

**From:** [Randi Razalenti](#)  
**To:** [Randi Razalenti](#)  
**Subject:** RE: For June Board Meeting Packet: WMCWSCD endorsement of Metro's N. Tualatin Mountains Master Access Plan  
**Date:** Monday, June 11, 2018 11:12:19 AM

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**From:** Hank McCurdy [<mailto:saveforestparkcorridor@gmail.com>]  
**Sent:** Monday, June 11, 2018 9:20 AM  
**To:** Jim Cathcart <[Jim@wmswcd.org](mailto:Jim@wmswcd.org)>

**Subject:** WMCWSCD endorsement of Metro's N. Tualatin Mountains Master Access Plan

Mike,

First of all thank you for inviting me to the last board meeting. As I told you over coffee, and as I stated in my comments before the board, someone has to do the hard work of reading and analyzing the vast number of documents involved in the matter of Metro's attempting to amend the comprehensive plan by having the County adopt its North Tualatin Mountains Access Master Plan (Access Plan). I have done that. Metro has submitted over 1500 pages. I am asking you and the Board to benefit from my efforts. It would be a serious mistake for the board to endorse Metro's North Tualatin Mountains Access Master Plan. I am asking that you please send this message to the board members in advance of the meeting set for June 12

I am concerned that some members of the Board see the opposition to the Access Plan as an effort to keep mountain bikers out of Burlington Creek Forest (BCF). ***Mountain bikers, as obnoxious and destructive as some of them may be, are not the issue. Erosion is.*** I am also concerned that board will be more concerned about maintaining a good relationship with Metro and its personnel, and that the environment, truth and integrity will be the casualties. So, I am offering a few things, keeping them as short as I can because for you and the board time management is critical.

I will start with just some of the things that Jonathon Sol and Karen Vitkay said at the board meeting. If some one on the board will do a little of the hard work necessary to read the records I refer to below there will begin to be some agreement with my opinion that many at Metro are masters of public relations and not very good at transparency, including Mr. Sol and Ms. Vitkay.

At the last board meeting Karen Vitkay claimed that the Carlson Geotechnical reports (technically there are two of them, a main report concerned with seismic risk and Appendix B that addresses landslide risks, both part of Exh. 2 discussed below) was a soils study, that Carlson Geotechnical drilled/dug holes and found that where Metro wants to put the trails in BCF is suitable from an erosion standpoint. There are two problems with Vitkay's inaccurate claim.

The first is that while Carlson Geotech did boring holes, they did not investigate erosion, except for a very small area where Metro plans the parking lot, restroom etc. Instead, the Carlson reports looked at the stability of the site where trailheads and stream crossing would be from a seismic and landslide standpoint. The main Carlson Geotech report has a "scope of work" section, which shows that it was not a soils study at all and it was not aimed at evaluating erosion. Rather, Carlson Geotech reports addressed seismic and landslide risks such as liquefaction and slope stability, not erosion. Appendix B also states in its conclusion that Carlson's "...assignment was limited to the identification and discussion of landslide hazards."

Ms. Vitkay's claims are all the more concerning because she commissioned the reports on Metro's behalf and they were addressed to her. It is hard to believe that Karen Vitkay did not read and understand the Carlson reports. This is more evidence that Vitkay, as she has in the past, will say what seems to be needed at the

moment regardless of the facts. In this regard you could take a look at the application she submitted to the Oregon Department of Parks.

In the application for funding to the Oregon Parks Department Vitkay claimed that there were no listed species in or “near” the BCF. By what definition of the word near is the BCF not near Burlington Bottoms (BB), especially when it gets all its clear, cold, water from the watershed of which the BCF is a part? The problem is that previously Metro said there were listed species in the BCF, naming at least two listed salmonoids, and stated that others “almost certainly occur” there. These statements were made in Metro’s 2014 Site Conservation Plan. Further, as Mr. Sol stated before the board, Burlington Bottoms is a *refugia* for listed salmonoids. This is itself a well-known fact and so Vitkay’s statement in the application for funding is, to put it charitably, suspect.

I explain the Carlson Reports in the memo I submitted between pages 297 and 304. The Carlson reports are Exhibit 2 of Metro’s Permit Submissions. These documents can be found at the County Planner’s library. <https://multco.us/landuse/document-library>. Metro’s Permit Submissions are well labeled. My memo is not. It is found in the Document Library under “Public Comment” “McCurdy testimony” (including memo etc.). Metro’s application for funding to the Oregon Parks Department (RTP Environmental Screening Form) is also found in the document library. It is Exh. 5 to my memo. (In looking at Exh. 5 this morning I see it does not show Ms. Vitkay signed it. She did, certifying that to the best of her knowledge it was accurate. I will be supplementing the record with evidence that she did indeed sign it).

Jonathon Sol stated that Burlington Bottoms and McCarthy Creek are *refugia* for listed salmonoids, and McCarthy Creek is not a salmonoid spawning stream. He also emphasized that where the trails would be installed in Burlington Creek Forest was over a half mile away from McCarthy Creek.

These statements are important because ODFW disagrees and has designated McCarthy Creek as a salmonoid spawning stream. In all likelihood, as Metro’s chief environmental scientist and a person who has been familiar with this area for years, Mr. Sol knows that. Additionally, BB is part of the same flood plain, as McCarthy Creek and Metro’s own graphics in the Access Plan show that, including BB waterways that braid into McCarthy Creek. We will have a statement from Sue Beilke, the ODFW biologist in charge of Burlington Bottoms, that says all these things: McCarthy is a salmonoid spawning stream, that it is part of the same flood plain as BB, and water courses braid into McCarthy from BB feeding water into the stream from BB.

I am drafting findings of fact and conclusions of law so that it will be easier for whoever decides this matter to issue its required written decision. I am attaching my very rough and incomplete draft. There is much more to add. Metro has failed to meet many of Multnomah County’s land use code requirements. There are probably a dozen or more clear deficiencies in Metro’s application to amend and for permits to be added still to my draft.

The board should respectfully decline to endorse the Access Plan. This is important not just for our environment, but also for Oregon’s land use planning process and indeed for the rule of law prevailing over influence and politics.

Best regards,  
Hank McCurdy

## Findings of fact and conclusions of law

1. Conclusion: Metro has forfeited any deference it might otherwise be entitled to for expertise in land use planning and environmental science because it has engaged in a pattern of misrepresentation of material facts and spoliation of evidence regarding important issues relating both to its request to amend Multnomah County's comprehensive plan and its request for County permits to implement its plan.
2. Finding of facts supporting the above conclusion include, but are not limited to the following
  - a.) Metro falsely claimed that it is in partnership with the Harborton Frog Shuttle, a volunteer group that captures and transports Red legged frogs across Highway 30 as they migrate back and forth between the Tualatin Mountains to the wetlands east of Highway 30 to breed. Indeed, Harborton Frog Shuttle believes that Metro's proposed trails in the BCF will be harmful to the Red Legged Frogs, a state designated sensitive species of high concern, which its numerous volunteers work to protect.
  - b.) Metro claims in its Master Access Plan to be preserving "core" habitat in the BCF by preserving unfragmented areas of 30 acres or more when under all versions of its trails maps it has left no more than 15 acres not fragmented by trails in about 226 acres of the 339 acre BCF, and when its own scientific literature reviews show that many species inhabiting the BCF need more than 30 acres of intact habitat to remain viable.
  - c.) Metro repeatedly claims, in the Access Plan and in its submissions in support of amending the comprehensive plan and for permits, that it will provide recreational trails access while preserving and in fact enhancing water, wildlife and habitat. With regard to the BCF this claim is clearly false and it may be so with regard to the MCF as well. Metro also falsely and repeatedly proclaims preservation of these natural values as its highest priority. Instead Metro's intends the destruction of habitat as it defines it. By its own admission Metro intends to destroy two thirds of the habitat in the BCF in favor of recreation because its trails, under any version of them it has proposed thus far, do not leave sufficient unfragmented habitat under its definition of core habitat as 30 acres or more.
  - d.) Metro claims that the trails its trails will be multiuse when according to its own trail building manual, *Green Trails*, multiuse trails that are to be used for mountain biking and hiking need to be 48 inches wide with occasional passing areas 10 feet wide so that mountain bikers will be able to pass hikers safely. Instead, the great majority of trails that Metro proposes under all versions of its plans for the BCF will be 30 inches wide or less, a width preferred by mountain bikers. Further, under any version of its trails maps produced thus far, there will be no 10-foot wide passing area. The evidence is clear and unrefuted that hikers, especially those with children and the elderly, will avoid such trails out of fear of injury from mountain bikers making Metro's proposed trails mountain biking trails, and not multi-use trails as Metro claims.

- e.) Metro claims that its trails are aimed at serving the underserved including people of color and others who are low income. Instead, because Metro's proposed BCF trails are actually intended to provide opportunities for mountain bikers its claim of "equity" is false. There is no public transportation to the BCF or MCF. Additionally, a mountain bike and necessary additional gear, such as shoes, water pack, helmet and other equipment is beyond the reach of people making even \$15 per hour.
- f.) Metro claims that it is unaware of any listed species in or near the BCF. Metro has also said, however, that listed anadromous fish are found in BCF in the lower reaches of Burlington Creek. Burlington Bottoms is directly east of the BCF across Highway 30, a distance of about 20 to 25 yards. Burlington Bottoms is widely known by the scientific and environmental community generally to be a refugia for listed anadromous fish. Unfortunately, Metro's statements about the presence of endangered anadromous fish in BCF follow a pattern similar to that they have made concerning elk, mentioned below. Metro no longer says what it said in its 2014 Site Conservation Plan, that Coho, winter steelhead and juvenile Chinook have been observed in the BCF. (SCP, pp.14-5). Instead Metro now claims in the Access Plan that "There is no *record* of fish use in Burlington Creek or Ennis Creek although it is *possible* that native fish use the lower reaches with less steep gradients." (Access Plan, p.16) (emphasis added).
- g.) Metro's statements regarding elk in the BCF range from they are there, but not as numerous as elsewhere in the area, to there are hardly any there, to at one point saying there were no sign of any, and back again to there are hardly any elk present in the BCF.
- h.) Metro acknowledges there has been no baseline study done to determine the extent of elk in the BCF, and explicitly stated it has no plans to do so because, as it has repeatedly and publicly said, such a study would be "too expensive and would not show anything anyhow." Metro claims to have knowledge of the animals that use habitat such as the BCF from a "substantial body of research" and input from "external experts." (Access Plan p. 16). Despite claiming good knowledge of fish and other wildlife in the BCF Metro has made conflicting statements concerning elk and listed fish in the BCF, ranging from, regarding elk, they are there in the BCF in relatively good numbers to there are hardly any present. Concerning fish in the BCF Metro has claimed that listed fish have been observed in the BCF, to they almost certainly occur along with other listed and sensitive species, to there is "no record" of endangered fish there, and then finally to there are none present. After having said that studying elk in the BCF Metro has now had done a "terrestrial study" of the BCF. This terrestrial study is not part of the record.
- i.) Metro has provided a geotechnical report from an engineering firm, Carlson Geotechnical and has represented it as showing that Metro's proposed trails in the BCF do not present an erosion risk. The Carlson report is, however, not a soils erosion study. Rather, it is a seismic and landslide risk study. Moreover, the Carlson report sets forth the slope degrees where Metro proposes to install trails. It appears that Metro claims that its proposed trails will be on slopes that are less than half as steep as the Carlson report found.

- j.) Metro asserted in reference to the BCF “Low levels of access are anticipated for the vast majority of the natural area.” (Access Plan, p. 2). Elsewhere, however, Metro has stated that mountain bikers will give the trails planned for the BCF an enormous amount of use. It is a false statement that the mountain biking trails Metro proposes for the BCF will be lightly used. (Access Plan, p. 2). Metro acknowledges this in its Park Funding Application. The great demand for mountain biking trails is one of the reasons it puts forward for asking for funding from The Oregon Parks Department. (Exh. 2, p. 14).
- k.) During periods of high water, which occur from late fall into late spring the watercourses of BB braid into McCarthy Creek. McCarthy Creek’s lower reaches are part of the same flood plain as BB. The BCF sits at the bottom of a 900-acre watershed, which is the sole source of clean, clear water for BB. The streams from the watershed into BB all flow through the BCF. Enough water flows into BB to support six beaver dams. Metro’s own graphic shows that the BB watercourses braid into McCarthy Creek. Nevertheless, Metro claims that the BB watercourses do not feed McCarthy Creek and also claims that McCarthy Creek is not a salmon spawning stream. McCarthy Creek is recognized by ODFW as an important salmonoid spawning stream, something that Metro’s environmental scientists know or should know.
- l.) Metro states it acquired the BCF, MCF and Ennis and Abby Creek forests in the North Tualatin Mountains, all of which sit in the narrowest part of the wildlife corridor between Forest Park and the Coast Range in order to “keep important wildlife and riparian corridors intact.” Metro acknowledges these are indeed “special places.” Metro is well aware of the biological-diversity importance of “the upland forests and streams that wildlife depend on for connections between Forest Park and the Coast Range.” (Access Plan, pp. iii and 4). Nevertheless, Metro claims there is no agreed upon standard for a wildlife corridor and dismisses its importance stating instead that it will rely on generally accepted ecology science principals. (Access Plan, p. 31). Metro has published a scientific literature review entitled *Wildlife corridors and permeability-a literature review* (Metro, 2014), an approximately 80-page booklet that discusses the science of wildlife corridors.
- m.) Metro published the above mentioned wildlife corridors booklet as well as a booklet entitled *Hiking, mountain biking and equestrian use in natural areas: A recreational ecology literature review* (Metro, 2017). Both of these publications discuss the science applicable to the subject matter depicted in the titles of the publications. On many points there is a consensus on generally accepted scientific principles. Metro however, ignores many of these generally accepted principles. For instance, while a segment of habitat 30 acres in size will be sufficient for some species, it is insufficient for many others known to inhabit BCF. As Metro points out, the following are typical core habitat area requirements: 26.4 acres for some small mammals, 81 to 484 acres for many species of non-prey birds, 440 acres for elk as well as other species of non-prey birds. (Exh.25, p. 86). Another example of Metro ignoring accepted ecological principals is Metro’s claim in its Access Plan,

- despite the scientific evidence to the contrary as set out in its literature reviews, that elk in the North Tualatin Mountains are habituated to human activity. (Access Plan, p. 32). The statements of a number of people living near Metro's four North Tualatin Mountains forests show this to be the case, including that both legitimate hunters as well as poachers shoot the elk.
- n.) ???Metro's map making capacity- hide the ball.
  - o.) Metro has falsely claimed that its plans for the BCF will not significantly increase the fire hazard when it knows that is not the case because increased use of the BCF will be high because of heavy mountain biking demand. Metro has alternately stated demand will be light and that it will be heavy. Metro has also either falsely or inaccurately claimed that the existing loop road will provide a 25' fire barrier while noting elsewhere that the loop road is 14' wide. Lastly, Metro has falsely implied that the Portland Fire Department will provide fire protection for the BCF when written and email correspondence from the Portland Fire Department explicitly states that "it will not be providing direct services via contract," and that although there might be a mutual aid agreement such that Portland Fire might provide service, but that Portland Fire was "unsure" about that.
  - p.) Of all the misstatements and misrepresentations that Metro makes its claim the preservation of water, wildlife and habitat is its highest priority, and that its trails plans for both MCF and BCF properly balance access so that it meets its declared highest priority is the most egregious. With regard to the BCF, this is clearly not the case. Instead, its plan for the BCF is, by its own definition, one of destruction of habitat and not preservation.
3. Conclusion: Statewide Land Use Planning Goal 1 requires that all phases of the planning process be open to the public and that the public be given timely and comprehensible information so that genuine citizen input can monitor and inform the process. Metro has not met its Goal 1 obligations.
  4. Findings of Fact supporting the above conclusion are as follows. The essence of any trails plan is a comprehensible map showing where trails will be located and how they will be constructed. This is especially the case regarding the Burlington Creek Forest because the combination of the slopes and soil type make the BCF highly erodible producing silt, which is the worst sediment for fish not only because it clogs spawning beds, but also because it impacts fish gills making it more difficult for fish to breath. The BCF is at the bottom of a 900 acre watershed that is the sole source of clean, clear, cold water for Burlington Bottoms, a *refugia* for federally listed salmonoids. Additionally, Metro has stated that Burlington Creek, the major water course of several that run through the BCF into BB, is itself almost certainly populated by federally listed salmonoids. Further, during approximately four months of the year, December into April, water fed from the 900-acre watershed braids into the lower reaches of McCarthy Creek, a recognized salmon spawning stream. Since putting forth its Master Access Plan in April 2016 Metro has produced numerous different trails maps for the BCF over the

approximately 20 months since April 2016, several of which it has represented as “the plan.” Only one set of maps, those found in the Access Plan, at page 28 for BCF, and page 29, for MCF, have been made public. Moreover, as Metro states in its Access Plan, the Access Plan, including its trails maps for BCF and MCF, is only a guide and vision for creating a plan and not the plan itself for these two forests. Metro does not appear to have produced more than one trails map for the MCF.

5. As a consequence of Metro having produced numerous trails maps for the BCF the Multnomah County Planning Department has been compelled to require Metro produce a trails map for the BCF. As a result Metro produced a further BCF trails map dated December 15, 2017, which it provided to the Multnomah County land use planning department. It remains unclear whether Metro considers its December 15, 2017 trails map plan as its final plan for the BCF. Metro has described this plan as its “30%” plan, presumably meaning it is 30% complete. Additionally, there is no evidence that Metro has published its BCF map of December 15, 2017 to the larger community as envisioned by Goal 1. Although many of BCF trails plans Metro has produced have similarities, there are differences in these maps that are likely material and which the larger community should have an opportunity to provide constructive criticism, the heart of Goal 1 proscriptions. This particularly important for the BCF because the risk of erosion is high depending on the width of the trails and the steepness of the slopes where the trails will be placed. A difference of only several feet in the location of a trail can be significant because most of the slopes in the BCF are greater than 25% with very few areas having slopes of 10%. There is a genuine question of whether Metro has accurately reflected the slopes of where it intends to place the BCF trails because it appears that in at least one instance Metro may have seriously understated the slopes of the locations where it intends to place trails in the BCF. This is all the more serious because Metro has, or should have, the capacity to produce trails maps that accurately show the slopes where it intends to place trails.