CONTRA COSTA COUNTY file #CDPC 25-00014

KMAC Tree Arbitration Board

View Claimants: Marcelina Cravat, Curtis Overway and Hazel Hung

Tree Owners: Leslie Jacoby and Leslie Nicholaeff

VIEW CLAIMANTS' NEW EVIDENCE FOR HEARING ON

May 27, 2026

As the Arbitration Board requested at the prior hearing in this matter, View Claimants respectfully submit the following new evidence to support their View Claims:

Hazel Hung ("Hazel"), owner of 236 Lake Drive, found a photograph that was taken in **December of 1985** of her view to the west, from her balcony that is adjacent to her living room. Hazel was present on her balcony when the photograph was taken by her late husband, Alexander Karu. This is a black and white print of that photograph. The color original will be produced at the hearing and a color enlargement of this photograph will be shown on View Claimants' power point presentation on May 27, 2026.

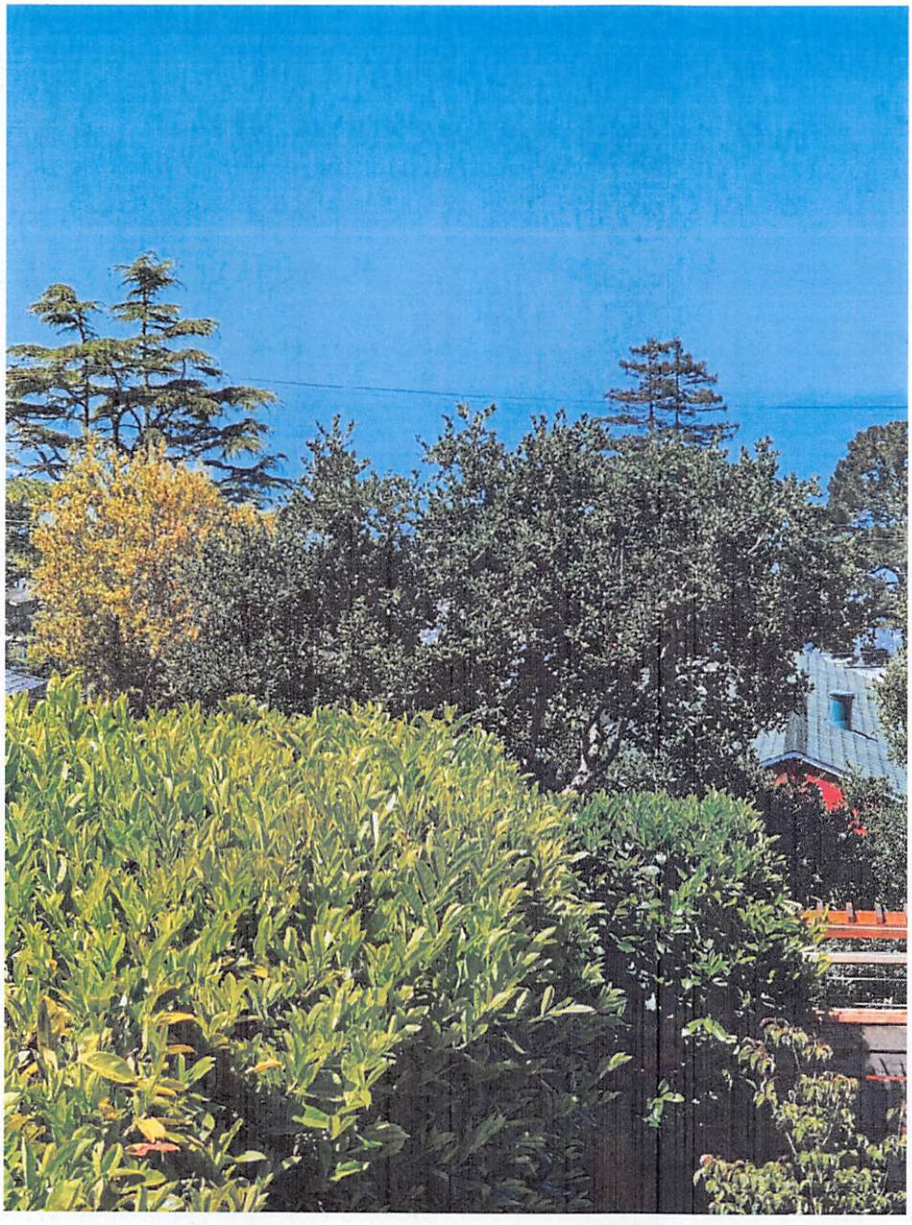
The house with the two chimneys is located next to Tree Owners' house which is to the left (south) of it. Albany Hill, the surface of the Bay, the Marin Headlands, the Golden Gate Bridge and environs are visible.

Hazel began occupying 236 Lake Drive with her late husband in December of 1985 and acquired/purchased her interest in it as co-owner soon thereafter.

Although photographs of Hazel's current views from her property were produced previously with her View Claim, on the following pages are **four more recent photographs:**

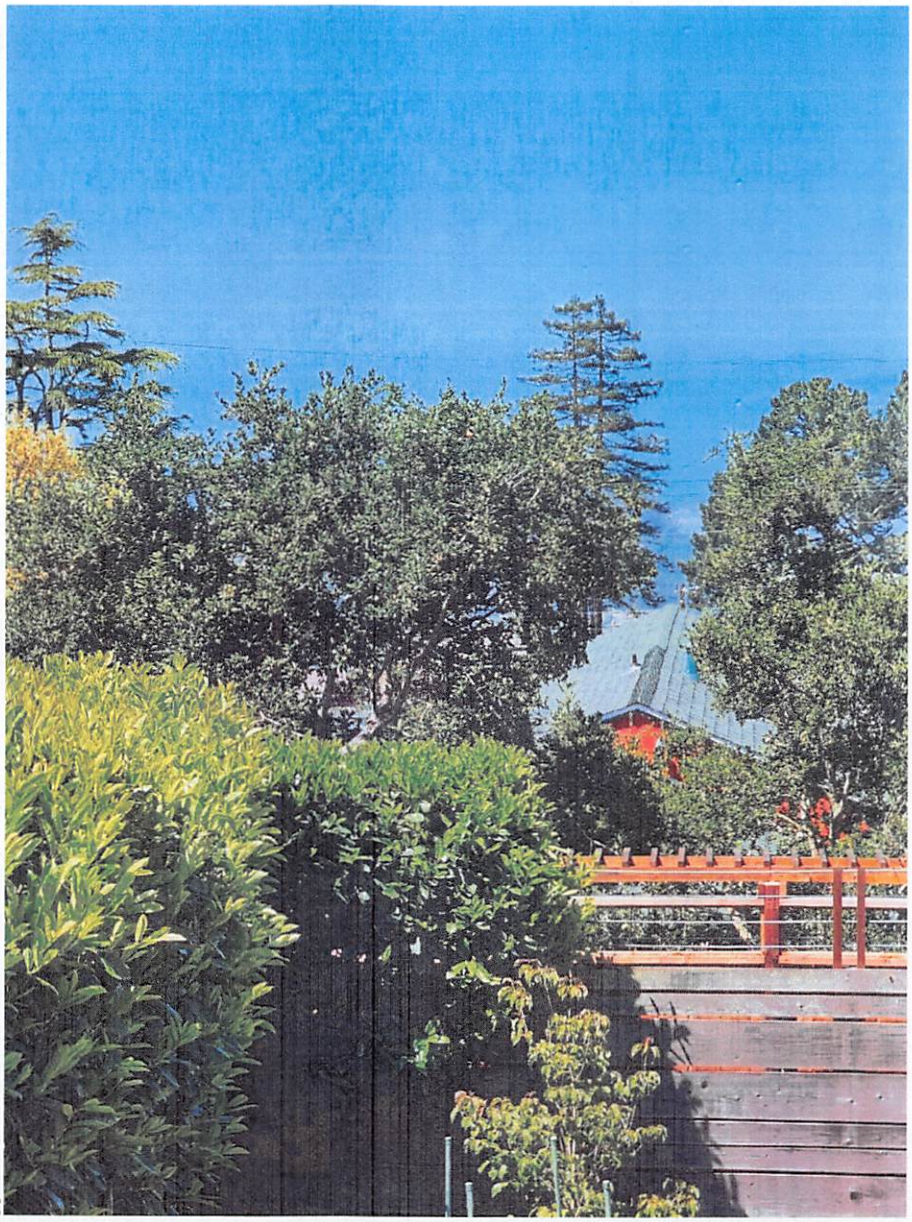
The roof of Tree Owners' red house is shown in the middle of the photo. The two coast live oaks (planted in 2011 0r 2012 by Tree Owners' admission), are in Tree Owners' back yard and appear to the right and left sides of the peak of Tree Owners' roof. In comparison to the 1985 photo where there are no trees on Tree Owners' land which are taller than the brown house, they currently exceed the height of that house by many feet.

HAZEL current view:



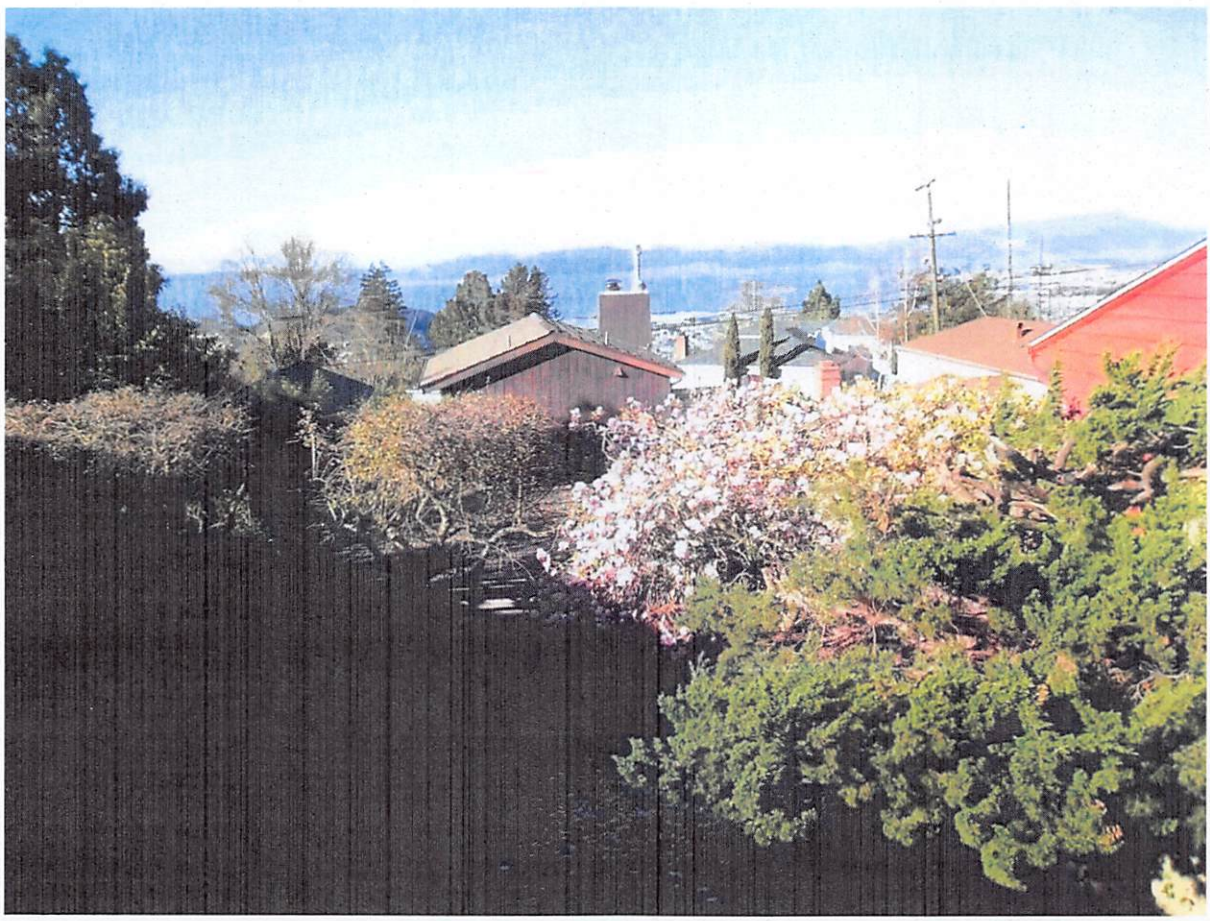
The roof of Tree Owners' red house is shown on the right side of the photo.

HAZEL current view:



HAZEL current view:

View Claimants, Marcy Cravat and Curtis Overway, owners of 238 Lake Drive, **acquired their property in 2006. Hazel obtained an appraisal of her property in 2006** and the appraiser, Peter Townsend, provided her with the following photograph of the view to the west of her home:



Email from: Peter Townsend

Dear Hazel

The picture you requested is attached as a jpg file which I hope you are able to print.

Hazel wrote:

Dear Mr. Townsend,

You appraised my house in Kensington (236 Lake Dr.) in Feb. of 2006. I wonder if I may get an enlarged version of the photo (from my deck).

The following four pages (numbered 8A, 8B, 8C and 8D, are **photographs of the Tree Owners' yard areas that were published on Zillow when they acquired their property in 2011:**

Back to search

Zillow

Save Share More

See all 23 photos

Zestimate®

$1,067,900

187 Purdue Ave, Kensington, CA 94708

2 beds **1** baths **1,304** sqft

Est. refi payment: **$6,624/mo** Refinance your loan

SingleFamily

Built in 1938

3,920 Square Feet Lot

Get a cash offer in 3 minutes

Find out how much your home could sell for in as little as 3 minutes with a no-obligation cash offer.

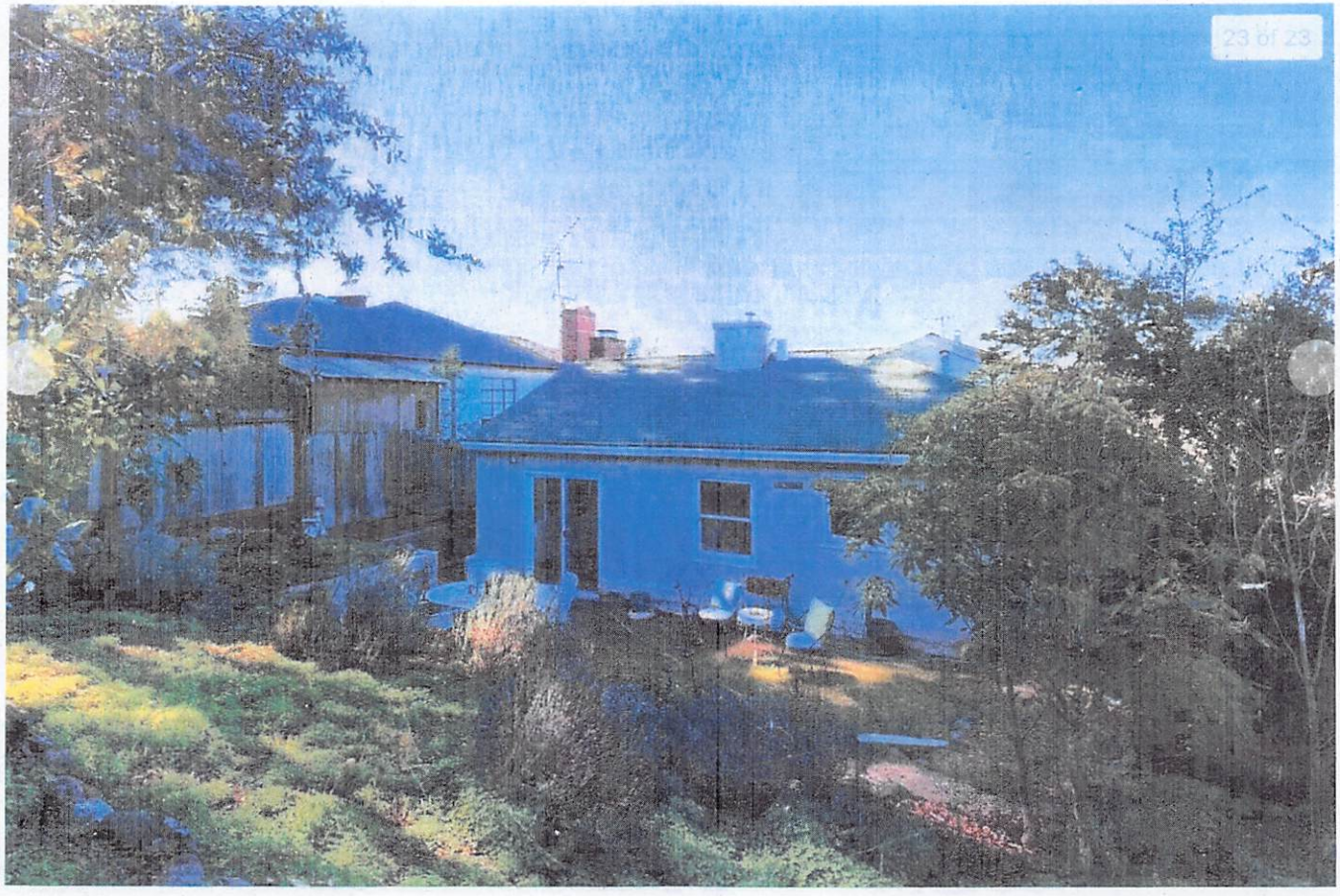
Estimated market value

$1,067,900

What is this number?

P. 8A

P. BB



p.8C

p. 81

Current view from Cravat/Overway home 238 Lake Drive:

Current view from Cravat/Overway home 238 Lake Drive:

See the **SIGNIFICANT CHANGES** statement of Legislative intent on the following two pages (11A and 11B).

SIGNIFICANT CHANGES TO THE TREE OBSTRUCTION OF VIEWS ORDINANCE

Presentation to Kensington Municipal Advisory Council – 2/28/23

- **New Arbitration Procedure.** The draft Tree Obstruction of Views Ordinance establishes a new arbitration procedure to resolve disputes over views that are obstructed by trees.

  - The draft ordinance encourages property owners to resolve disputes over views informally or by voluntary mediation, but if a dispute cannot be resolved informally or by mediation, a property owner who believes that a tree on another property is obstructing his or her view may submit a "view claim" to the County.
  - A view claim must describe the view that is obstructed, describe which trees are obstructing the view, and explain what steps have been taken to resolve the dispute.
  - A person who files a view claim has no right to a view that is greater than the view that existed when the person purchased the property.
  - A view claim is heard by a tree arbitration board, which is a board established by the Board of Supervisors. A municipal advisory council (like the Kensington Municipal Advisory Council) could serve as a tree arbitration board.
  - A property owner whose view is obstructed and a tree owner may present evidence to the tree arbitration board.
  - The evidence may include an arborist's report, which is a report that evaluates the feasibility and impact of actions that may be taken to reduce a view obstruction. Examples of these actions include tree trimming and tree thinning.
  - After hearing evidence, the tree arbitration board will issue a written decision. The decision will include the board's findings as to whether a view is obstructed. If a view is obstructed, the decision will describe the actions that must be taken to restore a view and will allocate the costs associated with restoring the view.
  - The decision of the tree arbitration board is binding on both parties *only* if they agreed before the hearing to be bound by the board's decision. The parties must comply with the decision within 30 days unless a longer period is specified.
  - The new arbitration procedure is in sections 816-2.602 through 816-2.606 of the draft ordinance.

- **New Procedure for Advisory Decisions.** The draft ordinance also establishes a new procedure for fact-finding and advisory decisions by a tree arbitration board.

  - If the parties do not agree to binding arbitration, a property owner or a tree owner may request that the tree arbitration board issue a *non-binding* advisory decision.
  - Under this procedure, the tree arbitration board receives evidence and issues a written decision.
  - The decision will include the board's findings as to whether a view is obstructed. If a view is obstructed, the decision will describe the actions that must be taken to restore a view and will allocate the costs associated with restoring the view.
  - The written decision is *not binding* on the parties, but if one of the parties goes to court to enforce the decision, there is a "rebuttable presumption" in favor of the tree arbitration board's decision – that is, the board's decision is presumed to be correct.
  - The new advisory decision procedure is in section 816-2.608 of the draft ordinance.

- **Other Changes to the Tree Obstruction of Views Ordinance:**

  - Additional Purpose. A new purpose of the ordinance is to discourage the planting and maintenance of trees that may result in excessive shade and unduly diminish desirable views. (Section 816-2.206(d).)

  - New Definitions. The draft ordinance adds new or revised definitions for "arborist," "arborist's report," "tree," and "view." (Section 816-2.208.) The revised definition of "view" is similar, but not identical, to the definition of "view" in the Kensington overlay ordinance (planning ordinance). A "view" is a "range of sight including pleasing vistas or scenes from the primary living areas of a residence." **Note:** an item that is open for discussion during the public review process is whether the term "view" should also include a range of sight from a deck connected to a residence.

  - New Factors. Several factors are considered when a view obstruction is evaluated by a tree arbitration board. The draft ordinance adds tree flammability and tree health as additional factors to be considered. (Section 816-2.410.)

  - Other County Tree Ordinance. The draft ordinance clarifies (Section 816-2.416(a)) that if a tree is trimmed, thinned, removed, or another action is taken to restore a view, a tree permit may be required under the County's Tree Protection and Preservation Ordinance, which is Chapter 816-6 of the ordinance code.

  - Solar Shade Control Act. The Solar Shade Control Act (Public Resources Code sections 25980 through 25986) is a state law that authorizes a private nuisance cause of action against a property owner if the owner's tree blocks someone else's solar panels. The draft ordinance does not preclude anyone from separately enforcing the Solar Shade Control Act. (Section 816-2.806(b).)

See the case of **Kahn v. Price**, especially the highlighted language, on the following eight pages (A through H)

Kahn v. Price

Court of Appeal of California, First Appellate District, Division Three

September 22, 2021, Opinion Filed

Reporter
69 Cal. App. 5th 223 * | 284 Cal. Rptr. 3d 253 | 2021 Cal. App. LEXIS 784 | 2021 WL 4305035

LINDA KAHN, Plaintiff and Respondent, v. KATHERINE PRICE et al., Defendants and Appellants.LINDA KAHN, Plaintiff and Respondent, v. KATHERINE PRICE et al., Defendants and Appellants; WILLIAM S. WEISBERG et al., Objectors and Appellants.

Overview

HOLDINGS: [1]-An action seeking declaratory and injunctive relief under the San Francisco Tree Dispute Resolution Ordinance regarding a tree on adjoining property that obstructed plaintiff's views of San Francisco Bay and Marin County was timely filed because the continuous nuisance doctrine rendered any statute of limitations inapplicable; [2]-The trial court did not have to dismiss the lawsuit predicated on plaintiff's failure to include in her prelitigation tree claim visual images of unobstructed views from the main level of her residence before the growth of the tree. The trial court admitted grant deeds showing plaintiff had acquired the property in 1976 and continued to own the property and written correspondence showing attempts at reconciliation had been made and failed.

Outcome

Amended judgment affirmed.

A. *Background*

Kahn purchased a multistory residence in San Francisco in 1976.4 At the time, the residence had unobstructed views from the primary living areas [*228] located on the north side of the home on the main level as well as unobstructed views from the north-facing rooms on the second and third floors. The residence's northerly and northwesterly views—of the San Francisco cityscape and Bay, the Golden Gate Bridge,

A

Angel Island, and southern Marin County—remained unobstructed by any other vegetation or the tree until 2011.

In or about 1998, the Prices' predecessors in interest (prior owners) purchased the multistory residence on property that is downslope from and abuts Kahn's property. The properties are separated by a structure (a retaining wall topped by a lattice fence) located 10 to 12 feet above ground level on the Kahn property; the tree is located at "the very rear" of the Prices' backyard and is adjacent to the retaining wall.

When Kahn replaced the lattice fence atop the retaining wall in 2001, she saw the origins of the tree that likely had been growing from a "volunteer seedling" since approximately 1999. The tree appeared "hedge-like" and was "well below the height of the lattice fence." By 2007, the tree was beginning to grow above the lattice fence but did not obstruct Kahn's views. However, by 2011 the tree was visible above the lattice fence at which time Kahn advised the prior owners that the tree was eclipsing her views. Kahn offered to pay for the removal of the tree, but instead the prior owners trimmed the tree.

In 2012, when Kahn learned the prior owners had sold the property to the Prices, Kahn contacted the Prices in writing and in person. The Prices, who were then living in Hong Kong and only visiting the San Francisco property occasionally, assured Kahn they would consult with their landscape architects about the tree.

"In late 2016, when it appeared informal resolution was unlikely," Kahn began the Ordinance's prelitigation procedures[5] by serving the Prices with a tree claim in early 2017[6] and the parties engaged in private mediation (in lieu [*229] of community board mediation under the Ordinance) in June 2017. When private mediation failed in late 2017, and the Prices declined to participate in arbitration, Kahn filed this lawsuit in early 2018 seeking declaratory and injunctive relief.

B. *Trial Proceeding*

At a bench trial held in June 2019, the court heard the testimony of the Prices, Kahn, Kahn's relative, Kahn's friend, and an immediate neighbor of Kahn and the Prices. The court also heard testimony of Kahn's expert consulting arborist and the Prices' expert consulting arborist, expert aerial photographer, expert geotechnical engineer, and real estate appraiser. The court considered extensive documentation including the parties' written communications and photographs taken at various times and from various locations within and without the parties' properties. Lastly, the court conducted an onsite inspection of the parties' properties on June 19, at which time the parties and counsel were present.[7]

B

The court found that since the purchase of her home in 1976 Kahn had "enjoyed" views (from all floors) of "the San Francisco cityscape, the Bay, the Golden Gate bridge, southern Marin County, and Angel Island" until 2011 when the tree began obstructing and ultimately "eclipsed" the views; but for the tree, Kahn's residence would still have those unobstructed views. Under the heading, "Historic Evidence of Views," the court specifically found: "Kahn, her [relative] and [her friend], both of whom regularly visited the Kahn home, testified to the northerly views over San Francisco, San Francisco Bay, southern Marin County, and Angel Island. The views were a principal factor in the Kahns' decision to purchase the property. The testimony and historic photographs establish that, when the Kahns purchased their home, the 'views,' as defined in [Ordinance] Section 822(n), from the garden, terrace, dining room, and kitchen dining area—north facing rooms located on the main level—were unobstructed. Nor was the view obstructed from any of the north facing rooms on the upper two levels of the Kahn home. (Kahn home's historic views). The evidence also establishes that the northerly and northwesterly views of the San Francisco cityscape, the Bay, the Golden Gate [*230] bridge, southern Marin County, and Angel Island remained unobstructed by the tree or any other vegetation until at least 2011."

The trial court also considered the burdens and benefits of the tree pursuant to the Ordinance's enumerated criteria and based upon the "testimonial and documentary evidence," the court's "personal inspection of the parties' respective properties," and "the written and oral arguments of counsel."

Regarding the tree's burdens, the court found that "the Kahn home had unobstructed views from the Golden Gate to Angel Island and, but for the tree, would still have that view. There are landmarks, vistas and other unique features, including the San Francisco Bay, Angel Island, and portions of southern Marin County which would be visible from the first level of the Kahn home, in the dining room and the kitchen, as well as from the patio and rear garden, but are partially or completely eclipsed by the tree's growth from 2011 to the present." The court found credible the photographic methodology used by Kahn's arborist who documented "the tree's effect and estimated the obstructions to be 50–60% from the dining room, 90% from the kitchen table, 20–30% from the rear patio, and 30–40% of [the view] from the rear yard looking north to northeast."

The court's own observations during the site visit corroborated the arborist's testimony. The court also found it was "only the tree—and not other factors—which obstruct the view and create the burdens listed in the Ordinance." In sum, the court found "overwhelming" evidence that: "the tree's rapid growth in both height and breadth obstructs the views of landmarks and vistas that could once be seen"; "[t]he degree of obstruction makes that burden significant and substantial"; and "there are no other factors contributing to the burden."[8]

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Discussing the tree's benefits, the trial court specifically found that "the tree's vigor in this context and location is not a benefit." In so concluding, the [*231] court explained that "Kahn raised concerns about the tree when it was young. Had [the Prices or their predecessors in interest] heeded her warning, when the tree was small, a skilled arborist ... could have advised on pruning that would have maintained the unique features of the Monterey pine while limiting its intrusion on the Kahn home's historic views. Instead the tree's owners ignored her requests, while the tree grew rapidly. Then in a belated effort to ameliorate the complaint, the tree was subjected to repeated topping and trimming. The unfortunate result is the tree no longer has the visual qualities of a Monterey pine ... . [¶] If the tree survives, unaffected by the beetles and pine-pitch canker, true to the species, it will become a very large stature tree. ... [I]f the tree is pruned to mitigate the view-related burdens, given its growth-pattern, the effects of that pruning will be fleeting—demanding frequent attention. [The parties' immediate neighbor] testified that the tree obstructs the views of the Golden Gate Bridge and surrounding waters from his home. Even when the tree is pruned in a manner which improves—but does not restore—those views, due to rapid growth, the view obstruction recurs within a very short period of time."

In evaluating the tree's "aesthetics, a trait in the eye of the beholder," the trial court found, "[u]nderstandably, that the Prices insisted that the tree's role in their yard, and, indeed in their decision to purchase the home, is paramount. They extol its virtues in shading their yard, providing a backdrop for their landscaping and assuring privacy for their family. While the court does not seek to substitute its artistic opinion for that of the homeowners, there are objective factors which cannot be ignored. The other landscaping in the Prices' yard is dwarfed by the tree. While the other trees and plants are all proportional to one another, the looming Monterey pine is disproportionate to all the surrounding vegetation and looms ominously. [¶] The tree is located at the very rear of their yard and atop a steep slope, adjacent to the retaining wall and Kahn's lattice fence. [The Prices' arborist] testified that, given [the tree's] distance from the Prices' home, it does not provide shade to either the home or the outdoor areas where the family would be dining or socializing ... ."

On the issue of "soil stability provided by the tree," the trial court found not credible the testimony of Prices' geotechnical engineer who opined, "without any data, testing, or explanation—that removal of the tree would result in a 'landslide' affecting multiple properties." Nor did the witness "distinguish whether the 'landslide' would occur regardless whether the stump and roots were removed at the time the tree is felled, or if they were allowed to remain. [Kahn's arborist] testified that leaving the roots and stump to decompose—while planting woody vegetation which could take root while the [tree's] roots decayed—would assure soil stability. Planting along the entire length of the retaining wall would provide additional stability as it is unlikely that the tree's roots

D

extend to the western edge of the yard." The [*232] court found no evidence that soil stability had been an issue during the decades predating the tree, and, no evidence that the retaining wall's stability depended on the tree. The court also found that, if the tree's roots contributed to the soil stability, it was at most a minor benefit and one which could be secured by leaving them in place after the tree was removed and added plantings.

The trial court did find the tree provided some visual screening for the yard and the children's bedrooms in the Prices' home, allowing for "minimal privacy," but "any benefit of this screening is minor and insignificant." In so concluding, the court found unpersuasive the Prices' contention that the tree was critical to provide privacy from the Kahn residence. "The Price yard and living spaces are not visible from the main floor of the Kahn home, not because of the tree, but because of the difference in elevation and the retaining wall and fence separating the Kahn home and the Prices' home. To the extent, the tree blocks views of the Prices' home, it does so from only a portion of the upper floors of the Kahn home and therefore does not provide the 'privacy' the Prices' claim to be essential. [¶] To the extent the Prices' claimed need for privacy is sincere—rather than merely a justification for retaining the tree—the site visit provided evidence of the visibility of the Prices' yard and children's bedrooms from neighbors to the east, west, and south. The site inspection also demonstrated that the interior of the Prices' home is visible on many sides." "Neighbors in many homes—much closer than the Kahn home—can peer into the Price property, and yet the Prices have not installed window coverings to provide the privacy they claim to value." The court's own observations were "corroborated" by Kahn's arborist's "room-by-room analysis," documented by photography from the yard and interior of the Prices' home.

Having determined the tree's burdens were "overwhelming" and "the benefits the tree confers to be minimal," the court therefore concluded Kahn had met her burden of proving "the burdens posed by the tree outweighed the benefits and that restorative action is required." In deciding the appropriate type of restorative action, the court evaluated the Ordinance's "[a]ppropriate [r]estorative [a]ctions" of (i) no action, (ii) trimming, (iii) thinning, (iv) delayed trimming or thinning, (v) topping, or (vi) tree removal with possible replacement plantings. (Ord., § 824, subd. (c)(1).) The court explained its reasons for finding that the first five actions were not feasible and the sole action that best achieved the Ordinance's objectives was removal of the tree, which we will later discuss in the analysis.

[*233]

The court also explained its decisions regarding the apportionment of costs between the parties. (Ord., § 825.)9 As to costs for the restorative action of tree removal, the court found the tree was not present before September 28, 1988, the effective date of the Ordinance. Consequently, the court directed that the cost of tree removal (the court-

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ordered restorative action) was to be paid "in equal proportion by the parties." As to litigation costs, the trial court found Kahn and the Prices were to pay their own attorney's fees pursuant to Ordinance section 825, subdivision (b), but Kahn as the prevailing party was entitled to her costs as defined in the Code of Civil Procedure.

The trial court entered judgment on December 2, 2019, later amended on February 28, 2020, in favor of Kahn "on both the cause of action for declaratory relief and the cause of action for injunctive relief" under the Ordinance. The court declared Kahn was entitled to restoration of her obstructed views, and to that end, the Prices were directed to remove the tree "so that the stump is cut to grade and the roots remain intact" and the stump was to "be treated to ensure that it will not re-sprout." The parties were to follow specific procedures in hiring a licensed, bonded, and insured tree care company to perform and complete the tree removal. The Prices were directed to pay the tree removal company and provide Kahn with a copy of the paid invoice and proof of payment; within five court days of receipt of the paid invoice, Kahn was to pay one-half of the amount paid to the tree removal company as evidenced by the paid invoice. The Prices were granted the right to "plant replacements at their option and expense," with the proviso that they "select species which, at maturity, will not interfere with the Kahn home's historic views." The amended judgment also included provisions awarding Kahn (1) $69,150.65 as costs (§ 1032 [prevailing party costs]; Ord., § 825, subd. (b) [court costs allocated at court's discretion]), (2) $41,182.50 as attorney fees and expert fees (§ 2033.420 [expenses incurred in proving matters which a party to whom a request for admission was directed failed to admit]), and (3) $47,345.30 as section 128.5 sanctions, payable jointly and [*234] severally by the Prices and their trial counsel William S. Weisberg and the law firm of Weisberg & Miller.

Appellants' timely appeal ensued.10

DISCUSSION

Discussion of Statute of Limitations is deleted.

2. *Ordinance's Prelitigation Procedures*

HN7 CA(8) (8) In order to pursue either binding arbitration or a court action, a complaining party must prepare a written "tree claim," and serve the tree claim on the tree owner. (Ord., § 823, subd. (c).) Ordinance section 822, subdivision (j) defines a "tree claim" as follows: "'Tree claim' shall mean the written basis for arbitration or court action under the provisions of this Article which includes the following: [¶] (1) The nature and extent of the alleged obstruction, including pertinent and corroborating physical

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evidence. Evidence may include, but is not limited to, photographic prints, negatives, or slides. Such evidence must show absence of the obstruction at any documentable time during the tenure of the complaining party. Evidence to show the date of acquisition must be included. [¶] (2) The location of all trees alleged to cause the obstruction, the address of the property upon which the trees are located, and the present tree owner's name and address. [¶] (3) Any mitigating actions proposed by the parties involved to resolve the tree claim. [¶] (4) The failure of personal communication between the complaining party and the tree owner to resolve the alleged obstruction as set forth in Section 823(a) of this Article. The complaining party must provide physical evidence that written attempts at reconciliation have been made and failed. Evidence may include, but is not limited to, copies of and receipts for certified or registered mail correspondence."

The Prices contend dismissal of the lawsuit is required because Kahn's prelitigation tree claim failed to include (1) "pertinent and corroborating physical evidence" in the nature of visual images showing an absence of an obstructed view from the main level of her residence before the growth of the tree, (2) "[e]vidence to show the date of acquisition" of the property by the property owner, and (3) "physical evidence that written attempts at reconciliation have been made and failed." The latter two categories of evidence were satisfied by the trial court's admission of grant deeds showing Kahn had acquired the property in 1976 and continued to own the property and written correspondence showing "attempts at reconciliation have been made and failed."

As to the argument that the Ordinance requires a prelitigation tree claim to include corroborating physical evidence in the form of visual images showing no obstruction before the growth of the tree, nowhere does the Ordinance provide that the court is without jurisdiction to adjudicate a tree claim and must dismiss the action if the prelitigation tree claim fails to include such evidence. While the Ordinance requires the parties participate in prelitigation procedures before pursuing either binding arbitration or litigation, and a tree owner would be entitled to a stay of the action to compel compliance if a complaining party had not complied with the prelitigation procedures (see [*241] *McMillin Albany LLC v. Superior Court* (2018) 4 Cal.5th 241, 255–256, 259 [227 Cal. Rptr. 3d 191, 408 P.3d 797]), that does not mean that the trial court must dismiss a tree action if the prelitigation tree claim fails to include physical evidence of the absence of the obstruction before the growth of the tree.

HN8 CA(9) (9) Simply put, the Ordinance does not contain a clear intent "to limit the fundamental jurisdiction of *the courts*" to adjudicate only in those cases where the complaining party's prelitigation tree claim includes pertinent and corroborating evidence of the absence of an obstruction before the growth of the tree. (*Quigley v. Garden Valley Fire Protection Dist.* (2019) 7 Cal.5th 798, 808 [249 Cal. Rptr. 3d 548, 444 P.3d 688], italics added.) If there were an intent to "withdraw a class of cases from

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state court jurisdiction, we expect" the Ordinance would make that intention clear. (*Ibid.*) Instead, the Ordinance "makes no reference to the jurisdiction of the courts, nor does it otherwise speak to the courts' power to decide a particular category of cases." (*Quigley, at p. 808*.) Thus, we reject the Prices' argument that the trial court was required to dismiss the action for Kahn's failure to attach to her prelitigation tree claim visual images of the absence of the obstruction from the main level of her residence before the growth of the tree.

CA(10) (10) In the alternative, the Prices argue that dismissal is still required because Kahn did not "fill the physical evidence gap" at trial as she presented only testimonial evidence regarding there being an unobstructed view before the growth of the tree. We see no merit to this argument. HN9 At trial, the court must determine both "[t]he existence of landmarks, vistas, or other unique features which cannot be seen because of growth of trees since the acquisition of the property" (Ord., § 824, subd. (a)(4)), and the degree to which the "alleged obstruction interferes with [the] view ... by means of a measuring instrument or photography" (*id.*, § 824, subd. (a)(5)); and, further, "[t]he extent of ... view available and documentable as present at any time during the tenure of the complaining party is the limit of restorative action which may be required" (*id.*, § 824 (c)(6)). However, these provisions do not impose a specific evidentiary requirement on the complaining party to produce visual images of the absence of obstruction *before the growth of the tree*, as the Prices suggest.

Moreover, even assuming the need for photographic evidence, the trial court's findings based on the above enumerated criteria—that Kahn had enjoyed unobstructed views from the main level of her home before the growth of the tree—is supported by both Kahn's testimonial evidence and her arborist's testimony regarding the absence of the obstruction before the growth of the tree based on an evaluation of the available historic photographs taken from the second level of the residence and the current partial [*242] view obstructions from the main level of the residence. (See fn. 8, *ante*.) The trial court, as the trier of fact, could properly combine the arborist's testimony with its own onsite observations and the testimonial evidence of Kahn and her witnesses regarding the absence of the obstruction before the growth of the tree, "'thus weaving a cloth of truth out of selected available material.'" (*Stevens v. Parke, Davis & Co.* (1973) 9 Cal.3d 51, 67–68 [107 Cal. Rptr. 45, 507 P.2d 653].)

In sum, we conclude the trial court was not required to dismiss the action predicated on Kahn's failure to include in her prelitigation tree claim visual images of unobstructed views from the main level of her residence before the growth of the tree. Given this conclusion, we need not address the Prices' additional evidentiary arguments.

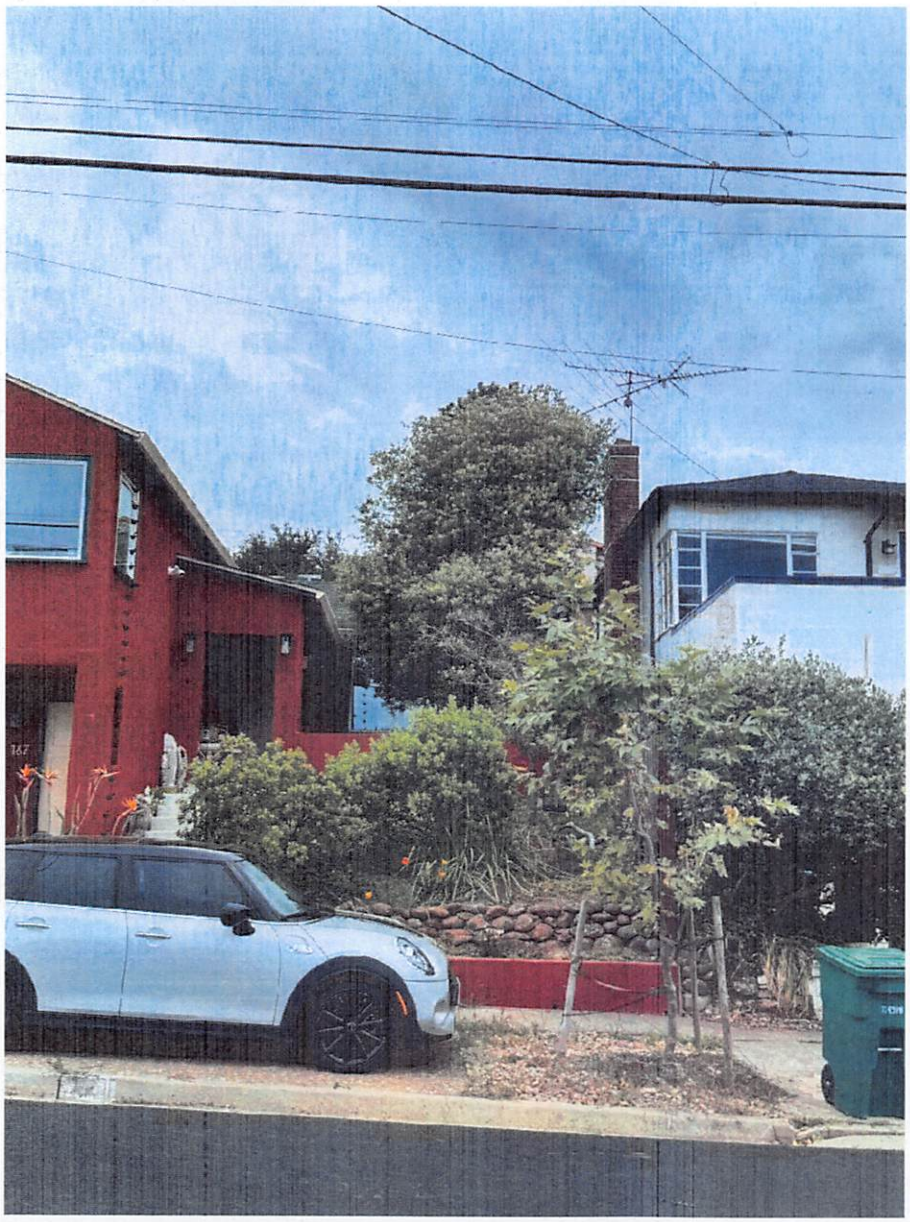
H

NEW PLANTINGS

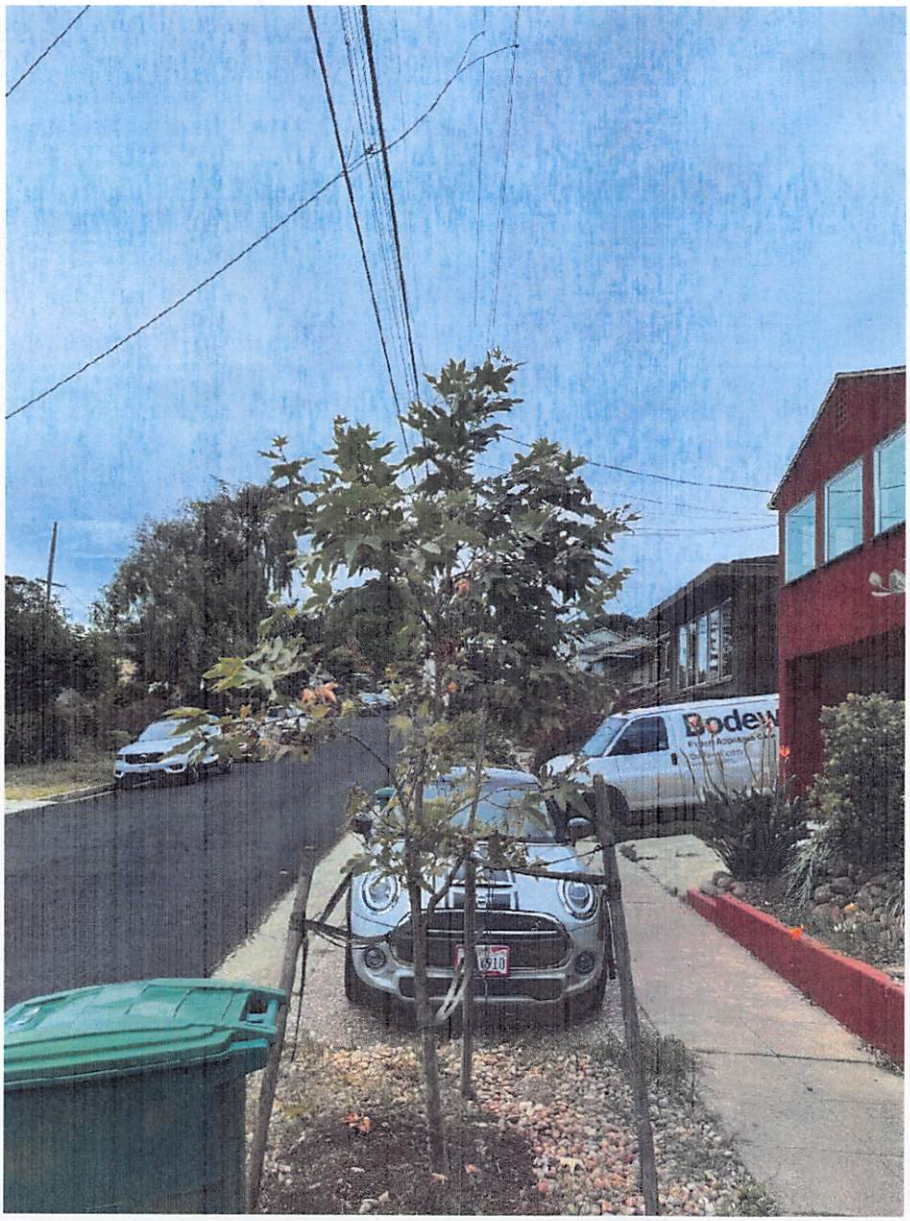
In violation of the new purpose of the Ordinance to discourage planting of obstructionist trees, Tree Owners **recently planted three new trees** which appear to be sycamores (arborist to confirm exact species). Such trees grow to 80 feet high, with a canopy width of between 20-50 feet. Tree Owners' lot is relatively small; only 3,920 square feet, as opposed to 5,000 square feet of minimum residential lot sizes). Therefore, the plantable area, excluding the footprint of their house, is much too small for large trees. View Claimants will present evidence of this in their power point presentation on May 27, 2026.

Photos of the new trees are shown on the following three pages:

Tree Owners' back yard.

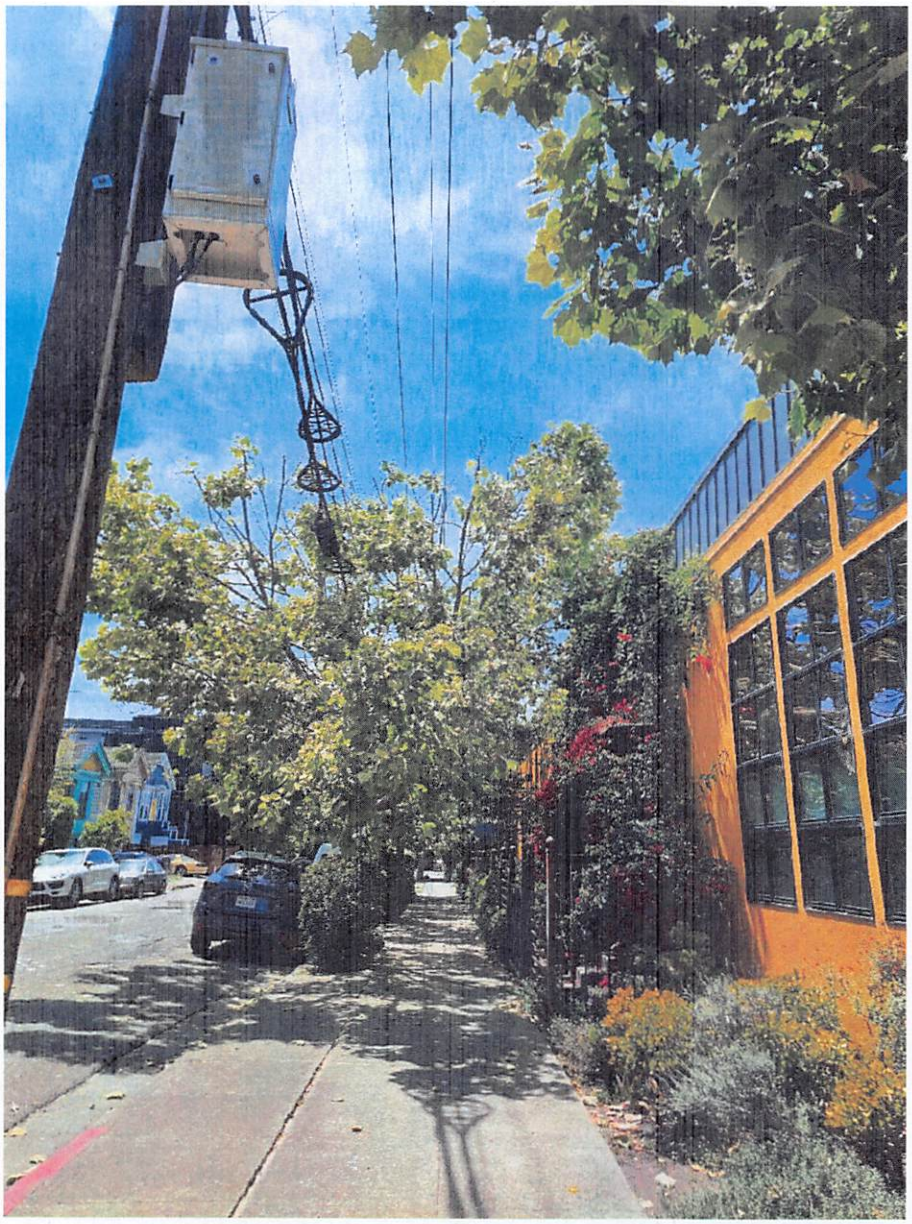


Two new plantings, one in Tree Owners' front yard and the other on street



Street planting under utility wires

The following photos on the next two pages are of mature sycamores in Emeryville that are common as "**street trees**" because of their large size. Marin Avenue in Albany and Berkeley are lined with such trees. The Cal Poly website indicates that such trees pose problems as allergens. They also shed considerably.



These trees require constant topping to clear utility lines.