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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

LOS ANGELES CONSERVANCY,
a non-profit corporation;

Case No. BS 151056

Petitioner,

v.

**Petitioner's Combined
Reply Brief in support of
Petition for Writ of Mandamus**

**CITY OF WEST HOLLYWOOD;
CITY COUNCIL OF THE CITY OF
WEST HOLLYWOOD;** and Does 1 to 5;

Hearing Date: August 25, 2015
Time: 9:30 a.m.
Dept: 82

Respondents.

Honorable Luis A. Lavin

CHARLES COMPANY; SYSTEM, LLC,
and Does 6 to 10;

Real Parties in Interest.

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Introduction

‘... [H]ow lucky West Hollywood [i]s to have such a rare and handsome piece of architecture ... This building is a treasure! (AR 5176.)

Demolition of the Jones Dog & Cat Hospital Building on Santa Monica Boulevard — an important part of West Hollywood history — is untenable, as defenses offered by the City and project applicant (collectively, the City) are, at best, vague and subjective.

The City claims, without supporting evidence, that adaptive reuse of the evocative Streamline Moderne building will somehow defeat the quest for an ‘iconic’ project at its prime Melrose Triangle intersection. Saying so, over and over again, does not make it true. As pointed out by the Los Angeles Conservancy, the authenticity of the building’s architecture provides a design opportunity for a vibrant urban block. (AR 6980.)

The Conservancy allows that historic resources cannot always be adaptively reused. But this is not one of those times. The Conservancy was compelled to bring this action because the City’s subjective approach — essentially, ‘new is better!’ — threatens scores of other vintage resources in West Hollywood and Los Angeles County.

CEQA is not ambiguous on this point. The City may not permit demolition of an historic resource because an applicant prefers an ‘all-new-design.’ Such a rule would cause irreversible environmental impacts adverse to our matchless California culture. Any landmark could be demolished, contrary to CEQA’s salutary goal to rehabilitate and repurpose historic sites when feasible to do so. Here, adaptive reuse is feasible.

The Los Angeles Conservancy urgently requests that a peremptory writ issue in the public interest, setting aside approval of demolition of the Dog & Cat Hospital.

Material Factual Clarifications

‘Dr. Eugene C. Jones, a progressive veterinarian whose clients included the likes of Charlie Chaplin, Gloria Swanson and Rudolph Valentino, commissioned Wurdeman and Becket to expand and remodel his original 1928 animal hospital, transforming it into a sleek and modern facility.’ (AR 4668.)

The Conservancy offers factual clarifications to assist the Court’s review:

- **Historic Status is not at Issue.**

The EIR acknowledges that the Dog & Cat Hospital is a qualified historic resource. (*E.g.*, AR 663; Opening Brief, p. 2; City Brief, pp. 1, 3, 4; Applicant Brief, pp. 2-3.) While this project has been pending a long time, the City’s official Cultural Resources Assessment conducted by environmental consultant firm LSA *in July 2006* concluded that the historic building *should be preserved*. This is not new information:

One historical resource was identified in the project area. The building ... is an excellent example of early Streamline Moderne architecture. Demolition of the building would be a significant adverse impact to the project. *LSA recommends that the proposed project plans change to include preservation of the building.*

(AR 2182, italics added.) Formal historic designation has been neither sought nor bestowed. Unless there is a reason to do so, as when an owner needs formal historic status to qualify for local or federal financial incentives or the cost-saving protections of the State Historic Building Code, many deserving resources are never listed in any

1 historic register. And in West Hollywood, an application for landmark designation
2 cannot be pursued during the time that a development project is pending.

3
4 Historic status is a given and a non-issue in this case.

5
6 • **A New ‘Iconic’ Design is Not a Project Objective.**

7 The sole surprise in the City’s opposition brief is that it underscores rather than
8 downplaying its goal for a new, already-‘iconic’ design, critiqued in the opening brief.
9 (*E.g.*, Opening Brief, p. 17 [“...the Melrose Triangle project objectives do not include
10 ‘iconic modern design.’”].) The City even begins its brief by asserting that in 2003 the
11 applicant “sought entitlement to construct an ‘iconic’ mixed-use development project
12 for the Melrose Triangle gateway site ...” (City Brief, p. 1; see pp. 4, 6, 14.)

13
14 The citations offered by the City do not match its statement. The 2003
15 application and the later EIR do not use the word ‘iconic.’ (AR 536-569, 6202, 7625,
16 7655.)¹ The project applicant in fact concedes the irrelevance of ‘iconic’ as a measure of
17 feasibility and in fact objects to the Conservancy’s characterization of the City’s reason
18 for finding a preservation alternative infeasible as “boil[ing] down to a lack of ‘iconic
19 modern design.’” (Applicant Brief, fn 7.) The record speaks for itself.
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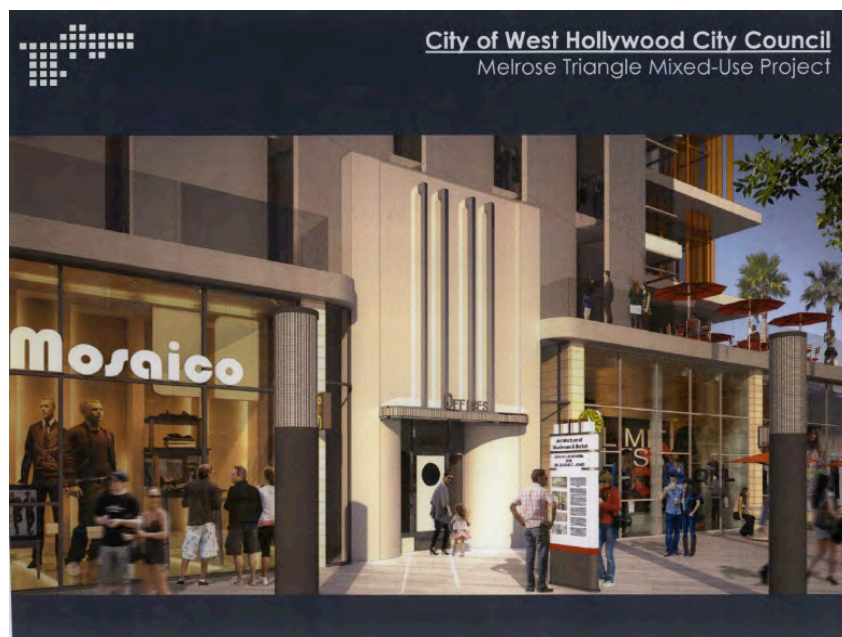
26
27 ¹ The project applicant’s brief more appropriately discusses the goal of an
28 ‘exemplary’ design. (Applicant Brief, *passim*.)

1 • **The Project does not Propose Meaningful Reuse of the Façade.**

2 The retention of an historic building’s primary ‘façade’ is not a mitigation
3 favored by preservation advocates. Indeed, it is colloquially referred to as the ‘f-word.’
4 Here, the EIR’s vague façade mitigation measure would not preserve the character-
5 defining features and historic integrity of the Dog & Cat Building.

6 The City promises that it will require “relocation” of the “streamline moderne
7 entrance façade.” (City Brief, pp. 3-4, 5.) The Court might infer that key character-
8 defining features of the building must therefore be prominently incorporated into the
9 new Melrose Triangle project. Not so.

10 The building fronts on Santa Monica Boulevard. In a presentation to the City, the
11 project applicant proposed to provide a kiosk and to mimic (not relocate or reconstruct)
12 a fragment of the entrance façade of the Dog & Cat Building *along the side of a new*
13 *garage* to be oriented toward the pedestrian paseo — *not* fronting on the street:



1 (AR 4635; see also 4636.) The City’s conditions of approval requiring that the historic
2 entrance be “reused and incorporated into the project design” directed consistency with
3 the above drawing. (AR 21.) As explained to the City Council by Adrian Scott Fine,
4 Director of Advocacy for the Los Angeles Conservancy:
5

6 The Conservancy has been hopeful that a revised plan
7 incorporating the historic building as part of the project would
8 result from recent discussions with the applicant’s representatives.
9 The proposal to reconstruct a small sliver of the front façade and
10 apply it onto a new building mid-block along the planned paseo
11 is not meaningful preservation of something the Conservancy can
12 support. This approach does not adhere to standard preservation
13 practices, allow for the building to maintain eligibility as an historic
14 resource, or meet the Secretary of the Interior’s Standards for the
15 Treatment of Historic Properties.²

16 (AR 4663, italics added.)

17 The mitigation measure adopted by the City Council to enforce the project
18 condition was both non-specific and unlawfully deferred, providing for submittal of
19 future “design and/or construction plans for review and approval” by the City planning
20 director, on no particular time-line, “that illustrate how [the historic building] shall be
21 permanently memorialized ... [The plans] shall incorporate some of the character-
22 defining features of the Streamline Moderne Style into the design.” (AR 59.)
23

24 The City’s failure to provide criteria, performance standards, or public process to
25
26

27 ² CEQA recognizes and invokes the federal *Secretary of the Interior’s Standards* to
28 ensure the protection of historic resources that are being significantly modified for
 adaptive reuse for new projects. (Guidelines, §§ 15331, 15064.5 (b)(3).)

1 enforce or shape the deferred mitigation violated CEQA. (*Ibid.*) The CEQA Guidelines
2 mandate that an EIR's formulation of mitigation

3
4 ... not be deferred until some future time. However, measures may specify
5 performance standards which would mitigate the significant effect of the project
6 and which may be accomplished in more than one specified way.

7
8 (Guidelines, § 15126.4 subd.(a), subd.(1), subd.(B). italics add.) Cases addressing
9 deferred mitigation, which require issuance of a peremptory writ on that basis in the
10 absence of performance standards, include *Preserve Wild Santee v. City of Santee*
11 (2012) 210 Cal.App.4th 260:

12
13 An EIR is inadequate if '[t]he success or failure of mitigation efforts ...
14 may largely depend upon ... plans that have not yet been formulated,
15 and have not been subject to analysis and review within the EIR.'
16 (*Communities for a Better Environment v. City of Richmond* (2010)
17 184 Cal.App.4th 70, 92, ... quoting *San Joaquin Raptor Rescue*
18 *Center v. County of Merced* (2007) 149 Cal.App.4th 645, 670 ...)

19
20 (*Id.*, p. 281.) Here, the Conservancy seeks to prevent the demolition of an historic
21 resource and the proposed façade mitigation on the side of the garage is of minor
22 import, but even that minor mitigation is inadequately defined and violates CEQA.

Standard of Review

‘Please do not allow this beautiful Art Deco building to be destroyed. This [is] a perfect example why many of us come to Los Angeles. [...] Once they are gone, they are gone forever.’ (AR 5444.)

The City summarily contends that all issues before the Court are to be resolved with deference to the City Council’s decisionmaking, based on substantial evidence in the record. The City relegates to a footnote its response to *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, relied upon by the Conservancy. (City Brief, p. 7, n.3.) The project applicant avoids referencing *Vineyard* or any other Supreme Court case. (Applicant Brief, pp. 8-9.)

The standard of review for determining EIR adequacy is a complex question, because appellate cases conflict. But the rulings of the Supreme Court take precedence.

Every alleged CEQA violation presents an issue of law based on a certified record. The question is “whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements.” (*Vineyard, supra*, 49 Cal.4th 412, p. 722, citing *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3rd 553, p. 564.) While an “agency’s substantive conclusions” are deferentially reviewed for substantial evidence, *id.*, p. 723, whether an EIR’s content complies with CEQA’s mandates is a legal question.

Vineyard resolved some of the longstanding inconsistencies in appellate decisions addressing CEQA’s dual standards of review. The administrative record — the evidence — must always be reviewed to decide both (1) whether an agency complied with

1 mandated CEQA procedures and (2) whether substantive factual conclusions are
2 supported by substantial evidence. Both inquiries are resolved via review of facts in the
3 record. Yet issues (1) and (2) differ as they are issues of law versus issues of fact.
4

5 Vineyard's direction to approach the adequacy of EIR analysis as an issue of law
6 was reinforced in *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, p. 131:
7

8 Judicial review of ... [CEQA's] two types of error differs
9 significantly: While we determine de novo whether the
10 agency has employed the correct procedures, 'scrupulously
11 enforc[ing] all legislatively mandated CEQA requirements'
12 [citation] we accord greater deference to the agency's
13 substantive factual conclusions.' [Citation.]

14
15 (*Id.*, p. 131.) *Vineyard* copiously reviewed an EIR's discussion of water supply for a
16 proposed development project, and held that its inadequate analysis was a failure to
17 proceed in the manner required by law. (*Vineyard, supra*, 40 Cal.4th 412, *passim*.)

18 Ongoing conflicts in the Courts of Appeal as to the standards of review applicable
19 to EIR adequacy include the cases cited by the City in footnote 3. And some, like *Santa*
20 *Monica Baykeeper v. City of Malibu* (2011) 193 Cal.App.4th 1538, [incorrectly] recite
21 the substantial evidence standard as if applicable to the scope or sufficiency of EIR
22 analysis — and then [correctly] treat and decide the issue as one of law by applying the
23 facts to CEQA's EIR content requirements. (*Id.*, pp. 1546–1562.) Others, like *Center for*
24 *Biological Diversity v. Department of Fish and Wildlife* (2015) 234 Cal.App.4th 214,
25
26
27
28

1 treat EIR adequacy as an issue of law without specifically saying so, although reciting
2 *Vineyard's* explication of the dual standards of CEQA review. (*Id.*, pp. 232, 237.)

3 Due to the still-ongoing appellate case conflicts, the California Supreme Court is
4 now directly considering the standards of review applicable to EIR adequacy in the
5 pending *Sierra Club v. County of Fresno*, S219783. In the meantime, the adequacy of
6 the Melrose Triangle EIR's alternatives analysis and responses to comments present
7 straightforward issues of law: did the City comply with CEQA's delineated requirements
8 for an adequate EIR analysis of alternatives and responses to comments?
9

10 Regardless of the standard of review, the evidence in the administrative record
11 proves that the Melrose Triangle EIR fails to provide a range of reasonable alternatives
12 or to adequately respond to comments. In addition, the City's findings that Alternative
13 3 is infeasible are not supported by substantial evidence in the administrative record.
14
15

16 Discussion

17
18 **'Do not let this rare and beautiful building be sacrificed.**
19 **It is buildings such as this one that enhance the**
20 **uniqueness of our city. THESE are the stand-out**
21 **buildings one points out to visitors or appreciates on**
22 **a morning walk. THESE are the buildings that make**
23 **you smile in awe at the talent and imagination of those**
24 **in the past. THESE are the link to that past, the buildings**
25 **that offer something special, something not to be found**
26 **in another city, a particular and lovely structure that is**
27 **ONLY in Los Angeles.'** (AR 5475.)

28 The Conservancy continues to rely on its comprehensive opening brief, and this
reply will address matters that may benefit from clarification or emphasis. These
include the City's misunderstanding of the law announced at the outset of its brief: that

1 it can meet its duties to comply with CEQA solely by “informing the public and decision
2 makers of the environmental impacts” of the Melrose project. (City Brief, pp. 2, 6, 8.)

3 The City is incorrect, as it has not met CEQA’s informational requirements, and
4 it is also gravely mistaken as to its duties. It surely knows better. As the Conservancy
5 emphasized during the administrative process and in its opening brief, CEQA has both
6 procedural and substantive mandates. When a project will have significant impacts, as
7 would occur here due to the demolition of an historic resource,³ it cannot be approved if
8 feasible alternatives may avoid demolition and accomplish most project objectives.
9 (Opening Brief, pp. 6-7; Pub. Resources Code, §§ 21002, 21081, 21084.1.) Informing the
10 public and elected officials about environmental impacts is important because it
11 provides the tools to accomplish CEQA’s primary goals: reducing environmental
12 impacts by adopting feasible alternatives and mitigation measures. (Ibid.)

13 The Supreme Court has repeatedly acknowledged the strong ‘substantive
14 mandate’ of CEQA, as in *Mountain Lion Foundation v. Fish and Game Commission*
15 (1997) 16 Cal.4th 105, p.123. The Court held that ‘[u]nder CEQA, a public agency must
16 also consider measures that might mitigate a project’s adverse environmental impact,
17 and adopt them if feasible,’ due to ‘CEQA’s substantive mandate that public agencies
18 refrain from approving projects for which there are feasible alternatives ...’ (*Id.*, p.134,
19 italics added; Opening Brief, pp. 6-7.)

A. The EIR Failed To Adequately Study Alternatives

‘The Conservancy can point to other projects that have successfully married preservation with new development, creating great places that honor the past without needlessly throwing it away.’ (AR 4663.)

The City fairly states the Conservancy’s position vis-à-vis inadequate analysis of an adaptive reuse alternative that avoids the wholesale demolition of the Dog & Cat Building: “Petitioner argues that a better alternative exists that would avoid demolition of the historic structure altogether without reducing the Project’s size.” (City Brief, p. 12.) The City claims, however, that “such a project does not exist.” (*Ibid.*) It proceeds to vaguely reference “regulatory considerations” and “design considerations,” without explaining why Alternative 3 could not be altered as suggested by the Conservancy to meet all such. (*Id.*, p. 13.) It goes without saying that the Conservancy does not propose, as claimed by the City, that the project “ignore” the City’s desire for a high-quality design “at the City’s western gateway ...” (*Ibid.*)

The City vaguely disparages the “rundown” condition of the Dog & Cat Hospital building — solely attributable to lack of maintenance by its owner, the project applicant — but cannot dispute its historic integrity or its availability for successful rehabilitation and adaptive reuse. Some redesign of just the Melrose Triangle Gateway building will be required to incorporate all or a substantial portion of the Dog & Cat Building [the rear portion now being less important] into the project, but neither reasonable cost nor time required for the partial redesign is a factor to be fairly considered under these facts.

³ Mitigation measures such as those adopted by the City cannot reduce the impacts of demolition to a level of insignificance. (*E.g.*, AR 667, Applicant Brief, p. 5.)

1 Because demolition of an historic building has significant environmental
2 consequences, the project applicant could and should have endeavored to incorporate it
3 into the design from the outset. As noted above, that was recommended by the City's
4 historic resource consultant by early 2006! (*Ante*, p.2.) The lack of an inclusive design
5 is not due to unsolvable conflicts attributable to an historic resource, but subjective
6 applicant and City decisions that disregarded CEQA's mandates to avoid significant
7 environmental impacts when feasible.
8

9
10 The conclusory statement that Alternative 3 provides a 'reasonable picture of a
11 project alternative to maintain the historic structure' is not borne out by the record.
12 (City Brief, p. 15.) The project applicant's contentions that Alternative 3 need not be
13 altered to fairly consider reuse of the Dog & Cat Building — because "the design of the
14 three buildings proposed by the project are intimately related, [and] changes to the
15 design of the buildings would impact the other buildings" — underscores the root of the
16 problem. The false claim is that a different design won't/can't be considered — because
17 it would be different. Claimed design problems are based on the project applicant's
18 hired-expert's subjective opinion aimed at defending the current project design.
19

20
21 What if a proposed project would eliminate endangered plants or wildlife habitat,
22 and there is a feasible way to design around them? Would examination of that
23 alternative be ignored because it would change the project configuration? No. A faulty
24 initial design that fails to take environmentally-sensitive habitat or site constraints into
25 account asks for trouble; it cannot self-justify. Hundreds of CEQA cases require
26 consideration of alternatives to avoid or lessen significant environmental impacts,
27
28

1 despite the unwillingness of an applicant and despite the status of design approvals.

2 Understandably, developers and their retained experts prefer to build just what
3 they have designed. But while design considerations are within the realm of local
4 agency discretion, deference to a particular design is not absolute: it is limited when it
5 will result in significant environmental impact. Destruction of an historic resource has
6 just such impact. (Pub. Resources Code, § 21084.1; see Opening Brief, p. 11.)

7
8 The case law is instructive: in *Preservation Action Council v. City of San Jose*
9 (2006) 141 Cal.App.4th 1336, p.1357, a developer's preference for a particular project
10 size and design was held to be insufficient to reject project alternatives that were
11 otherwise feasible. A project applicant's willingness "to accept" a feasible alternative is
12 irrelevant to its legal feasibility, as combining the two "would render CEQA
13 meaningless." (*Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587,
14 p. 602, italics added.) If any applicant [or agency] may trump a viable alternative
15 simply by pronouncing it undesirable as a matter of preference or policy, unrelated to
16 CEQA's statutory definition of feasibility, EIR alternatives analysis would be pointless.
17 For the same reason, feasible alternatives and mitigations must be adopted before an
18 agency weighs a project's public benefits against its significant environmental impacts
19 and determines whether overriding considerations justify project approval. (*Ibid.*)

20 And — before any of that happens — potentially-feasible alternatives must be
21 adequately analyzed in an EIR, without conclusory rejection for applicant or agency
22 preference or desire for maximizing profit or development size. As held in *Preservation*
23 *Action Council*, *supra*, 141 Cal.App.4th 1336,

1
2
3 This ambiguity in the FEIR's analysis of the reduced-size
4 alternative meant that the public and the City Council were
5 not properly informed of the requisite facts that would permit
6 them to evaluate the feasibility of this alternative. The FEIR
7 was inadequate because it lacked 'detail sufficient to enable
8 those who did not participate in its preparation to
9 understand and to consider meaningfully' the ... alternative.

10 (*Id.*, pp. 1355, *see* 1353-1356.)

11 A peremptory writ should issue setting aside the EIR certification and project
12 approval and requiring preparation of a revised EIR adequately analyzing a potentially-
13 feasible alternative that provides for adaptive reuse of the Dog & Cat Hospital in a
14 manner that accomplishes all project objectives.
15

16 17 **B. The EIR Failed to Respond to Comments**

18
19 **'There are numerous examples of projects in Pasadena, Santa**
20 **Monica, Long Beach, and Los Angeles that have successfully**
21 **integrated *historic structures and new ones* into thriving**
22 **commercial developments.... [Here] that will result in a superior**
site design that will enhance the cultural life of the City ...
(AR 339, italics added [Art Deco Society of Los Angeles].)

23 The City has not substantively addressed the claim that the EIR failed to respond
24 to comments, reiterating its [insupportable] arguments as to the infeasibility of any
25 incorporation of the Dog & Cat Building into the Melrose Triangle project. (City Brief,
26 p. 19.) The Conservancy's point is that the failure of the City and its EIR to respond to
27 comments on the Draft EIR that requested consideration of a feasible project redesign
28

1 is a stand-alone violation of CEQA. (AR 159, 185-186.) The City’s claim that any such
2 failure is not alleged to be prejudicial borders on the absurd; the loss of an historic
3 West Hollywood resource is at stake. (City Brief, p. 19.)
4

5 **C. The City’s Findings that Alternative 3 is Infeasible Are Not**
6 **Supported By Substantial Evidence**

7 **‘...[T]his building could be restored and adaptively reused to**
8 **retain its character defining features and provide a creative and**
9 **engaging development for the citizens of West Hollywood. With**
10 **thoughtful planning and design, this building could be renovated**
11 **and connected to new construction in order to meet the needs**
12 **of the developer.’** (AR 406-407.)

13 The City admits that Alternative 3 would avoid the significant impacts of
14 demolition of the Dog & Cat Hospital and meet the project’s objectives for mixed use,
15 but contends that it is legally infeasible.⁴ It claims that adaptive reuse of the historic
16 building would be “inconsistent with project objectives” because it would “eliminate or
17 disrupt ... critical design elements, require a reduction in parking, and disrupt the
18 pedestrian-friendly paseo ...” (City Brief, pp. 1, 17.) The project applicant goes even
19 further to proclaim that demolition is absolutely required “in order to construct the
20 project to meet required City development criteria.” (Applicant Brief, p. 2.) The
21 Conservancy addressed these unsupported points in its opening brief, to which the
22 Court is again respectfully referred, and now expands them.
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24
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27

28 ⁴ Unworthy of response: contentions that adaptive reuse favors preservation over
“affordable housing” and “improving the long term tax base.” (City Brief, p. 18.)

1 **1. Critical Design Goals can be met.** The City claims that avoidance of
2 demolition is infeasible in large part because it “would eliminate or disrupt the Project’s
3 critical design elements.” (City Brief, p. 5.) The Conservancy disagrees: the project’s
4 stated objectives, which it has never criticized, can be fulfilled via inclusion of the Dog
5 & Cat Hospital into the project design. (E.g., Opening Brief, pp. 7-8.) Only project
6 design objectives 2, 8, 13, and 14 relate in any way to Alternative 3, and all can be met:
7
8

9 2. Provide a modern, high-quality design that complements surrounding
10 uses and contributes to a sense of community, yet stands as an
11 architectural gateway to the City.
12

13 8. Enhance the intersection of Santa Monica Boulevard, Melrose Avenue, and
14 Doheny Drive [to] serve as a recognizable entrance to the City through the
15 location, form, and architectural elements of structures; landscaped open
16 spaces; and public art and/or other appropriate design techniques.
17

18 13. Implement a comprehensive landscaping program ...
19

20 14. Provide adequate common open space and internal access ...
21

22 (AR 539.) The integration of the Dog & Cat Building into the Melrose Triangle block
23 does not interfere with the City’s “critical design elements” or its goals of “introducing a
24 gateway development into the western edge of the City, providing affordable housing,
25 improving the long term tax base and improving the pedestrian experience at the
26 Melrose Triangle,” as the City proclaims. (City Brief, p.18.)
27

28 The mantra used to justify demolition of the historic Dog & Cat Building, that the
applicant was “not able to preserve that building and keep continuity on the façade”

1 (e.g., Applicant Brief, p. 7.) recalls the emperor without clothes. The proposed Melrose
2 Triangle project is not one building. It encompasses an entire City block proposing
3 many buildings of different scale that together can result in a “cohesive” design —
4 although that is not a project objective. Objective 5 comes closest: “Create a consistent
5 pattern of development and uses along Santa Monica Blvd that serves project residents
6 and surrounding community by redeveloping an underutilized site.” (AR 1539.)

7
8 A “consistent pattern of development and uses” does not require a “cohesive
9 design fronting” the Boulevard; even if it did, a “cohesive design” can include the Dog &
10 Cat Building. And a “modern” design, per objective 2, often includes historic elements,
11 as acknowledged by the City’s willingness to include a portion of the entrance façade at
12 the garage on the new paseo. The intent of objective 2 is best accomplished via
13 incorporation of the Dog & Cat Building in its historic footprint on Santa Monica
14 Boulevard within an “architectural gateway” contributing to a community uniquely rich
15 in California culture. As pointed out by the Conservancy, one of many conceivable
16 “alternatives ... [include] a redesign of the proposed ‘Gateway building,’ such as a
17 distinctive flatiron design that responds to the site’s triangular western portion and
18 orientation facing eastbound traffic along Santa Monica Boulevard.” (AR 4669.)

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23 **2. Parking and Paseo needs can be met.** The City and project applicant
24 contend that retention of the Dog & Cat Hospital is infeasible because it would
25 necessitate the loss of either 150 or 175 parking spaces intended for public use. (City
26 Brief [175 spaces], pp. 5, 19; Applicant Brief [150 spaces], p. 17.) However, the project
27
28

objectives do not require surplus parking to be provided to the public.

The project is already over-parked by 38 spaces. (*E.g.*, Applicant Brief, p. 17.) The parking needs required for a preservation alternative would of course be lowered by whatever square feet are removed from the project total. If in fact there is a reduction of 78,291 square feet (unlikely, since the Dog & Cat Building is less than 8000 square feet), as the City claims via Alternative 3, it would reduce the total number of required spaces from 884 to 629, almost exactly 150 less than current.

In a project redesign of one of the Melrose Triangle buildings, the Gateway Building, as sought by the Conservancy as a viable EIR alternative, the surplus public parking that is not a project requirement could be reduced. With the 38 spaces already provided and some reduction via the retention of the Dog & Cat Building, reduction of those non-required parking spaces is feasible. Also, upon issuance of a peremptory writ requiring a fair look at a preservation/adaptive reuse alternative, the possibility of retaining only the front half or 60% of the historic building will be a viable option, since it is the most important part of the building and least-affected by the recent fire. That could increase the feasibility of subterranean parking achieved by excavating under the rear of the Dog & Cat Building, as long suggested by the Conservancy, or temporarily relocating the front portion of the building to allow for excavation for parking.

The pedestrian paseo can easily be accommodated, as discussed in the opening brief. Upon remand, a partial redesign of Alternative 3 without unnecessary fatal flaws would ensue, and neither the City nor the project applicant has provided any reason why the pedestrian paseo cannot be accommodated with the Dog & Cat Building in

place, beyond contending that some redesign is necessary and “would be difficult.” (*E.g.*, Applicant Brief, p. 17.) The Conservancy provided examples of projects incorporating new construction, historic buildings, and paseos, including one in Seattle pictured below. (AR 6780; *see* examples at AR 6760-6803; Opening Brief, p. 20.)

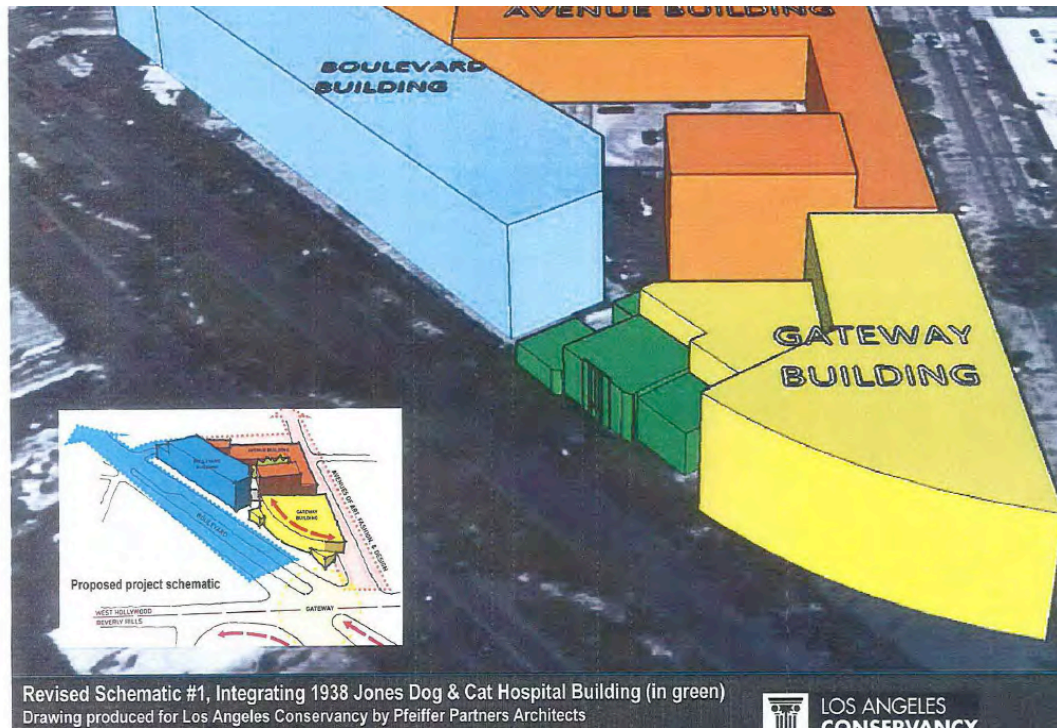


Example: Supply Laundry, Seattle, WA
ADAPTIVE REUSE OF HISTORIC BUILDING AND INTEGRATED WITH NEW CONSTRUCTION,
INCLUDING OPEN SPACE AND PASEO



LOS ANGELES
CONSERVANCY

The Conservancy also provided conceptual drawings of a redesign of the primary Melrose Triangle Gateway Building to accommodate the retention of the Dog & Cat Building with the desired paseo. (AR 6762-6765.) One example, utilizing the entire historic building (although now it may be more practical to remove the back):



(AR 6762.) There are multiple reasonable design solutions.

D. The Case is Not Moot

‘Within West Hollywood’s borders, there are exceedingly few examples of the Streamline Moderne style, making the Jones Dog & Cat Hospital building at 9080 Santa Monica Boulevard a particularly rare resource type for the city.’ (AR 4668.)

The Dog & Cat Hospital is owned by project applicant Charles Company, which as we now know was well-aware of a homeless encampment in the building and failed to secure the premises. The City acknowledges that the building can still be rehabilitated, as discussed below, and that the recent major fire damage occurred at the rear of the building. In light of these facts, the case is not moot and may be adjudicated solely on the basis of the administrative record and the City’s 2014 approvals.

1 The Conservancy thus objects to the City’s requested judicial notice of the
2 “Damage Assessment Report” (“the Report”) prepared a few weeks ago following a
3 tragic fire at the project site, as it is not part of the record and it is not relevant to the
4 issues before the Court. The report does not show that the case is moot; indeed, the City
5 relegates its claim of mootness to a few lines at the end of its brief. (City Brief, p. 20.)

7 Should the Court choose to take judicial notice of the cursory Report, the
8 Conservancy further objects to its relevance and sufficiency. The Conservancy has not
9 been afforded an opportunity to have the premises inspected by a structural engineer
10 familiar with historic buildings and the application of the State Historic Building Code.
11 The Report reflects on its face that it was prepared not by a structural engineer qualified
12 to assesss the building’s structural safety, but by a civil engineer. The conclusory Report
13 provides no facts to support pronouncements of repairs or costs, nor that “demolition is
14 the favored economic alternative over rehabilitation,” which in any event would not be
15 an opinion a civil engineer is qualified to make. (Report, p. 2.) The Report does confirm
16 that the entire north section of the historic building, including the façade facing Santa
17 Monica Boulevard, is structurally intact. Finally, and most important: “the existing
18 building can be rehabilitated to its former state.” (*Ibid.*, italics added.)

22 The statements of the City [“... some parts of the building are beyond repair,” City
23 Brief, p. 20] and the project applicant [“ .. most of the building needs to be demolished,”
24 Applicant Brief, p. 5] are unsupported by the City’s own Report and in any event would
25 not support a finding of mootness.
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1 Courts have declined to find CEQA challenges moot under much more extreme
2 facts. *Santa Monica Baykeeper v. City of Malibu* (2011) 193 Cal.App.4th 1538 is
3 particularly instructive as it provides comprehensive review of all of the CEQA
4 mootness cases. (*Id.*, pp. 1547-1553.) Citing *Cucamongans United for Reasonable*
5 *Expansion v. City of Rancho Cucamonga* (2000) 82 Cal.App.4th 473, 479, the Second
6 Appellate District lists various “exceptions to the rules regarding mootness allowing a
7 court to review the merits of an issue,” including the presence of an issue of “broad
8 public interest that is likely to recur” and when there may be a recurrence of the
9 controversy between the parties. (*Id.*, pp. 1547-1548.) Here, the controversy between
10 the parties as to the City’s compliance with CEQA and the design of the Melrose
11 Triangle project as it affects the historic Dog & Cat Hospital remains at issue. Judgment
12 and a writ issued in favor of the Conservancy remain of great practical benefit. (*Ibid.*)

16 In addition, in light of the recent tragic event on the site attributable to the
17 project applicant’s failure to maintain and secure the vacant building, encompassed
18 within the remedy sought by the Conservancy it asks that this Court’s peremptory writ
19 of mandamus order the City to require the project applicant to adequately maintain and
20 secure the historic building (which the Report states was still unsecured even after the
21 fire) pending the return to the writ in order to avoid further unpermitted demolition by
22 neglect in violation of CEQA.
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Conclusion

'We should be the custodians of preserving a unique architectural building located in West Hollywood.' (AR 5473)

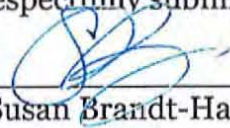


(AR 6792 [Jones Dog & Cat Hospital 2014].)

The Conservancy respectfully requests that its petition be granted and a writ issue setting aside the certification of the EIR and the approvals of the Melrose Triangle project including the demolition of the historic Jones Dog & Cat Hospital building. Pending the writ return, the building should be secured and maintained for safety and protection of historic fabric and integrity.

July 27, 2015

Respectfully submitted,



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Attorneys for Los Angeles Conservancy

Los Angeles Conservancy v. City of West Hollywood, et al.
Los Angeles County Superior Court Case No. BS151056

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 July 27, 2015, I served one true copy of:

**Petitioner's Combined Reply Brief
in support of 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.

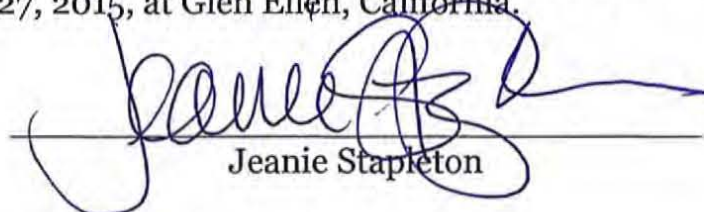
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I declare under penalty of perjury that the foregoing is true and correct and is executed on July 27, 2015, at Glen Ellen, California.


Jeanie Stapleton