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Uncertainty About an Agency's Discretion to Determine Historical Significance for Purposes of CEQA Is Finally Put to Rest

Resolving a long-standing debate, the court in [Friends Of The Willow Glen Trestle v. City Of San Jose \(H041563\)](#), 6th Dist. Aug. 12, 2016, ruled that San José's determination that a railroad trestle bridge was not a historic resource was to be evaluated under the substantial evidence standard of review. It rejected the argument that the fair argument standard should apply, even though San José made its determination in the context of a mitigated negative declaration.

San José proposed to demolish a wooden trestle bridge that had been constructed in 1922, and replace it with a steel truss bridge. The city evaluated the historical significance of the trestle bridge in an initial study based on a review of information that had been developed for an earlier project. Those earlier documents concluded that the trestle was typical of its kind, that bridge components had likely been replaced in the preceding decades, and that the trestle bridge was not historically significant. The initial study for the bridge concluded that, even though the trestle was "locally important," it was not historically significant.

Project opponents submitted a report claiming the trestle was "an important historical icon" and concluding that it qualified for listing in the California Register of Historic Resources. The city disagreed, and ratified the initial study's analysis by adopting a mitigated negative declaration.

The project opponents sued. They claimed the city's determination was invalid because the record contained a fair argument that the bridge project may have a significant effect on historic resources. The trial court agreed and ordered the city to prepare an EIR. The issue on appeal was whether the city's decision should be reviewed under the fair argument standard or the substantial evidence standard.

Panoramic view of Winters Vaca Valley Railroad Bridge from Railroad ave

The Willow Glen Trestle court relied on the language of section 20184.1 of CEQA, which identifies criteria under which a resource is deemed or presumed to be historically significant. It noted that the statute allows an agency to determine that resources presumed to be historic (such as resources listed on a local register) are not historically significant when it finds "the preponderance of evidence" supports that conclusion. Logically, if it makes such a finding, that finding must be upheld if it is supported by substantial evidence. The court then reasoned that the same standard must apply to determinations made under the final sentence in section 20184.1, which applies to resources that are not presumed historic. "Since the standard of judicial review for a presumptively historical resource is substantial evidence rather than fair argument, it cannot be that the Legislature intended for the standard of judicial review for a lead agency's decision under the final sentence of section 21084.1 to be fair argument rather than substantial evidence."

The court also addressed other court decisions on the issue. It ruled that those cases were not dispositive, as they did not explicitly consider the appropriate standard of review of a determination whether a resource is historically significant. More importantly, the Willow Glen Trestle court rejected its 1997 decision in *Architectural Heritage Assn. v. County of Monterey* -- the case which triggered a long-running controversy about the issue -- stating that "our decision in Monterey did not accurately state the appropriate standard of judicial review that applies in this case."

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