Questions on Potential Landowner Liability for Recreational Use in Georgia



Paper prepared by Ronnie Abellera
updated by John Seay
under the supervision of Laurie Fowler J.D., LL.M.
for the Georgia Environmental Policy Institute
and the UGA River Basin Center
Environmental Practicum

April 1996 (updated October 2009)

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ODUM SCHOOL OF ECOLOGY | THE UNIVERSITY OF GEORGIA

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Contents

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Questions

I. What Is the Potential Liability of Landowners Who Allow Public Recreation on Their Land, Especially Those Landowners Who Grant Easements to a Public Entity for Recreational Purposes?

II. What Is the Potential Liability of Landowners Who Allow Equestrians on Their Land?

Short Answers

I. The Recreational Property Act (RPA), O.C.G.A. § 51-3-20 et seq., shields landowners from liability for injuries to persons who use their land for recreational purposes without charge unless the landowners willfully or maliciously fail to guard against or warn of a dangerous condition, use, structure or activity.

II. The Equine Activities Liability Act (EALA), O.C.G.A. § 4-12-1 et seq., shields landowners and others from liability for injuries to persons engaging in equine activities subject to statutory limitations.

Discussion

I. Liability and Duty of Care Under the Recreational Property Act

The purpose of Georgia's Recreation Property Act (RPA) is "to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting the owner's liability toward persons entering ... for recreational purposes".[1] The RPA does not grant total immunity from liability to landowners who allow public recreation on their land. Rather, the RPA offers a limitation on the duty of care owed by the landowner to recreational users subject to certain statutory conditions. Landowners will not be liable unless they violate this standard of care.

The duty of care owed by a landowner to a recreational user arises from three sections of the RPA and interpretations by the courts. O.C.G.A. § 51-3-22 states:

> Except as specifically recognized by or provided in Code § 51-3-25, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes or to give any warning of a dangerous condition, use, structure, or activity on the premises to persons entering for recreational purposes.

O.C.G.A. § 51-3-23 further limits the duty of care by providing:

> [e]xcept as specifically recognized by or provided in Code§ 51-3-25, an owner of land who either directly or indirectly invites or permits without charge any person to use the property for recreational purposes does not thereby:
> (1) Extend any assurance that the premises are safe for any purpose;
> (2) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed; or

(3) Assume responsibility for or incur liability for any injury to person or property caused by an act of omission of such persons.

The protection of the RPA, however, is limited by O.C.G.A. § 51-3-25[2] which establishes that landowners who allow public recreation on their land may be liable for "willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity."

The Georgia courts have interpreted these provisions of the RPA to establish the general duty of care owed by a landowner to a recreational user as the duty of slight care.[2] The duty of slight care is lower than that of ordinary care; this standard is discussed more fully in Section E, Willful or Malicious Failure to Guard or Warn.

A. Both Public and Private Lands Are Afforded Protection

The RPA applies to both privately and publicly owned land so long as a fee is not charged for the use of the land.[3] For example, the courts have found that the RPA applies to both a public school playground[4] and a church playground[5] accessible to the public during non-school hours. The statute applies to land leased to the state, or a subdivision of the state such as a local government, for recreational purposes unless otherwise specified in writing.[6] The RPA does not apply to vacant lots in residential areas.[7] The RPA applies to rest areas maintained by the Georgia Department of Transportation[8], as well as to walkways maintained by recreational authorities to provide access to parks and rivers.[9]

B. Inviting or Permitting the Public to Use the Property for Recreational Purposes

In determining whether a particular tract has actually been opened to the public for recreational use, the Georgia courts inquire into several factors. First, the landowner must permit the use of his facilities or land by the public generally or by a particular class of the public, such as Little League players or Boy Scouts. Permitting free use by a class of individuals, such as one's neighbors and friends, is not sufficient. The RPA was not meant, for example, to apply to the land of a friendly neighbor who permits his friends and neighbors to use his swimming pool without charge.[10] However, in one case the Court of Appeals ruled that a participant in a city-sponsored after-school recreational and swimming program for the disabled could not recover against the city due to the operation of RPA. In all cases, the Courts have determined that public use must be proven to qualify under RPA.[11]

Second, the recreational use must be recognized under the act, which includes "but is not limited to any of the following or any combination thereof: hunting[12], fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archeological, scenic or scientific sites".[13] The courts have held that cycling falls within the statute's definition of recreational purpose[14] as does observing sport activities.[15]

Third, the primacy of the recreational use is important. If the major reason the public is invited is to further the business interest of the owner through the sale of food, merchandise, or service, the RPA will not shield the owner from liability, even where the

public receives some recreation as a side benefit. The Georgia Supreme Court refused to apply the RPA, for example, where a woman fell on a stairway in Underground Atlanta, though she was sightseeing and taking photographs of the area. The property owners and tenants of Underground "make their property available to the public for entertainment purposes and anticipate the visitors will purchase the food, merchandise, or services available... they provide scenic areas and comfortable facilities to attract the public to their businesses, not to give the public a place for recreation".[16] In another case, a man injured at a welcome center operated by the Georgia Department of Transportation was unable to recover because although the welcome center did distribute pamphlets advertising local businesses and therefore might have benefited financially from the operation of the welcome center, the Court of Appeals determined that the connection between the pamphlets and increased tax revenue was too tenuous to place the welcome center outside of the scope of the RPA.[17] On the other hand, the Court of Appeals held that Stone Mountain Park is a public recreation area, notwithstanding the fact that substantial revenues may be derived from the sale of special permits, concessions and tickets to rides and attractions.[18] Citing the fact that the park is operated by a public entity created by statute to acquire and administer it as a public recreation area, the court held that the RPA applied where injuries resulted from a woman's general recreational use of the park, for which no fee was charged, rather than from the use of the facilities for which a fee was charged. In all cases, though, the question of whether or not an area is being used primarily for commercial or recreational purposes is a question for the jury. In one case, for example, the Georgia Supreme Court held that where a park offered a mixture of commercial and recreational purposes it created a question of fact for the jury to decide.[19]

Fourth, the RPA is not applicable where a landowner has posted "keep out" signs in the area. In one case a landowner posted signs warning of danger and advising the public to stay away from a power plant and dam. A ten-year-old boy was drowned when he was sucked into a drainage pipe running from a pool below the dam. The Georgia Supreme Court held that the RPA did not apply because the posted signs expressly denied the public the use of the land.[20]

C. Fees Charged ror the Use of the Land

As a prerequisite to protection under the RPA, the owner cannot charge a fee for admission to the property. On the other hand, the absence of a charge does not assure applicability of the RPA when other conditions of the statute are not satisfied.[21] The term charge means the "admission price or fee asked in return for invitation or permission to enter or go upon the land".[22] The courts have clarified the application of this provision of the RPA.

They have consistently held that a fee imposed for vehicle use in a park does not constitute a charge for the recreational use of the park land itself.[23] In making this determination, the courts have considered the facts that the fee is the same for all vehicles, regardless of the number of people in the vehicle, and that people arriving on foot, bike and by boat are not charged a fee.

The advertising benefits stemming from a dairy's opening its picnic grounds and lake

for recreational use by Sunday school classes and other groups is not a charge as defined by O.C.G.A. § 51-3-21(1).[24] A fee paid by youths and teams participating in a softball program at a park owned by a city recreation board is not considered a charge under the RPA where a spectator, who was not charged for admission, was injured on the premises.[25]

In one case, the Court of Appeals applied some of the above factors and determined that a defendant power company was not liable for injury that occurred on its property where the land was made available at no charge to the public for hunting, camping, hiking, etc., because the plaintiff had not been on the land to further a commercial interest of the company; there was no mixture of commercial and recreational activities occurring on the property; there were no admissions fees or parking fees; and there were no vendors on the property.[26]

D. Attractive Nuisance

An attractive nuisance, for which a landowner may be liable, is some aspect of the land or its improvements that actually attracts a child to trespass onto the land and causes that child's injury. The object of attraction cannot be ordinary and must be unusually and extraordinarily attractive. Ponds and lakes are not normally treated as attractive nuisances under Georgia law as their inherent danger is obvious, even to children.[27] The Court of Appeals held that the attractive nuisance theory does not apply in cases where the injured child was permitted on the property, and is not, therefore, trespassing.[28] It thus appears that the attractive nuisance doctrine is not applicable in those situations where the RPA applies.

E. Willful or Malicious Failure to Guard or Warn

A landowner who allows public recreation on his land may be liable for "willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity." The injured party must prove that the landowner failed to use even slight care.[29]

The Georgia Supreme Court has established a four-part test for establishing willful failure to guard or warn.[30] It requires actual knowledge of an owner that: (1) his property is being used for recreational purposes; (2) a condition exists involving an unreasonable risk of death or serious bodily harm; and (3) the condition is not apparent to those using the property. Having this knowledge, the owner (4) must have chosen not to guard or warn in disregard of the possible consequences.

The court further explained that willful failure means "conscious, knowing, voluntary, intentional failure, a purpose or willingness to make the omission, rather than a mere inadvertent, accidental, involuntary, inattentive, inert or passive omission." This absolves the landowner from both constructive knowledge (one by exercise of reasonable care would have known the fact) and the duty to inspect.[31]

The Court of Appeals has held that a lessee's failure to guard or warn against dangerous conditions at a recreation area is not willful where the danger was open and obvious[32], and where there was no evidence that a condition involving an unreasonable risk of

death or serious bodily harm existed.[33] On the other hand, failure to guard or warn of an inherently dangerous and unnatural condition that is concealed from the public may trigger liability.[34] In one recent case, the Court of Appeals held that a defendant was not liable for the wrongful death of a visitor where there was no evidence demonstrating that the drowning resulted from willful or malicious failure to guard or warn against a dangerous condition.[35]

F. Liability for Public Entity Management of Land

As indicated earlier, the RPA applies to private and public landowners.[36] A county's activities involving routine maintenance and clean up of a ball field did not jeopardize the limitations on liability provided by the RPA when it allowed a local civic organization to use the field for ball games.[37] So long as the other factors of the statute are satisfied, there is no reason to believe that public management of private land, perhaps pursuant to a conservation easement, would frustrate the application of the RPA.

G. Liability Insurance

The Court of Appeals has held that a county did not waive protection under the RPA when it purchased liability insurance. It warns that one should not confuse "sovereign immunity with the specific limitation of duty granted to any landowner, public or private, by the RPA... The presence of insurance is irrelevant to application of the act".[38] Protection afforded by the RPA should help keep insurance rates down for those landowners who allow the public free access for recreational use.

H. Conservation Easements and the Uniform Conservation Easement Act

The Georgia Uniform Conservation Easement Act (UCEA), O.C.G.A. § 44-10-1 et seq., shields public entities and charitable groups from liability for injuries that occur on land upon which they hold a conservation easement. The statutory definition of a conservation easement specifically includes easements for recreational use. The UCEA, however, protects only the holder of the easement, not the owner of the encumbered property.[39] The landowner must rely upon the RPA for such protection. Certainly the express grant of an easement or lease to a public entity or charitable group to preserve the land for recreational purposes may be used as evidence that the landowner has invited or permitted the public to use the property for those purposes.

I. Land That Is Part of the Georgia Trails System

The Georgia Scenic Trails Act (STA), O.C.G.A. 12-3-110 et seq., authorizes the DNR to create the Georgia Scenic Trails System. It also attempts to limit the liability of landowners whose land is traversed by the system.[40] Because the scenic trails system is created for recreational purposes as described in the RPA, the RPA applies to lands in the scenic trails system.

II. The Potential Liability Under the Equine Activities Liability Act of Landowners Who Allow Equestrians on Their Land

The Georgia legislature enacted the Equine Activities Liability Act to provide immunity from liability for deaths or injuries resulting from the inherent risk of these equine activities. The immunity applies to equine activity sponsors who sponsor, organize or provide facilities for an equine activity; to equine professionals who charge compensation for riding instruction, equipment or tack rental, or veterinary services; or to any other person. This immunity does not apply to products liability cases or where the person charged:

> (1)(A) Provided the equipment or tack, and knew or should have known that the equipment or tack was faulty, and such equipment or tack was faulty to the extent that it did cause the injury; (B) Provided the equine and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity and to safely manage the particular equine based on the participant's representations of his ability;
> (2) Owns, leases, rents or otherwise is in lawful possession and control of the land of facilities upon which the participant sustained injuries because of a dangerous latent condition which was known or should have been known... by any person and for which warning signs have not been conspicuously posted;
> (3) Commits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and that act or omission caused the injury; or
> (4) Intentionally injures the participant.[41]

The EALA appears to hold landowners who open their land to equestrian use to a higher duty of care than required under the Recreational Property Act. Under the EALA, for example, a landowner may be liable for " a dangerous condition that was known or should have been known... for which warning signs have not been conspicuously posted." The landowner therefore has a duty to inspect his premises for dangerous latent conditions. Under the RPA, a landowner may be liable only for actual knowledge of a condition involving unreasonable risk of death or serious bodily harm which is not apparent to those using the property."

However, in one case the Court of Appeals held that the exception to immunity pertaining to possession and control of land and facilities applies only to conditions for which warning signs have been posted. The exception to immunity pertaining to willful or wanton disregard for safety did not apply where plaintiff was kicked by sponsor's horse since it was shown the horse was not so unusually prone to kicking that continuing to ride it was evidence of willful or wanton disregard for the safety of others. Further, failure to follow custom by tying red ribbon around tail of irritable horse did not rise to the level of willful or wanton disregard. Finally, the exception to immunity for cases in which the sponsor provides the equine did not apply where plaintiff rode her own horse.[42]

In another case the Court of Appeals held that a defendant was entitled to immunity as "any other person" where the plaintiff never alleged nor tendered evidence showing the defendants, as equine activity sponsors or as equine professionals, had to have warning signs to trigger immunity.[43]

Could a landowner who allows equestrians to use his property without charge claim that he falls under the broader protection of the RPA rather than the EALA? It seems logical to include equestrian riding under the RPA's definition of "recreational purpose" since hiking and bicycling, other activities involving outdoor enjoyment on a trail or path, fall within that definition. The Georgia legislature's clear pronouncement of the terms of equestrian liability under the EALA, combined with its failure to list equestrian use as a recreational purpose under the RPA, make it more likely that a court would apply the standards of the EALA, however.

Notes

1. O.C.G.A. § 51-3-20.
2. *Herring v. Hauck*, 118 GA. App. 623, 165 S.E.2d 198 (1968).
3. *Stone Mt. Mem. Assn. v. Herrington*, 225 Ga. 746, 171 S.E.2d 521 (1969).
4. *Edmondson v. Brooks Cty. Bd. of Educ.*, 205 Ga. App. 662, 423 S.E.2d 413 (1992); see also Olympic Games, Inc. v. Hawthorne, 278 Ga. 116, 598 S.E.2d 471 (2004).
5. *Maleare v. Peachtree City Church of Christ, Inc.*, 213 Ga. App. 393, 445 S.E.2d 321 (1994).
6. O.C.G.A. §51-3-24.
7. *Shepard v. Wilson*, 123 Ga. App. 74, 179 S.E.2d 550 (1970).
8. *Ga. DOT v. Thompson*, 270 Ga. App. 265, 606 S.E.2d 323 (2004).
9. *Julian v. City of Rome*, 237 Ga. App. 822, 517 S.E.2d 79 (1999).
10. *Herring v. Hauck*, 118 GA. App. 623, 165 S.E.2d 198 (1968); see also *Hart v. Appling County Sch. Bd.*, 266 Ga. App. 300, 597 S.E.2d 462 (2004).
11. *Hart v. Appling County Sch. Bd.*, 266 Ga. App. 300, 597 S.E.2d 462 (2004).
12. *Lee v. Dep't of Natural Res. Of Ga.*, 263 Ga. App. 491, 588 S.E.2d 260 (2003).
13. O.C.G.A. §51-3-21 (4).
14. *Brannon v. Stone Mt. Mem. Assn.*, 165 Ga. App. 120 (1983).
15. *Spivey v. City of Baxley*, 210 Ga. App. 772, 437 S.E.2d 623 (1993).
16. *Cedeno v. Lockwood, Inc.*, 250 Ga. 799 at 800, 301 S.E.2d 265 (1983).
17. *Matheson v. Ga. DOT*, 280 Ga. App. 192, 633 S.E.2d 569 (2006).
18. *Hogue v. Stone Mt. Mem. Assn.*, 183 Ga. App. 378, 358 S.E.2d 852 (1987).
19. *Olympic Games, Inc. v. Hawthorne*, 278 Ga. 116, 598 S.E.2d 471 (2004).
20. *Georgia Power Co. v. McGruder*, 229 Ga. 811, 194 S.E.2d 440 (1972).
21. *Cedeno*, 250 Ga. at 800.
22. O.C.G. A.§ 51-3-21 (1).
23. *Quick v. Stone Mt. Mem. Assn.*, 204 Ga. App. 598, 420 S.E.2d 36 (2002), cert. denied, 204 Ga. App. 922, 420 S.E.2d 36 (1992); *Majeske v. Jekyll Island State Park Auth.*, 209 Ga. App. 118, 433 S.E.2d 304 (1993); *Stone Mt. Mem. Assn. v. Herrington*, 225 Ga. 746, 171 S.E.2d 521 (1969).
24. *Bourn v. Herring*, 225 Ga. 67, 166 S.E.2d 89 (1969).
25. *Spivey v. City of Baxley*, 210 Ga. App. 772, 437 S.E.2d 623 (1993).
26. *Wren v. Harrison*, 165 Ga. App. 847, 303 S.E.2d 67 (1983); *Gregory v. Johnson*, 249 Ga. 151, 289 S.E.2d 232 (1982); *McCall v. McCallie,* 48 Ga. App. 99, 171 S.E. 843 (1933).
27. *Cooley v. City of Carrollton,* 249 Ga. App. 387, 547 S.E.2d 689 (2001).
28. *Edmondson v. Brooks Cty. Bd. of Educ.,* 205 Ga. App. 662, 423 S.E.2d 413 (1992).

29. *Herring v. Hauck*, 118 GA. App. 623, 165 S.E.2d 198 (1968).
30. *Georgia Power Co. v. McGruder*, 229 Ga. 811, 194 S.E.2d 440 (1972).
31. *Georgia Power Co.*, 229 Ga. at 811.
32. *Georgia Marble Co. v. Warren*, 183 Ga. App. 866; 360 S.E.2d 286 (1987); *Edmondson*, 205 Ga. App. at 662.
33. *Spivey v. City of Baxley*, 210 Ga. App. 772, 437 S.E.2d 623 (1993).
34. *North v. Toco Hills, Inc.*, 160 Ga. App. 116, 286 S.E.2d 346 (1981).
35. *Stone Mt. Mem. Assn. v. Herrington*, 225 Ga. 746, 171 S.E.2d 521 (1969); *Welch v. Douglas*.
36. *Ray v. Ga. Dep't of Natural Res.*, 296 Ga. App. 700, 675 S.E.2d 585 (2009).
37. *Muller v. English*, 221 Ga. App. 672, 472 S.E.2d 448 (1996).
38. *Wiederkehr v. Brent*, 248 Ga. App. 645; 548 S.E.2d 402 (2001).
39. *Edmondson*, 205 Ga. at 662.
40. *Welch v. Douglas Cty.*, 199 Ga. App. 269; 404 S.E.2d 450 (1991), cert. denied, 199 Ga. App. 907, 404 S.E.2d 450 (1991).
41. O.C.G.A. §44-10-3 (e).
42. O.C.G.A.§12-3-116.
43. O.C.G.A. § 4-12-3(b).

Appendix A: Recreational Property Act

§ 51-3-20. Purpose of the article.
The purpose of this article is to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting the owners' liability toward persons entering thereon for recreational purposes.

§ 51-3-21. Definitions.
As used in this article, the term:

> (1) "Charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land.
> (2) "Land" means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty.
> (3) "Owner" means the possessor of a fee interest, a tenant, a lessee, an occupant, or a person in control of the premises.
> (4) "Recreational purpose" includes, but is not limited to, any of the following or any combination thereof: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archeological, scenic, or scientific sites.

§ 51-3-22. Duty of owner of land to those using same for recreation generally.

Except as specifically recognized by or provided in Code § 51-3-25, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes or to give any warning of a dangerous condition, use, structure, or activity on the premises to persons entering for recreational purposes.

§ 51-3-23. Effect of invitation or permission to use land for recreation.

Except as specifically recognized by or provided in Code § 51-3-25, an owner of land who either directly or indirectly invites or permits without charge any person to use the property for recreational purposes does not thereby:

> (1) Extend any assurance that the premises are safe for any purpose;
> (2) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed; or
> (3) Assume responsibility for or incur liability for any injury to person or property caused by an act of omission of such persons.

§ 51-3-25. Certain liability not limited.
Nothing in this article limits in any way any liability which otherwise exists:

> (1) For willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity; or
> (2) For injury suffered in any case when the owner of land charges the person or persons who enter or go on the land for the recreational use thereof, except that, in the case of land leased to the state or a subdivision thereof any, consideration

received by the owner for the lease will not be deemed a charge within the meaning of this Code section.

§ 51-3-26. Construction of article.
Nothing in this article shall be construed to:

(1) Create a duty of care or ground of liability for injury to persons or property; or
(2) Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this article to exercise care in his use of the land and in his activities thereon or from the legal consequences of failure to employ such care.

Appendix B: Uniform Conservation Easement Act

§ 44-10-1. Short title
This article shall be known and may be cited as the "Georgia Uniform Conservation Easement Act."

§ 44-10-2. Definitions As used in this article, the term:

(1) "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic, or open-space values of real property; assuring its availability for agricultural, forest, recreational, or open-space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archeological, or cultural aspects of real property.

(2) "Holder" means:

(A) A governmental body empowered to hold an interest in real property under the laws of this state or the United States; or
(B) A charitable corporation, charitable association, or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of real property; assuring the availability of real property for agricultural, forest, recreational, or open-space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archeological, or cultural aspects of real property.

(3) "Third-party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder.

§ 44-10-3. Creation or alteration of conservation easements; acceptance; duration; effect on existing rights and duties; limitation of liability

(a) Except as otherwise provided in this article, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements, except that a conservation easement may not be created or expanded by the exercise of the power of eminent domain.
(b) No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.
(c)Except as provided in subsection (c) of Code Section 44?10?4, a conservation easement is unlimited in duration unless the instrument creating it otherwise provides.
(d) An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to the

conservation easement or consents to it.

(e) The ownership or attempted enforcement of rights held by the holder of an easement shall not subject such holder to any liability for any damage or injury that may be suffered by any person on the property or as a result of the condition of such property encumbered by a conservation easement.

§ 44-10-4. Actions affecting easements; parties; power of court to modify or terminate easement

(a) An action affecting a conservation easement may be brought by:

(1) An owner of an interest in the real property burdened by the easement;
(2) A holder of the easement;
(3) A person having a third-party right of enforcement; or
(4) A person authorized by other law

(b) The easement holder shall be a necessary party in any proceeding of or before any governmental agency which may result in a license, permit, or order for any demolition, alteration, or construction on the property.

(c) This article does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity.

§ 44-10-5. Validity of easement

A conservation easement is valid even though:

(1) It is not appurtenant to an interest in real property;
(2) It can be or has been assigned to another holder;
(3) It is not of a character that has been recognized traditionally at common law;
(4) It imposes a negative burden;
(5) It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;
(6) The benefit does not touch or concern real property; or
(7) There is no privity of estate or of contract.

§ 44-10-6. Interests covered by article; interests not invalidated by article

(a) This article applies to any interest created after July 1, 1992, which complies with this article, whether designated as a conservation or facade easement, or as a covenant, protective covenant, equitable servitude, restriction, easement, or otherwise.

(b) This article applies to any interest created before July 1, 1992, if such interest would have been enforceable had such interest been created after July 1, 1992, unless retroactive application contravenes the Constitution or laws of this state or the United States.

(c) This article does not invalidate any interest, whether designated as a conservation or preservation or facade easement or as a covenant, protective covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of this state.

§ 44-10-7. Construction and application of article to effect uniformity of laws

This article shall be applied and construed to effectuate its general purpose to make uniform the laws with respect to the subject of this article among states enacting it.

§ 44-10-8. Recordation of easements; revaluation of encumbered property; appeals
A conservation easement may be recorded in the office of the clerk of the superior court of the county where the land is located. Such recording shall be notice to the board of tax assessors of such county of the conveyance of the conservation easement and shall entitle the owner to a revaluation of the encumbered real property so as to reflect the existence of the encumbrance on the next succeeding tax digest of the county. Any owner who records a conservation easement and who is aggrieved by a revaluation or lack thereof under this Code section may appeal to the board of equalization and may appeal from the decision of the board of equalization in accordance with Code § 48-5-311.

Appendix C: Scenic Trails Act

§ 12-3-110. Short title
This article shall be known and may be cited as the "Georgia Scenic Trails Act."

§ 12-3-111. Legislative purpose
In order to provide for the increasing outdoor recreation needs of an expanding population with an increasing amount of leisure time, in order to promote the enjoyment and appreciation of the outdoor areas of Georgia, and in order to provide for a healthful alternative to motorized travel, trails should be established in urban, suburban, rural, and wilderness areas of Georgia. Therefore, the purpose of this article is to provide for a Georgia Scenic Trails System.

§ 12-3-112. "System" defined
As used in this article, the term "system" means the Georgia Scenic Trails System provided for in this article.

§ 12-3-113. Duties and powers of department as to system; requirements as to title to land traversed by system

The Department of Natural Resources shall have the responsibility of creating a Georgia Scenic Trails System. In carrying out such responsibilities, it shall be the duty of the department to identify and plan the system, to acquire or otherwise gain control over or rights to the use of the necessary land for the system, and to construct, manage, and maintain the system. For the purpose of carrying out its primary duties as provided in this article, the department shall be authorized to exercise any powers heretofore provided by law for the department, except for the powers of eminent domain. Notwithstanding the provisions of any other statute concerning the improvement of land held in fee simple by the State of Georgia, the department shall be authorized to expend state funds for construction, maintenance, and management of trails on lands acquired through purchase, easement, lease, or donation; provided, however, that no buildings shall be constructed on any real estate to which the State of Georgia does not hold title in fee simple, unless it is held under a quitclaim deed with a reversionary interest in the federal government or under a long-term federal license agreement with a reversionary interest in the federal government.

§ 12-3-114. Policies to guide department in creating and administering system

The department shall be guided by the following policies in creating and administering the Georgia Scenic Trails System:

(1) A balanced system of trails throughout the state should be sought, including, but not limited to, the following types of trails:

(A) Urban trails. These would be located within or close to urban centers and would accommodate intensive use from urban residents. Activities would include jogging, walking, and touring historic sites and other points of interest;
(B) Bicycle trails. These would be located in urban, suburban, or rural areas and

should be easily accessible to population centers. Bicycle trails in urban areas should provide an acceptable alternative to motorized transportation, and the cyclist should be protected from motorized traffic;
(C) Horse trails. These may extend through urban, suburban, rural, or wilderness areas and should be accessible to population centers. Supporting facilities may include stables, corrals, drinking water, primitive campsites, and shelter;
(D) Rural hiking trails. These would be accessible to, but not within, population centers and may traverse areas of historic or scenic interest, pasture land, and woodland. Activities would include hiking, walking, jogging, touring, camping, and fishing. Support facilities may include simple toilet facilities, drinking water, primitive campsites, and picnic tables and benches;
(E) Primitive hiking trails. These would be primarily to provide the beauty and inspiration of the wilderness experience to an increasingly urban society. They may traverse small areas of pastoral land or roadway but would be largely in undisturbed wilderness areas. Any facilities should be primitive in nature and widely separated;
(F) Historical trails. These would emphasize important events in the history of Georgia and would be appropriately marked to allow the user to become familiar with such history;
(G) Bikeways. These would be publicly owned and maintained paved paths, ways, or trails designated and signed as bicycle routes and located in urban, suburban, or rural areas. Notwithstanding any other provisions of this article, the routes of such bikeways shall be determined by the local governing authority wherein such bikeways would be located and shall be approved by the Department of Transportation;
(H) Combination trails. These would be trails consisting of combinations of any of the types of trails described in subparagraphs (A) through (G) of this paragraph;

(2) The use of the trails should be limited to those activities for which intended, and appropriate steps should be taken to enforce this policy;
(3) The physical facilities provided for the trails, such as trail markers, signs, toilet facilities, shelters, drinking water, campsites, picnic tables, and parking areas, should be in keeping with the intended use of the trails and with health, sanitation, and safety requirements but should make minimum changes in the natural environment consistent with those objectives;
(4) Assistance and encouragement should be provided for local governments in the development of trails, and a procedure should be adopted whereby such trails could be regulated and maintained as a part of the system;
(5) The advice, cooperation, and assistance of other state agencies, local governments and agencies thereof, and private associations and organizations should be sought in developing and maintaining the system;
(6) Planning and developing the system should be coordinated with the regional commissions and the Department of Community Affairs;
(7) Trails should be planned, constructed, and maintained on a long-term basis, and in connection therewith long-term control of the land making up the trails should be established by the acquisition in fee simple of rights of way to such land or by leases, easements, or other appropriate long-term agreements; and where feasible, rights of way should be of sufficient width to preserve the recreational, scenic, or historical

uniqueness of the trail; and
(8) A program for the education of the public on the effective use and care of trails should be established.

§ 12-3-115. Construction of bicycle trails and bikeways by Department of Transportation

(a) The Department of Transportation is authorized and directed to construct bicycle trails and bikeways in this state after the routes of such trails and bikeways have been determined by the Department of Natural Resources or by local governing authorities and approved by the Department of Transportation pursuant to this article.
(b) Nothing contained in this Code section shall be deemed or construed to prevent local governing authorities or private associations and organizations from constructing bicycle trails in this state, provided that the power of eminent domain shall not be exercised for the acquisition or construction of such trails.

§ 12-3-116. Responsibility and liability of owners of premises traversed by system
(a) Any person who goes upon or through the premises, including, but not limited to, lands, waters, and private ways, of another with or without permission to hunt, fish, swim, trap, camp, hike, sightsee, or for any other purpose, without the payment of monetary consideration, or with the payment of monetary consideration directly or indirectly on his behalf by an agency of the state or federal government, is not thereby entitled to any assurance that the premises are safe for such purpose. The owner of such premises does not assume responsibility for or incur liability for any injury to person or property caused by an act or failure to act of other persons using such premises.
(b) Nothing in this Code section shall be construed as affecting the existing case law of Georgia regarding liability of owners or possessors of premises with respect to business invitees in commercial establishments or to invited guests, nor shall this Code section be construed so as to affect the attractive nuisance doctrine. In addition, nothing in this Code section shall excuse the owner or occupant of premises from liability for injury to persons or property caused by the malicious or illegal acts of the owner or occupant.

§ 12-3-117. Adoption and promulgation of rules and regulations by Board of Natural Resources

The Board of Natural Resources is authorized to adopt and promulgate such rules and regulations as may be necessary to carry out this article.

Appendix D: Equine Activities Liability Act

§ 4-12-1. Legislative findings

The General Assembly recognizes that persons who participate in equine activities may incur injuries as a result of the risks involved in such activities. The General Assembly also finds that the state and its citizens derive numerous economic and personal benefits from such activities. The General Assembly finds, determines, and declares that this chapter is necessary for the immediate preservation of the public peace, health, and safety. It is, therefore, the intent of the General Assembly to encourage equine activities by limiting the civil liability of those involved in such activities.

§ 4-12-2. Definitions

As used in this chapter, the term:

(1) "Engages in an equine activity" means riding, training, providing or assisting in providing medical treatment of, driving, or being a passenger upon an equine, whether mounted or unmounted, or any person assisting a participant or show management. The term "engages in an equine activity" does not include being a spectator at an equine activity, except in cases where the spectator places himself in an unauthorized area and in immediate proximity to the equine activity.

(2) "Equine" means a horse, pony, mule, donkey, or hinny.

(3) "Equine activity" means:

(A) Equine shows, fairs, competitions, performances, or parades that involve any or all breeds of equines and any of the equine disciplines, including, but not limited to, dressage, hunter and jumper horse shows, grand prix jumping, three-day events, combined training, rodeos, driving, pulling, cutting, polo, steeple chasing, English and western performance riding, endurance trail riding and western games, and hunting;

(B) Equine training or teaching activities, or both;

(C) Boarding equines;

(D) Riding, inspecting, or evaluating an equine belonging to another, whether or not the owner has received some monetary consideration or other thing of value for the use of the equine or is permitting a prospective purchaser of the equine to ride, inspect, or evaluate the equine;

(E) Rides, trips, hunts, or other equine activities of any type however informal or impromptu that are sponsored by an equine activity sponsor;

(F) Placing or replacing horseshoes on an equine; and

(G) Examining or administering medical treatment to an equine by a veterinarian.

(4) "Equine activity sponsor" means an individual, group, club, partnership, or corporation, whether or not the sponsor is operating for profit or nonprofit, which sponsors, organizes, or provides the facilities for an equine activity, including, but not limited to, pony clubs; 4?H clubs; hunt clubs; riding clubs; school and college sponsored classes, programs, and activities; therapeutic riding programs; and operators, instructors, and promoters of equine facilities, including, but not limited to, stables, clubhouses, ponyride strings, fairs, and arenas at which the activity is

held.
(5) “Equine professional” means a person engaged for compensation in:

(A) Instructing a participant or renting to a participant an equine for the purpose of riding, driving, or being a passenger upon the equine;
(B) Renting equipment or tack to a participant; or
(C) Examining or administering medical treatment to an equine as a veterinarian.

(6) “Inherent risks of equine activities” means those dangers or conditions which are an integral part of equine activities, including, but not limited to:

(A) The propensity of an equine to behave in ways that may result in injury, harm, or death to persons on or around them;
(B) The unpredictability of an equine’s reaction to such things as sounds, sudden movement, and unfamiliar objects, persons, or other animals;
(C) Certain hazards such as surface and subsurface conditions;
(D) Collisions with other equines or objects; and
(E) The potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to maintain control over the animal or not acting within his or her ability.

(7) “Participant” means any person, whether amateur or professional, who engages in an equine activity, whether or not a fee is paid to participate in the equine activity.

§ 4-12-3. Immunity from liability for injury or death; exceptions

(a) Except as provided in subsection (b) of this Code section, an equine activity sponsor, an equine professional, or any other person, which shall include a corporation or partnership, shall not be liable for an injury to or the death of a participant resulting from the inherent risks of equine activities and, except as provided in subsection (b) of this Code section, no participant or participant’s representative shall make any claim against, maintain an action against, or recover from an equine activity sponsor, an equine professional, or any other person for injury, loss, damage, or death of the participant resulting from any of the inherent risks of equine activities.
(b) Nothing in subsection (a) of this Code section shall prevent or limit the liability of an equine activity sponsor, an equine professional, or any other person if the equine activity sponsor, equine professional, or person:

(1) (A) Provided the equipment or tack, and knew or should have known that the equipment or tack was faulty, and such equipment or tack was faulty to the extent that it did cause the injury.

(B) Provided the equine and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity and to safely manage the particular equine based on the participant’s representations of his ability;
(2) Owns, leases, rents, or otherwise is in lawful possession and control of the land

or facilities upon which the participant sustained injuries because of a dangerous latent condition which was known or should have been known to the equine activity sponsor, equine professional, or person and for which warning signs have not been conspicuously posted;
(3) Commits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and that act or omission caused the injury; or
(4) Intentionally injures the participant.

(c) Nothing in subsection (a) of this Code section shall prevent or limit the liability of an equine activity sponsor or an equine professional under liability provisions as set forth in the products liability laws.

§ 4-12-4. Warning required; effect of failure to comply with notice requirement

(a) Every equine professional and every equine activity sponsor shall post and maintain signs which contain the warning notice specified in subsection (b) of this Code section. Such signs shall be placed in a clearly visible location on or near stables, corrals, or arenas where the equine professional or the equine activity sponsor conducts equine activities. The warning notice specified in subsection (b) of this Code section shall appear on the sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by an equine professional or by an equine activity sponsor for the providing of professional services, instruction, or the rental of equipment or tack or an equine to a participant, whether or not the contract involves equine activities on or off the location or site of the equine professional's or the equine activity sponsor's business, shall contain in clearly readable print the warning notice specified in subsection (b) of this Code section.
(b) The signs and contracts described in subsection (a) of this Code section shall contain the following warning notice:

WARNING

Under Georgia law, an equine activity sponsor or equine professional is not liable for an injury to or the death of a participant in equine activities resulting from the inherent risks of equine activities, pursuant to Chapter 12 of Title 4 of the Official Code of Georgia Annotated.

(c) Failure to comply with the requirements concerning warning signs and notices provided in this Code section shall prevent an equine activity sponsor or equine professional from invoking the privileges of immunity provided by this chapter.