

Civil No. B270158

**IN THE COURT OF APPEAL OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION 3**

Los Angeles Conservancy,
Petitioner and Appellant,

Civil No. B270158

v.

Los Angeles Superior Court
Case No. BS151056

City of West Hollywood, et al.,
Respondents,

Charles Company, *et al.*,
Real Parties in Interest and
Respondents.

On appeal from the Superior Court of Los Angeles County
Honorable Richard L. Fruin, Jr.

Appellant's Opening Brief

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COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION 3		Court of Appeal Case Number: B270158
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Date: August 9, 2019

Susan Brandt-Hawley

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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!’
(Administrative Record (AR) 5176.)

The Los Angeles Conservancy challenges West Hollywood’s violations of CEQA vis-à-vis the proposed needless demolition of the 1938 Jones Dog & Cat Hospital, ignoring worldwide examples that harmonize historic resources into unique new construction.



(AR 6789.)

The Melrose Triangle project at issue will be a huge block-sized mixed-use development of residential units, retail, restaurant, office space, and subterranean parking on ten parcels bounded by Santa Monica Boulevard, Melrose Avenue, and Almont Drive.

The City approved demolition of an architectural treasure based solely on a preference for design on a blank canvas. In doing so, the City made two substantial CEQA errors that warrant reversal and remand. First, it certified an EIR for a project with significant impacts to an historic resource without identifying and analyzing a potentially-feasible alternative.¹ Second, it made findings that adaptive reuse of the Jones Dog & Cat Hospital would be infeasible, unsupported by substantial evidence.

In *Mountain Lion Foundation v. Fish & Game Commission* (1997) 16 Cal.4th 105, the California Supreme Court underscored “CEQA’s *substantive mandate* that public agencies refrain from approving projects for which there are feasible alternatives or mitigation measures.” (*Id.*, p. 134, italics added.) Because demolition of an historic resource causes significant environmental impact, CEQA’s substantive mandate disallows demolition if there is a feasible alternative that can accomplish most project objectives. (Pub. Resources Code, §§ 21002, 21081; CEQA Guidelines [14 Cal. Code Regs. §§ 15000 *et seq.*], § 15126.6, subd.(a).)

The Melrose Triangle EIR purported to fairly consider a “preservation” alternative, but it did not. From the outset, although

¹ Facts cited in the Introduction will be cited to the record, *post*.

aware that the site contained an historic resource, project sponsor Charles Company opted for a modern design without integration of the historic Jones Dog & Cat Hospital. “Alternative 3” simply proposes plopping the historic building into the modern project design — which had arbitrarily drawn a dominant pedestrian paseo right over the historic building footprint — and then claimed that the combination of the old and new failed to “result in a cohesive site design.” (AR 71.)

As pointed out by the Conservancy, the authenticity of the Jones Dog & Cat Hospital architecture equates to a unique design *opportunity* for a vibrant urban block. (AR 6980.) Alternative 3 was designed to fail, as in *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336 (*Preservation Action*) where “the public and the City Council were not properly informed of the requisite facts that would permit them to evaluate the feasibility” of avoiding demolition. (*Id.*, p. 1355.) Beyond that, the basis for rejection of Alternative 3, essentially that it would detract from the “modern” project design, is not substantial evidence of infeasibility.

Not every historic building can be saved. But just as a project proposed on a building site containing a protected blue-line stream must — of course — be designed around it, a project on a site

featuring an historic resource must — of course — seek to avoid its destruction if possible. Finding preservation of an historic building infeasible simply *because it is not new* is ... absurd and unlawful.

The City Council was not presented with any informed option for adaptive reuse. If not set aside by peremptory writ on remand, the City's violation of CEQA will result in needless loss of an irreplaceable part of West Hollywood and Greater Los Angeles history. *Any* landmark could be demolished on such basis, if allowed here, contrary to CEQA's salutary goal to rehabilitate and repurpose historic sites when feasible.

The City's consideration of the feasibility of adaptive reuse is mandated by state law. A writ should issue on remand, giving the evocative Jones Dog & Cat Hospital a chance to survive.

Statement of Facts

'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.)

Environmental Setting. The Jones Dog & Cat Hospital building on Santa Monica Boulevard, on a triangular City block also bounded by Melrose Avenue and Almont Drive, relies on curved

surfaces and horizontal banding. The building has smooth wall surfaces, curved corners, an emphasized horizontal design, extensive use of glass block, polished stainless steel over the entry canopy, and vertical fins. (AR 7254.)

City documents confirm that the building is “a fine example of Streamline Moderne architecture” associated with the work of ‘master architects’ Walter Wurdeman and Welton Becket. All parties agree that it qualifies as historic for purposes of CEQA. (AR 663.) The California Department of Parks and Recreation noted that “the building is in good condition” and “retains many of its original features and its integrity.” (AR 5192.)

Historic eligibility is a given and a non-issue in this case.

Melrose Triangle Project. In February 2003, the respondents Charles Company, *et al.*, applied for City approval of the Melrose Triangle project, a mixed-unit residential and commercial development. A Draft EIR was prepared. (AR 488.)

The City’s official Cultural Resources Assessment conducted by environmental consultant firm LSA in July 2006 concluded that the historic building should be preserved:

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.)



(AR 6791; Conservancy Depiction of Melrose Triangle Project Boundaries and Jones Dog & Cat Hospital building.)

That project did not proceed, and a new application followed in 2012, requesting demolition permits for all commercial structures on ten contiguous parcels. (AR 5.) The revised project

proposes 76 residential rental units, 82,000 square feet of retail/restaurant uses, four levels of subterranean parking, and 137,000 square feet of office space. (AR 495.) The project proposes to demolish the Jones Dog & Cat Hospital and every other building currently on the site. (AR 663.)

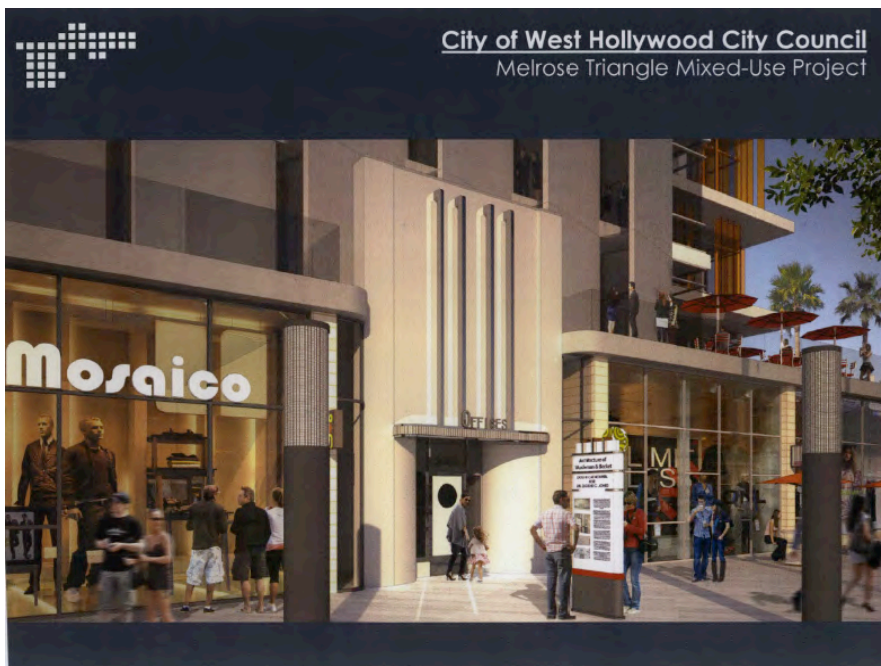
In 2014, the City prepared a Recirculated Draft and Final EIR. (AR 485-4485.) While the revised EIR addressed many environmental impacts, this action solely focuses on content relating to the “demolition of a historic resource.” (AR 505.) Along with the Art Deco Society of Los Angeles (AR 183), the West Hollywood Preservation Alliance (AR 154), the City of Beverly Hills (AR 144), Save the SMB Streamline Moderne (AR 6861-6873), and concerned residents (*e.g.*, AR 165), the Conservancy commented on the EIR’s inadequacy vis-à-vis historic resources and urged redesign of the project to avoid needless demolition. (*E.g.*, AR 1519-5822; 6166-6170; 6234-6236; 6976-6980.)

Mitigation for Demolition. The EIR proposes to mitigate the significant impact of demotion of the historic building by documentation and “incorporate[ing] some of the character-defining features of the Streamline Moderne Style into the design. (AR 60-61.) Although the City asserted that the approved project

“relocated” the “entrance façade,” this measure fails to reduce the impacts of demolition below significance and does not include incorporation of key character-defining features of the building into the new Melrose Triangle project, as implied by the City.

(Appellants Appendix (AA) 104.)

Rather than preserve any part of the iconic building on Santa Monica Boulevard, the project would *mimic* (not relocate or reconstruct) a fragment of the entrance façade along the side of a new garage to be oriented toward the *internal* pedestrian paseo, not visible from the Boulevard:



(AR 4635; *see also* 4636.) Proposed mitigation requires that the entrance be “reused and incorporated into the project design”

consistent with the above drawing. (AR 21.)

Adrian Scott Fine, Director of Advocacy for the Conservancy, succinctly summarized for the City Council the deficiencies of this proposed mitigation:

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

(AR 4663, italics added.)

Approval Process. In June 2014, the West Hollywood Planning Commission recommended approval of the project EIR and entitlements. (AR 77-312.) In August, the City Council certified the Melrose Triangle EIR and adopted a statement of overriding considerations due to impacts on historic resources. (AR 54-76.) The City Council required future “design and/or construction plans for review and approval” by the City planning director, on no

particular time-line, “that illustrate how [the historic building] shall be permanently memorialized ... [The plans] shall incorporate some of the character-defining features of the Streamline Moderne Style into the design.” (AR 59.)

The City then filed a Notice of Determination (NOD), describing the 300,000 square foot project as “a mixed-use commercial and residential development. The project would consist of three primary structures surrounding a broad paseo running through the center of the project site.” (AR 2.) In September 2014, the City Council approved zoning text and map amendments. (AR 54-76.) In October, the City Council approved demolition and development permits. (AR 5-46.) A second NOD was filed. (AR 1.)

Statement of the Case

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

The Conservancy filed the underlying mandamus action in November 2014. (AA 1.) While the action was pending, a tragic fire

occurred at the neglected and unsecured site, resulting in one death and a criminal prosecution. The rear portion of the Jones Dog & Cat Hospital building was significantly affected by the fire. However, the primary half of the building that fronts on Santa Monica Boulevard and contains the historic elements *remains intact*. (AA 127-130, 155-157.) Historic and architectural significance is primarily associated with the front portion of the building.

Following briefing and a hearing, the mandamus petition was denied. (AA 189.) This timely appeal followed. (AA 206.) No project construction has begun; the status quo is intact.

Standard of Review

‘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.)

This Court’s review is *de novo*, as CEQA mandamus actions present issues of law based on the certified administrative record. The duties of trial and appellate courts in CEQA actions are “identical.” (*Schaeffer Land Trust v. San Jose City Council* (1986) 188 Cal.App.3d 612, p. 622.) In deciding whether to reverse the judgment and remand the case for issuance of a peremptory writ, the Court will determine whether the City prejudicially abused its discretion, proven if it failed to

proceed in the manner required by law or if its findings were not supported by substantial evidence. (Code of Civil Procedure, § 1094.5; Pub. Resources Code, § 21168.)

An adequate EIR requires strict compliance with law. The Supreme Court held in *Vineyard Area Citizens v. City of Rancho Cordova* (2007) 40 Cal.4th 412 (*Vineyard*) that

[i]n evaluating an EIR for CEQA compliance ... a reviewing court must adjust its scrutiny to the nature of the alleged defect ... For example, where an agency failed to require an applicant to provide certain information mandated by CEQA and to include that information in its environmental analysis, we held the agency ‘failed to proceed in the manner required by CEQA.’ [Citations.] In contrast, in a factual dispute over ‘whether adverse effects have been mitigated or could be better mitigated’ [citation] the agency’s conclusion would be reviewed only for substantial evidence.

(*Id.*, p. 427, italics added.)

Vineyard found an EIR’s analysis of water supply insufficient for failing to proceed in the manner required by law; its reasoning applies to all questions of EIR adequacy. No authority gives an agency the discretion to determine its own compliance with CEQA as a matter of substantial evidence. Interpretation of the mandates of the Public Resources Code and the CEQA Guidelines is a matter

of statutory construction and requires judicial consideration of the intent of the legislature. (*E.g., Friends of Sierra Madre v. City of Sierra Madre* (2001) 24 Cal.4th 165, pp.188-189.)

Leaving to the discretion of an agency whether it has complied with CEQA's EIR requirements is comparable to judging its own conduct in complying with any other state law. These issues of statutory construction are instead subject to de novo review.

Statutory and regulatory authorities provide a detailed road map for EIR adequacy, and legislative intent is manifest in the policies of the Act. (Public Resources Code, §§ 21000-21006, 21061, 21061.1; CEQA Guidelines, §§ 15002-15003, 15020-15031, 15064-15064.5, 15082, 15084.) As to the EIR alternatives analysis at the heart of this case, there is authority and guidance in Public Resources Code sections 21002-21003 and 21061 and Guidelines section 15126.6.

On the other hand, once an adequate EIR is prepared, an agency's CEQA findings as to feasibility of project alternatives are deferentially reviewed for substantial evidence. (*Vineyard, supra*, 40 Cal.4th 412, p. 435.) This makes sense: by the time an agency considers approval findings, it has considered the EIR analysis and can make informed choices based on publicly-vetted environmental

information. Land use decisions must await an adequate EIR.

Statutory and Regulatory Framework

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

From its inception, CEQA’s protections have encompassed historic resources. The Legislature has committed to “take all action necessary to provide the people of this state with ... *historic environmental qualities*.” (Pub. Resources Code, § 21001, subd.(b), italics added.) The Supreme Court reiterated in *Friends of Sierra Madre v. City of Sierra Madre, supra*, 25 Cal.4th 165, that while CEQA is “directed primarily to ecological concerns and preservation of the environment,” it is “the policy of the state to ‘preserve ... examples of the major periods of California history.’” (*Id.*, pp.183-184; Pub. Resources Code, § 21001, subd.(c).)

CEQA’s protections extend to preventing the demolition of historic resources. (*E.g., Architectural Heritage Association v. County of Monterey* (2004) 122 Cal.App.4th 1095, *passim*.)

CEQA’s Substantive Mandate. When a project may have significant impacts, including demolition of any historic resource, it

cannot be approved if feasible alternatives could reduce impacts and still accomplish most objectives. (Pub. Resources Code, §§ 21002, 21081, 21084.1.) This ‘substantive mandate’ is reiterated in *Mountain Lion Foundation v. Fish and Game Commission*, *supra*, 16 Cal.4th 105, p.123: “[u]nder CEQA, a public agency must ... consider measures that might mitigate a project’s adverse environmental impact, and adopt them if feasible,” due to “CEQA’s substantive mandate that public agencies refrain from approving projects for which there are feasible alternatives ...” (*Id.*, p.134.)

Consistently, the Supreme Court held in *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, p. 369 that CEQA requires agencies “to avoid or mitigate, if feasible, the significant environmental effects of their project.” (See *County of San Diego v. Grossmont-Cuyamaca Community College District* (2006) 141 Cal.App.4th 86, p.98; *Preservation Action Council*, *supra*, 141 Cal.App.4th 1336 p. 1350 [“... public agencies should not approve projects as proposed if there are feasible alternatives ... available which would substantially lessen the significant environmental effects ...”]; Pub. Resources Code, § 21002.)

Project Objectives. Project objectives drive the environmental review and approval process, as EIRs explore ways for a project to meet as many applicant goals as possible while protecting the environment to the greatest extent feasible.

EIRs must evaluate alternatives that accomplish most basic project objectives. (Guidelines, § 15126.6 subd.(a); *Preservation Action, supra*, 141 Cal.App.4th 1336, p. 1353.) Alternatives worthy of study must also reduce or avoid impacts and be “potentially feasible.” (Guidelines, § 15126.6 subd.(a), subd.(c), subd.(f).) Such alternatives may well “impede to some degree the attainment of the project objectives, or ... be more costly.” (*Id.*, subd.(b).)

Determining Feasibility. ‘Feasible’ is defined as “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.” (Pub. Resources Code, § 21061.)

Understandably, a project applicant may be loath to alter a project after significant planning and expense. But — very relevant here — an agency’s or a project applicant’s willingness “to accept” an alternative is irrelevant to its legal feasibility, as combining the two “would render CEQA meaningless.” (*Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, p. 602, italics added.)

In *Preservation Action*, *supra*, Cal.App.4th 1336, p.1357, a developer's preference for a particular project size and design was held to be insufficient to reject project alternatives that were otherwise feasible. If any applicant [or agency] may trump a viable alternative simply by pronouncing it undesirable as a matter of preference or policy, unrelated to CEQA's statutory definition of feasibility, EIR alternatives analysis would be pointless. For the same reason, feasible alternatives and mitigations must be adopted before an agency weighs a project's public benefits against its significant environmental impacts and determines whether overriding considerations justify project approval. (*Ibid.*)

And — before any of that happens — potentially-feasible alternatives must be adequately analyzed in an EIR, without conclusory rejection for applicant or agency preference or desire for maximizing profit or development size. *Preservation Action*, *supra*, 141 Cal.App.4th 1336, found that an EIR was “inadequate because it lacked ‘detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully’ the ... alternative.” (*Id.*, pp. 1355, see 1353-1356.)

This makes sense: if an applicant may trump a viable alternative simply by pronouncing it undesirable, unrelated to

CEQA's statutory definition of feasibility, EIR alternatives analyses would be pointless.

For the same reason, agencies make two findings to approve projects with significant impacts. Feasible alternatives must be adopted before an agency weighs a project's public benefits against its environmental impacts and determines whether overriding considerations justify approval. (*City of Marina v. Board of Trustees of the California State University, supra*, 39 Cal.4th 341, p.350.) When, *as here*, an agency fails to adopt feasible alternatives, findings of overriding considerations are premature.

Responses to Comments. The City is required to provide a "good faith, reasoned analysis" in response to comments on the EIR; "[c]onclusory statements unsupported by factual information will not suffice." (Guidelines, § 15088, subd.(b).) When a comment raises a significant environmental issue, the EIR must address the comment "in detail giving reasons why" the comment was "not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice." (Guidelines, § 15088, subd.(c); *Laurel Hgts Improvement Assoc v. Regents of UC* (1993) 6 Cal.4th 1112, p.1124.)

Sutter Sensible Planning, Inc. v. Board of Supervisors (1981)

122 Cal.App.3d 813 explains that detailed EIR responses “insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug.” (*Id.*, p.820.) And *Flanders Foundation v. City of Carmel* (2012) 202 Cal.App.4th 603 affirmed issuance of a peremptory writ when an EIR failed to respond to a comment proposing a reduced-size parcel for an environmentally-damaging project. (*Id.*, pp.616-617.) The Court reiterated that “... [t]he purpose of CEQA is to inform both the public and the decision makers, *before the decision is made*, of any reasonable means of mitigating the environmental impact of a proposed project.” (*Ibid.*, italics in original.)

Discussion

‘There are numerous examples of projects in Pasadena, Santa Monica, Long Beach, and Los Angeles that have successfully integrated *historic structures and new ones* into thriving 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].)

A. The EIR Failed To Adequately Study Alternatives

Project Objectives are Adequate. The scope and direction of CEQA review is always driven by project objectives. Every EIR must explore ways to meet as many development goals

as possible while protecting the environment to the extent feasible.

An EIR's required 'statement of objectives' thus includes "the underlying purpose of the project" to "help the Lead Agency develop a reasonable range of alternatives to evaluate in the EIR and ... aid the decision makers in preparing findings or a statement of overriding considerations ..." (Guidelines, § 15124, subd.(b).)

Here, the Conservancy *does not fault* the EIR's presentation of project objectives. (AR 538-539.) They are referenced here because they inform the identity and feasibility of alternatives:

... to provide a mixed-use commercial and residential development project of superior quality and design using sustainable and environmentally superior practices ... [to] recognize and pay homage to the importance of pedestrians in the City by creating a project of three detached buildings around a central landscaped courtyard to simultaneously encourage pedestrian activity ... while also allowing pedestrian access between Santa Monica Boulevard and Melrose Avenue. The proposed mixed-use development would include residential, retail, restaurant, and office uses, thus maximizing shopping, eating, and working efficiencies for local residents and reducing vehicle trips. In addition, the proposed project would accommodate the need for additional residential housing ... while supporting and promoting the economic vitality of the City.

(AR 538-539.) The only subsidiary project design objectives relevant to this action include:

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

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

13. Implement a comprehensive landscaping program

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

(AR 539.)

Despite the City's representations to the contrary in the trial court [*e.g.*, that the applicant "sought entitlement to construct an 'iconic' mixed-use development project for the Melrose Triangle gateway site ..." (AA 100, 103, 105, 113)], the Melrose Triangle project objectives do not call for 'iconic modern design.'

The EIR Alternatives Analysis is Inadequate. Because the Melrose Triangle EIR concedes that the proposed demolition of the Jones Dog & Cat Hospital would result in significant

unmitigable environmental impacts, identification of feasible alternatives is of critical importance:

2.7.1 Cultural Resources

The proposed project would result in a significant adverse impact due to the loss of a historic resource on the project site. Impacts to the building ... would remain significant and unavoidable even after implementation of mitigation measures ... In addition, this significant and unavoidable adverse impact would contribute to a cumulative adverse impact related to the loss of historic resources in the City.

(AR 506; 515 [loss of the historic resource in combination with other losses in the City is “cumulatively considerable”].)

The EIR requires photo documentation of the building as mitigation, and an informational kiosk and reuse of the entrance as a design element, but concedes that environmental impacts are not reduced to insignificance. (AR 513.) As held in *League for Protection of Oakland’s Architectural etc. Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, “[a] large historical structure, once demolished, normally cannot be adequately replaced by reports and commemorative markers...” (*Id.*, p.909.) Similarly, “[a]s drawing a chalk mark around a dead body is not mitigation, so archival documentation cannot normally reduce destruction of an historic resource to an insignificant level.” (*Architectural Heritage*

Association, supra, 122 Cal.App.4th 1095, p.1119.)

The EIR alternatives analysis section considers:

- (1) a 'no project' alternative;
- (2) a reduced-size project; and
- (3) a reduced project/historic resource alternative:

(AR 877.)

Table 5.A: Summary of Development Alternatives

Alternative	Description	Basis for Selection and Summary Analysis
Proposed Project	<ul style="list-style-type: none">• 82,021 square feet of retail/restaurant uses• 137,064 square feet of office uses• 77,753 square feet of residential uses (76 units)• Demolishes historic structure at 9080 Santa Monica Boulevard	<ul style="list-style-type: none">• Refer to Chapters 3.0 and 4.0 of this Recirculated Draft EIR• Meets project objectives• Results in significant unavoidable impacts related to historic resources and traffic
Alternative 1: No Project/No New Development	<ul style="list-style-type: none">• Existing uses on site consist of commercial, office, and light industrial buildings; paved parking lots; and a parking structure• Does not demolish historic structure at 9080 Santa Monica Boulevard	<ul style="list-style-type: none">• Required by CEQA• Does not meet project objectives• Would eliminate significant impacts to historic resources and traffic
Alternative 2: Reduced Project/Reduced Office Uses	<ul style="list-style-type: none">• 82,021 square feet of retail/restaurant uses• Approximately 102,000 square feet of office uses• 77,753 square feet of residential uses (76 units)• Demolishes historic structure at 9080 Santa Monica Boulevard	<ul style="list-style-type: none">• Meets some of the project objectives• May reduce, but not eliminate, significant impacts related to traffic• Results in significant unavoidable impact related to historic resources
Alternative 3: Reduced Project/Historic Resource Avoidance	<ul style="list-style-type: none">• Approximately 60,400 square feet of retail/restaurant uses• Approximately 86,500 square feet of office uses• 77,753 square feet of residential uses (76 units)• Does not demolish historic structure at 9080 Santa Monica Boulevard	<ul style="list-style-type: none">• Meets some of the project objectives• May reduce, but not eliminate, significant impacts related to traffic• Would avoid the significant impact related to historic resources

CEQA = California Environmental Quality Act (CEQA)
EIR = Environmental Impact Report

The Conservancy contends that EIR analysis of Alternative 3 is conclusory and insufficient, and that the EIR must be revised.

The alternative is described as follows:

... [R]etail, office and residential uses proposed on the project site ... would be reduced and redesigned in order to retain the existing historic resource structure ... This alternative would preclude the construction of the Gateway Building (Building A) and most likely a small portion of the Avenue Buildings (Building B2).

(AR 503 [EIR].) The EIR does not present a conceptual design of Alternative 3. Yet while the footprint of the historic building is 7984 square feet, *Alternative 3 proposes to reduce the project size by much more*: down to 60,400 square feet compared with the proposed 82,000 square feet of retail/ restaurants, and to 86,000 square feet compared with the proposed 137,000 square feet of offices. (*Id.*, p. 877; AR 6865.)

The EIR explains that Alternative 3 would avoid significant impacts to historic resources and would also reduce significant traffic impacts. (AR 895.) However, the EIR also pronounces that avoiding demolition of the historic Jones Dog & Cat Hospital would somehow “*preclude construction of the [project’s primary] Gateway Building and a portion of the Avenue Buildings ...*” (AR

891, italics added.) No explanation is provided. (*Ibid.*)

Further, the EIR states that Alternative 3's impacts to the project's design and site plan would necessarily "not result in a cohesive site design." (*Ibid.*) "Although the building massing is reduced, this Alternative would not result in a cohesive redevelopment and design of the project site." (*Ibid.*) Similarly, the EIR concludes that Alternative 3 would fail to accomplish "pedestrian connectivity" through the site and "would not enhance the Santa Monica Boulevard Corridor to the same degree as the project since there would not be a cohesive site design for the entire project site." (AR 893.)

In summarizing Alternative 3, the EIR concludes that it achieves a lesser level of project benefits than the proposed project. The EIR then rates the alternatives in the order of 1, 3, 2, while admitting that the no-project Alternative 1 accomplishes none of the project's objectives. (AR 895-897.)

The EIR alternative analysis fails to comply with CEQA and provides an inadequate basis for comparison of the alternatives. CEQA requires that an EIR must include sufficient information about each alternative "to allow meaningful evaluation, analysis and comparison with the proposed project." (Guidelines, §15126.6

subd.(d).) Each alternative “must be described in sufficient detail to permit comparison with the proposed project. The key issue is whether the selection and discussion of alternatives fosters informed decision-making and informed public participation.” (*Laurel Heights Improvement Association v. Regents of the UC*, *supra*, 47 Cal.3d 376, p.404.)

There must be sufficient information in the EIR to permit comparison of the relative merits and environmental impacts of the project and alternatives. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, pp.733-734.) The analysis must include concrete information that allows a fact-based comparison of the environmental effects of the alternatives and the project. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, p.731.)

Here, as in *Preservation Action*, *supra*, 141 Cal.App.4th 1336, the City failed to adequately analyze a reduced-size project that would avoid demolition of an historic resource. As attorney Michelle Black of Chatten-Brown & Carstens explained to the City Council on behalf of Save the SMB Streamline Moderne, the EIR concedes that square footage is merely estimated for Alternative 3 and might change when actually designed ..., demonstrating that

“the Applicant and City never actually considered implementing this Alternative.” (AR 6864-65.)

Although this appeal is *de novo*, the Conservancy appreciates that the Court may be interested in the reasoning of the trial court. In denying the petition, the court reiterated the City’s findings that the EIR studied a reasonable number of alternatives and that substantial evidence supported findings that Alternative 3 was infeasible because it failed to obtain major project objectives. (AA 197-199; *See* discussion of inadequate findings *post* at pp. 30-41.) There was no assessment of the adequacy of Alternative 3, just a reliance on the baseless conclusions of the EIR. (*Ibid.*)

A peremptory writ should issue on reversal and remand to require revised EIR analysis of Alternative 3.

B. The EIR Failed to Respond to Comments

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

An EIR must respond to alternatives and mitigation measures that are proposed in comments on the Draft EIR. (Guidelines, § 15088.) The responses should provide analysis of

suggested mitigations and alternatives or otherwise explain why they need not be discussed. As held in *Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, p. 1029:

Our Supreme Court has described the alternatives and mitigation sections as ‘the core’ of an EIR. [Citation.] ... In keeping with the statute and guidelines, an adequate EIR must respond to specific suggestions for mitigating a significant environmental impact unless the suggested mitigation is facially infeasible.

The EIR’s inadequate analysis of Alternative 3 created a *separate violation of CEQA* as it carried through to inadequate responses to comments on the Draft EIR. In two typical examples, the West Hollywood Preservation Alliance (AR 154) and the Art Deco Society of Los Angeles (AR 183) commented that the Melrose Triangle project should be thoughtfully redesigned to incorporate the Jones Dog & Cat Hospital Building into a “creative and engaging development.” (*Ibid.*) The EIR’s response referred back to unsupported analysis in the Draft EIR misstating project objectives and concluding — without evidence — that no viable design could incorporate the historic building. (AR 159, 185-186.)

The responses are inadequate as a matter of law. The City’s claim that any inadequacy is not prejudicial (e.g., AA 119) is

ludicrous; the loss of an historic West Hollywood resource is at stake. The EIR comment responses must be revised.

C. The City's Findings that Alternative 3 is Infeasible Are Not Supported By Substantial Evidence

'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.)

Counsel for the project applicant summed up the reasons that retention of the historic Jones Dog & Cat Hospital building for incorporation into the Melrose Triangle project is supposedly infeasible: "Simply put, the Streamline Moderne design does not blend with the *iconic modern design required by the City* for the building at the western gateway to the City of West Hollywood." (AR 6827, italics added.) In the trial court, the City contended that adaptive reuse of the building would be "inconsistent with project objectives" because it would "eliminate or disrupt ... critical design elements, require a reduction in parking, and disrupt the pedestrian-friendly paseo ..." (AA 100, 117.) The project applicant goes even further to proclaim that demolition is absolutely required "in order to construct the project to meet required City development criteria." (AA 62.)

Critical Design Goals Can Be Met. There are many flaws in these pronouncements, the first being that the Melrose Triangle project objectives do not include “iconic modern design.” Indeed, that would be an impossible criterion for any new construction project since the plain meaning of ‘iconic’ is “widely recognized and well-established.” (Dictionary, www.Merriam-Webster.com.)

The project’s stated objectives, which the Conservancy has never criticized, can be fulfilled via inclusion of the Jones Dog & Cat Hospital into the project design. Only project design Objectives 2, 8, 13, and 14 (*ante*, pp. 21-22), relate in any way to Alternative 3, and all objectives can be met.

There is an iconic building already on this site: the Jones Dog & Cat Hospital, and there is no evidence in the record that this authentic historic Streamline Moderne building would not materially contribute to a stunning design for the desired Gateway to West Hollywood. The Conservancy explained how, providing configurations for adaptive reuse and photographic examples of projects accomplishing integration of historic structures into substantial new construction. (AR 6760-6803.)

The Art Deco Society of Los Angeles agreed, noting numerous examples of projects in Pasadena, Santa Monica, Long Beach, and

Los Angeles that have successfully integrated historic structures and new ones into thriving commercial developments. The Society supported “a thoughtful design of the Melrose Triangle project” incorporating the Streamline Moderne building into “a superior site design that will enhance the cultural life of the City of West Hollywood.” (AR 183)

The EIR in turn notes that Alternative 3 meets many project objectives, but contends that its benefits would be less those of the proposed project:

5.6.4 Attainment of Project Objectives

The Reduced Project/Historic Resource Avoidance Alternative would achieve many of the project objectives but would not utilize the parcels to their full extent. Although Alternative 3 would avoid the historic resource located on the project site, the reduction of retail and office uses would not maximize the redevelopment potential of the project site or fully enhance the area’s overall urban character. Consequently, Alternative 3 would not expand the economic base of the City or foster the City’s fiscal health to the same degree as the proposed project. In addition, this Alternative would not enhance the intersection of Santa Monica Boulevard/Melrose Avenue/Doheny Drive. This Alternative would meet some of the project objectives, but not to the same degree as the proposed project.

(AR 895, *see also* 897.)

The City’s findings concede that Alternative 3 “would be superior to the proposed project” as it would “avoid significant project and cumulative impacts related to the demolition of a potential historic resource as well as significant adverse impacts” on traffic. (AR 71.) Yet the City rejected Alternative 3 as infeasible “because it is inconsistent with the project objectives” and specifically “would eliminate and disrupt the project’s critical design elements, which are set out in Objectives 2, 5, 7, 8, 9, 13, 14, and 16.” (AR 71-72.)

Save the SMB Streamline Moderne further noted that “[c]onsidering that the site is 3 acres, it is inconceivable that retention of a single building with a 7,984-square-foot footprint — one of ten buildings currently on-site — would preclude construction of two-thirds of the Project.” (AR 6865.)

Absent further analysis and description of the alternative, there is no basis for the EIR’s conclusions that retention of ONE historic building would necessarily preclude construction of the Gateway or Avenue buildings. (AR 6865.) The EIR offers no reason why retention of the building would require substantial reductions — or indeed, any reductions — in the project size:

Although the historic building's footprint is only 7,984 square feet, the version of Alternative 3 studied in the EIR reduces the Project's total square footage by approximately 70,000 square feet. Alternative 3's total square footage could be increased by including the leasable space of the historic building itself, ... The EIR admits that the historic building is ideal for adaptive reuse ... (FEIR p. 2-12.) As noted by the Los Angeles Conservancy ... art galleries and showroom uses could be particularly well suited ... due to the building's extensive bands of glass block that provide abundant natural and diffuse lighting indoors. Retention of the historic building would also support General Plan Goals HP-5 and HP-6, as well as General Plan Policy HP-3.4 regarding adaptive reuse of cultural resources.

(AR 6863.) No conclusive evidence has been presented that the historic Jones Dog & Cat Hospital overlaps with the project's new building footprints, but even if the locations of the Avenue Buildings would need to be shifted slightly, and even if the Gateway Building could not extend as far down Santa Monica Boulevard as proposed, nothing precludes construction of those buildings around the historic resource. (AR 6865.) "The Project would simply need to be redesigned." (AR 6865.)

The integration of the Jones Dog & Cat Hospital into the Melrose Triangle block does not interfere with the City's "critical

design elements” or its goals of “introducing a gateway development into the western edge of the City, providing affordable housing, improving the long term tax base and improving the pedestrian experience at the Melrose Triangle,” as the City proclaims. (AA 117.)

The mantra used to justify demolition of the historic Jones Dog & Cat Hospital building, that the applicant was “not able to preserve that building and keep continuity on the façade” (*e.g.*, AA 67) recalls the emperor without clothes. The proposed Melrose Triangle project is not one building. It encompasses an entire City block proposing many buildings of different architectural treatments, scale, and heights that together can result in a “cohesive” design — although that is not a project objective. Objective 5 comes closest: “Create a consistent pattern of development and uses along Santa Monica Blvd that serves project residents and surrounding community by redeveloping an underutilized site.” (AR 1539.)

A “consistent pattern of development and uses” does not require a “cohesive design fronting” the Boulevard; even if it did, a “cohesive design” can include the Jones Dog & Cat Hospital. And a “modern” design, per Objective 2, often includes historic elements, as acknowledged by the City’s imposition of a mitigation measure to

include a portion of the entrance façade at the garage on the new paseo.

The intent of Objective 2 is best accomplished by including a significant portion of the Jones Dog & Cat Hospital building in its historic footprint on Santa Monica Boulevard within an “architectural gateway” contributing to a community uniquely rich in California culture. As pointed out by the Conservancy, one of many “alternatives ... [includes] a redesign of the proposed ‘Gateway building,’ such as a distinctive flatiron design that responds to the site’s triangular western portion and orientation facing eastbound traffic along Santa Monica Boulevard.” (AR 4669.)

Parking and Paseo Needs Can Be Met. The City and project applicant contend that retention of the Jones Dog & Cat Hospital is infeasible because it would necessitate the loss of either 150 or 175 parking spaces intended for public use. (AA, 104, 118 [City Brief, 175 spaces]; 77 [Applicant Brief, 150 spaces.]) However, the project objectives do not require surplus parking to be provided to the public, and sufficient parking spaces can be accommodated.

The project is already over-parked by 38 spaces. (*E.g.*, AA 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 (which is unlikely, since

the Jones Dog & Cat Hospital is less than 8,000 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 Jones Dog & Cat Hospital, reduction of those non-required parking spaces is feasible.

Also, upon issuance of a peremptory writ requiring consideration of a fair preservation/adaptive reuse alternative, the possibility of retaining a substantial portion of the historic building (the front of the 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 Jones Dog & Cat Hospital building, as long suggested by the Conservancy, or temporarily relocating and later returning the front portion of the building to allow for excavation for parking.

The pedestrian paseo can easily be accommodated. 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 Jones Dog & Cat Hospital building in place, beyond contending that some redesign is necessary and “would be difficult.” (*E.g*, AA 77.)

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; AA 55.)



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

LOS ANGELES
CONSERVANCY

Redesign is indeed appropriate to present adequate information for the public and decision makers to consider feasibility of a project alternative that avoids significant environmental impacts, mandated by Public Resources Code section 21002. The current lack of an inclusive design is not due to unsolvable conflicts attributable to an historic resource, but subjective City decisions that disregarded CEQA’s mandates to avoid significant environmental impacts when feasible.

Alternative 3 was further criticized because it may “not utilize the existing parcels to their full potential, and may not as fully enhance the area’s overall urban character.” (AR 71.) It was claimed not to “result in a cohesive site design or achieve the General Plan’s vision for the Gateway Bonus area, including high levels of open space, pedestrian walk through areas, and the location of additional height above 55-feet toward the Santa Monica Boulevard portion of the site.” (AR 71.) Further,

Designing the project around the building would result in an interrupted design frontage along Santa Monica Boulevard. The different design styles of the existing and proposed buildings would necessitate construction of smaller, disjointed structures on the site to accommodate the existing building. Not only would the building disrupt the cohesive frontage design on Santa Monica Boulevard, but options for redesign and reconfiguration of the project are limited [...] It would be speculative to suggest that a redesign would be simple given the shape of the site, all of the City’s development standards and the project objectives. Rather, the record demonstrates that Alternative 3 is infeasible as being inconsistent with the project objectives and critical design features.

(AR 72.)

These objections to Alternative 3 do not equate to substantial evidence of infeasibility. Only the overall project objectives and specific Objectives 2, 8, 13, and 14 relate to the feasibility of the Alternative 3 design. (AR 538-539.) *There is no project objective that requires a 100% modern design that militates the demolition of historic resources.* The objections to Alternative 3 are due to the design flaw inherent in the EIR's presentation of the alternative, rather than feasibility of reuse of the historic building.

The approval of the project after rejecting the shell of Alternative 3 violates the City's General Plan Goal HP-3: "Protect cultural resources from demolition and inappropriate alterations." (AR 5187.) A creative, thoughtful design incorporating the front portion of the Jones Dog & Cat Hospital building as a small, special part of the large Melrose Triangle project block could achieve *every one* of the relevant project objectives, including cohesive gateway design, pedestrian access, landscaping, and mixed uses.

There is no requirement in CEQA that a feasible redesign be "simple." *The problem here is that the project architect was not tasked at the outset with incorporating the site's single historic resource into the project design.* That was a choice made by the project applicant; delay attending redesign or revision of the EIR

on remand to the City is not relevant.

Similarly, the City's contention that it may find adaptive reuse infeasible from a 'policy' standpoint, relying on *California Native Plant Society v City of Santa Cruz* (2009) 177 Cal.App.4th 957, p. 1001, is insupportable. (AR 185-186.) What 'policy' is being served? An agency cannot simply declare its refusal to find an alternative feasible a matter of policy; CEQA requires supportable findings. Since Alternative 3 has not been designed, the decision to reduce the square footage of the buildings so significantly is unwarranted and unsupported.

Preservation Action, supra, found that a project applicant's reasons for "proposing a large [project] and rejecting a smaller [project] 'cannot be determinative of [the smaller [project]]'s] feasibility.'" (*Id.*, p.1357.) Infeasibility must be tied to evidence of the impracticality of the alternative. (*Ibid.*) Most smaller projects likely achieve lesser levels of benefits and profit; that does not equate to infeasibility.

A redesigned project that saves historic resources will meet project objectives.

Conclusion

‘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.)



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

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 eligible resources in West Hollywood and Los Angeles County.

As explained by Adrian Scott Fine, the Conservancy’s Director of Advocacy, incorporating the historic Jones Dog & Cat Hospital building into the Melrose Triangle Project “provides an

opportunity to create a dynamic and vibrant urban project with a mix of building heights and styles, of both historic and new construction.” (AR 6980.)

The City’s *choice* to instead approve demolition is dangerous. CEQA does not allow findings of infeasibility of adaptive reuse of historic resources to be based on vague contentions about design continuity or preference for modern construction. The integration of new construction and well-loved historic resources is occurring all over the world. Here, the West Hollywood City Council was presented with inadequate information with which to understand its adaptive reuse options.

To be sure, the elected City Council is empowered to make land used decisions. Councilmembers are excited about the Melrose Triangle project at the City’s gateway, and it *will* proceed. But even when an agency clearly favors a project, our Supreme Court recently emphasized that “CEQA’s requirements for informing the public and decision makers of adverse impacts, and [imposing] feasible mitigation measures, *still need to be enforced.*” (*Center for Biological Diversity v. Department of Fish and Wildlife* (2015) 62 Cal.4th 204, p. 240, italics added.)

So it is here. On behalf of the people of Greater Los Angeles, the Conservancy respectfully requests that the judgment be reversed and the case remanded for compliance with CEQA by granting the petition and issuing a peremptory writ setting aside the Melrose Triangle project EIR and related approvals.

Counsel's Certificate of Word Count per **Word:mac**²⁰¹¹: 7926

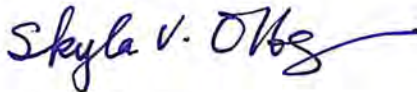
August 9, 2016

Respectfully submitted,

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Los Angeles Conservancy v. City of West Hollywood, et al.
Los Angeles County Superior Court Case No. BS151056
Court of Appeal No. B270158

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 August 9, 2016, I served one true copy of:

Appellant's Opening Brief

_____ 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.

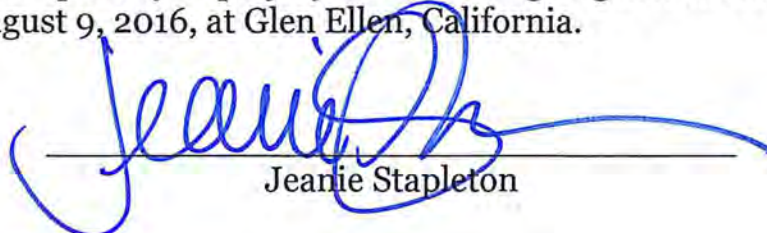
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I declare under penalty of perjury that the foregoing is true and correct and is executed on August 9, 2016, at Glen Ellen, California.



Jeanie Stapleton