

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
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Report

TO: Members of the Judicial Council

FROM: AOC Office of Court Construction and Management
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DATE: August 15, 2008

SUBJECT: Court Facilities Planning: Seismic Safety Policy for Leased Buildings
(Action Required)

Issue Statement

The Administrative Office of the Courts (AOC) recommends the adoption of the attached Seismic Safety Policy for Leased Buildings (the policy), in order to provide adequate assurance of seismic life safety for both employees and the public in buildings in which space is leased for court operations. The policy applies to all new leases entered into by the AOC on behalf of the court, as well as to all leased court facilities for which responsibility has already transferred to the state under the Trial Court Facilities Act of 2002 (Senate Bill 1732 [Escutia]; Stats. 2002, ch. 1082). The policy supports the mission and policy direction of the Judicial Council in its long-range strategic plan—Goal III, Modernization of Management and Administration and Goal VI, Branchwide Infrastructure for Service Excellence—by providing safe and secure facilities and improving existing court facilities to allow adequate, suitable space for the conduct of court business.

Recommendation

The Administrative Office of the Courts recommends that the Judicial Council take the following actions:

1. Adopt the attached Seismic Safety Policy for Leased Buildings.
2. Authorize the Administrative Director of the Courts to approve updates to the policy, as needed.

Rationale for Recommendation

Recommendation 1

The AOC recommends adoption of the policy, in order to provide adequate seismic life safety for persons who work in or visit the court in leased buildings. As the AOC implements its responsibility to acquire leased space for new judgeships and associated staff, for replacement

of existing facilities, and for expansion of court facilities, a policy is needed to define the seismic safety requirements for the buildings to be leased.

In the near future, the AOC will be entering into approximately 30 leases on behalf of the courts for the purposes of housing new judgeships and associated staff and for replacing or expanding existing facilities. The AOC's lease program may grow to 50 leases per year, depending on the need to lease space for new judgeships, relieve overcrowding, and provide for program services, as other legislatively driven program expansions occur.

The Trial Court Facilities Act addresses the transfer of existing trial court facilities from the counties to the state and provides seismic safety requirements for buildings that are to be transferred. These requirements were modified by Senate Bill 10 (Stats. 2006, ch. 444), commonly known as "Seismic Condition of Trial Court Facilities." Whereas these modified requirements address seismic standards for existing buildings subject to transfer to the state, they do not address requirements for leases to be entered into by the AOC on behalf of the courts or the renewal of such leases thereafter.

The attached policy was developed by Rutherford & Chekene, a structural engineering firm that has been the AOC's primary consultant for addressing seismic safety issues for the judicial branch's facilities program. The overall direction from the AOC to this firm was to develop a policy that (1) is reasonably consistent with the approaches of other State of California entities on seismic safety, (2) provides adequate seismic life safety for building occupants, and (3) will be readily understood by building owners and the structural engineering consultants whom they engage. The policy is based on the policies of the University of California and the California State University systems. Some features of their policies have been modified to address particular circumstances expected to be found in court facilities, but the technical requirements are essentially unchanged. The policy provides discretion by allowing four alternatives (i.e., Waiver Letter, Certificate of Applicable Code, Independent Review Report, and Administrative Exception) for how a building can be deemed to satisfy the seismic safety requirements. The policy applies to all new leases entered into by the AOC on behalf of the court, and upon renewal of those leased facilities which transferred to the state under the Trial Court Facilities Act. For all leased court facilities for which responsibility transferred to the state with a remaining lease term, the AOC will review all available options at the time of lease renewal, including but not limited to requesting that building owners upgrade their facilities to meet the safety requirements of the policy and locating new leasable space in buildings that conform to the safety requirements of the policy.

Recommendation 2

The AOC recommends that the Administrative Director of the Courts be authorized to approve updates to the policy in order to address (1) changes or advances in technical or code aspects of seismic safety evaluation and (2) circumstances that may arise when particular recurring aspects of the market for leased space require additional flexibility not foreseen at this time.

Alternative Actions Considered

The AOC considered the alternatives of proposing a policy without discretion (i.e., no waiver options) and alternatively, of having a policy. Proposing a policy without a discretionary aspect was considered undesirable, as a requirement of relocating a court would not be assured of additional state funding and the costs involved with moving and tenant improvements in newly leased space could be prohibitive. In addition, there is a potential in many smaller communities that no building considered to be seismically acceptable as Level IV or better would be available for lease. Not having a policy was also considered undesirable, as a lack of uniformity in ensuring the safety of court employees and the public in leased buildings would result, as well as inconsistency in the stability of court operations continuing after a seismic event.

Comments From Interested Parties

The policy was posted on Serranus for a three-week period—from June 16 to July 9, 2008—for appellate and trial court review and comment. In addition, the AOC solicited comments on the policy from all administrative presiding justices, appellate court clerk/administrators, presiding judges, and court executive officers via both e-mail and the AOC's *Court News Update*. All comments received were from the trial courts, and those comments, including responses from the AOC, are attached at pages 4 to 17. The AOC also presented this policy to the Court Executives Advisory Committee's Working Group on New Court Facilities Operational Impact, at their scheduled meeting on July 8, 2008. Comments from this working group are also included in the attached comments summary.

Following the collection and review of all comments, the policy was subsequently modified to incorporate court comments as appropriate and in preparation for final review by the Judicial Council at the August business meeting. Prior to this meeting, the revised policy was redistributed via e-mail to all commentators listed in the attached comments summary.

Implementation Requirements and Costs

The policy was developed by the AOC and Rutherford & Chekene, with necessary costs incurred for that consultancy. There may be additional costs associated with potentially restricting the pool of buildings available for court leases to those that meet the requirements of the policy. There may also be additional costs associated with buildings whose owners are unwilling to pay for retrofitting to meet the policy requirements, such as relocation and tenant improvement costs for courts that move from space in non-complying buildings to space in those complying with the policy's safety requirements. While these costs have not been quantified, the AOC recommends that the interest of providing safe facilities for court operations outweighs the potential costs to be determined.

Attachments:

Seismic Safety Policy for Leased Buildings Comments Summary

Seismic Safety Policy for Leased Buildings

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	Commentator	Position	Comments	AOC Responses
1.	Court Executives Advisory Committee, Working Group on New Court Facilities Operational Impact	N	<p>The working group believes the policy is overly cumbersome and restrictive and does not make clear roles and responsibilities of the trial courts in its administration.</p> <p>The working group recommends further clarification of the one-year waiver Alternative A and the subsequent two-year extension. If a facility is eligible for the waiver alternative, it is not clear what happens after the initial one-year waiver and the subsequent two-year extension of the waiver, currently stated in the policy. Does the court need to assess the facility at that time, and if it doesn't qualify, does the court have to relocate to a facility that does pass inspection? Can the court simply renew the waiver? Does the court, the county, the property owner, or the AOC pay for the added costs of assessment, relocation, and a higher lease? It was felt that the court or the AOC would eventually be held accountable for the cost, which could create a critical funding issue in the current budget climate.</p> <p>The working group recommends further research and cost analysis on the number of buildings that are currently leased, the number that have been assessed and passed, the number that have been assessed and failed, the number that have not been assessed, and the costs associated with complying with the proposed policy. It is recommended that this type of analysis will help the Judicial Council evaluate the need for this policy and its impact on the courts.</p> <p>Clarification needed on how the policy applies to facilities currently undergoing the transfer process, which may need to be leased until the transfer is complete or that may have long-term leases incorporated into the transfer process?</p>	<p>The policy has been clarified in Section I to indicate the courts do not have any responsibility or burden for implementing this policy. The policy will be implemented by the AOC and will apply to all new leases and existing lease renewals, including exercising options to extend an existing lease, which is entered into by the AOC on behalf of the court.</p> <p>The policy has been clarified in Section I that its application is triggered by one of two conditions:</p> <ol style="list-style-type: none"> 1. Creation of a new lease 2. Renewal of an existing lease, including exercising an option to extend a lease term. <p>The policy has been clarified to indicate the AOC will not evaluate any of the 151 existing leased spaces to determine if they provide adequate seismic life safety to occupants.</p> <p>The policy has been clarified in Section I and II to indicate that the 12 month and 3 year periods refer to how recent the documentation needs to be to support Alternatives B and C. (No documentation time limit for Alternative A.) When the conditions are met for any Alternative, the condition has been met for the upcoming lease term.</p> <p>The policy does not apply to leased facilities that have not yet transferred responsibility to the state, and since application of this policy is not triggered by transfer, but by a new lease or a lease renewal,</p>

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			<p>The working group recommends that further attention be given to the timing of the policy's implementation. Members felt that the proposed policy and its implications affecting lease renewals could further slow down and obstruct the current facility transfers from the county to the state. It was recommended that the proposed policy be limited to new leases alone, the policy be placed on hold until the current transfers were completed, or the policy be written to allow transferring facilities to be grandfathered into compliance.</p> <p>The working group recommends a clearer definition on what constitutes a lease renewal. If a court has a current five-year lease on a facility, with the option to extend that lease for three (3) more years, would the court need to seismically assess the building at the end of the five (5) years or the end of the eight (8) years to comply with the policy? It could be interpreted that exercising the option for another three-year lease after the initial five years would qualify as a renewal, and the policy would take affect at that time.</p> <p>The working group recommends that the policy would benefit from more flexibility to balance public safety concerns with public access and service concerns and the realities that courts face in leasing property throughout California. Members reported that it can be extremely difficult to find adequate, reasonably priced facilities to lease, particularly in rural areas. The proposed policy does not provide clear guidance for situations in which a court has exhausted its efforts without locating a facility that complies with the policy, or the only facility located is cost prohibitive to the court.</p>	<p>the transfer process should not be negatively affected by this policy. The council must act on this proposal because in the near future, the AOC will be entering into approximately 30 leases on behalf of the courts for the purposes of housing new judgeships and associated staff and for replacing or expanding existing facilities. The AOC's lease program may grow to 50 leases per year, depending on the need to lease space for new judgeships, relieve overcrowding, and provide for program services, as other legislatively driven program expansions occur.</p> <p>The policy has been clarified in Section I to indicate that a lease renewal includes exercising an option to renew. Once the conditions for and Alternative have been met, this applies to the lease term. In this example, the AOC would notify the building owner prior to the end of the five-year lease term that the building must comply with this policy prior to renewing the lease for the additional three years. The AOC would ensure that if the building owner could not meet the conditions of Alternatives A, B, or C, then Alternative D could be pursued in consultation with the court.</p> <p>The policy has been revised to clarify Alternative D – Administrative Exception, which allows for concerns raised regarding limited availability of alternative space, cost/benefit analysis, and other unique conditions of the court.</p>

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2.	Mr. Tim Wilson, Facilities Director, Superior Court of Fresno County	N	<p>The timing of this policy implementation seems confusing. Our court has achieved transfer of four of eight leased facilities without any discussions concerning the seismic safety of these facilities. With the implementation of this policy it appears that this will now become a concern and perhaps have a negative impact on the ability to transfer. Three of four of our pending leases have been in place for years and are on a month to month or year to year status perhaps triggering the new policy with renewal at transfer. Is it the intent of the OCCM real Estate Unit to now require seismic assessment prior to transfer? We do not have the in-house expertise to determine the seismic rating of these facilities and it is doubtful that the Lessor's will take on this responsibility without compensation. Additional information on the impact of this policy on the transfer process should be considered. It maybe a better approach to complete the transfer process, assess all leased facilities for compliance with the policy and then take a measured approach to replacing non-complaint facilities without the need for immediate concern to seismic rating of the facility. It is understood that the policy provides a waiver process which includes signature authority of the Administrative Director of the Courts to defer the seismic qualifications.</p> <p>The potential cost for new leased facilities, including tenant improvements, voice and data infrastructures, moving, etc. should be evaluated in relationship to the policy implementation. It would be expected that a portion of the statewide leased facility inventory would be negatively impacted by the policy resulting in potential unfunded or non-budgeted expenditures being necessary. Who would be responsible for the costs associated with these situations?</p>	<p>The policy does not apply to leased facilities that have not yet transferred responsibility to the state, and since application of this policy is not triggered by transfer, but by a new lease or a lease renewal, the transfer process should not be negatively affected by this policy.</p> <p>Seismic assessment is not required prior to transfer, and the policy has been clarified to indicate the AOC will not evaluate any of the 151 existing leased spaces to determine if they provide adequate seismic life safety to occupants.</p> <p>The policy has been revised to clarify Alternative D – Administrative Exception, which allows for concerns raised regarding limited availability of alternative space, cost/benefit analysis, and other unique conditions of the court.</p>

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			<p>Our Court received four new judgeships in FY 06-07. The AOC, in conjunction with our court, partnered in the lease and tenant improvements of a new 26,000 sq.ft. facility which opened in March of 2008. The lease has an initial term of five years with three possible three year extensions which we intend to exercise. Tenant improvement costs were 3.8 million dollars. It is unclear how the policy will impact this facility at the end of the initial five-year lease term. The building is constructed of both pre-cast and pre-stressed elements. Would the policy be triggered at the end of the primary five year lease term? If the facility was deemed to be a level V it appears that a waiver would be necessary as only Alternative A, item 6 may apply which would only be valid for two years. This presents a situation where the original cost benefit of the facility would be severely reduced as the pay back from use of the facility would be reduced from fourteen years to seven years.</p> <p>Consideration should be given to the lack of available lease space in rural communities.</p>	<p>Yes, the policy is triggered at the end of the five year lease term, and the policy has been clarified in Section I and II to indicate that the 12 month and 3 year periods refer to how recent the documentation needs to be to support Alternatives B and C. (No documentation time limit for Alternative A.) When the conditions are met for any Alternative, the condition has been met for the upcoming lease term. No further studies are required until the term expires.</p>
3.	Mr. José Octavio Guillén, Executive Officer, Superior Court of Imperial County	N	<p>Some courts, but especially small, rural, and non-metropolitan courts may be required to continue to lease necessary office space from their respective counties. These leased spaces may exceed the 10,000 square foot maximum criteria and may be contained within existing courthouse buildings that have 1) not transferred to the State and 2) said court facilities are rated level V.</p> <p>The policy is vague and problematic regarding the application of the "two year" threshold for the waiver letter (page one, last paragraph).</p>	<p>Please refer to the response to first set of comments. The policy has been revised to address the questions and issues raised.</p>

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			<p>The expectation that the building owner (County) or building owner technical agent (County CEO) will produce, procure or assist with the waiver process is not realistic. This will leave AOC as the only viable entity to perform this required step on behalf of the local court and thus adding more cost to the State and indirectly to the trial courts' funding sources. While we recognize that a policy is needed to be in compliance with current statutory requirements (SB 1732 and SB 10), the cost implication to the branch if this policy is adopted and implemented has not been fully analyzed and determined, although there is consensus that it will cost the branch more. Given the budgetary constraints faced by our State and Trial Courts, submitting this policy proposal to the Judicial Council without a full disclosure of its fiscal impact is both irresponsible and short-sighted.</p> <p>Courts currently negotiating transfers and also leasing court space on a year-to-year basis could potentially see an unanticipated fall-out by their lessors (county). The Counties may exercise the right not to renew leases with the courts because they don't want to comply with what they perceive to be burdensome and bureaucratic requirements. While we all believe that court space needs to have all the right attributes (clean, seismic compliant, safe, etc.) the reality is that some of us have been living in the poor house and this policy may have an unintended chilling effect in the relationship between courts and their counties. I would feel more comfortable if this policy was advanced after all my court facilities had transferred to the State. Overall, the policy needs to provide flexibility to accommodate the reality faced by courts currently leasing</p>	

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			<p>space in less than desirable county buildings; provide a flexible option for the waiver due to occupancy criteria (10,000 square feet); cost implications to the trial courts and branch as a whole NEED to be determined before this policy is advanced; and lastly the timing in proposing this policy should be considered in light of the potential fall-out at the local trial court level.</p>	
4.	<p>Ms. Kathleen Goetsch, Executive Officer, Superior Court of Merced County</p>	N	<p>I understand the items in "Alternative A. Waiver Letter" but what happens in the fourth year after the letter is written? The introduction seems to imply that the letter is good for one year with a two year extension. Does that mean that any Court in a building with one of the 6 items must move out and find other space in the fourth year? Is that possible in the real world? There will likely not be money for renting new commercial space. How many of these situations are there now in Alternative A across the state? That should be reviewed and money allocated to cover new leases presumably at a higher price than the current leases. The Judicial Council should know the implications here before they vote. If all it takes is another letter in the fourth year that should be stated.</p> <p>And a Court that needs less than 10,000 square feet (probably something that will happen frequently) may move into a Level V building and then have to move out in three years. Clearly Alternative A means that a new lease of any length must be Level IV.</p> <p>And my understanding is that we are planning many trailers/modulars. As I read this, modulars are only allowed for three years even if they have good natural gas connections. (Not sure here; there are too many "ifs" and "ors" in the sentence to be sure.) Without a provision for</p>	<p>Please refer to the response to first set of comments. The policy has been revised to address the questions and issues raised.</p> <p>Condition No. 4, under Alternative A – Waiver Letter, is only needed for renewal of leases for existing modular buildings, if they were determined to be Seismic Level V. Any new modular buildings procured by the AOC on behalf</p>

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			<p>the fourth and subsequent years, the "Alternative A. Waiver Letter" does not seem to settle the issue but only delay it. Perhaps I have misunderstood and there really is a way to stay in those buildings beyond the third year. If so or if not, that should be clearly stated up front in the introduction. Perhaps this is written to give Courts three years to get out of any rented facilities they are currently in that have high level seismic issues. But that too should be clearly stated up front.</p> <p>Alternative B has the same timing problem as Alternative A above.</p> <p>Alternative B has some conditions under the 1976 code that don't make sense to me. Why would we not accept a seismic retrofit? I would think that would be a good thing. In the transfer negotiations there was a time, before the exception law was passed, that we were requiring the County to retrofit buildings with seismic problems before transfer. Also, why do we not allow repairs after an earthquake? That too seems like a good thing if the repairs are to seismic code.</p> <p>Wording: Everything says "AOC occupied" but you mean "Court occupied" even though AOC will hold the lease.</p>	<p>of the courts would be designed to meet seismic safety requirements.</p> <p>The policy does allow for seismic retrofit of the building, whether voluntary or mandated, whether partial or complete, as part one of the conditions qualifying under item No. 2 of Alternative B., Certificate of Applicable Code.</p> <p>The policy has been revised to reflect this change. This policy would apply to all judicial branch entities, including court and AOC-occupied facilities.</p>
5.	Mr. John C. Van Whervin, Director of Facilities Services and Capital Projects, Superior Court of Los Angeles County	N	<p>Section II. Alternative A – Condition No. 1: I am not following the purpose of item 1. If the space does not meet seismic requirements, why occupy at all. An earthquake can take place at any time much less two years or is this for re-lease only?</p>	<p>The policy has been clarified to indicate its application is triggered by a new lease or the renewal of an existing lease. The policy has been clarified in Section I and II to indicate that the 12 month and 3 year periods refer to how recent the documentation needs to be to support Alternatives</p>

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			<p>Section II. Alternative A – Waiver Letter: The Waiver Letter should be signed by the local court as well as the AOC/person making the determination.</p> <p>Section II. Alternative B – Cert. of Applicable Code: The certificate of Applicable Code should be signed by the local courts' building permitting agency, e.g. Department of Public Works, City Building Department.</p> <p>Section II. Alternative C – Independent Review Report: Is it intended that an Independent Review Report would address the items listed under Alternative B., Item 2?</p>	<p>B and C. (No documentation time limit for Alternative A.)</p> <p>The Waiver Letter is produced by the AOC, the building owner, or the building owner's technical agent, and the AOC will consult with the court as a matter of process in making lease arrangements.</p> <p>The Certificate of Applicable Code must be signed and stamped by a structural engineer licensed by the State of California. In addition, the state is not subject to local jurisdiction review for permitting.</p> <p>An Independent Review Report could indicate that the building does or does not possess any of the characteristics or conditions listed under item No. 2 of Alternative B. This report must contain, at a minimum, item Nos. 1–7, as identified under Alternative C.</p>
6.	Mr. Alan Slater, Executive Officer, Superior Court of Orange County	N	<p>Section I. General: Terminating a current lease or deferring a new lease may not be feasible in the short term. It is our experience that most landlords do not have the type of records needed to meet these standards which would mean that the Court would in some cases have to move out of existing leased buildings pending some determination. For example, OCSC currently occupies leased buildings built in the 1970's or earlier. It would take months to evaluate whether the buildings met these standards and we may find that the buildings are not eligible for a waiver. In one case, the current lease is up and a new lease is under negotiation. (See 2 year waiver comment below).</p>	<p>The policy has been revised to clarify Alternative D – Administrative Exception, which allows for concerns raised regarding limited availability of alternative space, cost/benefit analysis, and other unique conditions of the court.</p> <p>The policy has been clarified in Section I and II to indicate that the 12 month and 3 year periods refer to how recent the documentation needs to be to support Alternatives B and C. (No documentation time limit for Alternative A.) When the conditions are met for any Alternative, the</p>

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			<p>The policy also does not address moving expenses, increased costs for new lease space, or costs for implementing seismic improvements which would be passed on to the Court.</p> <p>Section I. General: This policy seems to conflict with the standards that apply to buildings the AOC will own where a level V building will be occupied for many years with the County retaining liability or purchasing insurance. The goal of providing adequate life safety for court buildings would suggest that we should in every case move out of currently occupied level V buildings that are owned by the County or State until they are repaired. If the leased building is level V and currently occupied and insurance could be reasonably obtained, could that meet the objectives on an interim basis pending construction of a new permanent building?</p> <p>Section II. Alternative A – Waiver Letter: The two year waiver discussed here would be a practical approach but should apply to all existing court leases since it would afford some time to obtain or develop documentation or search the market for alternate space. If the landlord decides to conduct further review and it turns out that the building does not meet standards and new space must be sought, there should also be a provision to further extend the waiver to allow time to lease new space and move. The determination of administrative necessity is noted in item 6 but requires the Administrative Director to certify that the requirements are beyond the control of the AOC which implies that this might be a rare or extreme occurrence. With the proposed requirements as written, this certification will be needed in many or most cases.</p>	<p>condition has been met for the upcoming lease term.</p> <p>See first response to your comments above.</p> <p>Planning for lease renewals will need to take into account the timing associated with pursuing Alternatives A, B, C, or D.</p>

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			<p>Section II. Alternative A – Waiver Letter: In some markets that do not have new building stock, it may be impossible to locate buildings that meet these standards or find landlords who will be willing to incur the expense to make the determination. If that is the case, should the Administrative Director be allowed to waive these requirements?</p> <p>Section II. Alternative B – Cert. of Applicable Code and Alternative C – Independent Review Report: The certificate or independent review report may take a long time to prepare and approve. If this is an existing leased building or urgently needed replacement space, a one or two year waiver will be needed to ensure there is time to prepare and review the report.</p>	
7.	Ms. Tressa S. Kentner, Executive Officer, Superior Court of San Bernardino County	AM	<p>Section II. Alternative A – Waiver Letter: The only part I wonder about is related to waivers where it says that the building will be occupied less than 2 years. An earthquake could happen the day after occupancy, so I think there should be other criteria than just be in the building less than 2 years.</p>	This alternative contains a total of five conditions.
8.	Mr. Shawn Landry, Assistant Executive Officer, Superior Court of Yolo County	N	<p>General Comments:</p> <ul style="list-style-type: none"> • Policy is too cumbersome and restrictive overall • Policy is confusing to navigate and should be re-written • Development of a simple table should be written for ease of use • There is no fiscal analysis to determine judicial branch impacts. We are not comfortable with a policy that does not take fiscal impacts and responsibilities into consideration • The policy should have timetables for approval and 	The policy has been revised and clarified to address your comments. Please read the AOC responses to the first set of comments.

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			<p>an appeals process</p> <ul style="list-style-type: none"> • It is unclear which criteria a court must use; a waiver, certificate, or independent review • Use a simple sentence that states “Any building is eligible for a waiver letter if it meets the following criteria” - then list criteria • Rather than requiring a waiver every 2 years why not extend it to 4 – 5 years • There are problems with the waiver criteria such as 2 year lease (not practical and too restrictive), under 10,000 sq ft (impractical), 1-story wood frame (limited availability in some communities) • It appears that the AOC is determining the building rating, producing documents, determining whether it meets the requirements, and signing waiver letter – no independent review (very one sided with no court input) • How does the approval process work, who is it approved by, how long does it take for approval, and what is the court required to submit (on top of all the other requirements and justifications) • Who pays for structural engineer in last 2 criteria’s (AOC/Court – substantial cost impacts) <p>Section I. General – Paragraph No. 2: How does the Court determine which evaluation document is required? Does the Court need to know the building’s rating in order to determine which document is required? If so, how is that accomplished? Can any leased space that is leased for less than 2 years or is under 10,000 sq. ft, etc. qualify for a Waiver Letter or is it only for Level V buildings?</p>	<p>The policy has been clarified to indicate that the courts do not have any responsibility or burden for implementing this policy. The AOC, the building owner, or the building owner’s technical agent produces the documents. This policy only applies to Seismic Level V buildings.</p>

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			<p>Section I. General – Paragraph No. 3: Move sentence from Section II, Alternative A to first page for clarity. The AOC shall not, under any circumstances, approve for leasing or renewal of leases of a building having an Earthquake Damageability Level of Level VI or worse. The AOC shall not approve for leasing or renewal of leases of a building having an Earthquake Damageability Level V, except in instances where the building may qualify by waiver letter.</p> <p>Section I. General – Paragraph No. 4: If the AOC is producing the documents, is it also the AOC approving the documents? Who at the AOC approves the evaluation documents; which Department, is it a Committee? What is the time frame for approval? What other forms and information will the Court be required to submit?</p> <p>Section I. General – Paragraph No. 4: Since the Waiver Letter can be extended for another 2 years with another letter it is suggested that the initial term be extended to 4-5 years.</p> <p>Section I. Alternative A – Waiver Letter, Paragraph No. 1: Is the AOC determining the building rating or is this an objective measure? Building owners are not likely to want to enter into a two year lease. In order to meet AOC standardized size requirements for courtrooms it may be impractical to lease space less than 10,000 square feet. There may be limited availability of one-story wood framed buildings for lease. The above requirements severely limit leasing options for small/medium size Courts where there is not a lot of property available for lease.</p>	<p>The policy has been revised to reflect this change.</p> <p>The AOC, the building owner, or the building owner’s technical agent produces the documents. The AOC’s will oversee the schedule for initiating the process and will approve the documents. AOC staff will consult with the building owners or owner’s technical agents as needed in the preparation of any documents. No technical documentation will be required of the courts.</p> <p>The policy has been clarified in Section I and II to indicate that the 12 month and 3 year periods refer to how recent the documentation needs to be to support Alternatives B and C. (No documentation time limit for Alternative A.) When the conditions are met for any Alternative, the condition has been met for the upcoming lease term.</p> <p>The AOC has the final determination on a building’s seismic level rating.</p>

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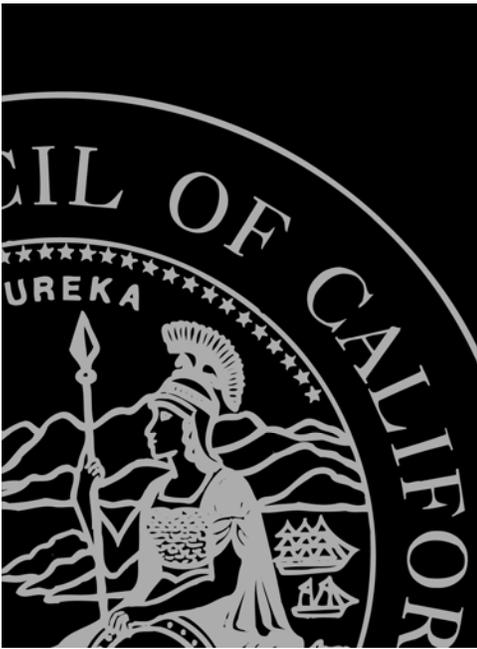
	Commentator	Position	Comments	AOC Responses
			<p>Section I. Alternative A – Waiver Letter, Paragraph No. 2: Making what determination? That the space will be occupied for less than 2 years, or that it is 10,000 sq. ft. or less, etc. or that it is a Level V?</p> <p>Section I. Alternative A – Waiver Letter, Paragraph No. 3: Does this mean that if a building is less than 10,000 sq. ft. or space will be occupied for less than two years, but is built to 1998 or subsequent editions of the California Building Code, a Waiver Letter can still be used as the evaluation document? Or is a Waiver Letter only for a building with a rating level of V?</p> <p>Section I. Alternative B – Cert. of Applicable Code, Paragraph No. 1: Will the building owner have a Certificate of Applicable Code or how does the building owner obtain the Certificate?</p> <p>Section I. Alternative B – Cert. of Applicable Code, Paragraph No. 2: What is the cost to get a Structural Engineer licensed by the State of California to sign and stamp the Certificate? Who will pay for this?</p> <p>Section III. Alternative C – Independent Review Report: Who pays for the Structural Engineer licensed by the State of California to write the Independent Review Report?</p>	<p>For buildings that have already been determined to be Seismic Level V, the Waiver Letter would identify which of the listed conditions would pertain.</p> <p>If a building can achieve a Certificate of Applicable Code, under Alternative B., then its seismic rating level is irrelevant, as it would be considered a seismically safe building for court occupancy. Court occupancy of Seismic Level V buildings may be occupied but only by Waiver Letter or through Administrative Exception.</p> <p>In addition to other specific criteria, the policy dictates that the Certificate of Applicable Code must be signed and stamped by a Structural Engineer licensed by the State of California. The AOC would request the building owner to contract with such an engineer to draft this document as a condition of lease renewal.</p> <p>The cost for these services varies, and the AOC or the building owner would pay for such services.</p> <p>See same response above.</p>
9.	Mr. Benjamin D. Stough, Executive Officer, Superior Court of Mendocino County	A	None.	None.

Seismic Safety Policy for Leased Buildings Comments Summary

	Commentator	Position	Comments	AOC Responses
10.	Mr. Michael M. Roddy, Executive Officer, Superior Court of San Diego County	A	None.	None.

Response Totals

	Agreement	Agree with Modifications	Do Not Agree	Total Respondents
Totals	2	1	7	10



Seismic Safety Policy for Leased Buildings

AUGUST 15, 2008



ADMINISTRATIVE OFFICE
OF THE COURTS

OFFICE OF COURT CONSTRUCTION
AND MANAGEMENT

I. General

It is the policy of the judicial branch, administered by the Administrative Office of the Courts (AOC), to acquire space in buildings owned by others that provide adequate seismic life safety to occupants. The requirements for establishing compliance with this Seismic Safety Policy for Leased Buildings (the policy) are set forth in the standard herein contained. Note that all evaluations performed under this standard are to consider the whole building and all of its structural components. Where a seismic hazard to the subject building clearly is posed by adjacent buildings, e.g., an elevated unreinforced masonry wall that may collapse onto the subject building, these hazards are to be included in the assessment required below. It is not the intent of this standard to require detailed analyses of adjacent buildings.

This policy applies to new leases, and only upon renewal for leases which transferred to the state under the Trial Court Facilities Act of 2002 (Senate Bill 1732 [Escutia]; Stats. 2002, ch. 1082). This policy does not apply to leases that have not transferred to the state. The policy applies to any judicial branch entity, such as trial and appellate courts and the AOC's Office of Governmental Affairs and regional offices.

The AOC will not evaluate any existing leased spaces to determine if they provide adequate seismic life safety to occupants. Application of this policy is initiated by two events:

1. Creation of a new lease; and
2. Renewal of an existing lease, including exercising an option to extend a lease term.

Newly leased or re-leased space may be occupied only if it satisfies the seismic safety requirements of this standard at the time of occupancy (for a new lease) or commencement of the renewed lease term in the case of re-leased space, which can be established by one of the following acceptable evaluation documents:

1. Alternative A: A determination that a Waiver Letter can be issued, see Section II.A., or
2. Alternative B: A Certificate of Applicable Code indicating the building was designed to modern code requirements and does not have characteristics known to be hazardous, see Section II.B.,¹ or
3. Alternative C: An Independent Review Report stating that the building has an earthquake damageability Level of IV or better, as defined in the table titled "Earthquake Damageability Levels for Existing Buildings," see Section II.C. and Attachment A., or
4. Alternative D: Administrative Exception stating the overriding conditions that require the lease of the building or buildings for the judicial branch entity when Alternatives A, B, and C cannot be met. The Administrative Director of the Courts (ADOC) has the authority to determine all Administrative Exceptions, see Section II. D.

¹ A building meeting either of the two requirements for a Certificate of Applicable Code, as listed under Section II.B., is generally considered to have the equivalent of earthquake damageability Level IV or better.

The AOC shall not approve for leasing or renewal of leases any building having an Earthquake Damageability Level of V (see the table titled “Earthquake Damageability Levels for Existing Buildings” presented in Attachment A), except in instances where the building qualifies by either Alternative A or Alternative D.² The AOC shall not, under any circumstances, approve for leasing or renewal of lease of a building judged by the AOC to have an Earthquake Damageability Level of VI or worse (see the table titled “Earthquake Damageability Levels for Existing Buildings” presented in Attachment A).

The documents establishing Alternatives A, B, and C listed above may be produced by the AOC, the building owner, or the building owner’s technical agent and will be accepted subject to the review by the AOC, as detailed in Section II. The AOC shall provide the written documentation supporting Alternative D, as indicated in Section II.D. below. The judicial branch entity—for which the lease is entered into or renewed by the AOC—does not have the responsibility or burden for producing any documents for Alternatives A, B, C, or D. When the supporting documentation is provided to meet the conditions of Alternatives A, B, C, or D, the alternative will be met for the duration of the upcoming lease term.

II. Acceptable Evaluation Documents

A. Alternative A—Waiver Letter

The requirements for seismic qualification under this standard may be waived under the following conditions, except that under no circumstances shall a building judged by the AOC to have an Earthquake Damageability Level of VI or worse (see the table titled “Earthquake Damageability Levels for Existing Buildings” presented in Attachment A) be considered acceptable:

1. The space will be occupied for fewer than two years, and a judicial branch entity does not currently occupy space in the building; or
2. The area of the space to be occupied by the judicial branch is 10,000 square feet, or less; or
3. The building is a one-story, wood-framed building; or
4. The building is a structure that was originally designed to be movable even if permanently located, such as a trailer, and it has an earthquake disconnect for natural gas installed or has no natural gas connection; or
5. The space to be occupied is within a structure currently occupied by the court and was previously qualified under Section II.B. or Section II.C. of this standard.

For any building not qualifying for a Waiver Letter, then either Section II.B., Section II.C. or Section II.D. below must be satisfied.

² Only buildings with an earthquake damageability Level of IV or better, as defined in the table titled “Earthquake Damageability Levels for Existing Buildings,” are eligible for Alternatives B and C.

B. Alternative B—Certificate of Applicable Code

A Certificate of Applicable Code (certificate) may be provided if the entire building was constructed under a permit approved by the local jurisdiction and was designed to meet one of the following requirements:

1. 1998 or subsequent editions of the California Building Code (CBC); or,
2. 1976 or subsequent editions of the Uniform Building Code and, in addition, the building does not have any one of the enumerated characteristics or conditions listed below:
 - Unreinforced masonry elements, whether load-bearing or not; not including brick veneer; or
 - Precast, prestressed, or post-tensioned structural or architectural elements, except piles; or
 - Masonry or concrete shear wall system with flexible (e.g., plywood) diaphragm; or
 - Apparent additions, alterations, or repairs to the structural system made without a building permit; or
 - Constructed on a site with a slope with one or more stories partially below grade (taken as 50 percent or less) for a portion of their exterior; or
 - Soft or weak story, including wood-frame structures with cripple walls, or is constructed over first-story parking; or
 - Seismic retrofit of the building, whether voluntary or mandated, whether partial or complete; or
 - Repairs following an earthquake; or
 - Welded steel moment frames (WSMF) that constitute the primary seismic force-resisting system for the building, and the structure was designed to code requirements preceding those of the 1997 edition of the Uniform Building Code, and the building site has experienced an earthquake of sufficient magnitude and site peak ground motions that inspection is required when any of the conditions of Section 3.2 of the FEMA-352 report indicate an investigation of beam-column connections is warranted; or
 - Visible signs of distress or deterioration of structural or nonstructural systems, e.g., excessively cracked and/or spalling concrete walls or foundations, wood dry rot, etc.

The Certificate of Applicable Code must be signed and stamped by a structural engineer licensed by the State of California. The certificate must contain an assurance that the signatory was responsible for establishing the findings reported in the certificate and had no prior involvement in the building's design, and that the signatory firm or individuals of the firm have no ownership interest in the property.

The Certificate of Applicable Code must reflect current analysis and be dated not more than 12 months before execution of a new lease or a lease renewal. The Certificate of Applicable Code can be dated up to three years before execution of a new lease or a lease renewal provided that it is accompanied by a current letter dated, signed and stamped by the author of the Certificate certifying that there have been: (i) no material changes in the structural system, either as part of building modifications or as the result of accidents, and (ii) no substantive change in the standards of evaluating buildings that would change the certificate's conclusions, and (iii) no seismic event that could change the certificate's conclusions.

C. Alternative C—Independent Review Report

An Independent Review Report (report) of the building structure and of its critical nonstructural elements for purposes of establishing the building's Earthquake Damageability Level may be provided. The Independent Review Report and its preparation, at a minimum, shall include the following:

1. A visit to the building to observe its condition and characteristics;
2. A review of available design drawings and soil reports for original construction and subsequent modifications;
3. A qualitative (and quantitative if deemed necessary by the evaluating structural engineer or AOC) evaluation of the building's gravity and lateral load-resisting structural systems;
4. A qualitative (and quantitative if deemed necessary by the evaluating structural engineer or AOC) evaluation of the likelihood of earthquake-induced site failure that could cause damage to the facility—that is, the building is in the vicinity of earthquake faults listed in the State of California Earthquake Zones Act of 1990 (previously Alquist-Priolo) or in the liquefaction susceptibility zone as identified by the local jurisdiction—or of whether the building site is subject to failure due to earthquake-induced landslide risk;
5. A qualitative (and quantitative if deemed necessary by the evaluating structural engineer or AOC) evaluation of the expected seismic performance of the building when evaluated against structural provisions of American Society of Civil Engineers (ASCE)-31 at the life safety performance level or CBC Chapter 34 for Occupancy Categories I–III performance criteria considering the building type, site location, and physical condition;
6. Identification of nonstructural falling hazards with a significant consequence of failure during an earthquake (e.g., large plaster ceiling or heavy exterior cladding); and
7. A list of the documents, plans, and other materials examined.

The Independent Review Report must be signed and stamped by a structural engineer licensed by the State of California who certifies that the Earthquake Damageability Level is/will be IV or better (see the table titled “Earthquake Damageability Levels for Existing Buildings” given in Attachment A) before occupancy occurs. The report must contain an assurance that the signatory was in responsible charge of the work described in the report and had no prior involvement in the building’s design, and that the signatory firm or individuals of the firm have no ownership interest in the property. The AOC, at its discretion, may have the Independent Review Report reviewed by qualified engineers to confirm its technical reliability prior to acceptance of the report’s conclusions and reliance upon it in execution of the real estate transaction.

The Independent Review Report must reflect current analysis and be dated not more than 12 months before execution of a new lease or a lease renewal. The Independent Review Report can be dated, signed and stamped up to three years before execution of a new lease or a lease renewal provided that it is accompanied by a current letter, signed and stamped by the author of the report certifying that there have been: (i) no material changes in the structural system, either as part of building modifications or as the result of accidents, and (ii) no substantive change in the standards of evaluating buildings that would change the report’s conclusions, and (iii) no seismic event that could change the report’s conclusions.

A landlord who intends to complete modifications to bring a building into compliance with the required (minimum) Earthquake Damageability Level rating shall: (i) certify that the work to be completed will meet the requirements of this standard, and (ii) provide a description of the work in sufficient detail to allow for the AOC’s technical review and approval. In addition, upon completion of the identified modifications, the landlord’s structural engineer shall prepare, sign, stamp, and submit to the AOC a letter confirming that the building meets the requirements of this standard. All lease documents under this provision must contain specific terms that in the event the Landlord fails to achieve this confirmation, the lessee (State/AOC) has no obligation to the lessor and the lease *may be terminated* without any penalties to the lessee.

D. Alternative D—Administrative Exception

The AOC may recommend to the ADOC that the building or buildings be leased on behalf of the judicial branch entity when the conditions of Alternatives A, B, and C cannot be met. The AOC shall provide written documentation supporting the exception, including but not limited to a cost-benefit analysis relative to availability of other facilities, standard due diligence, and other specific features of the particular judicial branch entity’s needs, the community needs, and the lease advantages. The AOC shall, in their recommendation, consult with the judicial branch entity in the analyses. The ADOC shall make the final determination of the granting of any Administrative Exception in writing.

III. References

American Society of Civil Engineers, *Seismic Evaluation of Existing Buildings*, ASCE-31, (ASCE/SEI Standard 31-03, 2003).

California Building Code, (California Code of Regulations, Title 24, Part 2, 2007 Edition).

Federal Emergency Management Agency, *Recommended Postearthquake Evaluation and Repair Criteria for Welded Steel Moment-Frame Buildings*, (FEMA-352, June 2000).

Attachment A: Earthquake Damageability Levels for Existing Buildings

Rating Level ¹	Definitions	Implied Risk to Life ²
I – III	Not provided for purposes of this policy. (Note that buildings having an Earthquake Damageability Level rating of I, II, or III are judged to comply with the judicial branch’s Seismic Safety Policy for Leased Buildings).	Negligible–Slight
IV	A building evaluated in accordance with ASCE-31 which substantially meets the life safety performance level for structural elements as well as those nonstructural elements with a significant consequence of failure. Note that “substantially meets the life safety performance level” is taken to mean that any deficiencies identified by the evaluation process have been carefully considered and can be waived by engineering judgment in light of mitigating circumstances such as the degree of overstress, the consequence of failure, etc. Alternatively, a building evaluated as meeting or exceeding the requirements of CBC chapter 34 for Occupancy Categories I–III performance criteria.	Small
V	A building evaluated in accordance with ASCE 31 or CBC chapter 34 as described for Rating Level IV above with deficiencies that preclude it from being rated as Level IV, the consequences of which could result in partial collapse of the structure or serious risk to life as a result of nonstructural element failure.	Serious
VI	A building evaluated in accordance with ASCE-31 or CBC chapter 34 as described for Rating Level IV above with deficiencies that preclude it from being rated as Level IV, the consequences of which could result in total collapse of the structure or severe risk to life.	Severe
VII	A building evaluated as posing an immediate life safety hazard to its occupants under gravity loads. The building should be evacuated and posted as dangerous until remedial actions are taken to assure the building can support CBC-prescribed dead and live loads.	Dangerous

Notes:

1. Earthquake damageability levels are indicated by roman numerals I through VII. Assignments are to be made following a professional assessment of the building’s expected seismic performance as measured by the referenced technical standard.
2. *Implied risk to life* is a subjective measure of the threat of a life-threatening injury or death that is expected for an average building in compliance with the indicated technical requirements. The terms *negligible* through *dangerous* are not specifically defined, but are linguistic indications of the relative degree of hazard posed to an individual occupant.