

# A lawsuit was filed in Newport. Now, Lake Oswego's insurance provider recommends closing local trails.

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A sign warns of potentially slippery trails at Luscher Farm.

The insurance provider for the majority of Oregon cities, CIS Oregon, recommended the closure of all improved recreational trails following a recent court ruling.

CIS made the recommendation in November based on the Oregon Court of Appeals' July 6 ruling in *Nicole Fields v. the City of Newport*, which complicated liability protections for cities and other trail owners. Oregon state law affords what is known as "recreational immunity" to protect landowners of recreational facilities from liability so that they are encouraged to keep and maintain trails and other recreational facilities.

The Court of Appeals ruling, and the Oregon Supreme Court's subsequent denial of a request to review the decision in October, led CIS to conclude that courts were "effectively ending recreational immunity" and cities should close trails that had been legally protected by it. Lake Oswego has yet to take any action.

The *Fields v. Newport* case centered on injuries Fields suffered while falling on an improved trail owned by the city while walking home with her dog from Agate Beach. Citing recreational immunity, the initial trial court ruled in favor of Newport. The Court of Appeals, however, issued an opinion stating that a trial court would need to determine whether Fields was using the pathway for recreational purposes. If the court said she wasn't — which was what Fields contended — Newport would be exposed to legal risk.

## **'Recreational immunity no longer stops a case at the beginning'**

CIS posited that, regardless of a future trial court's ruling in *Fields v. Newport*, local governments and others may now have to undergo trials centered on whether a plaintiff's activities were recreational in nature. Essentially, a determination of the intent of the plaintiff would be the deciding factor in cases regarding recreational immunity.

"Recreational immunity no longer stops a case at the beginning (an 'immunity' from suit), because any plaintiff can claim their "principal purpose" was not to recreate," CIS general counsel Kirk Mylander wrote in a "real-time risk" assessment.

In response to the ruling, CIS — which was formed through the League of Oregon Cities and the Association of Oregon Counties and insurers for Lake Oswego, West Linn, Wilsonville and many other cities — issued a memo recommending that cities close improved recreational trails.

"CIS understands this recommendation will not be popular. Weighing many factors and with a focus on the solvency of the trust and our members, this recommendation was determined to be the best course of action," the FAQ stated. "The

tasks required to close access ways to recreation areas might seem daunting. Once the Oregon Supreme Court's decision was made, it was determined that less aggressive measures would fail to meet the goal of protecting the trust and our members."

CIS did not respond to requests for comment.

## **Responses to the recommendation**

Scott Winkels, a lobbyist for the League of Oregon Cities, said CIS was providing sound risk management by advising governments to close recreational trails. He surmised that the ruling could also lead to increased insurance premiums for local governments.

Winkels has listened to concerns from local governments but has not yet heard of any that are seriously considering closing trails. He added that these decisions should be made locally.

"Cities are going to have to take a look at projects on the board, access to the trail systems, and determine if they can tolerate that level of risk," he said.

The Lake Oswego government has not decided what to do in response to the court decision and recommendation from CIS, and department heads are planning to meet later this month to consider a path forward. A decision might need to be made by the City Council.

West Linn has not taken action in response to the recommendation, either.

"We'll be working with the City Attorney and CIS as our insurance provider to understand our options," West Linn City Manager John Williams said in an email. "I certainly do hope that the Oregon Legislature is able to step in on this issue because people in West Linn, and all across the State of Oregon, will be incredibly frustrated if we have to close the trails that they love and use because of this technicality."

In a statement, Wilsonville City Manager Bryan Cosgrove committed to keeping trails open.

"While we are aware of the recent court ruling, and are working to urge our State legislators to restore protections through policy revision, we'll continue to serve our community's interests by keeping trails open for recreational use," the statement reads.

While local cities weigh their options, Winkels said that the league is reaching out to legislators to propose a fix to the law during the February 2024 "short" session. He said the Legislature has previously acted to protect recreational immunity and he was hopeful it would do so again.

Stephanie Noll, director of the Oregon Trail Coalition, also felt that a legislative remedy was needed both to encourage the maintenance of trails and so that private and public landowners would feel comfortable building new ones.

"(This) really has really raised so many concerns among our partners about keeping trails open to the public — the health, mental health, fitness (and) recreation benefits trails provide. We think a legislative fix is going to be needed so that land managers can keep their trails open to the public," she said.