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To: John Scarinza, Chair
Coos County Planning Board

From: Tara Bamford

Re: Mount Washington Railway Company Trail

Date: April 14, 2018

On 12/7/17 you requested that in preparation for the next meeting I review the 11/16/17 letter from Jason Reimers to the County Commissioners regarding the application of the Zoning Ordinance for the Unincorporated Places of Coos County to the Mount Washington Railway Company trail.

I noted that the definition of “trail” in the Ordinance acknowledges that construction may involve disturbance of the land’s surface.

3.89 Trail: A route or path other than a roadway, and related facilities used primarily for recreational activities, which passes through or occurs in a natural environment and may involve the disturbance of the land’s surface in its construction or use. Related facilities may include but not be limited to subsidiary paths, springs, campsites, view points and unusual or exemplary natural features in the immediate proximity of the trail which are commonly used or enjoyed by the users of the trail.

And that trails for motorized recreation are allowed in the Steep Slopes and High Elevation District:

7. Trails, provided they are constructed and maintained so as to reasonably avoid sedimentation of water bodies;
8. Snowmobiling and ATV trails.

At the 2/28/18 Planning Board meeting Attorney Duval, representing the Mount Washington Railway Company, was asked to provide, in advance of the 4/18/18 Planning Board meeting, information on the trail, including the purpose, what kind of vehicles are being used on it, and what was done to construct it. The Railway was also asked to provide pictures and plans (draft minutes 2/28/18). This information would assist the Planning Board in meeting the County Commissioners’ request to determine if there had been a change to the trail or associated activities relative to the applicaton of the Zoning Ordinance.

Attorney Duval’s 4/3/18 letter to the Coos County Planning Board reports that the trail has been in existence for many decades and has served a variety of purposes relative to the Railway and power conduit. Attorney Duval reports that the trail was improved last year for recreational

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activities and maintenance of the tracks, and that the “primary purpose of this trail is for recreation...”

Based on Attorney Duval’s 4/3/18 letter, it does not appear that the recent improvements or existing uses have led to a change in the status of this corridor in regard to the application of the Zoning Ordinance. (It should be noted that there are no pictures or plans accompanying the letter as requested by the Board.)

I agree with Attorney Duval that there is logic in applying the Zoning Ordinance in the same way to snowcats as to snowmobiles and ATVs. The differentiation of roads vs trails is not width-based in the Ordinance, and is typically discussed by the Coos County Planning Board as being of importance to ensure that actual roads providing access to property or buildings meet road standards. In addition, permits are required for land management roads in certain Protected Districts to ensure they are constructed in a manner which minimizes the impacts of land management activities on the sensitive resources.

However, it is my opinion that the County’s Site Plan Review Regulations would apply to any future “operation of passenger snowcats” as mentioned in Attorney Duval’s letter. The introduction of a new commercial activity offered by the Railway on its trail would in my opinion represent an expansion or change of use pursuant to the Site Plan Review Regulations. That would give the Board the opportunity at that time to ensure that stormwater and any other impacts associated with the trail are being properly managed.

It should also be noted that any improvements to this corridor without a permit, beyond those necessary for its current purposes as a recreational trail and for maintenance activities of the railway or power conduit, may constitute a violation of the Zoning Ordinance.