

USDA Forest Service

URBAN FOREST CONNECTIONS

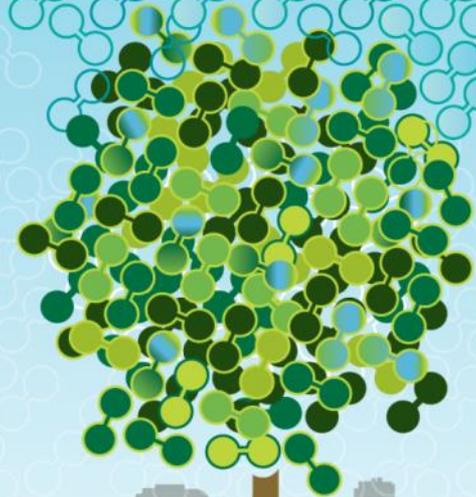
webinar series

Second Wednesdays | 1:00 – 2:00 pm ET

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TREE RISK ASSESSMENT FOR MUNICIPALITIES



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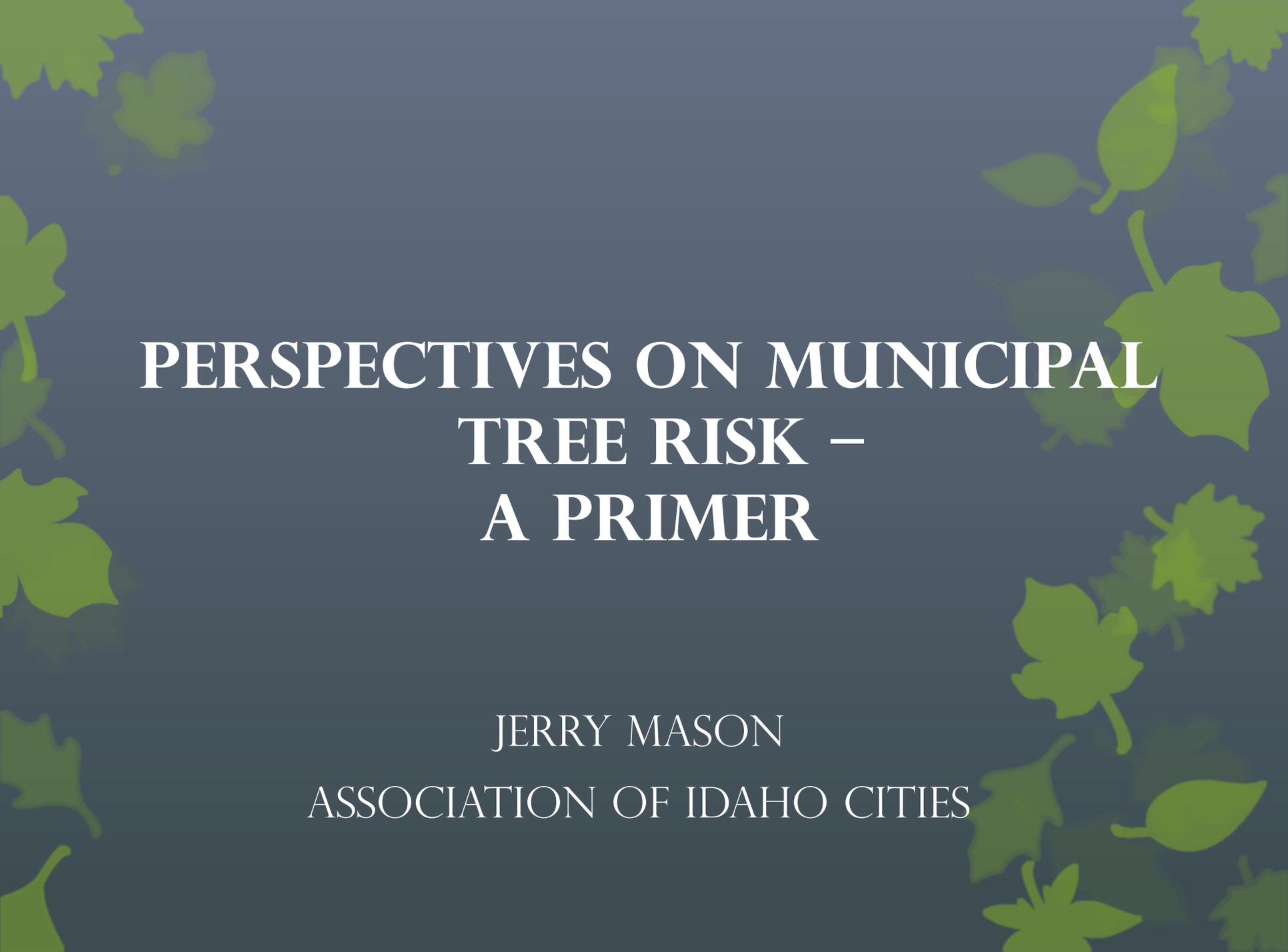
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PERSPECTIVES ON MUNICIPAL TREE RISK – A PRIMER

JERRY MASON
ASSOCIATION OF IDAHO CITIES

PRACTICAL IMPORTANCE OF TREE RISK

- Presence of trees in urban environment is a primary community asset
- Physics of trees can be a challenge in a developed environment – not just falling trees or branches
- Mass is unequalled by all but constructed buildings
- Movement can harm items with less mass
- Growth can displace facilities we have built

KEY TREE-RELATED EXPOSURES

- Falling parts or whole trees – possible injuries to persons and property
- Uplifting improvements in the way of tree roots
- Intrusion into utility systems by roots and branches
- Obstruction of traffic signs and control devices by overgrown branches – obstacle in r/w

FOUNDATIONS OF RISK

- Risk defined: possibility of suffering loss or harm
- Sovereign immunity – imported from English common law
- Balance of powers – keeping courts from being final source of all government powers
- 1960's and 1970's – Legislatures began to authorize suits against governments
- Limits/immunities became everyday fare in past 40-50 years – except WA

RISK EXPOSURE

- Avoiding negligent conduct
- Negligence defined: Failing to meet a reasonable standard of care
- Elements of negligence:
 - Duty
 - Breach of duty
 - Causation
 - Resulting Damages

FROM WHENCE DUTY (RESPONSIBILITY)?

- Establishing a standard of care – sources
- Most common source – directive legislation
- Proprietary operations – standard of operation
- Municipal ordinances
- Court precedent – from all possible sources – sometimes other levels of government – sometimes from other states

MAKING A CASE FOR NEGLIGENCE

- Breach of Duty
 - Must know the standard of care (this webinar)
 - Absence of training can be a breach in itself (conscious ignorance)
 - Are responsibilities affirmative or passive ? (must you inspect for hazards or remedy when identified?)
- Causation
 - Direct by your actions
 - Indirect by your failure to act
 - Can be shared by others – and apportioned
- Damages – usually measured in economic terms

POSSIBLE DEFENSES

- Public agency met the standard of care
- Statutory immunities may protect against liability – i.e., discretionary function
- Causation by others
- Be aware of public sector differences – less so in WA
- Adequate training – not foreseeable

LIABILITY PRINCIPLES IN ACTION

- Standing tree fell across utility lines, downing them, person tried to move branches and was electrocuted – WA
- ***Estate of Connelly v. Snohomish County PUD #1*** (Wash. App. 12-10-2012 - unpublished)
- Proprietary risk – failure to inspect all trees in corridor for vulnerability
- Foliage from plum tree alleged to block view of stop sign – resulting traffic crash
- ***Simons v. City of Portland*** (132 Or. App. 74 (1994))
- Alleged failure to keep trees trimmed to prevent obscuring traffic sign

ADDITIONAL EXAMPLES

- Trees located at base of sledding hill where fatal collision occurred
- *University of Alaska v. Shanti* (835 P. 2d. 1225, Alaska, 1992)
- Trees as an obstruction where recreational activities are conducted
- Birch trees next to sidewalk uplifted slab leading to tripping accident
- *Rosengren v. City of Seattle* (149 Wn. App. 565 (2009))
- The power of tree roots to create hazards for pedestrians

The background is a solid blue color with various green leaf silhouettes scattered around the edges. The leaves are in different shapes and sizes, some with prominent veins, and they are positioned primarily along the left and right sides of the frame.

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