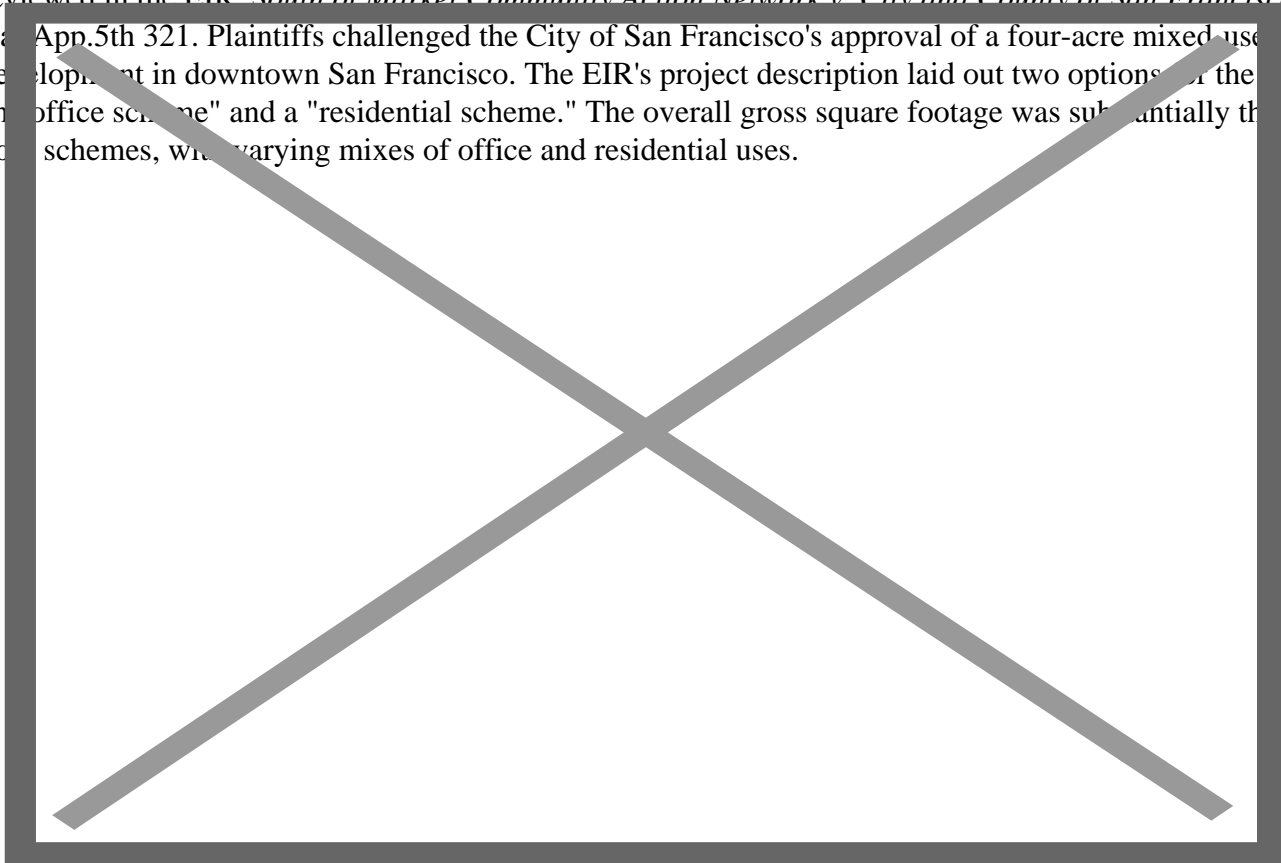


## **EIR's Project Description May Present Alternative Development Options and the Agency May Approve A Variant of an Analyzed Alternative**

An EIR's project description may identify alternative development schemes proposed for a single project, and the agency may approve a modified version of the project that incorporates elements of one of the alternatives reviewed in the EIR. *South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal. App.5th 321. Plaintiffs challenged the City of San Francisco's approval of a four-acre mixed-use development in downtown San Francisco. The EIR's project description laid out two options for the project — an "office scheme" and a "residential scheme." The overall gross square footage was substantially the same in both schemes, with varying mixes of office and residential uses.



While

plaintiffs alleged numerous violations of CEQA, the key issue on appeal was the adequacy of the EIR's project description. Plaintiffs asserted the EIR failed to provide an accurate, stable and finite description of the project claiming the two alternative schemes were "confusing" and hampered the public's ability to understand what project had actually been proposed and analyzed. The appellate court disagreed, finding that the EIR described a single project — a mixed-use development involving the retention of two historic buildings, the demolition of other buildings on the site, and the construction of four new buildings — with two options for different allocations of residential and office units. The project description did not fluctuate during the EIR process, nor, contrary to plaintiffs' arguments, did the description present a "misleadingly small fragment of the ultimately approved project." The description, the court concluded, was not curtailed, misleading or inconsistent; instead,

"it carefully articulated two possible variations and fully disclosed the maximum possible scope of the project" and thereby "enhanced, rather than obscured, the information available to the public." Plaintiffs also contended the City violated CEQA because the Final EIR selected a proposed plan based on neither the office scheme nor the residential scheme, but a "revised" project that modify one of those schemes by retaining one of the buildings that would have been demolished. But the court noted that plaintiffs had failed to identify any component of the adopted project that had not been analyzed in the EIR or been subject to public comment. It pointed out that "The CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal." It added that the point of requiring an EIR to evaluate alternatives was to allow consideration of options that may be less harmful to the environment. The City's decision to incorporate elements of one of the proposed alternatives was intended to address environmental concerns, implementing one of the key purposes of the CEQA process – to reduce or avoid environmental impacts whenever feasible. Plaintiffs' numerous other CEQA claims were also rejected. Reviewing for abuse of discretion, the court held the EIR properly analyzed cumulative impacts and impacts related to traffic, wind, shadow and shade, and open space. The EIR also reflected the required "good faith effort" at disclosure in its analysis of the project's consistency with area plans and policies.

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