



The
University of Mississippi

Oxford • Jackson • Tupelo • Southaven

Mississippi-Alabama Sea Grant Legal Program
254 Kinard Hall, Wing E
University, MS 38677
Phone: (662) 915-7775 FAX: (662) 915-5267
Email: waterlog@olemiss.edu
Internet: <http://masglp.olemiss.edu>

September 8, 2011

Andy Bauer, Director
Planning and Zoning Department
City of Gulf Shores
205 Clubhouse Drive, Suite B
Gulf Shores, Alabama

Re: Public Greenways and Alabama's Recreational Use Law (MASGC 11-008-10)

This product was prepared by the Mississippi-Alabama Sea Grant Legal Program under award number NA10OAR4170078 from the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the author and do not necessarily reflect the views of NOAA or the U.S. Department of Commerce.

Dear Andy:

This memo builds upon our earlier discussion of a public greenway along the ICW in Gulf Shores, Alabama and discusses potential concerns of landowner liability arising from granting easements across private property for public use. The following information is intended as advisory research only and does not constitute legal representation of the City of Gulf Shores, Alabama or its constituents. It represents our interpretations of the relevant laws and regulations.

In a previous memo dated July 14, 2011, we detailed the City's local authority for implementing a pedestrian greenway along the ICW. In addition to the City's current zoning requirements, we identified additional means for establishing the greenway. One option for achieving a continuous pathway was the acquisition of an easement across private properties for this limited purpose. However, landowner concerns over possible liability exposure was identified as a potential hurdle to acquiring the necessary easements. The following information outlines legal protections afforded landowners under the Alabama Recreational Use Law.

Alabama Recreational Use Law

Landowners who designate land for public use may inquire as to their liability for injuries sustained by users of public greenway. Commonly referred to as premises liability, a landowner

has the duty to provide certain standards of care to visitors. Visitors fall into one of four classes – invitees, licensees, trespassers, and recreational users. This classification determines what level of care the property owner owes the visitor. Generally, public users of the greenway would fall into the last category – recreational users.

The Alabama Legislature, recognizing a need for more public recreational areas, created Alabama’s Recreational Use Law to encourage designation of privately owned lands for public use. Under this law, landowners are not liable for injuries sustained by non-commercial public recreational users, unless the landowner fails to warn of a known danger that may cause death or serious bodily harm.

Non-commercial means that the landowner is not charging the public user a fee or otherwise profiting from the public user in exchange for permission to use the land. Recreational uses specifically include hiking and visiting, viewing, or enjoying scenic sites as well as a variety of other activities (such as picnicking, hunting, fishing, trapping, camping, water sports, boating, sightseeing, caving, climbing, rappelling, or others). (See ALA. CODE § 35-15-1 through 35-15-28 – Alabama’s Recreational Use Law).

Under the Recreational Use Law, a property owner is only liable to a recreational user in a very limited circumstance. Generally speaking, the landowner has no duty to inspect the land or to warn against dangerous conditions. To face liability, the landowner must have actual knowledge that:

- (1) the land is being used for non-commercial recreational purposes;
- (2) a condition exists that involves an unreasonable risk of death or serious bodily harm;
- (3) the condition is not apparent (hidden) to the recreational user; and
- (4) knowing these conditions, the owner chooses not to warn recreational users of the danger.

In other words, the landowner only has a duty to warn recreational users against hidden dangers that may cause death or serious harm if the landowner actually knows this harm exists.

I hope this information is helpful in accessing the viability of acquiring easements across private property for the purposes of the pedestrian greenway project. The Recreational Use Law should alleviate some property owner concerns over potential premises liability. The law also extends to government ownership and provides the City with additional liability protection.

If you have any additional questions, please let me know.

Sincerely,

/s/ Niki L. Pace
Research Counsel