

6. Next Steps for Regulatory Review and Disposition

Over the past two years, the Stewardship Council has focused on developing a baseline understanding of the Watershed Lands and their existing conditions, resources, and BPVs. From this baseline, the Stewardship Council developed a set of concepts and final recommendations by planning unit (see Volume II) to guide the preservation and enhancement of the BPVs across the watershed lands. The remaining steps required to meet the goals of the Land Conservation Commitment (as described in the Settlement Agreement and Stipulation) are expected to continue through 2013 as the Stewardship Council and PG&E complete the land disposition process.

The LCP Volumes I and II present the Stewardship Council's recommendations for future land conservation and are intended to support future regulatory approvals (for land transactions/encumbrances) consistent with these recommendations. As illustrated in Figure 6-1, following public review and comment, and adoption by the Stewardship Council Board of Directors, the Board will submit Volumes I and II of the LCP to PG&E. Following PG&E's internal review and approval process, PG&E will submit a Master Section 851 Master Application to the CPUC to request approval of the company's programmatic approach for disposition of the watershed lands. During the CPUC's review and approval process of this initial application, the Stewardship Council will begin preparing the Volume III disposition packages. Once approved by the Board, the disposition packages will accompany PG&E's parcel-specific Section 851 applications to the CPUC, and the FERC (as applicable).

6.1 LCP Review, Public Comment, and Approval

The Board received the Preliminary Draft LCP Volumes I and II for review and comment in mid-January 2007. The preliminary draft stimulated a lot of ideas and discussion, and the Board

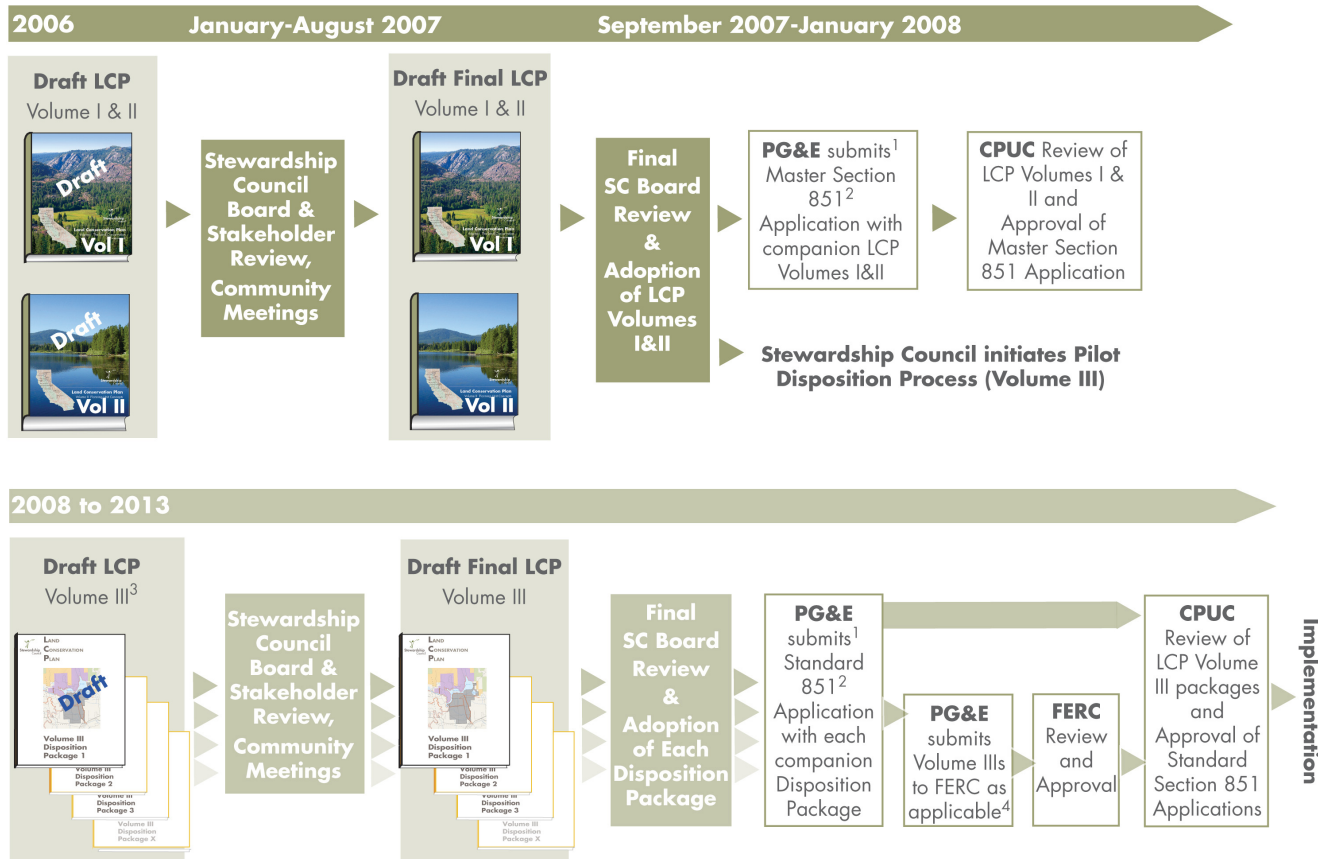


determined that additional time was needed to revise the documents prior to public review. The Board received the revised Draft LCP Volumes I and II in May. Following revisions, the LCP was made available for a 60-day public review and comment period from June 18 through August 21, 2007.

The draft LCP was posted on the Stewardship Council website, distributed on CD-ROM to all parties listed in the Stewardship Council's database, and hosted in public buildings in each of the 22 affected counties. In addition, the Stewardship Council hosted 10 community meetings, in locations dispersed across the Watershed Lands, during the months of June and July. The purpose of the community meetings was to orient the public to the draft LCP, and to guide the public on how best to provide comments on the document. The meetings were attended by more than 220 individuals.

The Stewardship Council received over 1,300 comments from members of the public. Comments were submitted through the Stewardship Council website, via email, and regular mail. The Stewardship Council reviewed all comments, and prepared responses to each; the text in the LCP was changed appropriately. All of the public comments and associated responses will become a part of the final LCP and will be made available to the public. The public comments, responses, and textual changes were reviewed by the Stewardship Council Board of Directors, and the members provided feedback to the staff. The final versions of these documents were provided to

LCP & Land Disposition Approval Process



¹ Subject to review and acceptance of the LCP recommendations in accordance with PG&E's internal governance process.

² The Section 851 process applies to any and all utility land transactions in California, to ensure that the transaction (or land encumbrance) is in the best interest of rate payers.

³ Volume III Disposition Packages will be developed and approved independent of each other, and on different timelines depending on the complexity of the transactions and other factors.

⁴ Applies to Watershed Lands within FERC jurisdiction.

Figure 6-1 LCP Approval Process

the Board. The Planning Committee of the Board recommended the adoption of the final LCP to the Board of Directors. The Final LCP was adopted by consensus at the Board's November 28, 2007 meeting in Sacramento. The draft Final LCP was posted on the Stewardship Council website one week prior to the Board meeting to facilitate public review. In keeping with the Stewardship Council policies and procedures, the Board meeting was open to the public, and the Board did accept public comments at the meeting.

Following the adoption of Volumes I and II of the LCP, the Stewardship Council will begin development of the individual disposition packages that comprise Volume III of the LCP. This work will start with a pilot disposition

effort in late 2007,¹ and will continue in earnest in mid-2008 and continue through 2013. The Board will take action on Volume III of the LCP in a number of stages and over a number of years. These disposition packages will address and resolve specific issues such as fee title retention or transfer, donee capacity and financial commitments, property tax neutrality, disclosure of hazardous wastes, and parcel splits. The process is illustrated in Figure 6-1.

The Stewardship Council will assemble individual disposition packages (Volume III) as donees are identified and agreements are reached. To facilitate regulatory review, as well as expedite the transfer of parcels and implementation of conservation efforts, adjacent parcels (and

likely going to one donee) will be clustered, or considered in “packages.” The Stewardship Council is not envisioned to hold title or conservation easements for the Watershed Lands.

Throughout this effort, the Stewardship Council will work collaboratively with interested stakeholders and qualified donees across the Watershed Lands regarding future disposition and management of the properties. In addition to continuing its extensive community outreach efforts, the Stewardship Council will comply with all public and stakeholder formal noticing requirements in the Stipulation (see Section 5.1). Again, as in all decision-making, the Stewardship Council Board will make all Volume III disposition decisions by consensus at a public Board meeting.

6.2 PG&E Roles and Responsibilities

As described in the Stipulation, once the Stewardship Council adopts the LCP (or Volumes of the LCP), the Stewardship Council will provide the final documents to PG&E. As the property owner, PG&E will then “expeditiously submit applications consistent with the LCP” to the CPUC for review and approval under Section 851 of the Public Utilities Code.² Prior to submittal to the CPUC, PG&E will also be responsible for seeking FERC approval on transactions that affect FERC related lands. The Section 851 process applies to any and all utility land transactions in California, to ensure that the transaction (or land encumbrance) is in the best interest of PG&E’s customers.

As part of its Section 851 applications, PG&E is expected to present land disposition and/or conservation easement requests that are consistent with the recommendations of the Stewardship Council as provided in the adopted LCP. PG&E is then expected to complete land transactions within six months of final receipt of all regulatory approvals no longer subject to appeal.

The Stewardship Council, PG&E, and CPUC have worked together for more than two years to anticipate the transition from the Stewardship Council LCP adoption to the PG&E/CPUC

Section 851 process. The goal is to ensure a smooth and efficient process, with the ultimate aim of completing the land transaction/conservation easement work and ensuring the protection of BPVs on the Watershed Lands.

6.3 CPUC Review and Action

Paragraph 20 of the Stipulation provides that the CPUC, “will exercise its authority to approve or disapprove all land dispositions under Public Utilities Code Section 851 consistent with the Land Conservation Commitment and this Stipulation.” It is anticipated that there will be approximately 1,000 separate parcels involved in the land transactions or placed under conservation easement or related agreements. As a result, the Stewardship Council and PG&E discussed with the CPUC the potential for a streamlined approval process under a Master Section 851 Application. The proposed streamlined approach is intended to ensure appropriate use of CPUC staff resources and expedite public enjoyment of the Watershed Lands.

Following PG&E’s submittal of the Master Section 851 Application, the CPUC staff will review the application and conduct environmental review of the application in accordance with the California Environmental Quality Act (CEQA), as necessary. Opportunities for public participation will be provided throughout the Section 851 application process in accordance with the CPUC’s requirements. In evaluating parcel-specific requests (or notices), the CPUC will confirm proposed transactions or land encumbrances are consistent with the objectives stated in the LCP for the relevant planning unit through the submittal of Standard Section 851 Applications.

6.4 FERC Review and Action

As described in Section 2.4.1, the Federal Power Act provides for regulation of hydroelectric power and gives FERC the responsibility to issue licenses for hydroelectric projects. FERC licensees are required to obtain FERC approval for the conveyance of any interests in lands necessary to carry out the license agreement. Approval requires a finding that the non-FERC project use for which

the interest is being conveyed will not interfere with FERC-project purposes.

The standard land use article contained in most current licenses grants the licensee (in this case PG&E) permission to convey, without prior FERC approval, certain small easements on project lands, subject to project-protective covenants. However, for easements involving more than five acres of project land, the licensee must apply for prior FERC approval. The standard land use article also grants the licensee permission to convey, subject to project-protective covenants, fee title to, easements or rights-of-way across, or leases of project lands for recreational development consistent with an approved project recreational plan. As such, it is expected that prior FERC approval will be required for both conservation easements and the installation of any proposed facilities on lands within FERC project boundaries.

Such approval must be sought from FERC on a transaction-by-transaction basis. PG&E must file a completed application with FERC, and if approved, FERC will issue an order giving PG&E the authority to grant permission for the specific non-project use. PG&E and the Stewardship Council are working closely with FERC to streamline and standardize, to the extent possible, the review and approval process for Watershed Lands located within the boundary of FERC-licensed hydroelectric projects.

Reservation of Rights for Hydroelectric and Associated Water Delivery Facilities

The Settlement Agreement and Stipulation directs that all rights for continued operations and improvements of hydroelectric and associated water delivery facilities be reserved by the conservation easements. All hydroelectric and associated water delivery facilities remain subject to ordinary regulations by the appropriate regulatory agencies (i.e., SWRCB, FERC) under general law.

6.5 CEQA and NEPA Compliance

Certain recommended actions in Volume III of the LCP may require environmental review, either at

the State or Federal level. Potential environmental impacts associated with proposed actions might require State-level review under CEQA, or perhaps trigger review at the Federal level under the National Environmental Policy Act (NEPA).³ Physical enhancements to the Watershed Lands will be subject to ordinary regulatory reviews, including CEQA, and approvals. The CEQA review procedures will be established through the CPUC's approval of a Master 851 Application (associated with Volumes I and II). Many of the land transactions and/or conservation easements to be developed in the Volume III disposition packages, however, are not expected to trigger either CEQA or NEPA review. This is due, in large part, to the fact that the objectives and recommendations of the Stewardship Council are focused on conservation — and in most cases only suggest minor physical enhancements to the properties.

6.6 Land Disposition and Implementation

As discussed earlier, the Stewardship Council anticipates that approximately half of the total acreage under review (approximately 70,000 acres⁴) will be available for fee donation to qualified public entities and non-profit organizations. While the remaining acreage will remain under PG&E's ownership, continue to be subject to the terms of specific FERC licenses, and be dedicated primarily to hydroelectric power generation (and related operational, resource protection, and environmental quality requirements), all 142,692 acres of land will be protected under conservation easements, or some legal equivalent, that ensure preservation and enhancements of the BPVs.

6.6.1 Implementation Schedule

In late 2007, the Stewardship Council began the process of developing a pilot disposition process framework to guide the implementation (disposition) phase of its work (Volume III) (Figure 6-2). The Council's goal is to complete all disposition work by the end of 2013; however, the pace of developing the individual disposition

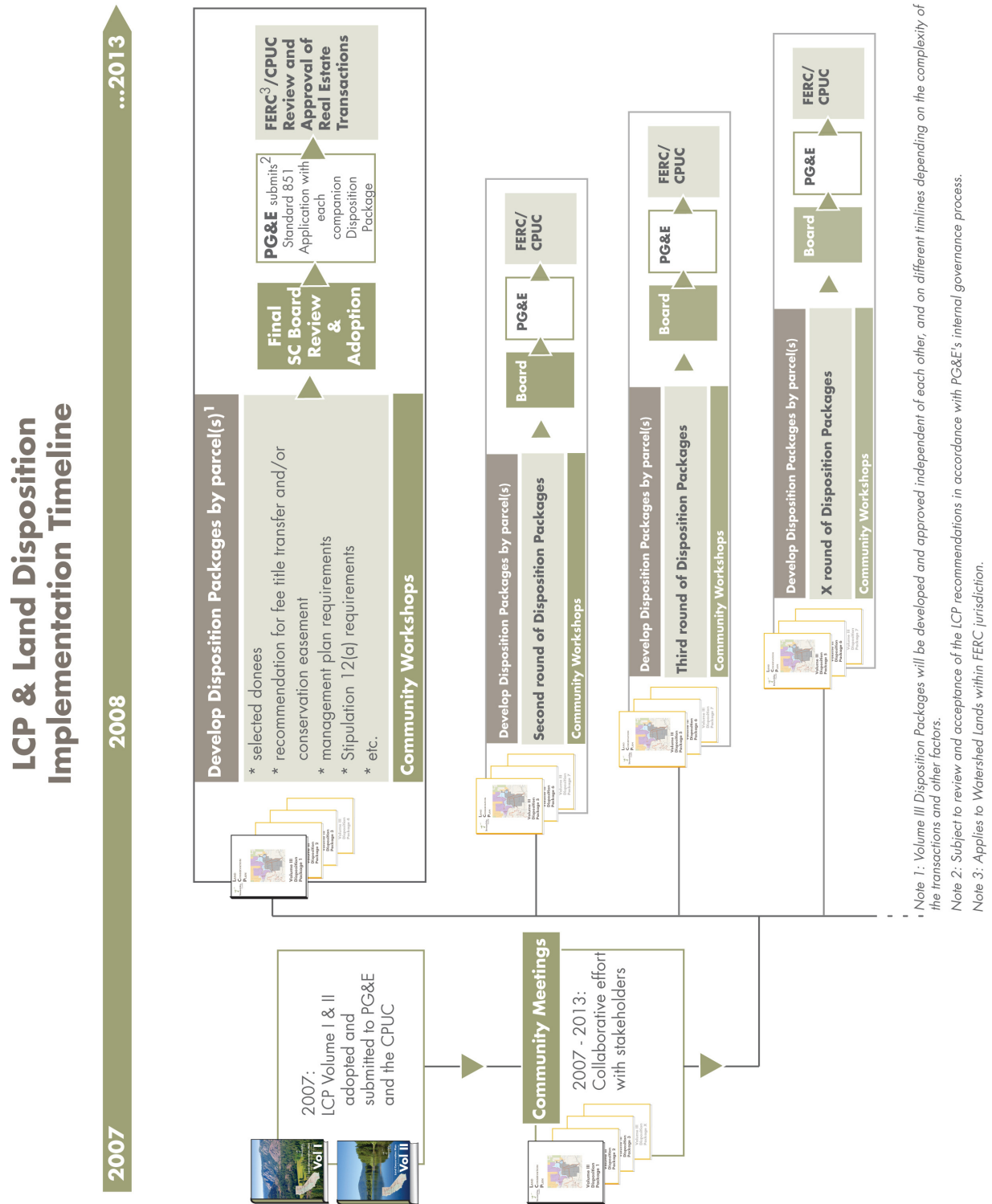


Figure 6-2 LCP and Land Disposition Implementation Timeline

packages will depend on a number of factors, including a variety of real estate and legal issues, and the ability to reach agreement with future landowners and/or conservation easement holders, among other issues.

The Stewardship Council has selected four planning units to serve as the “pilots”(i.e., McArthur Swamp, Bucks Lake, Kennedy Meadows, and Doyle Springs). These were selected to represent a range of conservation and real estate issues, and will be used as a basis to test and refine the pilot disposition process for future land transaction work. The goal of the pilot effort is to develop a process, including methodologies and practices that can be applied across the remainder of the Watershed Lands.

In developing the pilot disposition process, the Stewardship Council is focused on a number of objectives, including the following:

- Ensuring the process is open and inclusive, and provides opportunity for stakeholder participation; this will include developing methods for public outreach and engagement that are successful in connecting with a wide variety of interested stakeholders, and are productive in moving collaborative conservation agreements forward;
- Creating real estate transaction documents, for both fee title transfers and conservation easements, which are reflective of the requirements of the Settlement Agreement and Stipulation, and recognize the reserved rights for PG&E’s ongoing operations including all FERC license requirements;
- Building a greater understanding of the financial, management and operational issues related to the land transactions, and the ultimate implementation of recommended measures, including development of a grant funding program or other mechanisms for building capacity; and
- Developing and documenting methodologies and practices that are

replicable in an efficient and cost-effective manner across the Watershed Lands.

The pilot effort will be an important developmental and learning opportunity for the Stewardship Council. The lessons learned from the pilot effort will be used to develop detailed staffing, budget and schedule plans for the 2008 through 2013 implementation effort. The Council anticipates working simultaneously on transactions across the 11 watersheds and 22 counties, and while areas that impact people and local economic conditions will likely be prioritized, the pilot planning effort initiated in 2007 will provide the basis for further refinement of schedule, priorities, and methodologies.

The Stewardship Council will provide a refined schedule for land transaction implementation to the CPUC, the FERC, and the public no later than April 2008. This schedule will be updated on a regular basis, with specific communication of schedule progress and revisions on a biannual basis as a part of the Stewardship Council’s biannual reports to the CPUC (April and October of each year).

6.6.2 Community and Potential Donee Engagement

Throughout the land disposition process, the Stewardship Council is committed to an open, inclusive, and collaborative effort. The Stewardship Council will host community meetings in the four pilot planning areas beginning in December 2007 and continuing into early 2008. The Stewardship Council will use these forums to get input, develop collaborative work groups, and discuss the expected approaches to stakeholder and potential donee engagement.

In late January 2007, the Stewardship Council invited public entities, non-profit organizations, and Tribal entities that are interested in partnering with the Stewardship Council to implement the LCP to register via the Stewardship Council’s “Interested Donee Registry.” Registrants were asked to fill out a simple application regarding organizational information. Registrants were also asked to identify the watersheds and/or planning

units of interest. The information provided by the registrants will form the basis of a potential donee database. During the 2007 outreach efforts, the Stewardship Council further encouraged interested entities to register.

Once reviewed for basic qualifications, each interested entity will be evaluated against a set of criteria for its funding and organizational capacity to own and/or manage property so as to preserve and enhance the BPVs in perpetuity on the Watershed Lands. Ultimately, the Stewardship Council aims to generate a list of “qualified donees” (e.g., project partners) as a result of this effort.

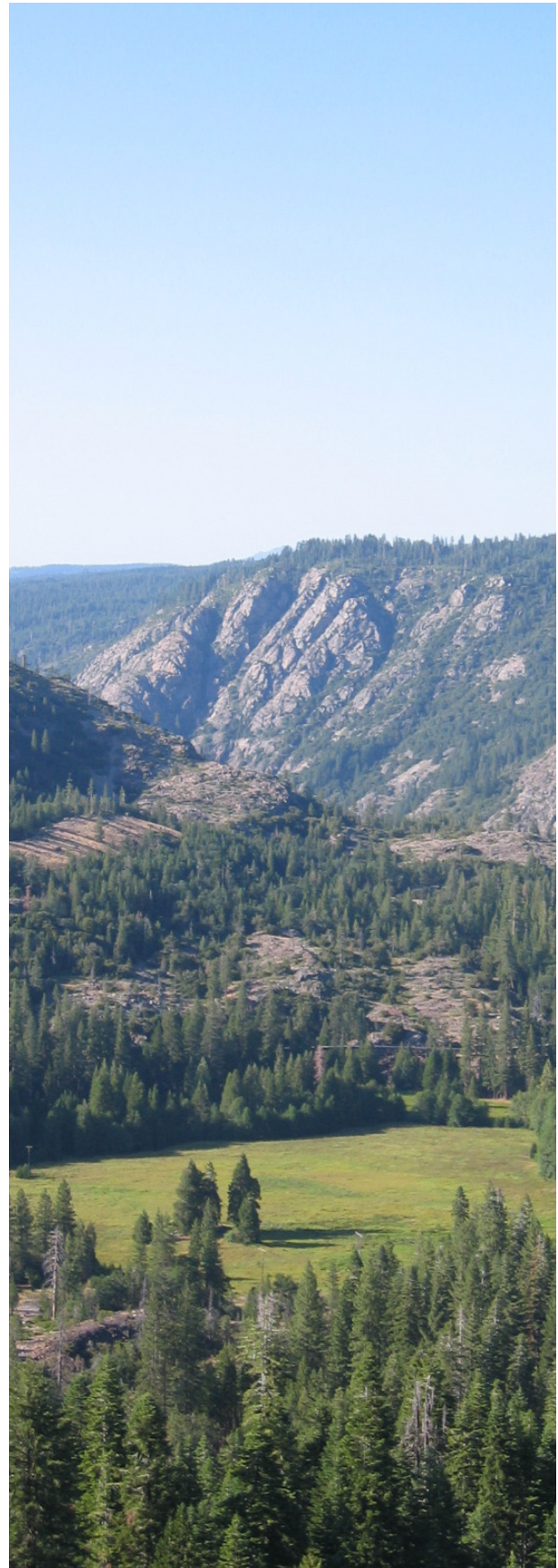
6.6.3 Defining the Disposition Process

Using input from the community meetings hosted in the pilot planning areas, the Stewardship Council will finalize a pilot disposition process which includes guidelines for how best to work collaboratively with the stakeholders and potential donees towards the development of the disposition packages. The Stewardship Council anticipates testing the pilot disposition process with the four pilot planning units, and potentially other opportunities as they arise.

As the Stewardship Council has done over the past two years, a high priority will be placed on getting input from stakeholders and interested entities across the Watershed Lands, and building a disposition program that is fair, equitable, and responsive to community input. At the same time, the Stewardship Council will ensure the disposition program meets all regulatory and legal requirements, as well as the Core Values of the Stewardship Council.

6.6.4 Funding for Future Land Stewardship

Finally, the Stewardship Council can, and likely will, independently disperse funds (grants, loans, etc.) as part of the Land Conservation Program. As part of this effort, the Stewardship Council may also consider the potential to provide grants to support local planning work in advance of the development of the disposition packages. Of the



\$70 million allocated over 10 years to support the Land Conservation Program, significant resources are anticipated to be dedicated to the long-term management and stewardship of the Watershed Lands. As a part of this effort, the Stewardship Council will also undertake efforts to identify potential matching funds or other funding programs (private and public) that may be accessed to augment these resources. Stewardship Council staff and Board members will be considering alternatives for funding programs to manage these assets, with the ultimate goal of making the maximum funds available to support the management and stewardship efforts of future donees and easement holders to ensure the conservation of the Watershed Lands in perpetuity.

Endnotes

¹ The pilot program will involve developing and evaluating a disposition process for four planning units. Lessons learned from this experience will be incorporated into a final disposition process framework that will be adopted by the Stewardship Council Board, and will include methodologies and practices for land disposition across the watershed properties.

² Detailed provisions and timelines related to dispute resolution and filing with the CPUC are also contained in the Stipulation. These will apply if the Stewardship Council is unable to settle disputes within a six-month period of initiation.

³ To the extent that Federal permits and authorizations are required as a result of a recommended action, or to the extent that Federal funding is involved in future activities, the applicable Federal agency would undertake NEPA review as may be appropriate at that time.

⁴ Final acreage amounts to be determined as part of the Volume III disposition packages.