This Week’s Topics

• Constitutional Law Review

• Administrative Agencies

• NEPA/CEQA
Any Guesses on These?

• What are Articles I-III of the Constitution and why is it important to understand Articles I-III when studying environmental law?

• Where is the Commerce Clause and what is its significance in environmental law?

• Name your congressional representatives. What is their LCV score? Why?

• How does each branch of government influence environmental laws?
Regulatory Takings

- **Lucas v. S.C. Coastal Council (1992)** – Beachfront Management Act
  - SC Supreme Court held that no compensation due when regulation designed to prevent serious harm
  - U.S. Supreme Court reversed and held that regulations that prohibit virtually all economically beneficial use of land require compensation
- **Dolan v. City of Tigard (1994)** – storm drainage and bike pathway exactions
  - OR Supreme Court held that the drainage and pathway ok to offset increased runoff and some of the increased traffic from the project
  - U.S. Supreme Court reversed and held; 1) there must be a nexus between the regulation and the property restriction, and 2) there must be a reasonable relationship between the requirement and the impact of the proposed regulation
Sources of Environmental Law

1) Legislative Branch
   - Enact environmental laws by passing bills and budgets

2) Judicial Branch
   - Impact environmental laws through statute interpretation

3) Executive Branch
   - Proposes, supports, or opposes (veto) legislation
   - Treaties
   - Executive orders

4) Administrative Law
   - Rule making
   - Enforcement
Administrative Law

• Many environmental laws are carried out by administrative agencies

• Administrative agencies are bodies created by the legislative branch to carry out specific duties

• Enabling legislation – Congress delegates legislative, executive and judicial power to agencies
Agencies with Env. Responsibilities

- EPA
- Department of the Interior
  - Bureau of Land Management
  - U.S. Fish and Wildlife Service
  - National Park Service
- Department of Agriculture
- Department of Energy
- Council on Environmental Quality
- NOAA (Dept. of Commerce)
- OSHA (Department of Labor)
- Army Corps of Engineers
Administrative Agencies

• Administrative agencies have legislative, judicial, and executive powers

• Rule making
  – Informal
  – Formal

• Problems w/rule making
  – Objectivity
  – Uncertainty
Challenging an Agency Rule

• Courts have invalidated agency rule-making actions because:
  – Congressional delegation too vague,
  – Unconstitutionality
  – Regulation exceeded the scope of enabling legislation,
  – Regulation deemed to be arbitrary and capricious

• Chevron deference
Adjudication

- Adjudication refers to agency actions taken for the purpose of enforcing regulations
- Agency staff identify potential violators and refer to Administrative Law Judge (ALJ)
- ALJ hears the case and issues initial decision
- The violator may appeal the decision to the agency administrator; they then make a ruling
- This decision may be appealed to the Circuit Court of Appeals (the federal judiciary)
Limitations on Agency Powers

• **Statutory limitations that restrict agency powers:**
  – The Administrative Procedures Act
  – Freedom of Information Act
  – Government in Sunshine Act

• **Institutional limitations**
  – Executive branch (appointments, budget recommendations, executive orders)
  – Legislative branch (oversight power, investigative power, enabling power, budgets, advise and consent on agency heads and Congressional Review Act power)
  – Judicial Branch (all agency action subject to judicial review under A & C standard)
National Environmental Policy Act

1. Established the Council on Environmental Quality (CEQ)

2. Requires federal agencies to examine environmental consequences of their actions

3. Required Environmental Impact Statements (EISs) for certain projects
Federal Agencies

• NEPA required federal agencies to take environmental consequences into account

• Requires the federal government to administer federal programs in the most environmentally sound fashion

• Prior to NEPA, some agencies contended that they lacked the authority to consider the environment
Environmental Impact Statements

• An EIS assesses the environmental impacts of a proposed federal activity
  – An EIR is an analogous document that must be prepared if project is in CA
  – When both federal and state agencies are involved, an EIS/EIR must be prepared
Environmental Impact Statement Process

- Project sponsor prepares an Environmental Assessment to determine the need for an EIS.
- If determination of EA is no EIS, then a Findings of No Significant Impact document (FONSI) must be made available to the public.
- EIS is required if activity is (1) Federal, (2) Major, and (3) Has a significant impact on the environment.
Environmental Impact Statements

Determination for Need

- Federal
  - Broadly defined; can be direct or indirect funding
- Major
  - Any “substantial commitment of resources”
- Significant Impact on the Human Environment
  - Deviates from the current character of the area where it will take place
  - Combines with current impacts to create a cumulative significant impact
Case Studies

• Goose Hollow Foothills League v. Ronney
  – HUD was preparing to loan $3.5 million to construct a high building in an area of Portland, OR where there were no other high rises

• Hiram Clarke Civic Club v. Lynn
  – HUD was preparing to insure a developer’s $3.7 million loan to construct a 272 unit apartment complex.
EIS Process (continued)

- Scoping Meetings
- Draft EIS (DEIS) is prepared
- The DEIS is must include:
  - A statement of the environmental impacts of the proposed project
  - Any unavoidable adverse impacts
  - Alternatives to the proposal
  - Any irreversible commitments of resources
Environmental Impact Statement Process (continued)

• Agencies will attempt to mitigate any significant environmental impacts, but this is not required.

• The agencies and the public are invited to review and comment on the DEIS:
  – Typically a public hearing is held.

• The agency then reviews and responds to comments and the Final EIS is prepared.