

**STAFF REPORT
C86**

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06/21/18
SB50-18-010
E. Kennedy
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**CONSIDER EXERCISING THE RIGHT OF FIRST REFUSAL FOR THE ACQUISITION
OF FEDERAL PUBLIC LANDS, OR RIGHT TO ARRANGE FOR THEIR TRANSFER
TO ANOTHER ENTITY, IN THE CITY OF PACIFICA, SAN MATEO COUNTY**

AREA, LAND TYPE, AND LOCATION:

708 square feet, more or less, of land in the city of Pacifica, San Mateo County.

INTRODUCTION TO SB 50:

In October 2017, the Governor of California signed SB 50 (Allen, Chapter 535, Statutes of 2017) into law, which added sections 6223 and 27338 to the Government Code and section 8560 to the Public Resources Code. Section 8560 makes certain federal land conveyances void unless the Commission is provided with a right of first refusal or the right to arrange for the transfer of the land to another entity. The Commission must exercise its right of first refusal at a public meeting. If the Commission was provided with its right of first refusal and right to transfer to another entity but elects not to purchase or arrange for transfer, it must issue a certificate affirming compliance with the law. Section 6223 prohibits the recordation of a conveyance of federal public lands unless it is accompanied by a certificate of compliance. The right of first refusal does not apply to certain conveyances, including but not limited to, those associated with a habitat conservation plan, lands conveyed into or out of trust for a federally recognized Native American tribe, and certain land exchanges.

BACKGROUND:

The Applicants, Armetta Parker and Geoffrey Mathews, are the homeowners of a property in the city of Pacifica. After purchasing their home, they learned that a portion of their backyard is subject to an easement held by the federal government (easement or Subject Federal Parcel). The easement is approximately 10 feet wide and 71 feet long. It was granted to the United States in 1942 for the purpose of installing, maintaining, repairing, and removing an underground communication cable associated with the Nike Missile Site, Milagra Ridge Military Reservation. The communication cable was never installed and there are no plans to install it. The missile site for which the easement was acquired was decommissioned in 1974. According to the General Services Administration (GSA), nonuse or deuse of an easement does not constitute abandonment; easements acquired by the federal government are perpetual until

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formally removed. The GSA agreed in a November 2, 2017 letter to extinguish the easement for a payment of \$4,800.

PROPERTY DESCRIPTION:

Appraised Value:

No appraisal was prepared.

Existing Improvements:

None.

Natural and Cultural Resources:

The Subject Federal Parcel was significantly disturbed decades ago as part of military activity before the residential community was established. Because of this development and the limited size of the easement, the Subject Federal Parcel offers no value for environmental or natural resource preservation or conservation purposes. Additionally, because the easement is over private property, in the Applicants' backyard, there is no public access to the location, and, therefore, no value for tourism, scientific study, or recreation.

Encumbrances:

None.

Contamination:

Unknown.

APPLICANTS' INTENDED USE:

This conveyance would extinguish the federal government's property rights by quitclaiming the easement to the Applicants, who are the owners of the burdened property. This would enable the Applicants to make use of their backyard space currently encumbered by the easement.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005 and 8560 and Government Code section 6223.

State's Best Interests Analysis:

Section 8560 defines "federal public land" broadly as "any land owned by the United States, including the surface estate, the subsurface estate, or any improvements on those estates." While the statute mandates that the Commission consider its right of first refusal for conveyances of federal public lands within the state of California, it does not provide guidance as

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to when the Commission should decide to acquire the subject federal public lands or to arrange for their transfer to another entity. However, the legislative history suggests that the Legislature intended for SB 50 to address conveyances of federal public lands with high value for environmental conservation or preservation, tourism, scientific study, or recreation. (See Assem. Com. on Natural Resources, report on SB 50 (2017-2018 Reg. Sess.), as amended May 26, 2017, pp. 3-4.; Sen. Com. on Natural Resources and Water, report on SB 50 (2017-2018 Reg. Sess.), Feb. 22, 2017 version, pp. 1-2.; Sen. Jud. Comm., report on SB 50 (2017-2018 Reg. Sess.), as amended March 20, 2017, pp. 3-4.)

The Subject Federal Parcel proposed for conveyance to the Applicants is for an unused communication cable easement located in a privately-owned backyard. Staff does not believe that the federal government's relinquishment of the easement is the type of conveyance that the Legislature intended for SB 50 to address. The 708-square-foot easement area over part of the Applicants' backyard does not provide opportunities for environmental conservation or preservation, tourism, scientific study, or recreation.

It would not benefit the State for the Commission to acquire this easement or to arrange for another entity to acquire it. For these reasons, staff recommends that the Commission find it is not in the State's best interests to acquire the easement or to arrange for its transfer to another entity.

OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
2. The Commission's finding that it is not in the State's best interests to acquire the Subject Federal Parcel or to arrange for its transfer, and authorization to issue a certificate of compliance are not projects as defined by the California Environmental Quality Act (CEQA) because they are administrative actions that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

3. **Finding that the acquisition or transfer to another entity is not in the State's best interests:** Staff recommends that the Commission also find

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that this activity is exempt from the requirements of CEQA as a statutorily exempt project. The activity is exempt because CEQA does not apply to projects that a public agency rejects or disapproves.

Authority: Public Resources Code section 21080, subdivision (b)(5) and California Code of Regulations, title 14, section 15270, subdivision (a).

4. **Issuance of a certificate of compliance:** Staff recommends that the Commission also find that this activity is exempt from the requirements of CEQA as a statutorily exempt project. The activity is exempt because CEQA does not apply to ministerial projects. After being provided with the right of first refusal and the right to transfer to another entity, the Commission has no discretion whether to issue the certificate of compliance—it “shall issue a certificate of compliance.”

Authority: Public Resources Code sections 21080, subdivision (b)(1) and California Code of Regulations, title 14, section 15268, subdivision (a).

EXHIBIT:

- A. Land Description

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

1. **Finding that the acquisition or transfer to another entity is not in the State’s best interests:** Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a statutorily exempt project pursuant to Public Resources Code section 21080, subdivision (b)(5) and California Code of Regulations, title 14, section 15270, subdivision (a), projects that a public agency rejects or disapproves.
2. **Issuance of a certificate of compliance:** Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a statutorily exempt project pursuant to Public Resources Code section 21080, subdivision (b)(1) and California Code of Regulations, title 14, section 15268, subdivision (a), ministerial projects.

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STATE'S BEST INTERESTS FINDING:

Find that it is not in the best interests of the State for the Commission to acquire an easement over 708 square feet of land proposed for conveyance from the General Services Administration to the Applicants, or to arrange for its transfer to another entity.

AUTHORIZATION:

Authorize the Executive Officer, or her designee, to issue a certificate of compliance with Public Resources Code section 8560 for the conveyance of a federal easement over 708 square feet of land from the General Services Administration to Ms. Parker, Mr. Mathews, or both.

LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF PACIFICA, COUNTY OF SAN MATEO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

LOT 117, as shown on that certain map entitled, "TRACT NO. 682, PACIFIC HIGHLANDS, SAN MATEO COUNTY, CALIFORNIA", filed in the office of the Recorder of the County of San Mateo, State of California on February 3, 1954 in Book 38 of Maps at page(s) 13 and 14.

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