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Sonia Sonju Erickson

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# NEPA and CEQA -- Euphemistic Environmental Eunuchs?

SONIA SONJU ERICKSON\*

For over one hundred years we have enjoyed the unfettered and technologically enhanced use of one of our most precious resources—land. Within the last several years the national conscience has been aroused to the fact that this is a finite asset. There has been a proliferation of acts, statutes, agencies, rules and regulations to evidence our awakened concern with the environment in which we live.

Where has this recognition of the need to conserve and more effectively utilize the land led? Have we created a balanced approach, recognizing both the needs of society and the environment or have we blindly stepped forward into a mire of criteria for which there are no standards? Many have approached the problem of land use from the theoretical or scientific point of view. Perhaps, it is time to analyze the problem from the practical standpoint. Are we merely paying “lip service” to the various enacted statutes? Are the statutes merely full of ineffective platitudes and devoid of any “binding” and meaningful standards.

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\* B.S., University of Wisconsin; candidate for Masters Degree, California State College, Fullerton; Planning Director, City of Rosemead; Mayor Pro Tempore, City of Cypress.

Both the Federal Government and the State of California have created acts dealing with environmental concerns. Our examination should commence with an overview of these acts and then to the practical consequences of their enforcement or "attempted" enforcement.

Following one brief day of hearings in Congress, the National Environmental Policy Act (hereinafter NEPA) was adopted in December, 1969. Constituting the response of Congress to the growing pressures of environmental groups, NEPA mandates a national policy of concern for the promotion of environmental quality and the prevention or elimination of environmental damage. NEPA became Public Law 91-190<sup>1</sup> on January 1, 1970, with the stated purposes of:

1. Establishing a national policy for the protection of our environment.
2. Promotion, prevention or elimination of environmental damage.
3. Enriched understanding of ecological systems and national resources.
4. Establishing a Council on Environmental Quality.<sup>2</sup>

In establishing national policy which demanded the protection of the environment, NEPA created two material monsters:

1. The Council on Environmental Quality.<sup>3</sup>
2. Environmental Impact Statements (hereinafter EIS).<sup>4</sup>

In recent years few Congressional actions have had a more pervasive impact on national policy, the processes of government at all levels and the private sectors of the economy.

Following in the footsteps of the Federal Government, early in 1970, the California Legislature adopted the California Environmental Quality Act of 1970 (hereinafter CEQA).<sup>5</sup> Much more verbose, CEQA also established a policy of maintaining and enhancing the environment, declaring that the present and future quality of the environment was a matter of statewide concern.<sup>6</sup> CEQA, however, did not create a separate agency for administration. It simply charged the State Office of Planning and Research with the respon-

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1. 42 U.S.C. §§ 4321, 4331-47 (1970).

2. *Id.* § 4321.

3. *Id.* § 4342.

4. *Id.* § 4332(c).

5. CAL. PUB. RES. CODE §§ 21000-21174 (West 1970).

6. *Id.* § 21000(a).

sibility of developing guidelines<sup>7</sup> and charged all state, regional and local agencies with the responsibility of implementing CEQA.<sup>8</sup>

Spelling out in more detail and more clearly who was to do what when, CEQA created the baby sister of the EIS, the Environmental Impact Report (hereinafter EIR). Ignoring no one, CEQA required all state agencies, boards, and commissions as well as all local agencies to prepare or cause to be prepared and to certify to the completion of an EIR on any project proposed to be carried out or approved which may have a "significant effect" on the environment.<sup>9</sup>

What are the practical effects of NEPA and CEQA? Both NEPA and CEQA require only disclosure. Significant environmental impacts must be identified and published. Upon identification of significant adverse effects, the approving agency is not prevented from approving the project. The agency is charged with the responsibility of reviewing the environmental impacts, studying the alternatives to the proposed project and weighing these matters before they make their decision. Criteria for the decisions have not changed. However, new criteria, substantive environmental standards, are beginning to emerge.

In June of 1973, the Court of Appeals for the District of Columbia issued one of the most significant NEPA decisions of that year.<sup>10</sup> The Court ruled that the Atomic Energy Commission (hereinafter AEC), an autonomous agency, must file an EIS on its liquid metal fast breeder nuclear reactor program. The Court relied extensively on recommendations issued by the Council on Environmental Quality in May, 1972, which stated:

In many cases, broad program statements will be appropriate, assessing . . . the overall impact of a large-scale program or chain of contemplated projects, or the environmental implication of research activities that have reached a stage of investment or commitment to implementation likely to restrict later alternatives . . .<sup>11</sup>

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7. *Id.* § 21083.

8. *Id.* § 21082.

9. *Id.* § 21100.

10. *Scientists' Institute for Public Information, Inc. v. Atomic Energy Commission*, 481 F.2d 1079 (D.C. Cir. 1973).

11. Council on Environmental Quality, Memorandum to Federal Agencies on Procedures for Improving Environmental Impact Statements (May 16, 1972), reprinted in 3 BNA Environment Reporter 82, 87.

In elaborating on the logic of this recommendation, the Court noted that to

[W]ait until technology attains the stage of complete feasibility before considering the possible adverse environmental effects attendant upon ultimate application of the technology will undoubtedly frustrate meaningful consideration and balancing of environmental costs against economic and other benefits.<sup>12</sup>

Further, the Court noted:

Once there has been, in terms of NEPA, 'an irretrievable commitment of resources' in the technology development stage, the balance of environmental costs and economic and other benefits shift in favor of ultimate application of the technology.<sup>13</sup>

It has been stated, correctly, that "all generation of power pollutes; atomic power pollutes for generations."<sup>13a</sup> However, efforts to thwart NEPA by the AEC have been persistent. Public Law 92-307,<sup>14</sup> an Act amending the Atomic Energy Act of 1954, authorized the AEC to issue temporary licenses to operate nuclear reactors under circumstances of "great need" for electricity. This Act was signed by an enthusiastic President Nixon on June 2, 1972. It was initiated as an attempt to allow interim licensing, authorizing limited operation of certain fully constructed nuclear power plants during an emergency situation, prior to and during the course of the ongoing full NEPA review. This was prompted by the Federal District Court of the District of Columbia's decision in the *Quad Cities* case,<sup>15</sup> in which the Court decided that the AEC could not authorize the operation of the Mississippi Nuclear Energy Complex at 25% of full commercial power levels prior to completing an EIS.

The AEC clearly was attempting to bypass NEPA requirements. They were unsuccessful in their attempts, however, since Public Law 92-307 as finally adopted<sup>16</sup> requires that a detailed statement on the environmental impact of the facility be prepared pursuant to NEPA. This statement must be complete prior to issuing any temporary operating licenses. However, requiring a mere statement of impact is meaningless unless some standards are set for the analysis process.

The Environmental Protection Agency (hereinafter EPA) has begun to prepare detailed methodologies for analyzing environmental

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12. *Scientists' Institute for Public Information, Inc. v. Atomic Energy Commission*, 481 F.2d 1079, 1089 (D.C. Cir. 1973).

13. *Id.* at 1090.

13a. Source unknown.

14. 42 U.S.C. § 2242 (1972).

15. *Izaak Walton League v. Schlesinger*, 337 F. Supp. 287 (D.C.D.C. 1971).

16. 42 U.S.C. § 2242 (1972).

aspects of different types of projects. Handbooks on the analyzation of highway projects and sewerage treatment plants have been prepared and EPA plans to prepare handbooks for water resource projects, nuclear power plants, airports and urban transportation systems. However, since the EPA was not in existence prior to NEPA, Congress, in its wisdom, created another enforcement arm. The mandate of NEPA created not only an awareness of the environment, but a watchdog of that environment—the Council on Environmental Quality.

The Environmental Quality Improvement Act of 1970, Title II, Public Law 91-224,<sup>17</sup> adopted April 3, 1970, provided additional goals for the Council, and further declared that it also was the responsibility of State and local government to protect the environment. Guidelines for the implementation of NEPA were established and subsequently amended by the Council on Environmental Quality in 1973. The guidelines appear in the Code of Federal Regulations, Title 40, Chapter 5, part 1500.<sup>18</sup>

Along with the Council on Environmental Quality and its attendant functions, NEPA created the requirement for the EIS. 42 U.S.C. 4332(2) applies to all agencies of the Federal Government. This section requires all federal agencies to:

1. Utilize an overall systematic, interdisciplinary approach assuring the integration of environmental factors in decision making;
2. Identify the methodologies and procedures to quantify environmental amenities and values allowing appropriate consideration in decision making; and
3. Prepare an EIS on any major federal action significantly affecting the quality of the human environment.

EIS's are to be prepared as early as possible, and in all cases prior to the agency decisions on any action significantly affecting the quality of the human environment.

Since the courts have considered that at the very least, NEPA "[i]s more than an environmental full disclosure law . . . [and that it] [w]as intended to effect substantive changes in decision

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17. *Id.* § 4371-74 (1970).

18. 40 C.F.R. § 1500 (1973).

making”,<sup>19</sup> the EIS’s must contain, at minimum, information which will put the public on notice to all known possible environmental consequences. Conclusory, unsupported statements are unacceptable as EIS’s and have rendered such statements inadequate. If reports have been prepared on similar projects or on aspects of the same project by other agencies which contain adverse environmental effects, the lead agency must acknowledge such reports.

The EIS must disclose environmental factors “wholly and candidly” and must be “written in language that is understandable to nontechnical minds and yet contain enough scientific reasoning to alert specialists to particular problems within their field of expertise.”<sup>20</sup> EIS’s specifically must contain:

- (i) the environmental impact of the proposed action,
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) alternatives to the proposed action,
- (iv) the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity, and
- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.<sup>21</sup>

The agencies preparing statements must consult with and obtain the comments of any Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved prior to making any detailed statement. Also, EIS’s must be circulated for review by other Federal, State and local agencies and by the public.<sup>22</sup>

In June of 1974, four and a half years after NEPA was enacted, EIS’s had been prepared for 5430 agency actions, with the greatest number of these prepared in the years 1970 and 1971. Since 1971, however, there has been a substantial decrease in the number of EIS’s which have been filed. One problem has been to define when a project requires an EIS. As to whether or not an action is “federal”, or “major” or its impact is “significant”, the trend is toward “thresholds” to be defined in agency regulations.<sup>23</sup>

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19. *Environmental Defense Fund v. Corps of Eng., U.S. Army*, 470 F.2d 289, 297 (8th Cir. 1972).

20. 40 C.F.R. § 1500 (1973).

21. 42 U.S.C. § 4332(2)(c) (1970).

22. *Id.*

23. *See* 40 C.F.R. § 1500.6 (1973).

It is interesting to note that the Department of Transportation files by far the greatest number of EIS's. In the four and a half years since adoption of NEPA they have filed more than 2600. In comparison, the AEC, low on the list, has reluctantly filed 175, averaging 28 per year for the last two years.

One of the early major controversies regarding the application of NEPA was the exemption of EPA itself from NEPA. The Council on Environmental Quality Guidelines ironically exempted the Environmental Protection Agency.<sup>24</sup> Subsequently, in *Portland Cement Assn. v. Ruckelhaus*,<sup>25</sup> petitioners argued that the new source performance standards adopted pursuant to Section 1857c(6) of the Clean Air Act<sup>26</sup> required EPA to follow NEPA. On June 29, 1973, the U.S. Court of Appeals for the District of Columbia ruled that the EPA is not subject to NEPA for new source performance standard promulgation. However, the Court stated that the criteria in Section 1857c(6)

reflects 'the best system of emission reduction', and requires the Administrator to take 'into account the cost of achieving such reduction.'<sup>27</sup>

These same criteria require the Administrator to

take into account counter-productive environmental effects of a proposed standard, as well as economic costs to the industry.<sup>28</sup>

Ultimately, Section 1857c(6), properly construed, requires the "functional equivalent of a NEPA impact statement."<sup>29</sup>

Following the *Portland Cement* decision, in *Appalachia Power Co. v. EPA*,<sup>30</sup> the courts, while upholding new source performance standards for fossil, fuel fire steam generators, remanded the record "[for] further consideration and explanation by the Administrator of the adverse environmental effects . . . [of] limes slurry scrubbing system. . ."<sup>31</sup>

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24. See 40 C.F.R. § 1500.9 (1973).

25. *Portland Cement Ass'n v. Ruckelhaus*, 486 F.2d 375 (C.A.D.C. 1973).

26. 42 U.S.C. § 1857 (1970).

27. *Portland Cement Ass'n v. Ruckelhaus*, 486 F.2d 375, 385 (C.A.D.C. 1973).

28. *Id.* at 385.

29. *Id.* at 384.

30. *Appalachia Power Co. v. E.P.A.*, 486 F.2d 427 (C.A.D.C. 1973).

31. *Id.* at 441.



While standards are still being set as to whom and to what EIS's apply, what has been the effectiveness of those so far submitted? An EIS was prepared by the Veteran's Administration (hereinafter V.A.) on a proposed new V.A. Hospital to be located in California. It was pointed out that the new V.A. Hospital was to be located in the proximity of five active faults, within a few miles of the most significant and active fault in the U.S., and within 200 feet of another active fault. Reflecting on a 1971 earthquake which destroyed the V.A. Hospital at Sylmar, California, one could almost conclude one of the critical site selection factors in locating a V.A. Hospital was proximity to a major earthquake fault.

The EIS disclosing these facts was prepared in sufficient time for input into the planning process. However, it did not affect the decision to locate the hospital on this site. In addition, when the local jurisdiction requested as required by CEQA, that the V.A. supplement the EIS with a discussion of mitigation measures, the Agency informed the jurisdiction that it had fully met its obligation under NEPA.

Another example of the ineffective application of NEPA is the EIS prepared for the establishment of an armed forces reserve center on the Naval Air Station at Los Alamitos, California. The station had been deactivated for two years and was proposed to be reactivated as an Army Reserve helicopter base. Significant environmental impacts clearly identified were an increase of aircraft noise and exhaust emissions in the Los Alamitos installation and immediately adjacent areas by resumption of flight operations. The Department of Defense conducted a public hearing on the EIS and received overwhelming public opposition to the reactivation of the base. In addition, the criticism by various agencies charged with the review of the EIS was dramatically insufficient in many areas. It was criticized as being worked backwards to justify the conclusion. However, it was not supplemented to include a response to any of these criticisms, and the base was reactivated in 1972.

Also, as in the current off-shore oil drilling proceedings in Southern California, it frequently appears as if the project agency has committed itself to that project before any EIS review is begun. Currently the Interior Department is contemplating off-shore oil leases without adequate EIS's. The State of California and specifically the coastal cities are demanding more time for reports under both NEPA and CEQA. Perhaps this may be the time to see if CEQA has any real muscle. Hopefully its guidelines may set a more definitive stage for action.

The California Office of Planning and Research was given the responsibility of developing guidelines for the implementation of CEQA.<sup>32</sup> These guidelines were to include objectives and criteria for the preparation of EIR's and the orderly evaluation of projects. They also were specifically to include criteria for public agencies to follow in determining whether or not a proposed project might have a "significant effect" on the environment and, therefore, require an EIR.<sup>33</sup> CEQA was declared to be an urgency statute necessary for the immediate preservation of the public peace, health, or safety and went into effect immediately. During the period of time between its adoption and the publishing of guidelines, however, EIR's still were required to be prepared.

EIR's must be prepared for any discretionary project (to include the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits and the approval of tentative subdivision maps).<sup>34</sup> Ministerial projects proposed to be carried out or approved by public agencies,<sup>35</sup> and projects listed by the Office of Planning and Research as not having a significant effect on the environment are exempt.<sup>36</sup> Recent amendments to the guidelines go further and state that CEQA will apply to projects unless there is no possibility that the activity in question may have a significant effect on the environment.

In compliance with the guidelines, EIR's must be prepared on the following projects, unless there is no possibility that the activity in question may have a significant effect on the environment:

1. Public projects.<sup>37</sup>
2. Private projects which involve assistance from a public agency or discretionary approval by the agency.<sup>38</sup>
3. Federal projects within the State and on which the State officially comments.<sup>39</sup>

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32. CAL. PUB. RES. CODE § 21083 (West 1970).

33. *Id.*

34. *Id.* § 21080.

35. *Id.*

36. *Id.* § 21084. See, CAL. PUB. RES. CODE § 21085 exempting emergency repairs to public services facilities.

37. 14 CAL. ADMIN. CODE § 15061 (1973).

38. *Id.*

39. *Id.* § 15063.

*Friends of Mammoth v. Board of Supervisors*<sup>40</sup> was the primary force in the application of CEQA to private projects. The court held that the statutory term "project" also meant private project. Ironically, lawyers criticize planners for imprecise use of the English language.

Recently, the court in *Bozung v. Local Agency Formation Commission*<sup>41</sup> applied CEQA to a local agency formation commission proceeding to approve a city annexation. Also, CEQA has been applied to the adoption of comprehensive land use plans around airports by the Airport Land Use Commission. This is not a radical extension of the project concept, however, since the guidelines specifically state that CEQA applies to the similar process of adopting a general plan.

When a project is a multiple or phased project an EIR must be prepared which addresses itself to the scope of the larger project. The EIR must consider all phases of the project.<sup>42</sup>

Projects approved prior to November 23, 1970, do not require an EIR, even though they may have a significant impact on the environment, unless (1) "a substantial portion of public funds allocated for the project have not been spent", or (2) "a public agency proposes to modify the project in such a way that the project might have a new significant effect on the environment."<sup>43</sup> The categories of projects for which the EIR is not required includes ministerial projects,<sup>44</sup> categorical exemptions<sup>45</sup> and emergency projects.<sup>46</sup> CEQA requires the guidelines to include a list of classes of projects which have been determined not to have a significant effect on the environment and which are exempt from the provisions of an EIR.<sup>47</sup> The Secretary of the Resource Agency was required to make a finding that these projects would not have significant effects on the environment.<sup>48</sup>

These exemptions fall into nine classes. Basically, class one consists of existing facilities undergoing negligible expansion of use,<sup>49</sup> class two consists of replacement or reconstruction of existing struc-

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

41. *Bozung v. Local Agency Formation Commission*, 37 Cal. App. 3d 842, 118 Cal. Rptr. 249 (1975).

42. 14 CAL. ADMIN. CODE § 15069 (1973).

43. *Id.* § 15070.

44. CAL. PUB. RES. CODE § 21080 (West 1970).

45. *Id.* § 21084.

46. *Id.* § 21085.

47. *Id.* § 21084.

48. *Id.*

49. 14 CAL. ADMIN. CODE § 15101 (1973).

tures and facilities,<sup>50</sup> class three consists of new construction of small structures<sup>51</sup> and class four consists of minor public or private alterations in the conditions of land, water and/or vegetation.<sup>52</sup> Classes five through nine consist of minor alterations in land use limitations,<sup>53</sup> information collection,<sup>54</sup> regulatory actions for protection of natural resources,<sup>55</sup> regulatory actions for the protection of the environment<sup>56</sup> and inspections.<sup>57</sup> Public agencies may request the addition or deletion of a class of projects to the list of categorical exemptions, but this request must include supportive material which shows that the class of projects does not have a significant effect on the environment.<sup>58</sup>

A Negative Declaration is prepared when a project, not categorically exempt, has been determined not to have a significant effect on the environment.<sup>59</sup> A Negative Declaration should be no longer than one page and must include a description of the project as proposed and a finding that the project will not have a significant effect on the environment.<sup>60</sup> The Negative Declaration and a Notice of Determination including the agency's disposition of the project shall be filed with the Secretary of Resources if the responsible agency is a State agency or the County Clerk if the responsible agency is a local agency.<sup>61</sup>

The agency with the principal responsibility for the approval of the project is defined as the lead agency.<sup>62</sup> It is responsible for the preparation of the report. The agency must either prepare the report itself or cause the report to be prepared.<sup>63</sup> While the test is a general one, some lead agencies are established by statute.

Following preparation of the draft and EIR, the report must be circulated to other public agencies having jurisdiction with respect

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50. *Id.* § 15102.

51. *Id.* § 15103.

52. *Id.* § 15104.

53. *Id.* § 15105.

54. *Id.* § 15106.

55. *Id.* § 15107.

56. *Id.* § 15108.

57. *Id.* § 15109.

58. CAL. PUB. RES. CODE § 21086 (West 1970).

59. 14 CAL. ADMIN. CODE § 15083 (a) (1973).

60. *Id.* § 15083 (b).

61. *Id.* § 15083 (d) (1) - (2).

62. CAL. PUB. RES. CODE § 21067 (West 1970).

63. *Id.* § 21165.

to the project or other agencies having special expertise with respect to the project.<sup>64</sup> Although CEQA does not require formal public hearings, the guidelines for the implementation of CEQA do specify that a public hearing should be held when it would "facilitate the purposes and goals of CEQA and these Guidelines do so."<sup>65</sup> Notice is to be given of these public hearings and may be the same form and time as notice for other regularly conducted public hearings of the public agency.<sup>66</sup> The final EIR consists of the draft, comments received in the consultation and review processes and the response of the responsible agency to the comments received.<sup>67</sup>

A Notice of Completion must be filed with the Secretary of Resources after the draft EIR is completed. This notice shall include a brief description of the project, its proposed location and an address where the copies of the EIR's are available.<sup>68</sup> Coupled with the Notice of Completion there must be a Notice of Determination.<sup>69</sup> The Notice of Determination must be filed with the Secretary of Resources, if the agency is a State agency and the County Clerk if the agency is a local agency.<sup>70</sup>

CEQA requires that all public agencies adopt by ordinance, resolution, rule or regulation, objectives and criteria and procedures for the evaluation of reports and the preparation of EIR's pursuant to CEQA. These objectives, criteria and procedures must be consistent with the guidelines for the implementation of CEQA.<sup>71</sup>

The guidelines define the environment to be "the physical conditions which exist in the area which will be affected by the proposed project including land, air, water, minerals, flora, fauna, ambient noise, objects of historic or aesthetic significance."<sup>72</sup> EIR's must consider the direct and indirect impacts of the project on the environment. These reports should consider sociological impacts, such as changes induced in population distribution, population concentration and the human use of the land.<sup>73</sup>

Assembly Bill No. 988 in the 1974 session of the California Legislature, which would have required a statement of measures to reduce wasteful, inefficient and unnecessary consumption of energy

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64. *Id.* § 21105. See also 14 CAL. ADMIN. CODE § 15085(b).

65. 14 CAL. ADMIN. CODE § 15165(a) (1973).

66. *Id.* § 15165(c).

67. *Id.* § 15146.

68. *Id.* § 15085(c).

69. *Id.* § 15085(g).

70. *Id.* § 15085(g) (1)-(2).

71. CAL. PUB. RES. CODE § 21082 (West 1970).

72. 14 CAL. ADMIN. CODE § 15026 (1973).

73. *Id.* § 15143(a).

to be included in the EIR, as well as an economic impact statement, was vetoed by Governor Reagan and termed not necessary. However, the amended guidelines do include the requirement for a statement of energy reduction measures.<sup>74</sup>

Under section 21083 of CEQA,<sup>75</sup> the guidelines must include criteria that shall require a finding of "significant effect on the environment" if any of the following conditions exist:

- (a) A proposed project has the potential to degrade the quality of the environment, curtail the range of the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals;
- (b) The possible effects of a project are individually limited but cumulatively considerable;
- (c) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.<sup>76</sup>

In addition to a description of the project and the environmental setting and a detailed valuation of all environmental impacts anticipated, the EIR must also address itself to mitigation measures proposed to minimize the impact.<sup>77</sup> Alternatives to the proposed action, including the alternatives of no project, must be included with reasons why the project should be implemented now rather than at a future date.<sup>78</sup> The report must consider irreversible environmental changes anticipated<sup>79</sup> and the growth-inducing impact of the proposed projects.<sup>80</sup> This is probably the most practical significant function of an EIR.

The costs for the preparation of an EIR, if prepared by a consultant, range from a minimum of about \$1,500.00 to upwards of \$30,000.00. This frequently is disproportionate to any benefits to the environment capable of being derived from them. Yet the law still requires them.

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74. See 14 CAL. ADMIN. CODE § 15081(b) and § 15143(c).

75. CAL. PUB. RES. CODE § 21083 (West 1970).

76. *Id.*

77. 14 CAL. ADMIN. CODE § 15143(c) (1973).

78. *Id.* § 15143(d).

79. *Id.* § 15143(f).

80. *Id.* § 15143(g).

The present effects of NEPA and CEQA are some minimization of negative environmental impacts, because of the forced consideration of environmental matters. NEPA has fought off the hobgoblins of the small technological minds and has begun to pursue its goals of preserving the environment for future generations, keeping it safe as well as pleasant, using it beneficially, carefully assessing its values and limitations, and ultimately seeking to achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities. Furthermore, mitigation measures that otherwise would not have been considered are implemented; and, in some cases, the identification of adverse effects does cause denial of the project. At my level of involvement and experience, it appears that CEQA is much more effective than NEPA in forcing environmental concern.

The response of many agencies and individuals involved in the preparation of EIR's is frustration. Most local agencies view the process as unduly burdensome, time-consuming and costly. Although public agencies may recoup the costs of preparation of the reports for private projects, when they do so, they frequently incur the wrath of the applicants. Furthermore, the requirements for these reports are generally felt to be applied to too many projects, with potential but extremely remote environmental consequences. There is an additional frustration of preparing EIR's, the results of which cannot be used as a basis for recommendations or decisions under existing decision criteria.

Although both NEPA and CEQA carry no real stick, properly used, they do enhance the planning process and result in a better project, something that should have happened a long time ago. While not virile, NEPA and CEQA have propagated excitement and confusion which I believe will produce some realistic and enforceable substantive environmental standards.