

CITY OF CARMEL-BY-THE-SEA

RESOLUTION NO. 2009-32

A RESOLUTION ADOPTING A PROJECT FOR IMPLEMENTATION: SALE OF FLANDERS MANSION PARCEL WITH CONSERVATION EASEMENTS AND MITIGATION

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 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 today, prior to its approval of the Project.

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

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 City Council has determined 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;

WHEREAS, the City Council has balanced the specifically-identified benefits of the project against significant and unavoidable environmental impacts identified in the Recirculated Final Environmental Impact Report, and has, by companion action, adopted A Resolution Adopting a Statement of Overriding Considerations, and 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.

WHEREAS, the City Council has found that continued retention of the Property as used in the past fails to achieve the primary project objective and the important secondary objectives of putting the Mansion to productive use and achieving preservation and restoration of this historic building;

WHEREAS, the City Council has found that 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;

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WHEREAS, the City Council has found that other alternatives to Sale of the Property with Conservation Easements and Mitigation are infeasible for specific economic, social and other reasons;

WHEREAS, the City Council has, by companion actions, adopted A Resolution Certifying the Recirculated Final Environmental Impact Report for the Sale of the Flanders Mansion Property, and A Resolution Adopting a Statement of Overriding Considerations, and 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 City Council has found, in balancing the specifically-identified benefits of the Sale with Conservation Easements and Mitigation alternative to the project against the environmental impacts the Recirculated Final Environmental Impact Report identifies as significant and unavoidable, that the Sale of the Property with Conservation Easements and Mitigation is environmentally-superior to the proposed project, will achieve the identified primary project objective and most of the secondary project objectives, and is the only feasible alternative to selling the Property without such conservation easements and mitigation; and

WHEREAS the City Council has found, in balancing the specifically-identified benefits of the Sale with Conservation Easements and Mitigation alternative against the environmental impacts the Recirculated Final Environmental Impact Report identifies as significant and unavoidable, that the benefits of Sale of the Property with Conservation Easements and Mitigation outweigh the significant, unavoidable environmental impacts.

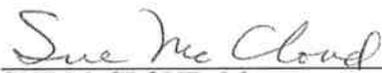
NOW, THEREFORE, BE IT RESOLVED THAT THE CITY OF CARMEL-BY-THE-SEA DOES:

Select as the project for implementation the alternative identified in the Final Recirculated Environmental Impact as Sale of the Flanders Mansion Parcel "with Conservation Easements and Mitigation".

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. 2009-32

**A RESOLUTION ADOPTING A PROJECT FOR IMPLEMENTATION: SALE OF
FLANDERS MANSION PARCEL WITH CONSERVATION EASEMENTS AND
MITIGATION**

Attachment A

A. 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:

The General Plan and the Mission Trail Nature Preserve Master Plan contemplate that the Flanders Mansion property may be sold, in policy numbers P5-141, P5-142, and P5-143.

Policy P5-141 provides with respect to the Flanders Mansion property (also known as the "Outlands" property):

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“P5-141 If retained by the City, preserve the Outlands property and grounds at Mission Trail Nature Preserve consistent with its status as a nationally registered historical resource.”

Policy P5-142 provides with respect to the Flanders Mansion property:

“P5-142 If retained by the City, utilize the Outlands property at Mission Trail Nature Preserve in a manner beneficial to the residents of Carmel-by-the-Sea while minimizing its expense to the City.”

Policy P5-143 provides with respect to the Flanders Mansion property:

“P5-143 If retained by the City, support uses at the Outlands property that are compatible with its location in Mission Trail Nature Preserve and adjacent to the Rowntree Native Plant Garden and Hatton Road neighborhood.”

Thus, these planning policies provide for potential retention and therefore, also anticipate a sale of the Flanders Mansion property and name this property specifically.

Evidence:

General Plan.
Mission Trail Nature Preserve Master Plan.
RDEIR, pp. 4.4-1 to 4.4-8;
Staff Report dated 23 April 2009;
Staff Report dated 12 May 2009.

4. Finding:

The RFEIR identified that, because a sale of the Flanders Mansion property would result in the permanent loss of parkland, it has the potential to conflict with certain 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.

Those General Plan goals, objectives and policies are: Goal G5-6, Policy P5-46, Policy P5-107 and Objective O5-21.

Evidence:

RDEIR Section 4.4, Land Use, Impact, at pp. 4.4-1 through 4.4-8;
RFEIR, at pp. 5-18 to 5-19.

5. Finding:

Mitigation measures have been proposed and are being adopted in a Mitigation Monitoring and Reporting Program, 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, which reduce to a less-than-significant level the impacts on views, aesthetics, trail access, the Lester Rowntree Native Plant Garden and the historic resource of the Flanders Mansion itself which could result from sale of the Flanders Mansion property parkland. Those impacts are identified in sections 4.1, 4.2, 4.3,

4.5 and 4.6, and the mitigation measures are numbered 4.1-1 through 4.1-5, 4.2-1 through 4.2-6, 4.3-1 through 4.3-4, 4.4-1, 4.5.1, and 4.6-1 through 4.6-3. An additional mitigation measure, 4.4-1, is also being adopted to lessen the impact of the sale of parkland on land use policies; those impacts are discussed in section 4.4 of the EIR.

Findings and rationale for each impact identified in the EIR are also contained in this Resolution, A Resolution Certifying the Recirculated Final Environmental Impact Report for the Sale of the Flanders Mansion Property.

Evidence:

RDEIR, Sections 4.1 through 4.6.

RFEIR, Section 5.0, pp. 5-13 through 5-21;

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, to be adopted this day.

6. Finding:

The RFEIR identified that a sale of the Flanders Mansion property was potentially inconsistent with General Plan Goal G5-6. This policy states:

“**G5-6:** Preserve and acquire open space and parks.”

Evidence:

General Plan;

RDEIR, at pp. 4.4-1 through 4.4-8;

RFEIR, at pp. 5-18 to 5-19.

7. Finding:

The proposed project does not conflict with Goal G5-6 and, therefore, this impact will not occur.

Rationale:

Goal G5-6 is a 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 citizens and visitors to the City. A sale of the Flanders Mansion property would represent a loss of approximately 2% of all parkland with City limits. This represents a very small area relative to other designated and developed public parkland in the City. Sale would not prevent implementation of this goal city-wide or in the future. The General Plan contains other policies that anticipate a sale of the Flanders Mansion property and name this property specifically.

A sale of the Flanders Mansion property must be viewed within the context of all parklands within the City. Within a City-wide context the various policies in the City’s General Plan are not necessarily in conflict, and the planning policies may support the preservation of parks and open space, conservation and recreation in general terms while permitting a sale of parkland at a specific site. Viewed in this larger context, selling the Flanders Mansion property

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would not be inconsistent with the General Plan. This rationale is consistent with the City Council decision in 2005 which was upheld by the Superior Court as being within the discretion of the City.

Within a smaller, site-specific context, the mitigations reduce the potential for a General Plan conflict. The Flanders Mansion property is an important site. Although it represents just 2% of Carmel's total parkland, it provides a disproportionately large number of benefits and is an integral part of the Mission Trails Nature Preserve. With an unmitigated sale, these park benefits would be lost or significantly diminished. The mitigation measures referenced above substantially lessen impacts on views, aesthetics, historic preservation and trail access. The mitigation measures, therefore, reduce the potential conflict with the General Plan policies. Viewed in this site-specific context, the proposed project of a straight sale would be less consistent than a sale with mitigations. The Sale with Conservation Easements and Mitigations Alternative substantially lessens the environmental impacts, according to the RFEIR, and, therefore, would be the most consistent with the planning policies.

Please see also further findings and rationale at Sections A.8-13.

This rationale is consistent with the City Council decision in 2005 which was upheld by the Superior Court as being within the discretion of the City.

Evidence:

General Plan policies, goals and objectives numbered G5-6, P5-46, P5-107 and O5-21, P5-141, P5-142 and P5-143;
Staff Report dated 23 April 2009;
Minutes of Planning Commission hearing of April 23, 2009
Staff Report dated 12 May 2009.

8. Finding:

The RFEIR identified that a sale of the Flanders Mansion property was potentially inconsistent with General Policy P5-46. This policy states:

“P5-46: 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.”

Evidence:

General Plan
RDEIR, pp. 4.4-1 through 4.4-8;
RFEIR, pp. 5-18 to 5-19.

9. Finding:

The proposed project does not conflict with Policy P5-46 and, therefore, this impact will not occur.

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Rationale:

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. A sale of the property with proposed mitigations 4.3-1, 4.3-2 and 4.3-3 will result in a full historical restoration of the property consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties. General Plan policy does not require the City to undertake this restoration, nor does it require that the City maintain ownership of the property. The policy intent of “preserving and protecting areas within the City’s jurisdiction which due to their aesthetic quality, [or] historic value should be maintained ... or restored for aesthetic ... purposes” will be met.

Please see also further findings and rationale at Sections A.6-7, 10-13.

This rationale is consistent with the City Council decision in 2005 which was upheld by the Superior Court as being within the discretion of the City.

Evidence:

General Plan policies, goals and objectives numbered G5-6, P5-46, P5-107 and O5-21, P5-141, P5-142 and P5-143;
RDEIR, Mitigation Measures 4.3-1 through 4.3-3.
Mitigation Monitoring and Reporting Program;
Staff Report dated 23 April 2009;
Minutes of Planning Commission hearing of April 23, 2009;
Staff Report dated 12 May 2009.

10. Finding:

The RFEIR identified that a sale of the Flanders Mansion property was potentially inconsistent with General Policy P5-107. This policy states:

“**P5-107:** Provide for public access and passive enjoyment of City parks and open space.”

Evidence:

RDEIR, pp. 4.4-1 through 4.4-8;
RFEIR, pp. 5-18 to 5-19;
General Plan.

11. Finding:

A sale of Flanders Mansion does not conflict with Policy P5-107 and, therefore, this impact will not occur.

Rationale:

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. A sale of the

Flanders Mansion property would represent a loss of approximately 2% of all parkland with City limits. This represents a very small area relative to other designated and developed public parkland in the City. There are five other entrances to the Mission Trails Nature Preserve. There also nine other designated parks and open spaces within Carmel City limits. With the exception of Pescadero Park (which has no access because it is being preserved as a natural open space), each has adequate public access and each can be enjoyed for passive use by the public. Likewise, most of the Mission Trail Nature Preserve, including the Lester Rowntree Native Plant Garden, will remain available for public enjoyment and, with the mitigation measures being adopted, many of the park benefits of the Flanders Mansion property which the public has enjoyed will be adversely impacted at a less-than-significant level. Sale would not prevent implementation of this policy city-wide or in the future. This policy does not specifically prohibit the sale of the Flanders Mansion property. The General Plan contains other policies that anticipate a sale of the Flanders Mansion property and name this property specifically.

A sale of the Flanders Mansion property must be viewed within the context of all parklands within the City. The Plan can support the provision of access to and enjoyment of, parks and open space in general terms while permitting a sale of parkland at a specific site. Viewed in this larger context, selling the Flanders Mansion property would not be inconsistent with General Plan policy P5-107. The RDEIR identified that a sale of the Flanders Mansion property is likely to remove from public use one entry to the park from Hatton Road. It also is likely to remove from public use a connection between the two trails. Proposed mitigation measures 4.5-1 will require that the City provide replacement trail access on the north side of the driveway and a connecting trail as shown on RDEIR Figure 4.5-1.

Please see also further findings and rationale at Sections A.6-9, 12-13.

This rationale is consistent with the City Council decision in 2005 which was upheld by the Superior Court as being within the discretion of the City.

Evidence:

General Plan policies, goals and objectives numbered G5-6, P5-46, P5-107 and O5-21, P5-141, P5-142 and P5-143;
Staff Report dated 23 April 2009;
Minutes of Planning Commission hearing of April 23, 2009
Staff Report dated 12 May 2009.

12. Finding:

The RFEIR identified that a sale of the Flanders Mansion property was potentially inconsistent with General Objective O5-21. This Objective states:

“O5-21: Optimize public use of City parks.”

Evidence:

RDEIR, pp. 4.4-1 through 4.4-8;
RFEIR, pp. 5-18 to 5-19;
General Plan.

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13. Finding:

A sale of the Flanders Mansion does not conflict with General Plan Objective O5-21 and, therefore, this impact will not occur.

Rationale:

General Plan Objective O5-21 is a general statement directing that the public's use of City parks should be optimized. The Flanders Mansion property provides for passive recreational use on the Mansion grounds, serves as a destination within the Preserve, provides informal public parking and enables an undesignated through-route between trails within the Preserve. All of these features help to optimize public use of the Preserve. A sale of the Flanders Mansion property is likely to result in a loss of public use of the property for passive use, a loss of the informal parking area and a loss of public access to the trail linkages. Proposed mitigation measures 4.1-1 through 4.1-5, 4.3-1 through 4.4, 4.5-1, and 4.6-1 through 4.6-3 will partially address these issues. Parking for three vehicles will be provided and new trail access at two locations will be provided. Any remaining loss of optimization is acceptable within the larger context of the Preserve and other parkland throughout the City. The Flanders Mansion property represents a very small area relative to other designated and developed public parkland in the City. The City has done an excellent job of optimizing public use of parks through its past actions. A sale would not prevent implementation of this Objective city-wide or in the future. This Objective does not specifically prohibit the sale of this specific property. The General Plan contains other policy statements that anticipate a sale of the Flanders Mansion property and name this property specifically.

Please see also further findings and rationale at Sections A.6-11.

This rationale is consistent with the City Council decision in 2005 which was upheld by the Superior Court as being within the discretion of the City.

Evidence:

RDEIR, Sections 4.1 through 4.3 and 4.5 through 4.6, and pp. 4.4-1 through 4.4-8;
RFEIR, pp. 5-13 through 5-21.
Mitigations 4.1-1 through 4.1-5, 4.3-1 through 4.4, 4.5-1, and 4.6-1 through 4.6-3;
General Plan;
Staff Report dated 23 April 2009;
Minutes of Planning Commission hearing of April 23, 2009
Staff Report dated 12 May 2009.

14. Finding:

None of the four referenced planning policies specifically prohibit the sale of the Flanders Mansion property.

Evidence:

General Plan policies, goals and objectives numbered G5-6, P5-46, P5-107.

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15. 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.

B. City Council Consideration of the Environmental Impacts and Mitigation Measures.

Section 21081.6 of the Public Resources Code requires all state and local agencies to establish monitoring or reporting programs whenever approval of a project relies upon an Environmental Impact Report (EIR). The purpose of the monitoring or reporting program is to ensure implementation of the measures being imposed to mitigate or avoid the significant adverse environmental impacts identified in the EIR.

The CEQA Guidelines section 15091(a) requires that, for each significant effect identified in a final EIR, the lead agency (the City here) must make one of the following three written findings supported by substantial evidence in the record, and must provide a rationale for each finding:

- (1) Changes have been incorporated in the project to avoid or substantially lessen the identified significant environmental effect.
- (2) The changes are within the jurisdiction of another agency and the changes have been or should be adopted by that other agency.
- (3) Specific considerations which make infeasible the alternatives identified in the final EIR.

The City finds that the mitigation measures identified in the DEIR as mitigating potentially significant impacts to a less than significant level, do in fact mitigate those impacts to a less than significant level.

1. EIR Section 4.1. Aesthetics.

a. Impact:

Sale of the Flanders Mansion Property would obstruct public access to two (2) public viewing locations, which are considered scenic vistas, adjacent to the Flanders Property. *This is considered a potentially significant impact that can be reduced to a less-than-significant level through the incorporation of the following mitigation measure.*

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(1) Mitigation Measure 4.1-1

In order to minimize potential impacts to the two (2) public viewing areas located adjacent to the Flanders Property, the City of Carmel-by-the-Sea, prior to the sale of the Flanders Property, shall provide additional trail access to these viewing locations from either the Doolittle or Mesa Trails. Appropriate trail signage and public amenities shall also be provided (e.g. benches, picnic tables, or similar), subject to the review and approval of the Forest and Beach Commission.

(2) Mitigation Measure 4.1-2

In order to ensure the long-term preservation of existing scenic vistas within the Mission Trail Nature Preserve and adjacent to the Flanders Mansion parcel, the City of Carmel-by-the-Sea shall permanently preserve these locations through scenic deed restrictions or easement, prior to the sale of the Flanders Mansion. The area of the scenic easement shall include the adjacent meadow area located south/southwesterly from the Flanders property as well as the two (2) viewing areas identified in Figure 4.1-5.

Finding:

The City Council finds that, by adopting and imposing Mitigation Measures 4.1-1 and 4.1-2 as identified in the RFEIR and shown in the Mitigation Monitoring and Reporting Program, changes or alterations have been required in, or incorporated into, the project which will avoid or substantially lessen the significant environmental impact on public access to scenic vistas adjacent to the Flanders Mansion as identified and analyzed in the RFEIR.

Rationale:

Adoption of these Mitigation Measures to address this impact is justified by the explanation of the environmental impact and the development and purpose of the mitigation measures in the RFEIR. Adoption of these Mitigation Measures is further justified because the RFEIR includes an analysis of the most significant, publicly accessible scenic vistas located in the vicinity of the Flanders Mansion property. These are documented and analyzed in Section 4.1 of the RFEIR. This analysis was based on site visits, photographs and a standard methodology for evaluating scenic vistas, as explained in the RFEIR. Without mitigation 4.1-1, public access to these locations will be obstructed. In order to minimize potential impacts to the two (2) public viewing areas located adjacent to the Flanders Property, the City of Carmel-by-the-Sea, prior to the sale of the Flanders Property, shall provide additional trail access to these viewing locations from either the Doolittle or Mesa Trails. Appropriate trail signage and public amenities shall also be provided (e.g. benches, picnic tables, or similar), subject to the review and approval of the Forest and Beach Commission.

In order to ensure the long-term preservation of existing scenic vistas within the Mission Trail Nature Preserve and adjacent to the Flanders Mansion parcel, the City of Carmel-by-the-Sea shall permanently preserve these locations through scenic deed restrictions or easement, prior to the sale of the Flanders Mansion. The area of the scenic easement shall include the adjacent meadow area located south-southwesterly from the Flanders property as well as the two (2) viewing areas identified in Figure 4.1-5.

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Evidence:

The record of the environmental proceedings including the RDEIR in Section 4.1, Table 4.1-5 and Mitigation Measures 4.1-1 and 4.1-2; RDEIR, Section 4.1, Mitigation Measures 4.1-1 and 4.1-2, at pp. 4.1-1 through 4.1-6; Mitigation Monitoring and Reporting Program, to be adopted this day by 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.

b. Impact:

Sale of the Flanders Mansion Property could result in indirect impacts to two (2) public viewing locations, considered scenic vistas, due to exterior changes, tree removal, perimeter fencing, and similar. *This is considered a potentially significant impact that can be reduced to a less-than-significant level through the incorporation of the following mitigation measure.*

(1) Mitigation Measure 4.1-3

In order to minimize potential indirect impacts to the two (2) public viewing areas located adjacent to the Flanders Property, future exterior changes shall preserve the existing tree line surrounding the Flanders property. Prior to any tree removal and/or the issuance of any building permit associated with future use of the Mansion, the owner shall submit detailed plans, including elevations, site plans, tree removal plans, and similar documentation, to the City of Carmel-by-the-Sea for review and approval. All tree removals shall be in accordance with the City's existing tree removal ordinance and standards. Any exterior architectural changes shall also be in conformity with Mitigation Measures 4.3-1. This mitigation measure shall be incorporated as a future condition of sale or lease agreement and shall run with the land.

Finding:

The City Council finds that, by adopting and imposing Mitigation Measure 4.1-3 as identified in the RFEIR and shown in the Mitigation Monitoring and Reporting Program, changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental impact on aesthetics identified and analyzed in the RFEIR (and as identified above).

Rationale:

Adoption of these Mitigation Measures to address this impact is justified by the explanation of the environmental impact and the development and purpose of the mitigation measures in the RFEIR. Adoption of these Mitigation Measures is further justified because sale of the Flanders Mansion property may result in an indirect impact resulting from the new owner, or a successor, installing exterior improvements and or removing trees on the property. These changes could impact two public viewing areas documented in the RFEIR in section 4.1. In order to minimize potential indirect impacts to the two (2) public viewing areas located adjacent to the Flanders Property, future exterior changes shall preserve the existing tree line surrounding the Flanders property. Prior to any tree removal and/or the issuance of any building permit associated with future use of the Mansion, the owner shall submit detailed plans, including elevations, site plans, tree removal plans, and similar documentation, to the City of Carmel-by-the-Sea for review and approval. All tree removals shall be in accordance with the City's

existing tree removal ordinance and standards. Any exterior architectural changes shall also be in conformity with Mitigation Measure 4.3-1. This mitigation measure shall be incorporated as a future condition of sale or lease agreement and shall run with the land.

Evidence:

The record of the environmental proceedings including the RFEIR in the Aesthetics Section, and Mitigation Measure 4.1-3;
RDEIR, Section 4.1, Mitigation Measure 4.1-3, at pp. 4.1-7 through 4.1-13;
Mitigation Monitoring and Reporting Program, to be adopted this day by 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.

c. Impact:

Sale of the Flanders Mansion Property could result in indirect impacts to the existing visual character of the Mission Trail Nature Preserve, the Lester Rowntree Arboretum, and the Flanders Property itself due to exterior changes to the property. *This is considered a potentially significant impact that can be reduced to a less-than-significant level through the incorporation of the following mitigation measure.*

(1) Mitigation Measure 4.1-4

In order to minimize potential indirect impacts associated with future use of the Flanders property, no new walls, fences, gates, or hedges shall be constructed, erected, or established without the prior approval of the City of Carmel-by-the-Sea. All exterior changes shall be subject to the Design Review process described in Chapter 17.58 (Design Review) and Chapter 17.32 (Historic Preservation) of the City's Municipal Code. The primary purpose of such exterior elements shall be to delineate the property boundaries and not create a visual barrier between the site and surrounding parklands. Prior to the approval of any such exterior element, the property owner shall submit detailed drawings of proposed exterior elements to the City of Carmel-by-the-Sea. This measure shall be incorporated as a condition of sale or lease agreement; this measure shall also be recorded to run with the land and be binding upon successor owners. Any such exterior element shall comply with the following guidelines:

- Solid masonry walls or fences that substantially block existing views of the Flanders Mansion from adjacent trails and driveway shall be discouraged. Solid masonry walls shall be prohibited along portions of the property that abut the Lester Rowntree Arboretum;
- All fences/walls shall be of natural earth tones and shall not block views of the Mansion from the driveway.
- Fencing shall be discouraged along the boundaries of the site above the circular portion of the driveway to the extent feasible (see Figure 4.1-6);
- If a gate is installed along the driveway it shall be placed in the approximate location identified in Figure 4.1-6;
- Landscape screening shall be encouraged along portions of the driveway that abut existing trails. Landscape treatments and screening shall be required for portions of the site abutting the Lester Rowntree Arboretum (see Figure 4.1-6);

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- Exterior elements shall avoid the removal of existing mature vegetation (i.e. trees), where feasible. In the event tree removal is required, it shall be done in accordance with Mitigation Measure 4.1-3;
- Exterior elements shall protect and preserve public views of the site, building and across the property;
- Exterior elements shall be subordinate in design character to the historic context of the site.

Finding:

The City Council finds that, by adopting and imposing Mitigation Measure 4.1-4 as identified in the RFEIR and shown in the Mitigation Monitoring and Reporting Program, changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental impact on aesthetics identified and analyzed in the RFEIR (and as identified above).

Rationale:

Adoption of these Mitigation Measures to address this impact is justified by the explanation of the environmental impact and the development and purpose of the mitigation measures in the RFEIR. Adoption of these Mitigation Measures is further justified because potential indirect impacts associated with future use of the Flanders property will be mitigated to a less-than-significant level. The Mitigation Measure and Mitigation Monitoring and Reporting Program require that no new walls, fences, gates, or hedges shall be constructed, erected, or established without the prior approval of the City of Carmel-by-the-Sea. All exterior changes shall be subject to the Design Review process described in Chapter 17.58 of the City's Municipal Code. The primary purpose of such exterior elements shall be to delineate the property boundaries and not create a visual barrier between the site and surrounding parklands. Prior to the approval of any such exterior element, the property owner shall submit detailed drawings of proposed exterior elements to the City of Carmel-by-the-Sea. Any such exterior element shall comply with the requirements set forth in the Mitigation Measure, 4.1-4. This measure shall be incorporated as a condition of sale or lease agreement and shall be recorded as part of the Mitigation Monitoring and Reporting Program in covenants to run with the land.

Evidence:

The record of the environmental proceedings including the RFEIR in Aesthetics Section, and Mitigation Measure 4.1-4; RDEIR, Section 4.1, Mitigation Measure 4.1-4, at pp. 4.1-14 through 4.1-16; Mitigation Monitoring and Reporting Program, to be adopted this day by 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.

d. Impact:

Future use of the Flanders Mansion could create additional sources of light or glare beyond the historical use of the property. Increased sources of light and glare could impact adjacent parkland. *This is considered a potentially significant impact that can be reduced to a less-than-significant level through the incorporation of the following mitigation measure.*

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(1) Mitigation Measure 4.1-5

In order to minimize potential excess glare and lighting, no new exterior lighting associated with the future use of the Flanders Mansion and property shall be permitted until the future owner submits a detailed lighting plan to the City of Carmel-by-the-Sea for review and approval. The lighting plan shall, at a minimum, comply with the exterior lighting standards for the R-1 District and the following standards:

- Fixtures shall be properly directed, recessed, and/or shielded (e.g., downward and away from adjoining properties) to reduce light bleed and glare onto adjacent properties or public rights-of-way, by:
 - Ensuring that the light source (e.g., bulb, etc.) is not visible from off the site to the maximum extent feasible; and
 - Confining glare and reflections within the boundaries of the subject site to the maximum extent feasible.
- No lighting on private property shall produce an illumination level greater than one footcandle on any property within a residential zone except on the site of the light source.
- No permanently installed lighting shall blink, flash, or be of unusually high intensity or brightness.

Finding:

The City Council finds that, by adopting and imposing Mitigation Measure 4.1-5 as identified in the RFEIR and shown in the Mitigation Monitoring and Reporting Program, changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental impact on aesthetics identified and analyzed in the RFEIR (and as identified above).

Rationale:

Adoption of these Mitigation Measures to address this impact is justified by the explanation of the environmental impact and the development and purpose of the mitigation measures in the RFEIR. Adoption of these Mitigation Measures at section 4.1-5 (RDEIR at p. 4.1-6) is further justified because the measure is designed to minimize potential excess glare and lighting, including exterior lighting through a series of detailed lighting plan requirements subject to review and approval by the City. The standards are those used in the R-1 (residential) district and are specific to the reduction of potential light bleed and glare onto adjacent properties or public rights-of-way, limitation of illumination distances (one footcandle), and limitation on high intensity type lighting (e.g., flashing and blinking lights).

Evidence:

The record of the environmental proceedings including the RFEIR in Aesthetics Section, and Mitigation Measure 4.1-5; RDEIR, Section 4.1, Mitigation Measure 4.1-5, at p. 4.1-16;

Mitigation Monitoring and Reporting Program, to be adopted this day by 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.

2. EIR Section 4.2, Biological Resources.

a. Impact:

Due to the proximity of the Flanders Mansion Property to ESHA, the proposed project may result in future uses that may impact special-status plant and wildlife resources due to construction activities, such as vegetation removal or ground disturbance. *This is considered a potentially significant impact that can be reduced to a less-than-significant level through the incorporation of the following mitigation measures.*

(1) Mitigation Measure 4.2-1

In order to ensure that impacts to special-status plant species are less-than-significant, spring-time floristic surveys of the project site shall be conducted to determine the presence/absence of those plant species identified in Appendix A (Biological Assessment of the Flanders Mansion Property prepared by Denise Duffy & Associates, October 27, 2008) as having either an “unlikely” or “medium” likelihood of occurrence. Multiple surveys would likely be required to identify early and late blooming plant species, the blooming periods of each plant species is listed in the plant species list of Appendix A of the 2008 Biological Assessment. All surveys should be completed prior to issuance of building permits. In the event that any special-status plant species is identified within project boundaries, these individuals/populations will require special planning consideration under CEQA, with avoidance being the preferable option to mitigation. If it is determined that impacts to these individuals/populations are unavoidable, further mitigation may be required (as determined by the lead agency).

(2) Mitigation Measure 4.2-2

In order to ensure that the ESHA are not impacted as a result of the proposed project, following any proposed construction and/or demolition, disturbed areas in proximity to ESHA shall be

- revegetated using appropriate native species and erosion control grass seed; in consultation with a qualified botanist (this type of mitigation may be included within the conditions of a Coastal Development Permit).
- provided protective fencing, placed to keep construction vehicles and personnel from impacting any vegetation adjacent to the project site (i.e. Lester Rowntree Arboretum to the east, mesic-meadow to the south). Any trees or vegetation within the API not required for removal shall be provided appropriate protection from impacts of construction activity. This includes fencing off shrubby vegetation and protective wood barriers for trees.
- provided erosion-control measures, implemented to assure that disturbed areas do not erode (potentially impacting off-site resources). These erosion control measures shall be presented as a component of a larger Mitigation Monitoring and

Restoration Plan, specific to the project to be implemented. The plan shall specify that no land clearing or grading shall occur on the project site between October 15 and April 15 unless protection to resources is demonstrated, subject to the approval of the Community Planning & Building Department. Any areas near construction that are identified as ESHA shall be provided protection from construction impacts through approved erosion-control measures; protection shall be demonstrated prior to issuance of building permits, subject to the review and approval of the Community Planning & Building Department.

Any areas near construction that are identified as ESHA, including trees which are located close to any construction site(s) shall be protected from inadvertent damage from construction equipment by protective flagging to avoid the site. In particular, for trees, requirements shall include wrapping trunks with protective materials, avoiding fill of any type against the base of the trunks and avoiding an increase in soil depth at the feeding zone or drip line of the retained trees. Said protection shall be demonstrated prior to issuance of building permits subject to the approval of the Community Planning & Building Department.

(3) Mitigation Measure 4.2-3

Monarch butterfly: In order to avoid potential impacts to Monarch butterfly, vegetation removal in the vicinity of the Lester Rowntree Arboretum (eastern portion of the site) shall be limited. No vegetation shall be removed during the overwintering period (October-February) until a lepidopterist or qualified biologist determine the presence/absence of an overwintering population of Monarch butterflies at the place of occurrence reported to the CNDDB.

(4) Mitigation Measure 4.2-4

Monterey dusky-footed woodrat: Prior to the initiation of any construction-related activities, pre-construction woodrat surveys shall be conducted. The survey shall be conducted no more than 30-days prior to construction. If woodrat nests are documented as being present within the construction area, the appropriate authority (i.e. CDFG) shall be contacted. No activities on the project site shall impact the stick-nest observed behind the Flanders Mansion Property within an ESHA, unless prior authorization is obtained from the appropriate authority (i.e. CDFG). If permitted, the removal of the known woodrat nest shall be conducted according to the steps outlined in the attached Biological Assessment.

(5) Mitigation Measure 4.2-5

Nesting raptors (and other avian species): Pre-construction surveys shall be conducted for nesting avian species (including raptors), if any construction (or demolition) is to be initiated after mid-March (March 15 to August 1). If nesting raptors (or any other nesting birds) are identified during pre-construction surveys, the appropriate steps shall be taken as outlined in the attached Biological Assessment. If project activities cannot avoid the nesting season (generally March 1 – August 31), the applicant shall retain a qualified biologist to conduct focused pre-construction surveys for nesting birds within 30 days of the commencement of construction activities to avoid impacts to any nesting birds present. The pre-construction surveys shall be conducted in all areas that may provide suitable nesting habitat within 300 feet of the construction area. If active nests are found, the biologist shall establish a suitable construction buffer until the young have fledged. For construction activities that occur outside of the nesting season (generally September 1 through February 28), pre-construction surveys are not required.

(6) Mitigation Measure 4.2-6

Bats: In the event that tree limbing and/or removal is authorized for any future project (after sale of the property), bat surveys shall be conducted by a qualified biologist to assess the potential for the actual impact area to support the bat species discussed in the Biological Assessment. If it is determined that potential bat habitat may be negatively impacted, steps shall be taken as outlined in the Biological Survey. This should be done prior to any tree removal on the project site.

Finding:

The City Council finds that by adopting and imposing Mitigation Measures 4.2-1, 4.2-2, 4.2-3, 4.2-4, 4.2-5 and 4.2-6 changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental impact on biological resources as identified in detail in the RDEIR at pages 4.2-1 to 4.2-14.

Rationale:

Adoption of these Mitigation Measures to address this impact is justified by the explanation of the environmental impact and the development and purpose of the mitigation measures in the RFEIR. Adoption of these Mitigation Measures is further justified because the RFEIR provides a detailed review and reconnaissance of the wildlife, botanical and sensitive habitat in the biological resources section of the report and recognizes that the areas surrounding the Flanders Mansion are considered a Environmentally Sensitive Habitat Areas (ESHA) and buffer. An update to the Biological Assessment undertaken by Denise Duffy and Associates in 2005 was prepared in 2008 and found no significant changes onsite or in the project vicinity since the assessment was last prepared. These Biological Assessments are included within the RDEIR as Appendix C [2005] and Appendix D [2008]. The RDEIR reviews and analyzes Habitat Types on the property (Planted Areas/Lawn, Monterey Pine Forest) (see Fig. 4.2-1 [Flanders Mansion Property Habitat Types], Special-Status Species (Hickman's Onion, Monarch Butterfly, Monterey dusky-footed woodrat, raptors) (see Fig. 4.2-2 2008 CNDDDB Occurrence Data, on Wildlife, Special-Status Plant and Sensitive Habitat information]). Further, the City recognizes the extensive Regulatory Environment on Federal, State and Local levels which contains laws protecting special-species status, more fully set forth and discussed in the RDEIR at pages 4.2-7 to 4.2-9, and the specific local requirements of the City's General Plan/Coastal Land Use Plan, the City Forest Management Plan, and various ordinances protecting Trees and Shrubs. (See RDEIR at pages 4.2-9 to 4.2-10.) The RFEIR found there were no direct biological impacts as a result of the project, but certain indirect impacts associated with potential future use of the Flanders Mansion either residential (single-family) or public/quasi-public (museum, non profit, office and some limited public events) uses may be incompatible with adjacent parklands designated as ESHA. Such indirect biological impacts may occur as a result of increased use, changes to access, removal of native trees and vegetation and changes to on-site drainage.

The series of Mitigation Measures, identified above at RDEIR pages 4.2-12 to 4.2-14, were set forth in the RFEIR to lessen these indirect and secondary impacts. Potential future impacts could occur during construction activities such as vegetation removal or site disturbance, which are considered secondary impacts, as they do not result directly from the sale of the Flanders Mansion.

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Mitigation 4.2-1 requires periodic floristic surveys to identify the likelihood (either “unlikely” or “medium” occurrence) of early and late blooming special-status plant species within the project boundaries. This mitigation requires special planning consideration under CEQA, with avoidance being the preferable option to mitigation. If impacts to these special-status plants is unavoidable, then further mitigation by the lead agency may be required.

Mitigation Measure 4.2-2 ensures that the ESHA, or areas in proximity to the ESHA, are not impacted as a result of the proposed project, following any construction and/or demolition. A series of revegetation measures under the direction of a qualified botanist, protective fencing plans for the Lester Rowntree Arboretum and mesic-meadow, in particular, are identified, erosion control measures consistent with MMRP, grading and land clearing preferences between October 15 and April 15 are established, and erosion-control, and protection of trees which are located close to any construction site(s) is subject to review and approval of the City’s Community and Planning & Building Department.

Mitigation Measure 4.2-3 ensures protection of the Monarch Butterfly by certain limits on vegetation removal, limits on removal during the overwintering period subject to approval by a qualified lepidopterist or biologist to determine presence of the butterfly and reported to CNDDDB.

Mitigation Measure 4.2-4 ensures protection of the Monterey dusky-footed woodrat by surveys conducted during all phases of construction. If woodrat nests are discovered, the appropriate authority (CDFG) shall be contacted and no activities on the project site shall impact the stick-nest observed behind the Flanders Mansion Property with an ESHA, unless authorized by CDFG. Any removal of a woodrat nest shall be accomplished according to the steps outlined in the above-referenced Biological Assessment.

Mitigation Measure 4.2-5 requires that Nesting Raptors and other avian species be surveyed for any construction or demolition within certain specified time periods. Any nest removals shall be accomplished according the steps outlined above-referenced Biological Assessment. If project activities cannot avoid nesting season (March 1 to August 31) then the applicant shall retain a qualified biologist to conduct a focused pre-construction surveys to avoid impacts to any nesting birds present. If active nests are found, the biologist shall establish a suitable construction buffer until the young have fledged.

Mitigation Measure 4.2-6 requires that bat survey be conducted by a qualified biologist to assess the potential for the actual impact to support the bat species discussed in the above-referenced Biological Assessment. If the bat habitat will be negatively impacted, steps shall be taken as outlined in the Biological Survey and done prior to any tree removal on the project site.

Evidence:

Record of environmental proceedings, including the RDEIR in 4.2 Biological Resources at pages 4.2-1 to 4.2-14;
RDEIR, Section 4.2, Mitigation Measures 4.2-1, 4.2-2, 4.2-3, 4.2-4, 4.2-5 and 4.2-6, at pages 4.2-12 to 4.2-14;
RFEIR, Section 4.2;
Mitigation Monitoring and Reporting Program, to be adopted this day by 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.

3. EIR Section 4.3, Cultural Resources.

a. Impact:

Sale of the Flanders Mansion and occupancy by new owners could result in alterations to the building or site that would diminish the historic integrity of the resource, affect the historic setting and/or physically separate it from its surroundings. *This represents a potentially significant impact that can be reduced to a less-than-significant level with implementation of the following mitigation measures.*

(1) Mitigation Measure 4.3-1

The terms of any sale shall be subject to Conditions of Sale requiring recordation of a deed restriction, which shall run with the land and be binding upon successive owners, requiring the adherence to a comprehensive Preservation Plan for the Flanders Mansion consistent with the Secretary's Standards and the Carmel-by-the-Sea Municipal Code historic preservation provisions. In general, the Preservation Plan shall identify changes to the property that could reasonably be expected to occur and make recommendations so that the changes would not disrupt the historic integrity of the resource. The Preservation Plan shall be prepared by a qualified professional and would provide practical guidance to the new owners of the Flanders Mansion. Said Preservation Plan shall include: 1) a history of the Flanders Mansion; 2) an assessment of the current condition of the property (building and grounds) and detailed descriptions of the character-defining features; and 3) recommendations following the Secretary's Standards for the appropriate treatment of these features. Specific standards and requirements of the plan follow:

A qualified specialist who meets the Secretary of the Interior's Professional Qualification Standards should prepare the preservation plan that shall, at a minimum, include the following information:

- A detailed history of the Flanders Mansion;
- A discussion of its historical significance (i.e. why the building is listed in the National Register);
- A comprehensive list of the features of the building that contribute to its historical significance;
- A detailed description of the current condition of the building and its integrity relative to the National Register criteria;
- A discussion of the Secretary of the Interior's Standards for the Treatment of Historic Properties;
- Specific standards and recommendations for the care and treatment of the Flanders Mansion. These standards in this section of the plan shall be based on the identified character-defining features and include relevant standards outlined by the Secretary of the Interior, and the Secretary's guidelines in applying these standards.

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It should be noted, that for this project, additional mitigation measures have been incorporated into the project which require that specific lease terms be implemented or that Conditions of Sale be recorded with the property that run with the land and mandate that the structure be maintained in a historic fashion per required standards.

(2) Mitigation Measure 4.3-2

Prior to the sale of the Flanders Mansion, the City of Carmel-by-the-Sea shall document the Flanders Mansion so that a record of the property as it exists today is preserved. To accomplish this, the City shall hire a qualified cultural resources specialist to document the Flanders Mansion (house and grounds) with a historical narrative and large format photographs in a manner consistent with the Historic American Buildings Survey (HABS). Copies of the narrative and photographs shall be distributed to appropriate local repositories (libraries, planning department) and concerned groups (historical societies, preservation groups). The preparation of the HABS documentation shall follow standard National Park Service procedures. There would be three main tasks: gather data; prepare photographic documentation; and prepare written historic and descriptive reports. The photographic documentation shall consist of large-format photography conforming to HABS standards. Photographic documentation shall include 4-by-5-inch negatives in labeled sleeves, 8-by-10-inch prints mounted on labeled photo cards, and an index to the photographs. In addition, the documentation shall include photographic reproduction of any building blueprints, if available.

Finding:

The City Council finds that by adopting and imposing Mitigation Measures 4.3-1 and 4.3-2 changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental impact on historic resources as identified in detail in the RDEIR at pages 4.3-10 to 4.3-14.

Rationale:

Adoption of this Mitigation Measure to address this impact is justified by the explanation of the environmental impact and the development and purpose of the mitigation measure in the RFEIR. Adoption of this Mitigation Measure is further justified because the RFEIR provides a detailed review of the Prehistoric, Ethnographic and Historic Overview of the Flanders Mansion and surrounding grounds, a description of its Existing Condition, the historic Regulatory Environment under local, state and national standards, and the Historic Resources impacted by any potential sale. (See RDEIR at pages 4.3-1 to 4.3-14, and discussion therein.) Generally, the impacts consider a new occupant repairing and replacing damaged or failing original architectural elements (e.g., windows, roof tiles, gutters, etc.), removal and replacement of landscape elements, realignment or replacement of existing or addition of new circulation patterns (e.g., driveways, paths, etc.), fencing, building modifications, and possible renovation of interior living spaces. The City Council concurs in the imposition of specific and extensive Mitigation Measures which require any new occupant to consult with and rely on the expertise of qualified experts in satisfying two mitigation measures: (1) adhere to the recommendations such as an expert in the adoption of a Preservation Plan for Flanders Mansion, which shall be part of the Conditions of Sale and recorded to run with the land and which shall include such preservation obligations as: a history of the Flanders Mansion, an assessment of the current conditions of the property and character-defining features and recommendations following specific historic standards for treatment of those features, as set forth in Mitigation 4.3-1 at page 4.3-10 to 4.3-14

of the RDEIR; and (2) adhere to the recommendations of a such an expert to undertake and document the Flanders Mansion and grounds with an historical narrative and photograph history in a manner consistent with the Historic American Building Survey (HABS) documentation standards, for distribution to appropriate repositories and concerned individuals. In addition, the City Council concurs with the recommendation in the RFEIR that any new occupant is required to follow responsible preservation practices to protect important cultural resources by complying with the Carmel historic preservation ordinance (CMC 17.32), the Secretary's Standards, CEQA, building permit standards, review by the Historic Resources Board of the City and generally obey and be subject to enforcement under all Historic Preservation ordinances and standards, and the above-described Preservation Plan for Flanders Mansions, as set forth in the RDEIR at pages 4.3-10 to 4.3-14, and under Mitigation Measure 4.3-2, at pages 4.3-11 to 4.3-14.

Evidence:

Record of environmental proceedings, including the RFEIR Cultural Resources; RDEIR, Section 4.3, Cultural Resources, at pp. 4.3-1 to 4.3-14, and Mitigation Measures 4.3-1 and 4.3-2, at pp. 4.3-10 to 4.3-14; Mitigation Monitoring and Reporting Program, to be adopted this day by 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.

b. Impact:

Since the project site lies within the City's known archaeological sensitivity zone, there is the potential that buried cultural resources may be discovered during project staging or construction activities. Disturbance or removal of artifacts associated with a buried site would constitute a significant impact to a potentially significant resource. *This impact can be reduced to a less-than-significant level with implementation of the following mitigation.*

(1) Mitigation Measure 4.3-3

If buried cultural resources, such as chipped or ground stone, historic debris, building foundations, or human bone, are inadvertently discovered during ground-disturbing activities, the following steps must be followed: stop work in that area and within 50 meters of the find; notify the City of Carmel Building Official; and retain a qualified archaeologist to assess the significance of the find and, if necessary, to develop appropriate treatment measures in consultation with the State Historic Preservation Office.

Finding: The City Council finds that by adopting and imposing Mitigation Measures 4.3-3 changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental impact on archaeological resources as identified in detail in the RDEIR at pages 4.3-14 to 4.3-15.

Rationale: Adoption of this Mitigation Measure to address this impact is justified by the explanation of the environmental impact and the development and purpose of the mitigation measure in the RFEIR. Adoption of this Mitigation Measure in further justified because the RFEIR provides a procedure of stopping any building work undertaken on the Flanders Mansion during staging or construction activities which uncovers any buried cultural resources, such as chipped or ground stone, historic debris, building foundations or human bone. The stop work procedures identified in Mitigation Measure 4.4-3 sufficiently and adequately protect this

resources though a 50 meter boundary protective requirement, notification of the City building official, retention of a qualified archaeologist to assess significance of find and the development of treatment measures in consultation with the State Historic Preservation Office.

Evidence:

Record of environmental proceedings, including the RFEIR in 4.3 Cultural Resources; RDEIR, Section 4.3, Cultural Resources, at pp. 4.3-14 to 4.3-15, and Mitigation Measures 4.3-3, at pp. 4.3-14 to 4.3-15; Mitigation Monitoring and Reporting Program, to be adopted this day by 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.

c. Impact:

Construction of the project may result in the discovery and disturbance of unknown archaeological resources and/or human remains. *This represents a potentially significant impact that can be reduced to a less-than-significant level with implementation of the following mitigation measures.*

(1) Mitigation Measure 4.3-4

If human remains of Native American origin are discovered during ground-disturbing activities, it is necessary to comply with state laws relating to the disposition of Native American burials, which falls within the jurisdiction of NAHC (Pub. Res. Code §5097). If human remains of any origin are discovered or recognized in any location other than a burial site, there will be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:

- the county coroner has been informed and has determined that no investigation of the cause of death is required; and
- if the remains are of Native American origin, the descendants from the deceased Native Americans have made a recommendation to the landowner or the person responsible for the excavation work for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in PRC 5097.98, or
- NAHC was unable to identify a descendant, or the descendant failed to make a recommendation within 24 hours after being notified by NAHC.

Finding:

The City Council finds that by adopting and imposing Mitigation Measure 4.3-4 changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental impact on archaeological resources as identified in detail in the RDEIR at page 4.3-15.

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Rationale:

Adoption of this Mitigation Measure to address this impact is justified by the explanation of the environmental impact and the development and purpose of the mitigation measure in the RFEIR. Adoption of this Mitigation Measure is further justified because the RFEIR provides a procedure for the discovery of any Native American human remains or Native American burials which may be uncovered during ground-disturbing activities. Further, the Mitigation Measure requires cessation of any excavation or disturbance of the site if human remains of any origin are discovered or recognized in any location other than a burial site until the county coroner has been informed and determined no investigation of the cause of death is required, and in addition if any Native American human remains are uncovered, specific provisions of the Public Resource Code requiring notification are complied with.

Evidence:

Record of environmental proceedings, including the RFEIR in 4.3 Cultural Resources; RDEIR, Section 4.3, Cultural Resources at pp. 4.3-15, and Mitigation Measure 4.3-4 at p. 4.3-15;
Mitigation Monitoring and Reporting Program, to be adopted this day by 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.

4. EIR Section 4.4, Land Use.

a. Impact:

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 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.*

(1) Mitigation Measure

Mitigation measures have been incorporated into this EIR as part of each topical CEQA section. No additional measures have been identified.

Finding:

The City Council in Section E, above, has found that the proposed project and all project alternatives are consistent with the identified General Plan policies, goals and objectives and that, therefore, this impact will not occur.

However, the City Council finds that, by adopting and imposing the Mitigation Measures identified as part of each topical CEQA section, changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Recirculated Final EIR.

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Rationale:

As discussed more fully in Section A, above, Consistency with General Plan and Other Planning Policies, Goals and Objectives, the City Council in connection with the 2005 FEIR determined that the sale of the Flanders Mansion property was consistent with various goals, objectives and policies of the General Plan. A Petition for Writ of Mandamus was filed (The Flanders Foundation v. City of Carmel-by-the-Sea, et al., Mont. Co. Super. Ct. Case No. M76728) challenging, among other things, the City's compliance with CEQA in the environmental review process and the City's determination of consistency with the General. After ruling the project site is parkland, the Superior Court found that the City acted within its discretionary authority in determining the project was consistent with the General Plan.

During the current environmental review of the proposed sale of the Flanders Mansion property, 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.

Mitigation measures have been proposed and are being adopted in a Mitigation Monitoring and Reporting Program, 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, which reduce to a less-than-significant level the impacts on views, aesthetics, trail access, the Lester Rowntree Native Plant Garden and the historic resource of the Flanders Mansion itself which could result from sale of the Flanders Mansion property parkland.

The City Council determines that the Sale of the Flanders Mansion property with Conservation Easements and Mitigation and lease of the property are consistent with the General Plan for the following reasons: (1) because a sale of the Flanders Mansion property would represent a loss of approximately 2% of all parkland with City limits, which represents a very small area relative to other designated and developed public parkland in the City which remain fully available for public enjoyment; (2) because sale of the property would not prevent implementation of General Plan goals, policies and objectives, numbered G5-6, P5-46, P5-107 and O5-21, city-wide or in the future; (3) because the General Plan contains other policies that anticipate a sale of the Flanders Mansion property and name this property specifically; (4) because the mitigation measures imposed through the Mitigation Monitoring and Reporting Program require full historic restoration of the Flanders Mansion; and (5) because mitigation measures are being adopted and will be imposed on the property in perpetuity, through easements and covenants, which will reduce to a less-than-significant level the impacts identified in the RFEIR which could result from the sale of the property, apart from the permanent loss of City ownership of this parkland property.

Adoption of the Mitigation Measures under each topical CEQA section will, other than the significant and unavoidable impact result from the permanent loss of City ownership of the Flanders Mansion property portion of City public parkland, reduce to a less-than-significant level the impacts on the Flanders Mansion property, the Mission Trail Nature Preserve and Lester Rowntree Native Plant Garden parkland, and the neighborhoods in the vicinity of the Preserve and the Flanders Mansion property which may arise from the sale of the Flanders Mansion property. The mitigation measures identified in the RFEIR are all contained 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, and the requirements of such mitigation measures and Mitigation Monitoring and Reporting Program will be incorporated into Conditions of Sale and Conditions of Lease, and easements and Covenants, Conditions and Restrictions to be recorded against the Flanders Mansion property and bind the City and all future owners and lessees of the property.

See also Rationale set forth for the Mitigation Measures under each topical CEQA section.

Evidence:

See findings of General Plan Consistency herein, at Section A;
Rationale set forth for the Mitigation Measures under each topical CEQA section, in this Section G;
General Plan policies, goals and objectives numbered G5-6, P5-46, P5-107 and O5-21, P5-141, P5-142 and P5-143;
The record of the environmental proceedings including the RFEIR in Land Use and Planning Section, and Mitigation Measure 4.4-1;
RDEIR, Section 4.4, pp. 4.4-1 through 4.4-15;
Mitigation Monitoring and Reporting Program, to be adopted this day by 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;
Staff Report dated 23 April 2009;
Minutes of Planning Commission hearing of April 23, 2009
Staff Report dated 12 May 2009.

b. Impact:

Sale of the Flanders Mansion Property could result in higher intensity land uses that could be incompatible with the surrounding Mission Trail Nature Preserve, Lester Rowntree Arboretum, and the Hatton Field residential area. *This is considered a potentially significant impact that can be reduced to a less-than-significant level.*

(1) Mitigation Measure 4.4-1

In order to minimize potential land use conflicts associated with potential future use of the Flanders Mansion Property, the City of Carmel-by-the-Sea shall require through conditions of sale, deed restriction, or similar legally-binding mechanism, that any future use and subsequent sale of the Property be restricted to single-family residential or a low-impact public/quasi-public use consistent with the historical use of the property. Future use of the property that would represent an intensification of use shall be subject to additional environmental review in accordance with CEQA, including the provisions of CEQA Guidelines sections 15162 and 15163, as applicable and shall require the preparation of a Traffic Impact Analysis. The traffic analysis shall be provided to the County of Monterey Public Works Department for review and comment. These restrictions shall run with the land and shall be legally binding on the City and successor owners and/or lessees.

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Finding:

The City Council finds that, by adopting and imposing Mitigation Measure 4.4-1, changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Recirculated Final EIR.

The Errata modification to this Mitigation Measure is a non-substantive change to clarify application of CEQA to future uses of the property.

Rationale:

Adoption of this Mitigation Measure is justified by the explanation of the environmental impact and of the development and purpose of the mitigation measure contained in the RFEIR. Adoption of this Mitigation Measure is further justified by the adoption of the mitigation measures under each CEQA topical section which will, other than the significant and unavoidable impact result from the permanent loss of City ownership of the Flanders Mansion property portion of City public parkland, reduce to a less-than-significant level the impacts on the Flanders Mansion property, the Mission Trail Nature Preserve and Lester Rowntree Native Plant Garden parkland, and the neighborhoods in the vicinity of the Preserve and the Flanders Mansion property which may arise from the sale of the Flanders Mansion property. The mitigation measures identified in the RFEIR are all contained 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, and the requirements of such mitigation measures and Mitigation Monitoring and Reporting Program will be incorporated into Conditions of Sale and Conditions of Lease, and easements and Covenants, Conditions and Restrictions to be recorded against the Flanders Mansion property and bind the City and all future owners and lessees of the property.

Evidence:

The record of the environmental proceedings including the RFEIR in Land Use and Planning, and Mitigation Measure 4.4-1; RDEIR, Section 4.4, pp. 4.4-1 through 4.4-15; Mitigation Measure 4.4-1, above (see also RDEIR, p. 4.4-9); Impacts and Mitigation Measures findings in this Section G; RDEIR, sections 4.0 through 4.6; RFEIR, section 5.0, Revisions to RDEIR; Errata to RFEIR dated on or about April 24, 2009 Mitigation Monitoring and Reporting Program, to be adopted this day by 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.

5. EIR Section 4.5, Parks and Recreation.

a. 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
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Preserve. *Since this loss of parkland is locally significant, this is considered a significant unavoidable impact that cannot be reduced to a less-than-significant level.*

(1) Mitigation Measure

Mitigation measures have been incorporated into this EIR to minimize impacts due to the sale of parkland. No additional measures have been identified.

Finding:

By companion action, A Resolution Adopting a Statement of Overriding Considerations, to be adopted this day, the City Council finds that specific economic, legal, social and other considerations, make infeasible the project alternatives identified in the Recirculated Final EIR which would substantially lessen this significant environmental effect.

However, in addition, the City Council finds that, by adopting and imposing the Mitigation Measures identified as part of each topical CEQA section, changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Recirculated Final EIR.

Rationale:

This finding is supporting by the Statement of Overriding Considerations, to be adopted by companion action this day, A Resolution Adopting a Statement of Overriding Considerations, which finds and concludes that the specifically-identified benefits of Sale of the Flanders Mansion property with Conservation Easements and Mitigation outweigh this significant, unavoidable environmental impact. As a result, those environmental impacts are acceptable.

Adoption of the Mitigation Measures under each topical CEQA section will, other than the significant and unavoidable impact result from the permanent loss of City ownership of the Flanders Mansion property portion of City public parkland, reduce to a less-than-significant level the impacts on the Flanders Mansion property, the Mission Trial Nature Preserve and Lester Rowntree Native Plant Garden parkland, and the neighborhoods in the vicinity of the Preserve and the Flanders Mansion property which may arise from the sale of the Flanders Mansion property. The mitigation measures identified in the RFEIR are all contained in the Mitigation Monitoring and Reporting Program to be adopted this day by companion action to be adopted this day by 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, and the requirements of such mitigation measures and Mitigation Monitoring and Reporting Program will be incorporated into Conditions of Sale and Conditions of Lease, and easements and Covenants, Conditions and Restrictions to be recorded against the Flanders Mansion property and bind the City and all future owners and lessees of the property.

Evidence:

A Resolution Adopting a Statement of Overriding Considerations, to be adopted this day by companion action;
Economic Report, including Appendix and appendix's addenda;
The record of the environmental proceedings, including the RDEIR in Sections 4.0 through 4.6, and Mitigation Measures therein, and the RFEIR;
Mitigation Monitoring and Reporting Program, to be adopted this day by 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.

b. Impact.

The sale of the Flanders Mansion Property may result in loss of public access to and through the Flanders Property and compromise access to the Preserve's trail system. *This is a potentially significant impact that can be mitigated to a less-than-significant level with the implementation of the following mitigation measure.*

(1) Mitigation Measure 4.5-1

In order to ensure trail access between the Lester Rowntree Arboretum and the Mission Trail Nature Preserve is preserved, the City shall provide additional trails as shown on Figure 4.5-1 to mitigate the loss of trail access as a result of the project. Prior to the sale of the Flanders Mansion, the City of Carmel-by-the-Sea shall set aside additional trails within the Mission Trail Nature Preserve as depicted in Figure 4.5-1.

Finding:

The City Council finds that, by adopting and imposing Mitigation Measure 4.5-1, changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Recirculated Final EIR.

Rationale:

Adoption of this Mitigation Measure to address this impact is justified by the explanation of the environmental impact and the development and purpose of the mitigation measure in the RFEIR. Adoption of this Mitigation Measure is further justified because the additional trails shown on Figure 4.5-1 mitigate the loss of trail access as a result of the sale of the Flanders Mansion property to a less-than-significant level. 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, requires the City of Carmel-by-the-Sea to set aside the additional trails within the Mission Trail Nature Preserve depicted in Figure 4.5-1.

Evidence:

The record of the environmental proceedings including the RFEIR in Section 4.5, and Mitigation Measure 4.5-1;
Analysis of Impacts and Mitigation Measure 4.5-1 set forth above (see also RDEIR, pp. 4.5-1 to 4.5-8);
RFEIR, Section 4.4, Land Use and Planning;
Mitigation Monitoring and Reporting Program, to be adopted this day by 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.

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6. EIR Section 4.6, Traffic and Circulation.

a. Impact.

The sale of the property may result in the loss of an informal parking area currently used by the general public to access the Mission Trail Nature Preserve and the Lester Rowntree Arboretum. Although not designated as public parking currently, parking in the lower driveway area of the Flanders Mansion Property would be eliminated from public access upon sale of the property. *This is a significant impact that can be mitigated to a less-than-significant level with implementation of the following mitigation measure.*

(1) Mitigation Measure 4.6-1

In order to ensure that adequate public parking is provided, the City of Carmel-by-the-Sea shall provide additional public parking to facilitate visitor access to the surrounding Preserve and Arboretum consistent with the policies of the Mission Trail Nature Preserve Master Plan, prior to the sale of the Flanders Mansion Property. Prior to the sale of the Flanders Mansion, the City shall develop a parking plan to provide at least 3 parking spaces along the existing driveway within the Mission Trail Nature Preserve as demonstrated in Figure 4.6-2. This site shall be surfaced with appropriate materials such as wood chips or similar. Paved surfaces, such as asphalt or similar, shall be prohibited. Construction of replacement parking shall provide for minimal disturbance to the natural surroundings and appropriate landscape treatments shall be provided to minimize views of parking from the Hatton Fields neighborhood. In the event that grading and/or vegetation-removal activities are required, use of non-impervious materials shall be required. Landscape screening shall also be provided to minimize visibility from surrounding residences. Native vegetation screening shall be provided along the area of the parking edge that is within close proximity to adjacent residences. All disturbed areas shall be replanted with appropriate native vegetation.

Finding:

The City Council finds that, by adopting and imposing Mitigation Measure 4.6-1, changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental impact on traffic and circulation as identified in detail in the RDEIR at pages 4.6-4 to 4.6-6, including Figures 4.6-1 (Trip Generation), 4.6-2 (Replacement Parking) and to 4.6-3 (Parking Mitigation Photos).

Rationale:

Adoption of this Mitigation Measure to address this impact is justified by the explanation of the environmental impact and the development and purpose of the mitigation measure in the RFEIR. Adoption of this Mitigation Measure is further justified because the RFEIR provides a means to ensure that adequate public parking is provided to facilitate visitor access to the surrounding Preserve and Arboretum consistent with Mission Trial Nature Preserve Master Plan, prior to any sale of the Flanders Mansion property. Such measure includes the City development of a parking plan for at least 3 parking spaces along the existing driveway within the Mission Trial Nature Preserve as shown in Figures 4.6-2 [Replacement Parking], 4.6-3 [Parking Mitigation Photos], surfaced with appropriate materials (e.g., decomposed granite, wood chips),

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designed with minimal disturbance to the natural surroundings, appropriate landscape treatments to minimize views of parking from the Hatton Fields neighborhood, and the use of appropriate native vegetation.

Evidence:

Record of environmental proceedings, including the RDEIR in 4.6 Traffic and Circulation, at pp. 4.6-1 to 4.6-4, and Mitigation Measures 4.6-1, at p. 4.6-4; Analysis of Impacts and Mitigation Measure 4.6-1 set forth above (see also RDEIR, pp. 4.6-1 to 4.6-4); Mitigation Monitoring and Reporting Program, to be adopted this day by 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.

b. Impact:

Implementation of Mitigation Measure 4.6-1 has the potential to result in additional impacts to biological resources due to the construction of replacement parking. *This impact can be mitigated to a less-than-significant level with implementation of the following mitigation measure.*

(1) Mitigation Measure 4.6-2

In order to ensure that potential impacts to biological resources are avoided during the construction of additional parking, the City of Carmel-by-the-Sea shall arrange for pre-construction wildlife surveys (raptors, bats, and woodrats) to be conducted by a qualified biological professional, prior to the initiation of any construction-related activities. In the event that any special-status species are observed within the construction area or within the immediate vicinity, the proper resource agency (i.e., CDFG or USFWS) shall be contacted. No work shall commence until such time that CDFG or USFWS have been contacted and appropriate removal or protective measures have been identified.

Finding:

The City Council finds that, by adopting and imposing Mitigation Measure 4.6-2, changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental impact on traffic and circulation as identified in detail in the RFEIR at page 4.6-8.

Rationale:

Adoption of this Mitigation Measure to address this impact is justified by the explanation of the environmental impact and the development and purpose of the mitigation measure in the RFEIR. Adoption of this Mitigation Measure is further justified because the RFEIR provides that in order to ensure that potential impacts to biological resources are avoided during construction of additional parking, the City shall arrange for pre-construction wildlife surveys (raptors, rats and woodrats) to be conducted by a qualified biological professional, prior to the initiation of any construction-related activities. In the event that any special-status species are observed within the construction area or within the immediate vicinity, the proper resource agency (i.e., California Department of Fish and Game or the U.S. Forestry and Wildlife Service) shall be

contacted. No work shall commence until such time as one of these agencies have been informed and appropriate removal or protective measures have been identified.

Evidence:

Record of environmental proceedings, including the RDEIR in 4.6 Traffic and Circulation at pages 4.6-8 and Mitigation Measures 4.6-2 at page 4.6-8;

The record of the environmental proceedings including the RFEIR in Section 4.5, and Mitigation Measure 4.5-1;

Analysis of Impacts and Mitigation Measure 4.6-1 set forth above (see also RDEIR, pp. 4.6-5 to 4.6-8);

Mitigation Monitoring and Reporting Program, to be adopted this day by 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.

c. Impact:

The sale of the property may result in future uses that may cause significant impacts to local traffic. *This is a significant impact that can be mitigated to a less-than-significant level with implementation of the following mitigation measure.*

(1) Mitigation Measure

Mitigation Measure 4.4-1 of **Section 4.4 Land Use** of the EIR.

Finding:

Please see also discussion under Mitigation Measure 4.4-1 and its related Impact, above, in section B.4.b.

The City Council finds that, by adopting and imposing Mitigation Measure 4.4-1, changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental impact on traffic and circulation as identified in detail in the RDEIR at Section 4.6.

Rationale:

Please see discussion under Mitigation Measure 4.4-1 and its related Impact, above, in section B.4.b.

Evidence:

The record of the environmental proceedings including the RFEIR in Section 4.6, and Mitigation Measure 4.6-3.

Analysis of Impacts and Mitigation Measure 4.6-3 set forth above (see also RDEIR, pp. 4.6-8 to 4.6-10)

See evidence under Impact and Mitigation 4.4-1

Mitigation Monitoring and Reporting Program, to be adopted this day by A Resolution

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Adopting a Mitigation Monitoring and Reporting Program, Conditions of Sale, Conditions, Covenants and Restrictions to Be Recorded Against the Property, and Conditions of Lease.

C. Covenants.

Finding: 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, , to be adopted this day, the City Council has provided for covenants to be prepared and recorded to run with the land to incorporate and impose the requirements of these Mitigation Measures set forth herein which are embodied Mitigation Monitoring and Reporting Program. The City Council has further provided that the easements described in the Sale with Conservation Easements and Mitigation Alternative shall also be recorded against the Flanders Mansion property. By recordation of said easements and covenants under the Flanders Mansion parcel (Assessor's Parcel No. 010-061-005), such Mitigation Monitoring and Reporting Program and easements shall be binding on the City and all future owners of the property in perpetuity, requiring future owners to achieve the provisions of the Mitigation Monitoring and Reporting Program which are their responsibility and, for future purchasers, achieve such provisions of the Mitigation Monitoring and Reporting Program as have not previously been completed and verified in accordance with the Mitigation Monitoring and Reporting Program.

Evidence:

Mitigation Monitoring and Reporting Program, to be adopted this day by 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.

D. 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 (RFEIR 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. 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.

a. **No Project Alternative (RFEIR section 6.3): Achievement of Project Objectives**

Finding: The No Project alternative would reduce the impacts compared to the Proposed Project; however, it does not effectively meet the basic project objective and therefore would not be feasible

The No Project Alternative would fail to meet the primary project objective of divestment of the Flanders Mansion property by the City of Carmel-by-the-Sea. In addition to failing to meet the primary project objective, this alternative would only meet some of the secondary objectives identified by the City.

The description of the No Project alternative describes how the secondary objectives related to historic preservation would be “partially achieve[d]”. The interim maintenance measures required by the Superior Court will prevent further significant deterioration, but would not achieve any rehabilitation or restoration of the Flanders Mansion, as outlined by ARG's report, which contains a list of work necessary to fully-restore the building in accordance with historic preservation standards.

The primary project objective is divestment of the property which will reduce City costs, including costs identified for current needs and potential costs for major maintenance concerns in the future based upon the age and condition of the building,. 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 surrounded by a single-family neighborhood. The City found that intensive uses of the site are not compatible uses for the site in both the 2005 EIR and public hearings and in testimony and documentation for the 2009 proceedings. 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:

RDEIR, pp. 6-4 through 6-7.

Amended Judgment, including the Intended Decision.
Peremptory Writ of Mandate.
Return documents (filed December 7, 2007, January 8, 2008, and October 30, 2008).

b. **Lease Alternative #1: Single-Family Residence Alternative (RFEIR section 6.4): Achievement of Project Objectives**

Finding: The Lease as Single-Family Residence Alternative fails to achieve certain project objectives.

The RFEIR found that: “This alternative would not meet the primary project objective, divestment of the Flanders Mansion property.” The RFEIR also found that: “Both Lease Alternatives and the Sale with Conservation Easements and Mitigations 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.”

By companion action this day, in A Resolution Adopting Statement of Overriding Considerations, the City Council determined that the lease for single family residential use alternative would not feasibly accomplish the basic Project Objectives in a successful manner due to economic, social, legal and other factors. The City Council also found that, because the benefits of the Sale with Conservation Easements and Mitigation specifically-identified in the Statement of Overriding Considerations outweigh the significant, unavoidable environmental effects of that project for implementation, the environmental risks are acceptable.

Evidence:

RDEIR, pp. 6-9 to 6-10.

A Resolution Adopting a Statement of Overriding Considerations, to be adopted this day.

c. **Lease Alternative #2: Public or Quasi-Public/Nonprofit Alternative (RFEIR section 6.4): Achievement of Project Objectives.**

Finding: The RFEIR found that the Lease for Public or Quasi-Public (i.e., nonprofit) use Alternative fails to meet the primary project objective, divestment of the Flanders Mansion property.

“This alternative would fail to meet the primary project objective, divestment of the Flanders Mansion property.” The RFEIR also found that: “Both Lease Alternatives and the Sale with Conservation Easements and Mitigations 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.”

By companion action this day, in A Resolution Adopting Statement of Overriding Considerations, the City Council determined that the lease for public or quasi-public use alternative would not feasibly accomplish the basic Project Objectives in a successful manner due to economic factors. The City Council also found that, because the benefits of the Sale with Conservation Easements and Mitigation specifically-identified in the Statement of Overriding Consideration outweigh the significant, unavoidable environmental effects of that project for implementation, the environmental risks are acceptable.

Evidence:

RDEIR, pp. 6-12 to 6-13.

A Resolution Adopting a Statement of Overriding Considerations, to be adopted this day.

d. **Sale Option: Sale with Conservation Easements and Mitigation Alternative (use unspecified as defined EIR, so includes SFR or Non-Profit) (RFEIR Section 6.5): Achievement of Project Objectives**

Finding: The RFEIR found: “Both Lease Alternatives and the Sale with Conservation Easements and Mitigations 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.” The RFEIR found that the Sale with Conservation Easements and Mitigation Alternative achieves the project objectives.

Implementation of this alternative would achieve the primary project objective, in addition to the majority of the secondary project objectives associated with the proposed project. This alternative minimizes potential impacts due to loss of parkland, including park benefits associated with the Property, and impacts to biological resources. This alternative assumes that the Flanders Mansion property would be utilized for either single family residential purposes or a low-intensity public/quasi-public use, such as offices for a non-profit or similar. Depending on the future use of the subject property, this alternative would also partially meet project objectives related to minimizing impacts on the surrounding neighborhood. This alternative would satisfy secondary project objectives related to minimizing impacts to the Lester Rowntree Arboretum and the Mission Trail Nature Preserve, and it would ensure that the Property continues to provide park benefits to the general public.

With the easements and mitigation described in this alternative and to be adopted and required in the Mitigation Monitoring and Reporting Program, this Alternative achieves to a better extent than the proposed project of sale without such easements and mitigations, the project's secondary project objectives of ensuring that the future use of the Flanders Mansion and property will not cause significant traffic, parking or noise impacts on the surrounding neighborhood (number 3), ensuring that future use will not significantly disrupt the public's enjoyment of the Mission Trail Nature Preserve or the Lester Rowntree Native Plant Garden, also known as the Arboretum (number 4), ensuring that the environmental resources of the park are protected (number 5), and ensuring that the Flanders Mansion parcel continues to provide the public with as many park benefits as are practical (number 6).

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Evidence:

RDEIR, p. 6-16.

RDEIR, pp. 6-13 to 6-17.

Mitigation Monitoring and Reporting Program, to be adopted this day by 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.

City files in Planning and Building Inspection Department, containing copies of said documents.

E. City Council Determinations.

1. Adoption of a Mitigation Monitoring and Reporting Program.

a. **Finding:** Revisions in the project design and implementation, together with the conditions of approval and the mitigation and monitoring program proposed, avoid, eliminate or substantially lessen all significant effects of the Project on the environment, and the Project, as so revised, implemented, mitigated, monitored and conditioned, will not have a significant effect on the environment.

Evidence:

RDEIR, Mitigation Measures in Sections 4.1 through 4.6;

RFEIR;

Mitigation Monitoring and Reporting Program, adopted by companion action this day, attached to 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

b. **Finding:**

By companion action to be adopted this day, 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 requirements of the Mitigation Monitoring and Reporting Program will be imposed on the City and all future owners by adopting Conditions of Sale and Covenants to be recorded and run with the land. The 2005 Conditions of Sale have been updated and incorporated into the Mitigation Monitoring and Reporting Program. By said Resolution, the City will also impose the Mitigation Monitoring and Reporting Program on the City and future lessees by adopting Conditions of Lease to be implemented in the event sale of the property is not approved by a majority of voters at a special election held in accordance with Government Code section 38440 *et seq.*

Evidence:

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, including its Attachments A through D, to be passed by companion action this day;

A Resolution Adopting a Project for Implementation: Sale of Flanders Mansion Parcel with Conservation Easements and Mitigation, to be passed by companion action this day; See also, 2005 Conditions of Sale, at Exhibit A to Resolution No. 2005-58.

2. Statement of Overriding Considerations.

a. **Finding:** By companion action, A Resolution Adopting a Statement of Overriding Considerations, the City Council is adopting a Statement of Overriding Considerations, including supporting findings and evidence set forth therein, specifically identifies the benefits of the Sale with Conservation Easements and Mitigation Alternative to be approved as the project to be implemented (by companion action, A Resolution Adopting a Project for Implementation: Sale of Flanders Mansion Parcel with Conservation Easements and Mitigation) and finds those specifically-identified benefits outweigh the significant, unavoidable environmental impacts assessed in the RFEIR and found above (in Section G). The Statement of Overriding Consideration being adopted finds, as a result, that the environmental risks of the Sale of the Flanders Mansion parcel with Conservation Easements and Mitigations acceptable.

Evidence:

A Resolution Adopting a Statement of Overriding Considerations, including its Attachment A, to be passed by companion action this day;
See also, A Resolution Adopting a Project for Implementation: Sale of Flanders Mansion Parcel with Conservation Easements and Mitigation, to be passed by companion action this day.

3. Compliance with Peremptory Writ of Mandate.

a. **Finding:** As described above in Section B.3-8 and also, generally, in all findings herein, the City has complied with the provisions of the Peremptory Writ of Mandate and Amended Judgment filed August 10, 2007.

Evidence:

Return documents filed on December 7, 2007, January 8, 2008, and October 30, 2008;
RDEIR;
January 2009 Notice of Availability/Notice of Completion
Public Notice of hearings dated April 1, 2009, as amended April 7, 2009;
Notice of Release of Recirculated Final Environmental Impact Report: Sale of Flanders Mansion Property, SCH #2005011108;
RFEIR.

4. Notice of Intent to Discontinue Parkland and Setting of Hearing on Protests.

a. **Finding:**

Pursuant to selection of a project for implementation which provides for sale of the Flanders Mansion property which is considered parkland, currently owned by the City, the City Council is adopting by companion action this day a Resolution of Notice of Proposed Discontinuance of Public Park Land and Setting Date for Hearing of Protests Against Sale of Public Park Land.

Said resolution contains an accurate description of the public parklands proposed to be sold; state the common name of the park; states the disposition which the legislative body proposes to make of the park; and fixes a time, not less than thirty nor more than sixty days after adoption of the resolution, and a place, at which the public or persons particularly interested may protest.

Said resolution sets the hearing on any protests against sale for regular City Council meeting on June 16, 2009 at 4:30 p.m.

Evidence:

A Resolution of Notice of Proposed Discontinuance of Public Park Land and Setting Date for Hearing of Protests Against Sale of Public Park Land, to be adopted by companion action this day;

See also, A Resolution Adopting a Project for Implementation: Sale of Flanders Mansion Parcel with Conservation Easements and Mitigation, to be passed by companion action this day.

5. Directions to Staff.

In accordance with CEQA and CEQA Guidelines, City staff is being directed to (1) prepare, file and provide a Notice of Determination of the City Council's action, (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 regular City Council meeting on June 16, 2009 at 4:30 p.m.

Evidence:

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

A Resolution of Notice of Proposed Discontinuance of Public Park Land and Setting Date for Hearing of Protests Against Sale of Public Park Land, to be adopted by companion action this day.