

Coastal cities scrambling to examine — or close — their trails following Oregon Appeals Court decision in Newport case

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Garret Jaros The city of Waldport will be closing the John Mare Woodland Trail as soon as signs are available and until the issue of “recreational immunity” is resolved.

By GARRET JAROS/Yachats News

A lawsuit against the city of Newport has caused a ripple affect across Oregon that has municipalities checking their hole card to decide whether they want to heed the advice of their insurer and close public trails or gamble on a legislative fix before their hand is called.

“On July 6, the Oregon Court of Appeals issued an opinion affectively ending recreational immunity for improved trails,” according to an assessment by CIS Oregon, the insurance provider for the majority of cities in Oregon.

Based on the court’s ruling, CIS advised cities in early November to close improved trails that provide access to recreational areas and consider closing unimproved trails.

Recreational immunity refers to an Oregon law that says landowners are not liable for injury, death, or property damage that arises out of the use of the land for recreational purposes.

The lawsuit that started it all was brought by Nicole Fields, who had been walking Jan. 5, 2019 with a friend and their dogs on Agate Beach. She left the beach via the city of Newport’s improved Ocean to Bay Trail, then slipped and fell on a wet footbridge breaking her lower left leg. She filed suit against Newport in 2020 claiming it was negligent in maintaining the bridge and not posting warning signs.

Newport responded that it was immune under recreational immunity. But Fields claimed she was simply transiting the trail and not recreating.

A Lincoln County circuit court judge ruled in favor of the city, citing the longstanding protections of recreational immunity. Fields appealed the decision, saying the court could not conclude her “principal purpose” was recreation if her intent was using the trail for a different purpose.

The Oregon Court of Appeals decided there is a factual dispute as to whether Fields was using the trail while recreating or simply to access the beach and that a trial court and jury would need to make that determination. Newport asked the Oregon Supreme Court to review and reverse the appeals court decision.

It was joined in the request by the city of Medford, the League of Oregon Cities, the Association of Oregon Counties, the Special Districts Association of Oregon, and the Oregon Recreation and Park Association.

Newport argued that “Landowners must decide if making their land available for recreational purposes is worth the risk of effectively losing access to the immunity by having to litigate through trial whatever subjective beliefs an injured plaintiff asserts their principal purpose was,” according to CIS’s assessment.

But the supreme court declined to review the appeals court decision, which CIS told cities amounts to a “de facto endorsement” to strike down recreational immunity.

Garret Jaros The city of Waldport has closed its Waziyata Trail and beach access because of hazards but even if fixed will remain closed after the Oregon Court of Appeals called into question “recreational immunity” as defense against lawsuits.

Local response

Cities in Lincoln County as well as the Oregon Parks and Recreation Department are handling concerns raised by the appeals court decision and the insurers' subsequent advice differently. While all have expressed a belief the Oregon Legislature will step in to remedy the situation when it meets in February, only one city – Waldport — has opted to close a trail based on CIS's suggestion.

Waldport

"The city has faith that legislatively the recreational immunity issue, which affects the entire state, will be addressed," said Waldport city manager Dann Cutter. "The minor inconvenience of closing these trails, conveniently in the rainy winter season, is a minor price to safeguard the city's potential exposure to liability.

Cutter

"Ignoring the CIS risks them not covering a potential loss or litigation process," he said. "With limited park's budgets, why risk the taxpayer's money by ignoring such a simple short-term solution. We'll revisit it all by the time spring rolls around."

Waldport will be closing the John Maré Woodland Trail that goes from the softball fields in the heart of town to the top of Crestline Drive near the skate park. While it is a recreational trail, it could also be used for transit, which makes it susceptible to a lawsuit based on the court of appeals decision that use may depend on the intent of the person on the trail.

The Waziyata Trail at the end of Waziyata Street, which has been closed because of a treacherous stretch, Cutter said, will remain closed even if repairs are made because it too could be used for transit and not just recreation. Alternatively, the Kittel-Kaffman Trail – known as the Lint Slough Trail — will remain open because it terminates after a half-mile so could not be used for anything but recreation.

"Those are the three trails that we have in town," Cutter said. "There may be other pathways or community trails that people have created over time but those are the only three recognized trails."

Beach access sites in Waldport fall under the jurisdiction of the Oregon Department of Transportation.

Cutter expects and will "push hard" for a fix during the Legislature's short February session, which he believes will result in an end to the situation within six months at most.

"And that's why I'm closing these — knowing that we're heading into the rainy, dark season where these trails will honestly not get utilized that much," Cutter said. "And that I am not hurting the citizens of Waldport dramatically by protecting them from potential liability for closing these while the legislature comes up with a fix."

Waldport pays CIS Oregon \$72,000 a year for insurance, he said, which has been increasing 15 to 20 percent a year.

Yachats

"Currently we are not planning on doing anything," said Yachats interim city manager Rick Sant. "I think there is an assumption that the Legislature is going to jump in and pass some laws that will protect cities from that kind of thing."

Sant

The city has lots of local trails maintained mostly by a robust group of volunteers.

The legal advice Yachats is getting is to just "hold off" Sant said. The fact that Waldport is getting a different opinion demonstrates how things like this can be problematic and take a while to sort through.

“I’m surprised Waldport would do that,” Sant said. “I don’t think there’s anything wrong with it. I understand why they’re doing it. But Waldport is the first one I’ve heard actually doing something. It doesn’t hurt to be cautious I guess.”

Following the advice of CIS would mean closing the 804 Trail in the city as well as parts of the Amanda Trail and others in town because it could be argued they are used for purposes other than recreation and thus not covered by recreational immunity.

Newport

“The steps that we are taking at this point is really conducting an inventory of the various formal and informal trails that people access across city property,” Newport city manager Spencer Nebel told Yachats News. “And we haven’t taken any action to either sign them, close them or take other steps other than what we normally do and that’s reviewing them for any potential problems or hazards.”

In regards to the Legislature, because the upcoming session is short, it is difficult to determine what will come out of it, Nebel said.

“But certainly, this is a really critical issue and the fix is relatively simple to clarify recreational immunity,” Nebel said. “But again, if you interpret this literally it could have a significant impact on property owners, not just cities. This could impact private property owners as well who have allowed access across their property for recreational purposes.

“And so I think it is something that definitely needs a legislative fix in order to address the questions that came up through the state court of appeals.”

Because of the ongoing litigation, Nebel said he could not comment on whether CIS Oregon is footing the bill for the city’s defense in the Fields case.

All cities pay for insurance and as long as the activity is covered by the insurance policy, then the insurance company is responsible for those lawsuits, he said. But when premiums are set for cities, the basis for whether there is a potential risk or not is key to what those future premiums will be.

“And if the recreational immunity is impacted by this court decision, that has an impact on claims that insurance companies would have to pay and that’s going to have an impact on premiums that cities pay,” Nebel said. “In the past ... when there were liability questions about certain things like skate parks, they basically stopped insuring cities for those kinds of activities.”

Nothing like that has happened in Newport’s case. But Nebel said CIS is basically alerting everyone that the court of appeals decision could bring changes to the operation of trails.

Depoe Bay

Depoe Bay is following CIS’s recommendations by checking its trails to see if any work needs to be done but is not closing any, said city recorder Kim Wollenburg.

“It is a concern,” she said. “Council did pass a resolution Nov. 21 that I’m getting ready to send to Rep. (David) Gombert and Sen. (Dick) Anderson. We, like other cities have as well, expressed our concerns about this. So council did pass a resolution that basically says ‘Don’t force us to do things, we want our recreational immunity back.’ ”

Lincoln City

Lincoln city is going through the assessment sent out by CIS to examine its trails, beach access and other things, said city manager Daphnee Legarza.

“So we are in that process,” she said. “But nothing has been closed.”

Oregon Parks and Recreation Department,

“We are aware of the case (Nicole Fields v. the city of Newport) and we are watching it and consulting with the Department of Justice,” said Oregon Parks and Recreation Department spokesman Chris Havel. “But we have no plans to close any state park trail or any other facility at a state park as a result of that case.”

Rep. David Gomberg, D-Otis

In his weekly newsletter, Gomberg said he expressed his concerns about the issue with the Oregon Parks and Recreation Commission at its November meeting in Newport as well as at the Cape Perpetua Land and Sea Symposium in Yachats.

Gomberg called the recommendation by CIS to close all improved recreational trails a “big deal” and said while he hates to see someone injured, if recreational immunity is cast aside, it could lead to the closure of public spaces.

“I’m not hearing of plans to close local trails, parks or beaches yet,” Gomberg wrote. “But in the meantime, these rulings ... will likely lead to increased insurance premiums for local and state governments. My concern is not with people who have brought these cases, but rather whether we need to update our negligence and immunity statutes.”

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