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ENDORSED
FILED
San Francisco County Superior Court
JAN 24 2018
CLERK OF THE COURT
NEYL WEBB
BY: Deputy Clerk

Attorneys for Petitioner CITY OF SAN JOSE

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

CITY OF SAN JOSE, a municipal
corporation,

Petitioner,

v.

STATE HISTORICAL RESOURCES
COMMISSION, a public body; OFFICE
OF HISTORIC PRESERVATION, a state
agency; and JULIANNE POLANCO, State
Historic Preservation Officer, a public
official, in her official capacity,

Respondents.

FRIENDS OF THE WILLOW GLEN
TRESTLE,

Real Party in Interest.

Case Number:

CPF-18-516021

PETITION FOR WRIT OF MANDATE

[Code of Civ. Proc. §1085; Code of Civ.
Proc. §1094.5]

Petitioner City of San Jose seeks an ordinary writ of mandate under Code of Civil
Procedure section 1085, and alternatively, an administrative writ of mandate under Code
of Civil Procedure section 1094.5, and alleges as follows:

1 1. Petitioner is the City of San José, a charter city and municipal corporation,
2 located in Santa Clara County.

3 2. Petitioner City of San Jose is a certified local government under Public
4 Resources Code section 5020.1, i.e. it has been certified by the National Parks Service to
5 carry out the purposes of the National Historic Preservation Act of 1966 as amended and
6 the regulations adopted under that Act.

7 3. Petitioner City of San Jose, now, and at all times mentioned in this petition, has
8 been the owner of the railroad bridge that spans Los Gatos Creek in San Jose, known as
9 the Los Gatos Creek Railroad Bridge, and also known as the Willow Glen Trestle
10 (hereinafter "Willow Glen Trestle"). As the owner of the Willow Glen Trestle, the City has a
11 beneficial interest in the outcome of these proceedings.

12 4. Respondents are State Historical Resources Commission, the State Office of
13 Historic Preservation, and Julianne Polanco, the State Historic Preservation Officer, in her
14 official capacity.

15 5. Respondent State Historical Resources Commission is a public body appointed
16 by the Governor, responsible for the statewide historic preservation program, including
17 conducting a statewide inventory of historical resources, establishing criteria for evaluating
18 historical resources, and conducting public hearings on nominations of resources for
19 listing on the California Register of Historical Resources.

20 6. Respondent State Historical Resources Commission conducts a statewide
21 inventory and maintains records of historical resources under federal and state law. It
22 oversees the administration of the California Register of Historical Resources, receives
23 and evaluates nominations to the California Register, and causes resources to be listed in
24 the California Register. The Commission receives, evaluates, and makes
25 recommendations regarding entries on the National Register of Historic Places to the
26 State Historic Preservation Officer.

27 7. California Register of Historical Resources includes historical resources the
28 Commission determined as significant historical resources, and meeting specific additional

1 criteria. The Register is a listing that indicates which resources deserve to be protected, to
2 the extent prudent and feasible, from substantial adverse change.

3 8. Respondent State Office of Historic Preservation is part of the State Department
4 of Parks and Recreation, and is directed by the State Historic Preservation Officer. The
5 State Office of Historic Preservation serves as the staff of the Commission and the Officer.
6 The State Office of Historic Preservation administers the California Register of Historical
7 Resources and the State Historic Resources Inventory, among other duties.

8 9. Respondent Julianne Polanco is the State Historic Preservation Officer, and in
9 that capacity is a public official appointed by the Governor, and serves as the Chief
10 Administrative Officer of the Office of Historic Preservation and Executive Secretary of the
11 State Historical Resources Commission. The State Historic Preservation Officer
12 administers state and federally mandated historic preservation programs.

13 10. A resource may be nominated for listing as an historical resource in the
14 California Register, subject to certain conditions stated in Public Resources Code section
15 5024.1(f). After technical review by the Office of Historic Preservation, the nomination of a
16 resource for listing in the California Register will be scheduled for a hearing by the
17 Commission. The Commission must consider public comments when it determines
18 whether to list the resource in the Register.

19 11. Before acting on the nomination of a resource, the Commission must consider
20 comments of the property owner and local government where the resource is located,
21 among other persons. If the local government objects to the nomination, the Commission
22 must give full and careful consideration to the objection before acting on the nomination. If
23 the local government objects to the nomination, the Commission must adopt written
24 findings to support its determination. The Commission's findings must identify the
25 historical or cultural significance of the resource. If applicable, the findings must also
26 identify the resource's overriding significance that has resulted in its listing in the California
27 Register over the objection of the local government.

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1 12. The significance of historical resources is evaluated as follows. An historical
2 resource must be significant at the local, state, or national level under one or more of the
3 following criteria:

- 4 i. It is associated with events that have made a significant contribution
5 to the broad patterns of local or regional history, or the cultural
6 heritage of California or the United States;
- 7 ii. It is associated with the lives of persons important to local, California,
8 or national history;
- 9 iii. It embodies the distinctive characteristics of a type, period, region, or
10 method of construction, or represents the work of a master or
11 possesses high artistic values; or
- 12 iv. It has yielded, or has the potential to yield, information important to
13 prehistory or history of the local area, California, or the nation.

14 13. Within 45 days after the Commission's decision on the nomination, the Officer
15 must notify in writing the applicant, the owner, and the affected local government of the
16 Commission's decision.

17 14. Within 30 days after the Commission transmits notice of its final determination,
18 a request for redetermination may be submitted with reasons why the Commission's
19 determination was improper. The Commission has the power to reverse or change its
20 determinations in whole or in part if there is a significant error in the facts, information, or
21 analysis on which the prior decision was based, or if the prior determination, in light of
22 current information, appears to have been arbitrary, capricious, or based on substantial
23 error. If the request for redetermination is denied, then the original determination must
24 become final for all purposes, unless the resource is later shown to be demolished,
25 altered, or has lost its integrity.

26 15. Petitioner is informed and believes that Real Party in Interest Friends of the
27 Willow Glen Trestle is an ad hoc non-profit group of San Jose residents.

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1 16. Petitioner does not know the true names or capacities of the Respondents
2 sued herein as DOES 1 through 25, and therefore identifies said parties by fictitious
3 names. Petitioner is informed and believes, and thereon alleges, DOES 1 through 25 are
4 either necessary or indispensable parties to the relief sought in this action and will ask
5 leave to amend the petition and complaint to allege their true names and capacities when
6 they are ascertained.

7 17. Petitioner is informed and believes, and thereon alleges, that Respondent and
8 DOES 1 through 25 are the agents and/or employees of each other and acted within the
9 course and scope of such agency and/or employment with respect to the matters alleged
10 in this action.

11 18. This Court has jurisdiction over all matters referred to in this pleading under
12 Code of Civil Procedure sections 1085 and 1094.5.

13 19. Venue is proper because the Office of the State Attorney General is located in
14 the City and County of San Francisco.

15 20. Petitioner City of San Jose has timely exhausted its administrative remedies.

16 21. Petitioner has no plain, adequate, and speedy remedy at law to redress the
17 wrongs described in this petition.

18 22. Petitioner City is informed and believes that in 2016, Real Party in Interest
19 Friends of the Willow Glen Trestle submitted a request for nomination of the trestle to the
20 California Register of Historical Resources.

21 23. Petitioner City of San Jose opposed the nomination.

22 24. At the public hearing of the Commission on May 10, 2017, Respondents
23 issued the decision placing the Willow Glen Trestle on the California Register of Historical
24 Resources.

25 25. Petitioner City of San Jose requested redetermination of the Commission's
26 decision.

27 26. At the public hearing of the Commission on October 27, 2017, Respondents
28 denied the City's request for redetermination of eligibility of the Willow Glen Trestle for

1 listing on the California Register of Historical Resources, declaring the May 10, 2017
2 decision as final.

3 27. On or about November 17, 2017, the State Historic Preservation Officer issued
4 a letter informing the City Manager for the City of San Jose of the Commission's October
5 27, 2017, decision.

6 28. Petitioner City of San Jose brings this action for judicial review and invalidation
7 of the decisions of Respondents of May 10, 2017, and October 27, 2017.

8 29. Petitioner requests Respondents to prepare the record of proceedings of May
9 10, 2017, and October 27, 2017.

10 **FIRST CAUSE OF ACTION**

11 **Petition for Writ of Mandate**

12 **against all Respondents and Does 1 through 25**

13 30. Petitioner incorporates by reference the allegations in paragraphs 1 through 29
14 as if specifically set forth herein.

15 31. Respondents' actions of May 10, 2017, and October 27, 2017, were arbitrary
16 and capricious, entirely lacking in evidentiary support, and/or unlawfully or procedurally
17 unfair.

18 32. Respondents' action of May 10, 2017, failed to comply with the requirements of
19 Public Resources Code section 5024.1, and California Code of Regulations sections 4852
20 and 4855, including but not limited to the following.

21 33. Respondents' action of May 10, 2017, failed to comply with the requirements of
22 Public Resources Code section 5024.1(f)(3) and California Code of Regulations section
23 4855(b)(2), mandating that when the local government objects to the listing, the findings of
24 the Commission must explain why the resource was listed in the California Register over
25 the objections of the local government.

26 34. Respondents' action of May 10, 2017, failed to satisfy the requirements of
27 Public Resources Code section 5024.1(c) and California Code of Regulations section
28

1 4852(b), in that the Willow Glen Trestle does not qualify as a historical resource under the
2 criteria listed in those sections, including the criterion on which Respondents relied.

3 35. Respondents' action of May 10, 2017, failed to satisfy the requirements of
4 California Code of Regulations section 4852(c), in that the Willow Glen Trestle does not
5 have the required "authenticity" of its "physical identity."

6 36. Respondents' action of October 27, 2017, was erroneous, and the City's
7 redetermination request under California Code of Regulations section 4857 should have
8 been granted because there was a significant error in the facts, information, and analysis
9 on which the May 10, 2017, decision was based, and because the May 10, 2017,
10 determination was arbitrary, capricious and based on substantial error.

11 37. Petitioner City of San Jose has a clear, present, and legal right to
12 Respondents' performance according to law.

13 38. Respondents have a present legal duty and present ability to perform as
14 required by law.

15 39. Under Code of Civil Procedure section 1085, a writ of mandate should issue
16 directing Respondents to rescind their decisions of May 10, 2017, and October 27, 2017.
17 WHEREFORE, Petitioners pray for the relief set forth below.

18 **SECOND CAUSE OF ACTION**

19 **Petition for Writ of Administrative Mandate**
20 **against all Respondents and Does 1 through 25**

21 40. Petitioner incorporates by reference the allegations in paragraphs 1 through 39
22 as if specifically set forth herein.

23 41. Public evidentiary hearings were required by California Code of Regulations
24 sections 4855 and 4857, triggering review under Code of Civil Procedure section 1094.5.

25 42. Respondents failed to provide Petitioner a fair hearing on May 10, 2017, and
26 on October 27, 2017.

27 43. Respondents' actions of May 10, 2017, and October 27, 2017, constituted a
28 prejudicial abuse of discretion in that Respondents did not proceed as required by law,

1 their decisions were not supported by the findings, the findings were not supported by the
2 evidence in the record, and the decisions resulted in a miscarriage of justice, including but
3 not limited to the following.

4 44. Respondents' action of May 10, 2017, failed to comply with the requirements of
5 Public Resources Code section 5024.1, and California Code of Regulations sections 4852
6 and 4855, including but not limited to the following.

7 45. Respondents' action of May 10, 2017, failed to comply with the requirements of
8 Public Resources Code section 5024.1(f)(3) and California Code of Regulations section
9 4855(b)(2), mandating that when the local government objects to the listing, the findings of
10 the Commission must explain why the resource was listed in the California Register over
11 the objections of the local government.

12 46. Respondents' action of May 10, 2017, failed to satisfy the requirements of
13 Public Resources code section 5024.1(c) and California Code of Regulations section
14 4852(b), in that the Willow Glen Trestle does not qualify as a historical resource under the
15 criteria listed in those sections, including the criterion on which Respondents relied.

16 47. Respondents' action of May 10, 2017, failed to satisfy the requirements of
17 California Code of Regulations section 4852(c), in that the Willow Glen Trestle does not
18 have the required "authenticity" of its "physical identity."

19 48. Respondents' action of October 27, 2017, was erroneous, and the City's
20 redetermination request under California Code of Regulations section 4857 should have
21 been granted because there was a significant error in the facts, information, and analysis
22 on which the May 10, 2017, decision was based, and because the May 10, 2017,
23 determination was arbitrary, capricious and based on substantial error.

24 49. Under Code of Civil Procedure section 1094.5, a writ of mandate should issue
25 directing Respondents to rescind their decisions of May 10, 2017, and October 27, 2017.
26 WHEREFORE, Petitioner seeks the following relief:

- 27 1. Immediate stay prohibiting Respondents and their agents, employees,
28 officers and representatives from undertaking any activity to implement the

- 1 decisions of May 10, 2017, and October 27, 2017, such as causing
2 recordation of any resolution of the Commission concerning the Willow Glen
3 Trestle in the official records of the Santa Clara County Recorder;
4 2. Writ of mandate to issue under Code of Civil Procedure section 1985 and/or
5 1094.5 directed to Respondents, and requiring them to rescind and set aside
6 their decisions of May 10, 2017, and October 27, 2017, and to cease all
7 actions to implement the decisions, such as causing recordation of any
8 resolution of the Commission concerning the Willow Glen Trestle in the
9 official records of the Santa Clara County Recorder;
10 3. Costs of suit, including attorney's fees under Civil Code §1021.5; and
11 4. Such other relief as the Court deems just and proper.

12
13 Respectfully submitted,

14 Dated: January 24, 2018

RICHARD DOYLE, City Attorney

15
16 By: Margo Laskowska
17 MARGO LASKOWSKA
Senior Deputy City Attorney

18 Attorneys for CITY OF SAN JOSE
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