

Address to the Portland City Council on Oct. 18, 2017 by Paul Majkut, Attorney at Law

‘human activity ... threatens to extinguish ... half of the species still surviving into this century,’ according to Edward O. Wilson, in *Half-Earth, Our Planet’s Fight for Life*, 2016, p. 135. “Yet there remain ... many reservoirs of Earth’s biodiversity ... (that) can be saved for future generations if those alive today have the will to act on their behalf.”

“Forest Park ... animals ... evolved over centuries owing to each animal’s specific adaptations to its habitat,” according to Marcy Houle, in *One City’s Wilderness, Portland’s Forest Park*, OSU Press, 2010, p. 58. “With the exception perhaps of martens, all of the species that Lewis and Clark recorded in 1806 can still be observed in Forest Park.”

In my August letters I pointed out: The 1995 Forest Park Natural Resources Management Plan, city Ordinance 168509, states it was created to “maintain (Forest Park’s) wilderness quality while allowing appropriate passive recreational use.” The Plan struck this balance by not allowing mountain bikes on the steep, soft dirt surfaces of the Park, but only on 30 miles of roads and hard packed surfaces of some Fire lanes.

In words still true today in a January 25, 1995 transmittal letter to the City Council, the Planning Commission stated:

“While the park has been preserved in one sense—through public ownership and environmental zoning—recreational overuse, exotic plants and animals, and inadequate parks staffing and financial resources threaten to degrade the forest ecosystem and the park’s special wilderness character. The Forest Park Natural Resources Management Plan provides essential strategies and actions needed to address these threats and properly manage both natural resources and recreational use.”

In my letters and Marcy Houle’s testimony we point out Ordinance requirements staff have ignored by proposing new mountain bike trails in the Park through the Off- Road Cycling Management Plan (ORCMP).

Mountain bikes tear up habitat and disturb wildlife well outside the trail and disrupt their nesting and foraging behavior. Creating new single-track trails for bikers will fragment existing habitat and displace wildlife in new areas, reducing the diversity and number of wildlife species there. As the West Hills Wildlife Corridor study concluded in 1990: “The process of fragmentation (of natural habitat) is, for all practical purposes, irreversible.” *One City’s Wilderness, Portland’s Forest Park*, OSU Press, 2010, p. 56.

The only way to accommodate mountain bikers’ desire to have a more challenging and engaging riding experience without degrading the natural resources of Forest Park is to develop other recreation areas for mountain bikes as the 1995 Plan envisioned, such as Gateway Green.

As I pointed out in my October letter: Mountain biking exposes hikers and riders to the danger of serious injuries. The design, construction and maintenance of mountain bike trails exposes the City and its employees to expensive liability for personal injuries.

Forest Park can be saved for future generations if you act on its behalf and not allow mountain biking down the steep, soft dirt slopes of Forest Park. Thank you.

Paul Majkut is a 1975 graduate of the University of Washington School of Law. He retired in 2014 as Deputy General Counsel for the Bonneville Power Administration after nearly 30 yrs at BPA. He was a staff attorney with the Fish and Game Division of the Washington State Attorney General's Office from 1977 to 1984. He has broad experience in the area of environmental law. He provides pro bono legal advice to the Coalition of Oregon Land Trusts for its members.

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Dear Commissioners, et al.,

In an August 18, 2017 letter to you, I described my concerns with the City's consideration of expansion of off-road cycling in Forest Park, including the addition of new 2-6 ft wide mountain bike trails. In an August 19, 2017 letter to you, I described my detailed thoughts on specific failings or problems with some of the analysis and reports on which the ORCMP is relying, including court precedent barring mountain bikes from steep dirt trails in another park.

In this letter I described my concerns with the City's potential liability for personal injuries in Forest Park now and from adding single track trails to Forest Park. Mountain biking exposes riders to the danger of spinal and other injuries. In a 2010 study in British Columbia one of every six spinal cases reviewed was severe enough to result in complete paralysis. "People need to know that the activities they choose to engage in may carry with them unique and specific risks," Dr. Marcel Dvorak, of the University of British Columbia in Canada, told Reuters Health by email. "Helmets will not protect you from these injuries, nor will wearing Ninja Turtle-like body armor." Reuters Health June 4, 2010. <https://www.reuters.com/article/us-spine-bike/are-you-risking-your-spine-riding-a-mountain-bike-idUSTRE65352D20100604>

Dvorak and his colleagues identified 102 men and 5 women who were seen at British Columbia's primary spine center between 1995 and 2007 after mountain biking accidents. The average patient was 33 years old and all but two were recreational riders, they report in The American Journal of Sports Medicine. See, Spinal Column and Spinal Cord Injuries in Mountain Bikers, A 13-Year Review, Emily R. Dodwell, MD, Brian K. Kwon, MD, PhD, Barbara Hughes, MD, MHSc, First Published May 20, 2010, American Journal of Sports Medicine.
<http://ajs.sagepub.com/content/early/2010/05/20/0363546510365532.abstract>

The team couldn't calculate the risk of a spine injury among those who mountain biked, but they figured that over the 13-year study period, the annual rate was one in 500,000 British Columbia residents. The riders accounted for 4 percent of all spine trauma admissions to the center. Surgery was required for about two-thirds of the mountain bikers. But the most devastating injuries were the 40 percent that involved the spinal cord. Of these, more than 40 percent led to

complete paralysis. “Wrist fractures and facial fractures are common” among mountain bikers, said Dvorak. “But spine injuries are the most severe with the most profound long-term consequences.”

While the City of Portland is, in theory, not liable for any personal injury, death or property damage that arises out of the use of the land for recreational purposes, that immunity does not limit liability for intentional injury or damages. ORS 105.682. See, Schlesinger v. City of Portland, 116 P.3d 239, 200 Or. App. 593 (Or, 2005). The City of Portland (city with a population of 500,000 or more) is also, in theory, not liable for any negligence action that arises out of the use of trails by foot, horse, bike or other nonmotorized vehicle. ORS 105.668(2).

However, as the City of Portland well knows, recreational use laws do not always assure protection from liability. In VanDerVelde v. U.S.A., U.S. District Court, Wyoming, 1999 WL 33593713, February 1, 1999, the government claimed it was not liable under the Wyoming recreational use statute to a cross-country skier on free groomed trails who was injured when he swerved to miss a U.S. government vehicle parked at the foot of the exit hill. The Court concluded that the action that caused the injury—parking the truck to block the trail exit—was not covered by the statute.

Moreover, recreational use laws do not assure protection from liability for city officers and employees. In Johnson v. Gibson, 358 Or. 624 (2016), the Oregon Supreme Court held: “Individual [city] employees responsible for repairing, maintaining, and operating improvements on City-owned recreational land made available to the public for recreational purposes are not ‘owners’ of the land, as that term is defined in the Oregon Public Use of Lands Act. They are therefore not immune from liability for their negligence.” In Johnson, that meant that individual City of Portland employees could still be held liable for negligent repair, maintenance, and operations, even if the City itself was theoretically immune. Johnson was a case that came before the Oregon Supreme Court on certified questions from the US Court of Appeals for the Ninth Circuit. That same logic applies to negligent repair, maintenance, and operations by City employees in Forest Park.

The Oregon Public Use of Lands Act definition of owners of land was amended in 2017, presumably to address the Johnson opinion by including officers, employees and agents “while acting within the scope of assigned duties.” ORS 105.672(4) First, there is a serious question whether that amendment would be held to be unconstitutional, if challenged, given that it purports to remove a remedy that existed at common law against those same individuals. See, Johnson, supra, 358 Or at 634-36 (discussing older Oregon cases on immunity of individuals). Second, even if it is constitutional the Act will not protect officers and employees who injure hikers and runners after notice of dangerous conditions effected through their intentional mismanagement of Forest Park, in a manner that is contrary to the Forest Park Plan and the City Code obligations. Such actions may well be found to be **outside** the scope of their assigned duties.

In addition, under these recreational use laws the City does not avoid liability for the design, construction and maintenance of mountain bike trails, since the law protects only the “use”

thereof. For example, The Forest Park Plan and Ordinance is unenforceable without the proper placement and maintenance of signage to prevent bicyclists from riding on hiker only trails, such as Wildwood. The City has been advised repeatedly and recently of the missing and inadequate signage there and the numerous dangerous incidents between bikes and hikers that have occurred there. The City is likely to be found liable in a suit for negligent management that leads to severe injury or death of a biker or hiker hit by a cyclist there.

In its Overview of Liability for Mountain Biking, presented at the 2008 IMBA Summit/World Mountain Bike Conference, Speakers, Pete Webber, International Mountain Bicycling Association and Jeff Jackson, Algonquin College, the IMBA conceded this point in two of several questions and answers it posed:

“Who is Potentially Liable?

If someone is hurt riding trails in your community, who can be found liable? Generally speaking, every organization involved in the trail's design, construction, and maintenance could potentially be named as a defendant in a lawsuit. This would include the landowner, the trail management agency, and even related non-profit groups... potentially everyone involved in the trail.

Types of Trail-Related Lawsuits

The most common lawsuits faced by trail managers are related to negligence. They occur when an injured visitor claims that a trail manager failed to design, construct, manage or maintain the trail with reasonable and prudent care.””

<https://www.imba.com/resources/liability/introduction-risk-management-and-liability-mountain-biking>

If the City is found liable in litigation over injuries due to the operation of the current hiker only or new mountain bike trails, it could be very expensive. On May 10, 2010, a Superior Court jury in Hartford, Connecticut awarded a former children's book illustrator \$2.9 million for injuries suffered years before in a bicycle accident on land owned by the Metropolitan District Commission.

“The six-person jury awarded the money to Maribeth Blonski of [Rocky Hill](#) after finding that the regional water and sewer authority improperly placed a steel gate across a path within the Talcott Mountain Recreation Area, said Blonski's lawyer, Michael A. Stratton.

On May 16, 2002, Blonski, now 43, was biking on a trail in the area, also known as the [West Hartford Reservoir](#), when she struck the gate, breaking four vertebrae in her neck, Stratton said. The MDC had installed the gate to block motor vehicle access to the water, he said.

...

It took eight years to resolve the case because of a dispute about whether the MDC was immune

from responsibility, Stratton said. After a four-day trial before Judge Edward Domnarski, the jury decided the authority was not immune in this instance, and also found that Blonski was partially responsible.”

http://articles.courant.com/2010-05-10/news/hc-hc-bicyclist-jury-award-mdc.artmay10_1_mdc-metropolitan-district-commission-stratton

Another risk posed by the addition of mountain bike trails in Forest Park is their potential use by electric powered mountain bikes (eMTBs). Once the mountain bike trails are built, there will be nothing to prevent their use by eMTBs. Even if the City prohibits such use, it is likely to occur. The City has, to date, failed miserably to enforce existing restrictions on mountain biking on Forest Park trails. There is no reason to believe that the Parks Department budget will somehow magically grow to cover the cost of additional future enforcement. Recall also that ORS 105.558(2) only protects the City of Portland from liability for any negligence action that arises out of the “use” of trails by a **nonmotorized** vehicle. ORS 105.558(2).

The IMBA advocates access to mountain bike trails by eMTBs in an article on its website, EMTB Access and Management:

“As a recognized, national leader in trail access and sustainable trail design, IMBA staff are regularly asked by land managers, industry partners and local mountain bike organizations for guidance on how to manage the emergence of eMTBs on local, state and federal lands.

IMBA believes that eMTBs have the potential to represent a broad, new challenge to mountain bike access. If handled properly, eMTBs could increase ridership and stewardship of trails. If handled incorrectly, the inevitability of eMTBs could jeopardize everything mountain bikers have gained in the last three decades by inadvertently overturning access.

IMBA recognizes that eMTBs are here to stay and wants to be proactive about managing and educating this new user group with the explicit purpose of ensuring that the increase in use of eMTBs does not negatively impact existing non-motorized trail access. IMBA is the only organization properly positioned to navigate this situation, thanks to the trust it has established with land managers, local trails organizations and the bicycle industry. IMBA will lead this effort with an extensive education campaign, clear guidelines on where eMTBs can and cannot be ridden, and productive partnerships with the companies that sell eMTBs.”

<https://www.imba.com/resources/embt-management>

At the same website the IMBA includes the following information:

“Is there an existing policy in your state for eMTB use on natural surface trails?

Oregon Parks and Recreation Dept- No policy yet, leaning towards allowing. No indication when policy will happen.

...

As of 2016, the USFS classifies eMTBs as motorized vehicles. They are only allowed on roads and trails open to motor vehicles and/or motorcycles, with possible local exceptions if they are

based on existing rules and go through the appropriate public and environmental processes for altering access to trails.”

<https://www.imba.com/resources/emtb-management>

In this letter I have described my concerns with the City’s potential liability currently and in adding single track trails to Forest Park. Mountain biking exposes hikers and riders to the danger of spinal and other injuries. The design, construction and maintenance of mountain bike trails exposes the City and its employees to expensive liability for personal injuries.

As I pointed out in my two prior letters, the 1995 Forest Park Management Plan was created to maintain Forest Park's wilderness quality while allowing appropriate **passive** recreational use. The Plan struck this balance by not allowing mountain bikes on the soft dirt surfaces of the Park, but only on the roads and hard packed surfaces of the Fire lanes.

Forest Park is “America’s premier urban ancient forest.” The 1995 Management Plan’s top priority is preservation of its natural systems, not mountain biking. Please protect Forest Park’s natural systems and do not expand off-road cycling in Forest Park.

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August 18, 2017

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Dear Commissioners,

Forest Park is "America's premier urban ancient forest." 1995 Forest Park Natural Resource Management Plan (The Plan), p. 97. I trust all of you agree.

In its vision statement The 224 page Plan states:

"In seven generations, an ancient forest of national renown." "Forest Park represents an unparalleled resource where citizens can enjoy the peace, solitude, ruggedness, variety, beauty, unpredictability and unspoiled naturalness of an urban wilderness environment; a place that maintains this wilderness quality while allowing appropriate passive recreational and educational use without degrading natural resources; an urban laboratory for environmental research and resource enhancement and restoration; America's premier urban ancient forest." The Plan, p. 97.

"Implicit in the plan's vision statement and more obvious in the goal statements is the adoption of preservation of natural systems as its top priority." p. 98 "Core Preserves-Interior forest habitat is Forest Park's most unique and valuable asset. No other urban park in the U.S. offers anything comparable in quality and quantity." p. 101 "Development of other recreation areas and facilities will relieve the pressure on Forest Park. This is a critical strategy for protection of natural resources in Forest Park and for reduction in user conflicts." p. 110. I trust you also agree with these points.

Inside the Park impacts to resources "come primarily from overuse and from invasive non-native plants." Except for ivy removal, "no programs address invasive species." Forest Park needs staff and funds to deal with these problems and for other resource enhancement projects that increase the health of park resources, such as successional acceleration, stream restoration and habitat restoration. The Plan, p. 91. In 1995 it was acknowledged that "Active resource management and protection has not been feasible because of a lack of time, money and personnel." The Plan, p.90.

The City is currently once again being asked to consider Mountain Bike single-track use in the park. "Mountain bikers are allowed on most fire lanes where there is sufficient sight distance for the safety of the trail users." p. 75 "Bicycle trails (Mountain Bikers) are allowed on the paved roads, most of the fire lanes (with exceptions)." p. 174 This allows mountain bikes only on paved

roads and 8 foot wide hard packed trails, not narrow dirt surface trails used by hikers and runners.

In 2006 in what may potentially be in violation of The Plan's restrictions, a 3 foot wide dirt trail was built to connect Firelane 5 to the Leif Erickson Trail. It is described in the Forest Park Conservancy White Paper on Off-Road Cycling in Forest Park, dated May 19, 2009. In an August 14, 2017 letter to the Portland Commissioners the Coalition to Protect Forest Park describes and shows the extensive erosion that exists there now.

The Forest Park Conservancy formed a Committee with mountain bikers and the Portland Parks and Recreation Department to produce the White Paper. The Committee stated:

"It appears that user conflicts between pedestrians and cyclists are increasing within the Park. While there are no systematic counts of conflicts, the Forest Park Conservancy receives complaints about cyclists on trails designated pedestrian-only, as well as reports of conflict on the shared use trails, roads, and fire lanes which are open to bikes. With the growing popularity of off-road cycling, these problems will potentially worsen unless this issue is addressed in a comprehensive manner that addresses both conflicts with user groups and efforts to protect the Park's natural resources." p.3

After a series of meetings the Committee concluded:

"Improvements, enhancements and expansion to Forest Park's existing road and trail infrastructure will increase the need for funding and other resources to support sustainable trail construction, long-term maintenance, localized habitat restoration, ongoing education, and enforcement of park regulations. Forest Park is an unparalleled natural resource and the bar must be set high for any expanded access. This committee believes that improvement and/or expansion of off-road cycling opportunities is a worthy consideration if these criteria can be met." p. 17

Please keep in mind those criteria were never met. In July 2010 a Forest Park Single-Track Advisory Committee reported:

"Consensus was not reached because a minority of Committee members could not support any proposed trail actions unless management conditions were associated with the actions. They specifically stated that wildlife and vegetation studies, and the recreation user survey listed in the NRMP, needed to be completed to determine the carrying capacity of the park before any recommendations for new trails should go forward. Safety concerns were also expressed."

On September 30, 2010 letter Commissioner Fish reported to the Committee on wildlife and vegetation studies and surveys that would be done and the creation of a new dedicated Park Ranger position for increased enforcement.

"Beyond Forest Park, we are working to expand off-road cycling access throughout the Portland metropolitan" including a PP&R managed Gateway Green single-track park."

“In response to your recommendations regarding trail options, we have concluded that Forest Park is not ready for expanded access.”

As the Portland Tribune acknowledged on May 23, 2017, without additional funding for education and enforcement Forest Park is **still not ready** for expanded access. The single ranger assigned to Forest Park who cannot write criminal citations is simply not enough. Nor can he even exclude repeat violators without the signage that vandals keep knocking down. See Section 16.70.560B.

In addition, in the Oregon Statewide Recreation Trails Plan for 2016-25, p.100, the highest priorities for new trails and maintenance identified in Region 2 where Forest Park is located were repair of major damage to existing trails and protection of natural features. (77% each) New trails were a low priority, with hiking, ADA and running trails ahead of new natural surface trails for bikers. (24%).

Which brings us to the present. Now rather than providing the funding and resources the Park Department needs, including more officers with the ability to cite violators, and following the Zoning Code, the City has spent considerable staff time and money considering a proverbial shortcut, one that will only exacerbate the hiker/biker conflict without those resources.

Through the Off-Road Cycling Master Plan (ORCMP) the Portland Bureau of Planning, the City is considering expanding off-road cycling in Forest Park, including the addition of new 2-6 ft wide mountain bike trails. In a May 16, 2017 Portland Tribune article the cyclist leading this effort characterized it as “kind of like an exception” to The Plan.

As I am sure you know, The Plan has been adopted as a City Ordinance and incorporated into the City Environmental Zoning Code. It is a violation of the Land Use laws to try to amend The Plan through an ORCMP. To create an exception, the City will need to go through a full Zoning change process, and likely also amend the City Comprehensive Plan, which relies on The Plan to meet some of the City State Wide Land Use Goals.

That said, there is an even more fundamental problem that plagues the ORCMP process. The Bureau of Planning is barreling ahead to open Forest Park to more off-road cycling, including two new single-track trails, even though it has no management responsibility for or expertise in the ecological functions of Forest Park.

It is the Park Department’s job to determine the carrying capacity of the park **before** any recommendations for new trails can go forward. Planning has already proposed 5 new trail options, leaving environmental analysis of each trail for later. This is not making “preservation of natural systems as (the Park’s) top priority.” The analysis of cumulative effects of expanding single-track cycling in Forest Park should take place **first** and should be done by the Parks Department.

Natural resource management plans provide the means to evaluate the cumulative effects of development and mitigation proposed at different times and in different places within the same large ecosystem. See, Section 33.430.310. Section 33.430.350 sets Approval Criteria for Amendment of a natural resource management plan:

- A. Compliance with Sections 33.430.310 through 350;
- B. Compliance with Statewide Planning Goals and the Portland Comprehensive Plan; and
- C. If the natural resource management plan is approved as part of a plan district, the criteria for adoption of plan districts that are in Section 33.500.050 are met.

Moreover, the Planning Bureau states a new vision of an interconnected systems of trails of up to 15 miles for off-road cycling within Forest Park. The Bureau states that riders are looking for up to 2 hours and 15 miles for each visit and “people who enjoy riding bicycles on dirt trails are generally looking for a narrower track, which provides a more engaging riding experience.” See Frequently Asked Question, Why is the Off-road Cycling Master Plan exploring options in Forest Park, on its off-road cycling website. This begs the question: How many cyclists will be encouraged to use such an interconnected system in Forest Park? 10, 100, 1000, 10,000 per day? When will we exceed the carrying capacity of the park? This needs to be assessed first, not after the proverbial horse has left the barn.

In order to avoid user conflicts on the trails, the City needs to evaluate how many new off-road cycling trails should or could be built? How much fragmentation of wildlife habitat would occur and how much wildlife nesting and feeding habitat would be reduced through off-road cycling disturbance? The City also needs to determine if such an expansion would interfere with “preservation of natural systems as (the Park’s) top priority.”

In 1995 the Management Plan was created to maintain Forest Park's wilderness quality while allowing appropriate passive recreational use. The Plan struck this balance by not allowing mountain bikes on the soft dirt surfaces of the Park, but only on the roads and hard packed surfaces of the Fire lanes.

Allowing mountain bikes on existing hiker trails will destroy the peace and unspoiled nature of the hiker experience in the Park. Mountain bikers want a more engaging riding experience that for many riders means a more vigorous, challenging and risky experience. Without a significant commitment of law enforcement resources, bikers simply cannot be kept off hiker only trails. The ecological impact of mountain bikes on soft dirt surfaces of the Park, including off-trail areas, is sufficient reason to bar the bikes from those areas.

Mountain bikes disturb wildlife well outside the trail surface and adversely impact their nesting and foraging behavior. Otherwise suitable habitat is abandoned. Creating new single-track trails for bikers only will fragment existing habitat and extend adverse impacts to wildlife in new areas. This can only serve to reduce the diversity and number of wildlife species in the park. The only way to accommodate mountain bikers’ desire to have a more engaging riding experience on soft dirt trails without degrading the natural resources of Forest Park is to develop other recreation areas for mountain bikes, such as Gateway Green, as the 1995 Plan envisioned.

I have some additional detailed thoughts on specific failings or problems with some of the analysis and reports on which the ORCMP is relying, as well as some interesting information on detailed studies that have been done on the impacts of mountain biking of this kind, including court precedent barring mountain bikes from steep dirt trails in another park. I will send you that in a second letter, as I trust I have already made my general point in this letter.

I urge you not to be pushed into any rash positions in search of a “compromise.” If you give up a portion of Forest Park to other uses, it will be gone forever. No subsequent politician will be able to undo or fix what you may have broken – in your haste to find a proverbial middle ground.

The 1995 Plan gave cyclists 30 miles of trails. That **was** the compromise. There is no need for you to compromise on the compromise. Such an approach leads only to a “death from a 1,000 minor cuts” outcome for the natural resources at issue. Please be strong and stand your ground, to keep Forest Park the sanctuary that it is today, so that your children and their children’s children can experience this wonder of foresightedness, and stand in awe of the City’s commitment to preserve this special place.

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August 19, 2017

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Dear Commissioners,

In an August 18, 2017 letter to you, I described my concerns with the City's consideration of expansion of off-road cycling in Forest Park, including the addition of new 2-6 ft wide mountain bike trails. In that letter I mentioned that I have some additional detailed thoughts on specific failings or problems with some of the analysis and reports on which the ORCMP is relying, as well as some interesting information on detailed studies that have been done on the impacts of mountain biking of this kind, including court precedent barring mountain bikes from steep dirt trails in another park. In this letter I provide those additional details.

In Task 3.2 of the Portland Off Road Cycling Plan, consultants (Waterbrook, Hilride, & Toole) minimize the potential impacts of expanded mountain biking in Forest Park without taking into account that this is "America's premier urban ancient forest" for which its Plan's top priority is preservation of its natural systems, not mountain biking. 1995 Forest Park Natural Resource Management Plan, p. 97 (The Plan). While the consultants admit there are critical gaps in research on mountain biking's adverse impacts on vegetation, p. 7, on stress on and altered behavior by wildlife in natural areas, p.8, and water resources, p.10, with some exceptions, they ignore these gaps and claim that mountain biking impacts are similar to hiking's impacts and this is just a design issue.

They concede that mountain bikers cause more adverse soil and vegetation impacts when they engage in unpermitted off-trail riding. "Morlock and others (2006) noted that the frequency of unpermitted off-trail activity by mountain bikes was the greatest cause of adverse soil and vegetation impacts. They concluded that the ecological impact of unpermitted off-trail routes was the primary argument for limiting mountain biking access to public lands." This is a serious problem in Forest Park since there is only one officer who lacks criminal citation authority.

They also concede that fragmentation and alteration of habitat by mountain biking trails may reduce the quality of nesting habitat and that wildlife impacts can be reduced by ensuring that trails avoid sensitive or critical wildlife habitats, including riparian corridors and wetlands. They also concede that additional studies of the impacts on wildlife habitat, including special status habitats and rare plant and animal communities are needed.

Finally, they concede that there also is a gap in information on the cumulative impacts of recreational activities in natural areas, both urban and rural.

Many of the studies that the consultants rely on are critically analyzed in an article in the July 2014 ARPN Journal of Science and Technology, "The Impacts of Mountain Biking on Wildlife and People A Review of the Literature, by Michael J. Vandeman, Ph.D. He compares the impacts of hiking and mountain biking. His findings are quite clear.

"It is obvious that mountain biking is harmful to some wildlife and people. No one, even mountain bikers, tries to deny that. Bikes create V-shaped ruts in trails, throw dirt to the outside on turns, crush small plants and animals on and under the trail, facilitate increased levels of human access into wildlife habitat, and drive other trail users (many of whom are seeking the tranquility and primitiveness of natural surroundings) out of the parks." p. 418-19.

Moreover, at least one court has upheld the action of a regional authority in excluding mountain bikes from the natural dirt trails of a regional park, Golden Gate National Recreation Area ("GGNRA"). In *Bicycle Trails Council of Marin v. Bruce Babbitt*, 82 F.3d 1445 (9th Cir. 1996), the mountain bikers complained that their interests were not given priority. They complained that park officials failed to give adequate consideration to the quality of the mountain bicycling experience in that several "single-track" and "loop" trails were closed to bicycles and that no concern was given the need to accommodate the most skilled bicyclists by providing them steep and difficult trails.

Nevertheless, the Ninth Circuit affirmed the National Park Service's rule that the use of bicycles was allowed in park areas under the same basic conditions as are motor vehicles, i.e. on park roads, in parking areas, and on routes designated for their use. Several "single-track" and "loop" trails were closed to bike use in the interest of public safety, resource protection, and the avoidance of visitor conflicts.

The Bureau of Planning and its consultants have failed to rigorously evaluate these potential impacts before proposing the expansion of off-road cycling in Forest Park.

1. Expanded mountain bike use, including single-track trails, poses an unacceptable threat of increased erosion in Forest Park that has not been rigorously evaluated.

"Forest Park is located on the east flank of the Tualatin Mountains. . . . Elevations rise from about 75 feet mean sea level along the Willamette to 850 to 1100 feet along the Skyline. . . . The Park landscape is deeply dissected by streams originating along the crest and draining east to the Willamette River . . . stream gradients reach as much as 11.5%. (600 feet per mile) . . ." The Plan, p. 32

"Forest vegetation moderates the effects of winds and storms, stabilizes and enriches soil, and slows runoff from precipitation." p. 29 But the Park's terrain is particularly susceptible to erosion. "Because of the steep terrain and fine-textured soils, a minor amount of accelerated erosion was found in disturbed areas where soil was exposed. This includes fire lanes, roads and trails that exist on all soil types." p. 34 "The fire lanes are generally oriented up and down the slopes of the park." p. 48

Off-road cyclists accelerate erosion for several reasons. They seek the excitement of rapid movement up and down the steep terrain of Forest Park that is often wet, "a more engaging riding experience." Frequently Asked Question, **Why is the Off-road Cycling Master Plan exploring options in Forest Park**, on the Bureau of Planning's off-road cycling website. And the majority will likely travel several times as far as hikers each trip. In the Oregon Statewide Recreation Trails Plan for 2016-25, p.89, single-track riders self-evaluated their desired pace as moderate (37%) to vigorous (42%). Single-track riders want 27% of nearby trails to be at a challenging level of difficulty and 58% of trails outside their communities at a challenging level of difficulty. Figures 67, 68, p. 95. While 75% of hikers prefer a trail length of less than 5 miles, 85% of single track riders prefer trails longer than 5 miles, (33% 6-10 miles) (29% 11-15 miles) (24% over 15 miles).

In one study Dr. Vandeman found that 34% of riders listed excitement/risk as a main reason for visiting the park. Bikers impacts are greater when they skid and worse in wet conditions. He also found that bikers' impacts were several times greater than hikers since bikers travel several times further than hikers. p. 420.

In Bicycle Trails Council of Marin, cited above, the Ninth Circuit affirmed the NPS finding that downhill bicycle travel on steep slopes is usually accompanied by braking and often by skidding which tends to push dislodged surface gravels into ditches, water bars, and drains. The court agreed that there were serious erosion problems on certain steep narrow trails and that restricting bicycle use would slow such erosion.

2. Expanded mountain bike use, including single-track trails, poses an unacceptable threat of increased disruption of plant communities in Forest Park that has not been rigorously evaluated.

In one study evaluated by Dr. Vandeman, after 500 passes, mountain biking began to show significantly greater impacts of soil compaction and degrading plants in the trails. Greater impacts would be expected to occur due to braking, accelerating, or turning. Allowing bikes on trails allows trail use to increase over what it would be if bikes weren't allowed. Killing plants and destroying seeds modifies the gene pool, and introduces human-caused loss of genetic diversity, and evolution. Dead plants and lost genetic diversity do not "recover" (see Vandeman, 2001). Even if the impacts of bikers were not more severe than hikers, mountain bikers have several times the impact of hikers, since they are easily able to, and do, travel several times as fast and as far as hikers. p. 420.

In Bicycle Trails Council of Marin, cited above, the Ninth Circuit affirmed the NPS finding that when bicyclists pass hikers on narrow trails at least one of the users is forced off of the trail and onto surrounding plant life. Bicyclist were also found to often occupy the center of the trail and travel in groups, thus further limiting the space available for other users when the bicyclists pass them. Bicyclists were also found to have difficulty staying on the trails where the steepness of the trail caused high speeds and the narrowness of the trails gave little margin for error and made sharp turns difficult, often skidding to control their speed, sliding off of trails on sharp turns, or cutting across off-trail areas at certain "switch-backs." Finally, this trampling of off-trail vegetation was found to be damaging to the park's natural plant life resources.

3. Expanded mountain bike use, including single-track trails, poses an unacceptable threat of increased disruption of animal communities in Forest Park that has not been rigorously evaluated.

In one study evaluated by Dr. Vandeman, it was noted "Because flushing from recreational activity may come at the cost of energy needed for normal survival, growth, and reproduction ..., and because it may cause animals to avoid otherwise suitable habitat ..., it is important that recreationists understand that their activities can flush wildlife and may make suitable habitat unavailable" (p.961). Dr. Vandeman concludes that since bikers are able, and typically do, travel several times as far as hikers, bikers have several times as much impact on wildlife as hikers. p. 421.

In another study evaluated by Dr. Vandeman "bicyclists caused eagles to flush at [the] greatest distances", which would tend to indicate that bicyclists have greater impacts. Once again, the greater distances that bikers travel and as well as the greater visitor numbers that the bicycle enables increase those impacts resulting in higher total numbers of encounters and flushings. pp. 421, 423.

Dr. Vandeman also referred to an excellent 2003 "critical literature review" on the ecological impacts of mountain biking by Jason Lathrop. Mr. Lathrop criticized a number of studies for not using realistic representations of mountain biking. For example, one "study's treatment passes at best loosely approximate the forces exerted by actual mountain biking. On real trails, riders possess widely varying levels of skill, resulting in variant speeds, turning, and braking. This study does not address these variables. I could find no references to it in the literature. Anecdotal evidence suggests, however, that small mammals are vulnerable to impact and are not uncommonly killed." p. 423.

After reviewing a number of studies comparing the impacts of hiking and mountain biking, Dr. Vandeman concludes:

"Some of the important characteristics of mountain biking that have been ignored are: speed; distance traveled; the increase in number of visitors that bikes allow; increased trail-building, with its attendant habitat destruction; the displacement of soil (other than downhill); the killing of roots and soil organisms and ecosystems; most effects on wildlife; manner of riding (skidding, braking, acceleration, turning, and representativeness); tire tread; and noise (bikes are relatively quiet, but a rattling chain may be perceived as "alien" to natural surroundings)." p. 424

I have taken a critical look at the consultants work in support of the Task 3.2 of the Portland Off Road Cycling Plan because they minimize the potential impacts of expanded mountain biking in Forest Park. This is not just a design issue. Forest Park is "America's premier urban ancient forest." The 1995 Management Plan's top priority is preservation of its natural systems, not mountain biking. Please protect Forest Park's natural systems and do not expand off-road cycling in Forest Park.

Paul Majkut
Attorney-at-Law

Parsons, Susan

Subject: FW: Dates to speak before Council? Oct 18

From: Paul Majkut [mailto:paulsmajkut@gmail.com]

Sent: Saturday, August 19, 2017 9:47 AM

To: Parsons, Susan <Susan.Parsons@portlandoregon.gov>; newmoonfarms@gmail.com; Catherine Thompson <thompsoca@gmail.com>

Subject: Fwd: Dates to speak before Council? Oct 18

I am concerned about the City's effort to expand off-road cycling in Forest Park through the Off-Road Cycling Master Plan. My concerns include public policy and legal issues with the Master Plan and this process. I just sent a letter to the Commissioners in which I describe these concerns. Paul Majkut

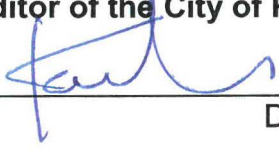
Request of Paul Majkut to address Council regarding off-road cycling
in Forest Park (Communication)

OCT 18 2017

PLACED ON FILE

Filed OCT 10 2017

MARY HULL CABALLERO
Auditor of the City of Portland

By  Deputy

COMMISSIONERS VOTED AS FOLLOWS:		
	YEAS	NAYS
1. Fritz		
2. Fish		
3. Saltzman		
4. Eudaly		
Wheeler		