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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

STOP TAKING OUR PARKS et al., Plaintiffs and Appellants, v. CITY OF LONG BEACH, Defendant and Respondent.	B156347 (Super. Ct. No. BS071279)

APPEAL from a judgment of the Superior Court of Los Angeles County, Dzintra I. Janavs, Judge. Affirmed.

Chatten-Brown & Associates, Jan Chatten-Brown, Douglas P. Carstens and Maya Golden-Krasner for Plaintiffs and Appellants.

Robert E. Shannon, City Attorney, Michael J. Mais, Principal Deputy City Attorney; Rutan & Tucker, M. Katherine Jenson and Robert S. Bower for Defendant and Respondent.

INTRODUCTION

Plaintiffs Stop Taking Our Parks (STOP) and California Earth Corps appeal from a judgment denying their petition for writ of mandate. They claim defendant City of Long Beach (City) failed to comply with the California Environmental Quality Act (Pub. Resources Code § 21000 et seq., "CEQA") prior to approving plans to build a new police station in Scherer Park. Specifically, they contend that, in the environmental impact report (EIR) for the project, the City failed to analyze a reasonable range of alternatives. They additionally contend the City violated CEQA by failing to identify an environmentally superior alternative other than a no project alternative and failing to state whether there were feasible alternative locations for the project other than the two identified. We disagree with plaintiffs' contentions and affirm the judgment.

STATEMENT OF FACTS

Scherer Park is a 24.99 acre park in the northern portion of the City. It is bordered by Del Amo Boulevard on the north, Long Beach Boulevard on the west, Atlantic Avenue on the east, and single-family homes to the south. The park contains basketball and tennis courts, a children's play area, and other recreational facilities, as well as a man-made lake and open space. The park is located in an area which is known to have a shortage of recreational and open space.

In 1984, the North Police Facility was constructed in the northeast corner of the park, at the corner of Del Amo Boulevard and Atlantic Avenue. Its location is near the geographic center of North Long Beach. It has become the accepted location for the delivery of police services in North Long Beach and is used with great frequency by the local community. It has been an asset to the local community and park goers, reducing gang activity and crime in the park and surrounding areas and making the park safe for families to use.

The North Police Facility was originally intended to be a temporary small, storefront operation. As demand for its services increased, however, the facility became inadequate, and its condition deteriorated. Trailers and additional parking spaces were added in 1992, increasing the size of the facility to 13,800 square feet. These additions ultimately were inadequate to meet the demand on the facility.

In 1994, the Long Beach Police Department completed a strategic plan to accomplish its goals of meeting community needs, improving customer and support services and maximizing use of resources. In order to meet community needs, the plan called for improving community access to the police department by decentralizing police facilities. The City would be divided into four service areas—north, south, east and west—with police facilities placed in each of these areas.

Construction began on a prototype police facility in the west service area in 1995, and the facility opened in 1997. It was proposed that the same plans be used for new facilities in the north and east service areas.[1]

City staff began looking for sites for construction of the new police facility in the north service area. The requirements for the site were: (1) that it be approximately three acres in size,[2] relatively flat, with immediate access to major north-south and east-west traffic corridors; (2) that it be relatively vacant and under single ownership in order to minimize the impact on property owners and tenants; (3) that it be relatively free from environmental contamination; (4) that it not be zoned for residential use; (5) that the cost for land assembly and tenant relocation be relatively low; and (6) that it be centrally located in the North Long Beach area in order to provide efficient access and service to the area.

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[1] The existing main police station in the downtown area would serve as the police facility for the south service area.

[2] An acre is 43,560 square feet. (Webster's 3d New Internat. Dict. (1993) p. 1399.)

By March 1998, City staff members were recommending construction of the new facility on the site of the North Police Facility in Scherer Park. Staff had considered and rejected four potential sites. (1) Houghton Park was not as centrally located as Scherer Park and would suffer greater impact from the project. (2) A 2.7 acre site at the corner of Victoria Street and Long Beach Boulevard had a narrow configuration, and acquisition of the property and demolition of an existing building would be too costly. In addition, the property was separated from most of North Long Beach by the Long Beach Freeway and Los Angeles River, making access more difficult, especially if there were a natural disaster such as an earthquake or flood. (3) A vacant parcel at the corner of Cherry Avenue and Carson Street was too costly to acquire and not centrally located. (4) Commercial property at 4250-4252 Atlantic Avenue had very limited parking. By contrast, Scherer Park was centrally located and already owned by the City, saving in acquisition costs.

In February 1999, the City Council directed City staff to identify key sites for the north service area police facility. They looked at up to eight sites in North Long Beach that were on commercial corridors. They ultimately narrowed the site selection down to three sites. These "were the most applicable and the best sites, given the location and requirements that the police department has, in terms of being within the central area of the entire patrol district, being on arterial corridors where you can access all areas of the patrol district within generally the same response time, being adjacent or close to the freeway so that you could have access . . . to the main facility in downtown." These three, which were included in the project EIR, were Scherer Park, the former Dooley's Hardware Store (Dooley's) on Long Beach Boulevard and Atlantic Plaza Shopping Center (Atlantic Plaza) on Atlantic Plaza east of Atlantic Avenue.[3]

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[3] Sites removed from further consideration were: (1) 3.5 acres on Atlantic Avenue just north of Scherer Park which had an irregular configuration, were adjacent to a flood control channel and residences, and would require environmental remediation; (2) 2.5 acres on Atlantic Avenue across from Houghton Park which was not centrally located, too small and irregularly shaped, adjacent to residences and likely to have high relocation

A report on the matter was presented to the City Council on February 22, 2000.[4] The report set forth the criteria used in making site selections and noted the site selected for the project was Scherer Park, with Dooley's and Atlantic Plaza as alternative sites. It stated that City staff would "conduct community meetings to assess the level of support or concern with regard to the selection of Scherer Park as the primary site of the North Police Station. These meetings will be a precursor to the environmental review process for the project mandated by [CEQA]." A number of people spoke both for and against the project. While police officers and local residents and business persons favored Scherer Park as the site for the project, there were some who were opposed to using additional parkland. The City Council approved conceptually the selection of Scherer Park "as the primary site for the North Police Station, subject to further study of alternatives during the environmental review process."

A community meeting was held on May 4, 2000. The overall response was positive, and suggestions were made concerning the layout of the proposed parking area. The Acting Director of the Department of Community Development then submitted an application to begin the environmental review process.

An Initial Environmental Study was prepared on June 14, 2000. Since it was concluded that the proposed project could have a significant effect on the environment, Notice of Preparation (NOP) of a Draft EIR was prepared and mailed out on June 19.[5] The NOP gave background on the project and noted that modification of the project to include a two-story parking garage would limit the project's encroachment into open space. An additional community meeting was held on August 24, 2000.

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costs; (3) 5 acres on Cherry Avenue at 55th Way which were not centrally located, would require environmental remediation and were being considered for use as open space once remediation was complete.

[4] The report was signed by the Acting Director of the Department of Community Development and the Chief of Police. It was approved by the City Manager.

[5] A copy was mailed to STOP's president.

A September 11, 2000 memorandum noted three options for construction of the North Police Station in Scherer Park. The original design called for surface parking, using approximately 3 acres of land and costing approximately $6.5 million. A design with consolidated surface parking, including retaining walls, would use 2.5 acres of land and cost $7 million. A design featuring subterranean parking would use 2.3 acres of land and cost $10 million. Of the three options, the second seemed to receive the most support.

The Draft EIR was completed on February 6, 2001. It was circulated for comment for 60 days.[6] The Draft EIR contained a proposal for constructing the North Police Station on 2.5 acres in Scherer Park. It also contained three project alternatives: no project, Dooley's and Atlantic Plaza.

The project was discussed at the February 27, 2001 City Council meeting. A STOP representative was present and spoke but did not challenge the limited alternatives to the project contained in the Draft EIR or suggest other sites for the project. One speaker mentioned the lack of replacement parkland as a mitigation feature in the Draft EIR. Other speakers both supported and opposed the project, one suggesting that Dooley's would be a better alternative to the use of parkland. One of the City Council members responded that the City was prepared to create more parkland as a replacement, but an update on the status of this was needed. It was reported that the Redevelopment Agency was in the process of trying to obtain the land for the park. Another councilmember suggested that land already owned by the City behind 52nd Street Plaza might be utilized.

A written response to the Draft EIR by STOP's vice-president opposed "the confiscation of parkland for the building of any edifice of an institutional nature as inherently wrong and, very likely, legally actionable." He stated that it made "little sense

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[6] The normal 45-day comment period was extended to 60 days due to the anticipated volume of comments.

to waste an invaluable environmental resource today for the sake of a public safety facility that could be built in (currently) ***two alternative locations***." (Emphasis in the original.) He also stated that while Dooley's and Atlantic Plaza both were viable alternative sites for the project, "Two alternatives do not represent sufficient study. There should be at least one or possibly, two more ***feasible 'Site Location'*** alternatives identified . . . ." (Emphasis in the original.)

Other responses to the Draft EIR suggested as alternative sites the Bixby Knolls shopping area and the city-owned property on 52nd Street. The government response to public comments did not address either of these suggestions.

The Final EIR was completed. It contained the Draft EIR, appendices and comments and responses. Approval of the Final EIR was considered at a May 3, 2001 Planning Commission meeting. At this meeting, STOP's vice-president reiterated his position that there were two alternative sites available, so it was unnecessary to "take Scherer Park for this police station." The Planning Commission, however, adopted a resolution certifying completion of the Final EIR and approving the project at Scherer Park. The Final EIR contained a mitigation measure requiring "one-for-one" replacement of the parkland taken with new parkland in the same general area before a certificate of occupancy for the new facility would be issued.

STOP and others appealed the Planning Commission's decision to the City Council, which held a hearing on the matter on July 17, 2001. Prior to the hearing, STOP wrote to the City Council that Dooley's was not a viable alternative, in that the school district was purchasing the site. Therefore, the Final EIR was "invalid and defective" and should be sent back to the Planning Department to "have them locate and evaluate TWO ALTERNATIVE SITES (although we'd prefer THREE) for recommendation on the EIR process." At the hearing, STOP's president told the City Council that STOP had located 12 alternative sites for the project.[7] STOP's attorney argued that other feasible

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[7] These alternative sites were a vacant lot on Long Beach Boulevard at Allington Street; an area on Long Beach Boulevard near the Long Beach Freeway and the Los

alternatives should have been identified, or the EIR should have contained an explanation as to why other alternatives were rejected. STOP's vice-president reiterated that the EIR was flawed, in that "the alternatives that were identified in the EIR are not really viable."

The Real Estate Officer for the Community Development Department then reviewed for the City Council the development process, including the identification of alternative sites and their presentation to the City Council previously. She also reviewed the specifications for the project: The exterior design of the police station was revised in order to add "greater visual interest." The retaining wall would be given "the appearance of a rustic bridge" and planted with vines. Amenities would be added to Scherer Park to replace some of those lost, including new seating and picnic areas. Replacement trees would be planted. Approximately 67 parking spaces currently used by the police department would be returned to public park use.

The Real Estate Officer also noted that the five-acre property at 55th Way and Paramount Boulevard had been identified as a possibility for replacement parkland. It was vacant and blighted. In addition, it required environmental remediation and property taxes on the property were delinquent, making it unlikely anyone else would want to develop the property.[8] The redevelopment agency was considering acquiring it and turning it over to the city, which could use an existing loan for remediation and construction of park improvements. She anticipated that the new park could open at the same time as the new police station.

Angeles River, under the power lines; a 55,000 square foot lot across from Dooley's; a blighted area on the east side of Long Beach Boulevard just above the tracks; the Wayside Trailer Park on 47th Street; the Camelot Center at Long Beach Boulevard and Pleasant Street; a blighted thrift store at 5117 Atlantic Avenue; an empty grocery store at 6000 Atlantic Avenue; Atlantic Plaza; an empty lot across from Atlantic Plaza; a closed McDonald's on Atlantic Avenue south of market Street; and a site on Via Carmelitos at Orange Avenue.

[8] It was a former dump site. Any development on the site would have to have porous surfaces in order to allow the venting of methane gas. In addition, it would be subject to subsidence. This limited its uses.

At the hearing, Councilmember Webb noted that the City Council was not given notice that the school district was moving forward in acquiring Dooley's. He asked the city attorney about the questions raised regarding the validity of the Final EIR. The city attorney noted there is no specific requirement as to the number of alternatives that must be considered. Moreover, the City could negotiate with the school district regarding Dooley's or take the property by eminent domain if necessary.

Councilmember Webb opined that the City Council had given consideration to alternative sites. The councilmember noted that use of the alternative sites would have an impact on the residents around them. The majority of the residents near Scherer Park were in favor of using that site for the new police facility, however. The parkland taken would be replaced on a two-for-one basis, as well. At the conclusion of the hearing, the City Council adopted a resolution certifying the final EIR and approving the project.

DISCUSSION

Standard of Review

Under CEQA, review of a governmental agency's actions extends only to "whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." (Pub. Resources Code, § 21168.5; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564, "*Goleta Valley II*.")

As noted in *Goleta Valley II*, *supra*, "[t]he EIR has been aptly described as the 'heart of CEQA.'" (52 Cal.3d at p. 564.) It serves to "inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made." (*Ibid*.) Thus, compliance with CEQA when preparing an EIR is crucial to ensure that the public knows the bases on which their responsible officials are taking environmentally significant action and can respond accordingly. (*Laurel Heights*

Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 392, "*Laurel Heights*.")

Accordingly, when reviewing an EIR, this court """does not pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document."""" (*Goleta Valley II*, *supra*, 52 Cal.3d at p. 564; *Laurel Heights*, *supra*, 47 Cal.3d at p. 392.) Our determination is """"whether policymakers have been adequately informed of the consequences of their decisions, and whether the public has sufficient information to evaluate the performance of their elected officials." [Citation.]' [Citation.]" (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 369; see also *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712.)

CEQA requires that an EIR "reflect a good faith effort at full disclosure." (*Kings County Farm Bureau v. City of Hanford*, *supra*, 221 Cal.App.3d at p. 712.) It does not require perfection or an exhaustive analysis of all possible alternatives. (*Ibid*.) A prejudicial abuse of discretion may be found only if the absence of information in the EIR "precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process." (*Ibid*.)

Failure to Analyze a Reasonable Range of Alternative Sites

The CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.) require an EIR to "describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its

reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason." (*Id*., § 15126.6, subd. (a).)

The CEQA Guidelines also require that "[t]he range of potential alternatives to the proposed project . . . include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects. The EIR should briefly describe the rationale for selecting the alternatives to be discussed. The EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination. . . . Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are: (i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts." (Cal. Code Regs., tit. 14, § 15126.6, subd. (c).)[9]

"CEQA establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR. Each case must be evaluated on its facts, which in turn must be reviewed in light of the statutory purpose." (*Goleta Valley II*, *supra*, 52 Cal.3d at p. 566.)

The scope of alternatives to be analyzed in an EIR includes those which feasibly could attain the basic project goals. (*Save San Francisco Bay Assn. v. San Francisco Bay Conservation etc. Com.* (1992) 10 Cal.App.4th 908, 922.) "An EIR need not consider

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[9] The scoping process is the screening process by which a local agency makes its "initial determination as to which alternatives are feasible and merit in-depth consideration, and which do not." (*Goleta Valley II*, *supra*, 52 Cal.3d at p. 569; see Cal. Code Regs., tit. 14, § 15083.) It involves "consult[ation] directly with any person or organization [the lead agency] believes will be concerned with the environmental effects of the project" in hopes of "solv[ing] many potential problems that would arise in more serious forms later in the review process." (Cal. Code Regs., tit. 14, § 15083.) It takes place after notice of preparation has been sent out and prior to completion of the Draft EIR. (Cal. Code Regs., tit. 14, §§ 15082, 15083.)

every conceivable alternative but must consider a range of alternatives sufficient to permit the agency to evaluate the project and make an informed decision, and to meaningfully inform the public." (*Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1264.) The EIR is sufficient if it provides enough information to allow comparison of the project with a reasonable choice of alternatives. (*Ibid*.) The EIR need not examine "alternatives that are so speculative, contrary to law, or economically catastrophic as to exceed the realm of feasibility." (*Save San Francisco Bay Assn.*, *supra*, at p. 922.) Neither is it required that the EIR "contain the results of unfruitful investigations or pursuits down blind alleys, but only 'an analysis of those alternatives necessary to permit a reasoned choice' [citation], and which are feasible, i.e., capable of being accomplished in a successful manner. [Citation.]" (*Concerned Citizens of South Central L.A. v. Los Angeles Unified School Dist.* (1994) 24 Cal.App.4th 826, 845.)[10]

It thus has been held that four alternatives are sufficient, so long as they "represent enough of a variation to allow informed decisionmaking." (*Mann v. Community Redevelopment Agency* (1991) 233 Cal.App.3d 1143, 1151; see also *Village Laguna of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134 Cal.App.3d 1022, 1028-1029.) The complete absence in an EIR of alternative sites for a project has been approved where there simply were no other feasible sites for the project. (*Save Our Residential Environment v. City of West Hollywood* (1992) 9 Cal.App.4th 1745, 1752, 1754.)

Plaintiffs first argue that the EIR fails to comply with CEQA, in that "[m]any potentially feasible alternatives . . . suggested by the public" were not evaluated in it. The potentially feasible alternatives suggested by the public and cited by plaintiffs include the two alternatives contained within the EIR, Dooley's and Atlantic Plaza. They

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[10] Public Resources Code section 21061.1 defines "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors."

include Bixby Knolls shopping center, the 52nd street lot owned by the City, and the "open space where Red Fox Lanes was taken down years ago." They also include the alternatives suggested by STOP: a vacant lot on Long Beach Boulevard at Allington Street; an area on Long Beach Boulevard near the Long Beach Freeway and the Los Angeles River, under the power lines; a 55,000 square foot lot across from Dooley's; a blighted area on the east side of Long Beach Boulevard just above the tracks; The Wayside Trailer Park on 47th Street; The Camelot Center at Long Beach Boulevard and Pleasant Street; a blighted thrift store at 5117 Atlantic Avenue; an empty grocery store at 6000 Atlantic Avenue; Atlantic Plaza; an empty lot across from Atlantic Plaza; a closed McDonald's on Atlantic Avenue south of Market Street; and a site on Via Carmelitos at Orange Avenue.

What plaintiffs fail to cite is any evidence that these alternatives were actually feasible, i.e., "capable of being accomplished in a successful manner." (*Concerned Citizens of South Central L.A. v. Los Angeles Unified School Dist.*, *supra*, 24 Cal.App.4th at p. 845.) At least one of the "alternatives," the 55,000 square foot lot, at slightly more than an acre is clearly too small for a project requiring two to three acres. Others, such as the vacant lot on Long Beach Boulevard at Allington Street, are not centrally located in the North Long Beach area and therefore are unsuitable for attaining the basic project goals. (*Save San Francisco Bay Assn. v. San Francisco Bay Conservation etc. Com.*, *supra*, 10 Cal.App.4th at p. 922.)

In addition, plaintiffs fail to cite any evidence that any of these alternatives varies significantly from the alternatives set forth in the EIR, i.e., that they would have less of a negative impact than the alternatives selected. Where those challenging an EIR have put forth their own alternatives, they have a duty to present evidence that their alternatives offer "'substantial environmental advantages'" over the alternatives contained within the EIR. (*Mann v. Community Redevelopment Agency*, *supra*, 233 Cal.App.3d at p. 1151.) Absent such evidence, there is no abuse of discretion in failing to discuss such alternatives in the EIR. (*Ibid*.)

Failure to Analyze Alternative Designs

Plaintiffs also complain that the EIR contained no alternative designs, such as subterranean parking. The trial court found the administrative "record shows that on-site alternatives using less parkland were explored with the public even before EIR preparation. . . . Subterranean parking was rejected because of the cost, safety concerns, and because it would not lessen negative impact on parkland. . . . In addition, the selected alternative was modified to reduce the Project from 3 to 2.5 acres of the 25-acre park. . . ." (Citations omitted.)

The administrative record shows that the original project design called for surface parking, using approximately 3 acres of land and costing approximately $6.5 million. The EIR contained an alternative project design with consolidated surface parking, including retaining walls, using approximately 2.5 acres of land and costing approximately $7 million. A design featuring subterranean parking which was rejected prior to preparation of the EIR would save only .2 acres of land but cost an additional $3 million. Local citizens groups and members of the City Council were consulted prior to rejection of subterranean parking.

Since the environmental impact of subterranean parking was not significantly less than the impact of the consolidated surface parking and carried with it a significantly higher economic cost, it need not have been examined in the EIR. (See *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 712-715.) Stated otherwise, under the circumstances, subterranean parking was not a reasonable alternative to the project and need not have been included as a feasible alternative in the EIR. (*Save San Francisco Bay Assn. v. San Francisco Bay Conservation etc. Com.*, *supra*, 10 Cal.App.4th at p. 922.) Hence, the City did not abuse its discretion in failing to include subterranean parking as an on-site alternative in the EIR. (*Kings County Farm Bureau v. City of Hanford*, *supra*, 221 Cal.App.3d at p. 712.)

Failure to Include Potentially Feasible Alternatives

Plaintiffs next argue that the failure to include in the EIR the potentially feasible alternatives rejected by City staff violated CEQA. As previously stated, the CEQA Guidelines state that "[t]he EIR should . . . identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination." (Cal. Code Regs., tit. 14, § 15126.6, subd. (c).) "Those alternatives and the reasons they were rejected . . . must be discussed in the EIR in sufficient detail to enable meaningful participation and criticism by the public. '"[W]hatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report."' [Citations.]" (*Laurel Heights*, *supra*, 47 Cal.3d at p. 405.)

Under the CEQA Guidelines, then, the EIR here should have identified the alternative sites and designs rejected as infeasible during the scoping process and explained why they were rejected. As the City points out, however, the rejection of alternatives by City staff took place prior to the scoping process.

Prior to March 1998, City staff considered and rejected four potential sites. Approximately five more sites were rejected about February 1999. At that time, site selection was narrowed down to the three alternatives contained within the EIR: Scherer Park, Dooley's and Atlantic Plaza. The NOP, which started the scoping process (Cal. Code Regs., tit. 14, §§ 15082, 15083), was not sent out until June 19, 2000. Thus, failure to include these rejected alternatives in the EIR did not violate the CEQA Guidelines.[11]

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[11] All the citations to the administrative record provided by plaintiffs regarding alternatives rejected by City staff are to these rejections made prior to the NOP.

Failure to Include a Sufficient Variety of Alternatives

Plaintiffs further argue that there were an insufficient variety of alternatives in the EIR, in that there were only two off-site alternatives, both with similar impacts, and both with significant problems identified early in the CEQA process. In light of the "many other potentially feasible alternatives which existed," the EIR failed to analyze a reasonable range of alternatives.

An EIR need not examine every possible alternative to the proposed project. "'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.'" (*Village Laguna of Laguna Beach, Inc. v. Board of Supervisors*, *supra*, 134 Cal.App.3d at p. 1029; accord, *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1178-1179, "*Goleta Valley I*.")

In *Goleta Valley I*, *supra*, cited by plaintiffs, the court examined whether an EIR was required to include alternate sites as project alternatives. (197 Cal.App.3d at p. 1178.) The developer of the project claimed that because it owned the proposed project site and there were no other feasible sites in the general area, no site alternatives were required. (*Id*. at p. 1179.) The court found "no authority or rationale for an inflexible rule that the availability of other sites must be considered . . . . It is necessary to examine the particular situation presented to determine whether the availability of other feasible sites must be considered in the EIR." (*Ibid*.) In the case before it, the court found that the developer's ownership of the proposed project site was a "factor[] of lesser significance." (*Ibid*.) In addition, because of the potential environmental impacts of the proposed project, reason required that the EIR at least consider the availability of feasible alternative sites. (*Id*. at p. 1180.)

Here, the EIR did consider the availability of feasible alternative sites and the impacts of using those alternative sites for the project. It therefore does not suffer the defects of the EIR in *Goleta Valley I*.

As the City notes, "where the circumstances warrant, a reviewing court may consult the administrative record to assess the sufficiency of the range of alternatives discussed in the EIR." (*Goleta Valley II*, *supra*, 52 Cal.3d at p. 569.) If "[t]he administrative record . . . reveals that the City . . . made a comprehensive analysis of numerous alternative sites for the project, the vast majority of which were not discussed in the EIR because their advantages and disadvantages did not substantially differ from the . . . prototypical sites selected for in-depth discussion," the EIR will be upheld. (*Save San Francisco Bay Assn. v. San Francisco Bay Conservation etc. Com.*, *supra*, 10 Cal.App.4th at pp. 922-923.)

Plaintiffs claim the "administrative record here simply supports the conclusion that the EIR did not consider a reasonable range of alternatives. The City's internal analysis considered alternatives that had the same, or in some cases fewer problems with them than the alternatives analyzed in the EIR. . . . Yet the City excluded those alternatives from the EIR without providing in the EIR any information about the reason for rejection of the alternatives."[12]

Plaintiffs identify the vacant parcel at the corner of Cherry Avenue and Carson Street as having no more problems than Dooley's and Atlantic Plaza. The administrative record indicates that this site was too costly to acquire and not centrally located, rendering it an infeasible alternative. (*Concerned Citizens of South Central L.A. v. Los Angeles Unified School Dist.*, *supra*, 24 Cal.App.4th at p. 845.) Plaintiffs point to commercial property at 4250-4252 Atlantic Avenue with very limited parking as having fewer problems than Dooley's and Atlantic Plaza, in that the problem could be cured with underground parking. The administrative record indicates that "[t]he site is a commercial building located in the heart of the Bixby Knolls Business corridor," rather than a vacant lot on which a new facility will be built. Construction of underground parking beneath an

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[12] Plaintiffs identify these alternatives as those sites rejected prior to the scoping process.

existing building may not be a feasible option in the terms of cost and the potential for damage to the structure.

That the EIR contained only two alternative sites, neither of which was without significant problems, does not, in and of itself, violate the rule of reason and invalidate the EIR. (*Save Our Residential Environment v. City of West Hollywood*, *supra*, 9 Cal.App.4th at p. 1754.) As previously stated, "CEQA establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR." (*Goleta Valley II*, *supra*, 52 Cal.3d at p. 566.) The adequacy of the EIR depends upon the facts of each case. (*Ibid*.; *Save Our Residential Environment*, *supra*, at p. 1754.)

In this case, there simply is nothing in the administrative record to indicate that a greater variety of feasible alternative sites was available for the project. The EIR therefore is not invalid for failing to include a sufficient variety of alternatives. (*Save Our Residential Environment v. City of West Hollywood*, *supra*, 9 Cal.App.4th at p. 1754.)

Failure to Identify an Environmentally Superior Alternative

Plaintiffs further contend the City violated the CEQA Guidelines in failing to identify an environmentally superior alternative other than the no project alternative. In support of this contention, they cite a portion of section 15126.6, subdivision (e)(2), of title 14 of the California Code of Regulations reading: "If the environmentally superior alternative is the 'no project' alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives."

The City discussed the environmental impacts of the proposed project. It then compared the environmental impacts of the no project alternative and the Dooley's and Atlantic Plaza alternatives. It did not, however, identify Dooley's or Atlantic Plaza as environmentally superior to the other or to Scherer Park. Rather, it noted that "[e]ach alternative has important environmental consequences. With most EIR's, the 'No Project Alternative' is considered to be environmentally superior since no action is taken. In the

current case, the no project alternative will result in delayed action since the existing facilities are inadequate and will have to be replaced at some time. [¶] Each alternative considered has both benefits and negative impacts. In the case of the project itself, the most significant effects are the use of and impact upon the park. Other impacts are less intense than the alternatives."

A review of the City's comparison chart indicates that the majority of the environmental impacts of the Dooley's and Atlantic Plaza alternatives are similar. In some areas, Dooley's is the environmentally superior alternative, while in other areas Atlantic Plaza is superior.[13]

As plaintiffs note, the trial court found "the EIR expressly did not identify an environmentally superior alternative, because each alternative was found to be superior in some respects and inferior in others. Thus, the significant effects of each alternative site were compared with those of the selected site. This comparison was also presented in tabular form." In other words, the EIR identified the environmentally superior alternative *to the extent possible*.

It has been noted that subdivision (e)(2) of section 15126.6 must be read in conjunction with subdivision (d), "which requires that an EIR compare the significant effects of the alternatives with those that would result from the project. Often, alternatives will reduce some impacts and increase others. When none of the alternatives is environmentally superior to the project, it should be sufficient to compare the significant effects of each alternative with those of the project." (1 Kostka & Zischke, Practice Under The Cal. Environmental Quality Act (Cont.Ed.Bar 2002) § 15.37, p. 610.5.) In the absence of any authority to the contrary, we agree with the trial court that a comparison of environmental impacts fulfills the mandate of section 15126.6,

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[13] For example, Dooley's would have a significant adverse impact on traffic but none on hydrology, while Atlantic Plaza would have a mitigable impact on traffic but would have an immitigable impact on the flood control channel.

subdivision (e)(2) of title 14 of the California Code of Regulations when there is no environmentally superior alternative.

Failure to State Whether Feasible Alternatives Existed

Plaintiffs finally argue that the City violated section 15126.6, subdivision (f)(2)(B) of title 14 of the California Code of Regulations by failing to state whether there were feasible alternative locations for the proposed project other than Dooley's and Atlantic Plaza or why alternative locations were infeasible. Subdivision (f) of section 15126.6 provides that "[t]he range of alternatives required in an EIR is governed by a 'rule of reason' that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project. The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision making."

Paragraph (2)(B) of subdivision (f) reads: "None feasible. If the lead agency concludes that no feasible alternative locations exist, it must disclose the reasons for this conclusion, and should include the reasons in the EIR. For example, in some cases there may be no feasible alternative locations for a geothermal plant or mining project which must be in close proximity to natural resources at a given location."

At the time the EIR here was prepared, the City had not concluded no feasible alternative locations existed. It had concluded two feasible alternative locations existed: Dooley's and Atlantic Plaza. It was only when certifying the EIR that the City Council concluded Dooley's and Atlantic Plaza were infeasible. Accordingly, section 15126.6, subdivision (f)(2)(B) of title 14 of the California Code of Regulations is inapplicable.

CONCLUSION

We conclude that, under the circumstances, the EIR analyzes a reasonable range of alternatives. Absent a showing that *feasible* alternatives suggested by the public were not analyzed, we will not fault the City for failing to include them in the EIR. Neither will we fault the City for failing to include alternative designs when, in consultation with the public, it had already a design which decreased the amount of parkland to be taken without being cost prohibitive. Finally, we find none of the CEQA violations claimed by plaintiffs. Hence, there was no prejudicial abuse of discretion. (Pub. Resources Code, § 21168.5; *Goleta Valley II*, *supra*, 52 Cal.3d at p. 564.)

The judgment is affirmed.

NOT TO BE PUBLISHED

SPENCER, P.J.

I concur:

MALLANO, J.

I concur in the judgment only:

VOGEL (MIRIAM A.), J.