

# Appendix G: Liability and Risk Reduction

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## G1. Liability

One concern for potential trail operators, trail landowners, and nearby landowners is whether they may be legally responsible (liable) for activities on or near the trail. The good news is that state and case law both clearly indicate that landowners and trail operators are generally protected from liability for recreational trail use, with some specific exceptions, and that there are common-sense ways to reduce risks.

There are three types of individuals or organizations that are typically concerned about such liability: the entity that operates the trail; the entity that owns the trail property; and the adjacent landowners. Different laws apply whether the entity is a public agency or private individual or business, but the resulting protection is generally the same.

## G2. California State Law

Liability for injury or other harm on any portion of the Delta Trail is regulated by several existing California laws. California laws, also called statutes, are organized into 29 codes which cover specific subject areas. A digital copy of all 29 codes is available free to view online.

Recreational trail use is addressed in several sections of codes, including (but not limited to):

- California Government Code Sections 830.6, 831.2, 831.4, 831.7, 835, 846, 14662.5 and 51238.5
- California Civil Code Sections 813, 846, 846.1, 1006, 1007, 1008, and 1009
- California Public Resources Code Section 5075.4
- California Code of Civil Procedure Sections 128.7 and 1038

California's Recreational Use Statute (RUS) and the Recreational Trails Act potentially offset some or all of a private landowner's increased liability associated with a trail. The text of the RUS can be found in Civil Code Section 846. The Recreational Trails Act is codified in Public Resources Code Article 6, Section 5070–5077.8. Notably, Section 5075.4 of the Recreational Trails Act states that “No adjoining property owner is liable for any actions of any type resulting from, or caused by, trail users trespassing on adjoining property, and no adjoining property owner is liable for any actions of any type started on, or taking place within, the boundaries of the trail arising out of the activities of other parties.”

## Duty of Care

Duty of care is a term used to describe how responsible one entity may be for injuries caused to another entity or individual. For trail purposes, this term refers to how much liability (responsibility) the trail operator or landowner has for injuries that occur on or near the trail. A higher duty of care indicates more potential responsibility for any injuries.

In California, a trail operator or landowner has generally not been found liable except when they willfully or maliciously failed to guard against a dangerous condition, the injured person paid to use the trail, or there was a specific invitation for use. These exceptions are covered in detail in the Recreational Use Statute (RUS), and in California Government Code Section 835, which pertains to agency awareness of a hazardous condition and failure to act to protect against it.

## G3. Indemnification

Indemnification is a term for a guarantee against potential liability or monetary loss experienced by another individual or entity. In trail development, indemnification refers to the situation in which one entity (typically a government agency or non-profit) assumes the responsibility for injury or harm that occurs on a trail managed and/or owned by another individual or entity. In California an agency or non-profit organization may agree to take responsibility for injuries or loss occurring on trails on or near private

property (see Government Code Section 14662.5 and 51238.5, and California Attorney General Opinion No. 95-305). The intention of these codes and the opinion is to encourage and support public trail development while reducing potential liability for private landowners. This is typically accomplished through a memorandum of understanding (MOU), easement agreement, or license agreement between the landowner and the agency.

## G4. Risk Reduction Strategies

There are some simple, common-sense strategies that can reduce risks to trail operators and landowners. These include proper planning, design, operation, and maintenance. Successful risk reduction also requires public awareness, through published rules, guidelines, and signage.

### Planning and Design

Following the trail design and planning best practices will go a long way in reducing the potential for injury to trail users and the potential associated liability for those injuries. General design standards and/or guidelines related to on-road bikeways, sidewalks, or paved trails are developed by national organizations, such as the American Association of State Highway and Transportation Officials (AASHTO) and the National Association of City Transportation Officials (NACTO). State standards and/or guidelines include those issued by Caltrans, including the California version of the Manual on Uniform Traffic Control Devices (CAMUTCD). Local agencies, such as cities and counties, typically adopt the Caltrans guidelines and standards as-is, or with slight modifications.

Recreational trails, especially unpaved trails, have fewer clear standards, but the U.S. Forest Service publishes planning and design standards and details for them, as does California State Parks, and many regional park and open space agencies.

In all cases the Americans with Disabilities Act (ADA) requires certain levels of accessibility for trails, depending on the context. The Architectural and Transportation Barriers Compliance Board (Access Board) has developed detailed guidelines for pedestrian facilities, recreational areas, and more. State and local agencies may also have their own specific accessibility requirements.

In addition to following all relevant laws, guidelines, and standards, it is usually worth studying one or more alternative alignments. Specific planning and design decisions may meet all relevant standards and guidelines but leave room for varying degrees of privacy and security for neighboring properties. By reviewing several options, the community and decision makers can weigh the benefits and drawbacks of each to find the one that best meets the community's needs.

### Operation and Maintenance

Developing and following a written maintenance plan is another important strategy for reducing potential risks. The plan should include details for trail inspection, record keeping, inventorying potential hazards, and emergency response procedures as well as sources for funding and support. The trail operator would be responsible for developing and implementing the plan, but the property owner (if different than the trail operator) should review the plan and confirm that it is in place and being followed.

Entities responsible for trail construction should fund or set aside funding for operations and maintenance activities in conjunction with the implementation of any specific trail plan.

## **Public Information**

Clear and consistent published rules, guidelines, and signage can also reduce potential risks. Using a combination of words and graphics to convey only the most important information is key — signage fatigue, visual clutter, and language barriers can reduce the effectiveness of signs. Key information includes permitted and prohibited uses; trail use behavior guidelines; potential hazards; permanent and temporary closures; and emergency contact information. Signs should be posted at the trail entry and at the location of the hazard (along with physical barriers), where appropriate.

## **Insurance and Waivers**

Insurance and waiver forms are also typical components of risk reduction strategies, although they do not reduce the future risk of injuries. They merely reduce the risk of financial losses due to injuries.