

V. RECORD OF PROCEEDINGS

For purposes of CEQA and these Findings, the Record of Proceedings for the Project consists of the following documents, at a minimum:

- The Notice of Preparation and all other public notices issued by the City in conjunction with the Project;
- The Draft and Final EIRs for the Granite Lakes Estates, and all documents cited as "References" in those documents;
- All comments submitted by agencies or members of the public during the 45-day public comment period on the Draft EIR;
- All comments and correspondence submitted to the City with respect to the Project, in addition to timely comments on the Draft EIR;
- The mitigation monitoring plan for the Project;
- All findings and resolutions adopted by City decisionmakers in connection with the Project (including these findings), and all documents cited or referred to therein;
- All reports, studies, memoranda, maps, staff reports, or other planning documents relating to the Project prepared by the City, consultants to the City, or responsible or trustee agencies with respect to the City's compliance with the requirements of CEQA and with respect to the City's actions on the Project;
- All documents submitted to the City by other public agencies or members of the public in connection with the Project, up through the close of the public hearing on May 28, 2002;
- Any minutes and/or verbatim transcripts of all information sessions, public meetings, and public hearings held by the City in connection with the Project;
- Any documentary or other evidence submitted to the City at such information sessions, public meetings, and public hearings;
- Matters of common knowledge to the City, including, but not limited to, federal, state, and local laws and regulations;
- The City of Rocklin Zoning Ordinance;
- The City of Rocklin General Plan, and all environmental documents associated with the 1991 General Plan Update and subsequent updates to the Circulation and

Housing Elements;

- Any documents expressly cited in these findings, in addition to those cited above; and
- Any other materials required to be in the record of proceedings by Public Resources Code section 21167.6, subdivision (e).

The custodian of the documents comprising the record of proceedings is Sandra Davies, Clerk to the City Council, whose office is located at 3970 Rocklin Road, California, 95677-2720.

The City Council has relied on all of the documents listed above in reaching its decision on the Granite Lakes Estates Project, even if not every document was formally presented to the City Council Staff as part of the City files generated in connection with the Granite Lakes Estates Project. Without exception, any documents set forth above not found in the Project files fall into one of two categories. Many of them reflect prior planning or legislative decisions with which the City was aware in approving the Granite Lakes Estates Project. (See *City of Santa Cruz v. Local Agency Formation Commission* (1978) 76 Cal.App.3d 381, 391-392 [142 Cal.Rptr. 873]; *Dominey v. Department of Personnel Administration* (1988) 205 Cal.App.3d 729, 738, fn. 6 [252 Cal.Rptr. 620].) Other documents influenced the expert advice provided to City Staff or consultants, who then provided advice to the City Council. For that reason, such documents form part of the underlying factual basis for the City Council's decisions relating to the adoption of Granite Lakes Estates Project. (See Pub. Resources Code, § 21167.6, subd. (e)(10); *Browning-Ferris Industries v. City Council of City of San Jose* (1986) 181 Cal.App.3d 852, 866 [226 Cal.Rptr. 575]; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 153, 155 [39 Cal.Rptr.2d 54].)

VI. FINDINGS REQUIRED UNDER CEQA

Public Resources Code section 21002 provides that "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would *substantially lessen* the significant environmental effects of such projects[.]" (Emphasis added.) The same statute states that the procedures required by CEQA "are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will *avoid* or *substantially lessen* such significant effects." (Emphasis added.) Section 21002 goes on to state that "in the event [that] specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects."

The mandate and principles announced in Public Resources Code section 21002 are implemented, in part, through the requirement that agencies must adopt findings before approving projects for which EIRs are required. (See Pub. Resources Code, § 21081,

subd. (a); CEQA Guidelines, § 15091, subd. (a).) For each significant environmental effect identified in an EIR for a project, the approving agency must issue a written finding reaching one or more of three permissible conclusions. The first such finding is that “[c]hanges or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.” (CEQA Guidelines, § 15091, subd. (a)(1).) The second permissible finding is that “[s]uch changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.” (CEQA Guidelines, § 15091, subd. (a)(2).) The third potential conclusion is that “[s]pecific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.” (CEQA Guidelines, § 15091, subd. (a)(3).) Public Resources Code section 21061.1 defines “feasible” to mean “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.” CEQA Guidelines section 15364 adds another factor: “legal” considerations. (See also *Citizens of Goleta Valley v. Board of Supervisors* (“*Goleta II*”) (1990) 52 Cal.3d 553, 565 [276 Cal. Rptr. 410].)

The concept of “feasibility” also encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project. (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417 [183 Cal.Rptr. 898].) “[F]easibility’ under CEQA encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors.” (*Ibid.*; see also *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715 [29 Cal.Rptr.2d 182].)

The CEQA Guidelines do not define the difference between “avoiding” a significant environmental effect and merely “substantially lessening” such an effect. The City must therefore glean the meaning of these terms from the other contexts in which the terms are used. Public Resources Code section 21081, on which CEQA Guidelines section 15091 is based, uses the term “mitigate” rather than “substantially lessen.” The CEQA Guidelines therefore equate “mitigating” with “substantially lessening.” Such an understanding of the statutory term is consistent with the policies underlying CEQA, which include the policy that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.” (Pub. Resources Code, § 21002.)

For purposes of these findings, the term “avoid” refers to the effectiveness of one or more mitigation measures to reduce an otherwise significant effect to a less than significant level. In contrast, the term “substantially lessen” refers to the effectiveness of such measure or measures to substantially reduce the severity of a significant effect, but not to

reduce that effect to a less than significant level. These interpretations appear to be mandated by the holding in *Laurel Hills Homeowners Association v. City Council* (1978) 83 Cal.App.3d 515, 519-527 [147 Cal.Rptr. 842], in which the Court of Appeal held that an agency had satisfied its obligation to substantially lessen or avoid significant effects by adopting numerous mitigation measures, not all of which rendered the significant impacts in question less than significant.

Although CEQA Guidelines section 15091 requires only that approving agencies specify that a particular significant effect is "avoid[ed] or substantially lessen[ed]," these findings, for purposes of clarity, in each case will specify whether the effect in question has been reduced to a less than significant level, or has simply been substantially lessened but remains significant.

Moreover, although section 15091, read literally, does not require findings to address environmental effects that an EIR identifies as merely "potentially significant," these findings will nevertheless fully account for all such effects identified in the Final EIR.

In short, CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to substantially lessen or avoid significant environmental impacts that will otherwise occur. Project modification or alternatives are not required, however, where such changes are infeasible or where the responsibility for modifying the project lies with some other agency. (CEQA Guidelines, § 15091, subs. (a), (b).)

With respect to a project for which significant impacts are not avoided or substantially lessened either through the adoption of feasible mitigation measures or feasible environmentally superior alternative, a public agency, after adopting proper findings, may nevertheless approve the project if the agency first adopts a statement of overriding considerations setting forth the specific reasons why the agency found that the project's "benefits" rendered "acceptable" its "unavoidable adverse environmental effects." (CEQA Guidelines, §§ 15093, 15043, subd. (b); see also Pub. Resources Code, § 21081, subd. (b).) The California Supreme Court has stated that, "[t]he wisdom of approving . . . any development project, a delicate task which requires a balancing of interests, is necessarily left to the sound discretion of the local officials and their constituents who are responsible for such decisions. The law as we interpret and apply it simply requires that those decisions be informed, and therefore balanced." (*Goleta II*, 52 Cal.3d at p. 576.)

VII. LEGAL EFFECTS ON FINDINGS

To the extent that these findings conclude that various mitigation measures outlined in the Final EIR are effective to reduce significant or potentially significant impacts to a less than significant level and are feasible and have not been modified, superseded or withdrawn, the City hereby binds itself to implement these measures. These findings, in other words, are not merely informational, but rather constitute a binding set of obligations that will come into effect when City decisionmakers formally approve the Project.

The mitigation measures are referenced in the mitigation monitoring program adopted concurrently with these findings, and will be effectuated through the process of constructing and implementing the Project.

VIII. MITIGATION MONITORING PLAN

A Mitigation Monitoring Plan ("MMP") has been prepared for the Project and has been adopted concurrently with these Findings. (See Pub. Resources Code, § 21081.6, subd. (a)(1).) The City will use the MMP to track compliance with Project mitigation measures. The MMP will remain available for public review during the compliance period.

IX. SIGNIFICANT EFFECTS AND MITIGATION MEASURES

The EIR identified several significant environmental effects (or "impacts") that the Granite Lakes Estates Project will cause. Some of these significant effects can be fully avoided through the adoption of feasible mitigation measures. Others cannot be avoided by the adoption of feasible mitigation measures or feasible environmentally superior alternatives; however, these effects are outweighed by overriding considerations set forth in Section XI below. This Section (IX) presents in greater detail the Council's findings with respect to the environmental effects of the Project.

A. SIGNIFICANT OR POTENTIALLY SIGNIFICANT IMPACTS REDUCED TO LESS THAN SIGNIFICANT LEVELS

Impact G-2: Site development will occur in areas underlain with shallow or exposed bedrock, which can present geotechnical constraints that require special construction methods. (Draft EIR, p. G-9.)

Finding:

Changes or alterations have been required in, or incorporated into, the project that avoid the potentially significant environmental effect as identified in the Draft EIR

Explanation:

Throughout the project site, dioritic bedrock and Mehrten formation is present at or within several feet of the soil surface, and shallow depth to rock has been identified in all soil units as an engineering limitation for most of the proposed structures. Exposed and shallow bedrock can pose excavation problems requiring special construction techniques, such as blasting, ripping, over-excavation, or drilling that may or may not result in fracturing of bedrock on or adjacent to the project site. Shallow perched water can saturate soils, which can be unstable under construction equipment, and will require