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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

Willow Glen Trestle Conservancy, an unincorporated association, and Friends of the Willow Glen Trestle, an unincorporated association;

Petitioners,

v.

City of San José; City of San José Department of Public Works; California Department of Fish and Wildlife; and Does 1 to 10;

Respondents;

_____/

Case No. 18CIV335801

Petitioner's Opening Brief on the Merits

Honorable Thomas E. Kuhnle

Date June 27, 2019
Time 9:00 a.m.
Dept 5

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Introduction and Summary of Argument

The Willow Glen Trestle Conservancy and Friends of the Willow Glen Trestle (collectively, the Conservancy) seek the Court's peremptory writ to uphold the protective mandates of CEQA, a citizen-enforced statute. Supplemental environmental review must now inform the San José City Council's exercise of discretion in considering the fate of the *newly-protected, historic* Willow Glen Trestle. The Conservancy does not ask the Court to decide whether the Three Creeks Trail Pedestrian Bridge should proceed with a rehabilitated Trestle *or* a generic steel bridge *or* a combination. That decision is under the purview of the elected Council.

The unusual facts of this case were intensively briefed and reviewed by the Court during preliminary injunction proceedings in October 2018.[1] The City approved demolition of the Trestle in 2014, treating it as if it had no historic value. The City relied on a mitigated negative declaration that was challenged by the Friends of the Willow Glen Trestle and set aside by this Court. The City successfully appealed to the Sixth District while concurrently preparing an environmental impact report (EIR) as a cautionary step in case its appeal was denied. Since the City's negative declaration was upheld, it never used the 2015 EIR to approve demolition.

In 2017, circumstances materially changed in the most important way. The California Historical Resources Commission finally and firmly resolved the Trestle's legally-disputed historic status. The Commission listed the Trestle in the

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[1] Facts discussed in the Introduction are cited to the record, *post*.

California Register of Historical Resources over the City's strong objections. The Trestle *is a qualified historic resource* entitled to protections for any new approvals subject to CEQA. (Pub. Resources Code, § 21084.1.) While the City need not *reopen* its 2014 project approvals, the Trestle's newly-established historic eminence has triggered supplemental CEQA obligations for a *new* discretionary action — the City's choice to enter into a Streambed Alteration Agreement (SAA) with the California Department of Fish and Wildlife (CDFW) in order to move forward with demolition.

The Willow Glen Trestle in 1955

The CEQA Guidelines provide that "[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*." (CEQA Guidelines [14 Cal.Code Regs.], § 15162 (c), italics added.) In light of the *new significant environmental effect* that was not yet established when the negative declaration was approved — the loss of a mandatory historic resource — supplemental review must now inform any "further discretionary approval" of the SAA. (*Id*. at (a), (b), (c), (d); Pub. Resources Code, § 21166.) Historic status is *no longer* resolvable by judicial deference to the City.

Under the facts, supplemental review in the form of an EIR is required before the City may take a new discretionary action to demolish the now-historic Trestle under the changed circumstances. The California Supreme Court decision in *Friends of the College of San Mateo Gardens v. San Mateo County Community College District* (*Gardens 1*) (2016) 1 Cal.5th 937, 957-958 and the remand decision in *Friends of the College of San Mateo Gardens v. San Mateo County Community College District* (*Gardens 2*) (2017) 11 Cal.App.5th 596 are controlling. (*Post* at 14.)

This Court based its denial of preliminary injunction in October 2018 in significant part on acceptance of the City's contention that the SAA is not a "*further discretionary approval on that project*" that would trigger supplemental CEQA review. (Order Denying Preliminary Injunction at 6.) The Court also asserted that "the finalization of the SAA did not change the activity to be undertaken." (*Id*. at 7.) The Conservancy's briefs focus on these important points both in the pending injunction motion and on the merits, in the light of the full administrative record.

The SAA is a new discretionary approval that unless set aside by issuance of a writ *will soon result* in demolition of the historic, well-loved Trestle. As that would cause significant environmental impact as a matter of law (Pub. Resources Code, § 21084.1) a negative declaration cannot suffice. (*Id*. at § 21151.) The Conservancy respectfully requests that the Court issue a peremptory writ ordering that the City and CDFW set aside the SAA and that before considering another SAA, the City prepare a supplemental EIR rather than continuing to rely on the 2014 mitigated negative declaration. The new EIR may freely reuse all relevant portions of the 2015 EIR.

The Conservancy has come to agree with the position taken by CDFW that the City remains the 'lead' agency responsible for supplemental CEQA review. The City has broader responsibilities than CDFW, a 'responsible' agency solely focused on fish and wildlife issues. (Pub. Resources Code, §§ 21067, 21069.) The City's CEQA obligations encompass protection of all resources in its jurisdiction, including historic sites unique to the Valley of Heart's Delight. If the SAA was a one-way permit, CDFW might well step into the shoes of lead agency since it has a final project approval prior to demolition. But that question need not be resolved here. Since *both agencies exercised discretion when entering into the SAA*, lead agency obligations need not shift to CDFW.

The Court's peremptory writ will serve the public interest. At last, procedural and *substantive* protections of CEQA can be objectively applied to see whether the *historic* Willow Glen Trestle may survive to serve as the Three Creeks Trail Pedestrian Bridge.

Statement of Facts

Mitigated Negative Declaration; No Historic Status. 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. (AR 691.) 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, it approved demolition based on a mitigated negative declaration. That action was ultimately upheld by this Court in case number 14CIV489446, following a decision of the Sixth District Court of Appeal in *Friends of*

the Willow Glen Trestle v. City of San José (2016) 2 Cal.App.5th 457. While the undisputed facts between 2014 and 2016 are relevant and important, the Conservancy relies on the chronology both as referenced in the published case and by this Court in the 2018 preliminary injunction proceedings. (*Id*. at 460-463; Order Denying Preliminary Injunction at 2.)

Environmental Impact Report; No Historic Status. When the City appealed the first Trestle mandamus action in 2014, it concurrently prepared an EIR to save time in advancing the Trestle project in case it did not prevail. (AR 17-499.) That EIR treated the Trestle as if it 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. While it found that rehabilitation of the Trestle was feasible, it was not politically preferred, and since there would be no significant impacts to demolition the EIR found no reason to advocate for rehabilitation and reuse.

The City Council certified the EIR while the appeal of the underlying case that had set aside the demolition approval mitigated negative declaration was pending. At the certification hearing on May 19, 2105, 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 its pending appeal. The Council simply certified the EIR and approved a mitigation monitoring plan. (A R 2-9, 11, 533, 638, 639.) It did not set aside prior approvals and did not reapprove the project based on the EIR.

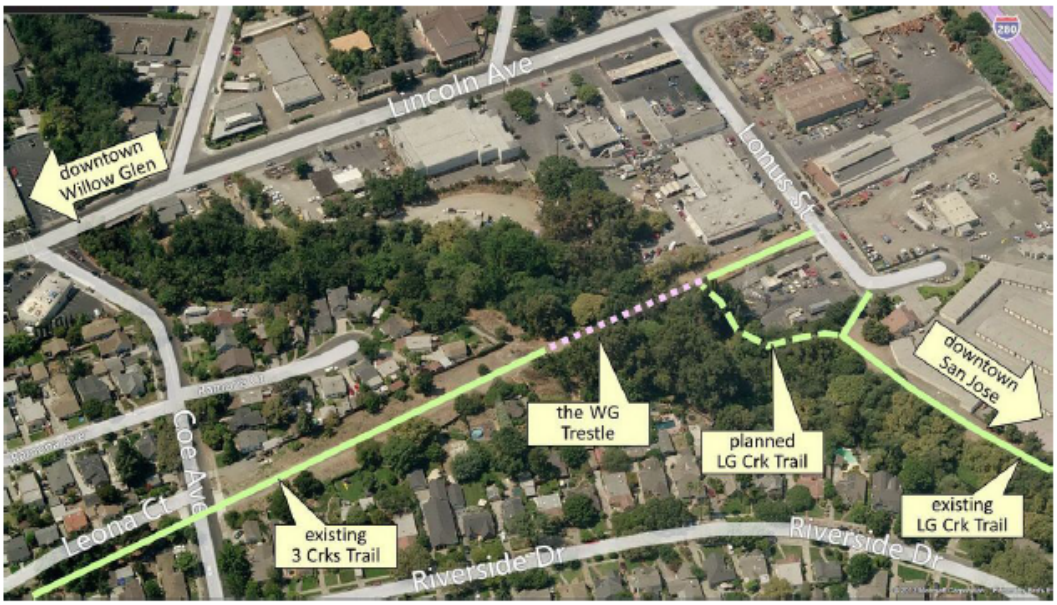

Fig. 3: Trestle in relation to planned and existing trails

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

(AR 1189.14.)

To be clear, because the Council did not rely on the EIR to approve the Trestle demolition project, its reliance on the mitigated negative declaration remains intact. (AR 1192.) At the same hearing, the Council denied a request by its appointed Historic Preservation Commission to declare the Trestle a landmark. (AR 754, 770.)

Historic Status Established. In May 2017 the California State Historical Resources Commission (the Commission) honored the Trestle with listing in the California Register of Historical Resources. 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 Commissioners. (AR 529, 531, 534, 539, 653-654 [minutes of the Commission in Pasadena approving nomination], 660 [minutes of the Commission regarding reconsideration of listing in Sacramento], 776-777, 1119 [Commission findings], 1120 [Commission denial of reconsideration].

The Commission's action is final: State Historic Preservation Officer (SHPO) Julianne Polanco notified the Friends of the Willow Glen Trestle in writing that the 2017 "determination is the final decision of the Commission and the Willow Glen Trestle will remain listed on the California Register." (AR 534, 1120.)

The Streambed Alteration Agreement. The demolition of the Willow Glen Trestle to allow for installation of a steel bridge requires a Streambed Alteration Agreement (SAA) under Fish and Game Code sections 1602 and 1603 because the

project involves work within Los Gatos Creek that affect fish and wildlife. (AR 501.) The details of the SAA requirements are not at issue, but the City cannot proceed with demolition of the Trestle without it. The City entered into a prior SAA when approving the Trestle demolition in 2014. That SAA was extended and expired in 2017. In March 2018 the City, as an "*applicant proposing project*," requested a new SAA to accommodate its proposed demolition project. (AR 782, 783.)

CDFW did not simply re-issue the 2014 SAA. It rejected the City's new proposed agreement as incomplete based on various biological issues. (AR 996, 998.) The City responded to the CDFW's concerns. (AR 997, 1111.) In one section, "… the city recognizes, as a Habitat Plan Co-Permittee, it is using some discretion in exempting this project from the Habitat Plan …" (AR 997, *see also* 1121-1122, 1221-1223.) Correspondence between CDFW and the City continued to alter the draft SAA through negotiation and review, including "whether the measures in the SAA "are acceptable" to the City. (AR 1198, 1200-1220, 1225, 1285-1305 and 1322 [substantial back-and-forth comments and amendments of the proposed creek diversion plan].)

The SAA acknowledges that its approval requires CEQA review and it *recites its reliance* on the City's 2014 mitigated negative declaration. (AR 790.) CDFW staff expressed some confusion as to why the City proposed to rely on the 2014 MND since it certified an EIR for the Three Creeks Trail Pedestrian Bridge project in 2015, but documented the SAA reliance on the negative declaration as the City proposed. (AR 1143.) As a responsible agency, CDFW was required to consider the

environmental effects of the project on fish and wildlife pursuant to Public Resources Code § 21166, Guidelines §§ 15062, 15064, and 15096. (AR 500.)

The eventual SAA signed by the City and CDFW, official as of October 4, 2019, recites that after a seven-month negotiation each party "*accepts and agrees* to comply with all provisions ..." (AR 519, 500-519.)

Statement of the Case

The Conservancy cannot improve on the Court's explication of the legal proceedings challenging the demolition of the Trestle since 2014. (Order Denying Preliminary Injunction (Order) at 2.) Following denial of the injunction, the Conservancy filed an appeal, but abandoned it after being notified by CDFW that federal permits required for the demolition project had forbidden operation in the creek after October 15 and thus equated to de facto injunction until June 15, 2019.

The Conservancy anticipated that this case would either settle or resolve on its merits before that time. Unfortunately, no settlement occurred and preparation of the administrative record took significant time despite cooperation by all parties and counsel. The record was in fact just certified on Friday, May 31, 2019, making timely filing of this brief impossible. As the Court knows, the merits are still pending and the Conservancy has renewed its motion for preliminary injunction.

The Conservancy does not know if the City will request judicial notice of another pending mandamus action, which it filed against the Commission [Case No. CPF-18-516021] in San Francisco Superior Court in 2018. Its petition challenges the

listing of the Trestle in the California Register and also contends that the Commission's approval findings were inadequate. The City named the Friends of the Willow Glen Trestle as real parties in interest and the group is participating in the litigation as full parties.

The Conservancy is not requesting judicial notice of the City's case against the Commission because as it turned out, the City did not pursue its challenge to the Register listing. However, following the hearing on the merits, the Commission requested and the Court allowed it to clarify on interlocutory remand its overriding reasons to list the Trestle in the Register over objections of the City. That occurred on May 8, 2019. The City concedes it has no further objections to listing. https://webapps.sftc.org/ci/CaseInfo.dll?CaseNum=CPF18516021&SessionID=E986446CA4D087619CB7DB4FA5F4A1F681F71337 Historic status will remain final.

Standard of Review

In the compressed timeframe for injunction sought in 2018, the parties did not brief standards of review. In application of Public Resources Code section 21166 as to when an EIR is required for a supplemental approval upon "changed circumstances" or "new information" for a project approved on a negative declaration, the Order Denying Injunction applied the substantial evidence standard, relying on *Benton v. Board of Supervisors* (1991) 226 Cal.App.3d 137, 1481. (Order at 4.)

Benton served as the leading case on the standard of review issue for decades. However, the California Supreme Court recently disapproved it in relevant part.

(*Gardens 1, supra*, 1 Cal.5th at 958, fn.6.) The remand opinion in *Friends of the College of San Mateo Gardens v. San Mateo County Community College District* (*Gardens 2*) (2017) 11 Cal.App.5th 596, fn.4, explained that the standard of review in *Benton* is "effectively the reverse of the standard announced by [*Gardens 1*]."

The *Gardens* cases require that under section 21166, supplemental CEQA review of a project initially approved based on a negative declaration (*unlike* a project initially approved following an EIR process) must be in the form of an EIR if the record contains a fair argument that the project *may* have a significant environmental impact that was not addressed in the prior environmental review. (*Ibid.*; *see Gardens 2*, 11 Cal.App.5th at 607-608; Guidelines, §§ 15162, 15164.) The Conservancy cites to *Gardens 2,* the remand decision following *Gardens 1*, because of its straightforward application of the fair argument standard to supplemental review after a negative declaration. *Gardens 1* unquestionably applied the fair argument standard but used language within the context of substantial evidence that some find confusing. (*Gardens 1*, *supra*, 1 Cal.5th at 958.)

In its Order Denying Preliminary Injunction, this Court explained what the Conservancy must do to prevail on the merits. First, it "must overcome a difficult standard of review — substantial evidence." (Order at 4.) As noted, the parties had not yet briefed this issue. The Conservancy submits that under the recent *Gardens* cases the fair argument standard applies to whether an EIR is required for the SAA.

Discussion

A. Statutory and Regulatory Framework

Fair Argument Standard. CEQA requires that agencies prepare an EIR for any project "which *may* have a significant effect on the environment." (Pub. Resources Code, § 21151 (a), italics added.) An EIR is required whenever substantial evidence in the record supports a 'fair argument' that significant impacts may occur, even though a different conclusion may also be well-supported. (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927; Guidelines, § 15064 (f)(1).) *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, explains that "... the question is one of law, *i.e.*, 'the sufficiency of the evidence to support a fair argument.' [Citation.] Under this standard, deference to the agency's determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary." (*Id.* at 1317-1318.)

Supplemental Environmental Review. Public Resources Code section 21166 provides in relevant part that after an initial project approval, supplemental environmental review is required when either of the following occur:

> (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the [EIR]
> (c) New information, which was not known and could not have been known at the time the [EIR] was certified as complete, becomes available

Although the language of section 21166 is directed solely to projects that follow an agency approval based on an EIR, the Supreme Court in *Gardens 1* interpreted the section to apply to projects following a negative declaration, as provided in Guidelines sections 15162 (a) and (b). The Court concluded that section 15162 "constitutes a valid gap-filling measure as applied to projects initially approved via negative declaration ..." (*Gardens 1, supra*, 1 Cal.5th at 959.)

The practical effect of section 21166, relevant to this case, is that when an agency makes a new discretionary approval relating to a previously-approved project, and due to changed circumstances or new information the approval causes significant environmental impacts not addressed in prior environmental review, the agency will conduct an appropriate level of CEQA review to inform its new decision.

As quoted *ante*, the Guidelines provide that "[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*." (Guidelines, § 15162 (c), italics added.) The supplemental review must take the form of an EIR if the changed circumstances or new information involve "new significant environmental effects." (*Id*. at (a) (1), (2), (3)(A).)

B. The Historic Status of the Trestle is New Information

The City and CDFW cannot and do not deny that the listing of the Trestle in the California Register occurred in 2017 nor that demolition would have a significant environmental impact. The City argued in the 2018 preliminary injunction

proceedings that the applicable City environmental document is the 2015 EIR. (City Opposition to Preliminary Injunction at 5-6.) However, that EIR is irrelevant as it was not relied on for any project approval including the SAA. (*Ante* at 6-8.) The 2014 mitigated negative declaration was relied upon for the SAA. (*Ibid*.)

Regardless, the City's reasoning is without substance. It argues that that the Register listing is of no import because concerned parties "knew or could have known that the Trestle was *potentially* a historical resource." (City Opposition to Preliminary Injunction at 5.) This is off point. The new information is not that the Trestle *might be* historic; the new information is that the Trestle *is* definitively historic and therefore its demolition *would have* a significant environmental impact that must be studied in an EIR process before any further discretionary approvals.

This Court in its 2018 injunction ruling also referenced the City's contention that the Superior Court ordered on remand that substantial evidence supported the City's finding that the Trestle was not historic, and that the remand order "is final." (Order Denying Preliminary Injunction at 5.)

The City well knows that the Court in the remand judgment was addressing the legality of the City's actions at the time of the adoption of the mitigated negative declaration and approval of demolition ***in 2014***. The ruling went no further and has no import to the actions of the Commission in 2017 and the SAA in 2018.

C. The SAA is a "Further Discretionary Project Approval"

Public Resources Code section 21166 and implementing Guideline section 15162 both anticipate subsequent project approvals that trigger supplemental environmental review. It is undeniable that many CEQA projects have multiple components and involve many discretionary approvals by the lead agency and by responsible agencies. Hundreds of published CEQA cases — which the Conservancy will not list here — address projects that differ from each other factually.

Regarding supplemental environmental review, most published cases (including *Gardens 1 and 2*) involve proposed changes to an initial project. But under the statute and guidelines for supplemental review cited above, project changes are only one occurrence that triggers a supplemental EIR. The other two are *changed circumstances* and *new information*. (*Ante* at 13.) Neither of those require a new or even a revised project, but address supplemental approvals of a project component. The key trigger for a supplemental EIR is a discretionary approval needed to accomplish the project, and that occurs under changed circumstances or accompanied by new information *that forecasts a new significant environmental impact not addressed and therefore not mitigated in the initial project approval.*

Supplemental CEQA review in this case is necessary to accomplish the goals of CEQA. As the Supreme Court held in *Tomlinson v. County of Alameda* (2012) 54 Cal.4th 281, CEQA is structured to: (1) inform the government and public about a proposed activity's potential significant environmental impacts; (2) identify ways to avoid or significantly reduce environmental damage; (3) prevent environmental

damage by requiring project changes via alternatives or mitigation measures when feasible; and (4) disclose to the public the rationale for approval of a project that may significantly impact the environment. (*Id.* at 285-286; Pub. Resources Code, § 21002; Guidelines, § 15002.) All of these goals are relevant to the preparation of an EIR to address feasible alternatives to demolition of the Trestle in order to avoid significant impacts that will attend its loss.

The City approved the demolition in 2014 despite the suitability of the Trestle for use as part of the Three Springs Pedestrian Trail project, for which it had already purchased a steel replacement bridge. A split City Council approval proceeded under what was essentially a pretense that the Trestle had no historic value because it was not yet listed in any historic register, ignoring facts and professional opinions to the contrary including those expressed by its own Historic Preservation Commission. Later, after the California Historic Resources Commission found the Trestle to be eligible for listing in the State Register, the City continued to fight the overwhelming evidence of its historic importance and credentials. (*Ante* at 2-8.)

The current SAA approval is a component of the Three Creeks Trail Pedestrian Bridge project; as it turns out this approval will be the final prerequisite to demolition of the Trestle. It essentially is the final approval of that demolition. The City and CDFW exercised discretion in the conditions of the SAA; hence the seven-month process before each agency signed off. (*Ante* at 8-9.)

Most important, the SAA is a City-initiated action under changed circumstances and new information: the Trestle is now listed in the California

Register and its demolition would have a significant environmental impact. All prior City approvals based on the mitigated negative declaration proceeded upon findings that the Trestle is *not* historic and that its demolition would have *no* significant impact. The SAA removes the last impediment to demolition and opens up the City's consideration – *both a responsibility and an opportunity* – to protect, if feasible, a unique historic resource vital to the history of Willow Glen.

In CEQA parlance, environmental review always encompasses the "whole of the action" so that no project elements may proceed until the entire project is studied and approved. (Guidelines, § 15378 (a).) The SAA is a required approval and prerequisite for the project to proceed, happening after the project's significant impact has been illuminated by the Trestle's listing in the California Register. If the Trestle had required no additional discretionary approvals, historic register listing could assuredly *not* prevent demolition despite the out-of-date CEQA review. But the plain meaning of Guideline section 15162 (c) controls, and warrants recitation one more time: "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), italics added.) Supplemental review must take the form of an EIR because changed circumstances and new information involve "new significant environmental effects." (*Id.* at (a) (1), (2), (3)(A).)

Guideline section 15162 (c) refers to a lead agency *approval*, not a new *project*. Consistently, Public Resources Code section 21166 subdivision (b) calls out "substantial changes ... with respect to the *circumstances under which the project is*

being undertaken" and (c) addresses "new information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available." Again, the point of 21166 is to make sure that new significant impacts of the project that become apparent after the initial project approval are subjected to CEQA review and mitigation if opportunity arises in the shape of a new discretionary action.[2]

The negative declaration relied upon for the SAA did not address the significant impacts that are now known to necessarily result from demolition of a recognized historic resource. (Pub. Resources Code, § 21084.1.) Now that the City has a new discretionary approval to consider before it may move forward to demolish the Trestle, it must do so in light of changed circumstance and new information. This is an optimum circumstance in which a project should be halted to consider environmental protections mandated by CEQA: demolition of an historic resource.

The Court's Denial of Preliminary Injunction cites *Cucamongans United for Reasonable Expansion v. City of Rancho Cucamonga* (2000) 82 Cal.App.4th 473, 478, in which petitioners unsuccessfully sought a supplemental EIR to study an application for design review, seven years after a tentative map had been approved in

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[2] The Court's ruling on the preliminary injunction considers "new project" as addressed in *Moss v. County of Humboldt* (2008) 162 Cal.App.4th 1041, 1056. Before 2016, whether a project was considered "new" or "supplemental" to an existing project affected the standard of review for preparation of an EIR. That distinction between "new" and "supplemental" was resolved in *Gardens 1,* when the Supreme Court held that whether characterized as "new" or "supplemental" the fair argument standard applies when an initial CEQA document does not address a significant project impact that becomes apparent with a later approval. (*Gardens 1, supra*, 1 Cal.5th at 953-968.)

1990. *Cucamongans* claimed that there was new information that had not been available at the time of the tentative map approval and sought an EIR as supplemental environmental review. The Court held that there was no pending *discretionary approval* because the City Council *denied* the pending design review application. "[W]hen the City denied the design review application process, there was no 'discretionary approval'; hence, an SEIR is not required." (*Id.* at 478.) The *Cucamongans* facts would be comparable had the City of San José declined to enter into an SAA in 2018; there would then be no discretionary approval under Guidelines section 15162(c). Projects that an agency disapproves are exempt from CEQA review. (Pub. Resources Code, § 21080(b)(5); Guidelines, § 15061(b)(4).)

As the Conservancy has represented to this Court and to the City and CDFW (*e.g.*, AR 1280.1), while the 2015 EIR is irrelevant to the merits of this case (*ante* at 6-8), the bulk of its content can be fully recycled. There is no need to draft a new EIR from scratch. A range of reasonable alternatives would need to be identified for reuse of the Trestle (Guidelines, § 15126.6), and the Conservancy will likely request that the EIR study the hybrid bridge idea that surfaced during the 2018 injunction proceedings that could leave the Trestle's wooden supports intact, utilize the new steel bridge for the trail surface placed above the historic Trestle, and fully avoid impacts to Los Gatos Creek. The EIR would analyze the feasibility of the various alternatives that the City must then consider when deciding whether it can avoid significant impacts as mandated by the Act. (Pub. Resources Code, § 21081 (a)(2).)

Conclusion

The Willow Glen Conservancy and the Friends of the Willow Glen Trestle request judgment and issuance of a peremptory writ in the public interest ordering that the City and CDFW set aside their approvals of the Streambed Alteration Agreement and that approval not be reconsidered until the City prepares and certifies an environmental impact report and fully complies with CEQA.

June 1, 2019

Respectfully submitted,

Susan Brandt-Hawley
Attorney for Petitioners

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

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 June 1, 2019, I served one true copy of:

Petitioner's Opening Brief on the Merits

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

__✓__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 June 1, 2019, at Glen Ellen, California.

Susan Brandt-Hawley