



Marina BAKER &lt;marina.baker@multco.us&gt;

## Fwd: Burlington Creek Forest and Metro's planned major road and culvert work

2 messages

**Hank McCurdy** <saveforestparkcorridor@gmail.com>  
To: boardclerk@multco.us

Wed, Jun 27, 2018 at 10:37 AM



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Dear Clerk,

I will be appearing at the "open mike" time tomorrow at the Commissioners meeting and appreciate you giving my email below and attachments to the Commissioners. Metro has already begun their major road repairs.

Thank you,

Hank McCurdy

----- Forwarded message -----

From: **Hank McCurdy** <saveforestparkcorridor@gmail.com>

Date: Thu, Jun 21, 2018 at 3:50 PM

Subject: Burlington Creek Forest and Metro's planned major road and culvert work

To: [lut.compliance@multco.us](mailto:lut.compliance@multco.us)

Dear Sir or Madam,

I received the attached flyer and thought that perhaps Metro might need various permits for the major work it plans for Burlington Creek Forest (BCF). I inquired with Kevin Cook, Senior Land Use Planner with Multnomah County, concerning that. Mr. Cook thought that Metro was proceeding under the Forest Practices Act and I took it, therefore, that Metro had not obtained County permits for its planned work in the BCF, which among other things includes "major repairs" and the replacement of culverts. (See the attached flyer from Metro).

The Forest Practices Act does not apply to the BCF. ORS 527.620 to 527.770 regulates forestland "operations." Forestland operations are defined as "commercial activity," with certain exceptions, none of which apply to the BCF. (ORS 527.610(5)). Metro does not intend any commercial activity in the BCF. Instead, it hopes to create a nature park there to be open to the public. Metro has an application pending before the County to amend the Comprehensive Plan for that purpose, which will not be determined until the end of this year or later. The County keeps postponing the hearing date. So, the proper inquiry is under Multnomah County's land use code. The Forest Practices Act's various prohibitions against local government rules that attempt to regulate forestland operations outside the urban growth boundary simply do not apply.

The BCF is zoned SEC and has the following sub-district designations within the SEC umbrella: streams, views and habitat. Separate and apart from the SEC designation and its various sub-districts that fall under it, the BCF also has the Hillside Development and Erosion Control designation. Developments on property zoned as above require various permits from Multnomah County. (MCC 33.4510, 33.4567, 33.4575, 33.5500). Metro's planned road activities, including culvert removal, are "development."<sup>[1]</sup> There are exemptions to the rules requiring permits for development activities such as MCC 33.4515(16) for "routine" road maintenance. Metro's planned activities for the loop road, however, as mentioned above, are not routine maintenance. Instead, according to Metro's flyer, they are "major road repairs." Also, arguably MCC 33.4515(8) exempts Metro from the SEC permit requirement, but on closer reading of that subsection it is apparent that it does not.

The subsection 8 exemption applies to "Activities to protect, conserve, enhance and maintain public recreational, scenic, historical and natural uses on public lands." As stated above, Metro is attempting to amend Multnomah County's comprehensive plan to allow the BCF to be used as a nature park. And while it is doubtful (for reasons that are lengthy and not pertinent here) that the BCF will ultimately become a recreational site, despite Metro's attempt to make it so, that has not occurred.

Until the BCF is opened for recreation there is no scenic value to be enhanced. One might argue that looking at the BCF from Sauvies Island demonstrates that it has scenic value. From that standpoint it does. But a claim that a view from below is enhanced by roadwork and culvert removal in the BCF is specious. Such work will not enhance the view of the

BCF from Sauvies Island or anywhere else. Additionally, Metro has admitted that the BCF is not an historic site. (Evidence that Metro has found the BCF not to be an historic site will be supplied on request.) That leaves only the enhancement of "natural uses" upon which Metro can attempt to hang a permit exemption. But, that too fails. Wildlife has never needed roads. Instead, roads are detrimental to natural uses and so the major repairs that Metro plans will not enhance natural uses.

The BCF has at least one stream protected under Multnomah County's land use code, Burlington Creek. (MCC 33.475). Exemptions to the SEC-S permit requirement are the same as for the SEC permit generally. (MCC 33.4575(B)). But, as discussed above no SEC exemptions apply. If the culvert removal and replacement that Metro intends is for a protected stream it needs a permit. Metro should be required to show where it plans culvert work so that a determination can be made whether or not it is required to obtain an SEC-S permit.

There can be no dispute regarding Metro's obligation to obtain a Hillside Development and Erosion permit. Where an area's slopes exceed 25% MCC 33.5505 requires a permit. The Comprehensive Plan shows that the average slopes in the BCF exceed 25%. (Figure 7-1). Additionally, the BCF is an area prone to "severe erosion." (Figure 7-3). None of the exemptions to the Hillside Development and Erosion Control permit requirement apply. (MCC 55.5510). Also, I have heard, but have not verified, that the Department of Geology and Mineral Industries latest finding is that the east slope of the Tualatin Mountains is the most landslide prone area in the state. If true this lines up with the repeated closure of Newberry Road over the years because of landslides. The latest Newberry landslide closure is now going on two years.

This request that Metro adhere to permitting requirements is entirely meritorious. The BCF sits at the bottom of a 900-acre, largely intact, watershed that is the sole source of clear, cold water for BB, a well-known *refugia* for listed salmonoids. During periods of high water BB braids into McCarthy Creek, an ODFW recognized salmon spawning stream.

I have also attached the Code Compliance form that I have filled out.

Thank you for your attention to this matter.  
Hank McCurdy

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[1]MCC 33.0005: "**Development**— Any act requiring a permit stipulated by Multnomah County Ordinances as a prerequisite to the use or improvement of any land, including a building, land use, occupancy, sewer connection or other similar permit, and any associated grading or removal of vegetation."

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**2 attachments**



**6218 Metro flyer.pdf**  
748K



**CCF21062018.pdf**  
2100K

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**Marina BAKER** <marina.baker@multco.us>

Wed, Jun 27, 2018 at 1:57 PM

To: #COS <cos@multco.us>, Mary-Margaret Wheeler-Weber <mmww@multco.us>

Hello,

I received this public testimony for tomorrow's BCC meeting.

Thanks,  
Marina

**Marina Baker**, Board Clerk  
Multnomah County Commissioners  
501 SE Hawthorne Blvd. Suite 600  
Portland, OR 97214  
(i/o) 503/600  
(o) 503.988.3277  
pronouns: she/her

----- Forwarded message -----

From: **Hank McCurdy** <[saveforestparkcorridor@gmail.com](mailto:saveforestparkcorridor@gmail.com)>

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