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6 Attorneys for Plaintiff
7 CITY OF ALBANY, a charter city

ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
05/04/2022 at 12:25:23 PM
By: Xian-xii Bowie, Deputy Clerk

EXEMPT FROM FILING FEES PURSUANT
TO GOVERNMENT CODE SECTION 6103

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA

10
11 CITY OF ALBANY, a charter city,
12 Plaintiff,

13 v.

14 ALBANY LIONS CLUB, LIONS
15 INTERNATIONAL, a California Non-Profit
Corporation; DOES 1-10, inclusive; and ALL
16 PERSONS UNKNOWN CLAIMING AN
INTEREST IN THE PROPERTY,

17 Defendants.
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Case No. **22CV010822**

COMPLAINT IN EMINENT DOMAIN

[ASSESSOR PARCEL NOS. 066-2754-14-50, 066-2754-40-3]

[Filed concurrently with:

1. Notice of Deposit; Declaration of S. Delahooke;
2. Notice of Motion and Motion for Order for Prejudgment Possession;
3. Declaration of J. Bond in Support of Motion for Order for Prejudgment Possession;
4. [Proposed] Order for Prejudgment Possession.]

1 Plaintiff alleges:

2 1. At all times mentioned here, plaintiff City of Albany (“City”) was, and now is, a
3 public agency organized and existing under the laws of the State of California, and is, pursuant to
4 Government Code § 37350 *et seq.*, vested by law with the authority to exercise the power of eminent
5 domain to acquire private property for the public use.

6 2. The City is the fee owner of the property at issue. Defendant, Albany Lions Club,
7 Lions International, a California Non-Profit Corporation (“Lions Club”), is the holder of an
8 easement interest in a portion of the property.

9 3. The City seeks to acquire, by eminent domain, the easement interest currently in the
10 possession of defendant, regarding ingress and egress for maintenance of an existing cross, as well
11 as removal of the cross, over a portion of Albany Hill Park, located on the west side of the 700
12 block of Taft Street, and identified as Assessor Parcel Nos. 066-2754-14-50 and 066-2754-40-3
13 (the “Property”), which is necessary for public use in the City of Albany, Alameda County,
14 California.

15 3. The Property is described and depicted in the attached Exhibit A, incorporated in
16 full herein.

17 4. On or about April 4, 2022, after a noticed hearing, and by at least a two-thirds vote
18 of all members of its governing Board, the City adopted Resolution No. 2022-32, a true and correct
19 copy of the authenticated original, which is attached hereto and made a part hereof as Exhibit B,
20 declaring that the public interest and necessity require the acquisition, by eminent domain
21 proceedings, of the easement interest described herein, for ingress and egress, as well as the removal
22 of a cross situated on the Property, and for such other uses are permitted by Government Code §
23 37350 *et seq.* and Code of Civil Procedure §§ 1240.110 and 1240.120. The City found and
24 determined in said resolution that:

- 25 (a) The public interest and necessity require the proposed Project;
- 26 (b) The proposed project is planned or located in a manner that will be most compatible
27 with the greatest public good and the least private injury;
- 28 (c) The acquisition of the easement interest described in Exhibit A is necessary for the

1 Project;

2 (d) The offer to purchase the Property as required by section 7267.2 of the Government
3 Code was made; and

4 (e) The public use for the project is a more necessary use than the use for which the
5 Property is appropriated.

6 5. The Property to be acquired may be subject to easements and rights of way
7 appropriated to existing public uses. The legal descriptions of those easements and rights of way
8 are on file with the City and describe the general location and extent of the easements and rights of
9 way with sufficient detail for reasonable identification. The herein described use or uses will not
10 unreasonably interfere with or impair the continuance of the public use as it now exists or may
11 reasonably be expected to exist in the future. The City is authorized to acquire the Property subject
12 to such existing public uses pursuant to section 1240.510 of the Code of Civil Procedure.

13 6. The Property to be acquired may be subject to easements and rights of way
14 appropriated to existing public uses. The legal descriptions of those easements and rights of way
15 are on file with the City and describe the general location and extent of the easements and rights of
16 way with sufficient detail for reasonable identification. The herein described use or uses of the
17 Property are more necessary than said existing public uses. The City is authorized to acquire the
18 Property appropriated to such existing public uses pursuant to section 1240.610 of the Code of Civil
19 Procedure.

20 7. The named defendant, Albany Lions Club, Lions International, a California Non-
21 Profit Corporation, is the easement holder of a portion of the Property sought to be acquired, which
22 is owned in fee by the City. No other parties are known the City to have an interest in the easement
23 sought to be acquired.

24 8. Defendants Does 1 through 10, inclusive, have, or claim to have, an interest in the
25 Property, the exact nature of which is unknown to the City. The true names or capacities, whether
26 individual, corporate, associate, or otherwise, of Does 1 through 10, are unknown to the City, who
27 therefore sues these defendants by such fictitious names. The City will request leave of court to
28 change these designations if the identities are ascertained.

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9. The City also names as defendants all parties unknown claiming an interest in the Property.

WHEREFORE, the City prays as follows that:

1. The Property interest herein described be condemned to the City for the purposes set forth herein;
 2. Defendants, and each of them, including all parties unknown and claiming an interest in the Property, be directed to answer and assert any claims they, or any of them, may have in the Property described herein;
 3. Just compensation be ascertained for the taking and the amount of the award for the Property be first determined between plaintiff and all defendants claiming any interest therein;
 4. All liens and encumbrances against the Property be deducted from the judgment;
- and
5. For such other and further relief as the Court may deem just and proper.

Dated: May 4, 2022

BEST BEST & KRIEGER LLP


By: 
SCOTT W. DITFURTH
MEGAN BESHAI
Attorneys for Plaintiff,
CITY OF ALBANY, a charter city

EXHIBIT A

EXHIBIT "A"
LEGAL DESCRIPTION
RECORDED GRANT DEED
AERIAL MAPS

Lots 1-18, Block 8, Map 00024, Page 70, Plat of Cerrito Hill, City of Albany, County of Alameda, State of California.

APN: 66-2754-14-5, 40-3

RECORDED EASEMENT

RECORDING REQUESTED BY

OK- 220770-B
TITLE INS. & TRUST COMPANY
AND WHEN RECEIVED MAIL TO

ALBANY LIONS CLUB
LIONS INTERNATIONAL
c/o Mr. Hubert F. Call
823 San Pablo Ave.
Albany, California

RECORDED AT REQUEST OF
TITLE INSURANCE & TRUST CO.
M. _____ MIA. FEE \$4.00 P.M.

RE: 3497 IM:152

AUG 24 1973

73-116351

OFFICIAL RECORDS OF
ALAMEDA COUNTY, CALIFORNIA
JACK G. BLUE
County Recorder

SPACE ABOVE THIS LINE FOR RECORDERS USE

SAHE AS ABOVE

DOCUMENTARY TRANSFER TAX \$ 1000.00
COMPUTED ON FULL VALUE OF PROPERTY CONVEYED.
DE COMPUTED ON FULL VALUE OF PROPERTY CONVEYED.
RECORDED IN BOOK 24 PAGE 70
Hubert F. Call
Ruth L. Call

EASEMENT
Grant Deed

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
HUBERT F. CALL AND RUTH L. CALL, HIS WIFE

hereby GRANT(S) to
ALBANY LIONS CLUB, LIONS INTERNATIONAL, A California Non-Profit
Corporation
the following described real property in the CITY OF ALBANY
County of ALAMEDA, State of California:

AN EASEMENT FOR INGRESS AND EGRESS TO MAINTAIN THE EXISTING CROSS
STANDING ON A PORTION OF THE FOLLOWING DESCRIBED PREMISES:

Lots 1 through 15, in Block 8, as shown on a plat of Cerrito Hill,
Alameda County, California, Filed in the office of the Recorder of
said county on May 13, 1909, in Map Book 24, Page 70.

Excepting therefrom that portion thereof conveyed to the City of
Albany, A Municipal Corporation, by Deed dated August 29, 1960,
Recorded January 4, 1961, under Recorder's Series No. AS/637,
Alameda County Records.

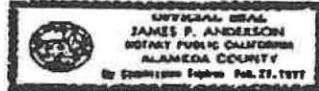
Dated August 17, 1973

Hubert F. Call
Ruth L. Call

STATE OF CALIFORNIA }
COUNTY OF Alameda } ss.
on August 17, 1973, before me, the undersigned, a Notary Public in and for said State, personally appeared
Hubert F. Call and
Ruth L. Call

known to me to be the persons whose names are subscribed to the within
instrument and acknowledged that they executed the same.
WITNESS my hand and official seal.

Signature James P. Anderson
Name (Typed or Printed) James P. Anderson



Title Order No. _____ Enclosure or Loan No. _____

MAIL TAX STATEMENTS AS DIRECTED ABOVE

AERIAL VIEW



AERIAL VIEW

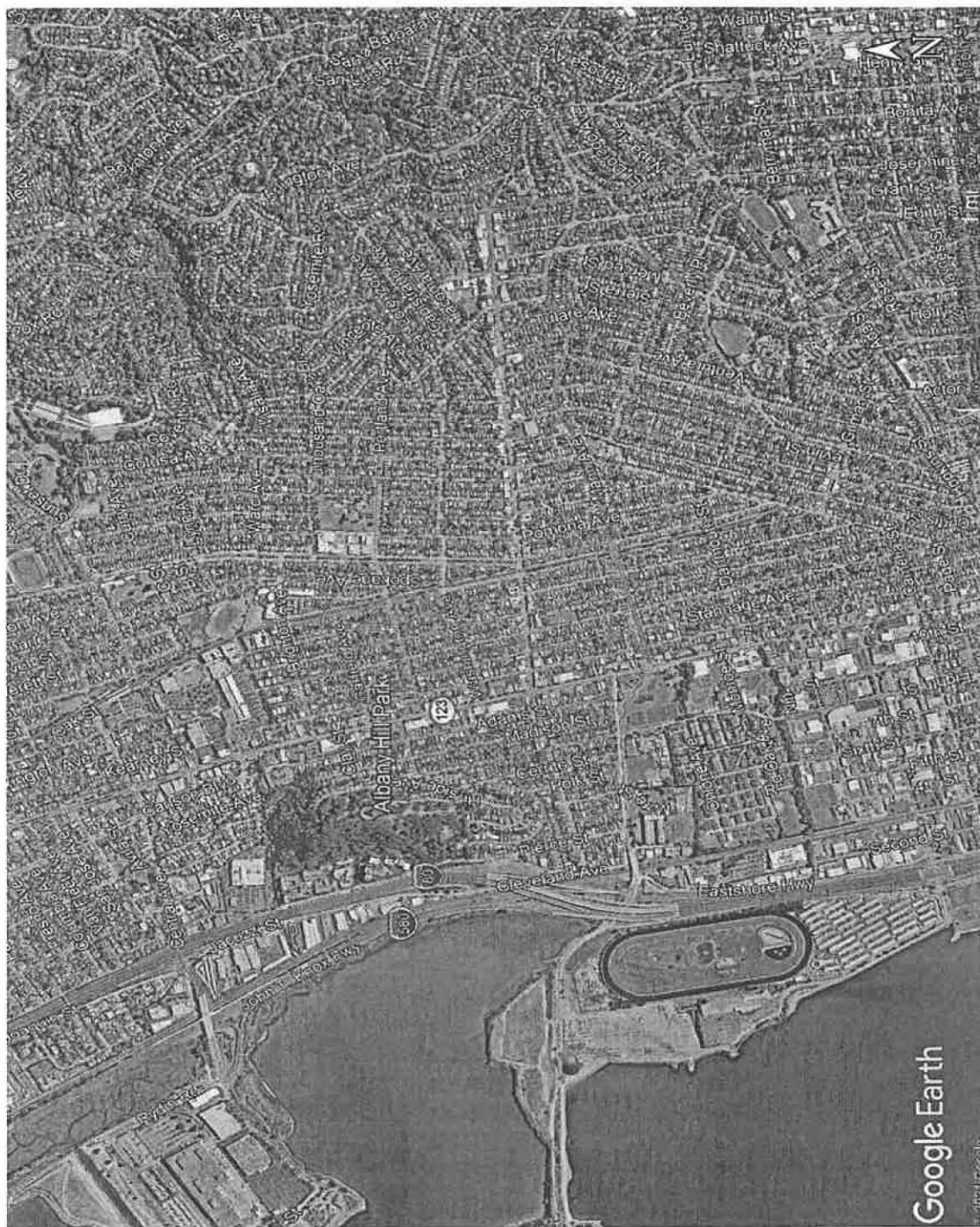


EXHIBIT B

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RESOLUTION NO. 2022-32

A RESOLUTION OF NECESSITY BY THE CITY COUNCIL OF THE CITY OF ALBANY, CALIFORNIA, DECLARING THAT THE ACQUISITION OF THE EASEMENT INTEREST FOR THE EXISTING CROSS, AS WELL AS REMOVAL OF THE CROSS ITSELF, ON A PORTION OF ALBANY HILL PARK LOCATED ON THE WEST SIDE OF THE 700 BLOCK OF TAFT STREET, IDENTIFIED AS ASSESSOR PARCEL NOS. 066-2754-14-5, 066-2754-40-3, BY EMINENT DOMAIN, IS NECESSARY FOR ELIMINATION OF A POTENTIAL ESTABLISHMENT CLAUSE VIOLATION AND TO PROVIDE FOR AN UNENCUMBERED PUBLIC PARK IN THE CITY OF ALBANY, ALAMEDA COUNTY, CALIFORNIA

WHEREAS, the City of Albany (the “City”) proposes to acquire the easement interest regarding ingress and egress for maintenance of an existing cross, as well as removal of the cross itself, on a portion of Albany Hill Park, more particularly described as Assessor Parcel Nos. 066-2754-14-5, 066-2754-40-3, in order for the elimination of a potential establishment clause violation and to provide for an unencumbered public park in the City of Albany, Alameda County, California, pursuant to the authority granted to it by section 37350.5 of the California Government Code and sections 1240.010, 1240.020 and 1240.030 of the California Code of Civil Procedure; and

WHEREAS, pursuant to section 1245.235 of the California Code of Civil Procedure, the City scheduled a public hearing for Monday, April 4, 2022, at 7:00 p.m., to be held via Zoom conference, and gave to each affected person, or entity identified as having a possessory interest in the existing easement, notice and a reasonable opportunity to appear at said hearing and be heard on the matters referred to in section 1240.030 of the California Code of Civil Procedure; and

WHEREAS, said hearing was held by the City and each person whose property interest is to be acquired by eminent domain was afforded an opportunity to be heard on said matters; and

WHEREAS, the City may now adopt a Resolution of Necessity pursuant to section 1240.040 of the California Code of Civil Procedure.

1
2 **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALBANY, CALIFORNIA,**
3 **DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:**

4
5 **SECTION 1.** The recitals above and true and correct and are hereby adopted as findings by the
6 City Council.

7
8 **SECTION 2.** The City Council finds that this Resolution is not subject to the requirements of the
9 California Environmental Quality Act (“CEQA”) for the following reasons:

- 10 A. The Resolution is not a “project” within the meaning of Section 15378 of the State
11 CEQA Guidelines. (See State CEQA Guidelines, § 1560, subd. (c)(3) [“An activity
12 is not subject to CEQA if...[t]he activity is not a project as defined in Section
13 15378”]. Here, the Resolution is not a “project” within the meaning of Section
14 15378 because the Resolution has no potential “for resulting in a direct physical
15 change in the environment, or a reasonably foreseeable indirect physical change in
16 the environment,” as further discussed below. (State CEQA Guidelines, § 15738.)
- 17 B. In the alternative, and if a project, this Resolution is exempt under State CEQA
18 Guidelines section 15061(b)(3), the common sense exemption, because it can be
19 seen with certainty that there is no possibility that the activity in question may have
20 a significant effect on the environment.

21 Notably, this Resolution will not result in any construction or development. Rather, this Resolution
22 simply: (1) acquires the easement interest currently in favor of the Albany Lions Club, Lions
23 International for ingress and egress to maintain an existing cross standing on a portion of the
24 property; and (2) removes a standing cross from the property. For these reasons, the Resolution
25 has no potential to result in a direct, or unforeseeable indirect, physical change in the environment,
26 and it can be seen with certainty that there is no possibility that the activity in question may have a
27 significant effect on the environment.

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3 **SECTION 3. Compliance with California Code of Civil Procedure and California**

4 **Environmental Quality Act.** There has been compliance by the City with the requirements of
5 section 1245.235 of the California Code of Civil Procedure regarding notice and hearing and with
6 the California Environmental Quality Act.

7
8 **SECTION 4. Public Use.** The public use for which the real property is required to be acquired by
9 the City of Albany for the elimination of a potential establishment clause violation and to provide
10 for an unencumbered public park in the City of Albany, Alameda County, California. Section
11 37350.5 of the California Government Code authorizes the City to acquire by eminent domain real
12 property necessary for such purposes.

13
14 **SECTION 5. Description of Property.** Attached and marked as **Exhibit A** is the legal description
15 and assessor map of the interest to be acquired by the City, which describes the general location
16 and extent of the property to be acquired with sufficient detail for reasonable identification.

17
18 **SECTION 6. Findings.** The City hereby finds and determines each of the following:

- 19 (a) The public interest and necessity require the proposed project;
- 20 (b) The proposed project is planned or located in the manner that will be most
21 compatible with the greatest public good and least private injury;
- 22 (c) The real property described in **Exhibit A** is necessary for the proposed project;
- 23 (d) The offers required by section 7267.2 of the California Government Code were
24 made; and
- 25 (e) The public use for this property is a more necessary use than the use for which the
26 property is appropriated.
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2 **SECTION 7. Use Not Unreasonably Interfering with Existing Public Use.** Some or all of the
3 underlying real property to be acquired is owned by the City as a public park. The legal descriptions
4 regarding this ownership is on file with the City and describes the general location and extent of
5 the public park sufficient detail for reasonable identification. In the event the herein described use
6 or uses will not unreasonably interfere with or impair the continuance of the public use as it now
7 exists or may reasonably be expected to exist in the future, counsel for the City is authorized to
8 acquire the real property subject to such existing public use(s) pursuant to section 1240.510 of the
9 California Code of Civil Procedure.

10
11 **SECTION 8. More Necessary Public Use.** Some or all of the underlying real property to be
12 acquired is owned by the City as a public park for existing public uses. The acquisition described
13 herein is not believed to interfere with or impair the existing public use of the property. To the
14 extent that the herein described use or uses will unreasonably interfere with or impair the
15 continuance of the public use as it now exists or may reasonably be expected to exist in the future,
16 the City finds and determines that the herein described use or uses are more necessary than said
17 existing public use. Legal Counsel for the City is authorized to acquire the real property
18 appropriated to such existing public use(s) pursuant to section 1240.610 of the California Code of
19 Civil Procedure. Staff is further authorized to make such improvements to the real property being
20 acquired that it determines is reasonably necessary to mitigate any adverse impact upon the existing
21 public use.

22
23 **SECTION 9. Further Activities.** Legal Counsel for the City is hereby authorized to file legal
24 proceedings necessary to acquire the hereinabove described real property interest in the name of
25 and on behalf of the City by eminent domain, and counsel is authorized to institute and prosecute
26 such legal proceedings as may be required in connection therewith. Legal counsel is further
27 authorized to take such steps as may be authorized and required by law, and to make such security

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deposits as may be required by order of court, to permit the City to take possession of and use said real property at the earliest possible time. Legal Counsel is further authorized to correct any errors or to make or agree to non-material changes in the legal description of the real property that are deemed necessary for the conduct of the condemnation action or other proceedings or transaction required to acquire the subject real property. Legal Counsel is further authorized to reduce or modify the extent of the interests or property to be acquired so as to reduce the compensation payable in the action where such change would not substantially impair the reason for what the real property is being acquired.

SECTION 10. This Resolution supersedes all prior resolutions to the extent that such resolutions conflict with this Resolution

SECTION 11. Effective Date. This Resolution shall take effect upon adoption.

PASSED AND ADOPTED by the City Council of the City of Albany at its meeting on the 4th day of April, 2022, by the following vote:

- AYES: Council Members Gary, McQuaid, Nason, Tiedemann and Mayor Jordan**
- NOES: none**
- ABSENT: none**
- ABSTAINED: none**


PRESTON JORDAN, MAYOR

EXHIBIT "A"
LEGAL DESCRIPTION
RECORDED GRANT DEED
AERIAL MAPS

Lots 1-18, Block 8, Map 00024, Page 70, Plat of Cerrito Hill, City of Albany, County of Alameda, State of California.

APN: 66-2754-14-5, 40-3

RECORDED EASEMENT

RECORDING REQUESTED BY

OK- 220776-B
TITLE INS. & TRUST COMPANY

ALBANY LIONS CLUB
LIONS INTERNATIONAL
c/o Mr. Hubert F. Call
823 San Pablo Ave.
Albany, California

RECORDED AT REQUEST OF
TITLE INSURANCE & TRUST CO.

M. MIA. PAID 4.00 P.M.

RE: 3497 IM: 152

AUG 24 1973

TR-110351

OFFICIAL RECORDS OF
ALAMEDA COUNTY, CALIFORNIA
JACK G. BLUE
COUNTY CLERK

SPACE ABOVE THIS LINE FOR RECORDERS USE

SAHS AS ABOVE

DOCUMENTARY TRANSFER TAX & NONL- 1st Year \$100.
COMPUTED ON FULL VALUE OF PROPERTY CONVEYED.
OR COMPUTED ON FULL VALUE AS SHOWN
IN THE RECORDS REMAINING AS OF 1971
Hubert F. Call & Ruth L. Call
Members of Board of Assessors or Agents Determining Tax.

EASEMENT
Grant Deed

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
HUBERT F. CALL AND RUTH L. CALL, HIS WIFE

hereby GRANT(S) to
ALBANY LIONS CLUB, LIONS INTERNATIONAL, A California Non-Profit
Corporation

the following described real property in the CITY OF ALBANY
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Excepting therefrom that portion thereof conveyed to the City of
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Alameda County Records.

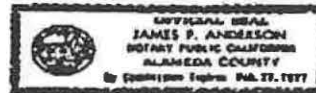
Dated August 17, 1973

Hubert F. Call
Ruth L. Call

STATE OF CALIFORNIA }
COUNTY OF Alameda } ss.
I, _____, a Notary Public in and for said State, personally appeared
Hubert F. Call and
Ruth L. Call

Known to me to be the persons whose names are subscribed to the within
instrument and acknowledged that they executed the same.
WITNESS my hand and official seal.

James P. Anderson
Name (Typed or Printed)



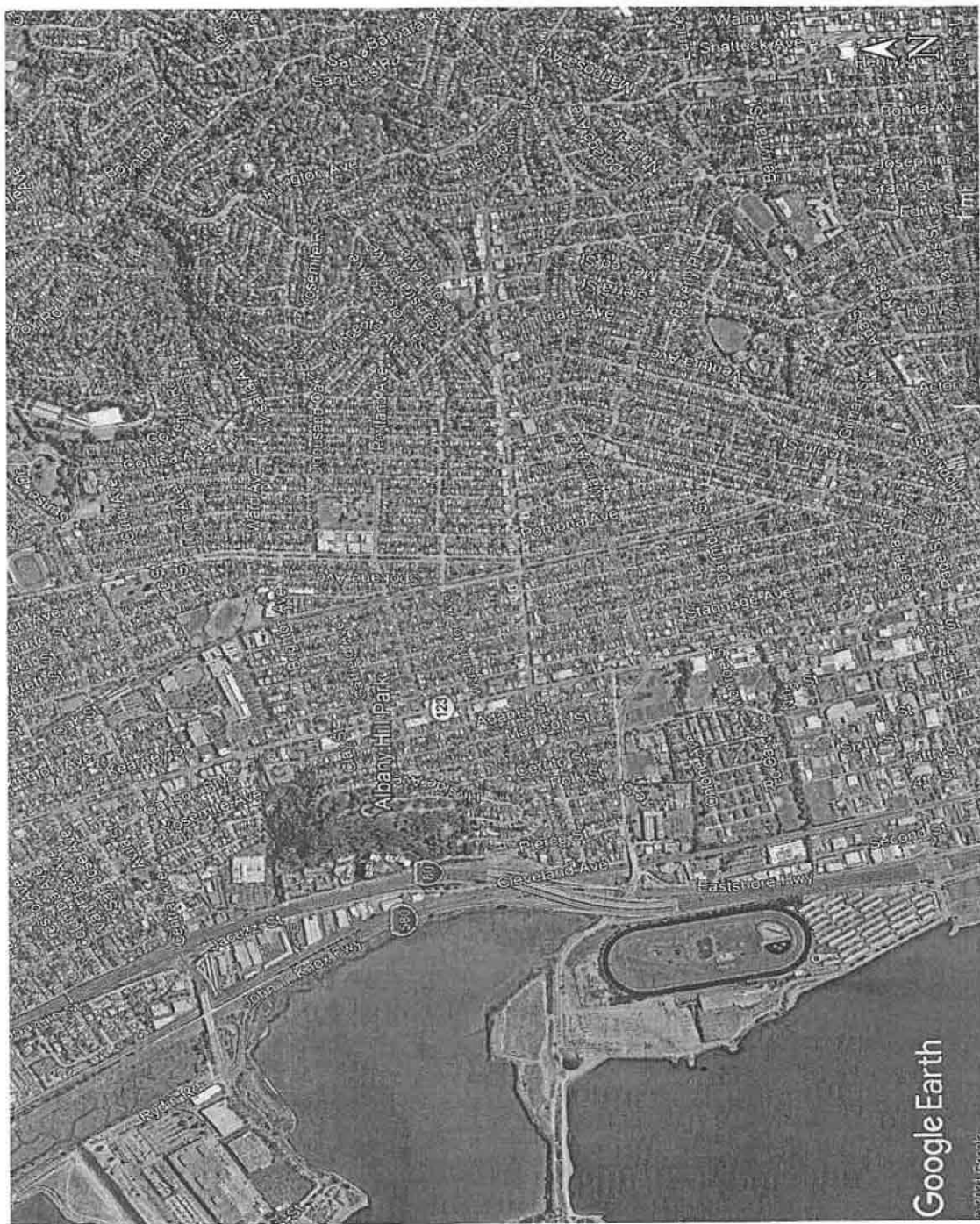
Title Order No. _____

MAIL TAX STATEMENTS AS DIRECTED ABOVE

AERIAL VIEW



AERIAL VIEW





City of Albany

1000 San Pablo Avenue • Albany, California 94706
(510) 528-5710 • www.albanyca.org

RESOLUTION NO. 2022-32

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF ALBANY,

The 4th day of April, 2022, by the following votes:

AYES: Council Members Gary, McQuaid, Nason, Tiedemann and Mayor Jordan

NOES: none

ABSENT: none

ABSTAINED: none

RECUSED: none

WITNESS MY HAND AND THE SEAL OF THE CITY OF ALBANY, this 5th
day of April, 2022.

Anne Hsu
CITY CLERK