

Civil No.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT**

**Willow Glen Trestle
Conservancy and Friends of
the Willow Glen Trestle;**

Plaintiffs and Appellants,
v.

**City of San José and City of
San José Department of
Public Works;**

Defendants and Respondents.

Civil Number

Santa Clara County Superior
Court Case No. 18CV335801

**EMERGENCY STAY
REQUESTED BY
FRIDAY JULY 5 AT 4 PM**

On appeal from the Superior Court of Santa Clara County
Honorable Thomas E. Kuhnle
408-882-2150

Petition for Writ of Supersedeas

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COURT OF APPEAL SIXTH APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
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APPELLANT/ Willow Glen Trestle Conservancy, et al. PETITIONER: RESPONDENT/ City of San José, et al. REAL PARTY IN INTEREST:	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS	
(Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE	
Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.	

1. This form is being submitted on behalf of the following party (name): Willow Glen Trestle Conservancy, et al.
2. a. ☒ There are no interested entities or persons that must be listed in this certificate under rule 8.208.
- b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1)	
(2)	
(3)	
(4)	
(5)	

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: July 1, 2019

Susan Brandt-Hawley
(TYPE OR PRINT NAME)


 (SIGNATURE OF APPELLANT OR ATTORNEY)

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To the Honorable Justices of the California Court of Appeal, the Sixth Appellate District:

Appellants Willow Glen Conservancy and Friends of the Willow Glen Trestle petition for an **immediate stay** and writ of supersedeas to prevent the imminent demolition of the historic Willow Glen Trestle. As in *People ex rel. San Francisco Bay v. Town of Emeryville* (1968) 69 Cal.2d 533, 537, “fruits of a reversal would be irrevocably lost unless the status quo is maintained.”

Despite years of objections from the City of San José, including a recent unsuccessful legal action it pursued in San Francisco against the State Historical Resources Commission, **the Willow Glen Trestle is now listed in the California Register of Historical Resources**. Such listing qualifies the railroad bridge as a ‘*mandatory historic resource*’ entitled to protections for historic structures under the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21084.1.; *Friends of the Willow Glen Trestle v. City of San José* (2016) 2 Cal.App.5th 457, 469.)

This Court is familiar with the underlying facts in this appeal, as it affirmed the City’s approval of demolition of the Trestle in 2014 based on a mitigated negative declaration, long before its eligibility for the California Register was definitively established. (*Friends of the Willow Glen Trestle v. City of San José, supra*, 2 Cal.App.5th

457.) The City prefers an already-purchased steel bridge to use as a link in the Three Creeks Trail Pedestrian Bridge project. Although the City's own experts confirm that a rehabilitated Trestle could be a safe and economically-feasible trail link over Los Gatos Creek, in 2014 the Trestle was not yet protected by CEQA as an historic resource. The City therefore legally exercised discretion to approve demolition that year without benefit of an environmental impact report (EIR) process to consider and adopt feasible alternatives.

But five years later, *the Trestle still stands, now formally credentialed as a qualified California historic resource* and ready to serve as a wonderful, evocative Three Creeks Trail Pedestrian Bridge. Its demolition now *would have* significant environmental impact as a matter of law. (Pub. Resources Code, § 21084.1.) CEQA *mandates* EIR review before a lead agency makes a new discretionary project-related approval *if* new information and changed circumstances disclose a significant new, unstudied project impact. (*Id.* at § 21166; CEQA Guidelines [14 Cal.Code Regs], § 21062 (c).) Despite just such an occurrence here, the City refused to conduct supplemental CEQA review in 2018 when it took a series of new discretionary actions to pursue the Trestle's demolition after five years. Hence this appeal.

Appellants note that while the City prepared a project EIR in 2015 while its appeal of the 2014 mitigated negative declaration was

pending, it never relied on that EIR to reconsider or reapprove demolition. (Appellants' Appendix (AA) at 9, 162-168, 243-244.) The City may expeditiously reuse much of the contents of that EIR to comply with CEQA, adequately updated both to acknowledge the Trestle's new historic status and to consider environmentally superior project alternatives. The required supplemental CEQA process, neither lengthy nor costly, could easily have been completed before the City took new discretionary actions between March 2018 and October 2018 — and even between the time this action was filed and now. One can only surmise that the City refused to conduct an EIR process in 2018 because its reuse of the Trestle to avoid any significant environmental impact is blatantly feasible.

Appellants now seek this Court's reversal after the Santa Clara Superior Court denied their mandamus petition last week. The court accepted the City's view that the 2018 project approvals *were not discretionary* and thus did not trigger supplemental CEQA review. (AA at 460.) It held as a matter of law that the City need not consider the new unstudied significant environmental impacts of demolition before making new approval decisions. (AA 470-472.) That was error that surely warrants this Court's full review and reversal.

A demolished historic resource is lost forever. The imminent demolition of a resource listed in the California Register presents an

exceptionally clear basis for issuing a stay and supersedeas to preserve the status quo and protect the Court's jurisdiction.

The Willow Glen Trestle is almost 100 years old and is a unique and important part of the saga of a community whose residents have championed its historic status and adaptive reuse for many years.

The City has no legal right to demolish the Trestle without applying mandatory CEQA protections to avoid significant impacts if it can feasibly serve as the Three Creeks Trail Pedestrian Bridge.

At appellants' request, the trial court has continued the current preliminary injunction in effect until 9:00 a.m. on Monday July 8, providing time for this Court's review. That protective injunction *will dissolve* absent a stay from this Court. (AA 473.) Appellants request an emergency stay **by 4 pm on Friday July 5.**

July 2, 2019

Respectfully submitted,



Susan Brandt-Hawley
Attorney for Appellants
Willow Glen Trestle
Conservancy and Friends
of the Willow Glen Trestle

Petition for Writ of Supersedeas

1. Appellants Willow Glen Conservancy and Friends of the Willow Glen Trestle are unincorporated associations formed in 2018 and 2013, respectively, each devoted to preservation and rehabilitation of the Trestle. (AA 4-5.)

2. The Willow Glen Trestle was built by Western Pacific Railroad in 1921 when it was a rival to the dominant Southern Pacific Railroad. The Trestle was undersized and forced trains to operate very slowly, under 10 miles an hour. (AA 6.)

3. The Trestle is strong enough only to carry freight for trains that ran “dead slow.” It took some years for Southern Pacific to build its tracks around San José, and in the meantime Western Pacific served the area’s many canneries. The route enabled the railroad to become profitable and expand its operations. By the 1930s, Western Pacific had a network of lines traversing the Bay Area eastward across the Sierras, providing an alternative to the Southern Pacific monopoly. (AA 7.)

4. If the Willow Glen Trestle had been just a “common trestle,” Western Pacific would not have developed a lucrative cannery business, Southern Pacific’s dominance would likely have been unchallenged, and the Bay Area might have developed very differently. (AA 7.)

5. The City first approved demolition of the Trestle in 2014, after buying a steel replacement bridge for the Three Creeks Trail Pedestrian Bridge Project — *before* any CEQA process. (AA 327.) Since the Trestle was not listed in any historic register in 2014, the City made a finding that it was not historic. Over the passionate objections of Willow Glen residents and archivists, the City approved demolition based on a mitigated negative declaration. That action

was ultimately upheld on remand in Santa Clara Superior Court case number 14CIV489446, following this Court's decision in *Friends of the Willow Glen Trestle v. City of San José, supra*, 2 Cal.App.5th 457. Appellants rely on the chronology in the published case as to undisputed facts between 2014 and 2016. (*Id.* at 460-463.)

6. When the City appealed the Trestle mandamus action in 2014, it concurrently prepared an EIR to save time in advancing the Three Creeks Trail Pedestrian Bridge project in case it did not prevail. (AA 258-274.) That EIR concluded that the Trestle was not historic, since it was not yet listed in the State Register, and found that the demolition would therefore have no significant environmental impacts. (AA 259.)

7. The City Council certified the EIR in 2015 while the appeal of the underlying case that set aside the mitigated negative declaration was pending. (AA 258.) At the certification hearing in May 2015, the Council agendized a motion to set aside the mitigated negative declaration and the demolition project and then to reconsider the project based on the EIR. However, it pulled the item from the agenda because it would have mooted the pending appeal. The Council instead simply certified the EIR and approved a mitigation monitoring plan. (AA 259-266, 268, 308, 320, 321.) It did *not* set aside prior approvals and did *not* reapprove the project based on the EIR, and so its appeal was *not* moot. (*Friends of the Willow Glen Trestle v. City of San José, supra*, 2 Cal.App.5th at 463).

8. Because the Council did not rely on the EIR to approve the Trestle demolition, its reliance on the mitigated negative declaration remains intact. (AA 406.) At the same hearing, the Council denied a request by its appointed Historic Preservation Commission to declare the Trestle a landmark. (AA 328-329.)



Fig. 3: Trestle in relation to planned and existing trails



Fig. 4: View of the Trestle from the planned Los Gatos Creek Trail

(AA 397

9. In May 2017 the State Historical Resources Commission honored the Trestle with listing in the California Register. The listing followed the nomination by the Friends of the Willow Glen Trestle and three well-attended hearings at which

the Commission unanimously found the Trestle qualified for listing over the strenuous objections of the City. The Trestle listing was broadly supported by Willow Glen residents and preservation experts including the State Commissioners. (AA 314, 323-324, 326, 330, 331, 354, 355.)

10. The demolition of the Willow Glen Trestle to allow installation of a steel bridge requires a Streambed Alteration Agreement (SAA) from the California Department of Fish and Wildlife (CDFW) under Fish and Game Code sections 1602 and 1603 because the project involves work within Los Gatos Creek. (AA 276.) The City entered into the SAA with CDFW when initially approving the Trestle demolition in 2014 but it expired in 2017. In March 2018 the City, an “*applicant proposing project*,” requested a new SAA to pursue Trestle demolition. (AA 332-333.) Between March and October 2018 the City and CDFW communicated regarding the new terms of the SAA. (*E.g.*, AA 348-353, 356-357, 432-434, 459.) In proposing the draft SAA, CDFW inquired whether measures were acceptable to the City and if it agreed to them. (AA 1225.) The SAA acknowledged that its approval required CEQA review and recited its reliance on the City’s 2014 mitigated negative declaration. (AA 275.) The new SAA signed by the City and CDFW (AR 276-294), official as of October 4, 2018, recites that each party “*accepts and agrees to comply with all provisions ...*” (AR 294.)

11. Appellants filed the underlying CEQA action (AA 1) and sought a TRO, which was granted in October 2018 when demolition was imminent. (AA 15-16.) Following denial of preliminary injunction (AA 29-35), appellants filed an appeal with this Court (AA 37), but soon abandoned it after being notified by

CDFW that federal permits required for the Trestle demolition forbid operation in the creek after October 15 and thus provided a de facto injunction until June 15, 2019. (AA 39.)

12. Appellants anticipated that this case would settle or resolve on its merits before June 15, 2019, when activity in Los Gatos Creek could again begin. However, settlement was not reached and preparation of the administrative record took significant time despite cooperation by all counsel. The trial court granted appellants' renewed motion for preliminary injunction on June 12, 2019 pending the merits hearing on June 24. (AA 201.)

13. The City filed a mandamus action against the State Historical Resources Commission [Case No. CPF-18-516021] in San Francisco Superior Court in 2018, challenging the Trestle's listing in the California Register and contending that the Commission's approval findings were inadequate. The City named the Friends of the Willow Glen Trestle as real parties in interest. The petition merits were litigated and judgment issued against the City in June 2019 following interlocutory remand. The City concedes it has no further objections to listing. Historic status will remain final. (AA 52-53, 209.)


14. On Friday June 28, 2019, the day after the hearing on the merits, the Honorable Thomas E. Kuhnle issued an Order denying the mandamus petition in this case in full. (AA 460-473.) Appellants filed this appeal the same day. (AA 475.)

15. The Order provides that preliminary injunction will remain in effect until **Monday July 8 at 9:00 a.m.** (AA 473.)

WHEREFORE, appellants pray that the Court grant an emergency stay ordering the City of San José and its employees, contractors, agents, and other persons acting in concert with it, to refrain from allowing, engaging, or participating in any construction, deconstruction, demolition, pre-demolition, or other physical activities that will further the demolition of the Willow Glen Trestle, and, after response by the City of San José, grant this petition and issue a writ of supersedeas to maintain the status quo and protect its jurisdiction while appeal is pending.

June 2, 2019

Respectfully submitted,



Susan Brandt-Hawley
Attorney for Appellants

Verification

I, Susan Brandt-Hawley, declare:

I am an attorney for appellants whose members are located outside of the counties where I practice law and so I verify this petition on their behalves. I have read this petition and know its contents. The matters stated in it are true based on my knowledge, except as to the matters that are stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true to the best of my knowledge and is executed on June 2, 2019, at Glen Ellen, California.



Susan Brandt-Hawley

Declaration of Susan Brandt-Hawley

I, Susan Brandt-Hawley, declare that I am counsel of record and have represented the appellants Friends of the Willow Glen Trestle since 2014 and the Willow Glen Conservancy since 2018.

1. I am informed and believe that the City of San José began two weeks ago with preliminary work at Los Gatos Creek, ***choosing to incur expense solely at its own risk*** and with knowledge that this action was pending, in pre-construction and pre-demolition activities in preparation for demolition of the Willow Glen Trestle. I am further informed and believe that those activities occurred in compliance with the preliminary injunction that is currently in place in this action and without damage to the Trestle structure itself, but that absent injunction the City intends to proceed with physical demolition of the Trestle forthwith.

3. Because the historic 1922 Willow Glen Trestle is listed in the California Register of Historical Resources, all parties agree that its demolition would have a significant environmental impact and would result in irreparable harm.

I declare under penalty of perjury that the foregoing is true to the best of my knowledge and is executed on June 2, 2019, at Glen Ellen, California.



Susan Brandt-Hawley

Memorandum of Points and Authorities

Introduction

The City of San José purchased a steel bridge to serve as a link over Los Gatos Creek for the Three Creeks Pedestrian Trail. *After* the purchase, in May 2014 the City approved the demolition of the 1922 Willow Glen Trestle based on a mitigated negative declaration. The Trestle was not listed in any historic register at that time and a split City Council took the position that its demolition would have no significant impact and so review in an EIR was not required.

Five years have passed. The Trestle still stands and its demolition would have a significant environmental impact as a matter of law since it is now listed in the California Register of Historical Resources and its historicity cannot be disputed.

The City must now undertake supplemental CEQA review before making new approvals to further the demolition of the Trestle under changed circumstances. The key issue before the Court is whether, under the facts and the law, a streambed alteration agreement (SAA) entered into on October 4, 2018 between the City and the California Department of Fish and Wildlife (CDFW) involved any discretionary action by the City that triggered the supplemental CEQA review provisions of Public Resources Code section 21166 and CEQA Guidelines [14 Cal.Code Regs.] section 15162. *As discussed*

below, the City's exercise of discretion is well-proven.

Since the Trestle is an historic resource its demolition would result in a significant environmental impact. (Pub. Resources Code, § 21084.1.) That was not acknowledged in the City's 2014 project approval that was based on a mitigated negative declaration. Thus, upon reversal and remand, a peremptory writ should order the City to set aside its approval of the SAA and comply with CEQA's procedural and substantive mandates in any further consideration of demolition. Those mandates require the review of a supplemental EIR to inform the City's discretion before considering demolition.

The new EIR may freely reuse all relevant portions of the EIR the City certified in 2015. That EIR treated the impact of demolition of the Trestle as *insignificant*, and so it must be updated to reflect *(1) the new significant impact, (2) the feasibility of a reasonable range of project alternatives to avoid or lessen the new significant impact, and (3) an environmentally-superior project alternative.* Pursuant to CEQA's substantive mandate, the City must then adopt any feasible alternatives to demolition identified in the EIR process:

... [P]ublic agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects ...

(Pub. Resources Code, § 21002, 21081.)

The Court’s emergency stay and writ of supersedeas will serve the public interest by preserving its jurisdiction to enforce CEQA, giving the historic Willow Glen Trestle a chance to survive to serve as a unique Three Creeks Trail Pedestrian Bridge.

Standard of Review

The bottom-line issue on appeal is whether, based on the undisputed facts in the certified administrative record, the City exercised discretion in 2018 that triggered its mandatory duty to conduct supplemental CEQA review to consider feasible alternatives before proceeding with demolition of the Trestle.

The issue is one of law, as this Court held in *Friends of the Juana Briones House v. City of Palo Alto* (2010) 190 Cal.App.4th 286. Whether the subject building permit was ministerial (supporting exemption from CEQA) or discretionary (requiring an EIR process) was a question of law resolved by construing the applicable ordinance. (*Id.* at 303.) The Court recognized that when a project requires both ministerial and discretionary approvals, CEQA mandates that all approvals be treated as discretionary. “The Guidelines treat projects of a mixed nature as discretionary. [Citations].” (*Id.* at 301-302.)

Friends of Westwood v. City of Los Angeles (1987) 191

Cal.App.3d 259 is consistent, as it reversed a trial court's finding that a building permit was exempt from CEQA as ministerial after noting that its review was focused on "whether the trial court's interpretations of the applicable laws are correct." (*Id.* at 264.) The Court quoted Guidelines section 15268 (d), which holds that projects that "involve an approval that contains elements" that are both discretionary and ministerial "will be deemed to be discretionary and will be subject to the requirements of CEQA." (*Id.* at 271.)

The City has offered no contrary authority.

Discussion: The SAA Involves Discretion

Preparation of a supplemental CEQA document is triggered by any of three situations:

- (a) *Substantial changes are proposed in a project* that will require major revisions of the environmental impact report;
- (b) *Substantial changes occur with respect to the circumstances* under which the project is being undertaken that will require major revisions in the [EIR]; or
- (c) *New information*, which was not known and could not have been known at the time the [EIR] was certified as complete, *becomes available*.

(Pub. Resources Code, § 21166, italics added.) While section 21166 refers solely to projects that follow an initial EIR, the Supreme Court has ruled that its reach expands to negative declarations as well. (*Friends of the San Mateo College Gardens v. San Mateo County Community College District* (2016) 1 Cal.5th 937.

Appellants here invoke subsections (b) and (c) of section 21166. An EIR process has been triggered by changed circumstances and new information; *since the Willow Glen Trestle is now listed in the California Register, its historicity cannot be denied and its demolition would necessarily cause a significant environmental impact*. Subsection (a) of section 21166, which admittedly is the focus of most supplemental CEQA review cases, does not apply because the scope of the project/ “whole of the action” of the Three Creeks Trail Pedestrian Bridge project has not changed.

Changed circumstances and new information only reopen CEQA review if the City makes a new discretionary decision. CEQA Guidelines section 15162 subdivision (c) thus requires an agency to conduct supplemental CEQA review when making *a new discretionary decision for a project that may have a new significant impact that was not addressed in prior environmental review*.

For private projects, strong equitable principles of fairness militate against multiple rounds of environmental review after a city

has legally approved a development project. But there is also a very practical reason not to reopen environmental review: unless a new discretionary governmental approval is needed, there is no reason to conduct further environmental review of a private project for which entitlements are final, as an agency has no power to impose new mitigations or alternatives to reduce significant environmental problems. Supplemental review is simply pointless.

Equitable factors differ for a city's own project, as elected officials always retain discretion to reconsider or alter their land use decisions. A city that may not want to reconsider its own project has a mandatory duty to do so based on circumstances codified in Public Resources Code section 21166 and CEQA Guidelines section 15162. That supplemental review must take the form of an EIR if changed circumstances or new information involve “new significant environmental effects.” (Guidelines, §§ 15162 (a) (1), (2), (3)(A).)

The Guidelines provide clear direction as to when supplemental review is mandated: “[o]nce a project has been approved, the lead agency’s role in project approval is completed, unless further discretionary approval on that project is required.” (*Id.* at § 15162 (c), italics added.) Here there is a material changed circumstance and new information that would require revisions in the City’s CEQA analysis upon “further discretionary approval on

that project ...,” because demolition of the Trestle would have a significant environmental impact that the City until now has vehemently contested.

Friends of Westwood, Inc. v. City of Los Angeles, *supra*, 191 Cal.App.3d 259, 272, addressed a normally-ministerial building permit for a private project treated as discretionary upon its facts. One essential take-away from *Friends of Westwood* is its focus on the benefits of environmental review in particular circumstances, in turn depending on whether an agency possesses enough discretion to modify the project conditions based on the environmental consequences that an EIR process might reveal. (*Ibid.*)

Did the City of San José have discretion to modify its decision to demolish the Trestle while the SAA approval was pending? This question involves multi-faceted consideration. As foundation for those considerations: an agency always retains authority to change course in implementing its own project. The trial court took the position that because the City knew in 2014 that an SAA would be required to remove the Trestle pilings from Los Gatos Creek, and at that time decided to seek that SAA to pursue demolition, its decision to reapply and then agree to a revised SAA in 2018 was somehow *ministerial*. (AA 468.) It disagreed with appellants’ point that at the time of the 2014 approval of the SAA, the City acted based

on a finding that the Trestle was not historic and that its demolition would have no significant impact, and changed circumstances and new information subject the new SAA to section 21166 review.

There is no case law or statutory or regulatory authority that the City's initial approval of "the whole of the action," including the expectation of seeking permits or approvals by other agencies with interest in affected environmental resources, rendered all of such approvals final even if the City later takes a new approval action after discovering a new and unstudied significant project impact.

The fact that the City approved the initial SAA does not mean that it has no choice as to whether to apply for or approve a subsequent SAA under new circumstances; its hands are not [figuratively] tied in that way. The City did not take the final step required before demolition of the Trestle could proceed until it decided to apply for and approve a new SAA in 2018. Was it required to do that? No. The *public* Three Creeks Trail Pedestrian Bridge project has discretionary elements — the City has never claimed exemption from CEQA but relied on a mitigated negative declaration — and each of its approvals by the City have been discretionary.

Another way to look at the factual scenario, again underscoring the fact that this is the City's own project, is that if there had been a new majority on the San José City Council in 2018,

which after learning that the Trestle was now listed in the California Register and that its rehabilitation for adaptive reuse would be safe, practical, and economically feasible and would avoid what it now knew would be a significant environmental impact, had the votes to decide not to seek a new SAA and to instead reconsider adaptive reuse, it would have had the power to do so. A City Council retains discretion to change course based on new information.

CEQA's "whole of the action" directive intends to maximize environmental protection by avoiding piecemealed project approvals that unfairly minimize the actual full scope of impacts. But no case has restricted an agency's ability to protect the environment when new information and/or changed circumstances warrant. The language of Guideline section 15162 (c) is consistent and worth repeating. It contemplates supplemental approval of a project, not a supplemental new project: "Once a project has been approved, the lead agency's role in project approval is completed, unless further discretionary approval on that project is required." (Guidelines, § 15162 (c).)

Obviously, "once a project has been approved," an agency intends to secure all necessary responsible agency approvals as part of the "whole of the action." But it has discretion to reconsider the *entire scope* of the project approval; not limited to the four corners

of a responsible agency permit except in certain circumstances not here present, such as a prior court order directing particular review. Here, when the City was required to exercise its discretion in furtherance of a project which it now knew to have a new significant environmental impact that it had not been subject to an EIR process, it has a full range of environmental authority and mandatory duty.

Conclusion

The City's refusal to conduct supplemental CEQA review to inform its discretionary decisions to proceed with the last step before demolishing the Willow Glen Trestle, recently listed in the California Register and known for the first time to have a significant environmental impact and thus warranting protection, is both shocking and wrong. Slight delay to the City cannot override the irreparable harm to appellants and loss of their potential remedy.

Demolition should not be allowed to occur while this Court considers the merits of this matter so important to the citizens of San José. The stay and supersedeas should issue in the public interest.

Counsel's Certificate of Word Count via Word:mac²⁰¹⁶: 4726

July 2, 2019

Respectfully submitted,


Susan Brandt-Hawley
Attorney for Appellants

Willow Glen Trestle Conservancy, et al. v. City of San José, et al.
Santa Clara County Superior Court Case No. 18CV335801
Sixth District Court of Appeal No. _____

PROOF OF SERVICE

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

On July 2, 2019, I served one true copy of:

Petition for Writ of Supersedeas

 X By placing a true copy enclosed in a sealed envelope with prepaid postage,
in the United States mail in Petaluma, California, as listed below:

Santa Clara County Superior Court
191 N. First Street
San Jose, CA 95113

 ✓ By emailing a copy to counsel as listed below:

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I declare under penalty of perjury that the foregoing is true and is executed
on July 2, 2019, at Glen Ellen, California.



Susan Brandt-Hawley