CITY OF CARMEL-BY-THE-SEA

RESOLUTION NO. 2009-31

A RESOLUTION ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS

WHEREAS, the City proposed as a project the sale of the Flanders Mansion parcel (APN 010-061-005), consisting of an approximately 1.252-acre parcel improved with a single-family residence (hereinafter referred to as "the Property");

WHEREAS, the City Council has, by companion action adopted this day, adopted A Resolution Certifying the Recirculated Final Environmental Impact Report for the Sale of the Flanders Mansion Property;

WHEREAS, the City Council has found that the environmental impacts of the proposed project, to wit, Sale of the Property without conservation easements and mitigation, may be substantially lessened by the alternative of Sale with Conservation Easements and Mitigation which also achieves all identified project objectives;

WHEREAS, the City Council has, by companion action this day, adopted A Resolution Adopting a Mitigation Monitoring and Reporting Program, Conditions of Sale and Conditions, Covenants and Restrictions to be recorded against the Property;

WHEREAS, the Recirculated Final EIR concluded that there may be two potential unavoidable significant impacts of the proposed project, i.e., a) inconsistency with the General Plan goals, objectives and polices related to preservation of parkland, and b) the permanent loss of locally significant parkland;

WHEREAS, the City Council has found that one of the environmental impacts which the RFEIR identifies as potentially significant and unavoidable, i.e., inconsistency with the General Plan, will not occur;

WHEREAS, the City Council has determined that the Lease alternatives and the No Project alternative identified by the Recirculated Final EIR to substantially lessen the significant and unavoidable impacts are infeasible and do not achieve the primary project purpose;

WHEREAS, the City Council has determined that the Sale with Conservation Easements and Mitigation alternative achieves the primary objective of the proposed project and best achieves the secondary objectives of the proposed project, while also being feasible; and

WHEREAS, the City Council has balanced the specifically-identified benefits of the Sale of the Flanders Mansion with Conservation Easements and Mitigation alternative, against the significant and unavoidable impacts identified in the Recirculated Final Environmental Impact Report, and determined the identified benefits outweigh the unavoidable adverse environmental effects and, as a result, those environmental effects are acceptable.

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NOW, THEREFORE, BE IT RESOLVED THAT THE CITY OF CARMEL-BY-THE-SEA DOES:

1. Make the findings set forth below in Attachment A, based on the evidence referenced therein;

2. Adopt the Statement of Overriding Considerations set forth below as Attachment A, based on the findings of fact and evidence referenced therein; and

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 12th day of May 2009, by the following roll call vote:

AYES:	COUNCIL MEMBERS:	HAZDOVAC, ROSE, SHARP, TALMAGE and McCLOUD
NOES:	COUNCIL MEMBERS:	NONE
ABSENT:	COUNCIL MEMBERS:	NONE

SIGNED:

SUE McCLOUD, Mayor

ATTEST:

Heidi Burch, City Clerk

CITY OF CARMEL-BY-THE-SEA

RESOLUTION NO. 2009-31

A RESOLUTION ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS

Attachment A

FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS: SALE OF FLANDERS MANSION PROPERTY WITH CONSERVATION EASEMENTS AND MITIGATION

Overview of Legal Standards for Approval of a Project or Alternative Despite Significant, Unavoidable Environmental Risks

When approving a project for implementation, the City Council shall mitigate or avoid the project's significant effects on the environment which are identified in an environmental impact report whenever it is feasible to do so. If economic, social, or other conditions make infeasible project alternatives or recommended mitigation measures, the project may nonetheless be carried out or approved at the discretion of the City Council. (See Pub. Res. Code, §§ 21002, 21002.1.) The City Council should not approve a project as proposed if there are feasible alternatives or mitigation measures available that would substantially lessen any significant effects that the project would have on the environment. (See Pub. Res. Code, § 21002; CEQA Guidelines [Title 14, Cal. Code Regs., § 15000 *et seq.*], § 15021.) CEQA requires the City Council to balance, as applicable, specifically-identified economic, legal, social or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social or other benefits of a proposed project outweigh the significant, unavoidable adverse environmental impacts, those environmental impacts may be considered acceptable. (See CEQA Guidelines, §§ 15092, 15093.)

If specific economic, social, or other conditions make infeasible certain project alternatives or mitigation measures which substantially lessen the significant environmental effects of the project, the City may approve the project in spite of one or more significant environmental effects. (See Pub. Res. Code, § 21002.) However, CEQA does not authorize an agency to proceed with a project that will have significant unmitigated effects on the environment, based simply on a weighing of those effects against the project's benefits, unless the measures necessary to mitigate those effects are truly infeasible. Economic viability is one of the factors that may be taken into account in addressing the feasibility of an alternative. (See CEQA Guidelines, § 15126.6.) 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. "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors. (See CEQA Guidelines, § 15364.) In order to approve a project or alternative that would have a significant, unavoidable environmental impact, the City will be required to make findings identifying the specific considerations that make infeasible the

environmentally superior alternatives and the specific benefits of the project which outweigh the environmental harm. (See Pub. Res. Code, §§ 21002, 21002.1, 21081; CEQA Guidelines, §§ 15092, 15093.)

Findings

1. **Finding:** For the Findings made herein, the City Council relies on all the documentary and other evidence set forth in the companion resolution adopted today, A Resolution Certifying the Recirculated Final Environmental Impact Report for the Sale of the Flanders Mansion Property, including its attachment, and the findings made therein, as well as any further evidence cited herein.

2. **Finding:** In making these findings, the City Council recognizes that the environmental analysis of the Project raises several controversial environmental issues, and that a range of technical and personal opinion exists with respect to those issues and that there are differing and conflicting opinions regarding the Project, its impacts, and the feasibility of reducing or avoiding those impacts. These differences of opinion relate to the methodologies the EIR employed, the historical significance of buildings on the project site, the feasibility of mitigating impacts to viewshed, parkland and historic resources, among other issues. The City Council has, by its review of the evidence and analysis presented in the RFEIR, and other evidence in the record, acquired an understanding of the breadth of this technical opinion and of the scope of the environmental issues presented by the Project. In turn, this understanding has enabled the City to make informed, carefully considered decisions after taking account of the various viewpoints on these important issues. These findings are based on full consideration of all viewpoints expressed in the RFEIR and in the record as well as other relevant evidence in the record of proceedings for the Project.

Evidence:
RDEIR;
RFEIR;
Supplemental Responses to Comments;
Errata of Revisions to the Recirculated Final EIR;
Staff reports for the May 12, 2009 City Council meeting.

3. **Finding:** These findings are based upon the evidence in the entire record of the City's proceedings relating to the Project. The City concludes that all the evidence supporting these findings was presented in a timely fashion to allow adequate consideration by the City. Some findings are based on specific references, as noted below. References to specific reports and specific pages of documents are not intended to identify those sources as the exclusive basis for the findings. The reference to certain parts of the EIR set forth in these findings are for ease of reference and are not intended to provide an exhaustive list of the evidence relied upon for these findings.

Evidence:
RDEIR;
RFEIR;
Supplemental Responses to Comments;
Errata of Revisions to the Recirculated Final EIR;

CBRE Consulting, Inc., Economic Feasibility Analysis report, dated, February 23, 2009, including all attachments thereto;
Staff reports for the May 12, 2009 City Council meeting.

4. **Finding:** The documents and other materials that constitute the record of proceedings on which the City's decision is based are located at the City of Carmel-by-the-Sea City Hall, East Side of Monte Verde Street Between Ocean and Seventh Avenues, P.O. Box CC, Carmel-by-the-Sea, CA 93921.

Evidence:
A Resolution Certifying the Recirculated Final Environmental Impact Report for the Sale of the Flanders Mansion Property, to be adopted by companion action this day, Section C.3.b.

5. **Finding:** The City Council finds that even though adopting the Sale with Conservation Easements and Mitigation has lessened significant effects on the environment certain other environmental impacts, and cumulative environmental impacts, may remain significant and unavoidable. The City Council finds, pursuant to CEQA section 21081(b) and CEQA Guidelines section 15093, that the specific economic, legal, social, technological and other benefits of the Project outweigh the Project's unavoidable adverse environmental impacts, and therefore, the impacts are acceptable. The following describes the significant and unavoidable impacts, alternatives analysis, infeasibility analysis and the Sale with Conservation Easements and Mitigation alternative for the purpose of providing supporting evidence for the City's adoption of statements of overriding considerations.

Evidence:
Evidence supporting the following determinations is referenced in the Resolution Certifying the Recirculated Final Environmental Impact Report for the Sale of the Flanders Mansion Property, adopted this day by companion action, and as cited with the findings below.

Environmental Effects of the Project Which Are Significant and Unavoidable ("Statement of Overriding Considerations") Despite Implementation of the Mitigation Measures in the EIR

6. In accordance with Public Resources Code section 21081 and CEQA Guidelines sections 15091 and 15092, the City by companion action this day, adopted A Resolution Certifying the Recirculated Final Environmental Impact Report for the Sale of the Flanders Mansion Property, and incorporates herein the analysis, findings and conclusions set forth in the Recirculated Final Environmental Impact Report ("RFEIR") regarding the environmental impacts that will result for the project and also adopts the findings and conclusions regarding the effect of mitigation measures in reducing or avoiding such impacts, as they may be augmented or specifically modified by these findings. These findings do not repeat the full discussions of environmental impacts contained in the RFEIR; the RFEIR's discussions and the potential environmental impacts of the project, the significance of those impacts prior to mitigation, the mitigation measures for those impacts, and the significance of the environmental impact with mitigation are summarized in the Resolution Certifying the Recirculated Final Environmental Impact Report for the Sale of the Flanders Mansion Property.

Evidence:
A Resolution Certifying the Recirculated Final Impact Report for the Sale of the Flanders Mansion Property, to be adopted by companion action this day;
A Resolution Adopting a Project for Implementation: Sale of Flanders Mansion Parcel with Conservation Easements and Mitigation.

7. The Recirculated Draft Environmental Impact Report ["RDEIR"] and Recirculated Final Environmental Impact Report ["RFEIR"] (collectively, the "EIR") together identify 15 impacts that may result if the proposed project is approved. All but 2 of the potentially significant environmental impacts are identified as less-than-significant or are mitigated to a less-than-significant level by the adoption of the mitigation measures proposed by the RFEIR.

Evidence:
RFEIR.

8. With the adopted conservation easements and mitigations described in the Sale with Conservation Easements and Mitigation alternative and the mitigation measures in the Mitigation Monitoring and Reporting Program, to be adopted this day by companion action, A Resolution Adopting a Mitigation Monitoring and Reporting Program, Conditions of Sale, Conditions, Covenants and Restrictions to Be Recorded Against the Property, and Conditions of Lease, the potential significant environmental impacts on the aesthetics, biological resources, cultural and historic resources, park and recreational benefits, land use, and traffic and circulation have been mitigated to a less-than-significant level, except for the following two significant unavoidable impacts, discussed further below in Paragraphs a-b(4).

Evidence:
RFEIR;
A Resolution Adopting a Mitigation Monitoring and Reporting Program, Conditions of Sale, to be adopted by companion action this day.

a. The RFEIR identifies loss of parkland as a significant and unavoidable impact: "Sale of the Flanders Mansion Property would result in the loss of locally significant parkland that is considered an integral component of the Mission Trail Nature Preserve." (See RDEIR, Section 4.5, p. 4.5-6.)

b. The RFEIR also identifies as a potentially significant and unavoidable impact, conflicts between the project and the General Plan: "Sale of the Flanders Mansion Property would result in the permanent loss of parkland and therefore has the potential to conflict with several goals, objectives and policies identified in the City of Carmel-by-the-Sea General Plan/Coastal Land Use Plan intended on minimizing impacts to parkland and promoting public use of publicly owned parkland. Specifically, the proposed project would conflict with the following goals, objectives and policies: G5-6, O5-21, P5-46, and P5-107. *This is considered a potentially significant impact that cannot be reduced to a less-than-significant level.*" (See RDEIR, Section 4.4, p. 4.4-8.)

The four identified policies state as follows:

Policy number G5-6 is to: "Preserve and acquire open space and parks." Goal G5-6 is a

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general statement recognizing that open space and parks are of value to the City and that they should be preserved and made available for the general public.

Policy number O5-21 is to: "Optimize public use of City parks." General Plan Objective O5-21 is a general statement directing that the public's use of City parks should be optimized.

Policy number P5-46 is to: "Preserve and protect areas within the City's jurisdiction, which due to their outstanding aesthetic quality, historical value, wildlife habitats or scenic viewsheds, should be maintained in permanent open space to enhance the quality of life. Such acquired areas would be left in a natural state or restored for aesthetic and/or wildlife purposes." Policy P5-46 is only partially relevant to the Flanders Mansion property. The property is developed with a building and the grounds are either paved or planted in an unnatural landscape. The policy intent of leaving acquired properties "in a natural state or restored for aesthetic and/or wildlife purposes" is therefore less relevant than would be the case for undeveloped property. However, the Flanders Mansion property is of historical value and it should be restored for its aesthetic value to the City as a historical resource.

Policy number P5-107 is to: "Provide for public access and passive enjoyment of City parks and open space." Policy P5-107 is a general statement directing that there should be public access to parks and open space to enable passive enjoyment by the Carmel's citizens and visitors.

Evidence:
General Plan;
A Resolution Adopting a Project for Implementation: Sale of Flanders Mansion Parcel with Conservation Easements and Mitigation, to be adopted by companion action this day;
A Resolution Certifying the Recirculated Final Environmental Impact Report for the Sale of the Flanders Mansion Property, to be adopted by companion action this day.

(1) The Planning Commission held a noticed public hearing, reviewed Staff Reports with analysis of the issue and determined that sale of the Flanders Mansion property with Conservation Easements and Mitigation Measures, for residential use is consistent with the General Plan.

Evidence:
Staff Report for April 23, 2009 Planning Commission meeting;
Minutes of April 23, 2009 Planning Commission meeting.

(2) The City's planning staff recommended as follows: "Determining consistency involves a balancing of all relevant policies and text… Carmel's General Plan does not contain decisive policies on the issue of whether to sell Flanders Mansion, lease it, or just keep it for Municipal uses. However, the General Plan does include policies that anticipate the possible sale of the Flanders Mansion property (General Plan Policies P5-141, P5-142 and P5-143, shown below). These policies support a conclusion that selling the property would be consistent with the General Plan. To harmonize the policies that anticipate a sale with the policies that conflict with the loss of public parkland, staff recommends that the City Council consider the broader context of parkland within the City. Within a City-wide context the various policies in the City's General Plan are not necessarily in conflict. The Plan can support parks, conservation and recreation in general terms while permitting a sale of parkland at a specific site.
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Viewed in this larger context, selling the Flanders Mansion property would not be inconsistent with the General Plan."

Evidence:
Staff Report, April 23, 2009.

(3) In connection with the City Council's 2005 consideration of the potential sales of the Flanders Mansion property, the City Council determined that such a sale was consistent with the General Plan, and the Superior Court in the petition action, The Flanders Foundation v. City of Carmel-by-the-Sea (Mont. Co. Super. Ct. Case No. M76728) upheld the City Council's determination as within the proper exercise of the Council's discretion.

Evidence:
Resolution 2005-56;
Amended Judgment filed August 10, 2007, incorporating February 21, 2007 Intended Decision.

(4) The City Council held noticed public hearings, reviewed Staff Reports with analysis of the issue, and has determined that sale of the Flanders Mansion property is consistent with the General Plan and the sale of the Flanders Mansion with Conservation Easements and Mitigation is supported, on balance, when all relevant policies are considered in light of the City's current state and circumstances, for the reasons set forth under this paragraph number 8.b. The Council finds that the policies in the General Plan are internally consistent and, on balance, support a sale of the property. Therefore, the potential conflict between selling the property and the General Plan policies identified in the RDEIR in section 4.4 do not exist. Consequently, the identified potentially significant and unavoidable impact will not occur.

Evidence:
General Plan;
Mission Trails Nature Preserve Master Plan;
RDEIR;
RFEIR;
Staff Reports for April 28, 2009 City Council meeting;
Staff Reports for May 12, 2009 City Council Meeting;
A Resolution Adopting a Project for Implementation: Sale of Flanders Mansion Parcel with Conservation Easements and Mitigation, to be adopted by companion action this day;
A Resolution Certifying the Recirculated Final Environmental Impact Report for the Sale of the Flanders Mansion Property, to be adopted by companion action this day.

9. The City Council finds that all of the mitigation measures recommended by the RFEIR are feasible and will avoid, eliminate or substantially lessen the other significant environmental effects identified in the RFEIR (with the exception of the two unavoidable significant impacts identified in Paragraph 4 above) to a less-than-significant level. By companion action, A Resolution Adopting a Mitigation Monitoring and Reporting Program, Conditions of Sale, Conditions, Covenants and Restrictions to Be Recorded Against the Property, and Conditions of Lease, all of the mitigation measures recommended by the RFEIR have been adopted that will reduce to a less-than-significant level environmental impacts related to the permanent loss of public parkland (e.g., the potential significant environmental impacts on the aesthetics, biological resources, cultural and historic resources, park and recreational benefits,

land use, and traffic and circulation). These impacts therefore will be less than significant after implementation of the mitigation measures, including the impacts from sale of the property on views of and from the Flanders Mansion, access to trails and the Mission Trail Nature Preserve and the Lester Rowntree Native Plant Garden.

Evidence:
RDEIR;
RFEIR;
Resolution Adopting a Mitigation Monitoring and Reporting Program, Conditions of Sale, Conditions, Covenants and Restrictions to Be Recorded Against the Property, and Conditions of Lease.

10. As set forth in the Resolution Certifying the Recirculated Final Environmental Impact Report for the Sale of the Flanders Mansion Property, all environmental impacts of the project are less-than-significant, or will be mitigated to a less-than-significant level by the mitigation measures adopted as conditions of approval, except for the following: The impact from the loss of City ownership of locally-significant public parkland which is inherent in any action to sell the property, including the Sale with Conservation Easements and Mitigation. It cannot be mitigated to a less-than-significant level, and, therefore, that impact remains significant and unavoidable. Under Public Resources Code section 21081(a)(3) and (b) and CEQA Guidelines sections 156091(a)(3) and 15092(b)(2)(B), the City Council determines that this significant effect on the environment will not be mitigated to a less-than-significant level through mitigation measures and further finds that this significant impact that will occur is acceptable due to the overriding considerations described below.

Evidence:
RDEIR, Section 4.5, Parks and Recreation, pp. 4.5-1 to 4.5-6;
RFEIR;
Resolution Certifying the Recirculated Final Environmental Impact Report for the Sale of the Flanders Mansion Property;
A Resolution Adopting a Project for Implementation: Sale of Flanders Mansion Parcel with Conservation Easements and Mitigation, to be adopted by companion action this day;
Staff Reports for April 28, 2009 City Council meeting;
Staff Reports for May 12, 2009 City Council meeting.

Findings Regarding Discussion and Analysis of Alternatives in the EIR

11. The EIR evaluates a range of potential alternatives to the proposed Project. The EIR examines the environmental impacts of each alternative in comparison with the proposed Project and the relative ability of each alternative to satisfy Project objectives. The discussion and analysis of alternatives in the RDEIR and RFEIR is augmented by a further discussion of alternatives in the Supplemental Responses to Comments to the Recirculated Draft EIR and Errata. That discussion provides additional information about the range of alternatives examined in the Recirculated Draft EIR, further describes the relationship between alternatives examined in the Recirculated Draft EIR and Project objectives, and addresses several variations on the alternatives that were suggested in comments on the Recirculated Draft EIR.
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The City Council finds that the range of alternatives analyzed in the RDEIR and RFEIR as amended reflects a reasonable attempt to identify and evaluate various types of alternatives that would potentially be capable of reducing the proposed Project's environmental effects, while accomplishing most but not all of the Project objectives. The City Council further finds that the RDEIR and RFEIR evaluated a reasonable range of alternatives to the Project and that the alternatives analysis is sufficient to inform the City and the public regarding the trade-offs between the degree to which alternatives to the proposed Project could reduce environmental impacts and the corresponding degree to which the alternatives would achieve the primary project purpose and secondary objectives of the project. By these findings, the City adopts the EIR's analysis and conclusions regarding alternatives eliminated from further consideration, both during the scoping process and in response to comments.

In making these findings, the City Council certifies that it has independently reviewed and considered the information on alternatives provided in the EIR, including the information provided in comments on the Recirculated Draft EIR that proposed other options for development of a residential project, and the responses to those comments in the Final Recirculated EIR. The discussion and analysis of these alternatives is not repeated in these findings, but the discussion and analysis of the alternatives in the EIR is incorporated in these findings by reference.

In making these findings relating to alternatives, the City Council finds and determines that all the evidence supporting the findings set forth below was presented in a timely fashion to allow adequate consideration by the City.

Evidence:
RDEIR, pp. 6-18 and 6-19.

Alternatives Which Would Substantially Lessen the Significant, Unavoidable Impact of the Sale of the Property Are Infeasible

12. The RFEIR describes and evaluates alternatives to the proposed Project. Each of these alternatives offers one or more environmental advantages in comparison with the proposed Project in terms of their ability to reduce or avoid significant impacts. Based on the analysis of impacts, mitigations, achievement of project purpose and secondary objectives, the City has determined to adopt one of the environmentally-superior alternatives. As set forth above, this alternative will substantially mitigate the significant environmental effects of the Sale with Conservation Easements and Mitigation alternative. However, as explained in the Resolution Certifying the Recirculated Final Environmental Impact Report for the Sale of the Flanders Mansion Property, these mitigation measures will not mitigate all Project impacts to a less-than-significant level, and one significant impact will remain after mitigation. The City Council finds, however, that by adopting the Sale with Conservation Easements and Mitigation alternative, the impacts will be mitigated to a level that the City finds acceptable.

As identified in the RDEIR: "Both Lease Alternatives and the Sale with Conservation Easements and Mitigation Alternative would significantly reduce the extent of impacts as compared to the proposed project, and both can be considered environmentally superior to the proposed project. However, the Lease Alternatives would retain City ownership of the Property and preserve flexibility on how the property is used in the future (i.e., after the term of the lease).

If the City of Carmel-by-the-Sea determines that the Lease Alternatives are infeasible for specific economic, legal, social, technical, or other considerations, the Sale with Conservation Easements and Mitigations Alternative also would be considered the environmentally superior alternative."

As explained in more detail below, the City Council finds that the Sale with Conservation Easements and Mitigation alternative should be approved instead of the Proposed Project or one of the other alternatives to it because, a) the other environmentally superior alternatives (the Lease alternatives) are infeasible, and b) in comparison with the Proposed Project and the Lease alternatives, the Sale with Conservation Easements and Mitigation alternative best achieves the primary project purpose and secondary objectives, and implements City goals, policies and programs. Furthermore, unlike the other alternatives, the Sale with Conservation Easements and Mitigation alternative has the ability to be successfully accomplished within a reasonable period of time taking account of environmental, economic, social, technological, legal and other relevant factors. The collection of attributes presented by the Sale with Conservation Easements and Mitigation alternative thus comprises a reasonable accommodation of the social, economic and environmental interests at stake.

Evidence:
RDEIR, pp. 6-18 to 6-19;
RFEIR;
Resolution Certifying the Recirculated Final Environmental Impact Report for the Sale of the Flanders Mansion Property;
Resolution Adopting a Mitigation Monitoring and Reporting Program, Conditions of Sale, Conditions, Covenants and Restrictions to Be Recorded Against the Property, and Conditions of Lease.

13. The Amended Judgment in The Flanders Foundation vs. City of Carmel-by-the-Sea and City Council of the City of Carmel-by-the-Sea (Mont. Co. Super. Ct. Case number M76728), filed August 10, 2007, and specifically the Intended Decision, dated February 21, 2007, incorporated by reference in the Amended Judgment, stated that, (1) a statement of overriding considerations based on economic infeasibility could not be legally adopted absent substantial evidence in the form of an economic analysis, and (2) if, at a future session, such evidence is presented and evaluated, the City may then adopt findings in conformity with that evidence.

Evidence:
Amended Judgment filed August 10, 2007, and February 21, 2007 Intended Decision, incorporated therein.

14. The City commissioned an economic report prepared by CB Richard Ellis ["CBRE"]. CBRE's report consists of two components: (1) an Economic Feasibility Analysis dated February 23, 2009, prepared by Lynn Sedway, Executive Managing Director, and Jonathan Kuperman, Director, of CBRE Consulting, Inc.; and (2) a Summary Appraisal Report, dated October 3, 2008, prepared by Gene Williams, MAI, CCIM, MRICS, Vice President of CBRE Valuation & Advisory Services, CA Certification #AG015954, The CBRE Report relied in part on the January 15, 2009, assessment by architectural and historic building experts, Architectural Resources Group ["ARG"], of the work needed in order to restore and rehabilitate the Flanders Mansion property, and their estimate of the cost to accomplish that rehabilitation.
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The economic experts recognize and set forth the standard for infeasibility under CEQA in their report, at page 6, consistent with the standards summarized above, at pages 3 to 4. The CBRE analysis used two tests for infeasibility: (1) it is impractical by virtue of a severely limited or nonexistent market for the alternative, and (2) it is impractical due to severe additional cost or lost profitability.

The CBRE report is part of the record of these proceedings, and has been reviewed and considered by the City Council in connection with its deliberations on the project.

15. Specific economic and other factors make infeasible the project alternatives which would avoid or substantially lessen this impact, specifically leasing the Flanders Mansion property for either single-family residential use or public or quasi-public use.

a. The CBRE Report found that the Lease For Single-Family Residential alternative is not feasible for the following reasons: (1) in the vicinity of the Property, the market for comparable single-family rentals is exceedingly thin and, in fact, non-existent where lessees are responsible for rehabilitating a property; and (2) with the estimated income stream from this alternative, the City would not recover its restoration costs ($1,157,000) for approximately 17 years. The City Council finds these expert opinions contained in the CBRE Report to be reasonable and credible, and on that basis finds that the Lease for Single-Family Residential alternative is not capable of being accomplished in a successful manner (i.e., the likelihood of leasing the Flanders mansion on acceptable terms is remote or non-existent), would not recover the costs of significant short-term and long-term repair and the substantial cost of rehabilitation within a reasonable period of time (i.e., it would take 17 years), and is, therefore, infeasible for economic reasons.

Evidence:
CBRE Consulting, Inc., Economic Feasibility Analysis report, dated, February 23, 2009, including all attachments thereto.
Pub. Res. Code, §§ 21002, 21002.1, 21081;
CEQA Guidelines [Title 14, Cal. Code Regs., § 15000 *et seq.*], §§ 15021, 15092, 15093, 15126.6, 15364;
Amended Judgment, filed August 10, 2007, including Intended Decision, dated February 21, 2007, at pp. 9-15, and authorities cited therein.

b. The CBRE Report found that the Lease for Public/Quasi-Public Use is not feasible for the following reasons: (1) in the Property's immediate area, a very limited market for comparable non-residential rentals, and here again, a non-existent market for nonresidential rentals when the lessee is required to rehabilitate the property; and (2) with the estimated income stream from this alternative, the City would not recover its restoration costs ($1,157,000) for approximately nine years. The economic experts found a lease for nonprofit use infeasible if the lessee were required to undertake the effort and expense of rehabilitating the property and also infeasible if the City were to undertake the rehabilitation. The City Council finds these expert opinions contained in the CBRE Report to be reasonable and credible, and on that basis finds that the Lease for Public/Quasi-Public Use alternative is not capable of being accomplished in a successful manner (i.e., the likelihood of leasing the Flanders Mansion for non-residential public/quasi-public use on acceptable terms is remote or non-existent), would not underwrite the costs of significant short-term and long-term repair and rehabilitation within a reasonable period of time (i.e., would take 9 years), and is, therefore, infeasible for economic reasons.
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Evidence:
CBRE Consulting, Inc., Economic Feasibility Analysis report, dated, February 23, 2009, including all attachments thereto;
Pub. Res. Code, §§ 21002, 21002.1, 21081;
CEQA Guidelines [Title 14, Cal. Code Regs., § 15000 *et seq.*], §§ 15021, 15092, 15093, 15126.6, 15364;
Amended Judgment, filed August 10, 2007, including Intended Decision, dated February 21, 2007, at pp. 9-15, and authorities cited therein.

c. The economic expert consultants also found infeasible a sale of the Flanders Mansion property with the City required to undertake the rehabilitation prior to sale, for the reasons described in the CBRE Report.

Evidence:
CBRE Consulting, Inc., Economic Feasibility Analysis report, dated, February 23, 2009, including all attachments thereto.
Pub. Res. Code, §§ 21002, 21002.1, 21081;
CEQA Guidelines [Title 14, Cal. Code Regs., § 15000 *et seq.*], §§ 15021, 15092, 15093, 15126.6, 15364;
Amended Judgment, filed August 10, 2007, including Intended Decision, dated February 21, 2007, at pp. 9-15, and authorities cited therein.

d. Continued retention of the Property as used in the past (i.e., the "No Project" alternative) fails to achieve several of the City's identified project objectives, including the primary objective and the important secondary objectives of putting the Mansion to productive use and achieving preservation and restoration of this historic building. Economic, social and other factors make a No Project alternative infeasible.

(1) Within the City finances, the City Council has determined, within its legislative, budgetary discretion, that the funding required for the City's annual operations and services, the reserves for needed for periodic shortfalls in annual revenue and for other capital and debt-service priorities in the City, such as maintaining and repairing infrastructure and the assets the City intends to retain, must take priority over expending funds needed to historically rehabilitate and maintain the Flanders Mansion building and grounds.

The City Council has proposed the Project because it has determined that the expenditures necessary to maintain, repair and historically rehabilitate the property is not an appropriate priority for the use of annual and reserve funds.

When allocating funds, either from current revenue (e.g., sales tax, property tax, TOT, fees) or from reserves, the City must make choices regarding priorities. Not all capital improvements and needs can receive funding. Attempting to forecast all future needs of the City would be speculative, as would efforts to identify the location, size, costs and potential environmental impacts of such facilities. Not all capital improvements and needs can receive funding. The City allocates its capital expenditures by using a five-year capital improvements program, updated annually.

The City anticipates ongoing expenses for street repairs, as documented in the 2008 Nichols Report, plus numerous storm drainage projects already appearing in the Capital Improvement Program. Each year, City Departments identify additional capital improvements

that will be needed in short-term or long-term time frames. Those related to health or safety, take the highest priority. Those related to capital assets that must provide continuing service are typically next in line for funding. Funding for new facilities such as the Forest Theater upgrade or implementation of the Del Mar and North Dunes Master Plan also must compete for funds. Within this context, providing funding for rehabilitating the Flanders Mansion is infeasible if the City is to maintain, protect and develop its other facilities, programs and services that the City Council has determined are of greater value to the public.

(2) The No Project Alternative would eliminate the significant and unavoidable impact and other site-specific environmental effects of the proposed Project; however, the City finds that this alternative would not address or support the social factors associated with the public importance and value of the Flanders Mansion historic resource. Failure of the No Project alternative to result in rehabilitation of the Flanders Mansion conflicts with the project objectives and General Plan policy P5-141. Selling the property will resolve a long-standing, troublesome issue that has plagued the City ever since acquiring the Mansion. A developed building site located inside a Nature Preserve is an anomaly. This fact has stymied City efforts to find a use that is compatible with both the purpose of the Preserve and the inherent nature of the building as a single-family residence. It is important to ensure the building will be restored and then maintained in its restored condition over the long term. By adopting the Sale with Conservation Easements and Mitigation alternative, restoration of the Mansion's historic character will be part of the park benefits maintained.

(3) The City finds that the No Project alternative is unacceptable when combined with the above economic and social factors, including the legal issues of ongoing premises liability risks, and the City's budget, finances, and public purpose priorities.

Evidence:
CBRE Consulting, Inc., Economic Feasibility Analysis report, dated, February 23, 2009, including all attachments thereto;
Pub. Res. Code, §§ 21002, 21002.1, 21081;
CEQA Guidelines [Title 14, Cal. Code Regs., § 15000 *et seq.*], §§ 15021, 15092, 15093, 15126.6, 15364;
Annual City budget and expenditures, and City capital reserves and long-term debt obligations;
Declaration of Rich Guillen in Support of Status Report on Return to Peremptory Writ of Mandamus;
City files in City Clerk's office and Planning and Building Inspection department, and City file relating to Flanders Mansion property;
Staff Report of Rich Guillen at public hearing of April 28, 2009;
Staff Reports for May 12, 2009 City Council meeting.

e. These findings contrast and compare the alternatives, where appropriate, to show that the selection of the Sale with Conservation Easements and Mitigation alternative, while still resulting in one significant and unavoidable environmental impact, has substantial environmental, social, fiscal, and other benefits. In rejecting certain alternatives, the City has examined both the environmental impacts and the project objectives and weighed the ability of the various alternatives to meet the objectives. The City finds, after due consideration of a reasonable range of alternatives (as set forth in the RFEIR and findings), that in comparison to the Proposed Project, the No Project Alternative and other alternatives, the Sale with
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Conservation Easements and Mitigation alternative best attains a balance between minimizing environmental impacts, and achieving the primary and secondary objective.

f. In accordance with section 15126.6(a) of the CEQA Guidelines, an RFEIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant impacts of the project. The No Project alternative would reduce the impacts compared to the Proposed Project; however, it does not achieve the primary purpose of the project (i.e., to divest the City of the Flanders Mansion property which is in need of significant short-term and long-term repair and rehabilitation), nor does it effectively meet several of the project's secondary objectives (i.e., ensure that the Flanders Mansion is preserved as a historic resource, and ensure that the Flanders Mansion building and property are put to productive use) therefore would not be feasible, as it applies to these Findings.

g. The primary project purpose is divestment of the property which will reduce City costs, including costs identified for current needs and costs for major repairs and ongoing maintenance in the future, based upon the age and condition of the building, over the course of 20 to 50 years. When balanced with other city property needs and municipal financing requirements, discussed above, these factors contribute to the infeasibility of the No Project Alternative.

h. An important secondary objective is protection of an identified historic resource in a residential neighborhood over the long term. The property is within a natural resource area and in close proximity to a single-family neighborhood. The City found that intensive uses of the site are not compatible uses for the site, as described in both the 2005 EIR and public hearings and in testimony and documentation for the 2009 proceedings.

i. Unlike the Sale with Conservation Easements and Mitigation alternative, with the proposed project with mitigation measures, the No Project alternative would not be subject to conditions or mitigation measures identified in this RDEIR. These conditions of sale and mitigation measures require the long-term care and rehabilitation of the mansion as a historic resource and ensure covenants and restrictions that run with the land. The No Project alternative has no such protection or long term assurances and is therefore considered to provide less protection and benefit to the historic resource.

j. Additionally, a number of the mitigation measures require enhancements to the Mission Trail Nature Preserve environment and also mitigations or conditions to ensure long term protection to the surrounding neighborhood against intensified uses that may impact the single family neighborhood and parkland environs. The no project alternative does not include these restrictions. Therefore, the No project alternative would not be able to meet the requirements of long-term protection of the historic resource within a single-family neighborhood and parkland and would not resolve a City issue that has been debated for over 30 years.

Evidence:
See also evidence cited above under Section 7.d;
RFEIR.

k. In combination, these economic, social and other factors make infeasible the No Project alternative, i.e., retention of the property and continued use consistent with the

past use (i.e., intermittent rental as a individual or single-family residence or as non-profit organization offices).

Evidence:
RDEIR, Section 6.3;
RFEIR;
Report of Architectural Resources Group, dated January 15, 2009, attached as Addendum C to CBRE Consulting, Inc., Economic Feasibility analysis report;
Report of City Administrator to City Council for April 28, 2009 hearing;
Staff Reports to City Council for April 28, 2009 hearing;
Staff Reports to City Council for May 12, 2009 meeting;
A Resolution Certifying the Recirculated Final Environmental Impact Report for the Sale of the Flanders Mansion Property, adopted by companion action this day.

l. The City Council, having reviewed the Economic Feasibility Analysis by CBRE, along with the discussion of the alternatives in Sections 6.0 through 6.7 of the RFEIR, finds that both lease alternatives and the No Project alternative are infeasible under the legal standards for infeasibility under CEQA set forth at the beginning of these findings.

Evidence:
CBRE Consulting, Inc., Economic Feasibility Analysis report, dated, February 23, 2009, including all attachments thereto;
Pub. Res. Code, §§ 21002, 21002.1, 21081;
CEQA Guidelines [Title 14, Cal. Code Regs., § 15000 *et seq.*], §§ 15021, 15092, 15093, 15126.6, 15364;
Amended Judgment, filed August 10, 2007, including Intended Decision, dated February 21, 2007, at pp. 9-15, and authorities cited therein.

The Project Alternative of Sale with Conservation Easements and Mitigation Is Economically Feasible, Achieves Project Objectives and Lessens the Environmental Impacts of the Project

16. Sale with Conservation Easements and Mitigation is economically feasible. For reasons described in the CBRE report, the economic expert consultants found feasible a sale of the Flanders Mansion property which did not require the City to undertake the rehabilitation but, rather, required the purchaser to perform the rehabilitation work identified by ARG. The economic experts recognize and set forth the legal standard for infeasibility under CEQA in their report, at page 6, consistent with the standards summarized above, at pages 3 to 4. In making their assessment, the economic expert consultants took into consideration the Mitigation Monitoring and Reporting Program approved in 2005 and assumed, correctly, that such mitigations or their equivalent would be imposed upon any purchaser of the property pursuant to the current environmental review. Accordingly, the economic experts' finding of feasibility of a sale of the Flanders Mansion is applicable to the Sale with Conservation Easements and Mitigation alternative.

Evidence:
CBRE Consulting, Inc., Economic Feasibility Analysis report, dated, February 23, 2009, including all attachments thereto;

Pub. Res. Code, §§ 21002, 21002.1, 21081;
CEQA Guidelines [Title 14, Cal. Code Regs., § 15000 *et seq.*], §§ 15021, 15092, 15093, 15126.6, 15364;
Amended Judgment, filed August 10, 2007, including Intended Decision, dated February 21, 2007, at pp. 9-15, and authorities cited therein

17. The City Council, having reviewed the economic feasibility report, along with the discussion of the alternatives in Sections 6.0 through 6.7 of the RFEIR, finds that the Sale of the Flanders Mansion with Conservation Easements and Mitigation is economically feasible under the legal standards for economic infeasibility under CEQA set forth at the beginning of these findings.

Evidence:
CBRE Consulting, Inc., Economic Feasibility Analysis report, dated, February 23, 2009, including all attachments thereto;
Pub. Res. Code, §§ 21002, 21002.1, 21081;
CEQA Guidelines [Title 14, Cal. Code Regs., § 15000 *et seq.*], §§ 15021, 15092, 15093, 15126.6, 15364;
Amended Judgment, filed August 10, 2007, including Intended Decision, dated February 21, 2007, at pp. 9-15, and authorities cited therein

The Benefits of a Sale of the Flanders Mansion Property with Conservation Easements and Mitigation

18. The City Council finds the specifically-identified benefits of the Sale with Conservation Easements and Mitigation alternative project are:

a. The Sale with Conservation Easements and Mitigation and the mitigation measures required by the Mitigation Monitoring and Reporting Program will ensure that the Flanders Mansion property is put to an appropriate use, consistent with its historic importance and use, while protecting the nearby residential neighborhoods from significant increases in traffic, parking and noise.

b. The Sale with Conservation Easements and Mitigation and the mitigation measures required by the Mitigation Monitoring and Reporting Program will ensure, in particular, the restoration, rehabilitation and long-term maintenance of the Flanders Mansion historic resource.

c. Through the mitigation measures identified by the RFEIR and being adopted into a Mitigation Monitoring and Reporting program, Conditions of Sale and Covenants to be recorded and run with the land, the sale of the Flanders Mansion property with Conservation Easements and Mitigation will ensure that: (1) the Flanders Mansion is preserved as a historic resource; (2) the Flanders Mansion building and property are put to productive use; future use of the Flanders Mansion and property will not cause significant traffic, parking or noise impacts on the surrounding neighborhood; (3) future use will not significantly disrupt the public's enjoyment of the Mission Trails Nature Preserve or the Lester Rowntree Native Plant Garden; (4) environmental resources of the park are protected and the Flanders Mansion parcel
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continues to provide the public with as many park benefits as are practical in light of such a sale, achieving the remaining secondary project objectives.

d. The sale of the Flanders Mansion property may return the property to the tax rolls, potentially adding to the funds available to be used for other public purposes.

e. The sale of the Flanders Mansion property will reduce any liability exposure attached to the City's ownership of the property and of the building which is in disrepair and located in an isolated area.

f. A sale avoids ongoing maintenance and repair expenses, may generate funds for other public purposes, and relieve the City of the financial burden of historic rehabilitation.

g. The Sale with Conservation Easements and Mitigation will preserve and protect biological resources and leave undisturbed areas identified for protected conservation easement and provide an opportunity for an improved viewing area immediately adjacent to the Lester Rowntree Arboretum.

h. A sale as a single-family residence will establish a land use that is compatible with the nearby Hatton Fields neighborhood and consistent with the purpose for which the Mansion was originally built.

i. Pursuant to Government Code section 38440 *et seq.*, final implementation of any sale of this parkland property will require a vote of the people. The citizens of Carmel-by-the-Sea will decide directly whether the benefits of selling the property with conservation easements and mitigations, outweigh the environmental harm of losing public access to 1.252 acres of parkland in a City that has 65 acres of parkland. Using the ultimate democratic process to determine the fate of the property is a benefit that is inherent in selecting a sale alternative. A lease alternative could be implemented by the Council without the approval of the citizens.

The Specifically-Identified Benefits of the Sale with Conservation Easements and Mitigation Outweigh the Remaining Significant, Unavoidable Impact

19. These specifically-identified benefits of the project outweigh the significant, unavoidable environmental impact which may result of the Sale of the Flanders Mansion with Conservation Easements and Mitigation. As a result, this environmental impact is acceptable.

20. The City Council further finds that, in the event it is determined that the mitigation measures identified by the Recirculated Final Environmental Impact Report above do not reduce the significant environmental impacts identified and analyzed in the RFEIR to less-than-significant levels, the benefits described above outweigh any and all potential unavoidable adverse impacts of the Project. The City Council further finds that each of the benefits described below is a separate and independent ground for its findings that the benefits of the Project outweigh any and all potential significant and unavoidable adverse environmental impacts of the Project.