



Meeting Materials for the Court Facilities and Trial Court Facility Modification Advisory Committees

JOINT OPEN PUBLIC MEETING

NOVEMBER 8, 2022



JUDICIAL COUNCIL
OF CALIFORNIA

ADMINISTRATIVE DIVISION
FACILITIES SERVICES



Meeting Materials for the
Court Facilities and
Trial Court Facility Modification
Advisory Committees
Joint Open Public Meeting

November 8, 2022

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JUDICIAL COUNCIL
OF CALIFORNIA

COURT FACILITIES
ADVISORY COMMITTEE

www.courts.ca.gov/cfac.htm
cfac@jud.ca.gov

www.courts.ca.gov/tcfmac.htm
tcfmac@jud.ca.gov



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TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Request for ADA accommodations
should be made at least three business
days before the meeting and directed to:
JCCAccessCoordinator@jud.ca.gov

JOINT MEETING OF THE
COURT FACILITIES ADVISORY COMMITTEE AND
TRIAL COURT FACILITY MODIFICATION ADVISORY COMMITTEE

NOTICE AND AGENDA OF OPEN MEETING

Open to the Public (Cal. Rules of Court, rule 10.75(c)(1) and (e)(1))

THIS MEETING IS BEING CONDUCTED BY VIDEOCONFERENCE

THIS MEETING IS BEING RECORDED

Date: November 8, 2022
Time: 10:00 a.m. – 11:30 a.m.
Public Videocast: <https://jcc.granicus.com/player/event/2016>

Meeting materials will be posted on the advisory body web pages on the California Courts website at least three business days before the meeting.

Members of the public seeking to make a recording of the meeting must submit a written request at least two business days before the meeting. Requests can be e-mailed to cfac@jud.ca.gov or tcfmac@jud.ca.gov.

Agenda items are numbered for identification purposes only and will not necessarily be considered in the indicated order.

I. OPEN MEETING (CAL. RULES OF COURT, RULE 10.75(C)(1))

Call to Order, Roll Call, and Opening Remarks

II. PUBLIC COMMENT (CAL. RULES OF COURT, RULE 10.75(K)(1))

This meeting will be conducted by videoconference with a livestream available for the public. As such, the public may submit comments for this meeting only in writing. In accordance with California Rules of Court, rule 10.75(k)(1), written comments pertaining to any agenda item of a regularly noticed open meeting can be submitted up to one complete business day before the meeting. For this specific meeting:

- Comments for the Court Facilities Advisory Committee or Trial Court Facility Modification Advisory Committee should be e-mailed to cfac@jud.ca.gov or tcfmac@jud.ca.gov or mailed or delivered to 455 Golden Gate Avenue, San Francisco, CA 94102, attention: Chris Magnusson.

Only written comments received by 10:00 AM on November 7, 2022, will be provided to advisory body members prior to the start of the meeting.

III. DISCUSSION AND POSSIBLE ACTION ITEMS (ITEMS 1-2)

Item 1

Building Official Policy (Action Required)

Review of the draft *Building Official Policy*. This policy sets forth the role, responsibilities, and qualifications of the Judicial Council's Building Official as well as establishes the process for appeal of the Building Official's determinations.

Presenter: Ms. Pella McCormick, Director, Judicial Council Facilities Services

Item 2

Judicial Council's California Environmental Quality Act Objectives, Criteria, and Procedures (Action Required)

Review of the draft *California Environmental Quality Act Objectives, Criteria, and Procedures*. This document shall serve as the implementing procedures for the Judicial Council pursuant to Public Resources Code section 21082 and California Code of Regulations Title 14, section 15022, which directs California public agencies to adopt objectives, criteria, and procedures for the evaluation of projects and preparation of environmental documents consistent with regulations.

Presenter: Ms. Jennifer Chappelle, Manager, Judicial Council Facilities Services

IV. ADJOURNMENT

Adjourn



Building Official Policy

NOVEMBER 8, 2022

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JUDICIAL COUNCIL
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ADMINISTRATIVE DIVISION
FACILITIES SERVICES

Revision Management

Revision	Chapter	Revision Description	Revision Date
1.0			

DRAFT

1 Purpose

The purpose of the Building Official Policy is to set forth the role, responsibilities, and qualifications of the Judicial Council’s building official (“Building Official”) as well as to establish the process for appeal of the Building Official’s determinations.

2 Statutory Authority

2.1. Judicial Council Responsibilities and Authorities

Government Code sections 69202 & 69204, 70374, 70391, 70391.5, and 70398–70398.7; Public Contract Code section 19204.

In these sections, the Legislature grants the Judicial Council broad policymaking and implementation authority and responsibility over appellate and trial court facilities, including all aspects of acquisition and construction of appellate and trial court facilities.

2.2. Judicial Council Staff

Government Code sections 69206 and 70392.

With these provisions, the Legislature gives Judicial Council staff authority to, and responsibility for, several broad areas connected to acquisition and construction of appellate and trial court facilities, requiring staff to (1) carry out the council’s policies with regard to appellate and trial court facilities, except as otherwise expressly limited by law; (2) develop for council approval the long-term court facilities plans for appellate and trial court facilities; (3) develop for council approval a five-year infrastructure plan, and (4) construct appellate and trial court facilities, including, but not limited to, selection of architects and contractors, except as otherwise expressly limited by law.

3 Authority Having Jurisdiction

The Judicial Council complies with California Code of Regulations, Title 24, Parts 1-12 and all amendments (collectively, the California Building Standards Code or “CBSC”), as applicable to its projects or properties. Except as otherwise provided for herein or by law, the Judicial Council is the authority having jurisdiction to ensure compliance with the CBSC for Judicial Council projects and properties. Specifically, Title 24, Part 2 (the “California Building Code”) section 1.2.1.2 provides as follows, “State agencies or state entities [expressly including the Judicial Council] authorized to construct state buildings may appoint a building official who is responsible to the agency for enforcement of the provisions of the California Building Standards Code.” The California Building Code defines a “state building” as a structure for which the agency “has authority to construct, alter, enlarge, replace, repair, or demolish.” (Cal. Code Reg., tit. 24, §§ 1.2.1.1.) Accordingly, the Judicial Council has the authority to serve as the Building Official for

property where it has the right to construct, alter, enlarge, replace, repair, or demolish structures.

4 Role

4.1. Duty Statement

The Building Official shall be responsible for enforcement of the provisions of the California Building Standards Code for all projects within the Building Official's authority, except as otherwise provided by law or this policy.

4.2. Employment Status

The Building Official shall be appointed by, and shall report to, the Director of Facilities Services. The Building Official shall be a full-time Judicial Council employee.

4.3. Compliance with Council Policies

The Building Official shall comply with the Judicial Council's employment policies and regulations, including but not limited to the Judicial Council's Conflict of Interest Policy.

5 Responsibilities

5.1. Program Administration

5.1.1. The Building Official administers the Judicial Council's code compliance program. Administration of the program includes:

5.1.1.1. Development and implementation of an effective project plan review process;

5.1.1.2. Managing and facilitating plan review by other regulatory agencies when necessary or appropriate;

5.1.1.3. Developing and implementing an internal process for project permitting, including maintenance of permit records;

5.1.1.4. Developing and implementing an internal process for verifying the commissioning of new facilities;

5.1.1.5. Developing and implementing an internal process for inspection of construction works in progress, including maintenance of inspection records; and

5.1.1.6. Developing and implementing an internal process for structural, mechanical, and smoke control system peer review.

5.1.1.7. If warranted, based on the Building Official’s inspections, the Building Official shall certify the completion of any work performed under a permit issued by the Building Official. Before issuing a Certificate of Completion the Building Official shall:

- 5.1.1.7.1. Ensure construction inspections are complete and any required final verified reports are received from the inspector of record.
- 5.1.1.7.2. Obtain final sign off from any special inspection and material testing laboratory, as required for the project.
- 5.1.1.7.3. Obtain a Certificate of Occupancy or Certificate of Project Completion for the project.
- 5.1.1.7.4. Ensure that building commissioning is complete.

5.2. Cooperation with Other Authorities Having Jurisdiction

Other regulatory agencies may also have jurisdiction over Judicial Council projects or properties. For example, pursuant to Health and Safety Code section 13108, the State Fire Marshal has authority over property and facility elements pertaining to fire and panic safety, also sometimes referred to as fire and life safety. Additionally, pursuant to Government Code section 4450 et seq., the Division of the State Architect is the authority having jurisdiction over property and facility elements dealing with accessibility. The Board of State and Community Corrections (“BSCC”) may also be the authority having jurisdiction over certain in-custody areas pursuant to California Code of Regulations, Titles 15 and 24, Minimum Standards for Local Detention Facilities (Ref. Penal Code 6031.4(d) “Local detention facility” also includes a court holding facility within a superior court that is operated by or supervised by personnel trained pursuant to Section 1024 of Title 15 of the California Code of Regulations).

There may also be instances where a Judicial Council property is shared with another public agency, such as a county, and that other public agency holds title to, and has the authority to act as the building official for, the property. In such instances, those multiple entities may have concurrent and overlapping authority to act as the building official for a property, and the entities shall confer and mutually agree on the aspects of the project which are under the jurisdiction of each respective entity.

In all instances, the Building Official shall cooperate with all other entities which may have jurisdiction over a property or facility or elements thereof.

5.3. Code Enforcement

The Building Official inspects projects throughout the construction process, assesses consistency with approved plans, the CBSC, and other applicable law, and enforces the standards set forth in the CBSC in accordance with the enforcement provisions therein.

5.4. Standard of Care

The Building Official shall possess the qualifications and ability to perform the responsibilities described in this policy and the CSBC, and to fulfill the Building Official's role in a professional manner. The Building Official shall perform all duties with the reasonable care, skill, and judgment of a person acting in the capacity as a Building Official in the same or similar circumstances.

The Building Official is responsible for the professional quality, technical accuracy, completeness, and coordination of the Building Official's work. The Building Official may, at times, delegate work to subordinates or consultants; the Building Official is responsible to ensure the professional quality, technical accuracy, completeness, and coordination of the Building Official's delegated work.

5.5. Compliance with Law

The Building Official shall comply with all applicable federal, state, and local laws in the performance of the Building Official's duties.

6 Qualifications

6.1. Required Credentials

The Building Official must have at least one of the following credentials:

- Professional Engineer licensed in California
- Architect licensed in California
- ICC Certified Building Official

7 Appeals

7.1. Any person adversely affected by a determination made by the Building Official in administering or enforcing this policy, the CBSC, or other applicable law may appeal the determination by submitting a written appeal to the Chief Administrative Officer.

7.2. The appeal shall clearly describe the way in which the Building Official's determination adversely affected the appellant and shall include any and all documentation which supports appellant's allegation.

7.3. The appeal shall be filed with the Chief Administrative Officer no later than ten (10) calendar days after receipt of written notice of the Building Official's determination. Failure to timely request an appeal constitutes a waiver of the hearing and a failure to exhaust administrative remedies.

- 7.4.** The Chief Administrative Officer shall schedule a hearing to consider the appeal within ten (10) calendar days from receipt or as soon thereafter as practically possible. The Chief Administrative Officer shall consider relevant evidence presented at the hearing and may also consult with outside experts to assist with rendering a decision.
- 7.5.** The Chief Administrative Officer shall document all decisions and findings in writing. The decision of the Chief Administrative Officer shall be issued within ten (10) calendar days of the hearing or as soon thereafter as reasonably practicable. A copy of the decision shall be delivered to the appellant(s) personally or sent electronically with a duplicate copy to the Building Official. The date of service shall be considered the same day if delivered personally or electronically.
- 7.6.** The decision of the Chief Administrative Officer in granting or denying an appeal shall become final on the date of service. Any appeal of the decision must be filed by the appellant with a court of competent jurisdiction pursuant to California Code of Civil Procedure sections 1094.5 and 1094.6, within thirty (30) calendar days of the service of the decision, otherwise, all objections will have been waived. The filing of such appeal within such time limit shall stay the effective date of the decision of the Chief Administrative Officer.

The seal of the Judicial Council of California is faintly visible in the background. It features a central figure holding a scale and a sword, surrounded by the text "JUDICIAL COUNCIL OF CALIFORNIA" and "EUREKA". The year "1926" is at the bottom.

Building Official Policy

Joint Meeting of the Court Facilities and
Trial Court Facility Modification Advisory Committees

November 8, 2022

Why is a Building Official Policy Needed?

- Government Code and CCR Title 24
- Enforce state laws regarding buildings
- Have effective processes for:
 - Code and regulatory consultation
 - Plan review
 - Permitting
 - Inspection
 - Final acceptance



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Who?

- Establishes the Facilities Services' **Quality Compliance Manager** as JCC's Authority Having Jurisdiction (AHJ) over construction
- Independent reporting hierarchy
 - Reports to Director
 - Project proponent vs. project authority



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Policy Purpose

- Defines AHJ's qualifications
- Delineates AHJ's role and responsibilities
- Requires cooperation with other AHJs
- Establishes the process for appeal



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AHJ Qualifications

- Employee of the Judicial Council
- Professional standard of care
 - Professional Quality
 - Skill
 - Judgment
- One of the following credentials:
 - Professional Engineer licensed in California
 - Architect licensed in California
 - ICC Certified Building Official



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Jurisdictional Responsibilities

- California Building Standards Code
- California Code of Regulations, specifically Title 24
- Health and Safety Code
- Government Code
- Earthquake Protection Law
- State Housing Law Regulations
- State Historical Building Code



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Cooperation with Other AHJs

- Multiple entities may have concurrent and overlapping authority
 - Government Code AHJs
 - State Fire Marshal – *Fire and Life Safety*
 - Division of the State Architect – *Accessibility*
 - Board of State and Community Corrections – *In-Custody Holding*
- County titled properties
- Leased facilities



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Building Official Role

- Liaison to other AHJs
- Plan review
 - Maintain records
 - Peer Review of structural, mechanical, and smoke control system
- Issue Building Permit
- Inspection of construction
 - Maintain inspection records
 - Verify commissioning is completed
- Issue Building Official's Certification at Completion



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Next Steps

Policy Schedule:

Milestones	Dates
CFAC/TCFMAC Initial Review	November 8, 2022
Public Comment Period	November 9 through December 9, 2022
Policy Revised Based on Comments	December 12–30, 2022
CFAC/TCFMAC Rereview/Approval	Early/Mid-January 2023
JC Report Deadline	January 20, 2023
Judicial Council Meeting for Adoption	March 23–24, 2023



Requested Action

- Recommend the policy is posted for a 30-day public comment period and to return for committee review prior to Judicial Council adoption.

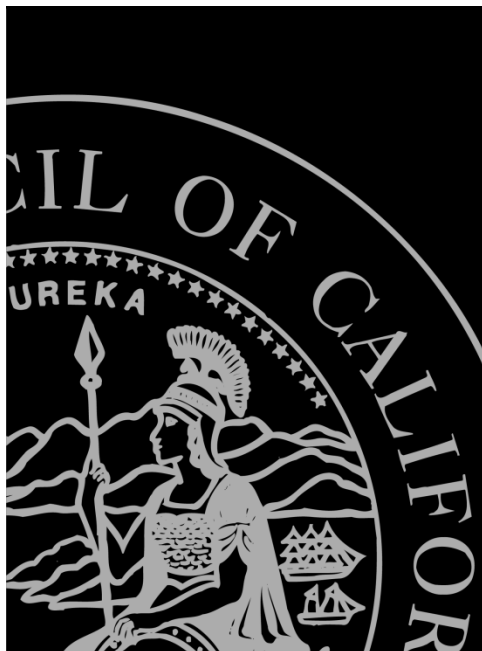


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QUESTIONS?



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California Environmental Quality Act Objectives, Criteria, and Procedures

NOVEMBER 8, 2022

DRAFT



JUDICIAL COUNCIL
OF CALIFORNIA

ADMINISTRATIVE DIVISION
FACILITIES SERVICES



California Environmental Quality Act Objectives, Criteria, and Procedures

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 CEQA regulations (Cal. Code Regs., tit. 14, §§ 15000–15387), commonly called the “CEQA Guidelines.” This document will serve as the implementing procedures, as that term is used in the CEQA Guidelines section 15022(a), for the Judicial Council of California (Judicial Council).

The purpose of these Procedures is to ensure the Judicial Council considers the potentially significant environmental impacts of its projects as required by CEQA, and to inform staff how to implement CEQA and other environmental regulatory requirements within the project schedule, 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 version of the statute and regulations are incorporated herein by reference.

List of Acronyms and Abbreviations

AB	Assembly Bill
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 Public Resources Code section 21065 as “an 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:
 1. An activity directly undertaken by any public agency;
 2. 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; or
 3. An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.
- 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 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 Modification. A facility modification is a physical modification to a facility or its components that restores or improves the designed level of function of a facility or facility

components. Facility modification includes minor improvements and repairs that do not meet the level of a major renovation and also includes deferred maintenance work. As discussed below, a facility modification is more likely to qualify for an exemption under CEQA than site acquisition or major renovation projects.

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 physical change in the environment, 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 do require documented consideration of environmental factors as identified in Appendix G of the CEQA Guidelines, the Environmental Checklist Form.
 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 physical change in the environment, 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 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 physical change in the environment, or a reasonably foreseeable indirect 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. **Decision-Making Body.** The decision-making body under CEQA is the authority that will approve or disapprove projects that are subject to CEQA. The decision-making 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 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 decision-making body. However, the decision-making 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 Judicial 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 at Appendix G of the CEQA Guidelines will serve as the basis of review.

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

1. 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. 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. For facility modifications, staff will begin environmental review when the location, scope, and basic design criteria have been identified for a project.
4. 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. 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 step C.

C. Review for CEQA Exemptions. Staff will review activities identified as projects in step A 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 are legislative in origin. The California Legislature has identified certain types of projects that are exempt from all or some of the requirements of CEQA. (CEQA Guidelines § 15260.) Statutory exemptions may have particular requirements in order for a project to qualify.
2. Categorical exemptions are categories of projects that the California Natural Resources Agency has identified that 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. 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. Staff will notify the project lead of the proposed exemption. If additional environmental studies, such as an historic resources study or 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 only a few examples of CEQA exemptions frequently used by the Judicial Council. The list is not exclusive; environmental staff should be consulted to determine whether one of the following, 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 are 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 not eligible 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 the 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 “conditions require immediate action to return a facility to normal operations, or a condition that will become immediately critical if not corrected expeditiously. Such conditions necessitate the need to stop accelerated deterioration or damage, to correct a safety hazard that imminently threatens loss of life or serious injury to the public or court employees, or to remediate intermittent functions and service interruptions as well as potential safety hazards. Such conditions may include, but are not limited to, the following: major flooding; substantial damage to roofs or other structural building components; or hazardous material exposure. Depending on scope and impact, a severe deterioration in life safety protection may also be considered a Priority 1 condition requiring a 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 is 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 the conditions listed in section 15162 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 makes 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 may be prepared under CEQA Guidelines section 15164. An addendum is appropriate when only minor technical changes to the document are necessary. 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 makes 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 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, Appendix G of the CEQA Guidelines, 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. (CEQA Guidelines § 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 any of the following: sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that 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 MND. 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, the project location (preferably on a map), the proposed finding that the project will not have a significant effect on the environment, the initial study, and proposed mitigation measures (for an MND only). (CEQA Guidelines § 15071.)
1. 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 a Notice of Intent to adopt a Negative Declaration or MND to responsible agencies, trustee agencies, and the county clerk of each county within which the project is located, as required by law. 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. 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. 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 § 15074(b).)
 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 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 only required if requested by the Governor's Office of Planning and Research, a responsible or trustee agency, Caltrans (if the project would affect a state highway or transportation facility), or the project qualifies as a project 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 appendices 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. 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. 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. 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 shall

prepare a written response. Staff shall respond to comments raising significant environmental issues received during the noticed comment period and any extensions 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.

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, must be done before approval of the project by the decision-making body. The decision-making 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 decision-making body must adopt a Statement of Overriding Considerations before approving the project.
 2. Certification of an EIR. Certification of the final EIR requires the decision-making body to certify that the EIR has been completed in compliance with CEQA, that the final EIR was presented to the decision-making body, that the decision-making body reviewed and considered the information contained in the final EIR before approving the project, and that the final EIR reflects the decision-making 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 decision-making 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 EIR. In addition, time must be allocated for preparation of technical studies and 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. The timing of 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 non-construction projects such as policies, studies, or leases that are subject to CEQA, staff should collaborate to implement the MMRP.

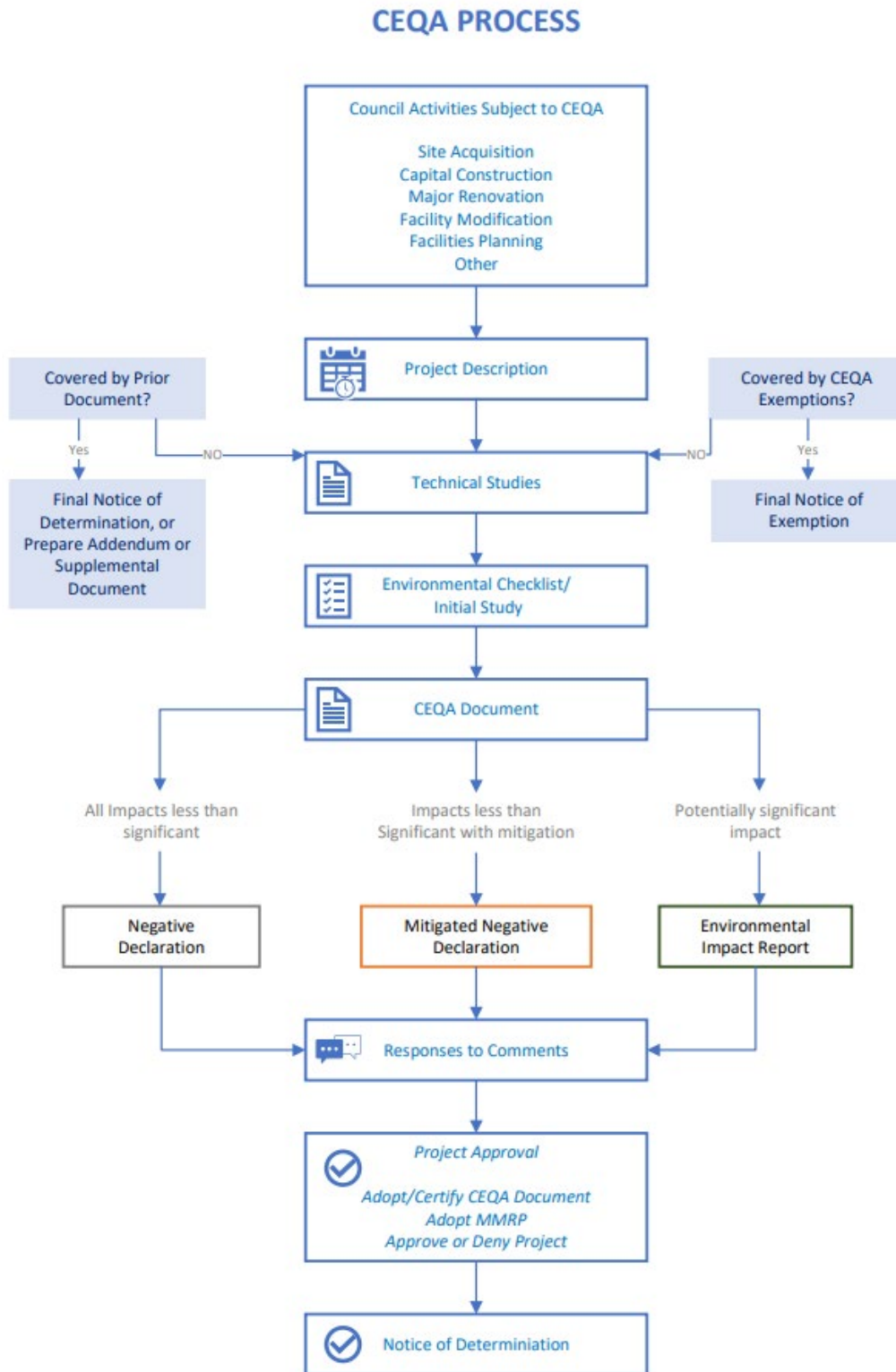
- A. Mitigation Monitoring and Reporting Program.
 - 1. Staff shall work with the environmental consultant in formulating the MMRP as part of the project approval process. Staff will collaborate to estimate the cost of implementing mitigation measures, including any consultant costs for surveying or monitoring.
 - 2. Staff will ensure 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 both 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 measures are incorporated into design and construction.
 - 3. Staff will manage pre-construction 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.

DRAFT

Figure 1



California Environmental Quality Act Objectives, Criteria, and Procedures

Joint Meeting of the Court Facilities and
Trial Court Facility Modification Advisory Committees

November 8, 2022



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California Environmental Quality Act (CEQA)

- CEQA Statute:

- Public Resources Code Section 21000 and following

- CEQA Guidelines:

- California Code of Regulations, Title 14, Section 15000 and following
- Inform decision makers and public about potential environmental impacts of proposed projects
- Reduce environmental impacts to the extent feasible



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CEQA Implementing Procedures - Purpose

- Statute requires adoption of Implementing Procedures
- Procedures previously incorporated within the Capital Outlay Program Management Manual
- Ensure the Judicial Council considers the potentially significant environmental impacts of its projects
- Conform to amendments to CEQA statute and guidelines within 120 days of effective date



CEQA Implementing Procedures - Objectives

- Inform of significant environmental impacts of projects
- Identify ways to avoid or mitigate environmental impacts
- Avoid or reduce impacts through alternatives or mitigation measures
- Disclose to the public reasons for project approval with significant impacts through statement of overriding considerations



CEQA Implementing Procedures – Criteria Overview

- Types of projects
 - Site Acquisition, Capital Construction, Facility Modifications, Facility Planning, Leasing
- Criteria and procedures for compliance
- Use of exemptions and prior CEQA documents
- Preparation of Initial Study
- Consultation with California Native American Tribes



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CEQA Implementing Procedures – Findings and Adoption

- Initial Study shows no significant impact:
 - Negative Declaration or Mitigated Negative Declaration
- Initial Study show significant impact:
 - Preparation of Environmental Impact Review
- Adoption of prepared environmental documentation
 - Mitigation Monitoring and Reporting Program
 - Regulatory Permits



CEQA Implementing Procedures - Draft Procedures Review

Procedures Development Schedule:

Milestones	Dates
CFAC/TCFMAC Initial Review	November 8, 2022
Public Comment Period	November 9 through December 9, 2022
Report Revised Based on Comments	December 12–30, 2022
CFAC/TCFMAC Rereview/Approval	Early/Mid-January 2023
JC Report Deadline	January 20, 2023
Judicial Council Meeting for Adoption	March 23–24, 2023



Requested Action

- Recommend the report is posted for a 30-day public comment period and to return for committee review prior to Judicial Council adoption.



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QUESTIONS?



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Court Facilities Advisory Committee

As of September 15, 2022

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