Summertime blues

As spring has finally arrived and summer will soon be upon us, there is an increasing demand from the public for greater access to recreational activities either provided by or sponsored by local agencies. Such activities as youth/adult recreational baseball/softball leagues; swimming; hiking; access to public lands/trails for recreational use. How does your agency manage its recreational exposure? In this issue we will identify the various Recreational Immunities available to your public entity to allow both you and your Board a happy, stress free recreational spring and summer.

What is a 'Hazardous Recreational Activity?'
California Government Code §831.7 states in part:

(a) Neither a public entity nor a public employee is liable to any person who participates in a hazardous recreational activity, including any person who assists the participant, or to any spectator who knew or reasonably should have known that the hazardous recreational activity created a substantial risk of injury to himself or herself and was voluntarily in the place of risk, or having the ability to do so failed to leave, for any damage or injury to property or persons arising out of that hazardous recreational activity.
(b) As used in this section, *"hazardous recreational activity" means a recreational activity conducted on property of a public entity that creates a substantial, as distinguished from a minor, trivial, or insignificant, risk of injury to a participant or a spectator.*

"Hazardous recreational activity" also means:

(1) Water contact activities, except diving, in places where, or at a time when, lifeguards are not provided and reasonable warning thereof has been given, or the injured party should reasonably have known that there was no lifeguard provided at the time.
(2) Any form of diving into water from other than a diving board or diving platform, or at any place or from any structure where diving is prohibited and reasonable warning thereof has been given.
(3) Animal riding, including equestrian competition, archery, bicycle racing or jumping, bicycle motocross, mountain bicycling, boating, cross-country and downhill skiing, hang gliding, kayaking, motorized vehicle racing, off-road motorcycling or four-wheel driving of any kind, orienteering, pistol and rifle shooting, rock climbing, rocketeering, rodeo, self-contained underwater breathing apparatus (SCUBA) diving, spelunking, skydiving, sport parachuting, paragliding, body contact sports, surfing, trampolining, tree climbing, tree rope swinging, waterskiing, white water rafting, and windsurfing. For the purposes of this subdivision, "mountain bicycling" does not include riding a bicycle on paved pathways, roadways, or sidewalks. For the purpose of this paragraph, "body contact sports" means sports in which it is reasonably foreseeable that there will be rough bodily contact with one or more participants.

What is Primary Assumption of Risk doctrine?

Assumption of risk can be either "primary" or "secondary." Primary assumption of risk refers to instances where "there is 'no duty' on the part of the defendant to protect the plaintiff from a particular risk.'" (*Knight v. Jewett* (1992) 3 Cal.4th 296, 308-09.) Primary assumption of risk is a complete defense and bars a plaintiff's claim for relief in its entirety. Think of such recreational activities as softball, hiking, etc. Secondary assumption of risk refers to situations in which "the defendant does owe a duty of care to the plaintiff but the plaintiff knowingly encounters a risk of injury caused by the defendant's breach of that duty." Secondary assumption of risk has been subsumed into the doctrine of comparative fault, and is not a complete bar to recovery.As the California Supreme Court has explained, in determining whether the defendant owed the plaintiff a legal duty to protect plaintiff from the particular risk that caused her harm, and thus whether primary assumption of the risk applies and bars plaintiff' recovery, the court must look to "the nature of the activity and the parties' relationship to the activity." This is an objective test, rather than a subjective one. Therefore, the issue of the plaintiff's reasonableness in assuming the risk is irrelevant. This inquiry necessarily involves a fact-specific, case-by-case analysis.

Recreational Access to Trails and Undeveloped Public Lands

831.2.
Neither a public entity nor a public employee is liable for an injury caused by a natural condition of any unimproved public property, including but not limited to any natural condition of any lake, stream, bay, river or beach.

831.21.
(a) Public beaches shall be deemed to be in a natural condition and unimproved notwithstanding the provision or absence of public safety services such as lifeguards, police or sheriff patrols, medical services, fire protection services, beach cleanup services, or signs. The provisions of this section shall apply only to natural conditions of public property and shall not limit any liability or immunity that may otherwise exist pursuant to this division.

831.25.
(a) Neither a public entity nor a public employee is liable for any damage or injury to property, or for emotional distress unless the plaintiff has suffered substantial physical injury, off the public entity's property caused by land failure of any unimproved public property if the land failure was caused by a natural condition of the unimproved public property.

831.4.
A public entity, public employee, or a grantor of a public easement to a public entity for any of the following purposes, is not liable for an injury caused by a condition of:

(a) Any unpaved road which provides access to fishing, hunting, camping, hiking, riding, including animal and all types of vehicular riding, water sports, recreational or scenic areas and which is not a (1) city street or highway or (2) county, state or federal highway or (3) public street or highway of a joint highway district, boulevard district, bridge and highway district or similar district formed for the improvement or building of public streets or highways.
(b) Any trail used for the above purposes.
(c) Any paved trail, walkway, path, or sidewalk on an easement of way which has been granted to a public entity, which easement provides access to any unimproved property, so long as such public entity shall reasonably attempt to provide adequate warnings of the existence of any condition of the paved trail, walkway, path, or sidewalk which constitutes a hazard to health or safety. Warnings required by this subdivision shall only be required where pathways are paved, and such requirement shall not be construed to be a standard of care for any unpaved pathways or roads.

Dog Parks, Anyone?

831.7.5.
(a) A public entity that owns or operates a dog park shall not be held liable for injury or death of a person or pet resulting solely from the actions of a dog in the dog park.
(b) This section shall not be construed to affect the liability of a public entity that exists under the law.
(c) "Public entity" has the same meaning as Section 811.2, and includes, but is not limited to, cities, counties, cities and counties, and special districts.

For more information or to discuss your agency's specific risk needs, please contact SDRMA Chief Risk Officer Dennis Timoney at 800.537.7790 or email Dennis your question at dtimoney@sdrma.org.