CEQA Summary

- CA Legislature passed CEQA in 1970; signed by Governor Reagan
- CEQA statutes are found in Public Resources Code sections 21000 et. seq
- The CA Resources Agency provides guidance on how agencies implement CEQA; this is known as the CEQA Guidelines
  - These are not statutory, but the courts give them great weight

CEQA

- Many consider CEQA to be CA’s most powerful environmental law
- CEQA requires public agencies to examine the environmental impacts of projects
  - Public agencies must avoid or mitigate the significant adverse environmental impacts caused by their actions whenever feasible
- Most importantly, CEQA has significantly increased the ability of the public to participate in the planning processes

Is an Agency Action Subject to CEQA? Three Questions:

1. Is the action a Project?
2. Is the Project exempt?
3. Is there any possibility that the project will cause significant environmental impacts?

If the action is a Project, and the Project is not exempt, and there is a possibility that the Project will cause significant environmental impacts, then it is an action subject to CEQA

Is the Action a Project?

- Under CEQA, a Project is an activity which may cause either a direct or indirect foreseeable physical change in the environment. Includes:
  - Public agency activities
  - Activities with public agency assistance (grants, loans, etc.)
  - Activities requiring a lease, permit, license from a public agency

Is the Project Exempt?

- If the action is a Project, it may be exempt
- Two types of exemptions under CEQA:
  1. Statutory Exemptions provided by the CA legislature
     - Includes emergency actions, passenger rail
  2. Categorical Exemptions
     - These are Projects that have no possibility to cause significant adverse environmental effects
     - Includes minor alterations of existing structures, public gatherings, small wildlife restoration projects

Significant Environmental Impacts?

- Lead Agency conducts Initial Study; a preliminary environmental analysis
- Provides the agency with information to use as a basis for deciding whether to prepare a negative declaration, mitigated negative declaration, or an EIR
- This is the threshold determination
  - An EIR must be prepared if there is substantial evidence in the record supports a “fair argument” that a project may entail significant environmental impacts – low threshold
What is Substantial Evidence?
• Within the context of the fair argument standard, substantial evidence is, “a fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.”
• It is not speculation, unsubstantiated opinion, argument, fears, concerns, desires, etc.

Why is it Important to Understand Fair Argument and Substantial Evidence?
• Whenever you submit public comments (written or oral) regarding a project’s potential significant adverse environmental impacts, provide as much factual background as you can
• This places the burden on the agency to respond
• This also provides a basis for a legal challenge if the agency does not respond or

Negative Declaration/Mitigated Negative Declaration
• If the Initial Study indicates there is no substantial evidence that the proposed project will have a significant effect on the environment, the lead agency may prepare a Neg Dec
• If the Initial Study indicates that one or more adverse significant environmental effects will occur, but they are able to mitigate these effects to levels if insignificance by making project revisions, a Mitigated Neg Dec may be prepared
• Challenges limited to 20-30 days

Environmental Impact Report
• EIR is a full report regarding the environmental impacts of Projects
• Environmental Impact Analysis areas are predetermined by statute
• CVSP DEIR

Environmental Impact Report Process
• CEQA’s Mandatory Findings
  – CEQA mandates that public agencies “avoid or minimize environmental damage where feasible” through project alterations, or
  – Economic, social, technological or other considerations make mitigation or alternatives infeasible
• Statement of Overriding Considerations
  – Must be based on substantial evidence and must provide reasons
  – Agency deference

Environmental Impact Report Process
• Notice of Preparation
• Scoping sessions?
• Preparation of the Draft EIR
• Notice of Completion
• Public notice
• Public comment period
• Public hearings?
• Final EIR
• FEIR Certification/Project Approval
• Notice of Determination