

Background

The Pacific Forest and Watershed Lands Stewardship Council (Stewardship Council) was formed in 2004 as the result of a court settlement in 2003, and is responsible for developing and implementing a land conservation plan for the permanent protection of more than 140,000 acres of Pacific Gas & Electric (PG&E) watershed lands (the watershed lands) located in 22 counties. This is referred to as PG&E's Land Conservation Commitment. Some watershed lands will be donated to public entities, Native American tribes, or qualified nonprofit conservation organizations. Conservation easements or conservation covenants will be placed on the watershed lands to ensure that the Beneficial Public Values (BPVs) of the parcels are protected in perpetuity.

The Stewardship Council is expected to dissolve after the completion of its work on the land conservation program. The Stewardship Council's dissolution is not expected until 2016 or thereafter.

In September, 2010 the Sierra Nevada Conservancy (SNC) Board authorized its Executive Officer to execute a Memorandum of Understanding (MOU) with the Stewardship Council. That MOU contemplates that the parties will negotiate agreements for work to be performed by the SNC and for the SNC to be reimbursed by the Stewardship Council or a successor/trustee. The SNC Board also authorized the Executive Officer to establish an appropriate budgetary mechanism to receive and expend funds necessary to fully cover the costs to perform the responsibilities associated with subsequently authorized agreements between the SNC and the Stewardship Council.

Also in September, 2010 the Stewardship Council board delegated authority to the Stewardship Council Executive Director to enter into a MOU with SNC that would guide the negotiation of specific contracts. The MOU was signed in November, 2010 by both parties and identifies potential future roles for the SNC pertaining to: 1) SNC serving as the covenant holder on watershed lands donated to the U.S. Forest Service (USFS); and 2) SNC performing certain other third-party roles related to the monitoring of lands or easements to be donated to various organizations on donated PG&E lands. The MOU clearly states that no agreement would require SNC to perform duties unless adequate financial resources were provided to reimburse SNC, and such duties would only be performed to the extent that resources were made available.

The Stewardship Council has made progress in identifying donees for fee title and conservation easements, and is planning to bring to its board for approval later this year the first Land Conservation and Conveyance Plans that have been drafted, including all proposed transfer documents.

Current Status

Recently, SNC Staff has been in discussions with Stewardship Council staff to prepare agreements for roles and tasks to be performed by the SNC after the dissolution of the

Stewardship Council. These tasks are not specifically identified in the existing MOU, but are generally consistent with tasks contemplated in past discussions.

SNC staff has also been discussing a proposed conservation covenant funding agreement with the Stewardship Council staff, necessary before SNC can begin performing duties on those lands donated to the USFS.

Next Steps

In order to perform the additional tasks currently being discussed, an amended MOU is necessary. Therefore, staff is recommending that amendments to the MOU (Attachment A) be made to address the following:

- 1) The willingness of the SNC to approve successor conservation easement holders for conservation easements on lands retained by PG&E in the event that original easement holders desire to assign their interest or cease to exist;
- 2) The willingness of the SNC to determine at its sole discretion to serve as a back-up conservation easement holder on a temporary basis for conservation easements on lands retained by PG&E, in the event that the existing conservation easement holder can no longer perform its duties and a suitable replacement has not been identified; and,
- 3) The willingness of the SNC to perform tasks associated with the plan to Monitor the Economic and Physical Impacts of the PG&E Land Conservation Commitment and for SNC to serve as a Public Information Repository of all key Land Conservation Commitment Documents as determined by the Stewardship Council.

The first anticipated use of the MOU and authority delegated to the SNC Executive Officer is likely to occur when an agreement is executed describing the acceptance of covenants and related SNC roles on the Deer Creek planning unit, which is being donated to the USFS. The parties expect that separate agreements would be drafted to accommodate future Conservation Covenants that the SNC may determine to accept, and each such covenant agreement would be accompanied by funds for the performance of specified duties.

Recommendation

Staff recommends the Board approve the attached amended MOU, and authorize the Executive Officer, in consultation with legal counsel, to execute the MOU, and to make non-substantive changes as may be needed.

Staff further recommends that the Board authorize the Executive Officer to enter into agreements with the Stewardship Council to provide services identified in the amended MOU provided that funding is made available to the SNC for such services.

Memorandum of Understanding

Amended June 7, 2012

Section 1: Purpose

This Memorandum of Understanding (MOU) dated November 30, 2010 is between the Sierra Nevada Conservancy (SNC), and the Pacific Forest and Watershed Lands Stewardship Council (Stewardship Council), a California nonprofit corporation and private foundation. The MOU was authorized by the Governing Board of the SNC on September 2, 2010 (amended June 7, 2012) and by the board of directors of the Stewardship Council on September 16, 2010, with approval for the Executive Director to execute an amended MOU granted on May 2, 2012.

This MOU is intended to provide guidance to the parties for future negotiations for the development of certain future agreements between the SNC and the Stewardship Council. It is anticipated that the scope of work and the compensation to be provided for duties performed by SNC will be clearly set forth in agreements, within the overall guidance of this MOU, and will meet the requirements of both the Stewardship Council, in connection with Pacific Gas and Electric Company's (PG&E's) transfer of lands and conservation easements pursuant to the Land Conservation Commitment (defined below), and be consistent with the legal authority of the SNC.

Section 2: Background

The SNC and the Stewardship Council have been engaged in discussions over the past three years concerning potential roles for the SNC to play in the long term preservation of public beneficial values on watershed lands subject to the Land Conservation Plan being developed by the Stewardship Council. This includes lands that will be conveyed by PG&E to new owners in fee title subject to conservation easements or equivalent protections, as well as lands that will remain with PG&E with easements in place. These transactions are intended to implement the "Land Conservation Commitment" as set forth in the following documents:

- (a) That certain Settlement Agreement (the "Settlement") as modified and approved by the California Public Utilities Commission in its Opinion and Order of December 18, 2003 (Decision 03-12-035); and,
- (b) That certain Stipulation Resolving Issues Regarding the Land Conservation Commitment dated September 25, 2003 (the "Stipulation").

Both the Stewardship Council and the SNC agree that the primary interest of developing this arrangement is to ensure that the lands in question are and will be managed in the long term to maintain the beneficial public values identified in the Land Conservation Plan. The SNC generally prefers not to receive ownership of fee title or conservation easements on the lands subject to the Stewardship Council's actions, and intends to consider accepting such interests in the future only on an interim basis or under unique circumstances. One such unique circumstance would be as the holder of Conservation Covenants on lands conveyed to the United States Forest Service (Forest Service).

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Section 3: Items for Inclusion in Scopes of Work for Individual Agreements

The SNC contemplates agreeing to perform various tasks, including but not limited to those enumerated below, in assisting the Stewardship Council with addressing long term issues, subject to the terms of future executed agreements and in compliance with all applicable legal requirements. It is understood that specific actions and activities on the part of the SNC will be contingent upon availability of adequate funding to carry out specified duties and subject to the legal authority of the SNC, as delegated to the Executive Officer by the SNC's Governing Board. The SNC and the Stewardship Council recognize four general categories of roles as outlined below, each to be funded separately by the Stewardship Council. These general categories involve: (1) acting as a covenantee under Conservation Covenants over lands donated by PG&E to the Forest Service, (2) preparation of a report in 2024 as part of the Stewardship Council's Plan to Monitor the Physical and Economic Impacts of the Land Conservation Commitment, (3) assuming various duties with respect to Conservation Easements and future Assignments of Property Interests, and (4) Serving as a Public Repository of Stewardship Council documents.

Category 1: Holder of Conservation Covenants over United States Forest Service (Forest Service) Lands

The SNC would agree to act as covenantee under Conservation Covenants over certain lands transferred to the Forest Service subject to future agreements that specify duties, which may include any or all of the following agreements and undertakings:

- A. To act as the covenantee under Conservation Covenants over lands that are conveyed to the Forest Service by PG&E (the Forest Service Lands), subject to necessary funding being provided by the Stewardship Council. As a covenantee, the SNC anticipates that it would be responsible for the monitoring of conservation restrictions on the Forest Service Lands, as set out in the Conservation Covenants, to ensure that the Forest Service's management of these lands is consistent with management plans and maintaining the beneficial public values enumerated in such Conservation Covenants
- B. To monitor and participate as needed to facilitate Forest Service completion of amendments to Land and Resource Management Plans (LRMPs) prepared pursuant to the National Forest Management Act as necessary to absorb donated lands and acknowledge covenants.
- C. To develop and maintain web based resources to facilitate public education and support covenant monitoring.
- D. To prepare a baseline resource conditions report.
- E. To establish monitoring protocols that may include:
 1. Coordination with each Forest Service forest unit that receives donated lands;
 2. Conducting regular visits;

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3. Completing physical on-the-ground visits;
 4. Identifying and establishing GPS locations and photo points;
 5. Establishing an Annual Schedule for meeting with Forest Service units and completing necessary physical inspections of donated lands;
 6. Reviewing Forest Service LRMPs Amendments; and
 7. Conducting an annual review of Forest Service Notices of Proposed Actions.
- F. To pursue legal and administrative remedies as provided by law and regulation and take action as necessary to enforce the terms of Conservation Covenants.

Funding to be provided by the Stewardship Council to the SNC in connection with the foregoing duties shall be set forth in separate written agreements, subject to the approval of the board of directors of the Stewardship Council and the Executive Officer of the SNC, and effective upon transfer of fee title to the Forest Service and the recording of the Conservation Covenants in the official records of the county or counties in which the transferred lands are located.

Category 2: Conservation Easements and Assignment of Property Interests

The SNC would agree to perform the following roles with respect to Conservation Easements to be held by various public or nonprofit entities on PG&E lands in support of the Land Conservation Commitment, subject to the terms and conditions enumerated in future agreements between the SNC and the Stewardship Council. These roles would be performed on an as-needed and likely infrequent basis. The duties to be performed would be set forth in future agreements between the SNC and the Stewardship Council and other documents, and may include the following:

Role 1: To comment upon proposed successor fee title holders as necessary. It is anticipated that the conservation easements to be recorded on lands transferred by PG&E in connection with the Land Conservation Commitment will provide that in the event a recipient entity of fee title proposes to transfer title to the donated lands, the SNC would receive notice and an opportunity to comment in writing upon the proposed transfer.

Role 2: To approve successor conservation easement holders in the event it becomes necessary. In the event that a recipient entity of a conservation easement on donated or retained PG&E watershed lands ceases to exist or proposes to transfer its rights under the conservation easement, the SNC would have the authority to approve a successor easement holder upon consultation with the fee title owner and in accordance with the terms of future agreements between the SNC and the Stewardship Council.

It is anticipated that the conservation easements to be recorded on donated and retained PG&E watershed lands will provide that the conservation easement holder shall obtain SNC's approval of a proposed assignee which

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must be an organization (a) qualified to hold a conservation easement under Section 815.3 of the California Civil Code; and (b) willing and financially able to assume all of the responsibilities of the conservation easement holder.

Role 3: To serve as temporary holder of conservation easements, at the SNC's discretion, when necessary pending the SNC's identification and approval of long-term conservation easement holder(s). In the event that a recipient entity of a conservation easement on lands transferred by PG&E or lands retained by PG&E ceases to exist or proposes to transfer its rights under the conservation easement, and the SNC has not approved the proposed assignee based on the the criteria specified above, the SNC would have the authority to assume the conservation easement holder's rights under the easement and to hold and manage the conservation easement until a transferee successor can be identified and approved by the SNC.

In such circumstances the SNC would have the right to assign the easement interest to another qualified holder and would be able to effect a transfer of title by the recording of an affidavit that establishes or affirms that an event or condition has occurred in accordance with specific provisions listed in the recorded easement.

It is understood that SNC may decline to exercise its right to assume the conservation easement in its discretion.

Funding to be provided by the Stewardship Council to the SNC in connection with the foregoing roles shall be set forth in a separate written agreement or agreements, subject to the approval by the board of directors of the Stewardship Council and the Executive Officer of the SNC.

Category 3: SNC would agree to monitor certain impacts of the Land Conservation Commitment (through 2023) and to oversee the preparation of a report in 2024 assessing the physical and economic impacts of the Land Conservation Commitment, subject to the terms and conditions enumerated in future agreements between the Conservancy and the Stewardship Council. . SNC's report would assess the impacts from the date of the close out report that will be prepared by the Stewardship Council just prior to its dissolution through December 31, 2023.

Category 4: SNC would agree to serve as a Public Information Repository of Land Conservation Commitment Documents, subject to the terms and conditions enumerated in future agreements between the Conservancy and the Stewardship Council. The documents to be included in the repository would be determined by the Stewardship Council and provided to the SNC by the Stewardship Council.

SECTION 4: Amendments to MOU

This MOU between SNC and the Stewardship Council may be amended in writing as agreed by the parties and is subject to the authorization granted, or general authority delegated, by the governing body of each party. Upon dissolution of the Stewardship

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Council, the MOU will cease to be in effect; however, the future agreements entered into by the parties pursuant to this MOU will survive as provided by the terms of the agreements.

SECTION 5: Effect of this Memorandum of Understanding

This is a non-binding document whose purpose is to facilitate further negotiations between the parties in anticipation of possible future binding agreements. Such agreements, when and if executed by the authorized representatives of the parties, will contain the entire and complete expression of the parties' agreement with respect to the contemplated transaction(s). This MOU is intended to serve as the basis for further negotiations and the parties recognize that each party may propose different or additional terms as negotiations proceed.

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Lands Stewardship Council

Date

Date