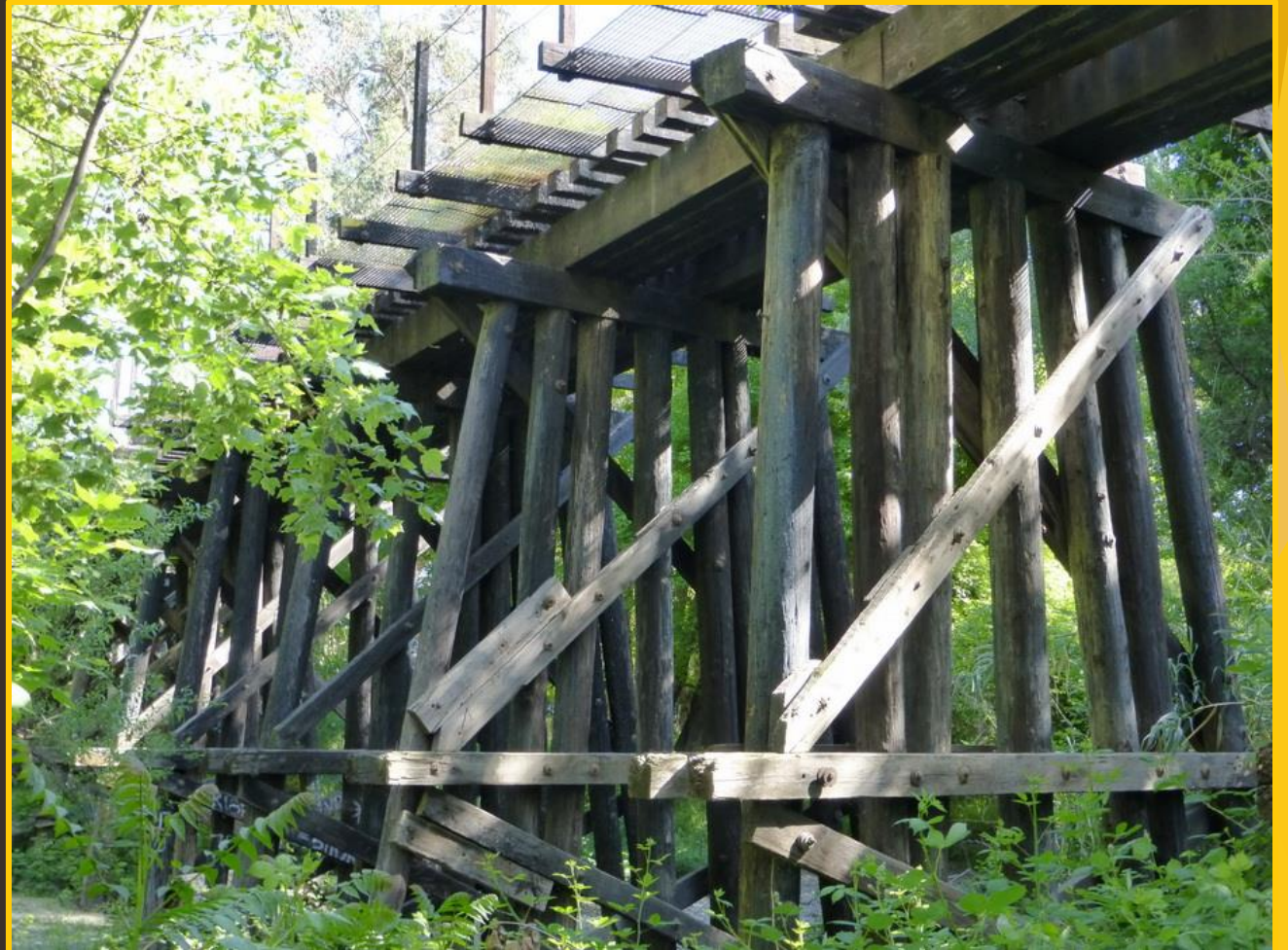


SJ's Request for Redetermination of the SHRC's May 2017 decision on the Willow Glen Trestle

Larry Ames
Friends of the
Willow Glen Trestle
Oct. 27, 2017



Title 14 of the California Code of Regulations, §4857, “Requests for Redetermination by the State Historical Resources Commission”

- ▶ “The Commission has the power to reverse or alter its prior determinations, in whole or in part, if any of the following occur:
- ▶ (1) There is a **significant error** in the facts, information, or analysis on which the prior decision was based; or
- ▶ (2) The prior determination, in light of current information, appears to have been **arbitrary, capricious**, or based on substantial error.”

City's request for Redetermination



Office of the City Manager

June 7, 2017

VIA FED EX

Chairperson Marshall McKay
State Historic Resources Commission
Attn: Julianne Polanco, Historic Preservation Officer
State Office of Historic Preservation
1725 23rd Street, Suite 100
Sacramento, CA 95816-7100

Dear Honorable Chair and Members of the State Historical Resources Commission:

Please accept this letter as the City of San Jose's request for redetermination of the State Historical Resources Commission's ("Commission") decision to list the Willow Glen Trestle on the California Register of Historical Resources ("Register"). (14 CCR Section 4857) The Commission has authority to reverse or alter its prior determination because there is a significant error in the facts, information, and analysis on which the decision was based.

A. The Willow Glen Trestle does not meet the California Register Criterion 1.

During the hearing on May 10, 2017 in Pasadena, the Commission requested additional guidance on "historic significance", and whether the threshold for finding "historic significance" was different under the National Register than the California Register. The National Register provides:

"A historical resource must be significant at the local, state, or national level, under one or more of the following four criteria:

- A. That are associated with events that have made a significant contribution to the broad patterns of our history."

The California Register provides:

"A historical resource must be significant at the local, state, or national level, under one or more of the following four criteria:

1. It is associated with events that have made a significant contribution to the broad patterns of local or regional history, or the cultural heritage of California or the United States."

Staff of the Office of Historic Preservation acknowledged the California Register differs in that historic significance could be based on history of California and not require significance on a national level. Apart from this jurisdictional distinction, Staff was unable to provide a substantive explanation for a distinction, and noted the difference in the criterion between the Registers is "fuzzy." Absent a material distinction, the specific comments from Keeper of the National Register regarding the nomination based on the trestle's connection to industrial development deserves further consideration and specific rebuttal.

The Commission ultimately relied on the importance of the Willow Glen Trestle to the residents that are advocating for its preservation citing to representations that this trestle contributed to development of the Willow Glen neighborhood. There is, however, no guidance in the California Office of Historic Preservation Technical Assistance Series #6 that provides "local" should be reduced to the level of a neighborhood. The phrase "local" should be interpreted in the context of the entire criterion and an objective standard. It would seem more reasonable that "local" in the context of the criterion language should mean historic significance to a town or city as distinguished from state or national significance. Lowering the threshold for historic significance to the level of a neighborhood interest makes the "local" significance relative and subjective. Lowering the threshold so low effectively means the application of no standard, and that any special interest within a city would be able to claim listing on the Register even if the events were not historically significant to the city.

If we assume "local" historic significance would be reduced to a neighborhood, the two factors cited in the nomination, staff report, and findings in support of Criterion 1 are in direct conflict and cannot be reconciled. According to the nomination, staff report, and finding, the trestle is historically significant for (1) "its association with the industrial development of San Jose"; and (2) "reducing the effects of industry on the residential community of Willow Glen." Specifically, the staff report emphasizes the importance of the Western Pacific's "operation in the San Jose area" in that the trestle "allowed access to a large industrial district." All of this industrial development, however, occurred outside Willow Glen. There can be no association with industrial development if the definition of "local" is restricted to the Willow Glen neighborhood. The findings either must be revised to rely on only one factor, or the nomination should be revised to be consistent with the findings.

B. Notwithstanding a finding for listing based on historic significance, the California Public Resource Code Section 5024.1(f) (3) requires the Commission to make findings of overriding significance to overcome local government objections.

The City has consistently objected to the listing of the trestle on both the National Register and the California Register in a series of communications to the Commission based on numerous reasons, including, but not limited to, failure to meet Historic Register Criterion, negative environmental impact, and lack of structural and historic integrity. Both the Public Resource Code section 5024.1(f) (3) and 14 CCR Section 4855 (b) (2) require support of, and objections by, local government to be given full and careful consideration. This did not occur in the staff report, findings, or Commission hearing discussion. Local governments are not


afforded the same consideration as a privately owned resource. Hence the Commission, at a minimum, is required by regulation to make findings of overriding significance. Even assuming the Commission's finding that there is support for listing based on a local historic contribution of the resource, there is no explanation for why it should be listed over the City's objections. This is a material oversight that is prejudicial to the City. A hearing on the request for redetermination would be an opportunity for the Commission to fully consider the City's objections, and make appropriate findings.

The Staff Report noted, and the Commission expressed their appreciation for the interest shown by some of the Willow Glen residents in preserving the trestle based on the number of letters and presenters at the hearing. The Commission also acknowledged that the trestle is a "humble" structure albeit aesthetically pleasing on scale with the neighborhood. It is understandable that the proponents' arguments resonate with the Commission because it invokes nostalgia and the desire to preserve a piece of the past. All these considerations, however, do not establish historic significance for all the reasons the City previously articulated in prior correspondence.

These advocates represent only a small segment of the larger Willow Glen community and had extensive opportunity to share their point of view as part of a widespread community outreach campaign. During the Commission hearing, the advocates acknowledged the status of the trestle will impact residents throughout the city because two trail systems terminate at that juncture. There are many more residents who could not attend the hearing in Pasadena, and should have been afforded the opportunity to speak before the Commission. While there was no regulation requiring the hearing be held in the Bay Area, there is a public interest in conducting the hearing at a location that would facilitate the greatest community participation.

The determination of whether to grant or deny the request for redetermination must be presented to the Commission for a vote, and cannot be decided at the staff level per 14 CCR Section 4857(b). The next scheduled Commission meeting is in San Rafael, CA which would afford San Jose residents impacted by the listing a better opportunity to participate in the discussion. We respectfully request notice of the hearing before the Commission to consider the City's request. If you have any questions or concerns please contact Susan Walsh, Historic Preservation Officer, Planning, Building and Code Enforcement at (408) 535-7910.

Sincerely,


Norberto Dueñas
City Manager

Cc: Richard Doyle, City Attorney

SHRC Findings

- ▶ Associated with the industrial development of San José
- ▶ Encouraged Western Pacific to enter the San José area, provide competition, and challenge the near monopoly on freight traffic previously held by Southern Pacific
- ▶ Associated with the residential development of Willow Glen
- ▶ Retains most aspects of historic integrity

California Register of Historical Resources
Willow Glen Trestle, San Jose, Santa Clara County, California
State Historical Resources Commission Findings

On May 10, 2017 at its regular quarterly meeting of the State Historical Resources Commission in Pasadena, Los Angeles County, California, the State Historical Resources Commission listed Willow Glen Trestle in the California Register of Historical Resources.

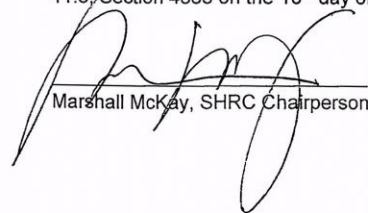
Pursuant to California Code of Regulations, Title 14, Chapter 11.5, Section 4855.c.3, the State Historical Resources Commission shall adopt written findings describing the resource and identifying its historical or cultural significance and identifying those criteria on which any determination is based.

Willow Glen Trestle is eligible for listing in the California Register of Historical Resources under Criterion 1 for its association with the industrial development of San Jose. Until the arrival of Western Pacific Railroad, San Jose and its surrounding agricultural communities had only one choice for railroad access to their community: Southern Pacific, whose near monopoly on freight traffic allowed them to dictate high rates to shippers. By encouraging Western Pacific to enter the San Jose area, the two railroads were placed in competition, and Western Pacific gained access to a major regional shipper of agricultural produce.

Willow Glen Trestle is also eligible for listing in the California Register of Historical Resources under Criterion 1 for its association with the residential development of Willow Glen. The decision to locate Western Pacific's branch via the Willow Glen Trestle facilitated industrial access while reducing the effects of industry on the residential community of Willow Glen.

The property retains most aspects of integrity, with some loss of integrity of design, materials and feeling due to removal of rails and tie plates, and addition of a deck and safety rail, but the property retains sufficient overall historic integrity to remain eligible for the California Register, with all timber elements of the superstructure still extant.

With this signature, it is hereby certified that the State Historical Resources Commission adopted these findings pursuant to California Code of Regulations, Title 14, Chapter 11.5, Section 4855 on the 10th day of May 2017.



Marshall McKay, SHRC Chairperson

5/10/17
Date

SHRC decision was hardly “arbitrary” or “capricious”

- ▶ At May 10, 2017 hearing in Pasadena:

- ▶ 9 min of Staff Report,
- ▶ nearly 50 min of presentations pro and con (including rebuttals),
- ▶ and 13 min of Commission discussion prior to vote:
- ▶ Total: 1 hr 10 min.



Not the 1st time the SHRC had considered the issue

- ▶ Also heard at April 18, 2016, meeting in San Francisco
 - ▶ Application for listing on the National Register
 - ▶ Total hearing: 1 hr 13 min.
 - ▶ (Note: SF mtg was close to SJ; a few members of the public did attend; Cmsn voted for Trestle. The public also came to Pasadena. And everyone could send letters or emails if they'd wish.)

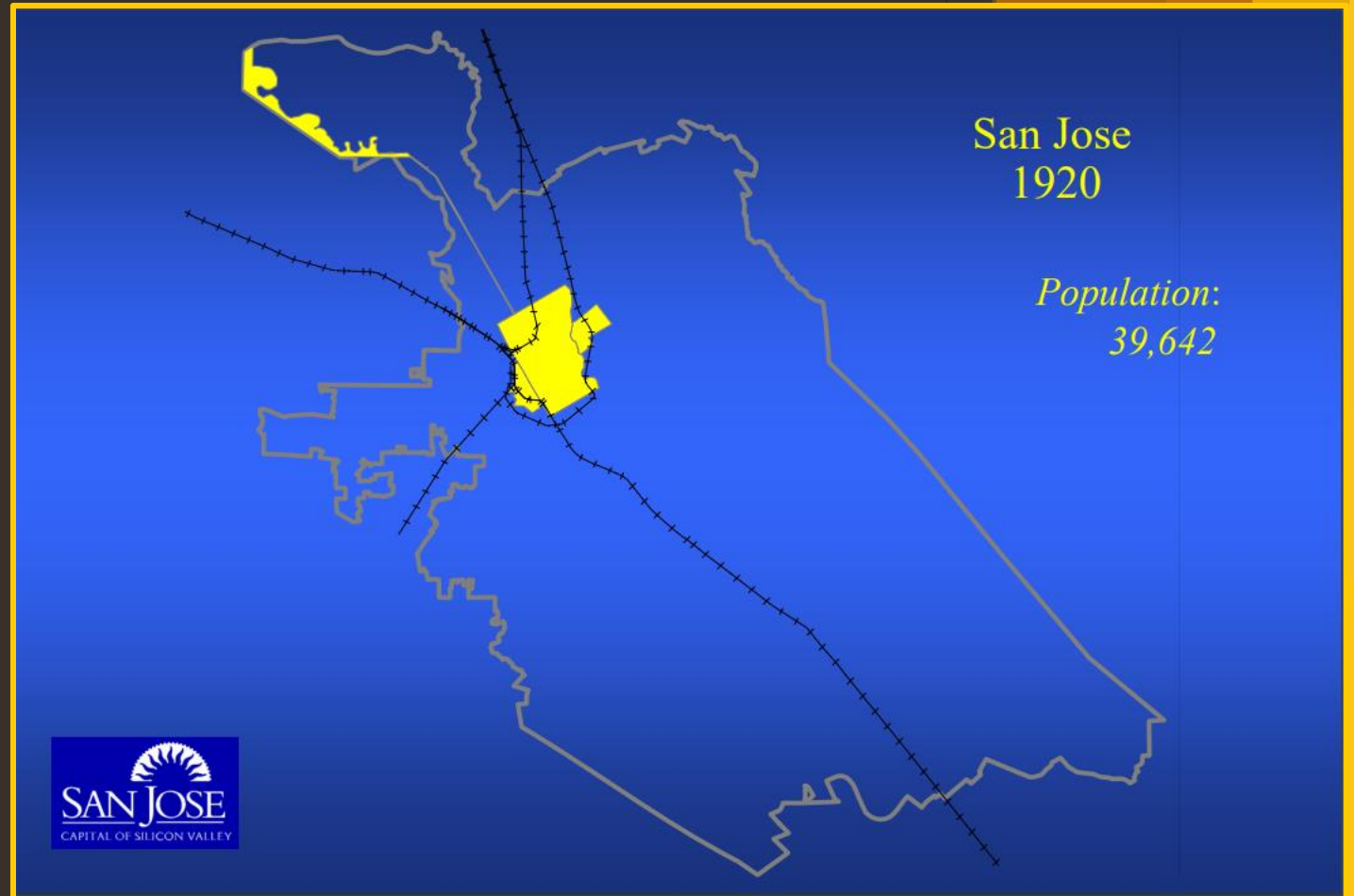


Factual Errors? The definition of “local”?

From the City’s complaint:

“The phrase ‘local’ should be interpreted in the context of the entire criterion and an objective standard. It would seem more reasonable that ‘local’ in the context of the criterion language should mean historic significance to a town or city as distinguished from state or national significance.”

San José was a much smaller town back then, so “local” in that time context was smaller as well.



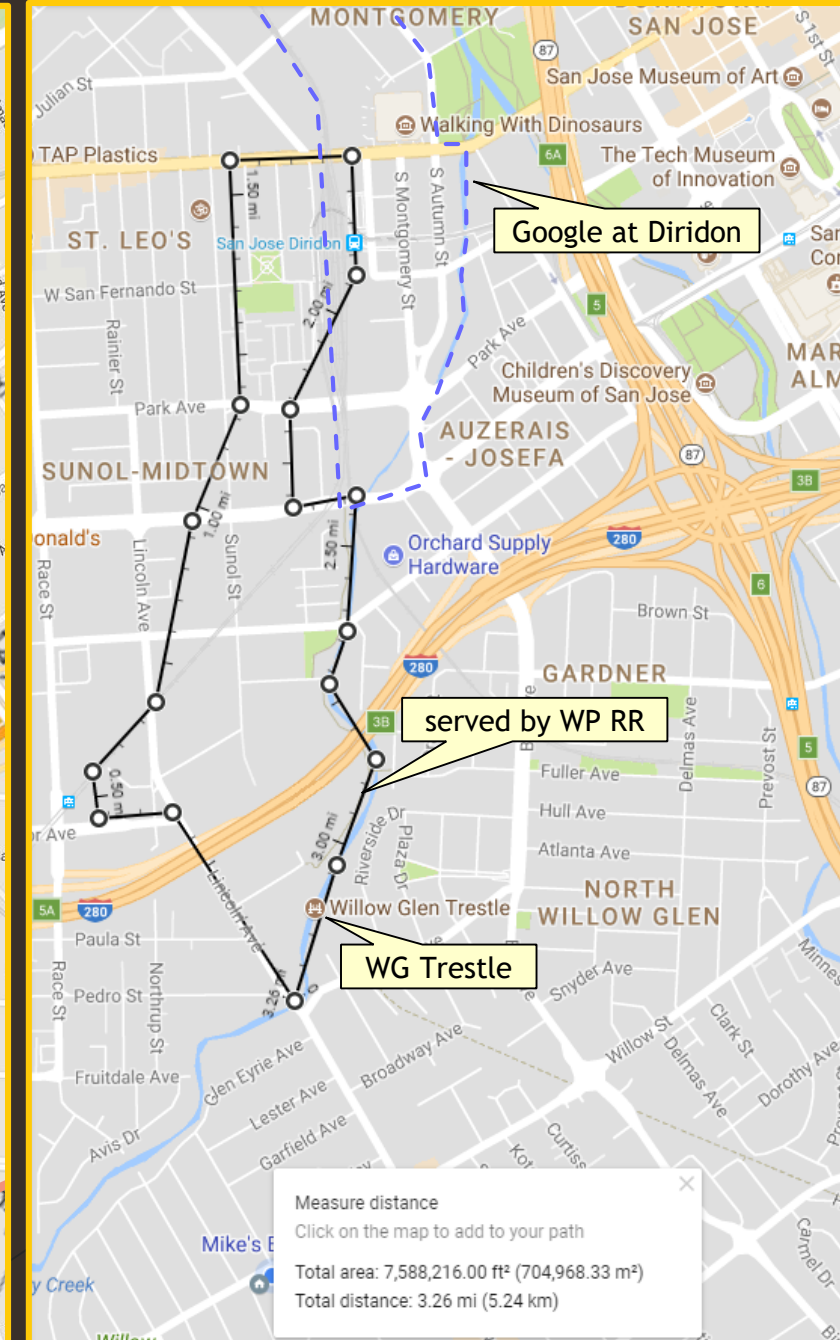
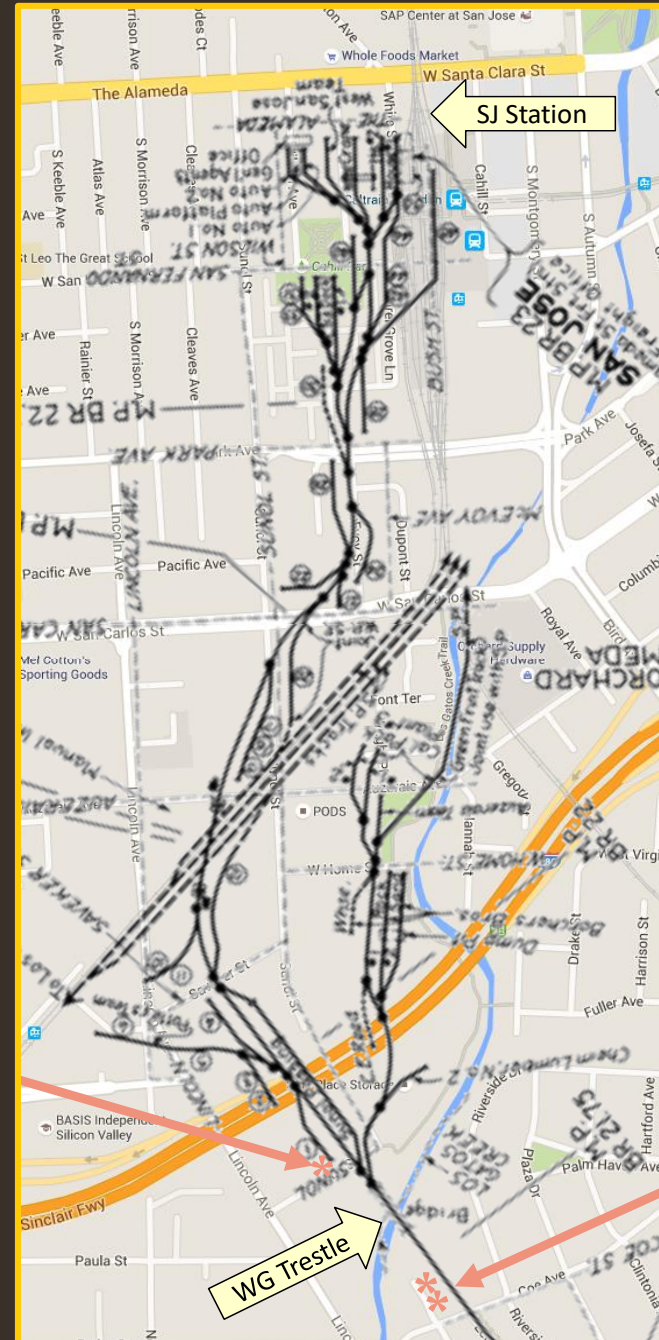
<https://www.sanjoseca.gov/DocumentCenter/View/721>

WP RR thru Willow Glen & to the San Jose Depot



Area of significance

- ▶ The Western Pacific Trestle served an industrial area over a mile long; ~7.5 mil.sq.ft. (~175 A, >1/4 sq.mi); ~50% larger than SJ's new, "biggest ever" project: Google at Diridon.
- ▶ Area of all of San José was only roughly 7 square miles*
- ▶ Trestle served 4% of City, plus surrounding orchards and fields.

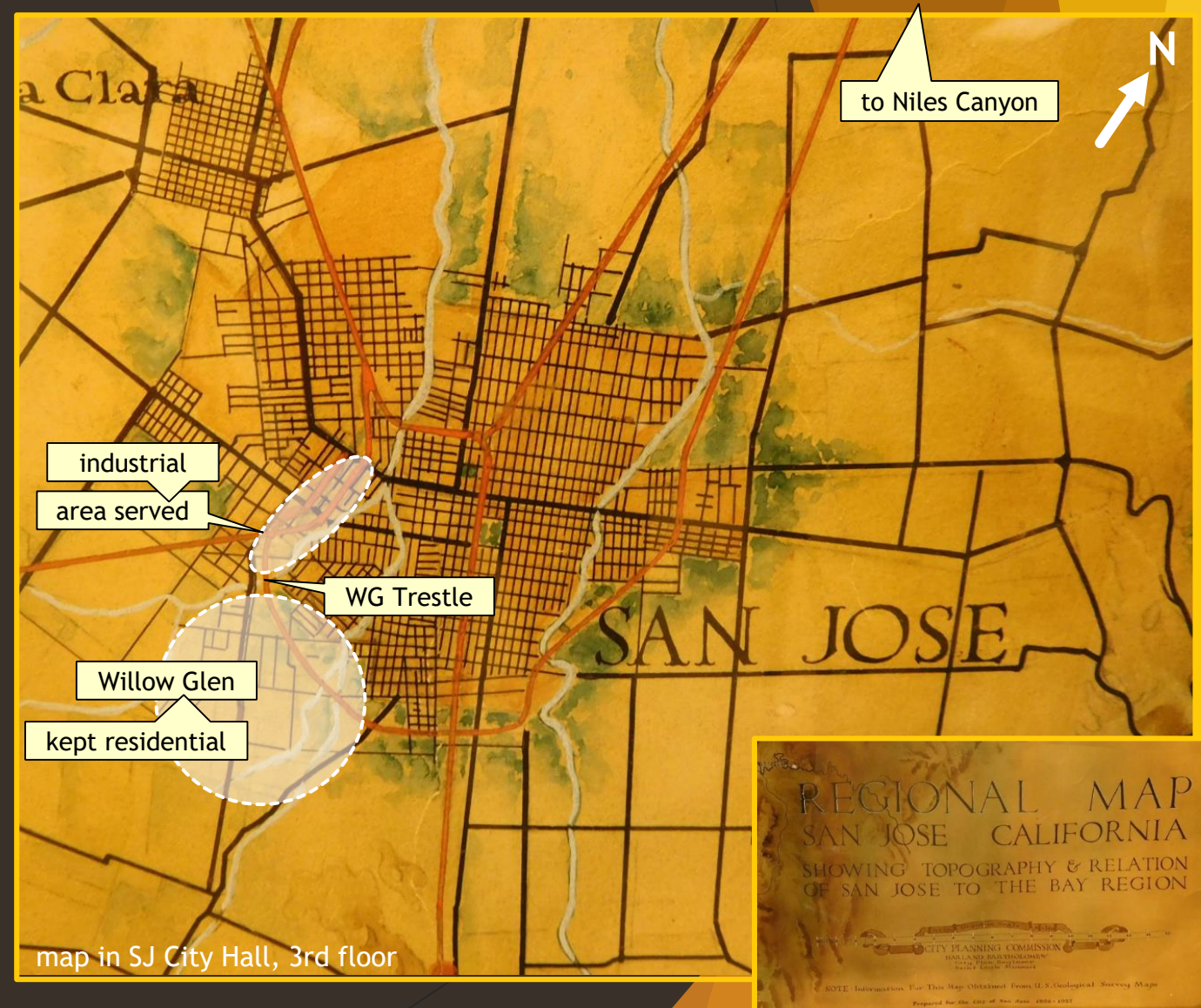


Confusion about Willow Glen and San José?

From the City's complaint:

“If we assume ‘local’ historic significance would be reduced to a neighborhood, the two factors cited in the nomination, staff report, and findings in support of Criterion 1 are in direct conflict and cannot be reconciled. According to the nomination, staff report, and finding, the trestle is historically significant for (1) ‘its association with the industrial development of San José’; and (2) ‘reducing the effects of industry on the residential community of Willow Glen.’ ... All of this industrial development, however, occurred outside Willow Glen. There can be no association with industrial development if the definition of ‘local’ is restricted to the Willow Glen neighborhood.”

The WG Trestle is at the border of the Town of Willow Glen, and it impacted both Willow Glen and San José.



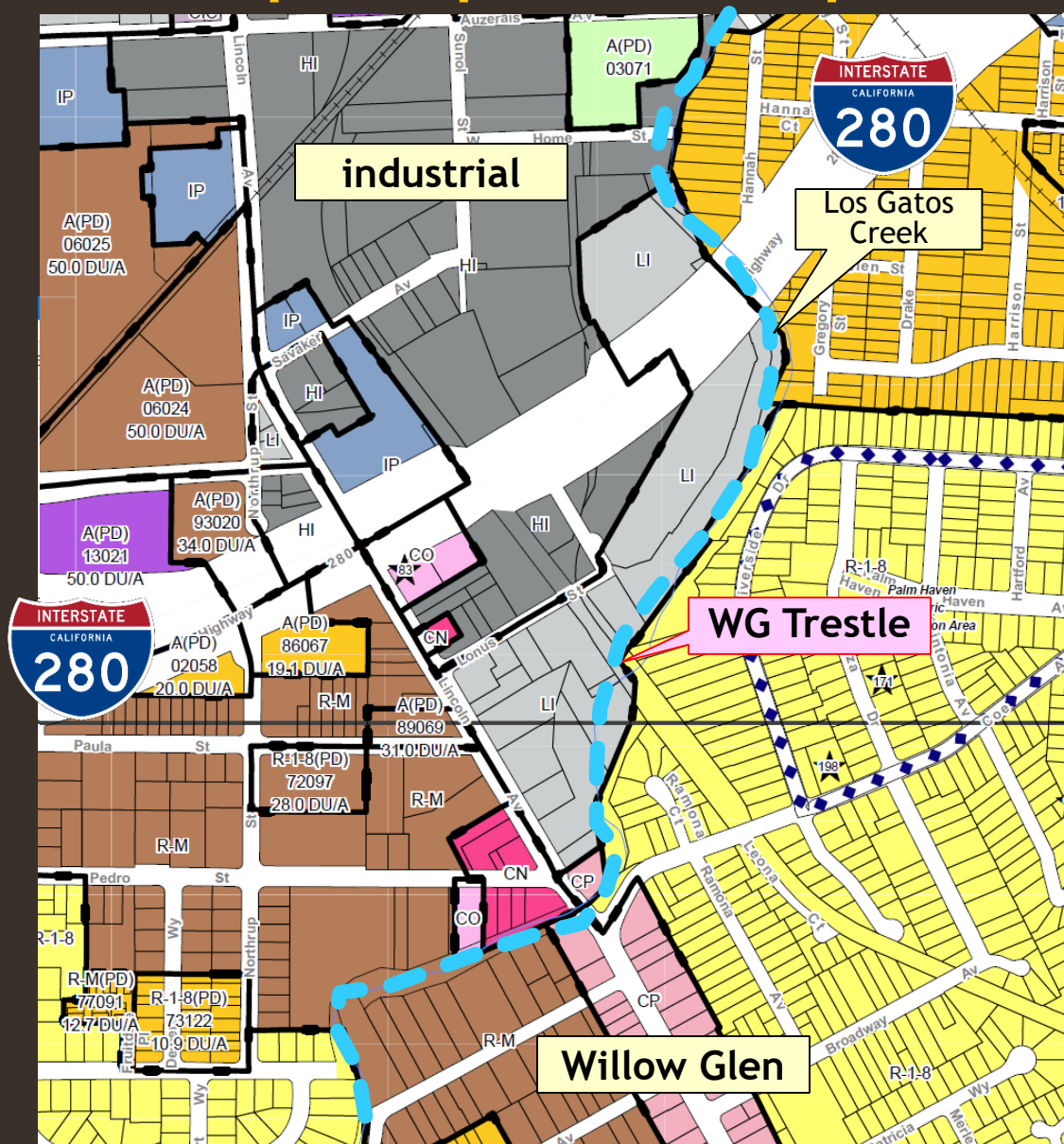
Trestle at the boundary of Willow Glen & San José

- ▶ Willow Glen was an unincorporated community in 1922 when Western Pacific built the trestle
- ▶ The trestle was at the edge of the Town of Willow Glen's boundaries
- ▶ Willow Glen has been annexed into San José, but it still retains its sense of community.

Willow Glen: an Independent Town, 1927-1936

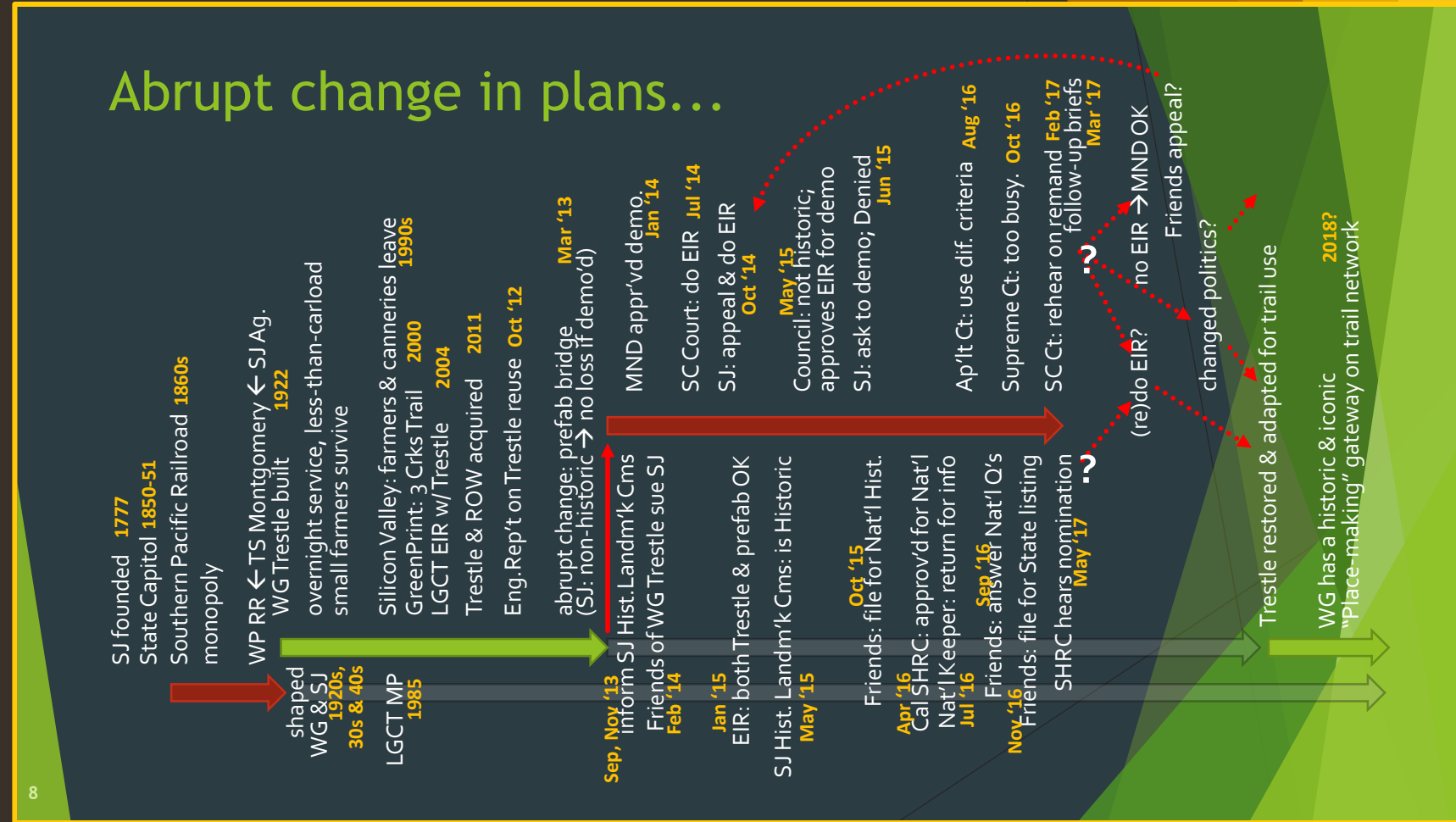


Dev'lpmt patterns persist



Multi-prong approach: Civic, Legal, Historic & Public

- ▶ Courts have recently ruled against us. (We're evaluating next steps.)
- ▶ It did give us 4 years:
 - ▶ Increased public's awareness of the trestle
 - ▶ Gave us time to research trestle's history & apply for State Historic Listing
 - ▶ Raised public's interest in community & historic preservation overall.
- ▶ **The SHRC & trestle's historic status are not impacted by the court's decision.**



City's evidence

The City showed two 1-page memos from 2004, from when it planned to reuse the trestle.

Wayne Donaldson, the author of one, later said that “the City council member’s totally confused on that letter that I wrote in 2004.”

(The Court couldn’t even consider this info as it was “after the fact”.)

BRIDGE EVALUATION SHORT FORM

Note: This form is only to be used for structure types listed in the Caltrans/FHWA/SHPO Memorandum of Understanding dated December 12, 1980.

Project: The Los Gatos Creek Trail – Reach 4 project would remove the existing railroad tracks from the Los Gatos Creek Railroad Bridge in San Jose, California and develop a surface on the bridge for a pedestrian trail.

EA: STPLER 5005 (071) Local Assistance Project

Location: Los Gatos Creek Trail – Reach 4, City of San Jose (see Map, attached)

County/Route/Postmile: Santa Clara County

Bridge Number: Not applicable

Bridge Name: Los Gatos Creek Railroad Bridge

Description: This railroad bridge spans Los Gatos Creek, just north of Ramona Court in San Jose and south of Interstate 280. The superstructure of the single-track bridge is a timber stringer trestle with an open deck. The stringers are aligned in rows directly beneath the tracks. The substructure consists of timber pile bents with timber caps. Timber runners tie the rows of timber pilings together. The pilings are driven directly into the ground with no footings.

History: Date of construction/designer:
The bridge is on the Western Pacific Railroad line from Niles to a freight depot at Bush Street and The Alameda in San Jose completed in 1922. The bridge was originally constructed in 1922, but the trestles and superstructure were likely replaced during the last 30 or 40 years. The design is based on standard plans for wood trestle bridges.

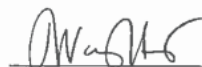
Other historical information (persons, events - e.g. WPA/CCC):

This bridge is a typical example of a common type and has no known association with important events or persons in local history

Prepared by: Ward Hill

Date: May 19, 2004

Position: Consulting Architectural Historian



Name



Title

http://wgtrestle.org/bridge_evaluation_05-19-2004.pdf

STATE OF CALIFORNIA – THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

OFFICE OF HISTORIC PRESERVATION DEPARTMENT OF PARKS AND RECREATION

P.O. BOX 942866
SACRAMENTO, CA 94298-0001
(916) 653-6624 Fax: (916) 653-8824
calshpo@ohp.parks.ca.gov
www.ohp.parks.ca.gov



September 10, 2004

REPLY TO: FHWA040813A

Brian Ramos, Chief, Office of Cultural Resource Studies
California Department of Transportation
P. O. Box 23660
OAKLAND CA 94623-0660

Re: National Register Eligibility Determination and Finding of No Historic Properties Affected, Los Gatos Creek Trail Project, San Jose, Santa Clara County.

Dear Mr. Ramos:

Thank you for submitting to our office your August 11, 2004 letter and Historic Property Survey Report (HPSR) regarding the Los Gatos Creek Trail project in the City of San Jose, Santa Clara County. The City of San Jose proposes to pave the Los Gatos Creek Trail to a width of 3.65 meters (12 feet) plus two 0.6 meter (2-foot) shoulders from Coe Avenue on the south to Auzerals Avenue on the north. Except where it will pass under I-280, the trail will be constructed outside the top-of-bank of Los Gatos Creek. An archeological resources record search conducted at the Northwest Information Center at Sonoma State University and field inventory survey conducted by qualified archeologists revealed no known prehistoric or historic archeological resources within or adjacent to the project APE. No architectural resources were located within the project APE.

Pursuant to stipulation VIII.C.5. of the “Programmatic Agreement (PA) among the Federal Highway Administration, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and the California Department of Transportation Regarding Compliance with Section 106 of the National Historic Preservation Act, as it Pertains to the Administration of the Federal-Aid Highway Program in California” (PA), Caltrans is seeking my comments on its determination of the effects the proposed project would have on historic properties. On the basis of the information provided in the HPSR I acknowledge Caltrans’ finding, pursuant to Stipulation IX.A.2. of the PA, of “No Historic Properties Affected” for this undertaking.

Thank you again for seeking my comments on your project. If you have any questions, please contact staff historian Clarence Caesar by phone at (916) 653-8902, or by e-mail at ccaes@ohp.parks.ca.gov.

Sincerely,



Milford Wayne Donaldson, FAIA
State Historic Preservation Officer

http://wgtrestle.org/SHPO_concurrence_ltr_09-10-2004.pdf

Path forward

- ▶ The Court ruled against us, saying that the City's evidence, "thin as it is," is "sufficient". "That the Friends [of the Willow Glen Trestle] can point to other contrary and more recent evidence ... is irrelevant...."
 - ▶ The Court was not allowed to consider the SHRC rulings, since they occurred after the City's "decision date"
- ▶ *However:*
 - ▶ **The WG Trestle still stands**
 - ▶ State environmental rules preclude any non-emergency in-stream construction during the rainy season, which officially started Oct. 15th.
 - ▶ City's demolition permit from the Calif. Dept. of Fish & Wildlife expires Dec. 31st.
 - ▶ **A favorable historic ruling by the SHRC** will give leverage in discussions with the City, the State permitting agencies, various funding sources, and the public.

The Willow Glen Trestle is Historic

- ▶ This is the trestle that enabled Western Pacific to enter the San José market and to break the monopoly formerly held by Southern Pacific
- ▶ The WG Trestle shaped the development of the local area, then and to this day: residential in Willow Glen, industrial in western San José.
- ▶ The SHRC was not capricious and did not err when it decided that the WG Trestle is historic.

Southern Pacific was infamous for its monopolist practices

The Octopus

In popular magazines, the Southern Pacific was drawn as an octopus, with tentacles controlling every interest in California.

THE OCTOPUS

The Octopus grabs all its money and holds it in Nob Hill, a rich neighborhood in San Francisco. Charles Crocker, an owner of the Southern Pacific, lived in this house.

STANFORD AND CROCKER

The Octopus eyes are the faces of Southern Pacific railroad owners Leland Stanford and Charles Crocker.

TELEGRAPH OPERATORS

The Southern Pacific owned telegraph lines along their tracks.

WINE GROWERS

The railroad company had a monopoly over transporting wine out of San Francisco.

MUSSEL SLOUGH

A place in the Central Valley south of Fresno. In 1880, the Southern Pacific sent federal marshals to evict squatters on their land there. Seven settlers were "Killed by the Railroad Monster."

WHEAT EXPORTING SHIPS AND WAREHOUSES

The Southern Pacific owned most of the state's warehouses and ferry services.

STAGECOACH COMPANIES

The arrival of the railroad lines put stagecoach operators out of business.

LUMBER DEALERS

The Southern Pacific owned fleets of ships that carried lumber up and down the Pacific, giving them a monopoly over transportation costs.

FRUIT GROWERS

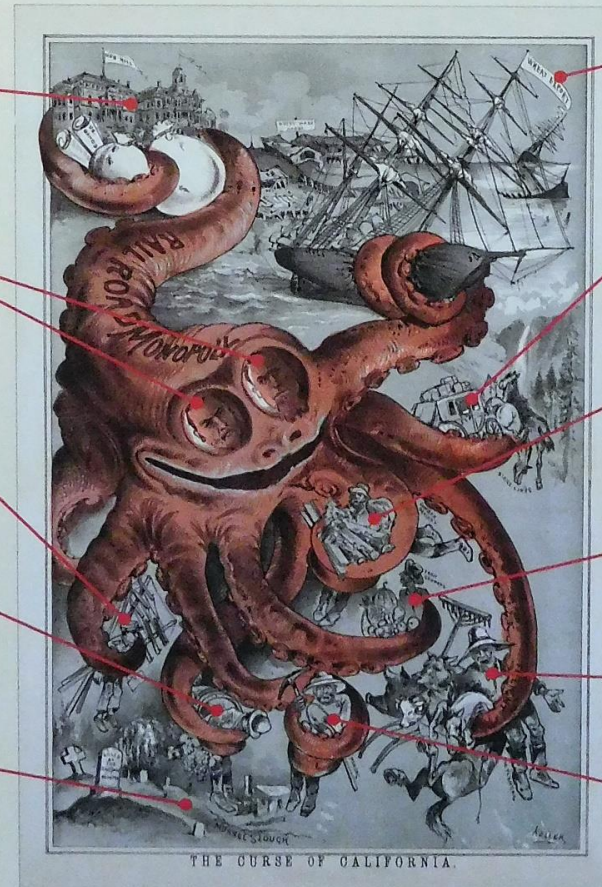
The Southern Pacific shipped almost all produce out of California and could charge high rates to do so.

FARMERS

Small farmers could barely turn a profit after they paid for freight charges.

MINERS

Miners had to pay high rates to ship their ore.



at the Oakland Museum

The Curse of California (The Octopus), by G. Frederick Keller. The Waag, 1892.

Furthermore,
... the trestle is also pretty.



Please help preserve this piece of our local history

The public is becoming ever more aware and appreciative of our dwindling ties to our past.

Please save the Trestle and deny the City's request for a redetermination.



Thank you.