

## Villages at Mt. Hood Board of Directors

### **Resolution of Support for Updating the Skiing Activities; Oregon Revised Statute (ORS) 30.970 - 30.990**

**WHEREAS**, at least 68% of Oregon residents participate in outdoor recreation each year;

**WHEREAS**, outdoor recreation generates \$955 million in state and local revenue;

**WHEREAS**, 141,000 direct Oregon jobs are provided by the winter recreation industry;

**WHEREAS**, average annual visits to Oregon ski resorts are 2,000,000;

**WHEREAS**, there have been significant changes in skiing activities and operations at ski areas since the statute was enacted in 1979; **Villages at Mt. Hood Board of Directors**

recognizes the important contribution of winter recreation activities to our community and state. As a matter of protection for participants and the economy, we as a body support revising the Skiing Activities statute.

**NOW THEREFORE, BE IT RESOLVED** that by action of the **Villages of Mt. Hood Board of Directors**, of

**Clackamas County** hereby authorizes support for the updating ORS 30.970 - 30.990 in the Oregon State Legislative 2016 Session, to wit:

- (1) Adding and defining "Freestyle Terrain" to account for features built for skiers and snowboarders by trained resort staff;
- (2) Outlining dangers of venturing within ski area boundaries, but not on groomed trails;
- (3) Updating ORS to reflect changes to the participant responsibility code;

---

[Authorized Signature] [Date]

---

[Second Authorized Signature] [Date]

## **Mt. Hood Bicycle/Pedestrian Coalition**

### **Resolution of Support for Updating the Skiing Activities; Oregon Revised Statute (ORS) 30.970 - 30.990**

**WHEREAS**, at least 68% of Oregon residents participate in outdoor recreation each year;

**WHEREAS**, outdoor recreation generates \$955 million in state and local revenue;

**WHEREAS**, 141,000 direct Oregon jobs are provided by the winter recreation industry;

**WHEREAS**, average annual visits to Oregon ski resorts are 2,000,000;

**WHEREAS**, there have been significant changes in skiing activities and operations at ski areas since the statute was enacted in 1979; **Mt. Hood Bicycle/Pedestrian Coalition**

recognizes the important contribution of winter recreation activities to our community and state. As a matter of protection for participants and the economy, we as a body support revising the Skiing Activities statute.

**NOW THEREFORE, BE IT RESOLVED** that by action of the **Mt. Hood Bicycle/Pedestrian Coalition**, of

**Clackamas County** hereby authorizes support for the updating ORS 30.970 - 30.990 in the Oregon State Legislative 2016 Session, to wit:

- (1) Adding and defining "Freestyle Terrain" to account for features built for skiers and snowboarders by trained resort staff;
- (2) Outlining dangers of venturing within ski area boundaries, but not on groomed trails;
- (3) Updating ORS to reflect changes to the participant responsibility code;

---

[Authorized Signature] [Date]

---

[Second Authorized Signature] [Date]

## SUMMARY

Revises provisions relating to liability arising out of skiing. Declares emergency, effective on passage.

## A BILL FOR AN ACT

Relating to skiing; creating new provisions; amending ORS 30.970, 30.975, 30.985 and 30.990; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 30.970 is amended to read:

30.970. As used in ORS 30.970 to 30.990:

(1) "Freestyle terrain" means terrain parks and terrain features including jumps, hits, ramps, banks, funboxes, jibs, rails, half-pipes, quarter-pipes and any other natural or constructed features.

[(1)] (2) "Inherent risks of skiing" includes, but is not limited to, those dangers or conditions which are an integral part of the sport, such as changing weather conditions, variations or steepness in terrain, snow or ice conditions, surface or subsurface conditions, bare spots, creeks and gullies, forest growth, rocks, stumps, freestyle terrain, snow immersion, movement of snow, lift towers and other structures and their components, collisions with other skiers and a skier's failure to ski within the skier's own ability.

[(2)] (3) "Injury" means any personal injury or property damage or loss.

(4) "Movement of snow" means: (a) Slides, sloughs or avalanches; (b) Any natural or constructed depressions in snow, including tree wells; or (c) Any natural or constructed accumulations of snow, including snowmaking mounds.

[(3)] "Skier" means any person who is in a ski area for the purpose of engaging in the sport of skiing or who rides as a passenger on any ski lift device.]

[(4)] (5) "Ski area" means any area designated and maintained by a ski area operator for skiing.

[(5)] (6) "Ski area operator" means those persons, and their agents, officers, employees or representatives, who operate a ski area.

(7) "Skier" means any person who is in a ski area for the purpose of engaging in the sport of skiing or who rides as a passenger on any uphill conveyance.

(8) "Skiing" means sliding or jumping on any form of snow or ice on skis, a snowboard or any other sliding device.

(9) "Uphill conveyance" means aerial tramways, aerial lifts, surface lifts, tows and conveyors.

SECTION 4. ORS 30.975 is amended to read:

30.975. (1) In accordance with ORS 31.600 and notwithstanding ORS 31.620 (2), an individual who engages in the sport of skiing, alpine or nordic, accepts and assumes the inherent risks of skiing [insofar as they are reasonably obvious, expected or necessary].

(2) A skier may not bring an action against a ski area operator for any injury arising out

of the inherent risks of skiing.

SECTION 5. ORS 30.985 is amended to read:

30.985. (1) Skiers shall have duties which include but are not limited to the following:

*[(a) Skiers who ski in any area not designated for skiing within the permit area assume the inherent risks thereof.]*

*[(b)]* (a) Skiers *[shall be]* are the sole judges of the limits of their skills and of their ability to meet and overcome the inherent risks of skiing *[and]*.

(b) Skiers shall maintain reasonable control of speed *[and]*, course, maneuvers and actions.

(c) Skiers shall abide by the directions *[and instructions of the ski area operator]*, instructions, signs, markings and warnings given or present at any ski area.

(d) Skiers shall familiarize themselves with *[posted]* information on the location and degree of difficulty of *[trails and slopes to the extent reasonably possible]* any run, slope, trail or terrain before skiing on *[any slope or trail]* the run, slope, trail or terrain.

(e) Skiers shall not cross the uphill track of any surface lift except at points clearly designated by the ski area operator.

(f) Skiers shall not overtake *[any other]* another skier except in such a manner as to avoid contact and shall grant the right of way to the overtaken skier. Any resulting contact or collision is the sole responsibility of the overtaking skier and not the ski area operator.

(g) Skiers shall yield to other skiers when entering a trail or starting downhill.

(h) Skiers may not stop in any place that creates a hazard or where the skier is not visible from above.

*[(h)]* (i) Skiers must *[wear retention straps or other]* use devices to prevent runaway skis.

*[(i)]* (j) Skiers shall not *[board rope tows, wire rope tows, j-bars, t-bars, ski lifts or other similar devices]* use an uphill conveyance unless they have sufficient ability to use the *[devices, and]* conveyance, including, but not limited to, sufficient ability to embark and disembark from the conveyance. Skiers shall follow any *[written or verbal]* instructions, signs, markings or warnings that are given or present regarding *[the devices]* uphill conveyances.

*[(j)]* Skiers, when involved in a skiing accident, shall not depart from the ski area without leaving their names and addresses if reasonably possible.]

(k) Skiers involved in an accident at a ski area shall leave contact information with the ski area operator before departing the ski area. A skier who is injured *[should, if reasonably possible,]* shall give notice of the injury to the ski area operator before leaving the ski area unless the ski area operator already has notice of the injury.

(L) Skiers shall not embark or disembark from *[a ski lift]* an uphill conveyance except at designated areas or by the authority of the ski area operator.

(m) Skiers shall inspect freestyle terrain before use.

(2) Ski area operators have no duty to judge the limits of a skier's skills or to judge a skier's ability to meet and overcome the inherent risks of skiing.

(3) Ski area operators have no duty to judge a skier's ability to use an uphill conveyance.

[(2)] (4) Violation of any of the duties of skiers set forth in subsection (1) of this section entitles the ski area operator to withdraw the violator's privilege of skiing.

SECTION 6. ORS 30.990 is amended to read:

30.990. Ski area operators shall give notice to skiers of their duties under ORS 30.985 in a manner reasonably calculated to inform skiers of those duties, but skiers are presumed to know their duties under ORS 30.985.

SECTION 7. The amendments to 30.970, 30.975, 30.985 and 30.990 by sections 3 to 6 of this 2015 Act apply only to skiing occurring on or after the effective date of this 2015 Act.

SECTION 8. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.

**NOTE:** Matter [*italic and bracketed*] is existing law to be omitted.

States with recent ski statue updates:

- Montana Legislature passed ski statue updates in February 2015. Included was:
  - Revised definition of “inherent dangers and risks of skiing” so that it now includes “any depth or accumulation” of snow “around or near trees or snowmaking equipment.”
  - Included avalanches as an inherent risk of skiing
  - Definition of “skiing” was amended to include events and competitions at ski areas plus broadened to include practice or training for competitions or special events.
  - Montana also passed legislation allowing use of waivers / releases in recreational activities for inherent risks in 2015.
- Idaho Legislature passed updates to their Ski Statue in February 2014. Included in the updates:
  - Provides broad protections to Idaho ski resorts when guests are injured in terrain parks or in-bounds avalanches
  - Expanded the statute’s definition of a “skier” to include any person using “freestyle terrain”
  - Added a provision which states that skiers expressly assume the risk and legal responsibility for injuries resulting from “any movement of snow, including but not limited to, slides, sloughs, or avalanches”
  - Provides ski areas protections from injuries resulting from tree wells, snowmaking mounds, or injuries in terrain parks.
- Connecticut amended their statute in 2014
  - Added mandatory restraint bars to lifts, padded towers / snow guns
- Minnesota Legislature passed a new law that was effective August 1, 2013
  - Liability waivers for consumer services – including recreational activities – that waive liability for damage, injuries or death which result from “ordinary negligence” remain enforceable in Minnesota following the 2012 - 2013 legislative session.
  - Bill that ultimately passed by the legislature and signed into law by Governor Dayton is consistent with long-standing common law in Minnesota.
  - The new law applicable to liability waivers distinguishes between “ordinary negligence” and “greater than ordinary negligence.” Liability resulting from “ordinary negligence” may be released, limited or waived, while liability resulting from “greater than ordinary negligence” may not. For public policy reasons, waivers purporting to release, limit or waive liability for damage, injuries or death resulting from “greater than ordinary negligence” are void and unenforceable.
  - This is consistent with the way in which Minnesota courts have treated liability waivers prior to the passage of this law.
- West Virginia adopted a new statute in 2012
  - Each skier expressly assumes the risk of and legal responsibility for any injury, loss or damage to person or property which results from participation in the sport of skiing including, but not limited to, any injury, loss or damage caused by the following: Variations in terrain including freestyle terrain; surface or subsurface snow or ice conditions; bare spots, rocks, trees, other forms of forest growth or debris; collisions

with pole lines, lift towers or any component thereof; or, collisions with snowmaking equipment which is marked by a visible sign or other warning implement in compliance with the statute.

- Each skier shall have the sole individual responsibility for knowing the range of his or her own ability to negotiate any ski slope or trail, and it shall be the duty of each skier to ski within the limits of the skier's own ability, to maintain reasonable control of speed and course at all times while skiing, to heed all posted warnings, to ski only on a skiing area designated by the ski area operator and to refrain from acting in a manner which may cause or contribute to the injury of anyone.
- Wisconsin adopted a new statute in 2012
  - A participant in any recreational activity, including skiing, accepts the inherent risks of which the ordinary prudent person is or should be aware
  - Risks inherent to skiing and snowboarding include: changes in weather or visibility, the presence of certain snow conditions and difficulties with the terrain, and the risk of collisions
  - Participant accepts that the operator of a ski area may not mitigate certain risks by padding items or obstacles within the ski area.
  - A participant is also deemed to acknowledge that his or her decision whether to wear a helmet while participating in the snow sport may contribute to his or her injuries, and that he or she is solely responsible for ensuring that a helmet is properly fitted.
  - Participants must conduct themselves within their abilities, heed warnings, and generally remain in control so as not to harm themselves or others.
- New Jersey amended statute in 2012
  - Made ski helmet legislation for minors mandatory
- Utah amendment to existing statute in 2006
  - Expanded inherent risks to include competitive racing and terrain park features
- Colorado Ski Safety Act of 1979 was last updated effective July 1, 2006.
  - Provides for skier assumption of inherent dangers, and creates statutory duties for skiers and operators.
  - Skiers, inclusive of sledders and snowboarders, have duties to ski within their abilities, with uphill skiers having a primary duty to avoid collision. Breach of skier duties constitutes negligence.
  - Defined the inherent risks as: *skier assumes the risk of any injury to person or property resulting from any of the inherent dangers and risks of skiing and may not recover from any ski area operator for any injury resulting from any of the inherent dangers and risks of skiing, including: Changing weather conditions; existing and changing snow conditions; bare spots; rocks; stumps; trees; collisions with natural objects, man-made objects, or other skiers; variations in terrain; and the failure of skiers to ski within their own abilities.*
  - Provides for a \$250,000 cap on damages under the statute.
  - Authorizes the use of releases for minors (as well as adults) under the statute.

West coast states that have statues with clauses Oregon's statue doesn't, but have not been updated recently.

- Washington and California allow release agreements and have inherent risk statutes and courts enforce release agreements for ordinary negligence.
- Alaska greatly restricts claims arising out an inherent risk of skiing by statute.





MOUNT HOOD  
UNINCORPORATED

CLACKAMAS COUNTY OREGON

WELCHES WEMME

NATIONAL FOREST  
RHODODENDRON BRIGHTWOOD ZIGZAG

# *Mt. Hood Bicycle-Pedestrian Coalition*



December 13, 2015

Oregon Wild  
5825 N. Greeley Ave.  
Portland, OR 97217

Attn: Erik Fernandez

Erik Fernandez/Oregon Wild Conservancy Group,

Thank you for meeting with us, and providing the opportunity to voice our concerns about the proposed 2015 Wilderness expansion plans.

A recent recreational impact analysis using data from the Oregon Wild website revealed an additional 16 trails included in the 2015 wilderness expansion proposal, including trails Oregon Wild negotiated to exempt from wilderness in 2009. These closures will adversely affect mountain biking/guide services, hiking, sled assisted hunting, foraging, , etc., not to mention diminish fire suppression access. Trail maintenance has become more difficult, time consuming, and costly due to wilderness restrictions on commonly used forester tools such as chainsaws, weed eaters, wheelbarrows, etc., which can potentially elevate the risks of fire damage due to the delayed containment of forest fires.

Increased restrictions will adversely impact our community's future economic growth, and work contrary to the Villages at Mt. Hood Board of Directors and the Mt. Hood Bicycle-Pedestrian Coalition's plans to promote, improve and enhance cycling tourism opportunities for the villages of Mt. Hood. We continue working with Oregon Dept. of Transportation (ODOT) and Clackamas County Board of County Commissioners (BCC) toward the development of a bicycle/pedestrian master plan to connect our five (5) villages, while at the same time continue to enhance our mountain biking opportunities.

While cycling tourism generates over \$400 million in revenues for Oregon each year, it is important to note that tourism is the only available resource to sustain our mountain economy. Cycling on Mt. Hood continues to increase in popularity, and continues to be a large tourism driver for local businesses.

Where proposed wilderness designated areas include significant mountain biking opportunities, we ask that boundary adjustments and/or alternative land distinctions such as a National Recreation Area (NRA) be designated to protect natural areas, while also preserving prime recreational mountain biking/hiking opportunities.

We should agree on undisputed areas for wilderness distinction, and compromise a less prohibitive distinction for recreational use, such as a "National Recreational Area". Otherwise, we stand opposed to the 2015 Wilderness Act expansion plan, without a binding agreement to exempt Forest Service roads and trails currently used and enjoyed for recreational purposes. Trails in the Zigzag District we are particularly interested in saving included:

- #673 Veda Lake

# Mt. Hood Bicycle-Pedestrian Coalition



- #671 Eureka Peak
- #492 Jackpot Meadows
- #674A Dry Fir Trail
- #472 Hidden Meadows Trail

A wilderness distinction will severely limit recreational opportunities, and economic growth for our communities. Therefore, we feel the best interest of our mountain communities will be ill-served by imposing increased wilderness restrictions. We feel it is imperative to maintain currently used MTB trails for recreational use, and Forest Service roads for cycling opportunities (i.e. gravel grinding) and emergency fire suppression access.

As a subcommittee of the Villages at Mt. Hood BOD, we plan to place this issue on the agenda for full disclosure and discussion, asking for the Villages Board and Clackamas County support in opposing increased wilderness restrictions.

Unless we are able to reach a mutual agreement to exempt currently used Forest Service roads and trails within our district from wilderness distinction, we must continue our plans to gain further support, and most importantly contact our state and congressional representatives with our concerns, as we are all aware of the serious and time sensitive nature of this issue.

In closing, we hope we are able to reach a common sense solution to what we believe to be an overly aggressive proposal. The Mt. Hood Bicycle/Pedestrian Coalition is aligned with Mt. Hood Skibowl, Hurricane Racing, IMBA, and other groups represented at our meeting who are opposed to the proposed wilderness expansion plan.

Please let us know if there is room to work here Erik! While we believe it would be more beneficial to work together in our efforts to prohibit clear cutting, we do not agree with the imposition of a wilderness designation at the expense of recreational opportunities and economic growth for our mountain communities.

Sincerely,

George C. Wilson  
Mt. Hood Bicycle/Pedestrian Coalition  
[www.mthoodbikeped.com](http://www.mthoodbikeped.com)

The bicycle is the most civilized conveyance known to man. Other forms of transport grow daily more nightmarish. Only the bicycle remains pure in heart. -Iris Murdoch, writer (1919-1999)





Come join  
**U.S. Senator Ron Wyden**  
for a  
**Clackamas County**  
**Town Hall Meeting**

Clackamas High School Auditorium  
West Campus  
14486 SE 122<sup>nd</sup> Avenue  
Clackamas, Oregon 97015

**Thursday**  
**January 7th, 2016**  
**10:00 am**