



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: August 21, 2015

Title	Agenda Item Type
Court Facilities: Sale of Equity Interest in Banning Courthouse as Surplus Property	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
None	August 21, 2015
Recommended by	Date of Report
Facilities Policies Working Group	July 27, 2015
Hon. Douglas P. Miller, Chair	Contact
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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 60.37% equity interest in the Banning Courthouse, and (2) authorize the sale of the Equity Interest to the County of Riverside.

Recommendation

The Facilities Policies Working Group (FPWG) recommends that the Judicial Council, effective August 21, 2015:

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

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

Most recently at the June 26, 2015 Judicial Council meeting, the Judicial Council approved the disposition of state equity in the Chino Courthouse (San Bernardino County) and the Inyo Historic Courthouse (Inyo County).

Rationale for Recommendation

In 2007, 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 60.37% equity interest in the Banning Courthouse, while the County of Riverside retained title to the land and building.³ The Superior Court of Riverside County vacated the facility and commenced operations in the new Banning Justice Center in May 2015.

The court is supportive of staff efforts to dispose of the Judicial Council's equity interest in the old facility, and would like staff to move forward as quickly as possible with a sale of the equity interest to the county.

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 Banning Courthouse disposition. The proceeds will be deposited into the State Court Facilities Construction Fund. (See footnote 10 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.

Although the facility has been vacated, 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.).

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 since the court had moved into the new replacement courthouse, the old facility would not 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 Banning Courthouse as surplus and authorize the sale of the equity interest to the County of Riverside.

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."

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

(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).

- 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
- 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

The Judicial Council has previously declared surplus an equity interest in the Chino courthouse, another 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: [¶] . . . [¶]

⁷ Section 70325(c).

⁸ Section 70344(b).

- (c) Dispose of surplus court facilities following the transfer of responsibility under Article 3 (commencing with Section 70321), subject to all of the following:
 - (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* property⁹ 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 Banning 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.

⁹ Section 11011 addresses “proprietary state lands.” (See § 11011(a).)

In this case, the Superior Court of Riverside County vacated the Banning Courthouse, moved into the newly constructed Banning Justice Center, and commenced operations there as of May 4, 2015. Prior to construction of the new courthouse, the old Banning Courthouse was identified for disposition within the judicial branch’s facility master plans. Accordingly, the Judicial Council must declare the courthouse to be surplus property.

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.¹⁰

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 Banning 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 Riverside County in which the court (1) confirmed it has no plans to reoccupy the Banning Courthouse, and (2) indicated it fully supports the permanent disposition of the council’s equity interest in the facility.

Alternative actions considered

One alternative action would be for the Judicial Council to retain its interest in the Banning Courthouse in its vacant state, and continue to be responsible for its share of ongoing operation and maintenance costs. Although the Banning 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 Banning Courthouse to another user. There is not a high demand for

¹⁰ 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.

commercial space in the City of Banning, especially space that is built out for court use and shared with the County of Riverside. The Judicial Council 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 Riverside 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 discussions with the county, staff has been informed that the county is very interested in reacquiring the equity interest in the facility. 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. The costs relating to the disposition of the equity in the building would be shared with the County of Riverside 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.