

## 4. Overall Recommendations

This chapter describes the Stewardship Council's recommendations for addressing the Land Conservation Plan (LCP) requirements described in Chapter 2. It focuses on the development of disposition strategies (Volume III), the approach to evaluating donee qualifications, and the approach to analyzing and monitoring potential impacts of disposition strategies. The planning unit concepts in Volume II address specific recommendations relevant to each planning unit, including detailed information on objectives and recommended measures to preserve and/or enhance the BPVs of the Watershed Lands.

### 4.1 Development of Disposition Packages

As discussed earlier, Volume III of the LCP will consist of a series of disposition packages for parcels and clusters of parcels (i.e., a planning unit) across the Watershed Lands. Each disposition package will be developed to protect and enhance the BPVs of the lands consistent with the recommended concepts in Volume II, as well as to provide recommendations for fee title transfer, and/or conveyance of a conservation easement, for a parcel or clusters of parcels. The following section discusses strategies for developing these disposition packages.

#### 4.1.1 Fee Title Retention or Donation

As described in Chapter 2, the Settlement Agreement and Stipulation allow for PG&E to retain the fee title interest to watershed lands that contain hydroelectric project features, or that are necessary for current and/or future operations. The Stewardship Council worked closely with PG&E to develop a representative list of the types of operational uses that currently exist on the Watershed Lands. These uses are presented in Table 4-1. PG&E has asserted that the majority of the lands that support these uses will continue to be owned in fee title by PG&E in the future, and protected with a conservation easement (or other appropriate legal mechanism). The lands

recommended by PG&E for continued ownership essentially fall into two broad categories:

- Lands within FERC Project boundaries; and
- Lands outside FERC Project boundaries, in circumstances where the lands either contain features necessary for operations and maintenance of facilities, or are necessary to support other ongoing operational uses by PG&E.

Table 4-2 contains a breakdown of acreage, by watershed, where PG&E will likely retain title (with conservation easements placed on the lands) and lands available for donation in fee. Table 4-3 provides a similar breakdown by county. These tables show that nearly 40 percent of the Watershed Lands are within FERC Project boundaries and will likely be retained by PG&E. Outside of the FERC boundaries, PG&E will likely retain an additional 10 percent of the Watershed Lands because they are needed to support current or future operations. This leaves about half the total acreage of lands available for donation.

Most of those lands available for donation are within two watersheds: the Pit-McCloud River Watershed, where about three-quarters of the lands are available for donation, and the Feather River Watershed, where about one-fifth of the lands are available for donation. Shasta County contains approximately half of the lands that will likely be available for donation (approximately 37,100 acres) in total. Appendix 5 contains a parcel-specific breakdown of lands expected to be retained by PG&E and those lands that are expected to be available for donation. Except in circumstances articulated in the Stipulation (and as discussed in Chapter 2), lands donated in fee will also be subject to permanent conservation easements, or some other legal mechanism.

#### 4.1.2 Parcel Splits

As detailed in Chapter 2, the Stipulation provides for parcels to be split to allow the

**Table 4-1 Land Uses that Support PG&E Operations and Maintenance Functions<sup>1</sup>**

| Land Uses                    | Description   |
|------------------------------|---|
| Laydown Area                 | Area used to temporarily store equipment and materials for a specific project. Site may also be used for a temporary office trailer, gathering of crews, parking, etc. in support of the project. (Up to 5 acres, depending upon terrain).            |
| Material/Equipment Storage   | Long-term storage of equipment and material.  |
| Electric Transmission Line   | 60 kV Electric Transmission Line – 50-foot wide corridor.<br>115 kV Electric Transmission Line – 75-foot wide corridor.<br>230 kV Electric Transmission Line – 100-foot wide corridor.<br>500 kV Electric Transmission Line – 200-foot wide corridor. |
| Rock Storage                 | Rock storage area (5 acres).  |
| Sediment Deposit/Debris Area | Area where dredge material is stockpiled when removing sediment and debris from reservoirs, canals, etc. This is an ongoing use.  |
| Gravel Source                | Quarry where PG&E obtains gravel for routine and major maintenance projects (5 acres).  |
| Helispot                     | Area to land and/or park helicopters (1 acre).  |
| Service Center               | PG&E administrative facility for office personnel, field crews, equipment parking and repair, construction material storage, etc.   |
| Water Source                 | Generally a source for water from adjacent canals or rivers that is used to support improvements or mitigation areas required under the FERC license or settlement agreements.  |
| Erosion Area                 | Generally geologically unstable areas that are subject to slides and erosion problems.  |
| Spoil Pile                   | Area where earthen material from slides or small projects is stockpiled.  |
| Snow Course                  | Area where snowpack is measured (helicopters are often used to transport the hydrographer taking the measurement, so helicopter landing in the area is common).   |
| Spill Channel                | Dams spill into spill channels because of high water levels, rejection loads, etc. Spill channels can be dangerous because of unpredictable spills releasing large quantities of water within a very short timeframe.                                 |
| Dam Maintenance Area         | Area used to maintain the dam. Includes materials and equipment storage and staging areas.  |
| Flow Study Area              | Area used for monitoring streamflows for FERC-required studies.   |
| Spray Field                  | Part of the operations of a septic system.  |

<sup>1</sup> This list is not intended to be all-inclusive. Acreages, widths, and other dimensions are typical but subject to change depending on a variety of geographic and operational factors.

Source: PG&E 2006

continued use by PG&E of a portion of a parcel for hydropower operations or maintenance, while allowing the remaining portion to be conveyed in fee to a third party. The Stewardship Council will address specific details about recommended parcel splits in the Volume III disposition packages.

#### 4.1.3 Conservation Easements or Other Mechanisms

A conservation easement is an interest in real property that is voluntarily created, freely transferable, and perpetual in duration. For the Watershed Lands, the conservation easements will describe the property subject to the easement and the parties to the agreement, including the grantor, grantee, and any third party beneficiaries. Each conservation easement agreement will describe the BPVs and other values to be protected and enhanced per Civil Code Section 815 and other

applicable statutes.<sup>1</sup> Each conservation easement will be subject to the reservations for hydroelectric operations, water storage and delivery, and other requirements as described in the Settlement Agreement, Appendix E. Table 4-5 lists General Rights to be Reserved by PG&E.

The conservation easements must provide for the preservation of the lands for the specified BPVs and to “prevent any other uses that will significantly impair or interfere with those values.” (Settlement Agreement, Appendix E). Easements and other mechanisms, such as management agreements, will also describe the physical enhancements required by the LCP, as well as the responsibilities and allocation of costs for the construction and maintenance of those improvements. The easements will also address all other activities required to fulfill the purposes of disposition, including provisions related to prohibited uses within the easement area, the grant

**Table 4-2 Lands Potentially Available for Donation in Each Watershed**

| Watershed                  | Total Acres    | Lands Likely to be Retained by PG&E Within FERC Boundary | Lands Likely to be Retained by PG&E Outside FERC Boundary | Total Acres Likely to be Retained by PG&E | Lands Likely Available for Donation (Outside FERC Boundary) |
|----------------------------|----------------|--|---|---|---|
| Carizzo Plain              | 655            | 0  | 1   | 1   | 654   |
| Cow-Battle Creek           | 11,085         | 1,219  | 218   | 1,437                                     | 9,648   |
| Eel River                  | 7,446          | 2,235  | 0   | 2,235                                     | 5,212   |
| Feather River              | 53,185         | 32,353   | 8,516   | 40,867                                    | 12,322  |
| Kern-Tule River            | 692            | 60   | 162   | 221                                       | 472   |
| Kings River                | 1,461          | 926  | 202   | 1,128                                     | 334   |
| Pit-McCloud River          | 38,223         | 8,480  | 755   | 9,232                                     | 28,996  |
| Stanislaus River           | 1,867          | 500  | 32  | 532                                       | 1,338   |
| Upper Mokelumne River      | 7,096          | 2,145  | 405   | 2,550                                     | 4,549   |
| Willow Creek               | 2,197          | 1,309  | 154   | 1,462                                     | 736   |
| Yuba-Bear River            | 18,629         | 3,992  | 3,834   | 7,823                                     | 10,808  |
| <b>Total Lands (Acres)</b> | <b>142,536</b> | <b>53,219</b>  | <b>14,279</b>   | <b>67,488</b>                             | <b>75,069</b>   |
| <b>% of Total Lands</b>    | <b>100%</b>    | <b>37%</b>   | <b>10%</b>  | <b>47%</b>                                | <b>53%</b>  |

*Note: All acreage estimates are approximate. All estimates have been rounded up to the nearest one acre, and totals may reflect minor rounding errors.*

**Table 4-3 Lands Potentially Available for Donation in Each County**

| County                     | Total Acres    | Lands to be Retained by PG&E Within FERC Boundary | Lands to be Retained by PG&E Outside FERC Boundary | Total Acres to be Retained by PG&E | Lands Available for Donation (Outside FERC Boundary) |
|----------------------------|----------------|---|--|------------------------------------|--|
| Alpine                     | 1,853          | 826   | 0  | 826                                | 1,028  |
| Amador                     | 4,438          | 1,183   | 405  | 1,588                              | 2,851  |
| Butte                      | 8,170          | 600   | 731  | 1,329                              | 6,843  |
| Calaveras                  | 24             | 23  | 0  | 23                                 | 1  |
| El Dorado                  | 205            | 197   | 0  | 197                                | 9  |
| Fresno                     | 1,502          | 926   | 242  | 1,168                              | 335  |
| Kern                       | 651            | 48  | 162  | 209                                | 443  |
| Lake                       | 5,336          | 1,946   | 0  | 1,946                              | 3,390  |
| Lassen                     | 6,700          | 0   | 6,699  | 6,699                              | 1  |
| Madera                     | 1,986          | 1,170   | 114  | 1,283                              | 704  |
| Mariposa                   | 8              | 8   | 0  | 8                                  | 0  |
| Mendocino                  | 2,111          | 289   | 0  | 289                                | 1,823  |
| Merced                     | 5              | 5   | 0  | 5                                  | 0  |
| Nevada                     | 9,261          | 2,329   | 2,841  | 5,167                              | 4,095  |
| Placer                     | 6,512          | 1,351   | 471  | 1,821                              | 4,693  |
| Plumas                     | 37,944         | 31,754  | 866  | 32,611                             | 5,329  |
| San Luis Obispo            | 655            | 0   | 1  | 1                                  | 654  |
| Shasta                     | 47,405         | 9,481   | 806  | 10,284                             | 37,127   |
| Tehama                     | 1,774          | 196   | 167  | 363                                | 1,412  |
| Tulare                     | 41             | 12  | 0  | 12                                 | 29   |
| Tuolumne                   | 1,846          | 479   | 32   | 511                                | 1,337  |
| Yuba                       | 59             | 0   | 0  | 0                                  | 59   |
| Other <sup>1</sup>         | 3,457          | 403   | 626  | 1,028                              | 2,431  |
| <b>Total Lands (Acres)</b> | <b>141,943</b> | <b>53,226</b>                                     | <b>14,163</b>                                      | <b>67,376</b>                      | <b>74,593</b>  |
| <b>% of Total Lands</b>    | <b>100%</b>    | <b>37%</b>  | <b>10%</b>   | <b>47%</b>                         | <b>53%</b>   |

<sup>1</sup> This acreage includes lands within parcels that cross County boundaries. Thus, the acreage attributable to each individual County cannot be accurately determined at this time. These areas are limited to the following: Shasta/Tehama Counties 281 acres, Lassen/Plumas Counties 221 acres, Nevada/Placer Counties 1,992, Amador/Calaveras Counties 782 acres, Merced/Mariposa Counties 10 acres, Madera/Fresno Counties 171 acres.

Note: All acreage estimates are approximate. All estimates have been rounded up to the nearest one acre, and totals may reflect minor rounding errors.

of particular property interests, and the rights of the grantee to enter the property, compliance monitoring, and enforcement.

Each agreement will also include a detailed assignment of the various responsibilities of the

grantor and grantee, including obligations to, for example: (1) defend and protect the grantor's and grantee's rights; (2) monitor for and prevent activities by third parties that are inconsistent with the conservation easement; (3) monitor for and prevent trespass and other unlawful activities;

(4) implement, or permit the implementation of, any physical improvements authorized or not authorized in the easement; and (5) keep the property free from liens and encumbrances that are inconsistent with or impede full enjoyment of rights granted in the easement. In the event of a breach of the conservation easement, the agreement will describe the remedies available to the non-breaching party. In some cases, third-party beneficiaries with their own enforcement rights may be included.

As detailed in Chapter 2, the Stipulation specifies limited circumstances in which a land donation made by PG&E would be made free of a conservation easement.<sup>2</sup> Recommendations regarding specific transaction documents will be made by the Board of the Stewardship Council on a case-by-case basis and will be fully described in the associated disposition packages in Volume III.

Volume III of the LCP will address the ultimate disposition of the lands, including the terms of the conservation easements as applicable. If the Stewardship Council determines that a conservation easement is the preferred means by which the long-term management objectives can be achieved, an easement will be crafted, in close consultation with PG&E and the grantor, to address each relevant parcel. Table 4-4 lists the types of items that may be addressed as part of each conservation easement.

### Other Factors to Address in Conservation Easements

The Stipulation requires that the LCP address numerous factors related to the disposition of parcels, in a programmatic fashion. As appropriate, some of these requirements, along with others found in the Stipulation, may be specifically addressed in conservation easements or other transactional documents. These include: (1) stating the objectives to preserve and/or enhance the BPVs for the parcels; (2) a finding that the intended donee of the conservation easement or other protection mechanism has the funding and other capacity to maintain the property interest so as to preserve and/or enhance the BPVs; (3) a commitment by an appropriate entity to provide property tax revenue or other

revenue so that the totality of dispositions in each affected county will be tax neutral for that county; (4) disclosure of all known hazardous waste or substance contamination or other environmental liabilities associated with each parcel; (5) consideration regarding whether to split any parcel partly used by PG&E, where the BPVs of the unused part may be enhanced by such split; and (6) a strategy to undertake appropriate physical measures to enhance the BPVs of individual parcels, provided that no such measure will be in conflict with the Settlement Agreement.<sup>3</sup> These elements will be addressed in full in the specific disposition packages in Volume III of the LCP.

### Reserved Rights

Conservation easements and grant deeds will include an express reservation of the right of PG&E to continue to operate and maintain hydroelectric generation facilities, associated water delivery facilities, electric and gas transmission and distribution lines, electric substations, and all appurtenances to such facilities in compliance with applicable laws, regulations, licenses and orders, including orders issued by the CPUC or FERC. In addition, PG&E will also reserve necessary rights to access its facilities, to repair, replace, reconstruct, or remove existing facilities, and to construct new facilities within reserved easement areas or as otherwise necessary to serve its customers. The Settlement and Stipulation also require PG&E to reserve the right to comply with existing agreements for economic uses, including consumptive water deliveries. Table 4-5 lists more specific examples of the types of reserved rights that will be addressed, as applicable, in the grant deeds and conservation easements.

### Existing Agreements

The conservation easements must honor existing agreements for economic uses. Numerous economic uses exist on the Watershed Lands, as listed in Table 4-6 by use type. Appendix 6 includes more detailed information on existing leases. As the data show, there are a total of 238 existing leases, licenses, or other written agreements with third parties allowing various uses of the Watershed Lands.

| <b>Table 4-4 Potential Conservation Easement Features<sup>1</sup></b> |   |
|---|---|
| <b>Category</b>   | <b>Subject</b>  |
| Parties   | Identity of grantor (Donor)<br>Identity of grantee (Donee)<br>Identity of third-party beneficiaries   |
| Real Property   | Description of real property<br>Title issues<br>Hazardous materials<br>Other conditions of real property  |
| BPV   | Define BPVs and 815 values to be Protected or Enhanced by Conservation Easement (CE)<br>Generally describe physical enhancements required by LCP  |
| Scope of Granting Clause  | Grant of all development and subdivision rights except as specified<br>Grant of air, mineral and water rights except as specified<br>Grant of all other rights specified in CE  |
| Rights of Grantee In General  | Right to enter<br>Right to monitor compliance by grantor and third parties<br>Described scope of any self-help rights in the event of violation<br>Include a general right to conserve, protect, restore and enhance the Conservation Value<br>Other rights specified in enforcement provisions described below   |
| Prohibited and Permitted Uses   | Define those uses that are limited or prohibited on the property<br>Define those uses that are specifically permitted, either conditionally or completely, on the property  |
| Affirmative Obligations of Grantor                                    | Comply with CE in general; defend and protect grantee's rights there under<br>Comply with all applicable State and Federal laws<br>Monitor for and prevent inconsistent activities by third parties<br>Monitor and prevent trespass and other unlawful activities<br>Operate, maintain, manage, repair, and replace property and any facilities as specified<br>Keep property free of tax, mechanics', and other liens and encumbrances<br>Implement, or permit the implementation of, any physical improvements required by LCP as specified |
| Physical Improvements   | Identify responsible party<br>Allocate cost of implementing physical improvements, including any permitting requirements<br>Allocate responsibility and cost of operations and maintenance (O&M) for physical improvements<br>Include other appropriate provisions relative to insurance, indemnity, access, etc.   |

**Table 4-4 Potential Conservation Easement Features<sup>1</sup>**

| Category                 | Subject   |
|--------------------------|---|
| Costs                    | Grantor responsible for all typical costs of ownership, including taxes and any costs of complying with CE                      |
|                          | Grantee responsible for its own costs of monitoring and other activities except in the case of breach or as otherwise specified |
|                          | Will endowment or other security be required LCP for either Grantor or Grantee obligations                                      |
| Other Liabilities        | Will any reps, warranties or indemnities be required relative to hazardous materials  |
|                          | Include cross-indemnities relative to the parties' respective acts or omissions on the property                                 |
|                          | Address liabilities for any acts by third parties   |
| Transfer and Assignments | Include language describing permitted transfers by grantor  |
|                          | Include language describing permitted transfers by grantee  |
| Remedies                 | Include typical notice and cure provisions, followed by election of any of the following remedies                               |
|                          | Injunctive relief and specific performance against grantor or any third party   |
|                          | Money damages for injury to the easement, restoration costs and other contractual damages, and loss of protected values         |
|                          | Litigation costs, including attorneys' fees, to the prevailing party  |
|                          | Consider whether alternative dispute resolution (e.g., mediation) would be appropriate  |
| Boilerplate              | Notice provisions   |
|                          | Estoppel certificates   |
|                          | Recordation   |
|                          | Amendment   |
|                          | Title warranties  |
|                          | Other boilerplate   |

<sup>1</sup> This table provides a representative list of issues that may be addressed in future conservation easements. It is intended for illustrative purposes only and is not intended to be exhaustive or prescriptive for specific parcel transactions. All conservation easements on those Watershed Lands retained in fee by PG&E will include an express reservation of the right for continued operation and maintenance of hydroelectric facilities and associated water deliver facilities, and compliance with any FERC or other regulatory requirements.

The lease category with the greatest number of leases (over half of all leases) is the homesite category. These are primarily leases for private homes/cabins, mainly at Bucks Lake and Philbrook Reservoir, with scattered other homesite leases throughout the rest of the Watershed Lands. There are also 27 leases for agriculture, consisting primarily of leases for cattle grazing with some horse grazing leases. The general commercial lease category contains 42 leases for a variety of

uses; many of these leases are for resorts at Lake Almanor, in addition to leases for natural resource-related endeavors such as beehives, quarries, and a Christmas tree farm. There are 19 general recreation leases, primarily consisting of leases for private camps.

See Appendix 7 for an overview of the Stewardship Council's official policy on existing agreements. The adopted policy states:

**Table 4-5 Reserved Rights**

| Facility or Activity  | General Rights to be Reserved by PG&E <sup>1</sup>  |
|---|---|
| Hydroelectric Generation Facilities and Associated Water Delivery Facilities                  | <ul style="list-style-type: none"> <li>a. The rights 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;</li> <li>b. The rights to conduct any and all uses and activities necessary to comply with any applicable FERC License, including any amendments thereto and replacements thereof, and with applicable regulations and orders of the FERC or other regulatory agencies; and,</li> <li>c. The rights to conduct any and all uses and activities necessary to comply with the Federal Power Act.</li> </ul> |
| Water Storage   | <p>The authority of PG&amp;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.</p>  |
| Electric and Gas Transmission and Distribution Lines, Substations, and Appurtenant Facilities | <ul style="list-style-type: none"> <li>a. The rights to maintain, operate, replace, repair, reconstruct, and remove existing gas and electric transmission and distribution lines and appurtenant facilities;</li> <li>b. The rights to construct new gas and electric transmission lines and appurtenant facilities within the reserved easement areas or, in the case of distribution lines, in locations necessary and appropriate to serve PG&amp;E and customer facilities; and,</li> <li>c. The rights to maintain, operate, replace, repair, reconstruct, expand, and remove existing substations and appurtenant facilities.</li> </ul>   |
| Vegetation Management   | <p>The rights to trim and cut down or clear away any and all trees and brush on or near generation, gas, electric, and appurtenant facilities that may be a hazard to or otherwise impede the operation of such facilities.</p>   |
| Access  | <p>The rights for ingress to and egress from generation, gas, electric, and appurtenant facilities over and across the watershed lands, including the rights to install, maintain, and use gates in all fences that cross the watershed lands.</p>  |
| Existing Agreements for Economic Uses   | <p>The rights to conduct any and all activities consistent with and/or necessary to comply with the terms and conditions of existing agreements for economic uses of the watershed lands, including consumptive water deliveries.</p>   |
| General Operations  | <p>The rights to conduct specific activities related to operations and maintenance of current and future generation, gas, electric, and appurtenant facilities, including such things as equipment and material storage, vehicle and equipment parking, helicopter landing areas, erosion control areas, spill channels, work staging areas, snow courses, and service yards and offices.</p>   |

<sup>1</sup> This list is intended only to be a representative sample of rights to be reserved by PG&E in order to comply with applicable laws, regulations, orders and licenses. Actual rights to be reserved for each parcel, and the terms and conditions thereof, will be based on a detailed assessment of requirements for each transaction proposed as part of the LCP Volume III disposition process.

**Table 4-6 Existing Leases**

| Type of Lease            | Number     | Notes  |
|--------------------------|------------|--|
| Aquaculture              | 2          | Fish hatching and growing facilities   |
| Agriculture              | 27         | Horse, cattle grazing and row cropping   |
| General Commercial       | 44         | Fish hatchery, sand quarry, gun range, mini power plant, parking, resorts and marinas, camp and recreational vehicle (RV) park, resorts, Christmas tree farm, bee hives, rock quarry, ski trails and warming huts, access road, camping area, pack station |
| General Recreation       | 19         | Private camps, stairway, sidewalk and rock work, residential use of shoreline  |
| Homesite                 | 127        | Bucks Lake and Philbrook Reservoir   |
| Local Infrastructure     | 10         | Library, fire stations, septic systems, sewage treatment plant, airport taxi strip and road facilities, emergency generator building, log boom, weather reporting station  |
| Park                     | 3          | State park, County park, City park   |
| Telecommunications       | 4          |  |
| Water Use                | 2          | For aquaculture facilities   |
| <b>Total # of Leases</b> | <b>238</b> |  |

Source: PG&E 10/16/2006, PG&E Updated 5/16/2007

“1. The Stewardship Council intends to include in the LCP a policy generally recommending that the Conservation Easements allow economic uses permitted under Existing Agreements, upon the expiration of such Agreements, to be continued by the owners of the affected Watershed Lands through lease renewals or other arrangements consistent with the Land Conservation Commitment established by D.03-12-035 and other applicable law.

2. This general presumption in favor of allowing the continuation of economic uses may not apply in individual cases where it is determined that such uses would materially conflict with the preservation or enhancement of the beneficial public values recognized by D.03-12-035.”

No major conflicting uses have been identified at this point in the planning process that would prohibit continuation of existing uses. However, in some cases, continuation of existing uses may require modified practices to preserve and/or enhance BPVs. This issue will be further addressed during the development of the disposition packages for the individual properties in Volume III.

#### **Lands within FERC Boundaries**

Conservation transactions within FERC boundaries must meet additional requirements. Such transactions must not expand or limit PG&E's obligations or the rights of others in FERC relicensing proceedings or otherwise under Part I of the Federal Power Act. The Stipulation states, by way of example, that a land disposition that would result in the creation of Federal Power Act Section 4(e) authority in PG&E relicensing

proceedings would be inconsistent with this provision as such authority entails the ability of other federal agencies to impose conditions on the license. Moreover, no environmental enhancement to the Watershed Lands may interfere with PG&E's hydroelectric operations, maintenance, or capital improvements. Conservation easements covering PG&E's hydroelectric operations may potentially take the form of deed restrictions consistent with the requirements of California Civil Code Section 815 *et seq.* In such instances, the Stewardship Council would be required to identify an entity qualified under the Stipulation and Settlement Agreement to be the enforcing party to such deed restrictions.

## 4.2 Donee Qualifications

The Stipulation requires that the conservation easements be donated to and managed by non-profit organizations, or public entities, with the experience and expertise to "fully and strictly implement" the easements (Settlement Agreement, Appendix E). California Native American tribes are also qualified to hold conservation easements and could be considered qualified donees. The Stewardship Council will rigorously screen donees to evaluate their experience and expertise to fully and strictly implement the conservation easements. The Stewardship Council will also evaluate potential donees' funding and other capacity to maintain the property interest so as to preserve and/or enhance the BPVs.

To ensure that parcels are conserved for the broad range of BPVs identified in the Settlement Agreement, the Stewardship Council will also evaluate a number of other essential factors to confirm that an interested organization possesses the necessary qualifications to accept donation of a parcel or conservation easement and to manage, steward, and monitor that parcel or conservation easement in the future. This will include ensuring the organizations:

- (1) possess the requisite organizational capacity to accept donation of a parcel or conservation easement; and

(2) are the best-suited donee organization among the group of qualified organizations relative to a particular parcel or parcels.

The donee must be able to monitor the land and oversee the conditions of the land related to the easement's specific requirements in perpetuity and have the financial ability to do so. While the Stewardship Council does have some funding available to support preservation and enhancement measures as described in Volume II of the LCP, donees will be expected to have a strong financial base and show a history of responsible financial management for similar land management functions.

The Stewardship Council will also need to consider the potential long-term challenges and accompanying solutions for each disposition. These solutions may include endowments for the enforcement or legal defense of the terms of the conservation easements or other conservation instruments. Unauthorized uses on Watershed Lands may also present potential long-term enforcement challenges. Management plans will be considered for each individual conservation easement to address the details of these and other challenges.

### 4.2.1 Organizational Capacity

The Stewardship Council will conduct a review of the organizational structure, systems, and practices of each potential donee organization before recommending the donation of a parcel or conservation easement. Review of donee organizations that are nonprofit entities will differ in practice and detail from public entities due to their differing legal, tax, and governance structures. For nonprofit organizations, evaluation of organizational capacity will involve review of the following components:

- **Corporate Structure:** The Stewardship Council will review corporate documents to confirm whether the organization operates in compliance with its charter documents and in conformance with other required corporate formalities.

- **Corporate Governance:** The Stewardship Council will review the donee organization's decision-making structure and procedures and other corporate policies and procedures to confirm whether the organization operates in compliance with legal requirements and in accordance with current best practices in the nonprofit and conservation field.
- **Legal Compliance:** The Stewardship Council will confirm that a donee organization operates in compliance with its contractual, legal, tax, and regulatory requirements.
- **Financial Controls, Systems, and Procedures:** The Stewardship Council will review the organization's financial statements and recordkeeping, investment and fund disbursal systems, procedures, and controls to confirm sound and prudent financial management.
- **Real Estate Transaction Policies and Practices:** The Stewardship Council will evaluate the organization's experience, policy, and practice in negotiating, structuring, and documenting property transactions and conducting due diligence investigations.

Evaluation of organizational capacity for a public entity or California Native American tribe will focus on essentially the same broad categories of inquiry identified above, taking into consideration the public, as opposed to private, nature of the entity's organizational structure and governance, especially as relates to differing charter documents and decision-making procedures.

#### 4.2.2 Project Qualifications

Each qualified donee organization will possess unique characteristics, varying in size, mission, expertise, focus areas and capacity. Similarly, each parcel also possesses unique and different management objectives for distinct BPVs.

The Stewardship Council will need to select the organization that is best suited to meet the specific

recommended objectives for each parcel or parcel cluster. By way of example, an organization whose purpose is to provide public access and recreational opportunities may not be the best donee organization for a parcel possessing very sensitive habitat values that will require active restoration and stewardship with limited or no public access.

The following identifies those project-specific factors the Stewardship Council may consider when determining which qualified donee organization, whether a public entity or non-profit organization, is best suited to accept donation of a particular property interest.

- **Geographic Focus:** The organization selected for a particular parcel will be actively engaged in conservation in the region and will have a strong reputation in the local community for building productive relationships, designing appropriate and thoughtful projects, and following through with commitments.
- **Regional Management and Stewardship Capacity and Experience:** The Stewardship Council will confirm an organization's management experience and capacity by reviewing an organization's past experience managing similar properties and uses and current management capacity.
- **Capacity and Experience Related to BPVs:** The Stewardship Council will evaluate an organization's recent experience with developing, restoring, or managing BPVs.
- **Holding and/or Managing Conservation Easements:** A conservation easement will be donated only to a qualified organization with a mission consistent with the conservation purpose, terms, and conditions of the conservation easement; solid experience holding and monitoring conservation easements; and the capacity to monitor and defend the conservation easement in perpetuity.

As is further described in Chapter 6, the Stewardship Council began the process of generating a potential donee database early in 2007 to serve as the starting point for working through this evaluation process.

### **4.3 Analysis of Impacts of Disposition Strategies**

The Settlement Agreement and Stipulation require that the Stewardship Council prepare an analysis of tax and other economic and physical impacts of each disposition strategy, along with a commitment to provide property tax revenue, other equivalent revenue source, or a lump sum payment, so that the totality of dispositions in each affected county will be “tax neutral” for that county. The land conservation planning process described in Chapter 3 and the resulting planning unit concepts in Volume II represent the Stewardship Council’s initial analysis of the physical impacts of disposition. The Stewardship Council’s summary and approach to existing economic agreements described in Section 4.1.3 (and Appendix 6) represent the initial analysis of other economic impacts of disposition.

#### **4.3.1 Property Tax Neutrality**

This section details the Stewardship Council’s anticipated approach to analyzing property tax revenue and achieving property tax neutrality. These programmatic approaches for analyzing tax and other economic and physical impacts will guide the parcel-specific impact analysis that will be included in the individual disposition packages (Volume III).

#### **Current Assessed Property Values**

Real property held by public utilities is subject to a valuation process by the California State Board of Equalization (SBE), rather than local county assessors, which sets the taxation value of all property owned or used by railroad, telephone, gas, and electric companies, as well as inter-county pipelines and interexchange and commercial mobile radio services.<sup>4</sup> The SBE performs this role simply because many of these properties cross multiple county lines and are best

assessed by a single agency at the State level. The SBE assessments then serve as the basis for the property taxes levied and distributed to local agencies.

#### *Unitary/Non-Unitary Property*

The SBE classifies real property owned by public utilities as either “unitary” or “non-unitary.” Unitary property is defined as those properties necessary for an assessee’s primary function. Non-unitary property is property owned by the assessee, but not used as part of its primary function. For example, a hydroelectric plant would be classified as unitary property, while grazing land might be classified as non-unitary property.

All land and improvements related to power generation or distribution within FERC boundaries is classified as unitary.<sup>5</sup> Recreational facilities (e.g., campgrounds) within FERC boundaries are also deemed unitary, as they are subject to FERC licenses. Watershed properties outside of the FERC boundaries are considered non-unitary. The actual rate of taxation applied to the Watershed Lands is set at a minimum of 1.00 percent of value by Proposition 13, but can vary somewhat due to local special assessments.<sup>6</sup>

The SBE assesses unitary improvements annually, while unitary and non-unitary lands, as well as any non-unitary improvements, are reassessed on a four-year cycle. Because these assessments are kept up to date, it is unlikely that there would be a significant change in assessed value following implementation of the LCP and donation of fee interest to tax-exempt entities (i.e., public entities, non-profit organizations), unless there was a change in allowable uses on the land.

#### **Appraisal Methods**

The SBE generally assesses both unitary and non-unitary land using typical appraisal methods, such as comparable sales. Unitary improvements, the most valuable aspect of PG&E watershed properties, are appraised on a reproduction cost less depreciation basis.<sup>7</sup> There are a negligible number of non-unitary improvements on PG&E Watershed Lands, as there are few improvements on the lands outside the FERC boundaries.

Timberland production zones (TPZ) on the Watershed Lands present an exception to this methodology. Approximately 31 percent of the total acreage of Watershed Lands are classified as TPZ lands and are appraised based on their use for growing and harvesting timber. Lands may be classified and assessed as TPZ even if they are not actively used for timber harvesting, but rather managed for a “compatible use,” as defined by the California State Revenue and Taxation Code, such as for watershed health.<sup>8</sup>

### Current Property Taxes

The property taxes paid by PG&E in 2005 are summarized in Table 4-7. Fresno, Shasta, and Plumas Counties account for almost 71 percent of the property taxes assessed and paid by PG&E, mainly through major unitary improvements located in these jurisdictions. The counties of Placer, Butte, and Amador account for an additional 19 percent of the total, with the remaining 10 percent distributed relatively evenly among the remaining 16 counties.<sup>9</sup>

**Table 4-7 Property Taxes Paid by PG&E on Watershed Lands by County, 2005**

| County                            | Property Tax From Improvements <sup>1</sup> |                  | Property Tax From Land |                    | Total From Land & Improvements |               |
|-----------------------------------|---|------------------|------------------------|--------------------|--------------------------------|---------------|
|                                   | Unitary                                     | Unitary          | Non-Unitary            | Total              | Prop. Tax                      | As % of Total |
| Alpine                            | \$28,200                                    | \$21,000         | \$11,300               | \$32,300           | \$60,500                       | 0.4%          |
| Amador                            | \$710,500                                   | \$18,000         | \$23,100               | \$41,100           | \$751,600                      | 5.0%          |
| Butte                             | \$914,200                                   | \$41,700         | \$23,700               | \$65,400           | \$979,600                      | 6.5%          |
| Calaveras                         | \$54,700                                    | \$1,900          | \$300                  | \$2,200            | \$56,900                       | 0.4%          |
| El Dorado                         | \$59,200                                    | \$1,100          | \$0                    | \$1,100            | \$60,300                       | 0.4%          |
| Fresno                            | \$4,922,100                                 | \$17,200         | \$8,300                | \$25,500           | \$4,947,600                    | 32.9%         |
| Kern                              | \$36,400                                    | \$1,500          | \$0                    | \$1,500            | \$37,900                       | 0.3%          |
| Lake                              | \$46,400                                    | \$37,000         | \$2,500                | \$39,500           | \$85,900                       | 0.6%          |
| Lassen                            | \$9,400                                     | \$33,800         | \$0                    | \$33,800           | \$43,200                       | 0.3%          |
| Madera                            | \$138,300                                   | \$62,500         | \$116,600              | \$179,100          | \$317,400                      | 2.1%          |
| Mariposa                          | \$500                                       | \$100            | \$0                    | \$100              | \$600                          | 0.0%          |
| Mendocino                         | \$92,900                                    | \$25,000         | \$200                  | \$25,200           | \$118,100                      | 0.8%          |
| Merced                            | \$12,700                                    | \$400            | \$0                    | \$400              | \$13,100                       | 0.1%          |
| Nevada                            | \$280,700                                   | \$34,800         | \$41,600               | \$76,400           | \$357,100                      | 2.4%          |
| Placer                            | \$776,800                                   | \$106,600        | \$176,800              | \$283,400          | \$1,060,200                    | 7.1%          |
| Plumas                            | \$2,252,600                                 | \$278,200        | \$98,300               | \$376,500          | \$2,629,100                    | 17.5%         |
| San Luis Obispo                   | \$300                                       | \$0              | \$2,800                | \$2,800            | \$3,100                        | 0.0%          |
| Shasta                            | \$2,828,100                                 | \$107,900        | \$138,500              | \$246,400          | \$3,074,500                    | 20.5%         |
| Tehama                            | \$120,100                                   | \$3,300          | \$7,600                | \$10,900           | \$131,000                      | 0.9%          |
| Tulare                            | \$20,900                                    | \$500            | \$2,000                | \$2,500            | \$23,400                       | 0.2%          |
| Tuolumne                          | \$247,300                                   | \$4,800          | \$16,900               | \$21,700           | \$269,000                      | 1.8%          |
| Yuba                              | \$200                                       | \$0              | \$200                  | \$200              | \$400                          | 0.0%          |
| <b>Total</b>                      | <b>\$13,552,500</b>                         | <b>\$797,300</b> | <b>\$670,700</b>       | <b>\$1,468,000</b> | <b>\$15,020,500</b>            | <b>100.0%</b> |
| <b>As % of Total Property Tax</b> | <b>90.2%</b>                                |                  |                        | <b>9.8%</b>        | <b>100%</b>                    |               |

<sup>1</sup> All improvements are classified as “unitary” by State Board of Equalization.

**Table 4-8 Property Taxes on Watershed Lands to be Potentially Retained and Donated by PG&E, 2005**

| <b>County</b>            | <b>Total Taxes<sup>2</sup></b> | <b>Property Tax<sup>1</sup></b>         |                               |
|--------------------------|--------------------------------|---|-------------------------------|
|                          |                                | <b>Retained by PG&amp;E<sup>3</sup></b> | <b>Available for Donation</b> |
| Alpine                   | \$32,300                       | \$26,500                                | \$5,700                       |
| Amador                   | \$41,100                       | \$14,800                                | \$26,300                      |
| Butte                    | \$65,300                       | \$24,400                                | \$40,900                      |
| Calaveras                | \$2,200                        | \$900                                   | \$1,300                       |
| El Dorado                | \$1,100                        | \$1,100                                 | \$0                           |
| Fresno                   | \$25,500                       | \$23,000                                | \$2,500                       |
| Kern                     | \$1,500                        | \$1,000                                 | \$600                         |
| Lake                     | \$39,500                       | \$15,600                                | \$23,900                      |
| Lassen                   | \$33,800                       | \$30,700                                | \$3,100                       |
| Madera                   | \$179,100                      | \$130,500                               | \$48,600                      |
| Mariposa                 | \$100                          | \$100                                   | \$0                           |
| Mendocino                | \$25,100                       | \$5,100                                 | \$20,000                      |
| Merced                   | \$400                          | \$300                                   | \$0                           |
| Nevada                   | \$76,400                       | \$47,400                                | \$29,100                      |
| Placer                   | \$283,500                      | \$180,700                               | \$102,800                     |
| Plumas                   | \$376,500                      | \$330,500                               | \$46,000                      |
| San Luis Obispo          | \$2,800                        | \$0                                     | \$2,800                       |
| Shasta                   | \$246,400                      | \$94,300                                | \$152,100                     |
| Tehama                   | \$10,900                       | \$5,600                                 | \$5,300                       |
| Tulare                   | \$2,400                        | \$2,000                                 | \$500                         |
| Tuolumne                 | \$21,700                       | \$10,600                                | \$11,200                      |
| Yuba                     | \$200                          | \$0                                     | \$200                         |
| <b>Total<sup>4</sup></b> | <b>\$1,467,800</b>             | <b>\$945,100</b>                        | <b>\$522,900</b>              |
| <b>As % of Total</b>     | <b>100%</b>                    | <b>64.4%</b>                            | <b>35.6%</b>                  |

<sup>1</sup> Represents total property tax.

<sup>2</sup> Only includes taxes from land.

<sup>3</sup> Assumes all lands within FERC license boundaries and acreage needed for current and future operations will be retained. It is assumed that land within a given parcel is valued uniformly.

<sup>4</sup> May not sum due to rounding.

#### 4.3.2 Potential Effect of Land Disposition

Implementation of the LCP will lead to the donation of some of the Watershed Lands in fee simple to public entities and nonprofit organizations. As both are tax-exempt, the donated properties may be removed from the tax rolls. The Stipulation clearly requires that the disposition process be tax neutral to the affected counties. Table 4-8 presents an estimate of the amount of property taxes associated with lands that might be donated to public entities or nonprofit organizations. This analysis does not include property taxes from improvements, as

they are virtually all unitary (i.e., required for operations) and will therefore be retained by PG&E.

The analysis indicates that up to \$522,900 in property taxes may be associated with lands that might be donated to tax exempt entities. This represents over 35 percent of the total property taxes generated by the PG&E Watershed Lands, excluding improvements. Properties in Shasta County generate the largest share of this total, while lands in Placer, Madera, Plumas, and Butte Counties generate a significant portion of these taxes.

## Tax Rate Areas

In California, property taxes are allocated among a series of agencies and districts depending on the subject property's Tax Rate Area (TRA). A county can have hundreds to thousands of TRAs, each with a distinct property tax allocation formula.

To illustrate this allocation process, Table 4-9 shows the distribution of property taxes in a sample TRA in Santa Clara County.<sup>10</sup> In this particular TRA, the County General Fund receives just fewer than 19 percent of the property taxes. Other entities that collect a share of property taxes include the County library, local school districts, the local fire district, the Santa Clara Valley Water District, the Bay Area Air Quality Management District, and various other districts. The specific entities receiving a portion of property taxes, and

their respective share of total property taxes, varies by county and TRA.

### 4.3.3 Potential Strategies to Achieve Property Tax Neutrality

The Stewardship Council will work with each of the 22 counties to evaluate the most appropriate approach, or combination of approaches, to achieve property tax neutrality, as each county will reflect a unique set of conditions, priorities, and policies that will affect the disposition process. There is the potential for using multiple options to achieve this goal in any given county.

#### Payment of Property Taxes by Donee

One potential option could be to have the donee commit to making a payment in lieu of taxes to the

**Table 4-9 Distribution of Property Taxes in Sample Santa Clara County Tax Rate Area**

| Agency/District                                 | Distribution of Property Taxes <sup>1</sup> |
|---|---|
| City of San Jose General Fund                   | 0.0%  |
| County General Fund                             | 18.8%                                       |
| County Library                                  | 3.6%  |
| Oak Grove Elementary                            | 21.3%                                       |
| East Side High District                         | 18.9%                                       |
| San Jose Community College                      | 9.0%  |
| County School Service                           | 3.8%  |
| Central Fire District Zone 1                    | 21.1%                                       |
| SCVWD-East 1                                    | 2.3%  |
| SCVWD-District                                  | 0.2%  |
| BAAQMD  | 0.3%  |
| Guadalupe/Coyote Resource Conservation District | 0.1%  |
| SCVWD-State Water Project                       | 0.7%  |
| SCVWD-Zone W-4                                  | 0.0%  |
| <b>Total</b>                                    | <b>100%</b>                                 |

<sup>1</sup> Percentages net of Education Revenue Augmentation Fund (ERAf) allocation.

local county. While not required to pay taxes per se, a tax exempt organization could reimburse the county directly for the equivalent dollar amount.

### **Annual Payments**

Another approach could be through annual compensation to the affected counties for any lost property taxes for an extended period of time. This approach allows for a relatively accurate yearly assessment of lost taxes; however, this strategy would also require extensive monitoring of property values and land transfers to tax-exempt agencies.

### **Lump-Sum Payment**

Another approach could be through a single lump-sum payment to the affected counties. The amount would be calculated based on an estimate of the net present value of any future property tax losses based on an appropriate discount rate.<sup>11</sup> This approach would require agreement on a series of assumptions (i.e., the rate of land transfers, the appreciation rate of assessed value, and the net present value discount rate).

### **Two-Tier Payments**

A two-tier payment approach would use either the annual payment or lump-sum approach, depending on the particular circumstances and property taxes at stake in each county.

To illustrate the varying degrees of potential property tax values at issue in each jurisdiction, Table 4-10 arrays the 22 counties into two tiers. In “Tier 1,” Placer, Shasta, Madera, Plumas, and Butte Counties annually receive almost 75 percent (i.e., approximately \$390,400 annually) of the property taxes associated with lands that may be donated to tax-exempt entities, while the remaining 25 percent of the property taxes (i.e., approximately \$132,500 annually) occurs in the “Tier 2” counties.

### **In-Lieu Payments**

As an alternate strategy to achieving property tax neutrality, counties may be made whole for lost property taxes via in-lieu payments. These could include ongoing funds directed from economic

activities on the property, one-time improvements on the land to improve public access and/or recreational opportunities, or land donations. Improvements could also generate ongoing revenue for the local jurisdiction through user fees or concessions.

## **4.4 Monitoring of Economic and Physical Impacts**

The Settlement Agreement and Stipulation require that the Stewardship Council develop a plan to monitor the economic and physical impacts of disposition and implementation of the enhancement measures on the applicable management objectives. This monitoring requirement includes property tax neutrality and other economic impacts, as well as the physical impacts associated with implementation of the LCP relative to the terms and conditions of the conservation easements.

### **4.4.1 Economic Impacts**

The Stewardship Council will monitor property tax revenue neutrality as the net change in property tax revenue accruing to the relevant county jurisdiction. As discussed above, estimated potential property tax revenue losses that could occur as a result of donation of lands to public entities or non-profit organizations may be offset by one-time or periodic payments to the affected counties. These payments, as well as the assessed values and property taxes paid by PG&E if it retains title, will be reported on an annual basis by the landowner to an as yet to be determined entity.

Monitoring other economic impacts that might result from donation of fee title or easements to public entities or non-profit organizations is a complex process. To monitor impacts, the Stewardship Council will work with PG&E and each county to develop an understanding of existing economic conditions. The disposition packages that comprise Volume III, and will be developed in consultation with local stakeholders, will be sensitive to considering actions that preserve and/or enhance these conditions.

**Table 4-10 Property Taxes on Watershed Lands to be Potentially Donated by PG&E, 2005**

| County          | Property Tax <sup>1,2</sup>            |   |
|-----------------|--|---|
|                 | Available for Disposition <sup>3</sup> | As % of Total Taxes Available for Disposition |
| Shasta          | \$152,100                              | 29.1%   |
| Placer          | \$102,800                              | 19.7%   |
| Madera          | \$48,600                               | 9.3%  |
| Plumas          | \$46,000                               | 8.8%  |
| Butte           | \$40,900                               | 7.8%  |
| Nevada          | \$29,100                               | 5.6%  |
| Amador          | \$26,300                               | 5.0%  |
| Lake            | \$23,900                               | 4.6%  |
| Mendocino       | \$20,000                               | 3.8%  |
| Tuolumne        | \$11,200                               | 2.1%  |
| Alpine          | \$5,700                                | 1.1%  |
| Tehama          | \$5,300                                | 1.0%  |
| Lassen          | \$3,100                                | 0.6%  |
| San Luis Obispo | \$2,800                                | 0.5%  |
| Fresno          | \$2,500                                | 0.5%  |
| Calaveras       | \$1,300                                | 0.2%  |
| Kern            | \$600                                  | 0.1%  |
| Tulare          | \$500                                  | 0.1%  |
| Yuba            | \$200                                  | 0.0%  |
| Merced          | \$0                                    | 0.0%  |
| El Dorado       | \$0                                    | 0.0%  |
| Mariposa        | \$0                                    | 0.0%  |
| <b>Total</b>    | <b>\$522,900</b>                       | <b>100.0%</b>                                 |

<sup>1</sup> Represents total property tax.

<sup>2</sup> Only includes taxes from land.

<sup>3</sup> Assumes all FERC lands and acreage needed for current and future operations will be retained by PG&E. It is assumed that land within a given parcel is valued uniformly.

#### 4.4.2 Physical Impacts

Monitoring plans will be developed for each parcel or set of parcels. Plans will describe baseline conditions, and establish guidelines for tracking progress in preserving and enhancing BPVs along with other information pertinent to the conservation easements. Monitoring and reporting activities will confirm compliance with legal and contractual obligations in donated

parcels, which will be a significant element in securing and maintaining local community support of particular donation transactions as well as the long-term success of the LCP. Finally, monitoring will provide valuable information and feedback in the short term to improve design and structure of future dispositions.

Monitoring plans for donated parcels and conservation easements will likely include the

components discussed below. This monitoring framework is consistent with best practices in the conservation field for monitoring and enforcing conservation easements, but applies to parcels donated in fee as well.

### **Baseline Conditions Report**

The baseline conditions report documents the physical condition of the donated parcel or conservation easement at the time of the disposition. This written report is typically prepared prior to the disposition and includes a narrative discussion of the physical condition of the parcel as it relates to the terms and conditions of the conservation easement. It also usually includes the specific conservation values of the easement property identified in the conservation easement, maps identifying the location of the easement property and the property's natural features and improvements, and digital pictures depicting the condition and features of the property from several locations. The report provides a basis from which to compare the future physical condition of the property relative to the condition of the parcel at the time of donation.

For conservation easements, this report is intended to provide written evidence in legal proceedings enforcing future easement violations. As such, the final report is typically reviewed and approved in writing by both the landowner and the easement holder, both of whom retain a copy following grant of the conservation easement. For donated fee parcels, this report will provide a basis for evaluating physical impacts to the donated parcel for purposes of ensuring protection of the parcel's BPVs and evaluating broader LCP program results.

### **Legal Compliance Monitoring**

Conservation easement best practices suggest an easement holder will conduct annual monitoring of the property to evaluate compliance with the terms of a conservation easement. Monitoring involves an inspection of the easement property, discussion with the landowner, and preparation of a written report by the easement monitor to document the results of monitoring activities. Monitoring plans for donated conservation easements will be

consistent with these best practices. To the extent other legal or contractual arrangements may apply to donated fee parcels, similar legal compliance monitoring procedures and practices will be developed to ensure continued compliance with those requirements.

### **Public Benefit Monitoring**

In addition to legal compliance monitoring, procedures and practices for monitoring impacts to a donated parcel's BPVs may be developed. These practices will require flexibility and precision to address the ownership, uses, and values of a particular parcel. For example, annual monitoring may be appropriate for a particular parcel providing sensitive habitat for endangered or threatened species for which habitat restoration activities are contemplated in order to confirm completion and results of restoration activities. On the other hand, a five-year monitoring schedule, as opposed to annual monitoring, may be adequate to evaluate physical impacts over time to a parcel containing solely agricultural values. Legally enforceable access rights may need to be put in place at the time of donation to preserve the right to conduct public benefit monitoring. As with legal compliance monitoring, appropriate reporting protocols will be developed to document public benefit monitoring.

### **Enforcement**

Legal and contractual violations identified during the legal compliance monitoring process will often lead to informal enforcement discussions and formal enforcement actions. Prompt enforcement of violations will be essential to protecting a parcel's BPVs and the integrity of the LCP. Since enforcement may be costly, legal defense endowments may be required in connection with property donations to ensure the entity responsible for enforcing violations has the financial wherewithal to resolve violations. Monitoring protocols will be designed to monitor existence, status, costs, endowments, and results of enforcement actions relating to donated parcels.

## Reporting

Information gathered during the monitoring process will require correlation, evaluation, and maintenance to be useful for evaluating the condition of donated parcels over time and other physical impacts. Monitoring data may also inform future decisions respecting PG&E property donations and other conservation opportunities.

Protocols for information management and analysis and reporting of monitoring results will be developed to track physical impacts to donated parcels.

## Endnotes

<sup>1</sup> Section 815 of the California Civil code states that “The Legislature finds and declares that the preservation of land in its natural, scenic, agricultural, historical, forested, or open-space condition is among the most important environmental assets of California.” This section of the code establishes the state’s requirements for conservation easements.

<sup>2</sup> This would most likely arise when a donee of fee title is precluded by law or policy from accepting the encumbrance of a conservation easement. In such instances, the requirement that the Governing Board receive satisfactory assurance that the land will be managed consistent with the purpose of the LCP could potentially be provided in the form of a memorandum of understanding, donation agreement, cooperative agreement, or some other mechanism.

<sup>3</sup> This list of items to include in conservation easements is paraphrased from the Stipulation. Refer to Appendix 2 for the actual language.

<sup>4</sup> Per Article XIII, Section 19 of the California State Constitution.

<sup>5</sup> FERC has the authority to license non-Federal hydroelectric power projects located on navigable waterways or Federal lands, or connected to the interstate electric grid.

<sup>6</sup> For example, if a property has an assessed value of \$1.0 million and is located in an area with a 1.10% tax rate, local agencies would collect \$11,000 in taxes from the property owner each tax year. The SBE makes a distinction between unitary and non-unitary property because much of a public utility’s property cannot be valued discretely in an effective manner. For example, a mile of power line crossing through a parcel must be valued as part of a broader power generating system (i.e., part of a larger “unit”) to represent its full value. Therefore, SBE assesses the fair market value of all of the property owned by a utility that is related to

power generation and distribution as a single unit. The resulting property taxes based on this unitary value are then allocated to individual counties according to an estimate of the utility’s holdings within each county.

<sup>7</sup> This appraisal method represents the cost of reproducing the property with a new property of similar utility, less the extent to which the value has been reduced by depreciation.

<sup>8</sup> Most of the TPZ lands in California were classified as such in 1976 by the SBE and local county assessors, following passage of the Z’berg-Warren-Keene-Collier Forest Taxation Reform Act. The values for TPZ lands are statutorily set each year by the SBE according to the type of timber grown on the property, not according to comparable sales. This state-centralized system of timber valuation was established by the Z’berg-Warren-Keene-Collier Forest Taxation Reform Act in 1976 to reconcile varying assessments by each county and to change tax regulations that were hindering environmental conservation efforts. The process of valuing land according to its timber production potential rather than by its highest and best use was developed because landowners were essentially being double taxed on the value of the timber as well as on the land’s highest and best use, regardless of whether or not that use was timber production. As a result, landowners were motivated to harvest the timber unsustainably to lower their property taxes and/or convert the land to non-timber use. Both of these responses threatened the State’s timber resources.

<sup>9</sup> Slightly more than 90 percent of the total property taxes paid by PG&E in 2005 (\$13.6 million out of \$15.0 million total) was generated by unitary improvements, which PG&E is likely to continue to pay following implementation of the LCP, while just under 10 percent (\$1.5 million) was generated by the underlying land value.

<sup>10</sup> The distribution shown in Table 4-9 summarizes property tax distributions net of Education Revenue Augmentation Fund (ERAF) allocations. The State directs a portion of local property taxes to the public school system via ERAF transfers. All percentages discussed in this context are net of ERAF.

<sup>11</sup> NPV is a technique for assessing the worth of future payments by looking at the present value of those future cashflows discounted at today’s cost of capital. The discount rate used in calculating the NPV should reflect what the resources could have earned if they had been invested elsewhere.

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