

**CITY OF CARMEL-BY-THE-SEA**

**RESOLUTION NO. 2009-29**

**A RESOLUTION CERTIFYING THE RECIRCULATED FINAL ENVIRONMENTAL  
IMPACT REPORT FOR THE SALE OF THE FLANDERS MANSION PROPERTY**

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 has proposed sale of the Flanders Mansion property since purchasing it as a portion of a larger, single parcel of land in 1972 for public purposes;

WHEREAS, the Flanders Mansion building on the site has been used since its purchase primarily as a single family residential unit (1972-2004), and as an art instruction center and offices (1980-2000), along with periods of vacancy and other similar intermittent uses;

WHEREAS, the 1.252-acre parcel referred to herein as the Property was created in its present configuration by an approved parcel map adopted by the City in 2000;

WHEREAS, the Property site is currently zoned P-2, Improved Parkland, which zoning permits single-family resident units (among others) as conforming uses;

WHEREAS, the Flanders Mansion building was placed on the National Register of Historic Places in 1989 based on its local significance;

WHEREAS, in contemplation of the proposed sale of the Property, the City commissioned preparation of an environmental impact report [“EIR”] pursuant to the California Environmental Quality Act [“CEQA”];

WHEREAS, the Recirculated Final EIR, which incorporates the complete RDEIR dated January 2009 by reference, was completed and released on April 16, 2009 [collectively, “RFEIR”];

WHEREAS, the RFEIR concludes that the sale of the Property carries two potential significant and unavoidable impacts, the permanent loss of City ownership of public parkland (found significant and unavoidable) and the potential inconsistency of the sale of the Property with four goals, objectives and policies of the Carmel-by-the-Sea General Plan (found potentially significant and unavoidable);

WHEREAS, the Planning Commission at its special meeting on April 23, 2009 determined that the sale of the Property with Conservation Easements and Mitigation (Alternative 6.5) for residential use and lease of the property for residential use are consistent with the General Plan;

WHEREAS, the Planning Commission at its special meeting on April 23, 2009 considered the RFEIR and recommended it be certified as adequate and complete in compliance with CEQA;

WHEREAS, the determinations and recommendations of the Planning Commission on April 23, 2009 have been forwarded to the City Council and have been considered by the City Council prior to making the findings and taking the actions on the project set forth herein and in companion Resolutions respectively entitled, 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; A Resolution Adopting a Statement of Overriding Considerations; a Resolution Adopting a Project for Implementation: Sale of Flanders Mansion Parcel with Conservation Easements and Mitigation; and A Resolution of Notice of Proposed Discontinuance of Public Park Land and Setting Date for Hearing of Protests Against Sale of Public Park Land;

WHEREAS, the RFEIR discusses alternatives to sale of the Property;

WHEREAS, the RFEIR in Sections 6.6 and 6.7 determined that, and the alternative described in Section 6.4, lease of the property, was environmentally superior to the proposed project, but failed to achieve the primary project objective and may result in additional impacts on traffic depending on the type of use;

WHEREAS, the RFEIR in Sections 6.6 and 6.7 determined that, if the Lease Alternatives in Section 6.4 were found infeasible, the alternative described in Section 6.5 of the RFEIR, i.e., Sale with Conservation Easements and Mitigation, would be considered the environmentally superior alternative to the proposed project;

WHEREAS, the proposed project and the Sale with Conservation Easements and Mitigations alternative include mitigation measures designed to mitigate all environmental impacts, other than the two potentially significant and unavoidable impacts referenced above, to a less-than-significant level; and

WHEREAS, said mitigation measures are being adopted and incorporated into a Mitigation Monitoring and Reporting Program, Conditions of Sale and Covenants to be recorded to run with the land, and Conditions of Lease, to ensure that the Flanders Mansion building will be restored, preserved, and maintained in perpetuity.

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

1. Find that the above recitals and the findings contained in Attachment A hereto are accurate, and that substantial evidence exists in the City files to support said findings and recitals. The recitals and findings are hereby incorporated in and made part of this Resolution by this reference.

2. Find that the City Council reviewed and considered the information contained in the April 2009 Recirculated Final Environmental Impact Report ["RFEIR"], and the January 2009 Recirculated Draft Environmental Impact Report ["RDEIR"] which the RFEIR incorporates [collectively, "RFEIR"], and public testimony received thereon during the hearing of April 28, 2009 and of today, prior to its approval of a project for implementation.

3. Find that the Recirculated Final Environmental Impact Report is complete and adequate in accordance with CEQA.

4. Find that the Recirculated Final Environmental Impact Report was completed in compliance with CEQA.

5. Find that the Recirculated Final Environmental Impact Report reflects City's independent judgment.

6. Find that the sale of the Flanders Mansion property is consistent with General Plan policies, goals and objectives.

7. Certify the RFEIR as adequate and complete

8. Make the Findings in Attachment A, incorporated herein by this reference.

9. Direct City staff to prepare, file and provide a Notice of Determination of the City Council's action by May 13, 2009, (2) start the process required for selling public park land and provide appropriate notices in accordance with Government Code § 38440 *et seq.*; and (3) provide notice of the hearing on protests against sale set for a City Council meeting on June 16, 2009 at 4:30 p.m.

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. 2009-29**

**A RESOLUTION CERTIFYING THE RECIRCULATED FINAL ENVIRONMENTAL  
IMPACT REPORT FOR THE SALE OF THE FLANDERS MANSION PROPERTY**

**Attachment A**

**General Overview of Documents Supporting Findings.**

For the findings set forth below, the City relies upon the following documents, as well as such other documents and items as are listed as evidence with any particular finding:

1. Administrative Record prepared for the action, The Flanders Foundation v. City of Carmel-by-the-Sea, et al. (Mont. Co. Super. Ct. Case No. M76728), challenging the Final Environmental Impact Report certified September 22, 2005 ["2005 Administrative Record"];
2. Notice of Preparation, dated January 14, 2005;
3. Draft Environmental Impact Report for the Sale of Flanders Mansion Property, dated March 2005 ["2005 DEIR"];
4. Notice of Completion of Draft Environmental Impact Report for the Sale of Flanders Mansion Property, dated April 1, 2005;
5. Notice of Completion of Draft Environmental Impact Report for the Sale of Flanders Mansion Property, dated on or about April 1, 2005;
6. Final Environmental Impact Report for the Sale of Flanders Mansion Property, SCH # 2005011108, dated August 2005 (now de-certified, by City of Carmel-by-the-Sea City Council Resolution No. 2007-71, passed November 6, 2007) ["2005 Final EIR"];
7. Notice of Determination, dated on or about September 23, 2005;
8. Amended Judgment Granting Petition for Writ of Mandamus in The Flanders Foundation v. City of Carmel-by-the-Sea, et al. (Mont. Co. Super. Ct. Case No. M76728), including Exhibit A, February 21, 2007 Intended Decision, by the Honorable Robert O'Farrell, filed August 10, 2007;
9. Peremptory Writ of Mandamus, entered August 10, 2007;
10. City of Carmel-by-the-Sea City Council Resolution No. 2007-71, passed November 6, 2007;  
//  
//  
//  
//

11. Return to Writ of Mandate, Declaration of Bernard Martino in Support of Return to Peremptory Writ of Mandamus, and Declaration of Donald G. Freeman, Esquire, in Support of Return to Peremptory Writ of Mandamus, filed by the City of Carmel-by-the-Sea, filed December 7, 2007;
12. Supplemental Declaration of Bernard Martino in Support of Return to Peremptory Writ of Mandamus, filed by the City of Carmel-by-the-Sea, January 11, 2008;
13. Status Report on Return to Peremptory Writ of Mandamus, Declaration of Bernard Martino in Support of Status Report on Return to Peremptory Writ of Mandamus, Declaration of Rich Guillen in Support of Status Report on Return to Peremptory Writ of Mandamus, filed by the City of Carmel-by-the-Sea, October 30, 2008;
14. Recirculated Draft Environmental Impact Report for the Sale of the Flanders Mansion Property, SCH # 2005011108, dated January 2009 ["RDEIR"];
15. Notice of Completion and Environmental Document Transmittal to State Clearinghouse, SCH # 2005011108, for the Recirculated Draft Environmental Impact Report for the Sale of the Flanders Mansion Property, dated January 2, 2009;
16. Notice of Availability/Notice of Completion for the Recirculated Draft Environmental Impact Report (RDEIR) for the Sale of the Flanders Mansion Property, SCH # 2005011108;
17. Recirculated Final Environmental Impact Report: Sale of Flanders Mansion Property, SCH # 2005011108, dated April 2009 ["Recirculated Final EIR"];
18. Notice of Release of Recirculated Final Environmental Impact Report: Sale of Flanders Mansion Property, SCH # 2005011108, dated April 15, 2009;
19. Economic Feasibility Analysis Report by CBRE Consulting, Inc., dated February 23, 2009, including all attachments;
20. Minutes of January 14, 2009 Planning Commission hearing;
21. Agenda for February 11, 2009 Planning Commission hearing;
22. Minutes of February 11, 2009 Planning Commission hearing;
23. Public Notice of hearings, dated April 1, 2009, as amended April 7, 2009, noticing April 20, 2009 meeting of the Forest and Beach Commission, April 20, 2009 meeting of the Historic Resources Board, April 23, 2009 Special meeting of the Planning Commission, and April 28, 2009 Special meeting of the City Council, as amended;
23. Notice of Release of Recirculated Final Environmental Impact Report: Sale of Flanders Mansion Property, SCH #2005011108, dated April 15, 2009;
25. Agenda and Staff Report and, when they are prepared and approved, the Minutes, for the April 20, 2009 regular meeting of the Historic Resources Board, and any oral testimony and documentary evidence presented at that hearing;

26. Agenda and Staff Report and, when they are prepared and approved, the Minutes, for the April 20, 2009 Special meeting of the Forest and Beach Commission, and any oral testimony and documentary evidence presented at that hearing;

27. Agenda and Staff Report and, when they are prepared and approved, the Minutes, for the April 23, 2009 Special meeting of the Planning Commission, and any oral testimony and documentary evidence presented at that hearing;

28. Agenda and Staff Report and, when they are prepared and approved, the Minutes, of the April 28, 2009 and May 12, 2009 Special meetings of the City Council, and any oral testimony and documentary evidence presented at those hearings;

29. All documents and other items and materials related to the Flanders Mansion parcel and surrounding properties, and the project, in all City files.

**FINDINGS FOR CERTIFICATION OF RECIRCULATED FINAL ENVIRONMENTAL  
IMPACT REPORT PURSUANT TO CALIFORNIA ENVIRONMENTAL QUALITY  
ACT**

**A. Background to 2007-2009 CEQA Review.**

**1. The Flanders Mansion Property and City Ownership.**

a. **Finding:** The Flanders Mansion was built in 1924 as a single-family residence for Paul Flanders and his family. The Mansion was designed by Henry Higby Gutterson, an architect from San Francisco.

**Evidence:**

2005 Environmental Impact Report;  
National Register of Historic Places nomination file;  
RDEIR dated January 2009, section 3.2, Project Background;  
Property files and records maintained in Carmel City Hall.

b. **Finding:** The Flanders property was zoned R-1: Single-Family Residential. During the period 1968 through 1972, the owner repeatedly sought approval from the City to subdivide and build on the property. In 1972, after repeatedly denying development proposals, the City bought the property. This parcel included the Flanders Mansion plus a large, undeveloped and forested area, including a creek. The total area of the property was approximately 14.9 acres.

**Evidence:**

Carmel-by-the-Sea Municipal Code;  
Property files maintained in the City's Planning Department;  
Subdivision Maps and records of meetings contained in historical record files maintained in the City's Planning Department;  
RDEIR dated January 2009, section 3.2, Project Background.

//  
//

c. **Finding:** After the City acquired the Flanders property and the Mansion, there was uncertainty about how best to use them. The City Council considered selling the Flanders Mansion, demolishing it, using it as a residence or occupying it with various nonresidential uses. Over time, the Flanders Mansion was occupied by a variety of uses on a short-term basis, including but not limited to, the following: Single-family residence, Wedding location, offices, Designer's Showcase.

**Evidence:**

Flanders Property Environmental Impact Report, dated 1975;  
Carmel City Council Minutes, 1972 through 1977.

d. **Finding:** In 1975, the City approved use of the 14.9 acre property, together with an adjacent 17.5 acre parcel acquired from the Doolittle family, as Mission Trails Park. The City improved the Park with hiking trails, benches and bridges over the creek. The Park is well-used by the public.

**Evidence:**

Property files maintained in the City's Planning Department;  
Resolution of the City Council;  
Capital improvement budgets dated from 1976 through 2009;  
RDEIR dated January 2009, section 3.2, Project Background.

e. **Finding:** In 1979, the zoning for the Mission Trails Park was changed. A small area (less than two acres) around the Flanders Mansion was rezoned to R-1 Single-Family residential. The larger area of open space around the Mansion was rezoned P1: Unimproved Parkland. In 1980, the City rezoned a small area around the Mansion to P-2A (Parkland with Improvements and Structures). Both parkland zoning designations were later changed when, in 2004, the City adopted its Local Coastal Program. The zoning for the Flanders Mansion parcel and the remainder of the park became P-2 and P-1, respectively. The entirety of the park became known as Mission Trails Nature Preserve.

**Evidence:**

RDEIR dated January 2009, section 3.2, Project Background.

f. **Finding:** In 1989 the Flanders Mansion was placed on the National Register of Historic Places based on its local significance.

**Evidence:**

RDEIR dated January 2009, section 3.2, Project Background;  
National Register of Historic Places nomination document.

g. **Finding:** Since acquiring the Flanders Mansion in 1972, the City has never established a permanent use. Over the past five years, the Mansion has been vacant.

**Evidence:**

RDEIR dated January 2009, section 3.2, Project Background.

//  
//  
//  
//

2. 2005 CEQA Review.

a. **Finding:** In 1985, the City Council determined that selling the Flanders Mansion should be investigated. Since selling the Mansion would constitute a project and could have regional significance as defined by the California Environmental Quality Act (CEQA), an Environmental Impact Report (EIR) was required.

b. **Finding:** The 2005 project purpose was to: (1) generate funds for needed capital improvements involving a number of municipal facilities and (2) to divest the City of a property needing significant funding for rehabilitation.

c. **Finding:** A public scoping hearing for the sale of the Flanders Mansion property was held on November 29, 2004 at City Hall. On or about January 14, 2005, the City, in accordance with the requirements of CEQA and the CEQA Guidelines, caused to be prepared, distributed and issued a Notice of Preparation ["NoP"] prepared in accordance with § 15082 of the CEQA Guidelines stating that an Environmental Impact Report ["EIR"] for the sale of the Flanders Mansion parcel would be prepared. The Initial Study and a preliminary scope of work for the EIR were included in the Notice of Preparation. The Notice of Preparation was sent to each responsible agency, federal agency and trustee agency as required by § 15082 of the CEQA Guidelines. A 30-day comment period on the Notice of Preparation provided agencies the opportunity to identify issues and concerns that should be addressed during the preparation of the Draft EIR and to provide the City with specific detail about the scope and content of the EIR. The Flanders Mansion Project was assigned State Clearinghouse Number 2005011108.

**Evidence:**

City File in Planning and Building Inspection Department, containing a copy of the Notice of Preparation;  
Planning Commission Minutes of November 2004 hearing;  
Notice of Preparation dated January 14, 2005;  
2005 DEIR, pp. 3-3 to 3-4 (description of process beginning the 2005 environmental review);  
RDEIR, Appendix A (a copy of the Notice of Preparation).  
(See also generally, Administrative Record in The Flanders Foundation v. City of Carmel-by-the-Sea, et al., Mont. Co. Super. Ct. Case No. M76728.)

d. **Finding:** The City received seven responses to the Notice of Preparation from the agencies and public on or before February 22, 2005.

**Evidence:**

City File in Planning and Building Inspection Department, containing the responses to the Notice of Preparation;  
Responses to Notice of Preparation;  
2005 DEIR, p. 3-4 (listing and describing comments received pursuant to Notice of Preparation);  
RFEIR.  
(See also generally, Administrative Record in The Flanders Foundation v. City of Carmel-by-the-Sea, et al., Mont. Co. Super. Ct. Case No. M76728.)

//  
//

e. **Finding:** The City of Carmel-by-the-Sea, as the Lead Agency, consistent with the CEQA Guidelines, prepared a Draft Environmental Impact Report [“Draft EIR” or “DEIR”] for the Sale of the Flanders Mansion Property, and circulated the Draft EIR for public review on April 1, 2005.

**Evidence:**

City File in Planning and Building Inspection Department, files contain copy of 2005 DEIR and April 1, 2005 Notice of Completion of the 2005 DEIR;  
2005 DEIR;  
April 1, 2005 Notice of Completion;  
RFEIR.

(See also generally, Administrative Record in The Flanders Foundation v. City of Carmel-by-the-Sea, et al., Mont. Co. Super. Ct. Case No. M76728.)

f. **Finding:** On or about April 1, 2005, the City filed with the State Clearinghouse, Office of Planning and Research, a Notice of Completion in accordance with § 15085 of the CEQA Guidelines.

**Evidence:**

Notice of Completion dated on or about April 1, 2005;  
City File in Planning and Building Inspection Department, containing copy of the Notice of Completion filed with the State Office of Planning and Research;  
RFEIR.

(See also generally, Administrative Record in The Flanders Foundation v. City of Carmel-by-the-Sea, et al., Mont. Co. Super. Ct. Case No. M76728.)

g. **Finding:** On April 1, 2005, the City issued a public notice the a Draft EIR had been completed and was available for review in accordance with sections 15085(c) and 15087(a) of the CEQA Guidelines [“Notice of Completion”] to all organizations and individuals who had previously requested such notice, provided the notice to adjacent property owners, and released the Draft EIR for public review and comment for a 45-day period commencing April 1, 2005, and ending 45 days later.

**Evidence:**

City File in Planning and Building Inspection Department, containing copy of 2005 DEIR and April 1, 2005 Notice of Completion of the 2005 DEIR;  
2005 DEIR;  
Notice of Completion dated April 1, 2005;  
RFEIR.

(See also generally, Administrative Record in The Flanders Foundation v. City of Carmel-by-the-Sea, et al., Mont. Co. Super. Ct. Case No. M76728.)

h. **Finding:** During the public review period, 54 comment letters were received. The City’s Planning Commission also held a public hearing to receive oral comments. These comments and the responses to them were included as part of the Final EIR, which was certified by the City of Carmel-by-the-Sea on September 22, 2005.

**Evidence:**

Public comments received between April 1 and May 16, 2005;  
Planning Commission Minutes, dated April 14, 2005;

2005 FEIR dated August 2005, which includes these public comments;  
City File in Planning and Building Inspection Department, containing copy of all public comments received and of 2005 FEIR which includes the public comments.  
(See also generally, Administrative Record in The Flanders Foundation v. City of Carmel-by-the-Sea, et al., Mont. Co. Super. Ct. Case No. M76728.)

i. **Finding:** The Flanders Mansion property lines were staked on July 18, 2005. The Planning Commission and Historic Resources Board (on July 28, 2005) and the City Council (on August 1, 2005) conducted field trips to the site. The staking of the property provided a visual delineation of the specific boundaries of the site for the public and clarified specifics regarding the site itself, in relation to the analysis in the EIR.

**Evidence:**

2005 FEIR, section 4.0, Responses to Comments, p. 4-8;  
RFEIR, section 4.0, Responses to Comments, pp. 4-90, 4-96.

j. **Finding:** The City's EIR consultant prepared Responses to Comments. The City evaluated the comments on environmental issues, and prepared written responses that contained good faith, reasoned responses to all significant environmental issues, in accordance with § 15088 of the Guidelines. Consistent with the CEQA Guidelines, the FEIR was completed and released in August 2005.

**Evidence:**

2005 FEIR dated August 2005, Responses to Comments;  
City File in Planning and Building Inspection Department, containing copy of 2005 FEIR dated August 2005;  
RDEIR, p. 3-4;  
RFEIR.  
(See also generally, Administrative Record in The Flanders Foundation v. City of Carmel-by-the-Sea, et al., Mont. Co. Super. Ct. Case No. M76728.)

k. **Finding:** The FEIR was reviewed by the Historic Resources Board, the Forest and Beach Commission and the Planning Commission. All three bodies were responsible for advising the City Council on the adequacy of the FEIR, within their respective areas of expertise. The Historic Resources Board and the Planning Commission forwarded recommendations to the City Council that the proposed project was consistent with the General Plan. The Forest and Beach did not forward a recommendation.

**Evidence:**

Final EIR dated August 2005;  
Historic Resources Board Minutes, dated April 18, 2005;  
Forest and Beach Commission Minutes, dated May 5, 2005;  
Planning Commission Minutes, dated April 14, 2005.

l. **Finding:** Pursuant to Section 65402 of the California Government Code, the Planning Commission also was charged with advising the City Council on whether the proposed project was consistent with the General Plan. At its meeting on September 14, 2005, the Planning Commission forwarded a recommendation to the City Council that the proposed project was consistent with the General Plan.

//

**Evidence:**

Planning Commission Minutes, dated September 14, 2005.

m. **Finding:** On September 22, 2005, the City Council certified the FEIR and adopted findings under CEQA, and approved the project of sale of the Flanders Mansion property for implementation. At that time the City Council also adopted a Mitigation Monitoring and Reporting Program, Conditions of Sale and a Statement of Overriding Considerations finding alternatives in the FEIR infeasible and finding the project benefits identified therein outweighed the environmental impacts which the FEIR found to be significant and unavoidable. Lastly, the City Council adopted a Resolution noticing its intent to sell the Flanders Mansion.

**Evidence:**

Minutes of City Council meeting of September 22, 2005;  
City Council Resolutions Numbered 2005-55, 2005-56, 2005-57, 2005-58, and all attachments to said Resolutions;  
RFEIR;  
City files in Planning and Building Inspection Department and City Clerk's office, containing copies of said documents.  
(See also generally, Administrative Record in The Flanders Foundation v. City of Carmel-by-the-Sea, et al., Mont. Co. Super. Ct. Case No. M76728.)

**B. Petition for Writ of Mandamus.**

1. **Finding:** On or about November 3, 2005, The Flanders Foundation filed a Petition for Writ of Mandamus (The Flanders Foundation v. City of Carmel-by-the-Sea, Mont. Co. Super. Ct. Case No. M76728), challenging the Resolutions of the City Council of the City of Carmel-by-the-Sea ["the City"] certifying the 2005 Final EIR for sale of the Flanders Mansion property, adopting Sale of the Flanders Mansion Property as the Project for Implementation, noticing the intent to sell the Flanders Mansion property, and adopting a Statement of Overriding Considerations, Mitigation Monitoring and Reporting Program, and Conditions of Sale for the sale of the Flanders Mansion property project (City of Carmel-by-the-Sea Resolutions numbered 2005-55, 2005-56, 2005-57 and 2005-58, respectively), each of which were adopted on September 22, 2005.

Evidentiary Support:

Petition for Writ of Mandamus dated November 3, 2005.

2. **Finding:** The Monterey County Superior Court, by the Honorable Robert O'Farrell, judge, issued an Intended Decision, dated February 21, 2007, later incorporated as an exhibit to the Amended Judgment Granting Petition for Writ of Mandamus, filed August 10, 2007 [collectively, "the Judgment"]. The Monterey County Superior Court also issued the Peremptory Writ of Mandate on August 10, 2007.

**Evidence:**

City Council Resolution Number 2007-71;  
City file in City Clerk's office and Planning and Building Inspection Department, containing a copy of said document;  
Amended Judgment Granting Petition for Writ of Mandamus in The Flanders Foundation

v. City of Carmel-by-the-Sea, et al. (Mont. Co. Super. Ct. Case No. M76728), including Exhibit A, February 21, 2007 Intended Decision, by the Honorable Robert O'Farrell, filed August 10, 2007;  
Peremptory Writ of Mandamus, entered August 10, 2007 in The Flanders Foundation v. City of Carmel-by-the-Sea, et al. (Mont. Co. Super. Ct. Case No. M76728).

The following findings describing the Court's judgment and writ are supported by the above-referenced evidence.

a. **Finding:** The Judgment found:

(1) the Flanders Mansion property is parkland;

(2) the City's determination to sell the Flanders Mansion property, which the 2005 Final EIR determined would have significant, unavoidable environmental impacts, was not supported by substantial evidence of infeasibility or by appropriate findings supporting selection of the sale project which identified the specific consideration that made infeasible the environmentally-superior alternative and the specific benefits of the sale project which outweighed the significant, unavoidable environmental impacts of the sale;

(3) the City's responses to public comments in the 2005 Final EIR were adequate and may be supplemented as part of future environmental review; and

(4) the City failed to preserve the Flanders Mansion against decay and deterioration and to maintain it in a state of good repair and free from structural defects.

b. **Finding:** The Judgment upheld the City's determination that the sale of the Flanders Mansion property was consistent with the City's General Plan.

c. **Finding:** The Judgment determined the City must comply with its Municipal Code section on Maintenance and Upkeep of historic resources (Muni. Code. § 17.32.210) for the Flanders Mansion property.

d. **Finding:** The Judgment ordered that, if the City later determines after appropriate environmental review and findings pursuant to CEQA to sell the Flanders Mansion property, the City must comply with applicable provisions of the Government Code relating to sale of parkland and sale of surplus land (Govt. Code, §§ 38440 *et seq.*, 54220 *et seq.*), including putting approval of sale of the property to a vote of the City's residents.

e. **Finding:** The Judgment granted the Petition for Writ of Mandamus, requiring that the 2005 Final EIR be decertified and all related actions be set aside.

f. **Finding:** The Judgment also ordered the City to implement "reasonable interim measures necessary to avoid further significant deterioration" of the Flanders Mansion.

3. **Finding:** On November 6, 2007, the City Council passed Resolution Number 2007-71, rescinding the four resolutions passed in 2005 (Nos. 2005-55, 2005-56, 2005-57 and 2005-58) certifying the 2005 Final EIR, approving sale of the Flanders Mansion parcel as the project for implementation, adopting Conditions of Sale, a Mitigation Monitoring and

Reporting Program and a Statement of Overriding Considerations, and noticing the City's intent to sell the Flanders Mansion parcel.

**Evidence:**

Resolution No. 2007-71;  
City file in City Clerk's office and Planning and Building Inspection Department, containing a copy of said Resolution;  
Return to Writ of Mandate and Declaration of Donald G. Freeman, Esquire, in Support of Return to Peremptory Writ of Mandamus, filed by the City of Carmel-by-the-Sea, December 7, 2007.

4. **Finding:** On December 7, 2007, the City filed with the Monterey County Superior Court documents in Return to the Peremptory Writ of Mandate.

**Evidence:**

Return to Writ of Mandate, Declaration of Bernard Martino in Support of Return to Peremptory Writ of Mandamus, and Declaration of Donald G. Freeman, Esquire, in Support of Return to Peremptory Writ of Mandamus, filed by the City of Carmel-by-the-Sea, December 7, 2007.

a. **Finding:** The Return informed the court that the City had decertified the 2005 Final EIR and rescinded all Resolutions relating to the 2005 project (described above).

**Evidence:**

Return to Writ of Mandate, Declaration of Bernard Martino in Support of Return to Peremptory Writ of Mandamus, and Declaration of Donald G. Freeman, Esquire, in Support of Return to Peremptory Writ of Mandamus, filed by the City of Carmel-by-the-Sea, December 7, 2007.

b. **Finding:** The Return documents described the measures the City were taking and would take to maintain the Flanders Mansion to prevent further significant deterioration, and offered the Court and the Flanders Foundation the opportunity to view and inspect the Flanders Mansion and the parcel's grounds.

**Evidence:**

Return to Writ of Mandate, Declaration of Bernard Martino in Support of Return to Peremptory Writ of Mandamus, and Declaration of Donald G. Freeman, Esquire, in Support of Return to Peremptory Writ of Mandamus, filed by the City of Carmel-by-the-Sea, December 7, 2007.

c. **Finding:** The Return stated that the City would undertake further environmental review pursuant to CEQA considering both sale and lease options for the Flanders Mansion property.

**Evidence:**

Return to Writ of Mandate, and Declaration of Donald G. Freeman, Esquire, in Support of Return to Peremptory Writ of Mandamus, filed by the City of Carmel-by-the-Sea, December 7, 2007.

//  
//

d. **Finding:** In its Return, the City also provided that if, following the further environmental review, the City again determined to sell the Flanders Mansion parcel, it would submit the sale of the property to the voters for approval (pursuant to Govt. Code, § 38440 *et seq.*) and, if the voters approved the sale of the property, the City would comply with the Surplus Land Act provisions (Govt. Code, § 54220 *et seq.*).

**Evidence:**

Return to Writ of Mandate, and Declaration of Donald G. Freeman, Esquire, in Support of Return to Peremptory Writ of Mandamus, filed by the City of Carmel-by-the-Sea, December 7, 2007.

5. **Finding:** On January 8, 2008, the City filed a supplemental document to correct one of the statements in the description of maintenance measures being undertaken.

**Evidence:**

Supplemental Declaration of Bernard Martino in Support of Return to Peremptory Writ of Mandamus, filed by the City of Carmel-by-the-Sea, January 11, 2008.

6. **Finding:** On October 30, 2008, the City filed further Return documents with the Monterey County Superior Court, providing an update on the actions being taken to comply with the Judgment and Peremptory Writ of Mandate.

**Evidence:**

Status Report on Return to Peremptory Writ of Mandamus, Declaration of Bernard Martino in Support of Status Report on Return to Peremptory Writ of Mandamus, Declaration of Rich Guillen in Support of Status Report on Return to Peremptory Writ of Mandamus, filed by the City of Carmel-by-the-Sea, October 30, 2008.

a. **Finding:** The Return Status documents described the measures that had been undertaken thus far to maintain the Flanders Mansion against further significant deterioration and provided a breakdown of expenditures in this regard following the Judgment and Writ in August 2007 through the end of September 2008.

**Evidence:**

Status Report on Return to Peremptory Writ of Mandamus, Declaration of Bernard Martino in Support of Status Report on Return to Peremptory Writ of Mandamus, Declaration of Rich Guillen in Support of Status Report on Return to Peremptory Writ of Mandamus, filed by the City of Carmel-by-the-Sea, October 30, 2008.

b. **Finding:** The Return Status Report also informed the court that counsel for representatives of the Flanders Foundation would be viewing the Flanders Mansion property on November 4, 2008, and again invited the court to attend that view.

**Evidence:**

Status Report on Return to Peremptory Writ of Mandamus, filed by the City of Carmel-by-the-Sea, October 30, 2008.

c. **Finding:** The Return Status Report further informed the court that The City was in the process of revising and updating the environmental impact report for the  
//

Flanders Mansion parcel, further reviewing the proposed use and potential disposition, under CEQA, and considering sale, lease and retention options.

**Evidence:**

Status Report on Return to Peremptory Writ of Mandamus, filed by the City of Carmel-by-the-Sea, October 30, 2008.

7. **Finding:** The City complied with the Amended Judgment, including the Intended Decision, and the Peremptory Writ of Mandate by taking the actions described above in Paragraph 3 through 6, and by the RDEIR and RFEIR, the public notices relating thereto and the hearings on the RFEIR, the public comment period on the RDEIR, the February 11, 2009 Planning Commission hearing taking oral public comments on the RDEIR, the April 20, 2009 Special meeting of the Forest and Beach Commission, April 20, 2009 regular meeting of the Historic Resources Board, April 23, 2009 Special meeting of the Planning Commission, and April 28, 2009 Special meeting of the City Council, and the findings made and actions taken by this Resolution and Resolutions respectively entitled, 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; A Resolution Adopting a Statement of Overriding Considerations; a Resolution Adopting a Project for Implementation: Sale of Flanders Mansion Parcel with Conservation Easements and Mitigation; and A Resolution of Notice of Proposed Discontinuance of Public Park Land and Setting Date for Hearing of Protests Against Sale of Public Park Land, by companion action this day.

**Evidence:**

All evidence cited in support of the above findings in Paragraphs numbered B.3 through 6c;

The repairs and maintenance performed to the Flanders Mansion and the Flanders Mansion property grounds;

The current condition of the Flanders Mansion and property grounds.

8. **Finding:** The City has had an analysis of the economic feasibility of the proposed project and alternatives performed by consultants qualified in economics and property and market valuation. The Economic Feasibility study by CBRE Consulting included the completion of the following major tasks: CRBE reviewed pertinent information including the EIR and property relevant codes, standards, and restrictions; performed a local reconnaissance to develop an understanding of the site and its environs; inspected the site to determine potential and assess existing conditions related to access, parking, visibility, topography, and views; observed adjacent properties and surrounding neighborhoods to form an opinion on potential value and use; developed case studies involving comparable properties; analyzed key local property-market statistics and trends affecting the value of the Property; conducted an appraisal of the market value of Flanders Mansion, through CBRE's Valuation & Advisory Services group, and evaluated the feasibility and value of each disposition alternative.

**Evidence:**

The Economic Feasibility Analysis report, dated February 23, 2009, including all attachments, by CBRE Consulting, Inc.;

Firm Qualifications and Professional Profiles for Lynn Sedway, Jonathan Kuperman attached to contract approved on August 4, 2008;

Qualifications for Gene Williams attached as Addendum G to appraisal, attached as

Appendix to the economic feasibility report;  
City files in City Clerk's office and the Planning and Building Inspection Department,  
containing copies of said documents.

**C. Current CEQA Environmental Review.**

**1. Finding: Description of the Proposed Project:**

The proposed project consists of the sale of the Flanders Mansion property, a 1.252 acre parcel together with all improvements. The project site is considered parkland and is zoned P-2 (Improved Parkland). The grounds of the Flanders Mansion property have historically been used by the public for passive recreational activities and the property provides a number of park benefits. Surrounding the property is an Environmentally Sensitive Habitat Area (ESHA) zoned P-1. This area plus the project site are all part of the City's largest park, the Mission Trail Nature Preserve. The building on the property (the Flanders Mansion) is recognized as a historic resource and is listed on the National Register of Historic Places. No part of the Mission Trail Nature Preserve zoned P-1 is subject to sale and all of it would be retained as public parkland.

**Evidence:**

RDEIR, section 3.0, p. 3-1;  
See also RDEIR, sections 3.1 through 3.2, pp. 3-1 through 3-4.

**2. Finding: Project Objectives:**

The City of Carmel-by-the-Sea has identified the primary purpose of the proposed sale is to divest the City of the Flanders Mansion Property which is in need of significant short-term and long-term repair and rehabilitation.

In addition to the primary purpose above, there are six secondary objectives:

- 1) To ensure that the Flanders Mansion is preserved as a historic resource;
- 2) To ensure that the Flanders Mansion building and property are put to productive use;
- 3) To ensure that future use of the Flanders Mansion and property will not cause significant traffic, parking or noise impacts on the surrounding neighborhood;
- 4) To ensure that future use will not significantly disrupt the public's enjoyment of the Mission Trail Nature Preserve or the Lester Rowntree Native Plant Garden;
- 5) To ensure that environmental resources of the park are protected; and
- 6) To ensure that the Flanders Mansion parcel continues to provide the public with as many park benefits as are practical.

The project objectives are consistent with requirements under CEQA Guidelines § 15124 and contain the necessary detail needed for evaluation and review of the environmental impact.  
//

The objectives are clearly written, provide assistance for the City to develop a reasonable range of alternatives and include the underlying purpose of the project.

**Evidence:**

RDEIR/RFEIR, section 3.3, pp. 3-4 to 3-5.

**3. Finding:** On or about January 2, 2009, the City filed with OPR a Notice of Completion in accordance with §15085 of the CEQA Guidelines.

**Evidence:**

Notice of Completion, dated January 2, 2009;  
City file in City Planning and Building Inspection Department, containing copy of Notice of Completion dated January 2, 2009.

**4. Finding:** On January 5, 2009, the City released the Recirculated Draft Environmental Impact ["RDEIR"] for public review and comment for a 45-day period commencing January 5, 2009 and ending February 18, 2009. Also on January 5, 2009, consistent with section 15085 of the CEQA Guidelines, the City issued a public "Notice of Availability/Notice of Completion" of the RDEIR in accordance with § 15087(a) of the CEQA Guidelines. Notice of the availability of the RDEIR and of the deadline for submission of public comments on the RDEIR was given by mailing the Notice of Availability/Notice of Completion to all persons and entities who had previously requested such notice, all persons and entities who commented on the 2005 DEIR, and to adjacent property owners, or by actual notice. A copy of the RDEIR was sent to Monterey County Public Works on March 13, 2009. The Notice of Availability/Notice of Completion informed them of the availability of the RDEIR, the locations where copies could be reviewed or purchased, and the closing deadline for public comments. The Notice of Availability/Notice of Completion of the RDEIR was filed with the Monterey County Clerk.

The Agenda for the Planning Commission hearing on February 11, 2009 at which oral public comments on the RDEIR would be taken also informed the public of the availability of the RDEIR. Said Agenda was posted at City Hall. In addition, two articles appeared in the Carmel Pine Cone informing the public of the availability of the RDEIR.

**Evidence:**

RDEIR dated January 2009;  
Notice of Availability/Notice of Completion;  
Certification of mailing of Notice of Availability/Notice of Completion;  
Mailing lists for Notice of Availability/Notice of Completion;  
Copy of Notice of Availability/Notice of Completion with Monterey County Clerk file stamp;  
Copy of the transmittal letter to the Monterey County Public Works Department;  
RFEIR;  
City file in Planning and Building Inspection Department, containing copies of said documents.

**5. Finding:** On or about January 5, 2009, City staff hand-delivered copies of the RDEIR for public availability to the Harrison Memorial Library and to Copies-by-the-Sea, both located in Carmel-by-the-Sea. Copies of the RDEIR were also available at the City of Carmel-by-the-Sea Planning Department at City Hall.

**Evidence:**

Certification of distribution of Notice of Availability/Notice of Completion;  
January 2009 Notice of Availability/Notice of Completion;  
City files in the City Clerk's office and Planning and Building Inspection Department,  
containing copies of said documents, and address lists.

**6. Finding:** By the end of the comment period on February 18, 2009, the City received 33 written comments from individuals and organizations for evaluation and response pursuant to § 15088(a) of the CEQA Guidelines. In addition, the Planning Commission held a hearing on February 11, 2009 and received oral comments from members of the public and the Commission.

**Evidence:**

RFEIR containing copies of the comment letters, the transcript of the oral public comments, and descriptions of the comments (Sections 3.0 and 4.0);  
Agenda, Minutes and transcript of Flanders Mansion-related portion of Planning Commission meeting of February 11, 2009;  
City files in Planning and Building Inspection Department, containing copies of said documents.

**7. Finding:** The City staff and consultant Denise Duffy & Associates reviewed and evaluated the written and oral comments received during the comment period, and prepared a good faith, reasoned analysis in response to such comments, including reasons why specific comments and suggestions were not accepted.

**Evidence:**

RFEIR containing copies of the comment letters, the transcript of the oral public comments, and descriptions of the comments (Sections 3.0 and 4.0);  
Agenda, Minutes and transcript of Flanders Mansion-related portion of Planning Commission meeting of February 11, 2009;  
City files in Planning and Building Inspection Department, containing copies of said documents.

**8. Finding:** On April 16, 2009, the City, through its consultant Denise Duffy & Associates, completed the Recirculated Final EIR ["Recirculated Final EIR" or "RFEIR"] in accordance with CEQA Guidelines section 15089, comprised of Responses to Comments, including copies of the written comments received and a transcript of the oral comments received at the Planning Commission hearing on February 11, 2009, and a section incorporating revisions to the Recirculated Draft EIR in light of comments received, in accordance with CEQA Guidelines section 15088(a)-(c). The RFEIR analyzes the environmental impacts of the Project, including project, cumulative, growth-inducing and irreversible environmental impacts, identifies and analyzes mitigation measures intended to reduce environmental impacts and considers alternatives to the Project.

The RFEIR incorporated by reference the complete RDEIR; collectively, therefore, the RFEIR and the RDEIR as modified by the RFEIR make up the final environmental document, and hereafter where the RFEIR is referenced, the reference includes both the RFEIR and the RDEIR (as modified by the RFEIR).

//  
//

**Evidence:**

RFEIR, dated April 2009;  
City files in City Clerk's office and Planning and Building Inspection Department,  
containing a copy of the RFEIR dated April 2009.

**9. Finding:** On April 15, 2009, the City prepared a Notice of Release of Recirculated Final Environmental Impact Report: Sale of Flanders Mansion Property, SCH #2005011108, which was on April 16, 2009 posted on and off the proposed project site and mailed or delivered to all persons who commented on the 2009 RDEIR. Such Notice of Release was also provided to the Monterey County Herald on April 16, 2009 for publication, which occurred on April 21, 2009.

**Evidence:**

Notice of Release of Recirculated Final Environmental Impact Report: Sale of Flanders Mansion Property, SCH #2005011108, dated April 15, 2009;  
A copy of the newspaper publication;  
Certification of the posting, mailing and publication, containing a copy of the mailing list, as above described;  
City files in Planning and Building Inspection Department, containing copies of said documents.

**10. Finding:** On April 24, 2009, the environmental consultant provided Supplemental Responses to Comments, responding to written public comments received by the City between the close of the public review and comment period for the RDEIR on February 18, 2009 through the hearing of the Planning Commission on April 23, 2009; the Supplemental Response to Comments also contains copies of those written public comments. Also on April 24, 2009, the environmental consultant provided an Errata of Revisions to the Recirculated Final Environmental Impact Report.

**Evidence:**

Supplemental Responses to Comments;  
Errata of Revisions to the Recirculated Final Environmental Impact Report.

**11. Finding:** On May 8, 2009, further responses on new matters raised in written public comments and oral testimony received by the City after the Planning Commission hearing on April 23, 2009 through May 4, 2009 at 5:00 p.m., were provided, attached to the Staff Report for the City Council continued meeting on May 12, 2009. On May 8, 2009, that Staff Report was posted, made available to the public at City Hall and on the City's website at: <http://ci.carmel.ca.us/carmel/index.cfm/government/staff-departments/community-planning-and-building/projects/> .

**Evidence:**

Staff Report dated 12 May 2009.

**12. Finding:** The modifications to the EIR following the public comments do not constitute significant new information added to the environmental document under Public Resources Code section 21092.1, in accordance with the standards described in CEQA Guidelines section 15088.5. After the modifications the EIR is not changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect

(including a feasible project alternative) that the project's proponents have declined to implement. The modifications neither (1) disclose a new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented, (2) disclose a substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance, (3) disclose a feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it, nor (4) disclose that the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications to an adequate EIR.

Responses to comments provided in RFEIR address significant environmental issues raised by commenting public agencies, private organizations and individuals. New information provided in the RFEIR in the response to comment format merely clarifies or amplifies information in the RDEIR. The new information does not reveal that the project would cause new significant impacts not previously identified in the RDEIR. A review of the new information does not indicate that there would be a substantial increase in the severity of an environmental impact discussed in the RDEIR. Also, no significant new information has been added that changes the EIR in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the City has declined to implement. There is no feasible project alternative or mitigation measure considered different from others previously analyzed that would clearly lessen the environmental impacts of the project, but which the City has declined to implement.

Therefore, recirculation of the document following the responses to comments and modifications to the RDEIR made following the public comments is not required, in accordance with CEQA Guidelines section 15088.5, before certifying the Recirculated Final Environmental Impact Report.

**Evidence:**

RDEIR;

RFEIR, Section 5.0;

Notice of Release of Recirculated Final Environmental Impact Report: Sale of Flanders Mansion Property, SCH # 2005011108, dated April 15, 2009;

Supplemental Responses to Comments;

Errata of Revisions to RFEIR; and

All documents and other items and materials in all City files.

**D. Project Decision-Making.**

**1. Review by Advisory Bodies.**

a. **Finding:** On April 20, 2009, the Forest and Beach Commission held a noticed public hearing and forwarded a recommendation to the Planning Commission that the RFEIR is adequate per CEQA Guidelines section 15151 with respect to issues affecting the Mission Trails Nature Preserve.

//

**Evidence:**

Public Notice of hearings, dated April 1, 2009, as amended April 7, 2009;  
Forest and Beach Commission Agenda for hearing on April 20, 2009;  
Forest and Beach Commission Minutes, dated April 20, 2009.

b. **Finding:** On April 20, 2009, the Historic Resources Board held a noticed public hearing and forwarded a recommendation to the Planning Commission that the RFEIR is adequate per CEQA Guidelines section 15151 with respect to issues affecting historic resources and aesthetics. The Board also forwarded a recommendation that in mitigation #4.3-1, the required Preservation Plan should be reviewed and approved by the Historic Resources Board.

**Evidence:**

Public Notice of hearings, dated April 1, 2009, as amended April 7, 2009;  
Historic Resources Board Agenda for April 20, 2009 hearing;  
Historic Resources Board Minutes for April 20, 2009 hearing.

c. **Finding:** On April 23, 2009, the Planning Commission held a noticed public hearing and made the following findings:

- (1) That the RFEIR is adequate per section 15151 of the CEQA Guidelines;
- (2) That sale of the Flanders Mansion property with Conservation Easements and Mitigation for residential use or lease of the Flanders Mansion property for residential use is consistent with the General Plan;
- (3) That the mitigations identified in the RFEIR should be adopted; and
- (4) That in Mitigation Measure 4.3-1, the required Preservation Plan should be reviewed and approved by the Historic Resources Board.

**Evidence:**

Public Notice of hearings, dated April 1, 2009, as amended April 7, 2009;  
Planning Commission Agenda for April 23, 2009 hearing;  
Planning Commission Minutes for April 23, 2009 hearing.

**E. City Council Consideration of Consistency with General Plan and Other Planning Policies, Goals and Objectives.**

1. **Finding:**

California Government Code requires that each decision made by the City be consistent with its General Plan. (Govt. Code, §§ 65000 *et seq.*, 65300.)

//  
//

**Evidence:**

Govt. Code, §§ 65000 *et seq.*, 65300.

**2. Finding:**

In the writ proceedings, the Petition challenged the City's determination that the sale of the Flanders Mansion was considered consistent with the City's adopted General Plan/Coastal Land Use Plan. After ruling the project site is parkland, the Court found that the City acted within its discretionary authority in determining the project was consistent with the General Plan.

The RDEIR was updated to accurately reflect the parkland status. The City's consideration and findings of General Plan consistency also have been updated to reflect the parkland status of the property, as shown in Findings made in this section E.1, below.

**Evidence:**

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

**3. Finding:**

On April 23, 2009, the Planning Commission of the City of Carmel-by-the-Sea reviewed the proposed project and each alternative. The Commission found that the sale of the Property with Conservation Easements and Mitigation (Alternative 6.5) for residential use and lease of the property for residential use are consistent with the General Plan.

**Evidence:**

Planning Commission Minutes dated April 23, 2009.

**F. City Council Consideration of Reasonable Range of Alternatives.**

**1. Finding:** The City finds that the RFEIR considered a reasonable range of alternatives to the Proposed Project which would attain the Project Objectives to the greatest extent feasible, as described fully in the RFEIR and further addressed below, and avoid or substantially lessen the significant effects of the Project. The four alternatives fully analyzed in the RFEIR included: No Project Alternative (RFEIR section 6.3), Lease Alternative #1: Single-Family Residence Alternative (RFEIR section 6.4), Lease Alternative #2: Public or Quasi-Public/Nonprofit Alternative (RFEIR section 6.4), Sale Option: Sale with Conservation Easements and Mitigation Alternative (RDEIR Section 6.5). The City finds that the Project and the project site have unique characteristics that make the selection of a suitable alternative site difficult.

The City finds that the RFEIR examined in detail those alternatives which could most closely attain the Project Objectives, and that the selection of the alternatives analyzed provided sufficient information to the City to permit a reasoned choice for alternatives to the Proposed

Project. In accordance with section 15126.6(a) of the CEQA Guidelines, an EIR 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 the significant impacts of the project. The No Project alternative would reduce the impacts compared to the Proposed Project; however, it does not effectively meet the project objectives and therefore would not be feasible, as it applies to these Findings as it does not meet the basic project objective of the project.

**Evidence:**

RDEIR, pp. 6-1 through 6-19.

2. **Finding:** The City finds that the RFEIR adequately addresses alternatives eliminated from the detailed analysis, providing a summary explaining why the alternatives were eliminated from further discussion and referencing the 2005 DEIR for a full explanation of the alternatives considered. In addition, for those alternatives selected for further evaluation, the ability of each alternative to reduce potential impacts is discussed and the RFEIR identifies that the alternatives chosen for this analysis were developed to avoid or substantially reduce the significant impacts associated with the proposed project.

**Evidence:**

RDEIR, pp 6-1 through 6-3, matrix on p 6-4.

**G. City Council Determinations.**

**1. Proper Notices and Consultation with Agencies.**

**a. Finding:**

Adequate public notice of preparation of an EIR for the sale of the Flanders Mansion property was given by the holding of the scoping meeting in November 2004, and by provision of the Notice of Preparation dated January 14, 2005. Said Notice of Preparation was mailed to various persons, entities and public agencies, and all persons, and entities who previously requested such notice.

**Evidence:**

Agenda and Minutes of Scoping Meeting;  
Notice of Preparation;  
RDEIR, Appendix A (Notice of Preparation);  
City files in City Clerk's Office Planning and Building Inspection Department, containing said documents and the mailing list for Notice of Preparation.

**b. Finding:**

Adequate public notice of completion and availability of the RDEIR, the 45-day period for the submission of written comments on the RDEIR, and the closing date of the public comment period was given consistent with section 15085 of the CEQA Guidelines by:

providing a Notice of Completion to the Office of Planning and Research;

//

mailing of a Notice of Completion/Notice of Availability to all persons and entities who previously requested such notice, all persons and entities who commented on the 2005 RDEIR, and the Monterey County Public Works Department; and

actual notice.

In addition, the public was provided further notice and opportunity to comment on the RDEIR by posting of the Agenda for a Planning Commission hearing on February 11, 2009 at which oral public comments on the RDEIR would be taken and the taking of oral public comments at said Planning Commission hearing, and through publication in the Carmel Pine Cone of two articles which discuss the completion and availability of the RDEIR, the public comment period, and the February 11, 2009 Planning Commission hearing agenda.

**Evidence:**

RDEIR dated January 2009;  
Notice of Completion and Environmental Document Transmittal, dated January 2, 2009;  
Notice of Completion/Notice of Availability;  
Certification of mailing of Notice of Availability/Notice of Completion;  
Mailing lists for Notice of Availability/Notice of Completion;  
Copy of Notice of Availability/Notice of Completion with Monterey County Clerk file stamp;  
Copy of the transmittal letter to the Monterey County Public Works Department;  
Agenda for February 11, 2009 Planning Commission hearing;  
Carmel Pine Cone article in January 9 to 15, 2009 edition, at pp. 1A, 8A;  
Carmel Pine Cone article in February 13 to 19, 2009 edition, at pp. 1A, 20A;  
RFEIR;  
City files in City Clerk's Office Planning and Building Inspection Department, containing copies of said documents.

c. **Finding:**

Monterey County was consulted during the 2005 and the current environmental review process. The Counties of Monterey, Santa Cruz and San Benito, and the Cities of Del Rey Oaks, Gonzales, Greenfield, King City, Marina, Monterey, Pacific Grove, Salinas, Sand City, and Seaside received a Notice of Preparation at the initiation of the environmental review of this project, in 2005, via distribution directly to the County Administrative Officer and distribution through the Association of Monterey Bay Area Governments ["AMBAG"]. The Carmel Area Wastewater District, Carmel Unified School District, National Trust for Historic Preservation, Monterey Peninsula Water Management District, Monterey County Planning Department, Monterey Regional Park District, and Monterey County Housing Authority also received notice at that time.

Monterey County and the other AMBAG member agencies and local governments again received notice of the availability of the Recirculated Draft EIR ["RDEIR"] in January 2009. In addition, a copy of the RDEIR was sent directly to Monterey County Public Works Department on March 13, 2009, who were given a further opportunity to submit comments. Monterey County did not submit any comment on the 2005 EIR draft, or on the current RDEIR to date. The State Clearinghouse (Office of Planning and Research ["OPR"], California Department of Transportation District 5, California Coastal Commission, California Department of Fish & Game Region 4, California Department of Forestry and Fire Protection, California Department

of Parks & Recreation, and the State Water Resources Control Board for Water Quality also received notice of the availability of the RDEIR in January 2009.

No comments have been received from any of these governments and agencies since the seven comments received following the Notice of Preparation.

**Evidence:**

Notice of Preparation dated January 14, 2005;  
Notice of Completion dated January 2, 2009;  
Notice of Completion and Environmental Document Transmittal, dated January 2, 2009;  
January 2009 Notice of Availability/Notice of Completion;  
2005 FEIR;  
RDEIR dated January 2009;  
Certification of mailing of Notice of Availability/Notice of Completion;  
Mailing lists for Notice of Availability/Notice of Completion;  
Copy of Notice of Availability/Notice of Completion with Monterey County Clerk file stamp;  
Copy of the transmittal letter to the Monterey County Public Works Department;  
Written comment letters received on the 2005 DEIR (contained in 2005 FEIR) and the 2009 RDEIR;  
Transcript of oral comments received at the Planning Commission hearing on February 11, 2009 on the RDEIR;  
RFEIR;  
City files in the City Clerk's office and Planning and Building Inspection Department, containing copies of said documents and mailing lists and transmittal communications.

d. **Finding:**

Adequate public notice of the completion and release of the RFEIR was provided on April 16, 2009 by:

mailing or delivering the Notice of Release to all persons who commented on the 2009 RDEIR;

posting the Notice of Release on and off the proposed project site, i.e., the Flanders Mansion property; and

publishing the Notice of Release in the Monterey County Herald on April 21, 2009.

**Evidence:**

Notice of Release of Recirculated Final Environmental Impact Report: Sale of Flanders Mansion Property, SCH #2005011108, dated April 15, 2009.  
Certification of mailing, posting and publishing of the Notice of Release of Recirculated Final Environmental Impact Report: Sale of Flanders Mansion Property, SCH #2005011108, on April 16, 2009.  
Copy of Monterey County Herald publication, dated April 20, 2009  
City file in City Clerk's office and Planning and Building Inspection Department, containing copies of said documents, and address lists.

e. **Finding:**

Adequate public notice of consideration of the project by the Historic Resources Board, Forest and Beach Commission, Planning Commission and City Council concerning the project and the Final EIR was provided in accordance with CEQA Guidelines section 15089.

Notice of the hearings by the Historic Resources Board, Forest and Beach Commission, Planning Commission and City Council was provided on April 1, 2009, and amended April 7, 2009, by: (1) mailing to all persons and entities who previously requested such notice, all persons and entities who were sent the Notice of Preparation, all persons and entities who commented on the 2005 RDEIR, Monterey County Public Works Department, and all persons and entities who commented on the 2009 RDEIR; (2) posting the Notice of the hearings on and off the proposed project site, i.e., the Flanders Mansion property; and (3) publishing the Notice of the hearings in the Carmel Pine Cone and in the Monterey County Herald.

**Evidence:**

Public Notice of hearings of April 20, 2009 Historic Resources Board hearing, Forest and Beach Commission hearing, April 23, 2009 special Planning Commission hearing and April 28, 2009 special City Council hearing;  
Copy of Monterey County Herald publication;  
Copy of Carmel Pine Cone publication;  
Agenda for April 20, 2009 Historic Resources Board hearing;  
Agenda for April 20, 2009 Forest and Beach Commission hearing;  
Agenda for April 23, 2009 special Planning Commission hearing;  
Agenda for April 28, 2009 special City Council hearing;  
City file in City Clerk's office and Planning and Building Inspection Department, containing copies of said documents, and address lists.

2. **Adequacy of EIR.**

a. **Finding:** The Final EIR is consistent with CEQA's Guidelines 15132 relative to the contents of the EIR including, but not limited to, a table of contents, summary, the project description, environmental setting, a discussion of environmental impacts, mitigation measures, unavoidable adverse impacts, impacts found not to be significant, cumulative impacts, project alternative and mitigation monitoring plan.

**Evidence:**  
RFEIR.

b. **Finding:** The City, in accordance with CEQA Guidelines § 15200, met the purpose of the public review process under CEQA which includes sharing expertise, disclosing agency analysis, checking for accuracy, detecting omissions, discovering public concerns, and soliciting counter-proposals. The RFEIR contains a list of the comments submitted on the RDEIR, copies of the comment letters received on the RDEIR, responses to the points raised in those comments, and limited revisions to the RDEIR made as a result of the public review process. In accordance with CEQA Guidelines Section 15132, the RFEIR was prepared to address the comments received during the public review period and, together with the RDEIR which is incorporated by reference by the RFEIR, constitutes the Recirculated Final Environmental Impact Report for the proposed Sale of the Flanders Mansion property.

//

**Evidence:**

RDEIR;  
RFEIR;  
Notice of Preparation dated January 14, 2005;  
Notice of Completion dated January 2, 2009;  
January 2009 Notice of Availability/Notice of Completion;  
2005 FEIR;  
Written comment letters received on the 2005 DEIR (contained in 2005 FEIR) and the 2009 RDEIR;  
Transcript of oral comments received at the Planning Commission hearing on February 11, 2009 on the RDEIR;  
Notice of Release of Recirculated Final Environmental Impact Report: Sale of Flanders Mansion Property, SCH #2005011108, dated April 15, 2009;  
Certification of mailing, posting and publishing of the Notice of Release of Recirculated Final Environmental Impact Report: Sale of Flanders Mansion Property, SCH #2005011108, on April 16, 2009;  
Copy of Monterey County Herald publication, dated April 20, 2009;  
City file in City Clerk's office and Planning and Building Inspection Department, containing copies of said documents, and address lists.

c. **Finding:** The Forest and Beach Commission at a duly-noticed special hearing on April 20, 2009, and the Historic Resources Board at a duly-noticed regular meeting on April 20, 2009, considered the RFEIR (SCH#2005011108) for sale of Flanders Mansion property. The role of the Forest and Beach Commission is to advise the Planning Commission on the whether the RFEIR provides adequate discussion of the project, impacts, alternatives and mitigation measures related to the Mission Trails Nature Preserve and the Flanders Mansion property. The role of the Historic Resources Board is to advise the Planning Commission on the adequacy of the RFEIR regarding historical, cultural and aesthetic issues related to the Flanders Mansion property. The Forest and Beach Commission determined and forwarded advice to the Planning Commission that the RFEIR is adequate to disclose the project's impacts related to the Mission Trails Nature Preserve and its adjacent neighborhood. The Historic Resources Board determined and forwarded advice to the Planning Commission that the RFEIR is adequate for reviewing impacts, alternatives and mitigations regarding the project's impacts related to historic preservation, cultural resources and aesthetic resources related to public enjoyment of the Flanders Mansion as a historical resource.

**Evidence:**

Minutes of Historic Resources Board meeting of April 20, 2009;  
Minutes of Forest and Beach Commission meeting of April 20, 2009.

d. **Finding:** The Planning Commission at a duly-noticed special hearing on April 23, 2009, determined that the RFEIR (SCH#2005011108) for sale of Flanders Mansion property has been completed in compliance with CEQA and that the Sale of the Flanders Mansion property for residential use with Conservation Easements and Mitigation project alternative and lease of the property for residential use are consistent with the General Plan. The Planning Commission further recommended certification of the EIR.

**Evidence:**

Minutes of the Planning Commission meeting of April 23, 2009.

//

e. **Finding:** Following the Planning Commission hearing, the City on April 24, 2009 provided further notice of the City Council special meeting scheduled for April 28, 2009.

**Evidence:**

Public Notice, Flanders Mansion Project, dated April 24, 2009.

f. **Finding:** At a duly-noticed public hearing on April 28, 2009, the City Council undertook consideration of proposed actions on the proposed sale of the Flanders Mansion property, including Resolutions certifying the Recirculated Final Environmental Impact Report, adopting a Statement of Overriding Considerations, adopting a project for implementation, and adopting a Mitigation Monitoring and Reporting Program for environmental impacts and Conditions of Sale and Covenants to be recorded to run with the land, and Conditions of Lease. At that public hearing, the City Council received oral public testimony and documentary comments concerning the proposed actions, following which the City Council closed the public testimony portion of the meeting. The City Council then provided the public with additional time to provide written comments, to be received by the City not later than 5:00 p.m. on May 4, and informed the public that the hearing would be continued for further consideration of the proposed actions at a later meeting during the week of May 12. The City Council took no final action on the proposed project and proposed actions at the April 28, 2009 hearing.

**Evidence:**

Minutes of City Council meeting of April 28, 2009.

g. **Finding:** Notice that the continued City Council meeting would be held on May 12, 2009 at 4:30 p.m. was posted on May 5, 2009.

**Evidence:**

Public Notice, Flanders Mansion Project, dated May 5, 2009.

h. **Finding:** At a duly-noticed public hearing on this day, and pursuant to the City Council members' deliberations, the City Council finds that the RDEIR (SCH#2005011108) for sale of Flanders Mansion property has been completed in compliance with CEQA, reflects the independent judgment of the City and by this Resolution certifies the RFEIR. The City Council further finds that the sale of the Property with Conservation Easements and Mitigation (Alternative 6.5) and lease of the Property are consistent with the General Plan. The RFEIR was presented to the Forest and Beach Commission and Historic Resources Board, Planning Commission and the City Council, was independently reviewed and analyzed by the City Council, and was used to review and consider the Flanders Mansion proposed project and its environmental aspects as required by CEQA sections 21082.1 and CEQA Guidelines sections 15090 and 15091.

**Evidence:**

RDEIR;

RFEIR;

Minutes of Historic Resources Board meeting of April 20, 2009;

Minutes of Forest and Beach Commission meeting of April 20, 2009;

Minutes of the Planning Commission meeting of April 23, 2009;

Minutes of City Council meeting of April 28, 2009;

Minutes of City Council meeting of May 12, 2009 (once prepared).

**3. CEQA Findings.**

a. **Finding:** Consistent with the provisions of section 15088.5(f)(1) of the CEQA Guidelines, portions of the 2005 DEIR was recirculated. Although the responses to the comments received in response to the 2005 DEIR and provided in the Final EIR dated August 2005 are not included in the Recirculated Draft EIR, those responses were taken into consideration as part of the Recirculated Draft EIR. Although the EIR was recirculated in its entirety, Section 4.3 Cultural Resources was only revised in part to provide additional information related to the Superior Court’s determination regarding the adequacy of mitigation measures. The previous analysis, mitigation measures, and significance determination have not changed, except where clarification was necessary to reflect the Superior Court’s determination. The RDEIR presented revised and expanded analysis of the proposed project’s potential impacts consistent with the Amended Judgment Granting Petition for Writ of Mandamus in The Flanders Foundation v. City of Carmel-by-the-Sea, et al. (Mont. Co. Super. Ct. Case No. M76728), The organization of the RDEIR corresponded to the organization of the 2005 in the following way:

<b>Recirculated Draft EIR (2009)</b>	<b>2005 DEIR</b>
Section 1.0, Introduction	Section 1.0
Section 2.0, Summary	Summary Table
Section 3.0, Project Description	Section 3.0
Section 4.1, Aesthetics	Section 4.2
Section 4.2, Biological Resources	Section 4.4
Section 4.3, Cultural Resources	Section 4.3
Section 4.4, Land Use and Planning	Section 4.5
Section 4.5, Parks and Recreation	Section 4.6
Section 4.6, Transportation/Traffic	Section 4.1
Section 5.0, CEQA Considerations	Section 5.0
Section 6.0, Alternatives	Section 6.0
Revised DEIR Mitigation Measures contained in various sections of the RDEIR and summarized in Section 2.0	Misc. mitigation measures throughout the 2005 DEIR.

**Evidence:**

Notice of Availability/Notice of Completion for the January 2009 RDEIR; RDEIR, including Appendix D.

b. **Finding:** The City Council hereby certifies that the Final Environmental Impact Report has been completed in compliance with CEQA; that the RFEIR was presented to the City Council, and that the City Council reviewed and considered the information contained in the RFEIR, and public testimony received thereon during the hearing, prior to approval of the Project; and, that the RFEIR reflects the City Council’s independent judgment and analysis.

The City Council declares that it has been provided with and reviewed evidence in the record to support these Findings. Such documents and items are cited as Evidence with the Findings and are those generally listed above at pages 4 through 6. Said evidence is incorporated herein by this reference as though fully set forth.

//

Collectively, these documents together with the further evidence and documents cited in support of the companion Statement of Overriding Considerations and the City Council's actions by Resolutions passed today, constitute the "Record of Proceedings" for the environmental impact report for the proposed sale of the Flanders Mansion Property. The City hereby provides notification that the Record of Proceedings is on file with Clerk of the City, at City Hall, East Side of Monte Verde Street Between Ocean and Seventh Avenues, in Carmel-by-the-Sea, California.

**Evidence:**

All documents referenced herein;

This Resolution Certifying the Recirculated Final Environmental Impact Report for the Sale of the Flanders Mansion Property, including its Attachment A.