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Wireless Facility Siting

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State Law

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- **Public Utilities Code**
- **Public Utilities Commission orders**



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Public Utilities Code 7901



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- Allows telephone companies to install telephone lines so as “not to incommode” the public right-of-way
 - > Does not apply to private property
- Wireless antennas are included in the definition of “telephone lines” (*GTE Mobilnet v. San Francisco*, 440 F.Supp.2d 1097 (N.D. Cal. 2006))
- Still “telephone lines” even if data is provided over the network (*Williams Com. v. City of Riverside*, 114 Cal.App.4th 642 (2003))
- Allows cities to regulate location and appearance (*Sprint v. Palos Verdes Estates*, 583 F.3d 716 (9th Cir. 2009))

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Public Utilities Code 7901.1

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- Requires municipalities to be reasonable in controlling the “time, place, and manner” in which public right-of-way is accessed
- Does not limit local regulation to construction activities only
 - > Rejected by Ninth Circuit in *Palos Verdes Estates* case



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General Order 159

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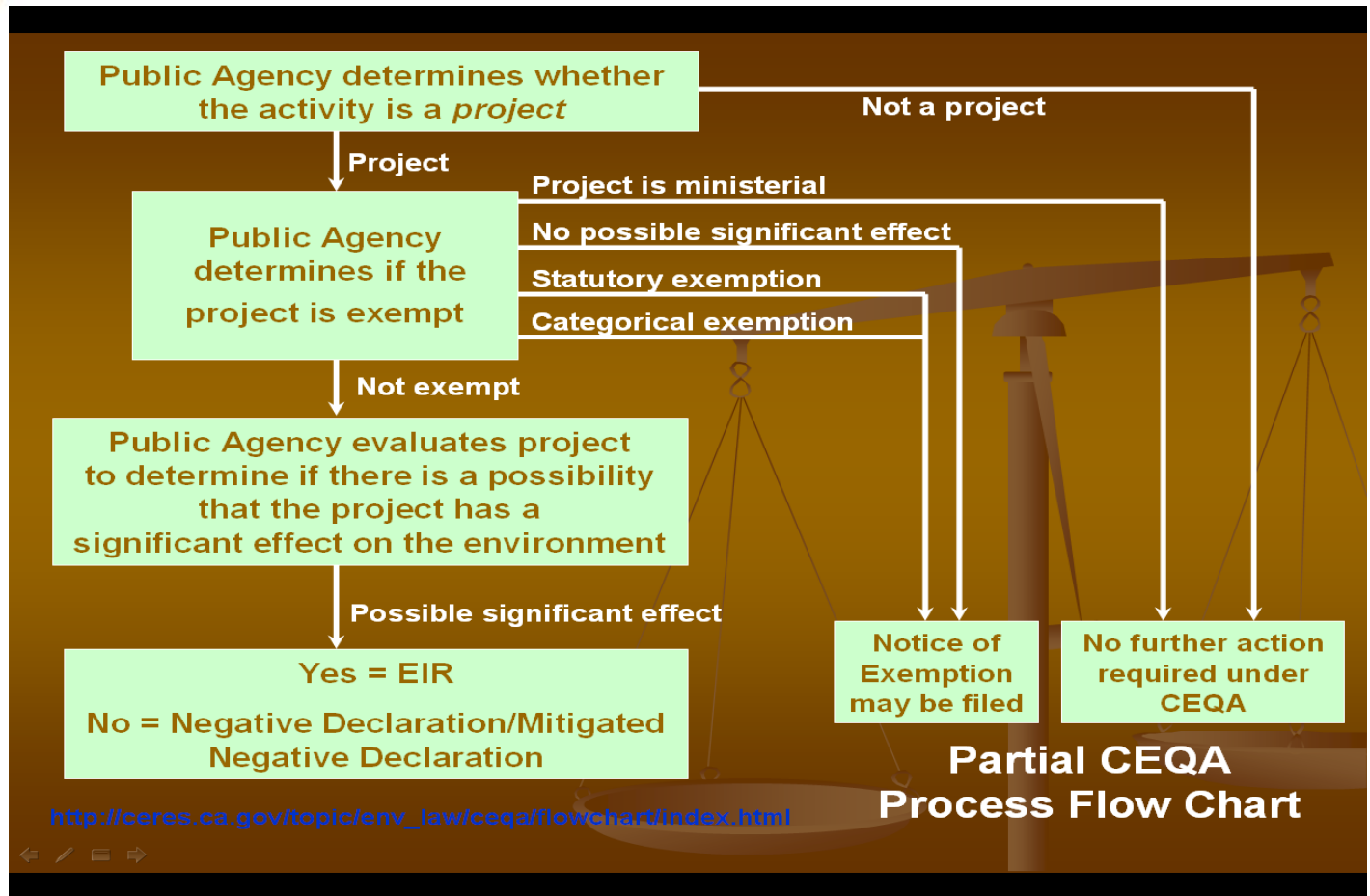
- Sets forth rules regarding the construction of commercial mobile radio service facilities
- Defers to local governments
 - > Land use approvals
 - Land use permits
 - Building permits
 - > Environmental review (CEQA)

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CEQA Process

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http://ceres.ca.gov/topic/env_law/ceqa/flowchart/index.html



**Partial CEQA
Process Flow Chart**

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General Order 170

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- Adopted in December 2010
- Establishes environmental review process where certain facilities can be deemed exempt from CEQA review by CPUC
- Applications for Rehearing Pending
 - > League, CSAC, and SCAN NATOA
 - > AT&T and other carriers

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Federal Law

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- **Federal Telecommunications Act**
- **Federal Communications Commission decisions**



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Telecommunications Facilities in the Right-of-Way

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- 47 U.S.C. § 253(a)
- States and local governments cannot prohibit service
- Carrier must show actual prohibition – not “the mere possibility of prohibition” (*Sprint v. County of San Diego*, 543 F.3d 571 (9th Cir. 2008) (*en banc*))



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Wireless Facilities

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- **47 U.S.C. § 332(c)(7)(B)**
 - > Limitations on local regulation of wireless facilities
 - No Unreasonable Discrimination
 - No Prohibition
 - Decide in reasonable time
 - Substantial evidence
 - RF Emissions



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No Unreasonable Discrimination

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- Carrier must show similarly situated “structure, placement, or cumulative impact” (MetroPCS v. San Francisco, 400 F.3d 715 (9th Cir. 2005))



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No Prohibition

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- **Carrier must demonstrate**
 - > Significant gap
 - > Alternate facility or site analysis
- **Carrier must show “lack of available and technologically feasible alternatives” (*T-Mobile v. Anacortes*, 572 F.3d 987 (9th Cir. 2009))**

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Reasonable Time

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- “Reasonable” not defined by statute
- FCC Shot Clock declaratory ruling (November 2009)
 - > Co-location applications
 - 90 days from complete application
 - > Other applications
 - 150 days from complete application
- On appeal in Fifth Circuit (Arlington v. FCC, case no. 10-60039)



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Substantial Evidence

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- **Local decision must be**
 - > Authorized by local law
 - > Supported by reasonable amount of evidence
 - > *NextG v. Newport Beach*, 2011 WL 717388 (C.D. Cal., Feb. 18, 2011)



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RF Emissions

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- Cannot deny application on RF emissions if facilities comply with FCC regulations
- Post-installation testing?
- RF concerns affect administrative record?



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Damages and Attorney's Fees

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- Not available under Public Utilities Code provisions
- No longer available under Federal Telecommunications Act through Civil Rights Act (42 U.S.C. § 1983)
 - > *Rancho Palos Verdes v. Abrams*, 544 U.S. 113 (2005) (section 332(c)(7)(B))
 - > *Sprint v. County of San Diego*, 543 F.3d 571 (9th Cir. 2008) (*en banc*) (section 253)



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Municipal Regulation

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- **Requirements to consider**
 - > Application submittal
 - > Particular staff or consultants to process applications
 - > Gap in service
 - > Alternate site analysis
 - > RF emissions
 - > Preferred sites



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The End

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