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7 Attorney for Petitioner
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,**
15 an unincorporated 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 Opposition to
Motion to Strike Supplemental
Administrative Record

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

Honorable Helen Williams

1 Petitioner opposes the city’s motion to strike the supplemental administrative
2 record. The circumstances regarding the city’s improper preparation of the record are
3 generally described in the Declaration of Susan Brandt-Hawley filed July 1, 2014 and
4 the Declaration of Jeanie Stapleton filed July 11, 2014; both attached for the Court’s
5 convenience. Petitioner timely elected to prepare the administrative record, since its
6 counsel routinely prepares records without a hitch, and met with significant problems.
7 (*Ibid.*) The supplemental record documents that the city now objects to were all within
8 city files relating to this project and even include the minutes of the Historical
9 Landmarks Commission on a matter regarding the Willow Glen Trestle.
10

11 The contents of a CEQA record as prescribed in Public Resources Code section
12 21167.6 (e) are construed broadly to include all documents submitted to any agency that
13 relate to a project, as long as submitted before project approval. As held in *County of*
14 *Orange v. Superior Court* (2003) 113 Cal.App.4th 1, 8, CEQA “contemplates that the
15 administrative record will include pretty much everything that ever came near a
16 proposed development or to the agency’s compliance with CEQA in responding to that
17 development.” Here, as described in the attached declaration, the documents referred
18 to as the supplemental administrative record are an appropriate part of the actual
19 record whether or not relied upon in the parties’ briefs. The city cannot object to the
20 documents based on a preference that they not be considered.
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22

23 In the earlier proceedings, the Honorable Joseph Huber did not rule upon
24 whether the supplemental record documents should be part of the record because the
25 Court found adequate evidence of qualifications for the California Register (under the
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1 fair argument standard) and needed to look no further. “*Even limiting the record to*
2 *only that material accepted by the City and certified by it as the official administrative*
3 *record...these statements are substantial evidence raising a fair argument that the*
4 *trestle’s demolition may have a significant impact on the environment, triggering the*
5 *requirement that an EIR be prepared.” (Order at 10, *excerpts attached*, noting record*
6 *evidence relied upon by the Court.)*

8 The Friends also object to the city’s Request for Judicial Notice as irrelevant,
9 regarding the city’s process for landmark designation. The fact-based opinions of
10 members of the city’s Historical Landmarks Commission are relevant regardless of the
11 scope of its duties under CEQA or the local landmark ordinances.
12

13 The Friends respectfully request that the motion be denied.
14

15 January 23, 2017

Respectfully submitted,

16 BRANDT-HAWLEY LAW GROUP

17 

18 _____
19 Susan Brandt-Hawley
20 Attorney for Friends of the Willow Glen Trestle
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ENDORSED

2014 JUL -1 1:51

David H. Vannoy, Clerk of the Superior Court
County of Santa Clara, California

By: REINA GANZA
Deputy Clerk

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7 Attorney for Petitioner

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SANTA CLARA**

10 **Friends of the Willow Glen**
11 **Trestle,**
12 an unincorporated association;
13
14 Petitioners,

Case No. CIV 114CV260439

Declaration of
Susan Brandt-Hawley
re Administrative Record

15 v.

16
17 **City of San José and City Council**
18 **of the City of San José;**

Date: July 18, 2014
Time: 9:00 am
Dept: 21

By Fax

19 Respondents;

Honorable Joseph Huber

20 _____/
21 **Does 1 to 10;**

22 Real Parties in Interest.
23 _____/
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1 I, Susan Brandt-Hawley, declare:

2 1. I am counsel for the Friends of the Willow Glen Trestle (Friends), a group
3 of community members acting in the public interest as a private attorney general.

4 2. Friends filed a timely election to prepare the administrative record
5 pursuant to Public Resources Code section 21167.6 subdivision (b) subdivision (2).

6 3. My staff and I worked as cooperatively as we could with counsel and staff
7 for the City to compile the administrative record. I hope to avoid burdening the Court
8 with copies of the extensive, tedious ongoing correspondence between counsel
9 regarding the appropriate content and form of the record and will instead be as brief as
10 possible in summarizing the record status.

11 4. During the months of April and May, my office provided a proposed record
12 index to Deputy City Attorney Katie Zoglin. Ms. Zoglin commented on the record
13 documents on many occasions and continued to provide many additional, relevant
14 documents from City files that my staff added to the record index as received. The City
15 continued to provide new documents to us for inclusion in the record until the day
16 before the opening brief was due on June 4. However, by June 3 I told Ms. Zoglin that I
17 could wait no longer to number the pages of the record according to the latest version of
18 the index, since I had to complete my brief. My staff then number-stamped the record
19 that met all of the City's requirements as communicated to us as of that date, right
20 before the opening brief was due on June 4. The opening brief cited to that numbered
21 record and was filed on time with difficulty due to the late numbering. The
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1 supplemental record and index, containing documents that Ms. Zoglin declined to
2 include in the record, were concurrently served on the City and lodged with the Court.

3
4 5. Before number-stamping the record, my staff removed all documents from
5 the record that the City did not agree to include, after I had explained to Ms. Zoglin that
6 the documents in fact met the statutory criteria for inclusion and that I would submit
7 those documents as a supplemental record.

8
9 6. The week following the filing of the opening brief, on the date I had
10 informed this Court and Ms. Zoglin that I was leaving on vacation for two weeks out of
11 the country, and without notice or agreement, the City unilaterally reconfigured the
12 index, renumbered and certified the record, and lodged it with the Court.

13
14 7. Unfortunately, the lodged record therefore does not match the index or
15 numbering of the record that Friends relied upon, after weeks of effort to accommodate
16 the City's requests and comments, to prepare and timely file the opening brief. Friends
17 lodged an excerpted record for the opening brief with numbers matching the citations
18 in that brief. The fact that the City's lodged record does not match the citations in the
19 opening brief was solely due to the City's unauthorized action to redo the record.

20
21 8. Instead of confusing matters further, I have not lodged the original record
22 and for my reply brief will cite to the record certified and lodged by the City. I will also
23 continue to cite to the "supplemental" record that contains documents that relate to the
24 project and were before the City and thus must included in "the" record:
25

26 **Pages 1-10:** City memoranda re BART, containing relevant discussions of creosote at
27 Coyote Creek, referenced by Friends and acknowledged by City staff (City AR 470).
28

1 **Pages 11-162, 168-169:** County of Santa Clara documents directing its staff to work
2 with the City to avoid demolition of the Willow Glen Trestle.

3 **Page 163:** Map of the trestle area.

4 **Pages 164, 170-171, 177-179, 180, 182-184, 201-266, 267-271, 272-273, 276-286:**

5 Project-related emails shown to have been copied directly to City officials and/or staff.

6 **Pages 165-167, 181:** *Mercury News* editorials referenced and hyperlinked in Friends'
7 member Larry Ames' email to the City's Mayor and Councilmembers on August 8, 2013
8 (City AR 1404-1405).

9 **Pages 172-176:** Drawing of the proposed trestle renovation provided to City staff and
10 referenced at City AR 755.

11 **Pages 185-191:** The Historical Landmarks Commission Synopsis: a City document.

12 **Pages 192-200:** Presentation to the Historical Landmarks Commission November 6.

13 **Pages 274-275:** Presentation to City Council January 14, 2014 (City AR 790-835).

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16
17 9. I initially anticipated filing a motion to augment the record before June 11
18 when leaving on vacation, and I so informed Katie Zoglin. However, I am instead
19 providing this declaration because in Friends' view these are not "supplemental"
20 documents but are part of the record per Public Resources Code section 21167.6
21 subdivision (e) and *County of Orange v. Superior Court* (2003) 113 Cal.App.4th 1 and
22 *Consolidated Irrigation District v. Superior Court* (2012) 205 Cal.App.4th 697.
23

24
25 I declare under penalty of perjury that the foregoing is true and correct and is
26 executed on July 1, 2014, at Glen Ellen, California.

27
28 Susan Brandt-Hawley



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 July 1, 2014, I served one true copy of:

**Declaration of Susan Brandt-Hawley
re Administrative Record**

By placing a true copy enclosed in a sealed envelope with prepaid postage in the United States mail in Glen Ellen, California addressed to the persons listed below.

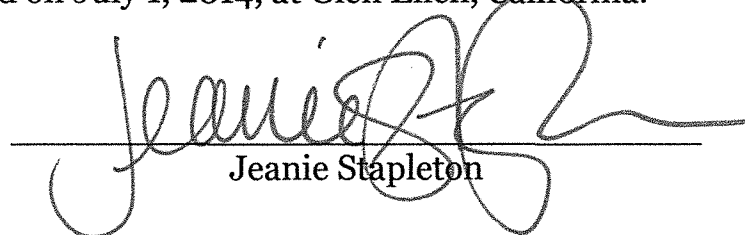
By emailing a copy to counsel as listed below.

Kathryn J. Zoglin
San Jose City Attorney's Office
200 E. Santa Clara Street
16th Floor
San Jose CA 95113

Attorney for Respondents

katie.zoglin@sanjoseca.gov

I declare under penalty of perjury that the foregoing is true and correct and is executed on July 1, 2014, at Glen Ellen, California.



Jeanie Stapleton

Susan Brandt-Hawley/SBN 75907
BRANDT-HAWLEY LAW GROUP
P.O. Box 1659
Glen Ellen, CA 95442
707.938.3900, fax 707.938.3200
susanbh@preservationlawyers.com

Attorney for Petitioner

(ENDORSED)
FILED

JUL 11 2014

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
DEPUTY
BY E. Mach

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

Friends of the Willow Glen Trestle, Case No. 114CV260439
an unincorporated association;

Petitioner,

v.

**Declaration of
Jeanie Stapleton in
Support of Petition**

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

Respondents;

Date: July 18, 2014
Time: 9:00 am
Dept: 21

BY FAX

Does 1 to 10;

Real Parties in Interest.

Honorable Joseph Huber

1 I, Jeanie Stapleton, declare:

2 1. I am a senior legal assistant and office manager employed at the Brandt-Hawley
3 Law Group since March 2009. I have a Bachelor of Arts degree from UCLA.

4 2. The public interest practice at this law office focuses on environmental
5 mandamus cases brought throughout California to enforce the California Environmental
6 Quality Act (CEQA), and in particular cases involving historic resources. These cases are
7 litigated based on administrative records of proceedings. As part of my professional duties,
8 I have indexed and organized many such records under the direction of Susan Brandt-Hawley.
9

10 3. Normally our office receives documents from the public agency whose CEQA
11 decision is at issue. I chronologically sort the documents and index them to comply with
12 California Rule of Court 3.1365. I work cooperatively with staff from the public agency and
13 project applicant to make sure the record is complete and accurate.
14

15 4. In this case, I was instructed to prepare the initial index and record based on
16 project-related documents that I was able to obtain via our client and the internet. It was my
17 understanding that this was the procedure requested by the deputy city attorney Katie Zoglin,
18 and that the City staff would then provide us with missing documents.
19

20 5. I completed the initial index of documents on April 9, 2014, and both the index
21 and the related documents were emailed to Ms. Zoglin on that date.

22 6. In the weeks between April 9 and June 3, I reviewed emails from Ms. Zoglin and
23 her staff providing comments and requested edits to the administrative record and index. Via
24 email, they provided 4 sets of substantial additional documents to add to the record on April
25 18. They provided additional documents to us to add to the record via emails they sent to our
26 office on April 24, April 25, April 30, May 23, May 28, and June 4. On behalf of petitioners, in
27 addition to the documents provided on April 9 our office provided 11 documents on May 30.
28

1 7. Concurrent with incorporating sets of new City documents into the draft record
2 between April 18 and June 4, I reviewed comments on the record and index provided by Ms.
3 Zoglin in many, many emails during that time period, including detailed substantive comments
4 received as late as June 2, June 3, and June 4. As directed by Ms. Brandt-Hawley, I added
5 documents to the record and index and removed documents from the record and index per
6 every request by Ms. Zoglin. Sometimes Ms. Zoglin's requests were inconsistent, as she
7 requested documents be removed and then requested the same be added, without explanation.
8 Some of the documents that Ms. Zoglin requested be removed from the record I indexed and
9 added to the "supplemental record."
10

11 8. On June 3, 2014, at the direction of Ms. Brandt-Hawley, I reviewed the last
12 comprehensive list of comments received from Ms. Zoglin and complied with all of the
13 requests, and then numbered the record to allow its use in finalizing the opening brief due the
14 very next day. Additional comments were received on June 4, after the record was numbered.
15

16 9. After numbering the record, I continued to respond to requests from Ms. Zoglin
17 regarding her preferred corrections to the index. I added tabs to the index at her request. I
18 removed one additional email from the record, at her request, and added it to the end of our
19 supplemental record.
20

21 10. On June 9, when we were prepared to finalize the index with the City's latest
22 proposed changes and to then forward the administrative record for review and certification as
23 numbered on June 3, I received an email from Ms. Zoglin's assistant Katherine Walters, who
24 said that "we are still reviewing the administrative record and suggest that you hold off on
25 making any revisions to the record or index at this time." I wrote back to her and sent a copy of
26 the index, stating that "[w]e will wait to hear from you, but in the meantime, I completed the
27 index following your instructions. Here it is."
28

1 11. On June 11, the City emailed a certified administrative record index. The
2 numbers of the record were changed from those in the draft index we had been working on for
3 two months, and upon which Ms. Zoglin had made many comments. The City then unilaterally
4 compiled the renumbered record and lodged it with the Court.

5 12. As directed by Ms. Brandt-Hawley, on June 5 I provided Ms. Zoglin via email
6 with the supplemental record containing documents to which she had objected. I then
7 prepared and lodged an excerpted record containing documents cited in the opening brief,
8 based on the numbered record I had prepared on June 3.

9 13. The City did not explain what changes it made to the record and index, or why. I
10 have compared our index and record of June 3 with the index and record filed by the City on
11 June 11, to determine the “errors” that the City claimed necessitated its actions to redo the
12 index and record.
13

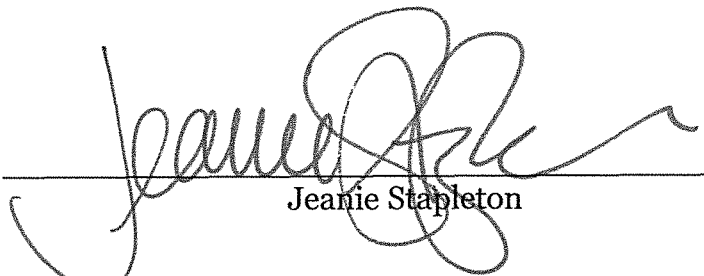
14 14. What I have found is the following:

- 15 • the City moved several documents around and edited many of the document
16 descriptions, but only one new document was added and one was removed.
- 17 • the City either expanded the description of some of the documents in the index to
18 include more detail, or changed the descriptions altogether (*e.g.*, ‘staff reports’ are now
19 renamed ‘memoranda’).
- 20 • the City moved one of the resolutions (76905) that had been listed (since April 9) as one
21 of the first documents in the record, in the “Resolutions” section of the index, to the
22 chronological section of the index. This immediately changed the numbering of the
23 entire record.
- 24 • the Transcripts and Minutes, indexed separately in our index (since April 9) were
25 combined/re-ordered chronologically.
26
27
28

- one document had an incorrect date in our June 3 index (May 30, 2013 email from Sarah Fleming). The City corrected this date and moved the document to the correct location in the index.
- the City added a document not previously provided to our office (one page email from Yves Zsutty to Jean Dresden, with attachments already in the record).
- the City removed a document (April 10, 2013 email from Matt Cano to Larry Ames).

14. These changes are extremely minor. Importantly, most of the City's late changes to the index and record could have been communicated to us weeks earlier, since they are simply changes to the index/record transmitted to the City on April 9. The one document added and one document removed could easily have been accomplished without renumbering the record. A document moved or added can be accomplished, as often happens with these records, as a .1 and .2. That is, a document to be added after page 20 can be numbered 20.1 and 20.2. A document removed can leave a blank page entitled "page intentionally blank."

I declare under penalty of perjury that the foregoing is true and correct and is executed in Glen Ellen, California, on July 9, 2014



Jeanie Stapleton

Order Issued
on Submitted Matter

FILED

JUL 28 2014

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY *[Signature]* DEPUTY

Sylvia Roman
Courtroom Clerk

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

FRIENDS OF THE WILLOW GLEN TRESTLE,
an unincorporated association,
Petitioner,

vs.

CITY OF SAN JOSE; CITY COUNCIL OF THE
CITY OF SAN JOSE,
Respondents.

Case No. 1-14-CV-260439

ORDER RE: PETITION FOR WRIT OF
MANDAMUS

The Petition for Writ of Mandamus by Petitioner Friends of the Willow Glen Trestle ("Petitioner") came on for hearing before the Honorable Joseph H. Huber on July 18, 2014, at 10:00 a.m. in Department 21. In advance of the hearing the Court carefully reviewed the administrative record and all briefs and pleadings. The matter having been submitted, the Court finds and orders as follows:

The request for judicial notice filed by Respondent City of San Jose ("City") with its Reply is DENIED. The material offered for judicial notice, portions of the San Jose Muni. Code

1 Cal App 4th 1383, 1399, n.10, cited by *Pocket Protectors* for the holding that expert opinion
2 offered under the Fair Argument standard need not meet the standards for expert witnesses
3 testifying at trial. “[T]o carry the proposition of the dissent to its logical extreme is to introduce
4 into the law a principle not heretofore recognized by any authority, i.e., that in order to raise a
5 fair argument, members of the public must bring forth impeccably credentialed experts who offer
6 scientifically irrefutable, site specific information foretelling certain environmental harm without
7 information supporting a contrary position. To the contrary . . . the evidence supporting a fair
8 argument should not be equated with ‘overwhelming or overpowering evidence.’ Nor does it
9 have to be uncontradicted.” *Id.* at 1402, internal citations omitted.

10
11 Having decided that the Fair Argument standard applies, the question becomes whether
12 Petitioner has shown that substantial evidence in the record supports a fair argument that the
13 demolition of the Trestle may have a significant effect on the environment because it may cause
14 a substantial adverse change in the significance of a historical resource. The Court finds that it
15 has shown that such substantial evidence exists in the record. Even limiting the record to only
16 that material accepted by the City and certified by it as the official administrative record, there
17 are several statements in the record from local citizens and at least two experts stating that the
18 trestle has historical value and/or referencing the material from the Willow Glen archives
19 uncovered after 2004 that may support a finding that the trestle is historic. These statements are
20 substantial evidence raising a fair argument that the trestle’s demolition may have a substantial
21 impact on the environment, triggering the requirement that an EIR be prepared.

22
23 The statements include, but are not necessarily limited to: the July 16, 2013 letter from
24 the California Trolley and Railroad Corporation (CTRC, a registered non-profit) at CAR 1392-
25 93 stating that “[t]he trestle is a classic 90 year-old structure, which once were common and are
26 almost now nonexistent”; the written comment letters from local citizens such as Larry Ames on
27 Dec. 19, 2013 (CAR 525-537 & 1495-1507) and Jan. 7, 2014 (CAR 1452-55), Martha Hendricks
28 on Nov. 19, 2013 (CAR 542-546 & 1512-1516); and a Dec. 18, 2013 letter from Jean Dresden

1 (CAR 518-524 & 1488-1507), the local historian partly responsible for the rediscovery of the
2 archive materials describing several sources of information that were not available in 2004 and
3 giving her opinion as to the historic value of the trestle. Her work regarding the archive material
4 is specifically referenced in Mr. Ames' letters and therefore indirectly referenced by others such
5 as architect Marvin Bamberg. Licensed Landscape Architect Susan Landry submitted a letter on
6 Dec. 16, 2013 (CAR 576) stating "Recently discovered reports and documents contain historic
7 information that was not taken into consideration and evaluated. The '3-Creeks RR Trestle
8 Bridge' was considered an historic feature over 50 years ago in Professional Reports that are part
9 of the discovered documents. The IS [Initial Study] states that there is 'No Impact' to the scenic
10 vista based on an outdated 2004 report for the CSJ's [City of San Jose's] Los Gatos Creek Trail
11 Project. The '3-Creeks RR Trestle Bridge' is the only remaining original 1920's Railroad Wood
12 Trestle Bridge along this historic rail line. . . . This historic RR line connected the Orchard in
13 south San Jose to the old Del Monte Cannery of Willow Glen." Brackets added.

14
15 Mr. Ames also made comments at the Jan. 14, 2014 City Council meeting stating that the
16 Willow Glen archive material "discovered in 2008" may make the Trestle "eligible for listing in
17 the State Historic Register under Categories 1, broad patterns of local or regional history, and
18 also possibly under Category 3, embodies the distinctive characteristics of a type of
19 construction," CAR at 799-801. This also qualifies as lay opinion supporting a fair argument. It
20 does not require technical expertise to opine that a 10-year old cursory evaluation of historical
21 significance could change if material discovered in the interim (and thus clearly not considered
22 in the prior evaluation) was also considered. Scott Lane (at CAR 803-804) and Richard Nisset
23 (CAR 804-805) also made comments at the Jan. 2014 hearing opposing demolition on the basis
24 that the trestle was historic and that a full EIR should be prepared.

25
26 Even if technical expertise is required to opine as to historical value, a separate and
27 additional basis for finding that a fair argument has been made exists in the record. The letters
28 dated Dec. 19, 2013 (CAR 1517 "With reference to Larry Ames' letter of this date") and Jan. 11

1 2014 (CAR 1464-1465) from Mr. Marvin Bamberg, a "CHRIS-listed historical architect,"
2 referencing the discovery of additional archive material discussed by Dr. Ames in his letters,
3 both included in the City's version of the AR, constitute "expert opinion supported by facts," and
4 are thus substantial evidence in support of a fair argument that (as Mr. Bamberg states) the
5 Trestle may qualify for listing in the California Register under criteria 1 (important events) and
6 criteria 3 (distinctive characteristics). Although the second, Jan. 11, 2014 letter by Bamberg
7 (specifically stating his belief that the Trestle "qualifies for listing in the California Register
8 under Criteria 1 and 3.") was not submitted until after the public comment period for the MND
9 had closed on Dec. 19, 2013, it was still submitted before the end of the City Council meeting at
10 which the MND was adopted and the NOD issued. Exhaustion of administrative remedies under
11 CEQA is satisfied if objections are made by any person "during the public comment period
12 provided by this division or *prior to the close of the public hearing on the project before the*
13 *issuance of the notice of determination.*" Pub. Res. Code §21177(a),(b), emphasis added.

14
15 The Dec. 16, 2013 letter from licensed landscape architect Susan Landry quoted above
16 was submitted during the public comment period and can also be considered "expert opinion
17 supported by facts" as she is presumably relying on her specialized training as an architect in
18 stating that the Trestle is historic and is the only remaining 1920's wood trestle on this rail line
19 closely linked to Willow Glen's history.

20
21 The City responds that even under the fair argument standard as the lead agency it is
22 vested with the authority to evaluate the credibility of evidence presented and determines if it
23 qualifies as substantial. But any questioning of credibility must be fact-based and addressed by
24 the lead agency during the administrative process. A determination that evidence is not credible
25 must be adequately supported by the record. In *County Sanitation Dist. No. 2 v. County of Kern*
26 (2005) 127 Cal App 4th 1544, 1597, the court emphasized that before an agency may reject
27 evidence as not credible, it must first identify that evidence with particularity to provide an
28 adequate basis for judicial review. Similarly, in *Pocket Protectors v. City of Sacramento* (2004)

1 124 Cal App 4th 903, 935, the court noted that, to find that the agency resolved disputed factual
2 allegations relating to credibility, the record must show that the decision-maker specifically
3 addressed the issue. There is no fact-based specific discussion of the evidence opposing the
4 City's conclusions in the record, let alone any fact-based evaluation of any specific person's
5 credibility. Most importantly, nowhere in the record does the City challenge the assertion that
6 Willow Glen archives were found in approximately 2008 and given to one of its public libraries
7 nor does it challenge anyone's credentials (such as those of Mr. Barnburg).

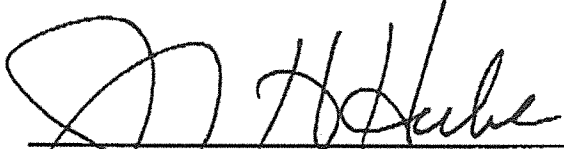
8
9 The evidence in the record relied on by Petitioner is similar to that found sufficient to
10 support a fair argument by the Sixth District in its *Architectural Heritage* decision. The Court
11 there stated "we disagree with the County's characterization of the speakers' testimony as
12 unsubstantiated opinion. For example, one of the speakers, Sales, is a certified historian; she
13 linked the jail with 'the perilous labor unrest in the Salinas Valley.' Another speaker, Munoz, is
14 an architect; he noted that the jail is 'a very rare style in Salinas and Monterrey County.' . . .
15 These and other speakers' remarks represent fact-based observations by people apparently
16 qualified to speak to the question of the jail's historic status. That testimony constitutes
17 substantial evidence, because it consists of 'facts, reasonable assumptions predicated upon facts,
18 and expert opinion supported by facts.'" 122 Cal App 4th at 1117-1118.

19
20 Petitioner here relies on two architects and an (amateur) historian, along with several
21 other citizens, attesting to the Trestle's possible historic value, based on material that was not
22 included in the 2004 review the City relies on for the determination that the trestle is not a
23 historic resource. None of their credentials or the key fact they base their opinions on (the
24 discovery of archive materials after 2004) was specifically challenged or evaluated anywhere in
25 the record. Neither City staff's disagreement with opposing opinions nor their stated opinion
26 that the archive material relates more to the railroad than the trestle constitutes a specific, fact-
27 based credibility determination.

1 Having found that there is substantial evidence in the administrative record supporting a
2 fair argument that the project as approved may have a significant effect on the environment, the
3 Court orders that Respondents' approval of the Project based on the MND be withdrawn and an
4 EIR prepared. Petitioner is directed to prepare and submit to Respondents for approval as to
5 form 1) an appropriate form of Judgment granting the Writ of Mandamus and 2) a Writ of
6 Mandamus, both consistent with this Order. Under Pub. Res. Code §21168.9(b), this Court will
7 retain jurisdiction over Respondents' proceedings by way of a return on the peremptory writ until
8 the Court has determined that Respondents have complied with CEQA. The parties are directed
9 to meet and confer and communicate to the Court a proposed return date on the Writ.

10
11
12
13 Dated:

7-28-14



Joseph H. Haber
Judge of the Superior Court

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 December 29, 2016, I served one true copy of:

Opposition to Motion to Strike

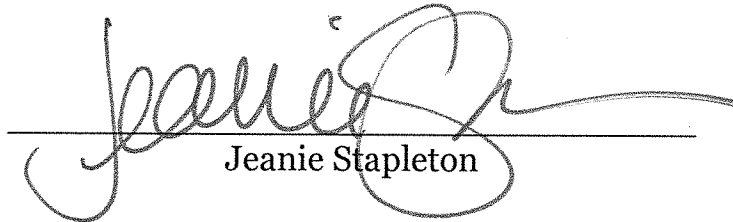
x By emailing a copy to counsel as listed below.

Kathryn J. Zoglin
San Jose City Attorney's Office
200 E. Santa Clara Street
16th Floor
San Jose CA 95113

Attorney for Respondents

katie.zoglin@sanjoseca.gov

I declare under penalty of perjury that the foregoing is true and correct and is executed on January 23, 2017, at Glen Ellen, California.



Jeanie Stapleton