

**STAFF REPORT  
C95**

A 18

04/19/18  
SB50-18-003  
E. Kennedy  
P. Huber

S 9

**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 ALAMEDA, ALAMEDA COUNTY**

**AREA, LAND TYPE, AND LOCATION:**

Approximately 14.8 acres of residential units, private streets, and appurtenant infrastructure originally part of the former Alameda Naval Air Station in the city of Alameda, Alameda 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 of compliance 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 federal public land at issue consists of approximately 14.8 acres of Navy-owned property referred to as the “Admirals Cove” parcel (Subject Federal Parcel). It is located within the North Housing Area of the former Alameda Naval Air Station in the city of Alameda. The Subject Federal Parcel has 146 residential units, private streets, and appurtenant infrastructure. It was formerly used to house military families and personnel. The Navy vacated the site in 2006 and in February 2017, the General Services Administration put the site up for auction. Carmel Partners (Applicant) was the winning bidder of the auction and has been

STAFF REPORT NO. **C95** (CONT'D)

in contract to purchase the property since mid-2017. Carmel Partners intends to rehabilitate the residential units and lease them to the public. The transfer and reuse of the Subject Federal Parcel is subject to a 2009 Community Reuse Plan adopted by the Alameda Reuse and Redevelopment Authority, a joint powers authority of the City of Alameda and the County of Alameda. The site is bounded by a park and residential neighborhoods and adjacent to a mixed-use development of shops, housing, and park land built on former Navy property.

**PROPERTY DESCRIPTION:**

***Appraised Value:***

No appraisal was performed, but Carmel Partners' winning bid amount was \$38,000,000.

***Improvements:***

The Subject Federal Parcel has 146 residential units in 4-plex and 6-plex townhouse structures, internal private streets, paved parking areas, landscaping and infrastructure.

***Natural and Cultural Resources:***

The Navy prepared an Environmental Assessment (EA) under the National Environmental Policy Act for the reuse of the entire North Housing Area of Alameda Naval Air Station, which includes the Subject Federal Parcel, since it was proposing to reuse the site, not create new development. This EA concluded that the disposal of the North Housing Area to private parties for redevelopment would have No Significant Impact on Cultural Resources and Biological Resources.

The Navy researched the potential presence of archaeological resources on the Subject Federal Parcel in 1996 and did not identify any archaeological resources. The Alameda Naval Air Station is located on former marshland and was built on fill, which makes the likelihood of encountering intact archaeological sites low. In April 2009, the Navy provided its data from this research to the California State Historic Preservation Office (SHPO) during its Section 106 consultation under the National Historic Preservation Act of 1966 concerning the North Housing disposal and reuse project, and the SHPO concurred with the Navy's identification efforts and its finding of "no historic properties affected" for the North Housing disposal and reuse plan.

Biological resources on the property were evaluated in the EA. The EA concluded that since the North Housing Area has been already developed, it had no biological resources, and redevelopment of the existing housing would have no significant impacts on biological resources. The EA noted

## STAFF REPORT NO. C95 (CONT'D)

that in the surrounding area, the closest significant biological resources and habitat were a colony of least tern nests over 1 mile away. The nesting area is separated from the Subject Federal Parcel by developed portions of the former Alameda Naval Air Station, streets, and other infrastructure. The U.S. Fish and Wildlife Service issued a Biological Opinion on August 29, 2012, indicating that the Navy's disposal and subsequent reuse of the North Housing Area would not jeopardize the continued existence of federally endangered or threatened species or result in adverse modification of critical habitat.

### ***Encumbrances:***

The Subject Federal Parcel has an easement reserved by L.A. Martino, et al., for sanitary sewers, storm sewer pipelines, and ingress and egress. It is also subject to a roadway dedication.

The Subject Federal Parcel is subject to a non-interference with Navigable Airspace provision. Since it is within 6 nautical miles of an airport, title 14, Code of Federal Regulations, part 77, Objects Affecting Navigable Airspace, applies to any construction or alteration on the property for which notice to the Administrator of the Federal Aviation Administration is required to be provided in accordance with those regulations.

The Subject Federal Parcel also has several restrictions related to managing potential environmental and human health hazards:

- Management of Polychlorinated Biphenyls (PCBs) – Certain portions of the improvements on the property may contain PCBs. Before beginning any maintenance, alterations, demolition, restoration or construction work affecting fluorescent light fixtures, the Grantee must determine if PCB ballasts are present. If so, the Grantee must dispose of them at its own expense and in accordance with applicable laws.
- Installation Restoration (IR) Site 25 Restrictions. The Subject Federal Parcel is part of IR 25, Operable Unit 5, the North Housing site of the former Naval Air Station. Previous investigations conducted at this site revealed the presence of polycyclic aromatic hydrocarbons (PAHs), which the Navy removed in certain locations throughout the Subject Federal Parcel. The property is subject to institutional controls that require future landowners to obtain written approval from the Navy, U.S. EPA, and California Department of Toxic Substances Control (DTSC) for excavation of soil from depths

STAFF REPORT NO. **C95** (CONT'D)

greater than 4 feet below ground surface or the removal of hardscape. For this work, future landowners must develop a Soil Management Plan and obtain approval of the Plan from the Navy, DTSC, and U.S. EPA (unless the U.S. EPA determines its review and approval is not necessary). The Navy intends to execute a Covenant to Restrict the Use of Property to the State of California, which allows the state to monitor and enforce the land use controls detailed in the Installation Restoration site 25 LUC Remedial Design, 2009.

- Compliance with the City of Alameda Ordinance No. 2824 re: Marsh Crust/Subtidal Zone Soil Management Requirements. A permit from the Chief Building Official must be obtained before excavation into the Marsh Crust/Subtidal Zone at the Former Naval Air Station Alameda.
- Marsh Crust Covenant: The Covenant prohibits certain excavation activities, gives DTSC the right to access, inspect, monitor, and remediate the property as necessary to protect human health or safety or the environment, and gives DTSC enforcement authority to require modification or removal of any improvement made upon the property in violation of the Covenant.
- Access Rights Pursuant to section 120(h)(3)(A)(iii) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA 42 U.S.C. section 9620 (h)(3)(A)(iii)): The United States retains and reserves a perpetual and assignable easement and right of access on, over, and through the property, to enter upon the property in any case in which a remedial action or corrective action is found to be necessary on the part of the United States, without regard to whether such remedial action or corrective action is on the property or on adjoining or nearby lands

***Contamination:***

The Finding of Suitability to Transfer completed by NAVY Base Realignment and Closure Program Management Office West (March 2016) describes the environmental condition on the Subject Federal Parcel and contains information regarding storage, release, or disposal of hazardous substances known to the Navy and a description of the response actions taken. As described above, polycyclic aromatic hydrocarbons were found in the soil on the former North Housing Area.

STAFF REPORT NO. **C95** (CONT'D)

Asbestos is likely present in the structures on the Subject Federal Parcel. Friable asbestos-containing material was found in the North Housing units in a 1995 survey, and there is no record of abatement occurring. Lead-based paint was also found in a 2010 evaluation of the former North Housing site.

**APPLICANT'S INTENDED USE:**

Carmel Partners intends to renovate the existing, vacant residential townhome units, including upgrading utility infrastructure, building exteriors and interiors, and landscaping. When the improvements are complete, Carmel Partners intends to offer them to the public for lease. The property is designated for Medium Density Residential Use in the City of Alameda's General Plan. It is zoned R-4 (Neighborhood Residential) PD (Planned Development). Reuse of the property is subject to a 2009 Community Reuse Plan adopted by the Alameda Reuse and Redevelopment Authority.

**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 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 conveyance 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 Carmel Partners does not possess high value for environmental or natural resource conservation or preservation, tourism, scientific study, or recreation. The parcel has already been fully developed and is within an urbanized area of Alameda Island, in the city of Alameda. It is adjacent to Alameda Landing,

STAFF REPORT NO. C95 (CONT'D)

a mixed-use development of shops, housing, and park land built on former Navy property, and it is close to the Oakland Inner Harbor and the Alameda Main Street Ferry terminal. The Subject Federal Parcel already has 146 residential units, which the Applicant intends to renovate and rent. This will increase the supply of rental units in this already developed area. The Community Reuse Plan approved by the Alameda Reuse and Redevelopment Authority contemplates this redevelopment. Staff believes, based on the Subject Federal Parcel's past use as a Naval Air Station and the information contained in the EA, that there are no natural or cultural resources with significant values within the Subject Federal Parcel.

For all the above reasons, staff recommends that the Commission find it is not in the State's best interests to acquire the Subject Federal Parcel 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 20165 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 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

STAFF REPORT NO. **C95** (CONT'D)

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 or 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).

**EXHIBITS:**

- A. Land Description
- B. Plat

**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 this activity is exempt from the requirements of CEQA pursuant to the California Code of Regulations, title 14, section 15061 as a statutorily exempt project pursuant to Public Resources Code section 21080, subdivision (b)(1) and the California Code of Regulations, title 14, section 15268, subdivision (c), a ministerial project.

**STATE’S BEST INTERESTS FINDING:**

Find that it is not in the best interest of the State for the Commission to acquire 14.8 acres of land proposed for conveyance from the Navy to Carmel Partners, 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 14.8 acres of federal public land from the Navy to Carmel Partners.

# EXHIBIT A

## LEGAL DESCRIPTION NAVY RETAINED PARCEL ALAMEDA, CALIFORNIA

REAL PROPERTY, SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF ALAMEDA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED RECORDED AUGUST 10, 1966, IN REEL 1821, IMAGE 494 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, ALSO BEING A PORTION OF PARCEL 2, AS SAID PARCEL 2 IS SHOWN AND SO DESIGNATED ON THAT CERTAIN RECORD OF SURVEY NO. 1816, FILED JUNE 6, 2003, IN BOOK 28 OF RECORDS OF SURVEY, AT PAGE 14, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERN CORNER OF SAID PARCEL OF LAND (RE 1821, IM 494), SAID CORNER ALSO BEING THE NORTHEASTERN CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS PARCEL 2 IN THE RESOLUTION RECORDED FEBRUARY 14, 1955 IN BOOK 7567 OF OFFICIAL RECORDS AT PAGE 117 IN SAID OFFICE OF THE COUNTY RECORDER;

THENCE, FROM SAID POINT OF BEGINNING, ALONG THE SOUTHERLY LINE OF SAID PARCEL (RE 1821, IM 494), NORTH 87°13'09" WEST 275.01 FEET;

THENCE, LEAVING SAID SOUTHERLY LINE, NORTH 02°46'51" EAST 56.71 FEET;

THENCE, NORTH 87°12'11" WEST 939.24 FEET;

THENCE, ALONG THE ARC OF A TANGENT 25.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 119°02'01", AN ARC DISTANCE OF 51.94 FEET;

THENCE, NORTH 31°49'50" EAST 740.67 FEET;

THENCE, ALONG THE ARC OF A TANGENT 134.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 60°04'10", AN ARC DISTANCE OF 140.49 FEET;

THENCE, SOUTH 88°06'00" EAST 427.74 FEET;

THENCE, ALONG THE ARC OF A TANGENT 25.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC DISTANCE OF 39.27 FEET;

THENCE, SOUTH 01°54'00" WEST 409.45 FEET;

THENCE, SOUTH 56°50'14" EAST 350.08 FEET TO THE EASTERLY LINE OF SAID PARCEL OF LAND (RE 1821, IM 494);

THENCE, ALONG SAID EASTERLY LINE, SOUTH 02°46'51" WEST 206.03 FEET TO SAID POINT OF BEGINNING.



CONTAINING 647,882 SQUARE FEET OR 14.87 ACRES OF LAND, MORE OR LESS.

ATTACHED HERETO IS A PLAT TO ACCOMPANY LEGAL DESCRIPTION, AND BY THIS REFERENCE MADE A PART HEREOF.

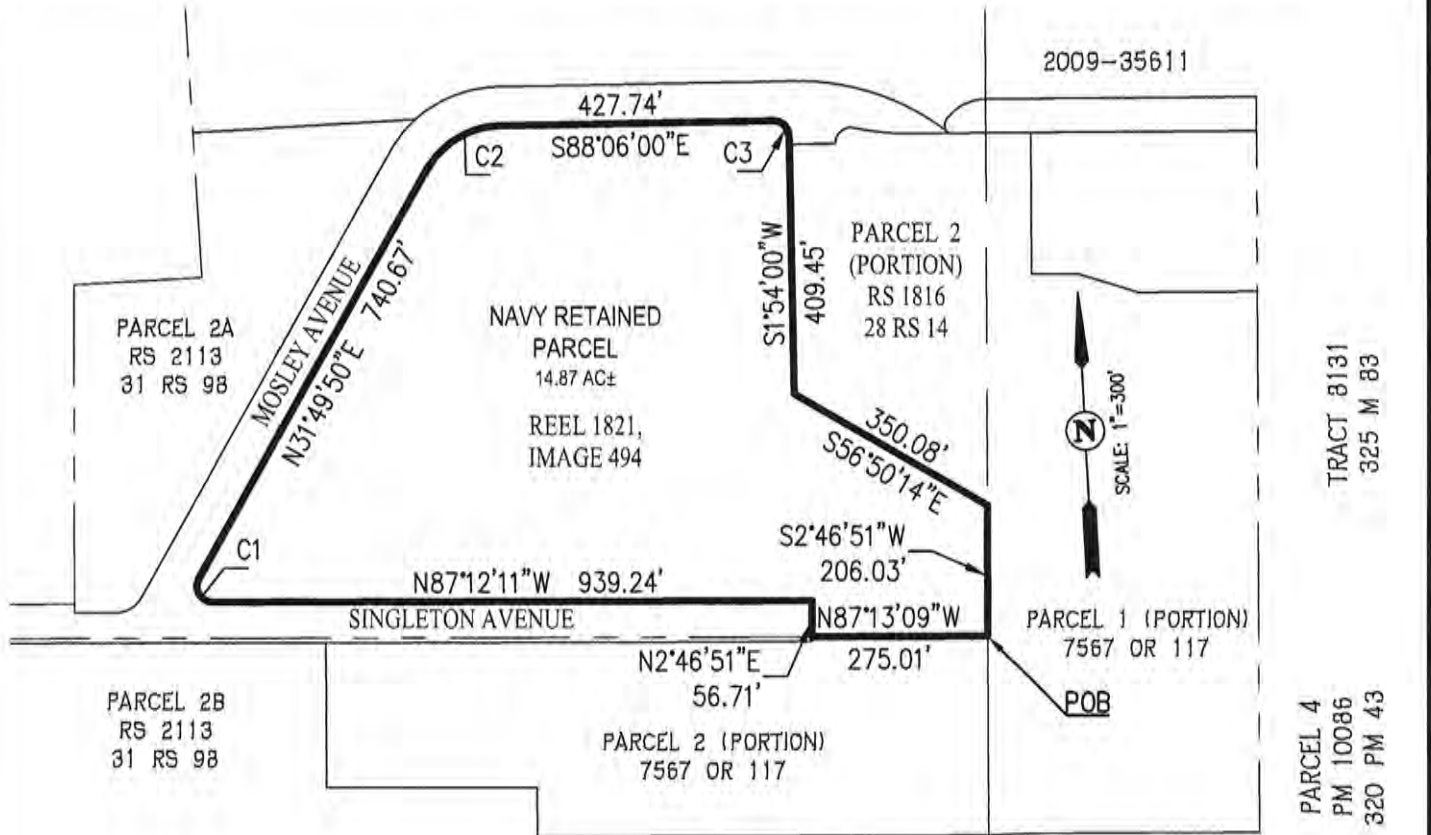


A handwritten signature in blue ink that reads "Joel Garcia". The signature is written in a cursive style and is positioned above a horizontal line.

JOEL GARCIA, P.L.S.  
L.S. NO. 5285

01-24-2017

# EXHIBIT B



CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C1	25.00'	119°02'01"	51.94'
C2	134.00'	060°04'10"	140.49'
C3	25.00'	090°00'00"	39.27'

### LEGEND:

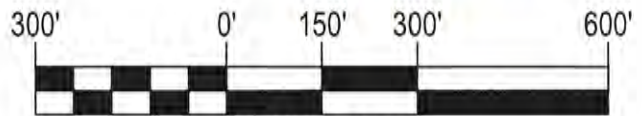
POB = POINT OF BEGINNING  
 POC = POINT OF COMMENCEMENT



01-24-2017

### NOTE:

COURSES ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 3. DISTANCES SHOWN ARE GROUND DISTANCES. TO OBTAIN GRID DISTANCES DIVIDE GROUND DISTANCES BY THE COMBINED SCALE FACTOR OF 1.00007055, AS SHOWN ON THAT CERTAIN RECORD OF SURVEY NO. 1816 (28 RS 14).



GRAPHIC SCALE

## PLAT TO ACCOMPANY LEGAL DESCRIPTION

NAVY RETAINED PARCEL  
 ALAMEDA, CALIFORNIA

JANUARY 24, 2017

SHEET 1 OF 1

**Carlson, Barbee & Gibson, Inc.**

CIVIL ENGINEERS • SURVEYORS • PLANNERS  
 2633 CAMINO RAMON, SUITE 350  
 SAN RAMON, CALIFORNIA, (925) 866-0322