

2022

Not Bluffing: Resolving Doctrinal Ambiguities in California's Natural Condition Immunity as Climate Change Heightens Risks of Injuries on Public Lands

Redmond Walton

Follow this and additional works at: <https://scholarlycommons.law.cwsl.edu/cwlr>

Recommended Citation

Walton, Redmond (2022) "Not Bluffing: Resolving Doctrinal Ambiguities in California's Natural Condition Immunity as Climate Change Heightens Risks of Injuries on Public Lands," *California Western Law Review*. Vol. 58: Iss. 2, Article 7.

Available at: <https://scholarlycommons.law.cwsl.edu/cwlr/vol58/iss2/7>

This Comment is brought to you for free and open access by CWSL Scholarly Commons. It has been accepted for inclusion in California Western Law Review by an authorized editor of CWSL Scholarly Commons. For more information, please contact alm@cwsl.edu.

**NOT BLUFFING: RESOLVING DOCTRINAL AMBIGUITIES IN
CALIFORNIA’S NATURAL CONDITION IMMUNITY AS
CLIMATE CHANGE HEIGHTENS RISKS OF INJURIES ON
PUBLIC LANDS**

TABLE OF CONTENTS

INTRODUCTION	396
I. CLIMATE CHANGE AND CALIFORNIA’S PUBLIC LANDS	398
<i>A. Current Trends in Climate Change</i>	399
<i>B. Impact of Climate Stressors on California’s Public Lands</i>	402
<i>C. Exacerbation of Dangerous Conditions Due to Climate-Driven Degradation</i>	405
II. CALIFORNIA’S PUBLIC PROPERTIES AND INJURY LIABILITY	406
<i>A. Public Property and Torts, an Overview</i>	407
<i>B. Premises Liability Under Government Code Section 835</i>	408
<i>C. Tension Between Public Premises Liability and Governmental Immunities</i>	409
III. NATURAL CONDITION IMMUNITY AND CALIFORNIA COURTS..	410
<i>A. What is “Natural”?</i>	412
<i>B. What is “Unimproved”?</i>	415
<i>C. Implications of the Inconsistent Application of the Natural Condition Immunity</i>	422
<i>D. Climate Change as a Test to Statutory Interpretation</i>	423
<i>E. An Illustration of How Doctrinal Ambiguity Could Create Problems for Litigants</i>	424
IV. ADAPTING THE NATURAL CONDITION IMMUNITY	425
<i>A. Resolving the Court’s Interpretation Issues</i>	425
1. <i>Clarifying “Natural”</i>	425
2. <i>Clarifying “Unimproved”</i>	426
CONCLUSION	428

INTRODUCTION

The climate is changing. One of California's most precious assets—its beautiful public lands—is endangered.¹ Public entities must act to protect these lands from climate change, but any action may eliminate the government's immunity for injuries resulting from a natural condition of the land.² Thus, government efforts to mitigate the effects of climate change present risks in part due to ambiguities in California's natural condition immunity doctrine, which California courts have historically struggled to interpret.³ This Comment proposes solutions.

Under section 835 of the California Government Code, private individuals may sue public entities for injuries caused by a dangerous condition of public property.⁴ Public property includes land, buildings, thoroughfares, and other facilities managed by public entities.⁵ If, however, the injury arising under section 835 is caused “by a natural condition of any unimproved public property,” the public entity will be immune from liability under section 831.2, commonly known as the “natural condition immunity.”⁶ The rationale behind the natural condition immunity is to encourage public entities to open land to public recreation by sparing them the burden and expense of defending injury suits.⁷ In an era where California's forty-two million acres of public property⁸

1. ENVTL. PROT. AGENCY, WHAT CLIMATE CHANGE MEANS FOR CALIFORNIA (Aug. 2016), <https://www.epa.gov/sites/default/files/2016-09/documents/climate-change-ca.pdf>.

2. *See* *City of Chico v. Superior Court*, 283 Cal. Rptr. 3d 432, 446–47 (Ct. App. 2021); *Alana M. v. State*, 200 Cal. Rptr. 3d 410, 418–19 (Ct. App. 2016). *But see* *County of San Mateo v. Superior Court*, 221 Cal. Rptr. 3d 138, 152 (Ct. App. 2017).

3. *See, e.g., Chico*, 283 Cal. Rptr. 3d 432; *Alana M.*, 200 Cal. Rptr. 3d 410; *San Mateo*, 221 Cal. Rptr. 3d 138. *San Mateo* expressly addresses tensions in immunity doctrine case law. Comparing *San Mateo* with *Alana M.* and *Chico*, indicates clear variability between courts.

4. CAL. GOV'T CODE § 835 (Westlaw through Ch. 770 of 2021 Reg. Sess.).

5. *See* LEGAL INFO. INST., *public property*, https://www.law.cornell.edu/wex/public_property (last visited Dec. 1, 2021).

6. *See* *McCauley v. City of San Diego*, 235 Cal. Rptr. 732, 733 (Ct. App. 1987); GOV'T § 831.2 (Westlaw through Ch. 770 of 2021 Reg. Sess.).

7. *Arroyo v. State*, 40 Cal. Rptr. 2d 627, 630 (Ct. App. 1995).

8. NAT. RES. COUNCIL OF MAINE, PUBLIC LAND OWNERSHIP BY STATE (Feb. 18, 2011), <https://www.nrcm.org/documents/publiclandownership.pdf> (calculating total state land area owned and managed by public entities in each state).

will be unprecedentedly difficult to manage with climate change,⁹ public entities must be able to focus time and energy on protecting public lands.

California lawmakers intended for section 831.2 to supersede section 835 and immunize public entities for injuries on unimproved lands. However, an evolving and inconsistent interpretation of the natural condition immunity has created tension between competing policies.¹⁰ Doctrinal uncertainty as to what constitutes a “natural” condition of “unimproved” public property leaves a lack of clarity for public entities and prospective plaintiffs regarding when and where the immunity applies.¹¹ Climate change may exacerbate the problems associated with this uncertainty.¹² Increased erosion, severe weather events, floods, and other harms tied to climate change will create new and unforeseen dangerous conditions on public property, giving rise to novel risks of tort liability for public entities.¹³

Public entities must act, but action could result in a loss of immunity under section 831.2.¹⁴ Thus, a balance must be struck that

9. ENVTL. PROT. AGENCY, WHAT CLIMATE CHANGE MEANS FOR CALIFORNIA (Aug. 2016), <https://www.epa.gov/sites/default/files/2016-09/documents/climate-change-ca.pdf>.

10. *Compare* *Gonzales v. City of San Diego*, 182 Cal. Rptr. 73, 78 (Ct. App. 1982) (suggesting that immunity under section 831.2 may not apply where human activity combines with a known natural defect to create a dangerous condition), *with* *Fuller v. State*, 125 Cal. Rptr. 586, 593 (Ct. App. 1975) (suggesting that the effect of human activity does not necessarily preclude a finding of a natural condition subject to section 831.2).

11. *See* *City of Chico v. Superior Court*, 283 Cal. Rptr. 3d 432, 446–47 (Ct. App. 2021); *Alana M. v. State*, 200 Cal. Rptr. 3d 410, 418–19 (Ct. App. 2016). *But see* *County of San Mateo v. Superior Court*, 221 Cal. Rptr. 3d 138, 152 (Ct. App. 2017).

12. *See generally* Melissa Chalek, *Climate Change and Government Negligence Liability in Massachusetts*, MARINE AFFAIRS INSTITUTE RWU (Fall 2020), https://docs.rwu.edu/cgi/viewcontent.cgi?article=1003&context=law_ma_sp (suggesting that climate change will heighten risks of negligence liability for governments that fail to adopt forward-looking policies).

13. *See generally* Jon Kusler, *Government Liability and Climate Change: Selected Issues for Wetland and Floodplain Managers*, ASSOCIATION OF WETLAND MANAGERS (April 2016), https://aswm.org/pdf_lib/government_liability_and_climate_cahnge_kusler_0416.pdf.

14. *See, e.g., San Mateo*, 221 Cal. Rptr. 3d at 152.

enables public entities to effectively manage public property and address climate change without being unreasonably exposed to liability. Moreover, private individuals should have a fair opportunity to sue public entities for injuries that result from negligent risk management.

Part I of this Comment details the risks of global climate change to California's public lands and how these risks precipitate new dangerous conditions on public property that may cause injuries. Part II explores the relevant statutes that authorize private citizens to sue public entities for torts and the tension of these statutes with governmental immunities. Part III evaluates the current state of the natural condition immunity. Finally, Part IV offers a prescriptive framework through which California's public entities can keep public properties open while ensuring injured parties receive rightfully entitled compensation.

I. CLIMATE CHANGE AND CALIFORNIA'S PUBLIC LANDS

The scientific consensus is clear: human activities are warming the atmosphere and driving global climate change.¹⁵ Since the Industrial Revolution, humans have increasingly relied on fossil fuels, such as coal, petroleum, and natural gas, to accelerate technological progress and population growth.¹⁶ However, combustion of fossil fuels produces greenhouse gases that concentrate in the atmosphere.¹⁷ These concentrated gases cause a "greenhouse effect," where radiation from the sun is trapped in the lower atmosphere resulting in the heating of Earth's surface.¹⁸ This heating is known as "global warming,"¹⁹ which drives a series of environmental changes that disproportionately impact California's lands over other global regions.²⁰ As this Comment will

15. See *Cleveland Nat'l Forest Found. v. San Diego Ass'n of Gov'ts*, 397 P.3d 989, 993–94 (Cal. 2017).

16. See *The Causes of Climate Change*, NASA GLOB. CLIMATE CHANGE, <https://climate.nasa.gov/causes/> (last visited Oct. 15, 2021).

17. See *id.*

18. See *id.*

19. *Id.*

20. Compare *FAQ: Climate Change in California*, SCRIPPS INST. OF OCEANOGRAPHY, <https://scripps.ucsd.edu/research/climate-change-resources/faq-climate-change-california> (last visited Dec. 1, 2021) ("California's environmental and social problems will be exacerbated by a warmer world."), with *World of Change: Global Temperatures*, NASA EARTH OBSERVATORY, <https://earthobservatory.nasa.gov/world-of-change/global-temperatures> (last visited Dec. 1, 2021)

explore, California's urban and rural public properties may see an expansion of dangerous conditions that may dramatically increase the number of bodily injuries.

A. Current Trends in Climate Change

Since the nineteenth century, greenhouse gases have increasingly accumulated in Earth's atmosphere.²¹ The preeminent greenhouse gas, carbon dioxide, is accumulating at a rate of 2.5 parts-per-million ("PPM") each year as a result of anthropogenic carbon emissions.²² This rate of atmospheric carbon dioxide concentration is one hundred times greater than in the pre-industrial era.²³ Currently, carbon dioxide levels are at 420 PPM in Earth's atmosphere, nearly twice above the 280 PPM mark of the eighteenth century.²⁴

Greenhouse gas accumulation is driving global environmental changes.²⁵ Today, Earth's surface is, on average, two degrees Fahrenheit warmer than in the pre-industrial era.²⁶ Since 1880, Earth has warmed, on average, 0.13 degrees Fahrenheit per decade.²⁷ However, since 1981, global warming has occurred at nearly double the centurial rate at 0.32 degrees Fahrenheit per decade.²⁸

(showing temperature change comparison with greater global warming effects in California than the global average).

21. See ENV'T PROT. AGENCY, *Climate Change Indicators: Atmospheric Concentrations of Greenhouse Gases*, <https://www.epa.gov/climate-indicators/climate-change-indicators-atmospheric-concentrations-greenhouse-gases> (last visited Dec. 2, 2021).

22. *Trends in Atmospheric Carbon Dioxide*, NOAA GLOBAL MONITORING LABORATORY (Oct. 2021), <https://gml.noaa.gov/ccgg/trends/gr.html>.

23. Rebecca Lindsey, *Climate Change: Atmospheric Carbon Dioxide*, CLIMATE.GOV (Aug. 14, 2021), <https://www.climate.gov/news-features/understanding-climate/climate-change-atmospheric-carbon-dioxide>.

24. *See id.*

25. *See generally id.*

26. *World of Change: Global Temperatures*, *supra* note 20.

27. Rebecca Lindsey and Lunn Dahlman, *Climate Change: Global Temperature*, CLIMATE.GOV (Mar. 15, 2021), <https://www.climate.gov/news-features/understanding-climate/climate-change-global-temperature>.

28. *Id.*

These warming temperatures are causing global sea levels to rise.²⁹ Global sea levels are now eight to nine inches higher than in the pre-industrial era, with one-third of this rise occurring in the last twenty-five years.³⁰ According to the U.S. Interagency Sea Level Rise Taskforce, global sea levels are highly likely to rise at least twelve inches (0.3 meters) above 2000 levels by 2100 on a low-emissions pathway and as high as 8.2 feet (2.5 meters) above 2000 levels on a high-emission pathway.³¹

Rising sea levels are in part due to melting ice caps.³² Currently, 1.2 trillion tons of ice melt each year, and the rate of ice loss is expected to increase.³³ Antarctica, for example, is losing twenty-four cubic miles of land ice each year.³⁴ Sea level rise also occurs due to thermal expansion, the increase in ocean water volume due to warming sea temperatures.³⁵ The ocean's surface temperature has warmed two degrees Fahrenheit since the pre-industrial era, contributing largely to the rise of global sea height.³⁶

This sea surface warming also precipitates the intensification of storms.³⁷ Hurricanes, for example, require an ocean surface temperature of seventy-nine degrees Fahrenheit to develop and are now intensifying due to the increased availability of warmer sea surface water.³⁸ As a

29. See generally Rebecca Lindsey, *Climate Change: Global Sea Level*, CLIMATE.GOV (Aug. 14, 2021), <https://www.climate.gov/news-features/understanding-climate/climate-change-global-sea-level>.

30. *Id.*

31. *Id.*

32. See *Understanding Sea Level*, NASA SEA LEVEL CHANGE, <https://sealevel.nasa.gov/understanding-sea-level/global-sea-level/ice-melt> (last visited Dec. 1, 2021).

33. See Slater et al., *Earth's Ice Imbalance*, THE CRYOSPHERE (Jan. 25, 2021), <https://doi.org/10.5194/tc-15-233-2021>, 2021.

34. Erik Conway, *Is Antarctica Melting?*, NASA (Jan. 12, 2010), https://www.nasa.gov/topics/earth/features/20100108_Is_Antarctica_Melting.html.

35. *Is Sea Level Rising?*, NAT'L OCEAN SERV. (Dec. 10, 2021), https://oceanservice.noaa.gov/facts/sea_level.html.

36. See *Ocean Warming*, IUCN ISSUES BRIEF, <https://www.iucn.org/resources/issues-briefs/ocean-warming> (last visited Oct. 15, 2021).

37. *See id.*

38. See Alan Buis, *How Climate Change May Be Impacting Storms Over Earth's Tropical Oceans*, NASA GLOB. CLIMATE CHANGE (Mar. 10, 2020),

result, hurricanes are reaching classifications of Category Three or higher more often in recent years.³⁹

On land, global climate change intensifies droughts⁴⁰ and imperils ecosystems.⁴¹ Higher temperatures cause the evaporation of water in plants and soils, causing ground-level drying and drought.⁴² Large wildfires in the western United States have doubled in frequency since 1984⁴³ and are expected to occur more often globally.⁴⁴ Climate change also drives the rise of invasive species and diseases, which,⁴⁵ coupled with hot temperatures and extreme weather events, leads to biodiversity loss around the planet.⁴⁶ It is estimated that one million animal and plant species are at risk of extinction due to climate change.⁴⁷

<https://climate.nasa.gov/blog/2956/how-climate-change-may-be-impacting-storms-over-earths-tropical-oceans/>.

39. See generally Tom Knutson, *Global Warming and Hurricanes: An Overview of Current Research Results*, GEOPHYSICAL FLUID DYNAMICS LAB'Y (Aug. 9, 2021), <https://www.gfdl.noaa.gov/global-warming-and-hurricanes/>.

40. See Richard Heim, *Drought and Climate Change*, CTR. FOR CLIMATE AND ENERGY SOLS. (Nov. 23, 2021), <https://www.c2es.org/content/drought-and-climate-change/>.

41. See generally Yadvinder Malhi et al., *Climate Change and Ecosystems: Threats, Opportunities and Solutions*, 375 PHIL. TRANSACTIONS OF THE ROYAL SOC'Y B 1794 (2020).

42. Tiffany Means, *Climate Change and Droughts: What's the Connection?*, YALE CLIMATE CONNECTIONS (Aug. 18, 2021), <https://yaleclimateconnections.org/2021/08/climate-change-and-droughts-whats-the-connection/>.

43. Philip E. Dennison et al., *Large Wildfire Trends in the Western United States, 1984-2011*, 41 ADVANCING EARTH & SPACE SCI. 2671, 2928 (2014).

44. Stuart Wolpert, *Increasingly Frequent Wildfires Linked to Human-Caused Climate Change*, SCI. DAILY (Nov. 5, 2021), <https://www.sciencedaily.com/releases/2021/11/211105114305.htm>.

45. Anna Szyniszewska, *Invasive Species and Climate Change*, CLIMATE INST., <https://climate.org/archive/topics/ecosystems/invasivespecies.html> (last visited Dec. 1, 2021).

46. See generally Sarah R. Weiskopf et al., *Climate Change Effects of Biodiversity, Ecosystems, Ecosystem Services, and Natural Resource Management in the United States*, 733 SCI. OF THE TOTAL ENV'T 137782 (2020).

47. Bill Chappell & Nathan Rott, *1 Million Animal And Plant Species Are At Risk Of Extinction, U.N. Report Says*, NPR (May 6, 2019, 2:10 P.M.), <https://www.npr.org/2019/05/06/720654249/1-million-animal-and-plant-species-face-extinction-risk-u-n-report-says>.

The dangers of climate change are severe for environments across the Earth.⁴⁸ No region is immune from the harms of rising global temperatures and sea levels.⁴⁹ California, both in its coastal and inland regions, is particularly vulnerable to the perils of global climate change.⁵⁰

B. Impact of Climate Stressors on California's Public Lands

Despite a two-degree Fahrenheit increase in global temperature since the pre-industrial era, global warming is not evenly distributed across the earth.⁵¹ California's temperatures have risen three degrees Fahrenheit in the past hundred years.⁵² The last seven years have been the hottest in the state's record-keeping.⁵³ California is projected to see fifteen more heatwave days per year by 2050.⁵⁴

48. See *Climate Change Widespread, Rapid, and Intensifying*, IPCC (Aug. 9, 2021), <https://www.ipcc.ch/2021/08/09/ar6-wg1-20210809-pr/>.

49. *Id.*

50. Compare SCRIPPS INSTITUTE OF OCEANOGRAPHY, *FAQ: Climate Change in California*, UC SAN DIEGO (last visited Dec. 1, 2021), <https://scripps.ucsd.edu/research/climate-change-resources/faq-climate-change-california> ("California's environmental and social problems will be exacerbated by a warmer world."), with *World of Change: Global Temperatures*, NASA EARTH OBSERVATORY (last visited Dec. 1, 2021), <https://earthobservatory.nasa.gov/world-of-change/global-temperatures> (showing temperature change comparison with greater global warming effects in California than global average).

51. See Rebecca Lindsay & Luan Dahlman, *Climate Change: Global Temperature*, NOAA CLIMATE (Aug. 12, 2021), <https://www.climate.gov/news-features/understanding-climate/climate-change-global-temperature>.

52. ENVIRONMENTAL PROTECTION AGENCY, *WHAT CLIMATE CHANGE MEANS FOR CALIFORNIA* (Aug. 2016), <https://www.epa.gov/sites/default/files/2016-09/documents/climate-change-ca.pdf>.

53. Tony Barboza, *2020 Ties 2016 as Hottest Year on Record, Even Without Warming Boost from El Niño*, L.A. TIMES (Jan. 14, 2021), <https://www.latimes.com/environment/story/2021-01-14/2020-hottest-year-on-record-el-nino-climate-change>.

54. *California*, STATES AT RISK, <https://statesatrisk.org/california/all> (last visited Dec. 1, 2021) (projecting an increase in the number of heatwave days).

These temperature patterns have serious ramifications for California's open spaces.⁵⁵ Higher temperatures enhance evaporation, which reduces surface water and dries soil and vegetation, causing drought.⁵⁶ The entire state is currently in a drought, with over eighty percent of the state experiencing severe drought conditions.⁵⁷ California's reservoirs are at fifty percent capacity, and state water sources are dwindling.⁵⁸ Sierra Nevada snowpack, which provides a significant sum of California's freshwater, could see a recession in size by up to seventy-nine percent of present values by the year 2100.⁵⁹

Further, hot temperatures, lack of rain, and low humidity are causing die-offs in California's ecosystems.⁶⁰ California's languishing vegetation has contributed to a doubling of large wildfires from 1984 to 2015, a number that is expected to increase.⁶¹ California's vegetation

55. See generally Kasha Patel, *California Heatwave Fits a Trend*, NASA EARTH OBSERVATORY (Sept. 6, 2020), <https://earthobservatory.nasa.gov/images/147256/california-heatwave-fits-a-trend>.

56. See Melissa Denchak, *Drought: Everything You Need to Know*, NRDC (Sept. 13, 2018), <https://www.nrdc.org/stories/drought-everything-you-need-know>.

57. See *California*, U.S. DROUGHT MONITOR, <https://droughtmonitor.unl.edu/CurrentMap/StateDroughtMonitor.aspx?CA> (last visited Dec. 30, 2021).

58. See Adam Beam, *Drought Saps California Reservoirs as Hot, Dry Summer Looms*, ASSOCIATED PRESS (June 17, 2021), <https://apnews.com/article/california-droughts-government-and-politics-science-business-76709d5854394905e0f46880ed6dab9c>.

59. Deborah Netburn, *Sierra Nevada Snowpack on Track to Shrink up to 79% by the End of the Century, New Study Finds*, L.A. TIMES (Dec. 16, 2018, 6:05 P.M.), <https://www.latimes.com/local/lanow/la-me-ln-sierra-nevada-snowpack-20181216-story.html>.

60. See Nicolette Balmaceda, *Forest Die-Off and Management*, CTR. FOR ECOSYSTEM CLIMATE SOLS. (Aug. 12, 2020), <https://california-ecosystem-climate.solutions/forest-die-off-and-management/>.

61. William Yardley, *Human-Caused Warming Doubled How Much of the West Has Burned Since 1984*, L.A. TIMES (Oct. 10, 2016), <https://www.latimes.com/nation/la-na-climate-change-fire-20161010-snap-story.html>.

has also experienced increases in infectious disease⁶² and invasive species that contribute to biodiversity loss.⁶³

The sea level on California's coast has risen eight inches in the last century⁶⁴ and is expected to rise another twenty to fifty-five inches by 2100.⁶⁵ A fifty-five-inch rise would expose half a million Californians to flooding and result in over 100 billion dollars in infrastructure and property damage.⁶⁶ Additionally, rising sea levels risks saltwater contamination to California's public lands, including the San Joaquin Delta, which provides fresh water to 20 million California residents.⁶⁷

Rising sea levels will also accelerate coastal bluff and beach erosion.⁶⁸ Current studies estimate that the coastal bluff erosion rate will double the historic rate by the year 2100.⁶⁹ Bluff erosion will happen contemporaneously with coastal sand depletion.⁷⁰ Current projections estimate that thirty-one percent to sixty-seven percent of Southern California beaches may become completely eroded by 2100.⁷¹ Additionally, global wave power has increased at a rate of 0.4 percent

62. See Cheryl Dybas, *California's Iconic Redwoods in Danger from Fire and Infectious Disease*, NAT'L SCI. FOUND. (Aug. 21, 2013), https://nsf.gov/discoveries/disc_summ.jsp?cntn_id=128879.

63. See generally CALIFORNIA INVASIVE PLAN COUNCIL, *IMPACTS OF CLIMATE CHANGE AND INVASIVE PLANTS IN SIERRA MEADOWS: OVERVIEW AND RECOMMENDATIONS* (Dec. 2015), <https://www.calipc.org/docs/ip/climateadaptation/ClimateChangeandInvasivePlantsinSierraMeadows.pdf>.

64. *Climate Change Impacts in California*, OFF. OF THE ATT'Y GEN., <https://oag.ca.gov/environment/impact> (last visited Dec. 1, 2021). See generally *California's Sea Level is Rising*, SEALEVELRISE.ORG, <https://sealevelrise.org/states/california/> (last visited Dec. 1, 2021).

65. *Climate Change Impacts in California*, *supra* note 64.

66. *Id.*

67. *Id.*

68. See Patrick Limber et al., *A Model Ensemble for Projecting Multidecadal Coastal Cliff Retreat During the 21st Century*, AM. GEOPHYSICAL UNION (June 19, 2018), <https://agupubs.onlinelibrary.wiley.com/doi/abs/10.1029/2017JF004401>.

69. *Id.*

70. Sean Vitousek, *Disappearing Beaches: Modeling Shoreline Change in Southern California*, USGS (Mar. 17, 2017), <https://www.usgs.gov/news/disappearing-beaches-modeling-shoreline-change-southern-california>.

71. *Id.*

per year.⁷² Stronger waves and higher local sea levels will intensify nearshore currents, further contributing to coastal erosion.⁷³

In addition to gradual environmental changes, climate change will trigger natural disasters that pose risks to inland and coastal regions of California.⁷⁴ Floods from stronger storms, rock failures, large wildfires, and other disasters will cause severe damage to California's public lands.⁷⁵ Both sudden and gradual environmental risks will exacerbate dangerous conditions on public property.⁷⁶

C. Exacerbation of Dangerous Conditions Due to Climate-Driven Degradation

The aforementioned effects of climate change will escalate the danger associated with natural conditions of California's public lands. As a result, car accidents, recreational accidents, and disaster events will occur more frequently.⁷⁷ Public entities will increasingly encounter climate-related issues, such as water on roadways, erosion of coastal bluffs, falling trees, and other safety hazards, in the day-to-day management of public property.⁷⁸ Additionally, state population growth

72. Borja Reguero et al., *A Recent Increase in Global Wave Power as a Consequence of Oceanic Warming*, NATURE COMM'NS (Jan. 14, 2019), <https://www.nature.com/articles/s41467-018-08066-0>.

73. See Science Buddies, *Shoreline Science: Exploring the Erosive Energy of Waves*, SCI. AM. (June 12, 2012), <https://www.scientificamerican.com/article/bring-science-home-beach-erosion/>.

74. See Lori Pottinger, *How Climate Change Dries Disaster Cascades*, PUBLIC POL'Y INST. OF CALIFORNIA (Jan. 29, 2019), <https://www.ppic.org/blog/how-climate-change-drives-disaster-cascades/>.

75. See Lucile Jones & Dale Cox, *Increasing the Resilience to Natural Hazards in Southern California*, USGS (Nov. 29, 2016), <https://pubs.usgs.gov/fs/2007/3037/>.

76. See Jon Kusler, *Government Liability and Climate Change: Selected Issues for Wetland and Floodplain Managers*, ASS'N OF STATE FLOODPLAIN MANAGERS (Apr. 2016), https://aswm.org/pdf_lib/government_liability_and_climate_cahnge_kusler_0416.pdf.

77. See Benjamin Leard & Kevin Roth, *How Climate Change Affects Traffic Accidents*, RESOURCES (Jan. 7, 2016), <https://www.resources.org/archives/how-climate-change-affects-traffic-accidents>.

78. See *id.*; see also Julia Simon, *Climate Change Is Killing Trees And Causing Power Outages*, NPR (Sept. 21, 2021), <https://www.npr.org/2021/09/21/1038078093/climate-change-is-killing-trees-and->

and development will pressure public property management and aggravate existing dangers on public property.⁷⁹

In response to the accelerating risks of climate change, public entities must employ new adaptation measures and ramp up management efforts of public properties.⁸⁰ For example, on public beaches, bluff erosion will require new infrastructure projects like cliff fortification and managed retreat.⁸¹ However, in conducting a risk management analysis of such a project, public entities must consider whether adaptation measures eliminate the natural condition immunity as a shield from liability. Precedent fails to clear the air on what legal protections a public entity will receive when adapting to climate change.

II. CALIFORNIA'S PUBLIC PROPERTIES AND INJURY LIABILITY

Over sixty million people visit California's public properties each year.⁸² Thousands of visitors are injured or killed while on public property.⁸³ Many of these injuries result from risks assumed by the

causing-power-outages (detailing how some utilities are now electing to “cut[] trees farther away from [] power lines and wires” because climate change has increased the number of trees falling onto electric power lines); Patrick Limber et. al., *supra* note 68 (indicating that heightened risks of dangerous roadways, tree death, and bluff collapse will cumulatively increase the need for oversight in maintenance of California public lands).

79. See America Counts Staff, *California Remained Most Populous State but Growth Slowed Last Decade*, CENSUS.GOV (Aug. 25, 2021), <https://www.census.gov/library/stories/state-by-state/california-population-change-between-census-decade.html>; Harry Baker, *Post-Pandemic Overcrowding of National Parks Causing Bigger Problems Than Just Long Lines*, LIVE SCI. (June 18, 2021), <https://www.livescience.com/overcrowding-us-national-parks.html>.

80. See Molly Loughlin Melius et al., CALIFORNIA COASTAL ARMORING REPORT: MANAGING COASTAL ARMORING AND CLIMATE CHANGE ADAPTATION IN THE 21ST CENTURY, STANFORD LAW SCHOOL (2015), <https://www.sl.c.a.gov/wp-content/uploads/2018/10/CACoastalArmoringRpt.pdf> (detailing how California can better adapt to sea level rise through coastal armoring, managed retreat, legislation, and other strategies that should be employed by public entities).

81. See *id.*

82. *About Us*, CAL. DEP'T OF PARKS AND RECREATION, https://www.parks.ca.gov/?page_id=91 (last visited Dec. 1, 2021).

83. *California Traffic Safety Quick Stats*, CALIFORNIA OFF. OF TRAFFIC SAFETY, <https://www.ots.ca.gov/ots-and-traffic-safety/score-card/> (last visited Dec. 1, 2021).

visitor,⁸⁴ but some injuries are caused by dangerous conditions on public land giving rise to tort liability for the managing public entities.⁸⁵ Liability often rises from dangerous conditions on roadways, parking lots, public walkways, traffic instrumentalities, or defects in public lands and parks.⁸⁶

Typically, public entities' duty of care to visitors is defined by statute.⁸⁷ State laws advance a broad social policy of government responsibility for safety on public property.⁸⁸ By holding public entities accountable, California's government liability laws protect individuals from foreseeable harm on public property and compensate them for injuries resulting from a breach of the duty of care.⁸⁹

A. Public Property and Torts, an Overview

In California, the Tort Claims Act⁹⁰ governs tort claims against public entities and employees.⁹¹ Prior to the passage of the Tort Claims Act, California tort claims were governed by sovereign immunity laws.⁹² However, these laws were riddled with complicated loopholes and exceptions that effectively swallowed the rules.⁹³ In *Muskopf v.*

84. *Statistics of Personal Injury Cases Nationwide*, PERSONAL INJURY SAN DIEGO, <https://personalinjurysandiego.org/personal-injury/statistics-of-personal-injury-cases-nationwide/> (last visited Dec. 1, 2021) (detailing statistics of personal injury cases nationwide).

85. *See, e.g., City of Chico v. Superior Court*, 283 Cal. Rptr. 3d 432, 446–47 (Ct. App. 2021); *Alana M. v. State*, 200 Cal. Rptr. 3d 410, 418–19 (Ct. App. 2016). *But see County of San Mateo v. Superior Court*, 221 Cal. Rptr. 3d 138, 152 (Ct. App. 2017).

86. *See, e.g., Chico*, 283 Cal. Rptr. 3d at 446–47; *Alana M.*, 200 Cal. Rptr. 3d at 418–19. *But see San Mateo*, 221 Cal. Rptr. 3d at 152.

87. *Nealy v. County of Orange*, 268 Cal. Rptr. 3d 621, 629 (Ct. App. 2020).

88. *See, e.g., Cordova v. City of L.A.*, 353 P.3d 773 (Cal. 2015).

89. *Id.* at 776–77.

90. CAL. GOV'T CODE §§ 810–996.6 (Westlaw through Ch. 770 of 2021 Reg. Sess.).

91. *See Milligan v. City of Laguna Beach*, 670 P.2d 1121, 1123 (Cal. 1983).

92. *See Nuveen Mun. High Income Opportunity Fund v. City of Alameda*, 730 F.3d 1111, 1125 (9th Cir. 2013).

93. *See generally* Jay E. Grenig, WEST'S CALIFORNIA CODE FORMS WITH COMMENTARIES, GOV'T § 910 Form 1 (West, 4th ed. 2012).

Corning Hospital District,⁹⁴ the Supreme Court of California discarded the sovereign immunity doctrines that controlled government tort claims in the state.⁹⁵ In response, the legislature passed a series of statutes outlining governmental tort liability.⁹⁶ Today, the Tort Claims Act governs issues of liability where a public entity's act or omission gives rise to an injury.⁹⁷

The Tort Claims Act provides that public entities and employees may be liable for injuries that arise under three limited circumstances: (1) the injury is caused by an act or omission of a public employee operating in the course and scope of their employment;⁹⁸ (2) the injury is caused by a dangerous condition of public property;⁹⁹ or (3) the injury is caused by an act or omission of a public employee that would be actionable against a private individual.¹⁰⁰ These theories of liability are subject to several restraints in the form of governmental immunities.¹⁰¹

B. Premises Liability Under Government Code Section 835

A claim for an injury that occurs on public property arises under section 835 of the California Government Code in the Tort Claims Act.¹⁰² Section 835 provides that a public entity may be held liable for injuries to a person while on public property where the plaintiff can establish that the public property was in a dangerous condition at the time of the injury, the injury was proximately caused by the dangerous condition, and the injury was reasonably foreseeable from the

94. 55 Cal. 2d 211, 359 P.2d 457 (1961).

95. *Muskopf*, 359 P.2d at 457.

96. *See, e.g.*, CAL. GOV'T CODE § 815(a) (Westlaw through Ch. 6 of 2022 Reg. Sess.) (“A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.”).

97. *See* GOV'T § 910 (Westlaw through Ch. 770 of 2021 Reg. Sess.).

98. *Id.* § 815.2.

99. *Id.* § 835.

100. *Id.* § 815.4.

101. *Nuveen Mun. High Income Opportunity Fund v. City of Alameda*, 730 F.3d 1111, 1126 (9th Cir. 2013).

102. *See generally* Scott Boyer, *Proving A Condition of Public Property Is Dangerous*, *ADVOC. MAG.* (Nov. 2016), <https://www.advocatemagazine.com/article/2016-november/proving-a-condition-of-public-property-is-dangerous>.

dangerous condition.¹⁰³ In addition, the plaintiff must establish either of the following:

(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) [t]he public entity had . . . notice of the dangerous condition . . . a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.¹⁰⁴

If the foregoing elements are met, the plaintiff may be entitled to relief under section 835.

C. Tension Between Public Premises Liability and Governmental Immunities

Despite resembling a standard premises liability claim, section 835 is narrower in scope.¹⁰⁵ Section 835 is subject to several immunities enumerated in the Tort Claims Act.¹⁰⁶

As an initial obstacle, a plaintiff must prove that the dangerous condition giving rise to injury is not a trivial defect of the property.¹⁰⁷ Under section 830(a), a “dangerous condition” of public property requires a “substantial (as distinguished from a minor, trivial or insignificant) risk of injury.”¹⁰⁸ The trivial defect immunity shields public entities from liability where a judge determines, as a matter of law, that the condition giving rise to injury is “minor, trivial or insignificant nature in light of the surrounding circumstances that no

103. CAL. GOV'T CODE § 835 (Westlaw through Ch. 770 of 2021 Reg. Sess.).

104. *Id.* (internal quotations omitted).

105. *Compare id.* § 835 (regarding conditions of public-entity liability for injuries due to dangerous conditions of public property), with *Ortega v. Kmart Corp.*, 36 P.3d 11, 14–15 (Cal. 2001) (regarding business-owner liability in a premises liability claim, generally).

106. *See, e.g.*, GOV'T §§ 831.2, 831.25, 831.4 (Westlaw through Ch. 770 of 2021 Reg. Sess.).

107. *See id.* § 830.2.

108. *Id.* § 830(a). *See also id.* § 830.2.

reasonable person would conclude that the condition created a substantial risk of injury.”¹⁰⁹

The design immunity, set forth in section 830.6, immunizes public entities from liability for injuries that are caused by the plan or design of public property.¹¹⁰ The purpose of the design immunity is to prevent the factfinder from second-guessing the risk analyses already considered by government officers who approved the plan or design.¹¹¹ Public entities may evade injury liability even where an approved plan or design malfunctions or deteriorates.¹¹² For example, the immunity may apply where an injury arises on public roads impaired by weather conditions¹¹³ or due to a traffic signal malfunction.¹¹⁴

Additionally, the Tort Claims Act categorically excludes certain types of public property from injury liability: a managing public entity is immune from liability where injury occurs on unpaved roads or trails;¹¹⁵ at water improvement or distribution facilities;¹¹⁶ at dog parks;¹¹⁷ due to failure to provide fire protection services;¹¹⁸ or due to inadequate correctional facilities.¹¹⁹

III. NATURAL CONDITION IMMUNITY AND CALIFORNIA COURTS

The natural condition immunity, set forth in section 831.2 of the Government Code, is a more powerful shield against public entity liability:

109. *Id.* § 830.2.

110. *Id.* § 830.6.

111. *See* *Martinez v. County of Ventura*, 169 Cal. Rptr. 3d 880, 883 (Ct. App. 2014).

112. CAL. GOV'T CODE §§ 830.9, 831 (West, Westlaw through Ch. 770 of 2021 Reg. Sess.).

113. *Id.* § 831.

114. *Id.* § 830.9.

115. *See id.* § 831.3.

116. *See id.* § 831.8.

117. *See* CAL. GOV'T CODE § 831.7.5 (Westlaw through Ch. 770 of 2021 Reg. Sess.).

118. *See id.* § 850.2.

119. *See id.* § 845.2.

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.¹²⁰

The natural condition immunity is absolute and applies “regardless of whether the public entity had knowledge of the dangerous condition or failed to give warning.”¹²¹

The legislative purpose of section 831.2 immunity is to ensure that public entities will not prohibit public access to recreational areas due to the burden and expense of defending against personal injury suits.¹²² Injuries will occur on public properties and parks, but to safeguard against all risks would exceed the state’s budget for resource management; thus, the natural condition immunity serves as a solution.¹²³

Judicial interpretation of section 831.2 suggests that the natural condition immunity protection is theoretically broad, but unresolved splits between courts in the application of the immunity have led to erratic outcomes.¹²⁴ These splits turn on three primary questions of statutory interpretation that remain unsettled: (1) what constitutes a “natural” condition; (2) how is causation established in a hybrid environment of natural and unnatural conditions on public property; and (3) what constitutes “unimproved” public property.¹²⁵ As a result, litigants are left to grapple with a doctrine full of uncertainties.¹²⁶

120. *Id.* § 831.2.

121. *Goddard v. Dep’t of Fish & Wildlife*, 196 Cal. Rptr. 3d 625, 633 (Ct. App. 2015).

122. *See Armenio v. County of San Mateo* 33 Cal. Rptr. 2d 631, 634 (Ct. App. 1994).

123. *See Alana M. v. State*, 200 Cal. Rptr. 3d 410, 418–19 (Ct. App. 2016).

124. *Compare County of San Mateo v. Superior Court*, 221 Cal. Rptr. 3d 138 (Ct. App. 2017), *with City of Chico v. Superior Court*, 283 Cal. Rptr. 3d 432, 446–47 (Ct. App. 2021).

125. *See generally Alana M.*, 200 Cal. Rptr. 3d at 418–19.

126. *See San Mateo*, 221 Cal. Rptr. 3d at 152.

A. What is “Natural”?

The Tort Claims Act does not define “natural.”¹²⁷ Therefore, California’s courts must define the term,¹²⁸ a challenge considering the constantly changing natural environment of California as the state develops and urbanizes.¹²⁹ As a result, two interpretations of “natural condition” have emerged in California case law: (1) the “hybrid condition” theory;¹³⁰ and (2) the “combination of human and natural forces is still considered a natural condition” theory.¹³¹ To date, the California Supreme Court has not resolved the split in case law.¹³²

In the years following the enactment of the natural condition immunity, several California courts interpreted the term “natural condition” consistent with the definition provided by the Restatement of Torts.¹³³ The Restatement Second of Torts defines the term natural as follows:

“Natural condition of the land” is used to indicate that the condition of land has not been changed by any act of a human being It is also used to include the natural growth of trees, weeds, and other vegetation upon land not artificially made receptive to them.¹³⁴

The first case to interpret “natural condition” in line with the Restatement definition was *Buchanan v. City of Newport Beach*.¹³⁵ There, dredged sand in Newport Beach raised the beach level by

127. *Id.* at 143–45.

128. *Id.*

129. See *California 2020 Projected Urban Growth*, KOORDINATES (Sept. 13, 2018), <https://koordinates.com/layer/670-california-2020-projected-urban-growth/>.

130. *Gonzales v. City of San Diego*, 182 Cal. Rptr. 73, 78 (Ct. App. 1982).

131. *Tessier v. City of Newport Beach*, 268 Cal. Rptr. 233, 235–36 (Ct. App. 1990) (quoting *Morin v. County of L.A.*, 263 Cal. Rptr. 479, 481–82 (Ct. App. 1989)).

132. See *Knight v. City of Capitola*, 6 Cal. Rptr. 2d 874, 881 (Ct. App. 1992) (overruled on other grounds).

133. See, e.g., *Buchanan v. City of Newport Beach*, 123 Cal. Rptr. 338, 342 (Ct. App. 1975); *Gonzales*, 182 Cal. Rptr. at 78.

134. Restatement (Second) of Torts § 363 (1965).

135. *Buchanan*, 123 Cal. Rptr. at 340–41.

twenty-seven feet, creating a steep sand berm along the waterline.¹³⁶ The plaintiff, Buchanan, collided with the sand berm after a plunging wave thrust him into the sand, breaking his neck.¹³⁷ Buchanan brought suit, contending that city's dredging altered the wave action from a "spilling" type of wave to a "plunging" wave, creating an unnatural condition on the beach that eliminated the government's immunity under section 831.2.¹³⁸ After losing on a motion for nonsuit, Buchanan appealed.¹³⁹ The appellate court reversed, ruling that the steeper beach and altered wave action where Buchanan's injury occurred may have constituted an unnatural condition of public property, a determination to be left to a jury.¹⁴⁰

Seven years later, in *Gonzales v. City of San Diego*,¹⁴¹ a California appellate court expanded the holding in *Buchanan*.¹⁴² There, the plaintiffs sued for the wrongful death of their mother, who drowned in a rip current at a San Diego beach where the city provided lifeguard and police protection.¹⁴³ The court found that the rip current, combined with the alleged negligent conduct of the lifeguard department, constituted a "hybrid condition" of public property rather than a natural condition.¹⁴⁴

The "hybrid condition" theory asserts that human alterations to a natural condition of public property can eliminate the immunity provided by section 831.2.¹⁴⁵ Whether or not a hybrid condition exists, according to the *Gonzales* court, is a triable issue of fact.¹⁴⁶ However, this theory has received cautious or negative treatment in subsequent cases. California courts have held that *Gonzales* "only stands for the proposition section 831.2 will not cloak a public entity with immunity when its own conduct is partially responsible for inducing a person to be victimized by a dangerous condition of the nature of a hidden

136. *Id.* at 339.

137. *Id.* at 340.

138. *Id.* at 340–41.

139. *Id.* at 339.

140. *Id.* at 341.

141. 182 Cal. Rptr. 73 (Ct. App. 1982).

142. *Id.* at 78.

143. *Id.* at 74.

144. *Id.*

145. *See id.* at 75.

146. *See id.* at 78–79 (Staniforth, J., concurring).

trap.”¹⁴⁷ Despite this treatment, *Gonzales* has not been abrogated by California’s Supreme Court and remains good law.

Buchanan and *Gonzales* mark one line of construction of the term “natural.”¹⁴⁸ Most courts have followed the reasoning of *Fuller v. State of California*,¹⁴⁹ which broadly interpreted the term “natural” to include artificial, human-related changes to the natural condition of public property.¹⁵⁰ In *Fuller*, the court held that the mere fact that human activity contributed to the formation of a condition did not necessarily preclude it from being a “natural” condition under Section 831.2.¹⁵¹ Although acknowledging that “each case must be decided on its own facts,” the *Fuller* court stated:

[T]he combined acts of men and of nature have caused substantial change to [California] coastline’s condition. It cannot be said wherever such has occurred and an area of the coast is no longer in the pristine state which it was prior to the population of California, that the Legislature intended such an area to be excluded from the application of section 831.2.¹⁵²

Since *Fuller*, California courts have generally held—despite *Buchanan* and *Gonzales*—that section 831.2 provides immunity where a natural condition has been altered in some manner by human activity.¹⁵³ For example, immunity under section 831.2 exists even where the public entity’s nearby improvements, together with natural forces, add to the buildup of sand on a public beach.¹⁵⁴ In *Tessier v. City of Newport Beach*¹⁵⁵ and *Morin v. County of Los Angeles*,¹⁵⁶ California courts reasoned that, because sandbars occur in nature even in the absence of human activity, any contributing human activity does

147. *McCauley v. City of San Diego*, 235 Cal. Rptr. 732, 733 (Ct. App. 1987).

148. *See Bartlett v. State*, 245 Cal. Rptr. 32, 35 (Ct. App. 1988).

149. *Fuller v. State*, 125 Cal. Rptr. 586 (Ct. App. 1975).

150. *Id.* at 593.

151. *Id.*

152. *Id.*

153. *See, e.g., Morin v. County of Los Angeles*, 263 Cal. Rptr. 479 (Ct. App. 1989).

154. *Id.*; *Tessier v. City of Newport Beach*, 268 Cal. Rptr. 233 (Ct. App. 1990).

155. 268 Cal. Rptr. 233 (Ct. App. 1990).

156. 263 Cal. Rptr. 479 (Ct. App. 1989).

not alter the natural character of the condition.¹⁵⁷ In other words, where human activity alters the coastal tide zone in a way that would occur regardless of human intervention, the natural condition immunity applies.¹⁵⁸

This reasoning has also been extended to cases off the beach. In *Goddard v. Dept. of Fish & Wildlife*,¹⁵⁹ manmade lakes and reservoirs were deemed “natural” for purposes of section 831.2.¹⁶⁰ In *Alana M. v. State of California*,¹⁶¹ trees situated between campsites in a public campground were deemed natural.¹⁶² In *Winterburn v. City of Pomona*,¹⁶³ caves in a city-owned greenbelt were considered natural.¹⁶⁴ These cases reflect the prevailing interpretation of the term “natural”—that human alterations to natural property, without more, keep the land in a natural condition under Section 831.2.¹⁶⁵

B. What is “Unimproved”?

Despite a split in precedent, California courts generally interpret the term “natural” consistently.¹⁶⁶ However, California case law is less clear on the construction of the term “unimproved.”¹⁶⁷

In *Rendak v. State of California*,¹⁶⁸ a California court considered, for the first time, what constituted “unimproved” land. In *Rendak*, a

157. *Id.* at 480–81; *Tessier*, 268 Cal. Rptr. 233.

158. *Morin*, 263 Cal. Rptr. at 481; *Tessier*, 268 Cal. Rptr. at 235.

159. 196 Cal. Rptr. 3d 625, 633 (Ct. App. 2015).

160. *Id.* at 634.

161. 200 Cal. Rptr. 3d 410, 418–19 (Ct. App. 2016).

162. *Id.* at 418–19.

163. 231 Cal. Rptr. 105 (Ct. App. 1986).

164. *Id.* at 107.

165. *City of Chico v. Superior Court*, 283 Cal. Rptr. 3d 432, 446–47 (Ct. App. 2021).

166. *See, e.g., Morin v. County of Los Angeles*, 263 Cal. Rptr. 479 (Ct. App. 1989); *Tessier v. City of Newport Beach*, 268 Cal. Rptr. 233 (Ct. App. 1990); *County of San Mateo v. Superior Court*, 221 Cal. Rptr. 3d 138 (Ct. App. 2017).

167. *Compare Chico*, 283 Cal. Rptr. 3d at 446–47, with *Alana M.*, 200 Cal. Rptr. 3d at 418–19, and *San Mateo*, 221 Cal. Rptr. 3d at 152 (highlighting the tension surrounding the quantum of evidence that must be produced by a plaintiff demonstrating human activities heightened the danger associated with a dangerous condition of public property that caused injury).

168. 95 Cal. Rptr. 665 (Ct. App. 1971).

man was killed by the collapse of a bluff while visiting Brighton Beach Park in Santa Cruz County.¹⁶⁹ The case was dismissed at the trial court for failure to overcome the state's natural condition immunity defense.¹⁷⁰ On appeal, the Rendak family argued that the bluff was not "natural" or "unimproved" because the park contained improvements, such as administrative offices, staff residences, and a parking area away from the collapsed bluff.¹⁷¹ Laying the foundation for recent natural condition immunity cases, the appellate court held that an improvement of a California park does not remove the immunity from the unimproved areas.¹⁷² Thereafter, the focus of natural condition immunity litigation was whether (1) human improvements to the public property existed at (2) the location of the injury.¹⁷³

Subsequent cases refined the *Rendak* holding, requiring "some form of physical change in the condition of the property at the location of the injury, [to justify] the conclusion that the public entity is responsible for reasonable risk management in that area."¹⁷⁴ This development, first introduced in *Eben v. State of California*,¹⁷⁵ added a third component to the unimproved analysis from *Rendak*: in addition to the need for (1) human improvement at (2) the location of the injury, there must also be (3) an assumption of risk management by the managing public entity.¹⁷⁶ Risk management requires some intention by the managing public entity to mitigate the risk of injury to visitors of public property.¹⁷⁷ This element ensures that public entities are only liable for foreseeable harms that the public entity should have protected

169. *Id.* at 666.

170. *Id.* at 666–67.

171. *Id.*

172. *Id.*

173. *See, e.g.,* Valenzuela v. City of San Diego, 286 Cal. Rptr. 1, 2 (Ct. App. 1991) (citing Bartlett v. State, 245 Cal. Rptr. 32 (1988)).

174. *Eben v. State*, 181 Cal. Rptr. 714, 718 (Ct. App. 1982) (citing VAN ALSTYNE, CALIFORNIA GOVERNMENT TORT LIABILITY PRACTICE (Cont. Ed. Bar 1980) § 3.42 5, p. 256) (internal textual emphasis omitted).

175. 181 Cal. Rptr. 714 (Ct. App. 1982).

176. *Id.* at 718.

177. *See generally* ANZECC, *Visitor Risk Management & Public Liability*, DEP'T OF CONSERVATION & LAND MGMT. (Aug. 1998), <https://www.awe.gov.au/sites/default/files/documents/risk-management.pdf>.

against.¹⁷⁸ Risk management solutions include barriers and other infrastructure, regulation of visitor activities, and enforcement strategies that protect the public from dangerous conditions of the property.¹⁷⁹

Eben best illustrates the risk management element of the “unimproved” property analysis. There, the plaintiff, Eben, was rendered quadriplegic after hitting his head on an underwater rock embankment while water-skiing at high speeds at Millerton Lake.¹⁸⁰ Eben lost at the trial court after failing to plead around the natural condition immunity.¹⁸¹ On appeal, Eben argued that the placement of hazard buoys along the lake’s shore constituted an improvement that precluded section 831.2 immunity.¹⁸² The appellate court reasoned that “some form of physical change in the condition of the property *at the location of the injury*, which justifies the conclusion that the public entity is responsible for reasonable risk management in that area,” is necessary to eliminate the immunity of section 831.2.¹⁸³ The court held that the hazard buoys were too remote from the injury site to be considered “at the location of the injury” and were not intended to create the illusion that it was safe to boat at high speeds.¹⁸⁴ The risk management contemplated by the hazard buoys was sufficiently unrelated to Eben’s accident; thus, the court found the immunity was correctly applied.¹⁸⁵

The *Eben* “risk management” analysis remained good law for thirty years.¹⁸⁶ Courts agreed that the existence of an improvement required

178. See generally *Alana M. v. State*, 200 Cal. Rptr. 3d 410 (Ct. App. 2016).

179. See NATIONAL PARK SERVICE, DIRECTOR’S ORDER #50C: PUBLIC RISK MGMT. PROGRAM (May 7, 2010), https://www.nps.gov/policy/DOrders/DO_50C.pdf.

180. *Eben*, 181 Cal. Rptr. at 715.

181. *Id.*

182. *Id.* at 718.

183. *Id.*

184. *Id.*

185. *Id.* at 719.

186. The appellate court later followed the holding in *Eben* in *Knight v. City of Capitola*, 6 Cal. Rptr. 2d 874 (Ct. App. 1992) (overturned on other grounds), but later reversed the *Eben* holding in *Meddock v. County of Yolo*, 162 Cal. Rptr. 3d 796 (Ct. App. 2013).

a physical change at the location of injury.¹⁸⁷ Subsequent cases added a new requirement that the physical change at the location of the injury is causally connected to the injury. For example, in *Mercer v. State of California*,¹⁸⁸ the lack of fences and signs at the location of the plaintiff's off-roading injury were held not causally connected to the injury and the natural condition immunity applied.¹⁸⁹ In *Rombalski v. City of Laguna Beach*,¹⁹⁰ a lifeguard station and a stairway at the location of the plaintiff's diving-related injury was held not causally connected injury itself.¹⁹¹

In 2013, several cases—all ironically involving fallen trees—pivoted away from the *Eben* analysis and convoluted the statutory interpretation of the term “unimproved” under section 831.2.¹⁹² These “fallen-tree cases” broadened the scope of the natural condition immunity by focusing on the *cause* of the injury rather than the *location* of the injury, muddying the existing “unimproved” property analysis.¹⁹³

*Meddock v. County of Yolo*¹⁹⁴ was the first fallen-tree case to decline to extend *Eben*. In *Meddock*, the plaintiff was struck by a fallen tree while standing in a paved parking lot managed by the county.¹⁹⁵ The plaintiff argued that, because he was injured on an improved parking lot, *Eben* barred the natural condition immunity.¹⁹⁶ The court rejected this argument, stating that “although the injury *occurred* on improved property, that is, the paved parking lot, it was *caused* by the trees.”¹⁹⁷ This holding emphasized the importance of an injury being

187. See *Eben*, 181 Cal. Rptr. at 715; *Mercer v. State*, 242 Cal. Rptr. 701, 704–05 (Ct. App. 1987).

188. *Mercer*, 242 Cal. Rptr. 701.

189. *Id.* at 708.

190. 261 Cal. Rptr. 820 (Ct. App. 1989).

191. See *id.* at 833.

192. See, e.g., *Alana M. v. State*, 200 Cal. Rptr. 3d 410, 418–19 (Ct. App. 2016); *Meddock v. County of Yolo*, 162 Cal. Rptr. 3d 796 (Ct. App. 2013); *City of Chico v. Superior Court*, 283 Cal. Rptr. 3d 432, 446–47 (Ct. App. 2021); *County of San Mateo v. Superior Court*, 221 Cal. Rptr. 3d 138, 152 (Ct. App. 2017).

193. See *Alana M.*, 200 Cal. Rptr. 3d at 418–19; *Meddock*, 162 Cal. Rptr. 3d 796.

194. 162 Cal. Rptr. 3d 796.

195. *Id.* at 798.

196. *Id.* at 801.

197. *Id.* at 800.

caused by a natural condition of unimproved property regardless of where the injury actually occurred.¹⁹⁸ *Meddock* implicitly rejected *Eben*, suggesting that its spatial analysis served a discrete purpose unique to *Eben*.¹⁹⁹

In *Alana M. v. State of California*,²⁰⁰ a three-year-old girl was injured by a falling tree in a campsite at Portola Redwoods State Park.²⁰¹ The tree had “identifiable defects including rot, a cavity, and a hatchet wound and it ‘was overextended with poor taper.’”²⁰² The plaintiff argued that the tree was improved due to its defects and the state’s assumed risk management over the tree, evidenced by the state’s Tree Hazard Program.²⁰³ The court dismissed the plaintiff’s arguments and expressly rejected the *Eben* risk management analysis.²⁰⁴ In its place, the court developed a new “causal nexus” analysis, under which a plaintiff must show that (1) the natural condition that caused the injury was in some way “improved,” and (2) the improvements “created, contributed to, or exacerbated the degree of, the danger associated with a natural condition.”²⁰⁵ Under this framework, the court determined that the plaintiff failed to introduce evidence that artificial improvements at the campsite created, contributed to, or exacerbated the degree of danger posed by the tree.²⁰⁶

Alana M. is a maturation of the *Meddock* holding.²⁰⁷ While both cases emphasize that a natural condition of unimproved land must cause the injury, *Alana M.* goes a step further by requiring that some human activity increase the danger associated with the natural condition.²⁰⁸

198. *Id.*

199. *Id.* at 801.

200. 245 Cal. App. 4th 1482 (2016).

201. *Alana M. v. State*, 200 Cal. Rptr. 3d 410, 418–19 (Ct. App. 2016).

202. *Id.*

203. *Id.* at 413.

204. *Id.* at 414–15 (suggesting that proactive risk management should not destroy natural condition immunity lest such risks swallow the reward of enjoying the public lands).

205. *Id.* at 415–16.

206. *Id.* at 418–19.

207. *See id.* at 416.

208. *Id.* at 415–16.

Later, in *County of San Mateo v. Superior Court*,²⁰⁹ a twelve-year-old boy was injured when a diseased tree fell on his tent in a designated campsite at San Mateo County Memorial Park.²¹⁰ An arborist testified that construction adjacent to the campsite changed the nature of the soil and root environment surrounding the tree, which likely exacerbated the risk of the tree falling.²¹¹ Unlike in *Alana M. and Meddock*, the court found that triable issues of fact existed as to whether the tree was “unimproved.”²¹² The court determined that *Alana M.*’s causal nexus test was satisfied because the plaintiff produced evidence that the nearby construction contributed to the danger of the tree and made it more likely to fall.²¹³

The *San Mateo* court distinguished *Alana M.* in several important respects. First, the court declared that it did not “need to decide whether and to what extent the location of the condition, or the location of injury, controls when dealing with a transitory hazard.”²¹⁴ This was a departure from *Alana M.*, which emphasized the location of the dangerous condition is controlling over the location of the injury.²¹⁵ Second, *San Mateo* refused to require that a plaintiff produce evidence showing some human improvement exacerbated the danger of a natural condition to establish a triable issue of fact.²¹⁶

In *City of Chico v. Superior Court*,²¹⁷ the court further clouded the immunity analysis. There, the plaintiff, injured by a falling tree branch while jogging through Lower Birdwell Park, argued that the tree’s branches had been pruned, which contributed to the tree’s condition.²¹⁸ The city forest manager confirmed that pruning may have affected the tree by pushing growth onto the remaining branches, making those branches larger and heavier.²¹⁹ To that end, the plaintiff’s expert

209. 221 Cal. Rptr. 3d 138 (Ct. App. 2017).

210. *Id.* at 140.

211. *Id.* at 141–42.

212. *Id.* at 152.

213. *Id.*

214. *Id.* at 146.

215. *Alana M. v. State*, 200 Cal. Rptr. 3d 410, 418–19 (Ct. App. 2016).

216. *San Mateo*, 221 Cal. Rptr. 3d at 151.

217. 283 Cal. Rptr. 3d 432 (Ct. App. 2021).

218. *Id.* at 438.

219. *Id.* at 437–38.

suggested that the larger and heavier branches held “excessive weight creat[ing] significant leverage at the point of attachment between the branch and the main trunk,” which could have caused the branch to fail.²²⁰ Relying on *San Mateo*, the plaintiff argued that the city interfered with the natural growth of the tree by pruning it, thereby pushing more vigorous growth into the remaining branches, and by not pruning the tree for years thereafter.²²¹ The plaintiff contended that the prior pruning led the remaining branches to become overwhelmed by their own weight, creating a dangerous condition.²²²

The *Chico* court ultimately held that the immunity applied as a matter of law.²²³ The court found the plaintiff’s “poor pruning” argument insufficient, because “no one opined that the prior pruning caused the subsequent break, not even plaintiff’s own expert arborist.”²²⁴ Although the plaintiff contended that the city’s neglectful forest management led the tree to become “overleveraged,”²²⁵ the court found the plaintiff failed to produce enough evidence to satisfy the *Alana M.* causal nexus test.²²⁶ Moreover, the court reasoned that the plaintiff’s argument was speculation insufficient to raise an issue of fact.²²⁷ The court ultimately held that the plaintiff failed to show “that the construction or existence of human-made improvements near the tree or located over the tree’s root system caused the branch to fail.”²²⁸

Chico purports to adopt the *Alana M.* causal nexus analysis but, as applied, runs afoul of the *Alana M.* rationale. *Alana M.* requires that a plaintiff establish that “human conduct created, contributed to, or exacerbated the degree of, the danger associated with a natural condition.”²²⁹ *Chico* clearly requires more. Under *Chico*, a plaintiff

220. *Id.*

221. *Id.* at 438.

222. *Id.*

223. *Id.* at 439.

224. *Id.* at 446.

225. *Id.* at 438.

226. *Id.* at 446–47.

227. *Id.* at 446.

228. *Id.* at 444.

229. *Alana M. v. State*, 200 Cal. Rptr. 3d 410, 418–19 (Ct. App. 2016) (citing *Arroyo v. State*, 40 Cal. Rptr. 2d 627, 630 (Ct. App. 1995)).

must essentially assert that *but for* the human improvements, the injury at issue would not have occurred.²³⁰

Ultimately, California’s Supreme Court has not settled several important questions regarding the “unimproved” element of the natural condition immunity. First, must human improvements exist at the location of the injury or at the location of the natural condition?²³¹ Second, is evidence of a causal link between improvements and the dangerous condition necessary or sufficient to uphold liability?²³² And if necessary, how much evidence must be introduced to overcome a motion for summary judgment?²³³ Finally, must the plaintiff prove that a human improvement creates the danger of a natural condition or merely exacerbates the danger?²³⁴ These questions remain unanswered, leaving difficulty for prospective litigants—including public entities who must prepare for climate change—to know exactly where and to what extent natural property can be altered by human activities before precluding the natural condition immunity.

C. Implications of the Inconsistent Application of the Natural Condition Immunity

The foregoing questions reflect critical issues in an action against a public entity under section 835 for a dangerous condition of public property. This doctrinal uncertainty impacts litigants. Plaintiffs must know what burdens of pleading and production they carry, and public entities must know how much care to exercise. Because relevant case law offers an ambiguous framework, public entities are left to guess the proper course of action against dangerous conditions. Must trees in a campground be evaluated regularly? Do coastal bluffs need constant examination? Does every sand dune or lake shoreline area need a warning sign? Threading the needle between reasonably managing public property with a limited budget and facing liability for inadequate maintenance is a delicate and uncertain challenge.

230. *Chico*, 283 Cal. Rptr. 3d at 446 (citing *Usher v. White*, 279 Cal. Rptr. 3d 281, 294 (Ct. App. 2021) (internal quotations omitted)).

231. *See Chico*, 283 Cal. Rptr. 3d at 443.

232. *See id.* at 440.

233. *See id.* at 446.

234. *See id.* at 444–46; *Alana M.*, 200 Cal. Rptr. 3d at 415.

The present status of the immunity doctrine also upsets judicial economy and efficiency. Almost any given factual scenario implicating the natural condition immunity presents an issue fit for appeal. Statutory interpretation of the terms “natural” and “unimproved” is so variable that unless the accident occurs in a remote area, any human modification to a natural condition essentially warrants appellate review.²³⁵ Excess appealability wastes judicial resources and time.

In sum, resolving the inconsistencies in natural condition immunity case law will serve both plaintiffs, public entities, and the judiciary. Plaintiffs can streamline the litigation process, either by avoiding litigation altogether or adequately pleading around the immunity. Public entities will have a clear schema to follow when managing public property. Consequently, courts will be freed from hazy precedent when evaluating public premise liability claims.

D. Climate Change as a Test to Statutory Interpretation

As climate change exacerbates dangerous conditions of public property, injuries that implicate section 835 and the natural condition immunity will become more prevalent.²³⁶ The resulting cases will inevitably turn on novel facts that will challenge the integrity of the natural condition immunity doctrine. While courts remain uncertain as to which standard a plaintiff must plead to overcome the immunity, pleading strategies will shift as plaintiffs innovate unique strategies to exploit doctrinal ambiguities.

235. See, e.g., *County of San Mateo v. Superior Court*, 221 Cal. Rptr. 3d 138, 152 (Ct. App. 2017) (leaving undecided whether the location of the injury or the location of the condition controls the immunity analysis). *But see City of Chico v. Superior Court*, 283 Cal. Rptr. 3d 432, 446–47 (Ct. App. 2021) (underscoring that a “natural” area surrounded by improvements is still, for natural condition immunity, “natural”).

236. See generally Jon Kusler, *Government Liability and Climate Change: Selected Issues for Wetland and Floodplain Managers*, ASS'N OF WETLAND MANAGERS (Apr. 2016) at 19–20, https://aswm.org/pdf_lib/government_liability_and_climate_cahnge_kusler_0416.pdf (hypothesizing that, as climate-related hazards become increasingly foreseeable, human-driven loss mitigation techniques will become more prevalent, thereby chipping away at sovereign immunity doctrine(s)).

Moreover, climate change will pose progressively costly risks of property damage to California's public lands.²³⁷ Accounting for these evolving stressors will strain public entities, which need clear direction in the face of existential threats and immunity challenges that require significant resources.

The solution to climate change adaptation and mitigation is complex and far outside the scope of this Comment. However, disentangling the uncertainty around injury liability for public entities is much clearer.

E. An Illustration of How Doctrinal Ambiguity Could Create Problems for Litigants

To understand how doctrinal ambiguity impacts both public entities and private parties, consider the following hypothetical:

A coastal city in California wants to place riprap at the base of a beach cliff to mitigate bluff erosion that has accelerated due to climate change. Placing the riprap on the beach is an expensive construction project, requiring large machinery and a staff of construction workers. For weeks, the city uses cranes to hoist materials down to the beach and tractors to press the materials to the bluff's base. The process puts a lot of stress on the coastal bluffs due to the vibration and weight of the machinery.

Shortly after the project is completed, a man walking down the beach near the newly placed riprap is injured from the collapse of a portion of the bluff. He sues in state court and claims the natural condition immunity does not apply because—per *Alana M.*— the risk of the bluff collapse was exacerbated due to the human activities associated with the construction project. The city will argue that *Chico* precludes liability, because the plaintiff's argument is speculative and does not establish that the construction was a sufficient factual cause of the bluff collapse. If the court adopts *Chico* (the most recent case), the plaintiff would likely be out of luck. However, if the court adopts *Alana M.* or *San Mateo*, the plaintiff may have a triable issue of fact.

The outcome of this hypothetical case would impact the way cities manage risk in fortifying coastal bluffs against climate change. If the

237. See Kasha Patel, *California Heatwave Fits a Trend*, NASA EARTH OBSERVATORY (Sept. 6, 2020), <https://earthobservatory.nasa.gov/images/147256/california-heatwave-fits-a-trend>.

verdict favors the defendant, then cities may commit more resources to coastal adaptation. If the verdict favors the plaintiff, then cities would likely reevaluate their coastal risk management strategies.

The outcome would also impact the way plaintiffs strategize in public premise liability suits. If the verdict favors the plaintiff, the injured parties' concerns about defeating section 831.2 immunity would be eased. If the verdict favors the defendant, plaintiffs would likely consider drastic changes to pleading strategies. Ultimately, how a court would rule on these facts is uncertain. As a result, public entities and prospective plaintiffs lack clear guidance on litigating such a case.

IV. ADAPTING THE NATURAL CONDITION IMMUNITY

California court must construe the natural condition immunity doctrine consistently and unequivocally to inform potential litigants of their rights and obligations under the Tort Claims Act. Additionally, statutory construction of the immunity should balance the interests of public entities and private individuals. This balancing should allow plaintiffs to bring suit in incidents of clear public entity neglect. However, this balancing should not require an unreasonable standard of care from public entities that manage significant amounts of public property during an era of climate change.

A. Resolving the Court's Interpretation Issues

To end doctrinal ambiguities, the Supreme Court of California should resolve the conflicting interpretations of the natural condition immunity. By creating a unified interpretation of the law, the Court can clear the fog surrounding the immunity and strike a balance between the competing interests of public and private entities. This is also an apt opportunity for the Court to embrace a forward-looking framework to address climate-exacerbated injury litigation.

1. Clarifying "Natural"

Regarding the term "natural," the Supreme Court of California should first abrogate the *Gonzales* "hybrid condition" theory. *Gonzales* leads plaintiffs astray from stronger arguments to defeat immunity, wasting judicial resources in the process. Courts have struggled to fit *Gonzales* into the broader immunity scheme, while the state legislature

intended to invalidate the case. Under section 831.21 of the California Government Code, passed by the state legislature ten years after *Gonzales*, public beaches are considered “natural” even if altered by human activities.²³⁸ By abrogating *Gonzales*, the Court would simply extend section 831.21 to other public lands. This decision would affirm the broad consensus amongst appellate courts that land or water is “natural” even if influenced by human activities.

Abrogating *Gonzales* is also in line with climate change concerns. By dispelling any notion that human influence on public property will automatically create a “hybrid condition,” public entities will be able to redirect their focus on mitigating and adapting to climate change. Instead of hesitating to fortify land against climate risks out of fear that the fortification will create a “hybrid condition,” public entities can simply pursue adaptation without worries of litigation.

2. Clarifying “Unimproved”

Regarding the term “unimproved,” resolution of current appellate ambiguities should favor protecting public entities. Public entities are already challenged with tackling climate-related risks that will intensify over time. An interpretation favoring public entities will promote accessibility to public lands and prioritize climate change adaptation over injury litigation. Such a resolution would also benefit injured parties, as clear precedent would guide plaintiffs.

To this end, first, the Supreme Court of California should emphasize that the location of the natural condition controls over the location of the injury. It is paramount to the immunity analysis to consider whether human improvements modified the natural condition itself. As courts have noted, dangerous conditions present migratory dangers.²³⁹ It is easier to evaluate and manage a dangerous condition at its source than to anticipate where it will injure a visitor. The location of the injury itself may inform the foreseeability analysis, but courts should focus on a causal analysis rather than an attenuated spatial analysis.

Second, the Court should adopt the *Alana M.* causal nexus test over the more restrictive *Chico* analysis. If a public entity improves the land

238. CAL. GOV'T CODE § 831.21 (Westlaw through Ch. 770 of 2021 Reg. Sess.).

239. See *County of San Mateo v. Superior Court*, 221 Cal. Rptr. 3d 138, 152 (Ct. App. 2017).

around a natural condition without exacerbating or contributing to the danger of the condition, then the entity should not be liable absent some further responsibility of risk management. Public entities should be liable only for foreseeable injuries that are within the scope of risk management that the entities assumed.²⁴⁰ Where a natural condition of public property causes an injury unrelated to the public entity's conduct, it is a mere tragic accident that does not warrant a remedy at law.

Additionally, the *Alana M.* causal nexus analysis is fair to plaintiffs. Under *Chico*, plaintiffs must produce convincing evidence showing a strong causal tie between the dangerous condition and the human improvement. Under *Alana M.*, plaintiffs must still produce some evidence of a causal link between the danger and the improvement, but only enough to reasonably assume that the improvement could have contributed to or exacerbated the danger.²⁴¹ The *Chico* test resembles a but-for causation analysis, whereas the *Alana M.* causal nexus test is comparable to a substantial factor causation analysis.²⁴² When a natural resource like a tree or bluff collapses, the number of potential contributing factors is so great that it is unfair to require plaintiffs to meet a but-for causation threshold. The causal nexus test filters frivolous suits, where the injury is essentially a tragic accident, from legitimate suits, where human improvements made it more likely that the injury would occur.

By interpreting the term “unimproved” favorably to public entities, courts will shield public entities from unfair climate change injury litigation. The causal nexus test allows public entities to take the necessary measures to combat climate change, so long as they do not exacerbate a dangerous condition of public property. Going forward, public entities will be able to implement infrastructure projects that protect against climate change without an exhaustive focus on injury risk management.

240. *Cf.* *Alana M. v. State*, 200 Cal. Rptr. 3d 410, 418–19 (Ct. App. 2016) (citing *Mercer v. State*, 242 Cal. Rptr. 701, 707–08 (Ct. App. 1987)) (implying that the underlying purpose for natural condition immunity is to shield state park campgrounds in wooded areas from liability for injuries from falling trees).

241. *Id.*

242. See BARRY A. LINDAHL, 1 MODERN TORT LAW: LIABILITY AND LITIGATION § 4:5 (2d ed.), Westlaw (database updated June 2021), for an explanation of the differences between but-for and substantial factor tests.

By abrogating *Gonzales* and implementing the *Alana M.* causal nexus test, the natural condition immunity will better serve California litigants. Prospective plaintiffs will have a clearer idea of when to bring suit and how to meet their burdens of pleading and production. Public entities will also be able to determine how to effectively manage public property in the face of a changing climate.

CONCLUSION

Resolving doctrinal ambiguity in the natural condition immunity will better serve the California court system, plaintiffs, and public entities alike. Climate change's accelerating impacts will increase injury risks on California public lands, and therefore, litigation against public entities. However, current inconsistencies in case law leave plaintiffs and public entities uncertain of their substantive legal rights and obligations under the immunity.

The Supreme Court of California can resolve these doctrinal ambiguities and provide a proper legal framework for prospective litigants by settling two issues. First, the Court can clarify the term "natural" by abrogating *Gonzales*, which has confused the analysis of the "natural condition" element. Second, the Court can bring substantial clarity to the term "unimproved" by adopting the causal nexus analysis established by *Alana M.* and by requiring a lower evidentiary threshold than *Chico*. By resolving these ambiguities, public entities will be able to focus on climate change and other issues of public property, and private individuals will still receive compensation in incidents of clear governmental neglect.

*Redmond Walton**

* J.D. Candidate, California Western School of Law, 2023. I want to give special thanks to Benjamin Korompis and his team of editors for their hard work in editing and preparing this Comment. Thanks to Professor Klein for his guidance and inspiration in the writing process; my parents, Kristen and Randy, for their unwavering support, advice, and love; my wonderful girlfriend Alaleh, for constantly inspiring me and being a beautiful and loving soul; and the California State Parks lifeguard service, for providing the perspective that made this Comment possible and being a great summer job. I could not have written this Comment without them.