

# PROGRAMMED TREE PRUNING AND PUBLIC LIABILITY<sup>1</sup>

by Stan T. Yamamoto

The issues of liability due to negligence as concerning street trees planted and maintained by municipalities are considerably more diverse than one might first imagine. Numerous situations causing personal injury or property damage may arise from street trees ranging from the uplifting of sidewalks and driveways to the blocking of sunlight or view.

This paper instead presents one city's systematic approach to maintenance of street trees which provides a defense to claims of liability. In the preparation of this paper, the thoughts, ideas and plain hard work of the Modesto Parks and Recreation Department have been incorporated and I extend my sincere appreciation to them.<sup>2</sup>

## Liability for Negligence

The City of Modesto like many other municipalities has retained unto itself the authority to supply, replace, plant and maintain street trees in all planting strips and planting easements within its jurisdiction. It also has prohibited and made subject to criminal prosecution any removal, trimming, pruning, spraying or cutting of any such trees. By acting in this manner, it can be argued that the City has assumed an exclusive duty to maintain street trees; and at least one appellate court has indicated that where such duty exists it extends to maintaining the trees in a safe condition and any dangerous conditions arising from the trees are attributable to the city (*Jones v. Deeter, 1984, 152 Cal. App. 3d 798, 806*). To rebut any argument of negligent maintenance of street trees, it thus becomes evident that the city must demonstrate the reasonableness of its maintenance program.

The basic policy of this state is that everyone is responsible for any injury caused to another by his want of ordinary care or skill in the management of his property. And, the proper test to be applied to

the liability of the possessor of land is whether in the management of his property he has acted as a reasonable person in view of the probability of injury to others (*Rowland v. Christian, 1968, 69 Cal. 2d 108, 118-119*). In measuring the probability some factors to be considered are:

- a) the likelihood of injury to others;
- b) the probable seriousness of such injury;
- c) the burden of reducing or avoiding risk of injury;
- d) the location of the land; and
- e) the landowner's degree of control over the risk-creating condition (*Sprecher v. Adamson, 1981, 30 Cal. 3d 358, 372*).

In short, the courts have imposed a duty upon possessors of land, and pertinent here, owners of street trees to maintain their property in a non-negligent manner. For cities concerned with street tree liability this means no less than the implementation and administration of a standardized tree maintenance program. At a minimum, consideration should be given to establishment of a consistent inspection program by which the natural processes of trees may be noted and defects corrected (*Keenan v. Smith, 1983, 149 Cal. App. 3d 576*). Thus, from a defense posture, cities must be able to argue that within given constraints, they have reasonably maintained their street trees. As will be seen below, the program implemented by the Modesto Parks and Recreation Department provides such an argument.

## Types of Tree Pruning

Reference herein will be made to several different techniques of tree maintenance which together have resulted in Modesto's programmed pruning. One type of maintenance is *by request*, where maintenance requests are taken from residents and the trees are then serviced in the order service was requested. *Crisis pruning* usual-

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ly means the maintenance of trees only on an emergency or near-emergency basis. A third type of maintenance is *task pruning* where only certain specified functions such as mistletoe removal or clearance of right-of-way obstructions are performed. A fourth type is *species pruning* where tree maintenance is performed by grouping of species and projection of common service needs. Finally, there is *programmed maintenance* whereby city tree crews are dispatched across the city by designed locations and perform all services upon trees in that location. This is also referred to as grid pruning, area pruning, or scheduled pruning. Over the years, the City of Modesto has utilized each of the above types of tree maintenance and to some extent continues to do so. However, since 1981, the primary method has been that of programmed maintenance.

### **The Groundwork for Programmed Pruning**

The City of Modesto is the County seat of Stanislaus County and lies approximately ninety miles south of the City of Sacramento and ninety miles to the north of the City of Fresno. As part of the San Joaquin Valley, it has hot summers and due to a lack of any appreciable native tree cover, the residents of Modesto desire and value large shade trees. City tree plantings and related municipal tree ordinances have been in effect since the early 1900's with the City assuming an ever increasing role in the care and maintenance of street trees. To a great extent, as the role of the City has expanded with respect to maintenance, residents have become more dependent upon governmental services.

In its formative years, Modesto covered less than two square miles and tree maintenance was performed on an as needed basis except for the regular removal of mistletoe. Climbing crews continued to perform the majority of maintenance tasks until 1957 when the first aerial tower was purchased. Since that time, the use of aerial towers has overtaken the need for such crews.

By 1960, the City of Modesto covered some ten square miles and tree pruning was being accomplished by request, species, and area. A three year pruning cycle was in effect with mistletoe removal being done during winter months. However, as the City continued to grow

in area and population, and trees matured, city crews were being inundated with requests by individual residents for tree maintenance service. As the demand continued for such service, less area and task pruning could be accomplished as crews were continuously responding to resident's requests and complaints. Eventually winter mistletoe removal suffered for lack of available personnel. The City was operating much like a private tree service in handling maintenance activities as requests for service were received. By the latter part of the 1970's, maintenance of trees had fallen behind requests by some four hundred and fifty calls-for-service; the tree maintenance program had no long-range goals; and the City's municipal forest was beginning to suffer the consequence of the request/crisis maintenance system. Over 12,000 trees had become infected with mistletoe and calls for emergency service were increasing. Moreover, as not all residents were requesting maintenance service, city crews were skipping many trees requiring horticultural or safety pruning. Trees that were being serviced were generally only task pruned — the two major functions being mistletoe removal and dead-wooding. Limb breakage and tree splitting were becoming common occurrences due to heavy terminal growth. Moreover, with the demand for cost efficiency as symbolized by Proposition 13, taxpayers were quick to point out the inefficiencies of the tree maintenance program. Management and operational personnel had no long-range objectives and with increasing requests for maintenance service, little time was available for forecasting and planning needs. Indeed, tree maintenance crews had little opportunity for input as they were expending as much time travelling between requests as they were servicing needs. It became clear that with the deterioration of the municipal forest, additional and related problems would result, to include the filing of damage claims against the City.

### **Development of Programmed Pruning**

To counter the request-for-tree-service system that had befallen the City, a concerted effort was undertaken to understand current and future needs and the methodology necessary to address those needs. Initially, an inventory was taken of

the municipal forest with notation of future maintenance requirements. Studies were conducted to test efficiencies and productivity; and, the experience of other municipalities was examined to glean from them insights into a comprehensive tree maintenance program.

Public safety and mistletoe removal were determined to be the primary concerns of any selected maintenance program. Eventually, a programmed maintenance emphasizing area pruning over species or task pruning was selected. A schedule for tree maintenance service was devised giving those areas facing the greatest deterioration the highest priority. Supported by maintenance projections which had indicated that by dividing tree maintenance crews into mature and intermediate tree groups on a three to one ratio, it became clear that the City's entire forest could be serviced within a seven year cycle. Projections also indicated that by utilizing area pruning, the primary objectives of public safety and mistletoe removal would be met, as well as improved efficiency, increased crew morale and overall improvement of the City's forest.

To make such a dramatic change in street tree maintenance — from a request-for-service to area pruning — it was clear that major obstacles would have to be overcome. The request system had become popular with Modesto residents, especially those for whom requests had been answered. To a great extent changing of public perception became an education process. Requests for maintenance service was limited to crisis or emergency situations and residents calling for service were explained the area process. Tree crews having direct public contact were also informed of the benefits to be gained by area pruning in order that the process could be explained in the field. And, attempts were made through the local news media as well as garden clubs, service clubs, and schools to inform as many residents as possible of the change in maintenance systems. Moreover, to assure consistency in information, both the City's administration and the City Council were informed of the programmed approach, its objectives, and the benefits to be attained by uniform implementation.

### **Programmed Pruning**

The City of Modesto now encompasses some twenty-five square miles and has a population of approximately 120,000 people. It remains a growing and vibrant community with over 60,000 street trees and 20,000 park trees. There are approximately 35-40 personnel involved in tree maintenance who are assigned to 4 hi-ranger crews, one lift crew, one low-pruning crew, one young tree crew, and several smaller crews who perform spraying, planting, root and stump removal, inventory and nursery work.

Today, seventy percent of tree maintenance is done by area with the remainder being task, crisis, species and some limited request pruning. Productivity with respect to numbers of trees pruned has doubled since the inception of the programmed maintenance system. The figures become even more dramatic when considering that during the 1970's task pruning was conducted whereas in area pruning the total tree is serviced to include removal of cross limb and deadwood, thinning or heading back limbs over houses and utility wires, and inspections for tree hazards or dangerous conditions.

### **Conclusion**

Possession ordinarily brings with it the right of supervision and control. And...the right of supervision and control goes to the very heart of the ascription of tortious responsibility (*Sprecher v. Adamson, 1981, 30 Cal. 3d 358, 369*). To the extent that reasonable tree maintenance is demonstrable, cities can go a long way in developing a strong defensive posture. As was the case of Modesto, the implementation and operation of programmed pruning was not a result of litigation, but rather due to close examination of the needs of the City's forest. Yet, as a further result of having addressed those needs in a comprehensive fashion, the City has placed itself in a defensible posture for claims of liability.

*Deputy City Attorney  
City of Modesto  
Modesto, California 95353*