



Capital Program Management Policy

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JUDICIAL COUNCIL
OF CALIFORNIA

ADMINISTRATIVE DIVISION
FACILITIES SERVICES

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Revision Management

Revision	Chapter	Revision Description	Revision Date
1.0			

1 Introduction, Purpose, and References

1.1 Purpose

The Judicial Council, supported by Judicial Council staff, establishes this *Capital Program Management Policy* as the guiding policy for the planning, acquisition, and construction of appellate and trial court facilities under authority of Government Code sections 70391(b) and 69204(b) and rule 10.181 of the California Rules of Court. This *Capital Program Management Policy* identifies and collects all Judicial Council and staff sources and authority to manage planning, acquisition, and construction of appellate and trial court facilities through the Capital Outlay Program; describes how that authority is exercised by Judicial Council staff at various stages of the planning, acquisition, and construction process; and communicates Judicial Council expectations for successful management of the Capital Outlay Program. The goal is to assist Judicial Council staff, particularly Facilities Services, to develop and manage construction projects of the highest standard.

This policy document describes the organizational structure, roles, responsibilities, and approaches to key functions that will take best advantage of the common characteristics and requirements of the individual projects within the program.

Judicial Council staff will identify and fill the positions necessary to implement Judicial Council authority over management of the Capital Outlay Program with Judicial Council employees, personnel from private sector consulting firms, or independent consultants.

This *Capital Program Management Policy* will be the basis for the design, construction, activation, and closeout of the appellate and trial court facilities capital-outlay projects. Separate policies govern the execution of facility modification projects.

1.2 Changes to the *Capital Program Management Policy*

For the *Capital Program Management Policy* to be a functional tool, it must be updated as appropriate. The Director of Facilities Services is responsible for keeping the document current. On recommendations from the Capital Program management team—with the consent of the Director of Facilities Services, the recommendation of the Court Facilities Advisory Committee, and the approval of the Judicial Council—the *Capital Program Management Policy* is updated and redistributed as needed.

As the *Capital Program Management Policy* is implemented, the Director of Facilities Services will rely on the continuous improvement process to review and propose revisions or updates to the policy, as appropriate.

The *Capital Program Management Policy* will be recorded and updated in electronic format.

1.3 Summary of Acquisition, Design, and Construction Authority

The authority of the Judicial Council, its Administrative Director, and its staff for the design and construction of appellate and trial court facilities is based on the California Constitution, various statutory provisions principally in the California Government Code, and specific rules of the California Rules of Court, identified below. Policies outlined in the various chapters flow from the authority provided from these provisions.

1.3.1 California Constitution, Article VI

These provisions establish the judiciary as a separate branch of government ([Cal. Const., art. VI, § 1](#)); establish the Judicial Council as the governing body of the judiciary, led by the Chief Justice of California, with authority to, among other things, make recommendations annually to the Governor and Legislature (*id.*, [§ 6\(a\), \(d\)](#)); and authorize appointment by the council of an Administrative Director to perform functions delegated by the council or Chief Justice (*id.*, [§ 6\(c\)](#)).

1.3.2 Statutory Authority

a. Judicial Council responsibilities and authorities

Government Code sections [69202](#), [69204](#), [70374](#), [70391](#), [70391.5](#), and [70398–70398.7](#); Public Contract Code section [19204](#)

In these sections, the Legislature grants the Judicial Council broad policymaking and implementation authority and responsibility over appellate and trial court facilities, including all aspects of acquisition and construction of appellate and trial court facilities.

b. Judicial Council staff

Government Code sections [69206](#) and [70392](#)

With these provisions, the Legislature gives Judicial Council staff authority to, and responsibility for, several broad areas connected to acquisition and construction of appellate and trial court facilities, requiring staff to (1) carry out the council’s policies with regard to appellate and trial court facilities, except as otherwise expressly limited by law; (2) develop for council approval the long-term court facilities plans for appellate and trial court facilities; (3) develop for council approval a five-year infrastructure plan; and (4) construct appellate and trial court facilities, including but not limited to selection of architects and contractors, except as otherwise expressly limited by law.

c. Other stakeholders—project advisory groups

Government Code section 70391 (see link above)

For the construction of new trial court facilities, the Legislature mandates creation of local project advisory groups that include representatives from the trial court, the

county, the local sheriff's office, and state agencies; bar groups, including the criminal defense bar; and members of the community. Consultation with the local sheriff in design, planning, and construction must include the physical layout of new facilities as it relates to court security and other security considerations, including matters relating to the safe control and transport of in-custody defendants. (Gov. Code, § 70391(f).)

1.3.3 Rules of Court

a. Judicial Council governance; committees and advisory bodies

California Rules of Court,¹ rules [10.1](#), [10.11](#), [10.30](#), [10.31](#), [10.32](#), [10.33](#), [10.34](#), [10.62](#), and [Appendix D: Judicial Council Governance Policies](#)

These rules and accompanying policies elaborate on the general role, purpose, and function of the Judicial Council—as the policymaking body for the judicial branch of the State of California—as well as its internal committees and various of its advisory boards.

One of the standing internal committees of the council, the Executive and Planning Committee, is responsible for overseeing the council's policies and procedures regarding court facilities, including development of policies, procedures, and guidelines for facilities; site selection; and capital appropriations. (Rule 10.11(c).)

The Court Facilities Advisory Committee is an advisory body of the Judicial Council charged with making recommendations to the council concerning the judicial branch capital program for the trial and appellate courts. (Rule 10.62(a).)

The Judicial Branch Budget Committee reviews and makes recommendations annually to the council on submitted budget change proposals for the judicial branch; coordinates these budget change proposals, including capital outlay appropriations; and ensures that they are submitted to the council in a timely manner.

b. Administrative Director

Rule [10.80](#)

The Administrative Director is authorized to perform those functions prescribed by the Constitution and laws of the state or delegated to the director by the council or the Chief Justice, including without limitation functions related to acquisition and construction of court facilities.

¹ These and all subsequent references to rules are to the California Rules of Court.

c. Judicial Council staff and Judicial Council

Rules [10.180](#), [10.181](#), and [10.184](#)

With these rules, the Judicial Council further elaborates on the statutory authorities and responsibilities of the Judicial Council and Judicial Council staff in requiring creation of facilities standards for design and construction of new appellate and trial court facilities and alterations to or renovations of existing facilities (rule 10.180); requiring policies, procedures, and standards for the planning, design, and construction of new appellate and trial court facilities and alterations to or renovations of existing ones (rule 10.181); and allocating responsibility for acquisition, space programming, construction, and design of appellate and trial court facilities among the courts, the Judicial Council, and its staff (rule 10.184).

d. Appellate and trial courts

Rules 10.180 and 10.184 (see links above)

Affected courts are responsible for using the policies, procedures, and standards adopted by the Judicial Council in any review of a proposed capital project and consulting with Judicial Council staff regarding the court's annual capital needs. (Rules 10.180(c), 10.184(c).)

e. Project advisory groups

Rule 10.184 (see link above)

Elaborating on the requirement of Government Code section 70374, the council, through implementation of this rule, mandates that Judicial Council staff work in consultation with the leadership of the affected courts to establish and work with an advisory group for each court construction or major renovation project. (Rule 10.184(d).)

1.4 Procedures

It is the policy of the Judicial Council that procedures will be developed for the implementation of the policies as needed. Judicial Council staff will be responsible for the development and update of the procedures as delegated.

2 Governance and Delegation

2.1 Purpose

The purpose of this chapter is to identify, in the statutes and California Rules of Court listed in the previous chapter, the specific authorities and responsibilities that each judicial branch entity or person holds and that support all the activities involved in the planning, land acquisition, design, construction, and closeout of appellate and trial court capital projects. The subsequent chapters of this manual elaborate on the responsibilities and authorities listed below.

2.2 Judicial Council of California

The Legislature has assigned the Judicial Council the following responsibilities and authorities:

- a. Exercise full responsibility, jurisdiction, control, and authority as an owner would have over appellate and trial court facilities, including but not limited to the acquisition and development of facilities. (Gov. Code, §§ 69204(a), 70391(a).)
- b. Exercise the full range of policymaking authority over appellate and trial court facilities, including but not limited to planning, acquisition, construction, and operation, to the extent not expressly otherwise limited by law. (*Id.*, §§ 69204(b), 70391(b).)
- c. Establish policies, procedures, and guidelines—including but not limited to facilities planning, acquisition, design, construction, operation, and maintenance—for ensuring that the appellate courts have adequate and sufficient facilities. (*Id.*, §§ 69204(c), 70391(e).)
- d. Establish and consult with local project advisory groups—including staff of the trial court, county, local sheriff's office, and state agencies; bar groups, including the criminal defense bar; and members of the community—on the construction of new trial court facilities. (*Id.*, § 70391(f).)
- e. Prepare funding requests for appellate and trial court facility construction, repair, and maintenance (*id.*, §§ 69204(e), 70391(j)) and allocate appropriated funds for appellate and trial court facilities maintenance and construction, subject to the other provisions of the law (*id.*, §§ 69204(d), 70391(h)).
- f. Implement the design, bid, award, and construction of all appellate and trial court construction projects, except as delegated to others. (*Id.*, §§ 69204(f), 70391(k).)
 1. This broad grant of authority in connection with the acquisition and construction of court facilities is limited by a requirement that all such activity is made subject to the State Building Construction Act of 1955 (*id.*, § 15800 et seq.) and the Property Acquisition Law (*id.*, § 15850 et seq.) except that (1) subject to Department of Finance (DOF) approval, the Judicial Council staff must serve as

the implementing agency (*id.*, §§ 69202(b), 70374(b)); (2) acquisition and construction of trial court facilities are not subject to the provisions of the Public Contract Code but must instead be subject to facilities contracting policies and procedures adopted by the Judicial Council after consultation and review by the DOF (*id.*, § 70374(b); Pub. Contract Code, § 19204(c)); and (3) “procurement and contracting for the planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of court facilities shall be conducted . . . consistent with the relevant provisions of [the Public Contract Code] applicable to state agencies” (Pub. Contract Code, § 19204(b), (c)).

2. Utilize the design-build delivery method for construction of trial court facilities as updated and revised in 2021. (Gov. Code, §§ 70398–70398.7.)
 - g. Provide for consideration by the DOF, Governor, and Legislature capital outlay projects that may be built with funds appropriated or otherwise available for these purposes in accordance with applicable five-year capital infrastructure plans. (Gov. Code, §§ 69204(g), 70391(l).) Annually recommend to the Governor and the Legislature the amount proposed to be spent for projects paid for with moneys in the State Court Facilities Construction Fund. (Gov. Code, § 70374(a).)
 - h. Consult with the local court in carrying out its responsibilities and authority for trial court facilities to select and contract with facility consultants, prepare and review architectural programs and designs for court facilities, prepare strategic master and five-year capital facilities plans, and perform major maintenance of a facility. (Gov. Code, § 70391(m).)
 - i. Develop performance expectations for court facility proposals, including benchmark criteria for total project life-cycle costs, project cost comparisons to traditional delivery and financing options, project risk assessments and allocations, utility and energy conservation requirements that meet or exceed state standards, and court security operations cost controls and reduction goals. (Gov. Code, § 70391.5.)

2.3 Executive and Planning Committee

- 2.3.1 The Executive and Planning Committee, an internal committee of the Judicial Council, oversees the council’s policies and procedures regarding court facilities, including development of policies, procedures, and guidelines for facilities; site selection; and capital appropriations. (Rule 10.11(c).)

2.4 Court Facilities Advisory Committee

- 2.4.1 The Court Facilities Advisory Committee (CFAC) is an advisory body created by the council in the California Rules of Court (rule 10.62) to make recommendations to the Judicial Council concerning the Capital Outlay Program for the trial and appellate courts (rule 10.62(a)), and to undertake other activities as assigned by the Executive and

Planning Committee, the council, or other areas identified by the CFAC consistent with rule 10.34.

The CFAC may establish subcommittees necessary to carry out its responsibilities and authorities, and those authorities delegated by the council. (Rule 10.30(c).) Examples of such subcommittees include the Courthouse Cost Reduction Subcommittee, the Independent Outside Oversight Consultant Subcommittee, and the Subcommittee on Courthouse Names.

2.5 Judicial Council Staff

The Legislature and the Judicial Council have provided council staff with the responsibility and authority to:

- a. Implement the council's policies with regard to appellate and trial court facilities, except as otherwise expressly limited by law (Gov. Code, §§ 69206(a), 70392(b));
- b. Develop for council approval the master plans for appellate and trial court facilities (*id.*, §§ 69206(b), 70292(c));
- c. Construct appellate and trial court buildings, including but not limited to selection of architects and contractors, except as otherwise expressly limited by law (*id.*, §§ 69206(c), 70392(d)); and in addition to those matters expressly provided by statute, acquire, space program, construct, and design court facilities, consistent with the facilities policies and procedures adopted by the Judicial Council and the California Rules of Court (rule 10.184(b)(1));
- d. Develop and maintain standards for the alteration, remodeling, renovation, and expansion of existing court facilities and for the construction of new court facilities (rule 10.180(a));
- e. Develop for presentation to the council recommendations for policies, procedures, and standards concerning the operation, maintenance, alteration, remodeling, renovation, expansion, acquisition, space programming, design, and construction of appellate and trial court facilities under Government Code sections 69204(c) and 70391(e) (rule 10.181(a));
- f. Prepare and submit to the council separate annual capital-outlay proposals for the appellate courts and the trial courts, as part of the yearly judicial branch budget development cycle, specifying the amounts to be spent for these purposes from the State Court Facilities Construction Fund and from other sources, and consistent with the Five-Year Capital Infrastructure Plan or with recommendations for appropriate changes in the Five-Year Capital Infrastructure Plan (rule 10.184(b)(2));
- g. Consult with the affected courts concerning the annual capital needs of the courts (rule 10.184(b)(3)); and

- h. Establish and work with an advisory group for each court construction or major renovation project (rule 10.184(d)).

2.5.1 Administrative Director

The Administrative Director is authorized to perform those functions prescribed by the Constitution or laws of the state or delegated to the director by the council or the Chief Justice, including, without limitation, functions related to acquisition and construction of court facilities, and is empowered to use any reasonable interpretation of council policies to achieve the council's goals, consistent with the limitations from the council and the Chief Justice. (Rule 10.80.)

Responsibilities and authorities include the following:

- a. Approve form of funding proposals for capital outlay projects.
- b. Approve site selection and acquisition of land necessary for capital outlay projects or recommend approval of controversial site selections in accordance with the Judicial Council's [*Site Selection and Acquisition Policy for Judicial Branch Facilities*](#) (Aug. 2009).
- c. Delegate to the Chief Administrative Officer authorities and responsibilities necessary to establish and operate the Capital Outlay Program.
- d. Delegate to the Chief Administrative Officer authorities and responsibilities for the planning, design, construction, and closeout of all capital outlay projects.
- e. Notwithstanding these or any other delegations, refer projects or actions to the Judicial Council that, in the Administrative Director's judgment, merit review and approval by the Judicial Council because of budget matters, environmental impacts, community concerns, or other reasons.
- f. Other matters as delegated by the Judicial Council or the Chief Justice under authority of article VI, section 6 of the California Constitution and rule 10.80 of the California Rules of Court.

2.5.2 Chief Administrative Officer

Responsibilities and authorities include the following:

- a. Delegate the day-to-day management of the Capital Outlay Program to the Director of Facilities Services.
- b. All such other responsibilities and authorities as may be delegated by the Administrative Director.

2.5.3 Director of Facilities Services

Responsibilities and authorities include the following:

- a. Manage the Capital Outlay Program in accordance with the policies stated in this *Capital Program Management Policy* and other applicable council policies.
- b. Establish, recommend, maintain, implement, and enforce additional policies, procedures, and guidelines necessary to manage the Capital Outlay Program.
- c. Procure contracts with architects/engineers, construction contractors, construction managers at risk, design-build entities, and other consultants and contractors as required to design and construct capital outlay projects.
- d. Execute or delegate the execution of notices of completion, under Civil Code section 3093, and authorize or delegate the authorization of notices of completion to be recorded in the county in which each project is constructed.
- e. All such other responsibilities and authorities as may be delegated by the Administrative Director or Chief Administrative Officer.

2.5.4 Appellate and Trial Courts

Responsibilities and authorities include the following:

- a. Courts are responsible for using the policies, procedures, and standards adopted by the Judicial Council in any review of a proposed capital project. (Rule 10.180(c).)
- b. Affected courts are responsible for consulting with Judicial Council staff regarding the court's annual capital needs. (Rule 10.184(c)(1).)
- c. Affected courts are responsible for consulting with council staff in the formation of project advisory groups for each new court construction or major renovation project and thereafter must work with those groups. (Rules 10.184(c)(2), (d).)

2.5.5 Project Advisory Groups

Responsibilities and authorities include the following:

- a. The primary stakeholder in any new court construction or major renovation project is the court where the project is located. With respect to trial court facility projects, other stakeholders include the county, the local sheriff, state agencies, bar groups including but not limited to the criminal defense bar, and members of the community. (Gov. Code, § 70391(f).)
- b. A project advisory group is required for each new trial court construction or major renovation project. Each project advisory group is to be formed by council staff in consultation with the local court and include court judicial officers, other court personnel, and others affected by the court facility, including the county, the local

sheriff, state agencies, bar groups, and members of the community. (Gov. Code, § 70391(f); rule 10.184(c), (d).)

1. Project advisory groups are responsible for working with Judicial Council staff on issues involved in the construction or renovation, from the selection of a space programmer and architect through occupancy of the facility.
2. For trial court projects, consultation with the local sheriff should include the physical layout of new facilities as it relates to court security and other security considerations, including matters relating to the safe control and transport of in-custody defendants.

3 Program Management

3.1 Purpose

The purpose of this chapter is to establish a program management structure encompassing all projects of the Capital Outlay Program so that all those projects can be managed with a common strategy and approach and common systems and processes. The chapter describes specific council staff responsibilities and duties required to manage the Capital Outlay Program, under general authority of Government Code section 70392 and rule 10.184, including strategic planning, human resources planning, risk management, safety management, and fund management components.

3.2 Policy

3.2.1 Program Management.

The Capital Outlay Program is a group of related capital construction projects, subprograms, and program activities involving both appellate and trial court facilities as contemplated and authorized by Government Code sections 69202 and 70374. All projects within the Capital Outlay Program are related through a common goal of strategic importance to the judicial branch. *Program management* is the centralized, coordinated management of the Capital Outlay Program to achieve the goals that allow for optimized and integrated costs, scheduling, and efforts. It is the policy of the Judicial Council that all capital projects are managed as a program and not as a collection of individual projects.

Consistent with this policy, the Director of Facilities Services has the following specific responsibilities and duties:

- a. Ensure sufficient communication with the Judicial Council and its Court Facilities Advisory Committee to enable compliance with their ongoing oversight and governance.
- b. Provide the Judicial Council and the CFAC with the information needed to make decisions necessary to plan and guide the Capital Outlay Program.
- c. Ensure that the overall program structure and program management processes enable the Capital Outlay Program and its individual project teams to successfully complete each project and meet the overall program goals and objectives.
- d. Establish the Capital Outlay Program management processes and procedures that will be followed in the planning and execution of all new court construction and major renovation projects.
- e. Establish a system of budget preparation and financial reporting and controls for the Capital Outlay Program and its projects.

- f. Ensure that the projects are organized, designed, and constructed in a consistent manner, and are fulfilled in accordance with all California building codes, the [*California Trial Court Facilities Standards*](#), and all other applicable laws and standards.
- g. Maintain an overall Capital Outlay Program schedule and budget.
- h. Establish and implement the quality and safety standards for the Capital Outlay Program and its projects.
- i. Establish and implement uniform policies for contracting and procurement.
- j. Establish and implement a system of records management and document control.
- k. Establish and implement a system of budget and schedule management.
- l. Establish and implement a process for risk management.
- m. Provide centralized support for managing changes and for tracking risks and issues as they may arise on individual projects.
- n. Along with designated managers, guide and direct the individual project managers in the centralized, coordinated requirements of the Capital Outlay Program.
- o. Recommend to the Chief Administrative Officer staffing and reporting requirements within Facilities Services necessary to achieve the responsibilities of this section.
- p. Coordinate the efforts within other Judicial Council offices of units that provide complementary services to the Capital Outlay Program to ensure those complementary units understand and apply the policies, procedures, and guidelines approved for the operation of the Capital Outlay Program. These offices are:
 - Legal Services, which provides legal assistance and advice related to the acquisition, design, construction, financing, and closeout of projects;
 - Budget Services, which assists with overall Capital Outlay Program budgeting, budgeting for individual projects, and financing of the costs of those projects with State Public Works Board bonds or other sources;
 - Branch Accounting and Procurement, which provides accounting and business services, including contract and procurement services, revenue tracking, and accounts payable services;
 - Audit Services, which provides audit services;
 - Public Affairs, which assists with developing the Program Communication Plan and is the office responsible for media relations;

- Human Resources, which administers the recruitment, hiring, payroll, and termination processes for all Capital Outlay Program staff; and
- Information Technology, which provides technology support to the Capital Outlay Program.

3.2.2 Strategic Planning

Directly, and as specifically assigned to the Deputy Director of Facilities Services, provide strategic planning services at both the Capital Outlay Program and project level. More specifically, the Director of Facilities Services is responsible to:

- a. Work with California's trial and appellate courts to identify the need for capital outlay-funded court facility replacement and modernization projects statewide, and advocate for those needs with the executive and legislative branches;
- b. Support all Judicial Council efforts to evaluate and prioritize the need for court facility replacement and modernization projects statewide in accordance with the *Prioritization Methodology for Trial Court Capital-Outlay Projects*;
- c. Annually update the *Judicial Branch Five-Year Infrastructure Plan* based on the *Prioritization Methodology for Trial Court Capital-Outlay Projects* or update as directed by the Court Facilities Advisory Committee;
- d. Based on the *Judicial Branch Five-Year Infrastructure Plan*, prepare and recommend annual fund requests to the Court Facilities Advisory Committee; and
- e. Support the CFAC in the preparation of its recommendations to the Judicial Branch Budget Committee and the Judicial Council.

3.2.3 Human Resources Planning

Prepare the Human Resources Plan for Facilities Services, which will evaluate the staffing and resources necessary to plan, administer, and deliver the Capital Outlay Program for the fiscal year in which the plan is developed and for the next two fiscal years thereafter. The plan must include:

- a. Total number of Facilities Services and complementary unit staff approved to work on the Capital Outlay Program, identified by funding source and job classification;
- b. Total number of contracted contingent staff identified by task, authorized project, and funding source; and
- c. A Capital Outlay Program human resources organizational chart that indicates each human resource, whether Judicial Council staff or contracted staff, working on any portion of the Capital Outlay Program.

3.2.4 Risk Management

To fulfill the mandates of Government Code section 70391.5, the Judicial Council establishes this comprehensive risk management program for the Capital Outlay Program. The Director of Facilities Services and its Manager of Risk Management must develop processes to:

- a. Identify and evaluate the Capital Outlay Program and project-related risk to the Judicial Council through risk analysis, risk response planning, and continuous maintenance of the Capital Outlay Program and individual project risk register;
- b. Whenever practical, establish and modify best risk management practices that may affect project cost and/or schedule;
- c. Retain risks whenever the threat of potential loss is determined to be reasonable as compared to the cost of risk transfer, and where elimination or avoidance is not possible;
- d. Where the threat of potential loss is determined to be too great for risk retention, finance the risk of loss through appropriate use of property, liability, and/or surety insurance and/or contractual transfer;
- e. Identify and escalate, as appropriate, those risks that cannot be resolved through established risk mitigation measures;
- f. Report on the risks associated with the Capital Outlay Program to the Judicial Council Executive Office and management; and
- g. Report on claims paid by project property, liability, or surety insurance, or losses incurred due to risks retained by the Judicial Council.

3.2.5 Safety Program

The Director of Facilities Services, or designee, and its Manager of Risk Management must develop and implement the Capital Outlay Program's health and safety program. In fulfilling these requirements, the health and safety program must:

- a. Establish and enforce construction contract terms and conditions that require construction contractors and their subcontractors to initiate, maintain, follow, supervise, and enforce safety precautions and programs in connection with the performance of their work on a project site;
- b. As part of the Judicial Council procurement process and based on project complexity, require prospective contractors to prequalify with consideration of the prospective construction contractors' health and safety culture, policy, plans, and record;

- c. For projects that are in the design phase or under construction using an owner-controlled insurance program, establish project-specific safety requirements that are provided in a project safety guidance manual;
- d. Establish a process to monitor the efforts of construction contractors and their subcontractors to ensure that their safety programs are being enforced as written;
- e. Establish within the Judicial Council Injury and Illness Prevention Program adequate requirements to ensure the safety of Judicial Council employees at construction sites; and
- f. Budget for appropriate funding at both program and project level for the implementation of the health and safety program.

3.2.6 Funding

In collaboration with Budget Services, the Director of Facilities Services must obtain and account for capital outlay funding consistent with the policy, procedures, and guidelines established by the Judicial Council, State Public Works Board, Department of Finance, applicable sections of the [State Administrative Manual](#), and applicable laws. In meeting this responsibility, Facilities Services will:

- a. Follow the directives of Budget Services; develop, maintain, and administer the budget preparation process for the Capital Outlay Program; and ensure the submission of a final budget recommendation for the judicial branch to the DOF each fiscal year;
- b. Follow the directives of Budget Services and, where appropriate, the *State Administrative Manual* to develop and maintain procedures to monitor and report on expenditures, allocations, and payments associated with the Capital Outlay Program, including the administration of facility-related funds;
- c. Monitor the budget and expenditures of all authorized funds and appropriations to identify variances, determine their cause, and implement measures to reduce or eliminate future variances;
- d. Obtain cash flow and forecast of future cash flow needs from Budget Services for use in project and program planning;
- e. Establish a system to provide effective management control over assets, liabilities, revenues, and expenditures, including the establishment and maintenance of a list of the scope and levels of approval authority for various Facilities Services staff with respect to procurement, contract, and payment authorization;
- f. Serve as the primary point of contact for Facilities Services in the event of an audit of Facilities Services' financial records; and

- g. Collaborate with Budget Services, which will serve as the primary point of contact for the DOF, State Public Works Board, and Legislative Analyst's Office on fiscal matters related to Facilities Services, including but not limited to issuance of bonds or other financing instruments, as well as ongoing compliance with postissuance requirements of those bonds or other instruments.

4 Communication

4.1 Purpose

The purpose of this chapter is to outline communications responsibilities within Facilities Services, as well as those responsibilities undertaken in partnership with the Judicial Council's Public Affairs office, in support of the Capital Outlay Program.

4.2 Policy

4.2.1 The Director of Facilities Services must ensure that proper processes, protocols, plans, and tools are developed for effective communications within Facilities Services and with stakeholders in the following critical areas:

- a. Reporting progress, accomplishments, significant changes, budget and schedule status, and upcoming challenges to interested parties, including the public;
- b. Responding to criticisms and crises; and
- c. Managing stakeholder communication.

4.2.2 The Director of Facilities Services must inform and engage Public Affairs to minimize criticism and potential crises that could affect the reputation and credibility of the Judicial Council or the Capital Outlay Program.

4.2.3 Facilities Services project managers are responsible to manage project communications, including reporting quarterly progress to keep the court, local and other stakeholders, and the project advisory group informed; working with their supervisors to engage with Public Affairs and provide periodic project information, as needed; and appropriately communicating potential project accomplishments, controversies, or criticisms.

4.2.4 In helping Facilities Services meet its responsibilities, Public Affairs must:

- a. Consult as needed with Facilities Services on best practices, channels, tools, and tactics to foster understanding and support of the Capital Outlay Program and individual projects among its various stakeholders and audiences;
- b. Consult with Facilities Services, the Judicial Council Executive Office, the CFAC, and the Judicial Council, as needed, on messaging, talking points, and tactics for significant issues related to the Capital Outlay Program and individual projects that could affect the reputation and credibility of the Judicial Council and the Capital Outlay Program; and
- c. Disseminate consistent messages and project facts based on accurate data supplied by Facilities Services management and staff.

4.2.5 In keeping with the Judicial Council's News Media Policy, manage and respond to all media inquiries, and draft and issue news releases, media advisories, web and online communications, and print materials as required.

5 Project Management

5.1 Purpose

The purpose of this chapter is to establish responsibilities and duties for management of the design and construction of new court construction or major renovations projects that have been approved to proceed to site acquisition, design, construction, and closeout, consistent with the processes, procedures, systems, and controls established for the overall Capital Outlay Program.

5.2 Policy

5.2.1 The Director of Facilities Services must ensure that all projects are managed consistent with the strategy, approach, systems, and processes of the overall Capital Outlay Program, as outlined in Chapter 3, Program Management.

5.2.2 The Director of Facilities Services must establish a unit or units and appoint managers, including assignment of a project manager (upon the authorization of initial project funding), with responsibility to:

- a. Acquire, space program, design, and construct court facilities;
- b. Establish a project advisory group consistent with the requirements of Government Code section 70391(f) and California Rules of Court, rule 10.184;
- c. Establish and maintain a Project Management Plan for each project, to include a project summary, goals, and objectives; stakeholder, scope, schedule, cost, quality, communication, and risk management; and roles and responsibilities;
- d. Complete environmental review, consistent with the California Environmental Quality Act (CEQA), conducting due diligence related to project and site conditions, and ensure CEQA compliance through project completion, consistent with the Judicial Council's CEQA Procedures;
- e. Identify in-house or qualified private resources for the procurement of appropriate real property sites;
- f. Develop design in accordance with the [*California Trial Court Facilities Standards*](#) and applicable building codes, obtaining mandatory review and approvals from jurisdictional agencies, including the Office of the State Fire Marshal and the Judicial Council's building official;
- g. Manage the procurement of the necessary qualified architects, contractors, construction managers, inspectors, and other consultants to design, construct, inspect, commission, and occupy the project;

- h. Administer and enforce the terms and conditions of design, construction, and consulting contracts, including, where appropriate, consultation with Legal Services to do so;
- i. At preestablished milestones, confirm continued support and authorization for the project from the council through the CFAC and various state agencies, consistent with the funding requirements established by the State Public Works Board and the DOF, to design and construct the project;
- j. Manage proposed changes to the project budget, scope, and schedule, ensuring appropriate agency approvals are secured before implementation;
- k. Establish and implement a process for the independent review of design and cost to maintain quality project design and to ensure that cost considerations are incorporated into design decisions;
- l. Provide for the procurement of furniture, fixtures, and equipment necessary to occupy the project;
- m. Establish an occupancy plan for the court facility necessary to move the court and, if applicable, other tenants into the project;
- n. Establish an operations transfer plan to transfer the completed facility from the construction project management team to the facility operations and maintenance team to facilitate the successful long-term operations and maintenance of the court facility;
- o. Following successful occupancy of the court facility, continue project management services until the closeout of the project is complete, under Chapter 7, Project Closeout, of this *Capital Program Management Policy*;
- p. Conduct a postoccupancy evaluation with the stakeholders at the required interval, and submit the documentation to the stakeholders; and
- q. Establish the long-term operational and maintenance requirements of the court facility, including analysis of energy-efficient building systems and materials.

6 Contracts: New Court Construction and Major Renovation Projects

6.1 Purpose

The purpose of this chapter is to establish responsibility and authority for the development and administration of contracts and procurement practices, construction change orders, and construction retention for the Capital Outlay Program.

6.2 Policy

6.2.1 Contracts, Contract Procurement, and Contract Administration

Policy and procedures for contracts, contract procurement, and contract administration for new court construction and major renovation projects are provided in *Court Facilities Contracting Policies and Procedures*, adopted by the Judicial Council as of December 7, 2007, and able to be amended at any time, by applicable law.

Facilities Services, in conjunction with Branch Accounting and Procurement, is responsible for the administration of any contracts necessary to implement the Capital Outlay Program projects, including contracts required to acquire and/or use the land, buildings, and other structures necessary to construct court facilities.

6.2.2 Change Orders and Contract Amendments

The Director of Facilities Services is responsible for ensuring that change orders, including field directives and unilateral change orders, and all contract amendments are implemented and administered consistent with the terms and conditions of the contract it is changing and the following:

- a. Any contract amendment that includes any substantive change to any portion of the contract, including the general or supplementary conditions, must be reviewed and approved by Legal Services before execution. An example of a substantive change is one that amends any of the rights, duties, or obligations of either party as stated in the contract. A nonsubstantive amendment is one that is consistent with the contract, such as a notice to proceed to a different phase of work, as contemplated by the contract; a change in contract time, as provided for in the contract; a change in the dollar value of the contract, consistent with the terms of the contract; or a change in scope that is anticipated by the contract documents, such as when the parties agree to amend the contract later to insert plans or drawings.
- b. A change order is required for a change in the scope of work, an increase or decrease in the amount of the construction cost, or an adjustment to the final completion date of a project. A change order may not be used to make substantive changes to any portion of the contract, including the general or supplementary conditions.
- c. A change order that would result in a material change in the performance, useful life, or function of a Capital Outlay Program project and that has been previously

reviewed and recommended for approval by the CFAC must be reviewed and supported by the CFAC.

- d. A change order that substantively alters the design or scope of facilities provided for in the original State Public Works Board–approved scope of work must be reviewed and supported by the CFAC, the Director of Facilities Services, and the DOF.
- e. A change order must not increase the project cost beyond the appropriated project authority unless a budget augmentation is approved by the DOF.
- f. A change order must not be separated into smaller segments of funding, cost, work, or function to avoid approval by a specific authority, as provided in item h.
- g. Approval of all change orders related to project cost must be as follows:
 1. The project manager may approve a change order in an amount not to exceed \$500,000, provided that this authority terminates when the total value of the change order at hand and all previously approved change orders and/or construction claims for the project collectively exceed 50 percent of the Judicial Council Contingency.
 2. The project manager’s Manager may approve a change order in an amount not to exceed \$750,000, provided that this authority terminates when the total value of the change order at hand and all previously approved change orders and/or construction claims for the project collectively exceed 60 percent of the Judicial Council Contingency.
 3. The project manager’s Principal Manager may approve a change order in an amount not to exceed \$1 million, provided that this authority terminates when the total value of the change order at hand and all previously approved change orders and/or construction claims for a project collectively exceed 70 percent of the Judicial Council Contingency.
 4. The Director or Deputy Director of Facilities Services may approve a change order in any amount, provided that this authority terminates when the total value of the change order at hand and all previously approved change orders and/or construction claims for the project collectively exceed 80 percent of the Judicial Council Contingency.
 5. If the total value of project change orders and/or construction claims collectively exceeds 80 percent of the Judicial Council Contingency, then the Chief Administrative Officer must approve all further change orders and construction claims.
 6. The Director of Facilities Services, with the concurrence of Legal Services, may approve a change order that would waive or impose liquidated damages.

- h. Approval of all change orders related to time extension must be as follows:
 - 1. The project manager may approve a change order adding additional days for project completion, up to a cumulative total of 30 days beyond the initial project completion date.
 - 2. The project manager's Principal Manager may approve a change order adding additional days for project completion, up to a cumulative total of 60 days beyond the initial project completion date.
 - 3. The Director or Deputy Director of Facilities Services may approve a change order adding additional days for project completion, up to a cumulative of 90 days beyond the initial project completion date.
 - 4. The Chief Administrative Officer may approve a change order adding additional days to a project in any amount.

6.2.3 In the event of an emergency, the Director of Facilities Services, or designee, may approve a change order beyond the director's or designee's authority described in this policy to the extent reasonably necessary to:

- a. Prevent or minimize an imminent threat to the health, welfare, and safety of persons or property;
- b. Protect the project, equipment, material to be used in the work, human safety, or environment at or near the project from substantial and immediate danger, injury, or deterioration; or
- c. Where damage or injury has occurred, protect the project, equipment, material to be used in the project, human safety, or environment at or near the project from further or additional damage, injury, or deterioration.

6.2.4 The Director of Facilities Services must present a written finding of the existence of the emergency and the purpose and scope of the change order in a report to the Administrative Director within 14 calendar days following approval of an emergency change order.

6.3 Retention

6.3.1 The Judicial Council must retain 5 percent of the construction contractor's contract price related to the construction phase of the project. The Judicial Council may withhold an amount greater than 5 percent if, before solicitation, the Director of Facilities Services determines that the project is unusually complex and a higher retention is required.

The Director of Facilities Services is responsible for ensuring that this Judicial Council policy covering construction contract retention is implemented and administered, consistent with the following:

- a. The Judicial Council will release the retention only upon the completion of the project, as determined by the Director of Facilities Services and under the terms and conditions of the applicable construction contract, subject to the following exceptions:
 1. If the retention is determined to be greater than 5 percent, at any time after the project reaches 50 percent completion and if satisfactory progress is being made, the Director of Facilities Services may, with the approval of the construction contractor's surety, reduce the retention to as low as 5 percent and/or allow the construction contractor to submit an invoice for the release of up to one-half the amount previously retained by the Judicial Council.
 2. If the Judicial Council has received the State Fire Marshal's certificate of occupancy, the Director of Facilities Services may, with the approval of the construction contractor's surety, if applicable, authorize the release of payment of all of the withheld retention, except for those amounts that the Judicial Council is permitted or required to withhold as determined by the Principal Manager, which must be set at no less than 150 percent of any amount:
 - That the Judicial Council is required to withhold by law or under the contract for the project;
 - Related to project work not yet completed;
 - Related to project work for which an unresolved noncompliance report has been issued;
 - Related to the cost of completion of punch list items;
 - Related to potential damages arising out of unresolved contract claims; and
 - Associated with cost-to-correct reported warranty claims.
- b. The final payment of all withheld retention shall be made after the notice of completion is recorded and upon receipt of a waiver and release made pursuant to Civil Code section 8120 et seq. and after the expiration of the period allowed to the construction contractor to file a claim.

7 Project Closeout

7.1 Purpose

The purpose of this chapter is to (a) identify and define key elements of *project closeout*, the formal recognition that all aspects of the project are complete, including occupancy, completion and acceptance of all contracts and noncontract works, filing of the notice of completion, completion of postoccupancy evaluations, and finalization of all financial aspects of the project; and (b) establish responsibility and authority for completion of those key elements.

7.2 Policy

7.2.1 The Director of Facilities Services is responsible for determining when the entire work of a project is completed in accordance with the requirements of all design and construction contracts. The director may accept a project as complete on behalf of the Judicial Council when all the items listed in section 7.2.3 are complete. Each of the following must occur before acceptance of the construction of a project as complete:

- a. Issuance of the State Fire Marshal's certificate of occupancy;
- b. Issuance of the Judicial Council building official's certification;
- c. Completion of any incomplete work and/or punch list items;
- d. Completion of the project inspector's final verified report;
- e. Receipt of the architect's letter of confirmation indicating that the building and systems are, to the best of the architect's knowledge, built in accordance with the contract documents;
- f. Receipt and approval of the construction contractor's final invoice;
- g. Release of all claims by the construction contractor, with the exception of any disputed contract claims filed, under Civil Code section 8120 et seq.;
- h. Receipt of all the construction contractor's records required under the terms and conditions of the contract documents; and
- i. Training of relevant facility operations personnel, and transfer of all operations and maintenance manuals and warranty information to facility operations.

7.2.2 Upon satisfaction of all requirements to accept the construction of a project as complete, the Director of Facilities Services, or designee, is authorized to execute and record in the county in which the project was constructed an official notice of completion.

- 7.2.3** The Director of Facilities Services may, before the project's completion and acceptance, authorize the court for which the facility is being constructed or renovated to take occupancy of the court facility if the following conditions are satisfied:
- a. *Ready for use.* The project in its entirety or partially, as applicable, is ready for use for the purposes of normal courtroom and court office operations, except for punch list items.
 - b. *Certificate of occupancy.* A temporary or final certificate of occupancy has been issued for the project or portion thereof by the State Fire Marshal.
 - c. *Governmental agency confirmations.* All other governmental agencies having jurisdiction have confirmed that the building and structures on the site or portions thereof are ready for occupancy.
- 7.2.4** Between 9 and 11 months after occupancy, the Facility Operations unit of Facilities Services must conduct a physical inspection of the court facility to identify and document any warranty claims and any latent defects in workmanship or materials existing at the time of acceptance of the project but that could not have been discovered by a reasonable inspection.
- 7.2.5** Between 12 and 18 months after occupancy, Facilities Services may complete and forward to the CFAC its postoccupancy evaluation, which summarizes whether the project is adequately supporting the trial court occupying the court facility, and Facility Operations end-user requirements. The evaluation may be funded by project funds or program support funds.
- 7.2.6** The following must occur before the Facilities Services staff complete the project closeout process:
- a. Completion of construction, as defined in section 7.2.1 and warranty inspection, as defined in section 7.2.4;
 - b. Verification that all project contracts are complete and final invoices have been paid;
 - c. Verification of resolution of any outstanding project disputes or claims;
 - d. Verification that all noncontract obligations have been fulfilled—such as for the State Fire Marshal and the Department of General Services—and the agencies or vendors have been paid fully; and
 - e. Verification that all project record documents have been filed in accordance with Chapter 9 of this policy.
- 7.2.7** Facilities Services will provide confirmation of project completion to Budget Services, and Budget Services will carry out the DOF-related financial closeout of the project.

8 Claims Management

8.1 Purpose

The purpose of this chapter is to establish the responsibility and requirements for Capital Outlay Program construction claim management and resolution for new trial court construction or major trial court renovation projects. Because appellate court facility projects are not exempt from the Public Contracts Code in the same manner as are trial court projects, the claim management and resolution process for appellate court facilities projects must follow a statutory claims procedure beyond the scope of this manual.

8.2 Policy

It is the intent of the Judicial Council to resolve claims as close in time to the events giving rise to each claim as possible, and to avoid stale or late claims and the late documentation of claims. The Judicial Council hereby exercises the power conferred on it by Government Code sections [930.2](#) and [930.4](#) to augment claims presentation procedures and create its own claims management and resolution process as the exclusive process for resolution of claims as indicated in this policy section.

The Director of Facilities Services is responsible for establishing a construction claim management and resolution process that incorporates the following requirements:

- a. A *claim* is a dispute that remains unresolved after conclusion of a dispute resolution process. A *dispute* is a request, demand, or assertion by a construction contractor, design professional, consultant, construction manager at risk, or design-build entity (collectively, *claimant*) regarding the compensation and/or time adjustments that the Judicial Council does not agree with or has not been settled through a change order or amendment.
- b. All contracts entered into by the council in connection with new court construction or major renovation projects must include a provision that requires the contractor to provide notification of the Judicial Council's claim management and resolution process in any subcontractor contracts to ensure that all subcontractors or others who may assert claims by and through the contractor are informed of the claim management and resolution process.
- c. A claim must be filed within the time frame established under the terms and conditions of the contract out of which the dispute has arisen.
- d. A claim must be in writing and include documents necessary to substantiate the claim for both entitlement and damages to allow the Judicial Council to reasonably evaluate the claim under the terms of the contractor's contract.
- e. Adherence to the claim management and resolution process outlined in the contract out of which the dispute has arisen is mandatory.

- f. The Judicial Council will respond to the claim as required under the terms of the contract out of which the claim has arisen. If no deadline for response is included in such contract, council staff will use its best efforts to respond to the claim within 45 days of its receipt with either an acceptance, a denial, or a request for additional information.
- g. The Director of Facilities Services, or designee, will render a written decision to the claimant, which must be final and binding, if the claimant does not request mediation of the claim in the time and manner required under the terms of the contract out of which the claim has arisen.
- h. Resolution of claims must be based on the contractor's supporting documentation, the Judicial Council's project documentation, the contract terms and conditions, the specific facts of the claim, and any information considered relevant to the claim. Project costs, schedule impacts, and other relevant factors should also be considered when evaluating the claim.
- i. Unless otherwise prohibited in the contract out of which the claim has arisen, the Judicial Council may pay any undisputed portion of a claim.
- j. The Judicial Council may withhold from any progress payment or final payment, or both, an amount not to exceed 150 percent of the disputed amount of any claim or any such other amount, as identified in the contract out of which the claim has arisen.
- k. The Judicial Council may notify the contractor's surety and request the surety's assistance in resolving claims.
- l. Subject to the dispute resolution procedures stated in the contract, the parties may resolve any outstanding claim consistent with any and all remedies available under law.
- m. If a claim is resolved, the Judicial Council must document the final resolution in an agreement and release of any and all claims, a contract amendment, or another document, as appropriate.
- n. Payment of claims may be made in accordance with the levels of authority established in Chapter 6, Contracts, paragraph 6.2.2, item g, with the exception that the project manager will have no authority to settle claims.
- o. For claims that assert an entitlement to additional time to complete the project or extend the completion date, the authority to provide additional time will be in accordance with Chapter 6, Contracts, paragraph 6.2.2., item h, with the exception that the project manager will have no authority to settle claims.

- p. A report detailing claims that have been submitted, have been resolved, or are outstanding must be presented on a quarterly basis to the Judicial Council Executive Office. The report should be sufficiently detailed to inform the Executive Office about claims and change orders affecting each project and the overall Capital Outlay Program.

9 Project Records Management

9.1 Purpose

The purpose of this chapter is to establish Capital Outlay Program records management policies and practices that provide for a uniform, transparent, and accountable document control system. The records management and document control system must include records preparation, records filing, records retention, public access, and privacy protections.

9.2 Policy

The Director of Facilities Services must develop and implement the Capital Outlay Program records management and document control program. The records management program must include the following general concepts:

- a. The file-naming/organization system must be applied across both paper and electronic files so that all the materials pertaining to a project can be found in the same way.
- b. Records that contain basic facts concerning the Facilities Services' origin, policies, functions, organization, and significant administrative decisions must be retained.
- c. Records that have legal value must be retained. Records have legal value if they contain evidence of legally enforceable rights or obligations of the Judicial Council and Facilities Services (such as, but not limited to, contracts, change orders, amendments, and formal notices).
- d. Records must be retained for at least 11 years in case a defect is discovered after the project is completed.
- e. Records associated with a bond-financed project must be retained throughout the life of the bond issuance (typically 30 years) plus an additional three years.
- f. Certain records used for a facility's operation and maintenance must be retained for the life of the facility, including but not limited to:
 - As-built drawings, training documentation, and operations and maintenance manuals;
 - Asbestos removal and disposal records; and
 - Records that are part of an environmental impact investigation and monitoring program.
- g. Judicial Council Branch Accounting and Procurement must include record retention policies when executing an agreement with the architect. The architect's project

records must be maintained for a minimum of 11 years after the project is completed.

- h. A Records Filing and Disposition Table will be prepared and maintained for each project to describe the documents that constitute project records and indicate the record location during the active and inactive phases of the project.
- i. The Records Filing and Disposition Table must be filed in the Facilities Services Master Filing System.
- j. All construction and consultant contracts must include provisions governing the timely delivery of relevant project documents to the Judicial Council. The duties of a project manager may not be deemed complete until the paper and electronic project record documents are organized in the appropriate physical and/or electronic locations.