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FILED
Superior Court of California
County of San Francisco

APR - 2 2019

CLERK OF THE COURT

BY: [Signature]
Deputy Clerk

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **FOR THE COUNTY OF SAN FRANCISCO**

17 **City of San José,**

Case No. CPF-18-516021

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20 Petitioner,

v.

[Proposed]

Order for Interlocutory Remand

21 **State Historical Resources**
22 **Commission, et al.,**

Hon. Ethan P. Schulman

23 Respondents,
24 _____/

25 **Friends of the Willow Glen Trestle,**

26
27 Real Party in Interest.
28 _____/

[Proposed] Order for Interlocutory Remand

MAR 21 2019

1 Petitioner City of San José's mandamus petition came on for hearing on the
2 merits on March 7, 2019, in Department 302, the Honorable Ethan P. Schulman
3 presiding. Margo Laskowska, Senior Deputy City Attorney, appeared for the petitioner;
4 Deputy Attorney General Shari Posner appeared for respondents State Historical
5 Resources Commission, *et al.*; and Susan Brandt-Hawley appeared for the real party in
6 interest Friends of the Willow Glen Trestle.
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8 Having issued a tentative ruling and considered the record, the briefs, and the
9 arguments of counsel, and
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11 **GOOD CAUSE APPEARING,**

12 The Court finds that petitioner has demonstrated that respondent abused its
13 discretion by failing to proceed in accordance with the law. (Code Civ. Proc. § 1094.5.)
14

15 Public Resources Code § 5024.1(f)(3) provides that: Where an objection has been
16 raised, the State Historical Resources Commission shall adopt written findings to
17 support its determination concerning the nomination of a resource to the California
18 Register of Historical Resources. At a minimum, the findings shall identify the
19 historical or cultural significance of the resource, and, if applicable, the overriding
20 significance of the resource that has resulted in the resource being listed in the
21 California Register over the objections of the local government. 14 CCR § 4855(b)(2)
22 echoes that requirement: Support of, and objections by, local government are to be
23 given full and careful consideration. When the local government objects to the listing,
24 the findings of the Commission shall identify the historical or cultural significance of
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1 the resource and explain why the resource was listed in the California Register over the
2 objections of the local government.

3 Notably, respondent's decision to list the Willow Glen Trestle on the California
4 Register did not refer to those provisions, citing only to a different provision of the
5 statute, § 4855(c)(3), that specifies the findings required in all cases, not the findings
6 specifically required where, as here, the local government objects to the listing. In
7 contrast, these provisions plainly require respondent to make factual findings that
8 highlight the historical or cultural significance of the resource and why the resource is
9 listed despite the local government's objection.
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12 In this case, respondent's decision merely described the historical significance of
13 the trestle and contained no analysis of petitioner's objections or of why respondent
14 listed it over those objections. (AR 268.) As such, respondent failed to comply with the
15 mandatory provisions of its governing statute and regulations requiring express
16 findings on these issues.
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19 Respondent argues that it merely needed to explain why the resource meets the
20 criteria of significance as set forth in Public Resources Code § 5024.1(c) and at any
21 rate, the Court should defer to respondent's interpretation. The Court accords no
22 deference to respondent's interpretation. Respondent's position is "clearly erroneous"
23 and interpreting the above provisions does not involve any agency expertise. (See
24 *Bonnell v. Medical Board* (2003) 31 Cal.4th 1255, 1265.) Adopting respondent's
25 interpretation would render the language requiring express findings "identify[ing] the
26 overriding significance of the resource" and "explain[ing] why the resource was listed
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1 in the California Register over the objections of the local government” mere
2 surplusage. Courts are instructed to avoid such interpretations. (*See People v. Valencia*
3 (2017) 3 Cal.5th 347, 357.)
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5 Respondent argues that its staff report addressed petitioner's objections. (See
6 Respondent's MPA in Opposition to Motion for Writ of Mandate, 20:8 and AR 158-161,
7 189-193.) While portions of the record do address some of petitioner's objections, it is
8 unclear whether respondent wholeheartedly adopted those recommendations.
9

10 “[I]mplicit in section 1094.5 is a requirement that the agency which renders the
11 challenged decision must set forth findings to bridge the analytic gap between the raw
12 evidence and ultimate decision or order.” (*Topanga Association for a Scenic*
13 *Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.) The Court is not
14 obliged “to grope through the record to determine whether some combination of
15 credible evidentiary items which supported some line of factual and legal conclusions
16 supported the ultimate order or decision of the agency.” (*Id.* at 516.) “The substantial
17 evidence test compels courts only to sustain existing findings supported by such
18 evidence, not to hypothesize new findings.” (*Sierra Club v. City of Hayward* (1981)
19 28 Cal.3d 840, 859 [“Because the [city] council failed to confirm that it considered
20 alternative uses only after determining that proximate alternative sites were
21 unavailable, we concluded that the findings it did make were insufficient to support its
22 conclusions.”]; *cf. Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212,
23 1224 [rejecting argument that defects in agency's statement of overriding
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1 considerations under CEQA were not prejudicial and therefore did not require
2 remand].)

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4 Lastly, the Court notes the narrowness of its ruling. The Commission lists a
5 resource if it meets the criteria of Public Resources Code § 5024.1(c). Nothing in this
6 order should be read to suggest that local government objections based on economic
7 or social considerations can override the criteria adduced in Public Resources Code
8 § 5024.1(c).
9

10 **Therefore, the Court orders** an interlocutory remand to the respondent
11 State Historical Resources Commission to clarify its findings consistent with this order
12 and Public Resources Code section 5024.1(f)(3). The Commission's finding that the
13 Willow Glen Trestle meets the delineated resource criteria for listing in the California
14 Register is supported by substantial evidence and was not challenged by the petitioner.
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16 The Commission must make further findings to specifically clarify, with reference
17 to the record, that the Commission considered the objections of the petitioner local
18 agency to listing the Trestle in the California Register and why the resource was listed
19 in the California Register over the City's objections. The Court further directs the
20 Commission to notice a public meeting to allow for full and fair public consideration of
21 its clarified findings on remand, consistent with this Order.
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24 The Court is informed that the Commission's next meeting is scheduled for May
25 8, 2019. The Commission shall lodge revised findings with the Court, with electronic
26 service on all counsel, on or before May 24, 2019. Thereafter at the request of any party
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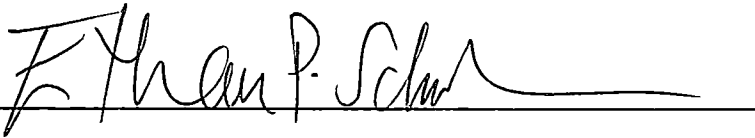
1 the Court may schedule a status conference and/or further hearing before the Court
2 issues judgment, or may issue its judgment based on the record before it.

3 During the pendency of this interlocutory remand to the Commission, the Court
4 shall retain jurisdiction over the City's Petition for Writ of Mandate.
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7 **IT IS SO ORDERED.**

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10 Date:

April 2, 2019



11 HONORABLE ETHAN P. SCHULMAN
12 Judge of the San Francisco Superior Court
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