

NAEP/AEP Conference – Los Angeles

ASCENT
ENVIRONMENTAL

CEQA PRACTICUM: PROJECT OBJECTIVES, ALTERNATIVES ANALYSIS, AND CEQA FINDINGS

PRESENTED BY:
AMANDA K. OLEKSZULIN
CURTIS E. ALLING, AICP
ASCENT ENVIRONMENTAL, INC.

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PURPOSE OF PRACTICUM

- ▶ Understand the interconnections between objectives, alternatives, and findings
- ▶ Address the questions we all have when preparing EIRs:
 - Why are project objectives important?
 - What alternatives should be selected?
 - How many alternatives constitute a reasonable range?
 - How extensive should the analysis be?
 - Does an environmentally superior alternative need to be identified? What if there isn't one?
 - How can an alternative be “feasible” in the EIR, but rejected as infeasible in findings?

ALTERNATIVES

CEQA's Substantive Mandate:

“[P]ublic agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects” of the project.

(Pub. Resources Code, § 21002.)

ALTERNATIVES

An EIR must describe and analyze a range of reasonable alternatives to the project that:

- 1) are potentially feasible,
- 2) would “feasibly attain most of the basic objectives of the project,” and
- 3) would avoid or substantially lessen any of the project’s significant effects. (CEQA Guidelines §15126.6, subd. (a).)

The purpose of this analysis is to determine whether there is a feasible way to achieve the basic objectives of the project, while avoiding impacts. (Pub. Resources Code, § 21002.1.)

ALTERNATIVES

- ▶ EIR must always evaluate the “no project” alternative
- ▶ EIR must evaluate a “reasonable range” of feasible alternatives
 - may include alternative approaches, sites, or both
 - expected to be potentially feasible although feasibility is not extensively analyzed
- ▶ Alternatives may be evaluated at a lesser level of detail than the project
- ▶ Must compare the relative effects of the alternatives

THE PROCESS

Objectives

“A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid decision makers in preparing findings or statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project.”

CEQA Guidelines Section 15124(b)

ADEQUATE PROJECT OBJECTIVES

- ▶ When overly broad, objectives cannot help focus alternatives
- ▶ When objectives are defined too narrowly, an EIR's treatment of alternatives may be inadequate, because they unreasonably limit alternatives analyses.
- ▶ Goldilocks objectives are needed...

DESCRIBE THE UNDERLYING PURPOSE

- ▶ Do not focus on achieving certain approvals as an objective
- ▶ This may hide the underlying environmental purpose for a project
- ▶ Reveal underlying project purposes in objectives

Habitat and Watershed Caretakers v. City of Santa Cruz
(2012)

THE PROCESS

The EIR

“An EIR shall describe a range of reasonable alternatives to the project . . . which would feasibly *attain most of the basic objectives* of the project, but would avoid or substantially lessen any of the significant effects of the project. . . .”

(CEQA Guidelines, § 15126.6, subd. (a).)

THE PROCESS

The EIR

The EIR “must consider a reasonable range of *potentially feasible* alternatives that will foster informed decision making and public participation.”

(CEQA Guidelines, § 15126.6, subd. (a).)

PRACTICE POINTERS:

DEFENSIBLE ALTERNATIVES CHAPTER

- ▶ Summary of Project and Objectives
- ▶ Summary of Significant Impacts
- ▶ Alternatives Considered but Rejected and Why
- ▶ Range of Alternatives Evaluated and Why
- ▶ Analysis of Each Alternative
 - Description of Alternative
 - Comparison of Impacts to Project (by topic area)
 - Summary of Impacts in Comparison to Project
 - Attainment of Project Objectives
- ▶ Discussion of Environmentally Superior Alternative

PRACTICE POINTERS

- ▶ Select a reasonable range that:
 - Meets most of the basic project objectives
 - Substantially lessens one or more significant impacts
 - Are potentially feasible (although lead agency has ultimate authority for determining feasibility)

PRACTICE POINTERS

- ▶ **When selecting a reasonable range of alternatives**
 - **Identify and review project objectives**
 - **Identify the significant environmental effects to be avoided**
 - **Briefly discuss the alternatives that will be considered and evaluated**
 - **Explain why other alternatives have been eliminated from further evaluation**

PRACTICE POINTERS

- ▶ The “Rule of Reason” applies in the selection of alternatives

(Citizens for Local Government v. City of Lodi, 2012)

WHAT IS A REASONABLE RANGE?

- ▶ No ironclad rule” ...
 - Dictated by facts of the situation, but 4 is a pretty good number 😊
- ▶ The number and type of alternatives depends on project and issues
 - Specialized projects (e.g., wastewater treatment plant expansion) may, by its nature have limited feasible alternatives. Objectives are important!
 - Other factors that can limit range of alternatives:
 - legal, technological, economic, environmental factors
 - Availability of infrastructure
 - General plan consistency
 - Jurisdictional boundaries
 - Availability of alternative sites
- ▶ Document your thought process

TWO ALTERNATIVES CAN BE ENOUGH... BUT NOT IN MOST SITUATIONS

- ▶ **Mount Shasta Bioregional Ecology Center v. County of Siskiyou (2012)**
 - Biomass-fueled cogeneration plant
 - County considered 5 alternatives, found 3 to be infeasible before release of Draft EIR
 - Only proposed project and no project alternative remained
- ▶ **Court accepted the analysis, found there is “no rule specifying a number...”**
- ▶ **But...petitioners did not recommend another reasonable alternative. If they had.....**

TYPICAL TYPES OF ALTERNATIVES

- ▶ **No Project**
 - Continuation of existing conditions
 - Reasonably expected outcome in foreseeable future, based on current plans, infrastructure, and services
- ▶ **Reduced Intensity Project Alternative**
- ▶ **Reconfigured Design or Plan Alternative**
- ▶ **“Mitigated” Alternative – Collection of Mitigation**
- ▶ **Others?**

CASE LAW

Watsonville Pilots Association v. City of Watsonville (2010) 183 Cal.App.4th 1059

EIR for update of City's General Plan did not consider "reduced development alternative," even though approved General Plan would have SU impacts on agricultural land. City argued EIR did not need to consider such an alternative it would be inconsistent with the City's objective to accommodate future demand for housing and employment.

Held: EIR inadequate because a "reduced development alternative" would meet most of the City's other objectives.

CASE LAW

Jones v. Regents of the University of California (2010) 183 Cal.App.4th 818

EIR for long-range plan for the Lawrence Berkeley National Laboratory considered an adequate range of alternatives.

University could rely on its project objectives in declining to consider alternatives urged by its opponents.

EIR did not need to consider an alternative consisting of moving lab facilities to another location, because that would be inconsistent with objective of maintaining campus-like setting in order to encourage exchange of ideas between scientists and academics.

QUESTIONS TO HELP SELECT ALTERNATIVES

- Would an alternative reduce at least one significant impact?
- Does the alternative attain most of the basic objectives of the project?
- Is the alternative potentially feasible?

EXAMPLE

- ▶ **1,000 unit single-family development on 400 acres.**
 - Wetlands are present on 15 acres
 - Site located adjacent to a scenic highway
 - In a non-attainment area for air quality

- ▶ **What would be a reasonable range of alternatives for this project?**

EXAMPLE

- ▶ **No Project Alternative**
- ▶ **Mitigated (Reconfigured) Design Alternative**
 - Consider avoiding onsite wetlands
 - Consider reducing the footprint of the project or setting further back from scenic highway
- ▶ **Reduced Unit Size Alternative**
 - Reduce the number of units to level that would avoid significant air quality impacts
 - Remember, must be potentially feasible
- ▶ **Offsite Alternative**
 - Determine whether developer has other properties where this could be relocated (may be infeasible)

No PROJECT ALTERNATIVE

- ▶ Evaluation of a no project alternative compares impacts of the proposed project with impacts that would occur without approving the proposed project
- ▶ The No Project alternative analysis shall discuss:
 - Existing conditions at the time the NOP is published, or if NOP, at the time environmental analysis is commenced
 - Reasonable, foreseeable future conditions if the project is not approved

PRACTICE POINTERS

- ▶ No Project alternative is not the baseline for determining whether the project's environmental impacts may be significant (unless it is the same as environmental setting)
- ▶ No project alternatives does not necessarily equal no change

IS AN OFFSITE ALTERNATIVE NECESSARY?

It depends....

- ▶ Can significant impacts be avoided/reduced on an alternative site?
- ▶ Are alternative sites feasible?
 - Possible to acquire?
 - Likely to be consistent with general plan or reasonable to expect a general plan amendment
 - Project objectives consideration: do objectives suggest geographic requirements, such as market area, amenities, etc.?
 - Does lead agency have ability to feasibly act on an alternative site (jurisdiction *could* be a factor)
- ▶ Alternative sites are not required, but should be considered if they are feasible and would reduce significant effects

PRACTICE POINTER:

OFFSITE LOCATIONS SCREENING ANALYSIS

- ▶ Public or agency interest exists in alternative sites
- ▶ Screening analysis to search for feasible locations
 - Establish site criteria – an important use of objectives
 - Define study area – market driven, community boundary?
 - Search for potential sites – well suited to GIS
 - Identify candidates and assess reasonableness for the EIR
 - Meets objectives? Feasible? Reduces a significant impact?
 - Document outcome, especially if none are reasonable

LEVEL OF DETAIL FOR ALTERNATIVES ANALYSIS

- ▶ Analysis is comparative (difference from NEPA's 'equal level')
- ▶ Must be able to determine if alternative would reduce significant effects of project, and if other effects might be increased

PRACTICE POINTERS

- ▶ Compare each alternative with each of project's significant effects
- ▶ Describe if impacts are greater, lesser, similar
- ▶ Summarize the overall conclusions of each alternative
- ▶ Discuss ability to feasibly attain project objectives
- ▶ Do NOT conclude that alternatives selected for evaluation are infeasible (but, they may be potentially infeasible) unless obvious.

ENVIRONMENTALLY SUPERIOR ALTERNATIVE

“If the environmentally superior alternative is the ‘no project’ alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives.” (CCR 15126.6)

- ▶ Not always clear if there is one environmentally superior alternative. Sometimes there is none, but environmental tradeoffs exist.
- ▶ What if the proposed project is environmentally superior to all alternatives except the ‘no project’ alternative?

PRACTICE POINTERS:

IMPACT COMPARISON TABLE

- ▶ Include a table that shows each issue, the relative environmental impacts, and how they compare to the project.

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

FINDINGS AND STATEMENT OVERRIDING CONSIDERATIONS

- ▶ EIR's role in decision making is to provide decision makers with meaningful information to influence the program or design
- ▶ Findings are the endpoint of the environmental review pathway
- ▶ Findings are used to approve the project and explain which mitigation measures and alternatives are adopted and rejected, and the status of significant effects (mitigated or not)

THE PROCESS

Findings

Basic requirement: if an agency approves a project that may have one or more significant effects on the environment, the agency must adopt one or more of the following findings with respect to each significant impact:

(1) Changes or alterations have been required in, or incorporated into such project that mitigate or avoid the significant environmental effects thereof as identified in the completed environmental impact report.

(2) 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.

(3) Specific economic, social, or other considerations, including the provision of employment opportunities for highly trained workers, make infeasible the mitigation or alternatives.

(Pub. Resources Code, § 21081, subd. (a); CEQA Guidelines, § 15091)

THE PROCESS

Findings

The issue here is whether an alternative that can avoid or substantially reduce any of the project's significant and unavoidable impacts is *actually* feasible.

The inability to attain key objectives may be one reason to reject an alternative

PRACTICE POINTERS

- Discuss alternatives addressed in the EIR, and explain why any that would avoid significant unavoidable effects are infeasible
- Make a Finding for each significant effect
- Suggested format
 - Impact:
 - Finding:
 - Facts in support of finding:
- MMRP need not be in EIR, but is adopted with the CEQA Findings at time of approval
- Mitigation measures written as conditions of approval

STATEMENT OF OVERRIDING CONSIDERATIONS

- Statement needed for approval of project with remaining significant effects
 - Reasons to approve a project where significant impacts are not avoided or substantially lessened
 - Supported by substantial evidence in the record
 - Reasons can be economic, legal, social, technological or other

(CEQA Guidelines § 15093)

PRACTICE POINTERS

- ▶ Findings need to clearly state why alternatives or mitigation that would avoid significant unavoidable effects are infeasible
- ▶ The Statement of Overriding Considerations would be clear and convincing. Why is it acceptable to approve a project with significant unavoidable impacts?

If CEQA requires you to consider alternatives that are “potentially feasible,” how can the alternatives later be determined to be infeasible?

PRACTICE POINTERS

- ▶ Feasibility of alternatives for evaluation is determined at the staff level and whether the alternative can attain most project objectives
- ▶ Decision-makers may have a different view of the same issues and they can make a contrary finding, as long as those decisions are supported by substantial evidence in the record

PRACTICE POINTERS:

ECONOMIC INFEASIBILITY OF ALTERNATIVES

- ▶ Test is not whether an alternative costs more, or whether proponent can afford it, but whether cost is so much greater that a reasonably prudent proponent would not proceed (*Uphold Our Heritage v. Town of Woodside* [2007]).
- ▶ Substantial evidence of economic infeasibility is key. Prepare and include an economic report in the record (*The Flanders Foundation v. City of Carmel-by-the-Sea* [2012]).

CASE LAW

Agency may reject an alternative as infeasible on policy grounds, provided finding is supported by substantial evidence (e.g., adopted policies re: need for housing or promoting non-vehicular transportation):

- *City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 401
- *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957
- *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App4th 296

THANK YOU!

PRESENTED BY:

AMANDA K. OLEKSZULIN (916.930.3183)

CURTIS E. ALLING (916.930.3181)

WWW.ASCENTENVIRONMENTAL.COM

WWW.FACEBOOK.COM/ASCENTENVIRONMENTAL