



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

File #: RES 20-189, **Version:** 1

- a. Adopt a Resolution Authorizing the County, by and through the County Clerk/Recorder (CCR) to declare its intention to withdraw from the California Electronic Recording Transaction Network Authority (CERTNA) effective July 1, 2021;
- b. If determined to be prudent and in the best interest by the CCR, authorize the CCR to rescind its withdrawal notice and continue to participate in CERTNA; and
- c. If determined to be prudent to proceed with withdrawal from CERTNA, authorize the County Clerk Recorder to take any and all necessary actions to finalize the withdrawal from its participation in CERTNA and take any and all necessary actions to participate in SECURE under the Electronic Recording Delivery Act (ERDA) of 2004 pursuant to an MOU approved by County Counsel containing no less favorable terms as exist in the current CERTNA JPA.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Adopt a Resolution Authorizing the County, by and through the County Clerk/Recorder (CCR) to declare its intention to withdraw from the California Electronic Recording Transaction Network Authority (CERTNA) effective July 1, 2021;
- b. If determined to be prudent and in the best interest by the CCR, authorize the CCR to rescind its withdrawal notice and continue to participate in CERTNA; and
- c. If determined to be prudent to proceed with withdrawal from CERTNA, authorize the County Clerk Recorder to take any and all necessary actions to finalize the withdrawal from its participation in CERTNA and take any and all necessary actions to participate in SECURE under the Electronic Recording Delivery Act (ERDA) of 2004 pursuant to an MOU approved by County Counsel containing no less favorable terms as exist in the current CERTNA JPA.

SUMMARY/DISCUSSION:

The Electronic Recording Delivery Act (ERDA) of 2004 (Govt. Code Sec. 27390-27399) established a local option for electronic filing of real property instruments. ERDA requires the Attorney General to certify and provide oversight for any electronic recording delivery system; the Department of Justice (DOJ) has been assigned the responsibility for the implementing the 2004 ERDA. Regulations to administer an Electronic Recording Delivery System (ERDS) have been established under Title 11, Division 1, Chapter 18, Articles 1 through 9 of the California Code of Regulations. The regulations define guidelines, procedures and standards which shall ensure the security of an ERDS.

On May 11, 2010, the Board adopted a Resolution approving the County's participation in ERDA, Resolution No. 10-118, and delegated authority to the County Clerk/Recorder (CCR) or his designee to participate in the California Electronic Recording Network Authority (CERTNA), Resolution No. 10-120. The CCR currently uses CERTNA's portal to accept and record real estate documents electronically. CERTNA is a joint powers public entity certified by the Department of Justice under ERDA for the purpose of providing an ERDS portal to its member counties.

Recently, a county in Southern California announced its intention to opt out of CERTNA. That county decided to change to an ERDS that consists mainly of Southern California counties called Statewide Electronic Courier Universal Recording Environment (SECURE). CERTNA and SECURE are the only two Department of Justice certified portals for electronic recording available to the various County Recorders in California. The loss of this participant and possible additional loss of other county participants in CERTNA may negatively affect the stability of CERTNA. Due to the aforementioned reasons, if it is in the best interest of the County, the CCR is seeking approval of the ability to state its intention to withdrawal from CERTNA effective July 1, 2021, so that circumstances can unfold and the only other option, SECURE, can be investigated and, if necessary, permit the CCR to join SECURE to ensure the seamless provision of electronic recording services in the event that continued participation in CERTNA is no longer viable.

If circumstances change and CERTNA can continue to be viable it will not be necessary to withdraw from CERTNA and the CCR is requesting the option of rescinding its notice of intention to withdraw. If circumstances unfold and the CCR determines that continued participation in CERTNA is no longer cost effective, nor is CERTNA participation any longer in the best interest of the County of Monterey, the CCR is requesting that he be allowed to proceed with withdrawal from CERTNA and formalize the transfer of its ERDS operations to SECURE based on an MOU containing no less favorable terms as currently exists under CERTNA. SECURE is a multi-county electronic recording delivery system jointly owned by the Counties of Orange, Los Angeles, Riverside, and San Diego who entered into an agreement to share ownership and ongoing maintenance of the system which is compliant with ERDA. Counties that wish to utilize SECURE can join SECURE as partner counties by entering into a MOU with SECURE. Partner counties include Santa Barbara, Sacramento, San Bernardino, San Mateo, Ventura, Marin, Tulare, and Nevada. Orange County is the Lead County for SECURE and is responsible for executing MOUs with partner counties, agents, and submitters that use the system.

Government Code section 27391 allows for a county recorder to enter into a contract with a title insurer, underwritten title company, institutional lender, entity of local state or federal government, or any authorized submitter or their agent for the delivery and recording of a digitized electronic record related to real estate property. Based on this code, SECURE administers MOUs with agents and submitters on behalf of its partner counties for the purpose of confirming and establishing procedures required to record real estate documents electronically. If participation in SECURE is the decision, there will be an initial buy-in fee of \$25,000 and an annual maintenance fee of \$0.30 per recorded document for participation in SECURE. Based on the number of recorded documents in FY 2019-2020, which was 67,285, the CCR estimates the annual maintenance fee will range from approximately \$20,000 to \$30,000 per fiscal year. The annual fee for participation in CERTNA has been approximately \$34,000 to \$44,000; therefore, the change to SECURE will not result in an increase of fees. Per Government Code Section 27397 (c)(1), the County Clerk/Recorder is authorized to collect an additional one dollar (\$1.00) for each real property instrument, paper, or notice for the electronic recording delivery system. Thus, all fees to participate in ERDS are absorbed by the \$1 (one dollar) the CCR collects per GC 27397 (c) (1) and will continue to have no effect on the County General Fund.

Delegating authority to the CCR to remain with CERTNA or join SECURE will allow the County continue participation in an approved ERDA/ERDS, and meet provisions as required by the Government Code, all

seamlessly to the County and local patrons.

Participating in ERDS allows the CCR's Office to record documents more efficiently and permits advantages related to the storage and retrieval of documents with the advances in technology. Since 2017, approximately 70% of all recorded documents are recorded electronically. Therefore, the CCR is asking the Board of Supervisors' to approve these recommendations.

OTHER AGENCY INVOLVEMENT:

County Counsel has reviewed and approved this report as to form.

FINANCING:

There is no additional cost to the County General Funds, as sufficient funds are available in the County Clerk/Recorder's Modernization Account (027-2730-ACR003) to fully cover the initial buy-in fee of \$25,000. Transactions relating to future fiscal years will be included in each respective Recommended Budget. Initial and ongoing costs are paid through fees collected at the time documents are recorded and will have no impact on the County General Fund.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

The services rendered in this agreement provide the CCR with the additional support it needs to provide reliable and high-quality services to the residents of Monterey County.

- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

Prepared by: Corina Morgan, Finance Manager, x5821

Authorized by:

Stephen L. Vagnini

Assessor-County Clerk/Recorder, x5803

Attachments:

Resolution

CERTNA JPA