



**County Counsel
Risk Management
COUNTY OF TULARE
AGENDA ITEM**

BOARD OF SUPERVISORS

ALLEN ISHIDA
District One

PETE VANDER POEL
District Two

PHILLIP A. COX
District Three

J. STEVEN WORTHLEY
District Four

MIKE ENNIS
District Five

AGENDA DATE: June 8, 2010

Public Hearing Required	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Published Notice Required	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Advertised Published Notice	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Meet & Confer Required	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Electronic file(s) has been sent	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Personnel Resolution attached	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Resolution, Ordinance or Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>

CONTACT PERSON: Robyn Henry PHONE: 559-733-6273 ext. 204

SUBJECT:

Earthquake Recovery Indemnity Authority (ERIA)

REQUEST(S):

That the Board of Supervisors:

Adopt Option A to continue to insure for earthquake exposure in the EIA Property Program in Tower 6 at no additional cost to the County.

SUMMARY/BACKGROUND:

The Trial Court Facilities Act of 2002, Government Code sections 70301 - 70404 (the "Act"), provides for a county to transfer responsibility for the funding and operation of all trial court facilities, as defined at Government Code section 70301(d), located in the county to the Judicial Council of California (State) through the Administrative Office of the Courts (AOC). Pursuant to the Act, the county and the AOC will enter into a transfer agreement to finalize the terms and conditions of each transfer of a court facility. All transfers were required to be completed by December 31, 2009.

As initially enacted, the Act established that neither title to, nor responsibility for, court facilities deemed deficient for seismic safety could be transferred to the State, unless provision was made in the transfer agreement for correction of the deficient items. Effective January 1, 2007, an amendment to the Act became effective that would allow the transfer of court facilities with a level V seismic rating (SRL-V) to the State so long as the county remained responsible for any earthquake related damage, and injury, to the same extent the county would be liable if responsibility

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was not transferred to the State.

For a transfer of title or responsibility of a SRL-V building to occur, the county must indemnify the State for any earthquake-related damage, and injury, pursuant to a negotiated agreement. The amendment to the Act also requires the county, in the event of earthquake related damage, to make repairs or to provide to the State sufficient funds to make those repairs.

The amendment to the Act further allows the counties and the Judicial Council of California to agree on a method to address the seismic issue so that the State would not have a financial burden greater than if the court facility transferred were rated as a level IV building. That method is the Earthquake Recovery Indemnity Authority (ERIA).

Exposure

The COT (County of Tulare) has “transferred responsibility” of two court facilities that have been classified as SRL-V: the Visalia Superior Court, and the Porterville Government Center. In accordance with the Act, COT has agreed to assume all seismic risk for these two facilities for a period of 35 years, or until the time that the facilities are no longer used as a court facility or the building is no longer classified as SRL-V. In particular, COT would be at risk to relocate the court facility which was damaged in an earthquake on a temporary basis while the original facility is being repaired, and/or pay for suitable replacement facilities. Had these facilities been classified as seismic risk level IV or better, the County would not be obligated to pay for court relocation or to repair/replace the existing facility. However, to the extent that coverage is available on these facilities in the EIA Property Program, the court’s interests are protected with an additional insured endorsement.

Options for Handling the Exposure

Option A – Continue to Insure for Earthquake Exposure in the EIA Property Program in Tower 6. Currently the County enjoys “free” earthquake coverage for all scheduled locations in Tower 6 of the EIA Property Program. Tower 6 provides a shared \$25M limit per occurrence and annual aggregate for all members and all locations under Tower 6 (\$5.7B in total insured values (TIV)). There are 27 counties, including COT, that participate in Tower 6. All 27 counties are considered to be in a low risk earthquake area, therefore there is no charge for the earthquake coverage that is provided. As mentioned, the courts are listed as additional insured on the EIA Property Program, so in the event of a covered EQ (earth quake) loss, the exposure to rebuild or replace the facility and to relocate the county and the court on a temporary basis is covered up to the \$25M limit. There is a deductible of 5% of the replacement cost of each building that the County is responsible for. EIA estimates the EQ deductible on the Visalia facility to be \$2.18M and the EQ deductible on the Porterville location to be \$161K. After exhaustion of the \$25M limit on payment of losses for all Tower 6 members – Limits apply to all COT

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facilities including court facilities and all facilities of the other 26 Tower 6 members. The County of Tulare would still be responsible for any and all costs that were not insured associated with providing suitable court facilities. Tower 6 members are situated in an area of the state with fairly low seismic risk. Option A is the status quo for COT.

Option B – Continue to Insure for Earthquake Exposure in the EIA Property Program, but move to Tower 1. The County could choose to move from Tower 6 in the EIA Property Program to Tower 1 at an additional cost of \$24,638 for the Visalia facility and \$1,804 for the Porterville location. In Tower 1, the County would have the full limits of the EIA's EQ coverage available including \$82.5M in limits shared by Tower 1 members only (\$3.1B TIV), and an additional \$225M in limits shared by all earthquake buyers in Towers 1-5 (\$14.8B TIV). The County would still retain the same 5% deductible described under Option A, the courts would be included as additional insureds, and the County would still be at risk for any uninsured earthquake loss to the courts associated with providing suitable court facilities.

Option C – Elect to join the ERIA Program. The ERIA program is the mechanism chosen by the counties and the Judicial Council of California to address the statutory seismic risk liability associated with the transfer of SRL-V buildings. Counties participating in the ERIA program will effectively transfer their statutory seismic risk liability to the ERIA. The State has (or will have) agreed to the structure of the ERIA mechanism including a \$25M cap on payments through the program. The EIA Property Program has agreed to insure the ERIA Program for the State required \$25M limit. This limit is guaranteed to pay the full \$25M limit to ERIA members to satisfy the State, even if the total limits available under the EIA program are exhausted. Due to this "priority of payments" arrangement, the EIA will charge a 10% surcharge to the ERIA members. Tulare County's locations would be moved from the County's schedule of values under Tower 6, to the ERIA's schedule of values under Tower 1. By participating in the ERIA Program, the County of Tulare will have coverage on a pooled basis for the 5% deductible exposure, and \$25M insured limits (covering County and Court losses) on a shared basis with all other ERIA members. Once the \$25M limit is exhausted by payment of covered claims, there is no additional coverage needed or available for any uninsured court loss. However, the County will still enjoy the full extent of earthquake limits available under the EIA Property Program described under Option B for the County's share of losses. The cost to join the ERIA Program will include a pooling charge from the ERIA for the deductible exposure, an ERIA admin fee, and an insurance charge for the cost to move from Tower 6 over to Tower 1 in the EIA Program. This insurance charge will be 10% higher than the cost of insurance quoted under Option B. If your Board wishes to choose this option, the County must select Option B to secure the desired coverage under Tower 1 of the EIA Program and then pay the additional costs (deductible pool charge, ERIA admin, and 10% surcharge on the insured layer) if/when the ERIA program obtains the necessary critical mass to launch the program. The County would also be required to execute the ERIA JPA Agreement

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and the Program MOU.

FISCAL IMPACT/FINANCING:

Advantages / Disadvantages of Available Options

- **Option A** is the least expensive option, if there is no earthquake. If there is an earthquake, the COT will still have insurance coverage of \$25M on a shared limit basis. COT will be responsible for payment of a 5% deductible, and if the insurance coverage is inadequate, will still have a statutory obligation to the court as stated above and beyond the insurance coverage to provide an alternate site.
- **Option B** will provide increased security in the event of a loss by purchasing additional limits in Tower 1 of the EIA Program – but this comes at a cost. COT will share a much higher limit with fewer members compared to Option A, but the shared risk is with members in areas more prone to earthquake. COT still will be responsible for the 5% deductible, and still have a statutory liability to the courts, but the chances of there being an uncovered loss are less than Option A because of the higher limits of coverage.
- **Option C** is the best option if your Board wishes to completely eliminate the liability to the courts. The liability is transferred to the ERIA and capped at \$25M as far as the State is concerned. COT will have the full limits of Tower 1 for the County's exposure and the ERIA will pay the deductible. This is the most costly option upfront since the deductible pool is pre-funded, there is an ERIA admin charge and a 10% surcharge on the insured piece.

The cost to participate in Option B and the ERIA is estimated for the coming year to be to more than \$32K. This is based upon a cost quote received from CSAC-EIA on May 11, 2010. The cost of coverage may increase or decrease from year to year and the County is obligated to provide insurance coverage for 35 years from the effective date of the transfer agreements. Total cost over the 35 years will be in excess of \$ 1 mil.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

This request is in accordance with Organizational Performance: "Provide for the stability of County operations through periods of economic fluctuations and changing priorities and service demands".

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ALTERNATIVES:

The Board may choose to elect:

1. Option B.
Direct Risk Management to increase limits of earthquake coverage within the CSAC-EIA program.
2. Option C.
Authorize participation in the ERIA, execute the JPA Agreement and Appoint a Director and Alternate Board Member.

INVOLVEMENT OF OTHER DEPARTMENTS OR AGENCIES:

If your Board accepts Option A and rejects participation in ERIA, the risk of a loss in excess of existing limits of \$25 mil exists and all County agencies could be affected.

If your Board chooses Option B or C the annual cost of participation will be spread to all County agencies by means of the property insurance allocation.

ADMINISTRATIVE SIGN-OFF:


Robyn Henry, Risk Manager
for Kathleen Bales-Lange

Cc: Auditor/Controller
County Counsel
County Administrative Office (3)

Attachment(s)

**BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF Earthquake)
Recovery Indemnity Authority (ERIA).)

RESOLUTION NO. _____
AGREEMENT NO. _____

UPON MOTION OF SUPERVISOR _____, SECONDED BY SUPERVISOR
_____, THE FOLLOWING WAS ADOPTED BY THE BOARD OF SUPERVISORS,
AT AN OFFICIAL MEETING HELD _____, BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: JEAN M. ROUSSEAU
 COUNTY ADMINISTRATIVE OFFICER/
 CLERK, BOARD OF SUPERVISORS

BY: _____
 Deputy Clerk

* * * * *

The Board of Supervisors,

Adopted Option A-

To continue to insure for earthquake exposure in the EIA Property Program in Tower 6
at no additional cost to the County.