

**HOW DID YOU  
WIN THAT CASE?**

# **CONFIDENTIAL SETTLEMENT**

**Severe Injuries Due to  
Negligent Tree Maintenance**



**Scott H. Carr**



**Ivan Puchalt**

Reporter: Marie Coronel  
ABC 10News Footage  
February 1, 2016, 4:30 a.m.

# Condominium Complex

The screenshot displays the Foxit Reader application window titled "Rehn1127- 1.PDF - Foxit PhantomPDF". The interface includes a top menu bar with options like File, Home, Convert, Edit, Organize, Comment, View, Form, Protect, Share, Accessibility, and Help. Below the menu is a ribbon with various tool groups: Tools (Hand, Select, Snapshot, Clipboard, Bookmark), View (Actual Size, Fit Page, Fit Width, Fit Visible, Reflow, Rotate Left, Rotate Right), Edit (Edit Text, Edit Object), Comment (Typewriter, Highlight, Rotate Pages, Delete, Extract), Convert (Scan, Quick OCR), and Protect (PDF Sign). The main content area shows a PDF page with an aerial photograph of a residential complex. A purple text recognition overlay is visible on the right side of the page, containing the text: "Text Recognition", "Some pages may contain unrecognized text. You can run text recognition to make text searchable or editable.", and a "Recognize Text" button. The text "Maya Linda Apartments" is overlaid on the image. The Windows taskbar at the bottom shows the system tray with the time 8:38 PM and date 8/6/2018, and several open applications including File Explorer, Word 2016, and Foxit Reader.

# Maya Linda Rd. - 2011



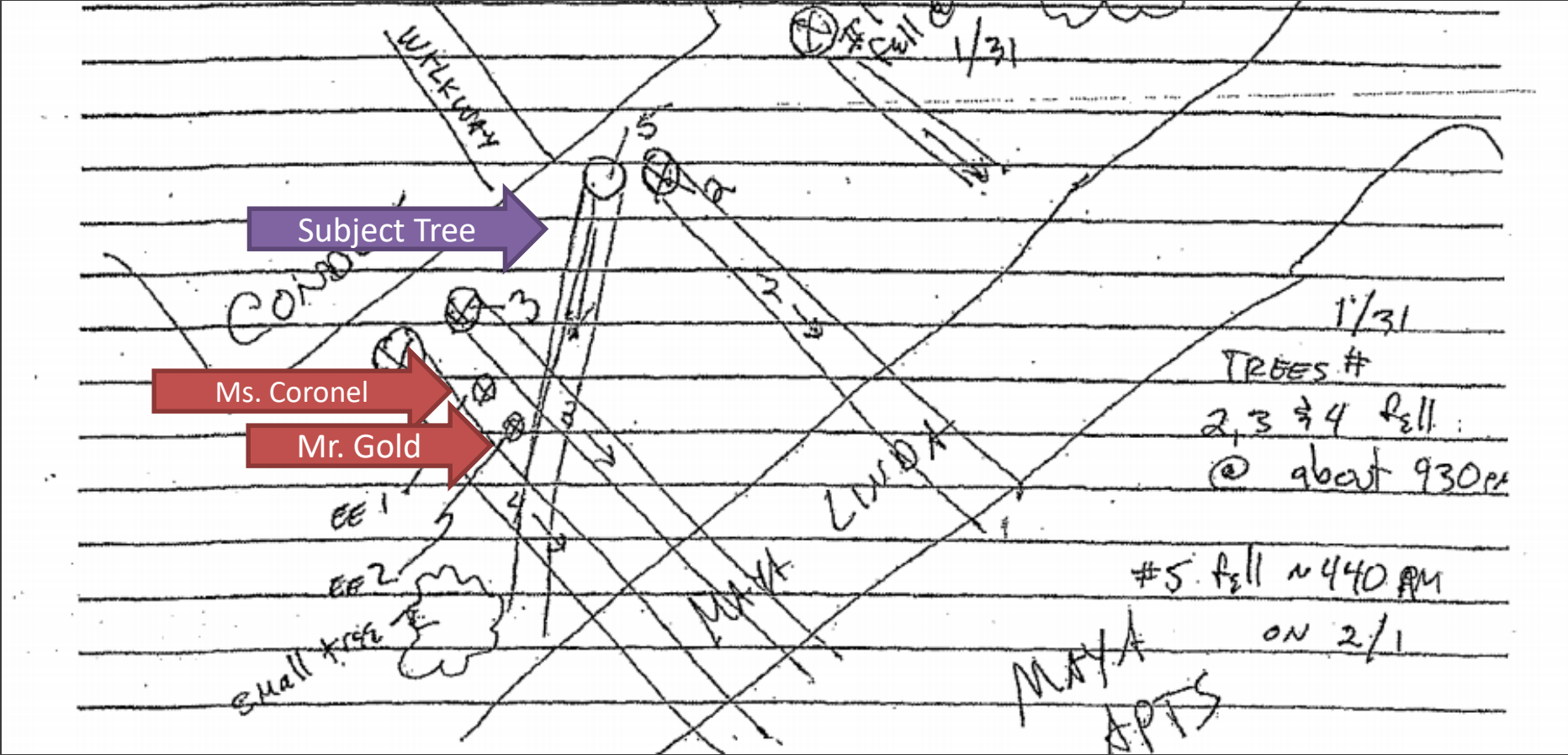
# Maya Linda Rd. - 2015







# Sketch Prepared by Cal-OSHA Investigator





# April 2014 Bid from Forestry Group

## Quest HOA

Tree Care Three-Year Management Plan Summary  
April 3, 2014



Qty	Tree Species	Location	Notes/ Tree Season	Service	2014	2015	2016
<b>Spring Tree Trimming (April - June)</b>							
11	Eucalyptus	Maya Linda Rd	Spring (April - June)	Down clean, clearance prune, size as needed for vehicles & pedestrians, hazard prune to reduce heavy end-weighted branches, balance canopy, and thin 25%	\$4,947		\$4,710
5	Ficus		Spring (April - June)	Down clean, clearance prune, size as needed for vehicles & pedestrians, hazard prune to reduce heavy end-weighted branches, balance canopy, and thin 25%	\$1,326		\$1,201
56	Camphor		Spring (April - June)	Down clean, clearance prune, size as needed for vehicles & pedestrians, balance canopy and thin 25%		\$3,731	
3	Crape Myrtle		Spring (April - June)	Down clean, clearance prune, size as needed for vehicles & pedestrians, balance canopy and thin 25%		\$128	
1	Cornflower Tree		Spring (April - June)	Down clean, clearance prune, size as needed for vehicles & pedestrians, reduce canopy, balance canopy, shape canopy, and thin 25%		\$37	
2	Podocarpus		Spring (April - June)	Down clean, clearance prune, size as needed for vehicles & pedestrians, reduce canopy, balance canopy, shape canopy, and thin 25%	\$141		\$146
1	Brazilian Pepper Tree		Spring (April - June)	Down clean, clearance prune, size as needed for vehicles & pedestrians, balance canopy and thin 25%		\$55	
52	Eucalyptus	Carroll Canyon & Interior	Spring (April - June)	Down clean, clearance prune, size as needed for vehicles & pedestrians, hazard prune to reduce heavy end-weighted branches, balance canopy, and thin 25%	\$5,055		\$5,454
1	Mycoporum		Spring (April - June)	Down clean, clearance prune, size as needed for vehicles & pedestrians, reduce canopy, balance canopy, shape canopy, and thin 25%		\$37	
1	Plum		Spring (April - June)	Down clean, clearance prune, size as needed for vehicles & pedestrians, reduce canopy, balance canopy, shape canopy, and thin 25%		\$19	
<b>Fall Tree Trimming (October - December)</b>							
1	Liquidambar		Fall (October - December)	Down clean, clearance prune, size as needed for vehicles & pedestrians, hazard prune to reduce heavy end-weighted branches, balance canopy, and thin 25%		\$73	
3	Mulberry		Fall (October - December)	Down clean, clearance prune, size as needed for vehicles & pedestrians, hazard prune to reduce heavy end-weighted branches, balance canopy, and thin 25%		\$274	
26	Pear Tree		Fall (October - December)	Down clean, clearance prune, size as needed for vehicles & pedestrians, reduce canopy, balance canopy, shape canopy, and thin 25%		\$1,646	
19	Algeria Pine		Fall (October - December)	Down clean, clearance prune, size as needed for vehicles & pedestrians, hazard prune to reduce heavy end-weighted branches, balance canopy, and thin 25%		\$1,284	
1	Camphor		Fall (October - December)	Down clean, clearance prune, size as needed for vehicles & pedestrians, hazard prune to reduce heavy end-weighted branches, balance canopy, and thin 25%		\$1,462	
<b>Tree Removals (17 Recommended Removals)</b>							
11	Eucalyptus Trees Along Maya Linda Rd (Tree # 1, 2, 4, 5, 6, 10, 11, 14, 17, 19, & 20) See Exhibit A for Locations	Maya Linda Rd	Very large trees. Selected trees have a structural weakness that poses a risk to building, vehicle, or person. Removal is recommended. Remaining 12 trees will be hazard trimmed per above best timing plan.	Removal, disposal and stump gird 6'-8" below grade	\$28,393		
1	#24 Eucalyptus	Unit 904 See Exhibit A	Has rd due to excessive opening of tree during trimming. Risk of fall on building. Removal is recommended.	Removal, disposal and stump gird 6'-8" below grade	\$1,500		
1	#25 Eucalyptus	Unit 903 See Exhibit A	Tree has rot and poses failure risk. Removal is recommended.	Removal, disposal and stump gird 6'-8" below grade	\$1,992		
3	#26, 27 & 28 Eucalyptus	Upper Pool See Exhibit A	Very large trees close to pool area. Trees have structural weakness and/or hazardous lean. Trees are likely to fail. Removal is recommended.	Removal, disposal and stump gird 6'-8" below grade	\$7,654		
1	#29 Eucalyptus	Unit 902 See Exhibit A	Tree has large wound approximately 15' high on trunk. Wounds have decay and pose a significant failure hazard. Removal is recommended.	Removal, disposal and stump gird 6'-8" below grade	\$1,116		
					\$14,604.00	\$4,000.00	\$16,710.00
<b>Spring Tree Trimming (April - June)</b>					\$0.00	\$3,340.00	\$0.00
<b>Fall Tree Trimming (October - December)</b>					\$0.00	\$0.00	\$0.00
<b>Tree Removals (17 Recommended Removals)</b>					\$41,619.00	\$0.00	\$0.00
<b>Total Recommended Services</b>					\$56,223.00	\$7,340.00	\$16,710.00

# April, 2014 Bid

Tree Removals (17 Recommended Removals)			
11	Eucalyptus Trees Along Maya Linda Rd (Tree # 1,3,4,5,6,10,11,14,17,19, & 20). See Exhibit A for Locations.	Maya Linda Rd	Very large trees. Selected trees have a structural weakness that poses a risk to building, vehicle, or person. Removal is recommended. Remaining 13 trees will be hazard trimmed per above tree trimming plan.
Removal, disposal, and stump grind 6 - 8" below grade.			\$29,353



# April 21, 2014

## HOA Minutes, page 2

- A motion was made by Cathy to approve the Pro Tec dumpster bid for all 4 phases. The motion was seconded by Adolfo and carried unanimously.
- All Board meetings will be held at Pro Tec Building services starting May 19, 2014
- A motion was made by Cathy to approve the Tree bid from Forestry Group. The motion was seconded by Adolfo and carried unanimously.
- A motion was made by Cathy to approve Pacific Green as our new landscaper starting June 1<sup>st</sup> 2014. The motion was seconded by Molly and carried unanimously.

# May 6, 2014 Email from Arborist to Property Manager

Hi Jennifer,

I have attached our updated tree management plan. I took off the tree removals that Zoen recommended go to next year. I also added the additional removals we discussed. I labeled the new removals R-1 through R-5. We now are only removing 5 Eucalyptus trees along Maya Linda Rd. The other Eucalyptus that were slated for removal are now in the trim section. I highlighted all the changes in red so you can see what I did. This is a little confusing, so if you would like us to stop by and review with you, don't hesitate to ask.

# May 8, 2014

----- Forwarded message -----

From: **Jennifer Rehn** <jrehn@prpm.net>

Date: Thu, May 8, 2014 at 2:38 PM

Subject: Re: Quest | Updated Tree Management Plan

To: Molly Moloney <mkmoloney@gmail.com>

Cc: Adolfo Tarango <atarango@ucsd.edu>, Cathy Chaffin <purpleinsd66@yahoo.com>

Dear Board,

We have no choice but to move forward at this time, we will be having more serious problems than what we already have, the 16K bill will be reimburse from the insurance company, they are also reimbursing for the Management fees ( overtime & housing the homeowners ). I will ask Forestry if they will do a payment plan

On May 7, 2014, at 7:27 PM, Molly Moloney wrote:

So with the insurance

On Tue, Hello,

It looks g

“We have no choice but to move forward at this time, **we will be having more serious problems than what we already have**, the 16K bill will be reimbursed from the insurance company...I will ask Forestry if they will do a payment plan.”

# Forestry Group Bid



**Eucalyptus Tree #3:**  
Several trees have hazardous trunk leans. Eucalyptus trees in turf areas have shallow roots. Once the soil becomes soaked, failure of trees like this significantly increases.

# Cadacalyx – “Sugar Gum”

15 Q. So you're saying that this subspecies of tree  
16 that was out on Maya Linda Road had a higher risk of  
17 failure as compared to other trees? Is that --

18 A. Correct.



# Contrast Trees Grown in Turf with Native Habitat



*Eucalyptus cladocalyx* (sugar gum) at Hancocks Lookout near Wilmington in the Flinders Ranges of South Australia.

# Contrast Trees Grown in Turf with Native Habitat

List of Fact Sheets | Glossary

ABCDEFGHIJKLMNOPQRSTUVWXYZ

## Natural populations

*Eucalyptus cladocalyx* is native to South Australia where it has a disjunct occurrence in three main regions: in the southern Flinders Ranges, the northern side of Kangaroo Island and the eastern side of Eyre Peninsula in a number of small areas between Coffin Bay and the Cleve Hills west of Cowell [1,2]. On the Eyre Peninsula it is a small to medium-sized tree, around 8-15 m in height and up to 0.4 m dbh, while in the Flinders Ranges and on Kangaroo Island it sometimes attains 35 m in height with a dbh of 1-1.5 m. In the Flinders Ranges and on Eyre Peninsula *E. cladocalyx* occurs on the upper slopes and summits of rocky ridgetops, while Kangaroo Island occurrences are in proximity to watercourses. The soils are skeletal or shallow in the former, derived from ironstone or quartzite, and deeper alluvial types, derived from ironstone or limestone in the latter [1].



Hancocks Lookout, SA



Wanilla, SA



buds, fruits



1 cm



# Battle of the Weather Experts



# Defense Contentions:

## Jan. 31, 2016 Extreme Storm

- 50 mph winds recorded at airport
- Hurricane force winds at other weather stations
- Rain
- 500 tree failures reported throughout County

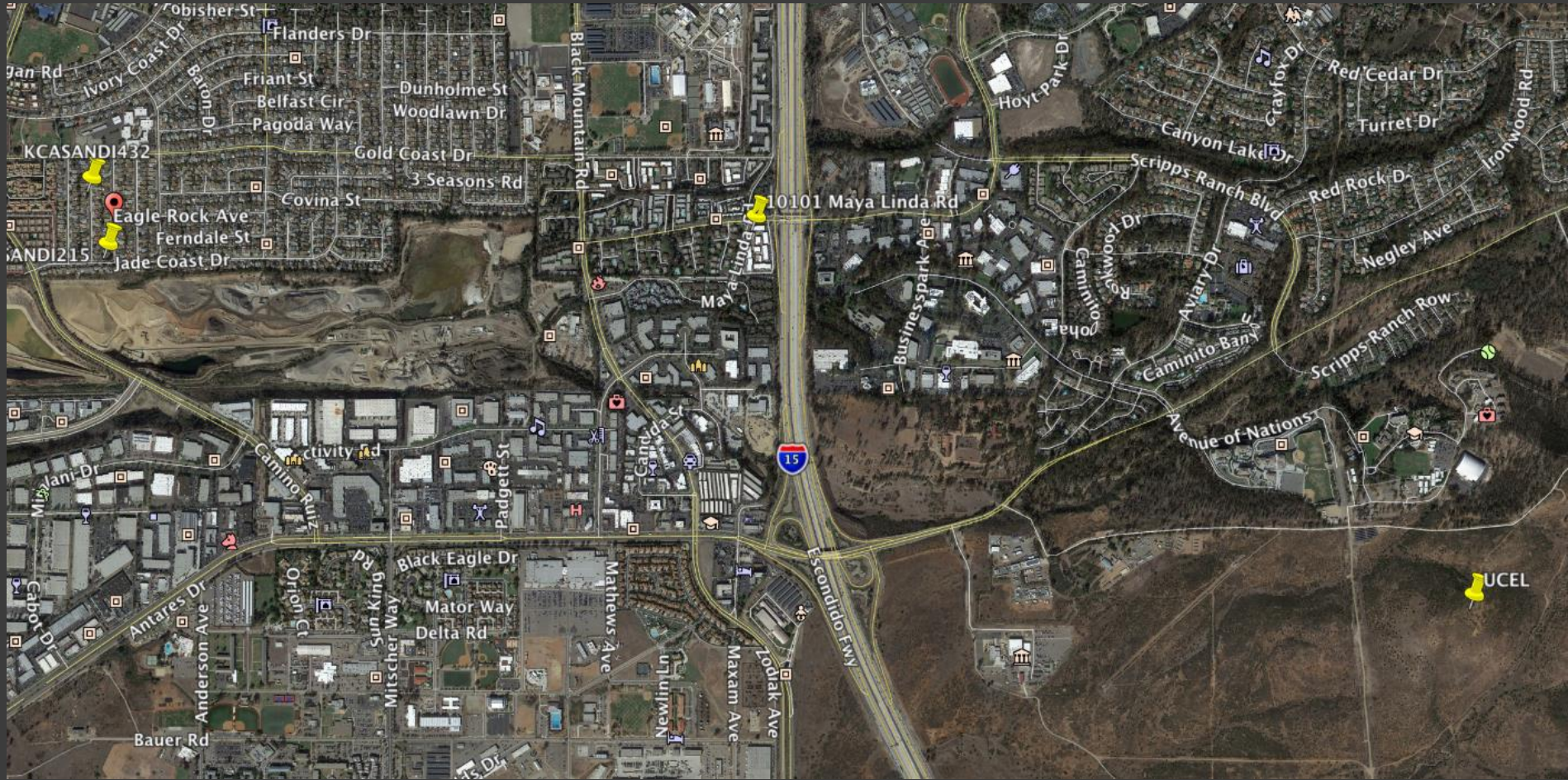
# Edward Aguado, Ph.D.

## Weather Expert

Professor Emeritus, Department of Geography, San Diego State University

### Opinions:

- At around 3 p.m. on February 2, 2016, wind gusts generally less than 15 mph, to between 20 and 25 mph.
- From 4 a.m. until the accident at approximately 4:45 a.m. wind gusts ranged from 6.9 to 14.1 mph.
- Healthy trees do not typically fall because of 25 mph wind gusts.
- Wind gusts recorded closer to area of subject incident less strong than at airport.



# Defense Expert Seminar Presentation

Consider the species



Pines



# Financial Feasibility

## HOA Budget Aug. 2014 – July 2015

	Aug-14	Sep-14	Oct-14	Nov-14	Dec-14	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Total
<b>Income:</b>													
Owner Assessments	61,690	61,690	62,000	62,000	62,000	61,690	62,000	62,000	62,000	62,000	62,000	62,000	793,300.00
Key Entry Fee	0	25	100	0	0	0	0	0	0	0	0	25	150.00
Maintenance Income:													
Late Fee	340	420	0	420	420	480	580	0	0	0	0	280	4,245.00
Returned Check Fee	0	0	0	0	0	70	0	0	0	0	0	0	315.00
Change of Occupancy Fee	100	0	0	0	100	0	0	0	0	0	0	0	200.00
Interest Income	47.78	23.35	19.29	9.68	11.66	24.88	24.88	100	0	0	24.72	0	280.15
<b>Total Income</b>	<b>62,177.78</b>	<b>62,158.35</b>	<b>62,213.29</b>	<b>62,429.68</b>	<b>62,531.66</b>	<b>62,554.88</b>	<b>62,604.88</b>	<b>62,100.00</b>	<b>62,465</b>	<b>63,505.20</b>	<b>62,434.72</b>	<b>62,305</b>	<b>749,380.36</b>
<b>Expenses:</b>													
Electric	2,689.85	2,181.10	2,638.91	2,417.48	2,710.72	3,061.44	2,294.88	4,683.12	3,770.00	3,770.00	3,770.00	3,770.00	33,440.99
Water	9,665.19	28,284.89	7,748.01	29,436.28	7,016.65	25,715.79	7,484.80	32,689.10	6,650.67	17,568.44	7,284.82	28,292.82	217,847.26
Trash	1,814.96	1,828.42	1,895.22	2,060.77	2,101.45	2,008.53	2,584.93	4,959.34	3,264.44	3,282.22	3,282.22	3,282.22	30,389.27
Landscaping	6,638.28	6,783.45	6,500	6,500	8,000	9,764.36	6,654.30	6,500.00	0.00	0.00	0.00	0.00	76,840.89
Landscaping Extras	535.42	215.57	649.74	0.00	0.00	349.70	0.00	287.28	0.00	0.00	0.00	0.00	3,254.12
Irrigation Maintenance	0.00	782.04	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,273.14
Tree Trims / Removal	26,179.71	0.00	0.00	1,989	0.00	2,760.00	0.00	0.00	0.00	0.00	0.00	360.00	35,274.71
Pool Monthly Service	0.00	462	145.00	880	645	760.00	1,210.00	960.00	0.00	0.00	0.00	0.00	6,172.00
Pool Chemicals/Parts	0.00	1,963	930.00	0.00	0.00	0.00	0.00	0.00	0.00	365.00	0.00	0.00	3,258.00
Building Maintenance	102,018.77	8,112.78	495.00	124,934.89	5,653.69	13,355.09	16,401.38	7,664.20	19,864.43	5,549.54	10,420.82	85.00	219,531.09
Pest Control - General	420	420	420.00	760	420	420.00	420.00	420.00	420.00	0.00	925.00	420.00	5,465.00
Pest Control - Termites	0.00	0.00	0.00	0.00	1,179.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	11,799.00
Custodial Services	2,226.56	908.97	741.00	0.00	1,314.88	200.00	200.00	400.00	200.00	200.00	200.00	400.00	6,991.41
Security Guard	350.00	390.00	350.00	430.00	390.00	390.00	350.00	350.00	950.00	390.00	350.00	350.00	4,440.00
Mailers (New Letter, notices, etc.)	2,897.77	1,302.46	685.37	408.89	271.05	1,922.43	919.53	86.39	5.94	3.60	8.58	26.70	9,470.71
Storage Rental	39.00	39.00	39.00	39.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	156.00

Total income = \$749k

Water = \$217k

Landscaping = \$76k



# March 2010 Quest Newsletter

March 2010

## QUEST

Homeowners Association Newsletter

### BOARD OF DIRECTORS

**Beverly Alexander - President**  
**Carol Brewer - Vice President**  
**Adolfo Tarango - Treasurer**  
**Molly Mahoney - Secretary**  
**Kathleen Keras - Director**

The next Board of Directors meeting is March 16 at 10125 Camino Volar. HOA meetings should be held in a neutral place. Unfortunately the designers of this community didn't see fit to provide a community center or common room. We are looking into finding a nearby place we can meet (library? community college? Suggestions anyone?) but until then we are stuck with inconveniently locating a board member. Watch your next newsletter for an update.

### Community Yard Sale April 10<sup>th</sup>

Be green to make a little green!

Yes, that's the Saturday after Easter so you will have plenty of time to get that Spring Cleaning done and those usable, but seldom used items set aside. (Anyone need a brand new mango splitter?) Set up your wares in your parking space(s) by 9 AM, moving your car(s) to the street. Leave the guest parking for guests! We want customers after all!!! The association pays for the advertising. Please have your unsold items removed by 1:00 PM.

**CURTIS**  
Management Company

Community Manager: **Gloria Newman**  
e-mail: [gnewman@curtismanagement.com](mailto:gnewman@curtismanagement.com)  
Assistant Manager: **April Aracuan**  
e-mail: [aaracuan@curtismanagement.com](mailto:aaracuan@curtismanagement.com)

10455 Sorrento Valley Road, #102  
San Diego, California 92121

March 2010

### Storm Damage, Trees down.

Our recent storms, with their combination of heavy rain and high winds, brought down 2 trees in our community. (This in spite of preventative trimming and removals.) Another tree was removed after an alert homeowner reported it. The fallen trees damaged a roof, a vehicle, sidewalk and other trees. If you notice a tree leaning more than it used to or the ground "swelling" around tree roots, please report it immediately. The El Nino event is predicted to send more storms in February and March so be on the lookout for problems and report them to Curtis.



Related to this, we will be considering good replacement trees to plant since some areas are getting rather bare. Our board is getting stretched rather thin. Volunteers for a landscape committee would be greatly appreciated. Please contact Curtis Management, any board member or e-mail

## Storm Damage, Trees down.

Our recent storms, with their combination of heavy rains and high winds, brought down 2 trees in our community. (This in spite of preventative trimming and removals.) Another tree was removed after an alert homeowner reported it. The fallen trees damaged a roof, a vehicle, sidewalk and other trees. If you notice a tree leaning more than it used to or the ground "swelling" around tree roots, please report it immediately. The El Nino event is predicted to send more storms in February and March so be on the lookout for problems and report them to Curtis.

# Summary Judgment

- Assumption of Risk
- Open and obvious

# Did Marie Coronel Assume the Risk?

1. Crossed police road closures in vehicle
2. Crossed yellow police tape
3. Knew four trees had fallen already
4. Knew this was a severe storm
5. Placed herself in the middle of the trees for the most dramatic shot
6. Never inspected the trees in the area



# Officer Kwiatkowski Testimony, p. 28:3-14

3 Q. Okay. After you advised residents to leave,  
4 you indicated that you put up some yellow caution tape?

5 A. Yes, yellow police tape. The area that we had  
6 cordoned or perimetered off would have been from Maya  
7 Linda and Carroll Canyon. So the start of that road all  
8 the way to, there is just about a stop sign when you  
9 continue down Maya Linda, and I would say it's probably  
10 a 4- or 500-foot area, estimate, and that included both  
11 sides of the road -- or, excuse me, both east and west  
12 side, used several rolls of police tape, and we also got  
13 cones out and shut down the roads so nobody could turn  
14 in and, you know, they would obviously hit a tree.

# SD County Media Relations Guide

San Diego County Sheriff's Department  
Media Relations Office

9621 Ridgehaven Court | San Diego, CA 92123  
(858) 974-2259



Text Recognition  
Some pages may contain unre-  
You can run text recognition t  
searchable or editable.



San Diego County  
Sheriff's Department  
Media Guide



**409.5(d) P.C. states "Nothing in this section shall prevent a duly authorized representative of any news service from entering the area closed..." After being advised of any existing danger, members of the news media are permitted free movement in the area as long as they do not hamper, deter or interfere with law enforcement or public safety functions.**

# Primary Assumption of the Risk

- Defendant has a duty of care to the plaintiff to eliminate dangers on its property.
- The plaintiff's conduct is, at most, secondary assumption of risk, and plaintiff's damages would be apportioned on a comparative fault basis (*Curties v. Hill Top Developers, Inc.* (1993) 14 Cal. App. 4th 1651, 1655–1656).
- In *Curties*, the plaintiff tenant at an apartment building slipped and fell on a grassy hill that he and other tenants knew was dangerous. (*Id.*, at 1653-1654.)
- The court explained that it does not matter that the plaintiff was aware of the dangerous condition at the time he fell because “[i]n determining whether assumption of risk applies under the duty approach, our inquiry does not focus upon the reasonableness or unreasonableness of [the plaintiff’s] conduct. Rather, resolution of the issue turns on whether, in light of the nature of the activity in which [the defendant land owner] and [the plaintiff] were involved, [the defendant land owner’s] conduct breached a legal duty of care to [the plaintiff]. (*Knight v. Jewett, supra*, at p. 315.)” (*Ibid.*) “Therefore, comparative negligence principles govern the determination of the relative fault of the two parties for [the plaintiff’s] injuries. (*Knight v. Jewett, supra*, at p. 314–315.)”
  - *Curties, supra*, 14 Cal. App. 4<sup>th</sup> 1656.
- “[T]his is a 'secondary' assumption of the risk case as defined in Knight. There was a triable issue of fact concerning whether [defendant] breached a duty of care toward plaintiff in maintaining the property. While a jury would certainly be entitled to consider plaintiff's conduct in deliberately encountering the danger despite his awareness of it for the purposes of determining comparative fault, such behavior does not automatically bar plaintiff's recovery.” (*Donahue v. San Francisco Housing Authority* (1993) 16 Cal.App.4<sup>th</sup> 658.)

# Primary Assumption of the Risk

- Even assuming primary assumption of risk were somehow to apply here, it still would not act as an absolute bar to Defendants' liability.
- As explained in *Fazio v. Fairbanks Ranch Country Club* (2015) 233 Cal.App.4th 1053, “[t]he doctrine of primary assumption of the risk, however, ‘does not grant unbridled legal immunity to all defendants.’ [Citation.] ‘Although defendants generally have no legal duty to eliminate (or protect a plaintiff against) risks inherent in the sport itself, it is well established that defendants generally do have a duty to use due care not to increase the risks to a participant over and above those inherent in the sport.’ [Citation.] Likewise, when the doctrine is applied outside the sports context, **summary judgment on primary assumption of risk grounds is unavailable unless the defendant disproves the theory it increased the inherent risks**, or establishes a lack of causation between its conduct and the plaintiff's injury. [Citations.]” (*Id.*, at 1059.)



# Open and Obvious

- A claim that a danger is “open and obvious” is an argument for comparative fault.
  - “Open and obvious” potentially reduces Defendants’ portion of liability, it does not function as a complete shield to liability.
    - *Donohue v. San Francisco Housing Authority* (1993) 16 Cal.App.4<sup>th</sup> 658;
    - *Martinez v. Chippewa Enterprises, Inc.* (2004) 121 Cal.App.4<sup>th</sup> 1179.

# Tree on Private Property – CACI 1011

In determining whether [Defendants] should have known of the condition that created the risk of harm, you must decide whether, under all the circumstances, the condition was of such a nature and existed long enough that [Defendants] had sufficient time to discover it and, using reasonable care:

1. Repair the condition; or
2. Protect against harm from the condition; or
3. Adequately warn of the condition.

[Defendants] must make reasonable inspections of the property to discover unsafe conditions. If an inspection was not made within a reasonable time before the accident, this may show that the condition existed long enough so that property owner using reasonable care would have discovered it.

# Tree on Private Property – CACI 1001

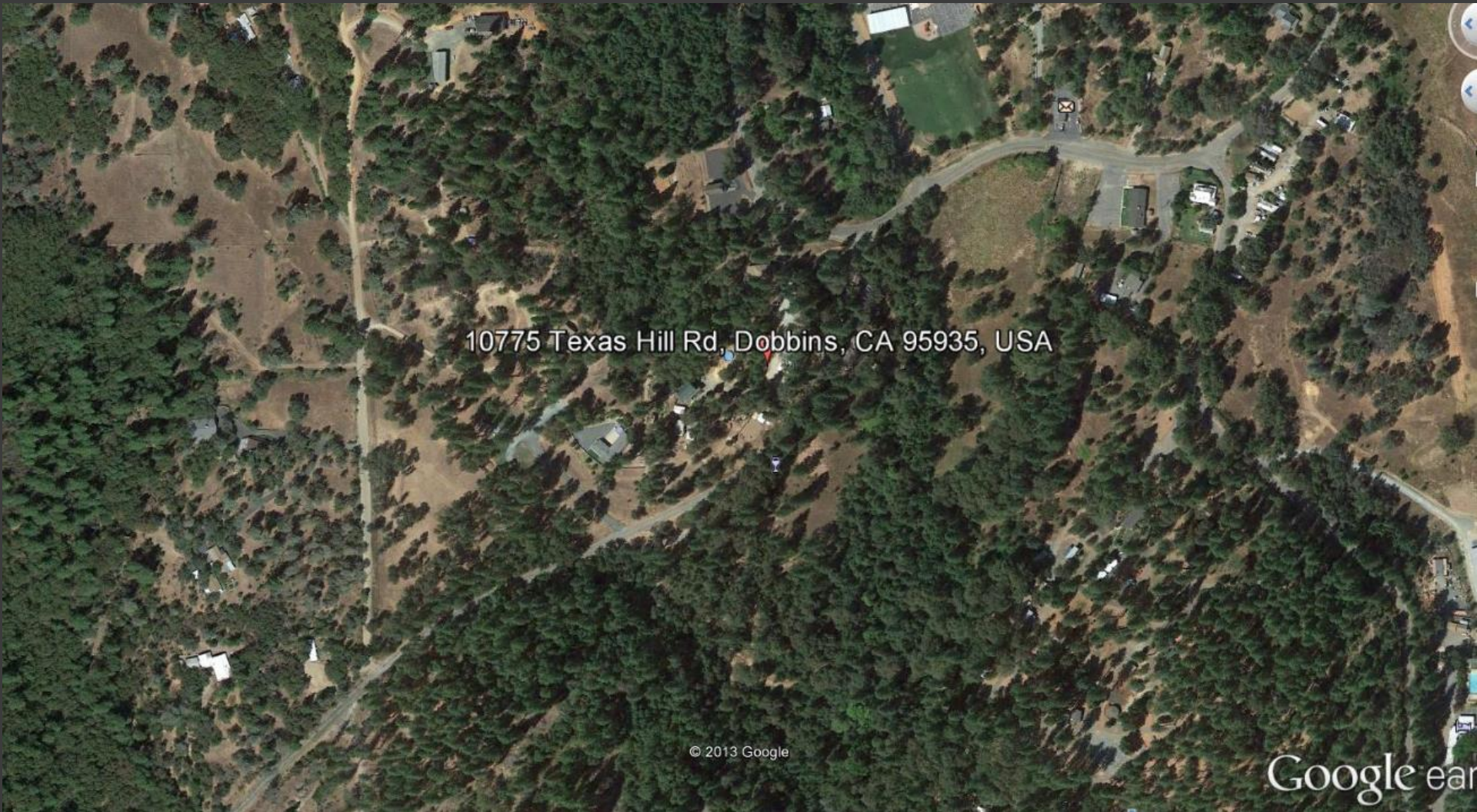
In deciding whether Defendants' used **reasonable care**, you may consider, among other factors, the following:

- (a) The location of the property;
- (b) The likelihood that someone would come on to the property in the same manner as Marie Coronel did;
- (c) The **likelihood of harm**;
- (d) The **probable seriousness of such harm**;
- (e) Whether Defendants' **knew or should have known** of the condition that created the risk of harm;
- (f) The **difficulty of protecting** against the risk of such harm; and
- (g) The extent of Defendants' control over the condition that created the risk of harm.

# Tree Case First Steps:

- Preservation letter
- Inspect tree with arborist
- Quality photographs
- Historical Images
  - Google Maps
  - Google Earth

# Pawloski vs. Yuba County



10775 Texas Hill Rd, Dobbins, CA 95935, USA

© 2013 Google

Google earth





No green needles.

© 2013 Google  
© 2013 Google

Google ear

Imagery Date: 4/2012 39°22'16.83" N 121°12'37.12" W elev 1828 ft eye alt 1728



Imagery Date: 4/2012 39



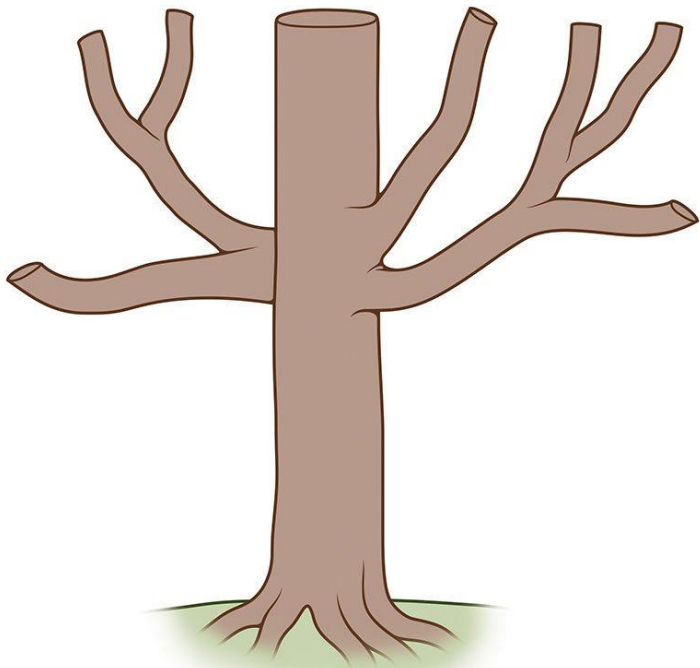
© 2018 Google  
© 2018 Google



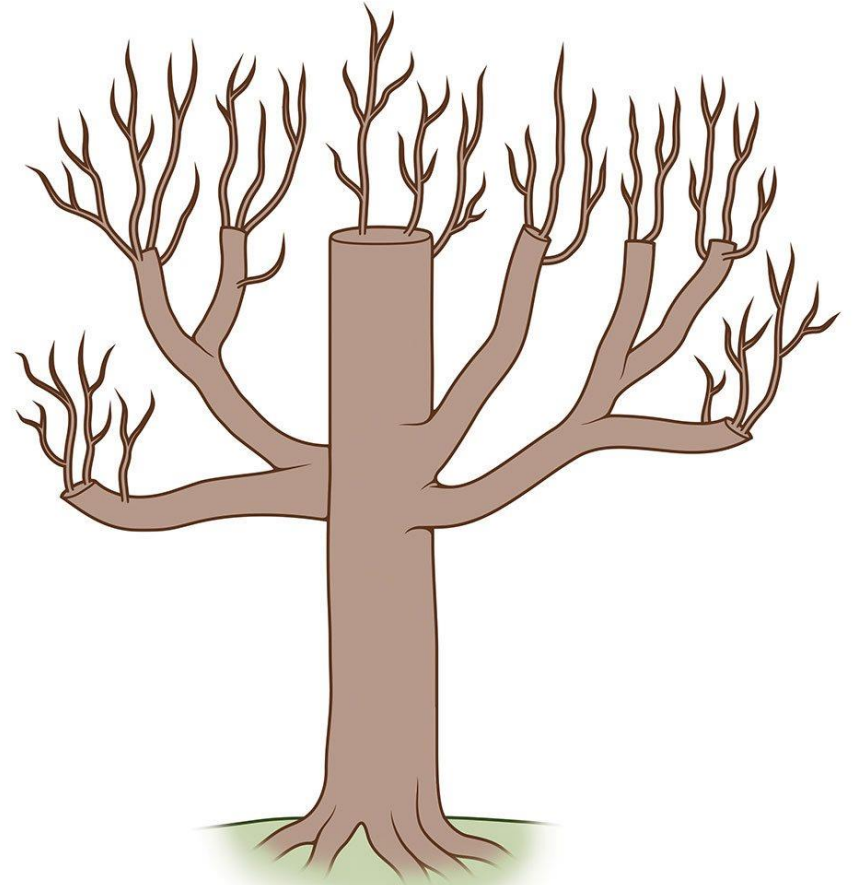


# Causes of Tree or Limb Failure

- Disease
- Improper pruning
- Topping
  - Epicormic growth = weaker limbs



**Topped Tree**



**Growth After Topping**

# Zhang vs. City of Los Angeles



# Zhang vs. City of Los Angeles





# Public Entity Cases

## Michael Burke vs. City of San Diego







# Notice – Public Entity

# History of Inspections

## 7. Inspection:

Contractor shall inspect each tree for signs of pests, diseases, splits and breakages. Should such a condition be found, the Contractor shall immediately notify the Contract Administrator who will determine if the tree should be trimmed.

### 7. Inspection:

Contractor shall inspect each tree for signs of pests, diseases, splits and breakages. Should such a condition be found, the Contractor shall immediately notify the Contract Administrator who will determine if the tree should be trimmed.

### 8. Site Notes:

If a tree root (tree) is encountered during palm trimming operations, the Contractor shall report the location to the Contract Administrator. Contract Administrator will arrange to have the root eliminated within five (5) working days after notification. Upon notification to the Contractor that the root has been eliminated, Contractor shall trim the palm.

### B. PURCHASING PALM TREES

The purchase and planting of palm trees must be pre-authorized in writing by the Contract Administrator.

#### 1. Plant Tree Size:

Palm authorized for planting shall be a minimum of six (6) feet crown trunk height. Crown trunk height shall be the distance measured from the soil level of the container to the lowest live axial shoot.

#### 2. Conditions Under Which Palm Trees Were Grown:

Palm trees shall be raised and grown in accordance with good horticultural practices under similar conditions similar to the City of San Diego for a minimum of two (2) years.

#### 3. Appearance:

Palm trees shall be free of dead or dying fronds with all fronds of a normal size and color for the species selected for planting.

All palm trees shall be well grown, symmetrical, without curvature or leaning of trunk from the propagator. Excessive scarring of the trunk, if unacceptable. The Contract Administrator shall, to the joint determination of the degree of scarring permitted.

#### 4. Value:

All palms shall be sound, healthy and vigorous, well fertilized prior to planting and show no signs of previous disease. They shall have healthy well developed root systems. All palms shall be free of physical damage or adverse conditions which would prevent thriving growth.

**City Inspections**

**2007**



# *“It’s the HOMEOWNER’S RESPONSIBILITY”*



# NO INSPECTION SYSTEM



# CACI 1102

## Definition of “Dangerous Condition”

**A “dangerous condition” is a condition of public property that creates a substantial risk of injury to members of the general public when the property or adjacent property is used with reasonable care and in a reasonably foreseeable manner. A condition that creates only a minor risk of injury is not a dangerous condition.**

## **CACI 1104 Inspection System**

**In deciding whether City of San Diego should have discovered the dangerous condition, you may consider whether it had a reasonable inspection system and whether a reasonable system would have revealed the dangerous condition.**

**[In determining whether an inspection system is reasonable, you may consider the practicality and cost of the system and balance those factors against the likelihood and seriousness of the potential danger if no such system existed.]**

# *Zhang* Case Deposition Testimony:

Tree Surgeon Supervisor for the City of Los Angeles

- As of 2018, city trees were on an 18-year trim cycle and within those 18 years, inspections would generally only be performed upon request.

# What Would a Reasonable Inspection System Have Revealed?





## **Warning Signs**

**Narrowing  
of trunk  
("pencilling")**



**Number  
of Fronds  
( $< 10$ )**



**Lack of  
Roots**



**Color of  
Fronds  
(Brown)**



# This Tree Was a Dangerous Condition





EX 218



EX 218



EX 249

# Defense Excuses:

- *“It was an Act of God.”*
- *Summer limb drop*

# Defense Excuses: This was No Act of God



## 2011 Hurricane Study University of Florida Queen Palm Tree Survival Rate

74% of Queen Palms survived  
120 mph winds  
(Hurricane Jeanne)

*San Diego Storm winds were  
35 mph at most*

Universal

Lindberg Fld EX 360

Jan 20	21	
0.64"	0.74	1.38"
30/39	35/47	1.52"
1-day maximum =		3.07"

Montgomery Fld

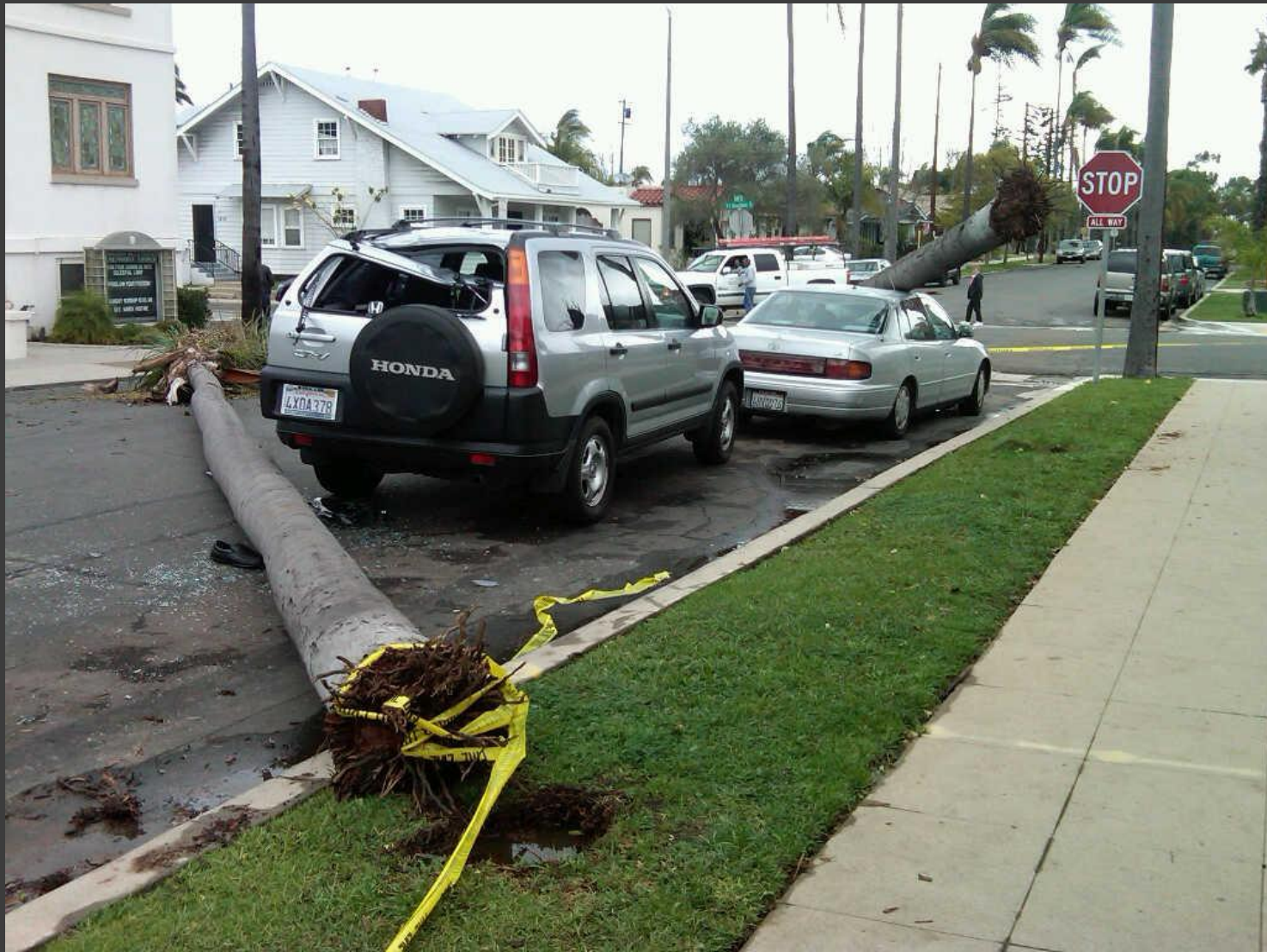
1.26"	0.97"	2.23"
24/31	31/44	2.53"

EX 360

# Defense Excuses: **This was No Act of God**

- The storm was foreseeable in the life span of the tree
  - Historical weather data

# Failure to Properly Tape off Area







# Immunities:

- Natural Condition Immunity
  - Cal. Gov't Code § 831.2
  - *Alana M. v. State of California*, (2016) 245 Cal. App. 4th 1482
    - Immunity applied to tree next to campsite in Portola Redwoods State Park
- Trail immunity
  - Cal. Gov't Code § 831.4
  - *Toeppe V. City Of San Diego* (2017) 13 Cal.App.5th 921 (2017)
    - No trail immunity where base of tree 25 feet from path

# Immunities:

- Federal Tort Claims Act
  - The FTCA’s **discretionary function exception** retains the United States’ sovereign immunity for any claim based on “**the exercise or performance or the failure to exercise or perform a discretionary function** or duty on the part of a federal agency or an employee of the Government.”

# Conclusion/Questions:

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