

TOWN OF WOODSIDE

Report to Town Council
From: Susan George, Town Manager

Agenda Item 1
April 28, 2009

**SUBJECT: RECONSIDERATION OF DEMOLITION PERMIT
APPLICATION: 460 MOUNTAIN HOME ROAD (JOBS)**

I. Summary

Steven Jobs (Jobs) has renewed his request for a demolition permit for the Jackling Estate (Residence) located at 460 Mountain Home Road (Property). If issued, Jobs plans to demolish the Residence and build a new single-family home on the Property.¹ Previously Jobs applied for a demolition permit in 2001 to demolish the Residence. At that time the Town's consultants determined that the Jackling Estate was an historic resource and the Town thus prepared an environmental impact report for the project pursuant to the California Environmental Quality Act (CEQA).² The Town Council's December 2004 approval of a demolition permit for the Residence was challenged. The trial court ruled in favor of the Petitioners and the Court of Appeal affirmed the trial court ruling in January 2007. In doing so, the Court of Appeal reasoned that the Town Council's findings rejecting certain restoration alternatives as economically infeasible were not supported by substantial evidence in the record since there was no comparative cost data of these alternatives compared to the cost of the new home. In June 2008, Jobs renewed his application for the demolition permit, providing the cost information that the Court of Appeal found lacking in the prior application for the demolition permit.

Staff has completed its review of the renewed application and an Addendum (EIR Addendum) to the Jackling Estate Demolition Integrated Final EIR (Final EIR)³ has been prepared. The Town Council is now being asked to act on the Final EIR Addendum and to approve the renewed application for the demolition permit. As to the EIR Addendum, the Town Council may adopt the EIR Addendum unless it finds that conditions exist which would mandate the preparation of a subsequent or supplemental EIR. As to the demolition permit, the Council may approve, conditionally approve or deny the demolition permit.

¹ The demolition of the existing Residence and the construction of a new single-family home are collectively referred as the "Project." However, the only item that you are being asked to approve now is the demolition permit. Construction of a new home on the Property would likely require, at minimum, architectural and site review and a site development permit.

² The CEQA statute is codified at Public Resources Code section 21000 *et seq.* The administrative regulations that implement the CEQA statute are known as the CEQA Guidelines and are found in Title 14 of the California Code of Regulations section 15000 *et seq.*

³ The Final EIR and EIR Addendum are collectively referred to herein as the "EIR."

If the Town Council approves the demolition permit, with or without conditions, a mitigation monitoring and reporting program would be required along with CEQA findings and a statement of overriding considerations.

The CEQA findings would need to confirm that there are no feasible mitigation measures to avoid or lessen the significant impact of demolishing the Residence and, as to each alternative, verify:

- That the alternative would not avoid the significant, unavoidable impact to the historic resource and/or
- That the alternative would not meet most of the basic Project objectives and/or
- That the alternative would be infeasible for economic, legal, social, technological or other reasons. The statement of overriding considerations would also need to set forth the specific benefits of the proposed Project that outweigh its unavoidable adverse environmental effect(s).

It is important to point out that in acting on this application, the Town Council's authority is limited. The Council may approve or deny the demolition permit. The Council does not have authority to direct that one of the restoration alternatives described below be implemented.

Part II of this staff report, Background (pages 2-5), provides a brief overview concerning the history of the Project. Part III, Review and Action on the EIR Addendum (pages 5-9), discusses the content of the EIR Addendum. Part IV, Review and Action on the Demolition Permit (pages 9-17), highlights areas that the Town Council should consider in its deliberations concerning the demolition permit. Finally, in Part V, Options for Town Council Action (pages 17-18), the staff report outlines the options available to the Town Council in acting on the EIR addendum and application for a demolition permit.

II. Background

The approximate 6 acre Property is located in the central portion of the Town, west of Interstate 280 and south of State Route 84. The Property is designated Residential-Environmentally Sensitive Area ("R/ESA") by the Town's General Plan. The environmentally sensitive designation is intended to identify areas that have significant development constraints. The designation applies here because of the Property's proximity to the San Andreas Fault. The site is zoned Special Conservation Planning ("SCP-5") pursuant to the Town's Zoning Code. This zoning district specifies a minimum lot size of 5 acres or larger and is intended for lands with steep hillsides, geologic hazards, difficult road access, or soil and water problems.

The Property is improved with the Residence as well as associated accessory structures, including a cottage, garage/water tower, and aviary. The Residence is a 14 bedroom, 17,250 square foot structure that was built in 1925 for Daniel Jackling, who was a key figure in the American copper mining industry. Mr. Jackling lived in the Residence from its construction until his death in 1956. The Residence was designed by George Washington Smith, a leading architect in the Spanish Colonial Revival style in the United States, and contains many unique copper fixtures reflective of Jackling's work in the mining industry.

Jobs purchased the Property in the early 1980s and lived in the Residence for approximately ten years, before renting it out to others. For over a decade, the Residence has been vacant. In February 2001, Jobs applied to the Town for a permit to demolish the main Residence and cottage in order to prepare the site for the construction of a new single-family home.⁴

As part of its CEQA review of the Project, the Town retained a consultant to determine whether the Residence qualified as an historic resource.⁵ The Town's consultant determined that the Residence was eligible for listing on the CRHR based on its association with Daniel Jackling and also because it embodies the features and qualities of the Spanish Colonial Revival style. A peer review of the Town consultant's findings concurred fully with the consultant's conclusions. For a project subject to CEQA that involves demolition of an historic resource, a lead agency must prepare an environmental impact report that includes an analysis of alternatives to the demolition. If the agency wishes to approve demolition of the historic resource, it must adopt findings, supported by substantial evidence, that there are no feasible mitigation measures or alternatives to demolition of the structure. In light of the consultants' conclusions that the Residence was an historic resource, the Town prepared the Final EIR to analyze the environmental impacts of the Project. The Final EIR is attached to this report as Attachment 1.

The Final EIR concluded that demolition of the Residence would have significantly impacted an historic resource. The Final EIR included mitigation measures requiring the applicant to develop historical and photographic documentation of the structure and to employ a qualified salvage company to remove and store features of the home identified as significant by an architectural historian. The Final EIR nonetheless concluded that these measures would not have reduced the impact of demolition of the Residence to a less than significant level. The Final EIR also examined five alternatives to the Project, focusing primarily on restoring and modifying the Residence to varying

⁴ According to the Final EIR, the aviary would be restored and relocated on-site and the garage/water tower structure would remain on the site for at least 5 years.

⁵ Under CEQA, historic resources include those listed in, as well as those determined to be eligible for listing in, the California Register of Historic Resources (CRHR). Properties are eligible for listing in the CRHR if they meet one of four specified criteria. The criteria at issue here are Criterion 2 and Criterion 3. Under Criterion 2, properties are eligible for listing if they are associated with the lives of persons important to California, local or national history. Under Criterion 3, properties are eligible for listing based on their physical or architectural attributes, including their association with a significant architect.

degrees in an attempt to avoid the significant impact of demolishing the Residence while still accomplishing most of the basic Project objectives associated with constructing a new single-family home. The alternatives are described and discussed in further detail below.

After public hearing, the Planning Commission certified the Final EIR and approved the demolition permit in June 2004. The Planning Commission's actions were appealed to the Town Council by several citizens and the daughter of a former owner of the Residence. In December 2004, the Town Council considered the appeal. After public hearing, the Town Council adopted Resolution No. 2004-6487, certifying the Final EIR and approving the demolition permit. The Town Council's actions were based, in part, on findings that none of the alternatives set forth in the Final EIR were economically feasible. At the time the Town Council acted on the Project, Jobs had not submitted any plans or cost estimate for the new home. The Town Council also adopted a statement of overriding considerations based on General Plan policies which encourage and promote protection of open space. The Town Council found that demolition of the Residence would have resulted in construction of a smaller home, thereby resulting in an overall increase in the amount of open space on the Property.

A group of individuals calling themselves Uphold our Heritage filed suit claiming that the Town Council's findings on alternatives and its statement of overriding considerations were not supported by substantial evidence in the record. No challenge was brought to the Final EIR itself. In January 2006, the trial court ruled in favor of Uphold our Heritage, reasoning that the Town's findings rejecting the restoration alternatives as economically infeasible were not supported by substantial evidence. The trial court also ruled that the Town's statement of overriding considerations was not supported by substantial evidence. The Town and Jobs jointly appealed the trial court's decision to the Court of Appeal.

In January 2007, the Court of Appeal upheld the trial court's decision, reasoning that without information concerning the cost of the new residence, there was no comparative basis upon which to reject some of the Final EIR alternatives as economically infeasible. Since the record did not support the Town Council's findings that certain alternatives were infeasible, the Court of Appeal found that the statement of overriding considerations that was adopted by the Council was also necessarily invalid.

As noted above, while Uphold our Heritage challenged the Town's findings and its statement of overriding considerations, it did not challenge the Final EIR itself and the time to assert any such challenge has long since expired. The Court of Appeal's actions thus did not set aside the Town Council's certification of the Final EIR, and the Final EIR remains in place and is valid.

In June 2008, Jobs renewed his application for the demolition permit. The renewed application includes conceptual design plans that propose construction of a

modern 6,000 square foot home in place of the existing Residence.⁶ The plans were prepared by the architectural firm of Bohlin Cywinski Jackson and depict the new home being located in substantially the same location on the site as the existing Residence. The applicant also submitted additional, detailed cost estimates for construction of the new residence and, for comparative purposes, cost estimates for an extensive renovation of the Residence to meet modern standards. According to these cost estimates, prepared by Baker pre-Construction Company, the cost of the new residence is estimated to be approximately \$8.2 million while the cost of renovating the existing Residence to modern standards is estimated to be approximately \$13.3 million. The aforementioned plans and cost estimates are contained in the Cost Comparison Report prepared by the applicant, which is attached as Exhibit B to the EIR Addendum.

In response to the Court of Appeal decision, the Town Council adopted Resolution No. 2009 - 6733 on February 10, 2009, formally setting aside its prior approval of the demolition permit for the Project, as well as its related action adopting a statement of overriding considerations.

On April 17, 2009, Town staff provided public notice of the Town Council's April 28, 2009 meeting regarding Jobs's renewed request for the demolition permit. On April 14, 2009, the Town Council received an e-mail from Clothilde Luce (on behalf of Uphold our Heritage) requesting a continuance of the hearing until May 26, 2009 in order to allow Uphold our Heritage sufficient time to prepare for the hearing. On that same date, Ms. Luce sent a separate letter generally asserting the technical feasibility of relocating the Residence to an off-site location. On April 14th, the Town also received an e-mail from Brian Turner of the National Trust for Historic Preservation requesting a continuance of the hearing for at least 30 days to allow his organization and the public sufficient time to review the EIR Addendum and proposed resolutions.⁷ On April 15, 2009, Town Manager Susan George responded to these e-mails requesting a continuance stating that the commenters could request a continuance at the April 28, 2009 meeting. The correspondence referenced in this paragraph is attached as Attachment 2 to the report.

III. Review and Action on the EIR Addendum

Once an EIR has been certified, as is the case here, there are relatively limited circumstances under which further CEQA review of that project may be conducted. In general, if there are changes in a project or circumstances under which a project will be undertaken that implicate new or substantially more severe environmental impacts than

⁶ Due to the conceptual nature of the plans submitted in conjunction with the application for ASRB review of the Project, it is anticipated that Jobs will need to submit more detailed plans and related materials prior to the Town's action on the ASRB application.

⁷ The EIR Addendum was made publicly available on April 16, 2009. While the public notice indicated that the Town Council would consider resolutions to adopt the EIR Addendum and approve the demolition permit at its April 28, 2009 meeting, Town staff subsequently determined that it would be more appropriate to seek direction from the Town Council at this meeting. As such, no formal action on the EIR Addendum or the demolition permit will occur at the April 28th meeting and the public will be given the opportunity to review and comment on any proposed resolutions prior to a future meeting on this matter.

were disclosed in the EIR or if an alternative previously found not to be feasible would in fact be feasible but the project proponent declines to adopt it, an agency must prepare a subsequent (or supplemental) EIR. Public Resources Code § 21166; CEQA Guidelines § 15162. By comparison, an agency is required to prepare an addendum to an EIR if some changes or additions to the EIR are needed but none of the conditions requiring preparation of a subsequent (or supplemental) EIR have occurred. CEQA Guidelines § 15164.

Since some changes or additions to the Final EIR were needed, but none of the conditions requiring preparation of a subsequent or supplemental EIR had occurred, the Town staff determined that it was appropriate to prepare the EIR Addendum to examine the renewed application submitted by Jobs. The EIR Addendum is Attachment 3 to this report. Essentially, the EIR Addendum makes changes to the Final EIR as necessary to confirm that the Final EIR fully evaluates:

- Both demolition of the existing Residence and construction of the new home,
- Expands upon the Project objectives in light of the renewed application and plans for the new residence,
- Examines a new, more comprehensive restoration alternative (Alternative 2A) and
- Assesses all of the alternatives in light of the comparative cost data of building the new home (evidence that the Court of Appeal found lacking in the Town's prior action approving the demolition permit).

As to the alternatives in particular, the EIR Addendum discusses:

- Whether each alternative (including Alternative 2A) would avoid or substantially lessen the significant effects of the Project on the Residence,
- Provides updated cost information on the alternatives as relevant,
- Reaches a preliminary conclusion as to whether each alternative meets most of the basic Project objectives and
- Reaches a preliminary conclusion as to whether each alternative would be feasible to implement.

Feasible is defined by CEQA as “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors.” CEQA Guidelines Section 15364. A summary of the EIR Addendum's tentative conclusions with respect to each of the alternatives is set forth below. The ultimate determination on these issues lies within the Town Council's purview.

A. Identified Alternatives

- **Alternative 1** describes the impacts of the Project not going forward, *i.e.*, the No Project alternative as required by CEQA. The EIR Addendum concludes that Alternative 1 would not meet the basic Project objectives of replacing the Residence with a smaller single-family home that comports with the Town Code and contains a modern floor plan and amenities consistent with current standards and expectations. The EIR Addendum also finds that this alternative may not result in the protection of the historic Residence due to the ongoing deterioration of the Residence and the lack of assurances that the Residence would be restored and used if the Project is not approved.
- **Alternative 2** describes restoring the Residence in accordance with the Secretary of the Interior's Standards for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings. Since this alternative would primarily alter the interior of the Residence and leave the exterior of the Residence intact, the EIR Addendum concludes that Alternative 2 would avoid the significant, unavoidable impact to the historic resource. However, the EIR Addendum goes on to state that it does not appear that this alternative would meet most of the basic Project objectives of replacing the Residence with a smaller home that contains a modern floor plan and amenities. The EIR Addendum also suggests that the cost of this alternative (which could be comparable to the cost of Alternative 2A, which also involves interior renovation of the Residence) may make it economically infeasible since it could exceed the Project costs by approximately \$5 million.⁸
- **Alternative 2A** is the new restoration alternative that involves extensive remodeling of the interior of the Residence so as to achieve more of the basic Project objectives than the restoration alternatives examined in the Final EIR.⁹ The EIR Addendum concludes that this alternative would avoid the significant, unavoidable impact on the historic Residence and would go considerably further than the other restoration alternatives in attaining at least some of the basic Project objectives. Nonetheless, the EIR Addendum concludes that this alternative would not meet some of the basic Project objectives and may be economically infeasible in light of its estimated \$13.3 million cost.

⁸ The Court of Appeal found that alternatives that would add \$5 million to the cost of the Project supported a reasonable inference that the alternatives were not, in fact, economically feasible.

⁹ Alternative 2A is based on a conceptual plan and preliminary architectural drawings prepared by the applicant's consultants and submitted in conjunction with the renewed application for the demolition permit.

- **Alternative 3** describes a restoration alternative similar to Alternative 2, but with modifications to the existing Residence to create a more conventional floor plan, as well as a major 16,000 square foot addition to the Residence to include a new living area, office suite and fitness area. The EIR Addendum concludes that this alternative would not avoid the significant, unavoidable impact to the historic Residence or meet most of the basic Project objectives. The EIR Addendum also suggests that the estimated \$20 million cost of this alternative (using the conservative Final EIR restoration cost of \$4.9 million plus nearly \$15 million for the 16,000 square foot addition based upon the per square foot estimate for the new home) may make it economically infeasible.
- **Alternative 4** describes the construction of a new home and restoration and relocation of the existing Residence to another portion of the Property. The EIR Addendum concludes that this alternative would avoid the significant adverse impact to the historic Residence, and may, depending on its specific characteristics, meet most of the basic Project objectives. However, the EIR Addendum concludes that this alternative may be infeasible for legal and/or economic reasons because it would exceed the maximum amount of development allowed on the Property per the Town Code and is estimated to cost between \$14.8 million (using the conservative estimated Final EIR restoration cost of \$6.6 million plus the estimated \$8.2 million Project cost) and \$21.5 million (using the applicant's estimated \$13.3 million restoration cost for Alternative 2A plus the \$8.2 million Project cost).
- **Alternative 5** describes construction of a new home and restoration and relocation of the existing Residence to an unknown, off-site location. The EIR Addendum concurs with the Final EIR that the analysis of this alternative is "highly speculative" and depends on factors such as the feasibility of moving the Residence, which would have to be accomplished in pieces, down a narrow driveway and onto a sloping road with overarching trees and utility lines. Assuming that it is physically possible to relocate the Residence and that a suitable off-site location could be found (no such site has been identified despite the applicant's marketing efforts),¹⁰ the Project could avoid the significant, unavoidable impact to the historic Residence and achieve the basic Project objectives. However, the EIR Addendum concludes that this alternative may be infeasible for the aforementioned reasons and/or for economic reasons in light of the estimated cost between \$14.9 million (using the conservative estimated Final EIR restoration cost of \$6.7 million plus the estimated \$8.2 million Project cost) and \$21.5 million (using the applicant's estimated \$13.3 million restoration cost for Alternative 2A plus the estimated \$8.2 million Project cost).

¹⁰ These efforts are documented in the September 2, 2008 memorandum from Howard Ellman, Jobs's attorney, to the Town Council, attached as Exhibit D to the EIR Addendum.

In summary, the EIR Addendum finds that the Project would result in the same significant environmental impact to the historic Residence that was identified in the EIR and that no new or substantially more severe impacts would occur as a result of the Project. As such, none of the information added by the EIR Addendum meets the conditions for preparation of a subsequent or supplemental EIR.¹¹

While the EIR Addendum reaches the tentative conclusions summarized above, the ultimate decision as to whether an alternative would achieve most of the basic Project objectives and/or be feasible must be made by the Town Council in connection with its action on the Project.

B. Conclusion

After conducting the public hearing, the Town Council has the following options with respect to the EIR Addendum:

1. Continue the public hearing to a future Town Council meeting for further consideration of the EIR Addendum;
2. Direct staff to prepare a resolution and findings for adoption of the EIR Addendum; or
3. Direct staff to prepare a resolution and findings for rejecting the EIR Addendum.

IV. Review and Action on the Demolition Permit

Staff believes that there are two primary areas that the Town Council should focus on in its deliberations concerning the demolition permit. First, the Council should consider whether there are any viable alternatives that would avoid the significant impact, accomplish most of the Project objectives and be feasible to implement from an economic, legal and technological standpoint. Second, if there are no such alternatives and the Council wishes to approve the demolition permit, the Council should consider whether the Project has specific benefits that outweigh its significant unavoidable impact on the environment, thereby justifying adoption of a statement of overriding considerations. Both of these topics are discussed in more detail below.

A. Viability of Alternatives

¹¹ In the future, if there are any changes in the Project (such as to the location of the new home on the Property or to the amount of necessary grading, for instance) that implicate any significant environmental impacts that were not examined in the EIR, further environmental review would be conducted by the Town as part of the architectural and site review process for the Project.

In order to be a viable alternative to the Project, the alternative must:

- Substantially reduce or avoid the significant impact of demolishing the historic Residence,
- Accomplish most of the basic Project objectives, and
- Be feasible from an economic, legal, and technological standpoint.

While the EIR Addendum reaches the preliminary conclusion that none of the alternatives are viable (as discussed in more detail below), the ultimate decision as to whether an alternative would achieve most of the basic Project objectives and/or be feasible must be made by the Town Council in connection with its action on the demolition permit.

In order to avoid or substantially reduce the significant impact to the historic Residence, the alternative must not cause a substantial adverse change in the significance of the resource, *i.e.*, through demolition or material alterations of the Residence that impair its historical significance or threaten its eligibility for inclusion in the CRHR. *See*, CEQA Guidelines § 15064.5(b):

A project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment. [¶] Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired. [¶] The significance of an historical resource is materially impaired when a project: . . . [d]emolishes or materially alters in any adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the [CRHR].

As discussed in the EIR Addendum, it appears that all of the alternatives except for Alternative 3 could avoid the significant impact to the historic resource.

In order to be a viable alternative, the alternative must meet most of the basic Project objectives proposed by the applicant. The basic Project objectives here include:

- Demolishing the Residence,
- Constructing a single-family home with a modern floor plan and amenities consistent with current standards and expectations,

- Replacing the Residence with a smaller home that is of a scale and character that complies with the current Town Code (approximately 6,000 square feet), and
- Constructing a new home that minimizes disturbance of the natural terrain and reduces overall building bulk and height on the Property.

While most of the alternatives would attain at least some of the Project objectives, only Alternative 4 and Alternative 5 would meet most of the basic Project objectives of replacing the Residence with a smaller single-family home with a modern layout and amenities.

Finally, in order to be a viable alternative, the alternative must be feasible. CEQA defines “feasible” as “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.” CEQA Guidelines § 15364. “Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries, and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is already owned by the proponent).” CEQA Guidelines § 15126.6(f)(1).

The EIR Addendum’s discussion of feasibility focuses primarily on economic, legal and technological issues.

1. **Economic Feasibility**

As previously noted, the Court of Appeal stated that a \$5 million increase over Project costs would support a reasonable inference that an alternative is economically infeasible. According to the applicant’s estimates prepared by construction professionals, the new home to be constructed as part of the Project would cost approximately \$8.2 million. It appears, based directly or implicitly on the renovation estimate submitted by the applicant, that each of the restoration alternatives would cost approximately \$13.3 million (for Alternatives 2 or 2A) or more (for Alternatives 3, 4 or 5) to implement. As such, based upon the evidence in the record, it appears that each of the alternatives except for Alternative 1 would be economically infeasible.

2. **Legal Feasibility**

Each of the alternatives is considered legally feasible if it is capable of being accomplished in accordance with existing laws and regulations, including the requirements of the Town Code. With certain exceptions not relevant here, the Town Code limits new residential development to 6,000 square feet in the applicable SCP-5 zoning district. Town Code § 153.047. The Town Code also contains regulations prohibiting moving, altering, increasing, enlarging or expanding a nonconforming use or structure. Town Code § 153.300. In contravention of Town Code, Alternative 3 would

add a 16,000 square foot addition to the non-complying 17,250 square foot Residence. Alternative 4 is not feasible because it would violate Town Code by allowing over 23,000 square feet of development on the Property. Since Alternatives 3 and 4 would not comply with the regulatory requirements of the Town Code, these alternatives are not considered legally feasible.

3. Technological Feasibility

The factor of technological feasibility refers (as pertinent here) to whether an alternative is physically capable of being implemented. In order to be relocated off-site, the Residence would need to be disassembled in pieces and moved down a narrow driveway (approximately 14 feet in width) and onto a sloping road with overarching trees and utility lines (the trees and utility lines would have to be removed). Some of the pieces may be too large to be relocated in this manner. Thus, relocation and reassembly of the Residence off-site in a historically cohesive and sufficiently intact fashion faces physical challenges and may be physically infeasible. Furthermore, there does not appear to be a suitable site to relocate the Residence to, based on the applicant's unsuccessful 4 year effort in this regard, as documented in the aforementioned September 2, 2008 memorandum from Howard Ellman to the Town Council. In short, Alternative 5 does not appear to be technologically feasible.

A summary table of the EIR Addendum's conclusions on alternative viability is provided below. It is important to reiterate that these are preliminary conclusions and the ultimate decision as to the viability of the alternatives must be made by the Town Council in connection with its action on the demolition permit. In order to find an alternative viable, the Town Council would need to answer yes to each of the questions presented below. As shown by the table, the EIR Addendum concludes that there were no viable alternatives to the Project since none of the potentially viable alternatives would answer yes to each of the questions presented.

TABLE 1: EIR ADDENDUM'S CONCLUSIONS REGARDING VIABILITY OF PROJECT ALTERNATIVES

Alternative	Avoid Impact?	Meet Basic Project Objectives?	Economically Feasible?	Legally Feasible?	Technologically (i.e., physically) Feasible?
Alternative 1: No Project Alternative	Yes	No	Yes	Yes	Yes
Alternative 2: Restoration	Yes	No	May Not Be	Yes	Yes
Alternative 2A: Restoration with Modern Plan	Yes	No	No	Yes	Yes
Alternative 3: Restoration Plus Addition	No	No	No	No	Yes
Alternative 4: Restoration Plus On-Site Relocation	Yes	Yes	No	No	Yes
Alternative 5: Restoration plus Off-Site Relocation	Yes	Yes	No	Yes	May Not Be

B. Conclusion

After conducting the public hearing, the Town Council has the following options with respect to the EIR Addendum's conclusions regarding the viability of alternatives:

1. Continue the public hearing to a future Town Council meeting for further information concerning the viability of some or all of the alternatives;
2. Determine that the information in the EIR Addendum is accurate and direct staff to prepare formal findings that the alternatives are not viable;
or
3. Determine that the information in the EIR Addendum is not accurate and direct staff to make specific changes to the EIR Addendum.

C. Statement of Overriding Considerations

Assuming that the Town Council concludes that none of the alternatives is viable for the reasons described above and wishes to approve the demolition permit, Council may only do so by adopting a statement of overriding considerations. A statement of overriding considerations must set forth the specific benefits of the Project that outweigh its significant impact on the environment.

Since adoption of a statement of overriding considerations involves a pure policy decision, the Town Council has fairly broad discretion to approve or reject such a statement provided its decision is supported by substantial evidence in the record. Substantial evidence includes facts, reasonable assumptions predicated upon facts or expert opinions supported by facts. Public Resources Code § 21080(e)(1).

Substantial evidence does not include "argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment." Public Resources Code § 21080(e)(2). A reviewing court presumes that an agency's decision is supported by substantial evidence and the burden rests on the party challenging the agency's decision to show that the decision was not in fact supported by substantial evidence. As with most projects, this one requires the Council to weigh and balance competing policies in making its decision.

1. Policies Supporting Approval

If the Council is inclined to approve the demolition permit, one benefit justifying adoption of a statement of overriding considerations would be the elimination of a non-complying structure, the Residence. If approved, the Project would result in the replacement of a 30 room, 17,250 square foot structure (*i.e.*, a structure that is nearly

three times the size allowed by the current Town Code) with a 6,000 square foot home which complies with the size limitations of the Town Code.

Another possible benefit is that the Project would replace the Residence with a home that is of a size and scale compatible with the Town's rural and scenic character. The Town's General Plan contains policies aimed at ensuring that buildings are subordinate to the land and of a size and scale so as to be compatible with the Town's rural and scenic character.¹² The Land Use Element of the General Plan contains the following goals and policies:

- "To preserve and enhance Woodside as a scenic, rural residential community." (Goal G1);
- "Buildings shall be of a size and scale and sited so as to be compatible with the rural atmosphere of the community." (Policy P8);
- "Structures shall be designed to be subordinate to the natural land form . . . [and] should conform to the shape and scale of the land" (Policy P20); and
- "Large, bulky and unscreened structures shall be discouraged, particularly if they are visible from the road." (Policy P23).

In addition, the Open Space Element of the General Plan contains the following policies:

- "The dominant features of the Planning Area contributing to the open quality are the natural land forms and vegetation. Structures should be subordinated to the site." (Policy P6); and
- "The scale of building, the siting of structures, and the design and materials of construction shall be harmonious with the natural setting so that the visual quality of open spaces will not be unreasonably impaired." (Policy P7).

The Project could be viewed as consistent with these policies because it would remove a large, bulky and unscreened structure visible from private roads and open space and replace it with a smaller home that is subordinate to the site. The substantial reduction in density of development on the site could also be viewed as enhancing the Town's scenic and rural character.

Another potential benefit of the Project is removal of a structure that could pose a substantial risk to public health and safety and thus constitute a public nuisance. The existing Residence would require substantial renovations in order to make it habitable

¹² While a finding of General Plan consistency would not be required in connection with the Town Council's action on the demolition permit, the policies set forth in the Town's General Plan are nonetheless instructive and highlight issues that the Town Council could consider when determining whether to approve or disapprove the demolition permit.

and, unless restored, will likely continue to deteriorate, thereby posing a substantial risk to public health and safety if the Project is not approved.¹³ Additionally, the Residence, which is located in close proximity to the San Andreas Fault, was not built in accordance with modern safety standards set forth in, among others, the Uniform Building Code and the Uniform Fire Code. As a result, nearby homes or residents could be harmed if the Residence were to be damaged or destroyed by an earthquake or fire. The new home to be built as part of the Project would be built in accordance with modern building codes and standards and would, by comparison, pose a minimal risk to public health and safety.

2. Policies Supporting Denial

Alternatively, the Town Council could find that the Project does not provide sufficient benefits to outweigh the significant unavoidable impact to the historic Residence. The EIR concludes that the Residence is historically significant in light of its association with Daniel Jackling, as well as its embodiment of the Spanish Colonial revival style of architecture. The EIR concluded that demolition of the Residence would result in a significant impact to the historic Residence. The Town Council could find that there are no compelling benefits that outweigh the loss of the historic resource that would result from demolition.

The Town's General Plan contains goals and policies aimed at preserving and protecting historic resources. In fact, in March 2009, the Town Council adopted and added an Historic Preservation Element to its General Plan.¹⁴ Although the goals, policies and programs listed in the Historic Preservation Element were intended to be implemented in a voluntary manner, the Element nonetheless contains the following goals and programs that may be deemed relevant:

- “To preserve, protect and enhance the historical, archaeological and aesthetic resources located within or related to Woodside.” (Goal G2);
- “To build civic pride in Woodside’s unique qualities by fostering citizen efforts to preserve, maintain and enhance its historic resources.” (Goal G3);
- “To encourage adaptive reuse of structures and features so as to encourage the preservation of these structures.” (Goal G4); and
- “The Town will cooperate with appropriate federal, state and local agencies to identify and record Woodside’s Historic Resources.” (Implementing Program 3).

¹³ The current condition of the Residence is described in a December 2008 letter from Project Manager Kenneth Morrison to Town Manager Susan George, attached as Exhibit C to the EIR Addendum.

¹⁴ As previously mentioned, no finding of General Plan consistency is required in connection with the Town Council’s action on the demolition permit. The Town Council may nonetheless wish to consider these policies when determining whether to approve or disapprove the demolition permit.

General Policy P11 and Land Use Element Policy P25 further provide that “[s]tructures of historic or architectural significance shall be identified and documented, and efforts shall be made to preserve them.”

If approved, the demolition permit would result in the elimination of the historic Residence. While documentation and preservation of certain architectural features would occur prior to demolition, the Town Council could find that the Project would not sufficiently preserve, protect and enhance the historic Residence. The Town Council could also find that the Project would not result in the adaptive reuse of the structure. Based on these factors, the Town Council could find that there are no compelling benefits that outweigh the Project’s significant impact on the environment.

D. Conclusion

After conducting the public hearing, the Town Council has the following options with respect to the issue of whether to adopt a statement of overriding considerations:

1. Continue the public hearing to a future Town Council meeting and request more information concerning the benefits of approving the Project;
2. Determine that the benefits of approving the Project outweigh the significant impact associated with demolishing the historic Residence and direct staff to prepare a statement of overriding considerations thereby approving the project;
3. Determine that the benefits of approving the Project do not outweigh the significant impact associated with demolishing the historic Residence and direct staff not to prepare a statement of overriding considerations thereby denying the project.

V. Options for Town Council Action

Staff presents the following options for the Town Council to consider in acting on the EIR Addendum and proposed demolition permit.

- **Option 1:** Open the public hearing and continue the hearing to a future Town Council meeting for further consideration of the Addendum and/or demolition permit.
- **Option 2:** Open the public hearing and continue the hearing, directing staff to provide specific further information regarding the EIR Addendum, the viability of alternatives, the benefits of approving versus denying the demolition permit, etc.
- **Option 3:** Conduct and close the public hearing and provide direction to staff on appropriate findings and resolutions for action on the EIR

Addendum and demolition permit. Such action, to be taken at a subsequent Town Council meeting, could consist of:

A. Adoption of the EIR Addendum and approval of the demolition permit;

- At such subsequent Town Council meeting, motions would then be made for:
 1. adoption of a resolution approving the EIR Addendum and
 2. adoption of a resolution approving a demolition permit, subject to conditions; a Mitigation Monitoring and Reporting Program; an associated Statement of Findings under CEQA and a Statement of Overriding Considerations.

B. Adoption of the EIR Addendum and denial of the demolition permit;

- At such subsequent Town Council meeting, a motion would then be made for:
 1. adoption of a resolution approving the EIR Addendum and
 2. adoption of a resolution denying the demolition permit.

C. Rejection of the EIR Addendum and denial of the demolition permit.

- At such subsequent Town Council meeting, motions would then be made for:
 1. adoption of a resolution rejecting the EIR Addendum and
 2. adoption of a resolution denying the demolition permit.