

# MEMORANDUM

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: CITY MANAGER CYNTHIA ALAMILLO**

**RE: UPDATE ON CHERRY TRAIL**

**DATE: SEPTEMBER 3, 2020**

## **RECOMMENDED ACTION:**

Move to allow the Assistant City Manager to amend C2 Recreation Consulting contract to include the creation of a City Trail Master Plan and to develop a scope of work and budget for Council to approve at the October City Council meeting.

## **BACKGROUND INFORMATION**

In April 2020, an existing pedestrian connection across private property from Cherry Street to Ocean Road was physically closed by the property owner. In response, the Classic Ridge Trail Access Campaign (TAC) was formed to re-establish access from the neighborhood down to the beach. The TAC developed a proposal for a pedestrian trail, named the “Cherry Trail”, through the undeveloped public right-of-way of Ocean Avenue between the south end of Cherry Street and Ocean Road.

The City hired Chris Bernhardt from C2 Recreation Consulting to review the TAC’s proposal. The first recommendation from Chris is to have legal counsel review a letter submitted by the attorneys from Mr. Brian Rohter and Ms. Eileen Brady. James Walker, City Attorney will join the September Council meeting to discuss this first step.

At past meetings, the City Council has discussed how to help the TAC re-establish access to the beach and while their proposed trail has been evaluated as a feasible option, the consultant’s assessment indicated the need for a more rigorous review.

To continue supporting the TAC, I suggest that the City continues working with C2 Consultant to develop a City Trail Master Plan. In the past, the City of Manzanita has counted on volunteer groups that have worked hard to implement new projects for the benefit of the community. This includes the doggie stations and the City Park. TAC is a group of volunteers that are also working hard to bring in a new amenity for the community and the City should support this initiative.

A City Trail Master Plan would have the purpose of providing direction and standards for the TAC to develop the Cherry Trail and would allow the City to establish policy guidance for the gradual and phased development of a city-wide loop that would connect the beach, state park and Laneda Avenue.

Ultimately, the master plan would be aimed at enhancing livability in our community. It would also provide a compelling basis for grant application opportunities, as well as support the City's, TAC's, and other local group's enthusiasm, planning and budget process for new trails.

Tentatively, the City Trail master plan would include the following:

- Implementation of the action steps identified in the consultant's report for the Cherry Trail.
- Identify a city-wide loop or a city-wide trail network that would include the proposed Cherry trail.
- Verify the degree of interest and enthusiasm for trail development
- Consider geographic locations within the City where potential trail would be most feasible, make good sense and would attract the highest utilizations.
- Serve as a reference document and provide useful information to encourage other local groups like TAC to support, adopt or provide maintenance to a trail segment.
- Provide the basis for pursuing grants and other external funding.
- Establish the policy and process for securing land easements, dedications, or donations.
- Provide action recommendations and implementation priorities for the acquisition, development, maintenance and management of individual trail segments and the overall trail loop/network
- Offer strategic directions for a phased development of the trails

While a city-wide trail loop or network has not been discussed previously, I believe that the resources that have been invested by both the City and the TAC, can serve a larger purpose. I also believe there is a high interest in the community for a city-wide loop. Walking throughout the city is one of the most enjoyed activities of our community members, and by providing a City-wide loop, the City would immediately increase the livability and beauty of community.

Staff fully supports the decision to allow the Assistant City Manger to continue working with C2 Recreation Consulting to develop a City of Manzanita Trail Master Plan.

July 20, 2020

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Brian Rohter & Eileen Brady  
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**Re: South Cherry Trail - Preliminary Legal Review**

Dear Brian and Eileen:

You have asked for a preliminary review of the potential regulatory approvals, processes, permits, standards, and other legal considerations that will likely apply to the proposed “South Cherry Trail” (“SCT”) project. For purpose of analysis below, we understand that a group of citizen volunteers (“Proponents”) have asked the City of Manzanita (“the City”) to allow them to construct a walking trail (with base rock, wooden treads, structural bracing, series of 3 stairways, and other components) on a span of sand dune between Cherry Street and Ocean Road within an undeveloped and unused, public right-of-way extension of Ocean Avenue. This understanding is based on limited information provided by the Proponents (including just two submittals<sup>1</sup>), so please consider the following as the likely regulatory requirements and/or considerations which should be the subject of due diligence and compliance determinations by the City prior to any approval of a project application for location within the public right-of-way.

**1. City of Manzanita Permit is Required for Work in Public Right-of-Way.**

Pursuant to City of Manzanita Ordinance 02-01, *AN ORDINANCE REGULATING PUBLIC RIGHTS-OF-WAY IN THE CITY OF MANZANITA, TILLAMOOK COUNTY, OREGON*, no person may occupy or encroach on a public right-of-way without first obtaining a permit from the City:

SECTION 1: Public Rights-of-way. Include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements and all other public ways or areas, including subsurface and air space over these areas.

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<sup>1</sup> The Proponent information reviewed for this analysis includes: a May 25, 2020 “Proposal to the City of Manzanita” and an undated “TKO and Manzanita Trails Access Group assessment proposal.”

SECTION 4: City Permission Requirement. No person may occupy or encroach on a public right-of-way without the permission of the City. The City grants permission to use rights-of-way by franchises, licenses, and permits.

Accordingly, the proposed new South Cherry Trail (“SCT”) cannot proceed without a permit from the City.

**2. Deficiencies in SCT Proposal.**

**A. Location of South Cherry Trail in Public Right-of-Way.**

From the limited information provided by SCT Proponents, it is unclear if the proposed construction is entirely within the narrow (approx. 25’) public ROW which extends from Ocean Avenue. A professional survey is required to confirm the precise location of the public ROW and the location of the proposed trail segments (*prior to* conducting any work) to confirm the SCT would not encroach on private property outside the ROW.

**B. Lack of Construction Details/Plans.**

The proposal fails to provide any detailed plans, elevations, engineering, slope and load calculations, geotechnical data, and other basic reports and documents that would allow the City and the public an opportunity to evaluate the feasibility, potential hazards and long-term public maintenance responsibility associated with the project, including potential impacts to adjacent private properties.

**C. Inadequate Operation & Maintenance.**

The proposal contemplates only three-years of maintenance (and allocates only \$1,000). There is no long-term operation and maintenance plan nor is there any assessment of whether \$1,000 is adequate for reasonably anticipated maintenance, and particularly in light of the absence of geo-tech analysis and detailed construction plans. As a path in the City ROW, the City will ultimately have responsibility for such costs in perpetuity.

**D. Inadequate Public Process.**

The City has failed to provide adequate public process which allows meaningful input and analysis. A project which will impact this active dune environment with large permanent structures placed in immediate proximity to residences and public roads should be preceded by a thorough public process and careful review by professional City staff including, at a minimum,

formal public notice and written comment, public hearings, application review, staff report review, and public review/rebuttal of professional reports.

**3. The Proposed SCT Construction is Not Authorized Under the Foredune Management Overlay Zone.**

Pursuant to City of Manzanita Ordinance NO. 95 - 6, *AN ORDINANCE ADOPTING STANDARDS AND REGULATIONS FOR A FOREDUNE MANAGEMENT OVERLAY ZONE*, much of the proposed SCT path is located within the foredune overlay zone of the North Manzanita Management Unit. This overlay zone allows the following outright uses and activities:

1. Sand Transfer within and between management units.
2. Vegetative Stabilization and sand collection.
3. Maintenance activities, including remedial grading and foreslope shaping.

Correspondingly, the SCT activities (which include construction of three elevations of stairs, tread installation, gravel fill, switchback construction, stormwater controls, and removal of vegetation) are *not permitted uses or activities* within this zone. Further, if the SCT was authorized by the City, this ordinance provides that any “foredune management activities” are subject to standards in Section 9, but *only* as part of an approved management unit “subarea<sup>2</sup>” plan. Such “subarea plans” have specific process and substantive requirements, including:

- identification of the limited geographic location of the management unit subarea (per definition criteria);
- details on scope and timing of activities to be carried out in the subarea;
- plan views and elevations of both existing conditions and proposed modifications in the subarea;
- a monitoring and maintenance program;
- provisions pertaining to access management; and

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<sup>2</sup> Ordinance No. 95-6, Section 3: DEFINITIONS: \* \* \* “Subarea: A portion of a management unit or units. A subarea shall extend a minimum of 500 feet of continuous shoreline in length. The shoreward (eastern) boundary of a subarea corresponds to the shoreward (eastern) boundary of the Foredune Management Area. This boundary is defined as the western foundation of existing buildings and a direct line between the western building foundations where there is no building. Any porch or deck west of the house foundation shall be considered as within the subarea.”

- identification of the individual(s) responsible for supervising the project.

Significantly, the subarea plan *shall have the approval of 60% of the property owners in that subarea*. The subarea plan must first be submitted to the City for administrative review prior to undertaking any activities in the Foredune Management Overlay Zone (consistent with the Manzanita Foredune Management Plan, Management Strategy and compliance with the City's Zoning Ordinance). There is also a fee (determined by the City) which shall accompany the plan. A qualified professional (engineer, engineering geologist, structural specialist) must inspect the work area before and after grading to confirm that grading and other measures have been done in compliance with the specifications outlined in the plan. The cost of this professional work is the responsibility of the property owners authorizing the work. The work window for any approved plan is restricted to October 1st through April 30th.

The SCT proposal does not appear to have addressed any of the above provisions. Absent such compliance, any required building or structural permit cannot be issued.

#### **4. City of Manzanita Zoning Ordinance - R-2 Base Zone.**

The subject site is zoned Medium Density Residential, R-2 pursuant to City Zoning Ordinance No. 95-4. Uses allowed as right in this zoning district include “park and publicly owned recreation area,” which means that the City will be required to demonstrate that the SCT constitutes such an allowed use based on the stated intent of the structural improvement. Such compliance findings must be rendered at the time of building permit issuance. It is more likely that the proposed pathway constitutes a “government structure including utility substation” since the adopted definition of structure includes “walks” and similar improvements. *See* Ordinance No. 95-4, Section 1.030 and 3.010(2). This requires conditional use approval pursuant to Ordinance No. 95-4, Section 3.010(2).

#### **5. City of Manzanita Zoning Ordinance - Beaches and Dunes Overlay Zone.**

##### **A. Beaches and Dunes Overlay Zone.**

Based on the City of Manzanita Zoning & Address Map, and the definition of “applicable areas” in City of Manzanita Zoning Ordinance 95-4 (“MZO”), Section 3.081, *Beaches and Dunes Overlay Zone*, the area of the proposed SCT falls within the MZO *Beaches and Dunes Overlay Zone*. The intent of this overlay zone is to regulate uses and activities in beach and dune areas in order to: 1) ensure the conservation and protection of beach resources and 2) protect dune areas, consistent with the built and committed exception of Goal 18, Beaches and Dunes Implementation Requirement 2, taken by the City. Development in this overlay zone is only allowed (pursuant to MZO Section 3.085) “if the findings required in Goal 18 implementation

requirement 1 are presented, and it is demonstrated that the proposed development: (a) Is adequately protected from any geologic hazards, wind erosion, undercutting, ocean flooding and storm waves, or is of minimum value; (b) Is designed to minimize adverse environmental effects (Note: These findings shall be made through the site investigation report).”

### **B. Goal 18 Compliance.**

With regard to the requirement to address statewide land use Goal 18 - Beaches and Dunes, the City must make findings demonstrating compliance with applicable Goal provisions since the City’s acknowledged ordinances incorporate this criterion. The City must evaluate the inventoried dune resources, adequate protection from geologic hazards (e.g., seismic and erosion), environmental effects of the project, and policies adopted to demonstrate Goal 18 compliance.

### **C. Site Investigation Report.**

Pursuant to MZO, Section 3.085, a registered geologist/engineer must prepare a Site Investigation Report (prior to the issuance of a building permit or conditional use application) for any work proposed in active foredunes, certain conditionally stable foredunes, and on all properties with a slope of 25% or greater. The burden is on the applicant to show construction feasibility and demonstrate: (1) The site investigation indicates that there is not a hazard to the use proposed on the site or to other properties in the vicinity; or (2) The site investigation specifies engineering or construction methods which will eliminate or minimize to an acceptable level the identified hazard.

MZO Section 3.085 further requires the applicant to meet the substantive requirements of MZO Section 4.050 which (*prior to* a Site Investigation Report) requires preparation of a detailed “Preliminary Site Investigation Report” by a qualified professional geologist, engineering geologist, soil scientist, etc. to “fully disclose the nature of on-site hazards or it shall conclude that known hazards were adequately investigated, and recommend development standards for buildable areas.” The Preliminary Site Investigation Report must evaluate, e.g., dune landforms, history of erosion or accretion, topography, elevations, beach zone lines, location of protective structures, and other site conditions, and must affirmatively find:

- (a) That the use will not have an adverse effect on the site or adjacent areas;
- (b) That permanent and temporary stabilization programs and maintenance of new and existing vegetation will be carried out;
- (c) That hazards to life, public land, private property and the natural environment will be avoided;
- (d) That methods for protecting the surrounding area from any adverse effects of the development shall be addressed.

The City building official may also require a supplemental site investigation by a registered geologist in open sand areas or other sites where there is a potential for wind erosion or other hazards. The City cannot approve plans unless they are consistent with the above provisions of the MZO. Accordingly, approval by the City should require Goal 18 findings, approval of both a Preliminary Site Investigation Report and Site Investigation Report, and a geologist site investigation specifically to address potential sand/wind/water erosion (based on prior history of erosion observed on the same dune area) pursuant to the MZO.

## **6. Street Improvement Standards.**

City of Manzanita Ordinance 91-2, *AN ORDINANCE CREATING STREET IMPROVEMENT STANDARDS*, applies to all “streets” in City of Manzanita, and purports in Section 1 to set “minimum requirements adopted by the City for the protection of the public health, safety, and welfare. Such provisions are intended to provide for orderly and safe street design, construction and repair.” “Street” is broadly defined in the MZO, Section 1.030, as follows:

“Street. The entire width between the right of way lines of every public way for vehicular and pedestrian traffic and includes the terms road, highway, place, avenue, alley, and other similar designations.”

### **A. Construction Standards.**

Ordinance 91-2 establishes minimum “Construction Standards” for all streets in Section 4, and specifies, among other provisions, the following:

- “Plans shall be designed to City standards by a licensed engineer”
- “Clearing, leveling, grading and drainage shall be approved by the City prior to start of construction”
- “All surfaces on which a base is to be constructed shall be firm at the time aggregate is placed thereon.”
- “No materials shall be placed on soft, muddy or frozen sub-grade”
- “Base rock for all City streets shall be 10” depth minimum. A ¾” minus crushed gravel layer shall be 3” depth minimum and applied on top of the base rock”
- “Compaction of base rock shall be at each 5” lift. Each layer shall be spread and compacted to the full width of the course before a succeeding layer is placed. The surface of each layer shall be compacted using mechanical vibrators or impact tampers. Compaction shall begin as soon as practicable after material is spread and continue until a density of not less than 95% of the maximum density has been achieved”
- “Concrete gutters and drywells are required for all streets”

Based on the above, the proposed SCT construction will be required to demonstrate conformance with the standards in Ordinance 91-2 or, in the alternative, that such standards are not applicable based upon a reasonable interpretation of the adopted code. Even if the City was inclined to consider alternative construction standards, any such interpretation must be consistent with applicable code provisions and must meet the minimum standards of protecting the public health, safety and welfare. However, no standards have been proposed or evaluated based on the information submitted.

**B. Permit Required.**

Section 6 provides that “No person, firm or corporation shall open a street surface, dig within the right-of-way or otherwise substantially alter a public right-of-way without first obtaining a permit from the City.” Accordingly, a street ROW permit is required.

**C. Warranty for Street Work.**

Section 8 mandates a one-year warranty period, during which the permit-holder is responsible for repairing any construction or excavation work which fails during the warranty period.

**D. Performance Bond & Insurance Required.**

Section 9 requires the permit applicant and/or contractor to submit to the City a performance bond, deposit of cash, or irrevocable letter of credit in an amount greater than or equal to 100% of the cost of repairing the right-of-way to as good or better condition as it was prior to the work included in the permit. Further, the permit applicant and/or contractor must shall take out and maintain Public Liability and Property Damage Liability Insurance and Automobile Public Liability and Property Damage Liability Insurance covering the City and any subcontractor performing work covered by the Permit from claims for damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under the Permit (per minimum policy limits set in the code).

**7. City of Manzanita Nuisance Ordinance.**

Pursuant to City of Manzanita’s Nuisance Ordinance, *AN ORDINANCE DEFINING NUISANCES; PROVIDING FOR THEIR ABATEMENT; PROVIDING PENALTIES AND REPEALING CONFLICTING ORDINANCES ORDINANCE NO. 79-6 NUISANCE ORDINANCE*, Section 22 provides as follows:

It shall be unlawful for any owner or person in charge of a building or structure to suffer or permit rainwater, ice or snow to fall from the building or structure onto a street or public sidewalk or to flow across the sidewalk. 2. The owner or person in charge of property shall

install and maintain in proper state of repair adequate drainpipes or drainage system, so that any overflow water accumulating on the roof or about the building is not carried across or upon the sidewalk.

The SCT proposal indicates that stormwater management/erosion will be addressed through various measures, including:

- “[U]sing US Forest Service techniques including adding knicks or water bars so that water can readily flow away from the trail if impacted”
- Staircase 3 “will include an erosion control berm at the confluence with Cherry Street...”
- “Adding culverts to existing drainages, creating new ditch lines for water to be directed appropriately - 3-sided rock or corrugated poly plastic are recommended.”

This raises significant concerns about where re-routed stormwater will flow, and whether it might create a nuisance to public or private property (e.g., mudslides or stormwater flows onto Ocean Road, undercutting adjacent residential structures via erosion, or ponding as vectors for mosquitoes) and associated liability to the City for damage to adjacent properties including loss or diminished of lateral support. No application should be approved without submittal of a comprehensive stormwater management plan prepared by a qualified professional engineer in addition to a slope/construction stability report and any related City permits.

## **8. ORS Chapter 390 - Ocean Shores; State Recreation Areas.**

Pursuant to ORS Chapter 390.605 through 770, any “improvements” to areas that fall within the statutory boundary of the “ocean shore” require permits from the State of Oregon State Parks and Recreation Department. The geographic boundary of the “ocean shore” is defined (upland) as the line of established upland shore vegetation or as described in ORS 390.770. An “improvement” is broadly defined to include: “filling a portion of the ocean shore, removal of material from the ocean shore or a structure, appurtenance or other addition, modification or alteration constructed, placed or made on or to the land.” ORS 390.605(2). Accordingly, the SCT Proponents must determine whether any portion of the proposed SCT construction falls within the geographic boundary of the “ocean shore” as defined in ORS Chapter 390.605. If the SCT is determined to fall within the “ocean shore” boundary, then the permitting and public review/hearing processes outlined in ORS 390.640 and 650 are mandatory.

## **9. ORS Chapter 390 - Oregon Trail Systems Act.**

ORS 390.950 through 995 provides a statewide statutory process for establishing recreational “trails” in Oregon. The State of Oregon Parks and Recreation Department can establish

recreational trails, but only after a public process including a hearing and consideration of the following criteria outlined in ORS 390.965:

(a) Emphasis shall be given to the development of trails across public lands.

(b) No trails shall cross private land occupied by a residential dwelling, or upon which a residential dwelling is under construction, within 300 feet of such residential dwelling, without the consent of the owner.

(c) Trails shall be selected to minimize the adverse effects on adjacent landowners or users and their operations.

(d) Development and management of trails shall be designed to harmonize with and complement any established forest, agricultural, or other use plan that is compatible with the purposes of ORS 390.950 to 390.989 and 390.995 (2).

(2) Before establishing a trail, the department shall consider at a public meeting the following information:

(a) The proposed route of such trail (including maps and illustrations) and the recommended mode or modes of travel to be permitted thereon;

(b) The areas adjacent to such trails, to be utilized for scenic, historic, natural, cultural or developmental purposes;

(c) The characteristics that, in the judgment of the department, make the proposed trail suitable as an Oregon recreation trail;

(d) The current status of land ownership and current and potential use along the designated route;

(e) The estimated cost of acquisition of lands or interest in lands, if any;

(f) The plans for developing and maintaining the trail and the cost thereof;

(g) Any anticipated problems of policing the use of such trail and any anticipated hazards to the use of any privately owned lands adjacent to such trail; and

(h) The extent to which the state or its political subdivisions and public and private organizations might reasonably be expected to participate in acquiring the necessary lands and in the administration thereof.

While it is unclear whether the SCT is intended for designation as a trail under ORS Chapter 390, the above criteria are highly relevant to the City's analysis of site selection, including suitability of proposed location, citing trails away from residential properties, long-term ownership/maintenance costs, and any unique hazards the trail might pose.

#### **10. DSL Removal Fill Permit.**

The SCT Proponents have the burden to evaluate if the removal and fill activities (which, as noted in Proponents' submittals, involves removing/filling sand and gravel, and working to avoid "wet zones") will require a Removal-Fill Permit from the Oregon Department of State Lands ("DSL") based on the potential presence of wetlands in the area of the proposed SCT project. The City should not approve the application unless the City or the project Proponents obtain an approved wetland delineation (from a qualified consultant) and analysis of removal/fill permit obligations in conformance with DSL rules.

#### **11. Threatened and Endangered Species.**

The Proponents have an obligation to evaluate and demonstrate there will not be environmental impacts from the SCT project. A biological survey should be conducted to determine if proposed construction might impact federal or state threatened or endangered species/habitat in the area of the proposed SCT.

#### **12. 1200-C Construction Stormwater Permit Applicability.**

The applicant must determine if the scope of the construction activity triggers the threshold requirements of the Oregon Department of Environmental Quality (DEQ) 1200-C Construction Stormwater General Permit, and, if so, obtain coverage under that permit as a registrant.

#### **13. Oregon State Building Code/Oregon Structural Specialty Code.**

The SCT site poses several unique challenges for construction, including the mobile nature of the dune sand/soil environment, lack of stable soil for structural support, high potential for increased erosion due to weather, stormwater and de-vegetation from trail use (as observed in adjacent areas of the same dune), and slope destabilization from excavation. Accordingly, proper construction standards must be evaluated and implemented.

The Proponents' submittals state that construction will include: treads with turnpikes or puncheons using debarked, notched logs and backfilled with pitrun rock, then layered with  $\frac{3}{4}$  minus and top dressed with  $\frac{1}{4}$  minus; 40 ft+ runs of box stairs held by rebar; adding culverts to existing drainages; creating new ditch lines for water to be directed; rerouting small sections, 25 yards or less, to address grading issues or wet zones; adding rock and wood crib/retaining walls to stabilize erosion/slide areas or degraded switchbacks). Each of these proposed construction techniques will have potential long-term impacts on structural slope stability, erosion and safety.

As noted above, multiple City and State code provisions mandate evaluation of the proposed SCT construction including, e.g., slope stability, stormwater runoff, erosion, impacts to adjacent

properties, construction standards, engineering (both lateral and horizontal support of trail components), and related design/materials. Proponents (and the City) must evaluate which provisions of the Oregon State Building Code and/or Oregon Structural Specialty Code apply to the proposed SCT project in addition to provisions of the Manzanita City Code.

#### **14. Archeological Survey/Inadvertent Discovery Plan.**

Oregon Coast dunes are frequently documented to contain artifacts from Oregon's coastal native tribes and subsequent non-indigenous settlement. Prior to any construction of the SCT, the City should require an archeological survey (conducted by a qualified professional archaeologist) and preparation of an "inadvertent discovery plan" to ensure that state statutory requirements are followed with regard to any artifacts or human remains found. It is further recommended that the City require the Proponent to consult with the Oregon State Historical Preservation Office ("SHPO") and local tribal governments before any ground-breaking activities occur.

#### **15. ADA Title II.**

The Federal Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 ("ADA"), Title II, specifically applies to local governments. Public facilities built or altered by local governments after January 26, 1992 must be readily accessible to, and usable by, individuals with disabilities. In a recent case, *Kirola v. City and County of San Francisco*, 860 F.3d 1164 (9th Cir. 2017), the 9th Circuit Court held that failure of a local governmental facility to provide "meaningful access" constitutes a violation redressable in civil court. The *Kirola* court held that federal ADA regulations apply to public rights of way, parks and playground facilities because those government facilities include "features" such as ramps that are expressly governed in the federal ADA regulations. <https://www.westerncity.com/article/lessons-local-governments-about-ada-lawsuits>.

Accordingly, there is strong indication that the ADA applies to the SCT because it will be a municipally-owned trail located entirely in a public ROW. The City will have to evaluate the applicability of the ADA "meaningful access" standards for the SCT as the City ultimately has the civil liability for the failure to make the trail ADA compliant.

#### **16. Civil Liability.**

Because the SCT will be located on public land, and owned entirely by the City of Manzanita, the City's potential civil liability risks include, but are not limited to, the following:

- *Personal Injury*: (e.g., persons using the path, negligent design, negligent construction, failure to maintain, catastrophic failure of the trail, pedestrians crossing public streets with no crosswalks or stop signs, etc.);

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- Property Damage: (e.g., erosion impacts which undermine the structural integrity of adjacent private properties, debris/water flow onto private properties);
- Nuisance/Trespass: (e.g., from conditions caused by redirected stormwater, vectors, mudflows, landslides onto private properties or Oregon Road);
- Regulatory Challenges: (e.g., failure to follow all applicable regulatory permits, standards, procedures, etc., including related administrative and judicial appeals).

Note: The City/City Attorney will need to independently evaluate the risk and degree of civil liability posed by the SCT project, which may include other risks/liability not cited above.

Very truly yours,



Christopher W. Rich



Steven L. Pfeiffer