1 2 3 4 5 6	RICHARD DOYLE, City Attorney (88625) NORA FRIMANN, Assistant City Attorney (93249) MARGO LASKOWSKA, Senior Deputy City Attorney (187252) KATHRYN J. ZOGLIN, Senior Deputy City Attorney (121187) ELISA T. TOLENTINO, Senior Deputy City Attorney (245962) Office of the City Attorney 200 East Santa Clara Street, 16 th Floor San José, California 95113-1905 Telephone Number: (408) 535-1900 Facsimile Number: (408) 998-3131 E-Mail Address: cao.main@sanjoseca.gov				
7 8	Attorneys for Respondents: CITY OF SAN JOSE and CITY OF SAN JOSE DEPARTMENT OF PUBLIC WORKS				
9	*				
10	SUPERIOR COURT OF CALIFORNIA				
11	COUNTY OF SANTA CLARA				
12	UNLIMITED JURISDICTION				
13	WILLOW GLEN TRESTLE	Case Number: 18CV335801			
14	CONSERVANCY, an unincorporated association; FRIENDS OF THE WILLOW	CITY OF SAN JOSE'S REQUEST FOR			
15	GLEN TRESTLE, an unincorporated association,	JUDICIAL NOTICE IN OPPOSITION TO RENEWED MOTION FOR			
16	Petitioners,	PRELIMINARY INJUNCTION			
17	v.	[Evid. Code §452(d)]			
18	CITY OF SAN JOSE; CITY OF SAN JOSE DEPARTMENT OF PUBLIC WORKS;	Date: June 10, 2019			
19	CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE; and DOES 1 to 10;	Time: 2:00 p.m.			
20	Respondents.	Dept: 5 Judge: Hon. Thomas E. Kuhnle			
21					
22	Does 1 to 10; Real Parties in Interest.				
23	Treat I arries in interest.				
24					
25	Respondents City of San Jose and City of San Jose Department of Public Works respectfully				
26	request the Court to take judicial notice under Evidence Code section 452, subpart (d), of the				
27	following declarations and requests for judicial notice with their respective exhibits, previously filed				
28	ADDA MADA				
		1			

	I .		
1	in the present case, and a declaration filed in the previous CEQA lawsuit regarding the trestle filed		
2	by Petitioner Friends of the Willow Glen Trestle:		
3	1. Declaration of Michael O'Connell in Support of Opposition to TRO and Preliminary		
4	Injunction, filed in the present case on October 5, 2018;		
5	2. Declaration of Katherine Brown in Support of City of San Jose's Opposition to Plaintiffs'		
6	Application for TRO and Preliminary Injunction, filed in the present case on October 5, 2018 ("First		
7	Brown Decl.");		
8	3. City of San Jose's Request for Judicial Notice in Opposition to Plaintiffs' Application for		
9	TRO and Preliminary Injunction, filed in the present case on October 5, 2018 ("First RFJN);		
10	4. City of San Jose's Second Request for Judicial Notice in Opposition to Plaintiffs'		
11	Application for TRO and Preliminary Injunction, filed in the present case on October 5, 2018		
12	("Second RFJN"); and		
13	5. Declaration of Yves Zsutty in Support of C	City's Opposition to Petition for Injunctive Relief	
14	filed in Friends of the Willow Glen Trestle v. City of San Jose et al., Superior Court of California,		
15	County of Santa Clara, case number 1-14-CV-260439, on May 14, 2014, a true and correct copy of		
16	which is attached hereto as Exhibit O.		
17		Description of the Land	
18		Respectfully submitted,	
19	Dated: June 6, 2019	RICHARD DOYLE, City Attorney	
20		4. 10.0 1	
21 22		By: Margo Lasherody MARGO LASKOWSKA Senior Deputy City Attorney	
23		Attorneys for Respondents: CITY OF SAN	
24		JOSE and CITY OF SAN JOSE DEPARTMENT OF PUBLIC WORKS	
25			
26			
27			

EXHIBIT O

RICHARD DOYLE, City Attorney (88625) NORA FRIMANN, Assistant City Attorney (93249) 2014 MAY 14 P 3: 43 KATHRYN ZOGLIN, Senior Deputy City Attorney (121187)
Office of the City Attorney
200 East Santa Clara Street, 16th Floor
San José, California 95113-1905
Telephone Number: (408) 535-1900 2 Facsimile Number: (408) 998-3131 5 E-Mail Address: cao.main@sanjoseca.gov 6 Attorneys for Respondents CITY OF SAN JOSE and CITY COUNCIL OF THE CITY OF SAN JOSE 7 8 9 SUPERIOR COURT OF CALIFORNIA 10 COUNTY OF SANTA CLARA 11 UNLIMITED JURISDICTION 12 13 FRIENDS OF THE WILLOW GLEN Case Number: 1-14-CV-260439 TRESTLE, an unincorporated association, 14 DECLARATION OF YVES ZSUTTY IN Petitioner, SUPPORT OF CITY'S OPPOSITION 15 TO PETITION FOR INJUNCTIVE ٧. RELIEF 16 CITY OF SAN JOSE and CITY COUNCIL 17 May 23, 2014 Date: OF THE CITY OF SAN JOSE, 9:00 a.m. Time: 18 Respondents. Department: 21 Judae: Hon. Joseph Huber 19 California Environmental Quality Act 20 Does 1 to 10; [CEQA] 21 Real Parties in Interest. 22 23 I, YVES ZSUTTY, declare that I have personal knowledge of the following, and if 24 25 called, would testify: 26 1. I am the City of San Jose's Trail Manager. As Trail Manager, I coordinate the 27 development of the City's trail program and have managed this program since 2003.

28

- 2. My duties include, but are not limited to the development of a 100-mile interconnected trail network that serves recreational and commuting objectives. I guide development of trail projects from start to finish, with a focus on representing the Department's objectives as Public Works manages the preparation of feasibility studies, master plan, design documents, and construction of trails. I serve as the City's primary point of contact for community meetings and trail-related development issues.
- 3. I have written over 75 competitive grant applications for the development of trail systems in San Jose over the past decade. I have coordinated with agencies and the community to seek the funds necessary for successful acquisition of the western alignment (from Lonus Street to Guadalupe River). The City bought the trestle structure, which referred to as the Willow Glen trestle by some, as part of its purchase of the western alignment properties extending from Lonus Street to Minnesota Avenue. I have guided development of the western alignment master plan for paved trail and landscape improvements, by collaborating with Public Works and consultant staff to develop a comprehensive master plan with extensive community input gathered through several public workshops and community group meetings.
- 4. The City of San Jose's development of the 100-mile interconnected trail network for recreation and commuting is guided by the City's General Plan, Greenprint, Bike Plan 2020 and individual trail system master plans. Many of the built trails have received awards from local, state and national organizations for the quality of the projects and innovative practices.
- 5. The City is developing a master plan regarding the development of the western alignment of the Three Creeks Trail. This master plan defines a continuous trail connecting the downtown section of the Los Gatos Trail with the Guadalupe River Trail (also a future development effort). The plan defines a paved trail with grave shoulders for cyclists, walkers, and runners. It includes playgrounds, five interpretive stations with panels on historical aspects of the corridor, and gateway structures.

- 6. The City has been working on the Three Creeks Trail project since approximately 2003. The goal of this project is to develop a trail system that connects the existing and future trails along the Los Gatos Creek, Guadalupe River, Highway 87 Bikeway, and Coyote Creek systems. The "western alignment" links the Los Gatos Creek to the Guadalupe River. The "eastern alignment" is the subject of ongoing property acquisition efforts, planning, and development. The eastern alignment would like the Guadalupe River, Highway 87 Bikeway, and Coyote Creek trail systems. The Three Creeks Trail system is unique within the network because of its multi-trail connectivity and its east-west alignment, since most trails in San Jose are oriented in the north-south direction along waterways that reach the San Francisco Bay.
- 7. An important component in connecting these trails is a crossing of the Los Gatos Creek. Currently, what is referred to in this litigation as the Willow Glen trestle crosses the Los Gatos Creek.
- 8. The Union Pacific Railroad ceased operations along the alignment. It is my understanding that it ceased to maintain that property for a number of years as it offered the property for sale. I believe this to be the case because I have observed that the structure has showed signs of degradation over time.
- 9. In December 2011, the City purchased the western alignment, which includes the trestle.
- 10. I have been to the trestle many times. It has been and continues to be in a state of disrepair. The trestle has timbers that have rotted. Attached as Exhibit E are true and correct copies of photos I took on May 7, 2014. They accurately depict the condition of the trestle on that day.
- 11. Because I believe the trestle in its current state is not safe for the public, I took steps to have a chain link fence and warning signs installed at both ends of the trestle. However, on more than one occasion, the fence links have been cut. Attached as Exhibit F are true and correct copies of photos I took on May 7, 2014. They accurately depict the

condition of the chain fence and warning signs, including where the fence has been vandalized, on that day.

- 12. The trestle has been subject to vandalism and has been set on fire at various locations. Attached as Exhibit G are true and correct copies of photos I took on May 7, 2014. They accurately depict locations on the trestle that have been burned.
- 13. I have organized public outreach events related to the trestle. This outreach includes but is not limited to community meetings on July 9, 2013 at the Save Our Trails Board meeting, on July 17, 2013 at the Willow Glen Neighborhood Association, July 24, 2014 at a workshop for the Three Creeks Trail Master Plan, and September 8, 2013, for the Final Workshop for the Pedestrian Bridge Design Refinement Meeting. All these meetings were open to the public.
- 14. The Willow Glen Neighborhood Association (WGNA) board supports this project. Attached as Exhibit H is a true and correct copy of an email it sent in support of the project. Save Our Trails also supports the project.
- 15. The City's Three Creeks Trail Pedestrian Bridge Project will remove the wooden trestle and replace it with a steel structure. According to the plans for the replacement structure, interpretive signs and seals commemorating the Southern Pacific and Western Pacific train lines will be installed by the replacement structure.
- 16. One of my first assignments as Trail Manager was to develop a funding package for acquisition of the railroad corridor lands in support of the future Willow Glen Spur Trail, which was later named the Three Creeks Trail.
- 17. I was able to secure grant funds for the Three Creeks Pedestrian Bridge
 Project, with the support of my department and City Council. We have secured grants of
 \$29,526 and \$1,773,027 from the Roberti-Z'Berg State Grant program to pay for the
 removal of the existing trestle and to preplace it with a steel and concrete bridge structure.
 I also submitted, and secured a \$450,000 grant from the Santa Clara Valley Water District.
- 18. The State grants expire in June 2015. The City has already received extensions on the grant from the State of California. Based on my experience and

discussions with the granting authorities, I understand that the State will not grant another extension on these grant funds.

- 19. I participated in a conference call several months ago with Grant Agency staff from the State and they made it clear that they want the project to remain on track and be completed by the deadline. They further advised me that although the State Legislature previously issued one extension for this grant program, there is no sign that it will allow any additional extensions.
- 20. Based on my grant-writing experience, I know that funders consider a grantee's track record in completing projects and complying with grant requirements including deadlines when evaluating new grant applications. It is my belief that if the City is unable to complete the pedestrian bridge project during the grant period, the City's future ability to secure grants from the State may be in jeopardy. It is my experience that state grant applications ask applicants to describe their ability to deliver projects, current projects, and performance on past grants. Based on my discussions with State staff and my grant-writing experience, it is my belief that there will be negative repercussions for the City if it is unable to finish the project within the grant period; I believe there would be a negative impact on the City's ability to secure grants from the State, and possibility other funders, in the future.
- 21. During the past five years, the City has been able to complete many trail projects thanks to grants from federal, state and local granting agencies such as the Water District. These projects have included the Guadalupe River Trail, Los Gatos Creek Trail, and Coyote Creek Trail. The community is very supportive of these projects.
- 22. While the City does not have complete statistics on trail usage, it has collected data during the past seven years as part of an annual trail count. I have initiated and managed the trail count during this time. According to our data, the Guadalupe River Trail is documented to be used by over 1,000 weekend users and 53% of the users do so to commute. The replacement of the trestle will significantly increase the connectivity of the trails and improve access to Willow Glen's popular Lincoln Avenue, so that the community

can instead use the trail and bypass the less than desirable industrial areas along Lonus Street and reduce time spent on public roadways to travel by bike and foot.

I certify and declare, under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 13, 2014, in San José, California.

YVES

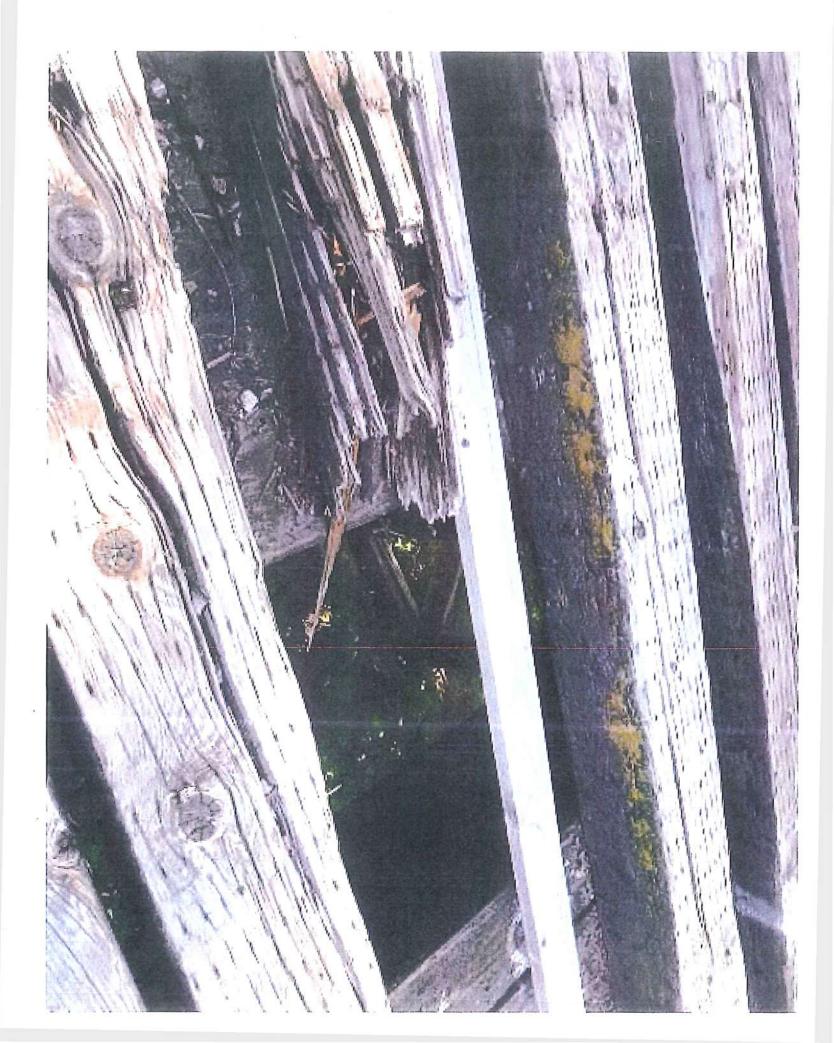
EXHIBIT E

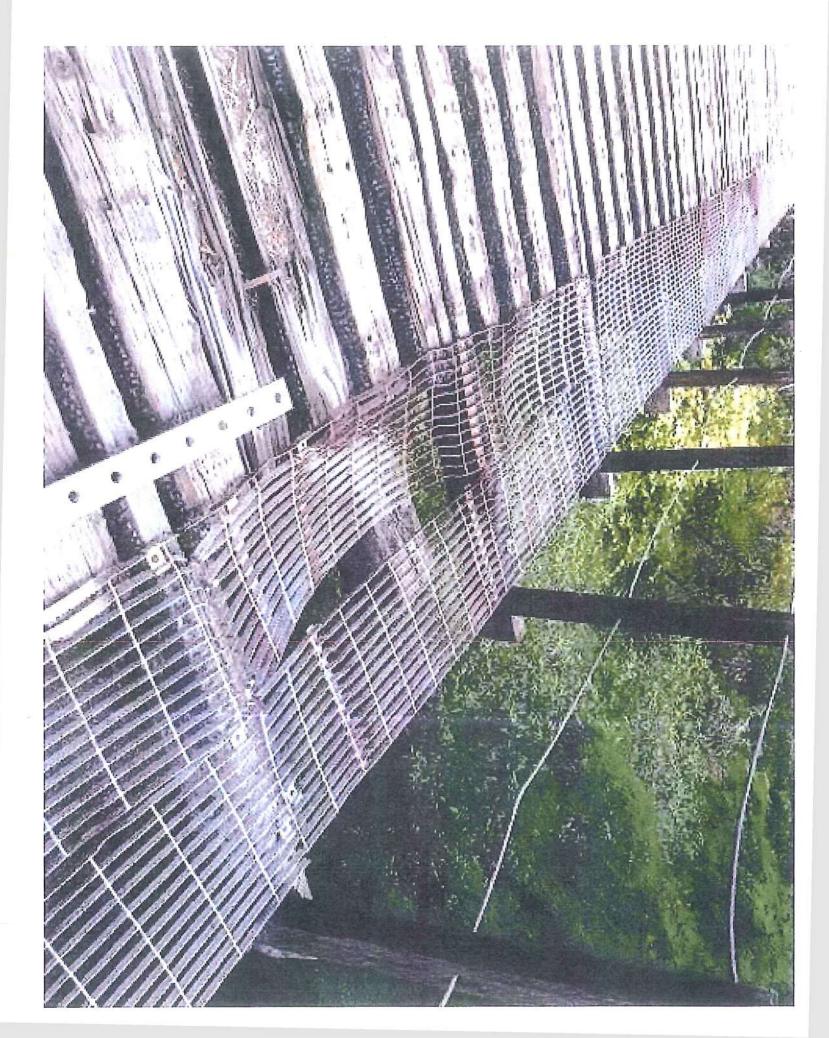


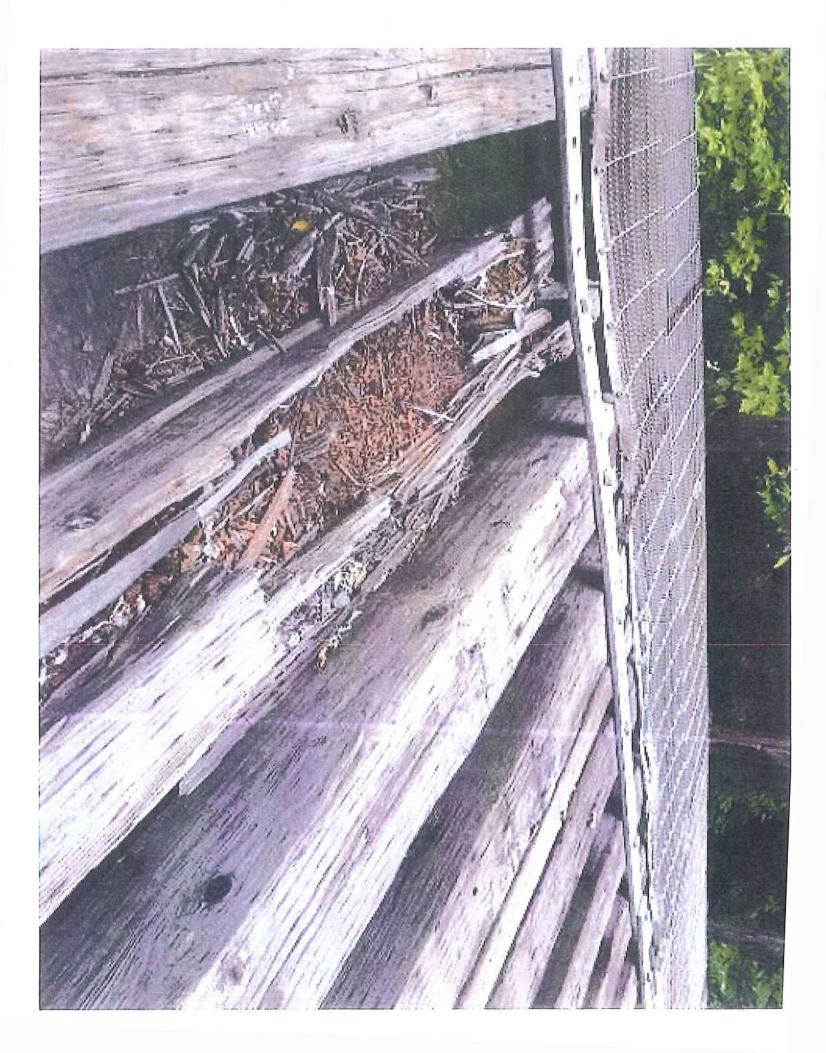


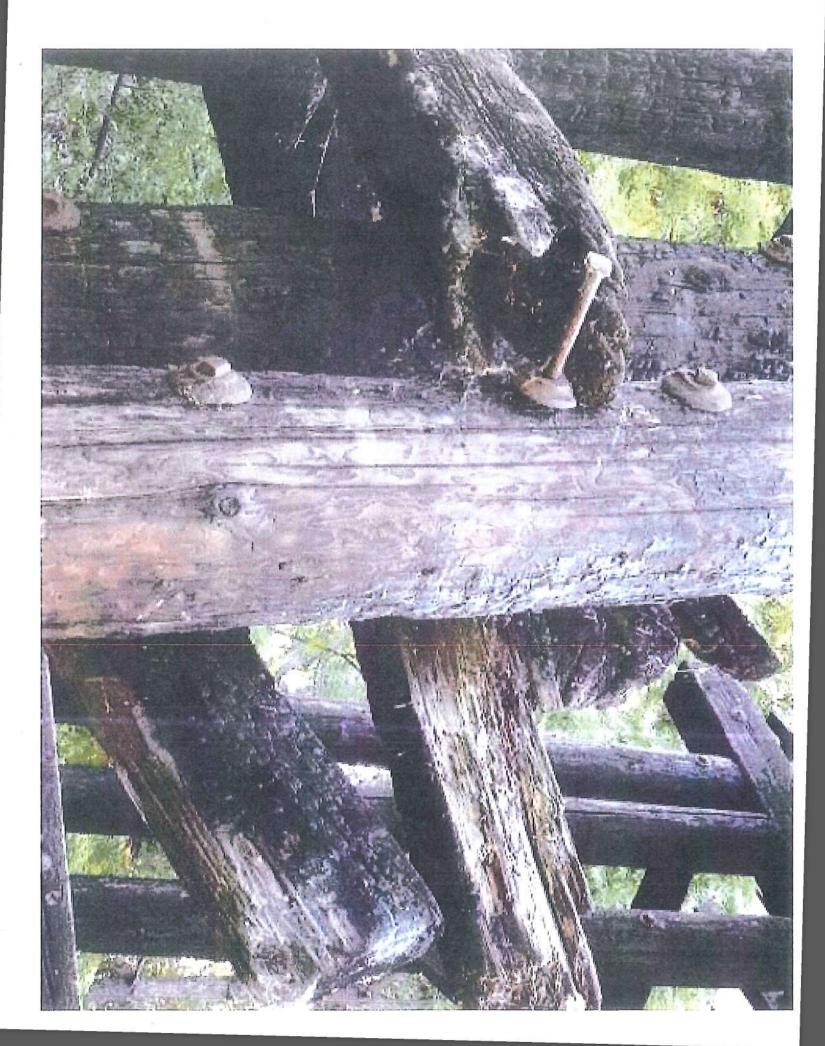
EXHIBIT F













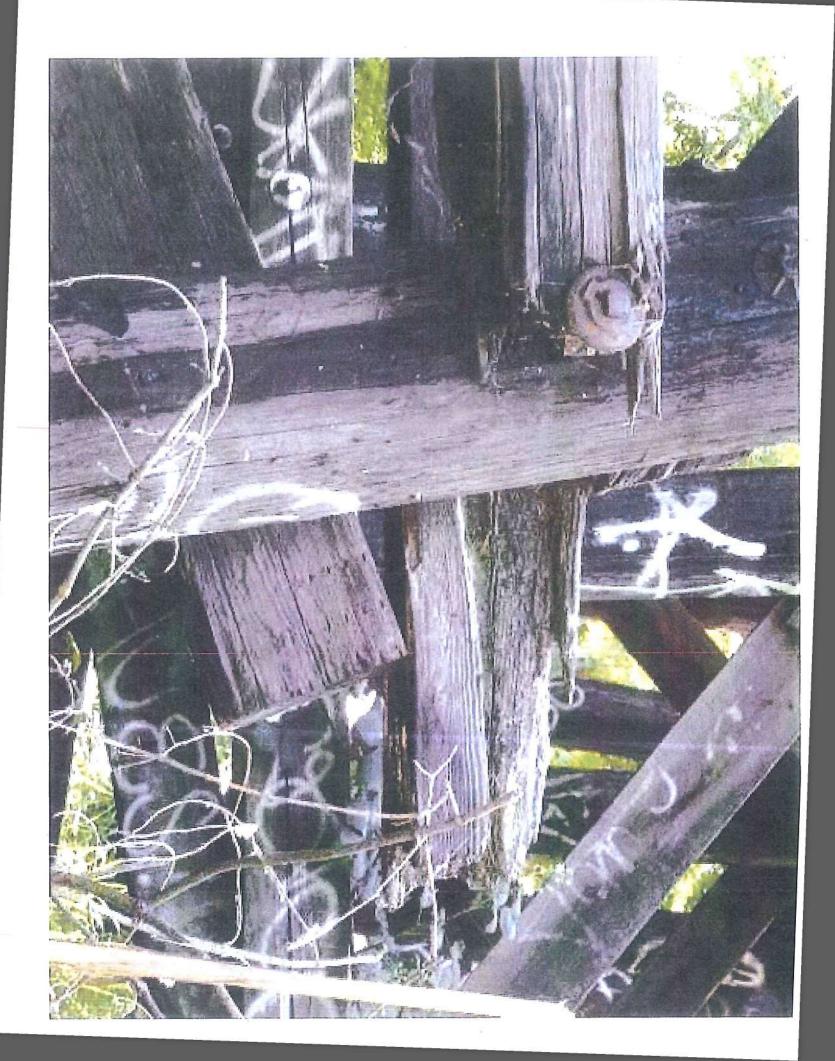
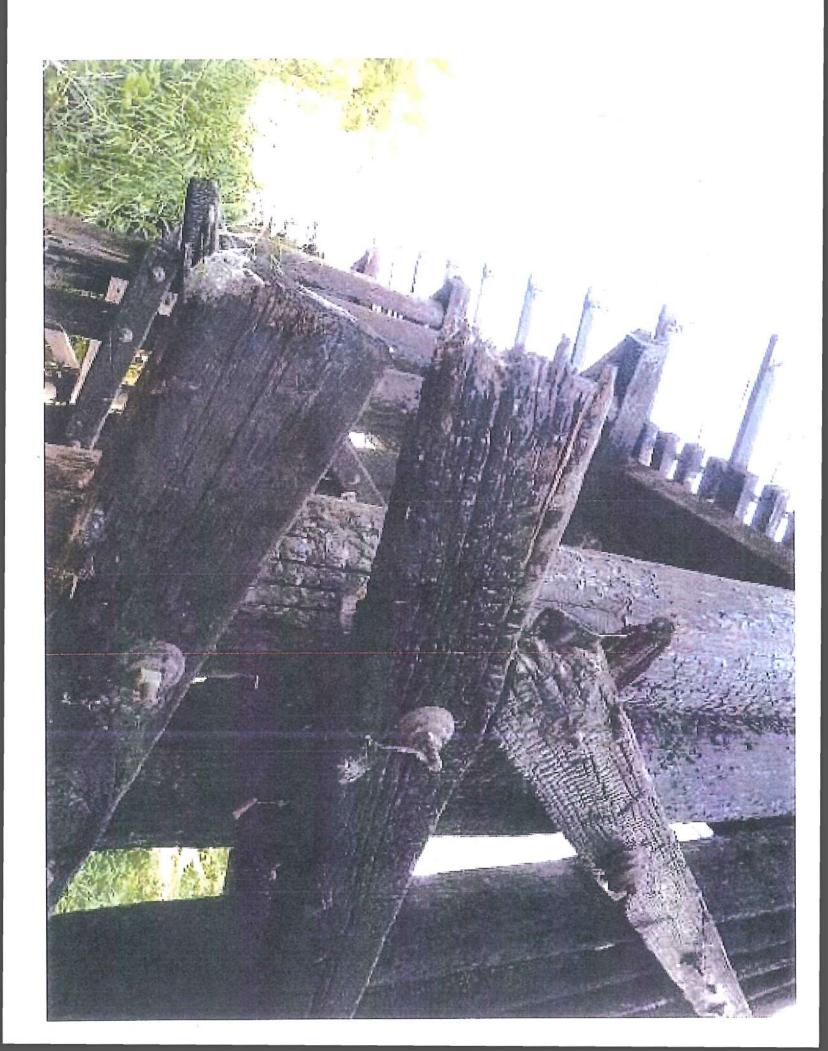


EXHIBIT G





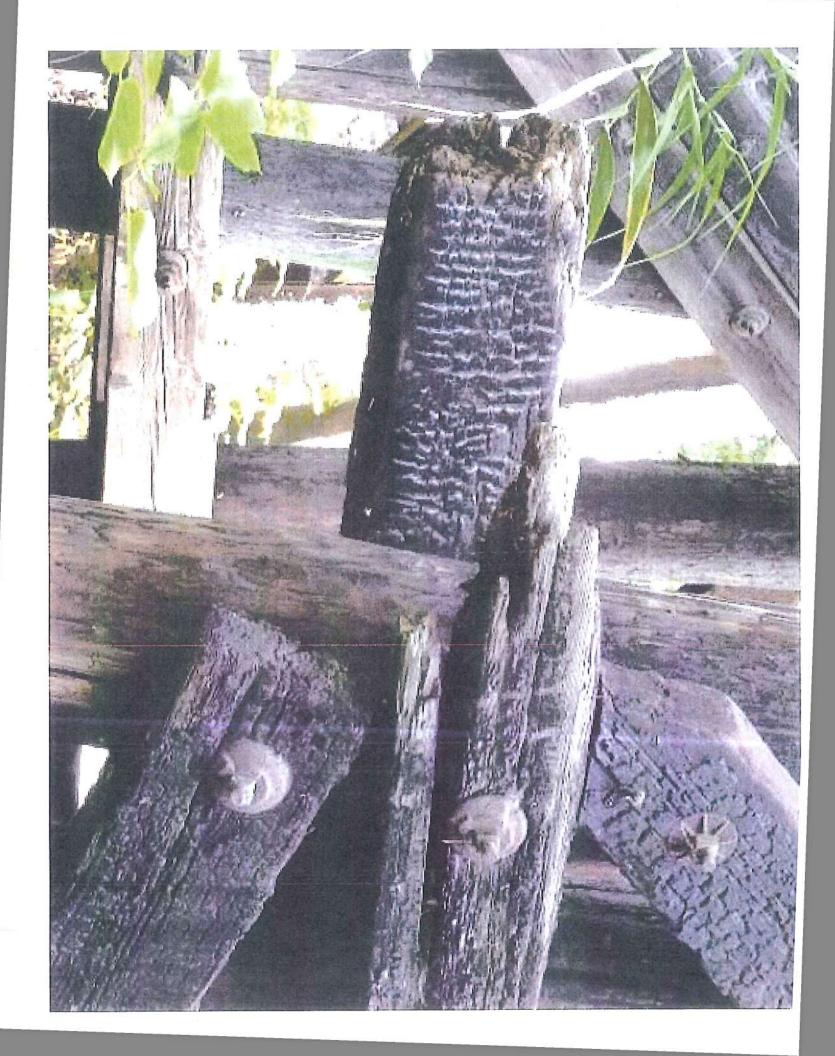


EXHIBIT H

Zsutty, Yves

From: Sent: Richard Zappelli [richard.zappelli@me.com]

Wednesday, May 08, 2013 9:40 AM

To: Oliverio, Pieriuigi Cc: Taisia McMahon;

Taisia McMahon; Bruce Tichinin; taisiat@comcast.net;; Zsutty, Yves

Subject: WGNA vote of confidence

Sent from my iPad

Councilperson Pierluigi Oliverio,

With the various conversations pro and con in the print media and electronic emails, I went to our board and asked them once again about our position on wood trestle vs. steel trestle. The WGNA board unanimously supports the decision of the City Council, and the position taken by the Save Our Trails board vote, we support the Construction of a steel trestle as presented in item 5.1 at the City Council meeting.

Further, our board as the utmost respect for Taisia McMahon, president of Save Our Trails,

and Yves Zsutty, CSJ.

We arrived at a vote of confidence as a result of electronic voting which is supported by our WGNA by-laws, we are 100% in support of a steel constructed Trestle.

Richard Zappelli, president, WGNA board

1	PROOF OF SERVICE		
2	CASE NAME: Willow Glen Trestle Conservancy, et al v. City of San Jose, et al.		
3	CASE NO.: 18CV335801		
4	I, the undersigned declare as follows:		
5	I am over 18 years of age and not a party to this action. My business address is		
6	200 East Santa Clara Street, Šan Jose, California 95113-1905, and is located in the county where the service described below occurred.		
7	On June 6, 2019, I caused to be served the within:		
8	CITY OF SAN JOSE'S REQUEST FOR JUDICIAL NOTICE IN OPPOSITION TO RENEWED MOTION FOR PRELIMINARY INJUNCTION		
9		TRONIC SERVICE listed belo	ow, transmitted using the One Legal Process
10	Service e	electronic filing system. The decally served to the electronic a	ocument(s) listed above was/were
11	Addressed as follows:		
12	Addressed as it	niows.	
13	Brandt-Hawley Law Group P.O. Box 1659 Glen Ellen, CA 95442 Phone Number: (707) 938-3908 Fax Number: (707) 576-0175 Email: susaph@preservationlawwers.com		Attorneys for Petitioners, Willow Glen Trestle Conservancy, an unincorporated association,
14			and Friends of the Willow Glen Trestle, an
15			•
16			
17	Sara D. Van Lo	h	Attorneys for Respondent, California
18	455 Golden Gate Avenue, Suite 11000 San Francisco CA 94102-7004 Phone Number: (415) 510-3865		Department of Fish & Wilding
19			
20			
21	Email: Connie.	Sung@doj.ca.gov	
22			
23	I declare under penalty of perjury under the laws of the State of California that the		
24	foregoing is true and correct. Executed on June 6, 2019, at San Jose, California.		
25			Courtney Mohammadi
26			Southley Monathinadi
27			