



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on April 17, 2015

Title	Agenda Item Type
Court Facilities: Declaration of San Pedro Courthouse as Surplus Property	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
None	April 17, 2015
Recommended by	Date of Report
Facilities Policies Working Group Hon. Douglas P. Miller, Chair Hon. Marla O. Anderson, Vice-Chair	March 23, 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 (FPWG) recommends that the council declare the San Pedro Courthouse to be surplus property.

The FPWG further recommends that the council direct Judicial Council staff to notify the Legislature that the court facility is surplus and take all actions necessary to obtain the Legislature's authorization to dispose of the surplus facility in accordance with Government Code sections 70391(c) and 11011.

Recommendation

The Facilities Policies Working Group recommends that the Judicial Council, effective April 17, 2015:

1. Declare the San Pedro Courthouse to be surplus property;
2. Direct staff to report to the Legislature that the court facility is a surplus court facility and to take all actions necessary to obtain the Legislature's authorization to dispose of the facility in accordance with Government Code sections 70391(c) and 11011;
3. Authorize the sale of the surplus facility to the County of Los Angeles; and
4. Delegate to the Administrative Director the authority to sign a real property sales agreement, contingent on staff's obtaining legislative authorization for the sale of the surplus property.

Previous Council Action

In August 2014, the Judicial Council considered a staff recommendation to declare three court facilities in Fresno County to be surplus. The council declined to act on the recommendation at that time in the absence of policies governing the determination, declaration, and disposition of surplus court facilities. The council's request for further information and development of policies led, in part, to formation of the Facilities Policies Working Group.

Rationale for Recommendation

The State of California, acting by and through the Judicial Council of California, Administrative Office of the Courts, is the record title holder of the San Pedro Courthouse.¹ The state holds a 95.15 percent equity interest in the facility, with Los Angeles County holding the remaining 4.85 percent equity interest. The Superior Court of Los Angeles County closed the facility to the public as of June 30, 2013, 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 it, and would like staff to move forward as quickly as possible with a sale of the facility back to the county.

Although the facility has been closed for more than 20 months, the council continues to remain responsible for the costs of operations and maintenance under the provisions of section 70343(a)(2).² Once the facility is disposed of, the judicial branch will realize financial savings on maintenance costs (utilities, landscaping, vandalism prevention/cleanup, etc.).

¹ The Judicial Council in the past referred to its staff as "the Administrative Office of the Courts." Rule 10.81(b)(4) of the California Rules of Court provides as follows:

The Judicial Council will continue to perform all duties, responsibilities, functions, or other obligations, and bear all liabilities, and exercise all rights, powers, authorities, benefits, and other privileges attributed to the "Administrative Office of the Courts" or "AOC" arising from contracts, memorandums of understanding, or other legal agreements, documents, proceedings, or transactions. The Judicial Council may be substituted for the "Administrative Office of the Courts" or "AOC" wherever necessary, with no prejudice to the substantive rights of any party.

² All future statutory references are to the Government Code, unless otherwise noted. Section 70343(a)(2) provides as follows:

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 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 March 20, 2015, meeting, the FPWG 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 facility as surplus, obtain legislative authorization for the sale, and sell the facility back to the county at fair market value in accordance with statute. The FPWG voted to recommend that the council declare the San Pedro Courthouse as surplus as the initial step toward disposition.

Declaration of courthouse as surplus property

The Judicial Council has never declared a property “surplus” or requested legislative authorization to dispose of surplus property and has no established policy or procedure for doing so. The process described below is based on existing law and existing practice within and without the judicial branch.³

Authority and process. Section 70391 vests in the Judicial Council the authority to dispose of surplus court facilities acquired through the Senate Bill 1732 (Stats. 2002, ch. 1082) transfer process (of which the courthouse is an example), in compliance with section 11011.

Section 70391 states, in pertinent part:

(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.

³ In addition, though not expressly required by statute, because each court facility represents a capital asset to the state, the Department of Finance (DOF) would expect to be given notice of the proposed transaction. If, as described below in more detail, legislative authorization for sale of the courthouse is sought through budget trailer bill language, DOF approval and support would be necessary because language gets added to a budget trailer bill only by the DOF.

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:

(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

Section 11011 provides the general statutory framework and process for disposition of surplus state-owned property by the Department of General Services (DGS). In general that process requires DGS to report annually to the Legislature the real property it has declared excess and to request legislative authorization to dispose of that excess property by sale or otherwise.⁴ Carrying that process over to the judicial branch, the first step in disposing of a surplus court facility is for the Judicial Council to declare that property to be surplus and to request legislative authorization to then dispose of it by sale or otherwise.⁵

The courthouse 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 court facility is “surplus” and thus eligible for disposal. Neither section, however, specifically defines “surplus.” This lack of a specific definition is mitigated by reference to the legislative history of section 11011. Specifically, a 1994 amendment to section 11011 provided guidance as to the definition of an “excess” state-owned property by listing three nonexclusive examples of lands that would be “in excess of” an agency’s foreseeable needs.⁶ Those examples, codified at sections 11011(a)(1)–(3), include:

⁴ Section 11011(c).

⁵ See California Rules of Court, rule 10.183(c)(2):

The Judicial Council must determine the following issues concerning transfer of responsibility of court facilities, except in the case of a need for urgent action between meetings of the council, in which case the Executive and Planning Committee is authorized to act under rule 10.11(d). [¶] . . . [¶]

(2) A decision to dispose of a surplus court facility under Government Code section 70391(c).

⁶ According to the sponsor of the 1994 amendment, the three examples addressed the need to provide state agencies with guidance in determining what properties within their purview were “in excess of” their foreseeable needs, and thus subject to section 11011(a)’s reporting requirement. (Sen. Newton R. Russell, letter to Gov. Pete Wilson re Sen. Bill No. 403 (1993–1994 Reg. Sess.) Aug. 31, 1994, Governor’s chaptered bill files, ch. 978.) Citing reports by the California Office of the Auditor General, Senator Russell contended that state agencies habitually under-reported their excess lands, causing the state to lose millions of dollars that it could collect if the lands were used more productively. (*Ibid.*) This under-reporting, Senator Russell surmised, resulted in part from the vague language of the statute:

- (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.

Under this standard, the Judicial Council must report to the Legislature as surplus any court facility that is not being utilized, is underutilized, or is not identified within the judicial branch's master plans for facility development so that the Legislature can authorize the council to dispose of the facilities.

In this case, the Superior Court of Los Angeles County reported that the courthouse is not now being utilized and that the superior court has no foreseeable plans to use this facility for court operations. The 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 and direct staff to report the courthouse to the Legislature as a surplus facility so that the Legislature can authorize the Judicial Council to dispose of it.

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 facility, and the county has the right to request that the facility be offered to

[T]he statutory term in Section 11011, "in excess of [an agency's] foreseeable needs," was too vague, and needed further clarification in order to give agencies less "wobble-room" by which they could ignore or misinterpret the intent of this provision of law and continue to hoard lands *that were not being used for any practical purpose*.

(Ibid [italics added].)

Hence, Senator Russell proposed the amendment to "give guidance to agencies as to what shall realistically be construed as 'excess lands'" by setting forth, in section 11011, "three clear, concise, and commonsense examples of land nonutilization or underutilization that obviously should apply to excess properties." (*Ibid.*) His intent, however, was that the three examples in the amendment would not be the exclusive criteria for determining whether or not a state-owned property is "excess."

Opponents of the amendment pointed out that ambiguity remained in section 11011, notwithstanding the exemplars proposed by Senator Russell. Specifically, although the amendment added the concept of underutilized land to the definition of "excess," it failed to define the term "underutilized." (Cal. State and Consumer Services Agency, Enrolled Bill Rep. on Sen. Bill 403 (1993–1994 Reg. Sess.) Sep. 2, 1994, p. 3.) No authority has since defined that term. Likewise, there is no authority defining "existing or ongoing state program," "specific utilization relative to future programmatic needs," or "within its master plans for facility development." Accordingly, the statutory changes that resulted from the 1994 amendment reflect the only controlling legal authority to offer guidance in determining whether a state-owned property is excess.

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.

Legislative authorization

This section addresses when legislative authorization for the proposed transaction might actually be obtained, assuming that the Judicial Council submits its request for that legislative authorization at some point before July 1, 2015, as required by the county's timeline, and taking into account the fact that the deadline for introduction of new bills for consideration this year passed on February 28, 2015.

Regular legislative process: January 1, 2017, effective date. Each year, all new bills to be considered that year must be introduced by the bill introduction deadline, generally the end of February. Those bills then work their way through the Assembly and Senate and, if they make it through that process, are voted on at some point during the year, are signed by the Governor, and have an effective date of January 1 of the following year.⁷

In this case, because the deadline for new bills for 2015 has already passed, a bill authorizing the sale would be drafted and introduced by the 2016 bill introduction deadline. Following the typical pattern of bills authorizing sales of surplus property by the Department of General Services, this bill would likely pass out of both houses by August 2016 and be signed by the Governor with an effective date of January 1, 2017. This process might be the easiest and most straightforward to accomplish, but the timeline would not accommodate the county's desire to close the transaction by November 2016.

"Gut and amend" process: January 1, 2016, effective date. Each year, a number of bills that had been introduced by the end of February are repurposed by amending the text as introduced to a wholly new subject (referred to as the "gut and amend" process). Once amended, such a bill follows the basic legislative process.

In this case, the "gut and amend" process would require Judicial Council staff (and/or county staff) to identify an already-introduced bill (and its author) that might be a candidate to be amended to authorize sale of the courthouse. If a bill were successfully identified, that amended bill would have to pass both houses by September 11, 2015, and be signed by the Governor, and

⁷ An urgency bill is effective the day it is signed into law by the Governor. An urgency bill must affect the public peace, health, or safety. A two-thirds vote in each house is required for passage. The proposed sale of the courthouse would not likely qualify as a proper subject for an urgency bill.

would have an effective date of January 1, 2016. The “gut and amend” process requires more effort but would allow a close of escrow by November 2016.

Budget trailer bill process: July 1, 2015, effective date. Finally, each year, a number of blank bills are introduced by the end-of-February deadline with the understanding that these bills will be filled in during the budget process with budget-related matters; these are referred to as “budget trailer bills.” Because they contain budget-related matters, budget trailer bills are passed along with the annual budget by the end of June and, like the budget, have an effective date of July 1. Language is added to budget trailer bills only through the DOF.

Because the substantive language of budget trailer bills is added by DOF staff, to take advantage of this option, Judicial Council staff (and/or county staff) must secure DOF’s early support and cooperation. If DOF’s support and cooperation could be secured in May or June 2015, then a budget trailer bill with an effective date of July 1, 2015, could be obtained.⁸ Under this option, the county’s desire for a closing before November 2016 could be met.

Comments, Alternatives Considered, and Policy Implications

This proposal was not circulated for comment. Staff has received written communication from the Superior Court of Los Angeles County stating that the facility is no longer being used for court operations, the court does not intend to resume court operations at this location, and the court supports the disposition of the facility through a sale to Los Angeles County.

Under sections 70391(c) and 11011, if the Judicial Council determines that a facility is no longer being used, and there is no current or foreseeable use of the facility for court operations, the Judicial Council is required to report it as a surplus facility to the Legislature so that it can obtain legislative approval to dispose of the facility. Because the Superior Court of Los Angeles County informed the FPWG that it was not using and did not have a foreseeable use for the facility, there are no legally authorized alternatives to consider; the FPWG concluded that it must recommend to the council that the council declare the facility as surplus.

Implementation Requirements, Costs, and Operational Impacts

In moving forward with the disposition of a surplus court facility, in accordance with sections 11011(c) and 70391(c), staff will report to the Legislature that the council has declared this court facility as surplus and request authorization from the Legislature to dispose of it as authorized by law. Because the listed court facility was transferred from Los Angeles County, staff will, in compliance with section 70391(c)(2), consult with the county concerning the disposition, and if requested by the county, the surplus facility shall be offered to that 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 facility. If

⁸ Language could be added to a trailer bill for the 2016–2017 budget with an effective date of July 1, 2016, which would also meet the county’s goal of a November 2016 closing.

for some reason the county changes its position and is no longer interested in reacquiring the facility after staff has obtained legislative authorization, the facility will then be offered to other state and local government agencies before staff considers other methods of disposition.

Costs will be incurred in the disposition process for an appraisal, title and escrow fees, and the like. Costs incurred will, however, be offset by the sale proceeds. Per the provisions of article III, section 9 of the California Constitution, the remaining sale proceeds will be deposited into the Deficit Recovery Bond Retirement Sinking Fund.

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.](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.](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=11011)
4. Attachment A: Correspondence from the Superior Court of Los Angeles County
5. Attachment B: Correspondence from County of Los Angeles



SHERRI R. CARTER
EXECUTIVE OFFICER / CLERK

111 NORTH HILL STREET
LOS ANGELES, CA 90012-3014

Superior Court of California
County of Los Angeles

March 17, 2015

Eunice Calvert-Banks
Manager, Real Estate
Judicial Council of California - Administrative Services Division
Real Estate and Facilities Management
455 Golden Gate Avenue, 8th floor
San Francisco, CA 94102

Dear Ms. Banks,

I am writing on behalf of the Los Angeles Superior Court to inform you that the Court has closed the San Pedro courthouse at 505 South Centre Street, San Pedro, CA 90731 and has no foreseeable future plans to reopen it. We support a Judicial Council decision to declare this courthouse to be surplus property. The County of Los Angeles has an interest in acquiring the courthouse, so prompt action by the council would hasten that process.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sherri R. Carter".

Sherri R. Carter
Executive Officer/Clerk



County of Los Angeles
CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 713, Los Angeles, California 90012
(213) 974-1101
<http://ceo.lacounty.gov>

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March 30, 2015

Ms. Mary Bustamante, Senior Real Estate Analyst
Judicial Council of California
Office of Real Estate and Facilities Management
2860 Gateway Oaks Drive, Suite 400
Sacramento, CA 95833

Dear Ms. Bustamante:

**LETTER OF INTEREST
SAN PEDRO COURTHOUSE ACQUISITION**

The County of Los Angeles sent you a Letter of Interest dated August 20, 2014, stating we were interested in the potential purchase of San Pedro Courthouse.

This letter is to confirm the County wants to purchase the San Pedro Courthouse after it has been declared surplus, and that the County will comply with the statutory requirements for the purchase.

If you have any questions or require additional information, please contact Jeff Chua at (213) 974-4362.

Sincerely,

MICHAEL SAMSING
Principal Analyst, CEO

MS:JC

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