

Madrone Wall Preservation Committee
5815 N.E. 31st Avenue
Portland, Oregon 97211
www.savemadrone.org
26 August 2005



Mary Cook Swanson
Senior Planner
Clackamas County Department of Transportation
9101 S.E. Sunnybrook Road
Clackamas, Oregon 97015

Re: Liability at Hardscrabble/Madrone Wall

Dear Mary:

PAB Focus Groups: We are encouraged by the outcomes of recent Parks Advisory Board (PAB) focus group meetings with citizens living near the Madrone Wall (10 August) and with various agencies (16 August). We are looking forward to the 14 September PAB focus group meeting for recreation groups to provide verbal input to the PAB regarding future use of the Madrone Wall. I understand the citizens spoke with a unified voice supporting preservation and re-established access to this publicly-owned site. This verbal input is reinforced by the unanimous support, offered to the Board of Commissioners in letters, of five Citizen Planning Organizations (Grant Park - the area in which the Madrone Wall resides, Rock Creek, Boring, Eagle Creek-Barton, and South Clackamas). Citizens clearly value the natural heritage of this amazing civic treasure for recreation, education, stunning views, and watershed and habitat protection. Their consensus advocating no quarrying or development of the site is equally unified. Various agencies provided input that reinforced the citizen input.

Oregon Revised Statutes & Commissioner Sowa: There appear to be some lingering questions over potential liability. To assist your County-directed process, we offer the following input. The County is clearly protected from frivolous lawsuits by the strong backing of the Oregon Revised Statutes (ORS) public use of lands section. ORS 105.682 addresses the liability of the owner of land used by the public for recreational purposes and states "an owner of land is not liable in contract or tort for any personal injury death or property damage that arises out of the use of the land for recreational purposes." In fact, while providing a solid foundation of protection to public and private landowners alike, the statutes also allow landowners to encourage outdoor recreation as ORS 105.676 makes it public policy "to encourage owners of land to make their land available to the public for recreational purposes ... by limiting their liability towards persons entering thereon for ... the use of such land for recreational purposes." Commissioner Larry Sowa evidently recognizes the excellent protection these statutes provide, which, as an aside, he was influential in helping craft as a State Legislator. He recently stated that "other areas have operated under county auspices and liability is taken care of, so I think that could be done (at Hardscrabble)"⁽¹⁾. The Madrone Wall is public land, there are multiple recreational use activities available, and the site should be re-opened to a public which has been exceedingly patient with closure of its land for nearly a decade.

Endorsing Preservation:

- Grant Park CPO
- Boring CPO
- Rock Creek CPO
- Eagle Creek-Barton CPO
- South Clackamas CPO
- Damascus for Open Space
- Friends of Barton Pk. & Clack. Riv.
- Friends of Mount Hood
- Cooper Spur Wild and Free Coalition
- Oregon Natural Resources Council
- Sierra Club
- Friends of Forest Park
- Three Rivers Land Conservancy
- Still Meadow Community
- American Alpine Club
- Fed. of Western Outdoors Clubs
- Mazamas
- Ptarmigans
- The Access Fund

County Counsel: Our Schwabe Williamson & Wyatt attorney and land use and property rights expert, Steve Morasch, contacted Clackamas County Counsel Steven Lounsbury in January to discuss the County's position on liability as it relates to the Madrone Wall. Mr. Lounsbury indicated that the County was no longer concerned with liability issues, especially in light of the recent *Waggoner v. City of Woodburn* case. In this case, the Oregon Court of Appeals issued a decision in December 2004 affirming ORS 105.672 insulates local governments from liability for recreational use of government land. Mr. Lounsbury indicated to our attorney that what the County does with the site is now a policy decision for the Board of Commissioners.

Recommendations: 1.) To gain the Clackamas County perspective on liability, we recommend you speak directly to County Counsel Steven Lounsbury. 2.) To gain a wider perspective on how other Oregon public landowners handle liability issues, we recommend you speak with contacts listed below at Oregon Parks and Recreation, Oregon Department of Transportation, and the United States Forest Service. While Oregon's Smith Rocks State Park is a world-class climbing destination and can offer input on how potential liability is handled, ODOT's Rocky Butte and Oregon Parks' Lewis and Clark State Park offer a closer approximation the future climbing recreational traffic that would likely be experienced at the Madrone Wall.

The Madrone Wall Preservation Committee is a tax exempt 501(c)(3) Oregon all-volunteer public charitable organization focused on preserving and re-establishing access to the Madrone Wall of Clackamas County and to act as a parks advocacy organization for a future park at the site of this amazing civic treasure.

3.) We recommend that your research include considering use patterns at Rocky Butte and Lewis and Clark State Park as a model for the Madrone Wall. We offer to tour you and your colleagues at these sites as part of your information gathering process; can we make arrangements to do this? 4.) Finally, for an even broader perspective on liability matters related to climbing and recreation, we recommend you contact The Access Fund which is an outstanding clearing house for information on access to rock climbing areas nationwide. Thank you.

Sincerely,

Keith K. Daellenbach

Keith K. Daellenbach (503/691-4102, kdaellenbach@att.net)
Director, Secretary/Treasurer

Liability Contacts:

- Donna Andrew, Risk Management and Safety Officer, Oregon Parks and Recreation Department, 725 Summer Street, N.E., Suite C, Salem, Oregon 97301, 503/986-0652
- Thad Fitzhenry, Park Ranger/Field Operation, Smith Rock State Park, 9241 N.E. Crooked River Drive, Terrebonne, Oregon 97660, 503/548-7501
- Malcolm Hamilton, Recreational Program Manager, United States Forest Service, Mt. Hood National Forest Headquarters, 16400 Champion Way, Sandy, Oregon 97055, 503/668-1792
- Gary Hunt, Permit Specialist, Oregon Department of Transportation, District 2B, 9200 S.E. Lawnfield Road, Clackamas, Oregon 97015, 503/652-5689
- Steven Lounsbury, County Counsel, Office of County Counsel, 2051 Kaen Road, Oregon City, Oregon 97045, 503/655-8362
- Kevin Price, Assistant Area Manager, Columbia River Gorge Management Unit, P.O. Box 100, Corbett, Oregon 97019, 503/695-2261 x222 (Lewis and Clark State Park)
- Shawn Tierney, Access and Acquisitions Director, The Access Fund, 207 Canyon, Suite 201, Boulder, Colorado 80302, 303/545-6772 x105, www.accessfund.org

cc:

- Commissioner Martha Schrader, Chairperson
- Commissioner Bill Kennemer, Vice Chairperson
- Commissioner Larry Sowa

- George Allen, Vice Chair, Rock Creek CPO
- Don Arbuckle, Chair, Grant Park CPO
- Virginia Bowers, Conservation Program Director, Three Rivers Land Conservancy
- Phyllis Brinkley, Chair, Eagle Creek-Barton CPO
- Clackamas County Parks Advisory Board c/o Parks Department
- Jayne Cronlund, Executive Director, Three Rivers Land Conservancy
- Jim Desmond, Director, Metro Regional Parks and Greenspaces Department
- Jo Anne Dolan, Outreach & Communications Coordinator, Clackamas River Basin Council
- Mike Ferrell, Citizen, Clackamas County
- Cam Gilmour, Director, Department of Transportation & Development, Clackamas County
- Fiona Gwozdz, Clackamas County Intern, Madrone Wall/Hardscrabble Project
- Joe Hargrave, Vice President, Oregon, Federation of Western Outdoor Clubs
- Steven Lounsbury, County Counsel, Clackamas County
- Mike McLees, Supervisor, County Parks and Forest, Clackamas County
- Steve Morasch, Land Use & Property Rights Attorney, Schwabe, Williamson & Wyatt, P.C.
- Gretchen O'Brien, Citizen, Clackamas County
- Les Otto, Chair, Boring CPO
- Kellie Rice, Regional Volunteer Coordinator, Western Oregon, The Access Fund
- Shawn Tierney, Access and Acquisitions Director, The Access Fund
- Dan Zinzer, Manager, Transportation Engineering, Parks & Property Management, Clackamas County
- Joan Zuber, Vice Chair, South Clackamas CPO

⁽¹⁾: Commissioner Sowa quoted in Chris Ehrlich's "Scaling a political wall" article in *The Oregonian*, 12/09/04.