

CAPISTRANO BAY DISTRICT
AGENDA REPORT
April 26, 2016

New Business

ITEM 9a

Relocation of Pedestrian Crosswalk at Admin Office

The Board has expressed an interest in possibly relocating the existing pedestrian crosswalk behind the guard building to a new location a bit south and adjacent to the District Admin Office Building. A proposed second step would then be to dismantle and remove the small triangular planter island that also is located in the service driveway just past the guard building.

The purpose is to move the pedestrian activity a bit further south and open the service driveway for a less obstructive pathway for vehicles entering on that side of the guard building.

The existing configuration of the two driveways and the planter island location was designed to provide pedestrian protection at the crosswalk and was approved and permitted by the City Traffic Engineer and the Planning Dept.

Relocating both the crosswalk and the planter island might turn out to be an improvement, once it's completed and everyone sees the difference. However, any changes made to the existing approved layout must be reviewed by the City and their Traffic Engineer.

Crosswalks can prove to be a serious liability for the responsible agency. Pedestrians assume a level of safety while using a crosswalk. If an injury should occur in an unapproved and unpermitted crosswalk, there is no question that the responsible agency would face a serious lawsuit.

The following two pages are copied from the current edition of the California Special Districts Association magazine and cover some of the details of Government Codes and Court Rulings on Public Property Liability Exposures. In a nutshell, a public agency can increase its statutory immunity to liability claims by demonstrating substantial evidence of discretionary approval, i.e., city permits.

With the Board's direction, the Manager would like to solicit bids from at least three traffic engineers for design and analysis of the proposed crosswalk project. The District should be able to make good use of the existing permitted drawings to overlay the proposed project for submittal to the City.

(see two attached pages)

Dangerous condition of public property liability exposures

When a public entity opens up its recreational facilities or is responsible for the maintenance of public roads, the primary theory of liability against a public entity is the Dangerous Condition of Public Property statute. California Government Code §830 states:

AS USED IN THIS CHAPTER:

- (a) "Dangerous condition" means a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used.
- (b) "Protect against" includes repairing, remedying or correcting a dangerous condition, providing safeguards against a dangerous condition, or warning of a dangerous condition.
- (c) "Property of a public entity" and "public property" mean real or personal property owned or controlled by the public entity, but do not include easements, encroachments and other property that are located on the property of the public entity but are not owned or controlled by the public entity.

§835.

Except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either:

- (a) *A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or*
- (b) *The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.*



Two recent cases confirmed the statutory immunities that public agencies can take advantage of in the defense of these type of injury claims.

Supreme Court Approves Public Entity Design Immunity Defense

Randall Keith Hampton, et al. v. County of San Diego

Supreme Court of California
(December 10, 2015)

In California, a public entity can be liable for injuries caused by dangerous conditions of public property – including roads. However, the public entity may sidestep liability by asserting design immunity. In order to successfully assert this defense, three elements must be proven: (1) there is causal relationship between the design and the accident; (2) the entity made a discretionary approval of the design; and (3) substantial evidence supports the reasonableness of the plan, as discussed in Government Code § 830.6.

In *Hampton v. County of San Diego*, the Court addressed the second element, concluding that the discretionary approval element “does not implicate the question whether the employee who approved the plans was aware of design standards or was aware that the design deviated from those standards.” The public entity is not required to prove in its case that the employee



Special District Risk Management Authority
1112 I Street, Suite 300
Sacramento, CA 95814
tel: 800.537.7790
www.sdrma.org

Officers

David Aranda, President, Mountain Meadows Community Services District
Jean Bracy, Vice President, Mojave Desert Air Quality Management District
Ed Gray, Secretary, Chino Valley Independent Fire District

Members of the Board

Muril Clift
Sandy Raffleson, Herlong Public Utility District
Mike Scheafer, Costa Mesa Sanitary District
Robert Swan, Groveland Community Services District

Consultants

Lauren Brant, Public Financial Management
Ann Siprelle, Best Best & Krieger, LLP
David McMurchie, McMurchie Law
John Alltop, Bickmore Risk Services & Consulting
Charice Huntley, River City Bank
James Marta, CPA, Auditor
Karl Sneider, Apex Insurance Agency
Doug Wozniak, Alliant Insurance Services, Inc.

SDRMA Staff

Gregory S. Hall, ARM, Chief Executive Officer
C. Paul Frydendal, CPA, Chief Operating Officer
Dennis Timoney, ARM, Chief Risk Officer
Ellen Doughty, ARM, Chief Member Services Officer
Debra Yokota, Claims Manager
Heather Thomson, CPA, Finance Manager
Wendy Tucker, Member Services Manager
Danny Pena, Senior Claims Examiner
Alana Batzianis, Senior HR/Health Benefits Specialist
Dan Berry – Senior Member Services Specialist
Heidi Singer, Claims Examiner
Shawn Vang, Accountant
Rajnish Raj, Accounting Technician
Rachel Saldana, Administrative Assistant

who made the discretionary approval had authority to disregard applicable design standards. The Court’s discussion is a broad affirmation of the discretionary approval provided by a qualified official (often a design engineer) of a reasonable design.

In Hampton, the plaintiff was injured in a collision between his vehicle, which was attempting a left turn, and another vehicle on a two-lane thoroughfare. The claim against the County, a public entity, was that the design and construction of the intersection where the accident occurred afforded inadequate visibility and failed to meet applicable county design standards because it did not describe, depict, or account for an embankment along the thoroughfare that impaired visibility. The County presented evidence that the design standards contemplated that drivers would “creep forward” after stopping at the stop line to improve visibility before making a turn, thus eliminating the impairment caused by the embankment.

The County moved for summary judgment. Plaintiff contested whether the County had met the requirements for discretionary approval because the design did not depict the embankment and visibility did not meet county standards. The trial court granted summary judgment to the County, and the appellate court affirmed. The Supreme Court also affirmed, holding that, in evaluating discretionary approval, trial courts are not to consider whether the approving engineer was aware of design standards or that the design in question met those standards. The rationale for this lies with the legislative intent of avoiding having a jury re-examine and second-guess governmental design decisions at trial. Allowing such a re-examination

would defeat the purpose of the design immunity, i.e., giving the jury the power to make its own decisions where public officials have been vested with authority to act.

For both legal and practical reasons, a trial court can consider whether the approving official, knowingly or unknowingly, approved the plans under the third element — the reasonableness of the design. On a practical point, the Court recognized that the reasons and motivation of the approving official would likely be unavailable, as design immunity defenses often occur many years after approval, forcing the entity to rely on distant memories. Furthermore, the allegation that the officials applied the wrong standard does not divest an entity

of a discretionary choice, but goes to the reasonableness of the design.

COMMENT

For public entities, this case serves two purposes. First, it is a strong affirmation and endorsement of design immunity. The Court’s approval signaled that the public entity’s deliberative process and decision making is not open to interpretation and second-guessing by the jury. Second, the design immunity defense is only available if the entity has design plans and as-built plans that reflect what was actually constructed, and plans show that there was discretionary approval by the entity.

Continued on page 42

Innovative Solutions for Improving Financial Health

PUBLIC
AGENCY
RETIREMENT
SERVICES

PARS

TRUSTED SOLUTIONS. LASTING RESULTS.

Maximize Use of Reserve Funds with the PARS Pension Rate Stabilization Program (PRSP)

- Maintain local control
- Offset pension rate increases
- Greater earning potential
- Pay pension costs at any time
- Lower liabilities for GASB 68
- Pre-fund OPEB & Pension in the same trust

Over 700 public agencies have chosen PARS for retirement solutions including:

Social Security Alternative
for part-time, temporary and seasonal employees which saves **79% or more**

Supplemental **Defined Contribution** or Stand alone **Defined Benefit** plans with custom design features

GASB
ENDORSED
AFFILIATE

MITCH BARKER mbarker@pars.org
DENNIS YU dyu@pars.org

800.540.6369 x 105

www.pars.org

© 2016 Public Agency Retirement Services (PARS). All rights reserved.