

CITY OF CARMEL-BY-THE-SEA

STAFF REPORT

TO: MAYOR McCLOUD AND COUNCIL MEMBERS

FROM: RICH GUILLEN, CITY ADMINISTRATOR

DATE: 12 MAY 2009

SUBJECT: CONSIDERATION OF STAFF RECOMMENDATION ON THE
RECIRCULATED FINAL ENVIRONMENTAL IMPACT REPORT AND
THE SALE OF THE FLANDERS MANSION PROPERTY

I. BACKGROUND

On 28 April 2009 the City Council held a public hearing on the sale of the Flanders Mansion. The Council received a significant amount of new oral testimony as well as several pieces of written testimony. Many speakers expressed concern that there was insufficient time to read the draft Resolutions and the errata.

The Council determined that additional written testimony would be considered if received by no later than 5:00 PM on Monday, 4 May 2009. Staff and the City's consultants would provide a written response to *new information only*. All responses and any necessary edits to the proposed Resolutions were to be posted on the City's website and made available at City Hall at least 72 hours in advance of the Council meeting. At the conclusion of the hearing, the Council continued action. Responses have been prepared by the City's project consultants. Responses have been provided only for new issues and issues that required clarification. All other comments have already been addressed adequately in the RFEIR, Findings, Staff Reports and other project documents.

The following documents are attached to this Staff Report:

Attachment-A: Discussion regarding priorities for City financing of capital improvements
Attachment-B: Letter report from CBRE responding to comments regarding economics
Attachment-C: Denise Duffy & Associates response to environmental comments
Attachment-D: Responses to legal issues and planning comments
Attachment-E: Staff Report from Sean Conroy on planning issues
Attachment-F: List of all letters received between April 28 and May 4, 2009

II. CAPITAL SPENDING PRIORITIES

The City Council established the goal of selling Flanders Mansion for several reasons. The property is a historical resource listed on the National Register and will require substantial funding to restore and rehabilitate. A report prepared by ARG indicates that approximately

\$1.157 million will be needed for this purpose. This expenditure would divert funds from capital reserves and/or shift funding from other projects that reflect a higher priority to the Council. The City maintains a strong balance of reserve funds and staff does not recommend spending these unnecessarily on projects of low priority to the City Council. Reserve funds help the City absorb revenue shortfalls from economic downturns like the current recession.

Ultimately, it is up to the City Council to set priorities for how public funds are allocated. This includes whether the public purpose is served by retaining and rehabilitating the Flanders Mansion property, or selling it to avoid this expense.

III. ENVIRONMENTAL REVIEW

This project was the subject of an Environmental Impact Report (EIR) prepared in 2005. At that time, the Council rejected, as economically infeasible, a lease alternative that would have avoided a significant impact. When the City's actions were challenged, the Superior Court found that the City did not have sufficient economic evidence to reject the lease alternative and therefore violated CEQA. As a result of the Court's decision, a 2009 Recirculated Draft and Recirculated Final Environmental Impact Report (RDEIR and RFEIR) have been prepared. The City also obtained an historic rehabilitation report prepared by ARG and a thorough economic analysis prepared by the firm of CBRE.

The 2009 RFEIR defines the primary purpose of the project as:

To divest the City of the Flanders Mansion property which is in need of significant short-term and long-term repair and rehabilitation.

In addition to this purpose there are several secondary objectives:

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

- 5) To ensure that environmental resources of the park are protected; and
- 6) To ensure that the Flanders Mansion parcel continues to provide the public with as many park benefits as are practical.

The RFEIR analyzes lease and sale alternatives. Lease alternatives do not achieve the project purpose but would achieve most secondary objectives and also avoid or reduce all significant impacts. Sale alternatives meet the project purpose and secondary objectives but would have one significant impact that cannot be mitigated. If the Council chooses to sell the property, it must (1) find the lease alternatives to be infeasible and (2) adopt a Statement of Overriding Considerations explaining why project benefits outweigh the significant impact. If the RFEIR is certified, the project is ready for Council action.

IV. ADDRESSING SIGNIFICANT IMPACTS

The Flanders Mansion RFEIR identifies 15 impacts. Of these, 13 can be reduced to less-than-significant levels by adopting mitigations. Of the two remaining impacts, one is significant and unavoidable (selling parkland) and the other is potentially significant-and-unavoidable (conflicts with General Plan policies). The Planning Commission determined that the Sale with Conservation Easements and Mitigations alternative is consistent with the General Plan if the occupancy of the Mansion is limited to a single-family residence. The Council has discretion to reach its own conclusion regarding General Plan consistency. If the project is consistent, there is no significant-and-unavoidable impact related to this issue.

The one remaining significant impact is classified as unavoidable. The Flanders Mansion property is parkland. It is well-integrated into the Mission Trails Nature Preserve and used by the public *as* parkland. Selling the property will likely result in the exclusion of the public from this part of the park and constitute a significant impact. There is no way to mitigate this except by not selling it. The RFEIR identifies three project alternatives that would avoid this significant-and-unavoidable impact:

- Lease as a single-family residence
- Lease as a public or quasi-public use
- No Project (do not sell or lease)

If the City Council chooses to sell the Flanders Mansion property it must

- (1) Determine that none of the alternatives is feasible due to *Specific economic, legal, social, technological or other considerations*, and
- (2) Determine that the remaining significant impact is “acceptable”. This is done by adopting a Statement of Overriding Considerations identifying project benefits that warrant approval in spite of the impact.

V. PROJECT DECISIONS

Before taking any project actions the City Council must first determine that the RFEIR is adequate to make informed decisions. The Forest and Beach Commission, Historic Resources Board and the Planning Commission all have determined that the RFEIR is adequate. If the RFEIR is adequate, the following project decisions can be made:

1. Select the project to adopt. The choices open to the City Council are:

- a) Proposed project: Sell the Flanders Mansion Property with mitigation measures
- b) No Project (do not sell or lease)
- c) Lease the property for occupancy as a single-family residence
- d) Lease the property for occupancy by a low-impact public or quasi-public use
- e) Sell the property with conservation easements and mitigations, leaving future uses unspecified.
- f) Sell the property with conservation easements and mitigations and limiting future occupancy to single-family residential use.

Staff recommends option (e). The attached Resolutions are drafted to adopt option (e) but can readily be changed to (f) if the Council so chooses. As part of the adopting resolutions, the Council also would be finding the project consistent with the General Plan. If the Council chooses to adopt one of the lease alternatives, staff should be directed to prepare new resolutions that reflect this.

2. Adopt a Statement of Overriding Considerations. Adopting a sale alternative will require a Statement of Overriding Considerations. This Statement must identify project benefits that warrant project approval in spite of the significant impact (loss of parkland).

3. Adopt mitigations to address the significant impacts identified in the RFEIR. These mitigations would require that Conditions of Sale and covenants be recorded. They would run with the land and apply to all future owners. The draft Resolution also covers the contingency that if the voters do not approve a sale, and the Council chooses to lease the property, the mitigations would be incorporated into Conditions of Lease.
4. Adopt a resolution providing notice of proposed discontinuance of public park land. This will start the process for a protest hearing, followed by a ballot measure.

Staff recommends adoption of the Sale with Conservation Easements and Mitigations alternative leaving future uses unspecified. This alternative meets the project purpose while doing the best job of avoiding or reducing environmental impacts. It also preserves the most flexibility for future Council actions. The following motions implement this recommendation:

Motion #1: To Adopt a Resolution to Certify the RFEIR with findings stating that the RFEIR is “adequate” as required by the CEQA Guidelines.

Motion #2: To Adopt the following Resolutions:

1. A Resolution Adopting a Project for Implementation: Sale of Flanders Mansion Parcel with Conservation Easements and Mitigation;
2. A Resolution Adopting a Statement of Overriding Considerations; and
3. A Resolution Adopting a Mitigation Monitoring and Reporting Program, Conditions of Sale, a Declaration of Conditions, Covenants and Restrictions to Be Recorded Against the Property, and Conditions of Lease

Motion #3: To Adopt A Resolution of Notice of Proposed Discontinuance of Public Park Land and Setting Date for Hearing of Protests Against Sale of Public Park Land.