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9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SANTA CLARA**
12

13 **Friends of the Willow Glen**
14 **Trestle,**
15 an unincorporated association;

16 Petitioners,

17 v.

18 **City of San José and City Council**
19 **of the City of San José;**

20 Respondents;
21 _____/

Case No. 2014-1-CV-260439

Petitioner's Corrected
Opening Brief
on Remand in support of
Petition for Writ of Mandamus

Date: February 3, 2017
Time: 9:30 am
Dept: 29a

Honorable Helen Williams

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Introduction

Council Members Campos and Rocha expressed that *due to the historical significance of the trestle*, they would not be supporting [demolition].¹

The Friends of the Willow Glen Trestle invoke mandatory protections of CEQA, a citizen-enforced statute. Members of Friends have long advocated safe, economical rehabilitation of the evocative 1921 Willow Glen Trestle for a unique pedestrian bridge within the Three Creeks Trail project. Back in 2014, a split vote of the San José City Council instead approved a generic steel replacement bridge, without benefit of an EIR.



The Willow Glen Trestle in 1955

¹ (Certified Administrative Record (CAR) 855, italics added [City Council Minutes approving demolition of the Willow Glen Trestle, January 2014].)

1 The Court need not decide the relative benefits or adverse impacts of either
2 rehabilitating the vintage trestle or installing a new steel bridge. The sole question
3 presented by this mandamus action on remand from the Sixth District is whether the
4 city’s proposed destruction of the trestle invokes an EIR process. Because there is
5 comprehensive evidence in this record that the unlisted trestle is *eligible* for listing in
6 the California Register of Historical Resources – the relevant criterion for treatment as
7 an historic resource under CEQA – the trestle must be treated as historic unless there
8 is substantial evidence in the record that the trestle is *not* eligible for listing. (*Friends of*
9 *the Willow Glen Trestle v. City of San José* (2016) 2 Cal.App.5th 457 (*Friends*), *passim*;
10 Pub. Resources Code, § 21084.1.) As explained below, no substantial evidence supports
11 the city’s findings that the trestle does not qualify as an historic resource.
12
13
14

15 The city will no doubt press its views as to the wisdom of demolishing the trestle.
16 Friends’ members passionately disagree, and the record reflects the city’s own experts’
17 opinions that rehabilitation is both safe and economical, but the long-term future of the
18 trestle is not here at issue. Because the trestle must be treated as historic, the city
19 Council may exercise its land use discretion only *after* full compliance with CEQA.
20

21 As a matter of law, demolition of an historic resource results in significant
22 environmental impact. (Pub. Resources Code, § 21084.1.) That potential impact triggers
23 a public EIR process. The city’s reliance on a mitigated negative declaration was thus
24 unlawful. This Court’s writ is requested in the public interest, to order that the approval
25 of demolition be set aside pending the city’s compliance with the mandates of CEQA.
26
27
28

Statement of the Case

1
2 The Friends will endeavor to clarify the confusing chronology of this case without
3 extraneous detail. After the City Council approved the demolition of the Willow Glen
4 Trestle in 2014 without an EIR process, the Friends filed this action to seek compliance
5 with CEQA. When the city announced its intention to proceed with demolition of the
6 trestle, the Friends timely sought and obtained a preliminary injunction to preserve the
7 status quo. Following briefing and a hearing on the merits, the Honorable Joseph
8 Huber granted the mandamus petition and issued a writ requiring the city to set aside
9 its trestle demolition approval and to reconsider approval only after CEQA compliance.
10
11

12
13 The city both filed an appeal *and* proceeded to prepare and certify a project EIR
14 to analyze the impacts of demolition and to consider project alternatives. However,
15 since the city did not (and still has not) reconsidered its approval of demolition based
16 on that EIR process, as required by the writ, the adequacy of the EIR was not
17 adjudicated and the writ was not discharged.² When the city nonetheless sought to
18 proceed with demolition in 2015 while the appeal was pending, its motion was denied
19 before the Superior Court and then summarily denied by the Court of Appeal. The
20 trestle remains standing in place.
21
22

23
24
25 ² While the city has taken the position that it is now too late for Friends to
26 judicially challenge the adequacy of the 2015 EIR or the city's CEQA compliance relative
27 to that EIR process, that is incorrect. Certification of an EIR is not actionable on its
28 own. The CEQA statute of limitations begins to run upon *approval of a project* based
on that EIR. (Pub. Resources Code, § 21167, subd. (c).) The city has not considered any
such approval and so its compliance with CEQA remains unadjudicated.

1 The Sixth District then granted the city’s appeal on the merits in 2016, solely as
2 to the standard of review applicable to the city’s decision that the Willow Glen Trestle
3 is not an historic resource for purposes of CEQA review. (*Friends, supra, passim.*)
4
5 In relevant part, the Court held that *Architectural Heritage Association v. County of*
6 *Monterey* (2004) 122 Cal.App.4th 1095 “did not accurately state the appropriate
7 standard of judicial review that applies in this case;” to wit, that the substantial
8 evidence standard and not the ‘fair argument’ standard must be applied to the question
9 of whether the trestle is historic for purposes of CEQA review. (*Id.* at 460 and *passim.*)
10

11 The Court of Appeal did *not* decide whether the trestle “is a historic resource as
12 defined by CEQA,” as the city had urged, instead directing “the process for determining
13 whether the Trestle is an historic resource” for purposes of CEQA. (*Friends, supra,*
14 *2 Cal.App.5th at 465, n.9.*) On remand, the Court directed that the 2014 judgment and
15 writ shall be vacated and that a new judgment shall issue as to “whether the City’s
16 adoption of the MND is supported by substantial evidence that the Trestle is not a
17 ‘historical resource’ under CEQA.” (*Id.* at 473-474.)
18
19

20 The California Supreme Court denied Friends’ petition for review. By stipulation
21 of the parties on remand, the judgment and writ are now vacated.
22

23 The Friends pray that the judgment be granted and a peremptory writ again
24 issues. Since the city has already prepared an EIR it may simply set aside its demolition
25 approval, update the EIR with current information and recirculate as needed (*e.g., see*
26 *post* at 5), and comply with CEQA if it chooses to reconsider demolition of the trestle.
27
28

Status of the Administrative Record

1
2 The Friends filed a timely election to prepare the administrative record in
3 February 2014. Without burdening the Court with the unnecessarily adversarial process
4 that ensued to complete the record, the city certified and lodged an incomplete record
5 despite Friends' election and extensive efforts. Friends lodged a supplemental record,
6 referenced in the briefs as SuppAR, containing the documents that the city refused to
7 include. Judge Huber did not rule on whether the supplemental record documents
8 should be considered as part of the appropriate record before the Court, finding that
9 the writ petition could be granted based on the city's record. (Order Re: Petition for
10 Writ of Mandamus, July 2014 (*2014 Order*) at 2, n.1.)
11
12
13

14 The Friends now move to augment the record with the supplemental record, and
15 will continue to cite to the CAR and SuppAR rather than lodging one complete record.
16

17 A further clarification regarding the record involves documents generated after
18 January 2014 when the demolition project was approved. The pleadings before this
19 Court include not only the trial court proceedings in 2014 but new information
20 generated during appellate proceedings in 2015-2016, including (1) the contents and
21 conclusions of the EIR certified by the city in 2015 regarding the historic qualifications
22 of the trestle and (2) the unanimous determination of the California State Historical
23 Resources Commission in April 2016 that the trestle qualifies for listing in the
24 California Register. Although encompassed in the pleadings, these new facts and related
25 documents are not part of the 2014 record and are irrelevant at this time.
26
27
28

Statement of Facts

1
2 The Willow Glen Trestle was built by Western Pacific Railroad, a rival to then-
3 dominant Southern Pacific Railroad. Following World War I, when Western Pacific was
4 cash-strapped and looking for freight income it built the undersized Willow Glen
5 Trestle that forced trains to operate very slowly, under 10 miles an hour. Its design and
6 construction in 1921 reflected the unique conditions of a time and place: the post-World
7 War I materials' shortage, Western Pacific's economic constraints, and the demand for
8 quick service by new canneries in Willow Glen and across San José. (CAR 1453-1454.)
9

10
11 For decades, the Southern Pacific (SP) railroad tracks had followed 4th Street
12 right through the center of San José. When that railroad's franchise expired at the turn
13 of the twentieth century, the city began pressuring SP to relocate its tracks. The State
14 Railroad Commission recommended that SP loop around the city and share tracks with
15 Western Pacific. However, because of the undersized design of the trestle, this was
16 infeasible. SP built its own crossing of Los Gatos Creek — the bridge near San Carlos
17 Street that is still in use today. (CAR 1453-1454.)
18
19

20 The Willow Glen Trestle was only strong enough to carry freight for trains that
21 ran 'dead slow.' This caused traffic congestion and led to the 'grade separation'
22 movement and the eventual incorporation of the Town of Willow Glen. (CAR 544, 1453.)
23

24 It took some years for SP to build its tracks around San José and in the
25 meantime Western Pacific served the area canneries. The route became Western
26 Pacific's 'cash cow' and enabled the railroad to become profitable and expand its
27 operations. By the 1930s, Western Pacific had a network of lines traversing the
28

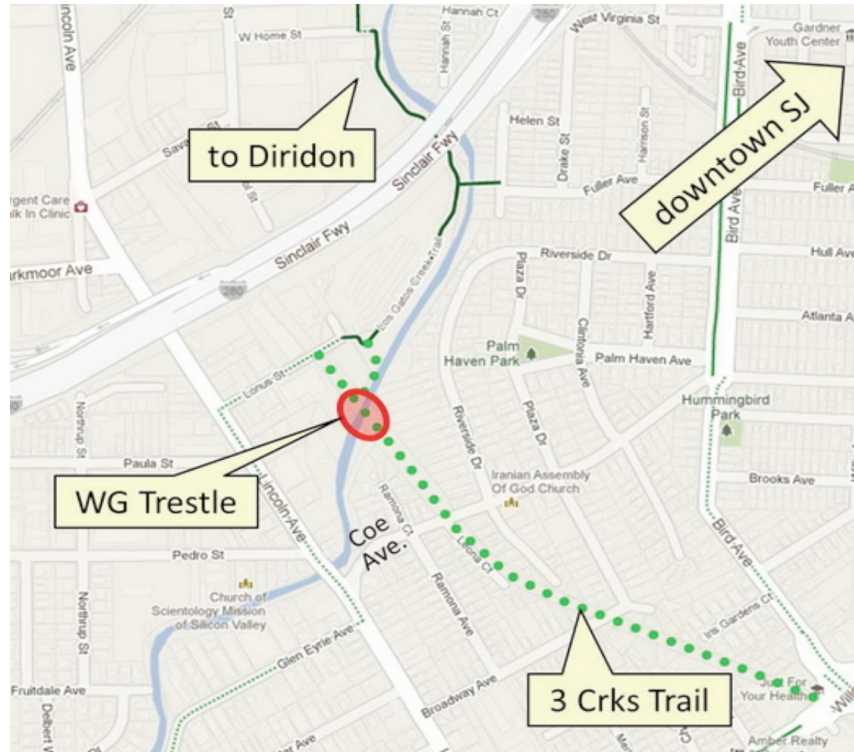
1 Bay Area eastward across the Sierras, an alternative to the SP monopoly. (CAR 1454.)

2 If the Willow Glen Trestle had been just a common trestle, Western Pacific would
3 not have developed a lucrative cannery business, SP's dominance would have stayed
4 unchallenged, and the Bay Area would have developed differently. (CAR 1454.)

5
6 For decades, members of the Friends have been volunteering to benefit the Los
7 Gatos Creek Trail and Three Creeks Trail, and as part of that effort have worked with
8 city planners to incorporate the Willow Glen Trestle into the trail network. The Friends'
9 members provided information to planners and government officials about the trestle
10 and railroad rights-of way, seeking grants so that the city could acquire them for the
11 Three Creeks Trail and its connection to the Los Gatos Creek Trail. (*E.g.*, CAR 1110-11.)

12
13
14 The city is continuing the process of developing the Los Gatos Creek Trail and
15 the Three Creeks Trail to improve its pedestrian and bicycle trail system. In 2004, the
16 city approved a project it called Los Gatos Creek Trail, Reach 4, based on a mitigated
17 negative declaration. That project envisioned repair and continued use of the Willow
18 Glen Trestle as part of the trail system. cursory historic review of the trestle,
19 which was at that time not threatened with demolition, indicated no known historic or
20 archaeological resources. (CAR 871; see *post* at 16-17.)

21
22
23 In January 2014, the city published a CEQA initial study and mitigated negative
24 declaration for a new Three Creeks Trail Pedestrian Bridge project, proposing to
25 demolish the city-owned Willow Glen Trestle and replace it with a prefabricated single-
26 span steel truss bridge, repurposing rehabilitation grant monies. (*Eg.*, CAR 371-426.)



(SuppAR 163.)

Relying on the cursory 2004 documents, the city’s initial study concluded that the trestle design was based on ‘standard plans’ and is ‘not unique’ nor qualified for the California Register although it is ‘locally important.’ (CAR 405.) The initial study conceded that “comments from local residents suggest additional local historical interests, including the role of the railroad spur and the trestle in the incorporation of Willow Glen and activism regarding roadway/railroad grade separations.” (*Ibid.*)

The record is replete with fact-based opinions regarding the trestle’s historic qualifications (*post*) including the expert opinion of architect Marvin Bamberg, AIA, that suffices on its own. (CAR 1464-1465.) The San José Historic Landmarks Commission declared that it would have designated the trestle an historic landmark if presented with that option by city staff in a timely fashion. (SuppAR 189.)

1 The City Council approved the demolition project in January 2014 based on the
2 mitigated negative declaration (CAR 1-14), refusing multiple requests for preparation of
3 an EIR. The City Council majority declined to find historic status for the trestle and
4 voted to approve the demolition project. Councilmembers Xavier Campos and Donald
5 Rocha voted against the mitigated negative declaration and against the demolition “due
6 to *the historic significance of the trestle.*” (CAR 855, italics added.)
7
8

9 **Standard of Review**

10 Under CEQA, the low-threshold ‘fair argument’ standard of review applies to an
11 agency’s duty to prepare an EIR for any project that may have a significant
12 environmental impact. However, since in 2014 the Willow Glen Trestle had not yet been
13 determined eligible for the California Register, the City Council was required to exercise
14 its discretion based on substantial evidence in the record as to whether the trestle is an
15 historic resource for purposes of CEQA. (*Ante* at 2; *Friends, supra, passim.*)
16
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18

19 ***Low Threshold for EIR Preparation.*** While the City Council has discretion to
20 determine the historic status of the trestle based on substantial evidence, in all other
21 respects CEQA’s well-settled EIR threshold standards continue to apply.
22

23 The purposes of an EIR are very practical: to provide detailed information about
24 potential project impacts, to analyze ways to minimize them, and to evaluate feasible
25 alternatives. (Pub. Resources Code, § 21061; CEQA Guidelines [14 Cal.Code Regs.],
26 § 15003 subd.(f).) CEQA’s goal is to “assure that the environmental consequences of a
27 government decision on whether to approve a project will be considered before, not
28

1 after, that decision is made.” (*Stanislaus Natural Heritage Project v. County of*
2 *Stanislaus* (1996) 48 Cal.App.4th 182, 196.) A good EIR will “demonstrate to an
3 apprehensive citizenry” that a public agency has analyzed and considered the impacts
4 of its actions. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 86.)

5
6 The mitigated negative declaration relied upon by the city to approve demolition
7 of the Willow Glen Trestle can be upheld only if “clearly no significant effect on the
8 environment would occur, and ... there is no substantial evidence, in light of the whole
9 record” that significant impacts may occur as a result of project approval, taking into
10 account any adopted mitigation measures. (Pub. Resources Code, § 21080, subd. (c),
11 italics added; Guidelines, § 15064, subd.(f), subd.(2).) The CEQA Guidelines echo the
12 statute, requiring that mitigation measures be sufficient to reduce potentially
13 significant impacts “to a point where *clearly* no significant effects would occur.”
14 (Guidelines, § 15070, subd.(b), subd.(1); italics added.)
15
16

17
18 ***The Fair Argument Standard of Review.*** The city must prepare an EIR if
19 destruction of the trestle “may have a significant impact on the environment.” (Pub.
20 Resources Code, § 21151, subd.(a).) There is a “low threshold requirement for initial
21 preparation of an EIR [that] reflects a preference for resolving doubts in favor of
22 environmental review when the question is whether any such review is warranted.”
23 (*League for Protection of Oakland’s Architectural etc. Resources v. City of Oakland*
24 (1997) 52 Cal.App.4th 896, 905.)
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1 The low threshold triggers an EIR rather than a negative declaration whenever
2 substantial evidence in the record supports a ‘fair argument’ that significant impacts
3 may occur, even if there is also substantial evidence supporting a different conclusion.
4
5 (*Friends of “B” Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1000-1003;
6 Guidelines, § 15064, subd.(f), subd.(l).)

7 In applying the fair argument standard to a mining project, *Sierra Club v. County*
8 *of Sonoma* (1992) 6 Cal.App.4th 1307 explained that “deference to the agency’s
9 determination is not appropriate and its decision not to require an EIR can be upheld
10 only when there is *no credible evidence to the contrary.*” (*Id.* at 1318, italics added.)

11
12
13 ***Evidence Needed to Support a Fair Argument.*** Courts consider “facts,
14 reasonable assumptions predicated upon facts, and expert opinion supported by facts”
15 that support a fair argument of a project’s significant environmental impact. (Pub.
16 Resources Code, § 21082.2, subd.(c).) The Guidelines echo this definition and further
17 define substantial evidence as “enough relevant information and reasonable inferences
18 from this information that a fair argument can be made to support a conclusion, even
19 though other conclusions might also be reached.” (Guidelines, § 15384 subd.(a);
20 *League for Protection, supra*, 52 Cal.App.4th 896, p. 905.)

21
22
23 Case law confirms that the fact-based opinions of appointed commissioners with
24 knowledge of environmental matters qualify as substantial evidence. *Stanislaus*
25 *Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, reversed a ruling
26 denying a peremptory writ, holding that an EIR was required based on a project’s
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1 potential growth-inducing impacts. In discussing the substantial evidence in the record
2 supporting a fair argument of environmental effects, the Court found that it was
3 ... not unreasonable to presume the agency relied upon by the
4 County to study and evaluate development proposals, in light
5 of its prior experience in the area, has expertise upon the subject
6 and is qualified to assess the data presented and to render opinions
7 thereon. [Citation] ... It is undisputed that members of the planning
8 commission are experienced in matters of planning and development.

9
10 (*Id.* at 155.) Consistently, in *Oro Fino Gold Mining Corporation v. County of El Dorado*
11 (1990) 225 Cal.App.3d 872, a county supervisor’s fact-based opinion qualified as
12 substantial evidence supporting a fair argument. (*Id.* at 883.)

13
14 ***Application of the Fair Argument Standard to Historic Resources.***

15 From its inception in 1970, CEQA has applied equally to historic and natural resources.
16 (*E.g.*, Pub Resources Code, §§ 21001 subd.(b) [“... it is the policy of the state to take all
17 action necessary to provide the people of this state with ... historic environmental
18 qualities.”].) Our California Supreme Court upheld CEQA’s protections to historic
19 resources in *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165 and
20 *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116.

21
22
23 Interestingly, historic resources present the only category of impact accorded its
24 own definition for additional CEQA protection. In 1992, Public Resources Code section
25 21084.1 was codified to provide that “a project that may cause a substantial change in
26 the significance of an historical resource is a project that may have a significant impact
27
28

1 on the environment.” Historical resources include “... a resource listed in, or
2 determined to be eligible for listing in, the California Register of Historical Resources
3 ...” (Pub. Resources Code, § 21084.1) CEQA Guidelines section 15064.5 provides that “a
4 resource shall be considered by the lead agency to be ‘historically significant’ if the
5 resource meets criteria for listing on the [California Register].” The Register criteria
6 relevant to this case include: (A) Is associated with events that have made a significant
7 contribution to the broad patterns of California’s history and cultural heritage and
8 (C) Embodies the distinctive characteristics of a type, period, region, or method of
9 construction, or represents the work of an important creative individual, or possesses
10 high artistic values.” (*Id.* at subd.(a), subd.(3); § 5024.1, subd.(c).)

14 Historic status is not a political choice for elected decisionmakers, but is a matter
15 of identification, as is the recognition of an endangered plant or animal species. Too
16 often, public agencies make historic resource identification decisions based on the
17 prospective plans for the property, as in *League for Protection and Architectural*
18 *Heritage Association*, and in this case. But an agency’s land use preferences do not
19 lawfully change an affected resource’s quality; an endangered plant does not suddenly
20 change its status because a worthy project applicant proposes to pour concrete over it.

23 Whether the Willow Glen Trestle is historic under CEQA is within the discretion
24 of the City Council to decide. However, the Council’s application of the facts to CEQA’s
25 requirements must proceed in the manner required by law, accompanied by findings
26 supported by substantial evidence that discloses the analytic route between the record
27 and the decision. (*Topanga Association for a Scenic Community v. County of Los*

1 *Angeles* (1974) 11 Cal.3d 506, 511–512, 515 (*Topanga*.) As the California Supreme Court
2 ruled just last week in *Orange Citizens for Parks and Recreation v. Superior Court*
3 ___ Cal.5th ___ (December 12, 2016, S212800), “*deference has limits*,” italics added.)
4

5 Without preparation of an EIR, no consideration of project alternatives is
6 required, and resources that may well qualify as historic may be approved for
7 demolition, as here, without mitigation for their loss. This does not happen with
8 destruction of plant and wildlife habitat, and the loss of historic resources can have
9 even greater impacts to the affected community due to their unique qualities. The
10 California Register provides objective criteria to identify potential historic resources.
11 (Guidelines, § 15064.5, subd.(a), subd. (3).)
12

13 **Discussion**

14
15 If the trestle is an historic resource, its demolition would have significant
16 environmental impacts that cannot be approved on the basis of a mitigated negative
17 declaration. This Court has carefully reviewed the Friends’ evidence that the trestle is
18 historic and finds it to be ***substantial and credible***. (2014 Order at 10-13.)
19

20 ... there are several statements in the record from local citizens and at least two
21 experts stating that the trestle has historical value and/or referencing the
22 material from the Willow Glen archives uncovered after 2004 that may support a
23 finding that the trestle is historic. These statements are substantial evidence ...
24 that the trestle’s demolition may have a substantial impact on the environment ...

25 (Order at 10.) The Court proceeds to discuss a great deal more evidence, in depth. (*Id.*
26 at 10-13.) That determination of substantial evidence in support of historic status was
27 not reversed by the Court of Appeal.
28

1 However, the judgment was vacated because the *Friends* ruling disallows the
2 application of the fair argument standard to the question of historic status of an
3 unlisted resource, which the Friends had urged consistent with the holding of
4 *Architectural Heritage Association v. County of Monterey, supra*, 122 Cal.App.4th at
5 1109. The sole question on remand is whether the trestle qualifies as historic when the
6 substantial evidence standard is applied to the city’s contrary determination. As Friends
7 have argued for three years, historic status is proven under either standard.
8

9
10 ***CEQA’s Application to Historic Resources.*** The paramount importance of
11 the EIR process, often and aptly described as the “heart of CEQA,” informs the Court’s
12 review of the record. (CEQA Guidelines [14 Cal.Code Regs.] § 15003, subd.(a).) An EIR
13 “protects not only the environment but also informed self-government.” (*Citizens of*
14 *Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, p. 564.) The Supreme
15 Court held in *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247 that
16 CEQA must be interpreted “to afford the fullest possible protection to the environment
17 within the reasonable scope of the statutory language.” (*Id.*, p. 259; Guidelines, §15003,
18 subd. (f).) *Bozung v. LAFCO* (1975) 13 Cal.3d 263 holds that it is “of course, too late to
19 argue for a grudging, miserly reading of CEQA.” (*Id.*, p. 274.)
20
21
22

23
24 ***The City’s Evidence is Not Substantial.*** The city relies upon its CEQA initial
25 study (CAR404-405, CAR442-448) and staff report (CAR 499-502). It contracted for an
26 expert report from CHsM Hill that declared rehabilitation of the trestle to be safe,
27 feasible, and less costly than demolition and new construction. (CAR 883, 903.) But it
28

1 then made conclusory findings that “... the design is based on standard plans for wood
2 trestle bridges” and

3 ... has no known association with important persons; the bridge materials were
4 likely replaces [sic] during the last 30 or 40 years; the trestle is not unique and is
5 unlikely to yield new, historically important information; and the trestle did not
6 contribute to ‘broad patterns of California’s history and cultural heritage.’
7

8 (CAR 3.) These findings do not track relevant criteria for California Register eligibility
9 for association with events that have made a significant contribution to the broad
10 patterns of California’s history and cultural heritage or embodying the distinctive
11 characteristics of a type, period, region, or method of construction. (*Ante* at 13.)
12

13 The city significantly relies upon two wholly-irrelevant statements from 2004
14 relevant to a prior city project that had proposed *rehabilitation* and reuse of the Willow
15 Glen Trestle. First, a short and essentially irrelevant 2004 letter from the State Historic
16 Preservation Officer (SHPO) M. Wayne Donaldson, FAIA, addressed the Los Gatos
17 Creek Trail project, which did not then threaten the Willow Glen Trestle within its “area
18 of potential effect (APE)” in federal parlance. (CAR 871.) Without referencing the
19 trestle, the SHPO stated in general terms that “based on the information provided” in
20 the then-current Historic Property Survey Report, the proposed Los Gatos Creek Trail
21 project would have no effect on historic properties. (*Ibid.*) The second document a
22 simple 1-page “Bridge Evaluation Short Form” prepared by historian Ward Hill. (CAR
23 444/859 [Ward Hill], 871 [SHPO], *both attached.*) These cursory statements were
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25
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1 relied upon in the initial study along with the fact that the trestle is not [yet] listed in
2 any historic registers. (CAR 404-405.)

3 This Court discounted the substantiality of the city's evidence as follows:

4 The City's 2013 MND claims in part that '[t]he project will not have a significant
5 impact on cultural resources, and therefore no mitigation is required.' *The prior*
6 *2004 MND for a trail system that proposed incorporating the existing trestle is*
7 *the City's main evidence for its conclusion that the Trestle is not a historical*
8 *resource. The evidence from 2004 is, at best, sparse and conclusory.* The 2004
9 Trail MND the City relies on did not propose any 'substantial adverse change' to
10 the Trestle. It stated to the public that the Trestle would be incorporated into the
11 trail system and that '[s]ix to eight-foot high security fencing would be installed
12 on both sides of the trail on top of the trestle bridge, which will be covered with
13 either wood or synthetic decking material.' CAR 0023 ...

14
15 (Order at 3, italics added.)

16 Aside from the summary nature of the two 2004 opinions that were addressing a
17 very different project that admittedly did not meet CEQA requirements for the 2014
18 demolition project, significant new information about the historic significance of the
19 trestle vis-à-vis the development of Willow Glen was discovered in 2008. (*Post* at 19.)
20 The archives were not yet available in 2004 and thus were not considered. (*Ibid.*)

21
22
23 ***The Friends' Evidence is Substantial.*** This Court's judgment that evidence
24 of historic status is substantial was not disturbed on appeal, and Friends will only
25 briefly summarize that evidence to provide context. Standing alone, the opinion of well-
26 credentialed San José preservation architect Marvin Bamberg, AIA, an expert listed in
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28

1 the California Historical Resources Information System (CHRIS), suffices. (CAR 1464-
2 1465.) “Bamburg’s unchallenged credentials and expertise are unassailable.” (CAR
3 1465.) He provided a fact-based professional opinion that the Willow Glen Trestle
4 qualifies for listing in the California Register under Criteria 1 [A] [important events]
5 and 3 [C] [distinctive characteristics]. (CAR 1466; Pub. Resources Code, § 5024.1,
6 subd.(c).) Further, “[i]ts rehabilitation and reuse as a portion of the Los Gatos Creek
7 Trail is important to the locale and history of this unique area of San Jose.” (CAR 1464.)
8
9 At the 2014 City Council hearing at which the demolition project was approved,
10 Councilmember Xavier Campos voted no, based in part on Bamburg’s expertise:

11
12 ... you’ve got other entities, including a letter from Marvin Bamburg, who used to
13 sit on our Preservation Action Council Advisory Board and also has a business in
14 Willow Glen, ... and he’s a respected person in this community ... is basically
15 telling us ... you can make an argument that it is historical ... I’m concerned with
16 the elimination of a number of historical structures in this city. There aren’t very
17 many wooden trestles like this around. I didn’t even know it existed until ... I
18 went to go see for myself, and when you get down to the creek, I mean, it’s a jewel
19 ... I’m even that much more concerned that it’s that easy for us to make a
20 determination that something is not historical when ... you see that it had a huge
21 impact in the history of this valley.

22 (CAR 813-816.)

23
24 Substantial corroborative evidence of historic status was explained by this Court’s
25 Order at 10-13; three *Mercury News* editorials and opinion pieces (SuppAR 165-167,
26 181); a letter from the Santa Clara County Historical Heritage Commission (SuppAR
27 271); and a letter from the California Trolley and Railroad Corporation (SuppAR 183-
28

1 184). Other corroborating evidence includes multiple submissions by Friends' leader
2 Larry Ames, including new-found historical data in the archives of Willow Glen
3 documenting the historic importance of the trestle. (*E.g.*, CAR 1022-1023, 1108-1112,
4 1351-1360-1394-1396, 1404-1405, 1452-1455; SuppAR 163, 170-171, 192-200, 267-275.)

5
6 Substantial testimony regarding historic importance of the trestle is reflected in
7 transcripts of the City Council hearings at CAR 588-835. The undersigned counsel
8 summarized evidence in a letter to the City Council before its approval of demolition on
9 January 14, 2014. (CAR 1558-1561.) Important community emails and letters
10 addressing historic status are also collected at CAR 1108-1313 and SuppAR 201-266.

11
12 Other examples of corroborating evidence of historic status include the fact that
13 city staff never brought the Willow Glen Trestle project before the city's Historic
14 Landmark Commission for a formal determination of the trestle's historic status. The
15 project was calendared solely as a discussion item in November 2013. The official city
16 'Synopsis' of the Commission's meeting states: "Discussion regarding the Willow Glen
17 Trestle: After a community presentation and comments, the Commission commented
18 that if the Trestle had been brought to them earlier in the process, they would have
19 considered it 'landmark worthy.'" (SuppAR 189.)

20
21
22 City of Campbell Historic Preservation Board member Susan Blake wrote to the
23 San José City Council that after visiting the Willow Glen Trestle 'up close' she "was
24 amazed at the construction with its massive supporting beams, still in good condition
25 after 90 years ..." Further, "as a member of the [Historic Board] I believe the trestle
26 meets the criteria for historic significance and is worthy of saving ... This trestle is
27
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1 significant because it represents important social, economic and cultural history related
2 to transportation, the community of Willow Glen, and Santa Clara County.” (SuppAR
3 177-179, 268.)
4

5 **Conclusion**

6 The Willow Glen Trestle is of significant local interest and meets qualifying
7 criteria for listing in the California Register. The narrow but critical question before this
8 Court on remand from the Court of Appeal is whether the record contains substantial
9 evidence to support the city’s finding that the trestle is not historic for purposes of
10 CEQA. *It does not*; the city primarily relies on irrelevant opinions from 2004 and fails
11 to consider the newly-discovered Willow Glen archives that support historic status.
12

13 The Friends of the Willow Glen Trestle request that this Court grant the
14 mandamus petition and issue a peremptory writ ordering the city to set aside the
15 mitigated negative declaration and approvals for the Three Creeks Trail project. Since
16 the city has already prepared an EIR, it need only set aside its project approval, update
17 the EIR with current information and recirculate as needed, and comply with CEQA if
18 it chooses to reconsider demolition of the Willow Glen Trestle.
19
20

21
22 December 29, 2016

Respectfully submitted,

23
24 BRANDT-HAWLEY LAW GROUP

25
26 

27 _____
Susan Brandt-Hawley
28 Attorney for Friends of the Willow Glen Trestle

**OFFICE OF HISTORIC PRESERVATION
DEPARTMENT OF PARKS AND RECREATION**

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calshpo@ohp.parks.ca.gov
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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 Auzerais 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,

A handwritten signature in cursive script, appearing to read "Milford Wayne Donaldson".

Milford Wayne Donaldson, FAIA
State Historic Preservation Officer

CAR0871

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):

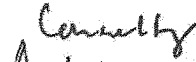
This bridge is a typical example of a common type and has no known association with important events or persons in local history

Prepared by: Ward Hill

Date: May 19, 2004

Position: Consulting Architectural Historian


Name


Connelly
Architectural Historian
Title

Friends of the Willow Glen Trestle v. City of San Jose, et al.
Santa Clara County Superior Court Case No. 114CV260439

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, CA 95442.

On December 29, 2016, I served one true copy of:

**Petitioner's Corrected Opening Brief on Remand
in support of the Petition for Writ of Mandamus**

_____ By placing a true copy enclosed in a sealed envelope with prepaid postage in the United States mail in Glen Ellen, California addressed to the persons listed below.

✓
_____ By placing a true copy enclosed in a sealed envelope by overnight mail at Glen Ellen, California addressed to the persons listed below.

_____ By emailing a copy to counsel as listed below.

Kathryn J. Zoglin
San Jose City Attorney's Office
200 E. Santa Clara Street
16th Floor
San Jose CA 95113

Attorney for Respondents

katie.zoglin@sanjoseca.gov

I declare under penalty of perjury that the foregoing is true and correct and is executed on December 29, 2016, at Glen Ellen, California.

Jeanie Stapleton