

**ENDORSED FILED**  
**SAN MATEO COUNTY**

JAN 27 2006

Clerk of the Superior Court  
By TERRI MARAGOULAS  
DEPUTY CLERK

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF SAN MATEO**

UPHOLD OUR HERITAGE,

Civil No. 444270

Petitioner,

Assigned CEQA Judge  
Hon. Marie S. Weiner, Dept. 2  
Pursuant to Public Resources Code  
Section 21167.1(b)

vs.

TOWN OF WOODSIDE,

**FINAL STATEMENT OF DECISION  
ON PETITION FOR WRIT OF  
MANDATE UNDER CEQA**

Respondent.

\_\_\_\_\_  
STEVEN JOBS and Does 1 to 10,

Real Parties in Interest.  
\_\_\_\_\_

On September 23, 2005, this Court held hearing/trial on the Petition for Writ of Mandate under the California Environmental Quality Act. Douglas Carstens of Chatten-Brown & Carstens appeared on behalf of Petitioner Uphold Our Heritage; Jean Savaree of Aaronson, Dickerson, Cohn & Lanzone appeared on behalf of Respondent Town of Woodside; and Howard Ellman of Ellman, Burke, Hoffman & Johnson appeared on behalf of Real Party in Interest Steven Jobs.

Upon due consideration of the Administrative Record, the trial briefs of the parties, and the oral arguments of counsel, the Court issued its Tentative Statement of Decision dated December 23, 2005 and filed December 28, 2005. There being no objections or opposition filed by any party as to the Tentative Statement of Decision, the Court enters its Final Statement of Decision, as follows:

***Factual Background***

Real Party in Interest, Steven Jobs, proposes to demolish a historic single family residence on his Woodside property in order to build a new single family residence. The demolition of this historic house was approved by Respondent Town of Woodside, against the recommendations of staff and counsel. Petitioner Uphold Our Heritage has filed a petition for writ of mandate under CEQA attacking propriety of the decision to allow demolition.

The property on 460 Mountain Home Road in Woodside presently contains a mansion home, a gardener/guest house, a bird house and a water tower – all of which Real Party in Interest Jobs seeks to demolish, and which demolition has been approved by Woodside. Administrative Record (“AR”) 1-4. Only the mansion home is at issue, as it is “historic” under California law.

URS Corporation, hired by Woodside to conduct a historic resource evaluation determined that the house is “historic” in that it is eligible for the California Register of Historic Resources.<sup>1</sup> AR 53-85. Under CEQA, the house may be considered a historic

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<sup>1</sup> “An historic resource must be significant at the local, state or national level under one or more of the following four criteria: (1) It is associated with events that have made a significant contribution to the broad pattern of local or regional history, or the cultural heritage of California or the United States. (2) It is associated with the lives of persons important to local, California or national history. (3) It embodies the distinctive

resource if it is eligible for listing in the California Register, even if it is not actually registered. Public Resources Code §21084.1 (An owner cannot be forced under California law to register a historic building, so its eligibility alone is sufficient for CEQA). It was determined that the Jackling House is eligible for such registration. See AR 443-444.

The house is known as the Jackling House. It was originally owned by, built for, and lived in Daniel Jackling starting in 1925. According to the Administrative Record, Jackling was a key figure in the American copper industry, if not the world. The house itself reflects his work with many unique and striking fixtures of copper and copper alloy. The house is an example of Spanish Colonial Revival style, by architect George Washington Smith (the leading architect of that style in the U.S.), with a high degree of craftsmanship, and containing many unique and unusual design and construction features.

The site was originally developed in 1925, and was the Jacklings' primary residence until their death. Jackling originally owned greater acreage in Woodside, which was subdivided and sold decades later after the deaths of Mr. and Mrs. Jackling in the late 1950's, while maintaining as his home the subject property on approximately 6 acres. AR 58, 77. Additions were made to the original 1925 structure, up through 1931.

Including the main residence rooms as well as servants' quarters, the mansion is two stories with 14 bedrooms, 13.5 bathrooms, and 30 total rooms, constituting 17,250 square feet. AR 59.

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characteristics of a type, period, region or method of construction, or represents the work of a master or possesses high artistic values. (4) It has yielded or has the potential to yield information important to the prehistory or history of the local areas, California or the nation." AR 56. The Jackling House was found by Respondent to meet criteria 2 and 3.

At this procedural juncture, **it is undisputed that the Jackling House is a “historically significant” resource under CEQA guidelines, Section 15064.5(b); and undisputed that CEQA required an Environmental Impact Report (“EIR”) due to it being a historic resource.** Public Resources Code §21084.1. Indeed, the Final EIR “concludes that there is substantial evidence that the existing house at 460 Mountain Home Road meets the criteria for listing on the California Register of Historical Resources (CRHR) under Criteria 2 and 3.” AR 451.

Real Party in Interest Steven Jobs purchased the Jackling House property in November 1984. AR 77, 816. He used the house as his primary residence for approximately ten years. AR 817, 820. Thereafter he got married, had a child, and moved to Palo Alto; so Jobs rented out the house to friends for several years. AR 817, 820. No one lived in the house starting in approximately 2000. AR 817, 820. Jobs claims that there was some vandalism in the meantime and that there was some destruction due to asbestos removal. AR 817. Jobs purchased the property right next door, giving him ownership of approximately 12 contiguous acres in Woodside. AR 817. He wants to tear down the residences on both lots in order to build one new residence on the total 12 acres. AR 818. He wants to reside in it with his wife and three children. AR 825.

Jobs seeks to obtain a demolition permit from Woodside to tear down this single family residence in order to build a new single family residence. AR 450-451. Jobs has not presented Woodside with *any* drawings or architectural plans for the anticipated new residence – as would be the norm. *No* information has been provided by Jobs to Woodside as to the anticipated cost of building the new residence. No information is provided as to the nature or style of the anticipated residence. See AR 452. The only



information provided is that Jobs has agreed to limit the new residence to approximately 6000 square feet *if* the demolition permit is granted. AR 452-453, 818.

According to the Woodside History Committee, as reported to the Woodside Planning Commission:

Beyond some relatively minor deferred maintenance, the present condition of the house is a result of willful neglect. The intentional removal of doors and windows has exposed the interior of the house to the elements, thereby causing further damage. Fortunately the house is very solidly build, and appears to be structurally sound. Therefore it could be restored . . . If the demolition of this property is approved, it will further encourage owners of other historic properties who want to avoid the restrictions of CEQA Guidelines to intentionally allow their properties to fall into disrepair.

AR 198. Other parts of the Record reflect that there are broken windows and doors which allowed the elements to get into part of the house, causing some damage due to rain and birds.

According to the environmental law consultant hired by Woodside, namely Susan Brandt-Hawley, in her advisory letter to the Woodside Planning Commission (made a part of the final EIR):

Mr. Ellman [counsel for Jobs] decries the EIR's alternatives discussion as if the Town is imposing the identified alternatives as a condition of the project. Instead, the EIR properly addressed a reasonable range of alternatives and succinctly noted that most of them appeared to be feasible. The Town has no obligation to approve the requested demolition of an historic resource. The Town cannot require rehabilitation of the Jackling House, but it may choose to deny its demolition since it will have a significant environmental impact. The fact that the valuable residence remains on the property and that according to the EIR its rehabilitation is feasible reinforces the fact that the applicant's objective of a single-family residence may be achieved without demolition. The applicant is left with viable, beneficial, non-demolition uses of his historic property.

The current deteriorated condition of the Jackling House is due to the owner's lack of maintenance as well as his deliberate actions taken to leave the house open to the elements and birds. The recent boarding up of the house has protected it and slowed the damage. In my opinion, any

reprise of destructive activities should be construed as demolition by neglect; a conscious act taken by Mr. Jobs to achieve demolition without a permit. If the Town does not grant a demolition permit, under its policy powers it may prohibit any reprise of demolition by neglect.

AR 492-493. This consultant recommended that the demolition permit be denied:

There is substantial evidence that demolition of the Jackling House would have a significant environmental impact that would be a permanent loss to the Town. CEQA provides that such a project cannot be approved unless "specific economic, legal, social technological, or other benefits of the project outweigh the significant effects on the environment." (Public Resources Code Section 21081.) Unless the Town finds an overriding benefit that outweighs the significant impact of the proposed demolition, it may be denied. Mr. Jobs' request for demolition of the historic Jackling House in order to build a different style of single family residence is akin to a proposal to plow up a field of unique endangered plants in order to sow a new garden.

AR 493.

According to the EIR:

The residence remains in fair to poor condition due to lack of maintenance and abandonment, while maintaining a substantial amount of significant extant historic fabric. Typical conditions found throughout the structure include: mold and biological growth on multiple surfaces, water damage at ceilings and floors, major penetrations through the wall depth, rusting on iron elements, rodent infiltration, and various damages elements. However, these conditions are treatable and do not warrant demolition of the house.

AR 547.

The Final EIR provided the following alternatives (AR 504-505):

1. "No Project Alternative". This alternative would provide for the status quo.
2. "Historical Rehabilitation of the Jackling House". This alternative would involve rehabilitation and restoration of the residence, providing protection for its "character-defining" features, but allow an upgrade to kitchens and bathrooms. The estimated cost is \$4.9 million.

3. "Historic Rehabilitation of the Jackling House and New Addition". This alternative provides for rehabilitation of the house with modifications especially to the second floor, and the ability to construct an addition to include a new living room with entertainment room, an office suite, and a fitness area. The estimated cost is \$9 million.

4. "On-site Relocation and Historic Rehabilitation of the Jackling House." This alternative provides for physically removing the house from its present location and moving it to another location *on the same property* where it is to be rehabilitated. The estimated cost is \$6.6 million.

5. "Off-site Relocation and Historic Rehabilitation of the Jackling House". This alternative provides for physically removing the house from the property and moving it to another property (as yet unknown) where it is to be rehabilitated. The estimated cost is \$6 million for moving and rehabilitation (with at least \$720,000 for the moving alone) (See AR 757-758) but with *unknown* actual cost because there is no information as to property (or obtaining of the property) where it would be moved.

Jobs has rejected all of these alternatives, and insisted upon full granting of a demolition permit.

The Staff of the Woodside Planning Commission recommended in its Report dated June 2, 2004 that the Planning Commission *deny* the demolition permit, and make a determination that the significant environmental impact of demolition of this historic resource was not outweighed by an overriding benefits to the public. AR 782-788, It noted that the proposal is *contrary* to the architectural and site review set forth in the Woodside Municipal Code Section 153.221. That Code provides, among other things,

that Woodside “encourage the maintenance, rehabilitation, and improvements of existing buildings and structures.” AR 783.

Instead, at its meeting of June 2, 2004, the Woodside Planning Commission approved the demolition permit. At that meeting, Mr. Jobs told the Planning Commission that he had purchased the adjoining property, and would agree to tear down the house on *that* property as well as other structures on the 460 Mountain Home property in addition to the requested demolition, causing a net removal of 20,00 square feet, and that he would construct a residence consistent with Woodside regulations and design standards. AR 795, 817-818. Jobs indicated that he did not like the look of the existing house and that it was rundown. AR 816. He also admitted that he allowed the house to fall into disrepair because he wanted to tear it down anyway. Jobs’ attorney argued that all of the alternatives were not economically feasible. He also indicated that Jobs did *not* have any designs or plans for the anticipated new residence – Jobs “did not wish to design the new residence until receiving permission to demolish the old estate.” AR 795. The staff and legal consultants told the Planning Commission that economic feasibility was not required under the EIR process and thus had not been studied. AR 795. The Planning Commission was informed that if any of the alternatives were deemed “feasible” then the demolition must be denied and the proposed project disapproved. AR 839.

The Planning Commission adopted and certified the final EIR, but ordered the staff to draft new findings, i.e., findings that there was an overriding benefit supporting demolition of the historic building. AR 798. Yet, the Planning Commission was unable to articulate the basis of its decision. On the contrary, it voted to “continue the discussion to meeting of June 16<sup>th</sup> to allow the Commissioners to consider the reasons why each

alternative is infeasible and articulate why the statement of overriding consideration should be prepared to allow the approval of the demolition permit. AR 798,

At the next meeting on June 16, 2004, counsel for Jobs proposed to the Planning Commission that they make findings of overriding considerations based upon the Town's General Plan. AR 893-901. The basic thrust of the finding is that tearing down the Jackling House would allow the building of a smaller residence in conformity with existing Town specifications and zoning. Several commissioners believed that "open space" was an overriding consideration. See AR 920, 921, 925, 931. The Planning Commission approved the Statement of Overriding Consideration and approved the demolition permit. AR 906.

As part of its findings, the Planning Commission found that all five project alternatives "are not feasible." AR 956. Specifically, Alternative #1 (no project) "fails to meet the project objectives and does not protect an historic resource"; and that Alternatives #2, #3, #4 and #5 are "economically unjustifiable". After finding that no alternatives were viable, the Planning Commission held that allowing the demolition with certain conditions added (of a mitigating nature) would be consistent with the General Plan, particularly as to open space. AR 958-960.

The decision was appealed to the Town Council by several citizens and a former owner of the Jackling House, and the appeal was supported by historical associations. That appeal pointed out that the Planning Commission's decision and findings were not supported by "substantial evidence" as required by CEQA, since there was no evidence that it is "economically unjustifiable" to rehabilitate the Jackling House for residential use. AR 999. "[T]here was no comparison of the cost of demolition and constructing a new

residence versus the cost of rehabilitating the Jackling House as a residence.” AR 999. It also maintained that alternatives *are* feasible.

The Town professional staff prepared a report for the Town Council on the issue, dated December 14, 2004, recommending that the Town Council *deny* the demolition permit, on the basis that alternatives listed in the EIR *are* feasible. AR 1012, 1017, 1025, 1030.

At the public hearing before the Town Council, many members of the community as well as former residents of Jackling House, spoke on the issue of the demolition permit and the EIR. All of those persons spoke *again* the demolition of the Jackling House, except for Jobs and his attorney. AR 1272-1273.

The Town Council approved the Final EIR, found that all alternatives were not feasible, and found that overriding considerations existed to allow issuance of the demolition permit, subject to certain conditions. The Petition for Writ of Mandate was then filed with this Court to contest the decision of the Town of Woodside.

### ***Standard of Review***

In writ review of a decision by a public agency under CEQA, the trial court “shall not exercise its independent judgment on the evidence but shall only determine whether the act or decision is supported by substantial evidence in light of the whole record.” Public Resources Code §21168. “The inquiry in such a case shall extend to . . . whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.” C.C.P.

§1094.4(b). "Where it is claimed that the findings are not supported by the evidence . . . abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in light of the whole record." C.C.P. §1094.4(c).

### *Analysis*

THE FINDING THAT ALL ALTERNATIVES ARE NOT FEASIBLE IS  
NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, AND IS  
ARBITRARY AND CAPRICIOUS

Respondent Town of Woodside specifically found that the Jackling House is "historic" under CEQA, and that "[s]ince the applicant proposes the full demolition of the Jackling House, which would destroy its historic significance, the project would result in a significant unavoidable environmental impact as defined in Public Resources Code section 21084.1 and CEQA Guideline Section 15064.5." AR 1396.

Woodside made the following findings at issue in this matter:

"WHEREAS, the Town Council finds that the [sic] none of the Alternatives identified in the Final EIR are feasible; and

WHEREAS, the Town Council finds that, as conditioned, the project will provide a public benefit in implementing the Town's General Plan; . . .

NOW, THEREFORE, BE IT RESOLVED that the Town Council certifies the Final EIR, approves the attached Statement of Findings under CEQA identified as Attachment A, approves a Statement of Overriding Considerations, and approves the project, subject to conditions included in Attachment A, for the demolition of the Jackling Estate Project." (AR 1393-1394.)

\* \* \*

"The EIR identified five project alternatives. The Town Council finds that these alternatives are not feasible.



Alternative 1 (no project) fails to meet the project objectives and does not protect an historic resource.<sup>2</sup>

Alternative 2 (renovation) is economically unjustifiable.<sup>3</sup>

Alternative 3 (renovation plus addition) is both economically unjustifiable and an enlargement of an already non-conforming structure.

Alternative 4 (moving on site) is economically unjustifiable, results in an enlargement of building mass on the site, and may compromise the historic resource.

Alternative 5 (moving off-site) is economically unjustifiable, physically impossible, and will severely compromise the historic resource.

There is substantial evidence in the record that alternatives including no project, historic rehabilitation, and historic rehabilitation with addition identified in the EIR are infeasible.

Recognizing the unavoidable significant environmental impacts of the demolition of the Jackling House, and recognizing that there is substantial evidence in the record that all project alternatives are infeasible, the demolition project can be approved if the Council makes a Statement of Overriding Considerations supported by substantial evidence that finds that specific economic, legal, social, technological, or other benefits of the project outweigh the impacts to historic resources, (Public Resources Code Section 21081.)

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<sup>2</sup> Respondent claims that it can do nothing about the rundown condition of Petitioner's existing house. Not only does this defy common sense, it is also contrary to the General Plan: "To maintain the character and quality of existing housing which is in good condition, and to improve the quality and character of housing where substandard structures are found." AR 1546.

<sup>3</sup> It is clear that the reference to "unjustifiable" is meant to be the same as "infeasible" – indeed, it otherwise would not be a valid basis for the decision by the Town of Woodside as Woodside must find infeasibility in order to move on to a statement of overriding considerations. In the minutes of the Council meeting, the alternatives set forth in the EIR were discussed as to their "feasibility". E.g., AR 1272, 1273. Indeed the Resolution passed by the Woodside Council states: "WHEREAS, the Town Council finds that the [sic] none of the Alternatives identified in the Final EIR are feasible" (AR 1393); "The EIR identified five project alternatives. The Town Council finds that these alternatives are not feasible." AR 1396.



The Town Council in the exercise of its discretion finds that there can be overriding benefits to the Town of Woodside and its residents sufficient to outweigh the demolition of this historic resource provided the project is conditioned [upon the following conditions] . . ." (AR 1395-1396.)

If the EIR alternatives are feasible, then they must be selected/followed in order to approve a project, otherwise the project must be rejected. If the EIR alternatives are not feasible, then the project must be denied (unless there are overriding considerations) because the project will otherwise be in violation of CEQA. CEQA defines "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." Public Resources Code §21061.1; CEQA Guidelines §15364.

The Administrative Record reflects a severe lack of evidence supporting any and all findings that the EIR alternatives are "economically unjustifiable" or economically infeasible. There is *no* evidence of any economic analysis whatsoever to compare the cost of the proposed alternatives (which costs *are* estimated in the EIR, except for alternative #5) versus **the cost of the proposed project, i.e., the estimated cost of the new residence**. The "purpose" of the project is to tear down a single family residence in order to build a single family residence. No costs of building the new residence were provided to the Town Council because Jobs has declined to provide any designs, plans, or specification of the new residence until after his demolition permit is granted. Thus, there is no cost comparison or analysis supporting any of these findings that each of the alternatives are "economically unjustifiable"

The appraised fair market value of the property is not found in the Administrative Record. On the other hand, the Record reflects that a confidential buyer recently (in

2000) purchased 11 acres in Woodside (which was also a part of the original Jackling Estate) for \$52.5 million. AR 283. Jobs has 12 acres.

That the alternatives may cost millions of dollars is not enough information as it has no context. It is certainly possible that Jobs may ultimately seek to build a house which costs more than simply rehabilitating the existing house -- a house he previously lived in for 10 years. All of this is unknown to the Town Council, and thus their finding of economic infeasibility is not supported by substantial evidence, and was arbitrary and capricious. This was an abuse of discretion.

"The fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is evidence that the **additional costs or lost profitability are sufficiently severe** as to render it impractical to proceed with the project." Citizens of Goleta Valley v. Board of Supervisors (1988) 197 Cal.App.3d 1167, 1181; San Franciscans Upholding the Downtown Plan v. City and County of San Francisco (2002) 102 Cal.App.4th 656, 692, bold added.

Respondent and Real Party in Interest rely upon City of Fremont v. San Francisco Bay Area Rapid Transit District (1995) 34 Cal.App.4th 1780, yet in that case, the finding of economic infeasibility was supported by the fact that BART had the financial information on the cost of the project and the **added cost** of the alternative. Thus, there was a context for cost comparison and economic impact. Here, Jobs has not provided any information as to the cost of the anticipated new residence to compare with the estimated costs of the five alternatives.

Further, even if the findings that no alternative is feasible were valid and were supported by substantial evidence, there is *not* substantial evidence supporting any findings of overriding consideration. Accordingly, on that basis, the demolition permit would *still* have to be denied under CEQA.

THE FINDING OF OVERRIDING CONSIDERATIONS IS  
ARBITRARY AND CAPRICIOUS AND NOT SUPPORTED BY  
SUBSTANTIAL EVIDENCE

The Town of Woodside cannot merely adopt a statement of overriding considerations and approve a project with significant impacts; it must first adopt feasible alternatives and mitigation measures. See Friends of Sierra Madre v. City of Sierra Madre (2001) 25 Cal.4th 165, 185. If significant impacts still remain after adoption of such mitigation and alternatives, the project may then be approved only with a statement of overriding considerations, which must in turn be supported by substantial evidence in the record of its public proceedings. Sierra Club v. County of Contra Costa (1992) 10 Cal.App.4th 1212.

The foundation of the Statement of Overriding Considerations by Woodside is that granting of the demolition permit is based upon the Town's existing General Plan: "[T]he Town Council finds that, as conditioned, the project will provide a public benefit in implementing the Town's General Plan". AR 1393. "The Town Council makes this finding in order to carry out the Town's General Plan." AR 1397. The specific findings

and reasons as the basis for the “overriding considerations”, set forth in AR 1398, basically focus upon the “public benefit” of “open space”.<sup>4</sup>

What the Town of Woodside has approved is the utter antithesis of its existing General Plan.

An actual review of the General Plan reveals that it overwhelmingly supports *preservation* of the historic Jackling House and would *not* provide a basis for granting of a demolition permit – indeed, a demolition designed to allow building of a structure by Jobs of completely unknown look, style, shape, size, color, design, layout or height. AR 1401-1632. The theme of the General Plan is one of conservation, preservation, and certainly maintenance of *existing* structures.

The General Plan does *not* support the findings of Woodside of overriding consideration for destruction of a *historic* residence existing on *private property*. Indeed, contrary to the vague “interpretation” of the General Plan applied to this CEQA project by Respondent, the General Plan is specific in condemning such a project as proposed here. It is arbitrary and capricious for the Town of Woodside to imply or interpolate the provisions of the General Plan contrary to its express components.

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<sup>4</sup> In fact most of the alleged “findings” based upon the General Plan make no sense at all in the context of this particular project, and thus are arbitrary and capricious. For example: “The use of natural materials is encouraged. Exterior colors shall blend with the surrounding natural landscape.” AR 1398. The Jackling House *is* made of natural materials, including wood, Spanish tile, copper, etc. As another example: “To protect the natural beauty and minimize disturbance of the natural terrain and vegetation.” AR 1398. How is demolition of a historic building, that has been in Woodside for decades, and the construction of a new house a means to “protect” natural beauty and “minimize” “disturbance of existing vegetation.” Such findings simply demonstrate the Town Council’s exaggerated efforts to find a means to the end that Jobs’ seeks.

*This is what the General Plan actually states:*

**"General Community Goals":**

- G1    To **preserve** and enhance Woodside as a scenic, rural residential community.
- G2    To **protect and enhance the unique character of the Town.**

(AR 1412, 1420, 1421.)

**"General Policies":**

- P11    Structures of historic or architectural significance shall be **identified and documented, and efforts shall be made to preserve them.**
- P25    Structures of historic or architectural significance shall be **identified and documented, and efforts shall be made to preserve them.**

(AR 1414, 1424.)

**"Land Use, Community Design and Aesthetics"**

- P9    Subdivision of property containing **existing structures of cultural or aesthetic merits shall be carefully conceived to preserve the integrity of original 'core' estate buildings, grounds, and heritage trees.**

(AR 1422.)

- 07    **An inventory of structures of historic or architectural significance and an historic element of the General Plan will be created.**

(AR 1428.)

**"Open Space"**

- G6    To provide open space for recreational needs **and for the preservation of buildings and sites of archeological, historical and cultural significance.**

(AR 1442.)

“Housing”

- G5 To maintain the character and quality of existing housing which is in good condition, and to improve the quality and character of housing wherever substandard structures are found.

(AR 1546.)

The finding by Woodside that demolition of the Jackling House in order to build a smaller residence would provide the public benefit of “open space” pursuant to the “General Plan” is completely unsupported by the Record. An actual review of the General Plan is very specific about what “open space” means<sup>5</sup> – and it does *not* mean creating “open space” on *private* property by *destroying* existing conditions, but rather specifically pertains to *public* use, or *new* development where no structure presently exists.

There is an Open Space section in the General Plan. (AR 1438-1471.) It explicitly defines what “open space” means under the General Plan:

Open space, then is a three dimensional concept defined as all of the space above the surface of the earth which is not occupied by structures.<sup>6</sup> (AR 1440.)

Open space land is any parcel or area of land or water essentially unimproved and designated in this plan for any of the open space uses defined in section 65560 of the Government Code of the State of California.<sup>7</sup> (AR 1440.)

In addition, the General Plan provides that “open space” has to do with areas of land that are *not* already improved with structures. For example:

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<sup>5</sup> “Open space uses indicated on the General Plan Diagram are defined and described in the Open Space Element.” (AR 1436.)

<sup>6</sup> Thus, by definition in the General Plan, “open space” does not involve areas of existing structures.

<sup>7</sup> Again, open space land explicitly does not include land which is already improved by structures.

"The preservation of natural open spaces and natural scenic areas in the Woodside Planning Area" (AR 1414.)

"Appropriate uses for undeveloped adjacent lands are open space, agriculture and equivalent land uses." (AR 1427.)

"To **conserve** open space resources . . . To **protect and preserve** open spaces . . . To **protect** the natural beauty and minimize disturbance of the natural terrain and vegetation. . . . To **preserve** open space where necessary for protection of the public health and safety. . . ." (AR 1442.)

Thus, utilizing the General Plan as the basis for a finding of overriding benefits based upon "open space" is not supported by substantial evidence, and was an arbitrary and capricious finding by Respondent in abuse of its discretion.

In regard to the "conditions" placed upon the demolition permit, there has been no showing that these conditions are actually enforceable. Rather, Jobs, through his attorney, emphasized in oral argument before the Court that compliance with the conditions was voluntary by Jobs. The placing of "conditions" as alleged mitigation of the demolition of a historic building demonstrates a lack of understanding of the mandates of CEQA. Alleged mitigation does not absolve compliance with CEQA, nor the decisions as to whether alternatives are feasible.

The conditions set by Woodside are as follows: (1) that the two properties owned by Jobs be joined as one property without future right of subdivision; (2) the size of the new residence is limited to 6000 square feet; (3) upon demolition, the flagpole, mailbox, and samples of the roof tiles, floor, organ, stone, mantels, fixtures, and moldings be preserved and offered to historical societies or museums; (4) that no permit be issued for 12 months to give time to try and find someone who will take and relocate the house; and (5) demolition must wait until the Woodside Architectural and Site Review Board approves the design of the new residence. AR 1274.

Such “conditions”<sup>8</sup> reflect that the decision of the Town of Woodside was arbitrary and capricious and did not reflect a proper exercise of discretion. For example, Woodside made a finding that the EIR alternative to have the house relocated to another site was not feasible, yet as a condition of its finding of overriding considerations Woodside required that efforts be made to see if the house could be relocated to another site to a willing taker! This demonstrates the absurdity of the “findings” of infeasibility made by Woodside.

As another example, pointed out by Petitioner, although the demolition permit was delayed in order to allow relocation bids to be solicited, Jobs is the sole decision-maker in determining whether or not to accept any proposals for relocation of the Jackling House. Woodside has no power to independently evaluate the proposals, since it already has granted approval of the demolition, and thus has no further discretion over relocation. Thus, there is no control over the “condition” or its feasibility, since the decision to grant the permit was already made.

As a further example, the preservation of samples from a historic structure is *not* considered “mitigation” under CEQA unless it alleviates the impacts of demolition to insignificance. See League for Protection v. City of Oakland (1996) 52 Cal.App.4th 896; Architectural Heritage Associates v. County of Monterey (2005) 122 Cal.App.4th 1095;

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<sup>8</sup> Under CEQA, a public agency cannot avoid the restrictions against projects that may cause a substantial adverse change in the significance of or otherwise damage a historical resource or historic building, by merely adopting mitigation measures, unless they reduce the problem to a less than significant impact. See, Lewis v. Seventeenth District Agricultural Assn. (1985) 165 Cal.App.3d 823, 830. Mitigation measures should not be left for future formulation either. CEQA Guideline §15126.4(a)(1)(B). They are supposed to be set forth in the EIR and considered in the EIR alternatives.



CEQA Guideline §15126.4(b)(2). No such showing was made to Woodside before making its decision to permit demolition. Nor is it likely that such samples would alleviate the significant adverse consequences of the complete destruction of the Jackling House, given the state of the Record.

Accordingly, the finding of overriding considerations was not supported by substantial evidence, and the granting of the demolition permit by Woodside to Jobs was an abuse of discretion.

The Petition for Writ of Mandate is Granted, and the Writ will Issue (1) ordering the Respondent Town of Woodside to set aside and void its approval of the demolition permit of the Jackling House, (2) enjoining and prohibiting demolition of the Jackling House and/or issuance or enforcement of any demolition permit, pending full compliance with CEQA.

Plaintiff Uphold Our Heritage is found to be the prevailing party, and may file a motion for award of attorneys' fees and costs pursuant to C.C.P. Section 1021.5 or as otherwise permitted under CEQA, as to which the Court will retain jurisdiction.

DATED: January 26, 2006

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HON. MARIE S. WEINER  
JUDGE OF THE SUPERIOR COURT