

CEQA Portal Topic Paper

Alternatives

What Are Alternatives?

Alternatives, in the context of the California Environmental Quality Act (CEQA), are optional ways that the project proponent could achieve most of their objectives, while also reducing or eliminating the environmental impacts of the proposed project (California Public Resources Code [PRC] Section 21002; see also *Friends of the Old Trees v. Department of Forestry & Fire Protection* (1997)).

Alternatives typically involve changes to the location, scope, design, extent, intensity, or method of construction or operation of the proposed project. The Lead Agency is required to evaluate and compare the environmental impacts of alternatives to the proposed project in an Environmental Impact Report (EIR), though not at the same level of detail as the proposed project (CEQA Guidelines Section 15126.6(d)).

Why Are Project Alternatives Important?

A fundamental mandate of CEQA is 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 the project” (PRC Sections 21002, 21081). Therefore, as part of the decision making process for projects involving the preparation of an EIR, governmental agencies are required under CEQA to consider alternatives to proposed actions affecting the environment (PRC Section 21001(g)).

One of the purposes of an EIR is to identify alternatives to a proposed project and evaluate the comparative merits of feasible alternatives (CEQA Guidelines Section 15126.6(d)). By examining a range of alternatives, the Lead Agency can demonstrate that it has taken a “hard look” at the project objectives to select alternatives that allow for meaningful comparison (See *Residents Ad Hoc Stadium Committee v. Board of Trustees* (1979)).

Courts have overturned many EIRs due to an improper or incomplete analysis of alternatives (See *Cleveland National Forest Foundation v. San Diego Association of Governments* (2017); *North Coast Rivers Alliance v. Kawamura* (2015); *Habitat and Watershed Caretakers v. City of Santa Cruz* (2013); *Watsonville Pilots Association v. City of Watsonville* (2010)).

An EIR can also be overturned if it analyzes a range of alternatives, but fails to identify a preferred alternative as the project. A broad range of alternatives without a stable project presents the public with a moving target and an obstacle to informed participation. (See *Washoe Meadows Community v. Department of Parks & Recreation* (2017)).

Is an Analysis of Alternatives Required in an IS/MND?

No, the purpose of an alternative analysis is to look at ways to avoid or reduce the significant environmental impacts of a proposed project. Negative Declarations (NDs) or Mitigated Negative Declarations (MNDs) are only prepared for projects that are demonstrated not to have any significant environmental impacts, or where mitigation can be adopted to reduce all significant impacts to a less-than-significant level. Therefore, because projects supported by NDs or MNDs have been determined to have no significant environmental impacts, no analysis of alternatives is required in these documents.

However, although it is not required, a Lead Agency's consideration of alternatives in support of an ND is not prohibited. An exploration and analysis of alternatives to: a project; a specific aspect of a project with the most potential to result in environmental impacts; or methods or technologies used in project construction or operations (e.g., handling of contaminated sediments) may be useful to minimize the environmental impacts of a proposed project, even where such impacts are already less than significant. Such an exploration of alternatives to the proposed project may also be helpful to the Lead Agency in other ways, such as identifying alternative approaches, designs, or locations that would reduce environmental effects or are more efficient, effective, or cost effective.

Is an Analysis of Alternatives Required in an EIR?

Yes, an evaluation of alternatives is required in all EIRs. CEQA Guidelines Section 15126.6(a) states:

“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 any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation. An EIR is not required to consider alternatives which are infeasible.”

What Alternatives are Required in an EIR?

An EIR must always evaluate a “No Project” alternative (CEQA Guidelines Section 15126.6(e)(1)). Evaluation of a No Project alternative compares impacts of the proposed project with impacts that would occur if the proposed project were not approved and implemented. Beyond evaluation of the No Project alternative, CEQA requires that a “reasonable range” of alternatives be evaluated in an EIR, but does not specify other alternatives that must be evaluated (CEQA Guidelines Section 15126.6(a)).

How Do I Develop A Reasonable Range of Alternatives?

What is a “Reasonable Range” of Alternatives?

The EIR must always evaluate the No Project alternative as well as a “reasonable range” of feasible “build” alternatives (CEQA Guidelines Section 15126.6(e)). Apart from the analysis of the No Project alternative however, there is no ironclad rule governing the nature or scope of the “reasonable range” of other alternatives to be discussed, other than the “rule of reason” (CEQA Guidelines Section 15126.6(a) & (f); see also *Citizens of Goleta Valley v. Board of Supervisors* (1990); *Laurel Heights Improvement Association v. Regents of the University of California* (1988)).

What constitutes a “reasonable range” of alternatives will vary with the facts of each project and should be guided only by the purpose of offering substantial environmental advantages over the project proposal which may be “feasibly accomplished in a successful manner” considering the economic, environmental, social and technological factors involved (See *Citizens of Goleta Valley v. Board of Supervisors* (1990) (citing PRC Sections 21002, 21061.1; CEQA Guidelines Section 15364)).

An EIR need not consider every conceivable alternative to a project (CEQA Guidelines Section 15126.6(a); *Mount Shasta Bioregional Ecology Center v. County of Siskiyou* (2012)). The alternatives considered may include alternative approaches, sites, or both (CEQA Guidelines Section 15126.6(a)).

Consistent with this rule of reason, it is generally uncommon (though not strictly prohibited) for an EIR to evaluate only the No Project alternative. In such a case, the Lead Agency has the relatively difficult legal burden of establishing that, given the circumstances at hand, no other feasible alternatives could satisfy the project objectives while resulting in fewer environmental impacts than the proposed project (See *Mount Shasta Bioregional Ecology Center v. County of Siskiyou* (2012)).

How Do I Develop Alternatives?

Because alternatives must meet most (though not all) of the project objectives, one should begin with reviewing the project objectives (CEQA Guidelines Section 15126.6(c); *In re: Bay-Delta etc.* (2008)). According to the CEQA Guidelines, “A clearly written statement of objectives will help the Lead Agency develop a reasonable range of alternatives to evaluate in the EIR” (CEQA Guidelines Section 15124(b)); see also Project Objectives Topic Paper).

Proper development and analysis of alternatives should also be tied closely to the known or likely significant environmental impacts of the proposed project, as the purpose of the alternatives is to reduce or eliminate these impacts. The project setting can also influence the choice of alternatives (e.g., infill vs. greenfield, site geotechnical constraints, slope, and presence of biological or cultural resources). When developing the alternatives:

- Identify the known or likely significant construction or operational impacts of the project;
- Focus on finding alternatives that avoid or minimize those significant impacts;
- Consider offsite locations, when possible;
- Consider alternative site plans on the proposed site;
- Consider reductions in project size or intensity of uses;
- Consider alternative construction methods or materials;
- Consider alternative project operations; and
- Confirm whether each alternative meets most of the basic project objectives.

How Do I Define The No Project Alternative?

The No Project alternative represents conditions in the study area in the absence of approval of the proposed project (CEQA Guidelines Section 15126.6(e)(1)). The No Project Alternative must discuss current conditions as well as reasonably foreseeable future conditions expected to occur if the project were not approved (CEQA Guidelines Section 15126.6(e)(2)).

However, the analysis of the No Project alternative should not be confused with comparison of the proposed project to Existing Conditions (the baseline for determining the project’s environmental impacts) (CEQA Guidelines Section 15126.6(e)(1)). The purpose of describing and analyzing a No Project alternative is to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project (*Id.*). The analysis of the No Project alternative, as with the analysis of other alternatives, is usually a comparative or qualitative assessment (CEQA Guidelines Section 15126.6(d)(e)).

The first step in the process is to establish the existing uses on the project site. The No Project alternative often represents conditions on the project site at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced (CEQA Guidelines Section 15126.6(e)(2)).

If the proposed project is not expected to be completed and operating for many years, the next step is to determine what reasonably foreseeable changes to the project site and environs are likely to occur unrelated to the proposed project. This may include projects that have been approved, but not yet completed, projects that have been proposed but have not yet been approved, and infrastructure projects planned to be completed within the timeframe established for the evaluation (CEQA Guidelines Section 15126.6(e)(3)(C)).

The analysis of the impacts of the No Project alternative can be accomplished in two general ways, depending on the nature of the proposed project:

1. When the project involves the revision of an existing land use or regulatory plan, a policy, or ongoing operations, the No Project alternative will be defined as the continuation into the future of the existing plan, policy, or operation. The existing plan, policy, or operations should be assumed to continue and to apply to other projects implemented during the timeframe of the analysis. Thus, the projected impacts of the proposed plan or alternative plans would be compared to the impacts that would occur under the existing plan (CEQA Guidelines Section 15126.6(e)(3)(A)).

or,

2. If the project is a specific development project on identifiable property, the No Project alternative should be defined as the conditions that would occur if the proposed project were not implemented. The discussion should compare the environmental effects of the property remaining in its existing state against the environmental effects that would occur if the project were approved and implemented. If disapproval of the project under consideration would result in predictable actions by others, such as the proposal of some other project, the consequences of these actions should be discussed as part of the environmental effects of the No Project alternative. In some circumstances, the failure to proceed with the proposed project would not result in the preservation of existing environmental conditions, but perhaps in another project being implemented; the analysis in that case should identify the practical result of the project's non-approval based on current plans and consistent with available infrastructure and community services. However, the Lead Agency is not required to speculate, or create and analyze a set of

artificial assumptions about what would occur in the future, if it cannot reasonably be known (CEQA Guidelines Section 15126.6(e)(3)(B)).

After defining the No Project alternative using one of these approaches, the Lead Agency should proceed to analyze the impacts of the No Project alternative by projecting what would reasonably be expected to occur in the foreseeable future if the project were not approved. This can often be done based on projections in the Lead Agency's local planning documents (e.g., a General Plan or applicable Specific Plan, and/or the CEQA documents prepared for those documents) (CEQA Guidelines Section 15126.6(e)(3)(C)).

Do I Need to Consider Offsite Alternatives?

Offsite alternatives should be considered. Zoning, environmental conditions, and availability are significant factors in evaluating an offsite alternative. To be analyzed in the EIR, the offsite alternative must be "feasible", and it must be possible for the project proponent to acquire the property. The proposed uses on the property should either be consistent with the applicable general plan designation for the property, or it should be reasonable to expect that a general plan amendment would be successful. There may be situations, however, where an offsite alternative is not feasible, for example, because the primary objective of the project is a modification of an existing facility. (*California Native Plant Society v. City of Santa Cruz* (2009)).

Do I Need to Consider Speculative Alternatives?

An EIR need not consider an alternative whose effects cannot be reasonably evaluated because insufficient detail regarding the alternative is available, and whose implementation is remote and speculative (CEQA Guidelines Sections 15126.6(f)(3), 15145; see also *Residents Ad Hoc Stadium Committee v. Board of Trustees* (1979); *Laurel Heights Improvement Association v. Regents of the University of California* (1993)).

Do I Need to Consider Alternatives Recommended by Others?

A Lead Agency should consider alternatives brought to its attention during the public scoping process (in a draft EIR), or during the public review period (in a final EIR), provided that the alternatives meet the above criteria (CEQA Guidelines Section 15126.6(c)). While not required, alternatives brought to the lead agency's attention after the public review period of an EIR may also be considered (PRC Section 21091(d)(1) & (2); CEQA Guidelines Section 15162(a)(3)(C); see also *Citizens of Goleta Valley v. Board of Supervisors* (1990)). In such circumstances, the lead agency may address the alternative by means of administrative findings (see *Citizens of Goleta Valley v. Board of Supervisors* (1990)).

However, Lead Agencies need not respond to late comments suggesting new alternatives (PRC Section 21091(d)(1); CEQA Guidelines Section 15207). Indeed, a Lead Agency may properly reject alternatives raised after the close of the public comment period; in such instances, the Lead Agency is not required to provide reasons for rejecting those alternatives (see *South County Citizens for Smart Growth v. County of Nevada* (2013)).

Are All Changes To A Project Considered Alternatives?

No, not all changes made to a project should be considered as separate alternatives. For example, minor changes in methods used (or rejected) in carrying out the project are typically not considered alternatives to the project (*Town of Atherton v. California High-Speed Rail Authority* (2014)). However, a number or group of such minor changes taken together, especially if they result in changes to the types or intensity of environmental impacts, may be considered an alternative.

May A Lead Agency Include Alternatives that Do Not Result in Reduced Environmental Impacts?

Yes. While the analysis of an alternative that does not result in the reduction or elimination of an environmental impact of the proposed project is allowable, it is not a substitute for the consideration of other alternatives that reduce or eliminate the project's impacts (CEQA Guidelines Section 15126.6(a); *Cleveland National Forest Foundation v. San Diego Association of Governments* (2017)).

What Must Be Included in an Analysis of Alternatives in an EIR?

Under CEQA, alternatives do not need to be described or analyzed at the same level of detail as the proposed project (CEQA Guidelines Section 15126.6(d)). However, they need to be described in enough detail to allow a comparative analysis of the alternatives against the proposed project (see *Residents Ad Hoc Stadium Committee v. Board of Trustees* (1979)). That is, it must be in sufficient detail for the Lead Agency to differentiate the impacts between the alternatives and to select the Environmentally Preferred Alternative (see *Laurel Heights Improvement Association v. Regents of the University of California* (1988)).

The EIR should briefly describe the rationale for selecting the alternatives to be discussed. The EIR should also identify any alternatives that were considered by the lead agency during the scoping process, but rejected as infeasible, and briefly explain the reasons why these alternatives were rejected (see *Alternatives Considered but Rejected* below for more detail). For an alternative suggested during the public comment period on the draft EIR, the final EIR should either analyze the suggested alternative at the appropriate level of detail, or explain that

the suggested alternative was considered but rejected from further analysis. Additional information explaining the choice of alternatives may be included in the administrative record (CEQA Guidelines Section 15126.6(c)).

The EIR may include a summary comparison table that lists each environmental resource analyzed, the relative environmental impacts of each alternative with respect to each resource, and how they compare to the impacts of the proposed project (CEQA Guidelines Section 15126.6(d)). The following are useful ways to compare alternatives:

- Describe if impacts are greater, lesser, similar to the proposed project and other alternatives;
- Summarize the overall environmental impacts of each alternative;
- Discuss the extent to which each alternative attains project objectives;
- Discuss any concerns with the feasibility of each alternative; and
- Most importantly, support any conclusions with evidence and include such evidence in the administrative record.

The following is an abbreviated example of a summary table.

Topic	Project	No Project	Alt 1	Alt 2
Air Quality	S	LTS	SUI	SUI
Noise	LTS	LTS	LTSM	LTS
Biology	LTSM	LTS	LTSM	LTS
Geology	LTSM	LTS	LTSM	LTSM

S=Significant Impact; SUI=Significant Unmitigated Impact; LTS=Less Than Significant Impact; LTSM=Less Than Significant Impact with Mitigation

Alternatives Considered but Rejected.

An analysis of alternatives in an EIR should include a list of alternatives considered but rejected, and include an explanation of why alternatives were rejected. (If this discussion is not included in an EIR, it must exist elsewhere in the administrative record). The Lead Agency may, as part of the scoping process, make an initial determination as to which alternatives are potentially feasible and merit in-depth consideration, and which do not. (CEQA Guidelines Section 15126.6(c)).

As noted above, remote or speculative alternatives need not be considered and may be rejected from further evaluation.

What Factors May be Considered in Determining the Feasibility of Alternatives?

As statutorily defined, “Feasible’ means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.” (PRC Section 21061.1; see also CEQA Guidelines, Section 15364 [same definition but with addition of “legal” factors].) “[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.” (*City of Del Mar v. City of San Diego* (1982); *Sequoyah Hills Homeowners Association. v. City of Oakland* (1993)).

The issue of whether an alternative is feasible arises at two different points in the CEQA process: first, in the assessment of alternatives in the EIR; and second, during the Lead Agency’s consideration of whether to approve the project. The standard for determining whether an alternative should be analyzed in an EIR is whether the alternative is *potentially* feasible. Subsequently, the Lead Agency must determine whether the alternatives included in the EIR are actually feasible, based on the analysis in the EIR as well as factors external to the environmental analysis, e.g., social or economic concerns (see *California Native Plant Society v. City of Santa Cruz* (2009)).

While there is no bright line between these two assessments, generally the EIR should refrain from reaching conclusions regarding *actual* feasibility and should focus the analysis on whether an alternative is *potentially* feasible, and then undertake the comparison of the environmental effects of the project and alternatives.

Screening criteria may be developed to determine the feasibility of potential alternatives. Among the factors that may be taken into account when addressing the feasibility of alternatives are:

- Site suitability for the proposed use(s);
- Economic viability;
- Availability of infrastructure to serve the site;
- General plan consistency, other plans or regulatory limitations;
- Jurisdictional boundaries (projects with a regionally significant impact should consider the regional context); and

- Whether the proponent can reasonably acquire, control or otherwise have access to an alternative site (or the site is already owned by the proponent)

(CEQA Guidelines Section 15126.6(f)(1); see also *Citizens of Goleta Valley v. Board of Supervisors* (1990); *Save Our Residential Environment v. City of West Hollywood* (1992)).

By applying the criteria to each potential alternative, infeasible alternatives can be screened out, and a reasonable range of feasible alternatives that meet most of the project objectives and substantially avoid or lessen the proposed project's significant environmental effects will result (see *In re: Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008)).

Under CEQA, an alternative may be eliminated for any of the following reasons:

- The alternative fails to meet most of the basic project objectives;
- The alternative is infeasible;
- The alternative does not avoid significant environmental impacts; or
- Implementation of the alternative is remote and speculative and the effects cannot be reasonably ascertained.

(CEQA Guidelines Section 15126.6(f)).

Alternatives may not be rejected merely because they are beyond an agency's authority, would require new legislation, or would be too expensive (CEQA Guidelines Section 15126.6(f)(2)).

When economics is used as a factor to support a finding of infeasibility, the fact that an alternative may be more expensive than the project does not necessarily make it infeasible (see *Citizens of Goleta Valley v. Board of Supervisors* (1988); *Association of Irrigated Residents v. County of Madera* (2003)). The Lead Agency must support the finding with specific data that shows the additional cost or lost profits are great enough to make it impractical to proceed with the project (see *Citizens of Goleta Valley v. Board of Supervisors* (1988)); *Foundation for San Francisco's Architectural Heritage v. City and County of San Francisco* (1980); *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002)).

Identification of Environmentally Superior Alternative.

CEQA requires that EIRs identify the Environmentally Superior Alternative, and discuss the facts that support that selection. (See PRC Section 21081.5; CEQA Guidelines Sections 15091, 15126.6(e)(2)). The Lead Agency is not, however, obligated to select the Environmentally Superior Alternative for implementation if

it would not accomplish the basic project objectives and/or is infeasible (see State CEQA Guidelines Section 15126.6(a), (c) & (f)).

Selection of the Environmentally Superior Alternative may be difficult, especially when the differences between the impacts of the alternatives involve trade-offs between types of impacts (e.g., between impacts on traffic and impacts on cultural resources, or between impacts on one species or habitat and impacts on other species or habitats). As with other aspects of CEQA, an explanation of the decision is often more important than the decision itself; as long as the explanation in an EIR is supported with substantial evidence in the administrative record, decisions by Lead Agencies are afforded deference by reviewing courts (CEQA Guidelines Sections 15151, 15384).

In many cases, the No Project alternative would have the fewest or least intense impacts. However, the State CEQA Guidelines Section 15126.6(e)(2) states that “If the environmentally superior alternative is the ‘no project’ alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives”.

Should the Lead Agency change its determination of the Environmentally Superior Alternative *after* circulation of the draft EIR but before the EIR’s certification by the Lead Agency, and that newly identified Environmentally Superior Alternative is *not* adopted as the proposed project, revisions to the draft EIR and recirculation of same are likely required (CEQA Guidelines Section 15088.5(a)(3); *South County Citizens for Smart Growth v. County of Nevada* (2013)). Arguably, recirculation is warranted even if the project proponent accepts the newly identified Environmentally Superior Alternative, in order to afford effective public comment on the Lead Agency’s determinations (PRC Section 21092.1; CEQA Guidelines Section 15088.5(a)(4); see also *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007)).

If the Lead Agency’s determination of the Environmentally Superior Alternative changes *after* certification of the EIR, but before approval of the project, the proposed project likely requires CEQA to be re-opened and a subsequent or supplemental EIR to be prepared (CEQA Guidelines Sections 15162(a)(3)(C), 15163(a)(1)). Any subsequent EIR shall again be subject to the same public notice and review provisions (CEQA Guidelines Sections 15162(d), 15072)). However, “[o]nce a project has been approved, the Lead Agency’s role in the project approval is completed, unless further discretionary approval on that project is required” (CEQA Guidelines Section 15162(c)). Therefore, if the Lead Agency’s determination of the Environmentally Superior Alternative changes *after* the approval of the project, no additional CEQA review is required unless the project is subject to additional discretionary approvals (CEQA Guidelines Section 15162(c)). In this case, the Lead Agency with jurisdiction over the next discretionary approval shall conduct any additional CEQA review required.

Analysis of Alternatives Under NEPA

While Lead Agencies under CEQA are not required to evaluate the environmental impacts of alternatives to the same level of detail as the proposed project (CEQA Guidelines Section 15126.6(d)), the National Environmental Policy Act (“NEPA”) requires a “co-equal” analysis of the alternatives (see 40 Code of Federal Regulations (“C.F.R.”) Section 1502.14(b)). Stated differently, under NEPA, the analysis of the impacts of alternatives must be at the same level of detail as the analysis of impacts of the proposed action (NEPA’s term for the proposed project).

This usually means that each alternative must be defined at a comparable level of detail. Section 1502.14 of the Council on Environmental Quality (CEQ) Guidelines states that in the “Alternatives” section of an Environmental Impact Statement (EIS), agencies shall “[d]evote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.”

Whereas an analysis of alternatives is not required in an Initial Study under CEQA, an alternatives analysis is required in initial Environmental Assessments (EAs) . However, alternatives analyses in EAs are typically less rigorous than those contained in EISs (Federal Highway Administration *Alternatives Analysis White Paper*).

CEQ and the California Governor’s Office of Planning and Research (OPR) have jointly prepared the February 2014 guidance document NEPA and CEQA: Integrating Federal and State Environmental Reviews (CEQA/NEPA Handbook). The handbook provides practitioners with an overview of NEPA and CEQA as well as suggestions for developing a single environmental review process that can meet the requirements of both statutes.

Table 1 summarizes the requirements for the analysis of alternatives under each type of environmental document under both CEQA and NEPA.

Table 1 – Alternatives Required In Each Type of Environmental Document

Document Type	Alternatives Required
CEQA	
Categorical Exemption	None
Initial Study	None
Environmental Impact Report	Reasonable range of alternatives, including those achieve would attain most of the basic project objectives while avoiding

	or reducing the environmental effects of the project. No-build must be considered. Comparative analysis. Analysis at same level of detail as proposed project not required.
NEPA	
Categorical Exclusion	None
Environmental Assessment	One build alternative is allowable, but for a complex or controversial project, more than one alternative is advised. No-Action alternative must be considered.
Environmental Impact Statement	All reasonable alternatives including No-Action Alternative. Each alternative must be considered and discussed at an equal level of detail.

Alternatives in Joint CEQA/NEPA Documents

The typical rule when preparing a joint CEQA/NEPA document is that when there is a difference between the requirements of the two laws, the Lead Agencies should prepare the document using the more stringent requirements (see *CEQA/NEPA Handbook* at 2, 20, 48). Because NEPA requires a more detailed alternatives analysis, joint EIR/EIS documents should be developed in a manner which satisfies NEPA requirements (40 C.F.R. Section 1502.14(b)).

Areas of Controversy Regarding Alternatives

Legal standards concerning alternatives analysis is one of the more settled areas of CEQA law. The two key issues in most CEQA decisions considering the adequacy of an EIR’s analysis of alternatives are whether the EIR included a “reasonable range” of alternatives, including for example an alternative project site, and whether the level of detail of the alternatives analysis is sufficient. There is not “bright-line” rule for either of these issues, and the results tend to be fact-driven. It is critically important to not short-change the alternatives analysis in the EIR, however, either in terms of the number of alternative considered or the depth of analysis. The ultimate determination whether an alternative is actually feasible should be made by the decision-making body as part of its findings rather than in the EIR itself, which should present the information regarding alternatives in a clear and impartial way.

Alternatives in the CEQA Statute

Alternatives are described in many, sections of CEQA (PRC Sections 21000 *et seq.*), including, but not limited to the following:

- § 21001(g) - Requires governmental agencies to consider alternatives to proposed actions affecting the environment.
- § 21002 - Public agencies should not approve projects, as proposed, if there are feasible alternatives or mitigation measures available that would substantially lessen the significant environmental impacts. Further states that projects that have significant impacts on the environment may be approved if alternatives are found to be infeasible.
- § 21002.1(a) - The purpose of an EIR is to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided
- § 21002.1(e) - EIRs shall focus on the project's potentially significant effects on the environment.
- § 21003.1(a) - Public comments on environmental documents should be made as soon as possible to assist the Lead Agency in identifying potential significant effects of a project, alternatives, and mitigation measures which would substantially reduce the effects.
- § 21061 - The purpose of an EIR is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.
- § 21080.1(b) - The Lead Agency shall, upon the request of a potential applicant, provide for consultation prior to the filing of the application regarding the range of actions, potential alternatives, mitigation measures, and any potential and significant effects on the environment of the project.
- § 21080.5(d)(2)(A) - Requires that an activity not be approved or adopted pursuant to a certified regulatory program if there are feasible alternatives or mitigation measures that would substantially lessen environmental effects.
- § 21080.5(d)(3) - Requires environmental documents prepared pursuant to a certified regulatory program to include a description of alternatives to the proposed activity.
- § 21081 – In making findings regarding an EIR where more or more significant environmental impacts were identified, the Lead Agency may

- include information as to why alternatives to the project are infeasible.
- § 21081.5 - In making findings regarding an EIR, including where alternatives are determined to be feasible, the Lead Agency must base its conclusions on substantial evidence in the record.
 - § 21083.8.1 - Pertains to EIRs for military base reuse plans, including subsections regarding the analysis of alternatives.
 - § 21091(d)(1) – The Lead Agency shall respond to comments received on a CEQA document if those comments are received during the public review period.
 - § 21094 - Pertains to tiered EIRs and initial studies, including the analysis of alternatives in these documents.
 - § 21100(b)(4) - Requires that EIRs contain an analysis of alternatives to the proposed project.
 - § 21104(a) - Requires State Lead Agencies to provide for early consultation while preparing an EIR to, among other things, identify alternatives to the proposed project.
 - § 21153 - Requires local Lead Agencies to consult with responsible and trustee agencies prior to completing and EIR to, among other things, identify alternatives to the proposed project.
 - § 21154 - When local agencies prepare an EIR for a project required pursuant to an order from a state agency, the alternatives to be analyzed in the EIR shall not include those that are in conflict with the order.

Alternatives in the CEQA Guidelines

Alternatives are described in many, sections of the CEQA Guidelines, including, but not limited to the following:

- § 15002(a)(3) - Provides that one of the basic purposes of CEQA is the prevention or avoidance of avoidable significant damage to the environment by requiring changes in projects through the use of feasible alternatives or mitigation measures.

- § 15002(f) - Defines the EIR as the document by which a governmental agency analyzes the effects of a proposed project and identifies alternatives to the proposed project.
- § 15002(h)(4) - Identifies the selection of an alternative as a means of protecting the environment.
- § 15004(b) - Prohibits the Lead Agency from taking actions that would, among other things, limit the choice of alternatives, prior to completing CEQA compliance.
- § 15021 - Prohibits a Lead Agency from approving a project when a feasible alternative or mitigation measures exist that would lessen significant environmental effects.
- § 15041(c) – For projects that include housing development, a Lead or Responsible Agency shall not mitigate for significant environmental effects by reducing the number of units, unless no feasible alternatives exists that would provide comparable reductions in effects.
- § 15060.5 – The Lead Agency shall consult with the project sponsor prior to the filing of a formal application to, among other things, identify potential alternatives.
- § 15065(c)(2) - When making findings regarding an EIR, where significant environmental effects remain after the adoption of mitigation measures, the Lead Agency must make detailed findings, based on substantial evidence, regarding the feasibility of alternatives that would avoid or substantially lessen the effects.
- § 15082(b)(1)(A) - In preparing responses to a Notice of Preparation for an EIR, Responsible and Trustee Agencies and OPR shall provide the Lead Agency with information, including reasonable alternatives that should be analyzed in the EIR.
- § 15083(a) - Suggests that scoping prior to preparation of an EIR can assist Lead Agencies in identifying alternatives.
- § 15088.5(a) - Defines the presence of new information that may require recirculation of an EIR prior to certification, to include the identification of a new feasible alternative.
- § 15091(a)(3) - In making findings regarding an EIR where one or more significant environmental impacts were identified, the Lead Agency may

- include information as to why alternatives to the project are infeasible.
- § 15091(c) - Where it shares jurisdiction with another agency for an alternative, the Lead Agency shall provide the specific reasons for rejecting mitigation measures or alternatives in their findings.
 - § 15096(d) - Comments of Responsible Agencies on EIRs should focus their comments on, among other things, alternatives that the EIRs should include.
 - § 15096(g) - Responsible Agencies shall not approve a project if they find that a feasible alternative is available that would avoid or substantially lessen a significant environmental effect.
 - § 15124(b) - Defines the relationship between alternatives and the project objectives.
 - § 15126.6 - Defines the general requirements of CEQA with regard to the analysis of alternatives.
 - § 15126.6(f)(2) - Alternatives may not be rejected merely because they are beyond an agency's authority, would require new legislation, or would be too expensive.
 - § 15145 - If the Lead Agency determines that an impact is too speculative, it should indicate this and need not analyze that impact further.
 - § 15151 - In evaluating the adequacy of an EIR, the courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.
 - § 15162(a)(3)(C) - Subsequent CEQA documentation may be required if, after an EIR has been certified or an ND adopted for a project, alternatives previously found to be infeasible, are subsequently found to be feasible.
 - § 15163(a)(1) – The Lead Agency or Responsible Agency may choose to prepare a supplemental EIR if any of the conditions described in Section 15162 would require the preparation of a subsequent EIR.
 - § 15207 – The Lead Agency need not respond to late comments (including suggested alternatives), but may do so.
 - § 15364 - Defines the term “feasible” within CEQA.

- § 15384 - Defines the term “substantial evidence” within CEQA.

Important Cases

The following are important published cases involving issues related to alternatives:

Los Angeles Conservancy v. City of West Hollywood (2017) 18 Cal.App.5th 1031: Court held that EIR’s analysis of the conservation alternative was detailed enough to permit informed decision making and public participation. Court found that City was not required to prepare a “conceptual design” for the alternative. Finally, Court stated that “[a]n agency’s finding of infeasibility . . . is ‘entitled to great deference’ and ‘presumed correct’” in determining whether Lead Agency’s findings that an alternative is infeasible is supported by substantial evidence.

Cleveland National Forest Foundation v. San Diego Association of Governments (2017) 17 Cal.App.5th 413: EIR that included analysis of project alternatives focused primarily on congestion relief was inadequate because it failed to analyze an alternative that could significantly reduce total vehicle miles.

Washoe Meadows Community v. Department of Parks & Recreation (2017) 17 Cal.App.5th 277: Court found that the presentation of five very different alternative projects in the EIR without a stable project description was an obstacle to informed public participation, noting that a broad range of possible projects presents the public with a moving target and requires a commenter to offer input on a wide range of alternatives.

Pesticide Action Network America v. Department of Pesticide Regulation (2017) 15 Cal.App.5th 478: Court held that Department “glaringly” failed to address any feasible alternative to registering proposed new uses for two pesticides as required by PRC Section 21001(g).

Banning Ranch Conservancy v. City of Newport Beach (2017) 2 Cal.5th 918: EIR did not describe a range of reasonable alternatives where it failed to include analysis of the Coastal Act’s environmentally sensitive habitat area (ESHA) requirements, including consideration of which project areas might qualify as ESHA or potential impacts on ESHAs for a project in the coastal zone.

Bay Area Citizens v. Association of Bay Area Governments (2016) 248 Cal.App.4th 966: Court held that the “No Project” alternative appropriately captured the continuation of existing regional policy. Court found that because the plaintiff’s proposed alternative double-counted statewide emissions mandates, it was not feasible in light of the emission reduction requirements of SB 375.

North Coast Rivers Alliance v. Kawamura (2015) 243 Cal.App.4th 647: EIR failed to analyze a control program as an alternative to eradication of light brown apple moth. “Last-minute” adoption of a control program instead of eradication did not cure errors in alternatives analysis, which did not include analysis of the control program based on stated project objective to eradicate light brown apple moth.

Town of Atherton v. California High-Speed Rail Authority (2014) 228 Cal.App.4th 314: Authority properly rejected alternatives proposed during public review process because substantial evidence showed proposed alternatives were substantially similar to alternatives considered in program EIR.

California Clean Energy Committee v. City of Woodland (2014) 225 Cal.App.4th 173: City’s findings that an alternative was environmentally inferior to proposed project were not supported by analysis in EIR, which rejected the alternative based on economic feasibility.

Habitat and Watershed Caretakers v. City of Santa Cruz (2013) 213 Cal.App.4th 1277: EIR failed to discuss any feasible alternative, such as a “limited-water alternative,” which would “partially meet the project’s objectives,” and EIR lacked analysis supporting agencies’ conclusion that the alternative would not lessen or substantially avoid the significant impacts from the project.

South County Citizens for Smart Growth v. County of Nevada (2013) 221 Cal.App.4th 316: When EIR includes a reasonable range of alternatives, but Lead Agency’s staff suggests an additional alternative after release of the final EIR and Lead Agency chooses not to recirculate the EIR with the staff alternative, the agency is not required to make an express finding that the staff alternative is infeasible before it can approve the revised project.

Mount Shasta Bioregional Ecology Center v. County of Siskiyou (2012) 210 Cal.App.4th 184: Court upheld EIR’s analysis of alternatives, where infeasible alternatives were dismissed during scoping phase, finding challengers of EIR failed to identify any potentially feasible alternative that could satisfy the project objectives, and finding the EIR considered a “reasonable range” of alternatives given the circumstances presented, despite the fact that the only alternative considered in depth in the Draft EIR was the “No Project” alternative.

Watsonville Pilots Association v. City of Watsonville (2010) 183 Cal.App.4th 1059: EIR for update of City’s General Plan should have considered a “reduced development alternative.” City’s argument that it was not required to consider a “reduced development alternative” because such an alternative did not meet each of the 12 project objectives is contrary to requirement in CEQA Guidelines Section 15126.6(b) that a feasible alternative be considered even if it “would impede to some degree the attainment of project objectives.” Further, City’s

argument that the “No Project” alternative was in essence a “reduced development alternative” was rejected since the “No Project” alternative achieved none of the basic project objectives, and the fundamental role of the alternatives analysis is to identify alternatives that achieve most of the project objectives while also reducing the project’s significant environmental effects.

Jones v. Regents of the University of California (2010) 183 Cal.App.4th 818: EIR for long-range plan for the Lawrence Berkeley National Laboratory included a reasonable range of alternatives, including a “partial off-site alternative,” and did not need to consider a “full off-site alternative” where such alternative was properly rejected because it failed to achieve a fundamental project objective.

California Native Plant Society v. City of Santa Cruz (2009) 177 Cal.App.4th 947: EIR’s alternatives analysis satisfied CEQA’s informational mandates and City’s decisions concerning which alternatives to analyze were supported by evidence in the administrative record. The alternatives selected need not satisfy every key objective of the project, and ranking the relative importance of the various objectives of the project is a policy decision entrusted to the city council. When assessing feasibility in connection with the alternatives analysis in the EIR, the question is whether the alternative is potentially feasible. When deciding on project approval, the question is whether the alternatives are actually feasible. Further, CEQA does not require an EIR to explore offsite project alternatives every case. The requirement that an EIR describe alternatives to the proposed project applies only to the project as a whole, not to the various facets of the projects, such as grading and access road.

Finally, the court held that City’s rejection of Environmentally Superior alternatives as infeasible based on policy considerations – here, the City’s interest in promoting transportation alternatives as well as access to its open space for persons with disabilities - was permissible under PRC Section 21081(a)(3).

In re: Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings (2008) 43 Cal.4th 1143: Finding Program EIS/R discussed a reasonable range of alternatives to expansion of water storage facilities by dam construction. Failure to include a reduced exports alternative was not an abuse of discretion because CALFED properly applied the rule of reason when it decided to consider in the PEIS/R only alternatives that had the potential to both achieve ecosystem restoration goals and meet current and projected water export demands, and that would provide balanced progress in all four of the program areas.

Association of Irrigated Residents v. County of Madera (2003) 107 Cal.App.4th 1383: Agency properly rejected reduced-herd size alternative as

infeasible where substantial evidence demonstrated alternative was economically infeasible and would not achieve the basic objective of the project.

San Franciscans Upholding the Downtown Plan v. City and County of San Francisco (2002) 102 Cal.App.4th 656: Appellants contention that EIR needed to include analysis of economic feasibility of alternatives was found to be without merit because it is the public agency, not the EIR, that bears responsibility for making "findings" as to whether "[s]pecific economic, legal, social, technological, or other considerations . . . make infeasible the mitigation measures or alternatives identified in the [EIR]," or whether there are "specific overriding economic, legal, social, technological, or other benefits of the project" that "outweigh the significant effects on the environment."

Friends of the Old Trees v. Department of Forestry & Fire Protection (1997) 52 Cal.App.4th 1383: Defining alternative for the purposes of CEQA as "a description of another activity of project that responds to the major environmental issues identified during the planning process." Finding that Lead Agency's review of timber harvest plan (THP) pursuant to certified regulatory program is required to include analysis of alternatives, and inclusion of mitigation could not substitute for discussing project alternatives.

Laurel Heights Improvement Association v. Regents of the University of California (1993) 6 Cal.4th 1112: Upholding Final EIR conclusion that potential cumulative impacts from toxic air emissions were too "speculative" for evaluation. Final EIR's response to comment expanding on discussion of the possible environmental consequences of an alternative did not trigger recirculation because substantial evidence supported Lead Agency's decision that there was no new adverse environmental effect or new feasible alternative that was not implemented by the project proponent.

Sequoyah Hills Homeowners Association. v. City of Oakland (1993) 23 Cal.App.4th 704: EIR that did not examine additional "decreased density alternatives" satisfied the information goal of CEQA because the analysis of the additional alternatives would not have eliminated the significant visual impacts from the project. Further, City did not violate CEQA in concluding that a decreased density alternative would be legally infeasible because it would be prohibited by Government Code Section 65589.5(j), which prohibits a local agency from requiring as a condition of approval that the project be developed at a lower density unless the project would have a specific, adverse impact upon the public health or safety that cannot be mitigated without lowering the density.

Save Our Residential Environment v. City of West Hollywood (1992) 9 Cal.App.4th 1745: Finding the extent to which alternatives must be considered in an EIR is governed by a rule of reason, the ultimate objective being whether a discussion of alternatives fosters informed decision-making and informed public

participation. Because EIR stated that no other site was available for proposed senior citizen housing development, and gave reasons for this conclusion, Court held EIR was adequate. The purpose of CEQA was not to generate paperwork, and EIR is not required to discuss infeasible alternatives.

Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553:

Finding EIR discussed a legally acceptable range of alternatives, that only reasonable alternatives need be examined in EIR, and that the administrative record substantially supported the conclusion that none of the additional sites represented a feasible project alternative or merited extended discussion in EIR. Although the alternatives were not barred from consideration simply because they were submitted by the citizens' group after the expiration of the comment period for EIR, the court held that the timing issue did justify the board's decision to address the alternative sites by means of administrative findings, rather than by commissioning yet another supplemental EIR.

The court held that the board properly relied on a local coastal program for analysis and conclusions in determining the feasibility of additional sites, finding no abuse of discretion in Lead Agency's finding of certain alternatives to be infeasible, based upon inconsistent land-use designations. Lead Agency could properly consider the fact that an alternative site was outside of that Lead Agency's jurisdiction and whether or not a site was owned by the project proponent, in making an assessment of feasibility.

Citizens of Goleta Valley v. Board of Supervisors (1988) 197 Cal.App.3d

1167: Court held that the record failed to provide substantial evidence to support a finding that a scaled-down project alternative was economically infeasible. The fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project.

Laurel Heights Improvement Association v. Regents of the University of California (1988) 47 Cal.3d 376:

Under CEQA an EIR must include a meaningful discussion of both project alternatives and mitigation measures. The range of alternatives needing to be analyzed is subject to a rule of reason. Equal level of detail not required in the analysis of alternatives, but is not prohibited. No purpose can be served by requiring EIR to engage in sheer speculation as to future environmental consequences.

Finding discussion of alternatives inadequate, where it identified three types of alternatives (no project anywhere, alternative sites at the university's existing campus, and alternative sites off-campus) but provided only one and one-half pages of textual analysis. The discussion of project alternatives must contain analysis sufficient to allow informed decision-making; conclusory comments in

support of environmental conclusions are generally insufficient. Lead Agency's responsibility to discuss alternatives was not dependent upon a showing by opponents of the relocation that feasible alternatives existed.

City of Del Mar v. City of San Diego (1982) 133 Cal.App.3d 401: Court held that City properly rejected project alternatives as infeasible, explaining that the Lead Agency may reasonably rely on various "economic, environmental, social, and technological" factors in evaluating the feasibility of project alternatives. "Feasibility" under CEQA encompasses "desirability" to the extent that desirability is based on a reasonable balancing of such factors.

Foundation for San Francisco's Architectural Heritage v. City and County of San Francisco (1980) 106 Cal.App.3d 893: Court held that Lead Agency made adequate findings that project alternatives were infeasible given their increased construction costs under PRC Section 21081.

Residents Ad Hoc Stadium Committee v. Board of Trustees (1979) 89 Cal.App.3d 274: Discussion of alternatives need not be exhaustive, and is subject to a construction of reasonableness. It requires the production of information sufficient to permit a reasonable choice of alternatives so far as environmental effects are concerned. Alternatives discussion should support Lead Agency's "hard look" at environmental consequences in recognition of the factors described in CEQA.

There is no need for an extended discussion of speculative alternatives. Lead Agency need not devote itself to an extended discussion of the environmental impact of alternatives remote from reality such as those which are of speculative feasibility or could only be implemented after significant changes in governmental policy or legislation.

County of Inyo v. City of Los Angeles (1977) 71 Cal.App.3d 185: EIR that lacks a genuine "No Project" alternative or alternatives tied to a reasonably conceived project fails to comply with CEQA's demand for meaningful alternatives.

Related CEQA Portal Topics

- Project Purpose and Objectives (In process)
- Project Description
- Findings (To come)

Authors

Lennie Rae Cooke, VCS Environmental - lrcooke@vcsenvironmental.com

Craig Stevens, Stevens Consulting - craig@cdstevens.com

Reviewers

Ian Michael Forest, Southern California Edison Company - Ian.Forrest@sce.com

Tina Thomas, Thomas Law Group - tthomas@thomaslaw.com

Amy Higuera, Thomas Law Group – ahiguera@thomaslaw.com

Leslie Walker, Thomas Law Group - lwalker@thomaslaw.com

Sources

Bass, Ronald E., et al., *CEQA Deskbook, A Step-by-Step Guide on How to Comply with the California Environmental Quality Act* (Solano Press Books, 3d Ed. 2012)

CEQA Practicum: “Project Objectives, Alternatives Analysis, and CEQA Findings,” Presented By: Amanda K. Olekszulín Curtis E. Alling, AICP Ascent Environmental, Inc., April 2013.

The White House Council on Environmental Quality and the California Governor’s Office of Planning and Research (OPR). 2014. NEPA and CEQA: Integrating Federal and State Environmental Reviews. Available at: <http://www.opr.ca.gov/news.php?id=64>. March 3.

Legal Disclaimer:

The AEP-sponsored CEQA Portal, this Topic Paper, and other Topic Papers and information provided as part of the CEQA Portal are not intended as legal advice. The information contained herein is being provided as a public service and has been obtained from sources believed reliable. However, its completeness cannot be guaranteed. Further, additional facts or future developments may affect subjects contained herein. Seek the advice of an attorney before acting or relying upon any information provided herein.

Date Updated: 10/18/18