehensive plan amendments for the surrounding urban reserve land.