



Board Agenda Item 31

DATE: November 24, 2020

TO: Board of Supervisors

SUBMITTED BY: Paul Dictos, CPA, Assessor-Recorder

SUBJECT: Notice of Withdrawal from Joint Powers Agreement with California Electronic Recording Transaction Network Authority (CERTNA) and Approval of Memorandum of Understanding for Statewide Electronic Courier Universal Recording Environment (SECURE)

RECOMMENDED ACTION(S):

- 1. Adopt a Resolution of intent to withdraw from the California Electronic Recording Transaction Network Authority effective July 1, 2021.**
- 2. Approve and authorize the Chairman to execute a Memorandum of Understanding with the counties of Orange, Los Angeles, Riverside, and San Diego for the Statewide Electronic Courier Universal Recording Environment, a multi-county electronic recording delivery system, effective November 24, 2020, through August 18, 2023, total not to exceed \$300,000.**

Approval of the first recommended action will allow for the County to withdraw from the California Electronic Recording Transaction Network Authority (CERTNA) effective July 1, 2021. Approval of the second recommended action will allow the Assessor-Recorder to participate in the Statewide Electronic Courier Universal Recording Environment (SECURE). These actions will assist in the process of transitioning the Recorder's office to a new electronic recording delivery system, which allows authorized submitters, such as title companies and lenders, to submit digitized records and digital electronic records for recording. This item is countywide.

ALTERNATIVE ACTION(S):

If the recommended actions are not approved by your Board, the County will continue to accept digitized records and digital electronic records for recordation through the California Electronic Recording Transaction Network (CERTN).

FISCAL IMPACT:

There is no increase in Net County Cost (NCC) associated with the recommended actions. The proposed Memorandum of Understanding (MOU) has an initial buy-in fee of \$50,000 plus an estimated annual compensation amount of \$67,200. The total costs under the MOU shall not exceed \$300,000. Sufficient appropriation and estimated revenues for the costs associated with this MOU are included in the Recorder Org 1048 Fiscal Year 2020-21 Adopted Budget and will be included within subsequent recommended budgets. The potential cost per month to record paper documents should that need arise is estimated to be \$88,000, and these costs will be included in FY 2021-22 recommended Budget with no impact to NCC.

DISCUSSION:

On July 22, 2008, the Board approved the Agreement No. 08-397 to join CERTNA for the purpose of using CERTN, which is an Electronic Recording Delivery System (ERDS). An ERDS allows authorized submitters, such as title companies and lenders, to submit digitized records and digital electronic records for recording under the Electronic Recording Delivery Act of 2004. Currently roughly 73 percent of all documents recorded in Fresno County are submitted through the County's ERDS.

Staff believes that CERTNA is not going to be able to sustain its operations because it is lacking solid oversight, it does not have management succession planning, there are various financial audit findings, and the largest founding member, San Bernardino County, has withdrawn. Also, because CERTNA is run by a Board of Directors, and the Assessor-Recorder is a member of that board, it is necessary for the Assessor-Recorder to travel quarterly to attend board meetings. That is an additional travel cost of approximately \$500 per quarter that the County incurs. For those reasons, staff wishes to withdraw from CERTNA, and the County may only withdraw from it as of the first day of July of any year following six months' notice by resolution of intent to withdraw adopted by the Board. Approval of the first recommended action will cause the County to withdraw from CERTNA effective July 1, 2021.

The Electronic Recording Delivery Act of 2004 requires that State Attorney General certifies and monitors the security of any ERDS. Currently there are only two ERDS that have been approved by State Attorney General, namely CERTN and SECURE.

The counties of Orange, Los Angeles, Riverside, and San Diego have created SECURE, which is another ERDS system, like CERTN. Those counties share the ownership and ongoing maintenance of SECURE. Other counties may use SECURE by entering into an agreement to use the service. Counties that use SECURE must pay an initial buy-in fee, based on the number of documents recorded annually, and then pay an annual fee based on documents actually recorded through the system. Currently, the fee is \$0.30 per recorded document. Fresno County averages about 224,000 recorded documents per year, so the buy-in fee would be \$50,000 and staff estimates that the average annual fee would be about \$67,200. Staff estimates that this would be between \$40,000 to \$60,000 in annual savings for the County over CERTNA, if the County were to move to SECURE. The annual maximum under the memorandum of understanding (MOU) for SECURE will not exceed \$300,000.

The largest counties in the State, such as Los Angeles, Orange, San Diego, Ventura, Riverside, and San Bernardino are part of SECURE. The County of Tulare also uses SECURE.

Because SECURE is a coalition of counties, and not a joint powers authority, like CERTNA, there are no board meetings to attend, and the Assessor-Recorder would not need to travel 200 miles each quarter to attend meetings. Thus, resulting in approximately \$500 savings in quarterly travel costs, if the County were to move to SECURE.

If the implementation of SECURE is delayed and not completed by July 1, 2021, when the County withdraws from CERTNA, the County would not have an ERDS as of that date. That means the County would only be able to accept paper documents for recording for a period of time until SECURE is operational. Accepting only paper documents for recording would create significant burdens for Recorder staff. As well, this period without an ERDS could cause title companies and other government agencies to experience delays in recording of their documents, which would affect real estate transactions throughout Fresno County. To compensate for these problems, the Assessor-Recorder would need to increase its staffing by temporarily reassigning staff from other units to timely record paper documents. If needed, Recorder's special revenue fund can absorb the overtime cost for staff to process daily paper recordings.

The letter of intent was approved by your Board on October 6, 2020 stating that the County wishes to explore participating in SECURE, with the intention of going live on July 21, 2021. After the approval of the letter of intent staff started discussions on the technical requirements with SECURE and the development of the project plan. Copy of the project implementation plan is included with this agenda item.

Upon approval of the MOU for SECURE, the Assessor-Recorder will start the implementation process with the plan of going live on July 1, 2021. The implementation process will not impact current operations. It will require staff training and some information technology connections in a test environment within the current recording system. ISD-IT will also be involved in the implementation process. The MOU for SECURE does not include a deadline for implementation, and the terms of the MOU are not negotiable. Separately, however, Assessor-Recorder staff and Orange County Clerk-Recorder staff prepared a detailed project implementation plan, which is attached to this agenda item. Based on the project implementation plan, the Assessor-Recorder is confident that SECURE's implementation will be completed by April 2021, prior to the County's withdrawal from CERTNA on July 1, 2021.

A certificate of operation from the State Department of Justice (DOJ) is needed for the County to join SECURE. In order to obtain the certificate, an audit by DOJ must be completed. A DOJ audit is scheduled to start after your Board's approval of this item and completed by December 2020, and staff expects that the audit will result in a certificate allowing the County to operate with SECURE.

In addition, the testing of SECURE web services and SECURE User Acceptance Testing (UAT) environment is scheduled to be completed by end of December 2020. The user acceptance (approval of test environment), staff training and DOJ's final certification of operation is scheduled to be completed in January 2021. The go live date is planned to be April 2021.

REFERENCE MATERIAL:

BAI #22, October 6, 2020

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Resolution
Fresno County SECURE Implementation Project Plan
On file with Clerk - Memorandum of Understanding

CAO ANALYST:

Ronald Alexander