

PROPOSED SUPPLEMENTAL CEQA GUIDELINES FOR THE
CITY OF DESERT HOT SPRINGS

2019

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1.0 INTRODUCTION

1.1 TITLE OF DOCUMENT

This document shall be known as the **City of Desert Hot Springs Supplemental CEQA Guidelines** ("Supplemental CEQA Guidelines").

1.2 BACKGROUND

The California Environmental Quality Act (referred to as "CEQA" and found in Section 21000 et. seq. of the Public Resources Code of the State of California "PRC") together with the State CEQA Guidelines ("SG") promulgated by the California Office of Planning and Research are intended to enhance the long-term protection of the environment and to encourage public participation in the process. They present objectives, criteria, and procedures for the evaluation of projects and the preparation of Environmental Impact Reports and Negative Declarations.

1.3 PURPOSE OF CITY CEQA GUIDELINES

It is the intent of the City of Desert Hot Springs to establish clear, standardized procedures with regards to the meaningful environmental review required by CEQA, including community involvement and transparency in the public approval process. In addition to the provisions of the Supplemental CEQA Guidelines, the City shall meet all of the substantive provisions of CEQA in order to ensure the discretionary actions of the City avoid or minimize, to the extent feasible, significant environmental impacts of a proposed project.

The Supplemental CEQA Guidelines implement CEQA and the State Guidelines, which are incorporated herein by this reference. Amendments to CEQA and the State Guidelines shall automatically be included as part of the Supplemental CEQA Guidelines. If the Supplemental CEQA Guidelines conflict with CEQA or the State Guidelines, CEQA and the State Guidelines will prevail. The authority to adopt these Supplemental CEQA Guidelines is granted under Public Resources Code Section 21082, which requires public agencies to adopt local environmental review guidelines.

The Supplemental CEQA Guidelines present the process used by the City to conduct environmental reviews. Figure 1 shows a flow chart of the major stages of environmental review established by the Supplemental CEQA Guidelines.

1.4 DEFINITIONS and ACRONYMS

Words, terms and phrases used in the Supplemental CEQA Guidelines shall be defined in accordance with the definitions in the Public Resources Code and the State Guidelines. (SG 15350 through 15387)

1.4.1 Definitions

As used in the Supplemental CEQA Guidelines:

"City" means the City of Desert Hot Springs.

"City Council" shall mean the Desert Hot Springs City Council.

"City Code" shall mean the Desert Hot Springs Municipal Code.

"County Clerk" shall mean the Clerk for the County of Riverside.

"Decision-making body" for public projects shall mean the City Council which is authorized to commit the public agency to a definite course of action in regard to a project by way of legislative action, final acceptance of a project design, or the authorization of funds to carry out the project by any person. If the project requires a discretionary permit or other entitlement required to carry out the project from a lower-decision making body, the lower decision-making body may conditionally act on the permit or entitlement, subject to the adoption of the CEQA document by the City Council, with consideration of the Draft Negative Declaration or EIR and make recommendations as an advisory body to the City Council, by resolution, on the CEQA document.

"Decision-making body" for private projects shall mean the City body which is authorized to approve the discretionary permit or other entitlement required to carry out the proposed project. If the proposed project requires permit approval from more than one decision-making body, the highest decision-making body responsible for action on an application for a development permit shall approve the Negative Declaration or Mitigated Negative Declaration or certify the Final EIR prior to the time the project is considered for approval. If the proposed project requires permits or other entitlement from both the City Council and other City bodies, then the decision-making body for CEQA purposes shall be the City Council.

"Planning Commission" shall mean the City of Desert Hot Springs Planning Commission. When development permits are required from the Planning Commission, the Planning Commission shall be the highest decision-making body and responsible for ensuring CEQA compliance.

"Staff" shall mean the City's Planning Division.

1.4.2 Acronyms

California Environmental Quality Act	-CEQA
CEQA Guidelines (State)	-SG
Environmental Impact Report (Draft or Final)	-EIR
Environmental Impact Statement (Draft or Final)	-EIS
Government Code	-SG
Initial Study	-IS
Mitigated Negative Declaration	-MND
Negative Declaration	-ND
Notice of Decision	-NOD
Public Resources Code	-PRC

1.5 FORMS

The Planning Division may adopt forms to implement the environmental review of projects in accordance with CEQA. The forms shall be used by the City and the Public and may be revised from time to time.

1.6 FEES FOR COST REIMBURSEMENT

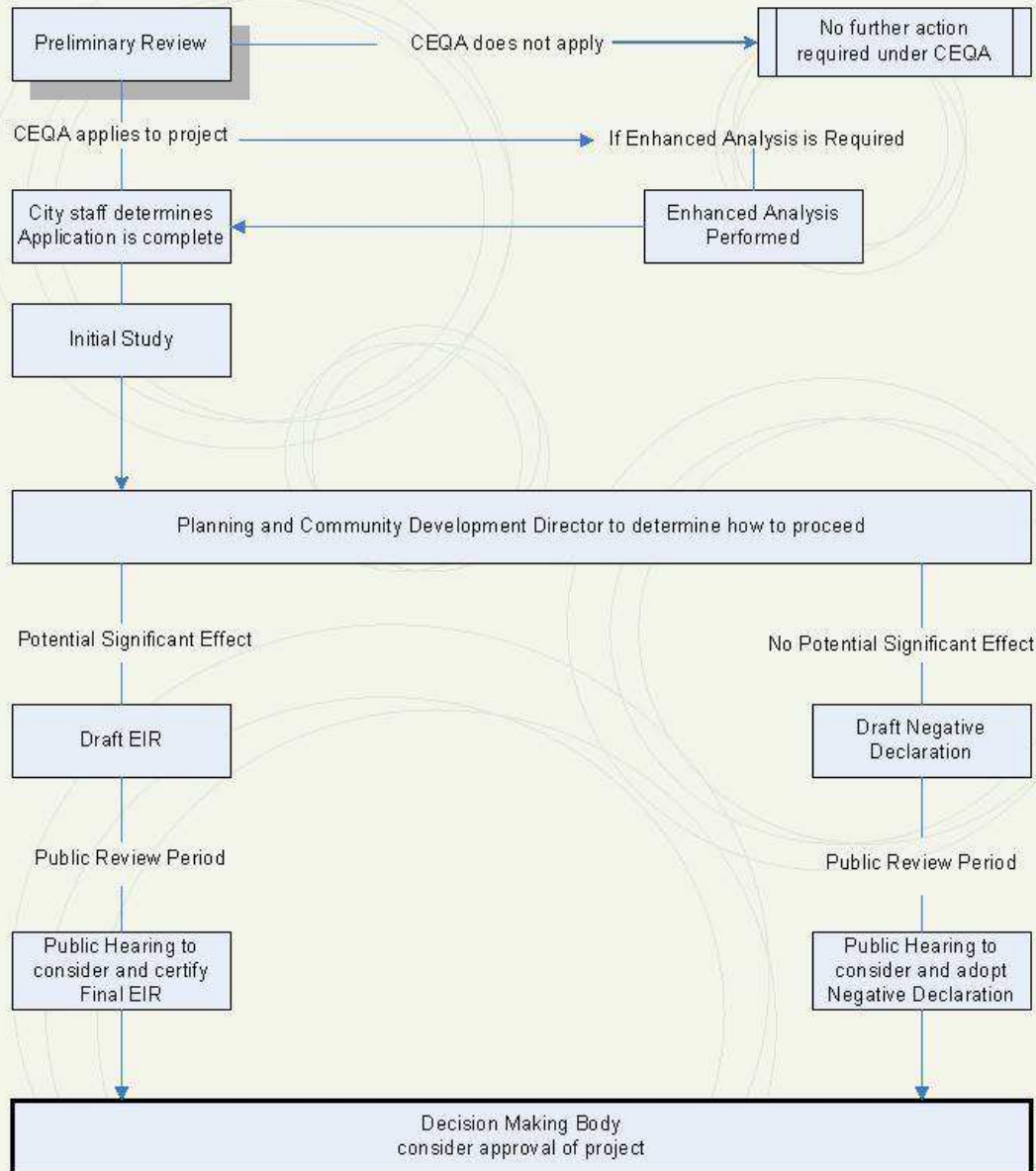
The City shall charge and collect a reasonable fee from the person proposing a project, in an amount sufficient to reimburse the City for the costs incurred by the City in environmentally reviewing a project in accordance with CEQA, the State Guidelines and the Supplemental CEQA Guidelines. The fee shall reflect, without limitation, the costs associated with preparing an Initial Study, preparing a Negative Declaration, preparing an EIR, noticing public hearings, monitoring compliance with mitigation measures and following the procedures necessary to comply with the requirements of law. The City fee shall be established from time to time by resolution of the City Council.

Prior to the City incurring any EIR-related expense, the project proponent shall provide the City with an amount of money equivalent to the estimated cost of preparing the EIR. This money shall be kept on deposit by the City and used as needed to pay the associated EIR costs. Any surplus on deposit after completion of the EIR process will be returned to the project proponent. If actual costs exceed the deposit, additional deposits shall be made within five days notice thereof.

The City CEQA related documents shall be processed, noticed and/or filed only after the required City, County and/or State fees have been paid.

No permit or other entitlement shall be issued for any project for which any part of the costs of the EIR preparation have not been paid. Any such unpaid costs, or any unpaid costs associated with required mitigation monitoring, shall constitute a lien upon the land which was the subject of the application. Such a lien shall be equal in all respects to a lien for unpaid City taxes.

Figure 1
Flow Chart of CEQA Environmental Review Process



NOTE: Figure 1 illustrates the general process set out in the City CEQA Guidelines. The language contained in the City CEQA Guidelines controls, subject to CEQA and State Guidelines.

2.0 PRELIMINARY CEQA REVIEW

2.1 PURPOSE

The Preliminary CEQA Review is conducted by Staff. Staff identifies the CEQA relevant aspects of the proposed project for purposes of initial processing.

2.2 PROCESS

Figure 2 presents a diagram of the Preliminary CEQA Review process which commences when the project proponent has a pre-application scoping session with City Staff concerning a proposed project application to the City. During the preliminary CEQA review process Staff determines:

- a. Whether the application is acceptable for receipt and complete;
- b. Whether the application represents a "project" for CEQA purposes;
- c. Whether the City is the "Lead Agency" or a "Responsible Agency";
- d. Whether there are "Responsible/Trustee" agencies;
- e. Whether the project is exempt from further CEQA processing; and
- f. Whether enhanced CEQA environmental analysis is necessary.

To document the determinations made during the preliminary review, Staff may complete a "Preliminary CEQA Review" form. Staff maintains the completed form in the activity file for the project. The Preliminary CEQA Review process ends when Staff determines whether the application is complete for CEQA analysis.

2.3 PRE-APPLICATION SCOPING SESSION

Before a proponent presents a project application to the City, the proponent shall participate with Staff in a scoping session in which the proponent and Staff meet to discuss the proposed project. The scoping session may involve no more than a discussion at the Department counter or it may involve a meeting attended by other City Departments. A series of meetings may be required to complete a scoping session.

For the scoping session, the applicant shall provide at the request of City Staff, a detailed written description of the project, a completed "Preliminary CEQA Review Questionnaire" (Attachment A), and pay the preliminary CEQA review fee.

The "b" through "f" determinations noted in the above 2.2 "Process" Section shall be made by Staff during the scoping session.

2.4 STAFF DETERMINATION WHETHER CITY IS THE "LEAD AGENCY"

Only one public agency is responsible for preparing an environmental review of a project for CEQA. This agency is designated as the Lead Agency by CEQA. (SG § 15051)

If Staff determines that the City is not the Lead Agency for the proposed project, an entry shall be made on the "Preliminary CEQA Review" form. No further action under CEQA is

required by the City at that time. However, the City will still be included in the CEQA process as specified by the State Guidelines. All environmental documentation must be received by the City prior to City action on the project.

When a dispute exists as to whether or not the City is the Lead Agency, the City will try resolving the dispute by consulting with the disputing agency or agencies. If an agreement is not reached, the City will submit a written request to the State Office of Planning and Research (OPR) for resolution. (SG § 15053)

2.5 STAFF DETERMINATION WHETHER CITY IS A "RESPONSIBLE AGENCY" OR IF THERE ARE RESPONSIBLE / TRUSTEE AGENCIES

The State CEQA Guidelines define a responsible agency as a public agency other than the lead agency which has discretionary approval power over the project. (SG § 15052) A Responsible Agency acts upon its own discretionary approvals for the project after reviewing and commenting upon the CEQA documents prepared by the Lead Agency. (SG § 15096) If Staff determines that the City is a Responsible Agency, an entry shall be made on the "Preliminary CEQA Review" form. The Lead Agency initiates the CEQA process. However, under certain circumstances, the City, as a Responsible Agency, may take a more active role in the CEQA analysis of the project.

A trustee agency is defined in the State Guidelines as a State agency having jurisdiction by law over natural resources affected by a project which are held in trust for the people of the State of California. A trustee agency may also be a responsible agency, if it has discretionary approval power over the project.

Appendix B of the State Guidelines contains a table listing the statutory authority of the State departments. Trustee agencies include California Department of Fish and Game, State Lands Commission, State Department of Parks and Recreation and the University of California. The Regional Water Quality Control Board for the Colorado River Basin Region and the South Coast Air Quality Management District may also be trustee agencies.

2.6 STAFF DETERMINATION WHETHER APPLICATION REPRESENTS A "PROJECT"

CEQA only applies to a "project" as defined by CEQA. (SG 15378 and PRC 21065) Staff will note on the Preliminary CEQA Review form whether the proposal constitutes a project as defined by CEQA. A "project" includes:

- a. Activities directly undertaken by the City or other governmental agency;
- b. Activities financed in whole or in part by the City; or
- c. Private activities which require discretionary approval from the City or some other governmental agency.

2.6.1 Discretionary and Ministerial Projects

A "discretionary project" is defined in CEQA as a "project that required 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, or regulations" which is "ministerial" in nature (SG § 15357).

Examples of discretionary projects include, but are not limited to, activities such as public works construction; zoning ordinances; adoption or amendment of a General Plan or its elements; or issuance of a lease, permit, license, certificate or other entitlement for use (i.e. conditional use permit, variance, major and minor site plan review, parcel maps, tentative tract maps, etc.).

Examples of ministerial actions include, but are not limited to, issuance of building permits, certificates of occupancy, final subdivision maps, outdoor dining permits, encroachment permits, haul permits, grading permits, and business licenses.

2.7 STAFF DETERMINATION WHETHER A PROPOSED PROJECT IS EXEMPT

A proposal which constitutes a "project" under CEQA may be exempt from further processing under CEQA. There are three general types of exemptions:

- a. Statutory;
- b. Categorical; and
- c. "General Rule".

2.7.1 Statutory Exemptions

The State CEQA Guidelines list exemptions from CEQA granted by statute enacted by the California Legislature (SG §§ 15260-15277). The exemptions take several forms ranging from partial exemptions to full exemptions. Examples of statutorily exempt projects include:

- a. **Ministerial projects**, as defined by State Guidelines (SG §§ 15268 and 15369);
- b. **Emergency projects**, as defined by State Guidelines (SG §§ 15269 and 15359); and
- c. **Feasibility or planning studies**, as defined by State Guidelines (SG § 15262).

2.7.2 Categorical Exemptions

The State Guidelines lists Classes 1 through 29 of Categorically Exempt Projects, projects determined by the State to be exempt from CEQA (SG §§ 15300 - 15329). The City utilizes the categorical exemptions provided in the State Guidelines.

A categorical exemption may not be used when special circumstances exist which will result in environmental damage either individually or cumulatively by the project (SG § 15300.2).

2.7.3 General Rule Exemption

The State Guidelines notes that CEQA applies only to projects which have the potential for causing a significant effect on the environment (SG § 15061(b)(3)). Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment the activity is not subject to CEQA. This rule exempts many small or routine projects.

2.7.4 Determination that Exemption Applies to Project

When a project is determined to be exempt, Staff will so indicate on the "Preliminary CEQA Review" form.

Staff may file a "Notice of Exemption" with the County Clerk (PRC § 21152). The filing of a Notice of Exemption will reduce the statute of limitations for legal challenges to the determination of exemption from 180 days to 35 days (PRC § 21167(d)). A copy of a Notice of Exemption form is included in Appendix E of the State Guidelines (SG § 15062).

2.7.5 Appeal of Exemption Decision

When a non-elected official or decision-making body of a local lead agency decides that a project is exempt from CEQA, and the agency approves the project, the decision that the project is exempt may be appealed to the local lead agency's decision-making body (SG § 15061(e)).

2.8 STAFF DETERMINATION WHETHER ENHANCED CEQA ANALYSIS IS NECESSARY

Enhanced CEQA environmental analysis is required of all projects that potentially would have significant environmental effects that could be potentially mitigated. This enhanced analysis, also known as an Environmental Study, could focus on issues such as traffic, visual impacts, biological resources, historic resources or potential environmental issues identified by the Director.

2.9 STAFF DETERMINATION WHETHER THE PROJECT APPLICATION IS ACCEPTABLE FOR RECEIPT BY THE CITY

The application must fully describe the project so that the project's compliance with City Code can be determined, the need for various approvals/permits/entitlement can be ascertained and the CEQA processing can proceed.

Generally, a project will not be divided into separate segments. The "project" should include the whole of the proposed action. (SG § 15378).

A project application shall be acceptable for receipt by the City when the following conditions have been satisfied:

- a. A scoping session has been conducted;
- b. The fee is paid for the Preliminary CEQA Review;
- c. The proposed project is sufficiently described;
- d. The proponent presents a completed Environmental Information Form and a completed Environmental Checklist; and
- e. If staff has determined that an enhanced traffic analysis is necessary, then both the full enhanced CEQA cost and fee is paid and the enhanced analysis is complete.

Staff will determine whether the project application is acceptable for receipt by the City. The proposal must be substantively complete for processing, in the correct format, and contain adequate information for CEQA review. Staff may require incomplete, incorrect or inadequate submittals to be resubmitted or augmented.

If the proponent does not present an application acceptable for receipt, Staff shall advise the proponent of deficiencies and shall return the application.

2.10 STAFF DETERMINATION OF APPLICATION "COMPLETENESS" AND REQUIREMENT FOR AN INITIAL STUDY

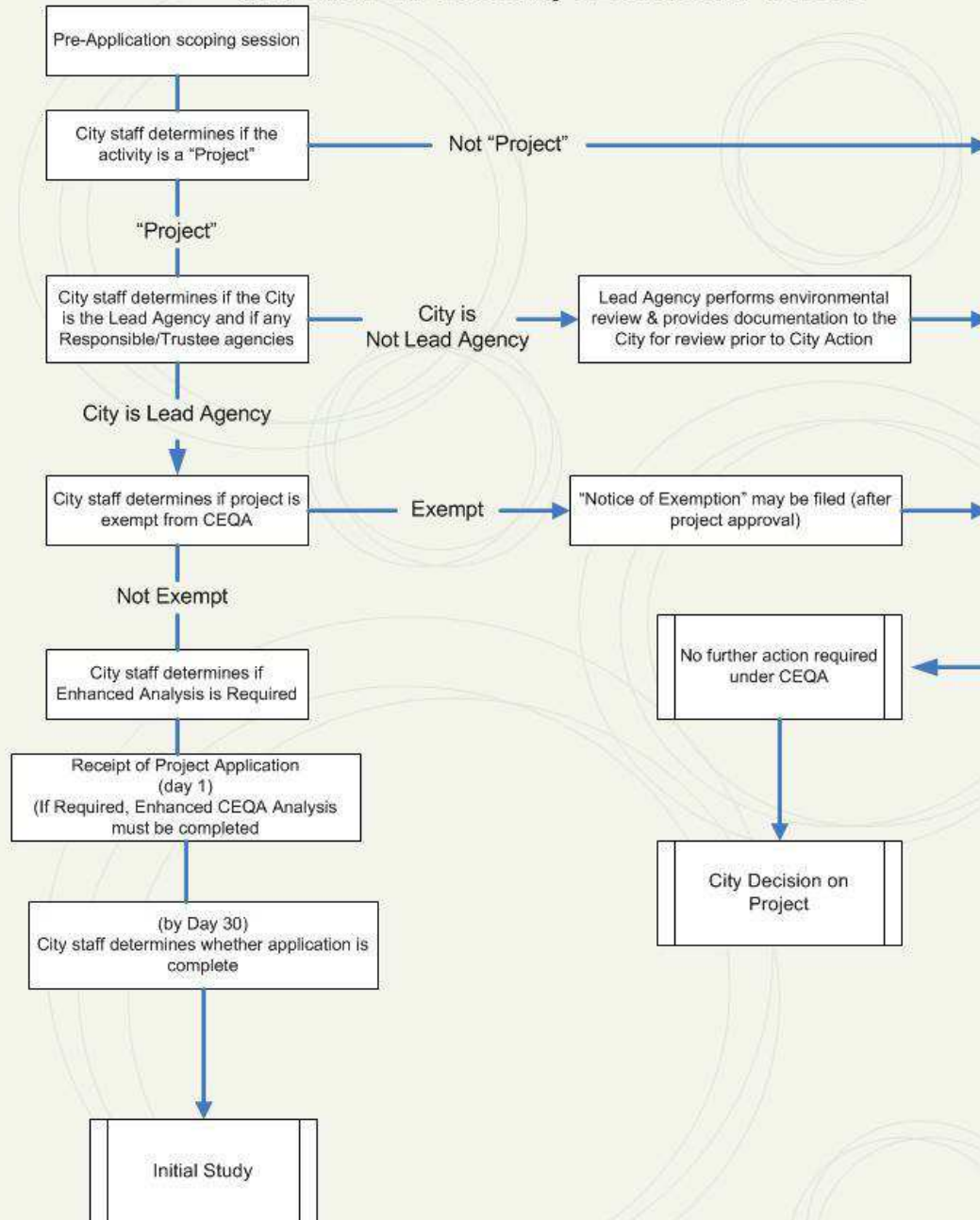
The Director shall order the preparation of an Initial Study when:

- a. The Preliminary CEQA Review is accomplished;
- b. The application is complete; and
- c. A non-exempt project has been identified (SG § 15063).

A "Preliminary CEQA Review" form will be completed and placed in the project file, indicating the determination that an Initial Study will be conducted.

If an Initial Study is required, the application shall not be deemed complete until the proponent submits a deposit for the preparation fee of the Initial Study.

FIGURE 2
Flow Chart of Preliminary CEQA Review Process



NOTE: Figure 2 illustrates the general process set out in the City CEQA Guidelines. The language contained in the City CEQA Guidelines controls, subject to CEQA and State Guidelines.

3.0 INITIAL STUDY

3.1 PURPOSE

The purpose of the Initial Study is:

- a. To identify potential significant effects, if any, that may result from the proposed project; and
- b. To provide a basis (evidence and data) for determining:
 - (1) Whether to proceed with a Negative Declaration; or
 - (2) Require the preparation of an EIR (SG § 15063).

3.2 PROCESS

The Initial Study phase starts when Staff has determined that the application is complete and the proponent has submitted a deposit for the preparation of the Initial Study; and ends with the City's determination whether to proceed with a Negative Declaration or require the preparation of an EIR. Figure 3 presents a diagram of the Initial Study process which includes the following:

The following documents are compiled as part of the draft Initial Study:

- a. Proponent's Application;
- b. Proponent's Environmental Information Form;
- c. Proponent's Environmental Checklist;
- d. Preliminary CEQA Review Form prepared by Staff;
- e. Written Comments from other City Departments and Consultants;
- f. Written Comments from Other Agencies (Responsible/Trustee);
- g. Written Comments from the Public; and
- h. Staff's Written Analysis/Initial Study Determination.

Staff may select certain Initial Study documents to be prepared by consultants hired by the City or the proponent.

3.3 APPLICANT'S ENVIRONMENTAL INFORMATION FORM AND ENVIRONMENTAL CHECKLIST

The applicant's Environmental Information Form and Environmental Checklist present the applicant's analysis of how the project will impact the environment. These documents are submitted concurrently with the project application.

3.4 OTHER AGENCIES

Staff will solicit, from other agencies, written comments regarding the identification of potential significant effects from the project.

3.5 STAFF ANALYSIS

Staff will consult with Responsible Agencies, Trustee Agencies and all appropriate City departments to determine the issues involved in the project along with potential significant effects.

If an EIR may be required, Staff will assess whether a tiered EIR can be used (PRC § 21093-21094).

Staff may notify the proponent of potential environmental impacts in order to allow the redesign, revision or resubmittal of the proposed project in a manner to eliminate such impacts.

3.5.1 Mandatory Findings of Significance

A project shall be found to have a significant potential impact on the environment if:

3.5.1.1 The project has the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major period of California history or pre-history.

3.5.1.2 The project has possible environmental effects, which are individually limited, but cumulatively considerable. As used in this subsection “cumulatively considerable” means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past, present, and reasonably foreseeable future projects.

3.5.1.3 The environmental effect of a project will cause substantial, adverse effects on human beings, either directly or indirectly.

3.5 DETERMINATION OF WHETHER TO PROCEED BY NEGATIVE DECLARATION OR EIR

3.6.1 Determinations.

The Planning Commission will determine:

- a. Whether the project description is complete / adequate;
- b. Whether the project may have potential significant impacts; and
- c. Whether to proceed by Negative Declaration or require the preparation of a Draft Environmental Impact Report (Draft EIR). The determinations will reference the information in the draft Initial Study. The determinations shall be in writing and shall become part of the final Initial Study.

3.6.2 EIR Required.

The Planning Commission shall direct that a Draft EIR be prepared if a fair argument can be made, based on substantial evidence in the record, that a project may have a significant effect on the environment, even though a fair argument could also be made, based on substantial evidence in the record, that the project may not have a significant effect on the environment (SG § 15064(f)).

The State Guidelines describe in detail the determination of significant effects and list conditions under which a project would normally have a significant effect on the environment. (SG §§ 15064, 15065 and Appendix G) The determination of "significance" must be based upon substantial evidence in the record (PRC § 21082.2(d)).

However, when the City is the project proponent, the City Council may direct that an EIR be prepared, even if not required.

3.6.3 Direction to Prepare EIR.

If the Planning Commission determines that the preparation of a Draft EIR is required, the Planning Commission will determine the type and scope of EIR needed:

- a. The State CEQA Guidelines list different types of EIRs and discuss the applicability of each type (SG §§ 15160 -15169).
- b. The State CEQA Guidelines list conditions under which a previously certified EIR may be used (SG § 15153) and conditions under which a new EIR must be prepared. (SG § 15162)

As directed by the Director, Staff will initiate the process to prepare either a Negative Declaration or a Draft EIR.

3.7 APPEALABLE DETERMINATION

The determination of whether the project description is complete/adequate; whether the project may have potential significant impacts; and whether to proceed by Negative Declaration or require the preparation of a Draft EIR is appealable to the City Council.

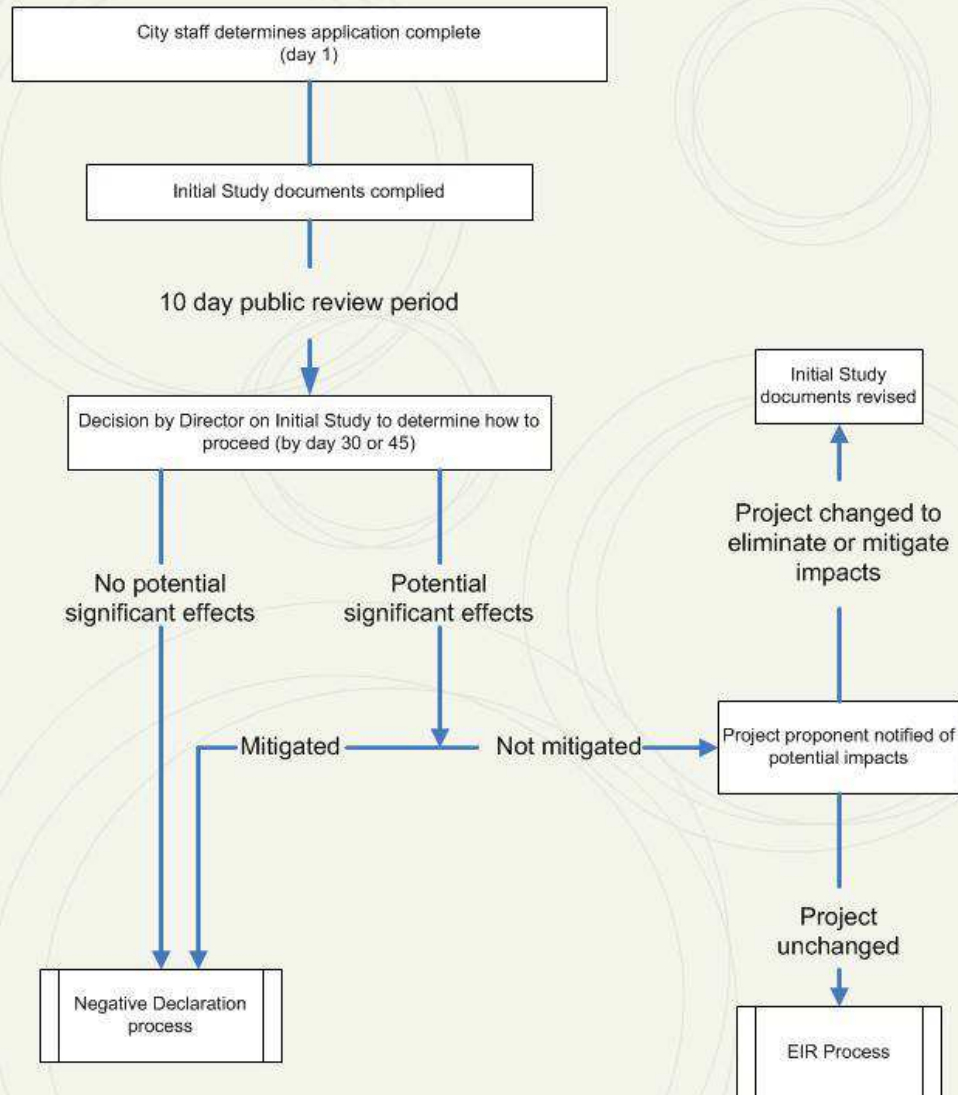
3.8 TIME LIMIT

The City has 30 days after an application is deemed complete to determine whether it intends:

- a. To rely on a Negative Declaration;
- b. To require the preparation of a Draft EIR; or
- c. To use a previously prepared EIR or Negative Declaration.

The 30-day period may be extended.

FIGURE 3
Flow Chart of Initial Study Process



NOTE: Figure 3 illustrates the general process set out in the City CEQA Guidelines. The language contained in the City CEQA Guidelines controls, subject to CEQA and State Guidelines.

4 NEGATIVE DECLARATION/MITIGATED NEGATIVE DECLARATION

4.1 PURPOSE

The City shall proceed by way of the Negative Declaration process, when the Initial Study shows either of the following:

- a. There is no substantial evidence in light of the whole record that the project as initially proposed may have a significant effect on the environment (Negative Declaration); or
- b. Potentially significant effects have been avoided or mitigated by revisions to the project and there is no substantial evidence that the revised project may have significant effects on the environment (Mitigated Negative Declaration) (PRC § 21080(c), SG § 15070).

A "negative declaration" is a written statement by the City briefly describing the reasons that a proposed project, not exempt from CEQA, will not have a significant effect on the environment and therefore does not require the preparation of an EIR (SG § 15371). The Negative Declaration also specifies the location and custodian of the documents or other materials which constitute the record of proceedings upon which the decision is based (PR 21081.6). This environmental document may be titled either a Negative Declaration or a Mitigated Negative Declaration, depending on whether measures to eliminate significant environmental impacts have been included.

4.1.1 Mitigated Negative Declarations

A "mitigated negative declaration" is appropriate if significant effects are identified but can be reduced to a less than significant level by requiring compliance with mitigation measures. Mitigation measures are actions identified through the Initial Study process and are designed to avoid, minimize, limit, rectify, repair, reduce or compensate for a project's impacts to the environment, such that impacts are "less than significant". Mitigation measures shall identify what action is required, when implementation of the mitigation measure is required, how compliance is monitored, and who is responsible for implementing, monitoring and/or coordinating the monitoring of the mitigation measure. Mitigation measures are required to be fully enforceable through permit conditions, agreements, or other measures. A MND contains the same components as a ND, with the addition of a mitigation monitoring report (see section 4.12).

In general, a MND rather than a full EIR will be prepared when potential impacts *clearly* (emphasis added) can be mitigated.

4.2 PROCESS

Figure 4 presents a diagram of the Negative Declaration process which includes the following:

- a. Preparation of draft Negative Declaration.
- b. Notice of Intent to Adopt a Negative Declaration is given which announces a Public Review Period and sets a Public Hearing.

- c. Review Period takes place.
- d. Consideration of Adoption of Negative Declaration.

4.3 PREPARATION OF DRAFT NEGATIVE DECLARATION/ MITIGATED NEGATIVE DECLARATION

Upon the determination that the City is to proceed by way of a Negative Declaration, the Staff will prepare a draft Negative Declaration (See SG § 15071 for required contents).

4.4 NOTICE OF INTENT TO ADOPT A NEGATIVE DECLARATION/ MITIGATED NEGATIVE DECLARATION

4.4.1 Notice of Intent (SG § 15072).

Staff will also prepare a Notice of Intent to Adopt a Negative Declaration filed with the County Clerk as least 20 days prior to the adoption of the ND or MND which:

1. Announces a 30 day, public review period for the Draft Negative Declaration that is to be on file at the City;
2. Sets a date, time and place for a public hearing, to be conducted by the decision-making body after the review period, to consider the adoption of the Negative Declaration; and
3. Specifies the address where the proposed Negative Declaration and all documents referenced therein are available for review.

4.4.2 Notice (See PRC § 21092 and SGs).

1. To the Public (SG § 15072).

On or before the commencement of the review period, the Notice of Intent to Adopt a Negative Declaration shall be:

- (a) Given to all persons who have requested such notice;
- (b) Published one time in a newspaper of general circulation within the City; and
- (c) Posted in the Office of the County Clerk, Riverside County.

2. To Other Agencies (SG § 15073).

On or before the start of the review period, Staff shall mail to all Responsible Agencies and Trustee Agencies:

- (a) The Notice of Intent to Adopt a Negative Declaration;
- (b) The Draft Negative Declaration; and
- (c) The Initial Study documents.

When one or more State agencies will be a responsible agency, trustee agency, or has jurisdiction over natural resources affected by the project, Staff shall mail to the State Clearinghouse for distribution to the appropriate State agencies:

- (a) The Notice of Intent to Adopt a Negative Declaration;
- (b) The Draft Negative Declaration; and
- (c) The Initial Study documents.

4.4.3 Acceptance of Mitigation Measures

The project applicant must accept any mitigation measures prior to the commencement of the public review period (PRC § 21080, SG § 15070).

4.5 REVIEW PERIOD

During the noticed review period written comments regarding the Draft Negative Declaration will be accepted by the City during the review period. After the review period, the Planning Commission will consider all written comments accepted and will make a recommendation to the decision-making body.

4.6 CONSIDERATION OF ADOPTION OF NEGATIVE DECLARATION

- a. If the Planning Commission is not the decision-making body for the project, but act as an advisory body, the Planning Commission shall consider (as a regular agenda item) the Draft Negative Declaration together with the project and make recommendations to the City Council on both items.
- b. At the date, time and place set forth in the Notice of Intent to Adopt a Negative Declaration, the decision-making body for the project will conduct a public hearing to consider the adoption of the Draft Negative Declaration for the project. This hearing can be conducted at the same meeting that the project is considered for approval (SG § 15087 (b)-(c)).
- c. If the decision-making body finds, on the basis of the Initial Study and any comments received regarding the Draft Negative Declaration, that there is no substantial evidence that the project will have a significant effect on the environment, the decision-making body shall adopt the Negative Declaration. (SG § 15074 (b)).
- d. If the decision-making body finds that the project may potentially have a significant effect, the decision-making body shall direct the preparation of an EIR.

4.7 ADOPTION OF MITIGATION MONITORING PROGRAM

When the CEQA process has resulted in mitigation measures being incorporated into the approval of the project, the City shall adopt a monitoring program for the project to ensure compliance with those measures during project implementation (PRC § 21081.6).

As a condition to the approval of the project, the proponent must agree in writing:

- a. To the mitigation measures to be included in the project;
- b. To the requirements of the monitoring program; and
- c. To the City's proposed plan for funding the mitigation measures and the monitoring method.

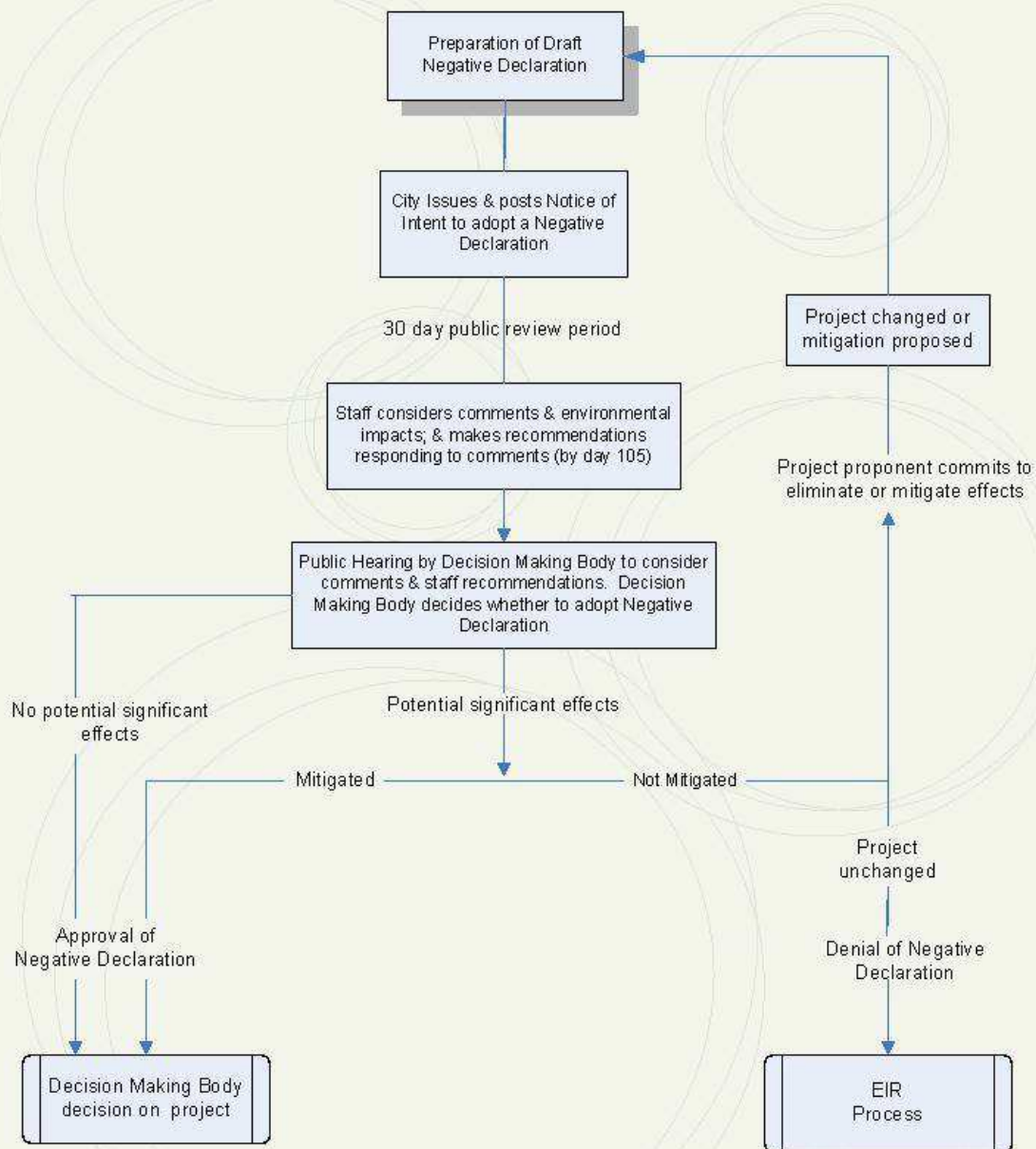
4.8 NOTICE OF DETERMINATION

Within five (5) working days of the final approval of a project for which a ND or MND is prepared, a NOD shall be prepared and filed with the County Clerk, and if necessary, with the State Office of Planning and Research (SG § 15075). The filing of the NOD begins a 30-day statute of limitations for filing court challenges. If the project has been denied, no NOD is required.

4.9 APPEAL

When a non-elected official or decision-making body of a local lead agency decides that a project is exempt from CEQA, and the agency approves the project, the decision that the project is exempt may be appealed to the local lead agency's decision-making body (SG § 15061(e)).

Figure 4
Flow Chart of Negative Declaration Process



NOTE: Figure 4 illustrates the general process set out in the City CEQA Guidelines. The language contained in the City CEQA Guidelines controls, subject to CEQA and the State Guidelines

5 ENVIRONMENTAL IMPACT REPORT

5.1 PURPOSE

When the Initial Study has produced substantial evidence from which a fair argument can be made that any aspect of the proposed project, either individually or cumulatively, may cause a significant negative effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial, an Environmental Impact Report (EIR) is required (PRC § 21151, SG § 15063(b)).

If the City can determine that an EIR will clearly be required for the project, an Initial Study is not required but may still be completed. It can be used to focus the scope of issues for the EIR if some effects are shown to not be significant.

"EIR" or "Environmental Impact Report" is a detailed statement prepared under CEQA describing and analyzing the significant environmental effects of a project and discussing ways to mitigate or avoid the effects. The purpose of an EIR is to provide information to the decision-making body when it considers the entitlements, approvals, and permits required to carry out the project (SG § 15362). The EIR will:

- a. Identify and analyze the significant effects of a project on the environment;
- b. Identify alternatives to the project as proposed; and
- c. Indicate the manner in which significant effects can be reduced, mitigated or avoided to preclude possible environmental damage (PRC § 21002.1).

5.2 PROCESS

To begin the EIR process, an NOP shall be prepared which indicates that an EIR will be prepared for the project and establish a 30-day public comment period during which written comments from agencies and the public will be accepted.

Figure 5 diagrams the EIR process which includes the following:

- a. An EIR is prepared in draft form.
- b. Notice of Completion is given that the Draft EIR is completed and available for public review and comment.
- c. The City evaluates and responds to comments.
- d. A Final EIR is prepared; and
- e. The decision-making body conducts a public hearing to consider certifying the Final EIR as complete.

5.3 PREPARATION OF DRAFT EIR

The Draft EIR will be prepared by Staff or a qualified environmental consultant selected by Staff and under contract directly to the City. The Draft EIR will satisfy the requirements of the State Guidelines (SG §§ 15120 -15132 and §§ 15140 -15153).

Staff will cause a Notice of Preparation to be created and sent to other governmental agencies which will have 30 days to respond (PRC §§ 21080.4, 21083.9, 21092.4, 21151.4, 21153; SG §§ 15082, 15103, and 15206). The contract to prepare an EIR for the City shall be executed within 45 days from the Notice of Preparation distribution date unless a time extension is mutually agreed to by the applicant and the City (PRC § 21151.5 (b)).

In preparing the Draft EIR, Staff [or consultant] may consult with other persons and organizations (SG §§ 15083, 15086(b)) and shall consult with other governmental agencies (PRC §§ 21082.1, 21153; SG § 15086(a)).

Staff may require the project proponent to supply information for use in preparing the draft EIR (SG § 15084).

5.4 NOTICE OF COMPLETION OF DRAFT EIR

As soon as the Draft EIR is completed, Staff will prepare a Notice of Completion (PRC § 21092; SG §§ 15085, 15087) which shall be:

- a. Filed with the Office of Planning and Research;
- b. Published at least one time in a newspaper of general circulation within the City;
- c. Posted in the Office of the County Clerk;
- d. Mailed to all Responsible Agencies and Trustee Agencies identified in the Initial Study;
- e. Mailed to anyone requesting such notice who has deposited an amount sufficient to pay the involved costs;
- f. Mailed to landowners, as shown on the latest equalized tax rolls, of property within 300 feet of the project site (SG § 15087); and
- g. When a state agency is a responsible/trustee agency or project will have statewide, regional or area wide impact outside the City, Staff [or consultant] will submit the Notice of Completion and ten copies of the Draft EIR to the State Clearinghouse.

The Notice of Completion will:

- a. Announce the public review period for the Draft EIR;
- b. Specify the address where the Draft EIR and all documents referenced therein are available for review; and
- c. Include a description of the significant effects on the environment, if any, anticipated as a result of the project.

5.5 REVIEW PERIOD OF DRAFT EIR

The Review Period for the Draft EIR will be no less than 45 days or no longer than 90 days. All Draft EIRs shall be submitted to the State Clearinghouse for review.

Staff shall make copies of the Draft EIR available for reading at City Hall and Library. Staff shall make copies available for purchase at a charge no equal to no more than the actual costs of reproducing the document (SG § 15045).

During the Review Period of the Draft EIR, affected agencies and the public have the opportunity to submit to the City written comments regarding the adequacy of the Draft EIR.

During the review period, the decision-making body may, but is not required to, conduct one or more noticed, public hearings on the Draft EIR to solicit more comment. A public hearing on the Draft EIR shall be conducted no sooner than fourteen (14) days after the publication of the Notice of Completion (SG § 15087(i)).

5.6 EVALUATION OF AND RESPONSES TO COMMENTS

After the Review Period, Staff shall evaluate and prepare written responses to the comments received during the Draft EIR's Review Period (SG § 15088).

If, after the Review Period, significant new information is added or substantial changes are made to the Draft EIR, then Staff will recirculate the modified, Draft EIR for additional review (PRC § 21092.1).

5.7 PREPARATION OF FINAL EIR

Based on the Draft EIR, the comments thereon, and the City's responses to those comments, Staff [or consultant] shall prepare a Final EIR (SG § 15132).

5.8 CERTIFICATION OF FINAL EIR

The Final EIR shall be submitted to the decision-making body. (SG § 15089) Staff [or consultant] will prepare a "Notice of Public Hearing to Certify Final EIR" which:

- a. Announces that the Final EIR is on file at the City; and
- b. Sets a date, time and place for a public hearing, to be conducted by the decision-making body to consider the certification of the Final EIR.

The Notice of Public Hearing to Certify Final EIR will be:

- a. Filed with the Office of Planning and Research;
- b. Published at least one time in a newspaper of general circulation within the City;
- c. Posted in the Office of the County Clerk;
- d. Mailed to all Responsible Agencies and Trustee Agencies identified in the Initial Study;
- e. Mailed to any interested parties requesting such notice;
- f. Mailed to landowners, as shown of the latest equalized tax rolls, of property within 300 feet of the project site (SG § 15087); and
- g. When a state agency is a responsible/trustee agency or project will have statewide, regional or area wide impact outside the City, Staff [or consultant] will

submit the Notice of Completion and ten copies of the Final EIR to the State Clearinghouse.

If the Planning Commission is not a decision-making body for the project, but does act as an advisory body regarding project approval, then prior to the City Council's public hearing, the Planning Commission shall consider the Final EIR, together with the project, and make recommendations to the City Council on both items.

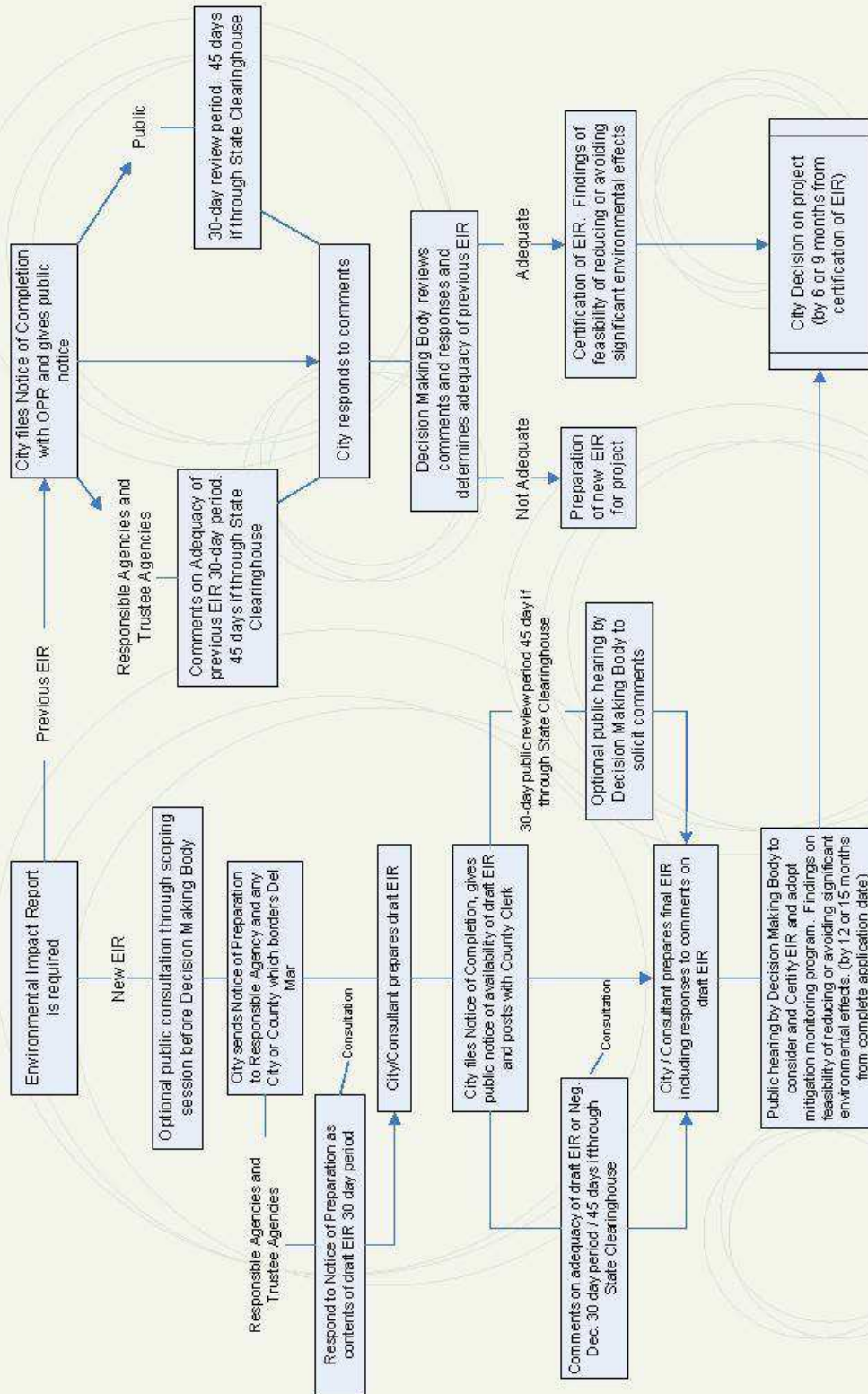
At the date, time and place set forth in the Notice of Public Hearing to Certify Final EIR, the decision-making body for the project will conduct a public hearing to consider the certification of the Final EIR for the project. This hearing may be conducted at the same meeting that the project is considered for approval (SG 15087 (b)-(c)).

The decision-making body shall determine whether to certify the Final EIR. (SG 15090). If the decision-making body determines not to certify the Final EIR, a new Draft EIR shall be processed.

If the decision-making body is the Planning Commission, the determination of the Planning Commission to certify the Final EIR may be appealed to the City Council.

Once the Final EIR is certified, the decision-making body may determine whether to approve the project.

Figure 5
Flow Chart of Environmental Impact Report Process



NOTE: Figure 5 illustrates the general process set out in the City CEQA Guidelines. The language contained in the City CEQA Guidelines controls, subject to CEQA and State Guidelines

6 DECISION ON PROJECT

6.1 PURPOSE

The purpose of the final step of these Guidelines is to integrate the information developed by the CEQA process into the decision-making process regarding the approvals, entitlements, and permits required to carry out the project.

State CEQA Guidelines contain both the process for project approval and the notification process (SG §§ 15091 -15095).

6.2 PROCESS

Figure 6 presents a diagram of the process for deciding whether to approve the proposed project and includes the following:

- a. Findings regarding significant adverse effects;
- b. Responses to Environmental Effects;
- c. Statement of Overriding Considerations (if necessary);
- d. Adoption of Mitigation Monitoring Program;
- e. Notice of Determination; and
- f. Certificate Regarding Fish and Game Fee

6.3 FINDINGS REGARDING SIGNIFICANT ADVERSE EFFECTS

The decision-making body must make findings demonstrating that the City considered the environmental consequences regarding each significant adverse effect identified in the CEQA documents. **Each of these findings must be supported by substantial evidence in the administrative record** (PRC §§ 21081, 21081.5, 21002.1; SG §§ 15003, 15091).

6.4 RESPONSES TO ENVIRONMENTAL EFFECTS

The State Guidelines lists the conditions under which a project may be approved by the decision-making body (SG § 15092).

The CEQA process by itself does not control the way in which a project can be built or carried out. Rather, when the CEQA process shows that a project would cause significant adverse effects to the environment, the City may respond to the environmental information by one or more of the following methods:

- a. Requiring revisions to the proposed project which eliminate adverse effects (SG § 15091);
- b. Imposing mitigation measures as conditions on the approval of the project to eliminate or substantially lessen the adverse effects (SG § 15091);
- c. Adopting plans or ordinances applicable to the proposed project to control a broader class of activities to eliminate or substantially lessen adverse effects caused by the project;
- d. Choosing a project alternative discussed in the CEQA documents, which eliminates or substantially lessens the adverse effects, and meets the same need as the proposed project;

- e. Disapproving the project; or
- f. Finding that, based on substantial evidence on the record which is cited in the finding, the changes or alterations to the project necessary to totally eliminate all of the significant adverse effects are not feasible and that the unavoidable significant environmental damage is acceptable due to the cited overriding considerations (SG §§ 15091, 15093).

6.5 STATEMENT OF OVERRIDING CONSIDERATIONS

If the decision-making authority decides to approve a project for which significant environmental consequences have not been avoided or substantially lessened, the authority shall issue a statement identifying the other interest(s) on which approval is based. Impacts that have been fully mitigated need not be addressed in this statement. (SG § 15093).

6.6 ADOPTION OF MITIGATION MONITORING PROGRAM

When the CEQA process has resulted in mitigation measures being incorporated into the approval of the project, the City shall adopt a monitoring program for the project to ensure compliance with those measures during project implementation (PRC § 21081.6).

As a condition to the approval of the project, the proponent must agree in writing:

- a. To the mitigation measures to be included in the project;
- b. To the requirements of the monitoring and reporting program; and
- c. To the City's proposed plan for funding the mitigation measures and the monitoring and reporting method.

6.7 NOTICE OF DETERMINATION

Within 5 working days of project approval, Staff will file a Notice of Determination with the County Clerk (PRC § 21152). If the project requires a discretionary approval from any state agency, the Notice of Determination shall also be filed with the State Office of Planning and Research. The appeal statute of limitations ends thirty (30) days after this filing. (PRC § 21167).

The State CEQA Guidelines contains a Notice of Determination form. The Notice of Determination will include any Statement of Overriding Considerations (SG Appendix D).

6.8 CERTIFICATE REGARDING FISH AND GAME FEE

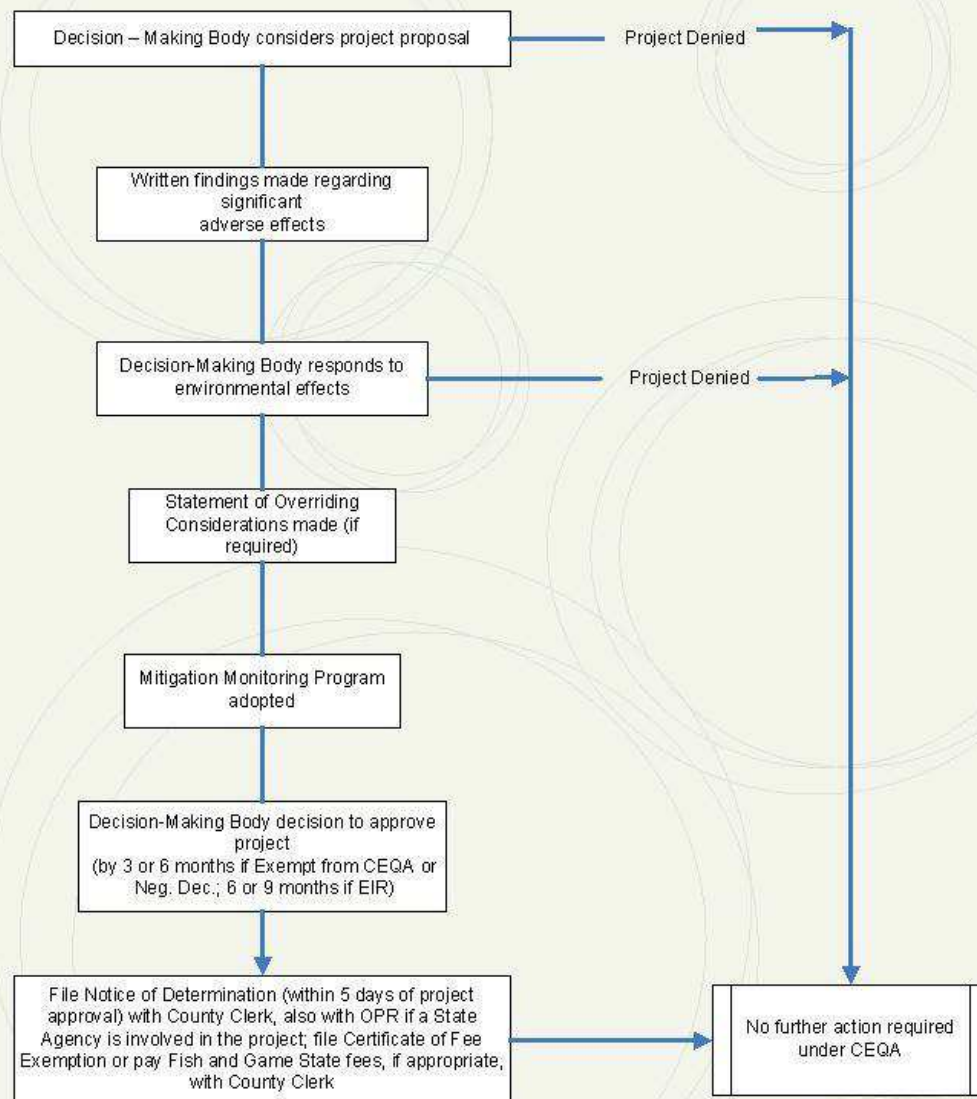
Either the State Fish and Game fee or a Certificate of Fee Exemption must be filed with the County Clerk together with the Notice of Determination. State Department of Fish and Game can reject the claim of exemption. Without the fee or an accepted exemption, the Notice of Determination is not operative, vested, or final.

6.9 PROJECT APPROVAL OR DISAPPROVAL

- a. The City shall not approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless:

1. The City makes one or more of the findings required by CEQA, **based on and supported by substantial evidence in the record** (PRC § 21081, 21081.5);
 2. The City adopts appropriate monitoring and reporting programs (PRC § 21081.6(a));
 3. The City adopts with appropriate mitigation measures (PRC § 21081.6(b));
 4. The City specifies the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based (PRC § 21081.6(a)(2)); and
 5. When acting as a Responsible Agency, the City comments to the Lead Agency during the public review period as specified by CEQA (PRC § 21081.6(c)).
- b. The City shall not disapprove a project in order to comply with the time limits specified in these CEQA Guidelines (GC § 65952.2).

FIGURE 6
Flow Chart of Decision of Project Process



NOTE: Figure 6 illustrates the general process set out in the City CEQA Guidelines. The language contained in the City CEQA Guidelines controls, subject to CEQA and State Guidelines.

7 CHANGES IN PROJECT/SUBSEQUENT ENVIRONMENTAL REVIEW

7.1 SUBSEQUENT ENVIRONMENTAL REVIEW

When an EIR has been certified or a ND adopted, no further environmental review shall be required for the project, unless the lead agency determines, based on substantial evidence in light of the record, that one or more of the following exist (SG § 15162):

7.1.1 Changed Project

Substantial changes are proposed in the project which will require major revisions of the previous EIR or ND due to the involvement of new significant environmental impacts or a substantial increase in the severity of previously-identified effects; or

7.1.2 Changed Circumstances

Substantial changes have occurred with respect to the circumstances under which the project is undertaken, that will require major revisions of the EIR or ND/MND, due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified effects; or

7.1.3 New Information

New information of substantial importance that was not known and could not have been known at the time the previous EIR was certified as complete or the ND/MND was adopted and shows any of the following:

- (a) The project will have one or more significant effects not discussed in the previous EIR or ND/MND;
- (b) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
- (c) Mitigation measure or alternatives previously found to be not feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation or alternative; or
- (d) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

7.2 SUBSEQUENT ENVIRONMENTAL DOCUMENT REQUIRED

Depending on the nature of the proposed revisions or changes to the EIR or ND, the type of document required shall be prepared in accordance with the State Guidelines §§ 15162-15164. Either a Subsequent EIR, supplement to an EIR, or an addendum to an EIR will be required to be prepared. In approving a project with a subsequent environmental document, the Decision Maker shall recite in its findings, based on substantial evidence on the record, the basis of the selection and preparation of the subsequent environmental document.

8 SEVERABILITY

8.1 SEVERABILITY

The provisions of the Supplemental CEQA Guidelines, or any of its provisions, are to be liberally construed to the end that all adverse consequences of a proposed project are fully disclosed to public decision makers and the public. If any provision of these procedures or its application to any project is held invalid for any reason, such invalidity shall not affect any other provision or application of this document, or any of its provisions, which can be affected without the invalid provision or application, and to this end the provisions of this act are severable.

9 REVISIONS TO POLICY

9.1 REVISIONS

From time to time, Staff shall review these procedures for consistency with CEQA and make a recommendation to the City Council regarding any suggested revisions.