



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on March 24, 2017

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| Title | Agenda Item Type |
| Court Facilities: Transfer of San Diego County Courthouse and Old Jail, and Related Equity Exchange | Action Required |
| Rules, Forms, Standards, or Statutes Affected | Effective Date |
| None | March 24, 2017 |
| Recommended by | Date of Report |
| Facilities Policies Working Group Hon. Douglas P. Miller, Chair Hon. Marla O. Anderson, Vice-Chair | March 4, 2017 |
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Executive Summary

The Facilities Policies Working Group recommends authorizing and approving the transfer to San Diego County of all of the state's equity interest in and title to the San Diego County Courthouse, adjacent Old Jail, and the land on which those buildings sit in exchange for the county's release of the Judicial Council and state from the existing obligation to demolish and remove those two facilities and such other consideration as the council and county may agree.

The Facilities Policies Working Group further recommends authorizing and approving the transfer to San Diego County of all of the state's equity interest in the Ramona Branch Building in Ramona, California, and a portion of the state's equity interest in the Meadow Lark Juvenile Court complex in exchange for San Diego County's transfer to the state of a portion of the county's equity interest in the South Bay Regional Center in Chula Vista, California.

Recommendation

The Facilities Policies Working Group recommends that the Judicial Council, effective March 24, 2017:

1. Authorize and approve the transfer of the state's equity interest in and title to the San Diego County Courthouse and Old Jail and the land on which those buildings sit to San Diego County in exchange for the county's full release of the Judicial Council's and state's obligation to demolish and remove the County Courthouse and Old Jail and such related obligations and other consideration as Judicial Council staff and county may agree;
2. Authorize and approve the exchange of all of the state's equity interest in the Ramona Branch Building and a portion of the state's equity in the Meadow Lark Juvenile Court complex for a portion of the county's equity interest in the South Bay Regional Center to finally resolve all consequences of the Judicial Council's 2013 decision to remove construction of the inmate transportation tunnel in downtown San Diego; and
3. Delegate to the Administrative Director or his designee the authority to execute a Memorandum of Agreement (MOA) with the County of San Diego outlining the terms of these transactions and all such agreements and documents as may be necessary to give effect to the terms memorialized in that MOA including written findings that may be required or advisable under the California Environmental Quality Act (Public Resources Code 21000–21189) with respect to the council's approval of the transactions described immediately above.

Previous Council Action

There has been no previous Judicial Council action with respect to the proposed transfer to the county of the County Courthouse, Old Jail, and land on which those buildings are located.

On April 21, 2015, the Court Facilities Advisory Committee (CFAC) reviewed a proposal to offer the San Diego Central Courthouse and Old Jail subject to the demolition and removal obligation for sale to the public through a Request for Proposal process with any cash proceeds from that sale applied to debt service payments for the bond financing of the new San Diego Central Courthouse, and recommended that the Judicial Council sponsor legislation authorizing that proposed transaction.

On April 30, 2015, the Policy Coordination and Liaison Committee (PCLC) reviewed the same proposal and recommended Judicial Council sponsorship of legislation authorizing the proposed transaction. The legislation was drafted and submitted. Subsequent discussion among legislative staff, the Department of Finance, Judicial Council executive leadership, and representatives of San Diego County, resulted in the transaction described in this Report.

Rationale for Recommendation

Background – Property Transfer

In 2009, under authority of the Trial Court Facilities Act of 2002 (Sen. Bill 1732; Stats. 2002, ch. 1082; hereafter the Act) the state took title to, and the Judicial Council took ownership and management responsibility for, the trial court facility locally known as the San Diego County Courthouse, 220 West Broadway, San Diego, California 92101 (County Courthouse) and the former county jail facility, which has a street address of 222 Front Street, San Diego, California 92101 (Old Jail) as part of a complex county-wide transaction (the County-Wide Transaction).¹ The real property on which the County Courthouse is situated consists of two full city blocks bounded by Broadway on the south, West B Street on the north, Union Street on the west, and Front Street on the east consisting of approximately 2.59 acres (the Real Property). The County Courthouse building (County Courthouse) extends over portions of both blocks of the Real Property and partially into the city block north of West B Street (County Block), which is owned by the County of San Diego. The County Courthouse is connected to the Hall of Justice, 330 W. Broadway, San Diego, California 92101 (HOJ), a shared use facility owned by the County, by a pedestrian skybridge that spans over Union Street (HOJ Bridge). Although the County owns title to the County Block, the state owns and is responsible for the portion of the County Courthouse located on the County Block.

The Old Jail occupies a separate legal parcel that is a portion of the Real Property between West B Street and West C Street and is connected to the County Courthouse. It is also connected to the County's existing, downtown central jail facility at 1173 Front Street, San Diego, CA 92101 (County Jail) by a pedestrian skybridge over Front Street (Old Jail Bridge). The Real Property, the County Courthouse Building, the HOJ Bridge, the Old Jail, and the Old Jail Bridge are sometimes collectively referred to herein as the "Property." The relative location of these structures is shown on Attachment A.

The County Courthouse is and will continue to be occupied and used by the superior court and the county until the New Courthouse is ready for occupancy expected in the summer of 2017.

Prior to the 2009 County-Wide Transaction, the county leased the Old Jail to the GEO Group for operation as a private detention facility on contract with the U.S. Marshal Service. At the expiration of the county's lease with the GEO Group in July 2014, Judicial Council staff entered into a new lease with the GEO Group that extends through March 31, 2019.

¹ Also included as part of the County-Wide Transaction was acquisition of the parcel of real property (Stahlman Block) on which the new San Diego Central Courthouse (the New Courthouse) is being constructed. The terms of the County-Wide Transaction are documented primarily in the Amended and Restated Transfer Agreement Between the Judicial Council of California, Administrative Office of the Courts, and the County of San Diego for the Transfer of Responsibility for and Transfer of Title to Court Facilities, Transfer of Title to the Old Jail, and Conveyance of Title to Stahlman Block by and between the Judicial Council and the County dated November 3, 2009.

As part of the County-Wide Transaction, the Judicial Council further agreed to demolish and remove the County Courthouse, the Old Jail, the HOJ Bridge, and the Old Jail Bridge after the superior court and county cease all operations in the County Courthouse, and to the extent necessary, restore any damage caused to the HOJ or County Jail by demolition and removal of the HOJ Bridge and the Old Jail Bridge (the Demolition Project).

In December 2010, the Administrative Director certified an Environmental Impact Report, State Clearinghouse #200002105 (EIR) prepared in compliance with the California Environmental Quality Act (Public Resources Code 21000–21189; hereafter CEQA) for the New Courthouse project which specifically included consideration of the Demolition Project and construction of an inmate transportation tunnel between the New Courthouse and the County Jail (Inmate Tunnel) under the County Courthouse real property. A copy of the EIR is available at Link A. The EIR was reviewed by Judicial Council staff in preparation of this Report and it was determined that because the Demolition Project and construction of an Inmate Tunnel were addressed in the EIR, there is no need to prepare a supplemental or subsequent environmental impact report to address the transaction contemplated in this Report.²

The estimated cost to the Judicial Council to complete the Demolition Project is expected to be somewhat more than the value of the Real Property after the Demolition Project has been completed.³ Taking these values into account, along with the value of Old Jail lease, the added value to the county in owning three contiguous blocks (the Real Property plus the block north of B Street), and the equity exchange described herein, FPWG has concluded that the exchange of the Property for a full release of the Demolition Obligation represents a fair exchange of value.

Legal Authority – Property Transfer

Except where expressly limited by statute, under authority of Government Code section 15862,⁴ the Judicial Council has jurisdiction over all real property or interests in real property acquired by the state under the Act, and under section 70391, the scope of that authority is further

² To address any concern that further CEQA review with respect to the transactions described herein, is required, the Administrative Director should make the following findings: (a) any potential effects of the Judicial Council's transfer to the county on behalf of the state of fee title to the County Courthouse, Old Jail and the land on which those buildings sit on behalf of the state, were fully considered and addressed in the EIR; (b) the Administrative Director is aware of no reasonably-foreseeable activities to be performed on or at the County Courthouse, Old Jail or the land on which those buildings sit other than those evaluated in the EIR which specifically included demolition of the County Courthouse, the Old Jail, ancillary structures, and construction of a pedestrian inmate transportation tunnel; (c) the Administrative Director is not aware of any facts, circumstances, or events in connection with the transfer of County Courthouse, Old Jail or the land on which those buildings sit that require preparation of a supplemental or subsequent environmental impact report; and (d) the exchange of all of the state's equity interest in the Ramona Branch Building and a portion of the state's equity in the Meadow Lark Juvenile Court complex for a portion of the county's equity interest in the South Bay Regional Center does not require any review under CEQA.

³ The demolition cost is high because the County Courthouse contains a significant amount of asbestos and other hazardous materials that must be carefully removed and disposed of in accordance with local, state and federal law.

⁴ All future statutory references are to the Government Code, unless otherwise noted.

described as the “full responsibility, jurisdiction, control, and authority as an owner would have” over those facilities.

The Legislature’s use of the phrase “as an owner would have” to describe the nature and scope of the Judicial Council’s authority is significant. Under California’s Civil Code, “[t]he ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others” (Civ. Code § 654). Ownership is qualified when it is shared with one or more persons; when the time of enjoyment is deferred or limited; and when the use is restricted. (Civ. Code § 680). Otherwise, it is absolute, meaning the owner “has the absolute dominion over it, and may use it or dispose of it according to his pleasure, subject only to general laws.” (Civ. Code §§ 678-679). “Ownership is a bundle of rights and privileges,” and an owner may enter into a lease agreement conferring on the tenant the rights of exclusive possession of the property “against all the world,” including the owner (*Union Oil Co. v. State Bd. of Equal.* (1963) 60 Cal.2d 441, 447).

Based on the foregoing, and because there is no express statutory limitation against it, the Judicial Council has statutory authority to authorize and approve the permanent transfer of all of its interest in the Property.

While the Judicial Council has the necessary authority to authorize and approve a permanent transfer of the Property to the county, every transfer of title to state-owned real property must be specifically authorized by statute.⁵ This necessary authorizing legislation is being drafted by the county with input from the Judicial Council and DOF.

Background -- Inmate Tunnel and the Equity Exchange

In February 2013, the Court Facilities Working Group (now the CFAC) reviewed another aspect of the County-Wide Transaction as part of its review of the status of the New Courthouse project, namely, the obligation of the Judicial Council to the county to construct an Inmate Tunnel, which would increase operational efficiency at the New Courthouse for both the county and the superior court, and decrease in-custody transport costs for the county. In light of the projected cost of constructing the Inmate Tunnel, the CFAC decided to eliminate the Inmate Tunnel from the New Courthouse project because of the broad, state wide need to reduce the scope and budget of all courthouse construction projects.

Under the terms of County-Wide Transaction, the county agreed to transfer to the Judicial Council the permanent right to occupy and use up to approximately 19,000 square feet of space at the county-owned South Bay Regional Center located at 500 Third Avenue, Chula Vista California (Building #37-H1; hereafter, the SBRC Space) in exchange for construction of the Inmate Tunnel. If the Judicial Council failed to timely complete the Inmate Tunnel, the county would have the right to require either that (1) the Judicial Council buy out the county’s equity interest in the SBRC Space or (2) the superior court vacate the SBRC Space. Following the Judicial Council’s 2013 decision to eliminate the Inmate Tunnel from the New Courthouse

⁵ *People v. Chambers*, 37 Cal.2d 552.

project, the county has chosen not to exercise that right and the superior court has continued to occupy and use the SBRC Space but with the understanding that the county could exercise that right at any time upon 90 days prior written notice.

To bring finality and certainty to the superior court's continued occupancy and use of the SBRC Space, and as additional consideration for the county's release of the Judicial Council's obligation to complete the Demolition Project, this proposal would result in the Judicial Council permanently transferring to the county all of the state's equity interest in (1) all of the Court's exclusive use area at the Ramona Branch Building located at 1406 Montecito Road, Ramona, California and consisting of approximately 3,622 square feet (Building #37-J-1; hereafter, Ramona), and (2) a portion of the Court exclusive use area at the Meadow Lark Juvenile Court complex located at 2851 and 2901 Meadow Lark Drive, San Diego, California and consisting of approximately 2,931 square feet (Building #37-E-2; hereafter the Meadow Lark Space) and, in exchange, the county would transfer to the Judicial Council all of its equity interest in the SBRC Space all to be effective at the same time as the transfer of the Property described earlier in this Report. The superior court is not currently regularly using Ramona or the Meadow Lark Space and fully supports and approves this exchange.

Legal Authority – Equity Exchange

The provisions of the Trial Court Facilities Act addressing administration of shared-use buildings such as the Ramona Branch Building and Meadow Lark Juvenile Court complex (§§ 70341–70342) rely on the concept of equity without actually using that word. In particular, section 70342(e) provides that 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 to which it has proposed to transfer the space to a third party (i.e., a market-rate transaction). In this case, despite the imbalance in the number of square feet being exchanged, the Judicial Council, superior court, and county each agree that in light of the Court's and county's respective current and future space needs, this equity exchange represents a fair exchange of value.

To be effective, any such transfer must be evidenced by a subsequent agreement that supersedes the shared-use agreement entered into by Judicial Council staff and the county under section 70343. In this case, the shared-use agreements previously entered into by Judicial Council staff and the county consisted of Limited Use Transfer Agreement with respect to Ramona, and a Joint Occupancy Agreement with respect to the Meadow Lark Space. Amendments to each of these agreements will therefore need to be among the required agreements to be drafted and negotiated following full execution of the MOA. Because these amendments will be completed under authority of section 70342(e), the Judicial Council has the requisite authority it needs to negotiate and execute them.

Comments, Alternatives Considered, and Policy Implications

If the Judicial Council does not approve the proposed transfer of the Property to the county in exchange for a release from the obligation to complete the Demolition Project, the Judicial

Council would need to find a source of funds to meet that obligation which would impose a substantial burden on the judicial branch. Failure to complete the equity exchange for the SBRC Space would at best, result in ongoing uncertainty as to the superior court's ability to occupy and use the SBRC space and at worst, allow the county to exercise its right to require the Judicial Council either to buy out the county's equity in the SBRC Space, which would impose a financial burden on the judicial branch, or require the court to vacate the SBRC Space, which would impose a substantial operational burden on the superior court.

Implementation Requirements, Costs, and Operational Impacts

The proposed transfer of the Property to the county and the exchange of equity interests at the SBRC, Ramona and Meadow Lark Space would entail no substantial out-of-pocket costs other than legal fees to draft, negotiate and finalize the agreements and other documents needed to implement these transactions.

Attachments and Links

1. Attachment A: Depiction of Property
2. Link A: Environmental Impact Report, State Clearinghouse #200002105,
<http://www.courts.ca.gov/facilities-sandiego.htm#tab3508>
3. Link A: Government Code section 15862,
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=15862.
4. Link B: Government Code section 70391,
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=70391
5. Link C: Government Code section 70342,
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=70342

**Attachment A
Depiction of Property**

