The Sustainable Municipality: Why Economic Harm is an Environmental Concern

Natalie Kuffel[*]

I. INTRODUCTION

The philosophy of sustainable development reflects a desire to "develop today without compromising available resources for future generations."[1] *Sustainability "includes both ecological and economic sustainability."*[2]

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[*] J.D. Candidate, University of the Pacific, McGeorge School of Law, to be conferred May 2014; B.A., Economics, New College of Florida, 2005. I would like to thank Professor John Sprankling, Justice Ronald Robie, Terry Watt, and Chris Calfee for their invaluable insights on this article, and my husband and children for their enduring patience and support.

1. Robert W. Burchell & Naveed A. Shad, *The Evolution of the Sprawl Debate in the United States*, 5 HASTINGS W.-NW. J. ENVTL. L. & POL'Y 137, 158 (1999) (quoting KEVEN J. KRIZEK & JOE POWER, A PLANNER'S GUIDE TO SUSTAINABLE DEVELOPMENT (1996)).

2. ROBERT B. KEITER, KEEPING FAITH WITH NATURE: ECOSYSTEMS, DEOMOCRACY AND

Today, local governments in California are in precarious financial positions.[3] In the last thirty years, federal and state funding to local governments has decreased,[4] while voters have limited local governments' ability to raise taxes.[5] As a result, many local governments turned to rapid development on previously undeveloped land as a way to obtain more "own-source funding," usually in the form of sales taxes.[6] Unfortunately, the voter-mandated tax limits have made it difficult to pay for the accompanying costs of this growth. These costs include constructing and maintaining new roads, "water pipes, sewers, schools and other local facilities."[7] While some new development was needed to accommodate growing populations, the sprawling nature of the development permitted in many jurisdictions led to higher than necessary costs.[8] These costs may have contributed to the financial difficulties and eventual bankruptcies of Stockton and San Bernardino in the summer of 2012.[9]

The costs associated with this growth are not immediately apparent. In areas

AMERICA'S PUBLIC LANDS 71 (2003).

3 For a map of country-wide bankruptcies, including those in California, see *Bankrupt Cities, Municipalities List and Map*, GOVERNING.COM, http://www.governing.com/gov-data/municipal-cities-counties-bankruptcies-and-defaults.html (last visited Oct. 14, 2013).

4 Ronald H. Rosenberg, *The Changing Culture of American Land Use Regulation: Paying for Growth with Impact Fees*, 59 SMU L. REV. 177, 180 (2006); *see also* GORDON SHUFORD & RICHARD YOUNG, A REPORT ON LOCAL GOVERNMENT FUNDING: AN OVERVIEW OF NATIONAL ISSUES AND TRENDS 6 (2000), *available at* http://www.ipspr.sc.edu/grs/LGRP/DOC/LGFP%20National%20Issues%20Trends.pdf ("In 1978, federal grants-in-aid to states and local governments amounted to 26.5% of their total funding. Over the 1990 to 1995 period, this amount averaged five percentage points less, or 21.5%.").

5 California's Proposition 13 is one of the most influential examples of these voter-mandated limitations. MICHAEL COLEMAN, LEAGUE OF CALIFORNIA CITIES, A PRIMER ON CALIFORNIA CITY FINANCE 5 (2005), *available at* http://www.californiacityfinance.com/FinancePrimer05.pdf.

6 SHUFORD & YOUNG, *supra* note 4, at 6.

7 *Id.* at 10.

8 *See* WILLIAM COYNE, ENV'T COLO. RESEARCH & POL'Y CTR., THE FISCAL COST OF SPRAWL: HOW SPRAWL CONTRIBUTES TO LOCAL GOVERNMENTS' BUDGET WOES 6–8 (2003), *available at* http://www.impactfees.com/publications%20pdf/fiscalcostofsprawl12_03.pdf (citing the cost of building a road in a compact area as twenty-five percent less than in a sprawling area, costs for new sewer and water hookups and service as being twenty percent to forty percent more in sprawling areas, and a greater need for more fire and police stations to keep response times low, and more schools even when existing schools are under capacity).

9 COYNE, *supra* note 8 (describing Colorado); William Fulton, Op-Ed., *The Bankruptcy-Sprawl Connection*, L.A. TIMES (Oct. 1, 2012), http://www.latimes.com/news/opinion/commentary/la-oe-fulton-california-bankruptcies-sprawl-20121001,0,2800342.story (describing local governments in California); *see also* DEREK OKUBO, NATIONAL CIVIC LEAGUE, FISCAL SUSTAINABILITY AND LOCAL GOVERNMENT 36 (2011), *available at* http://www.ncl.org/pdfs/99-4/OkuboFiscal.pdf (finding that local governments that avoided sprawl were in better financial shape because of "lower infrastructure costs and service expenses than in other growing communities"); Staff Reports, *Brown Wins Battle in War on Sprawl*, LEGAL NEWSLINE (Sept. 10, 2008), http://legalnewsline.com/news/215649-brown-wins-battle-in-war-on-sprawl (showing then Attorney General Jerry Brown criticizing the sprawling development patterns of San Bernardino and Stockton, two cities that declared bankruptcy in 2012).

experiencing rapid growth, municipalities often have a budget surplus during the new development, because the initial costs of the projects are paid for by impact fees and service taxes. Development agreements often provide additional financial benefits for the city.[10] New financial obligations become apparent only when the development period ends and residents begin demanding new services and facilities from the local government.[11] While all new development requires public facilities and services, government officials often underestimate how much these services will cost and overestimate the benefits of the new development.[12]

It is important that the fiscal impacts of a project be fully explored before a project is approved to avoid local governments incurring these large financial costs.[13] One way local governments can obtain a realistic estimate of the costs and benefits of growth is to conduct a fiscal impact analysis (FIA).[14] FIAs evaluate the potential revenues and costs of proposed projects. The additional information provided by FIAs can be used by local governments to reject projects that do not make financial sense, to adjust projects to make them fiscally neutral, or to change the amount of impact fees, excise taxes, or utility rates imposed on projects to better reflect the true costs.[15]

The potential value of a FIA can be illustrated by considering the respective

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10 GEOFF ANDERSON, INT'L CITY/CNTY. MGMT. ASS'N, WHY SMART GROWTH: A PRIMER 18 (1998), *available at* http://www.epa.gov/dced/pdf/WhySmartGrowth_bk.pdf ("In California, every million dollars of home building activity directly and indirectly generates more than $100,000 in tax revenues for state and local governments. At the same time, the residents do not yet occupy the houses, so there is no service demand from residents. But these are one-time revenues. After residents move in, they demand services in excess of their property taxes. Meanwhile, the attractive revenues from construction activity are gone.") For example, Stockton's revenues jumped from $139.1 million in 2001 to $186.4 million in 2007. Jim Christie, *Stockton Bankruptcy the Result of 15-Year Spending Binge*, HUFFINGTON POST (July 4, 2012), http://www.huffingtonpost.com/2012/07/04/stockton-bankruptcy_n_1648634.html.

11 ANDERSON, *supra* note 10, at 18.

12 *Id.* at 17.

13 COYNE, *supra* note 8, at 5–6.

14 ZENIA KOTVAL & JOHN MULLIN, LINCOLN INST., FISCAL IMPACT ANALYSIS: METHODS, CASES, AND INTELLECTUAL DEBATE 3 (2006), *available at* http://www.lincolninst.edu/subcenters/teaching-fiscal-dimensions-of-planning/materials/kotval-mullin-fiscal-impact.pdf.

15 *Id.* at 15-16; *see also* ECON. & PLANNING SYS., FAIRFIELD TRAIN STATION SPECIFIC PLAN FISCAL IMPACT ANALYSIS 1 (2011), *available at* http://www.fairfield.ca.gov/civica/filebank/blobdload.asp?BlobID=7146 ("[T]he purpose of this analysis is to ensure that that the additional service charges placed on the new . . . development–through Community Facilities Districts (CFDs) operating special taxes, Landscape, Lighting, and Maintenance Districts (LLMDs) assessments, and Homeowner Association Dues (HOAs)–are sufficient to cover any expected shortfalls between City General Fund service costs and revenues associated with [the] development."). For an example of a local government that charged an additional special service tax to offset the additional police and fire service costs that would not be covered by new revenue streams discovered by the FIA, see CITY OF BANNING, PLANNING COMMISSION AGENDA 25 (MAR. 7, 2012), *available at* http://www.ci.banning.ca.us/archives/32/Planning%20Commission%20Meeting%20March%207,%202012.pdf.

plights of two Southern California counties that were approached by developers interested in building large solar plants within their borders. San Bernardino County, enticed by the possibility of new jobs and increased tax revenue, did not prepare a FIA before approving two of the largest solar plants in the world.[16] Today, county officials are realizing that the millions of dollars in additional fire and safety services required by the plants will most likely not be covered by the revenue from the project.[17]

Nearby Inyo County hired an economic consultant to evaluate a similar proposal for a large solar project by conducting a FIA.[18] The consultant found that ninety-five percent of the construction jobs would not be filled by county residents and fewer than ten permanent jobs would be created for county residents.[19] The FIA also revealed that the tax revenues would be less than expected because the project would qualify for a solar property tax exclusion. Additionally, the study found that the construction workers were likely to buy their products across the border in Nevada, limiting the amount of sales tax that would be collected in Inyo.[20] In total, the FIA predicted that the project would cost the county $11 million to $12 million during construction and $2 million a year once the plant was in operation.[21] Local government officials in Inyo used this information to negotiate for additional fees from the solar company; however, their efforts were limited by the threat to move the project to a more "development-friendly" county, like San Bernardino.[22]

As seen from the Inyo County example, FIAs should be done on a statewide basis to avoid development shifting to the counties that are not preparing the FIAs (and thus not demanding fees to cover their costs).[23] Often local governments that fail to prepare a FIA are ones, like San Bernardino, that are seeking growth to overcome financial difficulties and are the least able to bear the costs.

This paper argues that the California Environmental Quality Act (CEQA) should be amended to include a FIA component to help local governments

16 Julie Cart, *Solar Power Plants Burden the Counties that Host Them*, L.A. TIMES (Nov. 25, 2102), http://www.latimes.com/news/local/la-me-solar-counties-20121125,0,4188597.story?page=1.

17 *Id.*

18 *Id.*

19 *Id.* It should be noted that the solar industry disputes these estimates. BRIGHTSOURCE ENERGY, Keely Wachs, *Response to LA Times: Solar Projects Benefit Counties* (Nov. 28, 2012), http://www.renewableenergyworld.com/rea/news/article/2012/11/response-to-la-times-solar-projects-benefit-counties. Situations like this, with "battling FIAs," could be assisted by the CEQA process, since it would allow the solar industry to comment on the FIA before the government makes its decision.

20 Cart, *supra* note 16.

21 *Id.*

22 *Id.*

23 COYNE, *supra* note 8, at 5–6.

remain financially sustainable.[24] The FIA could be placed in the existing Public Services section of the environmental impact report (EIR), which is currently limited to the physical impact of new public services, such as a new fire station.[25] While CEQA has traditionally been limited to addressing environmental concerns, economic effects can be considered if those effects will lead to physical effects.[26] This proposal is an expansion of the Urban Decay line of cases.[27] By creating more financially resilient local governments, FIAs can reduce the decay of public space caused by local government budget cuts.

Part II of this paper describes the unforeseen costs of new development and explains how the use of FIAs could lead to more fiscally-resilient municipalities. Part III provides a brief overview of CEQA. It also discusses how FIAs satisfy the economic-to-environmental connection that is required for information to be included in a CEQA EIR because FIAs can prevent the negative environmental impact of decay of public space. Part IV proposes that the Legislature expand the Public Services section of CEQA to make FIAs a mandatory part of future EIRs.

II. THE UNFORESEEN COSTS OF DEVELOPMENT

Local governments seek growth for a variety of reasons: to recover from a declining economy; "to upgrade old, deteriorating infrastructure and substandard public services"; "to fund the expansions in infrastructure and public services demanded by new residents"; and to continue the growth they believe has been the reason for their success.[28] Unfortunately, with growth and the quick revenue it provides in the form of impact fees, development agreements, and tax revenues, come costs that often exceed the benefits, even when impact fees are charged for new infrastructure.[29] In California, Proposition 13, passed in 1978,[30]

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24 *See id.* at 11 ("By assessing the fiscal impacts of a proposed project, municipalities 1) can better understand what considerations are important for the community while planning the project, 2) will make more rational decisions concerning provision of services, and 3) ensure sound, long-term growth policies.").

25 CAL. CODE REGS. tit. 14, § 15126.2(d) (2011).

26 See CEQA Guidelines section 15131, which states that that an EIR may only "trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes."

27 *See infra* Part IV, pp. 21. For an example of an Urban Decay analysis, see *Citizens Ass'n for Sensible Development of Bishop Area v. County of Inyo*, 217 Cal. Rptr. 893 (Ct. App. 1985).

28 COYNE, *supra* note 8, at 12–13.

29 *Id.* Local governments charge impact fees in order to cover the initial costs of infrastructure improvements and public services.

30 COLEMAN, *supra* note 5, at 7; Voters approved Proposition 13 by a large majority, largely out of concern for elderly homeowners who were being priced out of their homes due to increasing property taxes. Curt Pringle, Commentary, *California Cities and the Changing State-Local Fiscal Relationship*, PUB. POLICY INST. OF CAL. http://www.ppic.org/main/commentary.asp?i=1172.

exacerbated these problems.

A. Local Governments' Need for Revenue After Proposition 13

Local governments have traditionally relied on property taxes as their main source of revenue.[31] Prior to Proposition 13, local governments could choose the amount of property tax they charged to pay for the services they provided.[32] Proposition 13 capped property taxes at one percent, causing local property tax revenue to drop by sixty percent.[33] It also shifted control of property tax money from the local governments to the State.[34] At the same time, state and federal aid to California cities declined from twenty-one percent of a city's budget in 1974–75 to ten percent today.[35] This decline caused local governments to rely on other sources of revenue, especially sales tax.[36] Sales taxes are distributed on a "situs" basis, which means that one percent of the sales tax returns to the jurisdiction where the sale occurred.[37] While this seems insignificant, these sales tax revenues make up a large share of a local government's discretionary income.[38]

Because of Proposition 13 and the reduction in state and federal support, land use choices have become increasingly "fiscalized," with local governments choosing projects based on their potential to create sales tax revenue.[39] Big box retail — Target, Wal-Mart, Bed Bath & Beyond, etc. — and automalls are some of the most desired types of development because of their perceived ability to bring in large amounts of sales tax revenue.[40] Local governments have courted large employers as well because of their potential to create jobs and additional business license tax revenue.[41]

Unfortunately, local governments often underestimate the costs of this

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31 Pringle, *supra* note 30.

32 *See* Vicki Elmer, Abigail Thorne-Lyman & Dena Belzer, *Fiscal Analysis and Land Use Policy in California* 11 (U.C. Berkeley, Working Paper Series No. 10-2006), *available at* http://www.iurd.berkeley.edu/publications/wp/2006-10.pdf (indicating that the average California property rate was 2.67% prior to Prop. 13.).

33 COLEMAN, *supra* note 5, at 4–5.

34 PAUL G. LEWIS & ELISA BARBOUR, PUBL. POLICY INST. OF CAL, CALIFORNIA CITIES AND THE LOCAL SALES TAX 8 (1999), *available at* http://www.ppic.org/content/pubs/report/R_799PLR.pdf.

35 COLEMAN, *supra* note 5, at 7.

36 LEWIS & BARBOUR, *supra* note 34, at 9.

37 *Id.* at 5.

38 *Id. at 8; see also* Elmer, Thorne-Lyman & Belzer, *supra* note 32, at 10 ("Discretionary revenues are typically used to pay for ongoing police and fire services, parks, libraries, local streets, planning and some administrative services.").

39 ELISA BARBOUR, PUBL. POLICY INST. OF CAL., STATE-LOCAL FISCAL CONFLICTS IN CALIFORNIA: FROM PROPOSITION 13 TO PROPOSITION 1A, at 16 (2007), *available at* http://www.ppic.org/content/pubs/op/OP_1207EBOP.pdf.

40 LEWIS & BARBOUR, *supra* note 34, at 12.

41 ANDERSON, *supra* note 10, at 19.

development. While retail development is perceived as being fiscally positive, it often generates a long-term net fiscal loss because of the financial costs the local government incurs to ameliorate the increased traffic created by the retail.[42] Commercial and industrial development can also lead to additional residential development.[43] This residential development usually costs the local government more than it provides in increased taxes and fees because of the expensive services that residents demand, such as education[44] and emergency services.[45]

More information about the true costs and benefits of development can help prevent the fiscalization of land use. A national study of mid-sized cities found that cities that require FIAs during the development process were less likely to encourage retail development.[46]

B. One-Size-Fits-All Impact Fees Fall Short

In addition to relying on sales taxes to make up for lost property tax revenue, local governments have also increased the use of impact fees.[47] The Mitigation Fee Act[48] allows cities to charge developers impact fees in order to cover the initial costs of infrastructure improvements and public services. These include "parkland acquisition fees, school facilities fees, or street construction fees that are needed by the development along with connection fees for water and sewer lines."[49] These fees are enacted by a simple majority of a city council and must be shown to have a reasonable nexus to the government's costs and be roughly proportional to the need created by the development.[50] Importantly, impact fees can only be used for the new development and not to cover pre-existing

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42 *See* DEV. ECON., UNDERSTANDING THE FISCAL IMPACTS OF LAND USE IN OHIO 14 (2004), *available at* http://www.morpc.org/pdf/fiscalimpacts.pdf ("[R]etail does not generate sufficient income or property taxes to overcome the substantial traffic-related costs that result from the higher number of road trips generated by retail.").

43 *See* ANDERSON, *supra* note 10, at 19 (providing the example of Rio Rancho, New Mexico, which offered a $114 million incentive package to draw Intel to its town, but later found itself unable to pay for the services demanded by new residents drawn to the town because of Intel).

44 Education funding in California is complicated by AB 65, which was enacted by the legislature in 1976 and equalizes revenue available for schools among jurisdictions. Elmer, Thorne-Lyman & Belzer, *supra* note 32, at 13.

45 *See* ANDERSON, *supra* note 10, at 19.

46 Elmer, Thorne-Lyman & Belzer, *supra* note 32, at 18.

47 Burchell & Shad, *supra* note 1, at 151 (stating that impact fees are currently the fastest-growing source of municipal revenues).

48 CAL. GOV'T CODE §§ 66000-66008 (Deering 2013).

49 Elmer, Thorne-Lyman & Belzer, *supra* note 32, at 16.

50 If a development impact fee does not relate to the impact created by development or exceeds the reasonable cost of providing the public service, then the fee may be declared a special tax and must then be subject to a two-thirds voter approval. CHRIS SCHILDT, CTR. FOR CMTY. INNOVATION, STRATEGIES FOR FISCALLY SUSTAINABLE INFILL HOUSING 9 (2011), *available at* http://communityinnovation.berkeley.edu/reports/Fiscally-Sustainable-Infill.pdf.

deficits.[51]

While impact fees have become a key source of revenue for local governments, they are often inadequate because they are determined by a generic formula based on the number of residential units or square footage and not on the individual development project.[52] But growth does not affect government budgets uniformly. [53] For instance, growth that requires expanded infrastructure is more expensive to local governments than growth that utilizes existing infrastructure.[54]

Additionally, impact fees are uniformly dedicated to the initial construction costs of new infrastructure and not to ongoing maintenance costs.[55] These costs can be extensive and often go unpaid, becoming a liability for future generations; in the six counties in the Sacramento region alone, the cost of deferred road maintenance is estimated to be $100 million.[56] According to a recent estimate by the League of California Cities, this number totals $82 billion statewide.[57]

C. A Possible Solution: Fiscal Impact Analyses

To prevent passing financial liabilities of approved projects to future generations, some local governments require a FIA as part of the development proposal.[58] The federal government first developed FIAs in the 1930s and 1940s to analyze the fiscal effects of public housing and urban renewal programs.[59] FIAs can be prepared for individual projects or for large, jurisdiction-wide planning efforts.[60]

51 CAL. GOV'T CODE § 65913.8 (West 2011).

52 SCHILDT, *supra* note 50.

53 ANDERSON, *supra* note 10, at 20.

54 *Id.*

55 Rosenberg, *supra* note 4, at 205–206. Eighty-one percent of the roadways in California are the responsibility of local cities and counties. LEAGUE OF CAL. CITIES, 2012 CALIFORNIA STATEWIDE LOCAL STREETS AND ROAD NEEDS ASSESSMENT, at ES-3 (2012), *available at* http://www.savecaliforniastreets.org/reports/2012/2012-FinalReport.pdf.

56 SACRAMENTO AREA COUNCIL OF GOV'TS, MPT2035 ISSUE PAPERS: ROAD MAINTENANCE 1, *available at* http://www.sacog.org/mtp/pdf/MTP2035/Issue%20Papers/Road%20Maintenance.pdf.

57 LEAGUE OF CAL. CITIES, *supra* note 55, at ES-6.

58 *See* Elmer, Thorne-Lyman & Belzer, *supra* note 32, at 9 ("Some local governments have [even] established policies in their Municipal Codes that new development be 'fiscally neutral,' or should result in a net zero or net positive impact on the city budget.").

59 MICHAEL J. MUCHA, GOV'T FIN. OFFICERS ASS'N, AN INTRODUCTION TO FISCAL IMPACT ANALYSIS FOR DEVELOPMENT PROJECTS 1, *available at* http://www.gfoa.org/downloads/FinanicalImpactAnalysis.pdf.

60 *See* NATURAL RES. DEF. COUNCIL ("NRDC"), DEVELOPMENT AND DOLLARS: AN INTRODUCTION TO FISCAL IMPACT ANALYSIS IN LAND USE PLANNING Ch. 1, *available at* http://www.nrdc.org/cities/smartGrowth/dd/chap1.asp. For a detailed description of how San Jose created an FIA to analyze the conversion of industrial land to residential land, see Vicki Elmer, *supra* note 32.

A FIA looks at the effect of a proposed project on the local government's revenue and costs.[61] There are three basic sources of revenue: taxes, intergovernmental transfers, and fees.[62] Costs include both infrastructure and services, such as road maintenance, government, police, fire protection, sewer, water, recreation, and waste removal.[63] Often, a special district provides the services in exchange for property tax revenues that would otherwise go to the local government.[64]

While there are many methods used to create FIAs,[65] certain factors make some FIAs more reliable than others.[66] Development type, existing capacity, and density appear to be the most important factors to consider when analyzing the fiscal impact of new development.[67]A proper FIA will consider whether the property is residential, commercial, or industrial.[68] The possibility that new commercial or industrial development could generate demand for new homes and residential services should also be considered.[69] Any analysis should consider the value of any working, agricultural, or wildlands, all of which have been found to be revenue positive to municipalities.[70] Additionally, the FIA should take into account whether the new development can be served by existing infrastructure and public employees.[71] If new infrastructure is needed, a FIA should analyze the cost of replacing and repairing the infrastructure.[72] Finally, the FIA should consider the compactness of the development, i.e. whether the development is "concentrated near [the] existing infrastructure or scattered throughout the jurisdiction."[73] The density of the development (how close the buildings are to one another, not just to the existing town), also affects costs, because there is less connecting infrastructure.[74] Services, such as mail delivery,

61 KOTVAL & MULLIN, *supra* note 14, at 4-6.

62 *Id.*

63 *Id.*

64 *See* Elmer, Thorne-Lyman & Belzer, *supra* note 32, at 10 (stating that special service districts for fire service exist in thirty percent of California cities and special service districts for libraries exist in sixty percent).

65 KOTVAL & MULLIN, *supra* note 14, at 36. For an example of an actual fiscal impact analysis prepared by a consulting firm, see generally BAY AREA ECON., FISCAL IMPACT ANALYSIS OF PROPOSED DEVELOPMENT ON CONSTITUTION AND INDEPENDENCE SITES (2010), *available at* http://www.menlopark.org/departments/pln/bohannon/menlo-gateway_fia-final.pdf.

66 NRDC, *supra* note 60.

67 *The Fiscal Impact of Development*, IND. LOCAL GOV'T INFO., http://www.agecon.purdue.edu/crd/localgov/Second%20Level%20pages/topic_fiscal_impact.htm (last visited Oct. 17, 2013).

68 *Id.*

69 KOTVAL & MULLIN, *supra* note 14, at 22.

70 *Id.* at 24.

71 IND. LOCAL GOV'T INFO., *supra* note 67.

72 COYNE, *supra* note 8, at 16.

73 IND. LOCAL GOV'T INFO., *supra* note 67.

74 ANDERSON, *supra* note 10, at 20.

trash collection, and police and fire protection, are also less efficient when the service area is less compact.[75] The Environmental Protection Agency estimates that "for residential developments of three to five dwelling units per acre that are 10 miles away, utility costs are almost $10,000 per unit, compared to less than $5,000 for developments that are only 5 miles away."[76] Because compact, dense developments can also save agricultural land (which is usually revenue-positive), there are additional potential revenue benefits to this type of development.[77]

While the fiscal impact of a project should be fully evaluated by the local government, it is only one of many factors that should be considered.[78] One of the more common criticisms of FIAs is that they emphasize finances and do not consider social and environmental factors.[79] This is why the FIA should be integrated within CEQA's environmental review process as another factor for local governments to consider, and not a stand-alone document.

III. A POSSIBLE VEHICLE: THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

"Enacted in 1970, CEQA[80] is the California equivalent of the National Environmental Policy Act (NEPA)."[81] CEQA does not directly regulate land uses; it establishes a uniform set of statewide criteria that local governments must consider in determining whether proposed projects should be approved.[82] CEQA applies to all public projects and all private projects requiring a government permit or other entitlement for use.[83]

All projects undergo the same process. First, the public agency,[84] when acting as the "lead agency,"[85] conducts an initial study to determine whether the project

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75 URBAN LAND INST., HIGHER DENSITY DEVELOPMENT: MYTH AND FACT 11–12 (2005), *available at* http://www.nmhc.org/files/ContentFiles/Brochures/Myth%20and%20Fact%20FINAL.pdf.

76 ANDERSON, *supra* note 10, at 20.

77 *Id.*at 21.

78 IND. LOCAL GOV'T INFO., *supra* note 67.

79 KOTVAL & MULLIN, *supra* note 14, at 4.

80 CAL. PUB. RES. CODE §§ 21000–21177 (West 2011); CAL. CODE REGS. tit. 14, §§ 15000–15387 (2011) (codifying the CEQA Guidelines).

81 ELISA BARBOUR & MICHAEL TEITZ, PUB. POLICY INST. OF CAL., CEQA REFORM: ISSUES AND OPTIONS 3 (2005), *available at* http://www.ppic.org/content/pubs/op/OP_405EBOP.pdf.

82 CAL. CODE REGS. tit. 14, § 15002 (2011).

83 *See* Friends of Mammoth v. Bd. of Supervisors, 8 Cal. 3d 247, 262 (1972) ("[T]o limit the operation of . . . [C]EQA solely to what are essentially public works projects would frustrate the effectiveness of the act.") .

84 "Public agency" is defined as "any state agency, board, or commission, any county, city and county, city, regional agency, public district, redevelopment agency, or other political subdivision." CAL. PUB. RES. CODE § 21063 (West 2011).

85 The lead agency is "the public agency which has the principal responsibility for carrying out or approving a project." CAL. CODE REGS. tit. 14, § 15367 (2011).

may have a significant effect on the environment.[86] If the initial study shows that the project may have a significant effect on the environment,[87] the lead agency must prepare an EIR.[88] An EIR is used by governmental agencies to analyze environmental impacts.[89] If the lead agency determines that the project will not cause significant environmental effects, it issues a negative declaration or, if mitigation can reduce the environmental effects below the level of significance, a mitigated negative declaration.[90] If the agency determines that an EIR is required, a draft EIR is circulated for public comment.[91] The final EIR must respond to comments raised.[92] Then the lead agency certifies the final EIR and the project can continue through the entitlement process.[93]An EIR should contain information about alternatives and mitigation measures that could minimize significant effects on the environment.[94] CEQA is "action forcing" in that it provides that agencies should not approve projects with significant unmitigated impacts if there are feasible alternatives.[95] A public agency can approve a project with significant environmental impacts only if it finds such effects can be mitigated or concludes that unavoidable impacts are acceptable because of overriding considerations.[96]

Overriding considerations are "larger, more general reasons for approving the project, such as the need to create new jobs, provide housing, generate taxes, and the like."[97] An agency must provide more than an "unsupported claim that the project will confer general benefits."[98] There must be substantial evidence in the record to support findings of overriding considerations.[99]

During a judicial review, courts have the authority to require additional analysis or evidence but not to direct an agency to choose a proposed alternative over the project or deny the project.[100] It is the agency that retains authority to

86 *Id.* at § 15063(a).

87 A "'[s]ignificant effect on the environment' means a substantial adverse change in any of the physical conditions within the area affected by the project." *Id.* at § 15382.

88 CAL. PUB. RES. CODE § 21100(a) (West 2011).

89 CAL. CODE REGS. tit. 14, § 15002(f) (2011).

90 *Id.* § 15070.

91 *Id.* § 15087.

92 *Id.* § 15089(b).

93 *Id.* § 15090.

94 CAL. PUB. RES. CODE § 21002.1(a) (West 2011).

95 *Id.* § 21001.

96 *Id.* § 21081.

97 Sierra Club v. Contra Costa Cnty., 13 Cal. Rptr. 2d 182, 188 (Ct. App. 1992) (citing REMY, THOMAS & MOOSE, GUIDE TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT 147 (6th ed. 1992)).

98 Woodward Park Homeowners Ass'n. v. City of Fresno, 58 Cal. Rptr. 3d 102, 127 (Ct. App. 2007).

99 *Sierra Club*, 13 Cal. Rptr. 2d at 188.

100 *See* BARBOUR & TEITZ, *supra* note 81, at 5 ("CEQA retains substantive flexibility not just in how localities may choose to balance environmental, economic, and social goals . . .").

make that critical decision of whether the public benefits outweigh the environmental impacts. These decisions are checked by the political process since they are made by local governing bodies.[101]

A. CEQA's Public Services Section

CEQA currently mandates that an EIR evaluate potential impacts to public services, but the analysis is limited to the environmental, not economic, effects of expanded public services.[102] When the lead agency analyzes the effects on public services, it must answer whether "the project [would] result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities . . . the construction of which would cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives . . . ?"[103] In other words, will the increased need for public services result in the construction of new public facilities, and will those public facilities have a significant impact on the environment?

Despite this limited interpretation of the Public Services section, considering economic impacts in the EIR is not forbidden. CEQA requires "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."[104] However, this discussion of economic effects is limited by CEQA Guidelines section 15131, which states that an EIR may only "trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes." [105] The emphasis of the analysis, like in the Public Services section, remains on the physical changes.[106]

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[101] *See* Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal., 764 P.2d 278, 282–83 (Cal. 1988) ("If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. The EIR process protects not only the environment but also informed self-government.") (internal citations omitted).

[102] CAL. CODE REGS. tit. 14, § 15126.2 (2011). "The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical resources, scenic quality, and public services." *Id.*

[103] CAL. CODE REGS. tit. 14, § 15387 app (2011).

[104] CAL. PUB. RES. CODE § 21001(g) (West 2011).

[105] CAL. CODE REGS. tit. 14, § 15131(a) (2011).

[106] *Id.*

B. The Development of the Urban Decay Line of Cases

The first case to use section 15131's economic-to-environmental chain of causation to analyze urban decay was *Citizens Association for Sensible Development of Bishop Area v. County of Inyo* ("*Citizens Association*").[107] In *Citizens Association*, the California Court of Appeal for the Fourth District held that an EIR should have been required for a new retail development when the loss of patronage at existing businesses could have resulted in the physical deterioration of the downtown area, creating urban decay.[108] Three years later the Third District, in *Citizens for Quality Growth v. City of Mt. Shasta*, reaffirmed that an EIR should consider whether potential economic problems caused by a project could result in the physical deterioration of a downtown area.[109] More recently, the Fifth District has emphasized that an urban decay analysis is not required for every "supercenter" approval, but is required only when substantial evidence is presented that urban decay might result from the project.[110]

IV. INCORPORATING FIAS INTO CEQA

Under the economic-to-environmental chain of causation established in CEQA Guidelines section 15131 and used in the Urban Decay cases, a similar chain of analysis could be created for a fiscal impact statement that analyzes the economic effect of the project on the local government. A project that creates a financial burden on a local government can lead to decay of the public space — cracked sidewalks, crime, graffiti, etc. — a physical effect.

A. The Decay of Public Space

When urban decay concerns were first mentioned, many thought that they were outside of CEQA's scope as economic and social issues.[111] Eventually, economic reports were conducted that showed the negative physical impact of large commercial supercenters — the business closures and abandonment of other retail sites that created blight conditions and adversely affected public safety.[112]

Financially strained local governments also lead to blighted conditions and increased crime. Local governments that have been forced to declare bankruptcy

107 217 Cal. Rptr. 893 (Ct. App. 1985).

108 *Id.* at 904.

109 243 Cal. Rptr. 727, 734 (Ct. App. 1988).

110 Melom v. City of Madera, 106 Cal. Rptr. 3d 755, 760 (Ct. App. 2010).

111 Tayfun Amur, *Fighting CEQA with CEQA*, AM. PLANNING ASS'N 31 (2007), *available at* http://www.des.ucdavis.edu/faculty/handy/ESP171/Readings2/FightingCEQAwithCEQA.pdf.

112 *Id.*

have had to deal with rampant crime due to reduced police forces.[113] Other physical effects have included dead dogs that are not picked up by animal control and abandoned houses gutted by copper thieves.[114] In Vallejo, abandoned homes were turned into "squat-brothels," and were "littered with used needles and condoms."[115]

Even local governments that are not as financially strained as Stockton, San Bernardino, and Vallejo are showing physical effects from reduced budgets. In San Luis Obispo, "[r]oads are rougher, sidewalks [are] riddled with more cracks and grass at parks [is] left fallow."[116] In Marysville, local officials turned off street lights to save money.[117] And in Sacramento, budget cuts led city officials to close a popular baseball complex.[118] The complex has since had "[i]ts press box charred by a suspicious fire, and its lighting and irrigation systems crippled by copper wire thieves."[119] But local officials cannot afford to repair the park.[120]

B. The Causation Requirement

Economic effects must cause physical effects in order to be included in an EIR analysis. In an Urban Decay analysis, the financial effects of a new commercial business are analyzed to determine the potential for blight from the closure of existing businesses.[121] Under this proposed expansion, the financial impacts of a proposed land development project would be analyzed to see how the project will affect the local government's budget. To arrive at the physical effect, an additional assumption would have to be made that a financially-strained local government will lead to physical effects, namely crime and blight, through a reduction in city services.

City services are likely to be cut when budgets are tight because local governments, unable to carry a budget deficit, must often choose between

[113] *See* John Rudolf, *Stockton Bankruptcy May Force Mass Exodus of Police During Crime Wave*, HUFFINGTON POST (Aug. 23, 2012), http://www.huffingtonpost.com/2012/08/23/stockton-bankruptcy-police-crime_n_1826100.html.

[114] San Bernardino filed for bankruptcy in 2012. Ian Lovett, *A Poorer San Bernardino, and a More Dangerous One, Too*, N.Y. TIMES (Jan. 14, 2013), http://www.nytimes.com/2013/01/15/us/crime-rises-in-san-bernardino-after-bankruptcy.html?pagewanted=2.

[115] Kevin Fagan, *Bankrupt Vallejo Becomes Magnet for Hookers*, S.F. GATE (Feb. 27, 2011), http://www.sfgate.com/crime/article/Bankrupt-Vallejo-becomes-magnet-for-hookers-2457873.php.

[116] AnnMarie Cornejo, *Budget Cuts Hit California, SLO County Hard*, SAN LUIS OBISPO TRIB. (Dec. 29, 2011), http://www.sanluisobispo.com/2011/12/29/1887962/top-10-local-stories-of-2011-no.html#storylink=cpy.

[117] Nancy Pasternak, *Marysville Flips Switch on Street Lights*, APPEAL DEMOCRAT (April 3, 2012), http://www.appeal-democrat.com/articles/lights-115102-city-marysville.html.

[118] Ryan Lillis, *Novel Pitch for Diamond in the Rough*, SACRAMENTO BEE (Nov. 20, 2012), http://www.sacbee.com/2012/11/20/4998861/novel-pitch-for-diamond-in-the.html#storylink=cpy.

[119] *Id.*

[120] *Id.*

[121] *See supra* Part III.B.

raising taxes and cutting services.[122] Raising property taxes is restricted in California by Proposition 13, and sales tax can only be raised so high before shoppers flee to surrounding areas.[123]

Therefore, under existing law, a petitioner could request an FIA during the draft EIR stage for projects that may have a negative effect on a local government's budget because these projects would result in reduced services and a physical effect on public spaces.

C. The Benefits of Legislation

Legislation would ensure that all jurisdictions conduct FIAs and that the information is presented in the draft EIR so the public has access to the information before the project is approved. While some jurisdictions are already conducting FIAs as part of their planning process,[124] other jurisdictions are not. And it is often local governments like San Bernardino County, who need access to this information the most,[125] who are not conducting FIAs. Without legislation mandating statewide inclusion of FIAs in the EIR process, this will continue to happen as jurisdictions compete to be the most "growth friendly." To make the FIAs a statewide requirement, [126] and not an additional analysis that must be requested like the Urban Decay analysis, new legislation would be needed to amend CEQA.

Legislation should require that the fiscal impact information is analyzed in the existing Public Services section of an EIR. Currently, this section's analysis is limited to the physical impact of any new buildings caused by increased demand on public services from the project. The section should be expanded to allow the

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122 Of course there are additional options, like raising fees for service, firing staff and instituting hiring freezes. *See* MICHAEL PAGANO ET AL., NAT'L LEAGUE OF CITIES, CITY FISCAL CONDITIONS IN 2012, at 6–7 (2012), *available at* http://www.nlc.org/Documents/Find%20City%20Solutions/Research%20Innovation/Finance/city-fiscal-conditions-research-brief-rpt-sep12.pdf (describing the actions taken by local governments in 2012 in response to budget shortfalls).

123 *See* Ted Newcombe, *Tired of Service Cuts, California Cities Raise Taxes*, GOVERNING (Nov. 21, 2012), http://www.governing.com/columns/urban-notebook/Tired-of-Service-Cuts-California-Cities-Raise-Taxes.html ("[S]ome California cities may be reaching their limit when it comes to the sales tax increases.").

124 If these local governments had ordinances that required FIAs that were the functional equivalent of this proposal, they could be exempt from this additional CEQA requirement. However, to truly be the functional equivalent, the ordinance should require that the FIAs be published like an EIR so the public has access to the information.

125 *See* Lovett, *supra* note 114 (describing San Bernardino's financial difficulties).

126 A state-wide requirement is needed to prevent developers from "county-shopping." *See* ELIZABETH RIDLINGTON & BRAD HEAVNER, HOW DEVELOPMENT IMPACT FEES CAN DISCOURAGE LOW-DENSITY DEVELOPMENT 6 (2003) (on file with the *McGeorge Law Review*), *available at* http://research.policyarchive.org/5018.pdf ("Widespread adoption of impact fees and excise taxes—especially in rural areas and in every county—will encourage compact development rather than prompting developers simply to build in a different county.").

appropriate government authority[127] to use CEQA to evaluate economic costs of the project as well. The expanded Public Services section should evaluate the financial impact of the government providing services to the development. Special attention should be paid to the development type, existing capacity, and density, which have been shown to be the most important factors to consider when analyzing the fiscal impact of new development.[128] This analysis would be distinct from the Urban Decay analysis, because the FIA looks at the effects of the project on the government's budget, not the effects on other commercial businesses.[129]

Usually, when environmental harms are discovered in an EIR, agencies are required to mitigate or find feasible alternatives.[130] Mitigation for economic effects is not needed because the local governments can use the information obtained in the FIAs to change their impact fees to better cover the costs. This would be done through the local government's powers under the Mitigation Fee Act, not CEQA.[131] To reflect this, the fiscal information could be only an informational addition to the EIR and not an action document that requires mitigation.

If the lead agency is approving a project that is a financial burden, it should draft a statement of overriding consideration to detail the social and environmental benefits the project will provide. It is not uncommon for projects with a negative net financial impact (like affordable housing) to provide other benefits to the community that outweigh the fiscal effects; however, these benefits should be fully explored before a financially burdensome project is approved.[132] The deference to local government decisions provided by CEQA allows local governments to be informed about the fiscal impacts of a project

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[127] While the focus of this paper has mainly been on local governments, EIRs are conducted by a variety of government forms and the information contained in an FIA would be just as relevant to a project with fiscal effects on the state as it is to a county or city. For an example of a statewide economic analysis conducted, see CAL. HIGH-SPEED RAIL AUTH., 2012 REVISED BUSINESS PLAN Ch. 9 (2012), *available at* http://californiastaterailplan.dot.ca.gov/docs/1a6251d7-36ab-4fec-ba8c-00e266dadec7.pdf . Unlike most fiscal impact analyses, the Business Plan followed the notice-and-comment procedure of a CEQA EIR, though this was a separate document and not part of the programmatic or project-level EIRs that were conducted for the High-Speed Rail. CAL. HIGH-SPEED RAIL AUTH., 2012 REVISED BUSINESS PLAN EXECUTIVE SUMMARY, at ES-1 (2012), *available at* http://californiastaterailplan.dot.ca.gov/docs/1a6251d7-36ab-4fec-ba8c-00e266dadec7.pdf .

[128] IND. LOCAL GOV'T INFO., *supra* note 67.

[129] *See* Thane Harrison & Charlie French, *An Introduction to Fiscal Impact Analysis*, UNIV. OF N.H., *available at* http://extension.unh.edu/resources/files/Resource002700_Rep3989.pdf (last visited Oct. 17, 2013).

[130] CAL. PUB. RES. CODE § 21001 (West 2011).

[131] *See* City of Hayward v. Bd. of Trustees of Cal. State Univ., 143 Cal. Rptr. 3d 265 (Ct. App. 2012), as modified (July 11, 2012), *rev'd sub nom,* 287 P.3d 71 (Cal. 2012) (stating that mitigation for increased fire services is unnecessary because of the Mitigation Fee Act).

[132] MUCHA, *supra* note 59, at 5.

without requiring that only financially profitable projects are approved.[133]

Although FIAs have previously been connected to the CEQA process, this paper proposes a more thorough integration. When a local government chooses to do a FIA, it will often tie it to the CEQA process, for instance, by using the FIA to evaluate the financial effects of the different project alternatives proposed in the EIR.[134] It is also not uncommon for a local government to include a FIA in a statement of overriding considerations in order to show the financial benefits of the project.[135] By including this information earlier in the process in the draft-EIR, the public can comment on the FIA and point out any additional costs or revenues that the local government may have overlooked. A flawed FIA —for instance one that overemphasizes revenues and underestimates costs or uses faulty data — will not help local governments achieve financial sustainability.[136] Even if the FIAs are not flawed, the publication of the FIAs as part of the EIR will still be useful in ensuring that interested citizens are better informed about how new developments are financed and what the effect will be on their services and taxes.[137]

D. Potential Drawbacks

One potential drawback of including the FIA as part of the Public Services section of the EIR is that the EIR is only conducted if the project may have a

[133] *See* IND. LOCAL GOV'T INFO., *supra* note 67 (emphasizing that fiscal impacts must be balanced against the local government's interest in job creation, environmental concerns, and social equity); s*ee also* NRDC, *supra* note 60 ("Questions concerning development should be informed, but not necessarily controlled, by solid financial analysis.").

[134] For an example of this, see BAY AREA ECON., *supra* note 65, at 7.

[135] CAL. CODE REGS. tit. 14, §15093(a) (2011) ("CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits . . . of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits . . . of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered 'acceptable.'"). For an example of a statement of overriding consideration that uses fiscal benefits of an urban mixed-use development to override environmental effects, see BONTERRA CONSULTING & CITY OF BUENA PARK, FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS REGARDING THE BEACH AND ORANGETHROPE MIXED-USE SPECIFIC PLAN 77–79 (2008), *available at* http://www.buenapark.com/Modules/ShowDocument.aspx?documentid=821; s*ee also* ATASCADERO CITY COUNCIL, ADOPTED CEQA FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS FOR THE DEL RIO ROAD COMMERCIAL AREA SPECIFIC PLAN 198–200 (June 26, 2012), *available at* http://www.atascadero.org/files/CD/Walmart%20NOD/CEQA%20findings-Adopted.pdf (showing a proposed Wal-Mart for an urban area already served by infrastructure).

[136] NRDC, *supra* note 60.

[137] *See* Rosenberg, *supra* note 4, at 184 ("Few citizens comprehend the basic funding patterns of local government infrastructure and service provisions. Roads, schools, and fire stations mysteriously appear from time to time, with most people assuming that they were built, furnished and staffed by some level of 'government' yet with no clear concept of who actually paid for the expenses land, materials, and labor.").

significant environmental harm.[138] If the lead agency determines that the project will not cause significant environmental effects, it does not require that an EIR be prepared.[139] There could be projects that will have a negative fiscal effect, but will not go through the EIR process. However, it is likely that the same large development projects that have environmental impacts will also have fiscal impacts.

Another concern is that any addition to an EIR could lead to increased litigation because there would be another section of the EIR that could be found inadequate.[140] Economic analyses could be particularly problematic because they can be more speculative than other analyses in the EIR that are based on the "hard sciences." But the risk of litigation under CEQA is not large.[141] What risk there is could be limited by a statement within the legislation stating that the fiscal effects of the project can only be subject to litigation at a heightened standard above "fair argument" because economic analyses are less precise than the environmental analyses.

Another concern is that the addition of FIAs will increase the costs of EIRs. A proper FIA requires expertise,[142] and that can be expensive ($5000 to $100,000 depending on the complexity). [143] While this fee would be covered by the project applicant under CEQA, this could lead to the cost being shifted to citizens in the form of higher rents, housing prices, or consumer goods. For the developer, this cost would pose an additional "barrier to entry" for new development in California.

Additionally, a focus on the economics could lead to less affordable housing being built because it does not provide a financial benefit to the local government.[144] To avoid this problem, the legislature could exempt affordable housing from the analysis because it is like "infrastructure" — necessary for the community.[145] This method has been employed in Florida with some success.[146]

A larger problem is that, by the time a CEQA analysis is conducted it is

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138 CAL. PUB. RES. CODE § 21064 (West 2011).

139 *Id.* §§ 21100, 21151.

140 *See* Daniel P. Selmi, *Themes in the Evolution of the State Environmental Policy Acts*, 38 URB. LAW. 949, 994–95 (2006) (describing the prevalence of litigation under state environmental policy acts).

141 NRDC, CEQA — THE LITIGATION MYTH (2013), *available at* http://switchboard.nrdc.org/blogs/dpettit/CEQA%20Litigation%20Analysis%20FINAL.pdf (pointing out that there are only 200 CEQA cases filed per year).

142 KOTVAL & MULLIN, *supra* note 14, at 23.

143 Elmer, Thorne-Lyman & Belzer, *supra* note 32, at 20.

144 DEMOGRAPHIA, THE ASSOCIATION BETWEEN PRESCRIPTIVE LAND USE REGULATION AND HIGHER HOUSE PRICES (2012), *available at* http://www.demographia.com/db-dhi-econ.pdf.

145 Tracy Suber, *DCA Revises Fiscal Impact Model: Affordable Housing is Treated "Infrastructure-Like,"* HOUSING NEWS NETWORK, *available at* http://www.flhousing.org/wp-content/uploads/2012/12/DCA-Revises-Fiscal-Impact-Model.pdf.

146 *Id.*

usually difficult for a local government to deny a project or request that the project be moved to a different site.[147] Outright denials of projects by the lead agency at the CEQA stage are rare, and the courts are usually reluctant to require an analysis of alternative sites in an EIR unless the other sites are feasible locations for the project.[148] Development proposals are usually proposed by the owner of land for the use of that land.[149] A fiscally-superior site that is served by existing infrastructure will likely be owned by someone else, making it infeasible.[150]

Additionally, while development near existing infrastructure can be the fiscally sound choice for municipalities, it tends to be more difficult for developers than developing on large expanses of cheap, suburban land.[151] These parcels tend to be smaller and scattered, which makes it difficult to acquire enough land to develop a project that is large enough to be profitable.[152] The sites that do exist may have contamination from past uses or complex title issues that have kept them from previously being developed.[153] Local officials might also face pressure from neighbors of the infill parcels, who may oppose additional projects in their neighborhood, even though this might be the best project financially for the local government.[154]

Finally, the information obtained from the FIAs may not be able to overcome the political pressure that politicians face from developers, who often are major contributors to local political campaigns.[155] And local officials may find the prospect of a ribbon cutting at a shiny new development or a press release about new jobs created by the administration too tempting to turn away.[156] That is why

147 *See* CAL. CODE REGS. tit. 14, § 15126.6(a) (2006) ("An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.").

148 *See* Mira Mar Mobile Cmty. v. City of Oceanside, 14 Cal. Rptr. 3d 308, 316 (Ct. App. 2004) ("Because the proposed project is consistent with the City's existing plans, policies and zoning, we conclude a review of alternative sites was not necessary.").

149 Selmi, *supra* note 140, at 984.

150 *Id.* In light of these concerns, a superior choice may be for local governments to conduct an FIA in conjunction with a General Plan update. For an example, see generally CITY OF FRESNO, FISCAL IMPACT ANALYSIS OF CONCEPT ALTERNATIVES (2012), *available at* http://www.fresno.gov/NR/rdonlyres/A59BF398-1094-4743-9C54-EE18D319C1AA/0/EIRFiscalAnalysisReportMarch192012.pdf.

151 Josh Stephens, *The Case for Subsidizing the Mermaid Bar*, CAL. PLANNING & DEV. REPORT (Feb. 28, 2011), http://www.cp-dr.com/node/2889.

152 *Infill Incentives*, POLICYLINK, http://www.policylink.org/site/c.lkIXLbMNJrE/b.8019475/k.A3B6/Infill_Incentives/apps/nl/newsletter2.asp (last visited Aug. 5, 2013).

153 *Id.*

154 KOTVAL & MULLIN, *supra* note 14, at 30.

155 EBEN FODOR, BETTER NOT BIGGER: HOW TO TAKE CONTROL OF URBAN GROWTH AND IMPROVE YOUR COMMUNITY 11 (1999).

156 KOTVAL & MULLIN, *supra* note 14, at 4.

it is important that the FIAs be published as part of the CEQA process to provide more political accountability.[157]

V. CONCLUSION

Legislators should improve the Public Services section of CEQA EIRs by requiring the inclusion of a comprehensive FIA. This analysis would be similar to the Urban Decay line of cases, but instead of focusing on the effect of the project on other businesses, the analysis will focus on the effect of the project on the local government itself. Despite its economic focus, this analysis will provide environmental benefits by reducing the risk of the decay of public space that occurs when local governments experience financial difficulties. By making more informed financial decisions, local governments will ensure that all resources, environmental and financial, will be used sustainably.

[157] *See* Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal., 764 P.2d 278, 282 (Cal. 1988) ("Because the EIR must be certified or rejected by public officials, it is a document of accountability.").