



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on July 27–28, 2017

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Title	Agenda Item Type
Court Facilities: Disposition of Equity Interests in Courthouse Annex in Tehama County and old Falasco Justice Center in Merced County	Action Required
	Effective Date
	July 28, 2017
Rules, Forms, Standards, or Statutes Affected	Date of Report
None	June 19, 2017
Recommended by	Contact
Facilities Policies Working Group	Eunice Calvert-Banks, 415-865-4048
Hon. Douglas P. Miller, Chair	<a href="mailto:eunice.calvert-banks@jud.ca.gov">eunice.calvert-banks@jud.ca.gov</a>
Hon. Marla O. Anderson, Vice-Chair	Charles Martel, 415-865-4967
	<a href="mailto:charles.martel@jud.ca.gov">charles.martel@jud.ca.gov</a>

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### Executive Summary

Following completion of construction of new courthouses, and at other times for operational reasons, courts vacate one or more court facilities that are no longer suitable to the needs of the judicial branch. Often the vacated court facilities are located in county-owned buildings, but the Judicial Council remains liable for, and obligated to pay its share of the cost of operations and maintenance of its equity interest in the closed court facility. The Courthouse Annex in Tehama County and the former Falasco Justice Center in Merced County are two current examples. To eliminate the continuing liability and cost associated with permanently closed court facilities in county-owned buildings, the Facilities Policies Working Group recommends authorizing the permanent disposition of the Judicial Council's equity interests in the Tehama and Merced court facilities, and delegating to the Administrative Director authority to sign the equity disposition agreements for these two facilities and all other related documents needed to complete the transactions.

## **Recommendation**

The Facilities Policies Working Group recommends that the Judicial Council, effective July 28, 2017, take the following actions:

1. Authorize and approve the disposition of the state's equity interests in the Courthouse Annex in Tehama County and the former Falasco Justice Center in Merced County; and
2. Delegate to the Administrative Director or his designee the authority to sign the equity disposition agreements for these two facilities and all other related documents needed to complete the transactions.

## **Previous Council Action**

In June 2015, the Judicial Council authorized and approved the permanent disposition of the Judicial Council's equity interest in a court facility in Inyo County as partial consideration for a ground lease for space on which a modular court facility is to be located.

In December 2016, the Judicial Council confirmed the authority of the Administrative Director or his designee to negotiate, document, and enter into triple-net leases or licenses of permanently closed court facilities to governmental entities throughout the state for terms not to exceed five years without Judicial Council review and approval of each such lease or license. Pursuant to that directive, staff has negotiated triple net leases with Tehama County for the Courthouse Annex and Merced County for the former Falasco Justice Center, pending the counties' purchase of state equity in those facilities.

In March 2017, the Judicial Council authorized and approved the permanent disposition of the Judicial Council's equity interests in two vacant court facilities in Imperial County in partial settlement of a dispute with Imperial County.

Judicial Council staff has also disposed of equity interests in court facilities in a few instances in exchange for land or site improvements for a new courthouse.

## **Rationale for Recommendation**

### **Background**

The Judicial Council acquired equity interests in, and responsibility for, but not title to, the court facilities located in the Courthouse Annex in Tehama County (Annex) and the former Falasco Justice Center in Merced County (Old FJC) pursuant to the court facility transfer process under the Trial Court Facilities Act of 2002 (as amended, the Act). In each case, the court facilities were occupied and used by the local courts until new court facilities were constructed.

### **Superior Court of Tehama County—Courthouse Annex**

The Superior Court of Tehama County permanently closed the Annex to the public when it moved court operations into the New Red Bluff courthouse on August 29, 2016. The Annex is located at 445 Pine Street in the city of Red Bluff, adjacent to a county administration building. The Annex is a 10,595 square foot, two-story building and contains two courtrooms, two judges'

chambers, and clerk and administrative space. The court occupied 100 percent of the building, and included four reserved parking spaces located beneath the adjacent county building.<sup>1</sup> In fiscal year (FY) 2015–2016 the council spent \$87,104 on operations and maintenance (O&M) expenses for this facility, but as of February 28, 2017, all ongoing O&M cost has been shifted to Tehama County pursuant to a triple-net lease between the Judicial Council and the county. As part of the negotiations with Tehama County for the site of the new Red Bluff courthouse, on June 12, 2012, the Judicial Council and County of Tehama entered into a memorandum of understanding (MOU). The MOU, among other things, granted the County of Tehama an option to reacquire the Annex at either (1) the 2010 appraised value of \$1,250,000, or (2) the value of the property at the time the county exercised its right to purchase the property at fair market value under Government Code section 70391(c)(2)<sup>2</sup> prior to the Judicial Council offering it to any other state or local agencies. On February 28, 2017, the county exercised its option to acquire the Annex,<sup>3</sup> and on June 6, 2017, the county elected to pay the \$1,250,000 purchase price.

### **Superior Court of Merced County—former Falasco Justice Center**

The Superior Court of Merced County permanently closed the Old FJC to the public when it moved court operations into the newly constructed Falasco Justice Center in Los Banos on September 19, 2016. The closed court facility is a shared 14,675 square foot, two-story building with a parking lot wherein the state holds a 47.9 percent equity interest, and the county holds the remaining 52.1 percent. The court space within the building consists of one courtroom, a judge’s chambers, three walk-up windows, three offices, and administrative space. There are ten parking spaces, including one parking space reserved for the judicial office. According to a March 2017 appraisal, the court space is valued at \$244,000. In FY 2015–2016 the council spent \$42,605 as its share of O&M costs for this closed facility, but as of April 25, 2017, all ongoing O&M cost has been shifted to Merced County pursuant to a triple-net lease between the Judicial Council and the county. The County of Merced has expressed its desire to purchase this closed court facility at its \$244,000 appraised value.

### **Benefits of Disposition**

Every closed court facility carries some liability and has O&M cost associated with it until the Judicial Council disposes of that facility. Authorization and approval of the permanent disposition of the equity interests in the Annex and Old FJC will permanently eliminate the branch’s ownership liability risks.

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<sup>1</sup> Normally under the Act, title to a building that is 100 percent court occupied would have transferred to the state. In this case, as part of the long-term planning for the New Red Bluff courthouse, transfer of title to the Courthouse Annex was deferred to allow it to be more easily transferred back to the county after the court vacated.

<sup>2</sup> All future statutory references are to the Government Code unless otherwise noted.

<sup>3</sup> At the time of exercise, the county requested, and Judicial Council agreed, that closing of the acquisition transaction be deferred until a date no later than February 28, 2022.

The judicial branch would benefit from disposition of the Judicial Council’s equity interest in those facilities through receipt of the fair market value of those interests. Pursuant to section 70391(c), these equity sales proceeds would be deposited into the State Court Facilities Construction Fund.<sup>4</sup>

## Legal Authority

### Equity in the Trial Court Facilities Act

Each of the interests to be transferred pursuant to this report’s recommendations is an “equity interest” in a court facility, a concept important in the Act, but without a specific definition or clear analogue in general real estate law. Equity is specifically mentioned in only four places in the Act:<sup>5</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>6</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.”<sup>7</sup>
- 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 other 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 percent 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 rate.”<sup>9</sup>

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<sup>4</sup> Article III, section 9 of the California Constitution requires that proceeds from the sale of surplus state property must be deposited in the Special Fund for Economic Uncertainties. While an equity interest in a court facility is permanent and exclusive, the Judicial Council does not have a proprietary interest in the underlying real property because the state does not have sufficient control over it to unilaterally decide to sell it. Lacking such a proprietary interest, disposition of a surplus court facility in which the Judicial Council has only an equity interest is not a “sale of surplus state property” subject to the constitutional provision cited above.

<sup>5</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 (§§ 14673.10(g)(1) and 14673.11(g)(1)).

<sup>6</sup> Stats. 2002, ch. 1082, § 1(d)(4).

<sup>7</sup> *Id.*, § 1(d)(6).

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

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

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

- Section 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 for the county” as specified in the transfer agreement and in the agreement required under section 70343 (i.e., the Joint Occupancy Agreement (JOA)), regardless of which entity holds title to the building.
- Section 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 section 70342(a) through (c), if either the Judicial Council or county wishes to have additional space in a shared-use building, then the other party may charge reasonable rent for that use of additional space.
- Under section 70342(e), unless the Judicial Council or county otherwise agree, if either party desires to reduce the amount of space it occupies in a shared-use building, it may do so only after offering the other party its equity interest in that 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). Section 70342(e) further 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 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 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 must involve compensation for the vacated exclusive-use area and corresponding equity interest at its fair market value.

### **Disposition Authority**

The Judicial Council has specific authority in section 70391(c) to dispose of surplus court facilities including court facilities in both state-owned buildings and in county-owned buildings where the Judicial Council holds only an equity interest.<sup>10</sup> Each surplus court facility acquired through the courthouse transfer process must first be offered back to the county from which it was acquired at fair market value and then to other governmental agencies.<sup>11</sup>

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<sup>10</sup> Note that disposition by the state of title to real property requires specific statutory authorization in addition to this general grant of authority. (*People v. Chambers* (1951) 37 Cal.2d 552.)

<sup>11</sup> Section 70391(c)(2).

### **Delegation of Authority for Equity Dispositions**

Under article VI, section 6(c) of the California Constitution,<sup>12</sup> the Judicial Council has broad authority to delegate functions to the Administrative Director:

The council may appoint an Administrative Director of the Courts, who serves at its pleasure and performs functions delegated by the council or the Chief Justice, other than adopting rules of court administration, practice and procedure.

Disposition of equity interests in court facilities in county-owned buildings is consistent with that authority.

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

The proposal to dispose of the Judicial Council's equity interests in the Annex and Old FJC was not circulated for comment. Staff has received written communication from the Superior Court of Tehama County (Attachment A) and the Superior Court of Merced County (Attachment B) stating that their respective court facilities were permanently closed.

The alternative to approving disposition of these two court facilities is for the Judicial Council to continue to carry the liability of ownership for both the Annex and Old FJC and responsibility for O&M costs for the Old FJC with no benefit to the judicial branch.

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

As noted above, Tehama County has indicated its interest in acquiring the state equity in the Annex through exercise of its option to do so, and Merced County has indicated its interest in acquiring the state equity in the shared Old FJC. Following Judicial Council approval of the disposition of the two court facilities, Judicial Council staff will work with Tehama County and Merced County to finalize equity sales agreements.

Costs will be incurred in the disposition process, including costs of appraisals and title and escrow fees. Any such costs incurred by the Judicial Council will, however, be offset by the disposition proceeds.

### **Attachments and Links**

1. Attachment A: Confirmation from Superior Court of Tehama County re permanent vacation of the Courthouse Annex
2. Attachment B: Confirmation from Superior Court of Merced County re permanent vacation of the former Falasco Justice Center
3. Link C: Government Code section 70391 (superior court facilities),  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=70391](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=70391)

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<sup>12</sup> See also Cal. Rules of Court, rule 10.80(a).

4. Link D: Trial Court Facilities Act of 2002,  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=200120020SB1732](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200120020SB1732)
5. Link E: Government Code sections 70341–70344 (administration of shared-use buildings)  
[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)
6. Link F: California Constitution article VI, section 6,  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CONS&sectionNum=SEC.%206.&article=VI](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CONS&sectionNum=SEC.%206.&article=VI)
7. Link G: Cal. Rules of Court, rule 10.80,  
[www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10\\_80](http://www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_80)

**From:** Caryn Downing  
**To:** [Calvert-Banks, Eunice](#)  
**Subject:** RE: Sale of Courthouse Annex to Tehama County  
**Date:** Friday, June 30, 2017 9:39:53 AM

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Eunice,

The Court supports the Judicial Council selling the state equity in the former Courthouse Annex back to Tehama County.

Please let me know if you have any other questions.

Thanks, Caryn

Caryn A. Downing  
Court Executive Officer  
Superior Court of California, County of Tehama  
1740 Walnut Street  
Red Bluff, CA 96080  
530-527-6198

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**From:** Calvert-Banks, Eunice [mailto:[Eunice.Calvert-Banks@jud.ca.gov](mailto:Eunice.Calvert-Banks@jud.ca.gov)]  
**Sent:** Thursday, June 29, 2017 4:09 PM  
**To:** Caryn Downing <[cdowning@tehamacourt.ca.gov](mailto:cdowning@tehamacourt.ca.gov)>  
**Subject:** Sale of Courthouse Annex to Tehama County  
**Importance:** High

I wanted to confirm that your court is amenable with the Judicial Council selling the state equity in the former Courthouse Annex back to Tehama County. As you know, the county has entered into a triple net lease with the Judicial Council until such time as they may purchase it.

Please let me know; your response will be attached to the report – thank you!

**Eunice Calvert-Banks, Manager**

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**From:** Linda Romero-Soles  
**To:** [Calvert-Banks, Eunice](mailto:Calvert-Banks, Eunice)  
**Subject:** RE: former Los Banos court facility  
**Date:** Thursday, June 29, 2017 8:45:08 PM

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Yes, the court is OK with this decision.

Thank you.

Linda

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**From:** Calvert-Banks, Eunice [mailto:[Eunice.Calvert-Banks@jud.ca.gov](mailto:Eunice.Calvert-Banks@jud.ca.gov)]  
**Sent:** Thursday, June 29, 2017 3:57 PM  
**To:** Linda Romero-Soles <[Linda.Romero-Soles@mercedcourt.org](mailto:Linda.Romero-Soles@mercedcourt.org)>  
**Subject:** former Los Banos court facility  
**Importance:** High

Hi Linda:

I wanted to confirm that your court is amenable with the Judicial Council selling the state equity in the former Los Banos courthouse back to Merced County. As you know, the county has entered into a triple net lease with the Judicial Council until such time as they may purchase it.

Please let me know; your response will be attached to the report – thank you!

**Eunice Calvert-Banks, Manager**

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