

Mo-Yun and Ted Fong  
22045 Creekside Ct.  
Cupertino, CA 95014

Mr. David Cahen  
Risk Manager  
Cc: Santa Clara Valley Water District Board of Directors  
Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, CA 95118-3686

Dear Mr. Cahen,

We have reviewed your letter dated October 15, 2019 and after careful consideration, we are writing to **respectfully request that the recommendation of denying the claim could be reconsidered.** We understand that the recommendation will be reviewed at the Nov 12, 2019 Board of Directors meeting.

First, we wanted to correct the letter which dated that the damage occurred on April 27, 2019 as the damage to our home and the fence neighboring Mr. Middleton's property on 22044 Creekside Ct., Cupertino, CA 95014 occurred on Tuesday, August 27, 2019.

In addition, the letter cited statute (Cal. Gov. Code Section 815, subdivision (a)), but did not detail the subsequent statute (Cal. Gov. Code Section 815.2, subdivision (a)) which states that the water district can be liable if there is omission of an employee to act. This would suggest that **since the trees have not been inspected for over three years and/or had not been pruned could have caused the tree to fall for lack of proper maintenance and heavy branches. This has been confirmed through a request for public records.** So even though the inspector's report says that there is "no signs of decay," even a living tree could fall due to lack of care. So stating that SCVW did not have "actual knowledge that the tree was not healthy" or "acted in such a manner as to cause the tree to cause damage" is not sufficient to warrant a denial of the claim as it is exactly the lack of inspection and upkeep of the property/tree that caused it to fall.

As a long time resident in this home which we just renovated, we have and will always do our part to ensure that we live in harmony with our natural surroundings and also the utility companies that provide services to our neighborhood. We hope that you will reconsider the recommendation in light of this new information and helps us to recover the cost of reconstructing our home for our children's future.

Best,  
The Fong Family

**Michele King**

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**Subject:** FW: Request to Revise Claim Recommendation

**From:** David Cahen

**Sent:** Tuesday, November 05, 2019 9:12 AM

**To:** The Fongs <[thefongs@gmail.com](mailto:thefongs@gmail.com)>

**Cc:** Ted Fong <[jedifong@gmail.com](mailto:jedifong@gmail.com)>; Board of Directors <[board@valleywater.org](mailto:board@valleywater.org)>; Stan Yamamoto <[SYamamoto@valleywater.org](mailto:SYamamoto@valleywater.org)>

**Subject:** RE: Request to Revise Claim Recommendation

Dear Mr. and Mrs. Fong:

Thank you for your email. I have reexamined your claim and, unfortunately, have come to the same conclusion that the District was not responsible for the tree that fell.

As I stated in my original letter, the District is generally not liable for naturally occurring trees which fall. You asserted that the District should be held responsible since this particular tree had not been inspected, nor pruned, for at least three years. Therefore, a contributing cause of the incident could have been heavy branches.

The District owns or manages hundreds of miles of creeks and streams throughout Santa Clara County. Unfortunately, inspecting every tree in our watershed is impossible. Inspection of naturally occurring trees is a discretionary act. Public Entities and public employees are not liable for their discretionary decisions. (Cal. Gov. Code § 820.2.) A public entity is immune from tort liability for negligent acts of its employees if the employees are acting in a discretionary capacity.

In regards to notice, the public entity must have actual notice of the existence of a condition and knew or should have known of its dangerous character. (Cal. Gov. Code § 835.2(a).) During my investigation, Ms. Fong and I discussed the tree and both agreed that the tree was healthy and did not present an apparent danger in any way. I confirmed this with the District's biologist, who examined the tree after it fell. Since the District had no actual notice that the tree presented any danger, the District is not responsible for the failure of the tree.

Regards,

**DAVID CAHEN**

RISK MANAGER

Risk Management Unit

Tel. (408) 630-2213 / Cell. (650) 787-6949

Santa Clara Valley Water District is now known as:



Clean Water • Healthy Environment • Flood Protection

5750 Almaden Expressway, San Jose CA 95118

[www.valleywater.org](http://www.valleywater.org)

**From:** The Fongs [[mailto:thefongs@gmail.com](mailto:mailto:thefongs@gmail.com)]

**Sent:** Monday, November 04, 2019 1:46 PM

**To:** David Cahen <[DCahen@valleywater.org](mailto:DCahen@valleywater.org)>

Subject: Request to Revise Claim Recommendation

attachment: letter in pdf

cc: Santa Clara Valley Water District's Board of Directors

Dear Mr. Cahen,

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