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The Compatibility Of Economic And Environmental Objectives In Governmental Decision Making

In the Environmental Quality Act of 1970 the California Legislature expresses the intent that environmental protection shall be the guiding criterion in public decisions. This position has been criticized by those who contend that economic impact should also be given high priority. This comment analyzes the existing authority for governmental entities to consider economic factors and proposes that the economic evaluation of alternative land uses offers the best framework within which to consider both economic and environmental impact. The comment proceeds to analyze proposed economic impact legislation and then suggests an alternative. It concludes that if carried out properly, economic analyses and environmental analyses are complementary and not conflicting.

In 1970 the California Environmental Quality Act (CEQA) was enacted, requiring for the first time that environmental considerations constitute a major factor in shaping the future economic growth of this state.[1] Under CEQA public agencies must give high priority to environmental factors when judging the merits of a proposed project. Although it appeared that virtually everyone was in favor of environmental reform, it soon became apparent that the *scope* of acceptable environmental control would foster a storm of controversy. It is this controversy which forms the substance of this comment.

The initial dispute, whether CEQA applied to private as well as public projects, gave rise to *Friends of Mammoth v. Board of Supervisors*[2] wherein the California Supreme Court settled the question in the affirmative. The decision was applied restrospectively,[3] and the requirement of an environmental impact report (EIR) resulted in a virtual construction standstill within some areas of the state,[4] including those

1. CAL. PUB. RES. CODE §21000 *et seq.*
2. 8 Cal. 3d 1, *as modified*, 8 Cal. 3d 247, 502 P.2d 1049, 104 Cal. Rptr. 761 (1972).
3. *Id.* at 272, 502 P.2d at 1065, 104 Cal. Rptr. at 777.
4. See generally, *Hearings on the California Environmental Quality Act Before the California Senate Local Government Committee*, Oct. 25, 1972.

private projects which had previously applied for and received the necessary building permits. This particular problem was subsequently remedied by the passage of Assembly Bill 889 by the California Legislature.[5] This bill provided in part that the *Friends of Mammoth* decision was to be applied prospectively. Thus those projects having proper approval prior to the rendition of the decision were free of the EIR requirement and could be continued.[6]

A more persistent problem, and one with which Assembly Bill 889 made no attempt to deal, stems from the now famous footnote 8 of the *Friends of Mammoth* decision. Echoing federal court interpretations of the National Environmental Policy Act (NEPA),[7] CEQA's parent act,[8] the court stated that "if the adverse consequences to the environment can be mitigated, or if feasible alternatives are available, the proposed activity, such as issuance of a permit, should not be approved."[9] Although footnote 8 has not been judicially construed, business and labor groups alike perceive it as an interpretation of the intent of CEQA—that in public agency decisions on the merits of either a public or private project, environmental protection should prevail regardless of economic and social factors.[10]

Such an interpretation, if in fact correct, raises serious questions regarding the discretionary application of the police power. In its discretion a public agency may consider *some* economic factors.[11] Yet the priority accorded to economic objectives appears to have been usurped by the provisions of CEQA and footnote 8 of the *Friends of Mammoth* decision, which now in effect require that environmental factors be given much greater consideration than economic factors. There appears to be no allowance for a balancing of the economic and environmental objectives.[12] This lack of effective consideration of economic factors could lead to the eventual downfall of the remedial environmental objectives of CEQA.

In an effort to avoid the anticipated consequences of footnote 8, the legislature has begun attempts to vary the manner in which con-

5. CAL. STATS. 1972, c. 1154, §1, at 2270.
6. For a general discussion of the aftermath of *Friends of Mammoth* see, Seneker, *The Legislative Response to Friends of Mammoth: Developers Chase the Will O' the Wisp*, 48 CAL. S.B.J. 127 (1973).
7. See, for example, Sierra Club v. Froehlke, 359 F. Supp. 1289 (S.D. Tex. 1973).
8. 8 Cal. 3d at 260, 502 P.2d at 1057, 104 Cal. Rptr. at 769.
9. *Id.* at 263, 502 P.2d at 1059, 104 Cal. Rptr. at 771.
10. Senator Clark L. Bradley, Press Release, Senate Bill 1051, June 6, 1973; California Chamber of Commerce, Legislative Issue Report, Vol. 73, No. 6, Apr. 30, 1973.
11. See text accompanying notes 15-34 *infra*.
12. See text accompanying notes 35-52 *infra*.

struction projects are considered for approval. The legislation introduced in this area provides for systematic incorporation of economic and social factors within the framework of CEQA.[13] However, each bill contains certain hazards which would, upon enactment of the bill, create further problems.

While attempting to resolve this procedural problem regarding the mechanics of a governmental decision, this comment delves deeply into the broader problem of accomodating economic growth with environmental restraints. In this pursuit, the Alternative Land Use Theory,[14] a theory providing a means whereby the *total* impact of a proposed project is analyzed at various sites to determine the best location, is offered for consideration. The application of this theory seemingly results in the most desirable project, from both an economic as well as an environmental viewpoint. This comment will introduce the theory, discuss its relation to the pending legislation, and suggest criteria for its incorporation in future legislative proposals. However, before discussing a new method of incorporating economic and environmental objectives in the decision-making process, it is necessary to determine if economic considerations are within the scope of the police power and, if so, what limitations if any are placed upon its use.

ECONOMICS AS A VALID CONSIDERATION

A. Economics and the Public Welfare: The Scope of the Police Power

The police power has been defined as the inherent reserve power of a state to subject citizens' rights to reasonable regulation[15] and represents the generally accepted concept of public encroachment upon private interests.[16] In California this power has been delegated to cities and counties within the state,[17] and it is generally recognized that the power

13. A.B. 635, CAL. STATS. 1973, c. 895 (addition of §21155 to the Public Resources Code); A.B. 938, 1973-74 Regular Session, *as amended*, Sept. 5, 1973; A.B. 1184, 1973-74 Regular Session; S.B. 1051, 1973-74 Regular Session, *as amended*, Aug. 27, 1973 (proposed addition of §21091 to the Public Resources Code).

14. The "Alternative Land Use Theory" is a shorthand notation used by the author to describe the procedure of economic evaluation of alternative land uses—a procedure developed by Robert K. Arnold, Director of the Institute of Regional and Urban Studies, 610 University Ave., Palo Alto, Calif. 94301.

15. Berman v. Parker, 348 U.S. 26 (1954); Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1920); Miller v. Board of Public Works, 195 Cal. 477, 234 P. 381 (1925).

16. Goldblatt v. Town of Hempstead, 369 U.S. 590 (1962).

17. CAL. CONST. art. 11, §7, allows cities and counties to enact local regulatory ordinances not in conflict with the general laws of the state. The legislature has also specifically delegated police power to local governments, *e.g.*, zoning law. CAL. GOV'T CODE §65800 *et seq.*

vested in every city and county is as broad as that vested in the legislature itself.[18] Pursuant to this power, a city or county *may* restrict the use of land via a zoning ordinance, *may* amend existing zones, and *may* grant or deny variances to these zones.[19] Although the use of the word "may" is indicative of the discretionary nature of any agency's regulatory action, it belies the true nature of the decision. A decision is a conclusion chosen from a number of alternatives, yet the choice is not haphazard for it must depend on the scope of the information relied upon and the synthesis of that information. The permitted scope of inquiry defines the type of information which the agency is allowed to consider, and the synthesis of that information, in its most theoretical form, is the procedural mechanism whereby the relative influence of each piece of information is measured. Since regulatory action is subject to the constitutional limitations imposed upon the police power, it follows that laws may be enacted which define or limit both the scope of the information used[20] and the synthesis of that information.[21] Therefore, before discussing the wisdom or legality of *balancing* economic and environmental factors—one way of synthesizing this information—it is necessary to determine whether economic factors may constitutionally be considered in the making of governmental decisions and what, if any, limitations may be placed upon the use of economic factors.

California and federal courts have a long history of liberally construing the constitutional scope of the police power.[22] The United States Supreme Court recognized that any attempt to define or trace the limits of the police power would be fruitless for each case must turn on its own facts.[23] The California courts have recognized that the police power is broad, elastic, and changes with social and economic progress.[24] Indeed, it extends generally to measures designed to promote the public convenience and the general prosperity.[25] Since the

18. Stanislaus County Dairymen's Protective Ass'n v. Stanislaus County, 8 Cal. 2d 378, 384, 65 P.2d 1305, 1307 (1937).

19. Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 388 (1920); Miller v. Board of Public Works, 195 Cal. 477, 479, 234 P. 381, 383 (1925); CAL. GOV'T CODE §65800 *et seq.*

20. A.B. 1301, 1971 Regular Session, *as introduced* (*subsequently amended and enacted*, CAL. STATS. 1971, c. 1446, at 2852), required local government disapproval of subdivisions if it finds the subdivision to be economically unfeasible. This provision was amended out of the bill prior to passage.

21. CAL. PUB. RES. CODE §21001(d).

22. Berman v. Parker, 348 U.S. 26 (1954); Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1920); Miller v. Board of Public Works, 195 Cal. 477, 234 P. 381 (1925).

23. Berman v. Parker, 348 U.S. 26, 32 (1954).

24. Miller v. Board of Public Works, 195 Cal. 477, 479, 234 P. 381, 383 (1925).

25. Bahannan v. City of San Diego, 30 Cal. App. 3d 416, 422, 106 Cal. Rptr. 333, 336 (1973).

economic growth of a community and the concomitant economic needs of its citizens are public welfare considerations, the regulation of land use based on a community-wide economic analysis is within the scope of the police power.[26]

Although it is clear that economic factors may be considered in governmental decisions, such use is not without limitation. These limitations include the constitutional proscriptions of due process,[27] the "taking" provision of the fifth amendment, and the equal protection clause.[28] The due process proscription mandates that use of the police power can only be justified if it appears required in the public interest, and if the means are reasonably necessary for the accomplishment of the purpose without being unduly oppressive.[29] Thus those economic factors for which there is no sufficient public need are constitutionally banned from the scope of the police power. For example, a zoning ordinance establishing a minimum floor area in new houses in a particular district was held to be unconstitutional upon a showing that the purpose of the ordinance was to protect the investment of those persons who had already built in that district.[30] Furthermore, the regulation must be reasonable, for if found to be unreasonable it becomes a "taking" under the fifth amendment[31] and is an unconstitutional exercise of the police power unless compensation is made. However, it should be noted that whenever a discretionary regulation is involved,[32] any rights lost in the denial of a project are merely expectancy rights. Thus a finding of reasonableness will not be disturbed by the courts in the absence of a clear and convincing showing of an abuse of discretion.[33]

The equal protection clause of the fourteenth amendment may place a different limitation on the inclusion of some economic factors within the scope of the inquiry. The consideration of economic factors which tend to discriminate against the poor without sufficient reason, such as giving priority to residences with high assessed values and low service demands, probably constitutes invidious discrimination prohibited

26. National Advertising Co. v. County of Monterey, 211 Cal. App. 2d 375, 379, 27 Cal. Rptr. 136, 138 (1962), held that the police power can be used to consider "the economic question of what will repel or attract customers to a substantial business in the county."

27. U.S. CONST. amend. XIV, §1.

28. *Id.*

29. Goldblatt v. Town of Hempstead, 369 U.S. 590, 594 (1962).

30. Seńefsky v. Lawler, 307 Mich. 728, 731, 12 N.W.2d 387, 390 (1943). *But see,* Stayanoff v. Berkeley, 458 S.W.2d 305 (Mo. 1970).

31. Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 415 (1922).

32. CAL. PUB. RES. CODE §21080(a).

33. Siller v. Board of Supervisors, 58 Cal. 2d 479, 484, 375 P.2d 41, 44, 25 Cal. Rptr. 73, 76 (1962).

by the equal protection clause of the United States Constitution.[34]

B. *Limitations Imposed by CEQA: Synthesis of Information*

Although governmental agencies may generally regulate for economic reasons, this power may have been limited by CEQA. Before CEQA was enacted, a public agency considered a variety of factors in determining whether to permit a project; certainly low in priority, as evidenced by the uncontrolled growth in this state, was the environmental impact of the project. Although the claim is made that the purpose of CEQA is merely to provide an environmental full-disclosure document through the EIR,[35] a more persuasive argument can be made that the purpose of CEQA, as articulated in the policy declaration,[36] is to reorder the importance assigned to environmental factors and to change an agency's priorities from encouragement of economic growth to intelligent regulation of growth with environmental considerations paramount. This contention seems to negate the possibility of balancing economic and environmental factors, for balancing envisions placing these factors on an equal footing in the synthesizing process. The argument continues that the thrust of CEQA as originally formulated,[37] the subsequent court interpretation thereof,[38] and the subsequent amendments thereto[39] incorporate substantive legal rights and obligations which forbid placing environmental and economic factors on an equal footing.[40] Although a strong case for this contention can be made, a discussion of its merits is outside the scope of this comment. Rather, if the validity of the argument is assumed, an examination of the language of CEQA will demonstrate the reason why balancing would be prohibited.

Several key phrases within the policy declarations of CEQA[41] indicate that the legislature intended to supplant traditional planning

34. See generally Note, *The Equal Protection Clause and Exclusionary Zoning After Valtierra and Dandridge*, 81 YALE L.J. 61 (1971).

35. For a similar discussion of NEPA, see Environmental Defense Fund v. Corps of Engineers, 470 F.2d 289, 297 (8th Cir. 1972).

36. CAL. PUB. RES. CODE §§21000, 21001.

37. A.B. 2045, CAL. STATS. 1970, c. 1433, §1, at 2780.

38. Friends of Mammoth v. Board of Supervisors, 8 Cal. 3d 247, 502 P.2d 1049, 104 Cal. Rptr. 761 (1972).

39. A.B. 889, CAL. STATS. 1972, c. 1154, §1, at 2270.

40. The substantive rights argument states that an EIR is more than a procedural document requiring full disclosure of environmental harm. Since environmental objectives are given paramount importance under CEQA, it is argued that the EIR should change the decision-making process in that the information disclosed by the EIR must affect the decision. For a discussion of the substantive rights argument under NEPA, see Environmental Defense Fund v. Corps of Engineers, 470 F.2d 289 (8th Cir. 1972).

41. The Legislature finds and declares as follows:

(a) The maintenance of a quality environment for the people of this

policy and institute a program which favored environmental rather than economic factors. California, in recognizing (1) the limited capacity of the environment,[42] (2) the requirement for the state to take immediate steps to identify critical thresholds,[43] and (3) the necessity of taking all coordinated action to prevent the crossing of these thresholds,[44] has shown its awareness of the imminency of the permanent diminution of our quality of life. Imminency of danger mandates a firm approach. Thus placing economic and environmental factors on an equal footing hardly seems to comply with the spirit of the legislative intent.

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state now and in the future is a matter of statewide concern.

(b) It is necessary to provide a high-quality environment that at all times is healthful and pleasing to the senses and intellect of man.

(c) 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.

(d) 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 any 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.

(e) Every citizen has a responsibility to contribute to the preservation and enhancement of the environment.

(f) 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.

(g) 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.

CAL. PUB. RES. CODE §21000.

The Legislature further finds and declares that it is the policy of the state to:

(a) Develop and maintain a high-quality environment now and in the future, and take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.

(b) Take all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise.

(c) Prevent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history.

(d) Ensure that the long-term protection of the environment shall be the guiding criterion in public decisions.

(e) Create and maintain conditions under which man and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations.

(f) Require governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality.

(g) Require governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs, and to consider alternatives to proposed actions affecting the environment.

CAL. PUB. RES. CODE §21001.

42. CAL. PUB. RES. CODE §21000(d).

43. *Id.*

44. *Id.*

Three other intent sections of CEQA further show the priority which the legislature felt was due environmental considerations. All government agencies must give *major* consideration to preventing environmental damage,[45] must "take *all* action necessary to rehabilitate and enhance the environmental quality of the state,"[46] and must "insure that the long-term protection of the environment shall be *the* guiding criterion in public decisions."[47] Furthermore, the sections in CEQA which support the conclusion that balancing is forbidden, despite contrary language in the guidelines[48] promulgated pursuant to CEQA,[49] were not amended by Assembly Bill 889.

Further support is given to the argument that balancing of economic and environmental interests is outside the intended scope of CEQA by an examination of federal case law. Since CEQA was patterned after NEPA, federal court interpration of NEPA is highly persuasive precedent for California court interpretations of CEQA.[50] With regard to the question of balancing, a recent federal district court decision, *Sierra Club v. Froehlke*,[51] held, *inter alia*:

> What must not be overlooked is the priority assigned by Congress to environmental factors under NEPA. As this Court understands this body of law, protection of the environment is now viewed as paramount, and it is not to be placed on an equal footing with the usual economic and technical factors.[52]

From the foregoing analysis one can conclude that, although economics is a valid subject of consideration by a public agency, because of the proscriptions of CEQA these objectives cannot presently be balanced with environmental factors during the synthesizing process.

How Economics May Be Considered

Although it appears that little if any priority may be accorded economic considerations under CEQA,[53] such a position ignores the com-

45. Cal. Pub. Res. Code §21000(g).
46. Cal. Pub. Res. Code §21001(a).
47. Cal. Pub. Res. Code §21001(d) (emphasis added).
48. Guidelines for Implementation of the California Environmental Quality Act of 1970, Cal. Admin. Code tit. 14, §15000 *et seq.* Section 15012 of the CEQA Guidelines states, *inter alia*, that "public agencies retain *existing* authority to balance environmental objectives with economic and social objectives." (emphasis added). The substantive problems created by this section are currently the subject of a lawsuit, Petitioner's Brief for Writ of Mandate, Center for Law in the Public Interest, Inc. v. Livermore, LA No. 30168, Aug. 16, 1973, and although issues are clearly raised which are contrary to the intent of CEQA, a substantive discussion is not within the scope of this comment.
49. Cal. Pub. Res. Code §21083.
50. Friends of Mammoth v. Board of Supervisors, 8 Cal. 3d 247, 260, 502 P.2d 1049, 1057, 104 Cal. Rptr. 761, 769 (1972).
51. 359 F. Supp. 1289 (S.D. Tex. 1973).
52. *Id.* at 1370.
53. Cal. Pub. Res. Code §21001.

pelling practical aspects involved in virtually every construction project. Most business decisions, whether public or private, are made under a cost-benefit analysis wherein *all* factors are placed on an equal footing. The cost-benefit ratio is determinative. Once this cost-benefit procedure is fully understood, the necessity of considering the economics of the situation on an equal footing with the environmental factor becomes apparent.

A. Cost-Benefit Analysis

In *Sierra Club v. Froehlke* the court succinctly outlined the cost-benefit theory.

> A study of the record in this case, and particularly the Congressional hearings since fiscal year 1966 as they apply to projects contained within the ambit of the Trinity [Dam] Project, points up the importance of benefit-cost ratios in the appropriation and decision-making process for public works projects funded by the United States Government. The benefit-cost ratio is basically a comparison of the anticipated "benefits" derived from a particular public works project with the anticipated "costs" over the estimated life span of the projects. Both benefits and costs must be stated in monetary terms. Furthermore, since benefits and costs will be accruing over the many years of the project's life span, it is necessary to discount them so that their present values may be determined and compared. . . . Once this has been done, if a comparison indicates that the projected benefits will reasonably exceed the costs, then, all other things being equal, the project is typically regarded as being "justified." If, for example, it was expected that for every one dollar of federal investment in a given project the benefits would be equal to two dollars, then the benefit-to-cost ration would be 2.0 to 1 or 2.0:1. If the benefits equal the costs, the ratio is 1:1 or unity, as the term is used.[54]

The cost-benefit analysis described in *Sierra Club v. Froehlke* represents only one aspect of consideration before a project, such as a dam, is finally commenced, for it represents an analysis of the *need* for such a project. Often with public projects, once the need is determined, the best location for the project must also be determined—best location generally reflecting a cost-benefit approach. Although engineering considerations generally play a key role in determining the location of a project, these considerations are still made on a cost-benefit basis.[55]

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54. 359 F. Supp. at 1362.

55. *See generally*, W. ISARD, ECOLOGIC-ECONOMIC ANALYSIS FOR REGIONAL DEVELOPMENT (1st ed. 1972) [hereinafter cited as ISARD]; C. WEST CHURCHMAN, THE SYSTEMS APPROACH (1st ed. 1968); PLANNING PROGRAMMING BUDGETING: A SYSTEMS APPROACH TO MANAGEMENT (1st ed. F.J. Lyden and E.G. Miller 1968).

With respect to private projects, this concept of considering alternative uses for land has been confusingly alluded to by *Friends of Mammoth* and CEQA. Footnote 8 of *Friends of Mammoth*[56] enters as a source of confusion when it suggests that "feasible alternatives" to the proposed activity should be considered. This confusion is further amplified in CEQA. In the section containing the declaration of policy, CEQA requires that government agencies at all levels "consider *alternatives* to the proposed actions affecting the environment."[57] One of the purposes of an EIR is to "suggest *alternatives* to such a [proposed] project."[58] Additionally, the implementation section requires that an EIR shall include a detailed statement of "*alternatives* to the proposed action."[59] It remains unclear whether the court and the legislature were suggesting that a project with less environmental impact located on the *proposed* site should be considered as an alternative or whether *relocation* of the proposed project, as suggested by the Alternative Land Use Theory, should be considered as a valid alternative.

B. *Problems with Economic Considerations Under CEQA and Pending Legislation*

It is undeniable that economics is a vital force in the growth of a region and should likewise be a major consideration in the discretionary decision-making process of a public agency. Decisions affecting the public, be they decisions on the merits of a public or private project, should have the public welfare as the goal,[60] assessing both the short-term and long-term impact of the project on the quality of life. The assessment should not be limited to either economic or environmental factors nor should one factor be accorded more priority than the other, for a fair decision can be made only by according equal treatment to all factors.[61]

In *Sierra Club v. Froehlke* the cost-benefit analysis prepared by the Corps of Engineers contained an economic analysis of the environmental benefits without an accompanying discussion of the quantifiable environmental costs. This gave rise to the court's observation that environmental impact should be set forth in quantitative terms. Examining the legislative history of NEPA, the court noted,

56. 8 Cal. 3d at 263, 502 P.2d at 1059, 104 Cal. Rptr. at 771.
57. CAL. PUB. RES. CODE §21001(g) (emphasis added).
58. CAL. PUB. RES. CODE §21061 (emphasis added).
59. CAL. PUB. RES. CODE §21100(d) (emphasis added).
60. Berman v. Parker, 348 U.S. 26, 32 (1954).
61. See text accompanying note 62 *infra*.

> Congress evidently contemplated that benefit-cost procedures might be adaptable to include environmental considerations. In discussing the duties and functions of the CEQ [Council on Environmental Quality], NEPA's legislative history recited how environmental amenities might be given suitable consideration: "One way in which this might be done would be to develop a sophisticated cost and benefit analysis—in which the total (and not strictly economic) consequences of federal activities may be assessed."[62]

CEQA has not yet proposed such an analysis procedure.[63]

The court further voiced its concern about a seemingly favorable cost-benefit ratio when it noted that "a valid favorable benefit-cost ratio combining all facets of a project must represent the final synthesis of technical, economic, and environmental factors."[64] It is therefore apparent that the possible inequities arising from a comparison of qualitative and quantitative factors has been noted by Congress and this appellate court.

The provisions of CEQA do not provide that equal weight be given to environmental and economic considerations[65] because environmental objectives are to be the guiding criteria in public decisions,[66] while economic factors are merely to be considered.[67] Although proposals exist which attempt to balance environmental and economic objectives,[68] the balancing suggested only extends to a determination of the necessity for such a project and ignores an analysis of the best location.[69] The Alternative Land Use Theory combines these two cost-benefit analyses (need and location) into one comprehensive formulation yielding the least expensive project from both an economic and environmental viewpoint.

C. *The Alternative Land Use Theory*

An understanding of two underlying postulates is necessary before

62. 359 F. Supp. at 1364, *citing from* H. REP. No. 91-378, 91st Cong., 1st Sess., U.S. CODE CONG. & ADMIN. NEWS 2760 (1969).
63. 359 F. Supp. at 1364.
64. *Id.* at 1370.
65. See text accompanying notes 35-52 *supra.*
66. CAL. PUB. RES. CODE §21001(d).
67. CAL. PUB. RES. CODE §21001(g).
68. A.B. 635, CAL. STATS. 1973, c. 895; A.B. 938, 1973-74 Regular Session, *as amended,* Sept. 5, 1973.
69. Although A.B. 635, CAL. STATS. 1973, c. 895, §1, provides that "alternative land use policies" are to be evaluated and that the "economic efficiency" of land use decisions is to be evaluated, it is unclear whether the "alternatives" relate to the best *project* for the proposed location or the best *location* for the proposed project. Moreover, A.B. 938, 1973-74 Regular Session, *as amended,* Sept. 5, 1973, §3, at 4, appears to restrict its economic analysis to the project proposed and does not consider alternatives.

the general theory can be discussed. First, a true cost-benefit analysis should reflect all significant direct costs and benefits. This can best be accomplished by expanding a community economic analysis into a regional analysis.[70] Secondly, a cost-benefit analysis is a twofold process, the first step being the ascertainment of the need for such a project and the second being a determination of its most suitable location.

With respect to a regional analysis, the necessity of a project can be determined by assessing all known or anticipated costs and computing all derivable benefits from the project and comparing the values.[71] Local community cost-benefit analysis is usually limited to an analysis of the fiscal impact of a project, that is the cost of supplying city services and the benefits derivable therefrom.[72] However, the region and not the local community is the more appropriate economic unit for one cannot make a meaningful cost-benefit analysis of most urban developments on a community level without considering extra-community factors.[73] Assume, for example, that the city of Emeryville approves the construction of a high-rise office building on private land abutting the San Francisco Bay. Assume also that this decision was made on the basis of an economic analysis which revealed that the benefits to be derived, such as increased property tax and local employment, outweighed the costs involved, such as the expense of supplying city services and increased traffic burden. However, a regional analysis would reveal that the costs were not correctly assessed in that part of the quality of life of everyone living within the Bay Area is the aesthetic value of the view of the Bay and a debasement of the quality of the view or an obstruction thereof is harmful. Although this cost may be difficult to quantify, it is well established that the better one's view of the Bay, the higher one's rent. Therefore, economists could certainly attribute part of the total rent paid within the entire Bay region to the aesthetic value of the view. Loss or deterioration of the view could be reflected by lost rent revenues which should be included within the regional cost of the project.

The second postulate involves the twofold nature of the cost-benefit analysis. For a public project, the necessity of the project constitutes the first phase of the analysis. This phase receives the most public attention since approval results in the expenditure of public funds.

70. H.W. RICHARDSON, REGIONAL ECONOMICS 229 (1st ed. 1969).
71. Sierra Club v. Froehlke, 359 F. Supp. 1289, 1363 (S.D. Tex. 1973).
72. Address by Robert K. Arnold (Director of the Institute of Regional and Urban Studies), Local Agency Formation Commission (LAFCO) Statewide Conference, Nov. 18, 1971.
73. *See generally* ISARD, *supra* note 55.

The second phase consists of finding a suitable location for such a project and generally involves engineering considerations which are quantified and analyzed in terms of least cost.[74] With respect to private projects, CEQA and the economic criteria in the pending legislation limit their analysis to the *need* for the project without inquiring into its most suitable location.[75] However, since the purpose of a cost-benefit analysis is to justify the expenditure of public funds and any infringement on the quality of life, the project receiving the most justification, *i.e.* that project with the greatest cost-benefit ratio, should be the one which receives approval. This can only be accomplished by also analyzing the location of the proposed project. This approach of economic evaluation of alternative land use is the subject of some rather foresighted and controversial analyses relating to the concept of public economics.[76]

The larger scope of public economic inquiry as compared with the rather limited considerations of a private analysis should be mentioned. In a private analysis the decision maker compares his costs against his benefits. Public economics on the other hand focuses on the identification and measurement of the costs and benefits of alternative uses throughout the total community. Public economics includes the more traditional market place economics used by the private sector; however, where market economics concentrates on private cost-benefit, public economics examines regional costs and benefits and therefore concerns itself with the economic evaluation of alternative land uses. For example, when United States Steel proposed construction of an office building on the San Francisco waterfront, strong objections based on planning and aesthetics arose with respect to the location of the building. Utilizing the Alternative Land Use Theory,[77] several feasible locations were chosen within the Bay region (the proposed site included), and all locations were analyzed with respect to fiscal impact, distribution of impacts, economic value of other impacts, and social/cultural goals. These criteria comprise the substance of the theory and are discussed in detail below.[78]

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74. *Id.*

75. See note 69 *supra.*

76. See generally S. LEVY, BIBLIOGRAPHY ON EVALUATION OF ALTERNATIVE LAND USES (1972) (Institute of Regional and Urban Studies, 610 University Ave., Palo Alto, Calif. 94301).

77. Interview with Robert K. Arnold, Director of the Institute of Regional and Urban Studies, Palo Alto, Calif., July 24, 1973.

78. For specific applications of this approach see, R. ARNOLD & S. LEVY, SUMMARY OF WORK ON EVALUATION OF ALTERNATIVE LAND USES IN SONOMA COUNTY 1971-1972 (1972); R. ARNOLD & S. LEVY, AN APPLICATION OF A PLANNING AND EVALUATION PROCESS TO FOUR RESIDENTIAL GROWTH PATTERNS IN MILPITAS 1972-1977 (1972); R. ARNOLD & S. LEVY, AN APPLICATION OF A PLANNING AND EVALUATION

The initial area of inquiry is probably the one which is most familiar to public agencies for it deals with an analysis of their costs and benefits. Stated differently, this measures the impact of a project upon city revenues versus city expenditures. Analysis of city costs should include consideration of increased burden on the fire and police departments, the building and maintenance of new roads to handle the increased traffic, parking problems, traffic flow problems created on existing roads, increased burden on schools incurred by population influx, the cost of building new water, gas, and sewer lines, and the increased burden on the sewer system and the pro rata costs associated with any expansions thereof. These costs represent only one side of a fiscal analysis, the other side being the cash inflow to the city treasury because of increased property tax revenues from property made more valuable by the project. If a decision were rendered simply on a cost-benefit fiscal analysis, many projects would not receive approval, especially low-income housing projects for which tax revenues do not equal the cost of providing services.[79] However, another area of consideration is warranted, and a public agency should look beyond *its* cost and benefits and examine other aspects of community well-being. Other factors may dictate that a fiscally attractive project be disapproved or that one fiscally unattractive be approved.

The second consideration in our public economic analysis is a study of the distribution-of-impact factor. The Alternative Land Use Theory suggests changing the site of a proposed project if there will be less environmental harm, at another site within the region. Although removing the project from one community can mean serious economic losses to that community in the form of lost jobs, lost spendable income to local businesses, and lost tax revenues to the city, this loss is minimized in public economics theory since relocation of the project within the region merely transfers the economic gain of one community to another and, within our *regional* scope of analysis, the relocation of a project within the region does not have a detrimental impact on regional economics.[80]

The third aspect is the evaluation of other impacts. Presently this

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PROCESS IN THE DIABLO PLANNING AREA (1971) [hereinafter cited as THE SUNNYVALE STUDY]. The above sources were prepared by the Institute of Regional and Urban Studies, 610 University Ave., Palo Alto, Calif. 94301.

79. See generally Note, *The Equal Protection Clause and Exclusionary Zoning After Valtierra and Dandridge.* 81 YALE L.J. 61 (1971).

80. However, because the region is divided into independent units of government, some of which will suffer and others of which will gain by relocation, a tax equalization scheme to equitably distribute the benefits of new development would appear necessary. See The Metropolitan Distribution Act, MINN. STATS ANN. §473F.01 *et seq.* (1973).

analysis takes the form of an EIR which presents the impact of a project in physical terms, *i.e.* a qualitative analysis. Although recognition of environmental impact is a significant advance in the process of land use optimization, a qualitative approach does not fit nicely into the scheme of total economic evaluation. The agency considers the EIR, a qualitative report, and the economics of the project before making its own subjective, non-systematic economic evaluation of the physical impact. This questionable process of synthesizing qualitative and quantitative information is not rational and can be corrected by taking into account the fact that environmental harm, no matter how difficult to quantify, is nothing more than economic impact in disguise. Cost is the real issue. How much will it cost to protect the environment is the question. Although it may appear difficult to quantify environmental impact, it seems logical to attempt to develop schemes whereby these impacts can be translated into their dollar equivalents and integrated into our total economic evaluation.

Identification and measurement of these impacts in physical terms is a new field, and much is left to be learned. Scientists do not yet understand all of the indirect subtleties accompanying an attempt to change a given aspect of our environment. Translation of these physical measurements into dollar costs is also a new area which is being researched by economists on a fairly broad front.[81] Two theories are now in use which attempt to measure environmental harm in monetary terms. One approach is to directly quantify the costs associated with environmental harm. For example, air pollution can reduce the amount of sunlight which penetrates to a crop and cause a reduction in crop quality and productivity. Air pollution can also disrupt the food chain. If, for example, the by-product of an economic activity reduces the rate of photosynthesis in a particular area then the effects of those by-products upon organisms which consume the green plants can be estimated using food chain data.[82] Local water pollution can affect downstream drinking water with the concomitant need to build expensive water treatment plants.[83] Also water pollution can affect the recreational uses of a body of water which can be quantified.[84]

An alternative way of measuring physical impact in monetary terms

81. See generally S. LEVY, BIBLIOGRAPHY ON EVALUATION OF ALTERNATIVE LAND USES (1972).
82. ISARD, *supra* note 55, at 55.
83. *Id.*
84. *Id.* For a complex example of this process, see Address by John Zierold, Legislative Advocate of the Sierra Club, *Hearing before the Water Resources Council*, Mar. 14, 1972.

is presently being formulated at the Institute of Regional and Urban Studies. This method measures the environmental impact of a project as it is reflected in the projected changes in the value of existing property. An example of this technique can be found in a Sunnyvale study[85] which evaluated industrial versus residential development in a 500-acre tract located between two existing blocks of housing, Orchard Gardens and Lakewood Village. First, information was obtained from members of the city and county staff which revealed that if a new housing development were located in the 500-acre tract, the existing residents in Orchard Gardens would realize significant advantages in terms of improved community services, shopping facilities, and access to schools. Secondly, it was discovered that the existing housing in Orchard Gardens had failed to experience the same rate of appreciation as housing with the same physical qualities located in other areas of the City of Sunnyvale. In these other areas it was revealed that the community facilities, shopping facilities, and access to schools were much better than those existing in Orchard Gardens. It was therefore concluded that the improved physical facilities and access to the residents of Orchard Gardens should be reflected *to some extent* in an increase in the value of existing homes in Orchard Gardens. With an assumption of only a modest increase in the value of property in Orchard Gardens, the gains to the residents of that area from residential development far outweighed any of the net fiscal benefits of industrial development. In other words, with an analysis limited to fiscal impact only, industrial development was calculated to provide a net surplus of property tax revenues to the city and school district, whereas the residential development would produce a net deficit. But when the gains to the residents of Orchard Gardens were calculated into the equation, the residential development had a more favorable cost-benefit ratio than the industrial development.

The last element of the theory is the evaluation of the social/cultural objectives. This element illustrates the concept that the total evaluation of alternative land uses cannot, and should not, be made completely in economic terms.[86] For example, the goals of a community to achieve cultural or housing diversity can hardly be evaluated directly in dollar terms. At the same time, however, by placing the consideration of social or cultural goals explicitly within the evaluation framework, the community can determine whether the achievement of a specific cultural objective will be enhanced or thwarted by a specific

85. See THE SUNNYVALE STUDY, *supra* note 78.
86. Interview with Robert K. Arnold, *supra* note 61; see also A. TOFFLER, FUTURE SHOCK 452-58 (1st ed. Bantam 1970).

alternative. In Sunnyvale, the Institute found that a housing development properly designed and developed would assist the City of Sunnyvale in achieving its objectives of cultural and housing diversity in the particular neighborhood under investigation. In contrast, the industrial development would have had either a neutral or negative effect. Therefore, there was an additional benefit derived from residential development. However, if the industrial development had been more advantageous in dollar terms than the residential development when both fiscal and economic value of other impacts were calculated, the city would have to determine if it wanted to pay for the objectives of achieving cultural and housing diversity by foregoing fiscal benefits of industrial development.

Another reason exists for keeping the social/cultural objectives in qualitative terms. The very nature of the exercise of the police power is judgmental—most decisions are discretionary. With respect to a proposed project, if *all* factors are quantified, the discretionary element is lost for a decision is mandated by the cost-benefit ratio. Therefore, to insure the existence of local discretion, it is necessary to require that social/cultural factors be analyzed in a subjective fashion.

It seems apparent that there is a method for a realistic assessment of the impact of alternative land uses on a total community, and that such an assessment can be made in economic as well as qualitative terms. It is the responsibility of the decision maker to require that all relevant information be provided to allow him to understand how alternatives affect the total community. The public official has the responsibility of assessing alternatives from the perspective of the total community, not from the perspective of the private decision maker.[87]

CURRENT LITIGATION AND PENDING LEGISLATION

An examination of current litigation and pending legislation in California reveals the confusion which now exists surrounding the enforcement of CEQA, but more importantly it reveals that the state's goal of environmental preservation is being deterred and points to the need for a new, more comprehensive economic evaluation policy.

Current litigation in California is primarily concerned with two areas of controversy—the confusion which resulted after footnote 8 of *Friends of Mammoth*, and possible shortcomings of the Office of Planning and Research (OPR) Guidelines[88] which were intended to imple-

87. See THE SUNNYVALE STUDY, *supra* note 78; see also Address by Robert K. Arnold, *supra* note 72.

88. CAL. ADMIN. CODE tit. 14, §15000 *et seq.*

CEQA. In footnote 8 the court stated that "obviously if the adverse consequences to the environment can be mitigated, or if feasible alternatives are available, the proposed activity, such as issuance of a permit, should not be approved."[89] A pending suit[90] is seeking to establish footnote 8 as case law in California. This would require that no activity be permitted if there is a more environmentally desirable alternative, regardless of economic or other considerations. Case law such as this, however, would establish that environmental considerations are the *only* criteria and not "the guiding criteria in public decision."[91] This result would be unrealistic since intelligently controlled economic growth is essential to the state's well-being. Additionally, such a possibility appears to be outside the intended scope of CEQA in that the legislature recognized that economic considerations were important and included their admission in both the declaration of policy[92] and the implementation section.[93]

The second area of current litigation[94] concerns the sufficiency of the OPR Guidelines promulgated pursuant to CEQA. The petitioner in this case seeks to have the California Supreme Court declare, *inter alia*, that Section 15012 of the Guidelines is invalid in that it is contrary to the express language of California Public Resources Code Section 21001(d). Section 15012 of the Guidelines provides that "public agencies retain *existing* authority to balance environmental objectives with economic and social objectives." It is difficult, if not impossible, to see how the environmental factors are to be "the guiding criteria in public decisions"[95] when public agencies retain *existing* authority to treat environmental factors as they always have.[96] If the court invalidates Section 15012, local agencies will still be without the guidance necessary to consider economic factors if environmental factors are to be the "guiding criteria." These two cases thus represent the conflict which exists between those seeking environmental quality and those seeking economic growth. However, if the legislature were to recognize that economics encompasses environmental quality, there would be no need for a law which tends to assign different priorities to these factors.

Pursuant to the scare[97] evoked by footnote 8 of *Friends of Mam-*

89. 8 Cal. 3d at 263, 502 P.2d at 1059, 104 Cal. Rptr. at 771.
90. Burger v. County of Mendocino, 1 Civil No. 32455, filed Dec. 21, 1972, 1st Dist. Ct. of App.
91. CAL. PUB. RES. CODE §21001(d).
92. CAL. PUB. RES. CODE §21001(g).
93. CAL. PUB. RES. CODE §21100.
94. Center for Law in the Public Interest, Inc. v. Livermore, LA 30168, Aug. 16, 1973.
95. CAL. PUB. RES. CODE §21001(d).
96. CAL. ADMIN. CODE tit. 14, §15012.
97. *Hearings on the California Environmental Quality Act, supra* note 4.

moth, four pieces of legislation were sponsored by various building and labor interests seeking to provide for a more balanced consideration of the environmental and economic factors.[98] The only bill enacted thus far is Assembly Bill 635,[99] introduced by Assemblyman Arnett, which provides for an economic practices manual for local agencies to use in collating the economic, environmental, and social consequences of a proposed project. Assembly Bill 938, introduced by Assemblyman Warren, mandates, in the case of large projects, the inclusion of an economic impact statement in the environmental impact report, sets forth the elements which such statement must contain, and requires that economic and environmental considerations be balanced.[100] Assembly Bill 1184, introduced by Assemblyman Russell, would amend the Government Code to include economic considerations within the general plan on community developmental policies.[101] Finally, Senate Bill 1051, introduced by Senator Bradley, would change the intent section of CEQA to require that environmental considerations be "a principal guiding criteria" rather than "the guiding criterion" in public decisions.[102] Although it is apparent that some changes are needed, these bills have substantial shortcomings and would further add to the confusion in this area.

The commands of CEQA seem clear. In the process of information synthesis, environmental factors are to be the guiding criteria[103] while economic and other technical factors are to be merely considered.[104] *Sierra Club v. Froehlke*, interpreting NEPA, further declared that these factors could not be placed on an equal footing.[105] Only Senate Bill 1051 seeks to amend the intent section of CEQA by providing that environmental considerations shall be "a principal guiding criteria."[106] This change, however, would produce greater confusion since it conflicts with the express language of California Public Resources Code Sections 21000(d), 21000(g), 21001(a), and 21001(b) which provide, in effect, that environmental considerations should be paramount. The other three bills seek to establish economic interests as an equal

98. A.B. 635, CAL. STATS. 1973, c. 895 (addition of §21155 to the Public Resources Code); A.B. 938, 1973-74 Regular Session, *as amended*, Sept. 5, 1973; A.B. 1184, 1973-74 Regular Session; S.B. 1051, 1973-74 Regular Session, *as amended*, Aug. 27, 1973 (proposed addition of §21091 to the Public Resources Code).

99. CAL. STATS. 1973, c. 895.

100. A.B. 938, 1973-74 Regular Session, *as amended*, Sept. 5, 1973.

101. A.B. 1184, 1973-74 Regular Session.

102. S.B. 1051, 1973-74 Regular Session, *as amended*, Aug. 27, 1973.

103. CAL. PUB. RES. CODE §21001(d).

104. CAL. PUB. RES. CODE §21001(g).

105. 359 F. Supp. at 1370.

106. Pursuant to S.B. 1051, 1973-74 Regular Session, *as amended*, Aug. 27, 1973, §1, it is the policy of the State of California to "ensure that the long-term protection of the environment shall be a principal guiding criterion in public decision."

consideration without attempting to change the intent sections of CEQA, the law which governs the entire area.

Another source of confusion in the pending legislation is the quantification of the social/cultural factor. Assembly Bill 635 tends to treat this factor as quantifiable since it seeks to "equate" the social and economic factor with the environmental factor.[107] However, as discussed above, the social/cultural factor cannot, and should not, be cast into an economic formulation. This factor defies quantification for it is based upon the *desirability* of such a project; "desire" reflects the social or cultural utility, hence the difficulty in quantification. Secondly, the feasibility of such a quantification is not as significant as the advisability, for to cast this factor in monetary terms would eliminate the only remaining discretionary element in public decisions. Once the cost-benefit ratio is established, the decision would then be mandated and local agencies would lose their primary function of making discretionary judgments with regard to the merits on a proposed project.

Another source of potential confusion in the legislation concerns the proposed manner in which the environmental element is introduced into the economic analysis. For a cost-benefit analysis to be meaningful, the scope of inquiry concerning the costs of a project should be as broad as the scope of inquiry of the benefits derivable therefrom. In *Sierra Club v. Froehlke* the environmental benefits were included in the cost-benefit analysis, while many of the environmental costs were omitted. With regard to the fairness of this analysis, the court stated that "the meaning of the benefit-cost ratio, which is represented to the Congress, this Court, and the public as being an objective evaluation of all quantifiable factors involved in these various projects, is open to considerable question."[108] Section 3 of Assembly Bill 938, which details the scope of inquiry of the proposed economic impact statement,[109] fails to meet this standard of objectivity. To be fair

107. A.B. 635, CAL. STATS. 1973, c. 895, §2.
108. 359 F. Supp. at 1363.
109. [T]he environmental impact report shall also include a statement of the economic impact of the project, covering such of the following, in qualitative or quantitative terms, as is reasonably available and is determined by the public agency, board, or commission to have a significant bearing on a project:
(1) The approximate number and types of jobs to be created by the project, including the number and types of permanent jobs to be created and the impact of the project on unemployment.
(2) The impact of the project on the local tax base and the generation of state and local sales tax and other tax revenues.
(3) The economic impact of the project on minority groups, if any, and whether the project may improve the living conditions of residents of the geographic area directly affected.

and objective, a cost-benefit analysis should compare those benefits of the geographic area affected with those costs which the same geographic area will incur. In Assembly Bill 938, the proposed amendment to California Public Resources Code Section 21100(b)(6) is apparently limited to the *local* cost of governmental services. However, Section 21100(b)(6) allows the community to include the projected generation of *state* sales tax. Section 21100(b)(5) allows the community to assess benefits attributable to *other* communities, regions, or the state, thereby allowing a more favorable treatment of benefits in the supposedly objective cost-benefit analysis.

Not only should the geographic scope of inquiry be the same when assessing both costs and benefits, the scope should be expanded from a local to a regional analysis to reflect the fact that the region is *the* natural economic unit. That is, the effects of most *local* decisions having economic or environmental impacts extend to the geographic region.[110] It therefore seems apparent that a local cost-benefit analysis of a project cannot fairly measure the true costs and benefits to the community unless it examines the regional economic implications as well. As Robert K. Arnold points out,[111] the consideration of regional implications of a project will give rise to stronger regional governments which should have the power to control regional development.[112] Neither Assembly Bill 635 nor Assembly Bill 938 are clear as to the geographic scope of the economic inquiry.

Another problem area is the lack of mandatory inclusion of an economic analysis whenever an EIR is required. To keep within the proscriptions of CEQA[113] and the proscriptions of the police power, an economic analysis should always be conducted and the information disclosed to the public to apprise them of the total costs and benefits which they can expect. Otherwise, a local board's discretion would be too broad in that environmentally sound but economically unsound projects could receive approval. Assembly Bill 635 requires the Secretary of the Resources Agency to advise local governments of the proper

(4) The economic impact of the alternatives to the proposed project, including nonadoption.

(5) The impact of the project on purchasing power, per capita income, income multipliers, and other economic indicators of the state, region, or local area.

(6) The short-term and long-term costs of governmental services which will be required as a result of the project, including, but not limited to, costs affecting the public health, safety, and welfare.

A.B. 938, 1973-74 Regular Session, *as amended*, Sept. 5, 1973, §3, at 4.

110. See generally ISARD, *supra* note 55; THE SUNNYVALE STUDY, *supra* note 78.

111. Interview with Robert K. Arnold, *supra* note 77.

112. See generally Marks & Taber, *Prospects for Regional Planning in California*, 4 PAC. L.J. 117 (1973).

113. CAL. PUB. RES. CODE §21001(g).

manner in which to consider economic factors, but it does not mandate that the factors be considered in that manner.

If economic evaluation of alternative land uses is to be made prior to the approval of a project, and since a city or county cannot approve a proposed subdivision or zoning change unless it conforms with the general or specific plans,[114] it follows that a preliminary economic evaluation of alternative urban development policies would be warranted and that the general plan of a city or county should be modified accordingly. Assembly Bill 1184 seeks to incorporate an economic element in the general plan which would reflect the "economic impact and effect" of the *implementation* of the general plan as approved.[115] However, the provision should be expanded to provide for economic analysis of *alternative* development policies as well as those contained in the existing plan. An analysis of alternative policies should be undertaken prior to the adoption of a plan or plan element or any amendment thereof.

Conclusion

The equalization of the environmental and economic factors under the Alternative Land Use Theory necessitates amendment of the conflicting provisions in CEQA. Also, in order to evaluate the need and and desirability of a proposed project pursuant to the theory, the legislation must reflect the necessity of a regional cost-benefit analysis. Furthermore, it is incumbent upon the legislature to mandate that the governmental agency prepare an economic analysis of a number of feasible alternative sites within the region if the proposed project will result in substantial environmental harm. Moreover, the legislature should require that each site be *objectively* analyzed with respect to fiscal impact, distributive impact, and environmental impact and then *subjectively* analyzed with respect to the social/cultural desirability. This evaluation of alternatives should satisfy the objectives of both the business and labor interests and the environmentalists in that economically beneficial projects will almost certainly be constructed in the most appropriate location, thus avoiding any substantial environmental harm.

It appears that the major failure of the pending legislation is that environmental objectives are viewed as being adverse to economic ob-

114. Cal. Bus. & Prof. Code §11526(c); Cal. Gov't Code §65860. Each city and county is required to adopt a general plan, Cal. Gov't Code §65300, and may adopt specific plans, Cal. Gov't Code §65450.

115. A.B. 1184, 1973-74 Regular Session, §1, at 4.

jectives, and, as such, are separately evaluated and then balanced to somehow reach the "best" result. However, if the legislature accepts the premise that all changes in the environment have both positive and negative economic ramifications, it must also accept the conclusion that economic evaluation of environmental impact comes within the total economic objective of deriving the most benefits for the least cost.

John Michael Higginbotham