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The California Environmental Quality Act: Alternative Site Analysis Requirements in Environmental Impact Reports

The California Environmental Quality Act (CEQA) was promulgated for the purpose of protecting the environment through the reporting and disclosure of environmental impacts. The reporting process requires the consideration of alternative project sites. Currently, local agencies and project developers determine which alternative sites will be reviewed to meet this requirement. This article addresses whether a sufficient range of alternative sites are being considered under CEQA and which parties should be involved in the choice.

INTRODUCTION

Undeveloped land is a valuable and limited resource in California. As land development pressures continue to increase in California, land-use planners, government agencies, and city officials will have to make difficult and important decisions. The land-use decisions that are made today will have widespread effects on the quality of life and the environment far into the future.

Considering alternatives is an important part of any land-use decision. If city officials and planners make land-use decisions without

1. Peter Navarro, The Growth Nightmare: A Worst-Case Scenario for San Diego's Future, SAN DIEGO UNION, July 28, 1991, at C-1, C-7. By the year 2005, the population of San Diego County is expected to increase by one million persons. This mass infusion of population will put incredible burdens on an already limited land base. Outlying undeveloped areas of the county will be placed under incredible economic pressure to allow development on property currently zoned agricultural and rural. SAN DIEGO UNION, September 21, 1991, at A-23. The problems of population pressures on land resources are not restricted to San Diego County. The entire state of California can expect dramatic population growth. During the 1990s California's population is expected to grow by six million persons. Id.

2. Although this Comment is limited to the discussion of alternative site analysis under the California Environmental Quality Act, most environmental legislation includes provisions for the consideration of alternatives. See The National Environmental Policy Act, 42 U.S.C. §§ 4321, 4332 (1970); Federal Land Policy and Management Act, 43 U.S.C. §§ 1701, 1712(c)(6) (1976). Many individual states also employ some form of
considering potential project alternatives, many communities may be burdened with planning errors and the misallocation of resources. In order to ensure the optimum use of our land resources, a wide range of project alternatives should be considered before a new project is approved.  

This Comment discusses the background and the present state of alternative site analysis in California land-use decisions under the California Environmental Quality Act (CEQA). This Comment also addresses the issues of whether the optimum range of alternatives are being considered in land-use decisions and which organizations should be involved in the choice of alternatives. Currently under CEQA, local agencies and project developers determine which alternatives to consider in land-use decisions. However, these parties alone may not have sufficient incentive to find and consider the optimum range of project alternatives. Project opponents, the groups with the greatest incentive to find project alternatives, are not currently allowed to directly submit their alternative choices for in-depth environmental review. As a result, fewer project alternatives are being considered in these important land-use decisions.

Section I of this Comment discusses CEQA's legislative intent, background, and procedural workings. Section II surveys four representative decisions interpreting Environmental Impact Report requirements under CEQA. These four cases demonstrate how early court decisions interpreted CEQA to broaden the depth and scope of environmental analysis in Environmental Impact Reports. Section III traces the development of alternative site analysis under CEQA through appellate and supreme court case law. Section III concludes with an analysis of the expansive supreme court decision in _Laurel Heights_.

Section IV addresses the recent supreme court decision in _Citizens of Goleta Valley_. The _Goleta_ decision propounded a new direction in alternative site analysis under CEQA, guided by the principle of "feasibility." With the _Goleta_ decision, the scope of potential project environmental impact review in their land-use decisions. See Nicholas A. Robinson, _Environmental Impact Review in the States_, 307 PRAC. L. INST. REAL EST. 403 (1988).

3. See infra discussion of requirement for inclusion of alternatives in Environmental Impact Reports at text accompanying note 33.


5. See infra text accompanying note 140-41.


7. _Citizens of Goleta Valley v. Board of Supervisors_, 52 Cal. 3d 553, 801 P.2d 1161, 276 Cal. Rptr. 410 (1990); see infra text accompanying notes 124-43.
alternative locations narrowed as lead agencies\textsuperscript{8} and developers could pre-screen alternatives from discussion in the environmental analysis.

Finally, Section V explores the potential problems of alternative site analysis after Goleta. Allowing lead agencies and project developers to pre-screen project alternatives causes three problems: (1) the range of alternatives is reduced, (2) the public is excluded from the "analytic route" of the alternative site analysis, and (3) the sequence of events as outlined in the CEQA guidelines and case law is circumvented. Section V also sets forth a proposal that the California Legislature amend CEQA. CEQA should be amended to allow direct public participation in the selection of alternatives addressed in Environmental Impact Reports. Direct public participation would have tangible benefits upon land-use decisions. A wider range of alternatives would be addressed in Environmental Impact Reports. In addition, the public would be encouraged to participate earlier in the project review process and CEQA-related litigation would be reduced.

I. BACKGROUND, LEGISLATIVE INTENT, AND PROCEDURAL WORKINGS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

In 1970, the California Legislature enacted the broadest environmental legislation in the state under the title of the California Environmental Quality Act (CEQA).\textsuperscript{9} CEQA was enacted to remedy a very specific deficiency in land-use planning. Public agencies were approving projects without considering the environmental effects of those projects.\textsuperscript{10} CEQA was implemented to require agencies to perform a new, separate analysis of a project from an environmental standpoint.\textsuperscript{11}

\textsuperscript{8} See infra note 35.


\textsuperscript{10} Brief of Amici Curiae Sierra Club, Save California, Land Utilization Alliance, Stop Polluting Our Newport, and Friends of the Irvine Coast in Support of Appellant Citizens of Goleta Valley at 4, Citizens of Goleta Valley v. Board of Supervisors, 52 Cal. 3d 553, 801 P.2d 1161, 276 Cal. Rptr. 410 (1990) (No. S013629) [hereinafter Brief of Amici Curiae Sierra Club]. The Amicus brief provides an overview of the purpose of the enactment of CEQA to support the view that the legislature intended Environmental Impact Reports, see infra note 11, to be purely environmental documents.

\textsuperscript{11} CAL. PUB. RES. CODE § 21061 (West 1986). The separate environmental analysis required by CEQA is called an Environmental Impact Report (EIR). See infra text accompanying notes 41-44 for an overview of content requirements for EIRs.
The primary study that led to the enactment of CEQA was a legislative staff study known as the Environmental Bill of Rights.\textsuperscript{12} The California Assembly Select Committee on Environmental Quality prepared the study, which recommended policy changes to address the need for environmental protection.\textsuperscript{13} The study revealed that development in California was uncoordinated, fragmented, and that there was little understanding of environmental consequences. The report concluded that "an orderly process that prevents environmental damage, better identifies the true costs and consequences of our public and private actions, and prevents over-commitment of our limited resources" must be implemented.\textsuperscript{14} After further study, the legislature enacted CEQA. CEQA required agencies to consider environmental impact in a separate, complete analysis called an Environmental Impact Report (EIR).\textsuperscript{15}

CEQA guidelines are binding on all public agencies in California.\textsuperscript{16} The general purpose of CEQA is to provide information to the public and appropriate officials regarding the environmental consequences of development decisions before they are made.\textsuperscript{17} Additionally, the CEQA guidelines seek to compel government decision-making through the EIR process. CEQA requires agencies to consider environmental impact in a separate, complete analysis called an Environmental Impact Report (EIR).\textsuperscript{15} CEQA guidelines are binding on all public agencies in California.\textsuperscript{16} The general purpose of CEQA is to provide information to the public and appropriate officials regarding the environmental consequences of development decisions before they are made.\textsuperscript{17} Additionally, the CEQA guidelines seek to compel government decision-making.

\textsuperscript{12} The California Assembly Select Committee on Environmental Quality was charged with proposing an “Environmental Bill of Rights” and legislative action to protect California’s environment. CALIFORNIA ASSEMBLY SELECT COMMITTEE ON ENVIRONMENTAL QUALITY, ENVIRONMENTAL BILL OF RIGHTS 13 (March 1970).

\textsuperscript{13} CALIFORNIA ASSEMBLY SELECT COMMITTEE ON ENVIRONMENTAL QUALITY, ENVIRONMENTAL BILL OF RIGHTS (March 1970).

\textsuperscript{14} CALIFORNIA ASSEMBLY SELECT COMMITTEE ON ENVIRONMENTAL QUALITY, ENVIRONMENTAL BILL OF RIGHTS 20 (March 1970). In proposing the passage of an Environmental Quality Act, the committee acknowledged that the "preparation of Environmental Impact Reports by all levels of California government will not automatically prevent all environmental degradation" but the reports “will provide the initial steps for applying an orderly process” for considering environmental impact. Id. at 21; see also Brief of Amici Curiae Sierra Club, supra note 10, at 5.

\textsuperscript{15} CAL. PUB. RES. CODE § 21061 (West 1986) defines an EIR as: [a]n informational document which, . . . shall be considered by every public agency prior to its approval or disapproval of a project. The purpose of an environmental impact report 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. See also CAL. PUB. RES. CODE §§ 21100, 21151 (West 1986). Section 21100 sets forth the EIR requirements for state agencies. An almost identical requirement for local agencies is found at § 21151. EIR content requirements can also be found at CAL. CODE REGS. tit. 14, §§ 15120-132 (1991).

\textsuperscript{16} CAL. CODE REGS. tit. 14, § 15000 (1991). Sections 15000-387 make up the state CEQA guidelines which implement the provisions of CEQA. The Supreme Court of California has still not determined whether the guidelines are regulatory mandates or just aids in interpreting CEQA. In any event, the courts give the guidelines great weight unless they are clearly erroneous under CEQA. Citizens of Goleta Valley v. Board of Supervisors, 52 Cal. 3d 553, 564, 801 P.2d 1161, 1167, 276 Cal. Rptr. 410, 416 (1990).

\textsuperscript{17} Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal., 47 Cal. 3d 376, 764 P.2d 278, 253 Cal. Rptr. 426 (1988). See infra discussion of the Laurel
makers at all levels to make their decisions with these environmental consequences in mind.\(^8\)

## A. Basic Legislative Policies and Goals

The California Legislature described four basic objectives of CEQA:

1. To inform governmental decision-makers and the public about potentially significant environmental effects of proposed activities;\(^9\)
2. To identify the ways in which environmental damage can be avoided or significantly reduced;\(^10\)
3. To prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the agency finds the changes to be feasible;\(^11\) and
4. To disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.\(^12\)

In addition to the above four objectives, when the legislature enacted CEQA, the legislature pronounced a series of broad policy statements to guide the implementation of CEQA. The seven legislative policy goals were as follows:

1. The maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern.
2. It is necessary to provide a high-quality environment that at all times is healthful and pleasing to the senses and the intellect of man.
3. There is a need to understand the relationship between the maintenance of high-quality ecological systems and the general welfare of the people of the state, including their enjoyment of the natural resources of the state.
4. The capacity of the environment is limited, and it is the intent of the Legislature that the government of the state take immediate steps to identify critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds being reached.
5. Every citizen has a responsibility to contribute to the preservation and enhancement of the environment.
6. The interrelationship of policies and practices in the management of natural resources and waste disposal requires systematic and concerted efforts by public and private interests to enhance environmental quality and to control environmental pollution.

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Heights decision at text accompanying notes 115-22.

18. Laurel Heights, 47 Cal. 3d at 393, 764 P.2d at 278, 253 Cal. Rptr. at 431 (quoting Bozung v. Local Agency Reform Comm., 13 Cal. 3d 263, 529 P.2d 1017, 118 Cal. Rptr. 249 (1975)).


20. Id. § 15002(b).

21. Id. § 15002(c).

22. Id. § 15002(d).
It is the intent of the legislature that all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian.\(^2\)

The legislature also stated that it was state policy to “take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.”\(^2\)

Another state policy goal was to “[e]nsure that the long-term protection of the environment, . . . shall be the guiding criterion in public decisions.”\(^2\)

Generally, courts have given the broad policy statements and language of CEQA much deference. California appellate courts and the supreme court have stated that the language of CEQA should be “interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.”\(^2\) The difficulties arise in determining what lies within that “reasonable scope.” Before discussing the difficulties in interpreting the reasonableness of the legislative policy statements, it is important to understand how the environmental review process works and the role CEQA plays in that process.

### B. Overview and Procedural Workings of CEQA

Since CEQA’s enactment in 1970, CEQA guidelines have undergone numerous updates and changes.\(^2\) One of the most dramatic

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\(^2\) CAL. PUB. RES. CODE § 21000(a)-(g) (West 1986).

\(^2\) Id. § 21001(a) (emphasis added).

\(^2\) Id. § 21001(d) (emphasis added). Initially this code section read, “Ensure the long-term protection of the environment . . . is the guiding criterion in public decision making.” After the landmark *Friends of Mammoth* decision, 8 Cal. 3d 247, 502 P.2d 1049, 104 Cal. Rptr. 761 (1972), the California Legislature added to the code the phrase “consistent with the provision of a decent home and suitable living environment for every Californian.” Act of Sept. 22, 1979, ch. 947, § 5(d), 1979 Cal. Stat. 3269, 3271. See infra text accompanying notes 60-62.

\(^2\) *Friends of Mammoth*, 8 Cal. 3d at 259, 502 P.2d at 1056, 104 Cal. Rptr. at 768. This case was the first interpretation of CEQA by the California Supreme Court. The court broadly interpreted the CEQA guidelines to have the strongest effect possible to provide environmental protection under CEQA. See infra text accompanying notes 60-62.

\(^2\) CEQA was amended in 1972 after the *Friends of Mammoth* decision, 8 Cal. 3d 247, 502 P.2d 1049, 104 Cal. Rptr. 761 (1972), under AB 889, Stats. 1972, ch. 1154, p. 2271 (expanding scope of projects under CEQA); in 1976 under the Knox Bill, AB 2679, Stats. 1976, ch. 1312, p. 5888 (creating new provisions for public notice, streamlining EIR preparation, and adding time limits for preparation of EIRs by lead agencies); in 1977 under the Permit Streamlining Act, AB 884, Stats. 1977, ch. 1200, p. 3993 (government agency approval of private projects must be complete within one year of project application); in 1984 under the Goggin Bill, AB 2583, Stats. 1984, ch. 1514, p. 5338 (streamlining CEQA by reducing “frivolous litigation,” i.e., requiring pre-trial settlement conferences and exhaustion of administrative remedies); and again in 1989 under
changes occurred in 1972 when the legislature codified the main holding of a then recent California Supreme Court decision mandating that CEQA guidelines apply to private projects subject to government approval.\(^{28}\) Prior to this amendment to CEQA, the guidelines had been interpreted very narrowly to apply to government-funded projects only.\(^{29}\) Under the amended guidelines, CEQA applied to most public and private projects.\(^{30}\) Currently, under CEQA, a party who proposes any project that will have a significant effect\(^{31}\) on the environment is subject to the requirements set forth under the CEQA guidelines. The guideline requirements include informing the public and government officials of the environmental impact of the project\(^{32}\) as well as developing mitigation measures or alternatives to reduce the impact of the project.\(^{33}\)

The project approval process is detailed and complex. Set forth
Below is a brief overview. First, a local or state agency must determine whether the project falls under CEQA. In general, CEQA applies only to discretionary projects proposed to be carried out or approved by a public agency. If the project is subject to CEQA, the "lead agency" prepares an Initial Study to determine if the project will have a significant impact on the environment. An Initial Study is a preliminary analysis of the project's environmental effects that aids the lead agency in determining what type of environmental reporting is required. If the agency determines that there is no significant impact on the environment from the project, a Negative Declaration is prepared. The Negative Declaration is a document that states why the project will have no significant impact.

34. CAL. PUB. RES. CODE § 21080(a) (West 1986). Additionally, CEQA applies to the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps. If, however, there are a number of statutory exemptions from CEQA as well. Some important exemptions are: ministerial projects, CAL. PUB. RES. CODE § 21080(b)(1) (West 1986); CAL. CODE REGS. tit. 14, § 15268 (1991), emergency activities, such as repairs to public facilities, CAL. PUB. RES. CODE §§ 21080(b)(2)-(4) (West 1986); CAL. CODE REGS. Code tit. 14, §§ 15269(a)-(c) (1991), projects that a public agency rejects or disapproves (this provides the agency ability to quickly screen and disapprove projects before initiation of CEQA process), CAL. PUB. RES. CODE § 21080(b)(5) (West 1986); CAL. CODE REGS. tit. 14, §§ 15270(a),(b) (1991). There are eleven other statutory exemptions with an additional series of site-specific exemptions provided for in CEQA. CAL. PUB. RES. CODE §§ 21080(b)(6)-(16), 21080.03, 21080.07 (West 1986).

35. CAL. PUB. RES. CODE § 21067 (West 1986); CAL. CODE REGS. tit. 14, § 15367 (1991). A lead agency is the agency that has the principal responsibility for approving or carrying out a project. If, however, under CEQA other agencies beside the lead agency are involved in the environmental review process. A "responsible agency" (as opposed to the lead agency) is an agency that will undertake or approve a specific project, but is not the lead agency for the project. The term "responsible agency" includes all public agencies other than the lead agency that have approval power over the project. CAL. PUB. RES. CODE § 21069 (West 1986); CAL. CODE REGS. tit. 14, § 15381 (1991). While a lead agency must consider both the individual and collective effects of all activities involved in a project, a "responsible agency" need only consider the effects of those activities involved in the project that it must carry out or approve. Additionally, the responsible agency, when requested, must consult with the lead agency to assist in preparing the environmental documents. CAL. CODE REGS. tit. 14, §§ 15060(c),15060(d) (1991). The responsible agency's role in the environmental review process is outlined in CAL. CODE REGS. tit. 14, § 15060.

36. A lead agency can choose to prepare a full EIR without first preparing an Initial Study if the lead agency determines that an EIR will clearly be required. CAL. CODE REGS. tit. 14, § 15060(c),15060(d) (1991).

37. CAL. CODE REGS. tit. 14, §§ 15060(c),(g), 15365 (1991). The Initial Study has a number of specific purposes. Some of the most important purposes include: (a) providing the lead agency with information to determine whether an EIR or negative declaration should be prepared, (b) enabling a project applicant to modify a project before the preparation of an EIR, (c) assisting the preparation of an EIR by focusing the analysis on significant effects, (d) facilitating early environmental assessment during project design, (e) providing the factual basis for the negative declaration, and (f) eliminating unnecessary EIRs. CAL. CODE REGS. tit. 14, §§ 15060(c)(1)-(6) (1991).

and, therefore, why no EIR is required.40 If the Initial Study reveals the project will have a significant environmental impact, then an EIR must be prepared.40

An EIR is a document that informs the public and government officials of a project’s adverse environmental impact. The EIR is described as the “heart of CEQA.”41 Additionally, California courts state that the preparation of an EIR is the key to environmental protection under CEQA.42

The EIR is prepared by or in conjunction with the lead agency.43 Although the format of an EIR is left to the discretion of the lead agency, generally an EIR will contain: (1) A table of contents, (2) a brief summary of the proposed actions, (3) a project description, (4) the environmental setting of the project, (5) the environmental impacts of the project, (6) a brief statement of non-significant impacts, (7) organizations and persons consulted during the EIR preparation,

39. CAL. PUB. RES. CODE § 21064 (West 1986); CAL. CODE REGS. tit. 14, § 15070 (1991) provides:
   A proposed negative declaration shall be prepared for a project subject to CEQA when either:
   (a) The initial study shows that there is no substantial evidence that the project may have a significant effect on the environment, or
   (b) The initial study identified potentially significant effects but:
      (1) Revisions in the project plans or proposals made by or agreed to by the applicant before the proposed negative declaration is released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and
      (2) There is no substantial evidence before the agency that the project as revised may have a significant effect on the environment.
40. CAL. PUB. RES. CODE §§ 21100, 21150 (West 1986).
41. CAL. CODE REGS. tit. 14, § 15003(a) (1991) (quoted in Citizens of Goleta Valley v. Board of Supervisors, 52 Cal. 3d 553, 564, 801 P.2d 1161, 1167, 276 Cal. Rptr. 410, 416 (1990)).
43. CAL. PUB. RES. CODE § 21082.1 (West 1986); CAL. CODE REGS. tit. 14, § 15089(a) (1991). The lead agency must prepare the Final EIR. CAL. CODE REGS. tit. 14, § 15089(a) (1991). However, the Draft EIR may be prepared directly or under contract by lead agencies. Acceptable arrangements for the preparation of Draft EIRs include: (a) the lead agency preparing the EIR directly with their own staff, (b) contracting with another public or private entity, (c) accepting a draft prepared by the project applicant or his consultant, (d) entering into an agreement with project applicant to hire independent contractor to prepare the EIR, and (e) using a previously prepared EIR. CAL. CODE REGS. tit. 14, §§ 15084(d)(1)-(5) (1991). A recent appellate court decision has stated that a Final EIR may be prepared by the project applicant if the lead agency reviews the report’s contents. Friends of La Vina v. County of Los Angeles, 232 Cal. App. 3d 1446, 284 Cal. Rptr. 171 (1991).
and (8) cumulative impacts of the project if significant.\textsuperscript{44}

In preparing the EIR, the lead agency consults with other responsible agencies in order to receive input from them.\textsuperscript{46} Lead agencies are also encouraged to participate in a process called “scoping.”\textsuperscript{48}

During scoping, the lead agency contacts potentially affected or interested parties and asks what their concerns may be with respect to the proposed project. In this manner, the EIR analysis can focus on the effects that concern interested parties and eliminate unimportant issues from the study.\textsuperscript{47}

Once the Initial or Draft EIR is complete, a Notice of Completion is filed with the Office of Planning and Research.\textsuperscript{48} This notice is also given to all organizations and individuals who have previously requested notice and contiguous land owners if applicable.\textsuperscript{49} The Draft EIR is then available for public review and comment.

The lead agency is required to respond in writing to all comments on environmental issues it receives.\textsuperscript{50} The public or any public agencies may comment on the environmental impact of a project at any


\textsuperscript{46} \textit{Cal. Code Regs.} tit. 14, § 15083 (1991). “Scoping” is only an optional procedure. Early consultation with the public is authorized and encouraged by the CEQA guidelines but not required. However, scoping is required when a joint EIR/EIS (an EIS is the federal equivalent of an EIR) is prepared in conjunction with the federal government.

\textsuperscript{47} \textit{Cal. Code Regs.} tit. 14, § 15083 (1991) (description of the scoping process). To support and encourage agencies to participate in scoping (which is not mandatory under the CEQA guidelines), “[m]any public agencies have found early consultation solves many potential problems that would arise in more serious forms later in the review process.” \textit{Id.}

\textsuperscript{48} \textit{Cal. Code Regs.} tit. 14, §§15023, 15085(a)-(b) (1991). The Office of Planning and Research (OPR) is involved in the environmental review process in many ways. The OPR reviews CEQA guidelines and makes recommendations for amendments to the Secretary for Resources, distributes copies of environmental documents to various state agencies and boards, ensures state responsible agencies provide information to lead agencies in response to Notices of Preparation, resolves disputes as to which agency is the lead agency for a project, and receives and files all Notices of Completion, Determination, and Exemption.


\textsuperscript{50} \textit{Cal. Code Regs.} tit. 14, § 15088(a) (1991). The guidelines also allow the lead agency to respond to late comments it receives after the official comment period. The agency response must also include detailed reasons why specific comments and suggestions were not accepted. In addition, the agency’s response must include a good faith, reasoned analysis. Conclusory statements unsupported by factual information will not fulfill this requirement.
time during the EIR process. In fact, under the legislature's policy statement, which was previously noted, the public is responsible for participating in the process. During the comment period, public hearings on the draft report, although not mandatory, are also encouraged. After the lead agency responds to all the public comments, the lead agency finalizes and certifies the EIR. The project is then ready for approval.

Before approving a project, the lead agency must find that either (1) the project's significant environmental effects identified in the EIR have been avoided or mitigated or (2) social, economic, or other conditions make mitigation measures or alternatives infeasible. Additionally, the lead agency must find that unmitigated environmental effects are outweighed by the project's overall benefits. The lead agency should not approve a project as proposed if feasible alternatives or mitigation measures are available that would substantially lessen the project's significant environmental impact. If the project is approved, the changes or alterations incorporated into the project as mitigation measures or the overriding considerations that preclude mitigation must be stated in the record. After approval, the lead agency will file a Notice of Determination. As soon as the notice is

51. CAL. PUB. RES. CODE § 21003.1(a) (West 1986) ("comments from the public and public agencies on the environmental effects of a project shall be made to lead agencies as soon as possible").

52. CAL. PUB. RES. CODE § 21000(e) (West 1986) (emphases added) ("Every citizen has a responsibility to contribute to the preservation and enhancement of the environment."). See also Daniel P. Selmi, The Judicial Development of the California Environmental Quality Act, 18 U.C. DAVIS L. REV. 197 (1984).

53. CAL. CODE REGS. tit. 14, § 15087(g) (1991). "Public hearings may be conducted on the environmental documents, either in separate proceedings or in conjunction with other proceedings of the public agency. Public hearings are encouraged but not required as an element of the CEQA process." Id.

54. CAL. CODE REGS. tit. 14, § 15090 (1991). The lead agency certifies that the EIR has been completed according to CEQA and that the EIR was in fact presented, reviewed, and considered prior to project approval.

55. CAL. PUB. RES. CODE §§ 21002.1, 21081 (West 1986); CAL. CODE REGS. tit. 14, § 15091-93 (1991) (requirements of findings before project approval).

56. CAL. PUB. RES. CODE § 21002 (West 1986). This division ( §§ 21000-177) is intended to assist public agencies in "systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures." Id.


58. CAL. CODE REGS. tit. 14, § 15094(a) (1991). The Notice of Determination includes an identification of the project, a brief description of the project, approval date, whether the project will have significant environmental effects, whether mitigation measures were a condition of the approval, a statement that the EIR was prepared and certified to CEQA, whether a statement of overriding considerations was adopted, and where a copy of the Final EIR may be examined.
posted with the county clerk, a thirty-day statute of limitations for court challenges to approved projects begins to run. 60

II. ENVIRONMENTAL IMPACT REPORT REQUIREMENTS AS INTERPRETED BY THE CALIFORNIA COURTS: COURTS INTERPRETING CEQA BROADLY

Since CEQA's inception, California courts have continued to redefine and set the parameters for what is minimally required in an EIR. Section II discusses four representative CEQA decisions. These four decisions highlight how California courts have broadly interpreted the legislative intent and meaning of the CEQA guidelines.

The first issue the California Supreme Court broadly defined was what constitutes a “project” under CEQA. In Friends of Mammoth v. Board of Supervisors 60 the California Supreme Court set the tone for future interpretations of CEQA. Friends of Mammoth involved whether CEQA guidelines applied when a public agency approved a private development by issuing a conditional use permit. The court held that CEQA compliance and environmental analysis were required when an agency issues permits and leases to private individuals; therefore, CEQA compliance was not limited to government funded projects. 61 With Friends of Mammoth, the tone for CEQA interpretation had been set for the courts to interpret CEQA to afford the “fullest possible” 62 protection for the environment.

Two years later, in No Oil, Inc. v. City of Los Angeles, 63 the California Supreme Court defined what a “significant environmental effect” 64 was under CEQA. The No Oil decision involved a proposed zoning ordinance which would allow exploratory drilling for oil in

59. CAL. PUB. RES. CODE §§ 21167(b), (c), (e) (West 1986); CAL. CODE REGS. tit. 14, §§ 15075(e), 15094(d), 15112(e)(1) (1991) (“The filing of the notice of determination and the posting on a list of such notices starts a 30-day statute of limitations on court challenges to the approval under CEQA.”). CAL. CODE REGS. tit. 14, § 15094(d) (1991).

60. 8 Cal. 3d 247, 502 P.2d 1049, 104 Cal. Rptr. 761 (1972).

61. Friends of Mammoth, 8 Cal. 3d 247, 502 P.2d 1049, 104 Cal. Rptr. 761 (1972). The court also approved language used by the United States Court of Appeals for the District of Columbia Circuit in a case concerning the National Environmental Policy Act. The court stated that the “judicial role is active” in CEQA cases. Id. at 261, 502 P.2d at 1058, 104 Cal. Rptr. at 770 (citing Calvert Cliffs Coordinating Comm. v. Atomic Energy Comm’n, 449 F.2d 1109, 1111 (D.C. Cir. 1971)).

62. Friends of Mammoth, 8 Cal. 3d at 259, 502 P.2d at 1056, 104 Cal. Rptr. at 768 (1972).


64. CAL. PUB. RES. CODE § 21068 (West 1986). Under CEQA and the CEQA guidelines, projects which are deemed to have no significant environmental effect are not required to complete an EIR and may only complete a Negative Declaration. CAL. CODE REGS. tit. 14, § 15064(g)(2) (1991).
the Los Angeles area.65 The No Oil court, citing Friends of Mammoth, stated that an interpretation of CEQA with a "low threshold" requirement for preparing an EIR would provide the most environmental protection.66 The court further stated that EIRs should be prepared whenever an agency perceives some substantial evidence that the project "may" have a significant impact on the environment67 or whenever the project "arguably" will have an adverse impact on the environment.68 By requiring environmental analysis for projects with mere "arguable" effects, the California Supreme Court again interpreted the CEQA guidelines to afford the maximum environmental protection possible under CEQA.

California courts continued to interpret CEQA broadly. In San Franciscans for Reasonable Growth v. City and County of San Francisco,69 the appellate court articulated a requirement that the public agency reviewing the project conduct an analysis of the cumulative effects of the proposed project, as well as other proposed projects in the affected area. The decision involved the proposed development of a series of high-rise office buildings in downtown San Francisco. The EIR for the project did not address the cumulative impacts of other future downtown buildings that were also under review at the time.70 The court held that a project's EIR must not only carefully evaluate the direct impact of the project itself, but that the EIR must also consider the cumulative impact of other "sibling" projects under review.71 Again, California courts gave the EIR requirements an expansive interpretation in order to ensure that the maximum amount of important environmental information was disclosed.

66. Id. at 84, 529 P.2d at 76, 118 Cal. Rptr. at 44.
67. Id. at 85, 529 P.2d at 77, 118 Cal. Rptr. at 45 (quoting County of Inyo v. Yorty, 32 Cal. App. 3d 795, 809, 108 Cal. Rptr. 377, 387 (1973)).
68. Id. at 85, 529 P.2d at 77, 118 Cal. Rptr. at 45 (quoting Students Challenging Regulatory Agency Procedures v. United States, 346 F. Supp. 189, 201 (D.D.C. 1972), rev'd, 412 U.S. 669 (1973)). Many of the first interpretations of CEQA by California courts relied heavily on National Environmental Policy Act (NEPA) precedents for support. CEQA was initially modeled after NEPA and courts continue to use federal NEPA case law in their decisions.
70. Id. See also Citizens to Preserve the Ojai v. County of Ventura, 176 Cal. App. 3d 421, 222 Cal. Rptr. 247 (1985) (construing cumulative impact requirements under CEQA).
71. San Franciscans for Reasonable Growth, 151 Cal. App. 3d at 75, 198 Cal. Rptr. at 641. The court noted that without a mechanism for addressing the cumulative effects of projects, there would be "piecemeal development" and "havoc" in the urban environment. Id. at 76-77, 198 Cal. Rptr. at 642 (1984).
Finally, in Concerned Citizens of Costa Mesa, Inc. v. 32nd District Agricultural Ass'n,\textsuperscript{72} the California Supreme Court extended by interpretation the statute of limitations to bring an action for noncompliance with CEQA. Concerned Citizens involved a project to build an amphitheater adjacent to a residential development. After the amphitheater was completed, the local residents discovered it differed significantly from the project as described in the EIR.\textsuperscript{73} The CEQA guidelines mandated a 180-day statute of limitations beginning with the "commencement" of the project.\textsuperscript{74}

In order to circumvent this strict requirement, the court held that when projects deviate from their EIRs, the "commencement" of the project will not begin until the plaintiff "knew or reasonably should have known" the project differed from the EIR.\textsuperscript{75} The court reasoned that the project that was built was not the same "project" as in the EIR and, therefore, the statute of limitations did not apply.\textsuperscript{76} In support of its decision, the California Supreme Court emphasized the same policy considerations it had stressed in the cases previously discussed. CEQA was interpreted broadly for the benefit of the environment.

A common thread runs through these cases interpreting CEQA guidelines. The courts suggested they would not shrink from broadly interpreting CEQA in order to ensure that environmental consequences are given their own separate consideration in the decision making process.

Until recently, the environmentally expansive trend appeared likely to continue. In a series of cases defining the scope and depth that alternative sites should be afforded in EIRs, the courts continued to interpret CEQA broadly. Not until the recent supreme court decision of Goleta did the courts begin to backtrack from the goal of

\textsuperscript{72} 42 Cal. 3d 929, 727 P.2d 1029, 231 Cal. Rptr. 748 (1986).
\textsuperscript{73} Concerned Citizens of Costa Mesa, Inc. v. 32nd District Agric. Ass'n, 42 Cal. 3d 929, 727 P.2d 1029, 231 Cal. Rptr. 748 (1986). Contrary to the EIR, the amphitheater was significantly larger, the stage directly faced the residential area, noise mitigation measures were not followed, and the noise levels exceeded county laws. The amphitheater proposed in the Project EIR had called for a 5,000 seat capacity, while the amphitheater as-built had a seating capacity of over 7,000 seats. \textit{Id.} at 933-34, 727 P.2d at 1031-32, 231 Cal. Rptr. at 750.
\textsuperscript{74} CAL. PUB. RES. CODE § 21167(a) (West 1986). Actions filed against agencies which proceed with projects without filing an EIR when one is required by CEQA (under § 21166(a)) must be filed within 180 days after the commencement of the project.
\textsuperscript{75} Concerned Citizens of Costa Mesa, Inc., 42 Cal. 3d at 939, 727 P.2d at 1035, 231 Cal. Rptr. at 754.
\textsuperscript{76} Id. The court, citing Friends of Mammoth, 8 Cal. 3d 247, 502 P.2d 1049, 104 Cal. Rptr. 751 (1972), stated that allowing this interpretation of the statute of limitations under CEQA was "consistent with the Legislature's intent that CEQA 'be interpreted in such a manner as to afford the fullest possible protection to the environment.'" Id. The court also elaborated upon the overriding goal of encouraging public participation in the environmental review process. Id.
“affording the fullest protection” to the environment. Section III is an overview of those earlier expansive cases that initially defined alternative site analysis under CEQA.

III. ALTERNATIVE SITE ANALYSIS:
THE EXPANSIVE YEARS AND
THE “RULE OF REASON”

The CEQA guidelines expressly mandate that alternatives and mitigation measures be discussed in EIRs. However, California courts were left to interpret the quantity, quality, and scope of alternative analysis required under CEQA. Section III traces a series of six cases that outlined and defined the parameters of alternative analysis under CEQA. The last case discussed in section III, the Laurel Heights decision, reaffirmed the courts’ commitment to broadly interpret CEQA guidelines for the benefit of the environment.

A. Selected Case Law Defining Alternative Analysis
Under CEQA

In Residents Ad Hoc Stadium Comm’n v. Board of Trustees, a California appellate court articulated some early guidelines for the scope of alternatives analysis. Residents involved a football stadium to be built in conjunction with the California State University campus in Fresno. The EIR discussed four potential alternatives, including two different site locations and the “no-project” option. The EIR also specifically provided the reasons why the alternatives were not chosen. The court stated that the discussion of alternatives must be “sufficient to permit a reasonable choice of alternatives

79. Resident’s Ad Hoc Stadium Comm’n v. Board of Trustees, 89 Cal. App. 3d 274, 152 Cal. Rptr. 585 (1975). At the time the land for the project site was purchased by the University, it was largely surrounded by open agricultural land. Later, when the stadium project was proposed, the project site was surrounded by single family homes and apartments. Id.
80. Referred to as the “no-project alternative.” CAL. CODE REGS. tit. 14, § 15126(d)(2) (1991) (“The specific alternative of ‘no project’ shall also be evaluated along with the impact.”).
81. Resident’s Ad Hoc Stadium Comm’n, 89 Cal. App. 3d at 288, 152 Cal. Rptr. at 594.
82. Id. at 288, 152 Cal. Rptr. at 594-95. The trustees had delayed their decision on
so far as environmental aspects are concerned. The court in dicta stated that it was not appropriate to disregard alternatives simply because they may require implementing legislation or are beyond the scope of expertise of the agency. Although the court held that the discussion of alternatives was adequate in this particular case, the court's statements provided future ammunition for citizens' groups seeking to attack EIRs on the basis of content sufficiency.

1. Introduction of the "Rule of Reason"

The next case that focused on project alternative analysis was *Foundation for San Francisco's Architectural Heritage v. City and County of San Francisco.* In this decision, the court articulated the "rule of reason" principle. The decision involved the proposed demolition of a historic building in downtown San Francisco. A citizens' group attacked the sufficiency of the EIR on the basis that it failed to adequately discuss the alternatives to demolition.

The court held that the discussion of alternatives was adequate under CEQA. It noted that the EIR included thirty-nine pages of detailed discussion on the two no-demolition alternatives the citizens group had proposed and the "no-project" alternative. The court stated:

The statutory requirements for consideration of alternatives must be judged against a rule of reason. There is no need for the EIR to consider an alternative whose effect cannot be reasonably ascertained and whose implementation is deemed remote and speculative.

The court cited a federal National Environmental Policy Act case...
to support this new rule of reason standard. The court noted "absolute perfection" was not required in EIRs. CEQA only required officials and agencies to make an objective "good faith" effort to comply. Citizens' groups would have to be more careful in attacking EIRs for failing to discuss alternatives. Groups would have to argue they were not requiring "perfection," but were finding genuine deficiencies in the documents.

The "rule of reason" was codified under title 14 of the California Code of Regulations section 15126(d)(5). The code reiterated the "rule of reason" and also stated that "[t]he key issue is whether the selection and discussion of alternatives fosters informed decisionmaking and informed public participation."

The California courts began to vigorously apply the rule of reason in interpreting the sufficiency of project EIRs. In Village Laguna of Laguna Beach, Inc. v. Board of Supervisors, the appellate court held that an EIR which did not discuss the "literally thousands of 'reasonable alternatives'" was still sufficient under CEQA. The decision involved a proposed single-family home development on 1,310 acres in Orange County. The EIR discussed four project alternatives. The first alternative was "no development" and would allow the property to remain as a cattle ranch. The second, third, and fourth alternatives permitted 7,500 homes (the "low density" alternative), 10,000 homes, and 25,000 homes (the "high density" alternative) respectively. The citizens' group attacked the EIR on the basis that "some number" between 10,000 and 20,000 needed to be discussed in the EIR.

91. Foundation for San Francisco's Architectural Heritage, 165 Cal. Rptr. at 910, 165 Cal. Rptr. at 410-11. "Absolute perfection is not required; what is required is the production of information sufficient to permit a reasonable choice of alternatives so far as environmental aspects are concerned. It is only required that the officials and agencies make an objective, good faith effort to comply." Id.
95. Id. at 1028, 185 Cal. Rptr. at 44.
96. Id.
97. Village Laguna, 134 Cal. App. 3d at 1028, 185 Cal. Rptr. at 44.
98. Id.
99. Id. The citizens' group chose the 10,000 unit figure based on what the prior land-use element had allowed. The second 20,000 unit figure was the number proposed.
Although the court acknowledged that an alternative number of units between 10,000 and 20,000 was a "reasonable" alternative, it would not brand the EIR as inadequate under CEQA. The court stated that it was not unreasonable for the decision makers and the public to extrapolate the environmental advantages of a project in the undiscussed middle range by comparing the impacts of the higher and lower figures. The court again cited federal National Environmental Policy Act precedent to support the theory of not exploring "every conceivable variation" of reasonable alternatives in EIRs. The court, citing Foundation for San Francisco's Architectural Heritage, reaffirmed the rule of reason and stated that sufficient information had been provided to make a reasonable choice.

As additional courts addressed the issue of alternative site analysis in EIRs, they delineated the parameters of sufficient analysis under CEQA. A reasonable range of alternatives should be discussed in an EIR. Although courts often asserted that EIRs were not required to be "perfect," courts often continued to find EIRs inadequate for failing to discuss alternatives in sufficient detail.

In San Bernadino Valley Audubon Society, Inc. v. County of Santa Barbara, the court held that the EIR was inadequate for failing to fully discuss off-site alternatives and a potential land trade with the Forest Service. The decision involved a proposal to develop a cemetery on land supporting rare plants and bald eagle habitat. Although the EIR did have a section entitled "alternatives," no specific alternative sites were discussed. The EIR merely stated that relocating the project at other locations in the area "may" result in similar environmental damage; for another location to be more advantageous, it would need the same general attributes, but not the rare plants. The EIR also briefly mentioned that the Forest Service proposed a property trade with the project owner for less environmentally sensitive land but did not provide further detail.
court was unwilling to accept this cursory analysis of project alternatives and stated the EIR failed to provide sufficient information to allow decision makers to “intelligently take account of environmental consequences.”

Again, courts willingly drew the line and disallowed EIRs that did not sufficiently detail project on-site and off-site alternatives.

2. Alternatives Must Actually Be Considered in the Decision Making Process

California courts became more demanding regarding the amount of actual consideration given to alternatives in the decision making process. It was not enough to merely describe an adequate number of alternatives in an EIR. If a decision maker was going to approve a project despite the environmental consequences, the reasons why the alternatives were not chosen should be included in the Statement of Overriding Considerations.

In Citizens for Quality Growth v. City of Mt. Shasta, the court held that even though the EIR discussed six potential alternatives, the city had failed to adequately consider them in its decision. The decision involved a proposal to re-zone a thirty-five acre tract consisting of wetlands to commercial and controlled manufacturing uses. The EIR listed thirty-five mitigation measures and six project alternatives. The city determined the mitigation measures were infeasible, approved the project, and drafted a Statement of Overriding Considerations.

proposed project. Regarding the potential land trade with the Forest Service, the EIR did not mention the location, attributes, or why the Forest Service property would not be a feasible alternative. Id. at 751, 202 Cal. Rptr. at 429.

Id. at 751, 202 Cal. Rptr. at 428 (citing Santiago County Water Dist. v. County of Orange, 118 Cal. App. 3d 818, 173 Cal. Rptr. 602 (1981)).

On-site alternatives consist of project alternatives at the same location. Off-site alternatives are those which consider actual project location changes. See, e.g., Citizens of Goleta Valley v. Board of Supervisors, 52 Cal. 3d 553, 801 P.2d, 276 Cal. Rptr. 410 (1990).

CAL. CODE REGS. tit. 14, § 15093 (1991). A Statement of Overriding Considerations is a document which explains why the benefits of a proposed project outweigh the unavoidable adverse environmental effects and thus are deemed “acceptable.” Additionally, if the project is approved with unmitigable impacts, “the agency shall state in writing the specific reasons to support its action based on the final EIR.” Id. (emphasis added).


110. Citizens for Quality Growth v. City of Mt. Shasta, 198 Cal. App. 3d 433, 444, 243 Cal. Rptr. 727, 733 (1988). The six project alternatives were (1) no project, (2) development of non-wetland area only, (3) residential use, (4) alternate project design, (5) periodic land use inventory review and promotion of infill, and (6) option design. Alternatives (1) and (2) were identified as “environmentally superior alternatives.”
Considerations. The court stated that both mitigation measures and project alternatives must be found to be infeasible before a project with adverse environmental effects may be approved. Since the statement failed to mention the six project alternatives, the court determined the alternatives had not actually been considered in the decision to approve the project. In support of its holding in this case, the court again reiterated the common expansive theme that CEQA should be interpreted to afford the "fullest" protection to the environment.

B. The California Supreme Court on Alternative Site Analysis: The Expansive Laurel Heights Decision

After a long series of appellate court cases, the California Supreme Court finally addressed the issue of CEQA alternative site analysis. The supreme court in Laurel Heights Improvement Association v. Regents of University of California adopted a broad stance regarding the sufficiency of project alternatives in EIRs. Laurel Heights involved the planned relocation of a University of California bio-medical research facility to a residential neighborhood. The EIR had identified three types of alternatives: no project, alternative sites on the UCSF campus, and alternative sites off-campus. Only one and one-half pages of a 250 page EIR were devoted to the discussion of alternatives. The EIR flatly stated that no on-campus alternatives were evaluated as options. Regarding the off-campus alternatives, the EIR merely provided a map of other university facilities (represented by dots) and simply stated that the other locations were not large enough to accommodate the proposed facilities.

111. Id. at 439, 243 Cal. Rptr. at 729. The EIR stated that the 21 environmental impacts could be reduced to insignificance by implementing the mitigation measures. The six proposed project alternatives included the no-project option as well as a non-wetland only option. A soils engineer had been brought onto the project site and confirmed the soils were "wetland."
112. Id. at 444, 243 Cal. Rptr. at 733.
113. Id. The city had argued that since CAL. PUB. RES. CODE § 21081 stated that an agency may approve a project if "[s]pecific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report," the city only had to address either mitigation measures or alternatives. Id. (emphasis added). The court disagreed with this narrow interpretation of the guidelines.
114. Id. at 440, 243 Cal. Rptr. at 730 (quoting Friends of Mammoth v. Board of Supervisors, 8 Cal. 3d 247, 502 P.2d 1049, 104 Cal. Rptr. 761 (1972)). See supra text accompanying notes 60-62.
116. Laurel Heights Improvement Ass'n, 47 Cal. 3d at 403, 764 P.2d at 290, 253 Cal. Rptr. at 438. The court criticized the analysis for lack of data and conclusory statements regarding off-site alternatives stating, "It is impossible to analyze meaningfully the reports conclusion that Laurel Heights is the only available facility of sufficient size." Id.
The supreme court held that the EIR had not adequately discussed the project alternatives under CEQA. The supreme court opinion openly criticized the University's analysis, stating that "[i]t defies common sense for the Regents to characterize this as a discussion of any kind; this is barely an identification of alternatives, if even that."117

The supreme court discussed the legislative intent of CEQA and reaffirmed the broad policy statement of providing the "fullest protection" to the environment.118 The court also addressed the need to keep the public informed and to encourage public participation in the environmental review process. The court emphasized informed public participation as the "key" to alternative site analysis. The court stated that the public must be able to follow "the analytic route" the agency traveled in the decision-making process and that it was "critical" that the public be as "equally informed" as the agency.119 The court also reinforced the public's role by providing that if alternatives are rejected by an agency, they must be discussed in sufficient detail to "enable meaningful participation and criticism by the public."120

Regarding the scope of alternatives in EIRs, the court again echoed the expansive theme of earlier decisions. The court restated that "all reasonable alternatives" must be thoroughly assessed.121

117. Id. (emphasis in original).
118. Id. at 390, 764 P.2d at 281, 253 Cal. Rptr. at 429. The court acknowledged that the broad view taken in Friends of Mammoth was the "foremost principle" that the legislature intended under CEQA.
119. Id. at 404, 764 P.2d at 291, 253 Cal. Rptr. at 439. The court stated that "[w]ithout meaningful analysis of alternatives in the EIR, neither the courts nor the public can fulfill their proper roles in the CEQA process." The court also noted that whatever was considered to approve the project should be in the EIR itself; what various government officials knew themselves from other sources cannot make up for shortfalls in the EIR. Id.
120. Id. at 405, 764 P.2d at 291, 253 Cal. Rptr. at 439 (emphasis added). Although the court emphasized the importance of public participation in the environmental review process, they were not willing to shift the burden of identifying alternatives away from project proponents. The court flatly dismissed the Regents' argument that alternatives need only be discussed if project opponents can suggest feasible alternatives. The court stated that the burden to discuss project alternatives is on the project proponent and that the legislature never intended for the proponent to merely respond to the alternatives suggested by the public. The court reasoned that the project proponent knows the requirements and potential changes in the project and, therefore, would be the most logical party to suggest alternatives. Id.
121. Id. at 400, 764 P.2d at 288, 253 Cal. Rptr. at 436 (quoting Wildlife Alive v. Chickering, 18 Cal. 3d 190, 553 P.2d 537, 132 Cal. Rptr. 377 (1976)). The court reaffirmed the holding of Citizens for Quality Growth, 198 Cal. App. 3d 433, 243 Cal. Rptr. 727 (1988), in that both mitigation measures and alternatives must be discussed. Both
With this strong wording and unequivocal support for a broad interpretation of the guidelines, the Laurel Heights court provided a solid framework for the interpretation of CEQA alternatives analysis. The supreme court continued the trend where the appellate courts had ended. Commentators heralded the unanimous decision as a reaffirmation of "the tough standards" of CEQA and noted that the decision should encourage people who look to CEQA for environmental protection.\(^{122}\)

Two years later, the California Supreme Court again refined alternative site analysis under CEQA. On New Year's Eve 1990, the supreme court handed down its decision in Citizens of Goleta Valley v. Board of Supervisors.\(^{123}\) The Goleta decision focused upon "feasibility" as a threshold for the inclusion of an alternative in an EIR. This "threshold of feasibility" would grant lead agencies and project developers the power to pre-screen and limit the range of alternatives discussed in a project EIR.

IV. THE GOLETA DECISION: THE DOCTRINE OF "FEASIBILITY"

The Goleta case dealt squarely with how much discussion of alternatives is necessary in Environmental Impact Reports. In the early 1980s, the owner of a seventy-three acre ocean front parcel entered into an agreement with the Hyatt Corporation to build a hotel-resort on the site. The proposed hotel site was at the western end of the Goleta Valley and was surrounded by urban and suburban development. In order to accommodate the hotel, the Hyatt Corporation petitioned the county to zone the property for visitor-serving commercial development.\(^{124}\) Prior to Hyatt's zoning request, land-use experts defined the property as a "white hole" (an undesignated piece of property).\(^{125}\) The land was unzoned due to the inability of topics must be included in an EIR because an agency does not know until project approval which mitigation measures, if any, will be adopted. Therefore, a project proponent cannot anticipate the certain adoption of mitigation measures and ignore the requirement of discussing alternatives.

122. Pamela A. Maclean, *California Regional News*, Proprietary to the United Press International (December 1, 1988) (quoting Antonio Cosby-Rossman, an attorney specializing in environmental law and a visiting professor at UCLA). Cosby-Rossman noted that the Laurel Heights decision was the first decision interpreting CEQA since a conservative majority took control of the supreme court in March 1987. Id.

123. 52 Cal. 3d 553, 801 P.2d 1161, 276 Cal. Rptr. 410 (1990).

124. Id. at 559, 801 P.2d at 1164, 276 Cal. Rptr. at 413. The project site was known locally as Haskell's Beach. Although the property was vacant at the time, it had been used in the past for oil processing. Even though the property had been developed in the past, it did support a number of environmentally sensitive habitats and archeological sites. Three Native American burial sites were located on the project site.

125. Id. In Santa Barbara County's Local Coastal Plan, Haskell's Beach had no land use designation or development policy. The property was under the concurrent planning authority of the county and the Coastal Commission. The county had initially intended to zone the property for planned residential development, however, the Coastal
the county and the Coastal Commission to agree on the property's use. Hyatt filed its first EIR and the property was zoned to accommodate the hotel-resort project. The EIR included four project alternatives. The alternatives were (1) the prerequisite "no project" alternative, (2) a high-density residential development, (3) a smaller 340-unit hotel, and (4) a 400-unit hotel with the option for a second phase of additional units. The EIR did not discuss any alternative sites for the development.

A. The First and Second Appellate Court Decisions: Alternatives Analysis Inadequate Under CEQA

A local citizens' group challenged the sufficiency of the EIR for failing to discuss alternative locations. The appellate court agreed and stated the failure to address any off-site alternatives rendered the EIR inadequate under CEQA. Hyatt then created and submitted a supplemental EIR. In the supplemental EIR, only one alternative location was briefly discussed. The EIR found that all Commission had refused to accept this designation. The Coastal Commission proposed the property be zoned as resort/visitor serving commercial, but the county refused to accept that designation.

126. Id. at 560, 801 P.2d at 1164, 276 Cal. Rptr. at 413. In 1983, Hyatt filed an application for development of Haskell's Beach. As a result of Hyatt's application, the property was rezoned from PRD (planned residential development) to CV (visitor serving commercial). Hyatt's EIR was also certified as complete at the same time. Citizens of Goleta Valley v. Board of Supervisors, 197 Cal. App. 3d 1167, 1173, 243 Cal. Rptr. 339, 342 (1988), rev'd, 52 Cal. 3d 553, 801 P.2d 1161, 276 Cal. Rptr. 410 (1990).

127. Citizens of Goleta Valley, 197 Cal. App. 3d at 1174, 243 Cal. Rptr. at 342-43. Even though the 340-unit alternative would have provided greater flexibility to avoid impacting sensitive biological and agricultural resources, this less-dense alternative was not chosen due to economic infeasibility. The EIR did not detail the relative mitigation that could be achieved by adopting the 340-unit proposal as opposed to the 400-unit proposal. Regarding an off-site alternative, the EIR merely stated that development of alternative sites was not addressed because Hyatt did not own any other suitable properties for the project.

128. Id. at 1180, 243 Cal. Rptr. at 346. Hyatt had contended that since it owned no other feasible site in the area it would be unreasonable for them to be required to consider an off-site alternative in the EIR. The appellate court did not agree and stated, "Serving the public purpose at minimal environmental expense is the goal of CEQA. Ownership of the land used and identity of the developer are factors of lesser significance." Id. (emphasis added). Hyatt's failure to consider any off-site alternatives rendered the EIR inadequate under CEQA.

129. Citizens of Goleta Valley v. Board of Supervisors, 216 Cal. App. 3d 48, 264 Cal. Rptr. 587 (1989), rev'd, 52 Cal. 3d 553, 801 P.2d 1161, 276 Cal. Rptr. 410 (1990). The Supplemental EIR (SEIR) discussed one alternative site at Santa Barbara Shores. The Santa Barbara Shores site was deemed to be preferable regarding biological and cultural impact; however, the site would have more severe negative impact on traffic, air quality, and water resources. The county rejected the Santa Barbara Shores location and
other alternative locations were "infeasible," "speculative," or "remote." The only supporting evidence included brief references to two Coastal Commission reports from 1980 and 1985, a 1980 Local Coastal Plan, and some planning staff recommendations. No separate in-depth analysis of other alternative locations appeared in the EIR.\(^{130}\)

Once again, the appellate court agreed with the citizens group and held that the analysis of alternative sites was still inadequate under CEQA.\(^{131}\) The court relied heavily on the expansive language of the Laurel Heights decision. The appellate court reaffirmed that one of the primary purposes of an EIR was to inform the public.\(^{132}\) The court stated that references to other documents outside the EIR were insufficient to provide the public with adequate notice of why apparent alternative sites were rejected.\(^{133}\)

The citizens' group had suggested all the "infeasible" alternatives that were not analyzed in the EIR. The court noted that a lead agency may not refuse to review sites "simply because those sites do not meet all the proposed objectives [of the project] or because they may present economic or environmental difficulties of their own."\(^{134}\) Hyatt argued that the EIR need not discuss other alternatives because the other locations were (a) congested, (b) might sustain negative biological impacts, and (c) did not contain all the desirable

gave its final approval to Hyatt. \(^{130}\) Id. at 54, 264 Cal. Rptr. at 590. \(^{131}\) Id. at 58, 264 Cal. Rptr. at 592. ‘The key issue is whether the selection and discussion of alternatives fosters informed decisionmaking and informed public participation.' Id. (quoting Laurel Heights Improvement Ass'n, 47 Cal. 3d at 403-04, 764 P.2d at 290, 253 Cal. Rptr. at 438. See also CAL. CODE REGS. tit. 14, § 15126(d)(5) (1991). \(^{132}\) Goleta, 216 Cal. App. 3d at 56, 264 Cal. Rptr. at 591. The court rejected Hyatt's argument that the administrative documents reviewed during the scoping process were the "functional equivalent" to an EIR. The court stated that the two Coastal Commission reports and Local Coastal Plan did not discuss the specific environmental effects of this project. Although the commission reports were "extremely valuable," they "are not the 'functionally equivalent' to an EIR and are not adequate substitutes for specific study and analysis of the project." Id. \(^{133}\) Id. at 62, 264 Cal. Rptr. at 594-95. See CAL. CODE REGS. tit. 14, § 15126(d)(3) (1990) (alternatives should be discussed in EIR "even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly"). CAL. CODE REGS. tit. 14, § 15126(d)(3) (1990).
attributes sought for the project. The court, citing the CEQA guidelines, stated that these criteria were not the proper basis for failing to discuss an alternative.\textsuperscript{135}

\textbf{B. The Supreme Court Decision: Alternatives Sufficient in EIR, Concentration upon “Feasibility” as Determining Scope}

The supreme court rejected the appellate court's finding that the discussion of alternatives in the EIR was inadequate under CEQA.\textsuperscript{136} The court focused upon “feasibility” as a basis for discussing alternative locations in EIRs. The supreme court cited California Public Resources Code section 21002 for support and stated that the \textit{nature and scope} of alternatives discussed in EIRs was governed by “feasibility.”\textsuperscript{137}

The \textit{Goleta} court acknowledged that the CEQA legislation had not established a "categorical legal imperative" as to the scope of alternatives to be discussed in an EIR.\textsuperscript{138} The court stated that project EIRs must consider a "reasonable range of alternatives" to the project, or location of the project, which: (1) offer substantial environmental advantages over the project proposal and (2) may be "feasibly accomplished in a successful manner" considering the economic, environmental, social, and technological factors.\textsuperscript{139}

\begin{itemize}
\item \textsuperscript{135} \textit{Goleta}, 216 Cal. App. 3d at 62, 264 Cal. Rptr. at 594 (citing Cal. Code Regs. tit. 14, § 15126(d)(3) (1990)). “Even readily apparent economic, environmental, technical or social trade-offs are insufficient to excuse the study and discussion of such sites.” \textit{Id.}
\item \textsuperscript{136} Citizens of Goleta Valley v. Board of Supervisors, 52 Cal. 3d 553, 801 P.2d 1161, 176 Cal. Rptr. 410 (1990). The supreme court was not alone. Some commentators also agreed that the appellate court had gone too far. One commentator described the appellate decision as “impermissible judicial activism that ran afoul of the legislative intent behind the California Environmental Quality Act.” Sigfredo A. Cabrera, \textit{Weighing the Nay-saying; The State Supreme Court Rolls Up Its Sleeves to Strike a Balance Between Growth and Environmentalism}, \textit{The Recorder}, January 31, 1991, at 4, col 2.
\item \textsuperscript{137} \textit{Goleta}, 52 Cal. 3d at 565, 801 P.2d at 1167-68, 276 Cal. Rptr. at 416-17.
\item In determining the nature and scope of alternatives to be examined in an EIR, the Legislature has decreed that local agencies shall be guided by the doctrine of “feasibility.” “[I]t is the policy of the state that public agencies should not approve projects as proposed if there are \textit{feasible alternatives or feasible mitigation measures} available which would substantially lessen the significant environmental effects of such projects . . . .” \textit{Id.} (quoting Cal. Pub. Res. Code § 21002 (West 1986)) (emphasis in original). However, according to the \textit{Laurel Heights} decision, § 21002 does not define the content requirements of EIRs but deals expressly with project approval. \textit{Laurel Heights}, 47 Cal. 3d at 401, 764 P.2d at 288, 253 Cal. Rptr. at 437.
\item \textsuperscript{138} \textit{Goleta}, 52 Cal. 3d at 565, 801 P.2d at 1168, 276 Cal. Rptr. at 417.
\end{itemize}
Alternatives which the lead agency and project developers deemed "infeasible" would not have to be discussed in detail in the project EIR. The supreme court stated that the local agency could make the initial determination about which alternatives are feasible and, therefore, merit in-depth consideration, and which alternatives are infeasible and do not. The Goleta court also held that when potential alternatives were not discussed in detail in the EIR because they were not feasible, the evidence or reasons for infeasibility did not have to appear in the EIR itself. Rather, the court allowed the evidence to be in the administrative record.

The Goleta decision seemed to pull back from the expansive "full public disclosure" or "equally informed" views of Laurel Heights. The lead agency and project developer would make the initial determination of what alternatives are "feasible" and discuss only those alternatives in-depth in the EIR. All other potential alternatives that the lead agency either did not consider or deemed "infeasible" may be only briefly mentioned in the EIR (if at all) with their analysis (if any) relegated to the administrative record. Although the screening device of feasibility on its face seems acceptable, some potential problems should be addressed.

V. AN ALTERNATIVE TO ALTERNATIVE SITE ANALYSIS

Three potential problems arise when lead agencies and project developers are allowed to discuss only those alternatives they initially deem as feasible in their project EIRs. The three potential problems

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140. Id. at 569, 801 P.2d at 1171, 276 Cal. Rptr. at 410. The Goleta court determined that projects located outside the jurisdiction of the lead agency and sites not owned by the project proponent were generally not "feasible." Under the feasibility doctrine, these types of potentially environmentally superior alternatives would not need to be thoroughly discussed in an EIR. In determining that these types of sites were infeasible, the court again relied upon the definition of feasibility in California Public Resources Code § 21061.1. Id. at 574, 801 P.2d at 1174, 276 Cal. Rptr. at 423. As a result, in most private projects, no off-site alternatives would ever be discussed in an EIR. Since private property owners generally do not own other suitable pieces of property, project developers will merely state that all other potentially environmentally superior parcels are "infeasible" due to their lack of ownership. The emphasis on initially screening "feasible" alternatives will leave lead agencies and decision makers with "all" or "nothing" decisions in private projects. All other unowned off-site alternatives will be deemed "infeasible" and the agency will have a choice between the "no project" alternative or the on-site alternatives. When faced with losing the increased tax revenue a new project brings, decision-makers will be more likely to choose the "all" over the "nothing."

141. Id. at 569, 801 P.2d at 1170, 276 Cal. Rptr. at 419 (citing Committee of Ky. ex rel. Beshear v. Alexander, 655 F.2d 714, 718 (6th Cir. 1981)).

142. Id. at 569, 801 P.2d at 1171, 276 Cal. Rptr. at 420. "But where potential alternatives are not discussed in detail in the [EIR] because they are not feasible, the evidence of infeasibility need not be found within the [EIR] itself. Rather a court may look to the administrative record as a whole . . . ." Id. (quoting Committee of Ky., 655 F.2d at 719).

143. See supra text accompanying notes 115-22.
A. The Potential Problems

1. Failure to Diligently Seek Alternatives

The first problem is the general unwillingness of lead agencies and project developers to search out alternatives diligently. Project developers are inherently biased in favor of their own project ideas. The project developer's goal is to see its own proposal approved, not to seek out the best alternatives. Generally the developer has an incentive not to find the best alternative as it may mean the developer's project may be rejected.

Commentators, surveys, and environmental analysts have acknowledged that project developers are not extremely interested in pursuing project alternatives. Few developers are predisposed to believe...
there might be a better way to proceed than their own plans. One commentator has noted that "the inquiry into alternatives is an insult" to the project proponent who believes his plans are the most suitable.181

In addition to their inherent bias toward their own projects, project developers generally choose and discuss alternatives merely to protect themselves from citizens' suits. A recent survey conducted by the Association of Bay Area Governments revealed that fifty-four percent of the survey respondents said that legal defensibility, rather than the true informational role, drives the CEQA process.182 Project developers have become more interested in creating an EIR which is "bullet proof" against legal challenge than in developing an EIR which stimulates the discussion of alternatives.183

It is unrealistic to expect project developers, although well-versed on the requirements of their projects, to diligently seek project alternatives.184 Therefore, other parties more interested in finding environmentally superior alternatives should be allowed to directly participate in the process.

2. Subjectivity of Alternatives Choices and Public Isolation from Analysis

"Feasibility" is a subjective term. What the developer or lead agency deems as economically or technologically infeasible may not be the same as what the public would deem infeasible.185 By allowing lead agencies and developers to pre-screen or censor potential

are practicable alternatives. Applicants generally define project so narrowly that alternatives are rarely considered. Id. Although this example derives from the Clean Water Act, it demonstrates project applicants' disregard for considering alternatives. See also Houck, supra note 147.

151. Houck, supra note 147, at 774.
152. Timothy A. Tosta et al., Environmental Review After Goleta, 14 REAL PROP. L. REP. 177, 179 (1991) (in general, supporting the supreme court decision in Goleta).
153. Telephone Interview and Meeting with Serge Dedina, Environmental Analyst, in Imperial Beach, Cal. (July 29, 1991 & Aug. 2, 1991). Mr. Dedina stated that both lead agencies and project developers are wary of citizens suits and they are interested in "bullet proof" EIRs. See also Tosta, supra note 152, at 179 (shift "toward an environmental document which is 'bullet proof' against legal challenge" as opposed to documents that assist in the decision-making process).
154. Regarding the motivations of lead agencies in general, one author has noted that the prime motivating factor in local agency zoning decisions is "money" and the need to increase the tax base. Bradley Inman, 'Guide to California Planning' Says the State's System Has Failed, SAN DIEGO UNION, August 4, 1991, at F-3, col. 5. These types of non-environmental motivations also tend to influence the amount of "diligence" expended when considering project alternatives.
155. Reply to Amicus Curiae Briefs of California Cities and California Association of Sanitation Agencies at 45, Citizens of Goleta Valley v. Board of Supervisors, 52 Cal. 3d 553, 801 P.2d 1161, 276 Cal. Rptr. 410 (1990) (No. S013629). One of the arguments for allowing lead agencies and project developers to pre-screen feasible alternatives during the "scoping" or initial environmental analysis phase is to save the public
alternatives without analysis in the EIR, the public is isolated from the thought process or “analytic route” of the decision. CEQA is founded on the ideal that the public holds a “privileged position” in the decision making process.\textsuperscript{156} Citizens are encouraged and expected to participate in the CEQA process.\textsuperscript{157} If the public does not have access to an analysis of why alternatives were deemed infeasible, they cannot be as “equally informed” as the agency and, therefore, cannot fully participate in the environmental review process.\textsuperscript{158}

Additionally, the public should not be expected to “blindly trust” the agencies labeling of alternatives as “infeasible” without an analysis in the EIR.\textsuperscript{159} As the Amicus of the \textit{Goleta} decision noted, “an agency may not demand blind trust by the public or the courts, nor may it shield the manner in which it exercises its discretion from scrutiny by censoring EIRs.”\textsuperscript{160} An EIR is not intended to merely

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\item from “confusion” and “misleading infeasible alternatives.” Pre-screening proponents argue that “members of the public are not necessarily attuned to the legal and policy constraints on an agency’s ability to select among alternatives. Analysis of conjectural alternatives in an EIR can mislead the public into believing there is a wider range of reasonable alternatives than actually exists.” \textit{Id.} However, this contention fails to take into account the fact that just because the public does not agree with the agencies reasoning does not mean that the public is necessarily misled or confused.
\item Concerned Citizens of Costa Mesa v. 32nd Dist. Agricultural Ass’n, 42 Cal. 3d 929, 727 P.2d 1029, 231 Cal. Rptr. 748 (1986). “[T]he “privileged position” that members of the public hold in the CEQA process . . . is based on a belief that citizens can make important contributions to environmental protection and on notions of democratic decision-making . . . .” \textit{Id.} at 936, 727 P.2d at 1033, 231 Cal. Rptr. at 752 (quoting Daniel P. Selmi, \textit{The Judicial Development of the California Environmental Quality Act}, 18 U.C. DAVIS L. REV. 197, 215-16 (1984)).
\item CAL. PUB. RES. CODE § 21000(e) (West 1991) (“Every citizen has a responsibility to contribute to the preservation and enhancement of the environment.”).
\item 
\item \textit{Laurel Heights}, 47 Cal. 3d at 404, 764 P.2d at 291, 253 Cal. Rptr. at 439. The critical point is that the public must be equally informed. \textit{Id.} To allow the lead agency to rely on scoping to pre-screen alternatives without discussing them in EIR would be to “sanction the avoidance of public discussion.” \textit{Goleta}, 216 Cal. App. 3d at 59, 264 Cal. Rptr. at 592.
\item \textit{Laurel Heights}, 47 Cal. 3d at 404, 764 P.2d at 291, 276 Cal. Rptr. at 439. The court would not “countenance a result that would require blind trust by the public, especially in light of CEQA’s fundamental that the public be fully informed.” \textit{Id.} Even though an agency may be predisposed to determine an alternative is infeasible, the disclosure and discussion of the alternative may “foster reconsideration” and ultimately an “environmentally preferable result.” Reply to Amicus Curiae Briefs of California Cities and California Association of Sanitation Agencies at 2, Citizens of Goleta Valley v. Board of Supervisors, 52 Cal. 3d 553, 801 P.2d 1161, 276 Cal. Rptr. 410 (1990) (No. S013629).
\end{itemize}
dismiss or label alternatives. An EIR is intended to foster the discussion of alternatives.161

Currently under CEQA no mechanism allows citizens' groups to directly introduce project alternatives to the lead agency for detailed environmental analysis and inclusion in the Final EIR. Although lead agencies must respond to public and other agency comments during the Draft EIR stage, CEQA sets few requirements regarding the depth of analysis of the responses.162 At present, if citizens’ groups are not satisfied by the depth of analysis of alternatives in an EIR, they must ultimately file suit challenging the EIRs sufficiency.163 A mechanism is needed to allow public input regarding the scope and level of analysis that alternatives receive. Litigation is not the most efficient method to address these shortfalls.

3. Disregard for CEQA's Sequential Process

The Goleta decision allows the determination of “feasibility” to enter the CEQA process at the EIR stage.164 However, the CEQA guidelines, prior case law, and commentaries acknowledged that “feasibility” should be considered at the project approval stage after the preparation of the EIR.

California Public Resource Code section 21081 provides that whenever one or more significant effects are identified in an EIR, the agency may approve the project only if it determines one of the following:

(a) Changes or alterations have been required in, or incorporated into, such project which mitigate or avoid the significant environmental effects thereof.


162. CAL. CODE REGS. tit. 14, § 15088 (1991). The guidelines do not give the specific level of analysis comments should receive (i.e., consideration and preparation of analysis by environmental professional) but provide that a “good faith, reasoned analysis” supported by “factual information” is required.

163. CAL. PUB. RES. CODE §§ 21177(a)-(e) (no person may bring a cause of action alleging CEQA noncompliance unless generally some party has alleged grounds for noncompliance and petitioner has objected to approval of project). Also, CEQA petitioners generally must exhaust all administrative remedies prior to bringing suit for noncompliance. California courts have not agreed on the specificity petitioners must provide in stating their objections at an administrative level to qualify for exhaustion of administrative remedies under CEQA. However, if the petitioner raises his objection before the administrative agency with final decision making authority, then he has fulfilled the exhaustion of remedies requirement and may proceed with a CEQA suit. Browning-Ferris Industries v. City Council, 181 Cal. App. 3d 852, 226 Cal. Rptr. 575, 578-79 (1986) (objections made before City Council not required to be made before planning commission previously).

164. See supra text accompanying notes 124-42.
as identified in the completed environmental impact report.
(b) Such changes or alterations are within the responsibility and jurisdiction of another public agency and such changes have been adopted by such other agency, or can and should be adopted by such other agency.
(c) Specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.

Lead agencies should first identify potential alternatives in the EIR and then determine during the project approval stage what measures to undertake. Additional support for this two-step analysis can also be found in case law. In two recent decisions the courts acknowledged the two-step approach. In *Kings County Farm Bureau v. City of Hanford*, the court stated:

"The City has two obligations. It is responsible for ensuring the EIR contains a meaningful discussion of alternatives . . . and, if it concludes the project will have one or more significant effects, it must make findings on the record regarding the feasibility of such alternatives."

The California Supreme Court in *Laurel Heights* also paid close attention to the sequencing of the CEQA process. The court noted:

"As a matter of logic, the EIR must be prepared before the decision to approve the project. Not until project approval does the agency determine whether to impose any mitigation measures on the project . . . [T]o say that alternatives need not be discussed if there is a possibility that the agency might adopt mitigation measures . . . would invert the chronology of the CEQA process."

The *Laurel Heights* court clearly acknowledged the sequential nature of the EIR approval process as described in the guidelines. Commentators have also firmly acknowledged the two-step process...
mandated by the CEQA guidelines.171

Allowing lead agencies to first determine whether alternatives are feasible and then decide whether to include them in the EIR is not compatible with the sequential process outlined in the CEQA guidelines. It also reduces the scope of potentially environmentally superior alternatives addressed in EIRs.172

B. The Potential Solution: Direct Public Submittal of Alternatives

The California Legislature can, and should, take a number of steps in order to address the problems of ensuring that the optimum range of alternatives are considered in an EIR, encouraging public participation early in the review process, and reducing CEQA-related litigation. The legislature needs to realize that project developers and project opponents have competing interests when it comes to the discussion of alternatives in EIRs.173

The project developer wishes to ensure compliance with CEQA to avoid costly delays and court challenges. The project opponent wishes to see a broad assortment of alternatives to ensure that the optimum environmental decisions are made. In order to balance the competing interests of project developers and project opponents, an EIR should discuss a wide array of project alternatives.174


In these amendments [to California Public Resources Code § 21002] the legislature required a two-step approach. The public agency first identifies environmental impacts and determines whether there are alternatives or mitigation measures that would avoid the project's impacts. In the second step, the agency broadens its analysis. Still focusing on alternatives and mitigation measures, it determines whether they are "feasible" by considering economics, social factors, and "other conditions."

Id. at 261. See also Brief of Amici Curiae Sierra Club, supra note 10, at 8-10.

172. This initial focus based upon economic, social, or technological factors narrows the scope of potential environmentally superior alternatives. Allowing the screening of alternatives based on non-environmental factors reduces the impact of an EIR as a purely environmental document. See supra text accompanying notes 12-15 (initial legislative purpose to provide separate environmental analysis). See also Brief of Amici Curiae Sierra Club, supra note 10, at 4.

173. See supra text accompanying notes 147-54. Acknowledging the divergent views of project developers and project opponents will increase in importance as project developers gain more control over the contents of EIRs. A recent appellate court decision has held that a project applicant may complete and submit the Final EIR if the lead agency reviews the report's contents. In this manner, the project applicant has almost complete control over the scope of alternatives in the EIR. Friends of La Vina v. County of Los Angeles, 232 Cal. App. 3d 1446, 284 Cal Rptr. 171 (1991).

174. This view is consistent with the Laurel Heights view that one of an EIRs' "major functions" is to ensure that "all reasonable alternatives" should be discussed. Laurel Heights, 47 Cal. 3d at 404, 764 P.2d at 288, 253 Cal. Rptr. at 439. See supra text accompanying notes 115-21.
1. Benefits of Proposed CEQA Amendment

If citizens' groups were allowed and encouraged to directly participate in choosing alternatives for in-depth analysis in the Final EIR, the following three important goals would be met:

1. A wider assortment of project alternatives would be analyzed in an Environmental Impact Report.
2. There would be an increase in public participation earlier in the project review process.
3. A reduction in CEQA-related litigation regarding project alternatives would also result.

2. How the Legislative Changes Would Work

CEQA should be amended to allow citizens' groups to submit up to three project alternatives to the lead agency during the comment review period for Draft EIRs. These three proposed alternatives would then be subjected to an in-depth environmental analysis and guaranteed inclusion in the project's Final EIR. The three proposed alternatives would be analyzed regardless of whether the lead agency and project developer deemed them feasible. By allowing an alternatives inclusion in an EIR regardless of whether the lead agency deems it feasible, citizens' groups would be able to overcome the lead agencies' subjective determination of feasibility. In this manner, citizens' groups could have a direct impact on defining "feasible alternatives" in project EIRs through their own submittals.

The amendment should also provide that if the citizens' groups submit more than three alternatives, then the groups should be notified and given the opportunity to come to a consensus on the three most appropriate alternatives. If more than three alternatives are received by the lead agency, the lead agency would notify all individuals and citizens submitting alternatives of the need to meet and

175. Cal. Code Regs. tit. 14, § 15105 (1991) (requirement for Draft EIR review period: "the public review period for a Draft EIR should not be less than 30 days nor longer than 90 days except in unusual circumstances"). The review period in the proposed amendment would remain the same in order to keep the project review process as streamlined as possible. This would also ensure that the one year time limit for completion of CEQA review for private projects would be kept intact. Cal. Gov't Code § 65950 (West 1986) (lead agency must act within one year on projects requiring EIRs).

176. Currently lead agency responses to comments made during the Draft EIR can be included as a revision to the Draft EIR or as a separate section of the Final EIR. Cal. Code Regs. tit. 14, § 15088(c) (1991). However the depth of analysis to comments is not guaranteed. Cal. Code Regs. tit. 14, § 15088(b) (1991). See supra text accompanying note 162.

177. See supra text accompanying note 155.
choose the alternatives for analysis. If the parties could not meet or come to a consensus regarding which three alternatives should be submitted for in-depth analysis, then a representative from the lead agency would choose the three most environmentally sensitive alternatives regardless of their feasibility. In this manner, at least three more potentially environmentally superior alternatives would be analyzed in a project’s EIR.

This “consensus” requirement would have two positive effects. First, developers would be protected from the analysis expense of an unreasonable number of project alternatives. Second, citizens’ groups would be encouraged to meet and arrive at a consensus regarding the choice of environmentally optimum alternatives.

The developer would also be protected from unreasonable expense. In any given project, the developer would only pay for a maximum of three additional alternative analyses. Although requiring developers to provide for the analyses of the three additional alternatives is an added expense, the burden to developers is not especially onerous. According to at least one environmental analyst, the review of individual off-site alternatives does not constitute a large percentage of the cost to prepare the entire environmental review package.

The “consensus” requirement would also create an incentive for citizens’ groups to meet and choose the three most reasonable and environmentally superior alternatives. Citizens’ groups, as project opponents, have the greatest incentive to find and propose those alternatives that will actually meet the project objectives and provide the greatest environmental protection.

Furthermore, the “consensus” requirement is the most fair way to deal with multiple citizens’ groups proposing multiple alternatives. If the CEQA guidelines were amended to allow analysis of the first

178. It should be noted that only projects with significant environmental impact require the submittal of a full EIR. CAL. PUB. RES. CODE §§ 21100, 21150 (West 1986). Many projects require only a filing of a Negative Declaration before approval. CAL. PUB. RES. CODE § 21064 (West 1986); CAL. CODE REGS. tit. 14, §§ 15070 (1991). Additionally, only those projects which are publicly controversial will evoke the submission of additional project alternatives from citizens’ groups. In many cases, the proposed CEQA amendment will not effect the completion of the EIR.

179. Telephone Interview and Meeting with Serge Dedina, Environmental Analyst, in Imperial Beach, Cal. (July 29, 1991 & Aug. 2, 1991). Mr. Dedina provided a cost breakdown for a representative project. The expense of preparing alternative site analysis constituted less than four percent of the total EIR package expense. Mr. Dedina stated, that on average, an in-depth analysis of one off-site alternative requires approximately eight person-hours. Project analysts are billed at $50.00 to $70.00 per hour and project management is billed at $90.00 per hour. If the analysis of one site alternative was prepared entirely by project management, the cost would be $720.00. The total cost to prepare an analysis of three off-site alternatives would be approximately $2160.00 (assuming preparation entirely by project management). Mr. Dedina stated that his firm’s rates were representative for San Diego County.

180. See supra text accompanying notes 147-54.
three alternatives or three randomly chosen alternatives, some citizens’ groups would have their choices analyzed while other groups would not. By encouraging citizens’ groups to reach a consensus, each citizens’ group will have the opportunity to present its alternatives for consideration as one of the three project alternatives ultimately chosen. This requirement rewards cooperation and consensus among the citizens’ groups.

Direct public submittal of project alternatives would also reduce the amount of CEQA-related litigation. CEQA should be amended to include a restriction on the individuals who can challenge the sufficiency of alternatives analysis in EIRs. Only those individuals and citizens’ groups who actually participated in the Draft EIR comment review by suggesting alternatives (even if not analyzed in the EIR) should be allowed to challenge the sufficiency of the alternatives analysis of an EIR. 181

This limitation would have two important benefits. The first benefit would be a reduction in the amount of CEQA-related litigation. The second benefit would be to provide an incentive to the public for early participation in the project review process.

CEQA-related litigation would be reduced because the number of individuals who could challenge an EIR’s alternative site analysis would be limited to only those individuals who had suggested alternatives. Since the pool of individuals who could challenge the EIR would be set at the Draft EIR stage, the result would be the reduction in the overall number of potential plaintiffs and, therefore, suits. Furthermore, since the CEQA guidelines have strict notice provisions regarding the availability of Draft EIRs, due process considerations would not be ignored. 182

Citizens’ groups would also be encouraged to participate earlier in the project review process. The CEQA guidelines stress the importance of public participation throughout the project review process. 183 The legislature intended the public to have an active and

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181. This suggested limitation parallels existing CEQA provisions requiring individuals to present alleged grounds for CEQA noncompliance during administrative proceedings before filing suit. CAL. PUB. RES. CODE § 21177(a) (West 1986). Individuals must also have objected to the approval of the project before filing suit. CAL. PUB. RES. CODE § 21177(b) (West 1986).

182. CAL. PUB. RES. CODE §§ 21092(a)(1)-(3) (West 1986); CAL. CODE REGS. tit. 14, §§ 15087(a)(1)-(3) (1991). The notice must be given to all organizations and individuals who have previously requested it, and all contiguous land owners if applicable. The lead agency should also furnish copies of Draft EIRs to area public libraries and make copies available at their office. CAL. CODE REGS. tit. 14, § 15087(e) (1991).

183. CAL CODE REGS. tit. 14, § 15201 (1991) ("Public participation is an essential
important role in the CEQA process.184 If citizens' groups submit their suggestions for project alternatives early in the review process, their alternatives probably will have a greater impact on the actual design of a project.185 Belated objections and litigation after the approval of the Final EIR are not as productive as early project involvement.

Allowing direct public submittal of project alternatives would have tangible benefits in land-use decisions. A wider range of alternatives would be addressed in EIRs, the public would be encouraged to participate earlier in the project review process, and CEQA-related litigation would be reduced.

Although the public would have a larger role in choosing project alternatives, these proposed CEQA amendments are not intended to shift the burden of finding and discussing project alternatives from the lead agency.186 The lead agency would still have the continued responsibility to identify and comment upon those project alternatives they deem feasible.187 The proposed CEQA amendments are intended to supplement a lead agency's analysis and to allow the public a practicable vehicle for directly submitting project alternatives for in-depth analysis in the Final EIR.

CONCLUSION

Since CEQA's inception, California courts have generally interpreted the CEQA guidelines very broadly. Early CEQA decisions set an expansive tone for later court decisions. California courts willingly looked beyond the specific verbiage of the guidelines in order to support the ideal of providing the "fullest" environmental protection possible.


185. Additionally, if all suggestions for alternatives were presented and explored in a limited time frame, the review of project alternatives could be undertaken at one time, resulting in greater efficiency. The continual start-up and wind-down of analysis could be avoided. Telephone Interview and Meeting with Serge Dedina, Environmental Analyst, in Imperial Beach, Cal. (July, 29, 1991 & Aug. 2, 1991).

186. This view is consistent with Laurel Heights, 47 Cal. 3d 376, 764 P.2d 278, 253 Cal. Rptr. 426 (1988). The Laurel Heights court was unwilling to place the burden of identifying and documenting project alternatives on the project opponent.

187. The lead agency under the proposed amendment would still be bound by the CEQA provisions requiring the analysis of alternatives in EIRs and the consideration of alternatives in project approval decisions. CAL. PUB. RES. CODE §§ 21002.1(a), 21061 (West 1986); CAL. CODE REGS. tit. 14, §§ 15126(d), (d)(3) (1991).
California appellate and supreme court decisions molded and redefined the role and requirements of Environmental Impact Reports in land-use decisions. The required scope of alternative site analysis in EIRs continued to develop and the "rule of reason" was announced. In *Laurel Heights*, the supreme court reaffirmed the preeminence that environmental considerations should be given in project decisions. *Laurel Heights* broadly defined the parameters for adequate alternative analysis under CEQA.

Two years later, in *Goleta*, the supreme court seemed to shrink from the expansive environmental goals of CEQA. The court articulated the new screening device of "feasibility" in addressing alternatives analysis. "Feasibility" as defined by lead agencies and project developers would limit the range of project alternatives considered in an EIR. Lead agencies and project developers could pre-screen alternatives from analysis in EIRs.

Allowing feasibility to function as a screening device creates potential problems in the project review process. The optimum alternatives may not be considered, the public will not have as equal an access to the information as lead agencies, and the sequencing of the CEQA process is ignored, reducing the number of potential alternatives that are considered.

Land-use decisions have important and long-term effects on the quality of life in all California communities. If governmental decision makers are to choose the project alternatives with optimum economic benefits and minimal environmental impact, they must have a wide array of alternatives from which to choose. The legislature should allow direct public participation in suggesting the choice of alternatives discussed in EIRs. If the public were allowed to provide a range of alternatives for in-depth analysis during the comment review period of Draft EIRs, tangible benefits in land-use decisions could be realized. Developers and project opponents could feel confident that all important alternatives were considered in the EIR. Public participation in the review process would be enhanced. Future CEQA-related litigation would be reduced. Finally, decision makers would be provided with a wider range of alternatives to assist them in making their decisions.

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