



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on June 26, 2015

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Title	Agenda Item Type
Court Facilities: Transfer of Judicial Council's Equity Interest in Independence Courthouse	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
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### Executive Summary

The Facilities Policies Working Group (FPWG) recommends that the Judicial Council approve the proposed permanent transfer of the Judicial Council's 34% equity interest (the Equity Interest) in the Independence Courthouse, located at 168 North Edwards Street, Independence, California (the Independence Courthouse) to the County of Inyo (County) in exchange for the County's (1) forgiveness over time of the Judicial Council's existing obligation under the Joint Occupancy Agreement with the County dated April 29, 2008 (the JOA) to pay its 34% share of the cost of operating and maintaining the Independence Courthouse (the Shared Costs); and (2) agreement to enter into a long-term lease (the Lease) with the Judicial Council for certain real property located immediately adjacent to the existing County jail (also located in Independence) at a nominal rent for the purpose of installing and operating a modular courthouse (the Modular) for use by the Inyo County Superior Court (Court).<sup>1</sup>

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<sup>1</sup> The cost of acquisition, installation and construction of improvements in the Modular will be covered entirely by existing Courthouse Construction Funds (CCFs) collected by the County and currently in the possession of the Court

The goal of this transaction is to replace the court facility in the Independence Courthouse, which (1) will be increasingly expensive to operate and maintain because of deferred maintenance projects, (2) has many security deficiencies, and (3) is not fully accessible, with a more modern, secure and accessible court facility in the form of the Modular. Because the proposed location is adjacent to the County jail, shifting operations to that location will also allow for greater efficiencies for both the Court and County. The Court strongly supports this transaction and urges its approval.

Approval of this transaction is needed as soon as possible because the Modular to be used in Independence is currently being used by the Madera Superior Court while the new Madera Courthouse is being completed. The Madera Court's use of the Modular will cease by the end of August 2015, after which time they will move out their belongings, and the Modular will be ready for disassembly and transport to Independence. To minimize the risk of damage or loss that the Modular would be subject to while in storage after disassembly in Madera, site preparation in Independence must commence as soon as possible. Site preparation cannot commence in earnest until the transaction with the County for disposition of the Equity Interest, including the Lease, is complete.

### **Recommendation**

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

1. Authorize transfer of the Equity Interest to the County over time in exchange for (a) the County's forgiveness of the Judicial Council's obligation to pay Shared Costs with respect to the Independence Courthouse until such time as the total amount of such forgiven Shared Costs equals the fair market value of the Equity Interest, and (b) the County's agreement to enter into the Lease with the Judicial Council on mutually agreeable terms and conditions;
2. Direct Judicial Council staff to continue negotiating the agreements and other documents necessary to complete this transaction; and
3. Authorize the Administrative Director or his designee to execute such agreements and other documents.

### **Previous Council Action**

The Judicial Council has not been asked to consider an equity disposition transaction in the form proposed in this case.

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pursuant to a series of agreements between and among the County, Court and Administrative Office of the Courts leadership from the period 2008 through 2014.

The Judicial Council has, however, disposed of equity interests in court facilities in a few instances in the Judicial Council's Capital Program, where 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 addition, 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.<sup>2</sup> 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.

### **Rationale for Recommendation**

The County of Inyo is the record title holder of the Independence Courthouse. The Independence Courthouse was constructed in 1921 and was last renovated in 1958. The Court currently occupies and uses approximately 5,615 square feet of space in the Independence Courthouse, representing a 34% share, consisting of two courtrooms and accompanying judges' chambers and other administrative space with the County holding the remaining 66% share. The building has numerous security deficiencies, and is not fully accessible. It also has a number of deferred maintenance projects in the near term including interior and exterior painting (estimated cost of approximately \$140,000), window replacement (estimated cost of \$104,000), and replacement of lines for waste and potable water (estimated cost of \$164,000)<sup>3</sup>. Under the terms of the JOA, the Judicial Council is obligated to pay its 34% share of the cost of these projects in addition to regular on-going operations and maintenance.

The Modular, by comparison, which is about seven years old, is 8,000 square feet and would provide the Court with a much newer and more modern facility without the costly deferred maintenance projects on the horizon. Security and accessibility issues would also be remedied. By virtue of its proximity to the County jail, use of the Modular by the Court would also yield a real increase in efficiency in operations for both the Court and County with respect to the Court's criminal caseload. The Modular to be used in Independence is currently being used by the Madera Superior Court (Madera Court) while the new Madera Courthouse is being completed. Re-use of the Modular for this project after the Madera Court's need for it is eliminated this summer would represent an economic efficiency that would allow the project to be completed under the Inyo Court's very limited and fixed budget.

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<sup>2</sup> Memorandum re: Disposition of Portola Courthouse 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.

<sup>3</sup> This list of projects and their costs is taken from a schedule of expected deferred maintenance projects for the Independence Courthouse provided by Inyo County during the course of negotiations for the transaction that is the subject of this Memorandum.

According to a recent appraisal commissioned by Judicial Council staff, the current fair market value of the 34% equity interest in the Independence Courthouse is \$360,000.<sup>4</sup> Based on historical averages for Shared Costs at the Independence Courthouse and taking into certain needed deferred maintenance projects, an Equity Interest valued at \$360,000 could be reduced to zero after approximately five years of forgiveness of those Shared Costs by the County.

The Court strongly supports this transaction and has been advocating since at least 2008 to add a modular court facility in Independence. The County is very interested in using the space in the Independence Courthouse that the Court would vacate in a move to the Modular, and would clearly benefit from having the Modular immediately adjacent to the jail.

The County has also made clear that as much as it wants to assist the Court in completing the overall project, it is not able to pay in cash an amount equal to the fair market value of the Equity Interest, but it is, however, interested in structuring a buy-out through forgiveness over time of the Judicial Council's share of the cost of operating and maintaining the Independence Courthouse. As a result, the County and Judicial Council staff has been negotiating an agreement for disposition of the Judicial Council's Equity Interest that would include the following points:

- The fair market value of the Judicial Council's 34% equity interest in the Independence Courthouse would be determined by an appraisal (or, as noted above, two appraisals and negotiation).
- Upon completion of the construction and installation of the Modular, the Court would move out of the Independence Courthouse, and the County would then move into the vacated space.
- Starting as of the commencement date of the Lease, the Judicial Council's obligation to pay its 34% share of the cost of operations and maintenance of the Independence Courthouse (including the cost of deferred maintenance projects) would be forgiven, and the County would assume full responsibility for all operations and maintenance costs of that courthouse.
- The County would provide an annual accounting to the Judicial Council of the sums expended by the County to operate and maintain the Independence Courthouse.
- When the total amount of the Judicial Council's forgiven Shared Costs obligations equals the fair market value of the Equity Interest, the Judicial Council will record a Memorandum of Termination of Joint Occupancy Agreement, thereby extinguishing the Judicial Council's obligation to pay Shared Costs and terminating its Equity Interest in the Independence Courthouse.

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<sup>4</sup> This valuation is based on an appraisal dated as of February 25, 2015 obtained by Judicial Council staff. The County has indicated that it will obtain its own appraisal and so the final fair market valuation of the equity interest will likely be a negotiated amount reflecting the two appraisals.

The chairs of the Judicial Council’s internal committees asked for assistance from a small group of Judicial Council members to support the Executive and Planning Committee in its role overseeing the Judicial Council’s policies and procedures regarding court facilities under rule 10.11(c). The resulting Facilities Policies Working Group currently is reviewing practices and considering policies in various areas related to facilities management. Pending the development and implementation of new facilities-related policies, at its May 19, 2015, meeting, the FPWG reviewed the status of the courthouse, the proposed Modular project, and the proposed disposition of the Judicial Council’s Equity Interest, and determined that the Modular project and the disposition of the Judicial Council’s Equity Interest should proceed.

## Legal Authority

“Equity” is an important concept in the Trial Court Facilities Act of 2002 , SB 1732 (Escutia), codified in Government Code sections 70301 through 70404,<sup>5</sup> as amended (the Act), though it is nowhere defined and is specifically mentioned in only four places:<sup>6</sup>

- 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.”<sup>7</sup>
- 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.”<sup>8</sup>
- 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.”<sup>9</sup>

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<sup>5</sup> All statutory references are to the Government Code unless otherwise indicated.

<sup>6</sup> The term equity is also used in two sections of the Government Code generally addressing state-owned real property. These sections each authorize non-surplus dispositions of specific parcels of state-owned real property and related acquisitions of replacement property. In each case, if the director of the Department of General Services acquires such replacement properties through a lease, the Legislature expresses its intent that the state should “obtain an equity interest” in any such replacement land or facility (subsections 14673.10(g)(1) and 14673.11(g)(1)).

<sup>7</sup> Ch. 1082, Stats. 2002, Sec. 1(d)(4).

<sup>8</sup> Section 70325(c).

<sup>9</sup> Section 70344(b).

The provisions of the Act addressing administration of shared use buildings (sections 70341-70342) rely on the concept of equity without actually using that word:

- Subsection 70341(a) specifies that the user rights of the court and county in a shared use building “are based on the proportional allocation of exclusive use facilities within the building for the court and the county” as specified in the transfer agreement and in the agreement required under section 70343 (i.e. the JOA), regardless of which entity holds title to the building.
- Subsection 70341(b) makes clear that the court and county each have the exclusive use of its respective facilities in the building, together with the shared use of the common areas, indefinitely and at no cost (other than its proportionate share of the operations and maintenance).
- Under subsections 70342(a) through (c), if either the Judicial Council or county wishes to have additional space in a shared use building, then other party may charge reasonable rent for that use of additional space.
- Under subsection 70342(e), unless the Judicial Council or county otherwise agree, if either party desires to decrease the amount of space it occupies in a shared use building, it may do so only after offering the other party the space on the same terms and conditions as to which it has proposed to transfer the space to a third party (i.e., a market rate transaction). Notwithstanding any transfer of space pursuant to this subsection or the failure to use the space, section 70342(e) provides that the Judicial Council and the county are not relieved of their respective rights and responsibilities under the JOA to share ongoing operations and maintenance costs, unless the JOA is superseded by a subsequent agreement.

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.

This understanding of equity is embedded in the language of the JOAs adopted throughout the state during the court facility transfer process under the Act, including the JOA used for the Independence Courthouse. In particular, section 5.1 of the JOA addresses changes in use of the parties’ respective exclusive-use areas. Under authority of section 70342, section 5.1.3 of the JOA expressly confirms that “[t]he Parties’ Shares will only be adjusted if one Party at any time buys the other Party’s rights to occupancy and use of the Real Property for fair market value

under section 5.3 of this JOA, or otherwise.” In this case, the County is willing to buy, and the Judicial Council, with the full support and urging of the Court, is willing to sell, the Judicial Council’s Equity Interest in the Independence Courthouse for an amount equal to the fair market value of the Equity Interest as determined by one or more real estate appraisals and negotiation with the County. Rather than payment in cash, the County would pay for the Equity Interest over time by forgiving the Judicial Council of its obligation to pay Shared Costs under the JOA, and by its agreement to enter into the Lease. As required by section 70342(e), this buy-out arrangement would be documented by a new, “subsequent agreement” by and between the Judicial Council and County which will supersede the JOA, including in particular its cost-sharing provisions. In this case, the form of that “subsequent agreement” has not been finally established, but it would include specific reference to section 5.1.3 of the JOA and section 70342(e).

Because the agreement with the County regarding the Equity Interest at the Independence Courthouse will be an agreement under authority of 70342(e), the Judicial Council has the requisite authority it needs to negotiate and execute that agreement. Because this transaction with the County involving the Independence Courthouse and the Modular involves the management and operation of active trial court facilities, and insofar as the agreement(s) with the County documenting the transaction will be drafted, negotiated and executed while the court facility at the Independence Courthouse is still in operation, under section 70392(a),<sup>10</sup> the Judicial Council may delegate to Judicial Council staff its responsibility and authority to complete the transaction under authority of 70342(e).

### **Comments, Alternatives Considered, and Policy Implications**

This proposal was not circulated for comment. Staff has received written communication from the Superior Court of Inyo County stating that the court supports the disposition of the facility through a sale of the Judicial Council’s Equity Interest to Inyo County, so that the Modular project can proceed.

An alternative action would be for the Judicial Council and County to exchange the Judicial Council’s equity interest in the Independence Courthouse for title to the land on which the Modular would be placed rather than lease the land from the County. This alternative is beneficial in that it would secure the right to use the land forever, but is problematic because it would then be subject to the Property Acquisition Law (section 15850 *et seq*) which, requires, among other things, that all such acquisitions be done through the normal capital budgeting process. That process, in the normal course, extends over more than one fiscal year which in this case would extend into the 2016-17 fiscal year at a minimum with no guarantee of success. Acquisition of the land through the capital budgeting process would therefore add additional delay to a project highly desired by the Court and that has been already approved in large part by the Judicial Council executive office and the County. Such delay would likely render

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<sup>10</sup> Section 70392(a) gives the Administrative Office of the Courts (now Judicial Council staff) authority to “provide the ongoing oversight, management, operation, and maintenance of facilities used by the trial courts.”

impractical re-use of the Madera modular and thereby create the need for a re-conceptualizing of the project. For these reasons, the FPWG, Court and Judicial Council staff have not recommended this alternative.

Another alternative is to do nothing and have the Court continue its occupancy and use of the Independence Courthouse. This alternative would require some formal action, probably by the Judicial Council, to undo the approvals previously given by Judicial Council executives with respect to funding of acquisition and installation of the Modular, and construction of improvements within the Modular, and to dispose of the CCFs currently specifically encumbered for those purposes.<sup>11</sup> Because of time and effort that the Court has invested in the project already, and the benefits that would be realized by the Court upon its completion (increased security, accessibility and efficiency), the FPWG, Court and Judicial Council staff have not recommended this alternative.

### **Implementation Requirements, Costs, and Operational Impacts**

Out of pocket costs will be incurred in the Equity transfer process for an appraisal. Judicial Council staff time will be required to complete negotiations with the County and prepare necessary agreements and other documents. The out of pocket costs will, however, be offset by the elimination of the on-going obligation to pay the Shared Costs. The Court will benefit from the proposed transaction when its operations are moved from the Independence Courthouse to the Modular.

### **Attachments and Links**

1. [Trial Court Facilities Act of 2002, SB 1732 \(Escutia\):](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200120020SB1732&search_keywords=)  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=200120020SB1732&search\\_keywords=](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200120020SB1732&search_keywords=)
2. [Government Code section 70325:](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNumber=70325)  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNumber=70325.](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNumber=70325)
3. [Government Code sections 70341-70344:](http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=&title=8.&part=&chapter=5.7.&article=4)  
[http://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=GOV&division=&title=8.&part=&chapter=5.7.&article=4.](http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=&title=8.&part=&chapter=5.7.&article=4)

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<sup>11</sup> See section 76100 regarding CCFs generally and former section 70404 (repealed as of January 1, 2010) regarding the process for encumbering those funds.