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January 13, 2014

Honorable Chuck Reed, Mayor
Members of the San Jose City Council
via email clerkoftheboard@ventura.org

Subject: *Three Creeks Trail Pedestrian Bridge Project*
Agenda Item 4.6

Dear Mayor Reed and Councilmembers,

This office represents the Friends of the Willow Glen Trestle in opposition to demolition. Our statewide practice focuses on citizen enforcement of the California Environmental Quality Act. The many CEQA cases handled by this office over the last thirty years include 29 published appellate decisions including *Preservation Action Council v. City of San Jose* (involving the historic IBM Building 25) and two cases particularly relevant here, *Architectural Heritage Association v. County of Monterey* and *League for Protection v. City of Oakland*.

I know that the Council has been provided with a great deal of information regarding the history and importance of the Willow Glen Trestle, some of it conflicting. This includes the January 11, 2014 letter from historic architect Marvin Bamburg AIA, who is listed in the California Historical Resources Information System (CHRIS). The letter is attached for your convenience. Mr. Bamburg's expert opinion is that the trestle qualifies for listing in the California Register of Historical Resources under Criteria 1 and 3. It is associated with the recovery of Western Pacific and the subsequent breaking of the Southern Pacific near-monopoly, an event that made a significant contribution to broad patterns of local and regional history and cultural heritage of California (Criterion 1). It is also one of the last remaining wood-pile train trestles in the South San Francisco Bay Area, is unique in its low-cost, limited capacity design, and embodies distinctive characteristics of a type, period, region, or method of construction (Criterion 3).

CEQA requires the City to prepare an EIR whenever a project "may have a significant impact on the environment." (Pub. Resources Code, § 21151, subd.(a), italics added.) There is a "low threshold requirement for initial preparation of an EIR [that] reflects a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted." (*League for Protection v. City of Oakland* (1997) 52 Cal.App.4th 896, p. 905.)

The low threshold triggers an EIR whenever substantial evidence in the record supports a “fair argument” that significant impacts may occur, even if a different conclusion may also be well-supported. The CEQA Guidelines echo this definition and further define substantial evidence relative to the fair argument standard as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” (Guidelines, § 15384 subd.(a); *League for Protection, supra*, 52 Cal.App.4th 896, p. 905.)

Public Resources Code section 21084.1 provides that “a project that may cause a substantial change in the significance of an historical resource is a project that may have a significant impact on the environment.” Following similar reasoning in *League for Protection*, the Court in *Architectural Heritage Association v. County of Monterey* (2004) 122 Cal.App.4th 1095, therefore held that the fair argument standard must be applied to three questions: first, to the question of whether the resource at stake is historic; second, to whether demolition will have a significant environmental impact; and, finally, to whether mitigation measures will reduce the impacts to a level of insignificance. (*Id.*, p. 1109.)

CEQA Guidelines section 15064.5, adopted to comply with *League for Protection*, provides that “a resource *shall* be considered by the lead agency to be ‘historically significant’ if the resource meets criteria for listing on the California Register of Historical Resources.” The fair argument standard applies as to whether a resource meets the criteria. The contrary opinion provided to you by Bruce Tichinin is incorrect in its implication that statewide significance is required. California Register eligibility may be based on local or regional qualifications. Dicta from the Fifth District decision in *Valley Advocates* (a categorical exemption case) is inconsistent with statutory and regulatory authority and all other case law. Consideration of a negative declaration is controlled by the fair argument standard.

Respectfully, historic status is not a political choice for elected decision-makers, but is a matter of identification, just like an endangered plant or animal species. After the identification, an EIR may be used as the basis for land use decisions. *League for Protection* cogently holds both that the protections of CEQA are triggered by a fair argument of eligibility for an historic register and that designation as historic is not required in order to invoke the protections of CEQA.

Preparation of an EIR will assist this Council in determining the feasibility of incorporating the unique Willow Glen Trestle into the trail project.

Thank you very much.



Susan Brandt-Hawley

11 January 2014

John Davidson, Historical Preservation Officer
City Planning Department
City of San Jose
200 E. Santa Clara Street
San Jose, CA 95113

Re: Wooden Trestle Bridge, Willow Glen

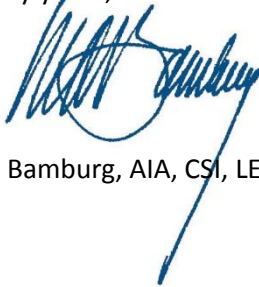
Dear John:

With reference to Larry Ames' letter of 10 January, I must go on record as agreeing with his suggestion that further analysis on environmental concerns be undertaken.

As a CHRIS-listed historical architect, I truly believe that the existing wooden trestle bridge is an important historical icon of the past, and my opinion is that it qualifies for listing in the California Register under Criteria 1 and 3. Its rehabilitation and reuse as a portion of the Los Gatos Creek Trail is important to the locale and history of this unique area of San Jose.

I cannot state any better than Larry has, the many unanswered questions and possibilities for reuse for the existing trestle. Please include my voice with those who have already expressed concern over the Council's handling of this important icon.

Very truly yours,



Marvin Bamburg, AIA, CSI, LEED-AP

Encl.

ARCHITECTS

MBA

1176 Lincoln Avenue, San Jose, California 95125 408.297.0288

PRINCIPAL:



MARVIN ARTHUR BAMBURG, AIA, CSI, LEED-AP

Education: Bachelor of Architecture, University of Illinois, 1958
High Honors

Military Service: Captain, U. S. Naval Reserve, Civil Engineer
Corps (Retired)

Experience:
1989 - present MBA Architects, San Jose, CA (President)
1985 - present Expert Witness, construction litigation - 18 cases
1996 - 1997 Bamburg/Bonesteel Architects (principal architect)
1978 - 1989 Marvin Bamburg Associates, Inc. - San Jose, CA
1968 - 1978 Marvin Arthur Bamburg, A.I.A. - San Jose &
Campbell
1964 - 1968 William W. Hedley, Jr., A.I.A. - Campbell, CA
1963 - 1964 Miller and Steiner, Architects - San Mateo, CA
1960 - 1963 Design Officer, Officer-in-Charge of Construction,
Japan
1959 - 1960 U. S. Naval Construction Battalion, Okinawa

Registration:

Registered Architect; CA C-4649; Colorado 302135; Nevada 3115; Washington
10629; NCARB File No. 22-670
Licensed Fallout Shelter Analyst, May '67, Reg. No. 7tt-1138-67
Licensed General Building Contractor, California No. 315752
Registered Disaster Service Worker, California SAPV10308
LEED Accredited Professional, October 2008
Listed in the California Historical Resources Information System (CHRIS)

Organizations:

American Institute of Architects (Chapter President 1981)
Rotary Club of Campbell, CA (Past President 1973-74 and 2012-13).
California Trolley & Railroad Corp. (Vice-president & Executive Board)
Construction Specifications Institute (President 2006-07)
Alpha Rho Chi, Architectural/Social Fraternity (past president 1957)
Tau Beta Pi & Sigma Tau, Engineering Honor Societies
Gargoyle Architectural Honor Society
International Conference of Building Officials (Member)
National Trust for Historic Preservation; Heritage Council (County)
Preservation Action Council, San Jose (Advisory Board)
Willow Glen Business & Professional Association Board (Vice Pres 2006-07)
Friends of the Winemakers (Museum committee chair)
City Lights Theater Company (Board member 2007 to present; pres-elect 2013)

Activities:

Architectural Consultant, City of Campbell (1972-1973)
Campbell & San Jose Inventory of Historic Sites (evaluator 1980)
Advisor, City of Santa Clara, Historic Landmarks Comm. (1987)
History Museums of San Jose, Development Council (1984-96)
Eastfield Ming Quong Board (1985-1992)
Insurance Trustee, California Council AIA , Chairman 1990 & 1995
Children's Discovery Museum of San Jose, Building Committee (1989-90)
Historic Preservation Committee Chairman, AIA/SCV, twelfth year
Willow Glen Beautification Project Committee, Chair 1995, (Treasurer)
Willow Glen Parking Advisory Task Force (1994)
County Preservation Advisory Team Member, State Historical
Preservation Office (1989-90)
Chai Care Board of Directors (1995-98)
San Jose Code Enforcement Appeals Commission (1992-1995)
San Jose Disabled Access Advisory Board (1994-98)

Awards:

Temple Emanu-el Altar Reconstruction, 1979, San Jose
Certificate of Commendation, SCVAIA "Great Places", 1982
Sourisseau Academy (San Jose State University), Local History Award, 1985
American Planning Association, Western Region, Planning Award for
the SJHM Master Plan (team effort), 1996

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