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8 Friends of the Willow Glen Trestle
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SANTA CLARA**
12

13 **Friends of the Willow Glen**
14 **Trestle**, an unincorporated
15 association;

16 Petitioners,

17 v.

18 **City of San José and City Council**
19 **of the City of San José;**

20 Respondents;
21 _____/

Case No. 2014-1-CV-260439

Petitioner's Request
for Judicial Notice
on Remand

22 Date: February 3, 2017
23 Time: 9:30 am
24 Dept: 29a

25 Honorable Helen Williams
26
27
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1 Pursuant to Evidence Code sections 452, subdivisions (b), and (c), Petitioner
2 Friends of the Willow Glen Trestle respectfully requests that the Court take judicial
3 notice of the minutes of the State Historical Resources Commission dated April 18,
4 2016, and July 29, 2016, true copies of which are attached as Exhibits A and B.

6 The minutes are a proper subject for judicial notice under Evidence Code section
7 452, subdivisions (b) and (c), by which courts may take judicial notice of a public
8 agency's official documents. (*See also Clark v. Patterson* (1977) 68 Cal.App.3d 329,
9 334, n. 5; *Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 7, fn. 2.)

11 The minutes are relevant to clarify a procedural matter in this remand
12 proceeding; to wit, the 2016 actions of the State Historical Resources Commission
13 confirming the historic qualifications of the Willow Glen Trestle. As in *Galante*
14 *Vineyards v. Monterey Peninsula Water Management District* (1997) 60 Cal.App.4th
15 1109, the parties agree that these documents are not part of the administrative record
16 before the Court relevant to the merits. However, judicial notice is appropriate in the
17 trial court. In *Galante*, for example, a CEQA addendum that post-dated the litigation
18 was addressed via judicial notice and referenced in the decision. (*Id.* at 1116, 1124.)

21 The April 2016 minutes, copied from the official State Parks website at
22 http://ohp.parks.ca.gov/?page_id=21754 are relevant to clarify the actions of the
23 Commission in light of the city's recent reference in its brief. (City's Opposition at 19,
24 n.4.) The Commission minutes document the official California determination that the
25 Willow Glen Trestle meets the criteria for listing in the National Register for Historic
26 Places. Those criteria were the model for listing in the California Register. There are
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1 four criteria, listed as A-D in the National Register and 1-4 in the California Register.
2 Any single criterion confers eligibility for historic listing.

3 The California Public Resources Code thus provides in relevant part that:

4 (b) The California Register shall include historical resources determined by the
5 commission ... to be significant and to meet the criteria in subdivision (c).
6

7 (c) A resource may be listed as an historical resource in the *California Register* if
8 it meets any of the following *National Register of Historic Places* criteria:

9
10 (1) Is associated with events that have made a significant contribution to the
11 broad patterns of California's history and cultural heritage.

12 (2) Is associated with the lives of persons important in our past.

13 (3) Embodies the distinctive characteristics of a type, period, region, or method
14 of construction, or represents the work of an important creative individual, or
15 possesses high artistic values.

16 (4) Has yielded, or may be likely to yield, information important in prehistory or
17 history.

18 (Pub. Resources Code, § 5024.1.) Here, as reflected in the minutes attached as Exhibit
19 A, the Commission determined unanimously, over the specific objections of the city,
20 that the Willow Glen Trestle meets Criterion A for listing in the National Register. It
21 therefore meets Criterion 1 for listing in the State Register via the statutory authority.
22

23 Petitioner Friends referenced in its pleadings that it would provide the Court with
24 the compelling transcript of the Commission meeting on April 18, 2016, of which it has
25 a copy, and offers to do so, but surmises that the minutes alone should be sufficient to
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1 clarify the status. ¹ The minutes of July 29, 2016 attached as Exhibit B are also
2 requested for notice because they reference the Commission’s approval of the minutes
3 of April 18. All minutes of the Commission on the State Parks website are notated
4 “draft” regardless of their final status, likely because they are posted prior to being
5 approved at a subsequent meeting and are not then reposted. Here, Exhibit B confirms
6 the approved final status of the April 2016 minutes.
7

8
9 January 24, 2017

Respectfully submitted,

10 BRANDT-HAWLEY LAW GROUP
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12 _____
13 Susan Brandt-Hawley
14 Attorney for Friends of the Willow Glen Trestle
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27 _____
28 ¹ The Court may note that among the speakers advocating historic status is former
State Historic Preservation Officer M. Wayne Donaldson who confirmed the eligibility
of the Trestle for historic listing and noted that his 2004 letter had been misconstrued.

EXHIBIT A

**STATE HISTORICAL RESOURCES COMMISSION
DEPARTMENT OF PARKS AND RECREATION**

1725 23rd Street, Suite 100
SACRAMENTO, CA 95816
(916) 445-7000 Fax: (916) 445-7053
calshpo@parks.ca.gov
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BRYAN K. BRANDES
.....Chairperson
MARSHALL MCKAY
.....Vice Chairperson
ALBERTO BERTOLI, AIA
ELIZABETH EDWARDS HARRIS
RICK MOSS
DAVID PHOENIX
ADRIAN PRAETZELLIS
JULIANNE POLANCO
.....Executive Secretary

Quarterly Meeting of the
STATE HISTORICAL RESOURCES COMMISSION
Presidio of San Francisco
The Golden Gate Club, Ventana Room
135 Fisher Loop
San Francisco, California
April 18, 2016
9:00 a.m.

COMMISSIONERS PRESENT

Bryan K. Brandes, Chair, Public Member
Marshall McKay, Vice-Chair, Folklife
Alberto Bertoli, Architecture
Elizabeth Edwards Harris, Architectural History
Rick Moss, Ethnic History
Adrian Praetzellis, Prehistoric Archaeology

COMMISSIONERS ABSENT

David Phoenix, Public Member

STAFF PRESENT

Julianne Polanco, State Historic Preservation Officer and Executive Secretary to the Commission
Jenan Saunders, Deputy State Historic Preservation Officer
Tara Lynch, Chief Counsel, California State Parks
Jay Correia, State Historian III, Registration Unit Supervisor
William Burg, State Historian II
Amy Crain, State Historian II
Eric Allison, CHRIS Coordinator
Diane Barclay, Outreach and Communications Coordinator

Twila Willis-Hunter, Executive Secretary

Note: Meeting minutes are a summary and not a verbatim transcription. Audio recordings of each State Historical Resources Commission meeting are available at <http://www.ohp.parks.ca.gov/shrcminutes>.

I. CALL TO ORDER

Legal notice having been duly given and a quorum present, the State Historical Resources Commission (Commission) meeting was called to order at 1:03 p.m. by Chair Bryan Brandes.

II. PLEDGE OF ALLEGIANCE

Chair Brandes led those assembled in the Pledge of Allegiance.

III. INTRODUCTION OF COMMISSIONERS AND STAFF

Chair Brandes thanked the California Preservation Foundation annual conference staff for setting up the meeting room and making the Commissioners and staff welcome. He extended a welcome to all present on behalf of the Commission, and extended a special welcome to former State Historic Preservation Officer (SHPO) Wayne Donaldson, and former Deputy SHPO Stephen Mikesell. Chair Brandes then asked the Commissioners to introduce themselves. State Historic Preservation Officer (SHPO) Julianne Polanco introduced herself and asked Office of Historic Preservation (OHP) staff to introduce themselves.

IV. WELCOME

Cindy Heitzman, Executive Director of the California Preservation Foundation (CPF), welcomed the Commission to the Presidio and the annual conference of the CPF. She noted that this year's conference was honoring the 50th anniversary of the National Historic Preservation Act, looking at the successes and challenges of the last fifty years and considering directions for the future. She thanked the Commission and the OHP for the work they do on behalf of historic preservation around the state and in partnership with the California Preservation Foundation.

V. RESOLUTIONS

A. Angel Island State Park (rescheduled to the next Commission meeting)

VI. APPROVAL OF JANUARY 29, 2016 MINUTES

Commissioner Harris moved to approve the Consent Calendar as presented. Commissioner Bertoli seconded the motion. **Action:** Motion carried unanimously by roll call vote.

Yountville Mayor John Dunbar, and Councilmembers Marita Dorenbecker and Margie Mohler, spoke in support of Yountville Grammar School, emphasizing the property's importance in the history of the region, and the success of the building's retrofit project.

Linda Pollack, Southern California Edison, spoke in support of Big Creek Hydroelectric System Historic District, remarking on the property's importance in the life and literature of early southern California. She thanked OHP staff and others for their help with the nomination process, and the Commissioners for their support.

David Weinstein, author of the nomination, spoke in support of X-100 and the recognition of modern resources. He thanked staff of the OHP for their help throughout the nomination process.

Break: 2:07-2:22 p.m.

**XI. NATIONAL REGISTER OF HISTORIC PLACES
CALIFORNIA REGISTER OF HISTORICAL RESOURCES
DISCUSSION AND ACTION ITEMS**

A PowerPoint presentation for each property preceded public comment and Commission discussion.

A. National Register of Historic Places, New Nominations

1. Rockhaven Sanitarium Historic District
Glendale, Los Angeles County
State Level of Significance

Speaking in support of the Rockhaven nomination were Christine Lazzaretto, Historic Resources Group; Michael Morgan, Emily Lanigan and Joanna Linkchorst, Friends of Rockhaven. The speakers emphasized Rockhaven's significance in local history, women's history, and mental health history, and the property's association with the work of mental health nurse and Rockhaven founder Agnes Richards.

With no speakers in opposition, the public comment period concluded.

Commissioner Bertoli moved to accept the nomination as presented. Commissioner McKay seconded the motion. **Action:** Motion carried unanimously by roll call vote.

2. Willow Glen Trestle over Los Gatos Creek
San Jose, Santa Clara County
Local Level of Significance

Speaking in support of the Willow Glen Trestle nomination were Susan Brandt-Hawley, Brandt-Hawley Law Group; Larry Ames, Scott Lane, and Severn Edmonds, Friends of the Willow Glen Trestle; Seth Bergstein, architectural historian; Gayle Frank, Preservation Action Council of San Jose; and Martha Heinrichs, Heather Lerner, Laura Levin, and Deborah Arant, community members.

Supporters spoke to the trestle's importance and place in the history of the Western Pacific Railroad and the economic and community development of the Willow Glen area. They also noted community support for the trestle and the efforts of the Friends of the Willow Glen Trestle to preserve the trestle as a tangible link to the area's past.

Speaking in opposition to the Willow Glen Trestle nomination were Martina Davis and Yves Zsutty, City of San Jose; Pierluigi Oliverio, Councilmember, City of San Jose; Bruce Tichinin and Taisia McMahon, Friends of the Three Creeks Trail; and Stephen Mikesell, Mikesell Historical.

Opponents emphasized their findings that the trestle was not a significant resource historically, and noted that the trestle did not qualify for city landmark status. Opponents also spoke of the trestle's impact on salmon and trout populations, and its impediment of the Three Creeks trail.

Wayne Donaldson, public member, spoke in rebuttal of the opposition, reiterating the trestle's significance to the community and community history.

Stephen Mikesell, Bruce Tichinin, and Councilmember Pierluigi Oliverio responded to the rebuttal, stressing that significance must be substantial enough to meet the level required under National Register of Historic Places criteria, and in their opinion, the trestle did not meet that level.

The public comment period then concluded.

Chief Counsel Tara Lynch responded to a letter submitted by Mr. Tichinin at the start of the commission meeting, in which he expressed concern regarding the impact a decision by the SHRC would have on CEQA compliance in this case. Ms. Lynch stated that a decision by the SHRC is not equal to, and does not result in, a direct or indirect physical change on the environment as defined under CEQA.

At the request of Commissioner Bertoli, staff read the text of Criterion A.

Commissioner Praetzellis asked Mr. Mikesell to clarify why he felt the trestle did not meet Criterion A. Mr. Mikesell responded that his research did not find a strong connection between the trestle and the region's fruit-packing industry, that to make any such connection "is a reach."

Commissioners Harris, McKay, Moss, and Bertoli, and Chair Brandes expressed favor for the trestle nomination, stating their belief that the trestle did meet the criteria level of significance with regard to its role in the region's community and commercial history, and it is important to preserve the less well-known historic structures that are tied to and reflect an area's past.

Commissioner Bertoli moved to accept the nomination as presented. Commissioner Harris seconded the motion. **Action:** Motion carried unanimously by roll call vote.

3. View Park Historic District
View Park-Windsor Hills, Los Angeles County
Local Level of Significance

Speaking in support of the View Park nomination were Katie Horak, Architectural Resources Group; Adrian Scott Fine, Los Angeles Conservancy; John Simmons, View Park resident; and Andre L. Gaines, Ben Kahle, Yolanda Parker, Pernell Cox, and Dr. Vanita Nicholas, View Park Conservancy.

Supporters spoke of View Park's historic significance as a neighborhood that transitioned from a racially exclusive environment to a community of the African American middle-class. They emphasized the strong community spirit and cohesiveness that has carried through generations of View Park residents, and the diversity of architecture preserved throughout the neighborhood. Also noted was the community's enthusiastic and financial support of the efforts to document the neighborhood's history and prepare the National Register of Historic Places nomination.

Andre L. Gaines, View Park Conservancy, read a letter from Ms. Rosalind Blackmen recounting the early history of View Park, including the period of the area's racial transition and development of a strong community identity.

With no speakers in opposition, the public comment period concluded.

Chief Counsel Tara Lynch reported that out of 1800 View Park property owners, only six had filed an objection, which was well below the majority required to allow an objection to stand against the nomination.

Commissioner Harris commented on the importance of a neighborhood of this size being recognized and designated as a historic district.

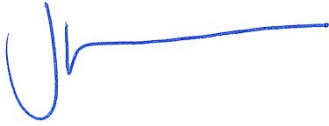
Commissioner Moss added that it also would help with the review process if more photographs were included in the review binder sent out to each commissioner.

Commissioner Harris recommended including in the nomination packet for View Park Historic District, a map showing View Park's location in context with the greater Los Angeles area.

XVI. ADJOURNMENT

Chair Brandes adjourned the regular meeting of the State Historical Resources Commission at 5:08 p.m.

Respectfully submitted,



Julianne Polanco
State Historic Preservation Officer

Date

EXHIBIT B

**STATE HISTORICAL RESOURCES COMMISSION
DEPARTMENT OF PARKS AND RECREATION**

1725 23rd Street, Suite 100
SACRAMENTO, CA 95816
(916) 445-7000 Fax: (916) 445-7053
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BRYAN K. BRANDES
.....*Chairperson*
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.....*Vice Chairperson*
ALBERTO BERTOLI, AIA
ELIZABETH EDWARDS HARRIS
RICK MOSS
DAVID PHOENIX
ADRIAN PRAETZELLIS
JULIANNE POLANCO
.....*Executive Secretary*

Quarterly Meeting of the
STATE HISTORICAL RESOURCES COMMISSION
Woodland Opera House
340 2nd Street
Woodland, California
July 29, 2016
9:00 a.m.

COMMISSIONERS PRESENT

Bryan K. Brandes, Chair, Public Member
Marshall McKay, Vice-Chair, Folklife
Alberto Bertoli, Architecture
Rick Moss, Ethnic History
David Phoenix, Public Member
Adrian Praetzellis, Prehistoric Archaeology

COMMISSIONERS ABSENT

Elizabeth Edwards Harris, Architectural History

STAFF PRESENT

Julianne Polanco, State Historic Preservation Officer and Executive Secretary to the Commission
Jenan Saunders, Deputy State Historic Preservation Officer
Tara Lynch, Chief Counsel, California State Parks
Jay Correia, State Historian III, Registration Unit Supervisor
William Burg, State Historian II
Amy Crain, State Historian II
Eric Allison, CHRIS Coordinator
Diane Barclay, Outreach and Communications Coordinator
Twila Willis-Hunter, Executive Secretary

Note: Meeting minutes are a summary and not a verbatim transcription. Audio recordings of each State Historical Resources Commission meeting are available at <http://www.ohp.parks.ca.gov/shrcminutes>.

I. CALL TO ORDER

Legal notice having been duly given and a quorum present, the State Historical Resources Commission (Commission) meeting was called to order at 9:07 a.m. by Chair Bryan Brandes.

II. PLEDGE OF ALLEGIANCE

Chair Brandes led those assembled in the Pledge of Allegiance.

III. INTRODUCTION OF COMMISSIONERS AND STAFF

Chair Brandes welcomed all present, and asked the Commissioners to introduce themselves. State Historic Preservation Officer (SHPO) Julianne Polanco introduced herself and members of the OHP staff in attendance.

IV. WELCOME

The Honorable Tom Stallard, Mayor of Woodland, welcomed the Commission and all present to the City of Woodland. He spoke about the history and restoration of the Woodland Opera House, and of the City's efforts to preserve and promote the community's history.

V. RESOLUTIONS

A. Angel Island State Park

Chair Brandes read the resolution into the official record. California State Parks District Superintendent Danita Rodriguez accepted on behalf of Angel Island State Park and California State Parks.

B. Matthew Clark, Kelsey Ewing, Sydney Fox, Allison Hodge, Austin Cozzi, 2016 National History Day-California Special Award Recipients (Senior Group Performance "American Exodus: The Okies' Exploration, Encounter, and Exchange in the San Joaquin Valley"). Deputy SHPO Jenan Saunders read the resolution into the official record. No students were present.

C. Christine Hoang, Helen Thai, Courtney Change, David Thong, Amber Lee, 2016 National History Day-California Special Award Recipients (Senior Group Exhibit "Locke

of Life”). Deputy SHPO Jenan Saunders read the resolution into the official record. Christine Hoang and Helen Thai accepted the resolution on behalf of the exhibit group.

- D. Mari Sanders, 2016 National History Day-California Special Award Recipient (Junior Individual Documentary “Giants in My Backyard: A Story of Land, People, and a Priceless Resource”). Deputy SHPO Jenan Saunders read the resolution into the official record. Mari Sanders accepted the resolution.
- E. Emily Tam, 2016 National History Day-California Special Award Recipient (Senior Individual Documentary “An Invitation to the World: The Exploration, of a New Nation at the 1915 Panama-Pacific International Exposition”). Deputy SHPO Jenan Saunders read the resolution into the official record. Ms. Tam was not present.

VI. APPROVAL OF APRIL 18, 2016 MINUTES

Vice-Chair McKay moved to approve the minutes as presented. Commissioner Moss seconded the motion. **Action:** Motion carried unanimously by roll call vote.

VII. COMMISSION AND STAFF REPORTS

A. Chair’s Report

No report given.

B. Executive Secretary’s Report

Executive Secretary and SHPO Julianne Polanco reported that since the last SHRC meeting, OHP staff has been busy with a variety of projects and preservation-related concerns, including discussions on how to accommodate sites with multiple layers of history and impact. SHPO Polanco mentioned she had attended a meeting at the Getty Conservation Institute in Los Angeles convened by the National Trust for Historic Preservation. Meeting attendees discussed the present and future of preservation, what has been done, what can be done, and how better to preserve places and histories not always recognized in preservation efforts of the past. SHPO Polanco also reported that the latest issue of the OHP newsletter was now available and copies had been distributed to all Commissioners.

VIII. COMMITTEE REPORTS

A. Archaeological Resources Committee (ARC)—Adrian Praetzellis, Acting Chair

Friends of the Willow Glen Trestle v. City of San Jose, et al.
Santa Clara County Superior Court Case No. 114CV260439

PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of Sonoma. I am over the age of eighteen years and not a party to this action. My business address is P.O. Box 1659, Glen Ellen, CA 95442.

On January 24, 2017, I served one true copy of:

Petitioner's Request for Judicial Notice on Remand

 x By emailing a copy to counsel as listed below.

Kathryn J. Zoglin
San Jose City Attorney's Office

Attorney for Respondents

katie.zoglin@sanjoseca.gov

I declare under penalty of perjury that the foregoing is true and is executed on January 24, 2017 at Glen Ellen, California.

Jeanie Stapleton