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MEMORANDUM

TO: Cary Bloomquist
Public Works Department
City of Saratoga

FROM: Richard S. Taylor
City Attorney

DATE: March 2, 2003

RE: Trail Liability Issues

You have asked for information concerning (1) the City's potential liability to users of City-owned trails, (2) private landowners' potential liability to trail users who might stray from the City-owned trail system onto private property, and (3) the City's authority to indemnify landowners adjoining the trail system for damages that might arise from trail users that stray from City trails to private property. As discussed below, California law provides broad immunity to both City and private landowners in lawsuits arising from injuries sustained by recreational users of trails and property. In addition, California law authorizes the City to enter indemnity agreements with landowners adjoining public trails. I discuss each of these issues in more detail below.

City Liability

Government Code section 831.4 states that a public entity, public employee, or grantor of a public easement to a public entity for specified recreational purposes cannot be held liable for injuries caused by the condition of certain roads, paths, and trails that provide access to recreation. Specifically, this section grants immunity from suit over the condition of "any trail" used for fishing, hunting, camping, hiking, riding ("including animal and all types of vehicular riding"), or water sports. (Gov. Code §831.4 (a), (b).) As one California court put it, "[t]he plainly stated purpose of immunity for recreational activities on public land is to encourage public entities to open their property for public recreational use." (*Armenio v. County of San Mateo*, 28 Cal. App. 4th 413, 417 (1994).)

California courts have granted cities, counties, and the state very broad immunity from suit under this section. For example, one court held that the state was absolutely immune from a lawsuit brought by a motorcyclist who was injured trying to avoid a pile of dirt placed by state employees in the

middle of an established trail in a state vehicular recreation park. (*Giannuzzi v. State of California*, 17 Cal. App. 4th 462, 464 (1993).) The court determined that public entities are immune from suits over the condition of trails so long as the trails provide opportunities for the recreational activities listed in the statute. (*Id.* at 466-67.) Another court found the state absolutely immune from a suit brought by a woman who alleged that a dangerous trail condition caused her to be thrown from her horse while riding in a state park. (*State of California v. Superior Court*, 32 Cal. App. 4th 325 (1995).)

Courts also have defined “trail” broadly for purposes of granting immunity. In *Giannuzzi*, 17 Cal. App. 4th at 466-67, the court concluded that a trail need not provide “access” to any separate property or activity in order to qualify for immunity from suit. (*See also Armenio*, 28 Cal. App. 4th at 417 (county was immune from suits over condition of bike path, even though the path did not provide “access” to any other recreational property).) In another case, a bicyclist riding on a paved bike path was injured when a section of pavement gave way under him, and then sued the city that owned the bike path. (*Farnham v. City of Los Angeles*, 68 Cal. App. 4th 1097 (1998), *review denied*.) The court rejected the bicyclist’s argument that a paved bike path was a “street or highway” (subject to different standards for immunity), and held that the city was immune from the lawsuit. (*Id.* at 1101.) The court also noted that California courts have unanimously interpreted Government Code §831.4 “to apply full immunity to any trail, paved or unpaved.” (*Id.* at 1103; *see also Carroll v. County of Los Angeles*, 60 Cal. App. 4th 606, 609 (1997), *review denied* (the words “trail” and “path” are synonymous for purposes of §831.4(b).)¹

Taken together, Government Code §831.4 and the cases interpreting it grant very broad immunity to cities, their employees, and grantors of easements, and provide strong defenses to lawsuits stemming from the condition of recreational trails.

Landowner Liability

California law also protects private individuals from liability to persons injured after entering private property for a recreational purpose. Civil Code section 846 makes clear that a landowner, or anyone else with a real property interest, “owes no duty of care to keep [that property] safe for use by others for any recreational purpose.”² This means that a landowner generally cannot be held

¹ Under some circumstances, public entities must take extra steps to ensure that they are not liable for the condition of paved trails. Specifically, paved trails, walkways, paths, or sidewalks on easements granted to a public entity for purposes of providing access to unimproved property are entitled to immunity only if the public entity “shall reasonably attempt to provide adequate warnings of the existence of any condition [that] constitutes a hazard to health or safety.” Gov. Code §831.4(c). As the language of the statute indicates, this warning requirement only applies to paved trails along easements that provide access to unimproved property. *See Giannuzzi*, 17 Cal. App. 4th at 467.

² The statute defines “recreational purposes” to include “such activities as fishing, hunting, camping, water sports, hiking, spelunking, sport parachuting, riding, including animal riding,

liable for injuries sustained by people who use her land recreationally, with or without permission. The statute does provide some exceptions. A landowner will not be shielded from liability if she willfully or maliciously fails to warn users of her property about a dangerous condition, charges money for permission to use her property, or expressly invites (rather than simply permits) others to use her property recreationally. (*See id.*) Like the Government Code provision immunizing cities from suits over trail conditions, this landowner liability limitation was designed “to achieve the Legislature’s goal of keeping as much private land as possible open for public recreational use.” (*Collins v. Tippett*, 156 Cal. App. 3d 1017, 1020 (1984).)

California courts have interpreted this law broadly. Absent willful or malicious conduct, landowners generally will not be held liable for injuries sustained by trespassers who enter their land for recreational purposes. (*See Charpentier v. Von Geldern*, 191 Cal. App. 3d 101, 108 (1987) (“The recreational trespasser on private land assumes the risk of injury . . . absent willful or malicious conduct by the landowner.”).) This liability limitation applies not just to landowners, but also to all others who hold interests in real property; thus a person who holds an easement, for example, may still claim immunity under Civil Code section 846. (*See Hubbard v. Brown*, 50 Cal. 3d 189, 194-95 (1990).)³

The California Supreme Court recently confirmed that “recreational purposes” are to be interpreted very broadly, and that the immunity granted under Civil Code §846 is intended to apply to all private property rather than just some subset of property suitable for recreational use. (*See Ornelas v. Randolph*, 4 Cal. 4th 1095 (1993).) In *Ornelas*, several children entered a farmer’s property and were playing on old farm equipment; one of the children dislodged a piece of metal pipe, which fell and injured another child playing nearby. (*Id.* at 1098.) The Court determined that the injured child had entered the property for “recreational purposes,” holding that the list of recreational activities specified by the statute is “not limited to activities which take place outdoors, and does not exclude recreational activities involving artificial structures. . . . Therefore, for our purposes here, clambering about on farm equipment is no different in kind from scaling a cliff or climbing a tree. [Citation.] Each is clearly recreational in nature.” (*Id.* at 1101.) The Court also rejected a long line of cases holding that owners of property “unsuitable” for recreation, such as construction sites, were not eligible to claim immunity. (*See id.* at 1105-08.) Instead, the Court concluded that the intent of the person entering private land for recreational purposes, rather than any characteristics of the land itself, determined whether immunity would be available. (*See id.* at 1108 (“One who avails oneself of the opportunity to enjoy access to the

snowmobiling, and all other types of vehicular riding, rock collecting, sightseeing, picnicking, nature study, nature contacting, recreational gardening, gleaning, hang gliding, winter sports, and viewing or enjoying historical, archaeological, scenic, natural, or scientific sites.” Civ. Code §846.

³ Section 846 does not apply directly to property interests held by public entities. *Delta Farms Reclamation Dist. v. Super. Ct.*, 33 Cal. 3d 699 (1983). However, the provisions of the Government Claims Act discussed above provide public entities with a number of other immunities from suit. *See Delta Farms Reclamation Dist.* at 704-07 (discussing simultaneous consideration by Legislature of Civil Code §846 and the Government Claims Act, and reasoning that application of §846 to publicly owned property would produce a conflict between the statutes).

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land of another for one of the recreational activities within the statute may not be heard to complain that the property was inappropriate for the purpose.”)

Ornelas confirms that persons who leave city-owned trails to trespass on any kind of private land will likely be found to be engaged in “recreational” use, and that (absent willful or malicious conduct) anyone with an interest in the private land may claim immunity from suit under Civil Code §846. More recent cases support this reading of the statute. (See, e.g., *Jackson v. Pacific Gas & Electric Co.*, 94 Cal. App. 4th 1110 (2001) (retrieving kite from utility pole a “recreational use,” and utility company holding easement was immune from suit, even where owner of land had expressly invited child onto property to retrieve kite); *Shipman v. Boething Treeland Farms*, 77 Cal. App. 4th 1424 (2000) (“When an uninvited, nonpaying recreational user becomes injured on private land, section 846 bars recovery. [Citation.] The definition of ‘recreational purpose’ in section 846 is so extensive it includes nearly any leisure activity.”).)

In summary, Civil Code §846 provides landowners and others who hold interests in property adjacent to City-owned trails with a broad degree of immunity from suit by persons who enter their property for recreational purposes.

Indemnity Agreements

An indemnity agreement is an agreement whereby one person agrees to assume responsibility for the legal consequences of the conduct of another. (Civil Code § 2772.) You have asked whether the City may agree to indemnify the owners of property adjoining City trails for damages that may arise from trespass onto that property. The California Attorney General considered this issue in 1995 and concluded that the answer is yes. (78 Cal. Ops. Atty. Gen 238 (1995).) A copy of the opinion is attached for your information; in addition to addressing the question presented it provides a useful review of the public and private immunities discussed above.). Although these opinions are not binding, courts frequently find such opinions to be of strong persuasive authority.

The Attorney General considered primarily whether such agreements would be an improper gift of public funds. (See Cal. Const. Article XVI, section 6.) He concluded that it would not in light of the substantial public benefits associated with publicly operated trail systems. Accordingly, if the City Council wished to enter indemnity agreements with landowners adjoining public trails there would be no legal obstacle to doing so.

Please do not hesitate to contact me if you have any further questions regarding this matter.

cc: Dave Anderson, City Manager