

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