



## BAINBRIDGE ISLAND LAND TRUST

*Preserving the Island's natural places since 1989*

December 20, 2019

The Honorable Christine Rolfes  
Washington State Senate  
8001 NE Day Rd W  
Bainbridge Island, WA 98110

Mayor Kol Medina  
Councilmember Joe Deets  
Councilmember Ron Peltier  
City of Bainbridge Island City Council SR 305 Working Group Members  
280 Madison Avenue North  
Bainbridge Island, WA 98110

Washington State Department of Transportation  
Attn: Michele Britton  
8293 Spring Creek Road SE  
Port Orchard, WA 98367

City of Bainbridge Island  
Attn: Chris Wierzbicki  
280 Madison Avenue North  
Bainbridge Island, WA 98110

**RE: SR 305 and Day Rd Roundabout Stormwater and Wall/Slope Options and Questions**

Dear Senator Rolfes, Mayor Medina, Councilmember Deets, Councilmember Peltier, Ms. Britton, and Mr. Wierzbicki,

Thank you all for the meetings and communications over the last several months regarding the proposed WSDOT Roundabout at the intersection of SR 305 and Day Road. This letter represents the best efforts of the Bainbridge Island Land Trust and Deborah and Keith Ferguson, the property landowners, following a careful review of WSDOT's plans and the discussions that ensued. Below you will find a statement of our general concerns and expectations as well as some specific comments and questions on aspects of the plans put forward thus far.

As you are aware, the Bainbridge Island Land Trust's recorded conservation easement is located on the Ferguson property in the area southwest of the roundabout project. The Fergusons and the Land Trust have carefully followed and reviewed each of WSDOT's proposed plans since becoming aware of the potential roundabout project in December 2018.

To date, all proposed designs presented to the Land Trust related to the construction of the roundabout and stormwater infrastructure at SR 305 and Day Road would encroach onto the conservation easement and violate the terms of the conservation easement.

From our ongoing discussions with you and the other stakeholders, we understand that there are a number of constraints with the project site and project budget that make construction of the proposed roundabout and related stormwater runoff facilities challenging. We remain committed to developing a solution that achieves the project goals, while minimizing the impact to the conservation land.

We ask WSDOT to concentrate its impacts off-site or to a single, defined area near the edge of the Ferguson property, to preserve the property's wildlife habitat, stream health, and scenic views conservation values. The Land Trust's and the Fergusons' goal is to eliminate, minimize, and/or consolidate the impacts to the conservation easement property. Additionally, any land required for long-term maintenance activities, performed by WSDOT or other agencies, should be consolidated to the edges of the Ferguson property or within the WSDOT right-of-way (ROW) to reduce the impacts to the conservation easement and remainder of the Fergusons' property.

## **Background**

At the September 18, 2019 SR 305 Working Group Meeting, City of Bainbridge Island (COBI) officials requested WSDOT explore the viability of dispersal to treat the stormwater from the roundabout project. In late October 2019, WSDOT provided 30% design dispersal plans and at the November 6, 2019 meeting, withdrew off-site stormwater vaults as a design option due to concerns about construction and future maintenance costs. WSDOT indicated that, in its view, a dispersal design was a viable stormwater option. At that meeting, WSDOT asked the Working Group to make a decision to either move forward with the Day Road roundabout or shift focus to other projects in the SR 305 focus area. As neither the Land Trust nor the landowners had had a chance to assess the dispersal plan prior to the November meeting, COBI requested additional time, until the January 2020 SR305 Working Group meeting, to explore options for the SR 305/Day Road Roundabout.

Following the November 6<sup>th</sup> meeting, the Land Trust (in consultation with the Fergusons and legal counsel) met with COBI staff and City Council members on November 7<sup>th</sup> and November 26<sup>th</sup> at City Hall, and met with COBI Staff and WSDOT at the Ferguson property on December 6<sup>th</sup>.

We particularly appreciate everyone making the time on November 14<sup>th</sup> to meet at the property to assess the real on-the-ground impacts of the proposed stormwater dispersal option and construction of the roundabout. The proposed dispersal area was staked and flagged to demonstrate the extent of proposed grading on the 2.18 acres, which would be required for the dispersal option. During that visit, a new dispersal plan was presented by WSDOT/Parametrix that expanded the area impacted by the dispersal plan to nearly 3.44 acres of grading, requiring cut and fill of up to approximately 6 feet. Some of the proposed grading was within the stream buffer.

On November 14<sup>th</sup>, both the Land Trust and the Fergusons determined that they could not support the stormwater dispersal option for several reasons: (i) it required extensive regrading and recontouring of the property's rolling topography; (ii) it would create a visual blight and allow for the potential spread of invasive species (Scotch Broom and Himalayan Blackberry); (iii) it required work in or near the stream

critical area buffer; (iv) it would require WSDOT to access the property for ongoing maintenance; and (v) it would require creation of a rock or concrete dispersion trench that had visual impacts and would interfere with haying operations.

### **General Discussion**

Multiple design options have been presented to date on various aspects of the roundabout project, each with their pros and cons. The Land Trust has several general questions and observations that would help direct and inform the overall roundabout discussion.

The Land Trust and the Fergusons request that WSDOT continue to explore design options that would reduce the amount of impervious surface created by the project, thereby reducing the project's stormwater requirements. As the roundabout design is near complete at this point, the only significant variable in the amount of stormwater discharge and impervious surface is the park-and-ride area. Particularly, we encourage examination of the proposed park-and-ride parking lot to reduce that to a size that is functional and safe and contains less than the approximately 82 paved parking stalls currently proposed.

Another factor that influences stormwater design is the requirement that project stormwater needs to be discharged within the same threshold discharge area (TDA) as the pre-project condition. We request that COBI and WSDOT continue discussions with the Department of Ecology (WDOE) about the possibility of allowing stormwater infrastructure within TDA 1 or TDA 2 to disperse stormwater from TDA 3. If WDOE would allow some flexibility in the TDA area, then we believe WSDOT has enough property within its ROW to construct stormwater ponds or vault infrastructure that would eliminate the need for stormwater infrastructure being located on the conservation easement (See Appendix I).

In determining the costs for the various alternative designs, we also ask that WSDOT include the potential land acquisition costs of each option. The cost of the land required for each stormwater and slope/wall design option should be known and considered prior to a final decision.

For example, while, the dispersal or stormwater pond options on the conservation easement may appear initially to be lower-cost alternatives, we do not believe that the costs of acquiring conservation easement lands have been adequately factored into the cost/benefit analysis. It is our understanding that the acquisition value of conservation easement properties through condemnation is based on the fair market value of the land prior to the conservation easement and the impact of value on the remainder of the land<sup>1</sup>. Additionally, land acquisition would likely include mitigation and legal costs. To that end, we believe that design choices that minimize the area of impact to the conservation easement will be less expensive overall.

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<sup>1</sup> While there is a dearth of case law in Washington, the Ohio Supreme Court noted, when confronting the valuation question, "It cannot be seriously suggested that, if he had foreseen that appropriation by the state, he would have wanted the state to benefit from the restriction by being enabled to take the land for less than it was worth. To give such an effect to the restriction would be to completely ignore and distort the purpose of the donor." *In re Appropriation of Easement for Highway Purposes v Thornmyer*, 159 N.E.2d, 612, 618.

## Summary Discussion of Stormwater Options Presented to Date

### 1) Large Stormwater Ponds

- The Land Trust and Fergusons cannot support an option that includes construction of large stormwater ponds on the conservation easement as these ponds would cause a high level of ecological and visual impacts to the property.

### 2) Dispersal

- The City of Bainbridge Island was initially interested in learning more about the dispersal option as it initially appeared to be a way to avoid the impacts associated with large stormwater ponds while having similar construction and maintenance costs. Since learning more about the dispersal option, the Land Trust and Fergusons consider the dispersal option to have unacceptable impacts on the conservation easement and property.

### 3) Vaults

- The Land Trust and the Fergusons continue to support vault designs located outside of the conservation easement, and preferably within WSDOT ROW because this option would minimize impacts to the conservation easement. While WSDOT has expressed concerns about the ongoing maintenance costs and lack of agency expertise to undertake the ongoing vault maintenance, at the November 6<sup>th</sup> SR 305 Working Group meeting, COBI expressed a willingness to explore accepting the maintenance obligation, perhaps in partnership with Kitsap Transit. We ask that the parties continue their discussions about reducing the park-and-ride impervious surface and of sharing the vault maintenance obligation. In addition, we request a detailed cost estimate of the vaults and associated maintenance be shared with all parties. This would enable a fuller examination and discussion of the vault option in comparison to other storm water options.

### 4) Pond and Vault Hybrid

- At the November 26<sup>th</sup> and December 5<sup>th</sup> meetings, WSDOT and COBI presented a hybrid stormwater option. This option would locate a vault beneath the park-and-ride and create a drainage pond along the western side of SR 305 (eastern side of the conservation easement property). Siting the drainage pond in this location would utilize an area adjacent to the highway. As currently proposed, the hybrid option places the pond in TDA 2, partially within the current WSDOT ROW and the conservation easement, and calls for an underground pipe buried through the Ferguson easement property from the pond to the stream located in TDA 3.
- While the hybrid option does have some merit, as it reduces impacts to the conservation easement compared to other options, as proposed, the hybrid option would not be acceptable to the Land Trust or the Fergusons because it requires disturbing a significant amount of land through the conservation easement to install a conveyance pipe and it

requires some form of ongoing maintenance relationship with WSDOT.

- The Land Trust and Fergusons could support the hybrid option under the following conditions:
  1. WSDOT locates the drainage pond(s) completely within the existing WSDOT ROW. One outstanding consideration is whether the pond needs to be one large continuous area or can it be divided into smaller pieces that can fit into the existing WSDOT ROW? This hybrid option retains the advantage of lower cost ponds while also reducing the amount of property that would need to be taken from the conservation easement property.
  2. WSDOT pursues a TDA exemption from WDOE. If WDOE issues an exemption that allowed the stormwater from TDA 3 to discharge into TDA 2 or TDA 1, this would eliminate the need for a pipe through the conservation easement. If an exemption cannot be issued, rather than a pipe running under the fields in TDAs 2 and 3 between the pond(s) and stream, piping instead might be sited through the WSDOT ROW around the property, which would minimize impacts to the easement and property.

### **Slope/Wall Options and Questions**

After the December 6, 2019 meeting with COBI arborist Nick Snyder, the Land Trust engaged arborist Olaf Ribeiro, Ph.D., for a second opinion about the potential of saving the trees in the face of a slope or shoulder pile wall. The conclusion of both arborists was that there is no viable way to save the existing trees in their current state with either a slope or a wall. Several questions did arise and we request that WSDOT provide answers to them:

- 1) How steep can the slope be and still remain stable and viable for both the vehicles and for planting and maintenance and to reduce the slope footprint in the conservation easement?
- 2) Is there a way to incorporate some of the existing trees into the slope so that as they die, they can be topped and become pre-installed wildlife snags?
  - This could help maintain a visual screen during the construction and early growth stages of the new vegetation on the slope and create a future habitat feature.
- 3) Is there a cost difference between the various slope steepness options?

The Land Trust's and the Fergusons' preference would either be for a wall or for a 2:1 slope with a guard rail on top and, if at all possible, with the incorporation of the existing trees to provide a visual screen and wildlife habitat feature.


In closing, regardless of the slope/wall and stormwater final designs, it is important to both the Land Trust and the Fergusons that these plans minimize the impact to the conservation easement land and clearly demark the limits of the encroachment/disturbance of the Ferguson property.

We appreciate the work done by all parties. We look forward to a continued collaboration with the stakeholders to find a solution that allows the SR 305/Day Road roundabout project to move forward with minimal impact to the Ferguson property heritage conservation land.

Best Regards,



Brenda Padgham  
Conservation Director



Andrew Fraser  
Stewardship Coordinator

CC: Deborah and Keith Ferguson  
Rob Crichton  
Patrick Mullaney

Enclosure: Appendix I