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7 Attorneys for Respondents:
8 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
14 CONSERVANCY, an unincorporated
15 association; FRIENDS OF THE WILLOW
GLEN TRESTLE, an unincorporated
association,

16 Petitioners,

17 v.

18 CITY OF SAN JOSE; CITY OF SAN JOSE
19 DEPARTMENT OF PUBLIC WORKS;
20 CALIFORNIA DEPARTMENT OF FISH
AND WILDLIFE; and DOES 1 to 10;

21 Respondents.

22 Does 1 to 10;

23 Real Parties in Interest.

Case Number: 18CV335801

**CITY OF SAN JOSE'S REQUEST FOR
JUDICIAL NOTICE IN OPPOSITION
TO RENEWED MOTION FOR
PRELIMINARY INJUNCTION**

[Evid. Code §452(d)]

Date: June 10, 2019

Time: 2:00 p.m.

Dept: 5

Judge: Hon. Thomas E. Kuhnle

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

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 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
18 Respectfully submitted,

19 Dated: June 6, 2019

RICHARD DOYLE, City Attorney

20
21 By: 
22 MARGO LASKOWSKA
Senior Deputy City Attorney

23 Attorneys for Respondents: CITY OF SAN
24 JOSE and CITY OF SAN JOSE
DEPARTMENT OF PUBLIC WORKS

EXHIBIT O

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10 Attorneys for Respondents
11 CITY OF SAN JOSE and CITY COUNCIL
12 OF THE CITY OF SAN JOSE

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED JURISDICTION

FRIENDS OF THE WILLOW GLEN
TRESTLE, an unincorporated association,

Petitioner,

v.

CITY OF SAN JOSE and CITY COUNCIL
OF THE CITY OF SAN JOSE,

Respondents.

Does 1 to 10;

Real Parties in Interest.

Case Number: 1-14-CV-260439

**DECLARATION OF YVES ZSUTTY IN
SUPPORT OF CITY'S OPPOSITION
TO PETITION FOR INJUNCTIVE
RELIEF**

Date: May 23, 2014
Time: 9:00 a.m.
Department: 21
Judge: Hon. Joseph Huber

California Environmental Quality Act
[CEQA]

I, YVES ZSUTTY, declare that I have personal knowledge of the following, and if
called, would testify:

1. I am the City of San Jose's Trail Manager. As Trail Manager, I coordinate the
development of the City's trail program and have managed this program since 2003.

///

1 2. My duties include, but are not limited to the development of a 100-mile
2 interconnected trail network that serves recreational and commuting objectives. I guide
3 development of trail projects from start to finish, with a focus on representing the
4 Department's objectives as Public Works manages the preparation of feasibility studies,
5 master plan, design documents, and construction of trails. I serve as the City's primary
6 point of contact for community meetings and trail-related development issues.

7 3. I have written over 75 competitive grant applications for the development of trail
8 systems in San Jose over the past decade. I have coordinated with agencies and the
9 community to seek the funds necessary for successful acquisition of the western
10 alignment (from Lonus Street to Guadalupe River). The City bought the trestle structure,
11 which referred to as the Willow Glen trestle by some, as part of its purchase of the
12 western alignment properties extending from Lonus Street to Minnesota Avenue. I have
13 guided development of the western alignment master plan for paved trail and landscape
14 improvements, by collaborating with Public Works and consultant staff to develop a
15 comprehensive master plan with extensive community input gathered through several
16 public workshops and community group meetings.

17 4. The City of San Jose's development of the 100-mile interconnected trail network
18 for recreation and commuting is guided by the City's General Plan, Greenprint, Bike Plan
19 2020 and individual trail system master plans. Many of the built trails have received
20 awards from local, state and national organizations for the quality of the projects and
21 innovative practices.

22 5. The City is developing a master plan regarding the development of the western
23 alignment of the Three Creeks Trail. This master plan defines a continuous trail
24 connecting the downtown section of the Los Gatos Trail with the Guadalupe River Trail
25 (also a future development effort). The plan defines a paved trail with grade shoulders for
26 cyclists, walkers, and runners. It includes playgrounds, five interpretive stations with
27 panels on historical aspects of the corridor, and gateway structures.

28 ///

1 6. The City has been working on the Three Creeks Trail project since
2 approximately 2003. The goal of this project is to develop a trail system that connects the
3 existing and future trails along the Los Gatos Creek, Guadalupe River, Highway 87
4 Bikeway, and Coyote Creek systems. The "western alignment" links the Los Gatos Creek
5 to the Guadalupe River. The "eastern alignment" is the subject of ongoing property
6 acquisition efforts, planning, and development. The eastern alignment would like the
7 Guadalupe River, Highway 87 Bikeway, and Coyote Creek trail systems. The Three
8 Creeks Trail system is unique within the network because of its multi-trail connectivity and
9 its east-west alignment, since most trails in San Jose are oriented in the north-south
10 direction along waterways that reach the San Francisco Bay.

11 7. An important component in connecting these trails is a crossing of the Los Gatos
12 Creek. Currently, what is referred to in this litigation as the Willow Glen trestle crosses the
13 Los Gatos Creek.

14 8. The Union Pacific Railroad ceased operations along the alignment. It is my
15 understanding that it ceased to maintain that property for a number of years as it offered
16 the property for sale. I believe this to be the case because I have observed that the
17 structure has showed signs of degradation over time.

18 9. In December 2011, the City purchased the western alignment, which includes
19 the trestle.

20 10. I have been to the trestle many times. It has been and continues to be in a
21 state of disrepair. The trestle has timbers that have rotted. Attached as Exhibit E are true
22 and correct copies of photos I took on May 7, 2014. They accurately depict the condition
23 of the trestle on that day.

24 11. Because I believe the trestle in its current state is not safe for the public, I took
25 steps to have a chain link fence and warning signs installed at both ends of the trestle.
26 However, on more than one occasion, the fence links have been cut. Attached as Exhibit
27 F are true and correct copies of photos I took on May 7, 2014. They accurately depict the
28

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

3 12. The trestle has been subject to vandalism and has been set on fire at various
4 locations. Attached as Exhibit G are true and correct copies of photos I took on May 7,
5 2014. They accurately depict locations on the trestle that have been burned.

6 13. I have organized public outreach events related to the trestle. This outreach
7 includes but is not limited to community meetings on July 9, 2013 at the Save Our Trails
8 Board meeting, on July 17, 2013 at the Willow Glen Neighborhood Association, July 24,
9 2014 at a workshop for the Three Creeks Trail Master Plan, and September 8, 2013, for
10 the Final Workshop for the Pedestrian Bridge Design Refinement Meeting. All these
11 meetings were open to the public.

12 14. The Willow Glen Neighborhood Association (WGNA) board supports this
13 project. Attached as Exhibit H is a true and correct copy of an email it sent in support of
14 the project. Save Our Trails also supports the project.

15 15. The City's Three Creeks Trail Pedestrian Bridge Project will remove the
16 wooden trestle and replace it with a steel structure. According to the plans for the
17 replacement structure, interpretive signs and seals commemorating the Southern Pacific
18 and Western Pacific train lines will be installed by the replacement structure.

19 16. One of my first assignments as Trail Manager was to develop a funding
20 package for acquisition of the railroad corridor lands in support of the future Willow Glen
21 Spur Trail, which was later named the Three Creeks Trail.

22 17. I was able to secure grant funds for the Three Creeks Pedestrian Bridge
23 Project, with the support of my department and City Council. We have secured grants of
24 \$29,526 and \$1,773,027 from the Roberti-Z'berg State Grant program to pay for the
25 removal of the existing trestle and to preplace it with a steel and concrete bridge structure.
26 I also submitted, and secured a \$450,000 grant from the Santa Clara Valley Water District.

27 18. The State grants expire in June 2015. The City has already received
28 extensions on the grant from the State of California. Based on my experience and

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

3 19. I participated in a conference call several months ago with Grant Agency staff
4 from the State and they made it clear that they want the project to remain on track and be
5 completed by the deadline. They further advised me that although the State Legislature
6 previously issued one extension for this grant program, there is no sign that it will allow
7 any additional extensions.

8 20. Based on my grant-writing experience, I know that funders consider a grantee's
9 track record in completing projects and complying with grant requirements including
10 deadlines when evaluating new grant applications. It is my belief that if the City is unable
11 to complete the pedestrian bridge project during the grant period, the City's future ability to
12 secure grants from the State may be in jeopardy. It is my experience that state grant
13 applications ask applicants to describe their ability to deliver projects, current projects, and
14 performance on past grants. Based on my discussions with State staff and my grant-
15 writing experience, it is my belief that there will be negative repercussions for the City if it
16 is unable to finish the project within the grant period; I believe there would be a negative
17 impact on the City's ability to secure grants from the State, and possibility other funders, in
18 the future.

19 21. During the past five years, the City has been able to complete many trail
20 projects thanks to grants from federal, state and local granting agencies such as the
21 Water District. These projects have included the Guadalupe River Trail, Los Gatos Creek
22 Trail, and Coyote Creek Trail. The community is very supportive of these projects.

23 22. While the City does not have complete statistics on trail usage, it has collected
24 data during the past seven years as part of an annual trail count. I have initiated and
25 managed the trail count during this time. According to our data, the Guadalupe River Trail
26 is documented to be used by over 1,000 weekend users and 53% of the users do so to
27 commute. The replacement of the trestle will significantly increase the connectivity of the
28 trails and improve access to Willow Glen's popular Lincoln Avenue, so that the community

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

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

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7 
8 YVES ZSUTTY
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EXHIBIT E



DASCO CEAL
Temporary Trail Closures
Due to the current
situation
the trail is
closed
for the
time being
We will
reopen
the trail
when
it is
safe
to
do
so

DO NOT ENTER



EXHIBIT F















EXHIBIT G







EXHIBIT H

Zsutty, Yves

From: Richard Zappelli [richard.zappelli@me.com]
Sent: Wednesday, May 08, 2013 9:40 AM
To: Oliverio, Pierluigi
Cc: 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, San 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**
9 **OPPOSITION TO RENEWED MOTION FOR PRELIMINARY INJUNCTION**

10 ☒ by ELECTRONIC SERVICE listed below, transmitted using the One Legal Process
Service electronic filing system. The document(s) listed above was/were
11 electronically served to the electronic address(s) below

12 Addressed as follows:

13 Ms. Susan Brandt-Hawley
Brandt-Hawley Law Group
14 P.O. Box 1659
Glen Ellen, CA 95442
15 Phone Number: (707) 938-3908
Fax Number: (707) 576-0175
16 Email: susanbh@preservationlawyers.com

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

17 Sara D. Van Loh
Connie Sung
18 Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
19 San Francisco CA 94102-7004
Phone Number: (415) 510-3865
20 Fax Number: (415) 703-5480
Email: Sara.VanLoh@doj.ca.gov
21 Email: Connie.Sung@doj.ca.gov

Attorneys for Respondent, California
Department of Fish & Wildlife

22
23 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct. Executed on June 6, 2019, at San Jose, California.
24

25 
26 Courtney Mohammadi
27
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