

Attachment 4

Comment evaluation memo pertaining to the Initial Study and
Proposed Mitigated Negative Declaration for the Humboldt
Bay Trail South Project



DEPARTMENT OF PUBLIC WORKS
C O U N T Y O F H U M B O L D T

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Comment Evaluation Memo

Project: Humboldt Bay Trail South
Lead Agency: County of Humboldt
Department: Public Works
Document Type: Initial Study and Mitigated Negative Declaration
Applicable Law: California Environmental Quality Act
30-day Comment Period: February 16, 2018 through March 19, 2018
State Clearinghouse No: 2018022036
Web Site: www.humboldtbytrail.info
Date Prepared: July 16, 2018

INTRODUCTION

The County of Humboldt Department of Public Works (“Public Works”) prepared an Initial Study and Proposed Mitigated Negative Declaration (“MND”) for the Humboldt Bay Trail South Project (“Project”) in accordance with the provisions of the California Environmental Quality Act (“CEQA”). The Project entails construction of a 4.2-mile paved bikepath between Eureka and Arcata along the Highway 101 and North Coast Railroad Authority (“NCRA”) transportation corridor. The Project will connect trail projects recently completed by the City of Eureka and City of Arcata to form a 14-mile network of trails. Eleven mitigation measures were identified in the MND to ensure the Project will have less than significant effects on the environment (Appendix F of the MND).

The 30-day public review period was February 16 through March 19, 2018; however, comments received through March 30, 2018, were considered. The State Clearinghouse distributed the document to state agencies, and no state agencies submitted comments (Attachment A). Public Works posted the document on the County website, made a copy available at the Public Works office, and published a Notice of Intent in the Eureka Times-Standard. A public meeting was held on February 27, 2018, at the Wharfinger Building in Eureka, where comment forms were distributed. Comments were invited using comment forms or via e-mail.

COMMENTS

Seventy comments were received. Particular consideration was given to comments addressing the sufficiency of the analysis of environmental impacts, and comments suggesting specific alternatives or mitigation measures that could potentially provide better ways to avoid or mitigate significant impacts. The following discussion is intended to provide a comprehensive response to all received comments that were relevant for evaluating the sufficiency and completeness of the MND. Comments are summarized based on common issues and themes.

RESPONSE TO COMMENTS

1. Eucalyptus Tree Removal

Several comments were received on the proposed removal of the northern group of eucalyptus trees situated in a row along Highway 101, north of the California Redwood Company former mill site. Approximately 219 trees larger than eight inches in diameter would be removed over a distance of 2,500 feet. These trees are situated directly adjacent to Segment 7 of the proposed trail and would present a significant safety hazard to trail users. The northern group of trees represents approximately 42 percent of the entire row of eucalyptus trees near the mill site. The group of trees situated south of the mill site entrance (over a distance of 3,400 feet) would not be affected by the Project. An exhibit depicting the tree removal area is provided in Attachment B.

Need and Alternatives

Some commenters questioned whether the safety hazards presented by the trees warrant their removal. A commenter asked why hazards associated with eucalyptus trees are different from other trees. Some commenters suggested alternatives to tree removal, including:

1. Installing warning signs.
2. Removing the rails and constructing the trail directly on the railroad prism, rather than adjacent to the rails.
3. Performing selective trimming of the mature trees and regular removal of seedlings.
4. Constructing an overhang structure to protect bicycle riders and walkers.

Some commenters supported the concern for safety hazards. A commenter noted that bark, branches, limbs, and seed pods are regularly released from the trees onto Highway 101 and adjacent ground. One commenter called the eucalyptus trees “messy and dangerous.” Some commenters shared accounts of incidents on Highway 101, as motorists or cyclists, caused by the eucalyptus trees.

Response:

Trees are valuable natural resources that provide aesthetic, cultural, ecological, and economic benefits. While trees are often an attraction for public spaces, they can cause property damage or personal injury due to their size and weight when either a whole tree or part of a tree experiences structural failure. Further discussion regarding the need for tree removal as part of the Project and consideration of alternatives is provided below.

To evaluate the safety risks associated with the northern group of eucalyptus trees, Public Works utilized the risk assessment framework contained in the Hazard Tree Plan for Humboldt County Parks and Trails (“Hazard Tree Plan”), which was updated in 2013. Implementation of the Hazard Tree Plan is intended to avoid dangerous conditions within County Parks and along the Hammond Trail. Another important reference is the Tree Risk Assessment national standard developed by the Tree Care Industry Association (2017).

The Hazard Tree Plan notes that risk cannot be entirely eliminated, and the overall goal is acceptable risk based on prudent management, rather than zero risk, which is unattainable. Tree risk assessment involves considering the likelihood of failure, the likelihood of the failed tree or tree part impacting a target, and the likely resulting consequences. To assess the overall hazard, trees can be evaluated for evidence of structural defects or weaknesses, the size of the defective part, the predicted failure zone (i.e., the area reached by the failed part of the tree), and the potential targets. Not all defects or conditions that predispose a tree or tree part to failure are detectable. Because the condition of trees changes over time, standard practice is to perform regular inspections and schedule treatments based on standardized criteria. Assessing tree risk

involves inherent uncertainties associated with tree conditions and the interaction between trees and the environment. An important part of assessing risk is the failure profile of the tree species, which is defined by documented recurring patterns of tree failure for the specific species. Ultimately, decisions must be made based on policies, factual evidence, and experienced judgment.

The project area for Segment 7 includes a row of mature trees growing within the embankment of Highway 101 and a row of younger trees growing within the railroad prism. Caltrans maintenance crews regularly monitor the segment of Highway 101 adjacent to the eucalyptus trees and remove debris that falls on the roadway and shoulder. In addition, due to the potential hazards for motorists and cyclists traveling on Highway 101, Caltrans commits significant resources to perform regular inspections and trimming treatments on the highway side of the trees.

The trail alignment for Segment 7 is situated on the east side (inland side) of the NCRA railroad, between the railroad and highway. The trail will be constructed by widening the railroad prism with either a retaining wall or earthen embankment. The railroad and highway are separated by a drainage ditch. Due to multiple constraints, no other feasible alignment was identified. The row of younger trees growing within the railroad prism directly conflicts with the proposed trail alignment and must be removed in order to construct the trail. The row of mature trees growing within the highway embankment is situated approximately 10 to 15 feet from the trail alignment. Based on the proximity of the mature eucalyptus trees to the proposed trail, and the fact that several trees are leaning toward the trail, there is a high likelihood that falling limbs or a toppled tree could strike the trail, and a high likelihood that such an incident would result in severe consequences if a trail user is present at the point of impact.

The primary safety concern is the vulnerability of trail users to falling limbs. Trail users would be situated within the failure zone of many elevated limbs measuring six to twelve inches in diameter and weighing hundreds of pounds. Eucalyptus trees have a unique growth pattern of reconfiguring their overall structure through deterioration. The trunk diameter continues to grow while heavy lateral branches die and fall. This characteristic of the species is an adaptive measure for maintaining stability over time, but results in a predisposition to dropping branches on a regular basis without warning. Often, the dropped branches have no detectable defects. In addition to falling limbs, a second failure scenario is uprooting and toppling of the entire tree. Eucalyptus trees are susceptible to toppling due to their shallow root system, especially during strong winds.

Public Works evaluated the failure profile of eucalyptus trees by reviewing safety incidents and safety concerns in California involving eucalyptus trees situated along transportation corridors and within public recreation areas. Examples of relevant cases are provided in Attachment C. These cases include several examples of unexpected structural failures leading to death, serious injury, and near-miss incidents. Tree failures often occurred under calm weather conditions. Attachment C also includes examples of public entities taking proactive measures to mitigate the safety risks created by having eucalyptus trees situated in close proximity to roads, trails, paths, and parks.

Beyond the fundamental imperative to protect public safety, Public Works considered the legal context for liability associated with an incident if the eucalyptus trees remained adjacent to the future trail. The outcome of any potential claim for compensable damage or injury due to alleged dangerous conditions on public property would depend on the facts of the situation and applicable law. Humboldt County would potentially be liable if a trail user suffered damage or injury caused by a structural failure of the eucalyptus trees, if it was determined that the County had negligently maintained the trees, or failed to correct a dangerous condition after receiving notice of its existence and dangerousness. Liability would be more limited for trees growing in a naturally occurring forest. However, the row of eucalyptus trees was deliberately planted, and there is precedent for performing regular maintenance (set by Caltrans on the highway side of the trees). Moreover, the provisions for immunity from liability provided by Government Code section 831.4 applies to the location or design of a trail, but not to features unrelated to a trail. Therefore, Humboldt County would

have significant exposure to liability if the Project is constructed adjacent to the row of mature eucalyptus trees.

None of the four alternatives presented in the public comments is an acceptable solution for the public safety risks:

1. Letting the trees remain and installing warning signs is not acceptable because the safety hazards would continue to exist. The trees would threaten public safety and would deter use and enjoyment of the trail by the public.
2. Constructing the trail directly on the railroad prism, rather than adjacent to the rails, is inconsistent with the NCRA Trail Policy and would require an exception to that policy. Even if approval could be obtained, this alternative is not acceptable because the trail would only be moved approximately eight to ten feet, and trail users would still be in the target zone of the trees. The risk to trail users would be unchanged.
3. Public Works considered the feasibility of implementing a program of regular inspections and trimming treatments on the row of mature trees. The project area is a narrow strip of land situated between Highway 101 and the Humboldt Bay shoreline, and presents significant constraints on equipment access and operability. The costs for a tree maintenance program at this location could cost on the order of \$50,000 to \$100,000 per year, and there would be significant concerns about worker safety and the sufficiency of the program. After reviewing the failure profile of eucalyptus trees, the age and condition of the trees within the project area, and the constraints on access for equipment and manpower to perform inspections and trimming treatments, Public Works concluded that it will not be feasible to implement an effective tree maintenance program that alleviates the safety risks to an acceptable level.
4. Constructing an overhang structure to protect bicycle riders and walkers is not acceptable for several reasons. Access would be severely limited for maintenance and repair following the failure of a tree or large limb. The construction cost would be on the order of several hundred thousand dollars. The likelihood of damage due to falling limbs or trees, or flood damage, would be high. The structure would obstruct views of Humboldt Bay and is unlikely to be permitted by the Coastal Commission. For these reasons Public Works deems this alternative to be infeasible.

Public Works will recommend termination of the Project if the northern group of eucalyptus trees cannot be removed.

Aesthetics

Several commenters addressed the positive aesthetic qualities of the trees. A commenter stated that the trees create a “beautiful visual backdrop” for the bay. A commenter expressed that the trees are a source of beauty and inspiration. A commenter described the trees as “old and grand and beautiful.” Some commenters disagreed with the Visual Impact Assessment (Appendix B of the MND) and stated that the eucalyptus trees should have received higher numerical ratings. Conversely, some commenters stated that the eucalyptus trees are a visual barrier for viewing the bay. A commenter described them as an “eyesore.”

Response:

Potential impacts to aesthetics are analyzed in Section 3.1 of the MND. The MND analyzed whether the Project would have a substantial adverse effect on a scenic vista, and whether the Project would substantially degrade the existing visual character or quality of the site and its surroundings. A “scenic vista” is considered a viewpoint that provides expansive views of a highly valued landscape for the benefit of the general public. “Visual character or quality” refers to the visual attributes of the elements in a landscape and the relationships between those elements.

The Visual Impact Assessment was prepared to provide a technical analysis of existing and proposed conditions and to predict viewer response to the changes resulting from the Project in accordance with CEQA Guidelines Appendix G and the 1988 methodology established for visual impact assessments by the Federal Highway Administration. The Visual Impact Assessment considered pattern elements (such as form, line, color, and texture), pattern character (such as dominance, scale, diversity, and continuity), and visual quality conditions (such as vividness, intactness, and unity). The numerical ratings of visual quality were determined by staff from the consulting firm Stantec, based on their professional experience evaluating similar projects. Judgments regarding aesthetic features are inherently subjective based on individual preferences. The negative and positive comments received regarding the aesthetic qualities of the trees indicate the diversity of opinions within the community. While some commenters advocated for higher ratings in the Visual Impact Assessment, they did not address the overall significance of the change in consideration of the Project as a whole.

The Visual Impact Assessment noted both negative and positive impacts resulting from tree removal. Viewer response will be negative for viewers who place a high value on the vertical elements and texture provided by the northern group of trees as they currently exist. Viewer response will be positive for viewers who place a high value on unobstructed views of Humboldt Bay and the surrounding shoreline, views which will be enhanced from removal of the northern group of trees. Overall, project-related impacts in the Visual Impact Assessment were determined to be negative at a moderately low significance level for the northern group of trees, and no impact for the larger southern group of trees.

Although the absence of the northern group of eucalyptus trees constituting approximately 42% of the length of the existing tree row following removal would be a noticeable change for those persons familiar with the existing views from Highway 101 and other viewpoints around Humboldt Bay, the remaining southern group of trees constituting approximately 58% of the length of the existing tree row will continue to serve as a landmark and dominant skyline feature. The threshold of significance for potential impacts to scenic vistas and visual character or quality was determined to be removal of more than half of the eucalyptus trees. Because the majority of the eucalyptus trees along Highway 101 will remain, the impacts from the Project were found to be less than significant in the MND.

The MND also analyzed whether the Project would substantially damage scenic resources within a state scenic highway. Highway 101 has not been officially designated as a scenic highway. Therefore, the Project will not impact scenic resources within a state scenic highway.

Public Works acknowledges that the eucalyptus trees along Highway 101 have aesthetic qualities that are appreciated and valued by many of the commenters. However, based on the analysis in the MND, the impacts to aesthetics resulting from the Project are considered less than significant under CEQA.

Biological Resources

A commenter stated that the trees provide habitat for birds. Some commenters asserted that the trees warrant protection as an environmentally sensitive habitat area. Some commenters argued that the trees deserve less consideration because they're non-native. A commenter suggested replacing the eucalyptus trees with native tree species.

Response:

Potential impacts to biological resources are analyzed in Section 3.4 of the MND. The northern group of eucalyptus trees provides roosting habitat for raptors and other bird species. Public Works did not identify evidence that roosting habitat is a limiting factor around Humboldt Bay for any bird species. The eucalyptus trees may provide nesting habitat for bird species such as great blue heron, great egret, double-crested cormorant, red-tail hawk, and great horned owl; however, the noise and disturbance caused by traffic on Highway 101 is likely a deterrent from significant usage. No rookeries or raptor nests were observed in the northern section of trees proposed for removal. The eucalyptus trees have not been documented to serve as a

corridor for wildlife movement. The trees in the southern section will continue to remain available to birds for nesting and roosting.

Mitigation measure BIO-5 (Avoidance and Protection Measures for Nesting Birds) was developed for all tree and vegetation removal activities to ensure no significant impacts to native migratory bird species. The preference is to remove vegetation outside the bird nesting season (March 15 to August 15), but if activities are done during the bird nesting season then a qualified wildlife biologist will conduct preconstruction surveys to check for nesting activity of native birds and to evaluate the site for special-status bird species. The mitigation measure includes a protocol for responding to the presence of an active nest.

Public Works retained GHD to perform vegetation mapping and assessment of the project area to determine whether Environmentally Sensitive Habitat Areas (“ESHA”) are present. ESHA is defined under the California Coastal Act as “any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.” The results of this study are documented in a technical report (GHD, November 2017). GHD noted that the eucalyptus trees are native to Australia and have been planted and naturalized in California. Eucalyptus trees are allelopathic (i.e., they create chemicals that are harmful to native species and deter their growth and propagation), and thus are often removed as part of habitat restoration projects because they can exclude more desirable native vegetation. The understory beneath eucalyptus trees is typically lacking in diversity and structure, and thus provide little native wildlife habitat value. GHD concluded that the eucalyptus trees do not have special rarity or special ecological value and do not meet the criteria for being considered an ESHA.

Public Works will evaluate opportunities for incorporating re-vegetation of native species into the Project in the design phase.

Cultural Resources

Several commenters stated that the trees are historically important. A commenter stated that the trees are part of the historic landscape and local heritage. A commenter stated the trees are an “iconic part of this region.” A commenter stated the trees are a “landmark on Humboldt Bay.” A commenter stated the trees are part of the area’s cherished character. A commenter stated the trees have a significant historic quality to area residents.

Response:

Potential impacts to cultural resources are analyzed in Section 3.5 of the MND. A brief historical overview of the eucalyptus trees is provided below, followed by a summary of the evaluation to determine whether the eucalyptus trees are eligible for listing on the National Register of Historic Places or the California Register of Historic Resources. Copies of historical maps and photographs are contained in Attachment D.

The state highway connecting Eureka and Arcata was initially constructed as an unpaved road in 1918, and was improved to become a paved, two-lane highway in 1925. Eucalyptus trees were first planted along the highway by Henry Devoy, who owned 1,100 acres of ranchland in the Fay Slough area. Eucalyptus trees were popular in the late 19th century and early 20th century due to their rapid growth, and were planted in many locations along the California coast for timber and to serve as windbreaks (providing shelter from the wind). According to Eureka resident Patricia Lotus, her great grandfather, Henry Devoy, planted the trees in 1921 with assistance from her grandfather M. Lee Gillogly, a right-of-way agent for the Northwestern Pacific Railroad Company. The trees were intended to serve as a windbreak for Mr. Devoy’s dairy ranch. According to a March 1925 Humboldt Standard newspaper article, the trees were reportedly planted without permission from the state highway commission. Mr. Devoy is notable for having donated 120 acres of land in southern Humboldt County, which became Richardson Grove State Park, and for being the namesake for Devoy Road between Eureka and Freshwater.

A historical photograph indicates that the trees in front of the main barn on the Devoy property were cut down after a damaging frost in 1933. An aerial photograph indicates that trees were replanted in the southern section by 1937. According to Eureka resident Gemma Fiamma, her father, Caesar Fiamma, helped re-plant trees in the southern section (south of the current mill entrance) as part of the Works Progress Administration, while the trees in the northern section were planted as a separate action. Historical photographs indicate that trees reached a height of approximately 75 feet by 1949. The highway was expanded to become a four-lane separated freeway in 1954 and 1955. Historical photographs indicate the eucalyptus trees were heavily trimmed (topped) in 1969.

Lands containing buildings, structures, or objects may be eligible for listing on the National Register of Historic Places (“NRHP”) or California Register of Historic Resources (“CRHR”) if they maintain integrity and meet one of the following criteria:

1. NRHP Criterion A (CRHR Criterion 1) – Associated with events that have made a significant contribution to the broad patterns of history.
2. NRHP Criterion B (CRHR Criterion 2) – Associated with the lives of persons significant in our past. This criterion is generally limited to properties that illustrate a person’s important achievements and are associated with the person’s productive life.
3. NRHP Criterion C (CRHR Criterion 3) – Embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values.
4. NRHP Criterion D (CRHR Criterion 4) – Have yielded, or may be likely to yield, information important in prehistory or history.

In 2003, JRP Historical Consulting (“JRP”) reviewed the entire row of eucalyptus trees for historical significance as part of the studies for the Eureka-Arcata Corridor Highway Improvement Project. JRP concluded that the eucalyptus trees were not eligible for listing on the NRHP or CRHR. The State Historic Preservation Office concurred with this conclusion in a letter dated November 29, 2006 (Attachment E).

In 2018, JRP updated their evaluation to assess any new information regarding the historical significance of the trees. The updated historical evaluation form is contained in Attachment E, and summarized here:

1. The eucalyptus trees do not meet NRHP Criterion A (CRHR Criterion 1) because they are not unique within the context of eucalyptus trees being planted in California or Humboldt County as wind breaks for agricultural land.
2. The eucalyptus trees do not meet NRHP Criterion B (CRHR Criterion 2) because there was no demonstrable evidence that Mr. Devoy made historically significant contributions to the ranching industry, and if he had, it’s unlikely that the eucalyptus trees were directly associated with that contribution. If Mr. Devoy was deemed historically significant for having donated land to create Richardson Grove State Park, the eucalyptus trees would still not meet this criterion because they are not directly linked to that contribution. Objects that commemorate a person’s important achievements are not considered to meet this criterion.
3. The eucalyptus trees do not meet NRHP Criterion C (CRHR Criterion 3) because they are not associated with a significant figure in landscape architecture, nor with an innovative planting plan.
4. The eucalyptus trees do not meet NRHP Criterion D (CRHR Criterion 4) because they are unlikely to provide important information regarding history.

Further, JRP noted that the integrity of the setting has changed significantly due to changes in land use in the vicinity of the trees. Based on this evaluation, JRP determined that the eucalyptus trees continue to be ineligible for listing on the NRHP or CRHR. JRP prepared a Historic Property Survey Report, Historic Resources Evaluation Report, and Archaeological Survey for the Project, and these documents were submitted to the State Historic Preservation Office, which concurred with their findings in a letter dated June 19, 2018 (Attachment E).

While the trees are approximately 75 to 80 years old and provide a tangible connection to historical activities around Humboldt Bay, they do not meet the eligibility requirements for being considered a historic place or historic resource. Therefore, the proposed removal of the northern group of the eucalyptus trees is not a significant impact to cultural resources under CEQA.

Hydrology and Water Quality

A commenter expressed concern about using herbicides near the bay.

Response:

The MND listed herbicides as a potential method for treating the eucalyptus stumps and root systems to prevent re-sprouting. The MND does not contain a description of specific techniques. Public Works is not considering the use of herbicides for the Project at this time, and adoption of the MND does not constitute approval for the potential use of herbicides. Public Works is currently planning to use mechanical methods such as a stump grinder or manual methods such as covering with black plastic to prevent or minimize resprouting following tree removal. In the event that mechanical and manual methods are determined to be insufficient and there is a desire to further consider the use of herbicides, Public Works will perform a supplemental review to determine the applicable requirements for complying with CEQA.

Other Aspects of the Eucalyptus Trees

Aspect 1: Wind Break

Some commenters stated that the trees are important because they serve as a wind break. Conversely, a commenter noted that the trees no longer serve their original purpose of serving as a wind break for a dairy ranch.

Response:

The trees may help provide shelter from wind for a portion of Highway 101 and adjacent property. However, the majority of the highway corridor between Eureka and Arcata has direct exposure to winds from over the bay. Therefore, the effect provided by the northern group of eucalyptus trees is very limited. The function of providing a potential wind break along Highway 101 does not override the safety hazard concerns to trail users.

Aspect 2: Interaction with Sunlight

A commenter stated that the trees are beneficial by providing sun glare protection to motorists. Conversely, a commenter stated that the trees create a distraction to motorists by causing a “strobe effect” with late afternoon sun flashing through the trees.

Response:

Public Works acknowledges that the eucalyptus trees may affect visibility for motorists, either positively or negatively. These aspects do not change the analysis of environmental impacts or conclusions in the MND.

Aspect 3: Calming Presence

Some commenters stated that the trees provide a calming presence along the highway and provide a safety benefit by calming traffic.

Response:

Public Works acknowledges that the eucalyptus trees may provide this benefit. However, this aspect does not change the analysis of environmental impacts or conclusions in the MND.

Aspect 4: Barrier between Highway and Trail

A commenter stated that retaining the trees would be beneficial by providing a physical barrier separating the trail from the highway.

Response:

The potential safety benefits that the eucalyptus trees would provide as a physical barrier do not offset the safety hazards presented by the trees to trail users. Further, the Project will include a cable barrier between Highway 101 and the trail at locations where it is determined to be necessary.

2. Project Design Elements

Issue 1: Driveway Crossing at Bracut Industrial Park

Some commenters expressed a preference to have the trail alignment in Segment 9 avoid crossing the driveway entrance for Bracut Industrial Park, and asked about the feasibility of going around the driveway. A commenter objected to placing the burden of stopping or yielding at the crossing on trail users over motorists. A commenter suggested an alternative of providing flashing lights to warn turning vehicles. A commenter stated that right-angle turns are undesirable for maintaining speed and traffic flow.

Response:

Public Works evaluated several potential options to bypass the driveway at Bracut, but none of the options were found to be feasible. Public Works will continue to refine the design details of the driveway crossing to maximize safety.

Issue 2: Alignment within Humboldt Bay

A commenter suggested an alternative alignment that would locate the majority of the trail within Humboldt Bay on a boardwalk or causeway.

Response:

Public Works reviewed the proposed alternative alignment and determined that it would not comply with the applicable design standards for a bikepath (Chapter 1000 of the Caltrans Highway Design Manual) and for accessibility (Chapter 11B of the California Building Code). In addition, there would likely be significant environmental impacts to areas used by shorebirds for foraging as well as eel grass habitat, and it is unlikely that these impacts could be sufficiently mitigated. Further, the alternative alignment would have higher construction and maintenance costs, and would unlikely be permitted by the Coastal Commission.

Issue 3: Alternative Design for the Eureka Slough Bridge

Some commenters advocated for the trail to be cantilevered on the side of the bridge, rather than being integrated on top of the bridge.

Response:

Public Works retained Morrison Structures, a bridge engineer, to consider a range of alternatives for improving the Eureka Slough railroad bridge to accommodate the trail. Morrison Structures considered the alternative of widening the bridge by cantilevering a separate deck girder frame from the existing supports. This alternative was eliminated from further consideration due to unfavorable weight impacts to the bridge supports, the difficulty in removing the cantilevered structure, and unfavorable construction costs compared to other alternatives.

Issue 4: Trail Width

A commenter expressed the desire for a wider paved section to accommodate passing cyclists and improve the flow of traffic.

Response:

Trail width is a key design parameter for user safety and the quality of the user experience. The width of the paved portion of the trail (ten feet) was determined based on applicable design standards, the context of the trail, and considering the goals of minimizing costs and environmental impacts. The width of ten feet was determined to be sufficient based on the estimated peak hourly usage rate. A wider trail would have higher construction costs, more wetland impacts, and higher mitigation costs.

Issue 5: Trail Surfaces

A commenter expressed preference for an unpaved trail.

Response:

The purpose of the Project is to provide a multi-use facility for transportation and recreation. The applicable design standards for a bikepath require a paved surface.

Issue 6: Bridge Surfaces

A commenter expressed concern about slippery wood on Eureka Slough bridge and bike tires getting trapped between pavement and the rails. Some commenters requested that metal bridge decks be avoided to provide a quieter tread and reduce noise. Conversely, a commenter noted that the metal bridge decks on the City of Arcata's Bay Trail North project area provide an audible warning of approaching cyclists.

Response:

The Eureka Slough bridge deck will be designed to avoid slippery conditions and to avoid gaps that could cause a hazard for bike tires. None of the bridges for the Project will have metal decks.

Issue 7: Pavement Markings

A commenter expressed a preference for white pavement markings over yellow.

Response:

The applicable design standards for a bikepath specify yellow pavement markings for the centerline to denote two-way traffic.

Issue 8: Signs

A commenter advocated for the reduction of signage (fewer signs and not as high). A commenter requested that the project avoid excessive signs regarding speeds and etiquette.

Response:

A detailed sign plan will be developed during the design phase of the Project. Some signs are mandated by safety standards, especially when there is the potential for conflicts between trail users and vehicles. Public Works agrees with the general principle of minimizing signs, especially in scenic areas.

Issue 9: Turnouts

A commenter recommended turnouts to allow wildlife observation, photography, and general enjoyment.

Response:

Opportunities for turnouts will be evaluated during the design phase of the Project.

Issue 10: Bollards

A commenter recommended the placement of bollards avoid blindspots for trail users.

Response:

The location of bollards will be considered during the design phase of the Project.

Issue 11: Vegetation

A commenter requested introducing more natural features between the highway and trail, such as quarry boulders and native shrubs and wildflowers. A commenter supported using vegetation as a sound and visual barrier. A commenter recommended being prepared to address invasive species that will colonize disturbed soil areas.

Response:

Public Works will evaluate opportunities for incorporating re-vegetation of native species into the Project, and will assess the need for managing invasive species following construction.

CONCLUSION AND STAFF RECOMMENDATION

After reviewing the comments received on the MND, Public Works believes that the environmental document has sufficiently addressed the potential environmental impacts of the proposed Project under CEQA. No changes to the MND are warranted. Public Works recommends that the Board of Supervisors incorporate the eleven mitigation measures into the Project, adopt the MND including the Mitigation Monitoring and Reporting Program (Appendix F of the MND), approve the Project, and direct staff to post a Notice of Determination with the Humboldt County Clerk/Recorder.

LIST OF ATTACHMENTS

- A Letter from State Clearinghouse
- B Proposed Eucalyptus Tree Removal Area
- C Eucalyptus Tree Incidents in California
- D Eucalyptus Area Maps and Photographs
- E Updated Historical Evaluation Form for Eucalyptus Trees (JRP, 2018) and Concurrence Letters from the State Historic Preservation Office (2006 and 2018)

Attachment A

Letter from State Clearinghouse



EDMUND G. BROWN JR.
GOVERNOR

STATE OF CALIFORNIA
GOVERNOR'S OFFICE *of* PLANNING AND RESEARCH

MAR 22 2018



KEN ALEX
DIRECTOR

March 20, 2018

Hank Seemann
Humboldt County
1106 Second St
Eureka, CA 95501

Subject: Humboldt Bay Trail South
SCH#: 2018022036

Dear Hank Seemann:

The State Clearinghouse submitted the above named Mitigated Negative Declaration to selected state agencies for review. The review period closed on March 19, 2018, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

Sincerely,

Scott Morgan
Director, State Clearinghouse

**Document Details Report
State Clearinghouse Data Base**

SCH# 2018022036
Project Title Humboldt Bay Trail South
Lead Agency Humboldt County

Type MND Mitigated Negative Declaration
Description Construction and operation of a Class I bike path along the North Coast Railroad Authority and Caltrans US Hwy 101 corridor generally between Bracut and Eureka, and construction of a cable between Bracut and Gannon Slough.

Lead Agency Contact

Name Hank Seemann
Agency Humboldt County
Phone (707) 445-7741
email
Address 1106 Second St
City Eureka
Fax
State CA **Zip** 95501

Project Location

County Humboldt
City Eureka
Region
Lat / Long 40° 48' 44" N / 124° 06' 34" W
Cross Streets NCRA and Caltrans US HWY 101 corridor between Eureka and Brainard Slough
Parcel No. mult
Township 5N **Range** 1W,1E **Section** 17 **Base** HBM

Proximity to:

Highways 101
Airports Murray Field
Railways NCRA
Waterways Humboldt Bay, Eureka Slough, Brainard Slough
Schools La Fayette ES
Land Use LU: County: natural resources, Industrial General, Public facility; City: NR

Project Issues Aesthetic/Visual; Agricultural Land; Air Quality; Archaeologic-Historic; Biological Resources; Coastal Zone; Cumulative Effects; Drainage/Absorption; Flood Plain/Flooding; Forest Land/Fire Hazard; Geologic/Seismic; Growth Inducing; Landuse; Minerals; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Schools/Universities; Septic System; Sewer Capacity; Soil Erosion/Compaction/Grading; Solid Waste; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Water Supply; Wetland/Riparian

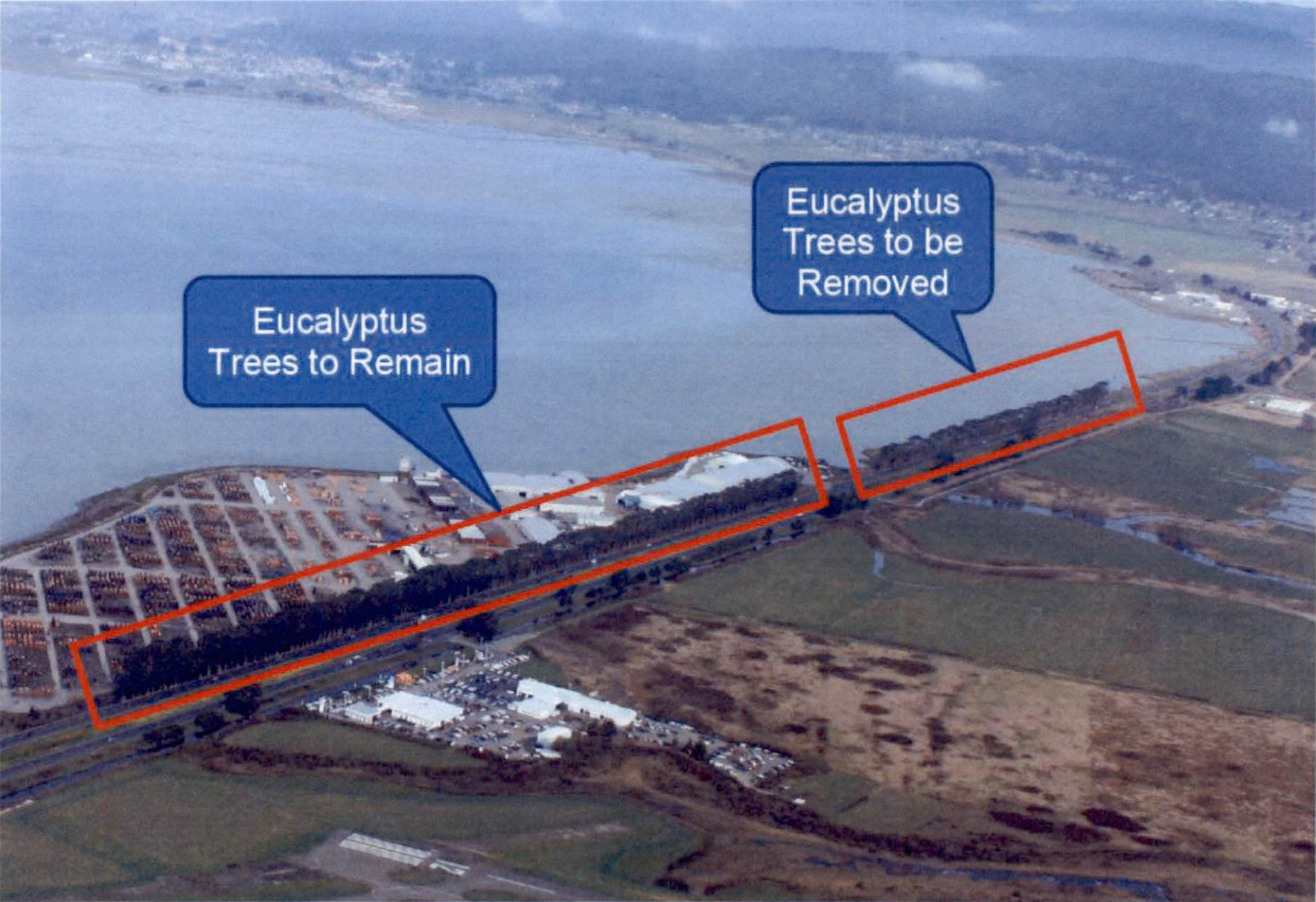
Reviewing Agencies Resources Agency; Department of Boating and Waterways; California Coastal Commission; Department of Fish and Wildlife, Region 1E; Department of Conservation; Office of Historic Preservation; Department of Parks and Recreation; Department of Water Resources; Caltrans, Division of Aeronautics; California Highway Patrol; Caltrans, District 1; Regional Water Quality Control Board, Region 1; Air Resources Board, Transportation Projects; Native American Heritage Commission; State Lands Commission

Date Received 02/15/2018 **Start of Review** 02/16/2018 **End of Review** 03/19/2018

Attachment B

Proposed Eucalyptus Tree Removal Area

Segment 7 – Eucalyptus North



Attachment C

Eucalyptus Tree Incidents in California

ATTACHMENT C
Examples of Eucalyptus Tree Safety Incidents in California

Case #1 – Whittier, CA (2016)

Whittier employees inspected Penn Park before fatal wedding-party tree collapse

By **SANDRA T. MOLINA** | smolina@scng.com and **STEPHANIE K. BAER** | sbaer@scng.com | San Gabriel Valley Tribune

PUBLISHED: December 19, 2016 at 6:52 pm | UPDATED: August 29, 2017 at 4:09 am

WHITTIER >> City employees surveyed Penn Park for leaning trees and broken branches, but found no safety issues, hours before a massive eucalyptus tree toppled onto a wedding party, killing a 61-year-old grandmother and injuring seven others.

“We have been a Tree City USA for more than 30 years, and take care to manage our urban forest,” Whittier City Manager Jeff Collier said Monday following a press conference at the park. “It’s very rare that this would happen.”

Witnesses reported the group was taking pictures beneath the 80- to 90-foot-tall tree at the park on Penn Street, around 4:30 p.m. Saturday when it suddenly uprooted and fell, trapping about 20 people.

On Monday, arborists were inspecting the tree to determine what caused it to fall. Collier said they were checking for disease or rot, soil stability and the health of the roots.

The tree was more than 50 years old and was last pruned two years ago, said Collier, who called the incident a “freakish situation.”

Collier said city employees had given a routine visual inspection of the park the morning before the tree fell and found “no apparent issues.” The wedding party did not have a permit to take photos at the park and city staff were not on site at the time.

It wasn’t clear when the experts would come to a conclusion about the cause of the collapse, which was ruled an accident by Los Angeles County Fire Department officials.

ATTACHMENT C

Examples of Eucalyptus Tree Safety Incidents in California

Coroner's officials identified the woman who died as Margarita Mojarro, 61, of San Pedro. Officials did not know whether the woman was related to the bride or the groom. She was a mother of four and grandmother of four, according to a family member, who asked for privacy.

City, fire and police officials did not have an update on the condition of a 4-year-old girl who was hospitalized in critical condition or the six other adults who were injured by the tree collapse.

"Saturday's tragic accident at Penn Park defies explanation," Mayor Joe Vinatieri said in a written statement Monday. "The city is investigating and inspecting the park, and will provide answers to many of the questions we all have, including what effect the drought, Friday's heavy rainfall and other factors may have played in this terrible accident. Those answers will be provided to the family, and our community, as soon as possible."

ATTACHMENT C
Examples of Eucalyptus Tree Safety Incidents in California

L.A. Times 12/19/2016

What types of tree usually fall?

Failing trees aren't usual considering the countless trees in California's cities, parks and forests. That said, there have been 5,902 tree or tree branch "fails" since 2010 in California, according to the [University of California's Tree Failure Report Program](#).

Of those, 23.2% involved oak trees, 17.1% were pine trees and 12.6% were eucalyptus.

Did the eucalyptus that fell Saturday fit the typical profile?

Yes. According to a 2014 report from The Britton Fund, a nonprofit entity from the International Society of Arboriculture's Western Chapter, the average age and size of failing eucalyptus in California is 65 years old and 81 feet tall.

Saturday's tree was an 80-foot-tall eucalyptus that was at least 50 years old and had a trunk diameter between 6 and 8 feet, Los Angeles County firefighters said.

Two-thirds of trees that failed were in high-use areas like Penn Park's eucalyptus, and 58% of them occurred in the winter months between November and February, the report stated.

The most common defect among the trees in the report were heavy lateral limbs, which were too big for the tree's root system and trunk to support.

Could it have fallen because of the drought?

According to Green, that's not likely. The park appears irrigated and there hasn't been a reported spike in tree failings since California's drought took hold five years ago.

Two factors that can cause a tree to fail, however, are long-term effects of decay and short-term effects of rain on loosening soil.

Do we know if this tree fell because of decay or rain?

It's too early to tell.

If the trunk snapped apart from its "root plate" below ground, Green said, that would be a symptom of long-term decay to the roots until they were so compromised that they were too weak for the tree.

If they remained attached and the entire tree fell over, unearthing all of its roots and the soil that were holding them, that would be a sign that it was the soil that failed, not the tree itself, he said.

Sometimes only part of the roots are compromised and others are not, further muddying the investigation for arborists, he said.

ATTACHMENT C
Examples of Eucalyptus Tree Safety Incidents in California

Could the city have detected the tree would fail?

It depends on the cause.

Whittier maintains a pruning and inspection schedule for its trees, though officials wouldn't immediately say what that was and when the last time Saturday's tree had been inspected.

But typically trees in municipalities are inspected on a one- to five-year basis, Green said. Long-term issues like root decay would be detectable because the tree would show outward symptoms like mushrooms growing around its base or on its trunk, he said.

"By the time you have a mushroom you have advanced decay – that means the wood has been eaten up," Green said. "The structural integrity...is like mush, like soft bread. It takes years for this to happen."

Another sign of decay would be a callous, or a raised ring on the bark that forms around an infected area on the tree's surface.

Conversely, a green canopy isn't a sign of a tree's health, Green said.

"A tree canopy can still be green but that doesn't mean the root system is structurally sound," he said.

But if the tree itself was healthy and it was the ground around it that was failing, that's difficult to predict, Green said. Heavy branches saturated with water and a powerful wind gust has been known to knock over a healthy eucalyptus, he said.

"Those are hard to detect," Green said. "I don't know how you would do it unless you see the soil shifting...you can't detect it."

Where does eucalyptus come from?

They are originally from Tasmania and Australia and were introduced to California in the 1800s. They were used as windbreaks and for their timber but have since become naturalized across California.

Family members of grandmother killed by Penn Park tree sue city of Whittier

By **MIKE SPRAGUE** | msprague@scng.com | Whittier Daily News
PUBLISHED: April 6, 2017 at 8:46 pm | UPDATED: August 30, 2017 at 4:07 am

LOS ANGELES >> Family members of a 61-year-old grandmother who was killed when a massive eucalyptus tree toppled onto a wedding party at Penn Park in December 2016 are suing the city of Whittier, alleging that the city failed to properly maintain the tree after it contracted a disease.

The lawsuit will cover 19 people injured in the tree collapse, including several members of the family of Margarita Mojarro of San Pedro. Mojarro, who later died at a hospital was the only person killed in the tree collapse.

A 3-year-old girl, reported to be a niece of the bride, was hospitalized in critical condition with a traumatic brain injury and a half-dozen other people were treated at a hospital for injuries not considered life-threatening.

Though the lawsuit does not state specifically how much the family will seek from the city, an attorney for the family, Brian Leinbach, said in March that he expected to seek upward of \$10 million.

Leinbach represents the entire group of injured. He blamed the city for allowing the tree to fall on Mojarro and the others at the park that day. The group was there to celebrate the impending marriage of Mojarro's daughter, Patricia.

Leinbach, who couldn't be reached Thursday, said in the lawsuit that the large blue gum eucalyptus tree had become acutely diseased.

ATTACHMENT C

Examples of Eucalyptus Tree Safety Incidents in California

“Whittier, which at all relevant times, controlled, maintained, inspected, supervised, and owned Penn Park and the tree, knew or should have known of the danger presented by the tree,” attorneys wrote in the lawsuit.

“However, despite this knowledge, (the city) did not remedy the danger, nor did it warn or otherwise inform persons, such as (my clients) to whom the tree presented a very real and foreseeable danger.”

The lawsuit stated the tree had “advanced rot and decay” and had been over-watered.

The collapse was preceded by a week of intense rain across the region. City officials said at the time that the ground at many of Whittier’s parks was saturated with water.

Authorities theorized that the storm that had dropped 1.85 inches of rain in Whittier that week, coupled with weakening of the tree from the lingering drought, were factors in its collapse.

The park is a popular photo-taking spot because of its mature trees. The wedding party was apparently posing for pictures at the time the tree fell.

Penn Park has remained closed since the December incident. In the weeks following the collapse, Whittier closed half a dozen of its parks out of fear of more falling trees. Murphy Ranch Park was one of those closed. It is expected to open Saturday, said Greg Alaniz, Whittier’s director of parks, recreation and community services.

Leinbach said city officials should have known of the impending danger — an arborist had inspected the tree a few days before the collapse.

Whittier City Manager Jeff Collier on Thursday said he hadn’t seen the lawsuit. He offered no further comment.

City officials said following the collapse that they ordered an investigation into why the tree fell. But Whittier officials have not said whether the study has been completed.

In March, Gray Kranker, an attorney for Whittier, said the city would not release the study due to the possible lawsuit involving the Mojarro family.

“There’s ongoing litigation about the tree,” Kranker said. “The expert was retained through our office and thus it is attorney work product.”

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Examples of Eucalyptus Tree Safety Incidents in California

The lawsuit alleges the collapse caused the wrongful death of Mojarro, brain damage to the 3-year-old girl injured in the incident and a litany of other serious injuries. Leinbach said the serious nature of the injuries was the reason for the inflated award estimate.

A second lawsuit also could be filed by Stefanie Oviatt, an assistant to the photographer taking photos of the wedding party that day. The City Council recently denied the claim.

Case #2 – Newport Beach, CA (2011)

Eucalyptus safety in spotlight after woman's death

By **DEEPA BHARATH** | dbharath@scng.com | Orange County Register
September 25, 2011 at 9:28 am

NEWPORT BEACH – Some consider the eucalyptus a “wonder tree” for its beauty and medicinal value, while others call it the “widow maker” because of its tendency to drop branches in the summer or simply collapse without warning – as one Irvine Avenue tree did on an unsuspecting motorist.

Eucalyptus trees, which are native to Australia, have been a hot topic of debate in the past week after a 10-ton blue gum eucalyptus [fell on top of 29-year-old Haeyoon Miller's car](#) on Sept. 15 and killed her.

Newport Beach officials reacted swiftly after Miller's death by [chopping down 104 eucalyptus trees](#) that lined a half-mile stretch of Irvine Avenue. Mike Pissani, deputy municipal operations director, says the city will come up with a plan to replace the trees along the roadway, although it most likely won't include as many as 100 trees. And none of those trees will be a eucalyptus.

He said the department is inspecting at least 300 other blue gum eucalyptus trees in the city to determine if they pose a hazard – particularly another group of 100 trees that line a bike path in the Westcliff area.

“We're only going after the blue gum variety because they are the ones that get big and heavy,” Pissani said. “Other varieties such as red gum and lemon gum are usually thinner and we don't see those as a hazard.”

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Examples of Eucalyptus Tree Safety Incidents in California

The eucalyptus trees on Irvine Avenue were planted at least 75 years ago in what is known as a "hedgerow," officials say. City officials followed an arborist's recommendation to remove all the trees in the hedgerow as opposed to a few because the hedgerow trees tend to have a common support system and just removing a few may make others unstable.

Eucalyptus trees were originally brought to the United States from Australia to build ships and railroad ties. They became widely used as landscape trees, however, after the builders realized the California blue gum variety split and curled, making it unfit for use in shipbuilding or railroad ties.

Throughout Orange County, the trees were planted as windbreaks between citrus groves and bean fields.

Some experts warn against the use of eucalyptus trees in landscaping. Others say they can be managed through proper maintenance.

Despite the deep roots eucalyptus trees have in California's history, their shallow roots make them unsuitable for any type of landscaping, especially on a public roadway where people and vehicles pass every day, said John Sevier, a certified arborist and eucalyptus expert who has testified in numerous personal injury and property damage cases involving eucalyptus trees.

Cities that choose to keep eucalyptus trees or plant them must have an aggressive maintenance program, he says.

"Without such a program, these trees are like ticking time bombs," says the now Texas-based Sevier, who specialized in eucalyptus trees from 1973 to 1994 when his business was based in San Diego.

He gives numerous examples of eucalyptus trees that dropped without warning. He testified in a case involving the death of a 4-year-old girl who was crushed to death by one of the trees at the San Diego Zoo in the 1980s.

"The zoo, after that incident, started to phase out eucalyptus trees and replace them with other more stable varieties such as oak and elm," he said. "The city (of Newport Beach) must act now before other lives are lost and more people are injured."

He says in his 39-year career as an arborist, he has found the blue gum eucalyptus more prone to falling than any other tree.

Eucalyptus trees that are in areas irrigated by sprinklers are even more hazardous because their roots have no incentive to go deep looking for water and their foliage and branches get large and heavy, Sevier says.

ATTACHMENT C
Examples of Eucalyptus Tree Safety Incidents in California

"When these trees fall, people exclaim it's an act of God that no one was killed," he says. "In my opinion, it's by the grace of God that more people haven't gotten killed by these trees."

On the other hand, cities such as Lake Forest take pride in their eucalyptus forests. The Woods, a community within the city, is almost submerged in a forest of these trees, said Luis Estevez, public works manger for the city.

"These trees add quite a bit of charm to the community," he said. "We're not planting any more eucalyptus trees, but we have no plans of taking them down or phasing them with other varieties of trees."

Lake Forest maintains its trees on a three- to four-year trim cycle, and trees in city parks are inspected daily, he said. Last year, an 80-foot eucalyptus tree collapsed in one of the city's parks, but that was due to a root fungus the city could not have discovered during its routine inspections, Estevez said. There were no injuries or property damage other than a broken park bench as a result of that incident, he said.

Blue gum trees make up a majority of Lake Forest's eucalyptus population, Estevez said.

Of the 36,000 trees in Newport Beach, only 300 now are blue gum eucalyptus. The city has had a rigorous pruning and maintenance schedule with the blue gum variety, Pissani said. The trees were pruned annually to ensure they did not get too big, he said.

A number of Newport Beach homes also have eucalyptus trees in their yards, but the city cannot police people's yards, Pissani said.

Chris Barnhill, curator of the Fullerton Arboretum, cautions cities against knee-jerk reactions and unnecessarily cutting down shade-giving mature trees.

"You have to evaluate each of these situations individually," he said. "It's very hard when people try to make blanket judgments about trees."

Eucalyptus trees are still "landscape-worthy" trees, Barnhill says. What happened in Newport Beach was extremely rare - as rare as someone getting struck by lightning, he says.

"The health and safety of the tree depend on how it's cared for," Barnhill says. "People don't need to be afraid of trees."

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Examples of Eucalyptus Tree Safety Incidents in California

Case #3 – San Diego, CA (2013)

Appeals court revives injured woman's lawsuit against San Diego over fallen tree limb

JULY 27, 2017, 1:40 PM

A San Diego appeals court on Thursday reversed a ruling that threw out a lawsuit by a woman who sued the city over injuries she suffered when a tree branch fell on her in Mission Bay Park.

The unanimous 3-0 ruling by the Fourth District Court of Appeal revives the 2013 suit by Lorin Toeppe. She was injured when a 10-foot-long eucalyptus branch split off from a tree near De Anza Cove boat launch in July 2013 and fell on her while she was walking with her boyfriend.

Toeppe, a physical therapist, suffered a crushed leg, fractured spine and lacerations to her face.

She sued, arguing the city was responsible because it had poorly maintained the tree. But in 2015 Superior Court Judge Eddie Sturgeon threw out the suit, agreeing with lawyers for the city that state law protects public entities from lawsuits over the conditions on trails and pathways.

The appellate court said that the issue was not the condition of the pathway — the concrete bike trail that snakes through the park — but the condition of the tree and how the city maintained it.

“In short, this is not a case about trail,” Justice Richard Huffman wrote. “It is about trees. Trees that were planted and maintained by the City. Trees that were not naturally occurring in Mission Bay Park. This is not a case where Toeppe was injured walking on a City trail in a naturally occurring forest. This is not a case where Toeppe had to walk on a trail to reach a dangerous condition or a dangerous condition was part of the design of the trail. Instead, Toeppe was injured when a tree branch struck her.”

In a statement Gerry Braun, chief of staff to City Attorney Mara Elliott, said the city isn't giving up. “The City will seek judicial review to ensure that San Diego and other public entities can continue to keep our beautiful parks and trails open to residents and visitors,” he said via email.

Toeppe's lawsuit was filed just months after after a jury awarded \$7.6 million to a Mission Hills man who was paralyzed when a palm tree toppled over and fell on him. She was represented by the same lawyers who won that award.

One of those lawyers, Daniel Balaban, welcomed the ruling because it allows Toeppe to press her case in court, and could benefit others.

“I think the (ruling) is significant because the general public will not be denied their day in court for dangerous conditions created by governmental entities that happen to occur near a trail,” said Balaban.

The city also argued it was also protected because Toeppe was standing on the path when she was struck, but the court said there was conflicting information on that fact, and the suit should not have been dismissed on those grounds either.

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Examples of Eucalyptus Tree Safety Incidents in California

LEGAL ALERTS | AUG 14, 2017

Trail Immunity Does Not Shield from Liability Simply Because an Injury Occurs on a Trail

Appellate Court Ruling Means Less Protections for California Public Agencies



A tree branch fell off of a eucalyptus tree and struck a woman while she was walking through Mission Bay Park in San Diego. She filed suit against the City of San Diego, alleging the City negligently maintained the eucalyptus tree, creating a dangerous condition of public property.

The City asserted it was immune from liability because the injury occurred while the plaintiff was on a trail. Last month, the Fourth District Court of Appeal rejected the City's argument in *Toeppe v. City of San Diego*, further narrowing the scope of trail immunity. The ruling means less protections for public agencies that open their land for public recreational purposes, particularly where the potentially dangerous conditions are not naturally occurring.

Under Government Code section 831.4, better known as "trail immunity," public entities are generally immune from liability for injuries caused by a condition of a trail used for recreational purposes. The purpose of trail immunity is to encourage public entities to allow their property to be used for such purposes.

In the trial court, the City argued trail immunity applied because the plaintiff was on a trail when she was struck by the tree branch. The trial court agreed with the City and entered judgment in its favor, finding the immunity should apply to the tree and its condition because of the location of the tree to the trail. Following the denial of her motion for new trial, the plaintiff appealed.

On appeal, the plaintiff asserted her claim was not based on a condition of the trail, but on the negligently maintained eucalyptus tree. She alleged the City managed and maintained both Mission Bay Park and the trees within it, and that for nearly 10 years, a City employee negligently trimmed the subject eucalyptus tree's branches. She argued the City created, and was aware of, the tree's dangerous condition and was therefore liable for the resulting harm. She

People



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Examples of Eucalyptus Tree Safety Incidents in California

further maintained there was a dispute as to whether she was on the trail when she was struck by the branch. The City countered that the dangerous condition at issue was connected to the trail the plaintiff was on when she was struck by the branch, making the immunity applicable.

The appellate court upheld the plaintiff's position, finding her claim did not give rise to trail immunity. In doing so, the court distinguished the trail immunity cases cited by the City, including *Amberger-Warren v. City of Piedmont* decided in 2006 and *Leyva v. Crockett & Co., Inc.* from earlier this year. The court noted that in this case, the dangerous condition was not a natural condition of the park and was entirely independent of the trail. There are many eucalyptus trees throughout the park and the trail does not provide the only access to those trees. The court explained that the plaintiff did not have to use the trail to find herself near the dangerous condition; she could have walked across the grass or sat at one of the picnic tables in the park. The court found the dangerous condition did not involve the trail at all, but rather a eucalyptus tree planted by the City with a base 25 feet from the edge of the trail. The court clarified that if the tree was negligently maintained, it was a dangerous condition regardless of the location of the subject trail, further narrowing the seemingly broad scope of trail immunity.

If you have any questions about how this opinion may impact your public agency, please contact the author of this Legal Alert listed to the right in the [Special Districts practice group](#) or your [BB&K attorney](#).

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Examples of Eucalyptus Tree Safety Incidents in California

Case #4 – Highland Park, CA (1990)

Death of Girl Prompts Review of Schoolyard Eucalyptus Trees

November 20, 1990 | LAURIE BECKLUND | TIMES STAFF WRITER



The towering old eucalyptus whose branch fell and killed a 4-year-old girl in a Highland Park schoolyard had not been pruned in recent memory and belonged to a species known for dropping large branches, tree experts and a school official said Monday.

A large branch from a nearby tree crashed to the ground about a month ago as a fifth-grade class looked on, according to a school official and a witness, but no one was injured.

As a result of the fatal accident at Buchanan Street School last week, the Los Angeles Unified School District has ordered an inspection and pruning program involving the estimated 750 eucalyptus trees throughout its school grounds, district legal adviser Ron Apperson said Monday.

Apperson acknowledged that the tree had last been pruned "a good time ago" and was scheduled for pruning in the next few months. However, he said it showed no signs of disease and denied that the tree was unsafe. "Such sudden limb drops are rare and difficult to predict," he said.

Several tree experts told The Times that it is difficult to predict which limbs will break. They said that the 80-foot-high ribbon gum variety that killed the preschool girl is one of several types of large, heavy eucalyptus trees prone to suddenly drop branches.

"That tree was dangerous," said John Sevier, who owns a San Diego firm called Tree Safety and frequently testifies in liability cases involving death or injury because of falling tree limbs. He examined the tree over the weekend and found evidence of the break in the other tree just a few yards away.

"We were just finishing PE and we saw it fall," said Sarah Salvador, 11, recalling the earlier incident.

She said her fifth-grade class, including the teacher, heard a loud crack across the playground and turned to see a limb crashing on the sidewalk just outside the playground. "It scared a few of us," she said.

Apperson confirmed that the other incident occurred, but said the breaks were the only ones at the school in years.

Carmen Munguia of Highland Park was killed Wednesday afternoon by a falling limb when she went to the school with her mother to pick up an older brother. It was a windless, sunny day, and witnesses said the branch cracked and fell for no apparent reason. The branch was about 35 feet long and 10 inches in diameter.

Such breakages are known to horticulturists as "sudden limb failure" or "summer branch drop." The causes are not fully understood.

ATTACHMENT C

Examples of Eucalyptus Tree Safety Incidents in California

Paradoxically, most such accidents happen on calm, sunny days in the seemingly safest of places--parks, playgrounds and golf courses--and the victims frequently are children, experts say. A 4-year-old girl was killed in 1983 when a eucalyptus branch just two inches thick fell on her at the entrance to the San Diego Zoo. A 10-year-old boy was killed at the Los Angeles County Arboretum in 1977 when a eucalyptus branch fell on him during a school field trip.

"For some reason, this often happens in hot, calm weather in the afternoon, or after such weather," said Richard Harris, a professor emeritus of landscape horticulture at UC Davis and one of the few acknowledged experts on the phenomenon.

"We believe it has something to do with moisture content. But we don't really understand it because the most common time for it to happen is in the afternoon when large branches can be many pounds lighter than in the morning, when they are filled with moisture."

Such accidents kill an average of one person a year in California and injure many more, according to Allison Berry, assistant professor of environmental agriculture at UC Davis, who is coordinating a three-year study of the problem.

More than 500 such limb failures have been recorded by certified arborists, or tree specialists, in California in the past three years, Berry said. At least a quarter of the incidents involve eucalyptus trees, partly because the trees are so common.

"But eucalyptus does seem to have a high incidence of branch failure in general," Berry said. "I must say, I always look up when I'm under a eucalyptus."

In Australia, Sevier said, some eucalyptus species are known as "widow makers."

While many of the hundreds of eucalyptus species in California are considered safe, some of the largest and most common are known for their limb breakage. Among them are the blue gum, red gum, sugar gum and ribbon gum.

The tree that killed the preschooler last week was probably planted about 40 years ago when horticulturists were less aware of its danger, according to Vance Tucker, a Cerritos tree expert who is a consultant to several local cities, golf courses and racecourses.

"Certain varieties (of eucalyptus) should never be planted in high-use areas," Tucker said. Asked if such trees should be planted in schoolyards, he said: "It's not something I would want to be responsible for."

Eucalyptus were imported from Australia in the mid-1800s to provide wood for railroad ties and trestles, and furniture for the growing population. But the wood warped, making it unusable. One of the largest and most common species, blue gum, was put into service making windbreaks in citrus groves. Many other varieties of eucalyptus are considered safe and well suited to California, experts said.

Careful maintenance over the life of a tree can reduce hazards, Tucker and others said. Poor pruning can create more hazards, they said. Inexperienced trimmers can mistakenly "hatrack" large eucalyptus, or cut the foliage so far back that the remaining trunk and limbs look like a hatrack. In such cases, experts warn, new foliage grows back so fast it is much weaker--and vastly more dangerous in most cases--than the old.

ATTACHMENT C

Examples of Eucalyptus Tree Safety Incidents in California

Case #5 – San Diego, CA (2016)

The city addresses tree safety concerns

Posted: Mar 10, 2016 12:50 PM PST

Updated: Mar 10, 2016 5:47 PM PST

Video Report By Shannon Handy, Reporter

CONNECT

SAN DIEGO (CBS 8) - The tree limb which injured a teacher Wednesday afternoon came from a eucalyptus tree. Several eucalyptus trees have been linked to injury or death and some experts say they are concerned. However, San Diego city officials say they monitor all trees to ensure people are safe.

RELATED: Teacher injured after being hit by falling tree branch in Scripps Ranch

Last month, a major cleanup effort was underway in San Diego after the city lost more than 500 trees during a severe wind storm. Though many different types of trees toppled over during the storm, one expert claims the majority were eucalyptus trees.

RELATED: Memorial for woman killed after tree falls on car in Pacific Beach

"These eucalyptus tree limb failures and trees falling over like a month ago, that's going to keep happening," said John Sevier, an arborist and former owner of San Diego based Eucalyptus Tree Service.

Sevier says the solution is to either get rid of all the eucalyptus trees in the county or prune and inspect them on a frequent basis.

"It breaks sometimes without warning at all. They just crack and break," said Sevier.

A eucalyptus tree was to blame for the death of a woman in Old Town in 2003, however, any tree can be hazardous, which is why San Diego city officials say they have crews out all the time doing preventative work.

"Prune them before they fail," said Jeremy Barrick, San Diego's Urban Forestry Manager.

Barrick was hired to oversee the maintenance of city trees and decide on new ones to plant.

"It comes down to monitoring the trees and tracking their trend and performance," said Barrick.

Barrick says it's also important for residents to look for signs of distress and report it as soon as possible.

Experts say it's best to stay away from trees during and after storms. If you do see a tree you're concerned about in the City of San Diego, call 619-527-7500.

ATTACHMENT C
Examples of Eucalyptus Tree Safety Incidents in California

Case #6 – Palo Alto, CA (2010)

Uploaded: Sun, Feb 28, 2010, 7:24 pm

'Widow maker' tree limb nearly hits Crescent Park resident

Neighbors concerned about eucalyptus trees near Pardee Park playground

by Sue Dremann / Palo Alto Online

A large tree limb from an aged eucalyptus tree nearly struck a Crescent Park resident and has sparked a debate about the safety of the aged trees at Eleanor Pardee Park.

Ron Eadie was taking one of his seven daily walks around the neighborhood park at Channing Avenue and Center Drive when a large limb crashed down on the sidewalk, missing him by inches, he said.

"I heard a loud crack. It sounded like a rifle shot. I ducked. Two limbs pancaked down on the sidewalk on Channing just 20 paces from where I was standing. The heavy butt ends of the branches were 5 1/2 to 6 inches in diameter. They thudded right where my head would be. You know what they call those trees, don't you? 'Widow makers,'" he said.

The Jan. 18 incident has neighbors concerned whether the 50- to 100-year-old trees should be removed. The 16 trees, which city officials say are 120 to 150 feet tall, surround a children's play structure area and canopy two sidewalks around the park's perimeter.

Worried residents and mothers of small children have taken up the issue with City of Palo Alto staff.

Longtime residents said the trees have been part of the landscape since Eleanor Pardee lived in a ramshackle house on the property in the early 1950s, well before it became a park.

But some residents said it's time to reconsider if the trees are safe, given their height and the area's high density of foot traffic.

Amy Kacher, a mother whose three young children play at the park, said a 36-foot limb fell on the path to the entry gate to the playground on the Channing side on Friday morning. She could not budge the limb, she said.



Photo by Amy Kacher.



ATTACHMENT C
Examples of Eucalyptus Tree Safety Incidents in California

"We're not trying to be over-dramatic. They're beautiful. But having them there is not logical," she said.

Steve Bisset, who was born and raised in Australia, said on the neighborhood e-mail that he was camping under a eucalyptus tree in Australia in 1965 when another eucalyptus fell over "with a deafening crash about 20 feet away, under windless conditions. More recently I was on the Stanford campus when a giant eucalyptus branch crashed to the ground nearby, again in windless conditions."

Reached by phone, he said he didn't necessarily want the trees removed.

"The Pardee Park eucalyptus are among the most beautiful of trees," he said.

But the danger to life is real, he said.

"Many arborists in Australia are experts in identifying which branches are dangerous. I would hope someone who has expert knowledge that is specific with eucalypts could identify and remove the branches that are in danger of falling. It would be better to keep the trees than not," he said.

But if that can't be done with certainty, the trees should be chopped down, since the area is a park where children play, he said.

City officials met with residents at the park on Wednesday, Feb. 24, and another meeting will be scheduled soon, according to Eric Krebs, city arborist.

Krebs said as many as six trees are being considered for removal. He has been watching the trees for sulfur fungus, a disease that causes rot in certain trees.

Pardee Park has two species of eucalyptus -- *Eucalyptus globulus* or blue gum and *Eucalyptus viminalis* or white gum, he said. The trees are native to Australia.

"Eucalyptus has very heavy wood and has very strong wood. Without defects, it's a pretty strong tree. They get a bad name because they do drop limbs," he said.

The label "widow maker" is a bit unfair to the eucalyptus, Krebs said. Quite a few other tree species also habitually drop large limbs, he said, especially during "summer limb drop," when trees try to reduce water loss from the trunk during drier periods. The drops occur mostly in windless or light-wind conditions between noon and 4 p.m., according to arborists' reports.

ATTACHMENT C
Examples of Eucalyptus Tree Safety Incidents in California

Case #7 – U.C. Berkeley, CA (2010)

Hazardous eucalyptus trees slated for removal

By **Christine Shaff**, Real estate | MARCH 22, 2010



Today (Monday, March 22) work crews will begin removing seven trees from the large eucalyptus grove near the west entrance to campus. After careful assessment by professional arborists, it has been determined that these trees present a significant public safety hazard due to their failing health and weakened root structures.

Campus landscape professionals, aided by outside registered consulting arborists, have been monitoring the health of the eucalyptus grove since 2002. They have determined that due to root decay, these trees are in danger of falling on adjacent walkways, roads or campus buildings. The trees are being removed as a matter of public safety.

The trees slated for removal will not be immediately replaced in order to allow campus landscape professionals to fully analyze the condition of the soil and its ability to support new trees. The area will not be used as a site for future buildings, as it is part of the Grinnell Natural Area which has long been designated and preserved as open space. For more detail, please see university's **Long Range Development Plan** and other campus planning documents noted below.

Campus landscape professionals will continue to monitor the grove for weakened trees. Any additional eucalyptus trees that present a hazard to public safety may also be removed.

The eucalyptus grove was originally planted by campus staff in 1877 as a wind break for a running track located in the area currently occupied by the Life Sciences Addition building.

ATTACHMENT C
Examples of Eucalyptus Tree Safety Incidents in California

Case #8 – Golden Gate Park, San Francisco, CA (2013)

SFGATE <https://www.sfgate.com/bayarea/article/Golden-Gate-Park-s-aging-trees-to-fall-4298277.php>

Golden Gate Park's aging trees to fall

GOLDEN GATE PARK Many hazardous old trees will be taken down in move to safeguard roads, paths

By **Will Kane** Updated 8:35 am, Friday, February 22, 2013

The hulking trees were planted nearly 100 years ago, before **Alexander Graham Bell** called San Francisco for the first time from his New York office. Before City Hall was opened a second time. Before blueprints for the **Golden Gate Bridge** were even drawn up.

But over the next few months, city park workers will fell almost 150 **Monterey** pine, cypress and eucalyptus trees in Golden Gate Park. The trees, most of which are 80 to 100 years old, are unhealthy, dead or a risk to the 13 million people who visit the 1,017-acre park each year, parks officials said.

"The focus is trees that would possibly go over the road or a main pathway" if they toppled over, said **Larry Costello**, a tree consultant hired by the city's Recreation and Park Department. "Wherever trees and people are in close proximity, there's a reason to be concerned."

Falling trees or tree limbs on city park property have damaged 61 **cars** since 2008. Three people were injured in 2012 when a tree branch fell on them. A fourth person was knocked in the head in 2009, and a woman died in 2008 when a Stern Grove tree branch fell on her car, crushing her as she was loading her dog into her Subaru.

Since 2011, city contractors have examined 3,000 of the park's trees and found that almost 360 must be cut down. More than 200 already have been sent to the chipper, and all of them will be replaced, said **Melinda Stockmann**, a park department project manager. The entire process for analyzing and removing the park's trees is about \$1.7 million.

Some of the trees are clearly dead or dying. They bear naked, brown branches and lean far to one side.

"They're going to say, the light is better over here, so I am going to grow over here," Costello said, pointing to a crooked Monterey pine tagged for removal. "But once they lean too far over, they aren't stable."

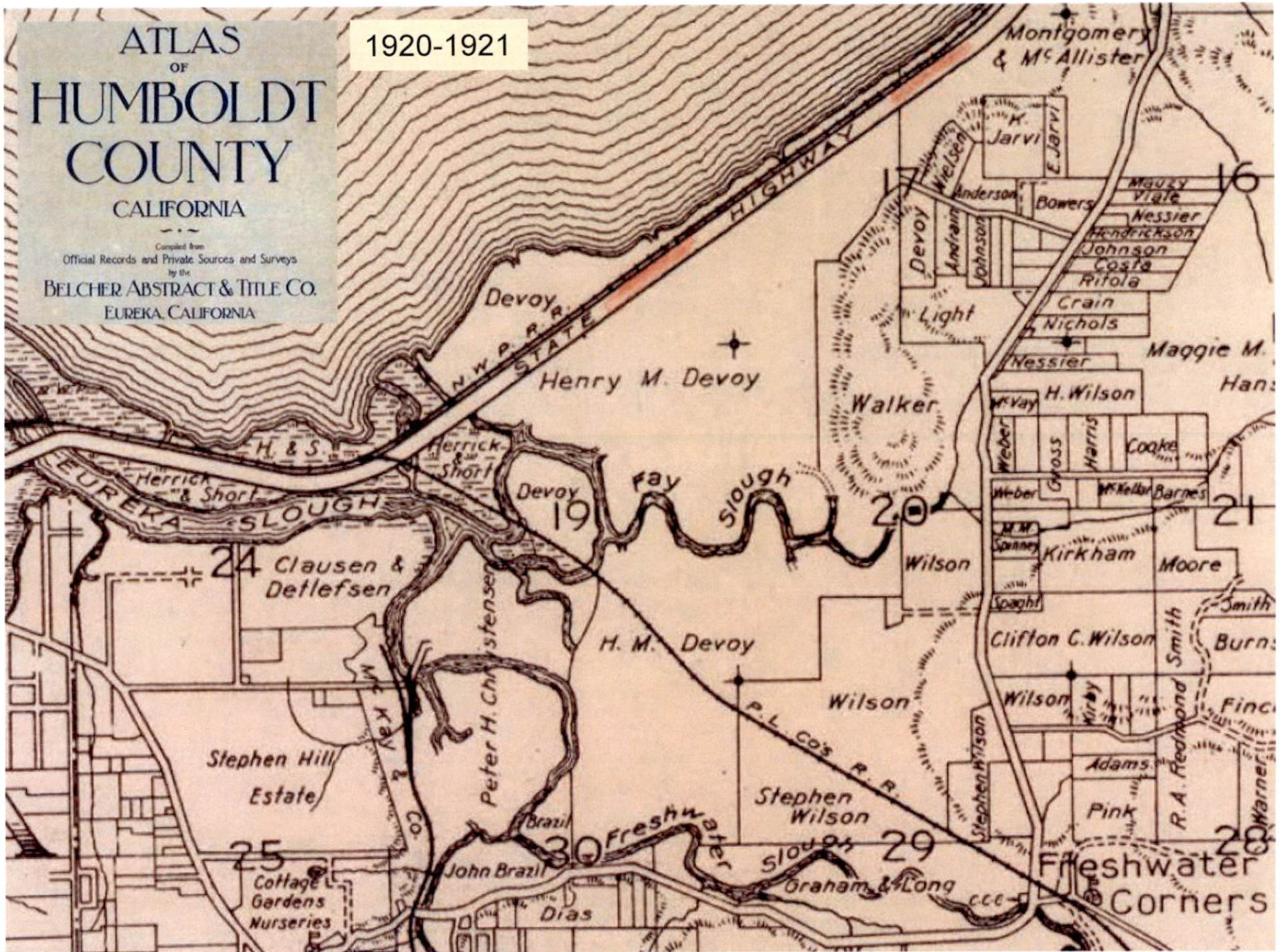
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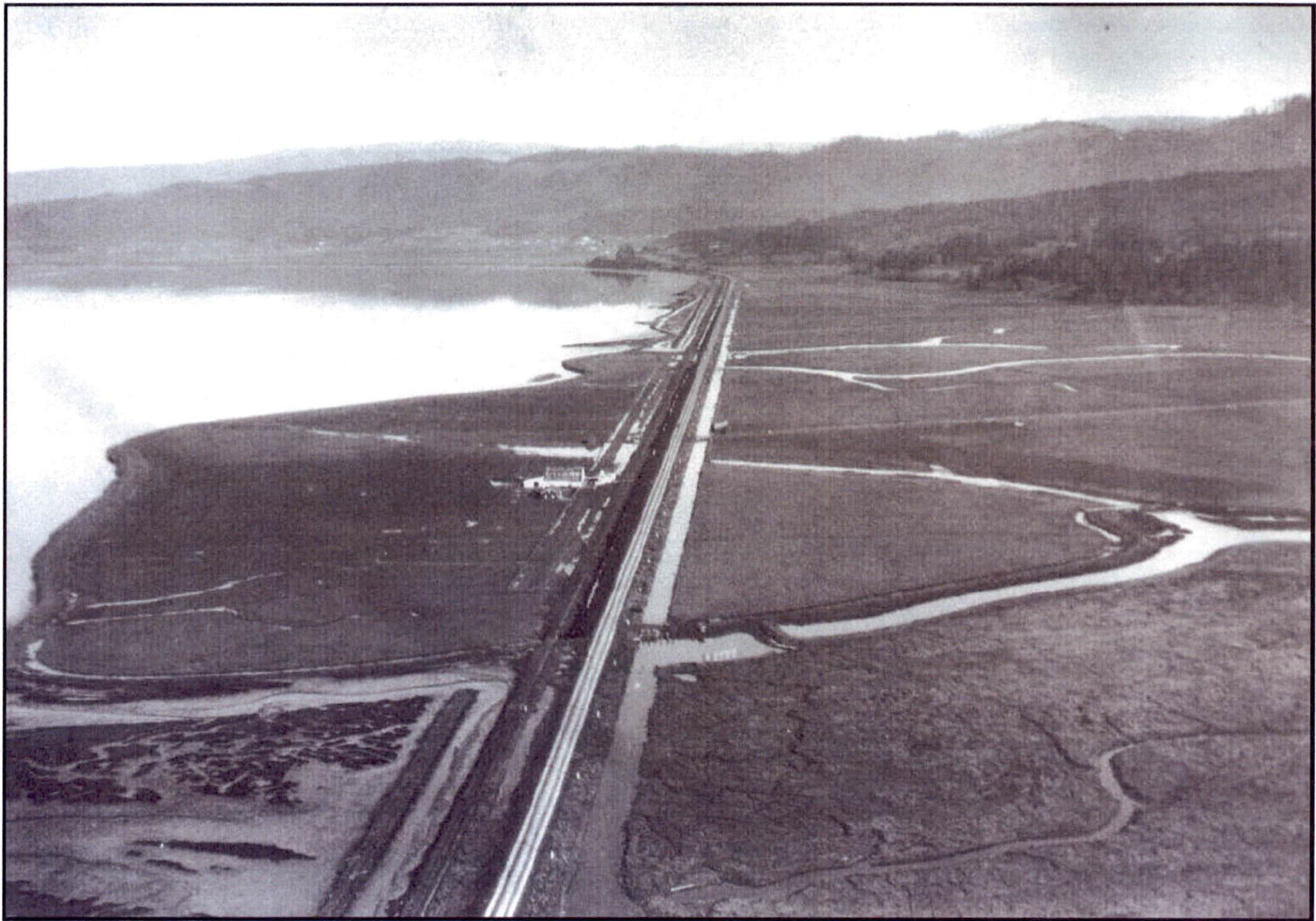
Eucalyptus Area Maps and Photographs

ATLAS
OF
HUMBOLDT
COUNTY
CALIFORNIA

Compiled from
Official Records and Private Sources and Surveys
by the
BELCHER ABSTRACT & TITLE CO.
EUREKA, CALIFORNIA

1920-1921





P-2: Aerial photo of original Murray Field by Kenny Kilburn, C. 1927-1929.



I-NUM-1-N-#16 EUCALYPTUS TREES CUT TO GROUND
AFTER KILLING FROST IN 1933



P-4: Aerial photo of original Murray Field by Pierce Flying Service, 1937.



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1965



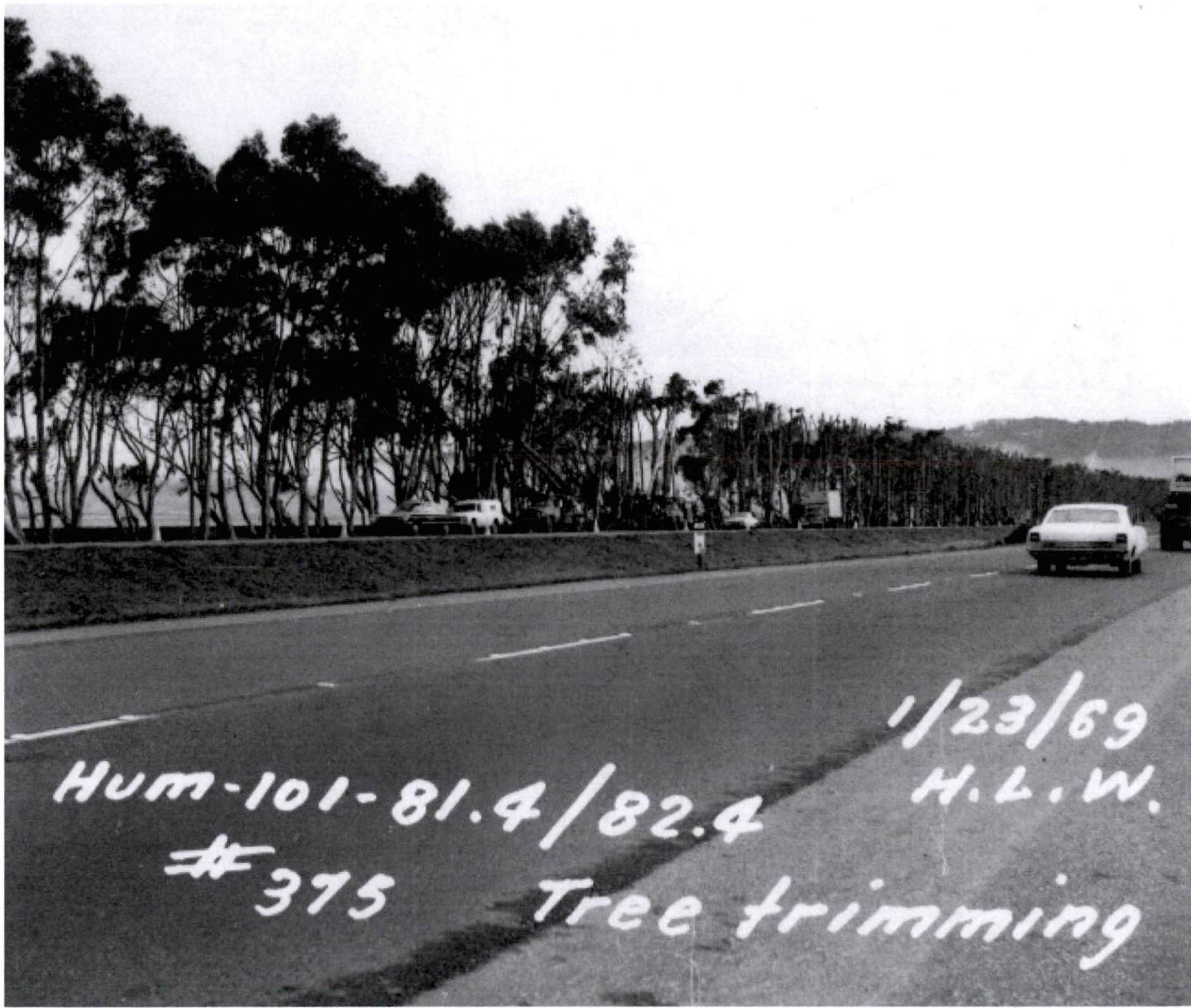
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Tree trimming

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Tree trimming

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H.L.W.



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Tree trimming



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Tree Trimming
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