



Agenda Item 24

DATE: February 24, 2015
TO: Board of Supervisors
FROM: Alan Weaver, Director *Alan Weaver*
Department of Public Works and Planning
SUBJECT: Alternative Environmental Impact Report Preparation Process

RECOMMENDED ACTION:

Approve revisions to the County's Regulations and Procedures for the Implementation of the California Environmental Quality Act by adding an Alternative Environmental Impact Report Preparation Process, originally approved as a pilot program that allows applicants to select an Environmental Impact Report consultant(s) of their choice from the County's approved Environmental Impact Report Consultant Master List.

On February 26, 2013, and April 23, 2013, your Board approved a pilot program to allow applicants the option of selecting an Environmental Impact Report (EIR) consultant(s) of their choice from the County's EIR Consultant Master List thus avoiding the standard County Request for Proposal process in an effort to streamline the EIR consultant selection process. Department staff is now recommending that this option be permanently available to County applicants.

ALTERNATIVE ACTION(s):

Your Board can determine not to permanently implement the Alternative EIR Preparation Process.

FISCAL IMPACT:

There is no net County cost associated with the recommended action. Costs associated with implementation of this item would be paid by project applicants.

ADMINISTRATIVE OFFICE REVIEW _____

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Official Action of
Board of Supervisors

[Signature]
Deputy

APPROVED AS RECOMMENDED

UNANIMOUS ☒ BORGEAS _____ MENDES _____ PACHECO _____ PEREA _____ POOCHIGIAN _____

DISCUSSION:

On February 26, 2013, staff presented an Agenda Item to your Board proposing revisions to the County's regulations pertaining to the California Environmental Quality Act (CEQA) implementation by adding a one-year pilot program to allow applicants to prepare their own EIRs for private development projects, as determined appropriate by your Board. The recommended pilot program was developed in response to comments received from the development industry regarding opportunities to enhance and reduce timelines for the County's environmental and development review process. Specifically, this option was identified in order to streamline the EIR consultant selection process which currently requires a Request for Proposal (RFP) and the associated selection/interview and agreement process. Upon consideration, your Board approved this one-year Alternative EIR Preparation Pilot Program (EIR Pilot Program).

Subsequently, on April 23, 2013, your Board modified the EIR Pilot program to waive County Administrative Policy No. 34 (competitive bids) and required retention of the EIR consultant by Fresno County (in lieu of the applicant) with authority granted to the Director of the Department of Public Works and Planning, or designee, to execute all required agreements associated with the EIR Pilot Program. The EIR Pilot Program still accommodated the applicant's ability to select an EIR consultant, but did not allow them to contract with the consultant directly; the County retained that responsibility pursuant to the existing County CEQA procedures. Contracts are required between the applicant and the County for the applicant to pay for the consultant services, and the consultant and the County for the preparation of the EIR.

Since implementation of the EIR Pilot Program, one applicant has utilized this option and the alternative selection process did save a considerable amount of processing time (approximately six months). While only one EIR has had to be prepared since the implementation of the EIR Pilot Program, staff believes that offering this option on a permanent basis will provide a viable alternative to the standard RFP process while still maintaining integrity in the process by still requiring the County to contract directly with the selected EIR consultant, and follow the County's EIR preparation and public outreach process. Approval of the recommended action to permanently implement the Alternative EIR Preparation Program will also require continuation of the waiver of County Administrative Policy No. 34 (competitive bid) to grant the Director of the Department of Public Works and Planning, or designee, the authority to execute all required agreements associated with the Alternative EIR Preparation Program. Please see Exhibit "A", Page 8 for the proposed revisions. The existing RFP process will remain as an option for selecting EIR consultants.

REFERENCE MATERIAL:

BAI #11, February 26, 2013
BAI #23, April 23, 2013



**Development
Services
Division**

**County of Fresno
Regulations and Procedures for the Implementation
of the California Environmental Quality Act**
~~(Revised February 26, 2013)~~
(Revised February 24, 2015)
Department of Public Works and Planning

I. OBJECTIVE

The California Environmental Quality Act (CEQA) is regarded as the foundation of environmental law and policy in California. The main objectives of CEQA are to disclose to decision makers and the public, prior to decision making, any significant environmental effects of proposed projects and to require public agencies to avoid or reduce significant adverse environmental effects by implementing feasible alternatives or mitigation measures. Other CEQA objectives are enhancement of public participation in the planning process, fostering of intergovernmental coordination in the review of projects, and public disclosure regarding reasons for agency approval of projects with significant environmental effects.

CEQA which is set forth in Public Resources Code section 21000, et. seq. authorizes the Secretary of the California Resources Agency to adopt "Guidelines" to implement CEQA. The Guidelines are published in Title 14 of the California Code of Regulations.

Public Resources Code section 21082 requires that all public agencies adopt by ordinance, resolution, rule or regulation, the objectives, criteria and procedures for the evaluation of projects and the preparation of environmental impact reports and Negative Declarations. Section 15022(d) of the Guidelines allows public agencies to adopt the CEQA Guidelines through incorporation by reference and to adopt procedures or provisions that are necessary to tailor the general provisions of the CEQA Guidelines to the specific operations of the public agency.

The County of Fresno hereby adopts the following provisions to implement CEQA and the Guidelines. These regulations and procedures are intended to adopt the CEQA Guidelines by reference and to supplement and define the CEQA review process of Fresno County thereby clarifying the roles and responsibilities of the decision-making bodies and various County departments within that process.

II. SUPPLEMENTAL DEFINITIONS

The list of defined terms in the Guidelines is expanded to include definitions unique to Fresno County environmental review:

- A. "Board" shall mean the Board of Supervisors of Fresno County;
- B. "County" shall mean the County of Fresno;
- C. "Department" means the Department of Public Works and Planning
- D. "Director" shall mean the Director of the Fresno County Department of Public Works and Planning;
- E. "Decision-Making Body" shall mean the Board, Planning Commission, or individual authorized to approve or render an advisory decision on a project or activity.

III. ROLES AND RESPONSIBILITIES

Department of Public Works and Planning

CEQA requires environmental evaluations to be conducted prior to initiating a public project or activity or prior to granting discretionary approval of a private project. Under County policy, the Department of Public Works and Planning ("Department"), is responsible for the preparation of environmental documents required for compliance with CEQA.

The Department has responsibility to first determine if an activity is a project, as defined in the Guidelines. If a proposed activity is not determined be a project, it is not subject to CEQA.

If an activity is a project, the Department shall determine if it has exempt status. The Guidelines contain certain activities that have been exempted from CEQA:

- Statutory Exemptions are granted by the State Legislature and include activities that are ministerial in nature. Ministerial decisions are those that require little or no judgement but are based on established and/or objective standards, such as a building permit.
- Categorical Exemptions are classes of projects that have been determined by the California Resources Agency to not have a significant effect on the environment.
- CEQA also contains a general rule that where it can be seen with certainty that a project will not have a significant effect on the environment, the project is not subject to CEQA.

The Department shall conduct an environmental review to determine possible exemption for all discretionary projects.

If a project is determined not to have exempt status the Department has the responsibility to prepare an Initial Study ("IS") in order to determine whether the project may have a significant effect on the environment.

If the IS shows that there is no substantial evidence that the project may have a significant effect, a Negative Declaration shall be prepared by the Department. If potentially significant effects are identified but revisions made by or agreed to by the applicant would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, a Mitigated Negative Declaration shall be prepared by the Department.

If the IS shows that the project may have a significant effect on the environment, the Department is responsible for the preparation of an Environmental Impact Report ("EIR").

This process is summarized in the Fresno County CEQA Process Flow Chart, Exhibit "A".

Decision-Making Body

The decision-making body has the responsibility to determine if a project will have a significant environmental effect and accordingly, shall determine whether a Negative Declaration, Mitigated Negative Declaration, or EIR is appropriate.

Other County Departments

Directors of other County Departments may request the Director of the Department of Public Works and Planning ("Director") to complete environmental reviews to determine whether certain types of projects/activities are exempt from CEQA.

IV. INITIAL STUDY

General

CEQA encourages agencies to implement streamlined procedures and/or policies in order to process environmental evaluations in the most efficient and expeditious manner. In order to meet this objective, the Department shall conduct environmental evaluations concurrently with the processing of the associated discretionary land use applications. This practice provides numerous opportunities to streamline the environmental review process, including:

- Following receipt of an application, a single distribution requesting reviewing agencies to comment on both project environmental effects and project considerations related to County ordinances and policies;
- Opportunity to consider and incorporate environmental considerations into the design of a project;
- Concurrent public noticing and review period for the environmental document and the project; and
- A single public hearing for consideration of both the environmental document and the project.

Steps for Preparing Initial Study

1. The Department shall provide an appropriate application form and shall specify any additional information including maps, plans, drawings and studies deemed necessary by the Department to initiate the IS.
2. The Department shall solicit comments from other departments, agencies, and individuals including responsible and trustee agencies with appropriate expertise to assist in identifying potential impacts, determining their significance, and identifying appropriate mitigation measures. This step is critical to determine if an application is complete.
3. The Department will make a determination if the application is complete within 30 days of receipt of the application, or such other time period as may be specified by CEQA. In the event an application is not complete, the applicant shall be notified in writing of the determination. This notification shall specify the additional information or technical studies necessary to make the application complete. Processing of the environmental application shall not resume until the required information is submitted.
4. If technical studies are required in order to process the environmental application, a disclosure/disclaimer statement shall be submitted by both the applicant and consultant describing any interests shared, financial, or otherwise. If technical studies are required in order to address water quantity issues, the applicant shall select a Hydro-geologic or other qualified consultant to prepare said studies from a Department approved Consultant Master List. If the consultant that the applicant wishes to retain is not on the approved Consultant Master List, said consultant qualifications shall be reviewed by County staff to determine adequacy. Work related to the Hydro-geologic study shall not commence unless and until the scope of work for the study has been approved by the County Water/Geology and Natural Resources Unit. In all cases, staff shall retain the discretion to require that certain studies be replicated (at the applicant's expense) in order to ensure consistency and integrity in the process.

5. The Department shall prepare the IS in the most expeditious manner as possible after acceptance of a completed application but no later than 180 days, or such other time period as may be specified by CEQA.
6. If the IS concludes that a Negative Declaration or Mitigated Negative Declaration is appropriate, the Department shall publish a Notice of Intent of Negative Declaration or Mitigated Negative Declaration in a newspaper of general circulation at least 20 days prior to the date action has been scheduled for the project, or such other time period as may be specified by CEQA.
 - a) When the decision-making body is required to hold a public hearing the Notice of Intent shall: Specify the project and location; start and end dates during which written comments on the Negative Declaration or Mitigated Negative Declaration will be received by the Department; location to deliver public comments; where copies of the environmental document may be reviewed; and the time, date and location of the public hearing when the decision-making body will determine whether a Negative Declaration, Mitigated Negative Declaration, or EIR is appropriate.
 - b) When the decision-making body is not required to hold a public hearing the Notice of Intent shall: Specify the project and location; start and end dates during which written comments on the Negative Declaration or Mitigated Negative Declaration will be received by the Department; location to deliver public comments; where copies of the environmental document may be reviewed; and the date when the decision-making body shall determine whether a Negative Declaration, Mitigated Negative Declaration, or EIR is appropriate.
7. The action of the decision-making body, if not the Board of Supervisors, may be appealed within 15 days of the date of the action, or other time period as may be specified in CEQA.
8. Within five days of the date of the final action on a project on which a Negative Declaration or Mitigated Negative Declaration has been approved, the Department shall file, with the County Clerk, a Notice of Determination with a copy of the Negative Declaration or Mitigated Negative Declaration attached.
9. If the IS concludes that a Negative Declaration or Mitigated Negative Declaration is not appropriate and an Environmental Impact Report ("EIR") should be required, staff shall forward the recommendation for an EIR to the Director. The Director shall review the determination prior to the Department's written notification to the applicant that an EIR is required.

V. ENVIRONMENTAL IMPACT REPORT (EIR)

Appeal of EIR Requirement

- A. When an applicant wishes to appeal the decision of the Director that an EIR is required, the applicant must file a written appeal with the Director within 15 days of being notified of the requirement to prepare an EIR. The written appeal request shall include the adopted appeal fee. Said appeal shall be heard by the Board of Supervisors.
- B. The appeal hearing shall be set by the Clerk to the Board of Supervisors for not less than fifteen (15) days nor more than forty (40) days after the expiration date for the filing of an appeal.

- C. Written notice of the Board hearing on the EIR appeal shall be mailed to the applicant, neighboring property owners and interested parties, as is the practice for the hearing on the project.
- D. The Board hearing shall be limited to environmental issues and shall not address the merits of the project itself. The Board will only consider the appeal of the requirement to prepare an EIR and shall render a decision whether or not an EIR is required.

Preparation of EIR

Preparation of an EIR may be initiated at the conclusion of an IS, or alternatively, during the Department's preliminary review of the project, if the applicant agrees that an EIR should be prepared.

Once a final determination is made that an EIR is necessary, the Board may authorize preparation of the EIR by a private consultant under contract, or by County staff.

The Applicant shall provide a detailed project description to the Department for review to determine adequacy for the EIR.

The EIR shall be prepared in accordance with the requirements of CEQA and the Guidelines.

EIR Consultant Master List

The Department shall maintain an EIR Consultant Master List (Master List) identifying areas of expertise of qualified environmental consultants to prepare EIRs. Consultants shall file a written request for consideration to be placed on the Master List. The request shall provide information required by the Department including but not limited to, primary areas of expertise and a list of environmental documents prepared within the last five years by the firm or by its staff if the firm is newly formed.

Interested consultants may submit requests for placement on the Master List at any time. Other information required shall include the consultant's staff, sub-consultant's qualifications, technical expertise, experience, education, and knowledge of legal requirements for CEQA documents and disclosure if environmental documents prepared by the firm were challenged in the court system, and the results of the challenge.

The Department shall have the authority to delete previously-listed consultants from the Master List based upon unsatisfactory performance of prior environmental services for the County or failure to respond to previously distributed RFPs. Prior service by a consultant shall be among the criteria used to evaluate qualifications of a consultant.

Annually, County staff shall convene to review (and/or re-review) all requests to verify that all consultants are appropriately included on the list. The review body shall consist of three County employees who have expertise or background in environmental matters, land development policies and procedures, and/or procurement procedures.

Request for Proposal

When an EIR is needed, the Department shall review the applicant-provided project description and determine the significant areas of environmental concern. Based upon that determination, the Department will prepare and distribute a Request for Proposal ("RFP") including the County's Terms and Conditions to no more than ten consultants named on the Master List. The ten consultants to receive the RFP shall be those who have in their prior request for placement on the Master List identified and demonstrated their primary areas of expertise relevant to the project. Prior to mailing of the RFP, the list of consultants and the RFP shall be submitted to the applicant for review.

Within two working days of mailing the RFP, the Department shall announce the release of the RFP on the Department's Website. The announcement shall include the release date of the RFP; project description; opportunity and deadline for response to the RFP; location where an RFP can be obtained; and a statement that the response to the RFP shall be limited to only those consultants whose names are currently on the Department's Master List.

Proposals submitted in response to the RFP shall include, but not be limited to, work program; timetables; budget; payment schedules; identification of project staff and sub-consultants; qualifications and experience; full disclosure of any contractual or other relationship with the applicant (including a subsidiary, parent, spouse, or child or any financial investment in the project or any other project or property of the applicant). The Department shall have the authority to disqualify a consultant/sub-consultant if information in the consultant's disclosure statement identifies a relationship between the applicant and consultant/sub-consultant which could compromise the integrity of the County's EIR and/or the County's policy to maintain an arm's length relationship between the applicant and consultant/sub-consultant. The decision to disqualify a consultant/sub-consultant may be appealed by the applicant to the Board of Supervisors in accordance with Section V (above) – Appeal of EIR Requirement.

In the event a project requires a consultant with special expertise in an area and the Department determines there is no firm on the Master List who possesses the required expertise, the Department may choose to distribute the RFP to consultants whose names do not appear on the Master List. In addition, in circumstances when a supplement or addendum to a previously certified EIR is necessary, the Department may contract with the EIR consulting firm who initially prepared the EIR without reliance on the RFP process.

The Panel established for review of the EIR Consultant Master List shall evaluate responses to an RFP when the number of proposals to a given project is 21 or more. The Panel shall evaluate the proposals and forward a list of the top ten qualified consultants to the Consultant Selection Committee for final selection of the EIR consultant.

Consultant Selection Committee

A Consultant Selection Committee (Committee) shall consider the top ten qualified consultants submitted by the Review Panel or if the number of RFP responses is 20 or less, the Committee shall evaluate all the proposals received, and shall make the selection of the EIR consultant.

The Committee shall consist of the project applicant and at least two Department staff (one who is the person who will manage the EIR).

In the event the Committee determines that none of the consultants submitting proposals possess the needed expertise to prepare the required EIR for a specific project, the Department may send the RFP to EIR consulting firms whose names do not appear on the Master List. Based upon the submitted proposals to the subsequent RFP, the Committee shall select the EIR consultant. The selection of the EIR consultant shall be based upon all elements of the submitted proposals and shall not be based upon the lowest bid response.

When unusual or extraordinary circumstances exist wherein a consultant has special expertise in the geographic area of the project or has conducted studies for other governmental entities in the area such that the benefits of past work accrues to the knowledge and expertise that is essential to the current project, the Board of Supervisors may determine the best interest of the County in obtaining an adequate document pursuant to CEQA would be served by selecting the consultant with special expertise in lieu of pursuing the standard RFP process.

Further, where such circumstances are found to exist, the County may determine that it would be beneficial to require a peer review of the consultant's work to assist the County in its review of the document and to further ensure the adequacy of data. In order to implement the peer review provision the County may also require the applicant agreement to contain a reimbursement provision for the services of a review consultant and related County services.

Notice of Selection

The Department shall inform the applicant, in writing, of the consultant selection and provide the applicant with the consultant's proposal.

If the applicant does not agree with the selected consultant, the applicant may request the Director to reconsider the selection prior to notification of the decision to the selected consultant. The applicant shall make such request in writing and within five days of receipt of the written notification of the EIR consultant selection.

In the event, the applicant does not agree with the decision of the Director, the applicant may appeal the EIR consultant selection to the Board of Supervisors. The EIR consultant selection may be appealed by the applicant to the Board of Supervisors in accordance with Section V (above) – Appeal of EIR Requirement.

Preparation of Required Contracts

Upon final selection of an EIR consultant, the Department shall prepare, for execution by the Board or County Purchasing Manager, a contract between the County and project applicant and one between the County and the EIR consultant.

Contracts prepared for the applicant and consultant signatures shall include stipulations requiring: a) inclusion of the County project manager or his/her designee in any meeting or other contact between the applicant and consultant and, b) the Department's authorization for each instance of written correspondence between the applicant and the consultant prior to mailing of such correspondence and the sender to provide the County a copy of all such correspondence.

Alternative EIR Preparation Process

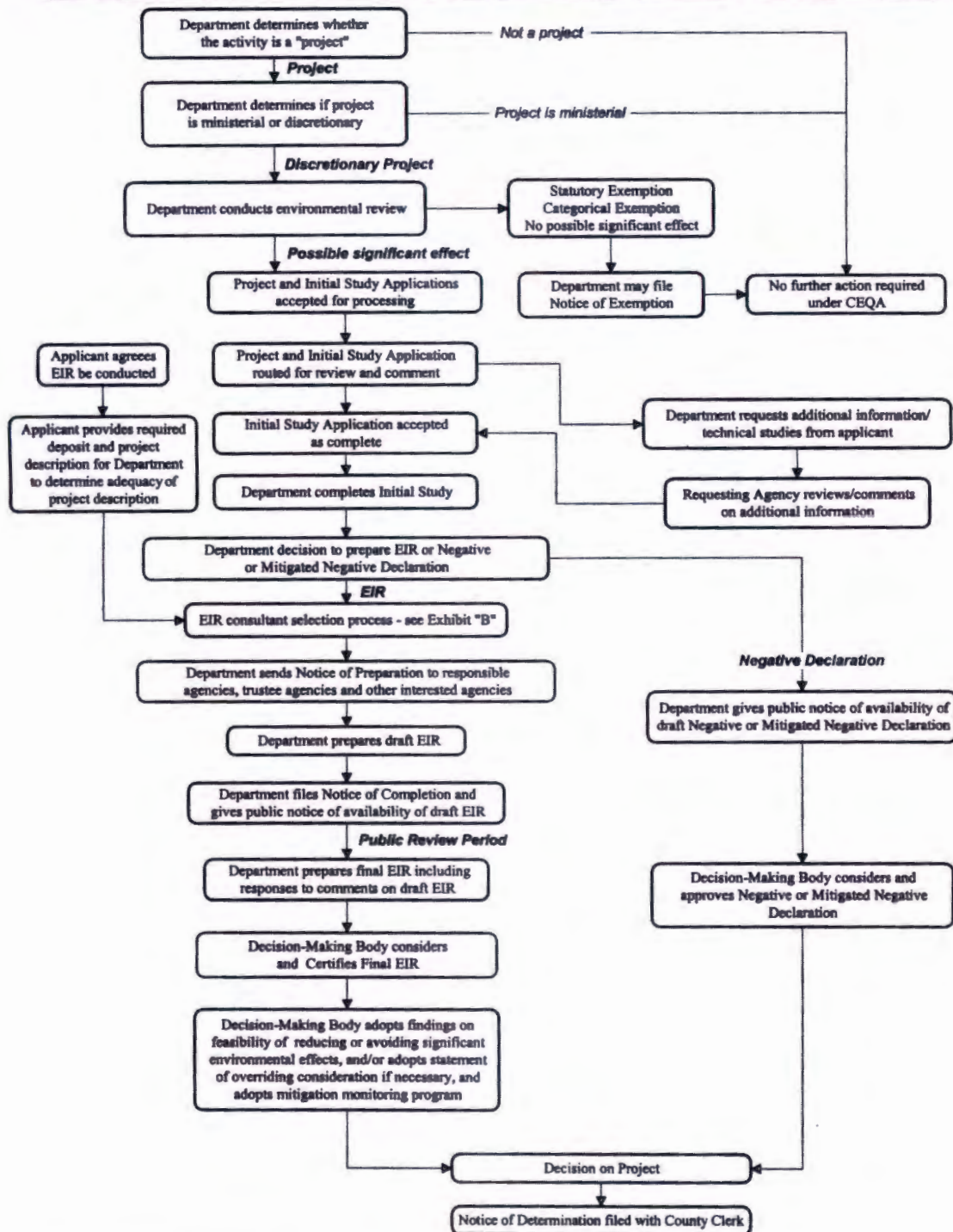
As an alternative to the EIR consultant selection process described above, a project applicant may bypass the standard County RFP process and select an EIR consultant directly from the County's EIR Consultant Master List. The selected EIR consultant shall continue to be retained by the County and be subject to the Preparation of Required Contracts Section above, except that County Administrative Policy No. 34 shall be waived and the Director of the Department of Public Works and Planning, or designee, shall be granted the authority to execute all required agreements associated with this Alternative EIR Preparation Process.

VI. REIMBURSEMENT OF ENVIRONMENTAL SERVICES

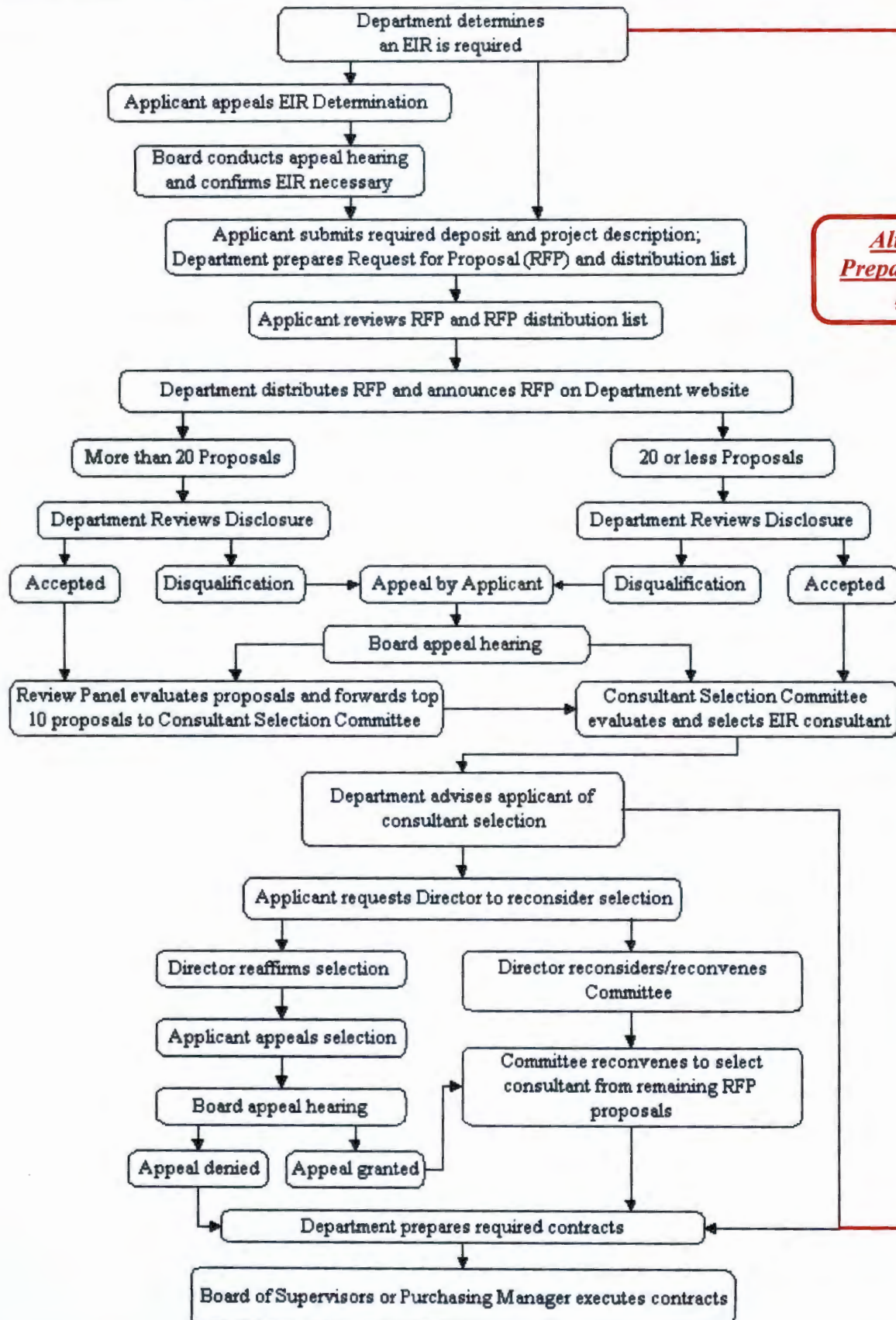
The cost of services associated with the environmental review process shall be borne by the project proponent/applicant or, as applicable, member of the general public. Such services shall include but are not limited to the following:

- A. The preparation of an Initial Study ("IS") for a proposed project;
- B. Costs of consultant services required to prepare technical studies and Environmental Impact Reports ("EIR");
- C. Costs of extra-help services required to maintain established EIR project timelines.
- D. Costs incurred by County staff during the preliminary review of the project description for use in the EIR and during the Request for Proposal process associated with the selection of an EIR consultant.
- E. Costs incurred by County staff for administration of the CEQA process and agreements for the EIR and the review of the related environmental documents;
- F. Costs of reproducing an EIR or other environmental documents when requested by a member of the public;
- G. The preparation of an environmental review to determine that a project is exempt from CEQA;
- H. Determination pursuant to CEQA Guidelines to limit or avoid subsequent environmental analysis when an EIR has been certified or a Negative Declaration adopted for a project.
- I. Collection of other fees mandated by State law such as the Department of Fish and Game fee and related administration fee.
- J. Costs incurred by the County for monitoring mitigation monitoring programs.

FRESNO COUNTY CEQA PROCESS FLOW CHART



EIR CONSULTANT SELECTION PROCESS



*Alternative EIR
Preparation Process -
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