

Recreational trail liability

When is a “paved trail” not a sidewalk?

When the public agency dedicates the paved trail as a “RECREATIONAL TRAIL.”

Trail Immunity Upheld for Bike Path Used both as a Transportation Corridor and for Recreational Purposes

January 21, 2016 | Bulletin No. 1273991.1

On January 13, 2016, California’s Sixth Appellate District certified *Burgueno v. Regents of the University of California* (Cal. Ct. App., Dec. 15, 2015) ___ Cal.Rptr.3d ___, 2015 WL 9700324 for publication. The case involved a dangerous condition of public property and wrongful death complaint arising out of the death of a University of California, Santa Cruz (UCSC) student, Adrian Burgueno. Mr. Burgueno was fatally injured while bicycling on an on-campus bike path, the Great Meadow Bikeway, which the plaintiffs alleged was maintained by UCSC in a dangerous condition.

The Great Meadow Bikeway is a paved bike path that runs through the UCSC campus. The trail was constructed in 1973, and serves as a bicycle transportation corridor to and from the main campus. The Great Meadow Bikeway is also used for recreational purposes and is used by some cycling clubs to connect to other recreational trails leading into the redwood forests beyond the UCSC campus. Mr. Burgueno was fatally injured on a downhill portion of the path after leaving a photography class on February 10, 2011.

The trial court granted summary judgment to the Regents of the University of California on the issue of trail immunity, finding that the complaint was barred by Government Code section 831.4. Pursuant to Section 831.4, a public entity “is not liable for an injury caused by a condition of: [...] (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....” As stated by the Court of Appeal, the “purpose of trail immunity statutes is to encourage public entities to open their property for public recreational use, because the burden and expense of putting such property in a safe condition and the expense of defending claims for injuries would probably cause many public entities to close such areas to public use.”

The plaintiffs appealed the trial court’s grant of summary judgment.

On appeal, the plaintiffs argued that, though it is sometimes used for recreational purposes, the Great Meadow Bikeway was designed primarily for the purpose of bicycle commuting on campus, and in fact was being used for commuting purposes by Mr. Burgueno at the time of the accident. The plaintiffs argued that the fact that the trail was sometimes used for recreational purposes did not change the fundamental character of the trail, and



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that character should be the basis for the immunity analysis. The plaintiffs also argued that the Regents would take responsibility for the Great Meadow Bikeway’s safety and would keep it open even without statutory immunity and that, therefore, the purpose of statutory immunity (to allow a trail to be opened where it would otherwise be closed due to the risk of liability) would not be achieved in this case.

The court rejected plaintiffs’ arguments and focused solely on whether the trail met the definition of a paved recreational trail under Section 831.4. Upon

finding that the trail met the definition of a recreational trail, the court determined that the action was barred by trail immunity and affirmed the trial court’s decision.

What this case means for your agency?

This case confirms the application of trail immunity for recreational trails, even where a trail is primarily developed for commuting and transportation purposes. Public agencies developing trails for commuting purposes can use this case to determine if any secondary recreational purposes achieved by a trail are sufficient to provide trail immunity under Government Code section 831.4.

The California Government Code identifies specific immunities that public entities enjoy to protect the public entity in order to allow the public to use these public lands for recreational purposes.

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. ^

For further information or to answer questions, please contact SDRMA’s Chief Risk Officer Dennis Timoney at dtimoney@sdrma.org or call at 800.537.7790.



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