Mr. Neeley, you have asked me to provide a legal opinion on whether the Chatfield Bluffs South HOA is *required* to allow owner access to Tract A, the "Open Space", aka "Sensitive Area" described in paragraph #5 of the Open Space Rules and Regulations adopted at least as long ago as 2010, and re-stated on April 4, 2022 .

In my opinion no such access is required by law. Rather, the Board may restrict and/or prohibit owner access to that area so long as it articulates a reasonable basis for such restriction or prohibition and notifies owners as required by statute.

The HOA was formed in 1996 and is therefore subject to the entirety of CCIOA (the Colorado Common Interest Ownership Act), found at C.R.S. §38-33.3-101 *et seq*.

C.R.S. §38-33.3-302.5.302.5 states an HOA "shall not *unreasonably* restrict or prohibit unit owners' access to, or enjoyment, of any common element…" (emphasis added). The statute goes on to state that if the HOA does restrict such access, it must provide notice of such restriction to each owner with a "simple explanation of the reason for the restriction or prohibition", an indication of how long the restriction will last, provide a telephone number or email address that owners can use to ask questions about the restriction, and post a physical notice at the entry to the common element.

The issue here is whether the HOA can provide a reasonable justification for prohibiting owners' access to Tract A. The answer is unequivocally yes. Prior boards (and apparently, even the declarant) have concluded that the value in maintaining the undisturbed ecosystem – not to mention avoiding the legal liability that arises from allowing access to a well-known rattlesnake haven – was sufficient to justify prohibiting access. In my opinion this is more than enough justification for the HOA to continue the longstanding policy to prohibit access.

Note the area we are describing, Tract A, is defined as "Open Space" on the Official Development Plan (recorded on August 17, 1994 at Book 76, pp. 13-14, Reception No. 94137643), and one portion of that is labeled "Wetlands". Section III(D) of that ODP specifies that "No activity may occur in the wetlands area on the southern slope of the site as shown on the ODP Graphic". While it is not immediately clear as to the precise location or extent of the area labeled "wetlands", certainly the Board is legally *prohibited* by the ODP from allowing any activity or access to this portion.

Similarly, Tract A is described as a "Sensitive Area". I have reviewed documentation from Ryland Homes that describes Tract A as a "lush natural preserve". Both descriptions seem apt, and the historical limitations on use of Tract A are consistent with preserving this area as an undeveloped wildlife area with limited to no human intrusion (aside from the developed footpath/sidewalk leading to the lookout area that was specifically designed for that purpose).

Aside from honoring the historical limitations on use, there are other reasons justifying restrictions on opening this area to recreational activities of owners. One of the most significant is the legal liability the HOA will be exposed to.

In my opinion, opening access to Tract A exposes the HOA to significant potential legal liability from persons who may be injured by the known danger of rattlesnakes (and the steepness of the terrain). I will not go into the specifics of the Premises Liability Act found at C.R.S. §13-21-115, but a recent case has concluded that an owner or their guests who enter upon common elements owned and controlled by an HOA are considered "invitees" under the Premises Liability Act, and are thus owed the highest legal duty of care. *Willis v. Twin Shores Master Owner Ass'n, Inc*., 2025 COA 37, 568 P.3d 807. This means the HOA can be held liable for its unreasonable failure to exercise reasonable care to protect against the dangers the HOA actually knew about. Given what I understand to be the extreme prevalence of rattlesnakes in this area, in my opinion it is likely that anyone bitten by a rattlesnake could easily sue the HOA for allowing access to Tract A at all. Simply notifying owners that rattlesnakes exist and to "take precautions" is, in my opinion, unlikely to successfully shield the HOA from liability.

Finally, allowing access to this area will result in a significant decrease in home values for those properties bordering the area, nearly all of which paid a "lot premium" to Ryland for the privilege of overlooking this "lush natural preserve". Increased human activity will lead to degradation of the landscape and wildlife habitat, increased risk of wildfires, higher instances of crime ranging from simple littering to increased risk of burglary, trespass, and vandalism -- all of which will result in lower property values for not only these homes but to others in the community as well.

To conclude, it is absolutely certain that the HOA can (and in my opinion, should) prohibit access to Tract A because very reasonable grounds exist to do so, and only a modest amount of notification is required by C.R.S. §38-33.3-302.5.

Very truly yours,

Paul R. Danborn

Danborn, Thiessen & Dunham P.C.
7400 Wadsworth Blvd., Suite 201
Arvada, CO 80004
(303) 420-1234
www.ArvadaLaw.com

DANBORN, THIESSEN
& DUNHAM P.C.