

Randi Razalenti

From: Michael Ahr
Sent: Tuesday, September 17, 2019 5:51 PM
To: Randi Razalenti
Subject: FW: WMCWSCD proposed letter of support for Metro's Master Access Plan
Attachments: 32819 Plea for Better Governance.docx

From: Hank McCurdy [REDACTED]
Sent: Tuesday, September 17, 2019 5:47 PM
To: Michael Ahr <Michael@wmswcd.org>; Jim Cathcart <Jim@wmswcd.org>
Subject: WMCWSCD proposed letter of support for Metro's Master Access Plan

Michael and Jim

I have not had a chance to more than skim the proposed letter. I am under the weather and will not make the meeting tonight. I have a great deal of respect for you, Jim and the entire WMCWSCD Board. My impression is that the proposed letter is a political document, although an effort has been made to pay attention to some of the technical details.

Metro has grown to be a large governmental entity. The WMCWSCD has an important relationship with it, and the Master Access Plan is just one of many interactions the WMCWSCD has and will continue to have with Metro. The letter is designed to preserve that relationship. I understand that. It is one of the major problems of modern societies.

I am very confident that Metro's Master access Plan will be rejected, if not at the County level, then on appeal. I have previously sent you the attached summary of why Metro's Master Access plan will fail. I ask that you please make sure that members of the Board receive the attached, and that also this email be read at the Board Meeting tonight.

Thank you for your courtesy.
Hank McCurdy

The draft letter in support of Metro's North Tualatin Mountains Master Access Plan (Access Plan) presented to the Board at its meeting in December 2018 is misguided. Instead, the WMSWCD should condemn the Access Plan. At the very least it should refrain from comment.

The Iron Cage

The drafters of the letter join in Metro's Access Plan, which is a deeply flawed plan of habitat destruction based on blatant, intentional misrepresentation. From an institutional standpoint the drafters' bias is both predictable, and unfortunate. It falls into the deficiency the 19th Century sociologist, Max Weber highlighted with his idea of the bureaucratic "iron cage." I mentioned this in my comments before the Board, but failed to articulate it very well.

Weber found that in the modern world governmental bureaucracy is rational, necessary and inevitable, but it is constraining. It stifles creativity and imposes a sometimes damaging control. It also creates an unregulated oligarchy of which Metro's Mr. Soll is a prime example. The iron cage's damaging effect can be summarized as "going along to get along." This is evident in the WMSWCD's draft support letter.

Instead of preserving a valuable relationship WMSWCD's support of the Master Access Plan, as tepid as it is proposed to be, the draft letter damages both Metro and the WMSWCD. It surrenders an opportunity to make Metro better. It invites complicity in Metro's wrong and unnecessarily tars WMSWCD with the brush of Metro's calculated misdeeds. Admittedly, it takes moral courage to let the emperor know he/she wears no clothes.

The Access Plan Has No Chance

The Access Plan fails in a great many particulars. I will outline the tip of the iceberg here concentrating primarily on SEC requirements. Metro needs SEC (Significant Environmental Concern) permits and others, and will not get them. The Multnomah Planner has already correctly rejected Metro's claim for exemption to the SEC permit requirements, which Metro claimed on the basis that it was preserving and enhancing both natural and recreational uses. MCC 33.4515(A)(5). Instead, Metro does the opposite and the County Planner therefore, rejected its exemption claim. And so, Metro otherwise tried to qualify for SEC permits.

If an applicant cannot meet SEC permits required, (wildlife, habitat, etc.) because of characteristics unique to the site it is nevertheless allowed to proceed if it produces a Wildlife Conservation Plan (WCP) that demonstrates only a "minimal" departure from the SEC requirements. Alternatively, if an applicant can meet all SEC requirements, but has a WCP that is more protective of water, wildlife and habitat than complying with the SEC sub district's various requirements, the applicant is allowed SEC permits.

Since Metro cannot meet SEC requirements under any version of its BCF plans it attempts to rely on the report of its expert, Siskiyou Biosurvey, claiming it is a WCP. But Siskiyou Biosurvey disagrees with Metro's characterization, stating that its report is not a "formal" WCP, a polite way of saying that it is neither a formal or informal WCP. Instead, lacking a WCP Siskiyou Biosurvey explicitly fell back on the SEC exemption, which claim of exemption the County Planner later rejected. Additionally, the Siskiyou Biosurvey report refers to an early version one of Metro's multiple BCF trails maps. In short, Metro has no evidence that it either meets SEC requirements, or has a qualifying WCP. Indeed, Metro has failed on a grand scale.

MCC has a number of specific SEC requirements, which Metro has not met, a few of which I mention here, such as that development must be within 200 feet of a public road, and also on already cleared land.

The Multnomah Planner has correctly rejected Metro's claim that the existing loop road is a public road. Since Metro's network of trails range far and wide from McNamee Road, well beyond the 200-foot development limit, its plan fails for that reason as well. Further, Metro places its parking lot, bike rack, toilet etc. well into the BCF, which will require cutting down numerous trees, when there is ample space within the already cleared power company easements that are 350 feet wide, and within 200 feet of McNamee Road. This power companies' easements area has the same, or not materially different slope than where Metro wants to put the parking lot and related amenities. That the easements can be used for this purpose is apparently not an issue as Metro's trail network runs within and across the power companies' easements many times. So, Metro fails here also.

Then there is the complete absence of evidence. The major issue is erosion. The dominant soil type is Goble Silt Loam on very steep slopes. The evidence is incontrovertible that the combination of the BCF's steep slopes and soil type is a volatile mix resulting in high degree of erodibility resulting in the worst kind of sediment for fish, that is, silt. Metro commissioned Carlson Geotechnical to do a seismic and landslide study, which study itself says it is not an erosion study even more explicitly than the Siskiyou Biosurvey says it is not a WCP. Even so, Metro has brazenly claimed it is. Metro has no erosion study because no one could credibly support any of the multiple BCF proposed trails network that Metro has produced.

Compounding the above is Metro's explicit statement, repeated numerous times both in the Access Plan and Metro's documents in support of its application to amend the Comprehensive Plan and for permits, that the Access Plan is not a plan, but rather a "vision" and "guide for development." It is not surprising, therefore, that Metro has changed the BCF trails map multiple times subsequent to that first published in the Access Plan. Metro's latest BCF trail map, dated December 15, 2017, has significantly extended the number and distance of trails, stream crossings, and parking spaces. What is surprising is it has done so despite the Oregon Department of Fish and Wildlife's (ODFW) Western Regional Biologist having twice told Metro that the opposite be done and has pointed out to Metro that the BCF is "critical" and "important" Category 3 Habitat under OAR 635-414-0005(3)(a).

The BCF warrants a Category 3 designation not just because the portion of the BCF where Metro plans its trails network sits at the bottom of a 900-acre watershed where all the watercourses that are the sole source of clean, cold water for Burlington Bottoms (BB) flow, but it is also deserving of this designation in its own right. Metro has admitted in its 2014 Site Conservation Plan that BCF itself is habitat for a variety of listed and sensitive species, which admission it has steadily backtracked from after deciding to turn most of the BCF into a recreation park.

BB is a remnant of the abundant riverine wetlands once common in the region. It is a well-known salmonoid refugia where listed salmonid smolts returning to the ocean come to rest and feed before continuing their journey. The water flowing through the BCF into BB supports six beaver dams, which are well known to be of great benefit to salmonoids. What is also significant about the Category 3 designation is that it requires on site mitigation of any development to ensure that the habitat has no net loss of quality or quantity. OAR 635-415-0025(3)(B)(c). The ODFW has pointed to these OARS when telling Metro to dramatically reduce the number and length of the proposed trails, parking spaces and stream crossings. Instead

the opposite has occurred. In the multiple BCF trails maps since that published first in the Access Plan in April 2016, stream crossings have ranged from two and now to eight in Metro's latest BCF map, and the number and length of trails has increased significantly as has the size of its parking lot. One of Metro's ecology science literature reviews points out that it is common for authorized trails to generate up to 50% more in unauthorized trails, something mountain bikers have earned a reputation for doing. For perspective, Metro's latest BCF trails map adds 6.7 miles of new trails (not including the inevitable unauthorized trails) to an area .4 of a square mile that already has a 2.9 mile loop road running through it. So, Metro calls for nearly 10 miles of trails in this highly erodible, narrowest point in the wildlife corridor between the Coast Range and Forest Park, a link that the Comprehensive Plan singles out as of vital significance. And now, if you are still reading, we turn to the major point.

The Major Point

While the Access Plan is laced with falsehoods, the biggest, which makes it an obvious sham, is Metro's oft repeated claim that it has used the best conservation science to allow balanced access and that while doing so Metro is actually improving water, wildlife and habitat in the BCF. Moreover, Metro's own admission shows this claim is absolutely false. Metro's claim that it is improving the BCF habitat is the opposite of the opinions of all the independent scientists that have reviewed this matter, but as important, the falsity of this claim is apparent because Metro provides a metric against which to measure its preservation and improvement claim. It asserts in its Access Plan and in its documents in support of amending the Comprehensive Plan and for permits that it does so by preserving "core habitat," which Metro defines as intact habitat segments of 30 acres or more.

A review of any of any of the multiple BCF trail maps that Metro has produced shows its trails divide the critical, approximately 250 BCF acres, south of McNamee Road, where all the water courses that feed BB flow, into pieces where the single largest intact segment will be at the very best 15 acres (probably it is closer to 12 acres) and the rest is cut up into long, narrow segments that are far smaller, and that exacerbate edge effect and ecological disruption zones, discussed below. In short, by Metro's own definition of habitat preservation, its claim to be to be preserving habitat is false. As will also be seen below, Metro's chief scientist, Jonathon Soll admits this while attempting to justify doing so.

Metro's proposed BCF trails network is primarily the narrow single-track mountain bikers prefer. Aside from the fact that even these narrow trails, frequently only 36 inches wide, will penetrate to the fragipan (the largely impermeable layer below the Goble Silt Loam soil on top of it) in many places, piercing the seasonal water table that sits on top of the fragipan from December through April, with obvious bad erosion consequences, the trails Metro proposes will create edge effect and ecological disruption zones on either side of trails that can extend up to forty meters on each side, but are usually less than that. The result is definite and damaging fragmentation as Metro's literature abundantly and unequivocally shows. This result is well studied and validated in the scientific community also as Metro's literature shows. So, any inference that Metro hopes will be made that the narrowness of its proposed trails is inconsequential, is defective. Moreover, Metro has already significantly disturbed the forest canopy, one contributing factor in fragmentation. It has done so well in advance of being permitted to do so. Metro's own expert, Carlson Geotechnical, pointed this out.

Carlson Geotech examined the trails locations in the field laid out in Metro's September 2017 BCF trails map. Out of the nine trails on that map labeled AA through H, it found that

numerous trees had been cut and felled along the trail alignments of five of them, A, D, E, G, and H. The words Carlson Geotech used to describe the number of trees cut and felled included “numerous,” “significant” and “abundant.” It might be coincidental that abundant numbers of trees were cut down along these trail alignments as part of Metro’s thinning operation, just as it could also simply be coincidental that numerous trees were felled and left suspended up to the present time obstructing the elk trails in the MCF, which trails Metro marked out before thinning that forest. Probably however, the blocking of elk trails and the felling of trees along trail alignments in BCF is what it appears to be, i.e. e., a clear breach of public trust.

What about the other remaining trail segments concerning which Carlson Geotech made no comment regarding felled trees? Only trails AA and C in Metro’s September 2017 trails map version runs through forested areas. Trails B and F run inside the already cleared power companies’ easements. But the point is, the forest canopy has not, and probably will not remain undisturbed by installation of trails. And it cannot be assumed that the proposed trails take advantage of existing game trails. Instead the probability, the explanation of which requires a lengthier space than the five page limitation of this message allows, is that the trails are designed to enhance the mountain biking experience with habitat a decidedly second level consideration. If you are still reading, further confirmation of the above disturbing pattern follows.

Inventory the Wildlife

Every word Metro has written about planning trails, across multiple publications, is that the wildlife should be carefully inventoried before trails are planned. Metro has done the opposite. Aside from a minimalist, extraordinarily low-budget effort, primarily regarding birds, Metro did no such inventory. Long after getting the Metro Council to approve the Access Plan, and after every independent scientist who has looked at this told Metro to do so, it finally committed to doing so in its funding application to the Oregon Department of Parks and Recreation. But it is too late, at least for a number of years. Metro has significantly disturbed the wildlife in the BCF, including through chain saw, backhoe and bulldozer work periodically since 2015 and scheduled to continue into 2019. The horse is out the barn door, and while I do not profess to be an expert, I know from working my own land that adjoins the BCF that it will literally take years for the BCF to return to its pre- 2015 state as habitat. As one of Metro’s ecology science literature reviews points out, post-disturbance wildlife inventories are of little value. Metro has destroyed evidence making wildlife inventories in the BCF of negligible value for an extended period.

Jonathon Soll’s Admission- Metro Doubles Down

On January 10, 2018 Mr. Soll responded to the criticism that ODFW’s Western Oregon Regional biologist made to Metro’s October 2017 BCF plan. He did so in response to concerns that the Oregon Department of Parks and Recreation had, triggered by the ODFW biologist’s opinion where Metro’s funding request was pending. At the time of her criticism the ODFW biologist did not yet have Metro’s December 15, 2017 BCF trails map, which is even worse than the October 2017 version because it increased stream crossings, trail lengths and parking. All too conveniently Soll did not mention Metro’s December 15, 2017 plan map. He acknowledged that ODFW’s criticism centered on fragmentation, and that the BCF was Category 3 Habitat, but ignored that Category 3 required on-site mitigation with no loss of habitat quantity or quality. He then stated that the “BCF should not be treated as more important than it is,” and went on to say:

While acknowledging some degree of fragmentation from new trails, we have been attentive to retaining large patches, minimizing stream crossings, and avoiding trails alignments along streams. These points are especially strong if the entire four site suite in the North Tualatin Mountains is considered. Two sites have no planned trail creation and a third has trails only through a small fraction of the area...

And so, we have come down to Metro's real claim, implicit in the masterfully drafted public relations document that is the Access Plan. That claim is, that overall, sacrificing the critical Category 3 BCF habitat is justified because Metro is doing good elsewhere.

The Irony

None of Metro's trails plans do the equity it claims. Metro's multiple trail maps have sidebars setting out the length and width of the various trail segments they depict. And while there is good evidence to question the accuracy of Metro's measurements, (including that provided by its expert Carlson Geotechnical) they do show that these trails are mountain biking trails, based on Metro's *Green Trails* trail building manual, among other things, and not the multi-use trails Metro declares them to be. The poor cannot afford to outfit themselves for mountain biking

Additionally, neither the MCF nor the BCF are realistically accessible to the socially/economically disadvantaged because of the lack of public transportation to them. Further, there will be few if any school outings to the BCF certainly, and perhaps the MCF as well. Metro's BCF parking lot design will not accommodate the average school bus, which is 44 feet long and 7 feet 10 inches wide. Parking along McNamee will be dangerous and along Skyline Boulevard it is out of the question.

The juxtaposition of the BCF next to the Native American Rehabilitation Association is ironic. The time is past when the words that the only good Indian is a dead Indian were heard, including in the California legislature, but the effects of racism are not. Native Americans cling to the remnants of their culture, which in the Northwest to a significant degree means fishing rights. Remnants of once great salmon runs struggle to survive, sheltering themselves in the remnants of once extensive wetlands like BB. The beneficiaries of Metro's BCF plan are primarily young, vigorous white men.

Bad Policy-Worse Politics

Should the WMSWCD endorsement matter when the Access Plan is fatally flawed anyhow? The better question is: will the WMSWCD allow alternate facts to prevail and contribute to a post-truth norm? The Board is a very fine group of ordinary citizens. It can continue to be. It should not be the shill of Metro's terrible plans in the hope of gaining some future advantage. The advantage lies in government integrity, not in the ideology of corruption. Metro needs to be made better. The WMSWCD Board should not foster its worsening.

Conclusion

I swear under the penalty of perjury that the assertions I have made in this message are well supported by evidence and true and accurate to the best of my knowledge, as I verily believe. Is anyone from Metro willing to do the same as to its assertions?

Respectfully submitted, Hank McCurdy, J.D., PhD.