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OFFICE OF ASSEMBLYMEMBER

Evan Low

TWENTY-EIGHTH ASSEMBLY DISTRICT

Legislative Proposal: 2017 Session

DATE RECEIVED:

NOTE: Thank you for contacting the office of Assemblymember Evan Low regarding your idea for possible legislation. In order to expedite the processing of the many proposals we receive, please take the time to complete the following request form, and return it electronically - if possible - to Tatum Holland the Legislative Director at Tatum.Holland@asm.ca.gov with "Legislative Proposal" as the subject line. If you are unable to return it by e-mail, please fax it to 916-319-2128, with a cover sheet that clearly indicates "Legislative Proposal." Thank you, again, for taking the time to complete this form, and we will consider your legislative proposals in the coming year.

Contact Information:

Name: Lawrence Ames

Home Address: ---

City: San Jose **ZIP Code:** 95125

E-mail Address: Larry@WGTrestle.org

Daytime Phone: --- **Evening Phone:** ---

1. Origin of the Bill:

- a. What person, organization, or government entity is requesting the introduction of this legislation? Please include names and contact information.

Friends of the Willow Glen Trestle
c/o Lawrence Ames (see above)

2. To your knowledge, has a similar bill been introduced in this or any previous session of the legislature? If so, please identify the session, number, and disposition of the bill.

No

LEGISLATIVE PROPOSAL REQUEST

A typical Assembly office receives more than 100 requests for legislation each year. Although many of these proposals are meritorious, Assembly Rules allow a Member of the Assembly to author no more than 40 bills in a two-year period. To assist Assemblymember Low in evaluating legislative proposals, he requests that you respond to each item below. No proposal will be considered unless all of the following information is provided (to the best you can answer).

1. **PROPOSAL SUMMARY.** Please describe the proposal in one sentence.

In order to help preserve California's historic heritage, clarify that CEQA (Calif. Environmental Quality Act) Law requires an Environmental Impact Study if credible evidence is presented that a resource affected by a project may be historic.

2. **PROBLEM.** Please describe the problem(s) that the proposal would address (please be specific, with supporting data and sources).

The community helped the City of San José to acquire a historic railroad bridge (“The Willow Glen Trestle”) for incorporation into the local trail network. The City then abruptly decreed “the trestle is not historic” and decided to demolish it, without doing any research into the history of the trestle. Concerns were dismissed with a Mitigated Negative Declaration (MND), wherein they refused to address any public comments. The Friends of the Willow Glen Trestle sued the City of San José to have the City properly study the history of the Trestle by having them do a full Environmental Impact Report (EIR). The Santa Clara County Superior Court ruled in the Friends favor (see http://www.wgtrestle.org/WILLOWGLENOrder07_28_14.pdf), but the City appealed to the Sixth District Court and prevailed (<http://www.wgtrestle.org/H041563WillowGlenTrestleSlipOpinion.pdf>). The Friends petitioned for a review by the State Supreme Court (http://www.wgtrestle.org/H041563_PR_FriendsOfTheWillowGlenTrestle.pdf), but they declined.

At issue is “whether CEQA’s ‘fair argument’ standard of review applies to the threshold question of *whether a threatened resource is historic* for purposes of CEQA review.” The appellate court instead directed the Superior Court “[to] determine whether the City’s adoption of the MND is supported by substantial evidence that the Trestle is not a ‘historical resource’ under CEQA.”

This ruling endangers historic resources across the state. Many historic structures and sites have not been formally listed as historic, and developers may be able to find a certified historian who is willing to sign a document declaring that a resource is not historic. Prior to the Sixth District Court ruling, CEQA would have “erred on the side of

caution” and required that an EIR be done to study whether the resource might indeed be historic; now instead it only asks whether someone was willing to sign a document saying that it is not historic, regardless of any other evidence presented.

3. **SOLUTION.** Please describe the proposal and how the proposal would address the problem (please be specific, citing existing law if possible)

Reaffirm that the original intent of CEQA law includes the protection of historic resources, and the purpose of an EIR is to study the various environmental impacts, including cultural impacts.

Specific legal citations are given in our Petition to the State Supreme Court (http://www.wgtrestle.org/H041563_PR_FriendsoftheWillowGlenTrestle.pdf).

4. **COST.** Please describe the estimated cost of proposal and identify the entity that would pay for the proposal. If state would pay, please identify a source for the funding and where you would recommend cutting state spending to pay for the proposal.

The cost would be to the developers or local agencies that would be required to do a full EIR to evaluate a structure’s historicity rather than a less costly MND. The savings are of the historic resources themselves that otherwise would be lost to the citizens of California.

5. **ORGANIZATIONAL SUPPORT.** Please describe the likely organizations that would support the proposal.

Friends of the Willow Glen Trestle

Preservation Action Council of San José (PAC*SJ)

* California Preservation Foundation, West Adams Heritage Association, Glendale Historical Society and Citizens to Save College Avenue

* Save Our Heritage Organisation (San Diego)

* United Auburn Indian Community and Pechanga Band of Luiseno Indians

[The first two are the litigants in our suit; the latter three filed “Friend of the Court” briefs on our behalf.]

6. **ARGUMENTS IN SUPPORT.** Please identify the top three arguments in support of the proposal.

- California’s rich historic past is in danger of being lost by development
- Local governments and other agencies do not have the resources to preemptively go out to evaluate all potentially historic structures and sites in their jurisdiction to determine which resources should be recognized as historic.

- The purpose of an Environment Impact Report (EIR) is to study the potential impacts of a proposed project, including any “cultural” impacts. This should include an evaluation of whether the affected resource is historic, not simply checking a box that the developer had found someone willing to sign a paper saying that it wasn’t. For all the other categories (noise, dust, water quality, traffic, etc.), an EIR is done if it credibly appears that there *may* be an impact, and such had been the criteria for historic (cultural) as well. But now, instead, the determination of historicity is to be done *prior* to the EIR: the answer has to be known before the study – and if the answer is not known in advance, then an EIR isn’t required.

7. **ORGANIZATIONAL OPPOSITION.** Please describe the likely organizations that would oppose the proposal.

- Former San José Councilmember Pierluigi Oliverio
- City of San José (or at least some elements thereof)
- League of California Cities.

[The latter one signed a “Friend of the Court” brief.]

8. **ARGUMENTS IN OPPOSITION.** Please identify the top three arguments in opposition to the proposal.

- The fear that any and every project would be delayed and would require a costly EIR study whenever any individual, presenting credible evidence or not, says “I think that might be historic: stop everything and go research it first.”

9. **BACKGROUND INFORMATION.** Please attach any reports, studies, etc., that support the need for the proposal.

Three-plus years of records (court cases, presentations, newspaper editorials, council actions, engineering reports, photos and diagrams, and a YouTube video tour of the structure) are all online and linked to the website www.WGTrestle.org

10. **CONTACT.** Please provide the name, title and phone number of the person who will be the contact on this proposal.

Dr. Lawrence Ames
 founder, Friends of the Willow Glen Trestle
 email: Larry@WGTrestle.org