

**STAFF REPORT  
C98**

A 37

04/19/18  
SB50-18-006  
E. Kennedy  
P. Huber

S 19

**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 COUNTY OF SANTA BARBARA**

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

5.93 acres, more or less, of federal public land in an unincorporated part of northeastern Santa Barbara 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 property proposed for conveyance includes 5.93 acres of federal public lands (Subject Federal Parcel) owned by the Bureau of Land Management (BLM). The Subject Federal Parcel is located about 4 miles from the southeastern limits of the city of Santa Maria, in an unincorporated area of northeastern Santa Barbara County. Arc Vineyards, LLC. (Applicant) owns 200 acres of land in the Santa Maria area of Santa Barbara County on which there is a vineyard and a winery. The Subject Federal Parcel is landlocked by the Applicant's property and by two other large properties. Most of the Subject Federal Parcel remains in its natural state, is not used for any purpose and is

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believed to never have been in private ownership, nor is there any legal access to it. BLM believes that the Applicant's vineyard and perimeter fencing encroach on a portion of the Subject Federal Parcel. The zoning designation for the area is Agriculture, which allows a variety of agricultural-related uses, including residential homesites. A legal access easement, however, would be required to qualify for a residential building permit. The Applicant posits that the creation of the parcel was the result of a surveying error; now, the Applicant intends to absorb the parcel into its large adjacent landholding and leave it in its current state.

### **PROPERTY DESCRIPTION:**

#### ***Appraised Value:***

According to a September 21, 2016 appraisal report, the Subject Federal Parcel has a fair market value of \$19,500 (effective date of value: August 30, 2016).

#### ***Existing Improvements:***

There are no existing improvements on the Subject Federal Parcel, with the exception that some of the Applicant's perimeter fencing and vineyard may be encroaching on the parcel.

#### ***Natural and Cultural Resources:***

The following discussion is derived from the Environmental Assessment (EA) for the Proposed Plan Amendment to the 1997 Caliente Resource Management Plan of the Sale of Public Lands to the Kaweah Delta Water Conservation District and Arc Vineyards, LLC, (DOI-BLM-CA-C060-2012-0021-EA). Vegetation on the Subject Federal Parcel comprises a mixture of oak woodland/scrub, chaparral, and coastal scrub. There are several sensitive plant species present listed by BLM and the California Native Plant Society: La Purisima manzanita (*Arctostaphylos purissima*), mesa horkelia (*Horkelia cuneata*), Hoover's bentgrass (*Agrostis hooveri*), and sand buckbrush (*Ceanothus cuneatus* var. *fascicularis*). There are no federally- or state-listed animal species associated with the parcel. The parcel does support habitat for the coast horned lizard (*Phrynosoma blainvillii*), a BLM and California Department of Fish and Wildlife sensitive species.

As described above, the Subject Federal Parcel is a landlocked public parcel, surrounded by private properties that are zoned as Agriculture, and the agricultural uses are mostly comprised of vineyards. Although the remaining habitat is relatively undisturbed, the habitat value is not significant due to the parcel being an isolated public land parcel surrounded by agricultural land. According to the EA, Arc Vineyards, LLC,

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intends to keep the remnant oak woodland and chaparral as open space in compliance with Santa Barbara County's development and permitting requirements. Maintaining the habitat on the parcel as open space will help protect the sensitive species identified above. The parcel could provide recreational and scenic amenities for winery patrons, including hiking and natural resource education. There is also the potential that the parcel could be linked with the nearby Los Flores Ranch regional park in the future, which is located less than 1 mile to the southeast.

An archaeological archival record search and cultural resources survey were conducted for the Subject Federal Parcel and no cultural resources were discovered on the parcel. The Subject Federal Parcel lies within the traditional territory of the Northern Chumash tribes. Certified letters were sent to members of the local Native American community describing the sale of the Subject Federal Parcel. Communication with one recipient, Mr. Freddie Romero, associated with the Elders Council of the Santa Ynez Band of Chumash Indians, stated the council had no concerns regarding the sale. No other recipients indicated that any places of traditional cultural or religious importance will be affected by the sale.

***Encumbrances:***

BLM's conveyance of the Subject Federal Parcel reserves to the United States all mineral interest in the land and the right to prospect for, mine, and remove the minerals under applicable law and any regulations that the Secretary of the Interior may prescribe, including all necessary access and exit rights.

The parcel is subject to a right-of-way for ditches and canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890 (43 U.S.C. § 945). The conveyance would also be subject to an "appropriate indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or occupation on the patented lands."

***Contamination:***

An Environmental Site Assessment conducted by BLM in 2013 for the disposal of the parcel did not identify any hazardous materials on the site.

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**APPLICANT'S INTENDED USE:**

The Applicant does not intend to change the present use of the Subject Federal Parcel. It desires to purchase the property to keep the parcel in its natural state, to meet Santa Barbara County's development and permitting requirements for open space, and because its vineyards may encroach over the boundary of the parcel.

**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 exercise its right to acquire 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 Arc Vineyards, LLC, is a small, isolated parcel of land that does not possess high value for environmental or natural resource conservation or preservation, tourism, scientific study, or recreation. It lacks public access as there is no recorded access easement. It is accessible by a private dirt road and is about 1 mile from a paved, public road. Due to its small size and lack of accessibility, it does not provide a significant opportunity for recreational or tourism use by the public. While the parcel does support several native plant species and provide habitat for coast horned lizard, the habitat value of the land is not significant because the parcel is surrounded by a vineyard and other agricultural uses. Further, the Applicant intends to leave the parcel in its current state, so the conveyance is unlikely to disturb the habitat.

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For these 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 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 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 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

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**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.

**STATE'S BEST INTERESTS FINDING:**

Find that it is not in the best interests of the State for the Commission to acquire 5.93 acres of land proposed for conveyance from BLM to Arc Vineyards, LLC, 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 5.93 acres of federal public land from BLM to Arc Vineyards, LLC.

# EXHIBIT A

## LEGAL DESCRIPTION

Real property in the unincorporated area of the County of Santa Barbara, State of California, described as follows:

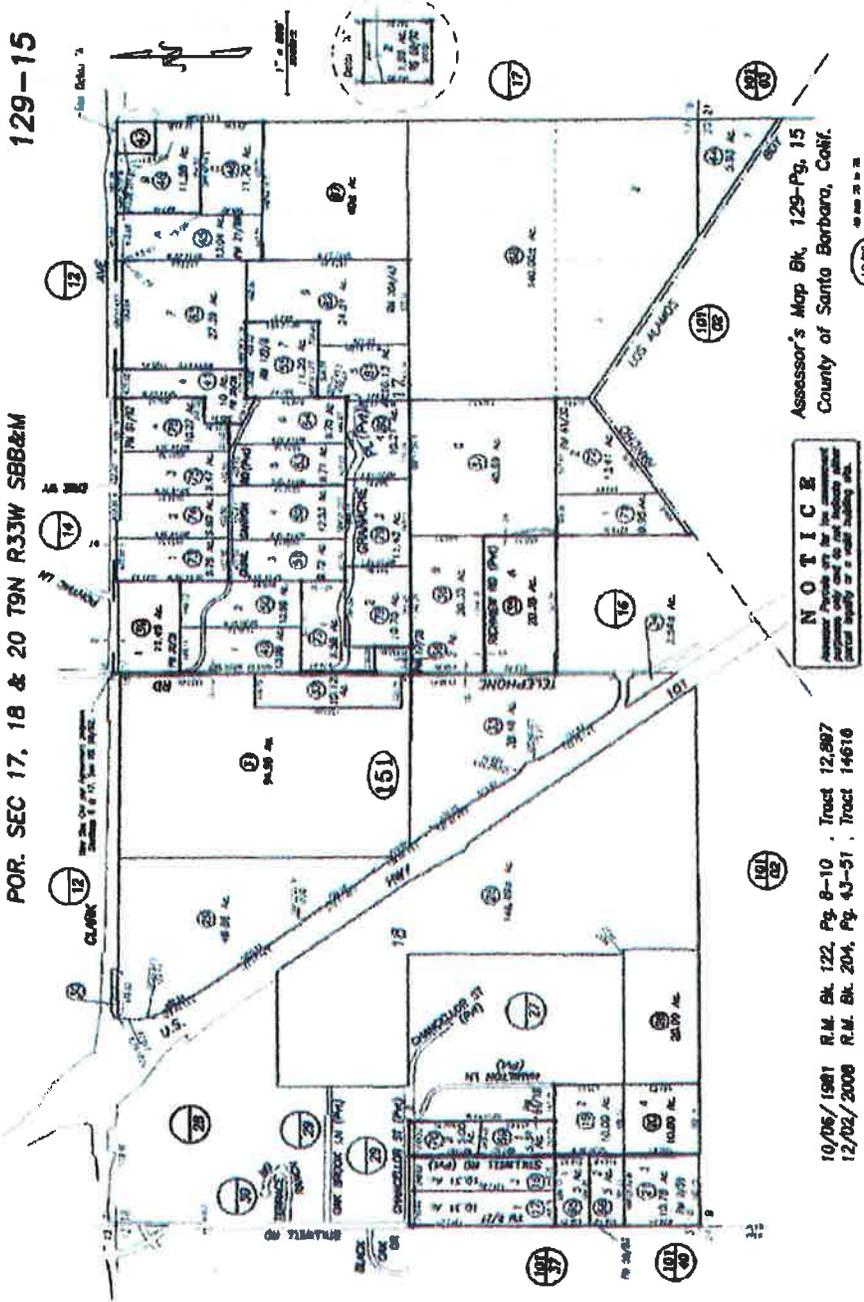
LOT 1 OF SECTION 20, TOWNSHIP 9 NORTH, RANGE 33 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND APPROVED BY THE SURVEYOR GENERAL NOVEMBER 2, 1891.

APN: 129-151-44

# EXHIBIT B

129-15

POR. SEC 17, 18 & 20 T9N R33W SBB&M



Assessor's Map Bk. 129-Pg. 15  
County of Santa Barbara, Calif.

**NOTICE**  
This map is for information only and does not constitute a warranty of a valid liability act.

10/06/1981 R.M. Bk. 122, Pg. 8-10, Tract 12,987  
12/02/2008 R.M. Bk. 204, Pg. 43-51, Tract 14618

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