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Superior Court of California
County of Los Angeles

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David W. Slayton, Executive Officer/Clerk of Court
City of Los Angeles
by: J. De Luna, Deputy

The Silver Lake Heritage Trust and Annie Sperling v. City of Los Angeles and City Council, 21STCP02612

Decision on petition for writ of mandate denied

Petitioners the Silver Lake Heritage Trust (“Silver Lake”) and Annie Sperling (“Sperling”) seek a writ of mandate to compel Respondents City of Los Angeles (“City”) and its City Council to set aside the City Council’s January 26, 2022 supplemental findings in its determination that the Taix French Restaurant (“Taix Restaurant”) is an historical-cultural monument (“HCM”), as well as the determination that the HCM designation is categorically exempt from the California Environmental Quality Act (“CEQA”).

The court has read and considered the moving papers, oppositions, and reply, heard argument at the February 9, 2023 trial, and renders the following decision.

I. Statement of the Case

A. Petition

Petitioner Silver Lake commenced this proceeding on August 11, 2021. The operative pleading is the First Amended Petition (“FAP”) filed on April 26, 2022, alleging causes of action for mandamus under (1) the City’s Cultural Heritage Ordinance, (2) CEQA, and (3) the Brown Act, as well as a claim for declaratory relief. The FAP alleges in pertinent part as follows.

The Taix Restaurant is located on two parcels: (1) 1911-1929 West Sunset Boulevard and (2) 1910-2018 West Reservoir Street. Marius Taix, Jr. established the Taix Restaurant in 1929, and it was remodeled under new ownership in 1962. It is now a popular restaurant, a legacy business, and a beloved community institution.

In August 2020, Petitioners submitted to the City’s Office of Historic Resources (“OHR”) an application to designate Taix Restaurant as an HCM. OHR prepared an initial staff report recommending that the City’s Cultural Heritage Commission (“Commission”) consider the nomination.

Under the Los Angeles Administrative Code (“LAAC”), each Commission member must have a demonstrated interest, competence, or knowledge of historical preservation. The Commission can designate a site as an HCM if it (1) is identified with important events of national, state, or local history, or exemplifies significant contributions to the broad cultural, economic or social history of the nation, state, city or community, (2) is associated with the lives of historical personages important to national, state, city, or local history, or (3) embodies the distinctive characteristics of a style, type, period, or method of construction, or represents a notable work of a master designer, builder, or architect whose individual genius influenced his or her age.

On October 15, 2020, the Commission held a hearing on Petitioners’ application and determined that it merits further consideration. OHR evaluated the relevant evidence and prepared its staff report. OHR’s staff report noted that Taix Restaurant was one of the City’s last dining establishments reflecting a post-World War II era in which the restaurant incorporated references to foreign locales that servicemen would recognize. Any changes to Taix Restaurant were part of the restaurant’s growth over time and compatible with the original continental dining design.

On December 17, 2020, at its second and final hearing, the Commission agreed with the staff report and recommended that the City Council add Taix Restaurant to the City’s list of HCMs. The Commissioner memorialized this recommendation in a Letter of Determination on January 26,

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2021.

On May 4, 2021, the City Council's Planning and Land Use Management ("PLUM") Committee held a remote hearing on the Commission's recommendation. On May 3, 2021, less than 24 hours before the hearing, Craig Bullock ("Bullock"), planning deputy to City Councilmember Mitch O'Farrell ("O'Farrell"), informed the PLUM Committee by letter of O'Farrell's request to modify the Commission's recommended findings. Bullock's letter referenced for the first time a salvage operation for Taix Restaurant's two outdoor signs and the cherry wood bar top. O'Farrell claimed this would convey Taix Restaurant's historical significance and justify its designation as an HCM. The PLUM Committee adopted O'Farrell's proposed findings at the hearing.

On June 2, 2021, the City Council conducted a remote hearing at which it adopted the PLUM Committee's report with O'Farrell's modifications.

Petitioners submitted a cure-and-correct demand under the Brown Act. The City Attorney informed Petitioners that the PLUM Committee would re-hear the application to approve Taix Restaurant as an HCM on November 30, 2021. The PLUM Committee clerk subsequently gave notice that the PLUM Committee would rehear the item on December 7, 2021 where it would consider whether (1) the proposed designation as an HCM was categorically exempt from CEQA, (2) Taix Restaurant conforms to the definition of a HCM under the Cultural Heritage Ordinance, and (3) the PLUM Committee should adopt the Commission's findings as amended by O'Farrell's modifications.

On December 6, 2021, O'Farrell submitted a letter with supplemental findings that had not been in Bullock's May 4, 2021 letter. O'Farrell's December 6, 2021 letter again called the two neon signs and cherry bar top character-defining physical features of Taix Restaurant. O'Farrell intended these findings to supersede the Commission's determination.

On December 7, 2021, the PLUM Committee continued the hearing to January 18, 2022. The agenda item for the hearing referred to consideration of a report from the Commission for the inclusion of the Taix Restaurant in the list of HCMs and a categorical exemption from CEQA. This item description did not provide proper notice of O'Farrell's plan to salvage fragments of Taix Restaurant. At the hearing, the PLUM Committee did not call on members of the public with their hands raised to speak.

At a meeting on January 26, 2022, the City Council determined "that the subject property conforms with the definition of a Monument" and approved the "recommendations of the Commission relative to the inclusion" of Taix Restaurant as an HCM. The City Council also approved the PLUM Committee's recommendations. The City has not responded to Petitioners' second cure-and-correct letter.

Petitioners seek a writ of mandate compelling the City to (1) set aside the Commission's findings as amended by the PLUM Committee to include O'Farrell's requested supplemental findings (the "Supplemental Findings"); (2) set aside and void the finding that the HCM designation based on the Supplemental Findings is exempt from CEQA; (3) take further action as required by law; and (4) refrain from issuing a permit for any demolition or alteration of the Taix Restaurant building. Petitioners also ask the court to declare that (1) the City's adoption of the Supplemental Findings violates the City's Cultural Heritage Ordinance, (2) CEQA categorical exemptions do not apply to the City Council's January 26, 2022 action, and (3) the PLUM Committee violated Government Code section 54954.3(a) by failing to provide members of the

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public an opportunity to be heard. Petitioners also seek attorney's fees and costs.

B. Course of Proceedings

On August 24, 2021, Petitioners served the City with the Petition and Summons.

On August 30, 2021, Petitioners served Real Party-in-Interest Holland Partner Group with the Petition and Summons by substitute service, effective September 9, 2021.

On April 28, 2022, Petitioners served Real Parties-in-Interest 1911 Sunset Investors, LLC ("Sunset") and Holland Partner Group with the FAP and Summons.¹

II. Governing Law²

A. National Register

The National Historic Preservation Act (16 U.S.C. §470 *et. seq.*) authorizes the Secretary of the Interior ("Secretary") to expand and maintain a National Register of Historic Places ("National Register") composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture. 16 U.S.C. §470a(a)(1)(A).

In evaluating properties for the National Register, the Secretary should consider which districts, sites, buildings, structures, and objects possess integrity of location, design, setting, materials, workmanship, feeling, and association and (a) are associated with events that have made a significant contribution to the broad patterns of national history, (b) are associated with the lives of significant persons in national history, or (c) embody the distinctive characteristics of a type, period, or method of construction, represent the work of a master, possess high artistic values, or represent a significant and distinguishable entity whose components may lack individual distinction. Pet. RJN Ex. 1 (36 C.F.R. §60.4); Pet. RJN Ex. 4, p. 13. The first two categories

¹ Petitioners point out that the City and Real Parties have not answered the FAP. Pet. Op. Br. at 15, n. 6. Petitioners seek no remedy from this failure.

² Petitioners request judicial notice of the following: (1) 36 Code of Federal Regulations ("C.F.R"), sections 60.3 and 60.4 (Pet. RJN Ex. 1); (2) 36 C.F.R. sections 67.1-67.11 (Pet. RJN Ex. 2); (3) "The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings" released by the U.S. Department of the Interior in 1995 ("Secretary's Standards") (Pet. RJN Ex. 3); (4) National Register Bulletin No. 15, "How to Apply the National Register Criteria for Evaluation," as revised by the U.S. Department of the Interior in 1997 (Pet. RJN Ex. 4); (5) the City Council's official action adopting the PLUM Committee report on June 28, 2022 (Pet. RJN Ex. 5); (6) a Planning transmittal to the City Clerk's Office dated October 25, 2022 (Pet. RJN Ex. 6); (7) Planning's Monuments List as of June 3, 2022 (Pet. RJN Ex. 7); and (8) OHR's HCM Nomination Information Guide, updated on April 2018 (Pet. RJN Ex. 8). Request Nos. 1-2 are granted under Evid. Code section 452(a), and Request Nos. 3-8 are granted under Evid. Code section 452(c).

The City requests judicial notice of an application form submitted to Planning on April 21, 2020 for a mixed-use housing project on the site of Taix Restaurant (City Opp. RJN Ex. 1). The application is not an official act, and the request is denied.

In reply, Petitioners request judicial notice of the City Council meeting minutes for February 1, 2022 (Reply RJN Ex. 1). The request is granted. Evid. Code §452(c).

reflect a building's Associative Value, whereas the third reflects Design or Construction Value. Pet. RJN Ex. 4, pp. 17-19. The aspects of Design or Construction Value include architectural design, engineering, artwork, and construction. Pet. RJN Ex. 4, pp. 23-24.

A "building" is a structure created to shelter any form of human activity, such as a house, barn, church, hotel, or similar structure. Pet. RJN Ex. 1 (36 C.F.R. §60.3(a)).

A "site" is the location of a significant event, a prehistorical or historical occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical or archeological value regardless of the value of any existing structure. Pet. RJN Ex. 1 (36 C.F.R. §60.3(l)).

A "structure" is a work made up of interdependent and interrelated parts in a definite pattern of organization. Pet. RJN Ex. 1 (36 C.F.R. §60.3(p)). Constructed by man, it is often an engineering project large in scale. Pet. RJN Ex. 1 (36 C.F.R. §60.3(p)).

Per a National Register Bulletin on applying the criteria for the National Register, an "historical resource" is a building, site, district, object, or structure evaluated as historically significant. Pet. RJN Ex. 4, p. 59. The criteria for identifying historical places are oriented to recognizing physically concrete properties that are relatively fixed in location. Pet. RJN Ex. 4, p. 10. They are not used for intangible values except to the extent that these values are associated with or reflected by historical properties. Pet. RJN Ex. 4, p. 10.

A property must be associated with important historical context and retain historical integrity of those features necessary to convey its significance. Pet. RJN Ex. 4, p. 9. The evaluation of the property includes determining whether it is significant under the National Register criteria, then whether the property retains integrity based on location, design, setting, workmanship, materials, feeling, and association that the property must retain to convey its historical significance. Pet. RJN Ex. 4, p. 9.

If a building has lost any of its basic structural elements, it is usually considered a "ruin" and categorized as a site. Pet. RJN Ex. 4, p. 10. A site need not be marked by physical remains if it is the location of a prehistorical or historical event or pattern of events and if no buildings, structures, or objects marked it at the time of the events. Pet. RJN Ex. 4, p. 11.

A building's ability to properly convey its historical significance lies in its integrity. Pet. RJN Ex. 4, pp. 50-51. In other words, integrity asks whether the property has retained the identity that made it significant. Pet. RJN Ex. 4, p. 51. Properties change over time, and a property need only retain the essential physical features needed to convey historical identity. Pet. RJN Ex. 4, p. 52. This includes why and when a property was significant. Pet. RJN Ex. 4, p. 52.

Although it can be a subjective judgment, the evaluation should be grounded in an understanding of a property's physical features and which ones are most essential to its significance. Pet. RJN Ex. 4, pp. 50-51, 54. A property with historical integrity will usually have most of the seven criteria recognized by the National Register: location, design, setting, materials, workmanship, feeling, and association. Pet. RJN Ex. 4, p. 50. The criterion most relevant to the property's significance should carry the most weight. Pet. RJN Ex. 4, pp. 50, 54. When the property has Associative Value, a basic test is whether the important event or person associated with it would recognize the property if seen as it is today. Pet. RJN Ex. 4, p. 54.

Design includes organization of space, proportion, scale, technology, ornamentation, and materials. Pet. RJN Ex. 4, p. 50. A property's design reflects historical functions and technologies as well as aesthetics. Pet. RJN Ex. 4, p. 50.

B. The Cultural Heritage Ordinance

Pursuant to the City's Cultural Heritage Ordinance (the "Ordinance"), an HCM may be "any site (including significant trees or other plant life located on the site), building or structure of particular historical or cultural significance to the City of Los Angeles." LAAC §22.171.7. A proposed HCM may be designated by the City Council "in whole or part." LAAC §22.171.10(f).

The City Council has the sole authority to designate an HCM:

"A proposed Monument may be designated by the City Council upon the recommendation of the Commission if it meets at least one of the following criteria:

1. Is identified with important events of national, state, or local history, or exemplifies significant contributions to the broad cultural, economic or social history of the nation, state, city or community;
2. Is associated with the lives of historical personages important to national, state, city, or local history; or
3. Embodies the distinctive characteristics of a style, type, period, or method of construction; or represents a notable work of a master designer, builder, or architect whose individual genius influenced his or her age." LAAC §22.171.7.

The Commission performs functions relating to historical and cultural preservation of sites, buildings, or structures that embody the heritage, history, and culture of the City. LAAC §22.171.1.

Any interested individual may apply for the designation of a site, building, or structure as an HCM. The applicant shall complete the application for the proposed designation on a form provided by Planning, include all information required, pay the required fee, and file the application with Planning. LAAC §22.171.10(b).³

Upon receipt of the application, the Commission shall determine at a public meeting held within 30 days of the filing of a complete application whether to take under consideration a proposed designation of an HCM. LAAC §22.171.10(e)(1).

Written notice must be given to the property owner⁴ and owner's representative for: (a) the decision to initiate an inspection and investigation into a proposed designation (LAAC §22.171.10(d)(1)); (b) the Commission's decision to take a proposed designation under consideration. LAAC §22.171.10(d)(4).

If the Commission determines to take the matter under consideration, it shall conduct an inspection and investigation. Id. The Commission, its sub-committee, or staff from the Department of City Planning ("Planning") acting on the Commission's behalf shall inspect and

³ Per OHR's Nomination Information Guide, the applicant must identify the type of the property at issue. Pet. RJN Ex. 8, p. 8. An application that is deemed complete must provide sufficient evidence and necessary documentation before the OHR prepares a staff report with its recommendation for the Commission. Pet. RJN Ex. 8, p. 4.

⁴ The "owner" is defined as "the person appearing as the owner of the property on the last Equalized Assessment roll of the County of Los Angeles and appearing as the owner of the property on the records of the City Clerk." LAAC §22.171.10(d)

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investigate any site, building or structure, including, but not limited to, touring or reviewing photographic or videographic records of the site, building or structure, in the City which it has reason to believe is or will in the future be an HCM. LAAC §22.171.8. Thereafter, Planning's director shall prepare a report and recommendation on the proposed designation. LAAC §22.171.10(c)(4).

After receipt of the report and recommendation, the Commission shall hold a public hearing regarding the proposed designation and determine whether the site, building, or structure conforms with the definition of an HCM. LAAC §22.171.10(c)(4). If the Commission recommends approval of the application for a proposed designation, the Commission shall submit a report and recommendation to the City Council. Thereafter, the City Council may consider the matter and may adopt the designation by a majority vote. LAAC §22.171.10(c)(4).

The Commission shall make a report and recommendation on the application within 75 days of the meeting where the proposed designation was taken under consideration. LAAC §22.171.10(e)(1). If the Commission fails to act on an application within the time allowed, the Commission shall be deemed to have denied the application. LAAC §22.171.10(e)(1).

The City Council may approve or disapprove in whole or in part an application or initiation for a proposed designation of an HCM. LAAC §22.171.10(f).

Once a monument is designated as an HCM, the Commission shall take all steps necessary to preserve the HCM not in conflict with the public health, safety, and general welfare, powers and duties of the City. LAAC §22.171.11. No permit for the demolition, substantial alteration, or relocation of the HCM shall issue without review by the Commission. LAAC §22.171.14. The Commission must evaluate whether a substantial alteration (1) complies with the Standards for Rehabilitation approved by the United States Secretary of the Interior; (2) protects and preserves the historical and architectural qualities and the physical characteristics that make the site, building, or structure a designated HCM; and (3) complies with CEQA. LAAC §22.171.14(a). The Commission shall also base its determination on the approval of a permit for the demolition or removal of any HCM on compliance with CEQA. LAAC §22.171.14(b)(2).

Planning shall compile and maintain a current list of all sites, buildings and structures that have been designated as HCMs. LAAC §22.171.9.

III. Statement of Facts

A. Background

Taix Restaurant is a French restaurant and banqueting facility located at 1911-1929 West Sunset Boulevard. AR 22-23, 246. SurveyLA⁵ lists Taix Restaurant as one of four examples of properties that have a long-standing commercial presence in a community. AR 2946.

B. The Sunset Project

On April 21, 2020, Sunset filed an application for a project to convert Taix Restaurant's lot into a mixed-use project with 170 residential units and 13,000 square feet of commercial space ("Sunset Project"). Opp. RJN Ex. 1.⁶ In May 2020, Real Party's expert, Kathryn McGee

⁵ SurveyLA is the City's comprehensive program to identify significant historical resources. Pet. RJN Ex. 8, p. 6.

⁶ This exhibit has not been judicially noticed but the fact appears undisputed.

("McGee"), wrote an Impact Analysis Report for the Sunset Project. AR 2272. McGee's report explained that Taix Restaurant's owners had recently sold the restaurant property to Sunset because they decided that the restaurant was no longer economically viable to operate in its current size and format. AR 2274. Taix Restaurant is considered an historical resource under CEQA. AR 2274. SurveyLA had identified it as a historical resource because it was significant as the founding or long-term location of a business that made a significant contribution to the commercial history of Los Angeles. AR 2274. The Sunset Project is a transit priority project under the Sustainable Communities Strategy of CEQA, which requires that such a project not have a significant effect on historical resources. Pub. Res. Code §21084.1. AR 2279.

The Sunset Project proposes to construct a six-story, mid-rise building with five stories of residential construction over one story of commercial, lobby, and parking space, and two underground stories of parking. AR 2287. It would preserve the historical user experience by (1) maintaining the location and relationship of the Taix Restaurant to Sunset Boulevard, (2) incorporating key features into the new design, such as Taix Restaurant's existing cherry wood bar top and scalloped ceilings in the dining room and bar area, and (3) reinstalling historical signage on the south facade, east elevation, and west elevation fronting the outdoor dining area of the new building. AR 2238. This would establish a balance between continuity and change so that Taix Restaurant could continue to both operate at a financially viable size and convey the feeling and association that characterize its appeal to the community. AR 2288-89, 2300. The Sunset Project would preserve the key physical characteristics needed for Taix Restaurant to remain eligible to become an HCM under Criterion 1 of LAAC section 22.171.7, structures that reflect and exemplify the broad cultural, economic, or social history of the community. AR 2300.

C. The HCM Nomination for Taix Restaurant

On August 24, 2020, Petitioner Silver Lake nominated Taix Restaurant as an HCM. AR 3, 5-6. The nomination form explained that Taix Restaurant was built in 1926 and is now threatened by private development. AR 3. Through a 2010 Hollywood Redevelopment Area Survey, SurveyLA determined that the restaurant site is eligible for national, state, or local landmark service. AR 4. Silver Lake claimed that Taix Restaurant qualifies as an HCM under (1) Criterion 1 as identified with important events of national, state, or local history, or exemplifies significant contributions to broad cultural, economic, or social history, and (2) Criterion 3 as embodying the distinctive characteristics of a style, type, period, or method of construction, or representing a notable work of a master designer, builder, or architect whose work influenced his era. AR 4.

The nomination form's architectural description explained that the building was of French Normandy design and started with a rectangular shape. AR 7. Additions had changed the building to an irregular shape to match the lot's irregular shape. AR 7. Changes included large neon signs that spelled "TAIX" over several entrances, closed eaves, small lights at regular intervals in the wider eave, and dormer vents toward the West end of the front facade. AR 7. The nomination included these alterations, most of which were from the 1960s and 1970s. AR 8.

The nomination form described the history of the Taix Restaurant beginning in the 1920s, renovations adding a two-story tower in 1963, and adding signage in 2000. AR 14. On October 16, 2012, the City Council renamed the intersection in front of the restaurant "Taix Square." AR 15-16, 281-82.

On July 13, 2019, Michael Taix and his wife deeded the property to Sunset. AR 16. Sunset now plans to raze the Taix Restaurant building and construct two multi-story buildings with a new Taix Restaurant on the first floor of one building. AR 16. Silver Lake objected because the building is an important component of the Taix Restaurant legacy that SurveyLA recognized as eligible to become an HCM. AR 16. In January 2020, a preliminary report by the Los Angeles Conservancy (“Conservancy”) – a private historical preservation entity -- concurred with SurveyLA’s findings. AR 16.

Silver Lake compared Taix Restaurant to Tom Bergins, an HCM for which the nomination form explained that well-established and long-lived businesses take on important social qualities and often mature into iconic and revered cultural institutions. AR 17. Such businesses become part of a community's collective memory and sense of cultural and commercial identity. AR 17. They bring people together, provide a sense of continuity with the past, and give cities a rich and layered identity rooted in history and more tangible than tradition or culture. AR 17. Although Taix Restaurant relocated in the 1950s from its original 1920s location, it had established itself in its new location as a historical venue that embodies distinctive characteristics of the rare French Normandy style in commercial architecture. AR 17.⁷

D. The Historic Resources Group Report

A preliminary assessment prepared by Historic Resources Group for the Conservancy found that Taix Restaurant seemed eligible for HCM designation. AR 33. Although evaluating properties that are significant for their use is difficult and subjective, this property met eligibility standards by SurveyLA and is similar to other HCM-eligible properties. AR 33. The report described the signage, including (1) the large neon roof sign reading “TAIX” at the northeast corner of the building, (2) the wall sign reading “TAIX” at the projecting canopy, (3) a projecting wall sign at the east end of the primary facade reading “TAIX”, and (4) a projecting “COCKTAILS” wall sign. AR 33.

The City’s OHR has taken the lead in developing a Citywide historical context statement through SurveyLA, which provides the framework to identify and evaluate its historical resources. AR 43. To analyze Taix Restaurant under Criterion 1, Historic Resources Group applied the historical context statement’s Commercial Identity theme of the Commercial Development context. AR 43. Commercial Identity evaluates the founding or long-term location of a business that made a significant contribution to commercial history. AR 43. Related resources include food service, retail stores, and service-related businesses. AR 43. Relevant property types include commercial historical districts with emphasis on those associated with ethnic groups. AR 43. A property is only eligible for commercial identity if it (1) is associated with a business that made an important contribution to commercial growth and development in the City and (2) is the founding or the long-term location of a business significant in commercial history. AR 44.

Historical integrity is the ability of a property to convey significance. AR 46, 312. It is defined as authenticity of a property's historical identity, evidenced by the survival of physical characteristics that existed during the property's historical period. AR 46, 312. Integrity

⁷ Taix Restaurant moved from downtown to its current location on Sunset Boulevard in the 1962. The “Taix Square” sign in front of the restaurant refers to the restaurant franchise, not the location, by stating “Established in 1927 by Marius Taix, Jr.” AR 512.

considerations include whether the building (1) has maintained integrity of location, design, feeling, materials, and association, (2) the setting around it has changed, and (3) has had alterations during the period of significance that are not based on architectural quality. AR 44.

Based on the theme and context, Taix Restaurant appears eligible for HCM designation under Criterion 1. AR 43, 47, 313. It is a cultural community icon with a commercial identity as a long-standing Echo Park restaurant and a second-generation French restaurant in the City. AR 45-47. Although it was established in 1927, the period of significance begins in 1962 when Taix Restaurant opened at its current location. AR 46. In this regard, it retains integrity of location. AR 46. It also retains integrity of setting because that area was and is a high-traffic commercial corridor. AR 47.

Architectural significance is not a consideration under Commercial Identity, and the loss of integrity from the original design is irrelevant because any alterations were made before or during Taix Restaurant's occupancy. AR 33, 46. The restaurant retains integrity of design insofar as the design conveys the significance of its current location as its long-term home. AR 46. The same applies to integrity of materials and workmanship. AR 47. Its integrity on all these aspects also allows the property to retain integrity in feeling and design. AR 47, 313. The Historic Resources Group cited National Register Bulletin No. 15 as a source. AR 49.

E. The October 15, 2020 Commission Hearing

Silver Lake prepared a presentation for the Commission with pictures of Taix Restaurant. AR 2496-99, 2501. Some pictures contrasted Taix Restaurant's original family-style dining setup (AR 2497) with the smaller booths, dimly lit dining areas (AR 2496-97), buffet style tables (AR 2498), and adjoining cocktail lounge (AR 2499). It also emphasized the neon "COCKTAILS" sign outside one of the entrances. AR 2501.

On October 14, 2020, the Echo Park Historical Society wrote a letter in favor of declaring Taix Restaurant an HCM. AR 2506.

1. Michael Taix's September 22, 2020 Letter

Former owner Michael Taix wrote to the Commission in a letter dated September 22, 2020. AR 519. He asked that, if the Commission recognizes Taix Restaurant as an HCM, it do so for the site and not the building. AR 519-20. He stated that Taix Restaurant's legacy is not one of bricks and mortar; it always needed to adapt to restaurant economics and changing public tastes. AR 519. While he appreciated what Silver Lake wanted to do, designation of the building as an HCM would have negative and unintended consequences that could end the business. AR 519.⁸

Taix Restaurant cannot continue in its present building and format. AR 521. While nostalgic, its over-sized and aged building and infrastructure had excessively high costs and is not viable in the face of changing public tastes. AR 521. Even before COVID-19 affected the industry, the restaurant was under-patronized due to increased competition, most of the organizations that once used the banquet halls are gone, and a big parking lot is pointless when most patrons

⁸ In an article about keeping Taix Restaurant open in 2020, Michael Taix stated that the restaurant had been ever-evolving and that room-by-room remodeling during the 1980s left little from the 1969 renovation. AR 380-81.

rideshare. AR 521. The costs of maintaining the building exceed revenue, and a drastic downsizing would cost more than the business can afford. AR 521.

Without the ability to adapt, Taix Restaurant would have closed permanently already. AR 521. The owners sold to Holland Property Group in 2019. AR 521. The terms of the acquisition, including months without paying rent and relief from mortgage payments and property taxes, allowed Taix Restaurant to stay open. AR 521. Even then, due to COVID-19 and the drop of sales, revenue does not cover the remaining operating cost. AR 522.

The Sunset Project would provide Taix Restaurant with 5,500 square feet of restaurant space, 7,500 square feet of retail space, and 166 residential units in the same building. AR 524, 532. The restaurant itself will be rebuilt to respond to new tastes and would be the right size to respond to current tastes and remain efficient yet aesthetically familiar. AR 524. The exterior would retain distinctive features such as the “Cocktails” and “Taix” signs while gaining inspiration from the original downtown location. AR 524, 530-31. The restaurant will have multiple interior rooms that connect to the outdoor patio with multiple window-door assemblies. AR 525, 532-33. The restaurant will also reuse its beloved cherrywood bar top and the trademark patinaed mirrors on the wall behind the bar. AR 525, 533.

Michael Taix proposed that the Commission find that (1) Taix Restaurant exemplifies significant contributions to the broad cultural, economic or social history of the City and state, (2) its primary significance is as a commercial use and legacy business, (3) its preservation requires that it be able to respond to economic and social challenges that compel changes in physical premises, and (4) the Taix family’s preservation plan will enable the business’s continuation while providing for character-defining interior and exterior features that will continue to convey its historical significance and inclusion as an HCM. AR 520, 526.

2. McGee’s Historic Resource Assessment

In 2019, Real Party’s expert McGee, an architectural historian and historical preservation planner and consultant, performed an Historic Resource Assessment. AR 1210. Because the Taix Restaurant was identified in SurveyLA, it is presumed to be historically or culturally significant and therefore a historical resource under CEQA. AR 1214. Her findings confirmed that Taix Restaurant is HCM eligible even though it does not appear to be a contributor to any Historic Preservation Overlay Zone. AR 1214-15.

McGee explained that while legacy businesses are important to the cultural identity of their communities, maintaining legacy restaurants over time poses unique challenges. AR 546. The system is traditionally focused on architecture and monuments but recently has had to develop new tools for intangible cultural resources. AR 1216. One such tool in San Francisco is the Legacy Business Registry, which works to provide educational and promotional assistance to businesses on the registry. AR 1217.

McGee’s report describes the Taix Restaurant’s wood frame and cherry wood bar top as a historical feature since its 1969 installation. AR 1223, 1227. In addition to the “Cocktails” sign, the Taix family added signage from the 1990s to 2017. AR 1229. A critic in 1992 noted that Taix Restaurant had not preserved the alluring aura of its history, instead adding décor that is straight from the 1970s. AR 1234. “Unlike other Los Angeles landmarks – Phillipe’s, the Pantry, Musso & Frank—the ghost of Raymond Chandler does not linger here.” AR 1234. A series of

refurbishments in the 1990s and thereafter sought to make the restaurant harken back to the past. AR 1234-35.

The eligibility criteria for the City's HCM designation aligns in large degree with national and state criteria. AR 1245. Taix Restaurant appears locally eligible under Criterion 1 despite renovations because it is a long-term restaurant business associated with one of the City's pioneering French families. AR 1245. It fails to qualify under Criterion 3 -- distinctiveness in its type, region, or construction -- because it is not a strong or high-style example of 1960s French Revival-themed, roadside architecture. AR 1246.

Once a resource meets one of the three criteria, it must be assessed for integrity. AR 1247. Because its period of significance is 1962-1980, the building has location integrity because it did not move after that period. AR 1247. As to design, despite alterations, it still has its essential French Revival design features and character-defining interior spaces that reflect its history. AR 1247. The setting is the same because the area has always been mixed use. AR 1247. Some portions of the interior have had extensive changes, but the restaurant generally retains integrity of materials. AR 1247. As to workmanship, retention of building materials from the 1960s in select portions helped convey significant character-defining features. AR 1247. All of these factors contribute to Taix Restaurant's integrity of feeling and association. AR 1247. While Taix Restaurant appears to retain sufficient integrity for listing as a City HCM and for the California Register, it does not appear to retain sufficient integrity to qualify for listing in the National Register. AR 1247, 1252.

The character-defining features of Taix Restaurant include its one-story height, its position at the sidewalk's edge facing Sunset Boulevard, multiple rooflines with towers and a gable, a porte cochere, a side chimney. AR 1248. The building exterior has significant French Revival architectural elements like (1) front gable with eaves supported on wood brackets, (2) rectangular towers flanking front gable, (3) a larger rectangular tower at southeast corner with flared metal roof and finial, (4) stucco exterior walls, (5) a low clinker brick wall extending across a facade, and (6) a south facade entrance that is offset from center of gable peak. AR 1247-48. The neon signage and west elevation chimney, entry, and porte cochere were all also significant visual elements. AR 1248. Significant interior features included the configuration and materials of the Cocktail Lounge, the Garden Room, the Foyer leading inside from the building's west elevation entrance, and the banquet and dining corridors. AR 1249-50.

The McGee report concluded that Taix Restaurant is a historical resource under CEQA that appears to meet HCM eligibility criteria on the local and possibly state level, but not federal. AR 1252.

3. The Commission Hearing

On October 15, 2020, the Commission heard Silver Lake's request to recognize Taix Restaurant as an HCM. Silver Lake's Carol Cetrone, Michael Taix, and Daniel Paul (an architectural historian) testified.

Commissioner Milofsky stated that he felt the highest priority for Taix Restaurant is the legacy business itself. AR 716. Most of the intangible value it brings can be preserved in a future building on site that is different from the current building. AR 716. An approach that preserves the building over the restaurant itself would be an abject failure and a bad approach. AR 717.

OHR head Ken Bernstein (“Bernstein”) stated that there are examples of applying the HCM designation of “site” to buildings no longer standing or intact on the particular site. AR 717, 720. For example, the original Disney studio complex is now part of a shopping center. AR 720. The City designated the site as an HCM after the transition to reflect that the area was home to a piece of entertainment history that no longer exists. AR 720.

The Commission meeting minutes show that it agreed to take the nomination under consideration. AR 672. Apparently, there was a subsequent visit by the Commission or its staff to the Taix Restaurant site. *See City Opp.* at 8.

F. The December 17, 2020 Commission Hearing

In a letter to the Commission on November 11, 2020, Michael Taix explained that the cocktail lounge and cherrywood bar top were added as part of 1969 expansions. AR 1070.

On November 25, 2020, counsel for the Taix family wrote to the Commission to again request that the Commission recommend that the City Council designate only the site of Taix Restaurant, not the building, as an HCM. AR 2508, 2512. The attorney also requested that the Commission recommend that the City Council condition the designation on implementation of Restaurant Preservation Plans attached to the letter. AR 1055, 1060-67.

The Conservancy sent Planning a December 17, 2020 letter observing that Taix Restaurant has been identified multiple times as an eligible historical resource. AR 2615. The Conservancy’s study agreed with this, as does that of the property’s new owner. AR 2615.

Silver Lake submitted supplemental information on November 17, 2020. AR 795-800.

1. The Staff Report

Planning’s staff report for the December 17, 2020 hearing recommended that the Commission declare the property as an HCM. AR 731. The report asserted that Taix Restaurant qualified as an HCM under two criteria.

First, the restaurant exemplifies significant contributions to the broad cultural, economic, and social history of the community as a long-time location with significant association with both the City’s commercial identity and post-World War II expression of European themes in restaurant culture. AR 734. SurveyLA identifies several eligibility standards for evaluating properties under the theme “Commercial Identity, 1920-1980.” AR 734. Taix Restaurant’s endurance over the years has caused it to become ingrained into the collective memory. AR 735.

Second, it embodies the distinctive characteristics of a style, type, period or method of construction. AR 735. It reflects the national interest in French cuisine during the post-World War II period when Taix Restaurant opened. AR 735. The continental-themed interior and French Norman Revival-style exterior exemplify this trend in restaurant culture. AR 735. *See* AR 751-753, 1323.

Planning staff could not find that the restaurant met the criterion based on the French Norman Revival architectural style alone because the Taix family added architectural changes during renovations years later. AR 735. Still, those changes were associated with the restaurant’s growth over time and compatible with the original continental dining design intent. AR 736. To the extent that it reflects post-World War II dining, the building has a high level of integrity of location, design, setting, materials, workmanship, feeling, and association to reflect that significance. AR 736.

Planning staff included a proposed CEQA Notice of Exemption for the HCM designation concluding that the project falls under Exemption Classes 8 and 31 and that no exceptions to the exemptions apply. AR 793.

2. HCM Precedent

The Commission's agenda packet included evidence of HCM designations of less than an entire building. In 1994, the City Council passed a resolution that designated a Farmers Market as an HCM. AR 1117. The Commission made this recommendation for the entire Farmers Market on March 6, 1991, but also recommended a finding that, in order for the Market to operate as it had for 57 years, it must be able to change over time. AR 1122. That *ad hoc* character was part of its significance. AR 1122. Future modifications to the Market were therefore to be liberally allowed, provided that the overall concept and general pattern of aisles, patios and tributary open spaces is maintained. AR 1122.

In 2005, the City Council adopted recommendations to designate as an HCM tenant improvements located inside Suite 2030 at 10100 Santa Monica Boulevard on a non-site-specific basis because they were attributable to noted architect John Lautner. AR 1128-29. At the same time, it adopted a Commission finding that those improvements could be disassembled and removed from the building and donated to the John Lautner Foundation. AR 1129.

On August 1, 2014, the City approved a project that would repurpose and redevelop parts of a theater designated as an HCM into a mixed-use project with apartment unit. AR 1145. To compensate, the new lobby would include an interpretive art display depicting the building's use as a theater during the period of significance. AR 1145. New additions and construction would not destroy historical materials, features, or spatial relationships that characterize the property. AR 1145. The new construction would be differentiated yet compatible with the historical materials. AR 1145. Any new additions would be such that their removal in the future would not impair the essential form and integrity of historical parts of the property. AR 1145.

3. The Commission Hearing

The Commission held its final hearing on December 17, 2020. AR 1345. Daniel Paul, Michael Taix, and Sunset's counsel, Allan Abshez, Esq., testified.

Commissioner Milofsky noted that the building exterior had changed many times, and Michael Taix admitted that he had changed the interior. AR 1394. Milofsky was more concerned with preserving the business itself, which seemed to be what the community cared about most. AR 1394. How to do that while giving Michael Taix the freedom to help the business preserve itself in the future was unclear. AR 1395.

Commissioner Gail Kennard replied that the argument that only the site should be an HCM did not make sense without a building on it and the business argument had no weight in her mind. AR 1395. There was no denying that the building is a legacy building; if Michael Taix cannot maintain a business inside it, maybe someone else will. AR 1396.

Commissioner Diane Kanner said that while she enjoyed meals at Taix Restaurant, the interior and exterior architectural quality were both negligible. AR 1396. The important factor is the intangible sentiment people have towards the business as part of their lives. AR 1397.

Commissioner Barron asked if there was a way to guarantee that the building would keep its use once it became an HCM. AR 1398-99. Commissioner Milofsky replied that they could

make Michael Taix's operation of a restaurant a condition of approval. AR 1399. Milofsky would prefer some way that adopts only Planning's finding about broad cultural influence and not the details of the interior decoration. AR 1402. They could make a finding on Criterion 1 which leaves the owner and the Commission a lot more latitude in how to maintain the business in future proceedings. AR 1402.

OHR head Bernstein noted that, as with Tom Bergin's, there is significant evidence that the building is a historical resource with significance to the commercial identity of the City and the community. AR 1397. How to address the viability of the legacy business inside it is a separate issue not before the Commission. AR 1398. That was a concern with Tom Bergin's as well, but it led to adaptive re-use and a re-opening of the bar restaurant. AR 1400.

OHR Senior City Planner Shannon Ryan agreed. AR 1399. Harsh as it may seem, the Commission needed to set aside the proposed development and only ask whether the property meets the criteria for HCM designation. AR 1399. Once it is a monument, it must come back to the Commission for any proposed project or redevelopment. AR 1399. She confirmed that the Commission cannot require the restaurant to stay on the property. AR 1400.

The Commission voted to adopt the staff report recommendation to designate Taix Restaurant as an HCM only under Criterion 1. AR 1404.

G. The Commission's Letter of Determination

On January 26, 2021, the Commission sent a Letter of Determination to the PLUM Committee with its recommendation. AR 1407. The Commission (1) determined that Taix Restaurant conformed with the definition of a HCM per LAAC section 22.171.7; (2) recommended that City Council consider Taix Restaurant for inclusion in the list of HCMs; (3) determined that such a designation is exempt from CEQA under Classes 8 and 31, per the categorical exemption form filed on November 13, 2020; and (4) adopted the attached findings. AR 1407, 1410.

H. Sunset's Objection to the Letter of Determination

On February 21, 2021, Sunset's counsel sent the City Council and Planning a letter that objected to the Letter of Determination. SAR 3046. Sunset's counsel reiterated that the Taix family agreed with Taix Restaurant becoming an HCM if it did not hamper efforts to make changes needed to continue the legacy business. SAR 3046. The City Council recognized in a resolution celebrating Taix Restaurant's 60th anniversary that evolution and change were part of the restaurant's legacy. SAR 3046, 3052. The Commission understood that the historical and cultural significance of Taix Restaurant came from its legacy of continuous hospitality and community. SAR 3046. As leading preservation organizations such as San Francisco Heritage recognize, traditional preservation methods are ill-equipped for the preservation of intangible elements of community. SAR 3046.

The Taix family requested that the City Council (1) approve the designation of Taix Restaurant as an HCM but identify the character-defining physical features of the restaurant that convey its historical significance and should be preserved; and (2) correct the draft findings prepared by OHR staff in the Letter of Determination to properly reflect the Commission's deliberations and decision in the December 17, 2021 hearing. SAR 3047. At that hearing, the Commission had agreed to limit HCM designation to significance only under Criterion 1 because Taix Restaurant's significance was as a legacy business and not an architectural statement. SAR

3047-48. The third paragraph of findings in the Letter of Determination also needed to be rejected because the Commission never found that Taix Restaurant's significance came from any original continental design intent. SAR 3049.

I. The May 4, 2021 PLUM Committee Hearing

On May 4, 2021, the PLUM Committee met to discuss the Commission's recommendation.

That same day, O'Farrell planning deputy Bullock sent a letter to the PLUM Committee conveying O'Farrell's support for designation of the Taix Restaurant site as an HCM. AR 1419.⁹ However, the designation should not limit its ability to evolve. AR 1419. O'Farrell proposed modifications to the Commission's decision, such that although most of the building was not architecturally or historically significant, the City Council would identify (1) the red and white east-facing "Taix" billboard sign, (2) the neon "Cocktails" sign, and (3) the cherry wood bar top as features that must be preserved. AR 1419, 1421. Bullock testified consistently with his May 4, 2021 letter. AR 1473-74.

Planning staff member Melissa Jones explained that the Commission's review of the proposal to designate Taix Restaurant as an HCM found that it exemplifies significant contributions to the broad cultural, economic, or social history of its community. AR 1462. The building was not recognized for its architectural merits, but it was still the physical embodiment of the legacy business that is Taix Restaurant. AR 1462. The Sunset Project will be reviewed separately if Taix Restaurant becomes an HCM, so the only relevant question is whether the building qualifies under the Ordinance. AR 1462.

Adrian Fine testified on the Conservancy's behalf, stating that although it supported the HCM designation, the PLUM Committee should continue the matter to give it time to consider the proposal to modify the HCM parameters to just the business instead of the building. AR 1468. If the PLUM Committee would not continue the matter, the Conservancy urged it to adopt the Commission's recommendation without O'Farrell's recommendation. AR 1468.

The PLUM Committee adopted the amendments proposed by O'Farrell.¹⁰

J. Post-PLUM Hearing Communications

On May 31, 2021, the Friends of Taix protested that the Commission had voted to recommend an HCM designation was for the entire building. AR 2661. The O'Farrell amendments drastically changed the HCM protections at issue to provide a developer with a more favorable outcome. AR 2663. This violated CEQA insofar as a project cannot have a significant effect on historical resources. AR 2663.

On June 1, 2021, former State Historic Preservation Officer Carol Nawi protested that demolishing the historical building both destroys a legacy business and has a negative effect on the very characteristics that make the neighborhood such a popular destination. AR 2694.

Also on June 1, 2021, Hollywood Heritage president Brian Curran asserted that approval

⁹ The Ordinance requires that opinions and information be solicited from the office of the Council District in which the site, building, or structure is located. LAAC §22.171.8.

¹⁰ At trial, the parties agreed that O'Farrell's proposed amendments are virtually identical to the Supplemental Findings adopted by the PLUM Committee on December 6, 2021 and subsequently by the City Council on January 26, 2023.

of O'Farrell's amendments would contradict the intent of the Commission and set precedent for altering HCMs without CEQA compliance. AR 2714-15. If anyone wanted an HCM amendment, they must bring it before the Commission. AR 2715. Hollywood Heritage asked that the PLUM Committee approve the Commission recommendation without the proposed amendments. AR 2715.

Also on June 2, 2021, the Art Deco Society of Los Angeles claimed that approving O'Farrell's amendments would contradict the intent of the Commission and set precedent for altering HCMs without CEQA compliance. AR 2733-34. HCM designation is tied to historical buildings and places, not building fragments and salvage. AR 2734.

K. The June 2, 2021 City Council Meeting

At a City Council meeting on June 2, 2021, O'Farrell discussed his proposed amendments to the Commission's Letter of Determination. AR 1780-81. He explained that he introduced them because the City has no legacy business program for when an HCM's value is as an ongoing business and not a feature of physical premises. AR 1781. There was just no tool available in the City for that objective. AR 1781.

At the hearing, the City Council approved the Taix Restaurant as an HCM and adopted the findings of the Commission as amended by the PLUM Committee's proposed amendments. See AR 1552.

L. Letters to the PLUM Committee

On December 6, 2021, Bullock sent a letter to the PLUM Committee that reiterated O'Farrell's support for designation of the Taix Restaurant site as an HCM with his modifications. AR 1495. Bullock noted that in 2015 the National Trust for Historic Preservation recognized that the preservation of legacy businesses represents a desire to preserve intangible elements of culture and community that these businesses have created over time. AR 1496. The Commission found that Taix Restaurant's HCM eligibility stemmed only from how it exemplifies the broad cultural, economic, or social history of the nation, state, city, or community. AR 1496. It expressed a desire to permit the restaurant to make the changes needed to continue, as it had to do over the past 100 years. AR 1496. O'Farrell proposed that although most of the building is not architecturally or historically significant, the City Council would identify (1) the red and white east-facing "Taix" billboard sign, (2) the neon "Cocktails" sign, and (3) the cherry wood bar top as features that must be preserved. AR 1497.

On December 7, 2021, Paul objected to the PLUM Committee about O'Farrell's proposal. AR 2910-11. On January 18, 2022, Paul revised and expanded his earlier letter. AR 3008. O'Farrell's recommendation of designating the site and not the building as an HCM is a distinction without a difference because sites include locations of standing buildings. AR 3009. Even if an HCM criterion affords a property's associative significance with intangible elements, there still need to be character defining features to preserve. AR 3010.

M. The January 18, 2022 PLUM Committee Meeting

In light of alleged Brown Act deficiencies at its May 4, 2022 hearing, the PLUM Committee reheard the matter on January 18, 2022. See AR 1554. On January 7, 2022, the PLUM Committee sent notice that it would hold a hearing on January 18, 2022 to consider a categorical

CEQA exemption pursuant to Classes 8 and 31, and a report from the Commission relative to the inclusion of Taix Restaurant as an HCM. AR 1526. The notice did not mention O'Farrell's proposed amendments. AR 1526-27.

The agenda for the meeting described this item as two discussions. The first was consideration of rescission of the City Council's prior action taken on June 2, 2021, in which the City Council (1) determined that the proposed HCM designation of Taix Restaurant is exempt from CEQA and the property conforms with the Ordinance's definition of a monument, (2) adopted Commission findings as amended by the PLUM Committee on May 4, 2021, and (3) approved the Commission's recommendation to include Taix Restaurant as an HCM. AR 1535. The second was consideration of a categorical exemption from CEQA pursuant to Classes 8 and 31. AR 1535.

At the meeting, Terry Macias stated that there should be no confusion as to what is at issue because O'Farrell's proposed amendments had not changed since December 2021. AR 1578.

The PLUM Committee voted to approve the HCM inclusion as amended by the O'Farrell's proposed Supplemental Findings. AR 1578-79.

N. The January 26, 2022 City Council Meeting

The PLUM Committee report recommended that the City Council (1) rescind its June 2, 2021 action based on the HMC proposal; (2) determine again that the proposed HCM designation of Taix Restaurant is exempt from CEQA under Classes 8 and 31; (3) determine that Taix Restaurant conforms with the Ordinance's definition of a HMC, (4) adopt the Commission's findings as amended by the PLUM Committee to include the Supplemental Findings, and (5) approve the Commission's findings as to Taix Restaurant's designation as an HCM. AR 1552.

On January 26, 2022, the City Council voted 12-0 to adopt these recommendations. AR 1998, 2064-65.¹¹

IV. The City's Designation of Taix Restaurant as an HCM

Petitioner Silver Lake challenges the City's HCM designation of Taxi Restaurant limited to the site and three character-defining features as an incorrect interpretation of the Ordinance and not supported by substantial evidence.¹²

A. Standard of Review

¹¹ On June 28, 2022, the City Council adopted a PLUM Committee report that recommended granting Sustainable Communities Project Exemption ("SCPE") for the Sunset Project. Pet. RJN Ex. 5. On July 28, 2022, the Planning Commission voted to approve the SCPE. Pet. RJN Ex. 6.

On February 6, 2022, the City filed a request for judicial notice of the City Council's official action for a SCPE and adoption of a Plum Committee report for the Sunset Project (City RJN Ex. A) and a Notice of Exemption from CEQA for the Sunset Project (City RJN Ex. B). The City proffers no reason why it did not seek judicial notice of these exhibits when its opposition was filed. The request is denied as untimely.

¹² As the City argues (City Opp. at 20-21), Petitioners have waived the FAP's the Brown Act claim by not briefing it.

A party may seek to set aside an agency decision by petitioning for either a writ of administrative mandamus (CCP §1094.5) or of traditional mandamus. CCP §1085.

CCP section 1094.5 is the administrative mandamus provision which structures the procedure for judicial review of adjudicatory decisions rendered by administrative agencies. Topanga Ass'n for a Scenic Community v. County of Los Angeles, (“Topanga”) (1974) 11 Cal.3d 506, 514-15. The pertinent issues under section 1094.5 are (1) whether the respondent has proceeded without jurisdiction, (2) whether there was a fair trial, and (3) whether there was a prejudicial abuse of discretion. CCP §1094.5(b). An abuse of discretion is established if the respondent has not proceeded in the manner required by law, the decision is not supported by the findings, or the findings are not supported by the evidence. CCP §1094.5(c).

CCP section 1094.5 does not in its face specify which cases are subject to independent review. Fukuda v. City of Angels, (1999) 20 Cal.4th 805, 811. Instead, that issue was left to the courts. Where, as here, the underlying administrative case does not involve a fundamental vested right, the standard of review is substantial evidence. Young v. City of Coronado, (2017) 10 Cal.App.5th 408, 418 (property owner’s challenge to a city council’s decision to designate a residential cottage as an historical resource); CCP §1094.5(c). “Substantial evidence” is relevant evidence that a reasonable mind might accept as adequate to support a conclusion (California Youth Authority v. State Personnel Board, (“California Youth Authority”) (2002) 104 Cal.App.4th 575, 585) or evidence of ponderable legal significance, which is reasonable in nature, credible and of solid value. Mohilef v. Janovici, (1996) 51 Cal.App.4th 267, 305, n. 28. Substantial evidence can be the opinion of a single expert (Coastal Southwest Dev. Corp. v. Coastal Zone Conservation Comm'n, (1976) 55 Cal.App.3d 525, 532), or opinions in a staff report (Griffin Dev. Co. v. City of Oxnard, (1985) 39 Cal.3d 256, 261).

The court considers all evidence in the administrative record, including evidence that detracts from evidence supporting the agency’s decision. California Youth Authority, *supra*, 104 Cal.App.4th at 585. The court must uphold the decision unless it concludes, based on the evidence before the City, a reasonable person could not reach the conclusion reached by the administrative agency. Harris v. City of Costa Mesa (1994) 25 Cal.App.4th 963, 969. Where “reasonable persons may differ,” the courts will not disturb the judgment of the administrative agency. Breakzone Billiards v. City of Torrance, (2000) 81 Cal.App.4th 1205, 1246. The court does not weigh evidence or decide who has the better argument and must resolve reasonable doubts in favor of the findings and decision. Topanga, *supra*, 11 Cal.3d at 514.

The court reviews questions of law *de novo*. Duncan v. Dept. of Personnel Admin., (2000) 77 Cal.App.4th 1166, 1174. An agency is presumed to have regularly performed its official duties (Evid. Code §664), and the petitioner seeking administrative mandamus therefore has the burden of proof. Steele v. Los Angeles County Civil Service Commission, (1958) 166 Cal.App.2d 129, 137; Afford v. Pierno, (1972) 27 Cal.App.3d 682, 691 (“[T]he burden of proof falls upon the party attacking the administrative decision to demonstrate wherein the proceedings were unfair, in excess of jurisdiction or showed prejudicial abuse of discretion).

B. Analysis

Petitioners argue that the central question arises out of the City Council’s Supplemental Findings proposed by O’Farrell. They contend that the undisputed evidence is that both the Commission and the City Council decided to approve Taix Restaurant’s HCM designation under

Criterion 1. Substantial, undisputed evidence supports that decision because both the Commission and the City Council agreed that Taix Restaurant “exemplifies significant contributions to the broad cultural, economic or social history of the [C]ity or [the Echo Park] community....” See LAAC §22.171.7(1). Yet, the City Council adopted O’Farrell’s Supplemental Findings that “the Taix Restaurant building (and its interior and exterior architecture and décor) are not architecturally or historically significant[,]” unless the “character-defining physical features” of the Taix billboard sign, Cocktails sign, and cherry wood bar top are preserved. AR 1497. The Supplemental Findings are in part legally irrelevant, and in part self-contradictory and unsupported by substantial evidence. They also violates the express intent of the Ordinance to foster preservation of City-listed HCMs. See LAAC §22.171.11. Pet. Op. Br. at 15-16.

The Ordinance spells out three HCM designation criteria and cabins the City Council’s discretion in determining what qualifies as an HCM. Any of the three criteria is sufficient for a proposed HCM to be designated. Petitioners argue that by supplementing the Commission’s findings -- the Commission is the City agency with the technical expertise in the field of historical-cultural preservation -- with the Supplemental Findings, the City Council took a quantum leap outside the bounds of its discretion by ignoring the plain meaning of LAAC section 22.171.7. This decision not only took liberties with what qualifies as an HCM under LAAC section 22.171.7, but also predetermined the fate of Taix Restaurant in a subsequent Commission demolition review. See LAAC §22.121.14(b) (demolition or any substantial alteration of HCM must be approved by the Commission, which may not approve the permit if the project does not comply with CEQA). Pet. Op. Br. at 16.

1. The City Council Properly Interpreted the Ordinance and the City Council’s Supplemental Finding Does Not Contradict Criterion 1

The City Council’s interpretation of the Ordinance raises a question of law reviewed by the court *de novo*.

On January 26, 2022, the City Council approved the inclusion of the “Taix French Restaurant” as an HCM. The City Council’s minutes, in pertinent part, state as follows:

“DETERMINE that the proposed designation is categorically exempt from CEQA, pursuant to Article 19, Section 15308, Class 8 and Article 19, Section 15331, Class 31 of the State CEQA Guidelines.”

“DETERMINE that the subject property conforms with the definition of a Monument pursuant to Section 22.171.7 of the Los Angeles Administrative Code (LAAC).”

“ADOPT the FINDINGS of the Cultural Heritage Commission (Commission), as amended by the PLUM Committee to include the supplemental Findings (*sic.*) in the communication from the Council District (CD) 13 Office, dated December 6, 2021, attached to the Council file; as the Findings of Council.”

“APPROVE the recommendations of the Commission relative to the inclusion of the Taix French Restaurant, located at 1911-1929 West Sunset Boulevard and 1910-2018 West Reservoir Street, in the list of Historic-Cultural Monuments.” AR 2019 (emphasis added).

The City Council's January 26, 2022 findings expressly acknowledge the City's desire to permit the Taix Restaurant owner to make necessary changes to the restaurant to enable it to continue as a legacy business, and identify certain character-defining features of the restaurant for preservation:

"...The City Council finds and determines that Taix Restaurant is significant under Criterion 1 only. The Council finds that the Taix Restaurant building (and its interior and exterior architecture and decor) are not architecturally or historically significant; provided, however, that the City Council identifies the following character-defining, physical features of Taix Restaurant that should be preserved in order to convey the restaurant's historical significance and justify its designation as a Historic-Cultural Monument, as well as its eligibility for inclusion in the California Register of Historical Resources: (i) The red and white east-facing Taix billboard sign along Reservoir Street; (ii) the vertical red and white "Cocktails" sign along Sunset Boulevard; and (iii) the restaurant's original cherry wood bar top." AR 1496-97.

As a result of its HCM designation, Taix Restaurant has been included in the City's List of Monuments. Pet. RJN Ex. 7, p. 86.

Petitioners argue that the City Council's decision to approve the inclusion of Taix Restaurant at a particular location as an HCM under Criterion 1 can only mean that the existing restaurant building at the existing Sunset Boulevard address is historically significant. Without a building, there would be no Taix Restaurant to include as an HCM. Nor could the site have "organically mature[d] into [an] iconic and revered cultural institution" (AR 1409 (Commission's December 17, 2020 findings)), or become "significant in the area of commerce as the founding or long-term location of a business that made a significant contribution to the commercial history of Los Angeles" (AR 1496 (City Council December 6, 2021 findings superseding January 26, 2021 staff recommendation and quoting SurveyLA)), without the building that houses the restaurant. Pet. Cp. Br. at 18.

Petitioners note that the City Council's finding that Taix Restaurant is significant under Criterion 1 means that it "exemplifies significant contributions to the ... history of the nation, state, city or community." LAAC §22.171.7(1). The clear import of LAAC section 22.171.7(1) is that historical significance is a necessary predicate for a finding that a property qualifies as an HCM under Criterion 1. Hence, the City Council contradicted itself in deciding that the Taix Restaurant exemplifies significant contributions to the cultural, economic or social history of the community and then making Supplemental Findings that the building housing the restaurant is historically insignificant.

Petitioners argue that the City Council's official minutes control. The minutes of legislative body meetings ensure that what occurs at meetings is memorialized in writing so that it can be looked back upon as a reliable record of official action. See Kunec v. Brea Redevelopment Agency, (1997) 55 Cal.App.4th 511, 521-24. The minutes reflect that the City Council voted to "APPROVE the recommendations of the Commission relative to the inclusion of the Taix French Restaurant, located at 1911-1929 West Sunset Boulevard and 1910-2018 West Reservoir Street, in the list of Historic-Cultural Monuments." AR 1999 (emphasis added). The ordinary meaning

of the term “restaurant” is “a business establishment where meals or refreshments may be purchased” (<<https://www.merriam-webster.com/dictionary/restaurant>> as of Jan. 27, 2023). The words “Taix French Restaurant” can only refer to the building that houses the restaurant.

The City Council also expressly determined that the “subject property” meets the definition of an HCM in the Ordinance. AR 2019. Yet, the Supplemental Findings conclude that the restaurant building is not architecturally or historically significant and it is not included in the HCM designation. AR 2018-19. At trial, Petitioners’ counsel added that the minutes of the City Council’s January 26 decision are inconsistent with, and therefore not supported by, the Supplemental Findings. CCP §1094.5 (b), (c). Reply at 11. See California Unions for Reliable Energy v. Mojave Desert Air Quality Management Dist., (2009) 178 Cal.App.4th 1225, 1241 (agency claim must fail where its logic is flawed or contrary to the evidence); Gray v. County of Madera, (“Gray”) (2008) 167 Cal.App.4th 1099, 1116-17 (“we decline to [defer to] findings [that] are not supported by substantial evidence or defy common sense”). Pet. Op. Br. at 18.

The court agrees that the City Council’s finding that Taix Restaurant is significant under Criterion 1 means that it exemplifies significant contributions to the cultural, economic or social history of the City or community. LAAC §22.171.7(1). This does not mean, however, that the entire building is historically significant under Criterion 1. The City Council did not contradict itself by at once finding that Taix Restaurant exemplifies significant contributions to the cultural, economic or social history of the City and community, and then adopting Supplemental Findings that the building housing the restaurant is not historically significant.

As Real Party’s counsel pointed out at trial, the Supplemental Findings “correct and supersede” the Commission’s January 26, 2021 recommended final determination. AR 1496; see AR 1407, 1409-10. Consequently, the Supplemental Findings are not just findings -- they are also a superseding part of the City Council’s HCM determination. Additionally, where reference to the administrative record informs the parties and reviewing courts of the theory upon which an agency has arrived at its ultimate finding and decision, it has long been recognized that the decision should be upheld if the agency in truth found those facts which as a matter of law are essential to sustain its decision. Craik v. County of Santa Cruz, (2000) 81 Cal.App.4th 880, 884-85. All interested persons knew or should have known from the administrative history that the City Council’s January 26, 2022 decision did not include the restaurant building in the HCM approval.¹³

Petitioners argue that the Commission (AR 1409) and later the City Council (AR 2018-19) both designated Taix Restaurant, not the restaurant site, under Criterion 1. See AR 2569 (Real Party’s request that site be designated). The omission is not a coincidence. While the Ordinance does not define the terms “site” and “building,” OHR’s HCM Information Guide describes a “site” as “Site/Open Space,” and offers as examples “parks, cemeteries, and public spaces, or an open

¹³ Petitioners add that there was no public notice that the City Council would approve designation of the site with three salvage items, and exclude the Taix Restaurant building, as an HCM. AR 1961, 1983-84 (January 26, 2022 City Council agenda); AR 1528, 1534-35 (January 18, 2022 PLUM Committee agenda); AR 1552-53 (PLUM Committee report to City Council). Reply at 9, n. 4. To the extent that Petitioners are arguing that the public received no notice that the City Council would limit the HCM designation to the site and three features, these are new issues raised for the first time in reply and are waived. See Regency Outdoor Advertising v. Carolina Lances, Inc., (1995) 31 Cal.App.4th 1323, 1333.

space with historical significance.” Pet. RJN Ex. 8, p. 8. OHR head Bernstein explained to the Commission that the HCM category of site typically applies to buildings no longer standing or intact. AR 720.¹⁴ Pet. Op. Br. at 18-19.

Petitioners note that the Supplemental Findings accept the Commission’s finding that Taix Restaurant is “a beloved community institution,” with “a reputation as one of Los Angeles’ most iconic dining establishments[,]” “exemplifies significant contributions to the broad cultural, economic or social history of the nation, state, city or community’ ” and at its “long-time location” on Sunset Boulevard in Echo Park, is “a business that bears a significant association with the commercial identity of Los Angeles.” AR 1409. Petitioners contend that the Supplemental Findings go off the rails by assuming that Taix Restaurant’s goodwill and public intangible assets, not the restaurant building, were approved as an HCM. AR 1496. The Ordinance limits HCM designation to properties classified as a “site...,building, or structure....” LAAC §22.171.7. It does not identify intangible assets as eligible for HCM status.¹⁵ The City Council simply may not make up a new “HCM lite” category for “intangible elements of culture and community.” The Ordinance does not lend itself to that stretch and Councilmember O’Farrell implicitly conceded as much: “This situation is not unlike putting a round peg in a square hole.” AR 1781. Neither a court nor a city council may rewrite the law. *See Searles v. Archangel*, (2021) 60 Cal.App.5th 43, 55. Pet. Op. Br. at 21-22.

Petitioners ask: Does the Taix Restaurant’s site have historical value by itself without regard to the historical value of the restaurant building? To make such a claim, a fiction would

¹⁴ Petitioners contend that their construction of the Ordinance accords with the National Register criteria guidelines for including a property in the National Register. The three HCM criteria of LAAC section 22.171.7 mirror the National Register’s three criteria. *See* Pet. RJN Ex. 1, p. 3 (36 C.F.R. §60.4). The National Register Bulletin specifies: “If a building has lost any of its basic structural elements, it is usually considered a ‘ruin’ and is categorized as a site.” Pet. RJN Ex. 4, p. 10. Pet. Op. Br. at 19, n. 9. “A building is a structure created to shelter any form of human activity, such as a house, barn, church, hotel, or similar structure.” Pet. RJN Ex. 1, p. 1 (36 C.F.R. §60.3 (a)). Pet. Op. Br. at 19, n. 11. For the National Register, a “site is the location of a significant event, a prehistorical or historical occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical or archeological value regardless of the value of any existing structure.” Pet. RJN Ex. 1, p. 2 (36 C.F.R. §60.3(l)) (emphasis added). Pet. Op. Br. at 19, n. 10

¹⁵ Petitioners argue that the National Historic Preservation Act (16 U.S.C. § 470 *et seq.*), does not identify intangible assets by themselves as eligible subject matter. It identifies “districts, sites, buildings, structures, and objects” as National Register subject matter. 16 U.S.C. § 470a (a)(1)(B). Bulletin No. 15 states:

“The National Register of Historic Places includes significant properties, classified as buildings, sites, districts, structures, or objects. It is not used to list intangible values, except in so far as they are associated with or reflected by historical properties ... [T]he National Register is oriented to recognizing physically concrete properties that are relatively fixed in location.” (emphasis added). Pet. RJN Ex. 4, p. 10.

have to be created that the restaurant building did not mark the site in the restaurant's period of growth from 1962 to 1980. *See* Pet. RJN Ex. 4, p. 11 (for National Register eligibility, a site need not be marked by physical remains if no building marked it at the time of the historical events). Pet. Op. Br. at 20.

Petitioners' argument that the term "site" -- which is not defined in the Ordinance -- can consist only of open space of historical significance, as supported by OHR's HCM Information and the testimony of OHR head Bernstein, is contradicted by the City Council's interpretation of the Ordinance. A proposed HCM may be designated "in whole or part." LAAC §22.171.10(f). The City Council may designate a part of a site (*e.g.*, significant trees), a part of a building, or a part of a structure as an HCM. Nothing in the Ordinance prevents the City Council from designating a site with a building on it, or obligates the City to designate the entire building, as an HCM.¹⁶

Nor does the Ordinance prevent the City Council from concluding in its Supplemental Findings that the restaurant building has no historical significance under Criterion 1, but the restaurant's goodwill or public intangible assets do, for purposes of designating an HCM. AR 1496. It is true that the Ordinance limits HCM designation to properties classified as a "site..., building, or structure..." (LAAC §22.171.7) and does not identify intangible assets by themselves as eligible for HCM status. But nothing in the Ordinance prevents the City Council from addressing a business's goodwill in deciding that a site or certain character-defining features of a building will be designated as an HCM.

In this case, the City Council exercised its authority and discretion under the Ordinance to designate the Taix Restaurant site and three character-defining features of the restaurant as an HCM. AR 25 1495-97. The signs and cherry wood bar top are properly a "part" of the restaurant building. *See also*, In the Matter of Teachers Insurance and Annuity Ass'n v. City of New York, (1993) 82 N.Y.2d 35, 45-46 (upholding New York preservation law designating both fixtures and personal property associated with the interiors of buildings as historical landmarks).¹⁷

It is true that the National Register does not permit such a conclusion for its eligible subject matter. It is also true that OHR head Bernstein explained to the Commission that the HCM category of site is typically applied to buildings no longer standing or intact. But these facts are not controlling for the City Council's interpretation of the Ordinance. The National Historic Preservation Act (16 U.S.C. § 470 *et seq.*) is not identical to the Ordinance, a fact which is obvious from McGee's conclusion that Taix Restaurant appears to meet HCM eligibility criteria under the Ordinance, and possibly at the state level, but not on the federal level. AR 1252. More important,

¹⁶ Real Party adds that this interpretation of the Ordinance is supported by CEQA's definition of a historical resource: "[A]ny object, building, structure, site... which a lead agency determines to be historically significant... may be considered to be an historical resource..." (emphasis added). Guidelines §15064.5(a)(3). RPI Opp. at 5.

¹⁷ The City Council's designation of the Taix Restaurant site, coupled with two signs and a cherry bar top, as an HCM places them under the jurisdiction of the Commission pursuant to the Ordinance. This gives the Commission the jurisdiction to review future improvements of the site consistent with the City Council's designation, including the Sunset Project. In contrast, the City's 2012 placement of a "Taix Square" sign in front of the restaurant was purely ceremonial. AR 281-82. RPI Opp. at 11, n. 2.

the City Council, not the Commission or OHR's head, interprets the Ordinance and decides what should be designated as an HCM. The City Council has no obligation to accept the Commission's or OHR's recommendation.

If there were any doubt, the court will defer to the City Council's interpretation of the Ordinance. The court must give deference to a legislative body's interpretation of its own ordinances. See City of Walnut Creek v. County of Contra Costa, (1980) 101 Cal.App.3d 1012, 1021. Additionally, while the courts take ultimate responsibility for construction of a statute, they do so by according weight and respect to an administrative agency's interpretation. Id. at 12. Yamaha Corp. of America v. State Bd. of Equalization, ("Yamaha") (1998) 19 Cal.4th 1, 12. Where the agency interprets a statute within its administrative jurisdiction, it may possess special familiarity with satellite legal and regulatory issues, which is the source of the presumptive value of the agency's views. Id. at 11. However, when an administrative agency does not have a longstanding interpretation of a statute or has not adopted a formal regulation interpreting the statute, courts need not defer to, and may simply disregard, the opinion offered by the agency. Interinsurance Exchange of Automobile Club v. Superior Court, (2007) 148 Cal.App.4th 1218, 1235-36.

The deference given to an agency's interpretation is situational and dependent on the presence or absence of factors supporting the merit of the interpretation. Yamaha, supra, 19 Cal.4th at 7-8, 12. Some deference is warranted where there are "indications of careful consideration by senior agency officials" or "the agency 'has consistently maintained the interpretation in question.'" Id. at 13. The court should consider whether the agency has a comparative advantage over the courts—such as if the subject matter of the statute is especially technical or complex—and factors indicating that the agency's interpretation in question is probably correct—such as when the interpretation has gone through formal notice-and-comment rulemaking, there are indications of careful consideration by senior agency officials, or the agency has maintained a consistent interpretation over time. See Harlick v. Blue Shield of California, 686 F.3d 699, 717 (9th Cir. 2012); see also Hoechst Celanese Corp. v. Franchise Tax Bd., (2001) 25 Cal.4th 508, 524 (an administrative construction of a statute is only entitled to as much deference as is warranted by "the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control").

Because it adopted the Ordinance, the City Council is entitled to deference in its interpretation that the Ordinance permits a legacy business's goodwill to be considered in HCM approval and that only a site or part of a building may be designated as an HCM. Acting in its role as administrative agency, the City Council is entitled to additional deference. Some of the factors for administrative agency interpretation do not weigh in favor of deference – the Ordinance is not technical or complex and there has been no evidence of careful consideration by senior officials. However, the City Council's subjective HCM determination is entwined with "issues of fact, policy, and discretion" and entitled to deference for that reason. See Citizens for Responsible Equitable Environmental Development v. City of San Diego (2010) 184 Cal.App.4th 1032, 1041. As the City's attorney pointed out at trial, the Ordinance requires that opinions and information be solicited from the office of the Council District in which the site, building, or structure is located. (LAAC §22.171.8), meaning that the City Council is expected to make policy choices on HCM status.

Both oppositions also note (City Opp. at 11-12; RPI Opp. at 6) that there is City Council precedent for the Supplemental Findings in applying the Ordinance. In 2005, the City Council designated tenant improvements designed by architect John Lautner (interior wall treatments, floor tiles and ceiling tiles) apart from the office in which they were located, as an HCM, and provided that the improvements could be removed and moved to a new and unidentified premises. AR 1129-30. In 1991, the City Council designated parts of the Farmers Market at Third and Fairfax as an HCM, also recognizing that to enable the Farmers Market must be permitted to continue to change in order to operate. The City Council provided that the demolition and remodeling of individual Farmers Market retail stalls should be routinely approved provided that the general pattern of aisles, patios and tributary open spaces around the stalls was preserved. AR 1122-26. In 2014, the City Council approved redevelopment of the Bob Baker Marionette Theater (HCM 958) into a mixed-use project with most of the theater building demolished, and with the theater itself truncated into an entry lobby to the new apartments with an interpretive display depicting its prior use as a theater. AR 1145-46.¹⁸

Petitioners admit that the City Council has discretion “to approve or disapprove in whole or in part” an application to designate an HCM (LAAC §22.171.10(f)), but argue that it is an abuse of discretion to conclude, in the face of evidence identifying many exterior and interior physical, character-defining features integral to the Taix Restaurant building expressive of its historical nature for purposes of Criterion 1, that the building may be reduced to two outdoor signs and the bar countertop. A construction of the Ordinance conducive to that outcome will give the City Council free reign to cut off at the HCM approval stage the chance to save from demolition long-standing buildings with significant commercial historical identity that qualify as a HCM under Criterion 1. This runs afoul of the express purpose of the Ordinance to encourage preservation (or rehabilitation, or adaptive reuse) and to honor the City’s cultural heritage. LAAC §22.171.11. Reply at 13-14.

At trial, the parties debated this issue: what the deference owed to the City Council’s interpretation of the Ordinance means with respect to its decision. Petitioners argued that the City Council’s interpretation of the Ordinance is entitled to deference, but it is required to approve an HCM where the expert evidence about an HCM designation is undisputed. To refuse adoption of an HCM in the face of undisputed evidence would be unreasonable and absurd, and therefore an abuse of discretion.

The court is persuaded that the City’s and Real Party’s counsel have the better argument, which is that the Ordinance entitles the City Council to make policy decisions, meaning that it could refuse to adopt an HCM even where there is no evidence to the contrary. Consequently, the City Council has the discretion to deny HCM approval to the Taix Restaurant building or even to the entire restaurant. The Ordinance’s plain language (including the requirement that the Council District be consulted), the City Council’s construction of it, and the precedent for interpreting the Ordinance permit limited designations. The City Council acted consistently with its authority under the Ordinance by designating only the restaurant’s site and three of its existing character-defining features as an HCM.

¹⁸ At trial, Petitioners’ counsel distinguished the Bob Baker Marionette Theater and Farmers Market, but the fact remains that these were limited HCM approvals of only part of an existing structure.

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2. The Supplemental Findings Excluding the Taix Restaurant Building from the HCM Are Supported by Substantial Evidence

The court must uphold the City's decision unless it concludes that, based on the evidence before the City and resolving any reasonable doubts in favor of the Council's findings and decision, a reasonable person could not reach the conclusions reached by the City. RPI Opp. at 7.

Petitioners contend that the City Council's finding that the Taix Restaurant building is not historically significant is unsupported by substantial evidence. See Gray, supra, 167 Cal.App.4th at 1116-17 ("we decline to [defer to] findings [that] are not supported by substantial evidence"). The experts – consisting of OHR's historical preservation planners, Real Party's expert McGee, Petitioners' historian Charles J. Fisher (AR 1), Petitioners' architectural historian (Paul), the Conservancy, and the Historic Resources Group -- all agreed that the Taix Restaurant building qualifies for HCM designation under Criterion 1. Pet. Op. Br. at 20; Reply at 12.

McGee reported:

"Because the Taix Restaurant was identified in SurveyLA, a local historical resource survey meeting the requirements Section 5024.1(g) of the Public Resources Code (SurveyLA), and for the reasons stated in this report, it is presumed to be historically or culturally significant. Therefore, the Taix Restaurant appears to qualify as an historical resource under CEQA....."

"This report confirms the Taix Restaurant appears to meet eligibility criteria for listing as an HCM, though the subject property does not appear to be a contributor to any [Historic Preservation Overlay Zone]." AR 1214-15, 1252.

Petitioners argue that there is no evidence that the experts' opinions are based on the site alone without the restaurant building. If there was no restaurant "located at 1911-1929 West Sunset Boulevard and 1910-2018 West Reservoir Street" (AR 2519), there would be nothing to represent the historical significance of the property. See Pet. RJN Ex. 4, p. 51 (property's integrity for purposes of the National Register is based on "essential physical features that must be present for a property to represent its [historical] significance."). Thus, in assessing a property's historical integrity -- its ability to convey its historical significance -- the experts considered the building, not the site without the building. AR 1247, 312-13.¹⁹ In the words of McGee, "the Taix Restaurant appears to retain sufficient integrity for listing as an [HCM] and for the California Register". AR 1247 (emphasis added). This necessarily means that McGee considered the restaurant building in evaluating each aspect of integrity. Pet. Op. Br. at 20-21.

Petitioners conclude that the uncontradicted evidence is that the Taix Restaurant building,

¹⁹ The National Register notes seven qualities that "in various combinations" bear on integrity: location, design, setting, materials, workmanship, feeling, and association. Pet. RJN Ex. 4, p. 50. A property need not possess all of these aspects to retain integrity. Id. The basic National Register integrity test is whether, despite some alterations to a building, a historical contemporary would recognize the Taix Restaurant from its period of significance (1962-1980), as it exists today. Pet. RJN Ex. 4, p. 54. Pet. Op. Br. at 20, n. 13.

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including its significant character-defining interior spaces, is historically significant to the cultural, economic, and social history of the City and community. This fact negates the City Council's finding that the building has no historical significance. Pet. Op. Br. at 21; Reply at 12-13.

Petitioners are incorrect. Substantial evidence supports the City Council's conclusion that the Taix Restaurant building has no historical significance and that only the restaurant site and three specific features need be designated.

As the City argues (City Opp. at 12-13), it is undisputed that Taix Restaurant qualifies under Criterion 1 despite its many changes in location, dining format, and décor over the years. AR 1245. It is also undisputed that Taix Restaurant is ineligible under Criterion 3: "[T]he Taix Restaurant cannot be said to be an especially strong, nor high-style example of French Revival-themed, roadside architecture from the 1960s. Therefore, the Taix Restaurant does not appear eligible under Criterion C/3/3." AR 1246. City Opp. at 14.

Criterion 1 requires that Taix Restaurant exemplify significant contributions to the broad cultural, economic or social history of the City or community. LAAC §22.171.7. McGee stated that once a resource meets one of the three criteria, it must be assessed for integrity. AR 1247. She concluded that the building has location integrity, design integrity despite alterations, setting integrity, and integrity of material if not the interior itself. AR 1247. All of these factors contribute to Taix Restaurant's integrity of feeling and association. AR 1247.

Yet, nothing in Criterion 1 and the integrity of the building means that the entire building must be designated as an HCM. As discussed *ante*, the Ordinance does not require designation of every part of a nominated building as an HCM.

Moreover, a property's historical integrity is its ability to convey its historical significance. AR 312-13. The integrity of an undistinguished building hardly conveys Taix Restaurant's historical significance. Much of the restaurant's interior was repeatedly altered over the years, a fact which the Commission acknowledged. AR 1394. "The 1980s, '90s, and 2000s brought extensive remodeling to every room...[t]he tin ceilings, the wood paneling, the brick wainscoting interior...and more....this was all done...to make it look older." AR 694. City Opp. at 14.

Mike Taix provided uncontroverted testimony that the interior appointments of the restaurant reflected recent remodeling:

"The 1980s, '90s and 2000s brought extensive remodeling to every room in the restaurant, and a repurposing of the wine shop, which we closed. The tin ceilings, the wood paneling, the brick wainscoting interior, wallpaper removal, lighting, booth layouts, windows, window replacements, and more. AR 694. *See also* AR 2:0381 ("The establishment has been ever evolving, and little is left from the 1969 renovation.") RPI Opp. at 8.

The Los Angeles Times' 1989 criticism of the remodeling verified Michael Taix's uncontroverted testimony:

"Taix may be one of L.A.'s older restaurants, but it did not preserve the more alluring aura of its own history. While there is a hammered tin ceiling, the décor otherwise is straight from the 70s: mauve and gray booths, frosted glass, shiny brass fixtures. Unlike other Los Angeles landmarks – Phillipe's, the Pantry, Musso

& Frank – the ghost of Raymond Chandler does not linger here.” AR 878.

The Commission’s staff also reported that the design of the building was not significant, stating: “While the applicant argues that the subject property also ‘embodies the distinctive characteristics of a style, type, period, or method of construction’ as an excellent example of a building designed in the French Norman Revival architectural style, staff is unable to make this finding.” AR 735. RPI Opp. at 7-8. By itself, the staff report’s conclusion is substantial evidence that the restaurant building’s exterior is insignificant.

After visiting the restaurant, the Commission agreed that the building design is not significant. AR 1396 (“The architectural quality is just kind of negligible on the exterior and the interior. *See also* AR 1402 (“I’m finding it hard to sort of deal with 25-year-old interior decoration changes and some applique, stucco and clinker brick as being significant.”). RPI Opp. at 8.

The public’s appreciation of Taix Restaurant also has never been grounded in its décor. In 1963, the Los Angeles Times reviewed the restaurant after its relocation to Sunset Boulevard from downtown: “It is...somewhat, decor-wise, a far cry from the original Taix down on Commercial St. - tufted leather booths, carpeting, tablecloths, and attractive waitresses rather than 80-year-old waiters.” AR 878.

Petitioners argue that whether the Taix Restaurant building has architectural significance is not germane to Criterion 1. Criterion 3 supports an HCM designation when a building “[e]mbodies the distinctive characteristics of a style, type, period, or method of construction; or represents a notable work of a master designer, builder, or architect whose individual genius influenced his or her age.” For Criterion 1, the value is associative -- *i.e.*, a property’s significance for its association with events or contributions to the history of the City or a community in the City. In contrast, the values for Criterion 3 are architectural design, engineering, artwork or construction. Since any of the three criteria of LAAC section 22.171.7 is sufficient to designate an HCM, the City Council’s finding that the Taix Restaurant building is not architecturally significant is legally irrelevant to its designation under Criterion 1. Pet. Op. Br. at 17.

The court does not agree. The Taix Restaurant’s lack of architectural significance under Criterion 3 does not make it irrelevant to Criterion 1. The City Council determined under Criterion 1 that Taix Restaurant exemplifies significant contributions to the cultural history of the City and community. The value of Taix Restaurant is its association with that cultural history. But what part of Taix Restaurant is so associated? The City Council can consider the undistinguished nature of the restaurant building in deciding that it is not part of that cultural association.

Petitioners also have admitted that the significance of Taix Restaurant is as a legacy business. Petitioners’ representative, Carol Cetrone, conceded at a Commission hearing:

“In Los Angeles and elsewhere, well-established and long-lived businesses take on important social qualities and often, over time, they organically mature into iconic and revered cultural institutions...[T]hese businesses are important because they build a very tangible bridge linking the present with the past.” That’s the entire quote from HRG. There could not be a more appropriate description for this iconic and treasured establishment.” AR 683-84.

Petitioners' expert, the Historic Resources Group, also conceded that Taix Restaurant was significant for its use (not its design), stating:

"Evaluating properties that are significant for their use is difficult, and the guidelines and eligibility standards are relatively subjective in comparison to the established thresholds for evaluating other types of significance." AR 835 (emphasis added).

"Legacy business" is a relatively new term. The National Trust for Historic Preservation recognizes that efforts to preserve legacy businesses present unique issues and represent a desire to preserve "intangible elements of culture and community that these businesses have created over time." AR 6:1215. While the term is somewhat new, the City Council's appreciation of Taix Restaurant as a legacy business goes back more than four decades. Recognition of Taix Restaurant as an intangible cultural asset occurred in the 1975 and 2017 City resolutions commemorating Taix Restaurant's respective 60th and 90th anniversaries in business. (AR 527 ("Whereas circumstances, time and place have changed during the past six decades, but the warmth, camaraderie and simply good food and service remain the same"); AR 1115 ("the present location opened in 1962 and continues to be a family affair. Family style service has given way to private booths, but Taix French restaurant remains faithful to...abundant portions of French country cuisine at affordable prices"). City Opp. at 12-13; RPI Opp. at 1.²⁰

The City Council also took into account Michael Taix's uncontroverted testimony that the restaurant's building threatened the continuation of Taix Restaurant as a legacy business:

"Put simply, Taix is no longer profitable and its premises are a white elephant. Even before the COVID-19 public health emergency, our facilities (particularly our extensive banquet facilities) were significantly under-patronized due to increased competition and changing public habits...We are now long-past the point where Taix's operating revenue is able to support this unnecessary overhead." AR 521.

As Commissioner Milofsky stated during the Commission's October 15, 2020 hearing, a designation that required preservation of an empty building or building façade would be "an abject failure, I totally agree that's not the approach to take." AR 717. He added at the Commission's

²⁰ Petitioners argue that the concept of a legacy business as an HCM is necessarily tied to the building in which the business has been operating. The Taix Restaurant's legacy is due in no small part due to the building's physical expression of post-World War II European theming in United States restaurant culture. AR 734, 1397-98 (OHR head Bernstein). See AR 796-97 (architectural historian Paul explaining that the Taix Restaurant's continental interiors lending a sense of removal and escape). A 1964 ad placed by the Taix brothers in the Los Angeles Times corroborates this intent: "[W]hen you enter this smartly appointed restaurant you enter France itself ... the decor is pure Parisian." AR 1325. Pet. Op. Br. at 20.

There is no legal support for Petitioners' position. The very concept of a legacy business is just that: a business. The location may or may not support the business as a City or community legacy.

December 17, 2020 hearing: "...I think that a lot of people advocating, 'well, save the building and it can be adaptively re-used as a wine store, it can be adaptively re-used as a hire-out hall' ... or a lot of things which...are not about what the community ...is loving about [Taix Restaurant]." AR 1398. See also AR 546 (*Sustaining San Francisco's Living History: Strategies for Conserving Cultural Heritage Assets*: "Despite their effectiveness in conserving architectural resources, traditional historical preservation protections are often ill-suited to address the challenges facing cultural heritage assets."). RPI Opp. at 9.

Petitioners respond that Michael Taix's September 22, 2020 letter to the Commission was written when the City's restaurant businesses were trapped in the Covid-19 pandemic's destructive path. His letter contains no economic or financial analysis. An argument that alternatives to demolition of an historical resource are economically infeasible must show that "'the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project.' [Citation.]" *Uphold Our Heritage v. Town of Woodside*, (2007) 147 Cal.App.4th 587, 599. Reply at 12, n. 7.

Petitioners add that the letter's suggestion that alternatives are infeasible begs the question. The HCM designation process assesses whether a proposed HCM meets any of the designation criteria, not whether alternatives to demolition are feasible. Nothing in the Ordinance provides for differential treatment of the building when determining whether it exemplifies significant contributions to the City's history. To do so would prematurely and improperly raise issues in the HCM designation process that may be addressed in the Commission's building demolition permit review process. A listed HCM might not escape demolition when the demolition review process is complete and the City Council has adopted a statement of economic or other special considerations under CEQA. Guidelines §§ 15091(a), (b), 15093(b). Reply at 12.

The court agrees that the viability of a legacy business is not directly relevant to the HCM designation under the Ordinance. Yet, it surely is relevant to the City Council's discretionary and subjective application of the HCM for the policy objective of supporting the continued operation of Taix Restaurant as a legacy business. This is not simply an issue whether an existing HCM can be demolished. Additionally, Petitioners cannot seriously dispute that, apart from the COVID-19 pandemic, Taix Restaurant would not survive without change.

The City Council concluded, based on overwhelming evidence, that neither the exterior nor the interior of the restaurant building embodies the distinctive characteristics of a style, type, period, or method of construction under Criterion 3. This conclusion does not control for Criterion 1, but it certainly is relevant. There is substantial evidence that the integrity of Taix Restaurant's undistinguished building does not convey the restaurant's historical significance. In any event, nothing prevented the City Council from including the site and certain character-defining features in the HCM and not the entire building.

The City Council's findings identify three character-defining physical features of Taix Restaurant to be "preserved in order to convey the restaurant's historical significance and justify its designation as a [HCM]." "There is a large neon roof sign reading 'TAIX at the northeast corner of the building . . . and a projecting wall sign . . . reading 'COCKTAILS.'" AR 839, 734, 1322. In designating these features, the City Council required that they be preserved and maintained as part of improvements at the site.

Substantial evidence supports the City Council's decision to include these three specific features as part of the HCM. The fact that the South facade signage was altered during 1990-2017,

but the Cocktails sign was not altered, shows that the Cocktails sign predated 1990 and was worthy of preservation. AR 1229. Petitioners themselves noted the signs as significant features of the restaurant. AR 267, 280 (the signs are “readily recognized and associated with the Taix brand”). The cherry wood bar top was identified as a significant continuing feature of the restaurant’s cocktail bar dating from its construction in 1969. AR 524, 1070, 1227. It also was identified as an historical element in the McGee report. AR 1223.

According to Petitioners, the Supplemental Findings taint and invite misuse of the restaurant’s designation as an HCM by dismissing the Taix Restaurant building’s historical significance. Real Party banks on those findings to speed up development of the Sunset Project. If the building is not historically significant, there will be no need for a report on the building’s “suitability for continued use, renovation, restoration or rehabilitation” (LAAC §22.171.14 (b)(1)), and no need for CEQA review. An HCM will be destroyed without public review of development design alternatives that do not destroy the character defining interior spaces of primary importance (e.g., keeping the extant restaurant within a smaller footprint, which would save the historical cocktail lounge). Reply at 11-12. This argument assumes that the Taix Restaurant building qualifies as an HCM. Substantial evidence supports the City Council’s conclusion that it does not.

In sum, the Supplemental Findings explain how the HCM designation action advances the City’s dual goals of (a) enabling Taix Restaurant to make necessary changes so that it can continue to operate, thereby supporting preservation of the restaurant as a legacy business and historical resource, and (b) preserving key physical features identified with the restaurant. City Opp. at 14. Applying the substantial evidence standard and resolving reasonable doubts in favor of the City Council’s findings and decision, a reasonable person could reach the City Council’s decision to exclude the restaurant building and include only the site and the three features in the HCM designation. RPI Opp. at 9, 12.

V. The City Council Correctly Found that the Project Is Exempt from CEQA

A. Governing Law

1. General

The purpose of CEQA (Public Resources Code²¹ §21000 *et seq.*) is to maintain a quality environment for the people of California both now and in the future. §21000(a). “[T]he overriding purpose of CEQA is to ensure that agencies regulating activities that may affect the quality of the environment give primary consideration to preventing environmental damage.” Save Our Peninsula Committee v. Monterey County Board of Supervisors, (2001) 87 Cal.App.4th 99, 117. CEQA must be interpreted “so as to afford the fullest, broadest protection to the environment within reasonable scope of the statutory language.” Friends of Mammoth v. Board of Supervisors, (1972) 8 Cal.3d 247, 259.

A “project” is defined as any activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment (1) undertaken directly by any public agency, (2) supported through contracts, grants, subsidies, loans or other public assistance, or (3) involving the issuance of a lease, permit, license, certificate, or other entitlement for use by a public agency. §21065. The word “may” in this context means a reasonable possibility. Citizen Action to Serve All Students v. Thornley, (1990) 222 Cal.App.3d

²¹ All further statutory references are to the Public Resources Code unless otherwise stated.

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748, 753.

“Environment” means the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, and objects of historical or aesthetic significance. §21060.5; Guidelines²² §15360. A project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment. §§ 5020.1(q), 21084.1.

CEQA expressly applies to discretionary projects by public agencies, including but not limited to the enactment and amendment of zoning ordinances, issuance of conditional use permits, and approving tentative subdivision maps. §21080(a). Environmental analysis must be performed before an agency approves a project (Laurel Heights Improvement Association v. Regents of the University of California, (“Laurel Heights”) (1988) 47 Cal.3d 376, 394), and an agency may not commit itself to a project without performing such review (National Resources Defense Council v. City of Los Angeles, (2002) 103 Cal.App.4th 268, 271-72),

The term “project” may include several discretionary approvals by government agencies; it does not mean each separate government approval. Guidelines §15378(c). The project is the whole of the action, not simply its constituent parts, which has the potential for resulting in either direct or reasonably foreseeable indirect physical change in the environment. Guidelines §15378. Not every agency action is a project. Simi Valley Recreation & Park District v. Local Agency Formation Commission, (1975) 51 Cal.App.3d 648, 663.

2. Historical Resources

An “historical resource” is a resource listed in, or determined to be eligible for listing in, the California Register of Historical Resources (“California Register”). §21084.1; Guidelines §15064.5(a)(1). A structure’s status as an historical resource for purposes of CEQA is either mandatory, presumptive, or discretionary, depending on whether it has been listed, or is eligible for listing, in various historical registers. §21084.1; Guidelines §15064.5; Valley Advocates v. City of Fresno, (“Valley Advocates”) (2008) 160 Cal.App.4th 1039, 1051.

A building listed in, or eligible for listing in, the California Register is a mandatory historical resource under CEQA. Valley Advocates, *supra*, at 1051-52. A building included in a local register of historical resources is a presumptive historical resource. *Id.* at 1054–58.

That a resource is not listed in either the California Register or a local register does not preclude a lead agency from determining that the resource may be an historical resource. Guidelines §15064.5(a)(4); Valley Advocates, *supra*, 160 Cal.App.4th at 1060 (“lead agencies have discretionary authority to determine that buildings that have been denied listing or simply have not been listed on a local register are nonetheless historical resources for purposes of CEQA”). Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California may be deemed an historical resource, provided the lead agency’s determination is supported by substantial evidence in light of the whole record. Guidelines §15064.5(a)(3). The lead agency generally

²²As an aid to carrying out the statute, the State Resources Agency has issued regulations called “Guidelines for the California Environmental Quality Act” (“Guidelines”), contained in Code of Regulations, Title 14, Division 6, Chapter 3, beginning at section 15000.

should consider a resource historically significant if it meets the criterion for listing on the California Register. Guidelines §15064.5(a)(3).

If a building is a discretionary historical resource, the lead agency has discretion to treat the building as an historical resource subject to CEQA. The decision must be made at the preliminary review stage when the agency determines whether a project falls under CEQA and whether a categorical exemption to CEQA applies. *See Citizens for the Restoration of L Street v. City of Fresno*, (2014) 229 Cal.App.4th 340, 371.

3. Exemptions

The Guidelines list 33 classes²³ of projects that generally do not have a significant effect on the environment and may be exempted from CEQA. §21084; Guidelines §15300; *Asuza Land Recl. Co. v. Main San Gabriel Basin Watermaster*, (1997) 52 Cal.App.4th 1165. Classes of projects designated in the Guidelines pursuant to section 21084 are expressly exempted from CEQA. §21080(b)(9). These categorical exemptions are those classes of projects that the Secretary of the California Resources Agency “has found...do not have a significant effect on the environment” and in the Guidelines “has listed those classes and ‘declared [them] to be categorically exempt from the requirement for the preparation of environmental documents.’” *Berkeley Hillside Preservation v. City of Berkeley*, (“*Berkeley Hillside*”) (2015) 60 Cal.4th 1086,1092,1102.

The exemptions are narrowly construed. *Santa Monica Chamber of Commerce v. City of Santa Monica*, (2002) 101 Cal.App.4th 786, 793. “‘Exemption categories are not to be expanded beyond the reasonable scope of their statutory language.’ [Citation.]” *Save the Plastic Bag Coalition v. County of Marin*, (“*Save the Plastic Bag*”) (2013) 218 Cal.App.4th 209, 226. “In order to support a categorical exemption under CEQA, a public agency must be able to marshal substantial evidence to support the conclusion that the project fell within the exemption.” *Id.* at 228.

No CEQA review is required if a categorical exemption is determined to apply to a proposed project or activity. §§ 21080(b)(9), 21084(a); *Muzzy Ranch Co. v. Solano Cty. Airport Land Use Comm.*, (2007) 41 Cal.4th 372, 380. CEQA does not require any particular procedure for agency approval of a project that it finds to be exempt from CEQA review. *See Apartment Assn. of Greater Los Angeles v. City of Los Angeles*, (2001) 90 Cal.App.4th 1162. If the agency properly finds the project is exempt from CEQA, no further environmental review is necessary. The agency may prepare and file a notice of exemption, citing the relevant section of the Guidelines and including a brief statement of reasons to support the finding. *Davidson Homes v. City of San Jose*, (1997) 54 Cal.App.4th 106, 113; Guidelines §§ 15061(d), 15062(a)(3).

Class 8 consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Guidelines §15308. This generally includes designation of landmarks and historical districts, as well as other

²³A project that is not exempt by statute or under the 33 categories in the Guidelines may be found to be exempt under the “common sense” exemption that a project is not subject to CEQA where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. §15061(b)(3).

preservation efforts. City Opp. at 16.

Class 31 consists of projects limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation, or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitation, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer ("Secretary Standards"). Guidelines §15331.

4. Exceptions to the Exemptions

Even if a categorical exemption applies, an agency may not find the activity categorically exempt if certain listed exceptions apply, including for a project which may cause a substantial adverse change in the significance of a "historical resource". Guidelines §15300.2(f). The environment includes "objects of historical or aesthetic significance." §21060.5; Guidelines §15360. The fact that an object of historical significance is man-made does not preclude it from being part of the environment protected by CEQA. Guidelines §15360. "A project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment." §21084.1. Valley Advocates, *supra*, 160 Cal.App.4th at 1051.

5. Standard of Review

A party may seek to set aside an agency decision for failure to comply with CEQA by petitioning for either a writ of administrative mandamus (CCP §1094.5) or of traditional mandamus. CCP §1085. A petition for administrative mandamus is appropriate when the party seeks review of a "determination, finding, or decision of a public agency, made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency, on the grounds of noncompliance with [CEQA]." §21168. This is generally referred to as an "adjudicatory" or "quasi-judicial" decision. Western States Petroleum Assn. v. Superior Court, ("Western States") (1995) 9 Cal.4th 559, 566-67. A petition for traditional mandamus is appropriate in all other actions "to attack, review, set aside, void or annul a determination, finding, or decision of a public agency on the grounds of noncompliance with [CEQA]." Where an agency is exercising a quasi-legislative function, it is properly viewed as a petition for traditional mandamus. *Id.* at 567; §21168.5.

The distinction between the two is rarely significant. In both cases, the issue is whether the agency abused its discretion. California Farm Bureau Federation v. California Wildlife Conservation Bd., ("Farm Bureau") (2006) 143 Cal.App.4th 173, 185, n. 6 (citations omitted). Public entities abuse their discretion if their actions or decisions do not substantially comply with the requirements of CEQA. Sierra Club v. West Side Irrigation District, (2005) 128 Cal.App.4th 690, 698. An abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence. Western States, *supra*, 9 Cal.4th at 568; §21168.5.

Whether the agency abused its discretion must be answered with reference to the administrative record. This standard requires deference to the agency's factual and environmental conclusions based on conflicting evidence, but not to issues of law. Laurel Heights, *supra*, 47 Cal.3d at 393, 409. Argument, speculation, and unsubstantiated opinion or narrative will not

suffice. Guidelines, 15384(a), (b).

Where a categorical exemption is at issue, the agency has the burden of demonstrating that substantial evidence supports its categorical exemption determination. California Unions for Reliable Energy v. Mojave Desert Air Quality Management Dist., (2009) 178 Cal.App.4th 1225, 1245. The court “must first determine as a matter of law the scope of the exemption and then determine if substantial evidence supports the agency’s factual finding that the project fell within the exemption.” Farm Bureau, *supra*, 143 Cal.App.4th at 185 (citations omitted). The court reviews the agency’s factual determination that a project comes within the scope of a categorical exemption under the substantial evidence standard. Holden v. City of San Diego, (2019) 43 Cal.App.5th 404, 410. The agency has the burden of demonstrating that substantial evidence supports its factual finding that the project is exempt. California Unions for Reliable Energy v. Mojave Desert Air Quality Management District, (“California Unions”) (2009) 178 Cal.App.4th 1225, 1239.

The court’s review of the agency’s decision whether a project is within the scope of an exception is essentially factual for some of the Guidelines section 15300.2 exceptions and requires application of a substantial evidence standard of review. Berkeley Hillside, *supra*, 60 Cal.4th at 1114. For example, the exceptions of unusual circumstances and location in an unusually sensitive environment (Guidelines §§ 15300.2(a), (c)) require the court to decide if substantial evidence supports the agency’s determination whether the project’s circumstances are within the scope of the exception. Berkely Hills Watershed Coalition v. City of Berkeley, (2019) 31 Cal.App.5th 880, 889-90. If the project is within the exception’s scope, the court then decides whether substantial evidence supports the agency’s conclusion about whether a fair argument can be made that the project may cause a significant effect on the environment sufficient to remove the project from the categorically exempt class. Aptos Residents Ass’n v. County of Santa Cruz, (2018) 20 Cal.App.5th 1039, 1049. It is unclear whether this same two-part standard will apply to the historical exception under 15300.2(f), but the court will assume that it does.

B. The City Council’s Determination That the HCM Project Is Categorically Exempt Is Supported by Substantial Evidence

The project for purposes of CEQA is the City Council’s designation of the Taix Restaurant as an HCM. AR 793. In adopting the Supplemental Findings, the City Council invoked CEQA’s Class 8 and Class 31 exemptions. AR 1552. The scope of the Class 8 exemption has been interpreted as “embrac[ing] projects that combat environmental harm, but not those that diminish existing environmental protections.” Save Our Big Trees v. City of Santa Cruz, (“Save Our Big Trees”) (2015) 241 Cal.App.4th 694, 707. In Save Our Big Trees, the court found that Santa Cruz’s legislative action of adopting heritage tree ordinance amendments was not supported by the Class 8 exemption because the amendments made the heritage tree designation process much stricter and expanded opportunities to cut down protected trees. *Id.* at 709-10. While Petitioners are unaware of any case interpreting the scope of the Class 31 exemption, they argue that the rule for narrow construction of the scope of exemptions and the similarities between the language and protective purposes of Class 8 and Class 31 exemptions indicates that the Class 31 exemption should not be construed to diminish protection for historical resources. Pet. Op. Br. at 22-23.

The court agrees with Petitioners that the scope of the Class 8 and the Class 31 exemptions requires the City Council to show by substantial evidence that the HCM designation project

“combat[s] environmental harm” and does not “diminish existing environmental protections”. Save Our Big Trees, *supra*, 241 Cal.App.4th at 707. Additionally, the Class 31 exemption is “limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction” of the projects consistent with the Secretary’s Standards. Guidelines §15331. In this case, that means the HCM designation project’s preservation of Taix Restaurant must be consistent with the Secretary’s Standards.

Petitioners note that the Commission’s Letter of Determination explained its rationale for its adoption of the Class 8 and Class 31 exemptions for the entire Taix Restaurant:

“The designation of Taix French Restaurant as an [HCM] in accordance with [the Ordinance] will ensure that future construction activities involving the subject property are regulated in accordance with Section 22.171.14 of the LAAC. The purpose of the designation is to prevent significant impacts to a [HCM] through the application of the standards set forth in the LAAC. Without the regulation imposed by way of the pending designation, the historical significance and integrity of the subject property could be lost through incompatible alterations and new construction and the demolition of an irreplaceable historical site/open space.” AR 1410.

Petitioners note that the Ordinance’s procedural safeguards (LAAC §22.171.14) for the HCM designation of the Taix Restaurant building as approved by the Commission would require Commission review for compliance with the Secretary’s Standards and CEQA before approval of a permit for any substantial alteration or demolition of the Taix Restaurant building. The Supplemental Findings “correct and supersede” (AR 1496) the Commission’s determination, and the regulatory supervision and protection for the restaurant building was lost with the City Council’s finding that the Taix Restaurant building is not historically significant. Pet. Op. Br. at 23-24.

According to Petitioners, the City Council did not have substantial evidence for its determination that the HCM designation project is a regulatory action to combat environmental harm that does not diminish existing environmental protections (Class 8) or preserves historical resources in a manner consistent with the Secretary’s Standards (Class 31). In fact, the perfunctory PLUM Committee report includes no analysis of consistency with the Secretary’s Standards as required for Class 31. *See* AR 1552–53. Pet. Op. Br. at 24.

Petitioners’ argument suffers from the defect that the City Council, not the Commission, is the lead agency for the HCM project under CEQA. The mere fact that the Commission would have provided broader historical resource protection than the City Council because it included the building in the HCM designation does not prevent the City Council’s action from meeting the Class 8 and the Class 31 exemption requirement that the HCM designation project “combat[s] environmental harm” and not “diminish existing environmental protections”. *See* Save Our Big Trees, *supra*, 241 Cal.App.4th at 707. The designation of the restaurant site and three features of Taix Restaurant does both.

The City argues (City Opp. at 17) that the Notice of Exemption for the HCM project states that the “[d]esignation of [the] Taix French restaurant as a Historic-Cultural Monument will assure the protection of the environment by the enactment of project review regulations based on the Secretary of Interior’s Standards to maintain and preserve the historical site.” AR 793. This

designation must be measured against the baseline environment for purposes of CEQA, which would be the property with no monument designation. *See* Guidelines §15125 (lead agency treats existing physical conditions at the time CEQA review begins as the environmental baseline against which the project's changes to the environment are measured). The difference between the two is that the former ensures the preservation of the resource determined by the City Council pursuant to the demolition and alteration protections of LAAC section 22.171.14 and the latter does not. City Opp. at 17.

Petitioners respond that the Notice of Exemption is not substantial evidence supporting the categorical exemptions because it predates the Supplemental Findings. The Notice of Exemption was prepared on November 13, 2020. AR 1410. The Commission's Letter of Determination is dated January 26, 2021. AR 1407. The Supplemental Findings excluding the Taix Restaurant building and designating the site and three character-defining features were not presented until Bullock's December 6, 2021 letter to the PLUM Committee. AR 1495. As a result, Petitioners argue that the Notice of Exemption cannot possibly be evidence supporting the approved categorical CEQA exemptions. Reply at 16-17.

It is true that the Notice of Exemption was prepared by the Commission before the Supplement Findings existed. However, the PLUM Committee reheard the categorical CEQA exemptions on January 18, 2022, after Bullock's earlier letters proposed the Supplemental Findings. *See* AR 1526, 1535, 1554. The PLUM Committee voted to approve the HCM designation as amended by the Supplemental Findings, including the categorical exemptions. AR 1578-79. The PLUM Committee report then recommended that the City Council (1) rescind its June 2, 2021 action based on the HMC proposal; (2) determine again that the proposed HCM designation of Taix Restaurant is exempt from CEQA under Classes 8 and 31; (3) determine that Taix Restaurant conforms with the Ordinance's definition of a HMC, (4) adopt the Commission's findings as amended by the PLUM Committee to include the Supplemental Findings, and (5) approve the Commission's findings for Taix Restaurant's designation as an HCM. AR 1552. The City Council followed the PLUM Committee's recommendation. AR 1998, 2064-65. In doing so, the City Council adopted the Notice of Exemption's language for the HCM designation limited to the Taix Restaurant site and three features.

Petitioners contend that, even if the City Council only designated the site and three features, the baseline environment is the existing Taix Restaurant building, which is an historical resource under Guidelines section 15064.5(a)(2). "A resource...identified as significant in an historical resource survey meeting the requirements of section 5024.1(g) of the Public Resources Code, shall be presumed to be historically or culturally significant." Guidelines §15064.5(a)(2). An historical resource must be treated "as significant unless the preponderance of the evidence demonstrates that it is not historically or culturally significant." Guidelines §15064(a)(2). After assessment of the baseline, the lead agency must "compare it to the anticipated or expected physical conditions were the project completed." CREED-21 v. City of San Diego, (2015) 234 Cal.App.4th 488, 504; Guidelines §15064.5(b)(1). The anticipated and expected outcome of the HCM designation project, as superseded by the Supplemental Findings, is the planned demolition of the Taix Restaurant building without demolition permit review under LAAC section 22.171.14. Reply at 17-18.

Petitioners cite McGee's report, which stated that Taix Restaurant was identified in SurveyLA, a local historical survey meeting the requirements of section 5024.1(g), that presumed

the restaurant to be historically or culturally significant. AR 1214. McGee's report also stated that Taix Restaurant had been identified in SurveyLA as an historical resource that appears to meet eligibility criteria for local listing as an HCM. AR 1252. McGee relied on SurveyLA to reason that the Taix Restaurant building "is presumed to be historically or culturally significant" for CEQA purposes, such as to qualify as an historical resource under CEQA. AR 1214, 1252, 2274, 2943, 2946. This evidence is corroborated by OHR's own analysis. AR 36, 45-47. Reply at 19.

Despite the statements of SurveyLA, McGee, and OHR, the Taix Restaurant building is not an historical resource. A structure's status as an historical resource for purposes of CEQA is either mandatory, presumptive, or discretionary, depending on whether it has been listed, or is eligible for listing, in various historical registers. §21084.1; Guidelines §15064.5; Valley Advocates, 160 Cal.App.4th at 1051. A building listed in, or eligible for listing in, the California Register is a mandatory historical resource under CEQA. Id. at 1051-52. A building included in a local register of historical resources is a presumptive historical resource. Id. at 1054-58. If a building of some historical significance has not been included in any list, or has been denied a place on a list, lead agencies have discretionary authority to determine that the building is nonetheless an historical resource for purposes of CEQA. Id. at 1060; Guidelines §15064.5(a)(4).

There are two ways that a resource may be presumed to be historical: (1) if the resource has been included in a local register of historical resources (as defined in section 5020.1(k)) or (2) it is deemed significant pursuant to criteria set forth in section 5024.1(g). Guidelines §15064.5(a)(2). Under section 5020.1(k), a resource may only be included in a local register of historical resources if that designation or recognition is made "by a local government pursuant to a local ordinance or resolution." §5020.1(k); Valley Advocates, *supra*, 160 Cal.App.4th at 1054-56.

At the time of its nomination, Taix Restaurant was not listed or eligible for listing in the California Register. Therefore, it is not a mandatory historical resource. Nor was it listed in a local register by ordinance or resolution under section 5020.1(k). The only way Taix Restaurant could be a presumptive historical resource is if it is deemed significant under section 5024.1(g). McGee relied on SurveyLA to conclude that Taix Restaurant is a presumptive historical resource, but there is no evidence that SurveyLA meets the requirements of section 5024.1(g).²⁴

Assuming *arguendo* that McGee could rely on SurveyLA without proof of its eligibility as

²⁴ Section 5024.1(g) sets forth the requirements for an historical resources survey to meet the criteria of section 5024.1(g) for presumptive historical significance: (1) The survey has been or will be included in the State Historic Resources Inventory; (2) The survey and the survey documentation were prepared in accordance with State Office of Historic Preservation procedures and requirements; (3) The resource is evaluated and determined by the State Office of Historic Preservation to have a significance rating of Category 1 to 5 on DPR Form 523; (4) If the survey is five or more years old at the time of its nomination for inclusion in the California Register, the survey has been updated to identify historical resources which have become eligible or ineligible due to changed circumstances or further documentation and those which have been demolished or altered in a manner that substantially diminishes the significance of the resource. If an historical resources survey does not meet all four aspects of the section 5024.1(g) test, the survey cannot form the basis for a presumption that a property is of historical significance for CEQA purposes. Guidelines §15064.5(a)(2); Valley Advocates, *supra*, 160 Cal.App.4th at 1057.

a section 5024.1(g) survey, the presumption of historical resource exists only until the preponderance of the evidence demonstrates that the resource is not historically significant. Guidelines §15064.5(a)(2). Real Party's counsel argued at trial that SureveyLA made Taix Restaurant a presumptive resource and that the presumption was overcome when the City defined what the historical resource was: the site and three character-defining features of the Taix Restaurant. The City's counsel argued that Taix Restaurant was never a presumptive resource. It started as a discretionary resource, and the City Council's action created the site and three character-defining features into a presumptive resource under CEQA.

Whether Real Party or the City define the correct path, the City Council had more than substantial evidence to overcome any presumption for the restaurant building. The evidence shows that the restaurant building is not worthy of protection under Criterion 3. The presumption was overcome, and the Taix Restaurant building only would be an historical resource if the City Council, acting as lead agency, exercised its discretion to designate it as an historical resource. The City Council did not do so.

This means that the baseline for CEQA purposes is the existing restaurant building without historical significance or HCM designation. Given this baseline, the City Council's HCM designation will have no impact on the physical environment. The fact that it foreseeably may be demolished without protection of more than the site and three features and without a demolition permit review under LAAC section 22.171.14 does not affect the Class 8 and 31 exemption analysis. As the City notes, the City Council could have disapproved the HCM designation in its entirety, in which case CEQA would not apply at all. City Opp. at 18.²⁵

Petitioners also argue that there also is no evidence that preserving the billboard sign, the Cocktails sign, and the cherry wood bar top brings the HCM designation project within the scope of the Class 8 or 31 exemptions. The City Council selected these items from a much larger list of numerous physical features identified in the McGee report as "considered to have primary importance and [that] should be preserved...." AR 1248-50. They include character-defining spaces associated with the continental dining interior: the Cocktail Lounge, the Garden Room, the Foyer leading inside from the building's west elevation entrance, the Alcove Seating Area, and the Dining Room Corridor. AR 1249. Petitioners ask: What distinguishes the two neon signs and the bar top from these spaces and many other significant physical character defining features? Petitioners answer that the distinction is that the three chosen items can be easily removed before demolition and reinstalled in a new Taix restaurant. Without substantial evidence to show how the limited salvage operation required by the Supplemental Findings supports the Class 8 and Class 31 categorical exemptions, the exemptions must fail. Pet. Op. Br. at 24.²⁶

²⁵ Save Our Big Trees, 241 Cal.App.4th at 694, is distinguishable for this reason. The City Council's HCM designation did not detract from protections for the Taix Restaurant's building and its interior; there never has been any historical resource protection for them.

²⁶ Petitioners point out that McGee opined in a May 2020 report for the Sunset Project that it preserves the "historical user experience" through a plan that maintains the restaurant's location to Sunset Boulevard and incorporates the three character-defining features, preserving "the key physical characteristics that convey the 'feeling and association' that characterize the restaurant's enduring appeal to the community." As a result, McGee opined that the Sunset Project will not have a significant effect on historical resources. AR 2288-89.

The same substantial evidence supporting the exclusion of the building from the HCM designation supports the City Council's selection of the three items from a larger list of character-defining features identified in the McGee report for purposes of Class 8 and Class 31 exemptions. AR 1248-50. Any object, building, structure, or site which a lead agency determines to be historically significant may be deemed an historical resource if supported by substantial evidence in light of the whole record. Guidelines §15064.5(a)(3). The City Council had substantial evidence that these three character-defining features of Taix Restaurant should be preserved, as well as the restaurant site, under the Ordinance. Petitioners themselves pointed out much of their significance and the City Council exercised its discretion to select them for preservation.

Petitioners finally argue that the City also makes no effort to explain how the Supplemental Findings are consistent with the Secretary's Standards as required by Class 31 exemption. The Secretary of the Interior's Standards is a 182-page publication that, as indicated by its title, focuses on buildings. Pet. RJN Ex. 3. Yet, the City suggests that preservation of the two signs and cherry wood bar top is consistent with the Secretary's Standards. Reply at 17.

This would be a problem for a Class 31 exemption if there was any building preserved. However, the City Council's HCM designation does not preserve any portion of the Taix Restaurant building. As such, it is "consistent" with Secretary's Standards because they are inapplicable to the site and three features preserved. In any event, Petitioners' argument pertains only to Class 31 and has no bearing on whether there is substantial evidence for the Class 8 exemption.

C. No Exception Applies to the Class 8 and 31 Exemptions

Petitioners rely on Guidelines section 15300.2(f)'s exception to the Class 8 and 31 exemptions to argue that the HCM designation project may cause a substantial adverse change in the significance of an historical resource. They note that the adverse change in the significance of an historical resource need not be direct to foreclose the City Council's reliance on the categorical exemptions. "The scope of review under CEQA is not confined to immediate effects but extends to reasonably foreseeable indirect physical changes to the environment." California Unions, supra, 178 Cal.App.4th at 1242. Pet. Op. Br. at 25-26.

Petitioners argue that the indirect physical change in the environment from the Sunset Project was reasonably foreseeable long before the City Council's January 26, 2022 action. Real Parties made known no later than May 2020 that they were seeking a SCPE for the mixed-use Sunset Project. AR 2272, 2774-76. See AR 1462 (May 2021 PLUM Committee meeting noted: "There's a proposed project for the site"). The physical change in the environment is significant

Petitioners argue that McGee's report refers to a plan not mentioned or adopted by the City Council and express concern that the City or Real Party may contend that McGee's suggested measures mitigate the HCM designation project and support the categorical exemptions. Yet, a lead agency may not rely on mitigation measures to support a categorical exemption from CEQA; mitigation measures may only be evaluated in a public review process under CEQA. Salmon Protection & Watershed Network v. County of Marin, (2004) 125 Cal.App.4th 1098, 1102, 1108. Pet. Op. Br. at 25. Petitioners' concern has proved unfounded. Neither the City nor Real Party rely on McGee's Sunset Project report, which the parties agree is irrelevant to the HCM designation. City Opp. at 16, n. 4. See Reply at 18-19.

within the meaning of CEQA because Taix Restaurant's inclusion in the List of Monuments qualifies it as an historical resource for purposes of CEQA. §21084.1; Valley Advocates, *supra*, 160 Cal.App.4th at 1055; Guidelines §15064.5(a)(2). The Supplemental Findings facilitate that change by erroneously finding that the restaurant building is not historically significant, thereby signaling the City Council's intent to the Commission that signing off on the demolition of the building without public CEQA review and mitigation is appropriate. Accordingly, the City Council erred when it proceeded under the Class 8 and Class 31 categorical exemptions. Pet. Op. Br. at 26.

Petitioners have not met their burden to show that the historical resource exception applies. The project under CEQA is the whole of the action, not simply its constituent parts, which has the potential for resulting in either direct or reasonably foreseeable indirect physical change in the environment. Guidelines §15378. Two activities are sufficiently related to be considered as a single CEQA project that must be reviewed together (1) when the purpose of the project under review is to provide the necessary first step toward a larger development or (2) when development of the project under review requires or presumes completion of another activity. *See, e.g., Planning & Conservation League v. Castaic Lake Water Agency*, (2009) 180 Cal.App.4th 237.

The HCM designation is not tethered to the Sunset Project. Real Party's application for the Sunset Project was filed on April 21, 2020, processed by Planning on May 10, 2022, and deemed complete by operation of Govt. Code section 65943(a) on June 10, 2020. City RJN Ex. 1, pp. 6, 10-12. Petitioners' HCM application for the Taix Restaurant was filed more than two months later, on August 24, 2020. AR 6. Nor does the Sunset Project need the HCM designation to move forward. The Sunset Project is completely independent from the HCM designation project. City Opp. at 19-20; RPI Opp. at 14.

Petitioners acknowledge that the HCM designation project and the Sunset Project are indisputably two separate CEQA projects. They argue that does not mean, however, that the HCM designation project is not tethered to the Sunset Project. "The scope of review under CEQA is not confined to immediate effects but extends to reasonably foreseeable indirect physical changes to the environment." California Unions, *supra*, 178 Cal.App.4th at 1242 (citations omitted); §§ 21083(b)(2), 21084.1; Guidelines §15355. The HCM designation project and the Sunset Project are related, and the HCM designation project has a reasonably foreseeable adverse cumulative impact of the demolition of the Taix Restaurant building. The physical demolition of the physical characteristics that make up an historical resource by definition has a significant effect on the environment. Reply at 19-20.

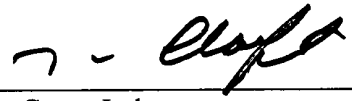
The short answer is that the Taix Restaurant building and its interior have been determined not to be historical resources for CEQA purposes. While the demolition of the restaurant building as part of the Sunset Project without the protections of LAAC section 22.171.14 is reasonably foreseeable, it is not a substantial adverse change in the significance of an historical resource. Substantial evidence supports the conclusion that the HCM designation project is not within the

scope of the Guidelines section 15300.2(f)'s exception.^{27 28}

VI. Conclusion

The FAP is denied. The City's counsel is ordered to prepare a proposed judgment, serve it on all counsel for approval as to form, wait ten days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for March 21, 2023 at 1:30 p.m.

Dated: February 21, 2023



Superior Court Judge

JAMES C. CHALFANT

²⁷ Petitioners and the City dispute whether the FAP's fourth cause of action for declaratory relief is subsumed within the mandamus claim. City Opp. at 21; Reply at 14-15. Petitioners are correct that they may ask for a declaration of rights or duties, either alone or with other relief under CCF section 1060 and that declaratory relief is tailor-made for resolving disputes over the meaning of laws or regulations, especially when the issue is likely to recur. Reply at 14-15. The court's denial of mandamus necessarily means that the City's interpretation of LAAC section 22.171.10(f) is correct. Therefore, declaratory relief will issue in the City's favor.

²⁸ The court need not address Real Party's contention that the FAP's first and fourth remedies should not be imposed. RPI Opp. at 15.

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