



Santa Clara Valley Water District

File No.: 19-0962

Agenda Date: 11/12/2019

Item No.: *3.1.

BOARD AGENDA MEMORANDUM

SUBJECT:

Denial of Claim of Mo-Yun Fong.

RECOMMENDATION:

Deny the claim.

SUMMARY:

The District received a claim for damages on September 9, 2019 from Cupertino resident, Mo-Yun Fong. Ms. Fong resides at 22045 Creekside Court (District 5). The reported date of loss was April 27, 2019. According to the claimant, a fallen oak tree damaged the backyard fence, corner of the house including the gutter. The claimant is seeking to recover \$2,320.50 for the gutter repair (\$1,276.50) and fence repair (\$1,044.00).

Risk Management has investigated this matter, including a site visit to discuss this matter with the claimant and assess the claim's validity.

The California Government Tort Claims Act and the California Claims Act (collectively, "Act") states that a public entity is not liable for an injury except as otherwise provided by statute. (Cal. Gov. Code Section 815, subdivision (a)). Generally, there is no liability for damage caused by a tree on public land, even if the damage occurs on private land, unless the entity had actual knowledge that the tree was not healthy, or the entity acted in such a manner as to cause the tree to cause damage.

From discussions with the homeowner and through inspection of the tree, staff has determined that the tree showed no evidence of rot, disease or other distress. Staff had no knowledge that the tree might fall and therefore, there is no negligence on the part of the District. Therefore, there is no liability on the part of the District, and staff recommends that the claim be denied.

FINANCIAL IMPACT:

There is no financial impact associated with this item.

CEQA:

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The recommended action does not constitute a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

Attachment 1: Claim

*Handout 3.1-A, Mo-Yun Fong

UNCLASSIFIED MANAGER:

Stan Yamamoto, 408-630-2755