

# City Trees and Urban Forests: Understanding Inverse Condemnation Liability



Robert C. Ceccon  
Richards, Watson & Gershon



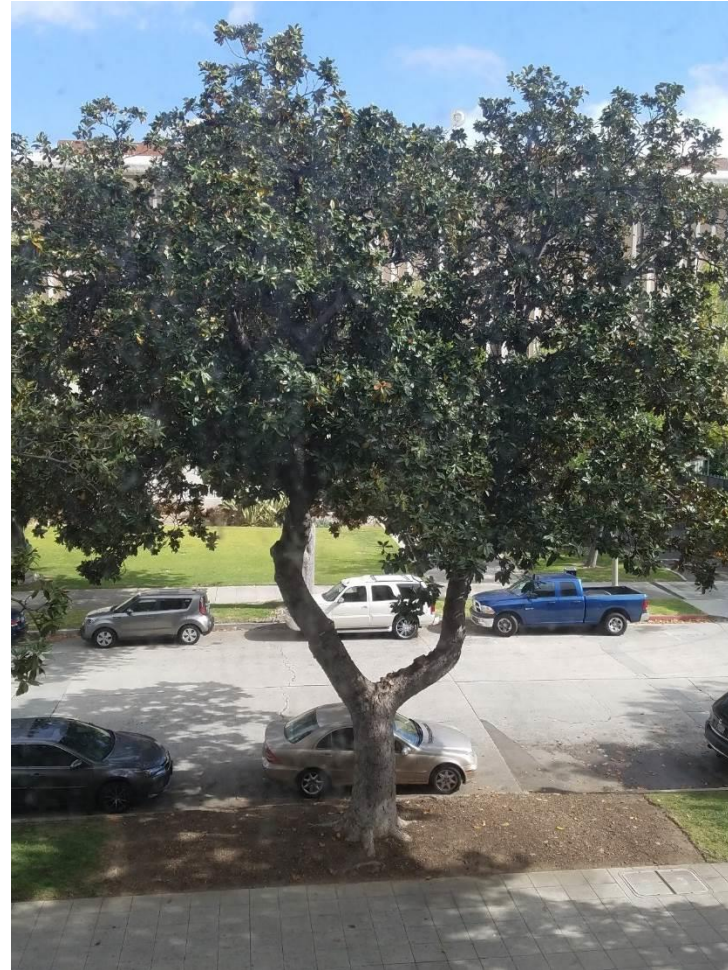
Ann Rider  
Assistant City Attorney  
City of Pasadena

May 3, 2018

League of California Cities: City Attorneys' Spring Conference



# City Trees and Urban Forests





# Understanding Inverse Condemnation Liability





# Thank You League of California Cities!



COURT OF APPEAL - SECOND DIST  
**FILED**  
SEP 27 2016  
JOSEPH A. LANE Clerk  
Z. CLAYTON Deputy Clerk

Case No. B266959  
(Consolidated with Case No. B268452)

**IN THE COURT OF APPEAL  
FOR THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT, DIVISION THREE**

MERCURY CASUALTY COMPANY as subrogee of  
SARAH and CHRISTOPHER DUSSEAUT,  
Plaintiff and Respondent,  
vs.  
CITY OF PASADENA,  
Defendant and Appellant.

On Appeal from the Superior Court for the County of Los Angeles  
Honorable Richard L. Fruin, Jr., Judge of the Superior Court  
Case No. BC488745

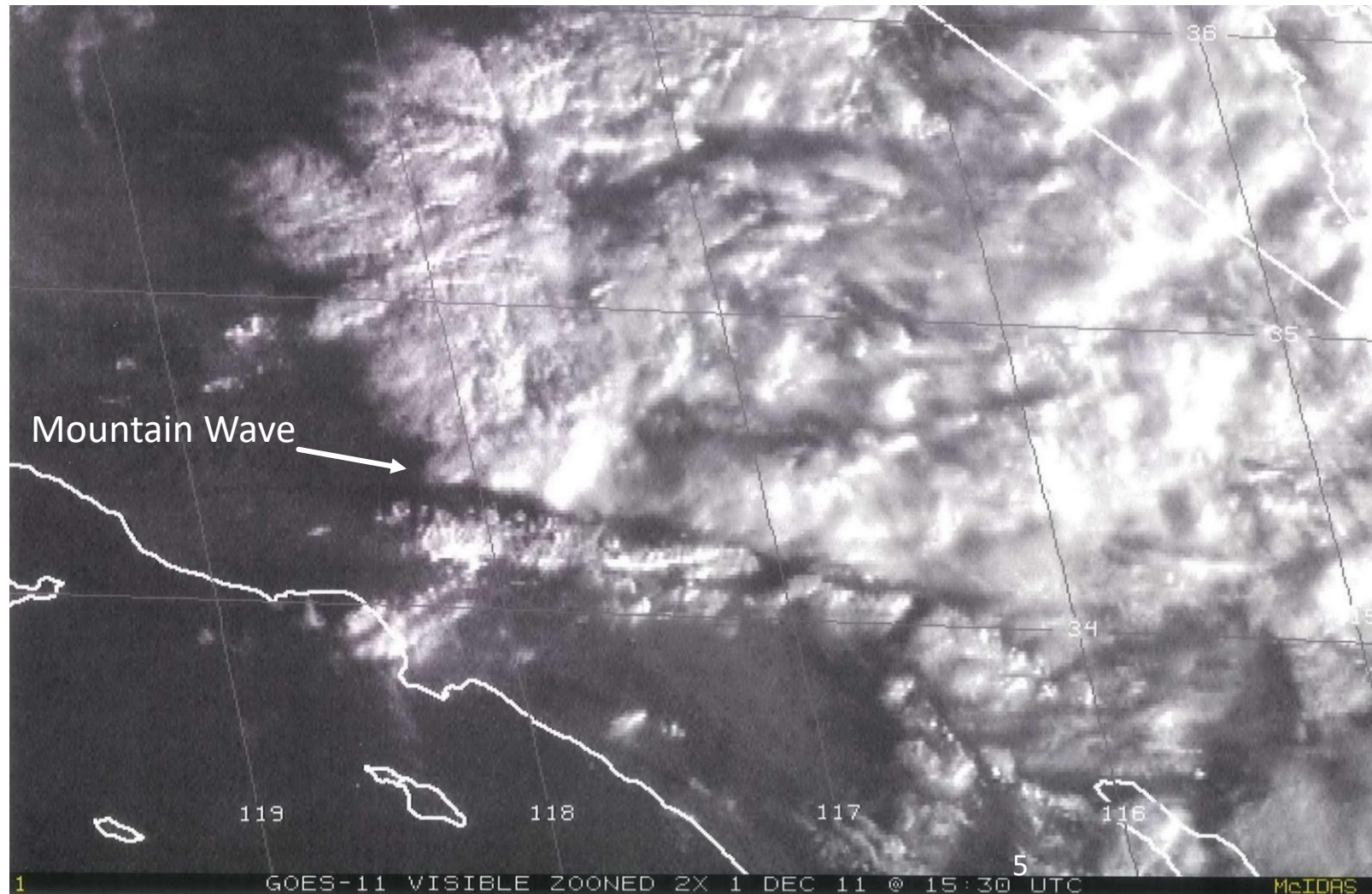
**AMICUS CURIAE BRIEF ON BEHALF OF THE LEAGUE OF  
CALIFORNIA CITIES; THE CALIFORNIA STATE  
ASSOCIATION OF COUNTIES; CALIFORNIA PARK AND  
RECREATION SOCIETY; PROFESSOR DANIEL P. SELMI; and  
PROFESSOR JOHN ECHEVERRIA IN SUPPORT OF CITY OF  
PASADENA**

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*Attorneys for the League of California Cities; the California State  
Association of Counties; California Park and Recreation Society;  
Professor Daniel P. Selmi; and Professor John Echeverria*



# Hurricane Force Winds Hit Pasadena





# Winds Measured at Over 100 M.P.H.

Mt. Washington California

```
:      LST      in      mph      Deg      Deg F      Deg F      %      volts      Deg      mph      w/m2
:  Date  Time  Precip  Wind Wind  Av Air  Fuel  Rel  Battery  Dir Mx Gust Solar
:YYYY/MM/DD hh:mm  Speed Direc  Temp  Temp Humidity Voltage MxGust Speed  Rad.
2011/12/01 00:00  3.19  4.0  304.0  65.0  61.0  27.0  12.6  85.0  13.0  0.0
```

Mt. Washington California

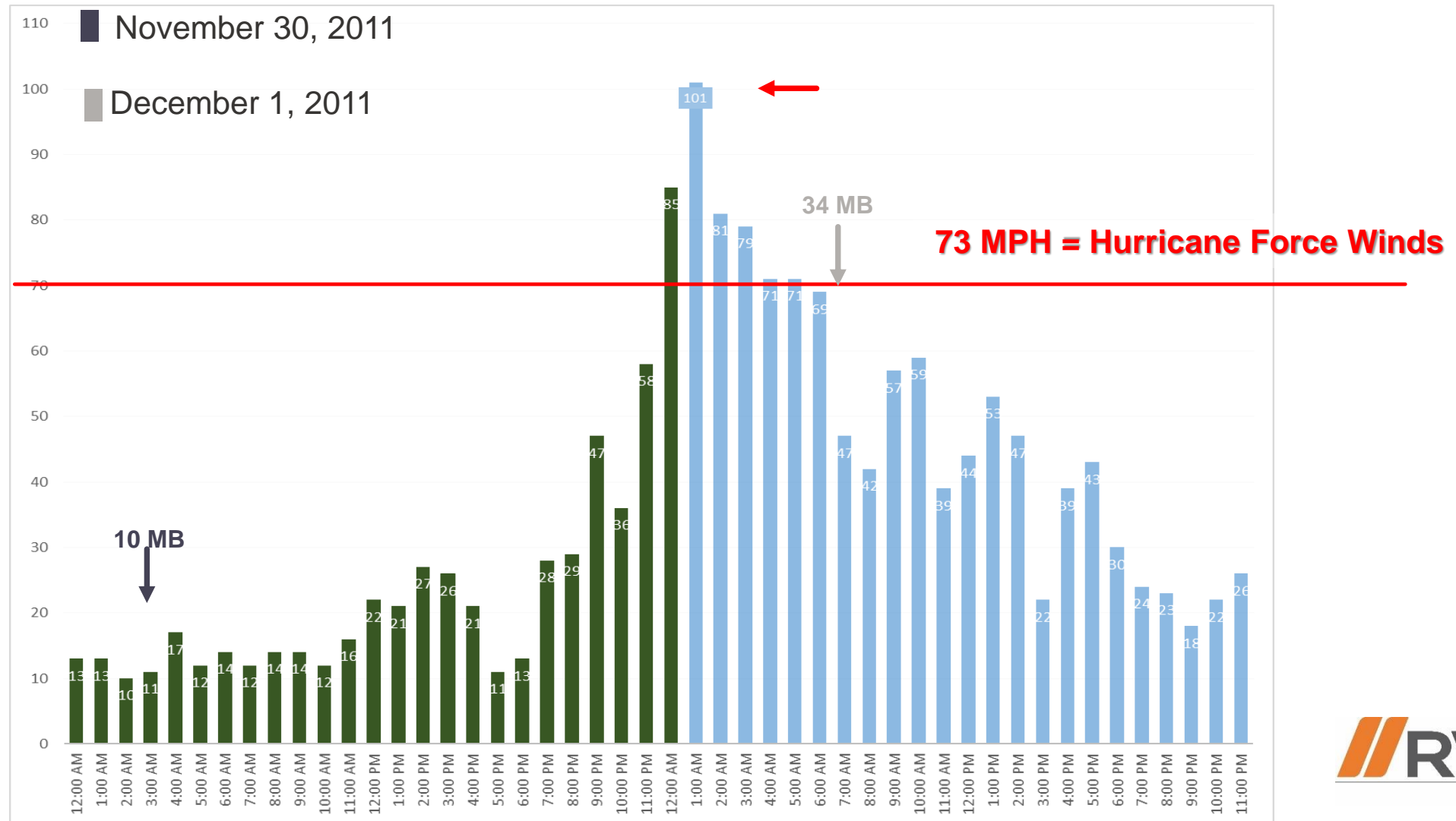
: : Date :YYYY/MM/DD	LST Time hh:mm	in Precip	mph Wind Speed	Deg Wind Direc	Deg F Av Air Temp	Deg F Fuel Temp	% Rel Humidity	volts Battery Voltage	Deg Dir MxGust	mph Mx Gust Speed	w/m2 Solar Rad.
2011/12/01	00:00	3.19	24.0	354.0	58.0	57.0	20.0	12.6	231.0	85.0	0.0
2011/12/01	01:00	3.19	18.0	338.0	57.0	56.0	20.0	12.6	147.0	101.0	0.0
2011/12/01	02:00	3.19	21.0	332.0	58.0	56.0	19.0	12.5	148.0	81.0	0.0
2011/12/01	03:00	3.19	18.0	334.0	56.0	55.0	21.0	12.5	172.0	79.0	0.0
2011/12/01	04:00	3.19	15.0	322.0	56.0	55.0	23.0	12.5	142.0	71.0	0.0
2011/12/01	05:00	3.19	15.0	339.0	55.0	54.0	24.0	12.5	155.0	71.0	0.0
2011/12/01	06:00	3.19	9.0	353.0	55.0	54.0	24.0	12.5	249.0	69.0	0.0

```
2011/12/01 06:00  3.19  9.0  353.0  55.0  54.0  24.0  12.5  249.0  69.0  0.0
2011/12/01 07:00  3.19  10.0  338.0  55.0  54.0  24.0  12.5  284.0  47.0  4.0
2011/12/01 08:00  3.19  16.0  348.0  58.0  57.0  21.0  12.9  133.0  42.0  69.0
2011/12/01 09:00  3.19  15.0  337.0  61.0  60.0  19.0  13.3  215.0  57.0  203.0
2011/12/01 10:00  3.19  10.0  357.0  60.0  59.0  18.0  13.6  200.0  59.0  177.0
2011/12/01 11:00  3.19  10.0  20.0  67.0  68.0  15.0  13.5  157.0  39.0  522.0
2011/12/01 12:00  3.19  8.0  1.0  66.0  70.0  14.0  13.5  145.0  44.0  523.0
2011/12/01 13:00  3.19  17.0  25.0  65.0  74.0  14.0  13.5  233.0  53.0  422.0
2011/12/01 14:00  3.19  5.0  333.0  65.0  69.0  15.0  13.6  198.0  47.0  386.0
2011/12/01 15:00  3.19  6.0  354.0  65.0  66.0  16.0  13.6  202.0  22.0  309.0
2011/12/01 16:00  3.19  9.0  8.0  62.0  60.0  18.0  13.1  242.0  39.0  133.0
2011/12/01 17:00  3.19  10.0  342.0  59.0  58.0  20.0  12.8  178.0  43.0  24.0
2011/12/01 18:00  3.19  3.0  52.0  57.0  56.0  23.0  12.7  168.0  30.0  0.0
2011/12/01 19:00  3.19  8.0  192.0  58.0  56.0  23.0  12.7  314.0  24.0  0.0
2011/12/01 20:00  3.19  7.0  188.0  56.0  55.0  26.0  12.7  29.0  23.0  0.0
2011/12/01 21:00  3.19  9.0  186.0  55.0  54.0  30.0  12.6  277.0  18.0  0.0
2011/12/01 22:00  3.19  8.0  214.0  54.0  52.0  34.0  12.6  7.0  22.0  0.0
2011/12/01 23:00  3.19  7.0  217.0  53.0  52.0  37.0  12.6  33.0  26.0  0.0
```



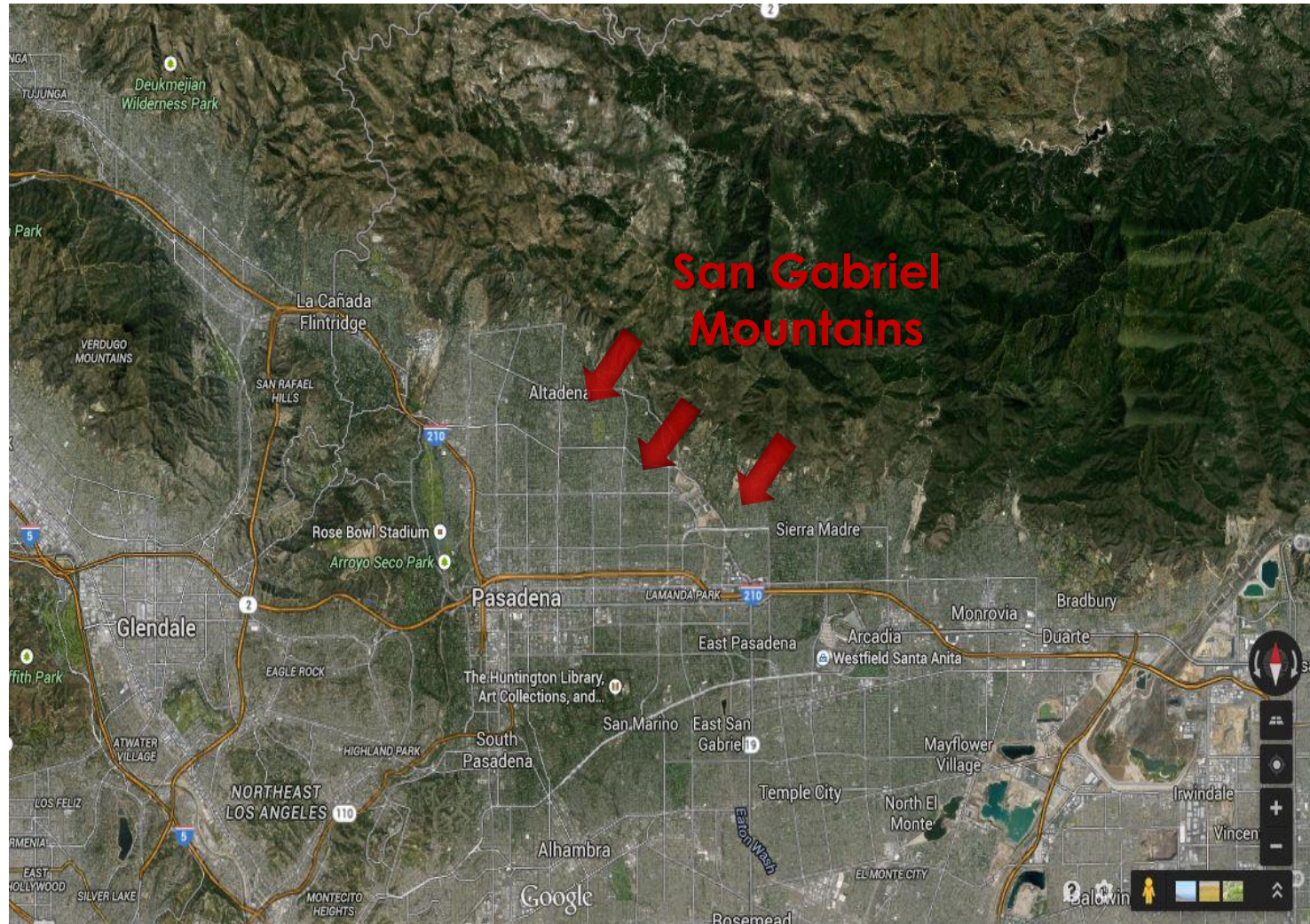


# Mt. Washington Hourly Maximum Wind Gust on November 30, 2011 – December 1, 2011



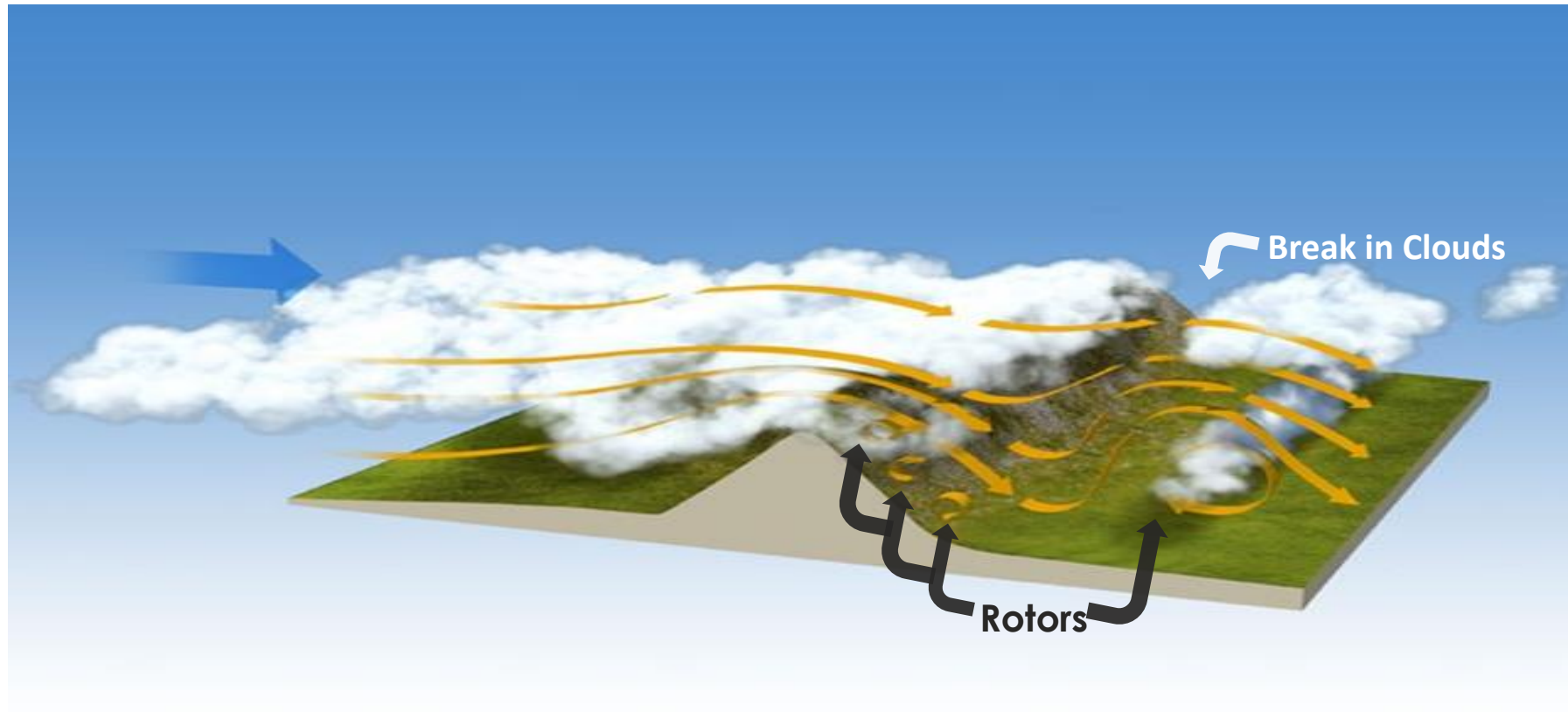


# Typical Santa Ana (Northeast)





# Mountain Waves





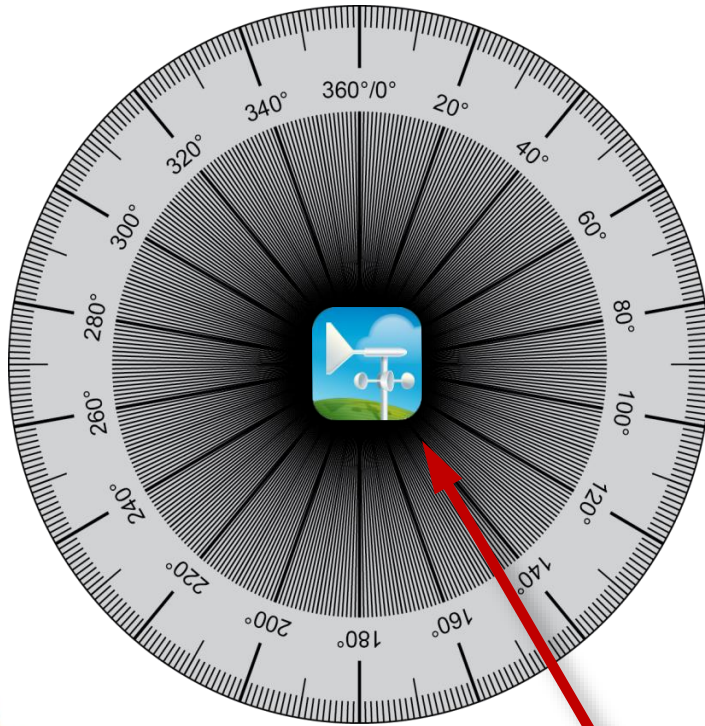
# 2011 Pasadena Windstorm North-Northwest to North





# Mt. Washington cf. San Rafael at 1 AM, December 1, 2011

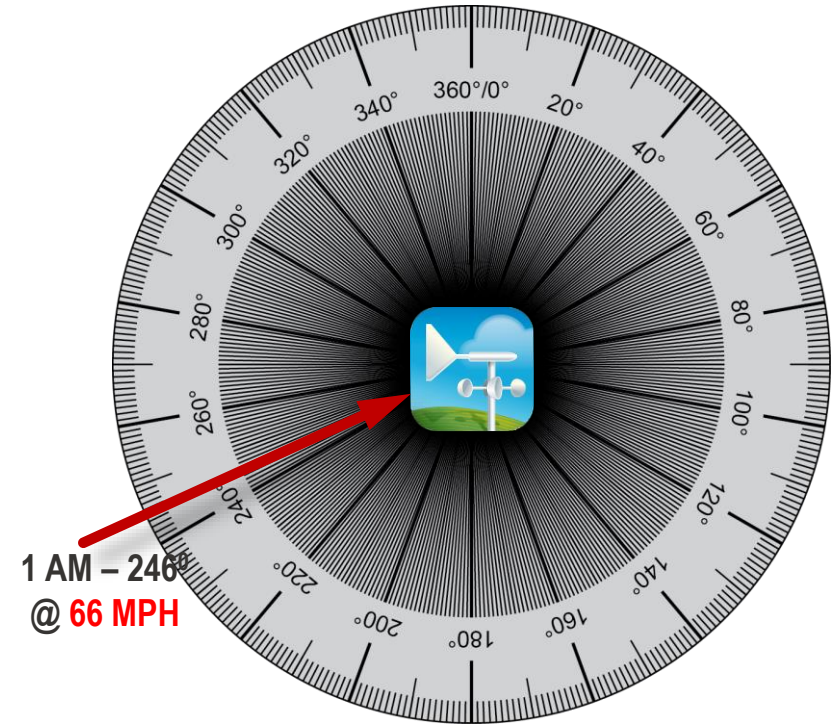
Mt. Washington



1 AM – 147°  
@ 101 MPH



San Rafael

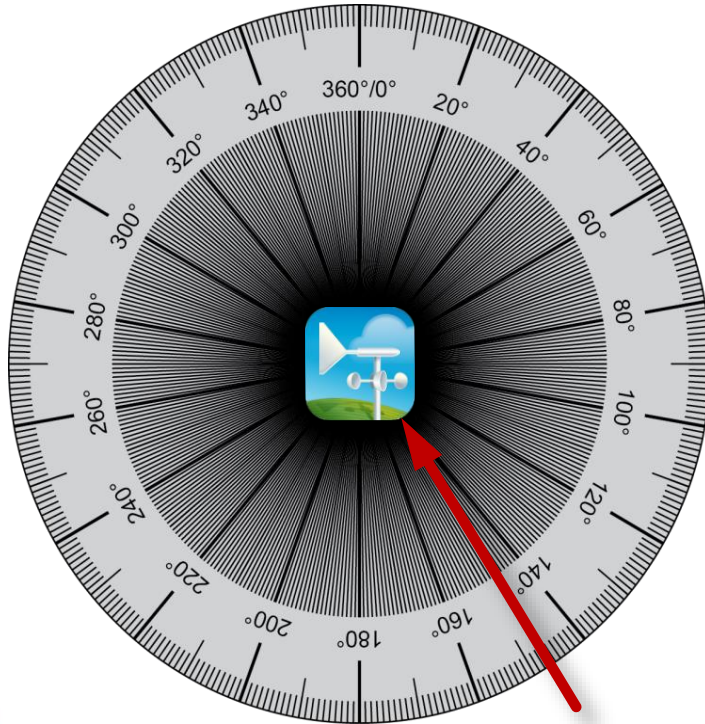


1 AM – 246°  
@ 66 MPH



# Mt. Washington cf. San Rafael at 2 AM, December 1, 2011

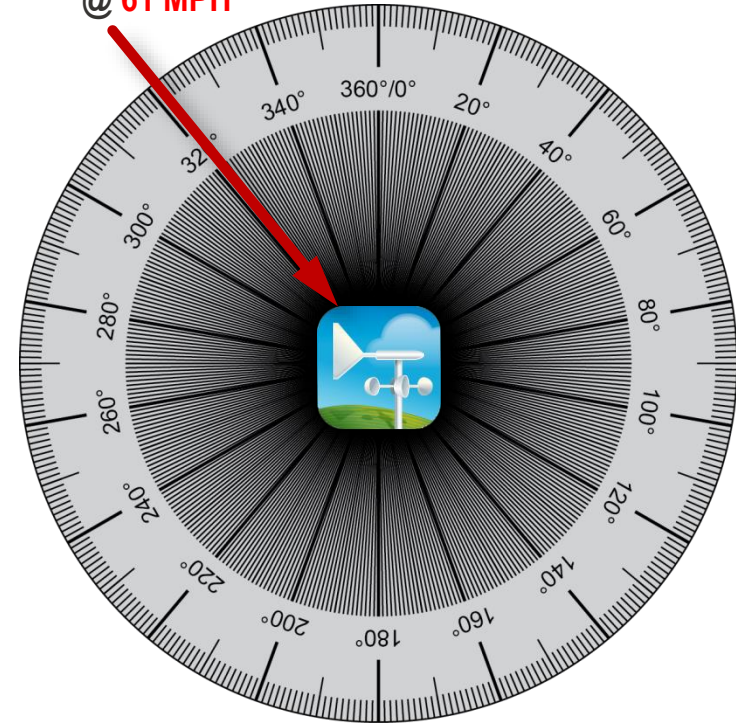
Mt. Washington



2 AM – 148°  
@ 81 MPH



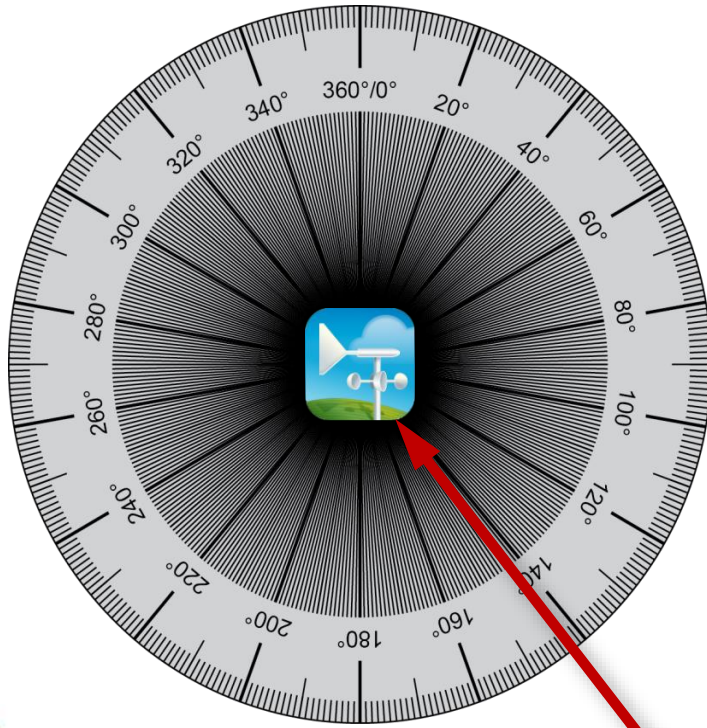
2 AM – 321° San Rafael  
@ 61 MPH





# Mt. Washington cf. San Rafael at 4 AM, December 1, 2011

Mt. Washington

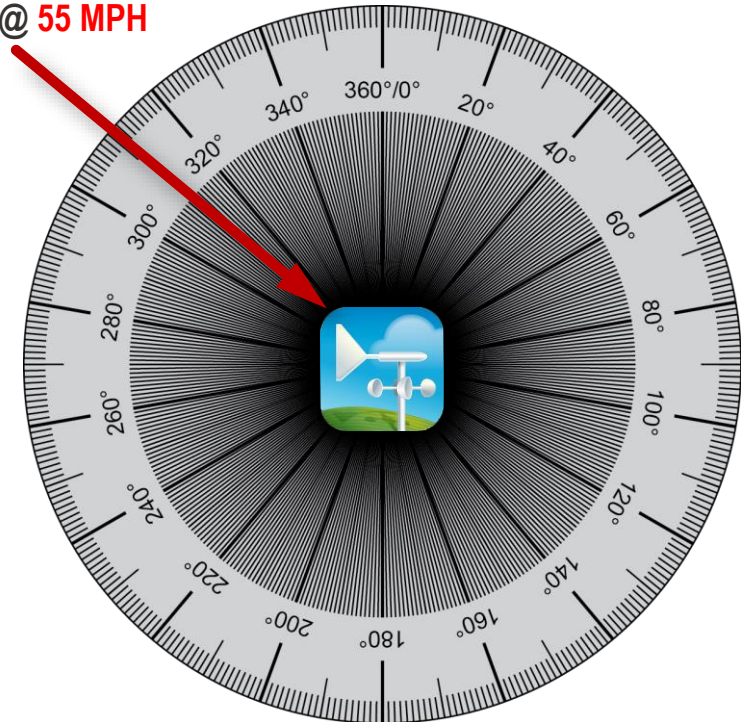


4 AM – 142°  
@ 71 MPH



San Rafael

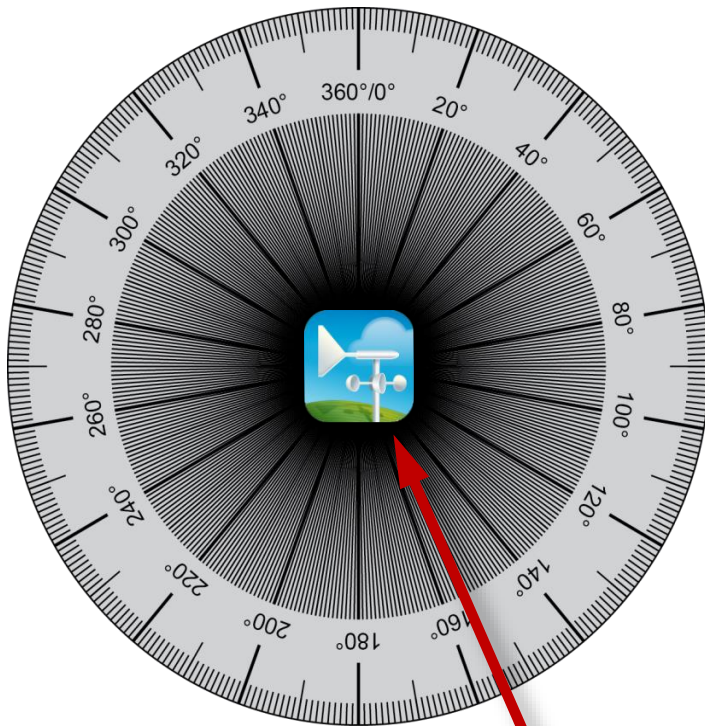
4 AM – 310°  
@ 55 MPH





# Mt. Washington cf. San Rafael at 5 AM, December 1, 2011

Mt. Washington

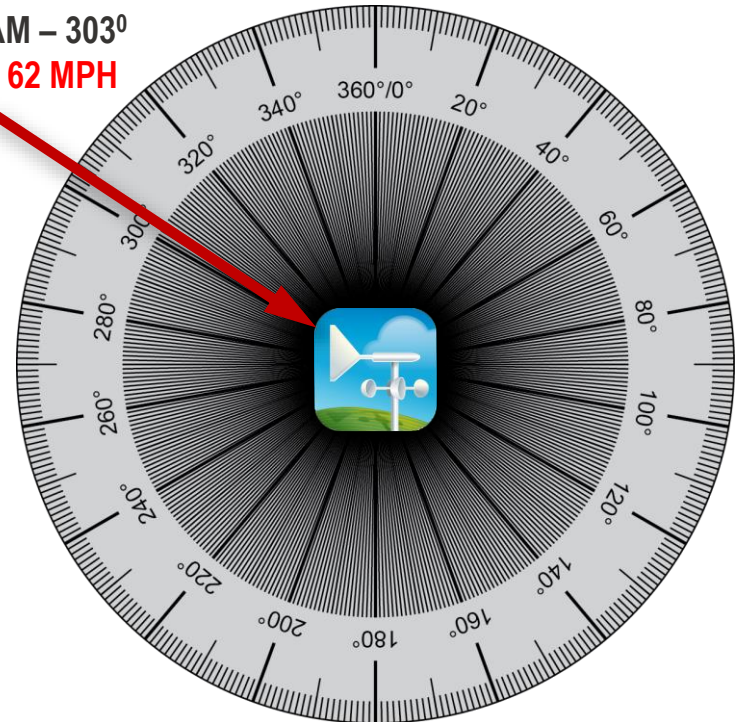


5 AM - 155°  
@ 71 MPH



San Rafael

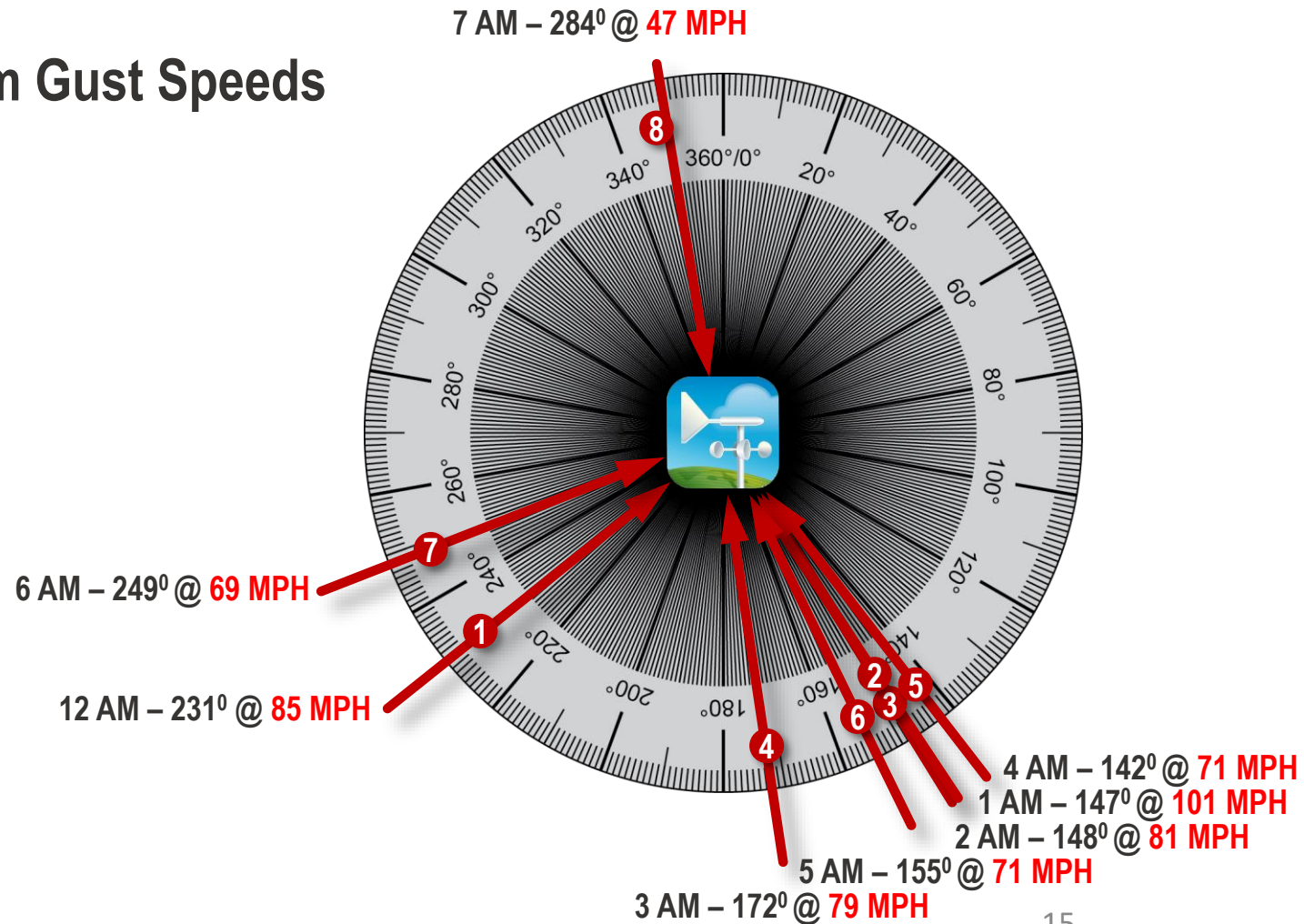
5 AM - 303°  
@ 62 MPH





# Mt. Washington - December 1, 2011

## Maximum Gust Speeds





# Result – Extensive Damage





# 5,500 Tree Related Failures Reported Citywide





# 2,200 of the 57,000 City Trees - Total Failures





# 100 Million Pounds of Debris





# Damaged Public and Private Property





# City Crews Worked Around the Clock for 2 Weeks





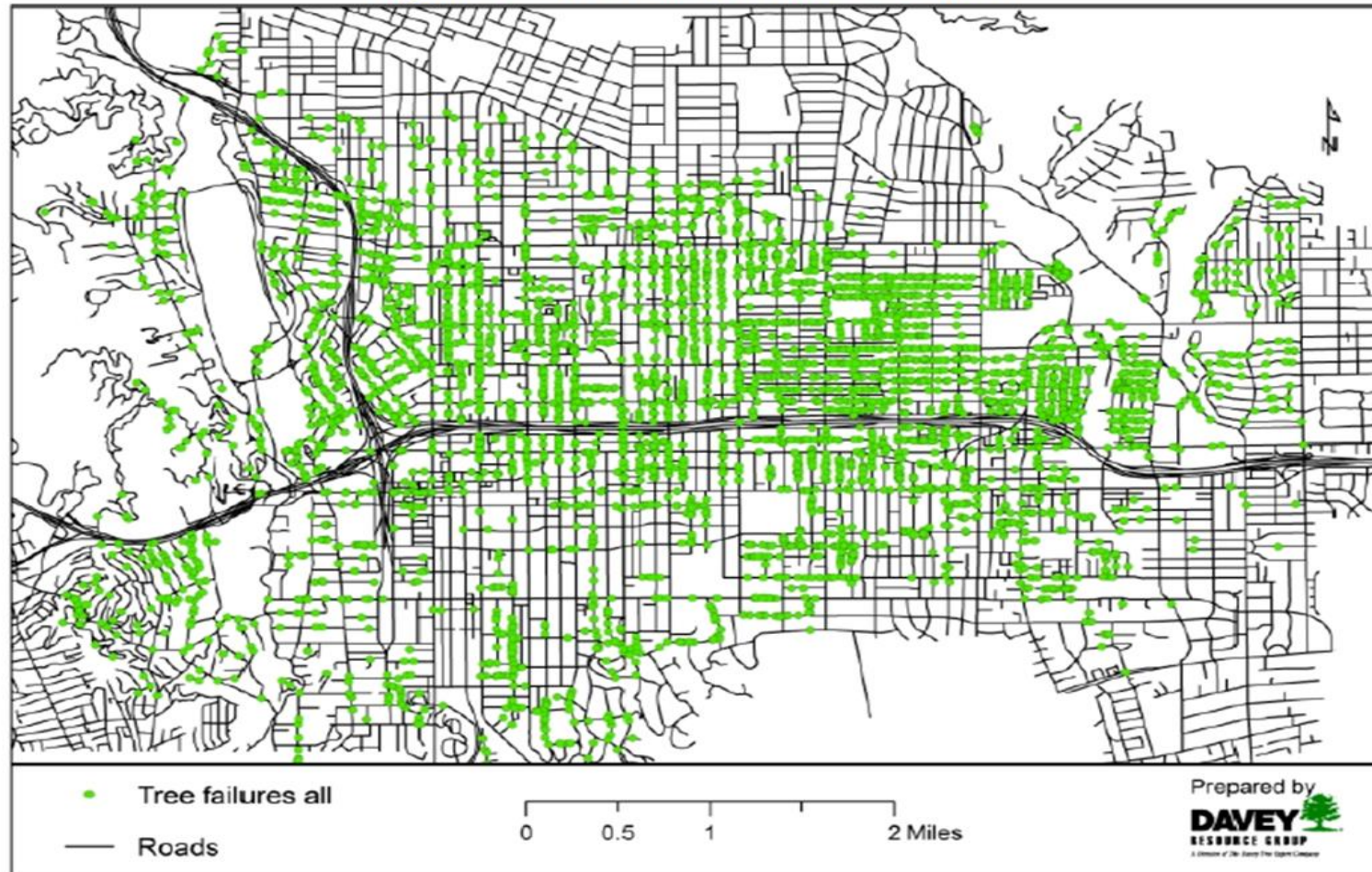
# Windstorm Cost Pasadena \$14.2 Million





# Citywide Street Tree Failures

Figure 2. Street Tree Failure Overview





# Tree falls on Dusseault's Home



Subject tree

PLF/DEFT  
WITNESS  
DATE: 01-21-15  
Dianne Jones CSR No. 3328

5

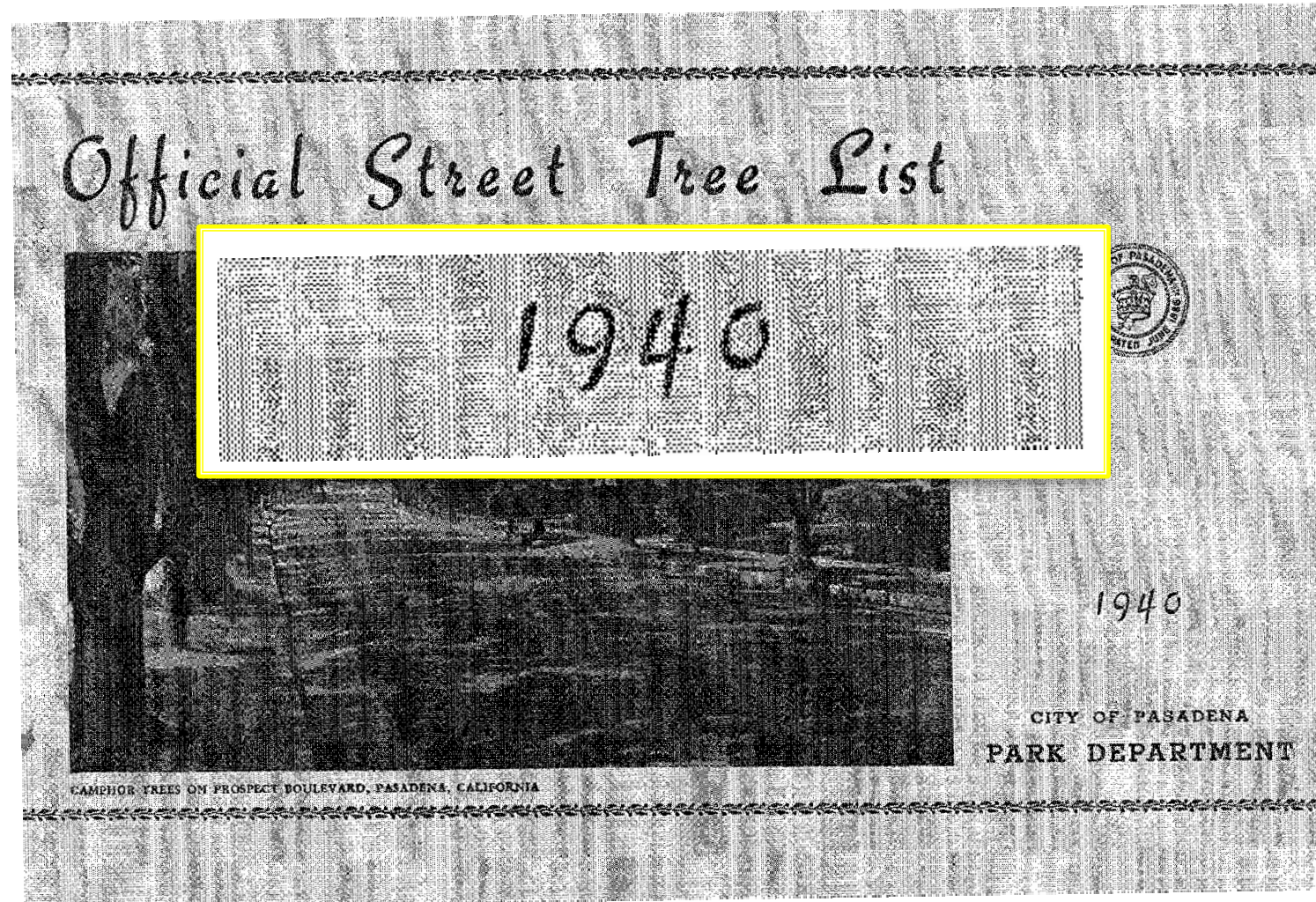


# Root Ball of Canary Island Pine That Fell at Dusseault Property





# City of Pasadena's Official Street Tree List – 1940





# City of Pasadena's Official Street Tree List – 1940

Official Street Tree List

Name of Street	P. H.	Parking Width Feet	Street Width Feet	Soil Type	Botanical Name	Official Tree	Common Name
Hillside Terrace	6.4	5	36	Al	Eucalyptus polyanthemos	Red Box	
Highland							
W. of Los Robles	6.6	10	30	Rs	Cinnamomum camphora	Camphor	Camphor
E. of Los Robles	7.1-6.8	10	30	Ro Rs	Cinnamomum camphora		
Hill Avenue:							
N. of Colorado	7.0-7.2	10	44	Hg Ro	Quercus agrifolia	Live-oak	
N. of Washington	6.6-7.0	10	43	Hg	Ulmus parvifolia	Chinese Elm	
S. of Colorado	6.4-6.8	7	48	Ro Rs	Quercus agrifolia	Live-oak	
S. of California	6.8	10	30	Ro	Magnolia grandiflora	Magnolia	
Hillcrest Avenue	6.4-7.0	13	40	Ro	Erythea edulis	Guadalupe Palm	
Hillside Terrace	6.4	5	36	Al	Eucalyptus polyanthemos	Red Box	

Page Nineteen





# Pasadena Tree Protection Ordinance



## Agenda Report

TO: CITY COUNCIL DATE: April 15, 2002  
FROM: CITY MANAGER  
SUBJECT: AN ORDINANCE OF THE CITY OF PASADENA AMENDING  
CHAPTER 8.52 OF THE PASADENA MUNICIPAL CODE, ENTITLED  
"CITY TREES AND TREE PROTECTION ORDINANCE" AND  
AMENDING RELATED SECTIONS OF TITLE 17 AND CHAPTER 1.25

### RECOMMENDATION:

It is recommended that following the Public Hearing the City Council:

1. Hold the first reading of the ordinance to adopt the proposed amendments to Pasadena Municipal Code (PMC) Chapter 8.52 (City Trees) and Title 17 (Zoning) and Chapter 1.25 with staff's recommended changes (Attachment A); and
2. Adopt by resolution the Tree Protection Guidelines; and Specimen Tree List; and
3. Acknowledge that the Tree Protection Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15061(b)(3); and
4. Direct the City Clerk to file a Notice of Exemption with the Los Angeles County Recorder; and
5. Direct the City Attorney to prepare an amendment to the PMC Chapter 2.80 to add the Urban Forestry Advisory Committee as a subcommittee of the Design Commission





# Pasadena Tree Protection Ordinance

- Pasadena is graced by the presence of thousands of mature trees that contribute long-term aesthetic, environmental, and economic benefits to the city. Aesthetically, trees offer dimensions in the form of color, shape, texture, scale and variety. Mature trees are often integral components of many historic sites and their presence contributes to the site's cultural and historic significance.
- Environmental benefits derived by trees include the filtering of air pollutants; increasing atmospheric oxygen levels; stabilizing soils; reducing heat convection; decreasing wind speed; and reducing the negative effects of solar glare. The biological diversity of wildlife and plant communities is enhanced by the favorable conditions created by trees.
- The economic benefits derived from trees include increased property values, and additional revenue generated by businesses, visitors and new residents attracted to the urban forest image of the city. Trees are a major capital asset to the city and like any valuable asset they require appropriate care and protection.





# Pasadena Tree Protection Ordinance

- Safeguards the City's urban forest by providing for the regulation of the protection, planting, maintenance and removal of trees in the city.
- Delegates to City Manager to “maintain” public trees meaning pruning, trimming, spraying, fertilizing, watering, treating for disease or injury or any other similar act which promotes growth, health, beauty and life of trees.
- Sets forth a program for tree planting and tree care.
- City Council approves changes to the master street tree plan and protection ordinance.





# City Maintains Tree Inventory

## Tree Inventory Master Report

6/4/2013

2:09 PM

Tree Rec #: 91,924

Alt. Tree ID: 25782

Status: Yes

Tree Code: PICA  
Common Name: CANARY ISLAND PINE  
Genus: PINUS  
Species: CANARIENSIS  
Cultivar: L  
Tree Type: Inactive  
Designation: Even  
City: Street Tree  
Property ID Tag:  
Address: 1188 LAUREL ST  
Cross Street: LAUREL ST  
Location: PICH  
Alt. Park ID:  
Alt Parking Lot ID:

Previous Tree #:  
Date Planted:  
Removal Date:  
Planted Diameter:  
Owner:  
Maintenance:  
Location: PARKVIEW AVE  
Plant Location: LINDA VISTA AVE

Cost:

Grid Location: F-2  
Street Side: 6

GIS Sub Type:

### Attributes

Trunk Diameter: 0.0  
Height: 0.0  
Crown Spread: 0.0  
Overhead Wire:  
Wire Height: 10.0  
Clearance: No  
Lawn Width:  
Mulch Type:  
Stake Type:  
Bracing Type:  
UG Utility:  
Sprinkler System:

Landscaping:  
LA Length:  
LA Width: 0.00  
LA Diameter:  
LA Area:  
Weed Control:

On Special Watch: ☐  
Watch Date: 1/9/1989  
Tree Value:  
Age:

### Commissioning

Motion:  
Request Reason:  
Moved By:  
Seconded By:  
Approved/Deny:  
Motion Passed:  
Receipt #:

Commission Mtg:  
Council Approved:  
Appeal Date:  
Appealed: False  
Fee Waived: False  
Prior Submittal: False

### Inspections

Last Inspection: 2 8 2012  
Next Inspection:

Activity: Inventory  
Tree Condition:

Date:	Activity:	Condition:	Trunk Dia:	Height:	Spread:	Crew:
2/8/2012	Inventory		0.00	0.00	0.00	JA

Default WO Cat:

No WO/PM/Req: ☐

### Work Orders

WO #:	Main Task:	Status:	Status Date:	End Date:	Start Date:	Complete Date:
TREE-182903	Safety Prune - B Prune	Complete	5/25/2005	5/25/2005	5/25/2005	
TREE-104743	PRUNE	Complete	1/1/1998	1/1/1998		
13-04-00181	Contract Pruning - Clearance	Complete	1/4/2011	11/30/2010	11/30/2010	





# Most Major Cities Have Similar Tree Protection Ordinances or Plans that Govern Public Trees

<u>City</u>	<u># Protected Trees</u>
Pasadena	60,000
Los Angeles	700,000
Santa Monica	34,000
Sacramento	100,000
San Diego	250,000
San Francisco	124,000
Berkeley	46,000





# Four Lawsuits Filed Against City of Pasadena

Timothy E. Cary, Esq. State Bar No. 093608  
**LAW OFFICES OF ROBERT A. STUTMAN, P.C.**  
 3230 B. Imperial Highway, Suite 312  
 Brea, California 92821  
 Telephone: (714) 572-9500  
 Facsimile: (714) 572-9501  
 Our File No. 1280.333

CONFORMED COPY  
 ORIGINAL FILED  
 SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF LOS ANGELES

JUL 23 2012

John A. Clarke, Executive Officer/Clerk  
 By *[Signature]* Deputy  
 May 7, 2012

Attorneys for Plaintiff, MERCURY CASUALTY COMPANY  
 As Subrogee of SARAH and CHRISTOPHER DUSSEAUT

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL-STANLEY MOSK COURTHOUSE

MERCURY CASUALTY COMPANY  
 As Subrogee of SARAH and CHRISTOPHER  
 DUSSEAUT,

Plaintiff,

vs.

CITY OF PASADENA and DOES 1-50,  
 inclusive

Defendants.

Case No.: **BC 488745**

COMPLAINT FOR

1) INVERSE CONDEMNATION  
 (CAL CONST. ART 1 SEC 9)

2) DANGEROUS CONDITION OF  
 PUBLIC PROPERTY (GOV. CODE §835)

3) NUISANCE (CIV CODE SEC 3479)

COMES NOW Plaintiff, Mercury Casualty Company as Subrogee of Sarah and  
 Christopher Dusseaut who by way of this Complaint alleges as follows:

## ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

State Bar No. 093608  
**ROBERT A. STUTMAN, P.C.**  
 3230 B. Imperial Highway, Suite 312

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 ORIGINAL FILED  
 SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF LOS ANGELES

SEP 04 2012

John A. Clarke, Executive Officer/Clerk  
 By *[Signature]* Deputy  
 (Civil Court)

MERCURY CASUALTY COMPANY  
 O'HALLORAN

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL-STANLEY MOSK COURTHOUSE

MERCURY CASUALTY COMPANY  
 O'HALLORAN,

Plaintiff,

CITY OF PASADENA and DOES 1-50,  
 inclusive,

Defendants.

Case No.: **BC 491467**

COMPLAINT FOR:

1) INVERSE CONDEMNATION  
 (CAL CONST. ART 1 SEC 9)

2) DANGEROUS CONDITION OF  
 PUBLIC PROPERTY (GOV. CODE §835)

3) NUISANCE (CIV CODE SEC 3479)

COMES NOW Plaintiff, Mercury Casualty Company as Subrogee of James O'Halloran  
 who by way of this Complaint alleges as follows:

## ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

Timothy E. Cary, Esq. State Bar No. 093608  
**LAW OFFICES OF ROBERT A. STUTMAN, P.C.**  
 75-145 Saint Charles Place, Suite 1  
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 Telephone: (760) 776.7190  
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 OF ORIGINAL FILED  
 Los Angeles Superior Court

NOV 26 2014

Sherril R. Carst, Executive Officer/Clerk  
 By: Moses Soto, Deputy

Attorneys for Plaintiffs

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL-STANLEY MOSK COURTHOUSE

BY FAX

FIRST NATIONAL INSURANCE  
 COMPANY OF AMERICA as Subrogee of  
 MARK and CHERIE HARRIS; ALLSTATE  
 INSURANCE COMPANY as Subrogee of  
 CHRISTOPHER THOMAS, and NICHOLAS  
 FALACCI; TRAVELERS COMMERCIAL  
 INSURANCE COMPANY as Subrogee of  
 WILLIAM FRANCIS; and TRAVELERS  
 PROPERTY CASUALTY INSURANCE  
 COMPANY as Subrogee of SOLER  
 GIATCHER KAPTANIAN,

Plaintiffs,

vs.

CITY OF PASADENA and DOES 1-50,  
 inclusive,

Defendants.

Case No.:

**BC 565199**

COMPLAINT FOR:

1) INVERSE CONDEMNATION  
 (CAL CONST. ART 1 § 19)

Timothy E. Cary, Esq. State Bar No. 093608  
**LAW OFFICES OF ROBERT A. STUTMAN, P.C.**  
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 Palm Desert, California 92211  
 Telephone: (760) 776.7190  
 Facsimile: (760) 776.7191

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 Superior Court of California  
 County of Los Angeles

DEC 01 2014

Sherril R. Carst, Executive Officer/Clerk  
 By Sherrilyn Bolden, Deputy

Attorneys for Plaintiff STATE FARM GENERAL INSURANCE COMPANY a/s/o  
 JUAN FLORES, EDWARD FEHRENBACHER, VIA CALIFORNIA HOA, INC.,  
 FREDERICK GARCIA, DEBORAH LEFEVRE, JEFFREY SMITH, BRAD YOUNG,  
 PATRICIA CHAN, EDGAR MUJUKIAN, MICHAEL FULP, EZEQUIEL SEVILLA, SH  
 JAMBAZIAN and MIRIAM HARRINGTON

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL-STANLEY MOSK COURTHOUSE

BY FAX

**BC 565357**

STATE FARM GENERAL INSURANCE  
 COMPANY as Subrogee of JUAN FLORES,  
 EDWARD FEHRENBACHER, VIA  
 CALIFORNIA HOA, INC., FREDERICK  
 GARCIA, DEBORAH LEFEVRE, JEFFREY  
 SMITH, BRAD YOUNG, PATRICIA CHAN,  
 EDGAR MUJUKIAN, MICHAEL FULP,  
 EZEQUIEL SEVILLA, SHAKE  
 JAMBAZIAN and MIRIAM HARRINGTON,

Plaintiff,

vs.

CITY OF PASADENA and DOES 1-50,  
 inclusive,

Defendants.





# \$1,856,063 in Damages Alleged

INSURER	INSURED	AMOUNT
Mercury	Chris and Sarah Dusseaukt	\$ 800,000.00
Mercury	James O'Halloran	\$ 293,000.00
First National	Mark Harris	\$ 87,720.00
Allstate	Christopher Thomas	\$ 178,245.00
	Nicholas Falacci	
Travelers Commercial	Willaim Francis	\$ 28,610.00
Travelers Casualty	Sole Khatcher Kaptanian	\$ 4,079.00
State Farm	Juan Flores	\$ 49,365.00
State Farm	Edward Fehrenbacher	\$ 186,302.00
State Farm	California HOA	\$ 7,991.00
State Farm	Frederick Garcia	\$ 53,434.00
State Farm	Deborah Lefevre	\$ 50,044.00
State Farm	Jeffrey Smith	\$ 10,306.00
State Farm	Brad Young	\$ 12,675.00
State Farm	Patricia Chan	\$ 15,509.00
State Farm	Edgar Mujukian	\$ 9,990.00
State Farm	Michael Fulp	\$ 16,051.00
State Farm	Ezequiel Sevilla	\$ 18,061.00
State Farm	Shake Jambazian	\$ 29,121.00
State Farm	Miriam Harrington	\$ 5,560.00
		\$1,856,063





# Overview

## 1. Brief Overview of the Law

2. The difference between trees and traditional works of public Improvement
3. Causation: Why falling trees will rarely subject public entities to inverse condemnation liability
4. Negligent maintenance versus a negligent plan of maintenance





# The Law of Inverse Condemnation

“[A]ny actual physical injury to real property proximately caused by the improvement as deliberately designed and constructed is compensable under article I, section [19] of our Constitution whether foreseeable or not.”

*Albers v. County of Los Angeles*,  
62 Cal.2d 250, 263-264 (1965)





# 3 Decisions Discussing Inverse Condemnation Liability for Damage Caused by Trees

- ***Regency Outdoor Advertising, Inc. v. City of Los Angeles***,  
39 Cal.4th 507 (2006)
- ***City of Pasadena v. Superior Court***,  
228 Cal.App.4th 1228 (2014)
- ***Mercury Casualty Co. v. City of Pasadena***,  
14 Cal. App. 5th 917 (2017), *reh'g denied* (Sept. 15, 2017),  
*review denied* (Nov. 15, 2017)





# Trees on Century Boulevard

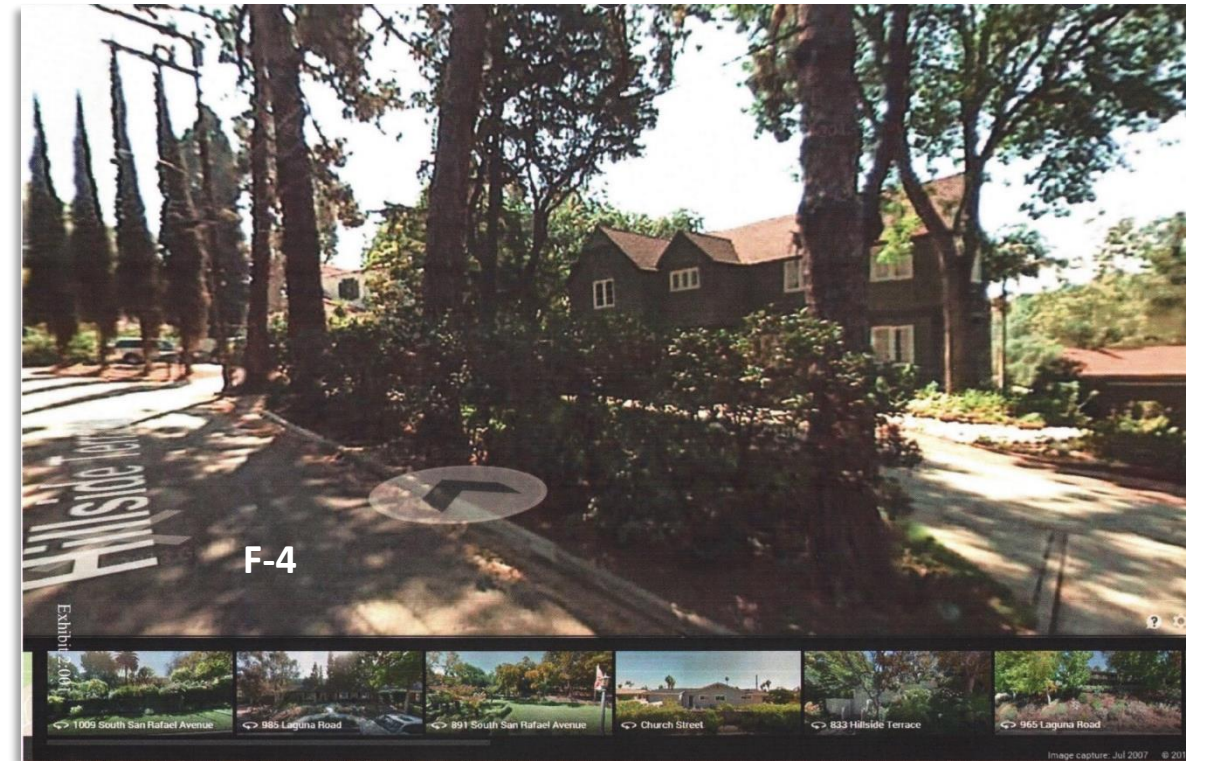




# Trees in Front of the Subject Property









# Holding of *Mercury Casualty* Court

“In order for a tree to be a work of public improvement, it must be ‘deliberately planted by or at the direction of the government entity as part of a **planned project or design** serving a public purpose, such as to enhance the appearance of a public road.’”

*Mercury Casualty v. City of Pasadena*,  
15 Cal.App.5th 917, 908 (2017)





# Holding of *Mercury Casualty* Court

Pasadena's ordinance creating an urban forest “does not constitute a design for a public project or improvement, nor does it covert [the tree that fell] into a work of public improvement, that subjects the City to inverse condemnation liability.”

*Mercury Casualty v. City of Pasadena*,  
15 Cal. App. 5th 917, 930 (2017)





# Overview

1. Brief Overview of the Law
- 2. The difference between trees and traditional works of public improvement**
3. Causation: Why falling trees will rarely subject public entities to inverse condemnation liability
4. Negligent maintenance versus a negligent plan of maintenance





# SAT Question

Which of these four things is unlike the other?

- ☐ 1. Flood Control Channel
- ☐ 2. Electrical Power Line
- ☐ 3. Tree
- ☐ 4. Sewer System





# Difference between Trees and Traditional Works of Public Improvement

1. Tree provides most benefit to adjacent property owner
2. Adjacent property owners often maintain public trees by watering them
3. Adjacent property owners often take control over a public right of way





# Trial Testimony of Plaintiff's Expert Arborist, Walter Warriner

5           A       I DIDN'T READ ANYTHING ABOUT IT, NO.

6           Q       WE TALKED A LITTLE BIT ABOUT THE BENEFITS OF  
7       A TREE.   WOULD YOU AGREE THAT A TREE PROVIDES MORE  
8       BENEFITS TO THE PERSON LIVING CLOSEST TO THE TREE?

9           A       IN GENERAL, YES.

10          Q       AND THE PERSON LIVING NEAR THE TREE GETS THE  
11       INCREASED PROPERTY VALUES; CORRECT?

12          A       YES.

13          Q       AND THE TREE PROVIDES SHADE.   THAT SHADE  
14       BENEFITS THE PERSON LIVING NEXT TO THE TREE THE MOST;  
15       CORRECT?

16          A       YES.

17          Q       NOW, I THINK YOU DESCRIBED A TREE AS A  
18       PUBLIC IMPROVEMENT.   BUT UNLIKE OTHER PUBLIC





# Difference between Trees and Traditional Works of Public Improvement

1. Tree provides most benefit to adjacent property owner
2. Adjacent property owners often maintain public trees by watering them
3. Adjacent property owners often take control over a public right of way





# Sprinklers on Subject Property's Parkway – October 2011





# Trial Testimony of Mercury's expert

77

1 SEE, IF YOU LOOK IN THE DARK CENTER, YOU CAN COUNT THOSE  
2 RINGS THERE. BUT WHEN YOU GET OUT DOWN TOWARDS THE  
3 BOTTOM OR THE OUTER EDGES, YOU CAN SEE THE PATTERN OF  
4 THE SAW BLADE CUTTING THROUGH THOSE LINES THAT GO

20 Q AND BASED ON YOUR ESTIMATE THAT THIS TREE  
21 WAS AT LEAST 60 YEARS OLD, AND BASED ON YOUR TESTIMONY  
22 THAT, WITHOUT IRRIGATION, IT WOULD GROW 6 INCHES TO 12  
23 INCHES AS A YEAR, THAT TREE, WITHOUT IRRIGATION, WOULD  
24 BE 30 TO 60 FEET HIGH; CORRECT?

25 A OKAY. YES.

22 THAT, WITHOUT IRRIGATION, IT WOULD GROW 6 INCHES TO 12  
23 INCHES AS A YEAR, THAT TREE, WITHOUT IRRIGATION, WOULD  
24 BE 30 TO 60 FEET HIGH; CORRECT?

25 A OKAY. YES.

26 Q AND SO BY PLACING ARTIFICIAL IRRIGATION ON  
27 THE TREE ON THE CITY'S RIGHT OF WAY THAT THE CITY OWNED,  
28 THE ADJACENT PROPERTY OWNERS CAUSED THAT TREE TO GROW





# Mercury Casualty Company v. City of Pasadena

“In addition to Trees F-1 through F-4, there were shrubs inside the city-owned parkway that the prior owners of the Dusseaults' home had planted. The Dusseaults maintained the shrubs using a sprinkler system that they owned.

The sprinkler system also irrigated the city-owned trees, which **may have caused them to grow between 40 to 50 feet taller than they would have grown with only natural irrigation.”**

*Mercury Casualty Company v. City of Pasadena,*  
14 Cal. App. 5th 917, 923 (2017)





# Difference between Trees and Traditional Works of Public Improvement

1. Tree provides most benefit to adjacent property owner
2. Adjacent property owners often water maintain public trees by watering them
3. Adjacent property owners often take control over a public right of way





# Trial Testimony of Mercury's Expert Arborist, Walter Warriner

10 Q DOES THE FACT THAT THERE ARE OTHER SPECIES  
11 OF TREES ON THE STREET RUN CONTRA TO THAT CONCLUSION?

12 A NO.

13 Q WHY NOT?

14 A WELL, PEOPLE TAKE OWNERSHIP OF THEIR PARKWAY  
15 OR THE STREET RIGHT OF WAY THAT'S ADJACENT TO THEIR  
16 HOMES, AND THEY PLANT -- THEY INTERSPERSE PLANTINGS IN  
17 THAT RIGHT OF WAY. IT'S PRETTY COMMON. EVERYBODY DOES  
18 IT. I SHOULDN'T SAY "EVERYBODY," BUT A LOT OF PEOPLE  
19 DO. AND IT'S COMMON.





# Trial Testimony of Mercury's Expert Arborist, Walter Warriner

11 Q LET'S PHRASE THE QUESTION A LITTLE BIT  
12 DIFFERENTLY. THE ADJACENT HOMEOWNER ACTUALLY HAS SOME  
13 INVOLVEMENT IN IMPACTING THE TREE IN THEIR FRONT YARD,  
14 DON'T THEY?

15 A YES.

16 Q AND I THINK YOU SAID THEY TREAT THE RIGHT OF  
17 WAY AS THEIR OWN, DON'T THEY?

18 A HOMEOWNERS DO, YES. THEY HAVE A TENDENCY  
19 TO.

20 MR. CECCON: I HAVE NO FURTHER QUESTIONS, YOUR  
21 HONOR?





# 976 Hillside Terrace Flower Bed – 2009 and 2011

May 2009



October 2011





# Deposition Testimony of Neighbor Christel Lang

35 EAST

1 ACTUALLY RE

2 A. T

3 ANYWAY THAT

4 ROOTS GOT I

5 Q. D

6 LONGEST ROO

7 TREE?

8 A. T

9 FEET LONG.

10 Q. D

11 THE THICKE

12 A. S

13 Q. W

14 ALL CAME FR

15 OPPOSED TO

16 OF THE TWO

17 PROPERTY IN

18 A. T

19 LEFT SIDE C

20 ROOTS FROM

21 THE CENTER OF THE PLANTING BED, AND I DIDN'T SEE THEM

22 GETTING INTO THERE, AND I THINK THE REASON THERE WERE SO

23 MANY TREES BY THE ONE THAT FELL IS BECAUSE THE PLANTING BED

24 WAS REMOVED BEHIND IT, AND THEY HAD TO GET DOWN AND LEVEL

25 THE GROUND AND PREPARE IT FOR THE NEW LANDSCAPING, AND

Q. DO YOU HAVE ANY ESTIMATE AS TO THE LENGTH OF THE LONGEST ROOT THAT YOU BELIEVE WAS CUT FROM THAT PARTICULAR TREE?

A. THERE WERE SOME PIECES THAT WERE AT LEAST TWO FEET LONG.

Q. DO YOU HAVE AN ESTIMATE AS TO THE THICKNESS OF THE THICKEST PIECE?

A. SOME PIECES WERE AS BIG AS MY WRIST. CHOPPED UP.





# Trial Testimony of Neighbor Christel Lang

131

1 SAW PULLED OUT FROM THE GROUND NEAR TREE F-2.

2 A I THINK IT WAS TWO FEET. THAT WAS WHAT IT  
3 LOOKED LIKE TO ME -- IT WAS IN PIECES; TWO FEET.

4 Q AND HOW THICK?

5 A THE SIZE OF MY WRIST. IT WAS A PRETTY  
6 SUBSTANTIAL --

7 Q DID YOU BELIEVE IT WAS FROM TREE F-2?

8 A I THOUGHT IT WAS.

9 Q WHY?

10 A BECAUSE THERE WAS NOTHING ELSE THERE  
11 ANYMORE. THE OTHER PLANTS -- THE ROSEMARY BUSHES HAD





# From Page 20 of City's Opening Brief

Then, in early 2011, the Dusseaults extensively re-landscaped the City's right-of-way. (4-RT/1027:1-12.) Photographs taken before and after the re-landscaping project show a dramatic change in the area adjacent to Tree F-2. (3-AA-7/689.) The Dusseaults removed and replaced vegetation, and installed a new sprinkler system in the parkway. (3-RT/736:9-737:27.) **Their neighbor, Christel Lang, testified that the Dusseaults' laborers used pickaxes near Tree F-2, and removed roots as large as her wrist.** (4-RT/1029:6-1031:14; 2-AA-7/488.) The trial court found Lang's testimony that workers removed roots near the base of Tree F-2 was "credible." (3-AA-13/822.)





# Mercury Casualty Company v. City of Pasadena

“In early 2011, the Dusseaults re-landscaped the parkway in front of their property. They replaced some of the existing vegetation with drought-resistant plants and shrubs and installed a new drought-resistant irrigation system. **A neighbor testified that** during the landscaping project, one of the **workers hired by the Dusseaults removed chunks of tree roots near the base of Tree F-2, the largest of which was about two feet long and the width of a human fist.**”





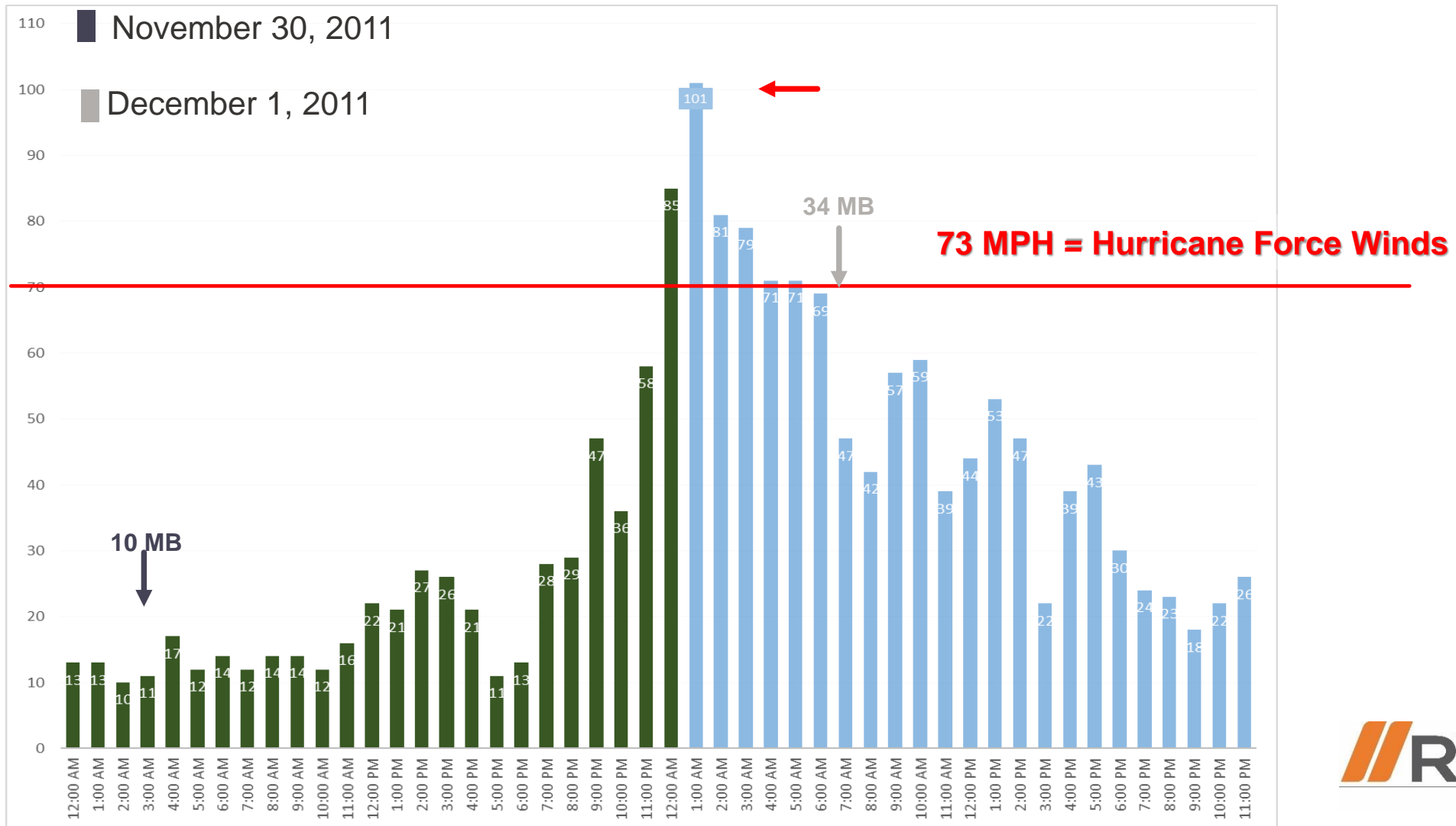
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# Cause of Tree Falling: Winds at Twice Hurricane Force





# Cause of Damage: Tree Hits House





# City's Reply Brief

Second, the trial court greatly expanded the liability of public entities by holding that the City is liable in inverse condemnation regardless of causation. According to the trial court, if one of approximately 57,000 City trees falls and causes damage to adjacent property, the City is liable regardless of the cause of the tree falling. (3-AA-13/818.) Strict liability would attach if the cause is a bolt of lightning, an industrious beaver, or a drunk driver. The trial court's ruling on causation is contrary to both existing law and public policy.





# Argument in Court of Appeal

“Justice Lavin: **If I took an axe and chopped a tree almost completely and a few days later it fell over in your view the City would still be liable for inverse condemnation. . .?**”

Mercury’s Counsel: Not necessarily because the test is whether under the facts it is a substantial concurring cause and under your scenario I think there would be an argument that it was not a substantial concurring cause.

Justice Lavin: How is it any different than a completely unprecedented windstorm?

Mercury’s Counsel : Well **the windstorm acting alone did not cause the damage.** I would dispute the characterization as completely unprecedented windstorm. So the question is was the tree a substantial.

Justice Lavin: Well I guess **if I were to chop the tree down I guess eventually the tree falls down that’s what causes the harm but I chopped it. . . I’m just not following your logic.”**





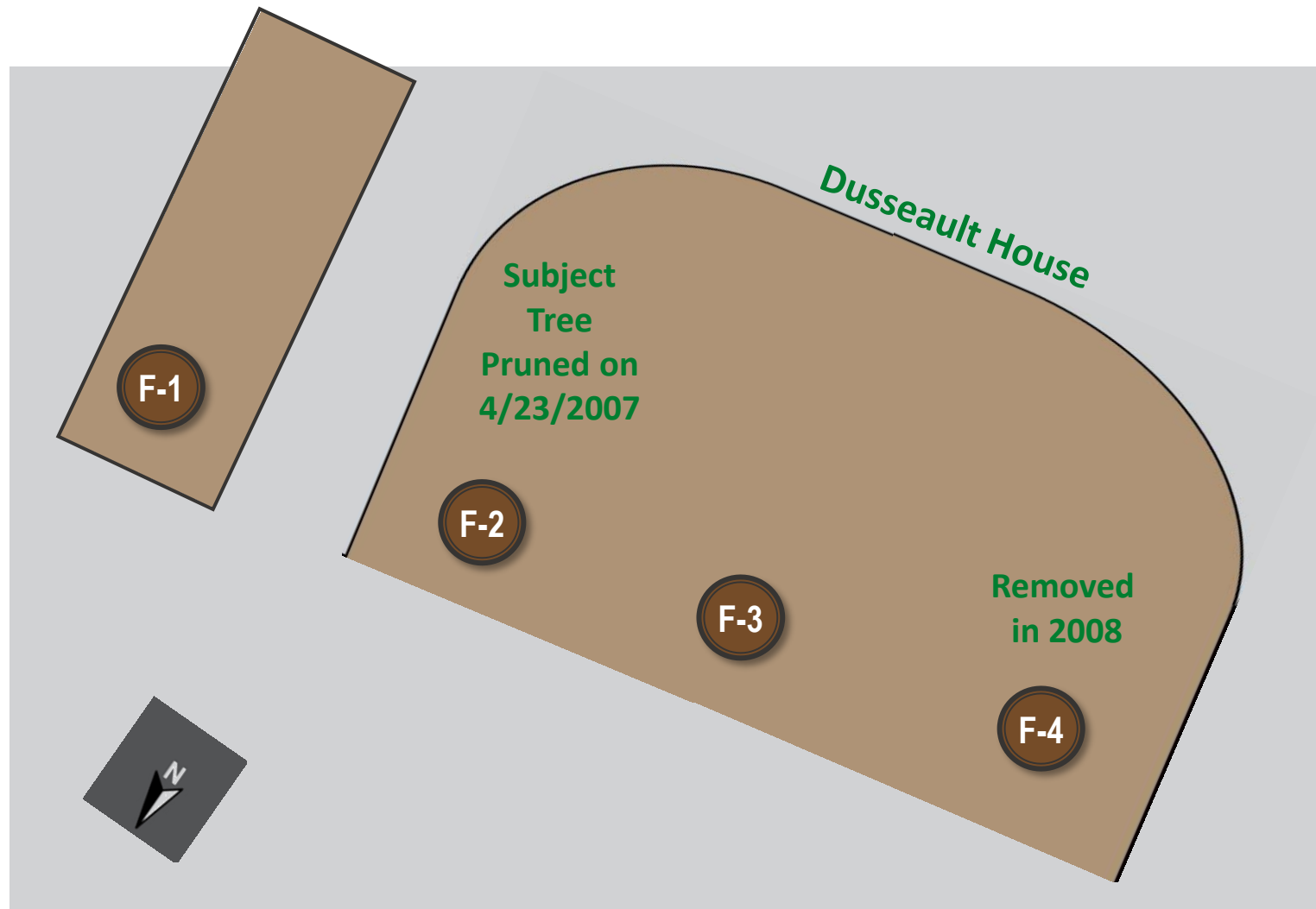
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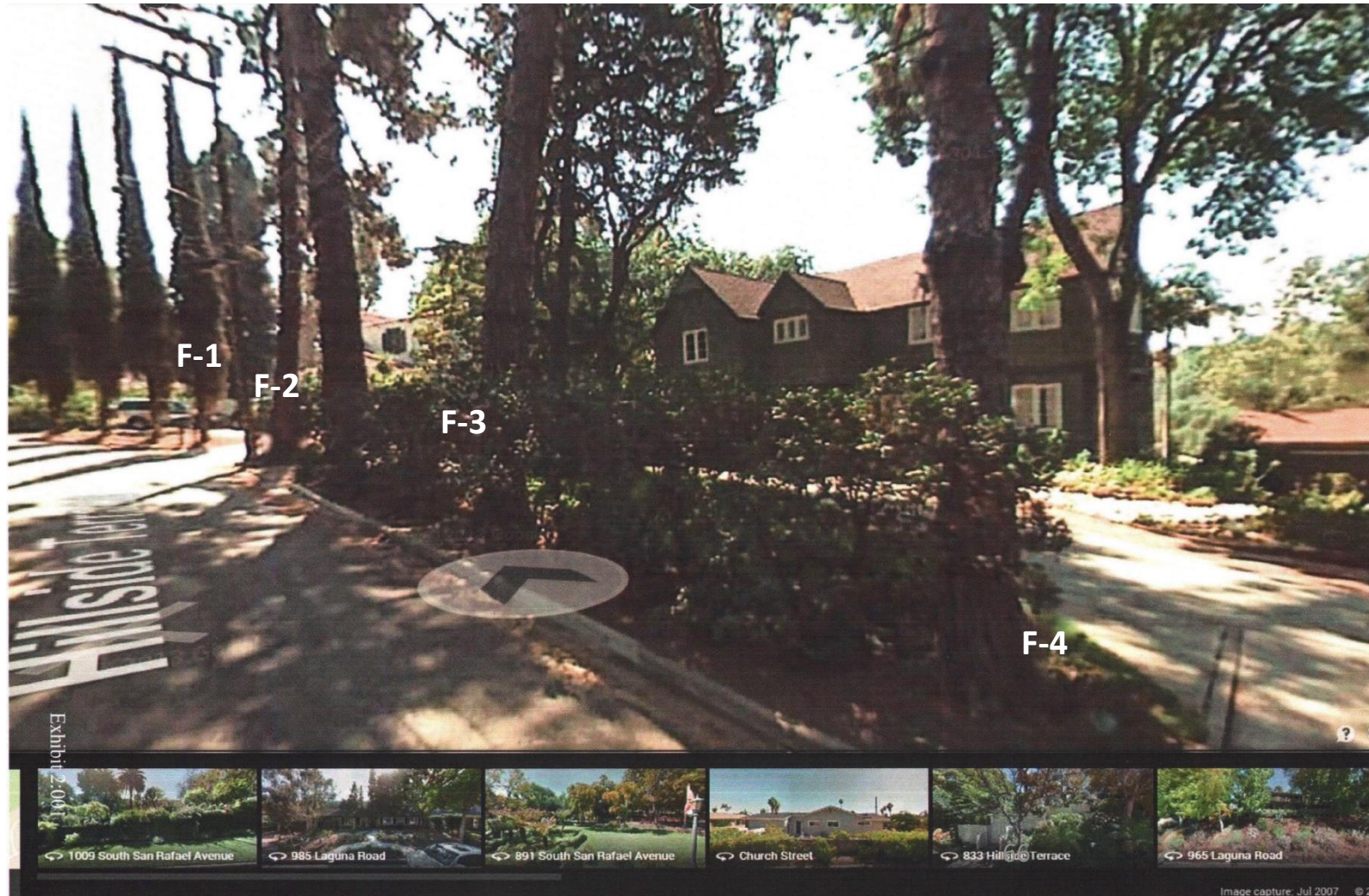


# Schematic of Canary Island Pine Trees on Subject Property





# Four Trees in Front of Property





# F-2 and F-3 Pruned on April 23, 2007

## FORESTRY SERVICE ORDER REQUEST

Date Received: 4/24/06 Time Received: 10:25 am  
 Received From: Sarah Dusseault  
First Name Last Name  
 Address/ Dept.: 976 Hillside Terrace  
Number Street Apt./Suite  
 Telephone: 626/403-9338 213/200-9496

### WORK CODE\*: (list as many as apply)

- |                                                |                                                    |
|------------------------------------------------|----------------------------------------------------|
| A. Complete Pruning                            | K. Remove Stake                                    |
| B. Safety Prune                                | L. Rootprune                                       |
| C. Training Prune                              | M. Sidewalk Related<br>( ) Off Grade ( ) Sink Hole |
| D. Backfill                                    | N. Spray                                           |
| E. Hanger                                      | O. Stump                                           |
| <input checked="" type="checkbox"/> F. Inspect | P. Tree Well                                       |
| G. Limbdown                                    |                                                    |

### WORK COMPLETED:

Date	Site	Species	Work Code*	Comments
4/23/07	F2	PICA	A	Completed By GSC
4/23/07	F3	PICA	A	

Date	Site	Species	Work Code*	Comments		
4/23/07	F2	PICA	A	Completed By GSC		
4/23/07	F3	PICA	A			

### EQUIPMENT

P00318

ADDRESS NOT IN TM

Rev. 12/04 PWS172





# Forest Service Request Regarding Removing Tree F-4 in 2008

**FORESTRY SERVICE ORDER REQUEST** *glen uss* *ASAP* Ticket #: *AB1501787*

Date Received: *2-20-08* Time Received: *4:23 PM*

Received From: *Roland* *Lang*  
First Name Last Name

Address/ Dept.: *976 Hillside Terrace*  
Number Street Apt./Suite

Telephone: *(626) 799-6151* *d#6*  
Home Work

Taken By: *[Signature]* Referred To: *cit*

WORK CODE* (list as many as apply):	
A. Complete Pruning	K. Remove Stake
B. Safety Prune	L. Rootprune
C. Training Prune	M. Sidewalk Related ( ) Off Grade ( ) Sink Hole
D. Backfill	N. Spray
E. Hanger	O. Stump
F. Inspect	P. Tree Well ( ) Low Tree Well ( ) Curb Damage
G. Limbdown	Q. Treedown
H. Plant	R. Other
<input checked="" type="checkbox"/> I. Remove	
J. Restake	

INSPECTION REQUEST:		INSPECTION REPORT:	
Request: <i>Tree is dead. Tree is a</i>		Inspected By: <i>Rund</i> Date: <i>2-21-08</i>	
<i>Yucca tree 22.5 dia 45x30</i>		Site #: <i>F-1</i> NW: <i></i>	
<i>overhanging out of fence</i>		Species: <i>PICA</i>	
		Work Needed: <i>Removal</i>	
Cross Street: <i>San Rafael</i>			

WORK COMPLETED:					EMPLOYEE NAME(S)	HOURS
Date	Site	Species	Work Code*	Comments		
				<i>Approved for removal</i>	<i>E. Bangs</i>	<i>2</i>
				<i>2126 LOS 16</i>	<i>ARNOLD</i>	<i>2</i>
					<i>R. Montoya</i>	<i>2</i>
					<i>MARCUS</i>	<i>1</i>
<i>4-9</i>	<i>08 F-1</i>	<i>PICA</i>	<i>I</i>	<i>Removal</i>	<i>R. Montoya &amp; crew.</i>	<i>4</i>
					<b>EQUIPMENT</b> <i>1701, 1751, 1928, 1908, 2007</i>	
					<i>1071 LORON</i>	
<i>6/3/08 F-1 PICA</i>					<i>1751</i>	
<i>STUMP REMOVAL</i>						
<i>STUMP &amp; REMOVAL</i>						

ADDRESS NOT IN TM



P00319



# Holding of Mercury Casualty Court

“To establish an inverse condemnation claim based on a government entity’s maintenance of one of its improvements, the property owner must show that the **plan of maintenance was deficient** in light of a known risk inherent in the improvement.”

*Mercury Casualty v. City of Pasadena,*  
15 Cal. App. 5th 917, 930 (2017)





# Concluding Thoughts

- Each tree is different, so pay attention to facts
- More maintenance is better
- Always emphasize public policy
- Problem areas

