Civil No. H047068

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 H047068

Related Case H041563

Santa Clara County Superior Court Case No. 18CV335801

On appeal from the Superior Court of Santa Clara County
Honorable Thomas E. Kuhnle

Appellants' Opening Brief

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Introduction

The Willow Glen Trestle Conservancy and the Friends of the Willow Glen Trestle (collectively, the Conservancy) seek to enforce the protective mandates of the California Environmental Quality Act (Pub. Resources Code, § 21000 *et seq*.) to which the evocative, historic Willow Glen Trestle is now entitled.

The Conservancy seeks reversal to require the San José City Council to conduct an environmental impact report (EIR) process to inform its discretion as to whether its Three Creeks Pedestrian Trail will span Los Gatos Creek via a rehabilitated 1928 Willow Glen Trestle *or* a generic steel bridge *or* a combination.

A split City Council relied on a mitigated negative declaration (MND) to approve demolition of the Trestle five years ago, finding no historic status that would trigger an EIR process. The Friends of the Willow Glen Trestle successfully challenged the approval. The city appealed the trial court judgment and peremptory writ, and in the meantime concurrently prepared an EIR in 2015 as a cautionary step.

This Court reversed the judgment. (*Friends of the Willow Glen Trestle v. City of San José* (*Trestle 1*) (2016) 2 Cal.App.5th 457.) On remand, the trial court upheld the city's 2014 approvals based on the MND. As the city did not rely upon the 2015 EIR, it never became ripe for legal challenge.

In 2017, circumstances changed in the most important way. The California Historical Resources Commission listed the Trestle in the California Register of Historical Resources after multiple hearings and over the city's vociferous objections. Now, as a *qualified historic resource,* the Trestle is entitled to CEQA's protections. (Pub. Resources Code, §§ 21084.1.) The city need not *reopen* its 2014 approvals but now has supplemental CEQA obligations for a *new* discretionary action — its choice in 2018 to enter into a Streambed Alteration Agreement (SAA) required by the California Department of Fish and Wildlife (CDFW) in order to move forward with demolition on the banks of Los Gatos Creek.

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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 City Council approved demolition in 2014 — the loss of a qualified historic resource — supplemental review must now inform the city's "further discretionary approval" of the demolition via 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 these facts, the City must conduct supplemental environmental review in the form of an EIR process before it may take a new discretionary action to demolish the now-historic Trestle under 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 13-14.)

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In its denial of the Conservancy's mandamus petition, the trial court accepted the City's characterization of the SAA as ministerial rather than a "*further discretionary approval on that project*" that triggers supplemental CEQA review. (Appellants Appendix (AA) at 469-472.) The Conservancy will explain why that characterization is incorrect.

Unless set aside by issuance of a writ on reversal and remand, the SAA is a new discretionary approval that *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), an MND cannot suffice. (*Id*. at § 21151.) The Conservancy respectfully requests that the Court reverse and remand this case for issuance of a peremptory writ ordering the city to set aside the SAA. Before entering into another SAA, the city must prepare an EIR rather than continuing to rely on the 2014 MND. The new EIR may freely reuse all relevant portions of the 2015 EIR.

The Conservancy came to agree with CDFW in the trial court that the city remains the 'lead' agency responsible for supplemental CEQA review, and dismissed CDFW from the action prior to judgment. (AA 203.) 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 the city, with final project approval before demolition. But that question need not be resolved here. *Both agencies exercised discretion when agreeing to the SAA*; lead agency obligations need not shift.

A peremptory writ on remand 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.

Reversal and remand are urgently requested.

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Statement of Facts

Mitigated Negative Declaration; No Historic Status.

The history of Willow Glen and the Trestle are not at issue in this appeal, but were important in the *Trestle 1* case. In brief, the city proposed the Three Creeks Trail Pedestrian Bridge Project in 2014 to provide a connection over Los Gatos Creek where the Willow Glen Trestle still stands. The city approved demolition of the Trestle in 2014, after buying a steel replacement bridge *before* any CEQA process. (AR 691.)

The Trestle was not listed in any historic register in 2014 and 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 an MND because the loss of a non-historic Trestle would have no significant environmental impact. The city's 2014 action was upheld following this Court's ruling in *Trestle 1*. The Conservancy relies on the further chronology of facts between 2014 and 2016 referenced in this Court's opinion. (*Trestle 1*, *supra*, 2 Cal.App.5th at 460- 463.)

Environmental Impact Report; No Historic Status. When the city appealed the Trestle mandamus action in 2014, it concurrently prepared an EIR to save time in advancing the Trestle demolition in the event it did not prevail on appeal. (AR 17-499.) The EIR noted that the Trestle was not listed in any historic register. It thus treated it as not historic and found that the demolition would have no significant environmental impacts. (AR 495-499.) While it found that rehabilitation of the Trestle was feasible, it was not politically preferred, and demolition of a non-historic trestle would have no significant impacts. (*Ibid.*)

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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.)

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The City Council certified the EIR in 2015 while its appeal of the MND case that had set aside the demolition approval was pending. At the certification hearing on May 19, 2015, the Council agendized a motion to set aside both the 2014 MND and the demolition approval and to reconsider the demolition based on the 2015 EIR. *However, the Council pulled the item from the agenda to avoid mooting its pending appeal*. The Council simply certified the EIR and approved a mitigation monitoring plan. (AR 2-9, 11, 533, 638, 639.) It *did not* set aside prior approvals of the MND or demolition, and *did not* reapprove the project based on the EIR. At the same public hearing, the Council denied a request by its Historic Preservation Commission to declare the Trestle a landmark. (AR 754, 770.)

Historic Status Established. In May 2017 the California State Historical Resources 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 approving nomination], 660 [minutes of the Commission regarding reconsideration of listing], 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

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Creek that affects 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 an SAA in place. The city entered into an SAA when approving the Trestle demolition in 2014. That SAA expired in 2017.

In March 2018 the city, an "*applicant proposing project*," requested a new SAA to allow demolition of the Trestle. (AR 782, 783.)

CDFW did not re-issue the original 2014 SAA. It rejected the city's new proposed agreement as incomplete based on various biological issues. (AR 996, 998.) The city then responded to 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 months of 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 is required to consider the environmental effects of the demolition project on fish and wildlife pursuant to Public Resources Code § 21166 and Guidelines §§ 15062, 15064, and 15096. (AR 500.) The SAA acknowledges that its approval *requires CEQA review* and *recites reliance* on the 2014 MND. (AR 790.)

The eventual SAA signed by the City and CDFW on October 4, 2019, recites that after the 7-month negotiation each party "*accepts and agrees* to comply with all provisions ..." (AR 519, 500-519.)

Statement of Appealability

This appeal is taken from a final judgment and is appealable under Code of Civil Procedure, section 904.1(a)(1).

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Statement of the Case

After the trial court affirmed the city's reliance on the MND in 2017, the City moved forward with the demolition project. Work in Los Gatos Creek required for the project was limited by state and federal fish and wildlife agencies to occur between June 15 and October 15. On October 4, 2018, the CFWD finalized the SAA, the final approval needed prior to demolition. (AR 1441.) The Conservancy filed a mandamus petition and sought injunctive relief as the city had announced its intention to proceed with demolition of the Trestle immediately. (AA 1-27.) Following expedited briefing and hearing, preliminary injunction was denied following issuance of TRO. (AA 28-36.)

Following denial of the injunction, the Conservancy filed an appeal, but abandoned it after being notified by CDFW that federal permits required for demolition had forbidden operation in the creek after October 15 and thus equated to de facto injunction until June 15, 2019. (AA 37-40.)

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 certified on Friday, May 31, 2019. Following briefing, the petition was denied and the Conservancy immediately filed this appeal. (AA 460,475.)

As demolition of the Trestle was imminent, this Court granted an emergency stay of demolition on July 3, 2019, and then granted the Conservancy's Petition for Writ of Supersedeas on July 26, 2019.

The status quo is in place; the Trestle still stands. This appeal is entitled to calendar preference by statute and the Court has so ordered.

Standard of Review

CEQA mandamus actions present issues of law based on the certified record, and appellate review is de novo. (*Schaeffer Land Trust v. San José City Council* (1986) 188 Cal.App.3rd 612, 622, *Lighthouse Field Beach*

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Rescue v. California Department of Parks and Recreation (2005) 131 Cal.App.3d 1170, 1182-1183.)

The primary issue in this 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 subdivision (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.

The second question is the standard of review for *supplemental environmental review* under Public Resources Code section 21166. Under the California Supreme Court's decision in *Gardens 1*, *supra*, 1 Cal.5th 937 and the remand opinion in *Gardens 2*, *supra*, 11 Cal.App. 596, when there are changed circumstances under Public Resources Code 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

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argument that the project *may* have a significant impact that was not addressed in the prior environmental review. (*See Gardens 2*, 11 Cal.App.5th at 607-608; Guidelines, §§ 15162, 15164.)

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 record evidence 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

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Gardens 1 interpreted the section to apply to projects following a negative declaration, as provided in Guidelines sections 15162, subdivisions (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 appropriate CEQA review to inform its new decision.

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 SAA Involves City Discretion

An EIR process has been triggered by changed circumstances and new information. The Willow Glen Trestle is now listed in the California Register of Historical Resources, and qualifies as a "mandatory" historic resource under Public Resources Code section 21084.1:

> A project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment. For purposes of this section, an historical resource is a resource listed in, or determined to be eligible for listing in, the California Register of Historical Resources ...

(*Trestle 1*, *supra*, 2 Cal.App.5th at 469.) As a matter of law, the Trestle's historicity can no longer be denied and its demolition would necessarily cause a significant environmental impact.

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Subsection (a) of section 21166, admittedly is the focus of most supplemental CEQA review cases, does not apply here because the scope of the project/"whole of the action" of the Three Creeks Trail Pedestrian Bridge project has not changed.

However, changed circumstances and new information reopen CEQA review *if* the City makes a new discretionary decision. CEQA Guidelines section 15162 subdivision (c) 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. (*Ante* at 6.)

For private projects, strong equitable principles of fairness militate against multiple rounds of environmental review after a city has legally approved a development project. And 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*. Supplemental review must an EIR process 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

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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 project conditions based on the environmental consequences that an EIR process might reveal. (*Ibid*.)

As discussed at the merits hearing, CDFW had the obligation to comply with requirements of the Fish and Game Code, *and to obtain the SAA the City had the obligation to reach agreement with CDFW as to how to do so*. (Reporter's Transcript at 27-42.)

Both agencies exercised discretion. The SAA states:

> WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified CDFW on March 19, 2018 that Permittee intends to complete the project described herein.
>
> WHEREAS, pursuant to FGC section 1603, CDFW has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.
>
> WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.
>
> NOW THEREFORE, Permittee agrees to complete the project in accordance with the Agreement.

(AR 501, italics added.)

"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).) It is important to note the

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language referencing approval "on" a project and not approval "of" a project. The SAA is a "further discretionary approval" made by the city as the lead agency for the Three Creeks Trail Pedestrian Bridge following new information and changed circumstances that trigger supplemental review and mitigation of impacts to the now-historic Trestle.

The City of San José had discretion to modify its decision to demolish the Trestle while the SAA approval was pending. 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 in fact agreed to an SAA at time, 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 did not consider the Trestle to be historic or that its demolition would have a significant impact, and that the contrary circumstances in 2018 subject the new SAA to section 21166 review.

There is no case law or statutory or regulatory authority supporting an argument that the city's initial approval of "the whole of the action," automatically makes future approval actions ministerial even after discovering a new and unstudied significant project impact. To the contrary, 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.

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. It was not required to take that step. The public Three Creeks Trail Pedestrian Bridge project was discretionary from the outset and remains so. The city did not claim exemption from CEQA but relied on a mitigated negative declaration.

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

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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.

Here, when the City was required to exercise its discretion in furtherance of a project which it now knows to have a significant environmental impact that had not been subject to an EIR process, it has a full range of environmental authority and mandatory duty.

C. An EIR will Accomplish the Goals of CEQA

The Conservancy's public-interest goal, sought now for so many years, is to enforce CEQA's supplemental review provisions that require the city to consider and impose any feasible adaptive reuse alternative for the historic Willow Glen Trestle.

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 would attend its loss.

The SAA removes the last impediment to demolition and reopens 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.

Guidelines 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

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“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 a 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.

The 2014 negative declaration relied upon for the SAA did not address the significant impacts that are now known to necessarily result from the demolition of the now-historic Trestle. (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. Further, while the city claims that any supplemental review cannot exceed the scope of environmental issues presented in the SAA, which addresses fish and wildlife and related water quality, there is no authority for such a view.

A new discretionary lead agency decision opens up the full scope of CEQA. The California Supreme Court continues to strictly enforce agency duties in cases such as *City of San Diego v. Board of Trustees of the California State University* (2015) 61 Cal.4th 945 and *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, in which public universities were required to address all impacts of proposed projects — even when outside their own mission of education. Consistently, in *Center for Biological Diversity v. California Dept. of Fish and Wildlife* (2015) 62 Cal.4th 204, CDFW was charged with broad CEQA obligations to address *historic and resources impacts and greenhouse gas issues* beyond its normal mission to protect fish and wildlife.

As the Conservancy represented to the trial court and to the city (*e.g.*, AR 1280.1), the bulk of the content of the 2015 EIR 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 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

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the new steel bridge for the trail surface placed above the historic Trestle, and fully avoid impacts to Los Gatos Creek. (AA 20-21, 25.) 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 respectfully request reversal and remand. The judgment and peremptory writ should issue in the public interest to order that the city set aside its approval of the 2018 Streambed Alteration Agreement and that approval not be reconsidered until the city prepares and certifies an environmental impact report and fully complies with CEQA.

Counsel's Certificate of Word Count per Word[mac2016:] 5426

October 15, 2019

Respectfully submitted,

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Willow Glen Trestle Conservancy, et al. v. City of San José, et al.
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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 October 15, 2019, I served one true copy of:

Appellants' Opening Brief

__✓__By electronic service on counsel via TrueFiling as listed below.
______By emailing a copy to counsel as listed below.

Margo Laskowska
margo.laskowska@sanjoseca.gov

Elisa Tolentino
elisa.tolentino@sanjoseca.gov

__✓__By placing a true copy enclosed in a sealed envelope with prepaid postage, in the United States mail in Glen Ellen, California, as listed below:

Honorable Thomas E. Kuhnle
Department 5
Santa Clara County Superior Court
191 N. 1st Street
San Jose CA 95113

I declare under penalty of perjury that the foregoing is true and is executed on October 15, 2019, at Glen Ellen, California.

Susan Brandt-Hawley

Document received by the CA 6th District Court of Appeal.