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BLACK FOREST TRAILS ASSOCIATION

c/o Ms. Lisa Douglas
10675 Elizabeth Way
Colorado Springs, CO 80908

Re: Liability of Private Landowners Who Allow Access Across Their Property for
Recreational Trails

Dear Ladies and Gentlemen:

At the request of Lisa Douglas of your organization, I have again reviewed Colorado law with respect to the question of liability of individual landowners who grant easements or other use rights for recreational purposes or, more specifically, trails, without compensation. This letter does not address the question of an owner's liability related to any property leased to a public entity. I have reviewed my prior opinion letter and the opinion of the County Attorney for El Paso County (the "County Attorney") contained in a letter dated May 3, 1995 to the Black Forest Trails Association, as well as C.R.S Sec. 33-41-101, et seq. and the amendments to it (the "Colorado Recreational Use Statute" or the "Statute"). My opinion remains substantially the same as that expressed in my letter of January 19, 1998. For convenience, I will re-summarize the law generally and restate my opinion.

Sec. 33-41-101 states that the purpose of the Colorado Recreational Use Statute is to encourage owners to make their land available for recreational purposes by limiting their liability. To that end, Sec. 33-41-103 provides, subject to some limitations discussed below, that a landowner who directly or indirectly invites or permits, **without charge**, any person to use their property for recreational purposes does not, by virtue of allowing such use, (a) extend any assurance that the premises are safe for any purpose; (b) confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed; or (c) assume responsibility or incur liability for any injury to person or property or for the death of any person caused by an act or omission of such person. Simply stated, that means persons using the property for recreational purposes are treated, for liability purposes, as trespassers and they are therefore afforded the least protection available under the law.

This limitation on liability is qualified by Sec. 33-41-104. Property owners are not protected against their own willful or malicious, that is knowing and deliberate, failure to guard or warn against a known dangerous condition, use, structure or activity likely to cause harm or where the owner charges a fee or receives some other consideration in exchange for entry on the property or use of

facilities. Protection is also not available under the Colorado Recreational Use Statute where there is an *attractive nuisance* on the property or if some commercial enterprise is located on the property and that commercial enterprise is directly related to the injury received. *Attractive nuisance* is a legal term referring to a condition on the property that does not occur naturally that is unusually attractive to children, such as a swimming pool or trampoline, which creates an unreasonable risk of injury to a child.

None of this is any different than what was contained in my letter of January 19, 1998 or the letter from the County Attorney. However, since the date of the County Attorney's letter, the Colorado Recreational Use Statute was amended. Those provisions, which I addressed in my previous letter, have not changed significantly but I will again summarize them.

The limitation on liability in Section 33-41-103 applies to both urban property owners and owner's whose property is located in "rural" areas. Thus the limitation on liability applies to any private property owner opening his or her property to public recreational uses. Note too the definition of the word "charge" in the context of Sec. 33-41-103. The statute makes it clear that the "charge" the statute refers to does not include "any consideration received by the owner for (any) lease, easement or other right" given to a public entity. Clearly what the statute now contemplates as a "charge" is more in the nature of a fee charged to each user and specifically excludes lease payments and payments from public entities or the government.

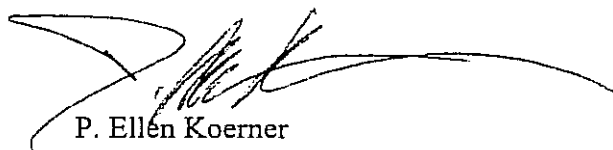
In addition, Sec. 33-41-104(2)(a) sets limits on the recovery available where an owner has liability under the exceptions listed in Sec. 33-41-104(1) (i.e., attractive nuisance, wanton and willful disregard, etc.) which are consistent with the Governmental Immunity Act. Thus, even if liability under one of the exceptions listed in Sec. 33-41-104 is found, liability is not unlimited.

Finally, the Statute provides for attorney fees and costs to the prevailing party in the event of a lawsuit involving recreational use of private property. Thus if a property owner must defend him or herself against a claim, and the owner prevails under the Statute, the owner would be entitled to recover costs, including attorney fees. Of course, if the user prevails, the owner would pay the user's costs and attorney fees.

This opinion has been rendered on behalf of the Black Forest Trails Association. The law as it applies in a given situation may or may not be consistent with the opinions contained in this letter and, of course, the law is subject to change. Counsel should be consulted on a case-by-case basis.

I hope this provides you with the information you needed. If I can be of further assistance, please feel free to give me a call.

Sincerely yours,
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