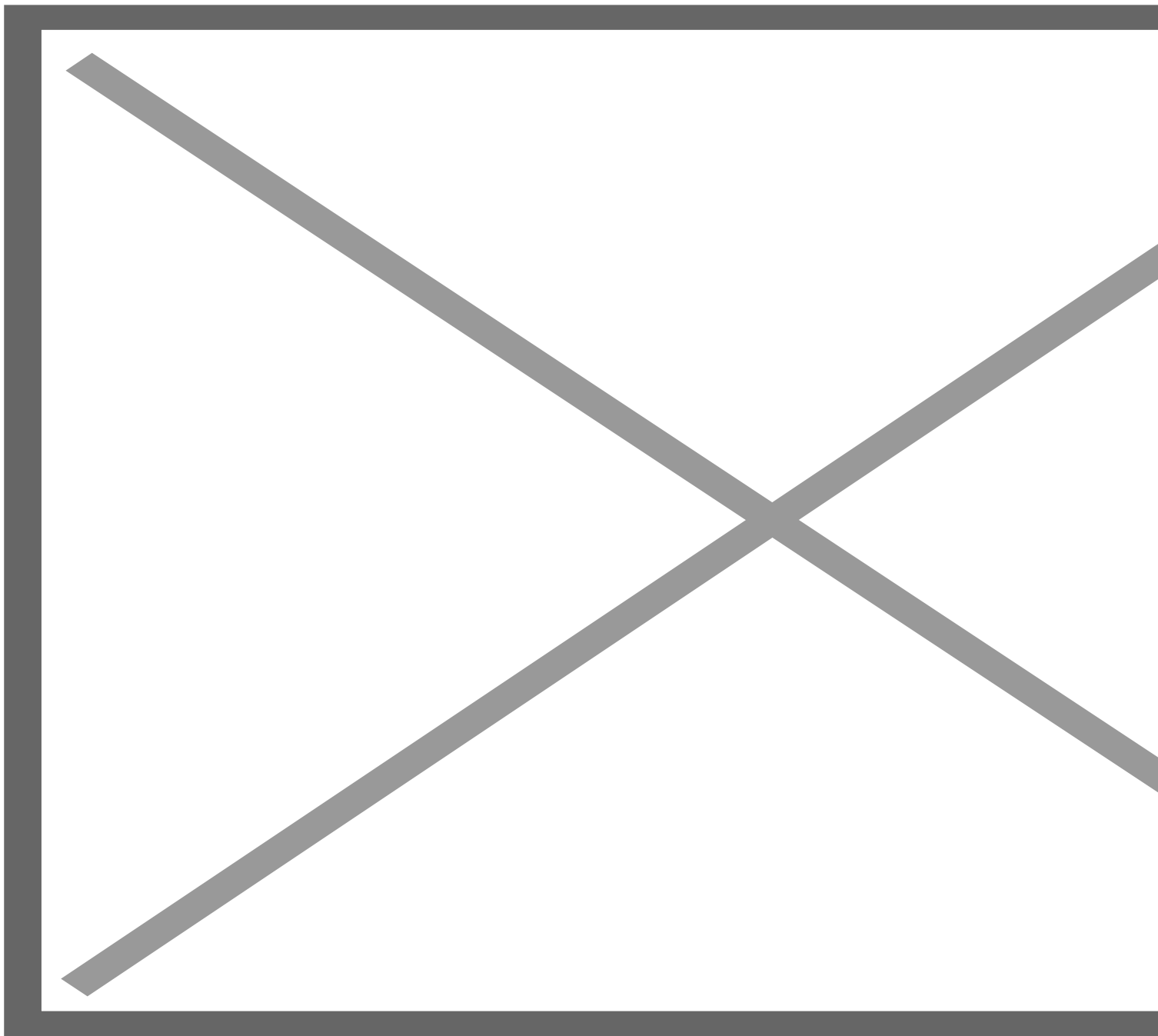


## Failure to Identify Preferred Alternative Dooms EIR

A draft EIR that studies five very different project alternatives without identifying a preferred alternative violates CEQA by failing to provide the public with a stable project to review, the court of appeal held in [Washoe Meadows Community v. Department of Parks and Recreation](#), No. A145576 (1st Dist., Nov. 15, 2017).



The California Department of Parks and Recreation undertook a project to address erosion of the Upper Truckee River in Washoe Meadows State Park and Lake Valley State Recreation Area, which was a major source of sediment and nutrient runoff in Lake Tahoe. The Recreation Area contained an 18-hole golf course that had

altered the river's original course and flow. The Department issued a scoping notice that identified four alternatives for the project: Alternative 1: No project. Alternative 2: River restoration with reconfiguration of the 18-hole golf course. Alternative 3: River restoration with a nine-hole golf course. Alternative 4: River stabilization with continuation of the existing 18-hole golf course. The scoping notice identified Alternative 2 as the preferred alternative. The Department's Draft EIR (which also served as a draft EIS for purposes of NEPA and the Tahoe Regional Planning Compact and Tahoe Regional Planning Agency Code of Ordinances) added a fifth alternative that would include decommissioning of the golf course. The Draft EIR did not specify a preferred alternative; rather, the Draft EIR stated that the Department would select a preferred alternative after receiving comments on the Draft EIR. The Draft EIR analyzed all five alternatives in considerable detail. In the Final EIR, the Department identified a slightly modified version of Alternative 2 as the preferred alternative. Washoe Meadows Community filed a petition for writ of mandate seeking to set aside the Department's certification of the Final EIR, alleging, among other claims, that the failure to identify a preferred alternative in the Draft EIR violated CEQA. The court of appeal agreed. The court of appeal relied on *County of Inyo v. City of Los Angeles*, 71 Cal. App. 3d 185 (1977), in which the court stated that "[a]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." Although *County of Inyo* involved an EIR that inconsistently described the scope of the project, the court held that the circumstance in this case—where the Draft EIR had not selected a preferred alternative for the project—was "no less problematic." The court explained: "For a project to be stable, the DEIR, the FEIR, and the final approval must describe substantially the same project. A DEIR that states the eventual proposed project will be somewhere in 'a reasonable range of alternatives' is not describing a stable proposed project. A range of alternatives simply cannot be a stable proposed project." The court explained that the Department's failure to select a preferred alternative could limit meaningful public participation in the environmental review process. According to the court, it did not matter if the EIR had thoroughly analyzed the preferred alternative; the Draft EIR's failure to identify a preferred project "impair[ed] the public's right and ability to participate in the environmental review process." The court explained that "[a] description of a broad range of possible projects, rather than a preferred or actual project, presents the public with a moving target." The court recognized that "there may be situations in which the presentation of a small number of closely related alternatives" would be acceptable, but explained that in this case the five alternatives were vastly different because each alternative "created a different set of impacts, requiring different mitigation measures." When an agency is considering a diverse range of alternatives, the court held, it must select a preferred alternative prior to preparing a draft EIR.

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