# California Environmental Quality Act Objectives, Criteria, and Procedures

ADOPTED BY JUDICIAL COUNCIL ON:
March 24, 2023

Judicial Council *of* California

## Purpose

These California Environmental Quality Act (CEQA) objectives, criteria, and procedures (Procedures) are adopted under Public Resources Code section 21082 and California Code of Regulations, title 14, section 15022, which direct California public agencies to adopt objectives, criteria, and procedures for the evaluation of projects and preparation of environmental documents consistent with CEQA (Pub. Resources Code, §§ 21000–21189) and the State CEQA Guidelines (Cal. Code Regs., tit. 14, §§ 15000–15387). This document will serve as the *implementing procedures*, as that term is used in CEQA Guidelines section 15022(a), for the Judicial Council of California.

The purpose of these Procedures is to ensure that the Judicial Council considers the potentially significant environmental impacts of its projects, as required by CEQA, and to inform staff on how to implement CEQA and other environmental regulatory requirements within the project scheduling, acquisition, contracting, design, construction, and operation processes.

These Procedures will be revised to conform to amendments to the CEQA statute or CEQA Guidelines within 120 days after the effective date of any amendments. During the period in which the Judicial Council is revising these Procedures, the Judicial Council will conform to any statutory changes that have become effective under CEQA. (CEQA Guidelines, § 15022(c).)

All references to CEQA and the CEQA Guidelines are current as of the date of adoption of these Procedures, and the current versions of the statute and regulations are incorporated herein by reference.

**List of Acronyms and Abbreviations**

| | |
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| CEQA | California Environmental Quality Act |
| EIR | Environmental Impact Report |
| MMRP | Mitigation Monitoring and Reporting Program |
| MND | Mitigated Negative Declaration |
| NOD | Notice of Determination |

## CEQA Objectives

The primary objectives of CEQA are to (1) inform decision makers and the public about the potential, significant environmental effects of proposed projects and activities; (2) identify ways to avoid or mitigate environmental damage; (3) avoid or reduce environmental impacts by requiring implementation of an environmentally preferable alternative or feasible mitigation measures; and (4) disclose to the public the reasons for approval of projects with significant environmental effects through the use of a statement of overriding considerations, where applicable. (CEQA Guidelines, § 15002.)

## Overview

This section discusses key terms in the CEQA process as they relate to the activities of the Judicial Council.

### A. CEQA Applies to "Projects"

A "project" is defined in the Public Resources Code as:

> [A]n activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following:
>
> (a) An activity directly undertaken by any public agency.
>
> (b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.
>
> (c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.
>
> (Pub. Resources Code, § 21065.)

### B. A Project Under CEQA Must Also Involve the Exercise of Discretion

A "discretionary project" is one that "requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, regulations, or other fixed standards." (CEQA Guidelines, § 15357.) Accordingly, ministerial projects, which do not involve an exercise of discretion, are not subject to CEQA.

### C. Judicial Council Activities That May Meet the Definition of a Project Under CEQA

Judicial Council activities that may meet the definition of a project under CEQA include the following:

1. ***Site Acquisition.*** The site acquisition process includes a consideration of alternative sites, site selection, and acquisition of a proposed building site.
2. ***Capital Construction.*** Capital construction projects (capital projects) consist of construction of new facilities or major renovation of existing facilities. Capital projects may require environmental review in conjunction with site acquisition or construction work, which may also include demolition activities.
3. ***Facility Modifications.*** A facility modification is a physical modification that restores or improves the designed level of function of a facility or its components. Facility modification includes minor improvements and repairs that do not meet the level of a major renovation, as well as deferred maintenance work. As discussed below, a facility modification is more likely than site acquisition or major renovation projects to qualify for an exemption under CEQA.
4. ***Facilities Planning.*** Adoption of a plan for physical development—such as a facilities master plan or master development plan, which has the potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment—could be considered a project under CEQA. However, strategic plans, feasibility studies, and other preliminary plans or studies that do not commit the Judicial Council to a particular course of action are not projects

under CEQA, but they do require documented consideration of environmental factors as identified in the *Environmental Checklist Form* (CEQA Guidelines, App. G).

5. ***Leases, Permits, Licenses, Certificates, or other Entitlements.*** The Judicial Council's issuance of a lease, permit, license, certificate, or other entitlement may constitute a project under CEQA if it has the potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment.

### D. Judicial Council Activities That Do Not Meet the Definition of a Project Under CEQA

Judicial Council activities that do not meet the definition of a project under CEQA include the following:

1. Proposals for legislation to be enacted by the state Legislature;
2. Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, general policy and procedure making (unless the policy or procedure has a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment and meets the standards for a project under CEQA);
3. The creation of Judicial Council funding mechanisms or other fiscal activities that do not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment;
4. Organizational or administrative activities that will not result in direct or indirect physical changes in the environment;
5. Strategic plans, feasibility studies, and other preliminary plans or studies that do not commit the Judicial Council to a particular course of action; and
6. Ministerial projects for which approval involves applying fixed, objective standards with little or no judgment required as to the wisdom or manner of carrying out the project.
(CEQA Guidelines, § 15268.)

### E. Lead Agency

The "lead agency" under CEQA is the public agency that has the principal responsibility for carrying out or approving a project. The lead agency will decide whether an EIR, an MND, or a Negative Declaration will be prepared, or if the project falls within a CEQA exemption. The process for identifying the lead agency is described in CEQA Guidelines section 15051. The Judicial Council will typically act as the lead agency for projects that it will undertake. These Procedures are only applicable to projects for which the Judicial Council is acting as the lead agency.

### F. Decisionmaking Body

The decisionmaking body under CEQA is the authority that will approve or disapprove projects that are subject to CEQA. The decisionmaking body must either make a finding that the project is exempt from CEQA or approve the CEQA document by adopting a Negative Declaration or MND, or by certifying an EIR. For most of the Judicial Council projects described in these Procedures, the Administrative Director of the Judicial Council will act as the decisionmaking body. However, the decisionmaking body could also be the Judicial Council, in the case of a particularly controversial project; a staff-level

manager, in the case of a lease or license; the Building Official, in the case of a building permit; or the Facilities Director, for contracts within the director's authority.

### G. Local Land Use Regulations

As an independent branch of government, the Judicial Council is generally not subject to local land use regulation. The council will, however, consider local land use regulations and planning documents to the extent required by law when conducting environmental review of a project. (See, e.g., CEQA Guidelines, § 15125(d).) For example, local regulations or planning documents may be considered in the formulation of thresholds of significance for project impacts, or in the development of mitigation measures for a specific project.

## Criteria and Procedures for CEQA Compliance

The Judicial Council is required to consider the potentially significant environmental impacts for each proposed project. The process below identifies the responsibilities and timing of compliance (see Figure 1). The CEQA process provides an opportunity for interested parties, local agencies, state agencies, federal agencies, California Native American tribes, environmental nongovernmental organizations, members of the public, and others to participate in the CEQA process for Judicial Council projects. The CEQA process must be completed before the Judicial Council's approval of a project and before site acquisition approval by the State Public Works Board because the purpose of CEQA is to inform decision makers and the public about the potential environmental impacts of a project *before* project approval.

### A. Criteria for Review for Applicability of CEQA

Staff will review all capital projects (including site acquisition) and certain facility modifications; facilities planning activities; and leases, permits, licenses, certificates, or other entitlements identified by staff as having the potential to result in a physical change in the environment or a reasonably foreseeable indirect change in the environment to determine if the activity is a project subject to CEQA. The *Environmental Checklist Form* (CEQA Guidelines, App. G) will serve as the basis of review.

### B. Procedures for Review of Applicability of CEQA to Judicial Council Projects

1. ***Site Acquisition.*** For site acquisition, staff will begin environmental review when a range of feasible sites has been identified (or a single site, if no feasible alternative sites are identified).
2. ***Capital Construction.*** For capital projects and major renovations, staff will begin environmental review when the location, scope, and basic design criteria of the project have been identified.
3. ***Facility Modifications.*** For facility modifications, staff will begin environmental review when the location, scope, and basic design criteria have been identified for the project.
4. ***Facilities Planning.*** For facilities planning activities, staff will begin environmental review when undertaking any facilities plan that staff anticipates will be presented for approval to the Judicial Council.
5. ***Leases, Permits, Licenses, Certificates, or other Entitlements.*** For leases, permits, licenses, certificates, or other entitlements, the Building Official or other lead staff on the project will undertake environmental review.

Activities that are determined by staff to be projects under CEQA will proceed to section C below.

### C. Review for CEQA Exemptions

Staff will review activities identified as projects in section A above to determine if a CEQA exemption will apply to the project. CEQA has three types of exemption: statutory, categorical, and the "common sense exemption." Projects that are found to be exempt will not require the preparation of a CEQA document (a Negative Declaration, an MND, or an EIR).

1. ***Statutory Exemptions.*** Statutory exemptions are legislative in origin. The California Legislature has identified certain types of projects that are exempt from all or some CEQA requirements. (CEQA Guidelines, § 15260.) Statutory exemptions may have particular requirements in order for a project to qualify.
2. ***Categorical Exemptions.*** Categorical exemptions are categories of projects that the California Natural Resources Agency has identified will normally not have a significant effect on the environment. These exemptions are located in the CEQA Guidelines. (CEQA Guidelines, §§ 15300–15333.) There are currently 33 classes of categorical exemptions. The use of categorical exemptions is limited by certain exceptions. (CEQA Guidelines, § 15300.2.)
3. ***Common Sense Exemption.*** The common sense exemption applies to projects "[w]here it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment … ." (CEQA Guidelines, § 15061(b)(3).)
4. ***Environmental Studies and Filing a Notice of Exemption.*** Staff will notify the project lead of the proposed exemption. If additional environmental studies, such as a historic resources study or a traffic study, are necessary to determine whether the project qualifies for an exemption, staff will contract with an environmental consultant to prepare the studies. Where appropriate, staff will file a Notice of Exemption with the Governor's Office of Planning and Research within five days of approving the project. The filing of the Notice of Exemption reduces the statute of limitations for legal challenges from 180 days to 35 days.
5. ***Examples of CEQA Exemptions.*** Not all facility modifications, facility planning activities, real estate transactions, policies, procedures, or rules are "projects" for the purpose of CEQA. The following are a few examples of CEQA exemptions frequently used by the Judicial Council. The list is not exhaustive; environmental staff should be consulted to determine whether one of the following exemptions, or another exemption, is applicable to a proposed activity.
    a. The majority of routine maintenance and repair activities, real estate transactions, and policy and procedure work is likely to be exempt under the common sense exemption, or the Class 1 Categorical Exemption. For example, the repair and maintenance of existing facilities involving negligible or no expansion of the existing use of a building is subject to the common sense exemption. (CEQA Guidelines, § 15301.) Interior modifications are typically exempt from CEQA unless the structure is identified as a historical resource. Some of these activities are also not considered a project under CEQA Guidelines section 15378(b).
    b. Exterior maintenance and repair are typically exempt from CEQA unless the project will have a significant environmental impact and/or the structure is a historical resource. Projects that may cause a substantial adverse change in the significance of a historical resource are

ineligible for a CEQA exemption because an exception to the exemption applies. (CEQA Guidelines, § 15300.2(f).) Repairs and renovations to historic structures should be reviewed by staff to determine CEQA applicability and to determine if consultation with the State Historic Preservation Officer is required.

c. Minor grading (a slope of less than 10 percent) and landscape replacement are typically exempt under the Class 4 Categorical Exemption unless healthy, mature trees would be removed. These routine facility modifications may be reviewed for exemption by staff.

d. Emergency repairs to publicly owned facilities necessary to maintain service essential to public health, safety, or welfare are exempt from CEQA, including repairs that require a reasonable amount of planning to address. (CEQA Guidelines, § 15269.) The Judicial Council's Trial Court Facility Modification Advisory Committee's list of Priority 1 projects includes a list of emergency facility modifications that address unforeseen situations "where a condition of the facility requires immediate action to return the facility to normal operations or where a condition exists that will become critical if not corrected expeditiously. Such conditions necessitate a Facility Modification to prevent accelerated deterioration, damage, or dysfunction; to correct a safety hazard that imminently threatens loss of life or serious injury to the public or court employees; or to remedy intermittent function, service interruptions, or potential safety hazards. These conditions may include, but are not limited to, major flooding, substantial damage to roofs or other structural building components, or actual or imminent hazardous material release or exposure. Depending on the scope, complexity, and impact, a severe deterioration in life, safety, or security components may also be considered a condition requiring a Priority 1 Facility Modification." Therefore, Priority 1 projects are exempt from CEQA under the emergency projects exemption. (CEQA Guidelines, § 15269(b).)

6. ***Exceptions to CEQA Exemptions.*** Note that categorical exemptions are further subject to "exceptions" that may disqualify a project from using them. These exemptions include impacts to historical resources as explained above, hazardous sites, impacts to a scenic highway corridor, cumulative impacts, and special circumstances. (CEQA Guidelines, § 15300.2.) Any facility modifications that would change or expand the use of a facility should be forwarded to staff for review.

### D. Use of a Prior CEQA Document

For projects that do not qualify for an exemption, staff will determine if the Judicial Council's, or another agency's, prior CEQA documentation includes a description and evaluation of the Judicial Council's proposed project. Staff will review the document prepared by the Judicial Council or other agency to determine if it adequately addressed the proposed project. Review of the prior CEQA document by staff or the environmental consultant will result in one of the following courses of action:

1. ***Use of "Within the Scope" Finding.*** A "within the scope" finding is a determination that the proposed Judicial Council project and its environmental impacts are described in, and adequately addressed by, the prior CEQA document, and none of the conditions listed in CEQA Guidelines section 15162 has occurred. If none of those conditions has occurred, the Judicial Council may rely on the prior CEQA document in approving the proposed project. When relying on a prior environmental document, staff will prepare an initial study to verify the adequacy of that prior

environmental document. All applicable mitigation measures must be incorporated into the project. Staff will file a Notice of Determination (NOD) with the Governor's Office of Planning and Research within five working days of approving the project. The NOD limits time to bring legal challenges under CEQA to 30 days.

2. ***Use of Addenda.*** An addendum is appropriate when Judicial Council staff make a determination that the proposed project is described in, and adequately addressed by, the prior CEQA document but minor changes or additions are necessary and none of the conditions listed in CEQA Guidelines section 15162 has occurred. In this case, an addendum, appropriate when only minor technical changes to the document are necessary, may be prepared under CEQA Guidelines section 15164. Addenda cannot be used when new or substantially greater impacts, requiring new mitigation measures or alternatives, are identified. An addendum may include an initial study, as discussed above, to document that an addendum is the appropriate level of review. An addendum does not require public review or circulation but shall be considered by the Judicial Council—along with the prior Negative Declaration, MND, or EIR—before deciding whether to approve the project. Following project approval, staff will file a NOD with the Governor's Office of Planning and Research within five working days.

3. ***Use of Subsequent Environmental Documents.*** If Judicial Council staff make a determination that the proposed project is described in the prior CEQA document, but one or more of the conditions described in CEQA Guidelines section 15162 have occurred, a subsequent Negative Declaration, MND, or EIR shall be prepared. If an EIR was previously prepared and conditions described in CEQA Guidelines section 15162 have occurred, but only minor changes or additions are necessary to make the prior EIR adequately apply to the project in the changed situation, a supplement to the EIR may be prepared. A supplemental EIR need only contain the information necessary to make the prior EIR adequate for the project as revised and may be circulated by itself without recirculating the entire prior EIR. Notice, circulation, and public review of a supplemental EIR is carried out in the same manner as for an EIR. Following certification of the Final Supplemental EIR and approval of the project, staff will file a NOD with the Governor's Office of Planning and Research within five working days of project approval.

4. ***Use of Tiering.*** If the prior CEQA document was a program EIR, staff will determine if the proposed Judicial Council project is within the scope of the program EIR. (CEQA Guidelines, § 15168(c).) A program EIR is an EIR that is prepared for a series of actions, such as development of a specific plan or master plan. If project-specific or site-specific impacts are not adequately addressed by the program EIR, a tiered document (Negative Declaration, MND, or EIR) may be prepared under CEQA Guidelines section 15152. Tiering refers to the practice of addressing broader topics in a program EIR (or, less frequently, a master EIR, which is a type of program EIR), which is then used as the basis to prepare more focused CEQA documents for individual projects. A tiered CEQA document will typically focus only on site-specific or project-specific impacts that have not been addressed in the prior EIR. Notice, circulation, and public review of a tiered document is carried out in the same manner as for a Negative Declaration, MND, or EIR. Following adoption of a tiered Negative Declaration or MND, or certification of a tiered EIR, and approval of the project by Judicial Council, staff will file a

NOD with the Governor's Office of Planning and Research within five working days of project approval.

### E. Preparation of Initial Study

If the project is neither exempt nor covered by a prior CEQA document, staff will prepare an initial study. The *Environmental Checklist Form* (CEQA Guidelines, App. G) may be used as the format for the initial study. The standard for preparation of an EIR is whether a fair argument can be made that there is substantial evidence the project would result in a potentially significant impact. If the initial study shows there is no substantial evidence that the project may have a significant effect, staff will direct the preparation of a Negative Declaration. If the initial study identifies potentially significant effects, but revisions to the project (mitigation measures) would clearly avoid the effects or reduce the effects to a less-than-significant level, staff will direct the preparation of an MND. If the initial study identifies one or more potentially significant impacts, staff will direct the preparation of an EIR. Note that if staff has determined that an EIR is clearly required (e.g., the project would result in the demolition or substantial alteration of a significant historical resource, or impact a significant biological resource), the initial study is not required.

### F. Consultation With California Native American Tribes

Tribal consultation is an important tool to avoid unanticipated impacts to tribal cultural resources during construction, which can cause project delay.

1. Within 14 days of deciding to undertake a project, the Judicial Council shall notify those California Native American tribes that are traditionally and culturally affiliated with the geographic area of the proposed project and that have previously requested, in writing, to be notified of such projects by the Judicial Council. (Pub. Resources Code, § 21080.3.1(d).) Notice shall include a brief description of the proposed project and its location, lead agency contact information, and a statement that the California Native American tribe must request consultation in writing within 30 days of receiving the notice. If within 30 days of notice, a California Native American tribe requests consultation, the Judicial Council shall, within 30 days of the California Native American tribe's affirmative response, enter into government-to-government consultation. (Pub. Resources Code, § 21080.3.1.)
2. Tribal consultation shall involve consideration of potentially significant effects to tribal cultural resources, project alternatives, and options for avoidance, preservation in place, or mitigation measures to avoid significant effects to tribal cultural resources. Tribal cultural resources are sites, features, places, cultural landscapes, sacred places, or objects that have cultural value to a California Native American tribe and are either included or determined to be eligible for inclusion in the California Register of Historical Resources, included in a local register of historical resources, or a resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant under criteria in Public Resources Code section 5024.1(c). (Pub. Resources Code, § 21074.) As the lead agency, the Judicial Council shall take into account the significance of the resource to the tribe when making a determination.
3. Tribal consultation shall begin before public circulation of the draft CEQA document. Consultation shall be considered concluded when the parties agree to measures to mitigate or

avoid a significant effect on an identified tribal cultural resource, when a tribe ceases to engage in consultation, or when a party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. Staff shall maintain the list of California Native American tribes requesting notice of projects within the geographic area traditionally and culturally affiliated with that tribe.

### G. Preparation of Negative Declaration or Mitigated Negative Declaration

If the initial study, discussed above in section D, shows that the project would not have a significant effect on the environment, a Negative Declaration shall be prepared. If potentially significant effects may occur but revisions to the project (mitigation measures) would clearly avoid the effects or reduce the effects to a less-than-significant level, an MND shall be prepared. Any necessary technical studies that have not yet been prepared for the proposed project should be prepared at this time. A Negative Declaration or MND shall include the project description, project location (preferably on a map), proposed finding that the project will not have a significant effect on the environment, initial study, and proposed mitigation measures (for an MND only). (CEQA Guidelines, § 15071.)

1. ***Public Review Period.*** The Negative Declaration or MND shall be circulated for public review as required by law. (CEQA Guidelines, § 15105.) At the start of the public review, staff shall provide to responsible agencies, trustee agencies, and the county clerk of each county within which the project is located, as required by law, a Notice of Intent to adopt a Negative Declaration or MND. The Notice of Intent shall also be mailed to all organizations and individuals who have previously requested notice, including the U.S. Department of Defense or any branch of the U.S. Armed Forces. The public shall be notified as required by law. (CEQA Guidelines, § 15072.)
2. ***State Agency Review.*** The Negative Declaration or MND shall be sent to the Governor's Office of Planning and Research and uploaded electronically to the State Clearinghouse for state agency review.
3. ***Public Hearings.*** Following the public review period, staff shall notify any public agency that commented on the document of any public hearing to be held for the project (unless such notice was included in the Notice of Intent), as required by law. (CEQA Guidelines, § 15073(e).)
4. ***Recirculation.*** Recirculation of a proposed Negative Declaration or MND is required if, after public review has begun and before adoption or certification, significant new information is added to the document. Recirculation is not required when replacing mitigation measures in an MND with equally effective measures. (CEQA Guidelines, § 15073.5.)

### H. Preparation of an EIR

An EIR shall be prepared if the initial study shows that the project would have one or more potentially significant effects, or if staff has otherwise determined that an EIR is necessary. (CEQA Guidelines, § 15064.)

1. ***Scoping Process.*** The first step in preparing an EIR is to determine the scope and contents of the EIR. Staff shall prepare a Notice of Preparation and circulate it as required by law. (CEQA Guidelines, § 15082.) Agencies have 30 days from receipt of the Notice of Preparation to

provide comments on the scope and content of the EIR. A scoping meeting is required only if requested by the Governor's Office of Planning and Research, a responsible or trustee agency, or Caltrans (if the project would affect a state highway or transportation facility), or if the project qualifies as of statewide, regional, or areawide significance under California Code of Regulations, title 14, section 15206. However, the Judicial Council may voluntarily elect to hold scoping meetings.

2. ***Draft EIR.*** The required contents of a Draft EIR are listed in CEQA Guidelines sections 15120–15131. The Draft EIR shall include an executive summary, a table of contents (or index), the project description, a description of the environmental setting, an analysis of environmental impacts, a description of feasible mitigation measures and alternatives that would minimize any significant impacts, and a list of the preparers and persons or agencies consulted. The Draft EIR should focus on potentially significant impacts; environmental effects determined through the scoping process to be unlikely to occur need not be discussed further in the Draft EIR. The Draft EIR should be written in plain language to serve the objective of informing decision makers and the public of the potential environmental impacts of the proposed project. Technical studies prepared in support of the Draft EIR should be included as appendixes to the Draft EIR, with the exception of confidential tribal cultural resources information or studies that should be included in the record via a confidential appendix.
3. ***Public Review Period.*** The Draft EIR shall be circulated for public review for a period of at least 45 days. (CEQA Guidelines § 15105.) The Draft EIR and supporting documents shall be available to the public at the Judicial Council offices during normal business hours and should also be made available electronically. It is also recommended that Draft EIRs be made physically available at local libraries serving the project area.
4. ***Notice of Availability.*** At the start of the public review, staff shall provide a Notice of Availability of the Draft EIR as required by law. (CEQA Guidelines, § 15087.)
5. ***State Agency Review.*** The Draft EIR shall be provided to the Governor's Office of Planning and Research for state agency review, accompanied by a Notice of Completion.
6. ***Evaluating and Responding to Comments.*** Staff shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and prepare a written response. Staff shall respond to comments that raised significant environmental issues and that were received during the noticed comment period or an extension and may respond to late comments. Staff shall provide a written proposed response, either in a printed copy or in an electronic format, to a public agency on comments made by that public agency at least 10 days before certification of an EIR. (CEQA Guidelines, § 15088(b).)
7. ***Recirculation.*** Recirculation of a proposed Draft EIR is required if, after public review has begun and before adoption or certification, significant new information is added to the document. Recirculation is not required where new information added to an EIR merely clarifies, amplifies, or makes insignificant modifications in an otherwise adequate EIR. (CEQA Guidelines, § 15088.5.) If recirculation of an EIR is requested, and the Judicial Council decides not to recirculate the EIR, then the Judicial Council must include substantial evidence supporting this decision in the administrative record. (CEQA Guidelines, § 15088.5(e).)

8. ***Final EIR.*** Following the public review period, staff shall direct the preparation of the Final EIR as required by law. (CEQA Guidelines, § 15132.)

### I. Approval

Before approval of a proposed project by the Judicial Council, the Negative Declaration or MND must be adopted or the Final EIR certified.

1. ***Adoption of a Negative Declaration or an MND, or Certification of the Final EIR.*** Adoption of a Negative Declaration or an MND, or certification of the Final EIR, must be done before approval of the project by the decisionmaking body. The decisionmaking body must make certain findings when adopting a Negative Declaration or MND, or certifying a Final EIR. If an EIR includes significant and unavoidable impacts, the decisionmaking body must adopt a Statement of Overriding Considerations before approving the project.
2. ***Certification of an EIR.*** Certification of the final EIR requires the decisionmaking body to certify that the EIR has been completed in compliance with CEQA, that the final EIR was presented to the decisionmaking body, that the decisionmaking body reviewed and considered the information contained in the final EIR before approving the project, and that the final EIR reflects the decisionmaking body's independent judgment and analysis.
3. ***Mitigation Monitoring and Reporting Program.*** When approving a project for which mitigation measures have been required in an MND or EIR, the decisionmaking body must also adopt an MMRP as required by law. (CEQA Guidelines, § 15097.)
4. ***Notice of Determination.*** Following approval of a project for which a Negative Declaration or MND was adopted or an EIR certified, staff shall file the NOD with the Governor's Office of Planning and Research within five working days of project approval. The NOD limits the statute of limitations that allows legal challenges under CEQA to 30 days. Filing of a NOD is subject to a fee collected by the California Department of Fish and Wildlife. The filing fee amount is updated annually and is available on the California Department of Fish and Wildlife website.

### J. Schedule

The CEQA process includes mandatory public review periods for CEQA documents such as a Negative Declaration or an EIR. In addition, time must be allocated for preparation of technical studies, administrative drafts, and Judicial Council internal review of documents, as well as tribal consultation, if properly requested by a California Native American tribe. The schedule will vary with the size and complexity of the project and the associated technical work needed to evaluate the project.

## Mitigation Monitoring and Reporting Plan Requirements and Permitting

The MMRP identifies required mitigation measures and methods of compliance for the proposed project. Mitigation measure implementation may occur during design, construction, or operation of the project. Regulatory agencies may require additional measures as conditions of permits issued for the project. Ideally, the CEQA mitigation measures will include any applicable permit conditions, although this is not always the case.

For nonconstruction projects such as policies, studies, or leases that are subject to CEQA, staff should collaborate to implement the MMRP.

### A. Mitigation Monitoring and Reporting Program

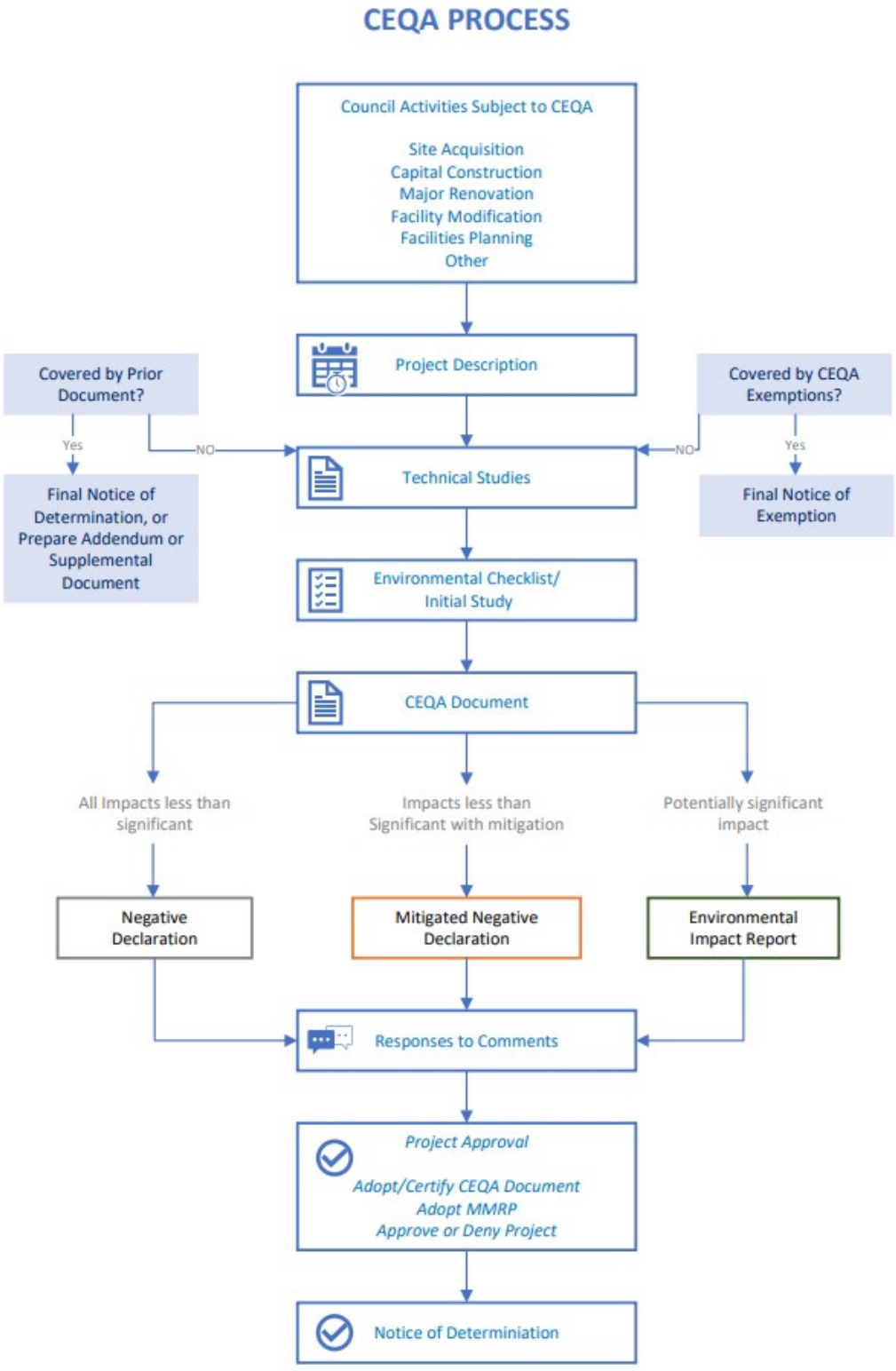
1. Staff shall work with an environmental consultant in formulating the MMRP as part of the project approval process. Staff will collaborate to estimate the cost of implementing mitigation measures, including any consultant costs for surveying or monitoring.
2. Staff will ensure that mitigation measures are incorporated into the design and construction of the proposed project. For design-build projects, staff will work with the contractor to ensure mitigation measures are incorporated into the project design, construction specifications, and construction contracts. For traditional design-bid-build projects, staff will coordinate with the architect of record and the general contractor to ensure that measures are incorporated into design and construction.
3. Staff will manage preconstruction surveys and provide for construction monitoring of mitigation measures, if applicable. Staff is responsible for managing consultants used in mitigation monitoring or reporting. Staff will collaborate on identifying potential environmental consultants.
4. Staff shall collaborate to implement off-site mitigation. Off-site mitigation may include, but is not limited to, purchase of compensatory habitat or restoration of off-site habitat. Off-site mitigation may also include construction of off-site infrastructure to serve the project.

### B. Regulatory Permitting

Staff are responsible for coordinating regulatory permitting.

1. The regulatory permitting process should begin as soon as regulated resources are identified, normally when the technical studies are prepared for those resources or during preparation of the CEQA document. CEQA documents must include a list of necessary discretionary permits in the project description. Permits from state and federal agencies typically cannot be issued until the CEQA process is complete. However, consultation with these agencies and preparation of permit applications can and should occur much earlier.
2. Staff shall collaborate with consultants to ensure compliance with regulatory permit requirements during construction. Such measures, if different from the CEQA mitigation measures, shall be coordinated with the MMRP to the extent feasible.

**Figure 1**


CEQA PROCESS
Council Activities Subject to CEQA
Site Acquisition
Capital Construction
Major Renovation
Facility Modification
Facilities Planning
Other
Project Description
Covered by Prior Document?
Yes
NO
Final Notice of Determination, or Prepare Addendum or Supplemental Document
Technical Studies
Covered by CEQA Exemptions?
NO
Yes
Final Notice of Exemption
Environmental Checklist/ Initial Study
CEQA Document
All Impacts less than significant
Impacts less than Significant with mitigation
Potentially significant impact
Negative Declaration
Mitigated Negative Declaration
Environmental Impact Report
Responses to Comments
Project Approval
Adopt/Certify CEQA Document
Adopt MMRP
Approve or Deny Project
Notice of Determiniation