

2. Purposes and Required Elements of the Land Conservation Plan

This chapter presents an overview of the purposes and required contents of the LCP, including the protection and enhancement of BPVs, the overall enhancement of environmental and economic benefits on the Watershed Lands, and a description of other requirements of the planning process. The requirements described below, and the planning process described in Chapter 3, lead to the Stewardship Council's overall recommendations described in Chapter 4 of this Volume.

Fundamentally, the LCP is required to present the Stewardship Council's recommendations for future land conservation of the Watershed Lands, and is intended to support future regulatory approvals (for land transactions/encumbrances) consistent with these recommendations. As detailed below, the LCP requirements span a number of issues, including providing specific data and background requirements, honoring existing agreements for economic uses, providing for continued operation of hydroelectric and water delivery facilities, and preserving and enhancing public access. Each of these elements is important to carrying out the mission of the Stewardship Council, and is required by the Settlement Agreement and/or the Stipulation. In addition, this chapter describes other legal constraints relevant to implementation of the LCP, including compliance with the Federal Power Act.

2.1 Protection and Enhancement of Beneficial Public Values

As discussed in Chapter 1 of this document, protection of the six identified BPVs is central to the work of the Stewardship Council. Appendix E of the Settlement Agreement (see Appendix 1) requires PG&E to ensure that the Watershed Lands are conserved for the following broad range of beneficial public values: (1) protection of the natural habitat of fish, wildlife, and plants; (2) preservation of open space; (3) outdoor recreation by the general public; (4) sustainable forestry; (5) agricultural uses; and (6) historic

values. The Stewardship Council was created to ensure this commitment was realized through the development and implementation of land conservation recommendations consistent with this mandate.

Because no one BPV has a higher value or importance than another BPV, the Stewardship Council considered each of the values equally throughout the planning process based on the existing physical aspects and current management and use of the land. Additionally, Appendix E of the Settlement Agreement states: "The conservation easements...shall prevent any other uses that will significantly impair or interfere with those (beneficial public) values." Again, the Stewardship Council took care to meet this requirement.

Chapter 3 of this Volume provides an overview of the methods of analysis used by the Stewardship Council to develop the recommended objectives and potential preservation and enhancement measures for each BPV. Volume II provides more detailed information regarding the BPVs and the Stewardship Council's recommendations for how they will be preserved and/or enhanced on specific planning units in the Watershed Lands.

2.2 Enhancement of Overall Environmental and Economic Benefits

A second over-riding consideration in the LCP process was the requirement to "enhance the existing environmental and economic benefits of the Watershed Lands and Carrizo Plains on an overall basis" (Item (g), page 11 of the Stipulation). This requirement lead the Stewardship Council to undertake a thorough examination of existing conditions, both environmental and economic, and to focus on how to best enhance this current state. As reflected in the planning unit Recommended Concept maps in Volume II, the Stewardship Council focused on recognizing existing uses and values, and suggesting measures to preserve and enhance these conditions. As a result, and due to the fact that the lands have been generally well stewarded for many decades, the Stewardship Council does not

suggest dramatic changes in land use or resource management.

The recommendations of the Stewardship Council are also based on the understanding that certain economic benefits can be gained by enhancing the environmental values of a place. The maintenance and conservation of environmental resources (e.g., watershed protection), timber production, raising and selling livestock, the enhancement of recreation and tourism, the protection of cultural and historical sites and objects, and the protection of open space all have the potential to yield economic benefits. The preservation and enhancement of these types of benefits via recommendations in the LCP have the potential to yield positive long-term results, both from an environmental and economic perspective.

2.3 Specific Requirements of the Stipulation

The Stipulation requires that the LCP address a number of specific elements as described in Section 12(a), Items 1-10 (see Appendix 2). Each of these elements provides information on the Watershed Lands or helps to shape recommendations in the LCP. Table 1-1 in Chapter 1 shows where Stipulation requirements have been and/or will be addressed in the LCP Volumes, and gives the exact description of each using language taken directly from the Stipulation. An overview of the required Section 12(a) elements is provided below.

2.3.1 Acreages and Existing Economic Uses

Item 1 requires that the LCP state reasonably exact estimates of acreage, by parcel and existing economic uses (including all related agreements). Appendix 5 contains a table listing the reasonably exact acreages of each legal parcel, including subtotals by planning unit and watershed. A table and brief description of the existing economic uses of the lands, in the form of leases, is provided in Chapter 4, with more detail provided in Appendix 6. The disposition packages in Volume III will more fully identify existing economic uses

(including all related agreements) for each parcel or cluster of parcels.

2.3.2 Objectives to Protect and/or Enhance Beneficial Public Values (BPVs)

Item 2 requires that the LCP state the objectives to preserve and/or enhance the BPVs of each individual parcel. Chapter 3 of this volume describes the planning process used to analyze the opportunities to preserve and/or enhance the BPVs of the Watershed Lands. Volume II of the LCP fully satisfies this requirement by identifying the objectives to preserve and/or enhance the BPVs in each planning unit.

2.3.3 Land Donation and Conservation Strategies

Item 3 requires the LCP to address “recommendations for grant of a conservation easement or fee simple donation...” This relates to the Land Conservation Commitment requirement for the Watershed Lands to: (1) become subject to permanent conservation easements; and/or (2) be donated in fee simple to one or more public entities or qualified conservation organizations, whose ownership will ensure the protection of their BPVs (Settlement Agreement; see Appendix A).

The Stipulation generally requires that any transfer of fee title pursuant to the Land Conservation Commitment must include a conservation easement to preserve and/or enhance the BPVs. However, there are two exceptions to this general requirement. A conservation easement is not required if either: (1) the Land Conservation Plan adopted by the Stewardship Council includes a determination that the particular parcel does not have significant public value; or (2) the chosen donee of fee title informs the Stewardship Council’s Board that applicable law or policy precludes its accepting a conservation easement, and the Board receives satisfactory assurance in another form that the parcel will be managed consistent with the purpose of the Land Conservation Commitment.

Conservation Easement

A conservation easement is an interest in real property that is voluntarily created, freely transferable, and perpetual in duration. State law defines a conservation easement as:

[A]ny limitation in a deed, will, or other instrument in the form of an easement, restriction, covenant or condition, which is or has been executed by or on behalf of the owner of the land subject to the easement and is binding upon successive owners of such land, and the purpose of which is to retain land predominantly in its natural, scenic, historical, agricultural, forested, or open-space condition. (Cal. Civ. Code § 815.1).

Under the Settlement Agreement and Stipulation, conservation easements must be donated to and managed by one or more non-profit conservation trustees, qualified conservation organizations, or public agencies with the experience and expertise to fully and strictly implement the conservation easements (See Appendix 1, Settlement Agreement Appendix E).

Fee Title Retention or Transfer

A recommendation of fee simple donation¹ requires that a donee be identified, and that the donee be qualified, such that they have the funding and other capacity to preserve and enhance the lands.

The planning unit maps in Volume II illustrate the location of anticipated lands where PG&E will retain title and lands that will be available for donation to qualified donees (see Appendix 5 of Volume I for a list of specific parcels). Volume III will further refine parcel-specific details regarding disposition of lands.

The Settlement Agreement states that PG&E will not be expected to make fee simple donations of lands with hydroelectric project features, and that conservation easements and BPV enhancements may not interfere with hydroelectric operations. In addition, there are numerous areas critical to the daily operation and maintenance of these facilities. In general, PG&E is expected to retain fee title to

those lands within the boundaries of hydroelectric projects licensed by the FERC, as well as other properties required for continuing and future utility operations. In all cases, however, these lands will be conserved via a conservation easement or other equivalent legal document to ensure their preservation and/or enhancement.

2.3.4 Donee Capacity and Financial Commitments

Item 4 requires the LCP to make a finding that the intended donee has the funding and other capacity to maintain the property so as to preserve and/or enhance the BPVs. Chapter 4 includes detailed information on key considerations that the Stewardship Council will evaluate to determine the funding and other capacity of each potential donee. While the Stewardship Council will further address specific conservation easement issues and land donations as part of the Volume III disposition packages, the legal requirements for potential conservation easement holders are described below.

Legal Requirements

State law limits the types of entities or organizations that may acquire and hold conservation easements to only the following:

A tax-exempt nonprofit organization qualified under Section 501(c)(3) of the Internal Revenue Code and qualified to do business in California, which has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use;

The State or any State or local government entity, including any city, county, or district, provided that the government entity is otherwise authorized to acquire and hold title to real property; or

A Federally recognized California Native American tribe or a non-Federally recognized California Native American tribe that is on the contact list maintained by the Native American Heritage

Commission to protect a California Native American prehistoric, archaeological, cultural, spiritual, or ceremonial place, if the conservation easement is voluntarily conveyed.

2.3.5 Property Tax Neutrality

Item 5 requires assurances and commitments by an appropriate entity that the land dispositions will be “tax neutral” for that county. The Settlement Agreement and Stipulation require that the Stewardship Council prepare an analysis of tax and other economic and physical impacts of the dispositions, along with a commitment to provide property tax revenue, other equivalent revenue source, or a lump sum payment, so that the resulting dispositions will be property tax neutral for each affected county. Chapter 4 provides an initial review of property tax neutrality and potential ways to resolve this concern. The Stewardship Council, working closely with the counties, will address specific remedies to meet the tax neutrality requirements for each parcel or parcel cluster in Volume III.

2.3.6 Disclosure of Known Hazardous Wastes

Item 6 requires that the LCP provide “disclosure of all known hazardous waste or substance contamination or other such environmental liabilities associated with each parcel.” The Stipulation also states in Section 12(f) that “PG&E will hold the donee harmless for hazardous waste or substance liability, provided that PG&E may decline to agree to such disposition unless the Commission first authorizes PG&E to recover the costs of such liability and any associated mitigation or remediation measures in rates.” Chapter 3 provides an initial review of information pertaining to hazardous wastes; Volume III will fully address this requirement at the parcel level.

2.3.7 Parcel Splits

Parcel splits could potentially occur as part of the recommendations provided in the Volume III disposition packages. Item 7 states that the LCP

must include an: “...appropriate consideration whether to split any parcel which is partly used or useful for operation of PG&E’s and/or a co-licensee’s hydroelectric facilities, where the BPVs of the unused part may be enhanced by such a split, provided that it is consistent with Section 12(b) (4) of the Stipulation and that, in the event that governmental approval of a parcel split imposes conditions or restrictions on other PG&E property, the decision to accept or reject such conditions will be at PG&E’s sole discretion.” As such, the potential for parcel splits would promote the continued use of a portion of a parcel for hydropower operations while protecting and enhancing BPVs on the remaining portion of the parcel. The issue of parcel splits will be addressed, in accordance with this requirement, in Volume III of the LCP.

In the case of a parcel split recommended by the Stewardship Council, PG&E will be reimbursed for all costs associated with obtaining approval for the parcel split, including the cost of any condition imposed by a government authority, provided that the Board will have the right to reject the proposal to split the parcel in lieu of paying the cost of any conditions and to propose an alternative (Stipulation Item 13(a)).

2.3.8 Physical Enhancement of BPVs

Item 8 requires the development of measures for physical enhancement of BPVs. These measures, illustrated for each planning unit in Volume II, represent a set of potential measures to meet specified conservation objectives and preserve and enhance the BPVs for the Watershed Lands. Selected enhancements will be more closely defined and recommended in the Volume III disposition packages, in consultation with PG&E, FERC, stakeholders, agencies, and future land owners and managers. Examples of these measures include such physical improvements as extending trails for recreation facilities, adding access areas, or improving fencing to better manage livestock distribution.

Although the Stewardship Council recommends numerous potential measures in Volume II, these recommendations are generally conceptual and/

or foundational in nature and are not intended to be the final determination of actual physical actions. Rather, they are intended to convey the Stewardship Council's recommendations based on input from experts, stakeholders, resource specialists, and members of the public that participated in the planning process over the past three years. The insights and perspectives gained during this planning and community input process provide the cornerstone of the recommendations for the physical enhancement measures for the LCP. The Stewardship Council will work with organizations interested in holding land or conservation easements to alter, adapt, or otherwise refine these measures and will describe the final recommended measures to be implemented in the Volume III disposition packages (and related real estate documents).

2.3.9 Monitoring

Monitoring is the ongoing inspection of land protected by a conservation easement to determine compliance with the terms of the easement; it ensures the protection of the land's conservation values over time. Item 9 requires a plan to monitor the economic and physical impacts of disposition and implementation of enhancement measures on the applicable management objectives.

Responsibilities for and methods of monitoring (including frequency and timing) will be established as part of the fee and easement donation process. Chapter 4 of this volume includes programmatic recommendations for the monitoring program, including anticipated components that will be addressed in future monitoring plans. The disposition packages that will comprise Volume III will more fully address the details of the monitoring program for each parcel or parcel cluster.

2.3.10 Implementation Schedule for Transactions and Measures

Chapter 6 (Figures 6-1 and 6-2) depicts the implementation schedule for transactions and measures. This schedule includes an overview

of the timing of various dispositions as well as key milestones to implement various LCP requirements as described above. The Stewardship Council is committed to helping facilitate the transfer of lands in an expeditious manner, and will make best efforts to complete all land transactions between 2008 and the end of 2013.

2.4 Other Required Considerations

The Stewardship Council factored other considerations into the planning process for the LCP, including hydroelectric and associated water delivery facilities, as well as existing economic uses. These items are described below.

2.4.1 Hydroelectric and Associated Water Delivery Facilities

The development of the LCP recommendations is subject to several restrictions. First, under Paragraph 17(c) of the Proposed Settlement Agreement, no "enhancement may at any time interfere with PG&E's hydroelectric operations, maintenance or capital improvements." Second, paragraph (1) of Appendix E of the Proposed Settlement Agreement states:

"Conservation easements on the Watershed Lands will include an express reservation of a right for continued operation and maintenance of hydroelectric facilities and associated water delivery facilities, including project replacements and improvements required to meet existing and future water delivery requirements for power generation and consumptive water use by existing users, compliance with any FERC license, FERC license renewal or other regulatory requirements. In addition, easements will honor existing agreements for economic uses, including consumptive water deliveries."

Lastly, the Stipulation further states that any conservation easement that is created as part of the disposition package will: "expressly reserve the authority of PG&E or other holders

of applicable water rights to apply to the applicable regulatory authority to increase or otherwise modify the water storage capacities of existing licensed facilities.” Thus, the LCP recommendations must recognize the continued rights of PG&E and others to operate, maintain, and improve existing hydroelectric and associated water storage and delivery facilities.

FERC Project Boundaries

The Federal Power Act provides for regulation of hydroelectric power and gives FERC the responsibility to issue licenses for hydroelectric projects. When issuing a license for a hydroelectric project, FERC requires the licensee to undertake appropriate measures to protect public interest uses of the waterway, including fish, wildlife, and recreation. These requirements, as set forth in the license, constitute the “project purposes.” The Federal Power Act also provides FERC with the authority to regulate the use of project lands, not just by the licensee, but also by anyone else. FERC licensees are required to acquire and retain all interests in non-federal lands and other property necessary or appropriate to carry out project purposes, and obtain FERC approval for the conveyance of any such interests in the lands.²

PG&E and the Stewardship Council are working closely with FERC to streamline and standardize, to the extent possible, any review and approval process for Watershed Lands located within the boundary of FERC-licensed hydroelectric projects. Chapter 6 provides more details on anticipated FERC involvement in the disposition of the Watershed Lands.

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., State Water Resources Control Board (SWRCB), FERC) under general law.

2.4.2 Agreements for Existing Economic Uses

Section 12 of the Stipulation states that the LCP will “enhance the existing environmental and economic benefits of the Watershed Lands and Carizzo Plans on an overall basis.” The Settlement Agreement provides that conservation easements on the lands will “honor existing agreements for economic uses...” (Section 1, Appendix E). Chapter 4 summarizes 238 existing leases, licenses, or other written agreements with third parties allowing various uses of the Watershed Lands. Appendix 6 provides additional detail on existing economic uses in each county.

The Stewardship Council considered all existing uses during the development of the LCP. Numerous stakeholders, including many leaseholders, participated in the Stewardship Council planning process and the development of the land management concepts. The Stewardship Council considered concerns regarding continuation of historic uses on the Watershed Lands, as well as concerns related to the future economic viability and importance of the leased properties on communities within and adjacent to the Watershed Lands. In May 2006, the Stewardship Council adopted a policy to address existing leases (see Appendix 7). The policy expresses the Stewardship Council’s intention to recommend that existing uses continue, while also recognizing the Council’s obligation to ensure these uses do not conflict with the BPVs the Council is charged with preserving and enhancing.

2.4.3 Preservation or Enhancement of Reasonable Public Access

Item 12(e)(2) of the Stipulation requires that the conservation easements will “preserve or enhance reasonable public access to Watershed Lands.” Further, the Settlement Agreement promises perpetual public access to the lands, with the exception of areas that are restricted for reasons such as safety, security, or resource protection. When developing the planning unit concepts for Volume II, the Stewardship Council assessed potential opportunities to enhance public access. The Stewardship Council will further evaluate

these recommendations at the parcel level during the development of Volume III, which will include the drafting of fee transfer and conservation easement documents for each parcel(s).

Endnotes

¹ The definition of “fee simple” is “an estate in land of which the inheritor has unqualified ownership and power of disposition” (American Heritage Dictionary).

² FERC defined infrastructure is in some cases located on privately owned, state, or federal lands.

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