



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: June 26, 2015

Title	Agenda Item Type
Court Facilities: Sale of Equity Interest in Chino Courthouse as Surplus Property	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
None	June 26, 2015
Recommended by	Date of Report
Facilities Policies Working Group Hon. Douglas P. Miller, Chair Hon. Marla O. Anderson, Vice-chair	June 2, 2015
	Contact
	Eunice Calvert-Banks, 415-865-4048 eunice.calvert-banks@jud.ca.gov Leslie Miessner, 415-865-4056 leslie.miessner@jud.ca.gov

Executive Summary

In keeping with the Judicial Council's authority and responsibility to dispose of surplus court facilities under Government Code section 70391(c) and rule 10.183 of the California Rules of Court, the Facilities Policies Working Group recommends that the Judicial Council (1) declare as surplus property the Judicial Council's 51.17% equity interest in the Chino Courthouse, and (2) authorize the sale of the Equity Interest to the County of San Bernardino.

Recommendation

The Facilities Policies Working Group (FPWG) recommends that the Judicial Council, effective June 26, 2015:

1. Declare the Judicial Council's equity interest in the Chino Courthouse to be surplus property;
2. Authorize the sale of the equity interest to the County of San Bernardino;

3. Direct staff to negotiate an Equity Rights Purchase Agreement and any other documents necessary to complete this transaction; and
4. Delegate to the Administrative Director the authority to sign such documents.

Previous Council Action

The Judicial Council has disposed of equity interests in court facilities in other contexts. In a few instances in the Judicial Council's capital program, Judicial Council equity in a court facility has been the consideration given to a county in exchange for land or site improvements for a new courthouse.

In November 2012 and again in September 2013, the Judicial Council executive office approved dispositions of equity interests in two closed court facilities in county-owned buildings.¹ In each of these cases, the counties had also ceased operations in the buildings that housed the court facilities and are now selling the buildings as surplus county property with the Judicial Council entitled to its share of the proceeds.²

Rationale for Recommendation

In 2008, as part of the Senate Bill 1732 (Stats. 2002, ch. 1082) transfer process, the Judicial Council entered into (1) a Transfer Agreement for the Transfer of Responsibility for Court Facility (Transfer Agreement), and (2) a Joint Occupancy Agreement (JOA) with the county. Under the Transfer Agreement, the Judicial Council accepted responsibility for the court facility which represented a 51.17% equity interest in the Chino Courthouse, while the County of San Bernardino retained title to the land and building.³ The Superior Court of San Bernardino County closed the facility to the public as of December 2012, and the courthouse has since been vacated by the court. The court has notified the FPWG that it has no future plans to reopen the facility, is supportive of staff efforts to dispose of the Judicial Council's equity interest in it, and would like staff to move forward as quickly as possible with a sale of the equity interest to the county.

Although the facility has been closed for more than 29 months, the council continues to remain responsible for the costs of operations and maintenance under the provisions of section 70343(a)(2).⁴ Once the facility is disposed of, the judicial branch will realize financial savings on maintenance costs (utilities, landscaping, vandalism prevention/cleanup, etc.).

¹ Memorandum re: Disposition of Portola Courthouse (Plumas County), dated November 6, 2012, and signed by Curtis L. Child on November 13, 2012; and Memorandum re: Disposition of Willits Court Facility (Mendocino County), dated September 16, 2013, and signed by Curt Soderlund on September 20, 2013.

² These transactions are of the same kind as the proposed Chino Courthouse disposition. The proceeds will be deposited into the State Court Facilities Construction Fund. (See footnote 11 below, and accompanying text.)

³ Under authority of Gov. Code § 70323(b)(1). All future statutory references are to the Government Code unless otherwise indicated.

⁴ Section 70343(a)(2) provides as follows:

The Facilities Policies Working Group (FPWG)⁵ reviewed the status of the courthouse and determined that this facility was not being used by the court and would not for the foreseeable future be used for court operations. The court is in favor of having the council declare the council's equity interest in the facility as surplus and sell the equity interest back to the county at fair market value in accordance with statute. The FPWG voted to recommend that the council declare the equity interest in the Chino Courthouse as surplus and authorize the sale of the equity interest to the County of San Bernardino.

Equity in the Trial Court Facilities Act

"Equity" is an important concept in the Trial Court Facilities Act of 2002, SB 1732 (Escutia), codified in Government Code sections 70301 through 70404, as amended (the Act), though it is nowhere defined and is specifically mentioned in only four places:

- The uncodified Legislative Findings and Declarations of the Act include a list of "guiding principles" for carrying out the transfer of responsibility of court facilities from the counties to the states, one of which is "the preservation of the respective equity interests of the county and the state in a joint-use or historic facility."⁶
- Another guiding principle for the transfers in section (d)(6) of the Legislative Findings and Declarations is that "[c]ounties shall not be entitled to compensation for any equity value of court facilities transferred to the state."
- In section 70325, which addresses transfers of buildings subject to bonded indebtedness, the Act provides that "during the period and to the extent which bonded indebtedness is outstanding with respect to any court facility, the state shall not have any equity or ownership rights, in, to, or with respect to, the court facility."⁷

(2) Unless otherwise specifically provided by agreement between the Judicial Council and the county, the Judicial Council and the county shall share operation and maintenance costs in a shared use building as follows:

(A) Each entity is responsible for the operation and normal day-to-day maintenance costs of that space in the building exclusively used by the entity.

(B) Each entity shall share the operating and normal day-to-day maintenance costs for the common space in the building based on the proportionate amount of space exclusively used by each entity.

(C) Each entity shall share the major building repairs and maintenance affecting the entire building, including, but not limited to, common areas, based on the proportionate amount of space exclusively used by each entity.

⁵ The FPWG supports the Judicial Council's Executive and Planning Committee in its role of overseeing the council's policies and procedures regarding court facilities under rule 10.11(c) of the California Rules of Court.

⁶ Ch. 1082, Stats. 2002, § 1(d)(4).

⁷ Section 70325(c).

- Section 70344 addresses the narrow situation of a shared use building where either the court or the county occupies 80% or more of the building. In that case, the majority occupant can require the other party to vacate the building upon reasonable notice and compensation “for its equity in the facility and for relocation costs at the fair market value.”⁸

The provisions of the Act addressing administration of shared use buildings (§§ 70341–70342) rely on the concept of equity without actually using that word. Read together, these sections of the Act make clear that an equity interest in a shared use building is an ownership interest that is exclusive, permanent and without payment of rent or other occupancy charges to the other party, regardless of how title is held. If the court/Judicial Council or county vacates or otherwise fails to use its exclusive use area, the rights and obligations of the parties under the JOA continue in full force and effect unless they agree to another arrangement memorialized in a subsequent agreement that supersedes the JOA. Any such arrangement, whether voluntary or, in the case of a 20% or less equity interest, involuntary, must involve compensation for the vacated exclusive use area and corresponding equity interest at its fair market value.

Disposition of a closed court facility in which the Judicial Council holds only an equity interest in county-owned building

Although the Judicial Council has previously declared surplus a court facility in a state-owned building as a step towards its disposition,⁹ it has not yet been asked to consider declaring surplus an equity interest in a shared-use court facility where title is held by a county.

Authority. Government Code section 70391 vests in the Judicial Council the authority to dispose of surplus court facilities acquired through the transfer process under the Act, in compliance with section 11011.

Section 70391 states, in pertinent part:

The Judicial Council, as the policymaking body for the judicial branch, shall have the following responsibilities and authorities with regard to court facilities, in addition to any other responsibilities or authorities established by law: [¶] . . . [¶]

- (c) Dispose of surplus court facilities following the transfer of responsibility under Article 3 (commencing with Section 70321), subject to all of the following:

⁸ Section 70344(b).

⁹ The Judicial Council declared as surplus property the San Pedro Courthouse in Los Angeles County at its April 17, 2015 meeting.

- (1) If the property was a court facility previously the responsibility of the county, the Judicial Council shall comply with the requirements of Section 11011

Because section 70391(c) applies to court facilities following a “transfer of responsibility,” it applies to (A) those court facilities in which the Judicial Council has taken both (i) transfer of responsibility and (ii) title to the land and building, as well as to (B) those court facilities in which the Judicial Council has taken a (i) transfer of responsibility but only (ii) an equity interest in the land and building (while the county continues to retain title under section 70323(b)(1)). The court facility in the Chino Courthouse is an example of the latter.

The court facility as “surplus” under section 70391(c). By generally requiring compliance with section 11011, section 70391(c) imposes on the Judicial Council the obligation to determine whether a given closed court facility is “surplus” and thus eligible for disposal under its authority. This lack of a specific definition of “surplus” is mitigated by reference to the three nonexclusive examples listed in sections 11011(a)(1)–(3) of lands that would be “in excess of” an agency’s foreseeable needs:

- (1) Land not currently being utilized, or currently being underutilized, by the state agency for any existing or ongoing state program.
- (2) Land for which the state agency has not identified any specific utilization relative to future programmatic needs.
- (3) Land not identified by the state agency within its master plans for facility development.

Since section 11011 provides the general statutory framework and process for disposition of excess *state-owned* property¹⁰ by the Department of General Services (DGS), the requirements set forth in section 11011 (such as reporting to the Legislature as surplus and subsequent legislative authorization to dispose of the property) are not directly applicable here. However, the examples listed in sections 11011(a)(1)–(3) are useful here for guidance on whether the Chino Courthouse should be declared surplus. Under this standard, the Judicial Council must declare as surplus property any court facility that is not being utilized, is underutilized, or is not identified within the judicial branch’s master plans for facility development.

In this case, the Superior Court of San Bernardino County reported that the Chino Courthouse is not now being utilized and that the superior court has no foreseeable plans to use this facility for court operations. The Chino Courthouse is not identified within the judicial branch’s facility master plans for future facility development. Accordingly, the Judicial Council must declare the courthouse to be surplus property.

¹⁰ Section 11011 addresses “proprietary state lands.” (See § 11011(a).)

Deposit of Proceeds into State Court Facilities Construction Fund. Section 70391(c) identifies the State Court Facilities Construction Fund, subject to limited exceptions not relevant here, as the fund in which to deposit any money received for surplus court facilities.¹¹

County's right of first refusal

Under section 70391(c)(2), the Judicial Council is required to consult with the county concerning the disposition of the Chino Courthouse, and the county has the right to request that the facility be offered to the county at fair market value before being offered to another government agency. Section 70391(c)(2) provides:

The Judicial Council shall consult with the county concerning the disposition of the facility. Notwithstanding any other law, including Section 11011, when requested by the transferring county, a surplus facility shall be offered to that county at fair market value prior to being offered to another state agency or local government agency.

Comments, Alternatives Considered, and Policy Implications

This proposal was not circulated for comment. Staff has received written communication from the Superior Court of San Bernardino County in which the court (1) confirmed it has no plans to reoccupy the Chino Courthouse, (2) indicated it fully supports the permanent disposition of the council's equity interest in the facility, and (3) expressed its agreement with the County of San Bernardino's plan to sell the facility to the City of Chino.¹²

Alternative Actions Considered

One alternative action would be for the Judicial Council to retain its interest in the Chino Courthouse in its vacant state, and continue to be responsible for its share of ongoing operation and maintenance costs. Although the Chino Courthouse is not occupied, the Judicial Council continues to be responsible for its share of expenses such as utilities, landscaping, and trash removal. This alternative is not recommended.

Another alternative action would be for the Judicial Council staff to try to lease or license the court space in the Chino Courthouse to another user. There is not a high demand for commercial space in the City of Chino, especially space that is built out for court use and shared with the County of San Bernardino. In addition, the Chino Courthouse is bounded on either side by a library and a senior center, making the space most suitable for civic use. The Judicial Council

¹¹ Although article III, section 9, of the California Constitution also addresses where to deposit the proceeds of surplus property, and would trump any irreconcilable statute, there is no conflict as the constitutional provision does not apply here. (Cf. *People v. Navarro* (1972) 7 Cal.3d 248, 260 [where a statute and constitutional provision conflict, the constitutional provision controls].) Article III, section 9, requires that "the proceeds from the sale of surplus *state property*" must be used to pay the principal and interest on bonds issued under the 2004 Economic Recovery Bond Act. (Cal. Const., art. III, § 9, italics added.) Accordingly, the constitutional provision does not apply where, as here, the court facilities are located in county-owned shared use buildings.

¹² The City of Chino plans to renovate the building for future use as part of the city's civic center.

would continue to incur ongoing operations and maintenance costs while this former court facility stands empty during the marketing of the space to potential lessees or licensees. This alternative is not recommended.

Implementation Requirements, Costs, and Operational Impacts

In moving forward with the disposition of a surplus court facility, staff will, in compliance with section 70391(c)(2), consult with the County of San Bernardino concerning the disposition. If requested by the county, the equity interest in the facility shall be offered to the county at fair market value before being offered to any other state or local government agency. In informal discussions with the county, staff has been informed that the county is very interested in reacquiring the equity interest in the facility so that the county can sell the entire building to the City of Chino. If for some reason the county changes its position and is no longer interested in reacquiring the equity interest in the facility, the equity interest will then be offered to other state and local government agencies before staff considers other methods of disposition.

Implementation Costs

The costs relating to the disposition of the equity in the building would be shared with the County of San Bernardino on a pro rata basis.

Attachments and Links

1. [Cal. Rules of Court, rule 10.183:](http://www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_183)
http://www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_183.
2. [Government Code section 70391:](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=70391)
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=70391.
3. [Government Code section 11011:](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=11011)
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=11011.
4. Attachment A: Correspondence from the Superior Court of San Bernardino County
5. Attachment B: Correspondence from County of San Bernardino

From: Volkers, Christina M. [<mailto:CVolkers@sb-court.org>]
Sent: Thursday, May 07, 2015 11:29 AM
To: Bustamante, Mary
Subject: RE: Chino Disposition

Hi Mary. Although I cannot find my reply, please accept this as the response:

The Superior Court of California, County of San Bernardino is agreeable to the immediate disposition of the Chino courthouse through a sale to the City of Chino. They have good plans for the site. We had to close the Chino courthouse in December 2012 due to budget cuts. We have no plans to reopen the court in that location and fully support disposing of the property immediately. The terms have been discussed over the last few months and the Court is agreeable on all facets. Please proceed with submitting this recommendation wherever appropriate.

Thank you.

Chris
Christina M. Volkers
Executive Officer
Superior Court of California, County of San Bernardino
247 West Third Street, 11th Floor
San Bernardino, CA 92415-0302
office: 909-708-8751 fax: 909-708-8784

**Board of Supervisors
County of San Bernardino**



GARY C. OVITT
VICE CHAIR
SUPERVISOR, FOURTH DISTRICT

Attachment B

August 4, 2014

RECEIVED
AUG 11 8 2014

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
OFFICE OF THE PRESIDING JUDGE

Presiding Judge
The Honorable Marsha G. Slough
Superior Court of California – County of San Bernardino
247 West Third Street, Eleventh Floor
San Bernardino, CA 92415-0302

Dear Judge Slough:

A handwritten signature in blue ink that reads "Marsha".

After our previous meeting in your office to discuss the possibility of selling the former County Courthouse in Chino, I am pleased to be able to present to you an appraisal for that building. Using a list of approved appraisers provided by the County of San Bernardino, the City of Chino hired an appraiser who examined the courthouse located at 13620 Central Avenue. County staff has reviewed this appraisal and find it to be satisfactory.

Thank you for your willingness to support the sale of this building. The City of Chino would greatly benefit from owning this building to improve their civic center. If possible, I would like for us to meet in a month or so to discuss the progress of this appraisal through the Administrative Office of the Courts.

Sincerely,

A handwritten signature in blue ink that reads "Gary".

GARY C. OVITT
Supervisor, Fourth District
Vice Chair, County of San Bernardino Board of Supervisors

CC: ✓ Christina Volkers
Terry Thompson
Matt Ballantyne