

**Willow Glen Trestle  
Santa Clara County, California  
California Register of Historical Resources  
Supplemental Staff Report for State Historical Resources Commission meeting  
May 8, 2019**

**Introduction:** At its May 10, 2017 meeting, the State Historical Resources Commission (Commission) unanimously voted to list the Willow Glen Trestle on the California Register. The City of San Jose subsequently challenged the Commission's listing decision, claiming the Commission's findings were insufficient pursuant to Public Resources Code Section 5024.1(f)(3) and California Code of Regulations, Title 14, Section 4855 (b)(2). The San Francisco Superior Court ruled that the Commission's written findings were insufficient under these provisions and issued an interlocutory remand order sending the matter back to the Commission to clarify its findings. This supplemental staff report addresses the court's order and is incorporated by reference into the attached, recommended supplemental findings for the Commission's consideration.

**Relevant Procedural Background:** On March 3, 2017, the Office of Historic Preservation (OHP) received an application from the Friends of the Willow Glen Trestle (Friends) for the listing of the Willow Glen Trestle (Trestle) on the California Register. The nomination supports a listing of the Trestle under Criterion 1, for its association with events that have made a significant contribution to the broad patterns of local or regional history or the cultural heritage of California or the United States.

The City of San Jose (City) opposed the nomination. It submitted two letters, along with multiple attachments, objecting on several grounds to the Friends' 2017 nomination of the Trestle as well as to Commission's initial draft staff report and proposed findings. (See City letter to OHP and the State Historic Preservation Officer (SHPO), February 27, 2017 and City Letter to the Commission, OHP and the SHPO, May 1, 2017.)

The Commission held a hearing on the Trestle's nomination on May 10, 2017, wherein Commission staff, the City and members of the public actively participated. After presentations/testimony regarding the nomination and deliberations by the Commission, a motion was made to approve the Trestle for listing on the California Register under Criterion 1. The Commission unanimously passed the motion.

On June 7, 2017, the City submitted a request for redetermination of the Commission's decision. The SHPO set a hearing for October 27, 2017. At the October hearing, the Commission received a brief summary from staff outlining the grounds for redetermination and heard testimony from the City in support of its request along with opposition testimony from members of the public. The Commission unanimously denied the City's redetermination request and the Commission's May 10, 2017 listing decision became final.

**The City's Legal Challenge:** The City filed a Petition for writ of mandate in San Francisco County Superior Court challenging the sufficiency of the Commission's findings in support of its listing decision. The City's writ petition was set for hearing on March 7, 2019. The Court found that the City had demonstrated that the Commission abused its discretion by failing to proceed in accordance with the law. (Code Civ. Proc. § 1094.5.) Specifically, the Court found that the Commission's written findings failed to comply with the requirements in Public Resources Code section 5024.1(f)(3) and Title 14 of the California Code of Regulations, Section 4855 (b)(2).

Public Resources Code section 5024.1(f)(3) provides that where an objection has been raised, the Commission shall adopt written findings to support its determination concerning the nomination of a resource to the California Register of Historical Resources. At a minimum, the findings shall identify the historical or cultural significance of the resource, and, if applicable, the overriding significance of the resource that has resulted in the resource being listed in the California Register over the objections of the local government. The Commission's regulations, 14 CCR § 4855(b)(2) provide that, "Support of, and objections by, local government are to be given full and careful consideration. When the local government objects to the listing, the findings of the Commission shall identify the historical or cultural significance of the resource and explain why the resource was listed in the California Register over the objections of the local government."

The Court found that while the Commission's findings did describe the historical significance of the Trestle, the findings contained no analysis of the City's objections or of why the Commission listed the Trestle over those objections. The Court, however, expressly provided that its order should not be read to suggest that local government objections based on economic or social considerations can override the criteria adduced in Public Resources Code section 5024.1(c).

On April 2, 2019, the Court ordered an interlocutory remand to the Commission to clarify its findings consistent with its order and Public Resources Code section 5024.1(f)(3). The Court ordered the Commission to make further findings to specifically clarify, with reference to the record, that the Commission considered the objections of the City in listing the Trestle in the California Register and why the resource was listed in the California Register over the City's objections. The Court further directed the Commission to notice a public meeting to allow for full and fair public consideration of its clarified findings on remand, consistent with the order.

The Commission's consideration of the supplemental staff report and supplemental findings to address the objections raised by the City was placed on the agenda for the meeting scheduled for May 8, 2019. Per the Court's order, revised findings are to be lodged with the Court by May 24, 2019.

### **The City's Criteria-Based Objections**

As noted in the Commission's May 2017 staff report, the Friends' nomination

stated that the Trestle was being nominated under Criterion 1 for its association with commercial and industrial development of West San Jose and for the continued residential development of the Willow Glen community. (Willow Glen Trestle California Register Nomination, p. 13.) The City raised numerous criteria-based objections to the Trestle's nomination. In sum, these objections were (1) that a resource must meet both Criterion 1 and 3 in order to qualify for listing in the California Register (City Letter to OHP and the SHPO, February 27, 2017, p. 1), (2) the Trestle does not fit the criteria for Criterion 1 because the Trestle's association with regional industrial and transportation development is weak (City Letter to OHP and the SHPO, February 27, 2017, p. 2; City Letter to OHP and the SHPO, February 27, 2017, Attachment F, Letter from Stephen Mikesell, p. 1), (3) the Trestle does not fit the criteria for Criterion 1 because the Trestle did not help shape the residential development of Willow Glen (City Letter to OHP and the SHPO, February 27, 2017, p. 2-3); City Letter to OHP and the SHPO, February 27, 2017, Attachment F, Letter from Stephen Mikesell, p. 1), (4) the Commission should consider the findings of the Keeper of the National Register of Historic Places in rendering its decision about whether the Trestle meets the criteria in the California Register (City Letter to the Commission, OHP and SHPO, May 1, 2017, p. 2), and (5) the Trestle lacks sufficient historic integrity to qualify for listing (City Letter to the Commission, OHP and SHPO, May 1, 2017, p.3). These points are addressed in more detail below.

**City Objection 1: To list a railroad trestle under Criterion 1 alone would be precedent-setting because the Trestle is not significant under Criterion 3.**

The City argued that it would be inappropriate for the Commission to list a resource under Criterion 1 if it was not also significant under Criterion 3. (City Letter to OHP and the SHPO, February 27, 2017, p. 1). The original staff report addressed this concern, in noting that there is no legal requirement that a resource meet both Criterion 1 and Criterion 3, in order to qualify for listing on the California Register. (Staff Report, May 2017, pp. 2-3.)

**City Objection 2: The Trestle is not significant under Criterion 1 because the Trestle is not associated with the commercial or industrial development of West San Jose in any important way, and is a modest isolated railroad structure.**

As to the Trestle's association with the commercial or industrial development of West San Jose, the City objected that the nomination and May 2017 staff report did not explain what specifically was significant about the Trestle's contribution to the operation of the Western Pacific railroad system or the industrial development of the canning industry. According to the City, the canning industry was well-established before the Trestle was built; thus, the Trestle was not "associated with events that made a significant contribution to the broad patterns of local history, or the cultural heritage of California or the United States." (City Letter to OHP and the SHPO, February 27, 2017, p. 2; City letter to Commission, OHP, and SHPO, May 1, 2017, p. 2.) The City further

claimed that because Southern Pacific, not Western Pacific, was the dominant shipper of dried fruit, the Trestle's role in the industrial development of San Jose was secondary. (City Letter to OHP and the SHPO, February 27, 2017, p. 2.)

As noted in the May 2017 staff report, whether Western Pacific was the dominant shipper of produce is not relevant for purposes of this particular nomination. (Staff Report, May 2017, p. 3.) Rather, it is the Trestle's role in helping Western Pacific break up a regional monopoly held by Southern Pacific railroad and allowing the western San Jose region, including Willow Glen, to further prosper in its fruit canning and processing industries. Also, it was the breaking up of Southern Pacific's monopoly that later pressured Southern Pacific to realign its tracks around the newly incorporated Willow Glen. (Willow Glen Trestle California Register Nomination, p. 20; see also Response to City Objection 3.) Further, the City offers no articulable basis for the proposition that a resource must be associated with the dominant industrial company in the region for the resource to qualify for listing under Criterion 1.

The City also did not dispute that Western Pacific broke what had previously been Southern Pacific's monopoly in the shipping services available to the fruit packing industry in the area. A central aspect of the Trestle's role in aiding local industrial growth is the more competitive shipping rates offered by a new major regional player, Western Pacific. (Willow Glen Trestle California Register Nomination, pp. 19-20.) This evidences a strong correlation between Western Pacific's development of the Trestle, and the resultant more competitive shipping rates, which in turn, fostered more competitive local industrial activity. In particular, small, independent growers had a more affordable means to get their product to market. (Willow Glen Trestle California Register Nomination, pp. 19-20.)

The nomination acknowledges that San Jose was already a leading fruit shipping center prior to the Trestle's construction, but articulates how the Trestle spurred considerable industrial growth and listed specific industries that followed the West San Jose spur line, including packing houses and processing facilities for fruit growers, Standard Oil Company, various lumber yards, petroleum and other industries. (Willow Glen Trestle California Register Nomination, p. 15, 19.)

The City argued that the Trestle is not associated with the local packing industry in any important way. (City Letter to OHP and the SHPO, February 27, 2017, p. 2; referencing Exhibit F, Letter from Stephen Mikesell, February 14, 2017, p. 2.) However, the nomination provided evidence that the spur into the Willow Glen community bolstered the local fruit processing industry. (Willow Glen Trestle California Register Nomination, Page 20.) These facts also show a significant relationship between the Western Pacific Railroad's growing success and the fruit packing

industry's growth in the region.

The City also argued that the Trestle is a modest, isolated railroad infrastructure resource; therefore, the case for significance in association with the local themes of Commerce and Transportation are weak at best. (City Letter to OHP and the SHPO, February 27, 2017, Exhibit F, Letter from Stephen Mikesell, February 14, 2017, p. 2.) The Trestle's association with local themes of commerce and transportation were well-documented in the nomination. This included not only the relevance of the Trestle to the railroad development and the local canning and fruit processing industries, but also the break-up of the Southern Pacific monopoly, as discussed above and in the May 2017 staff report. (Willow Glen Trestle California Register nomination, p. 20.) Similarly, the City argued that because the Trestle was part of a coordinated transportation network, it could not be considered individually significant as a part of the railroad's development. (City Letter to OHP and the SHPO, February 27, 2017, Attachment E, Historical Evaluation of the Los Gatos Creek Trestle, Prepared by consultant Stephen Mikesell, page 19). This aspect of the City's objection was also addressed in the May 2017 staff report at page 3, "railroad-related resources are inherently parts of a larger network, and should be judged as elements in that network." Moreover, this nomination was not based on the Trestle's contribution to the development of the railroads in general; rather, it was based on the Trestle's facilitation of regional industrial development related to fruit canning and processing.

**City Objection 3: The Trestle is not significant under Criterion 1, because the Trestle's association with residential development is weak.**

The City argued that there is little support for the assertion that the Trestle helped to shape residential building in Willow Glen. (City Letter to OHP and the SHPO, February 27, 2017, p. 2.) As the original staff report notes, completion of the Trestle allowed access to a large industrial district, resulting in creation of a distinct branch of Western Pacific's operations in the San Jose area, the Willow Glen branch. The nomination evidences the region's interest in the Trestle and its negotiating position in keeping the region from becoming congested and industrial. " (Willow Glen Trestle California Register nomination, Page 16.) The nomination also portrayed a clear link between the development of the railroad spur into Willow Glen, and the Willow Glen community's negotiations with Western Pacific to retain the residential nature of the community. (Willow Glen Trestle California Register Nomination, Page 18.) In addition, the Nomination was able to demonstrate how Willow Glen's incorporation later allowed it to defeat Southern Pacific's attempt to run tracks through its neighborhood. (Willow Glen Trestle California Register Nomination, p. 18.) These facts point to a clear significant connection between the Trestle's construction and operation and residential development of Willow Glen.

**City Objection 4: The Commission should consider the findings of the Keeper of the National Register of Historic Places in rendering its decision about whether the Trestle meets the criteria in the California Register.**

The City argued that the Commission should be compelled to reject the California Register nomination because of the rationale provided by the Keeper of the National Register when it returned the Trestle's nomination to the National Register as incomplete. (City letter to the Commission, OHP, and the SHPO, May 1, 2017, pp.2-3, citing the National Register of Historic Places Evaluation/Return Sheet dated July 5, 2016.) Contrary to what the City's objection suggests, the Keeper's determinations and comments do not bind the Commission. This is because there are notable differences between the California Register and the National Register criteria, as acknowledged in California's regulations and discussed in the May 2017 staff report (see pp. 3-4). In particular, the State criteria have been modified for State use "to include a range of historical resources which better reflect the history of California." (14 CCR § 4852.) Thus, while the return sheet indicates that the property is ineligible for National Register listing, the return does not render a nomination for California listing impossible because the standards are not identical and staff is expected to base its recommendations to the Commission on the information contained in the State nomination. (Staff Report, May 2017, at pp. 3-4.) Further, as also noted in the May 2017 staff report (pp.3-4) and under California Code of Regulations 4852(4)(c), "...it is possible that historical resources may not retain sufficient integrity to meet the criteria for listing in the National Register, but they may still be eligible for listing in the California Register. A resource that has lost its historic character or appearance may still have sufficient integrity for the California Register if it maintains the potential to yield significant scientific or historical information or specific data." Upon this basis, as discussed further with regard to the City Objection 5, staff's position is that the property retains sufficient historic integrity for California Register listing.

**City Objection 5: The Trestle lacks sufficient historic integrity to qualify for listing.**

The City argued that the Trestle's structure has been extensively modified, and its historic integrity compromised, rendering it ineligible for listing. (City letter to Commission, OHP, and the SHPO, May 1, 2017, p. 3.) Historical integrity was addressed in the May 2017 staff report in stating, "the property retains most aspects of integrity, with some loss of integrity of design, materials and feeling due to removal of rails and tie plates, and addition of a deck safety rail, but the property retains sufficient overall historic integrity to remain eligible for the California Register under Criterion 1, with all timber elements of the superstructure still extant."

Though it has been modified, the 96-year old Trestle remains supported by two timber pile abutments and thirteen timber pile bents, with all the timber elements of the superstructure and substructure otherwise present. (Willow Glen Trestle California Register Nomination, page 1.) As discussed in the May 2017 staff report (at p. 4), the nomination analyzed the property's historic integrity under all seven aspects of integrity:

- Location. The Willow Glen Trestle remains in its original location and has integrity of location.
- Design. While the deck modifications and rail removal have somewhat reduced the Trestle's integrity of design, the primary structural elements that characterize the Trestle as an engineering structure remain including the deck railroad ties and outriggers and all components of the substructure. It is the substructure, with its characteristic pile-bent construction, that communicates the greatest integrity of design as an engineering structure. The stringers that support the railroad ties and are the primary elements of the trestle's superstructure also remain.
- Setting. The Trestle's riparian setting and the Western Pacific's West San Jose spur's alignment remain intact, despite conversion to a recreational trail.
- Materials. The timber materials of the trestle's substructure remain intact including the pile caps, piles, and cross bracing. Original timber stringers remain extant on the trestle superstructure as well, all of which provide sufficient integrity of materials.
- Workmanship. Workmanship remains evident in the Trestle's timber superstructure and substructure to retain integrity of materials.

Based on Cal. Code of Regulations, Title 14, section 4852(c), Staff concluded that the nomination adequately supports that the Trestle has maintained sufficient historic integrity.

### **The City's Other, Non-Criteria Based Objections**

The City raised several objections that are not based on the Criteria for the California Register. While these concerns are outside of the purview of the Commission, staff will summarily address them nevertheless.

1. The City's comments referenced their status as a Certified Local Government, and asked that the Commission defer to the City's determination that the Trestle did not qualify as a historic resource.

The City argued that it had "spoken on the local historical significance of [the] trestle: it was nominated to be a Landmark under the City program and the City Council

denied that nomination. The City has heard and reheard the historic significance of the trestle and asks the Commission to honor judgement [sic] of the City of San Jose as a Certified Local Government and deny this application.” (City Letter to OHP and the SHPO, February 27, 2017, Attachment A, Letter from the City to the SHPO, March 24, 2016 in response the National Register nomination, page 6; City Letter to the Commission, OHP and SHPO, May 1, 2017, p.4.) As noted in the May 2017 staff report (at p. 3), the City’s historic preservation commission voted to support listing of Willow Glen Trestle as a local landmark, although this decision was reversed by the City Council. The justification provided by the City Council for this decision was based on the needs of a concurrent project that included removal and replacement of the Trestle with a new steel pedestrian bridge. (Staff Report, May 2017, p.3.) These are social and economic concerns and are not properly put before the Commission, the only entity with authority to list a resource on the California Register.

2. The City spent 10 years securing grants, negotiating partnership agreements, and working with the State to establish the Three Creeks Trail, which calls for replacing the bridge with a free-span steel bridge. (City Letter to OHP and the SHPO, February 27, 2017, Attachment A, City Letter to the SHPO, March 24, 2016, page 3.)

These comments reflect economic concerns that are not within the purview of the Commission’s review pursuant to its regulations.

3. The City argued that replacing the bridge with a steel replacement bridge is the environmentally preferable alternative under the California Environmental Quality Act (CEQA). (City Letter to OHP and the SHPO, February 27, 2017, Attachment A, Letter from the City to the SHPO, March 24, 2016 in response the National Register nomination, page 5.)

These comments reflect economic and CEQA-based concerns that are not within the purview of the Commission’s review pursuant to its regulations.

**California Register of Historical Resources**  
**Willow Glen Trestle, San Jose, Santa Clara County**  
**California State Historical Resources Commission**  
**Supplemental Findings**  
**May 8, 2019**

On May 10, 2017, at its regular quarterly meeting of the State Historical Resources Commission in Pasadena, Los Angeles County, California, the State Historical Resources Commission listed the Willow Glen Trestle in the California Register of Historical Resources. On May 8, 2019, at its regularly quarterly meeting in Palm Springs, CA, the Commission reviewed the supplemental staff report supporting this listing and considered public comment regarding the same.

Pursuant to Public Resources Code section 5024.1(f)(3), and California Code of Regulations, Title 14, Chapter 11.5, Section 4855 (b)(2), (and to the extent applicable, Title 14, Chapter 11.5, Section 4855 (c)(3), requiring the Commission's written findings to support its determinations) when there is an objection by the local government, the findings of the Commission shall identify the historical or cultural significance of the resource and explain why the resource was listed in the California Register over the objections of the local government.

Willow Glen Trestle is eligible for listing in the California Register of Historical Resources under Criterion 1 for its association with the industrial development of San Jose. Until the arrival of Western Pacific Railroad, San Jose and its surrounding agricultural communities had only one choice for railroad access to their community, Southern Pacific, whose near monopoly on freight traffic allowed them to dictate high rates to shippers. By encouraging Western Pacific to enter the San Jose area, the two railroads were placed in competition, and Western Pacific gained access to a major regional shipper of agricultural produce.

Willow Glen Trestle is also eligible for listing in the California Register of Historical Resources under Criterion 1 for its association with the residential development of Willow Glen. The decision to locate Western Pacific's branch via the Willow Glen Trestle facilitated industrial access while reducing the effects of industry on the residential community of Willow Glen.

The property retains most aspects of historic integrity, with some loss of integrity of design, materials and feeling due to removal of rails and tie plates, and the addition of a deck and safety rail, but the property retains sufficient overall historic integrity to remain eligible for the California Register, with all timber elements of the superstructure still extant.

In light of the information summarized in the May 2017 staff report and supplemented by the May 2019 supplemental staff report (hereby incorporated by reference), the Commission is not persuaded by the objections raised by the City

of San Jose that the Trestle does not qualify for listing on the California Register. The Commission has considered the City's criteria-based arguments and finds as follows:

**(1) City Objection 1:** To list a railroad trestle under Criterion 1 alone would be precedent-setting because the Trestle is not significant under Criterion 3.

Finding: The Commission is not aware of any requirement that a resource meet both Criterion 1 and 3 in order to be listed on the California Register; thus, the Commission finds no merit in the City's Objection No. 1.

**(2) City Objection 2:** The Trestle is not significant under Criterion 1 because the Trestle is not associated with the commercial or industrial development of West San Jose in any important way, and is a modest isolated railroad structure.

Finding: The Commission finds that the Trestle's significant association with the breaking up of the monopoly of the Southern Pacific Railroad and the correlated growth in the fruit processing industry support the decision to list the Trestle and outweigh the City's Objection No. 2.

**(3) City Objection 3:** The Trestle is not significant under Criterion 1 because the Trestle's association with residential development is weak.

Finding: The Commission finds that the Willow Glen Community's related negotiations with Western Pacific regarding its development of the railroad spur into Willow Glen and the location of the Trestle so as to keep Willow Glen mostly residential further supports the Trestle's association with events that significantly contributed to the residential development of Willow Glen, and contributes to the Trestle's eligibility under Criterion 1, contrary to the City's Objection No. 3.

**(4) City Objection 4:** The Commission should consider the findings of the Keeper of the National Register of Historic Places in rendering its decision about whether the Trestle meets the criteria for the California Register.

Finding: The criteria for listing on the California Register are broader than the National Register, particularly as to standards regarding historic integrity. Determinations by the Keeper of the National Register do not bind this Commission as they are not based on identical criteria. The Commission thus finds the City's Objection No. 4 unpersuasive.

**(5) City Objection 5:** The Trestle lacks sufficient historic integrity to qualify for listing on the California Register.

Finding: The Commission finds that modifications to the Trestle did not compromise its historic integrity so as to render the Trestle ineligible for listing. Thus, there does not appear to be any validity to the City's Objection No. 5.

In sum, the Commission finds that the Trestle meets the criteria for listing on the California Register under Criterion 1, and further finds the record demonstrates the overriding historical and cultural significance of the Trestle, justifying its listing over the objection of the City.

With this signature, it is hereby certified that the State Historical Resources Commission adopted these findings pursuant to Public Resources Code section 5024.1, California Code of Regulations, Title 14, Chapter 11.5, Section 4855 (b)(2) and 4855 (c)(3) on the 8<sup>th</sup> day of May 2019.

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Adam Sriro, SHRC Chairperson

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Date