

**PHYSICAL PROPERTY COMMITTEE MINUTES
SPECIAL MEETING
January 31, 2014**

The special meeting/study session of the Physical Property Committee was called to order by Chair Blake at 1:00 p.m., on Friday, January 31, 2014, in Clubhouse Four.

ROLL CALL

Present:	Mr. L. Blake, Chair	Ms. A. Seifert
	Ms. B. Coven	Mr. M. Supple
	Mr. P. Moore	

Absent:	Mr. T. Bolton	Ms. K. Rapp
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Also	Mr. R. Ankeny, Executive Director
Present:	Mr. M. Weaver, Community Facilities Manager
	Mr. T. DeLeon, Recreation Supervisor
	Mr. T. Garner, Project Coordinator/Building Inspector
	Ms. L. Lubin, Recording Secretary
	Ms. L. Stone, GRF Representative, Mutual Three
	Ms. R. Winkler, GRF Representative, Mutual Ten
	Mr. J. Antisdell, GRF Building Inspector
	Mr. B. Case, GRF Building Inspector
	Mr. J. Chisholm, GRF Building Inspector
	Mr. G. Hurtado, GRF Building Inspector
Mr. D. Van Horn, GRF Building Inspector	
	50 Foundation Members

CHAIR'S ANNOUNCEMENTS

The Chair thanked all who attended and introduced the speaker, Mr. Ted Stamen.

GUEST SPEAKERS

Mr. Ted Stamen, arborist and independent consultant, was invited to speak about the tree care and liability issues for the Foundation and the Mutuals.

Mr. Stamen stated his extensive experience, certifications, and education. To reduce liability and ensure quality work, Mr. Stamen explained the importance of proper pruning protocols written by the American National Standards Institute (ANSI); developing a quality set of specifications; hiring only companies with International Society of Arboriculture (ISA) certified arborists and tree workers; adequate insurance protection; developing a pruning schedule; and retaining the value of the trees.

Mr. Stamen stated that tree work is one of the five most hazardous industries with high fatalities and injuries and therefore adequate insurance levels are necessary. He also stated that an Act of God defense in regard to damage to a person or property does not really exist, will not hold up in court, and should be avoided. Rather, the history of the tree's care will be the factor most examined and scrutinized.

A short recess was held from 1:50 p.m. to 2:00 p.m.

To help avoid liability, Mr. Stamen stated that in regard to specifications to be very clear, avoid boilerplates, have them professionally written, and have input from both the insurance company and legal counsel. He also suggested having contracts lasting more than one year with a 30-day cancellation clause will help to obtain quality work from contractors who will work to keep the contract. He also suggested having a digital tree inventory for easy updating and accessing of the last work done on a particular tree.

In response to a shareholder, Mr. Stamen reported that if a tree is damaged by more than 50% that it is better to replace the tree than to try to restore it.

CHAIR'S COMMENTS

The Chair stated that the presentation was very informative and thanked all who attended. He also stated that Mr. Stamen's recommendations will be reviewed; he encouraged Mutual representatives to take the recommendations back to their Boards for consideration.

The next Physical Property meeting will be held in Clubhouse Three, Room One on Wednesday, February 5, 2014.

ADJOURNMENT

Chair Blake adjourned the meeting at 2:22 p.m.

A handwritten signature in black ink that reads "Larry Blake". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Larry Blake, Chair
PHYSICAL PROPERTY COMMITTEE

II 02/04/14

ACTION ITEMS

Mr. Stamen asked the Foundation and Mutuals to consider his suggestions for insurance (liability, worker's comp, E & O); professionally written specifications including ANSI standards and reviewed by insurance company and legal counsel; and requiring ISA certifications for tree workers and arborists.

**PRESENTATION OUTLINE
LEISURE WORLD
SEAL BEACH, CALIFORNIA**

FRIDAY, JANUARY 31, 2014

1. INTRODUCTION

- A. Ted Stamen
ISA Certified Arborist
- B. Retired University of California
Arborist and Horticulturist
- C. Since 1993
Free Lance Consultant
Expert Witness
Educator
- D. Only thing I am selling "Reliable Information", I have no vested interests
- E. Web site: www.TedStamen.com or just search Ted Stamen
- F. See attached résumé

2. SELECTED PAST PROJECTS

- A. USAA – Root Pruning
- B. Irvine Company
- C. City of Whittier
- D. County of Riverside
- E. ISA Certification Training Courses

3. PURPOSE OF TALK

- A. Changing urban tree care industry
- B. Need to follow American National Standards Institute (ANSI)
- C. Occupation Safety Hazard Administration (OSHA)
- D. Legal Issues
 - Attorneys
 - Lawsuits
- E. Insurance issues
- F. Help you make intelligent decisions to obtain quality tree work, limit your liability, and help you obtain quality tree work from your contractor

4. LEGAL ISSUES

- A. Somset cottages
- B. Long Beach State University
- C. Tree appraisal for dollar value
- D. Root pruning
 - Anaheim legal
 - Legal settlement
- E. Sidewalks
 - Grind concrete
 - Root removal
 - Replace sidewalks
 - Rubberized sidewalks
- F. Booska v. Patel
- G. Inspectors

5. URBAN TREE CARE INDUSTRY

- A. Top five hazardous industries in U.S.
- B. Fatality level
- C. Lawsuits
- D. Legal representation – costly
- E. Insurance companies
- F. Act of God, see handout – California lawyer

6. BEST PROTECTION FOR LEISURE WORLD OF SEAL BEACH

- A. Quality tree company
- B. ISA Certified Arborists
- C. ISA Certified Tree Workers
- D. Adequate insurance
 - Liability
 - Workers' Compensation
 - E & O
- E. ANSI
- F. OSHA
- G. Training
 - Investigate past claims for injury, fatalities, and property damage
- H. Your own specifications
- I. Leisure World inspectors should be ISA Certified Arborists

7. WHY PRUNE TREES

- A. Reduce risk of failure
- B. Provide clearance
- C. Reduce shade and wind resistance
- D. Maintain health
- E. Improve a view
- F. Improve aesthetics

8. DOWN SIDE TO PRUNING TREES

- A. Reduce production of sugars and starches

9. PRUNING GOAL

- A. Structure
- B. 3- to 5-year cycle

10. TREE TOPPING

- A. Against industry standards
- B. Against California Government Code Section 53067
- C. Lawsuits
- D. Destroys value of trees
- E. Makes trees hazardous
- F. Reputable tree care contractors will **NOT** top trees

11. SPECIFICATIONS

- A. Contractor's qualifications
- B. Certified arborists
- C. Certified tree workers
- D. On-site supervisor
- E. Indemnity
- F. Shifting loss to contractor
- G. Shifting legal responsibility to contractor
- H. Who pays damages to tree
- I. Who pays damages to property
- J. Insurance – additional insured
- K. Insurance – Workers' Compensation
- L. Insurance – General liability
- M. Safety – OSHA, ANSI
- N. Traffic control
- O. Arboriculture practices
- P. Follow standard of industry
- Q. Clean up
- R. Photo exhibits
- S. Most important – for homeowner protection
- T. Good for many years

12. QUESTIONS

13. SUGGESTIONS – COSTA DEL SOL

14. THANK YOU

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About Ted Stamen

Ted Stamen is a professional Horticulturist and an International Society of Arboriculture Certified Arborist (individual who is involved in the care of trees). He has been in the horticulture and arboriculture industry for over 30 years with Rutgers, University of Rhode Island, Cornell University, and University of Connecticut. Recently, he was employed by the **University of California** Cooperative Extension, Riverside, as a Horticulturist and Arborist. A majority of his time was spent working in the field with landscapers, nurseries, arborists, pesticide applicators, and public entities. Mr. Stamen continues to conduct training seminars, short courses, and workshops.



Since retiring from the University of California, he has been involved in the field of arboriculture (trees) in a variety of positions. For four years, he was employed as a sales representative for the largest tree care company in California. He inspected, bid, and sold tree care services from \$25,000 to \$1,000,000. Other duties included tree inventories, diagnosis of tree problems, writing technical reports, and conducting training courses. Ted resigned from this position to become a **full-time, independent consultant**.

Because of his education, experience, and reputation, Ted is often called upon to be a consultant for public and private entities at the local, state, and national level. Mr. Stamen also speaks and writes on tree litigation, specifications for tree contracting, troubleshooting tree problems, and other related topics. Finally, he is a forensic consultant on trees that have created property damage, injury, and/or death.

Education

- ▶ Bachelor of Science Degree, University of Florida, Gainesville, Florida
- ▶ Masters of Science Degree in Ornamental Horticulture, University of Massachusetts, Amherst, Massachusetts
- ▶ Advanced training in horticulture and arboriculture from the University of California and other world-renowned institutions and leaders. This training was over many years while employed by the University of California, Cornell University, and other educational institutions. His position was always related to being an Urban Horticulturist and Arborist in a field-related position
- ▶ Voted Educator of the Year for California by the 5,000 members of the Pesticide Applicator's Professional Association

February 2014

2014 Arborists' Certification Preparation Course – will be for 10 consecutive Wednesday evenings starting on February 5, 2014.

March 2014

2014 Municipal Specialists' Certification Preparation Course – will be taught for 5 Wednesday nights and starting on March 19, 2014.

2014 Tree Workers' Certification Preparation Course – will be taught in **Spanish and English** for 5 Wednesday nights and 1 Saturday starting on March 19, 2014.



ROOT PRUNING

ORANGE COUNTY

City offers \$700,000 to family of man killed by tree

Anaheim agrees to a tentative deal in an accident that crushed a van.

By SARAH TULLY
THE ORANGE COUNTY REGISTER

ANAHEIM • Just about every day, Michael Gandy took work breaks by parking in the shade of tall ficus trees on a neighborhood street.

But in April, a 50-foot-tall tree blew over, smashing his van and causing fatal injuries. It was his 49th birthday.

The City Council has tentatively agreed to pay a \$700,000 settlement to Gan-

dy's mother and sister, who blamed what they called faulty tree-trimming practices for Gandy's death. The council discussed the offer during a closed meeting Tuesday, City Attorney Jack White said.

"I just hope it will draw attention to the hazard of the trees in that area so hopefully, no one else will go through the experience we did," said Carole Gandy-Strong, Gandy's sister.

In August, the family members filed legal claims, which said the city failed to trim tree-tops but cut the roots, making the tree unstable in fierce Santa Ana winds.

White said city crews trimmed the roots to prevent



FILE PHOTO: THE ORANGE COUNTY REGISTER

FATAL MISHAP: Michael Gandy's van was crushed by a falling tree during high winds in April.

sidewalk cracks. The family sought \$2.4 million, but Gandy-Strong said they were pleased with the offer.

When the tree snapped on April 18, Gandy had just finished his day as a church maintenance worker and had parked his white Ford Aero-

star van on tree-lined Archer Street to work on writing a book on church history, attorney James Kuan said.

Gandy studied music as a graduate student but gave up a potential opera career to dedicate his life to the church, Kuan said.

Booska v. Patel

(1994) 24 Cal. App. 4th 1786; 30 Cal. Rptr. 2d 241

Plaintiff, Booska, and defendant, Patel, were next door neighbors. Booska owned a thirty to forty year old Monterey pine tree. Roots of the tree grew into Patel's yard. There is a question as to whether the Monterey pine's roots were damaging Patel's walkways.

Patel hired a contractor to dig a three foot deep trench between his yard and Booska's property to sever the roots of the Monterey pine. After the trenching, Booska filed a lawsuit against Patel for injuring the tree and for creating a nuisance. Booska alleged that the tree was unsafe and unhealthy because the Monterey pine's roots had been severed. Booska's allegations were supported by the testimony of an arborist. (Apparently, the only reason that the contractor who severed the Monterey pine's roots was not sued is that he went bankrupt.)

Patel defended his actions by arguing that a landowner had the absolute right to prune encroaching roots and branches back to his or her property line. Patel cited several California cases to support his position. The cases Patel cited were cases which California attorneys, public entities, property owners, and arborists depended on for years. The Court analyzed Patel's argument and the cases he cited. It ruled that, "whatever rights Patel has in the management of his own land, those rights are tempered by his duty to act reasonably."

✓ *Booska v. Patel* is significant because it changed California law. A neighbor is now required to act reasonably when pruning encroaching roots and branches. A neighbor no longer has the absolute right to cut encroaching roots and branches back to stubs ending at his or her property line. The health of a tree must be taken into account.

(Note, the California Supreme Court refused to hear Patel's appeal.)

NEWPORT PAYS \$1 MILLION IN DEATH

Tustin woman was killed in 2011 when eucalyptus fell on her car.

BY ERIC HARTLEY
ORANGE COUNTY REGISTER

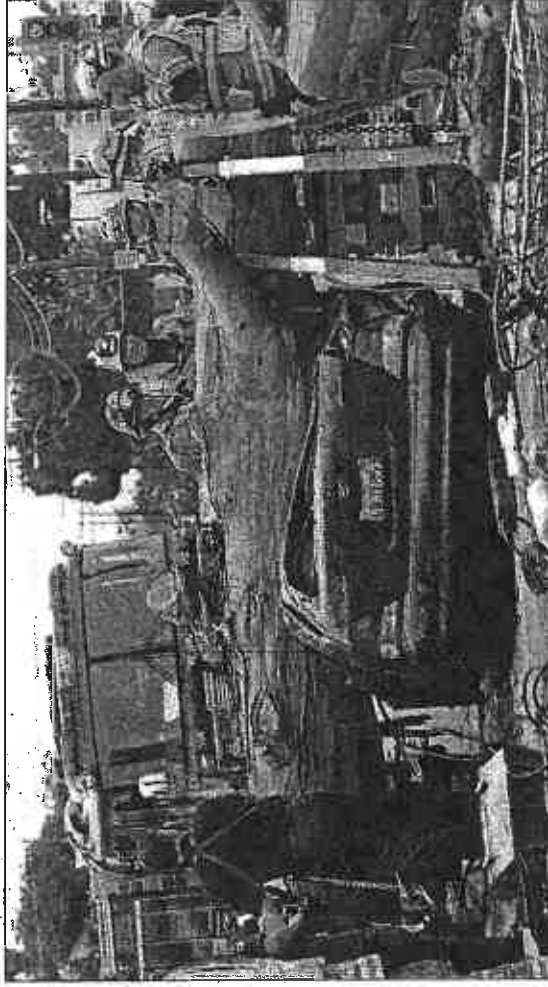
NEWPORT BEACH • The parents of a woman killed two years ago when a 10-ton eucalyptus tree fell on her car have received more than

\$1 million after settling lawsuits with the city.

The Newport Beach City

Miller Council met in closed session in April and approved two separate \$500,000 payments to the parents of Haeyoon Miller. But the vote was not publicly disclosed at the time because written agreements had not been finalized, City Attorney Aaron Harp said Monday.

The total settlement under deals signed in May was \$1.05 million: the city and its insurer each paid \$500,000, while its tree contractor paid \$50,000. Neither the city nor the



FILE PHOTO: ROSE PALMISANO, ORANGE COUNTY REGISTER
Rescue workers attempt to free Haeyoon Miller, who was trapped in her Hyundai Accent after a blue gum eucalyptus tree fell on it in Costa Mesa in September 2011.

contractor admitted any fault or wrongdoing. Miller, 29, who lived in Tustin, died Sept. 15, 2011, when a 50-foot blue gum eucalyptus tree fell on her Hyundai Accent, according to court filings.

At the time, she was stopped at Irvine Avenue and 17th Street, which is on the border of Costa Mesa and Newport Beach. Under an agreement between the two cities, Newport cared for the trees on public property in the area, and Costa Mesa paid for part of the costs.

Miller's mother, Hyun Suk, and father, Sunyl Chung, filed separate lawsuits in June 2012 against both cities and the contractor that cared for the trees, West Coast Arborists. Their complaints said the cities and the contractor should have known the 60-year-old tree was unsafe because it was rotten, decayed and leaning dangerously close to traffic lanes. In court filings, Newport Beach officials said they did not know of any problems with the tree that fell on Miller's car. But just days after the death, Newport

paid nothing to the plaintiffs, and the settlements release it from any liability, Assistant City Attorney Harold Potter said.

West Coast Arborists referred questions to a lawyer, who didn't return a call. A company official said it still performs work for Newport Beach and Costa Mesa.

Steven Lipscomb, a lawyer for Suk, said the case was settled after a meeting with a mediator. He said Suk, who lives in Los Angeles County, is a very private person and would not want to discuss the settlement in detail but was "happy that the case was behind her."

Lawyers for Chung, who lives in South Korea, did not respond to a call and email Monday.

Miller, who was born in South Korea, moved to the United States so she could attend the Juilliard School in New York, where she played violin, Lipscomb said. He said she later started her own dance and photography studio and loved photographing animals.

Harp, the city attorney, said Newport Beach "could have had to pay more had it rejected its insurer's advice to settle, then lost at trial."

TON • LA HABRA • LA PALMA • ORANGE • PLACENTIA • SANTA ANA • STANTON • VILLA PARK • YORBA LINDA

Man killed while trimming tree

31-year-old Anaheim man was working on a palm in Cerritos when a cluster of fronds fell, pinning him in the tree.

By DENISSE SALAZAR
THE ORANGE COUNTY REGISTER

CERRITOS • A 31-year-old man from Anaheim was killed while trimming a 70-foot-tall palm tree in Cerritos, authorities said Tuesday.

The man, Jose Angel Barajas, was trying to cut tree fronds when a cluster of them came down and pinned him against the trunk of the tree,

Los Angeles County Fire Department officials said.

At 8:23 a.m. Monday, firefighters responded to reports of a tree trimmer being stuck in a tree in a residential area at 13718 Lucas Lane.

Upon arrival, rescuers heard a groan coming from the tree, but could not see Barajas, who was hidden under the fronds about 40 feet above the ground, said Los Angeles



Barajas

County Fire Battalion Chief Chris Jackson.

"The weight came down, and he was pinned from the top and was being locked by a waist belt," Jackson said.

About 25 firefighters assisted in the rescue using an aerial ladder and a chainsaw to get to Barajas.

It took them more than two hours to reach him, detangle him from the waist belt and

lower him, Jackson said.

He was no longer conscious by the time firefighters reached him, Jackson said. He was pronounced dead at the scene.

An autopsy is pending to determine the cause of death, said Capt. Ed Winter of the Los Angeles County coroner's office.

Investigators from the California Occupational and Safety Health Administration responded to the scene.

CONTACT THE WRITER:
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Acts of God - Insurance Liability

The first time you read or heard of the "acts of God" loophole found in most insurance policies, you probably either had a good chuckle, imagining some very unlikely scenario, and moved on assuming that the clause would never really apply to you, or you may have become very worried by the thought that anything could be construed as an act of God. As elusive as the phrase sounds, there are some basic elements in determining whether or not an event truly qualifies as an act of God.

Definitions of an "act of God" vary, but all refer to natural disasters or extreme weather events such as lightening, tornados, hurricanes, or earthquakes. No one can be held responsible for an actual act of God, but if the resulting damage or injury was foreseeable and/or preventable by normal care then there is a responsible party involved. In most cases, where the defendant or insurance company claims that an accident or injury is the result of an act of God, other circumstances apply which place the responsibility on a person.

Trees

Injuries caused by falling trees, usually as the result of a weather event such as high winds or snow, are often defended as acts of God. While trees are normally considered an asset, they can cause serious damage and are a serious responsibility. Tree owners are responsible for maintaining the condition of their trees. A tree that is unhealthy or improperly cared for can quickly become a hazard. An extreme weather event will cause the inevitable to happen, but the responsibility lies on the party who allowed the tree to fall into a dangerous state to begin with.

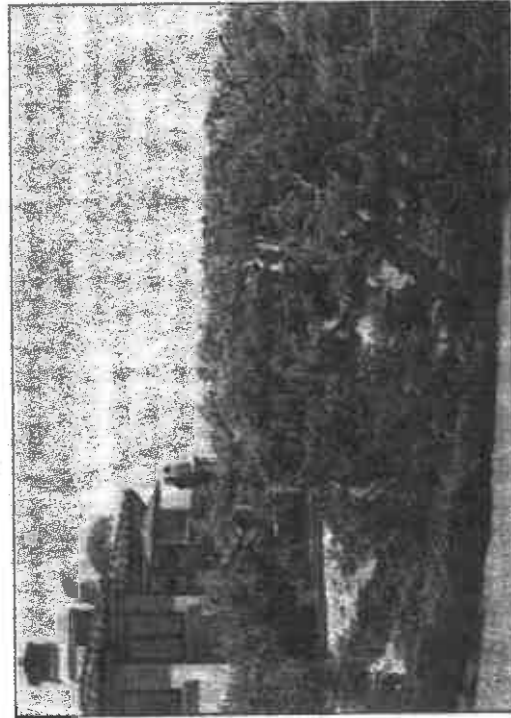
Construction

Poor construction is often undetectable until a normal or extreme weather event causes it to fail. Responsibility in such a case depends on the severity of the event, the foreseeability of the event, and the quality of the underlying structure. In locations where severe natural events are known to happen or be likely, the normal standard of care is greater. For instance, in areas where tornadoes, hurricanes, or earthquakes are common, buildings must be constructed to reasonably withstand such events. Some catastrophes are so extreme that no building could withstand the event, but in cases of inadequate construction, a natural disaster or extreme weather event does not constitute an "act of God" defense. More often, this is an issue with normal storms which cause disproportional damage or injuries.

Other Negligence

Improper maintenance of all kinds can turn an act of God into a preventable accident. Airplane crashes, rocks falling on highways, collapsing bridges, and even capsizing boats, among many other things have been unsuccessfully defended as acts of God. Negligence can come in the form of failing to heed knowledge of a danger in other ways, as well. For instance, a tour guide in Arizona was held responsible for leading a group of tourists to their death in a flash flood. Because the guide had been informed that the area was prone to

Payback time for tree topper



CHOP JOB: Dana Point pines topped to clear view of ocean.

FILE PHOTO: SANG H. PARK, THE REGISTER

"This has been a very upsetting year for us."

DOLLY WARREN, ARTHUR'S WIFE

UPDATE

WHAT'S NEW

Arthur Warren, 75, agrees to pay Dana Point \$175,000 to settle a lawsuit alleging Warren hired someone to chop the tops off seven city-

owned, decades-old pine trees in Heritage Park to improve his ocean view, according to a settlement approved by the City Council. He also wrote a letter of apology. The agreement was reached through mediation that began in January, said Madison Spach, Warren's attorney.

BREAKDOWN

\$110,000

Damages

\$65,000

Attorney fees

BACKGROUND

The city files a lawsuit in July against Warren, a Lantern Bay Estates resident. It alleges illegal landscaping destroyed the trees, which an arborist estimated were worth about \$50,000 each.

Warren had asked the city in May and June to have the trees topped, according to the suit. But the city told him that doing so was against proper trimming procedures and could damage the trees.

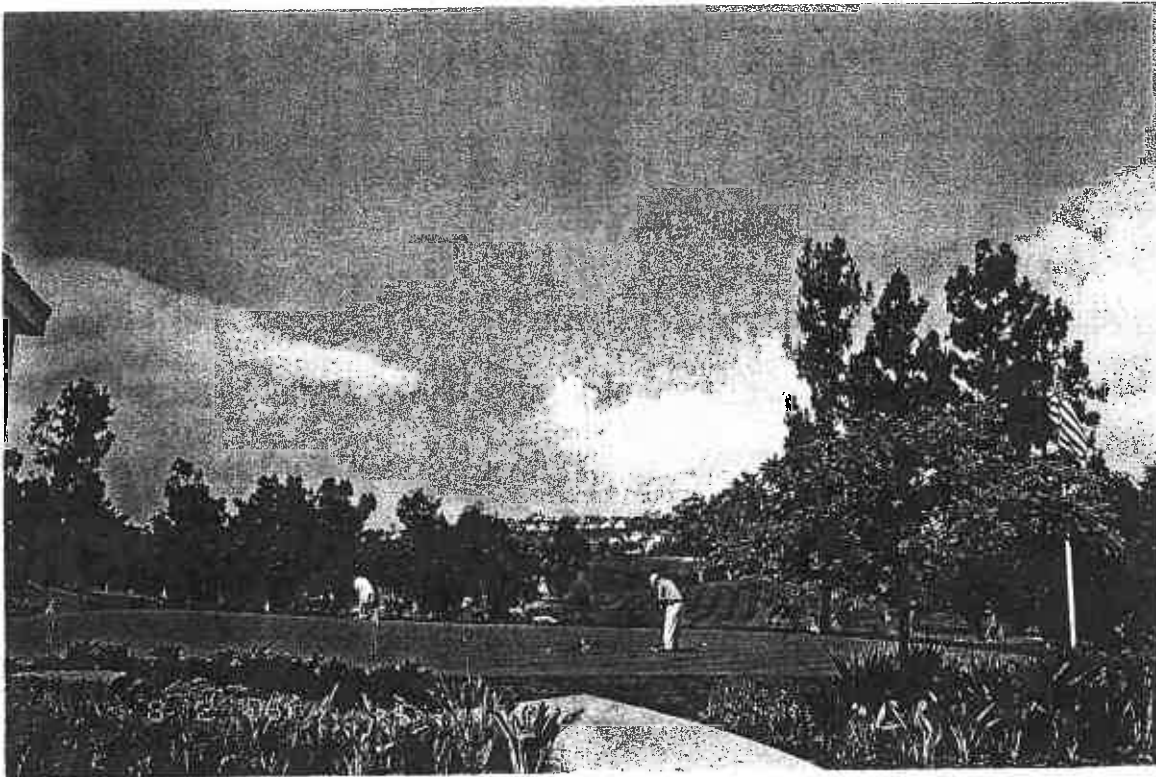
WHAT'S NEXT

Of the settlement, \$110,000 will be used to replace the damaged pines, which have not yet been removed from the park, said Mayor Wayne Rayfield. The city has not determined what type of tree will be planted, he said.

- Susan Gill Varden, The Register

**REQUEST FOR BID
FOR TREE PRUNING, TREE
PLANTING AND TREE REMOVALS**

Mission Viejo Country Club



**Kevin Hutchins
Golf Course Superintendent
Mission Viejo Country Club
26220 Country Club Drive
Mission Viejo, CA 92691**