

Hi David:

I'm an associate that works with Heather. We looked into your question regarding the Burney Water District's liability with regard to maintenance of the dirt road.

California Gov Code Section 835 indicates that a public entity is liable for injury caused by a dangerous condition of its property if (1) the property was in a dangerous condition at the time of the injury, (2) that the injury was proximately caused by the dangerous condition, (3) that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and (4) either a negligent act or omission of an employee created the dangerous condition or the public entity has actual or constructive notice of the dangerous condition a sufficient time prior to the injury to have taken measures to protect against the condition.

Here, the customer's complaint is that the dust from cars driving down the road is bothersome to the adjacent property owners. The dust itself does not seem to be a dangerous condition that would cause injury to the property owners. She's not complaining that the dirt road is causing cars to swerve or the dirt road itself is a dangerous condition. The only "dangerous" condition we can think of that might be caused by the dust is a claim that the dust caused a health condition such as asthma. It might be difficult for a plaintiff claiming the dirt caused asthma to meet all of the requirements above, but that is not to say someone would not try to litigate this issue.

That said, the law is clear that the public entity can be liable for a dangerous condition if it has actual or constructive notice of it. The definition of constructive notice includes a condition that existed for such a period of time and was obvious that in the exercise of due care, the public entity would have noticed it. Due care would include reasonably adequate inspections. So the District should be conducting regular inspections and maintaining the dirt road in the event there is an actual dangerous condition that could cause an injury. If the dirt road is a dangerous condition, it may consider options to make it safe such as paving the road.

Please let me know if you have any further questions or would like to discuss any of the above.

---

**Victoria M. Gómez Philips** | Associate

**LCW** LIEBERT CASSIDY WHITMORE

6033 W. Century Boulevard, 5th Floor

Los Angeles, CA 90045

phone: 310.981.2008 | fax: 310.337.0837

[vgomezphilips@lcwlegal.com](mailto:vgomezphilips@lcwlegal.com) | [website](#)