

August 23, 2019

California Public Utilities Commission
Public Advisor's Office
505 Van Ness Ave.
San Francisco, CA 94102
public.advisor@cpuc.ca.gov



RE: Comment on Proposed Tribal Land Transfer Policy

Dear Public Advisor's Office,

We have reviewed the California Public Utilities Commission (CPUC) draft policy on "Investor-Owned Utility Real Property – Land Disposition – First Right of Refusal for Aboriginal Properties to California Native American Tribes" ("**draft policy**"). Key provisions of the CPUC's draft policy conflict with both the legal requirements of the Settlement Agreement and Stipulation (each as defined below) and the Stewardship Council's charter documents, policies and procedures, all of which have been approved by the CPUC. The draft policy also appears to be inconsistent with the land conservation plans developed by the Stewardship Council over the past decade. If the draft policy, in its current form, was applied to pending and future advice letters and applications filed by Pacific Gas and Electric Company (PG&E) seeking Commission approval of fee donations and conservation easement recommendations, other interested third parties (particularly those entities already selected by the Stewardship Council Board of Directors as the best suited potential donees and conservation easement holders pursuant to recommendations) would likely argue that the actions are incompatible with the provisions of the Settlement Agreement and Stipulation. We request that current and future transactions recommended by the Stewardship Council Board in order to fulfill PG&E's Land Conservation Commitment be exempted from any new policy.

Since its formation in 2004, the Stewardship Council has made a concerted effort to extend the benefits of the PG&E Land Conservation Commitment to Native American entities. This effort has included recommendations by the Stewardship Council Board for three Native American entities to receive fee title to lands totaling over 8,000 acres in 10 distinct transactions in Shasta, Plumas, Mendocino and Lake counties. As part of implementing a robust conservation program, the Stewardship Council has provided several million dollars in funding to Native American entities, in particular, for a variety of purposes including costs to: facilitate the negotiation of the land transfers and protection efforts, capacity building, land planning work, fulfillment of property tax payments, and enhancement project grant funding. Since 2004, the Stewardship Council has conducted extensive outreach and engagement with Native American entities, including the facilitation of unique and meaningful partnerships. These efforts are summarized and attached to this comment letter in a document originally prepared for the CPUC in September 2018 and recently updated (Exhibit A - Native American Outreach and Engagement Efforts).

With the Stewardship Council's finite financial resources and an already very aggressive schedule to complete the remaining land transactions by 2021 and dissolve the organization, any new layer of requirements could jeopardize the Stewardship Council's ability to complete its obligations to implement the Land Conservation Commitment. The Stewardship Council appreciates the opportunity to provide the below comments on the draft policy.

I. BACKGROUND

A. 2003 Settlement Agreement and Stipulation – PG&E’s 2001 Chapter 11 Filing

On April 6, 2001, PG&E filed for Chapter 11 bankruptcy protection. Two years later, after a complex series of financial and rate analyses and negotiations, PG&E and CPUC staff announced a Proposed Settlement Agreement. In addition to settling a host of financial issues, the Proposed Settlement Agreement included a Land Conservation Commitment by which the PG&E Watershed Lands would be subject to conservation easements and/or be donated in fee simple to public entities or non-profit organizations for the benefit of the public. The Stipulation Resolving Issues Regarding the Land Conservation Commitment (the “**Stipulation**”), a supplementary document to the Proposed Settlement Agreement, was created in September 2003 to clarify outstanding issues stakeholders had with the original Land Conservation Commitment. In December of 2003, the CPUC issued a final order that modified and clarified the Proposed Settlement Agreement offered by PG&E, its parent company PG&E Corporation, and CPUC staff. (Decision 03-12-035.) This final order (“**Settlement Agreement**”) required that PG&E commit to preserving and/or enhancing approximately 140,000 acres of Watershed Lands associated with its hydroelectric system by adhering to the Land Conservation Commitment as specified in both the Settlement Agreement and Stipulation. The Settlement Agreement and Stipulation require that the Watershed Lands: (1) be subject to permanent conservation easements restricting development of the Watershed Lands so as to protect and preserve the Beneficial Public Values¹, and/or (2) be donated in fee simple to one or more public entities or qualified nonprofit conservation organizations² whose ownership will ensure the protection of the Beneficial Public Values.

On December 22, 2003, the bankruptcy court entered an order (the “**Confirmation Order**”) confirming PG&E’s plan of reorganization. Among other things, the Confirmation Order approved the Settlement Agreement. The Confirmation Order also directed PG&E to comply with the Stipulation.

¹ The Settlement Agreement establishes that 140,000 acres of PG&E’s Watershed Lands will be conserved in perpetuity for outdoor recreation, sustainable forestry, agriculture, natural resource protection, open space preservation, and protection of historic resources. Note, the Stewardship Council broadened the definition of “historic” resources to include cultural resources.

² Appendix E of the Settlement Agreement references fee simple title to “one or more public entities or qualified conservation organizations...” [underline emphasis added]. Based on legal research, the Stewardship Council determined that there were reasonable grounds to identify Native American Tribes as “public entities”.

B. Role of the Commission in the Implementation of PG&E's Land Conservation Commitment

Paragraph 20 of the Stipulation provides that the Commission “will exercise its authority to approve or disapprove all land dispositions under Public Utilities Code Section 851 consistent with the Land Conservation Commitment and this Stipulation.”

C. Role of the Pacific Forest and Watershed Lands Stewardship Council (“Stewardship Council”)

Pursuant to the Settlement Agreement and Stipulation, PG&E created the Stewardship Council, a California non-profit corporation, to oversee and carry out PG&E's Land Conservation Commitment. The Settlement Agreement and Stipulation are the governing documents for the Stewardship Council's work.

The Stipulation prescribes which organizations have the right to appoint representatives to the Stewardship Council Board of Directors (the “**Board**”), and requires that all decisions of the Board be made by consensus. The Stewardship Council Board includes appointees from state and federal agencies, water districts, Native American and rural interests, forest and farm industry groups, conservation organizations, the CPUC, and PG&E.

Under the Land Conservation Commitment, the Stewardship Council is charged with developing a Land Conservation Plan that must include “objectives to preserve and/or enhance the beneficial public values, as defined in Settlement Agreement, Appendix E, of each individual parcel,” and “a strategy to undertake appropriate physical measures to enhance the beneficial public values of individual parcels.”

In accordance with the Stipulation, the Land Conservation Plan must include among other things, a recommendation for grant of a conservation easement or fee simple donation of each parcel, and a finding that the intended grantee has funding and other capacity to preserve and/or enhance the beneficial public values. Volumes I and II of the Land Conservation Plan were adopted by the Stewardship Council in November 2007. In Volume I of the plan, the overall framework is established, including legal requirements, the planning processes, methodologies, public involvement and regulatory processes. Volume II of the plan organizes the lands by watershed into 47 planning units to provide more detail regarding the beneficial public values, existing conditions, management objectives, measures, and conceptual plans for each planning unit. Volume III of the plan consists of a series of Land Conservation and Conveyance Plans (“**LCCP**”) to be adopted by the Stewardship Council and recommended to PG&E.

i. Status of Recommended Land Transactions

The Stewardship Council is in the final stages of implementing the plan to satisfy the requirements of the Settlement Agreement and Stipulation, and we are working expeditiously with PG&E and our project partners to process the remaining transactions. The Stewardship Council's current strategic plan calls for the final set of transactions, including the placement of conservation easements on PG&E retained lands, to be submitted to the CPUC and closed escrow no later than the end of 2021, with ultimate dissolution of the Stewardship Council planned for the first half of 2022. This timeline is aggressive, and, achievable.

To date, the Board has approved LCCPs for 78 transactions, encompassing 77,055 acres, out of a total of approximately 98 anticipated transactions. Out of the 98 total anticipated transactions, 43 transactions have closed escrow, encompassing 33,677 acres.

As of August 14, 2019, PG&E has filed 54 advice letters seeking approval of the Stewardship Council's recommendations. To date, the CPUC has approved 50 advice letters. CPUC action on four advice letters is pending. It is anticipated that PG&E will file 44 additional advice letters to complete its obligations under the Land Conservation Commitment.

ii. Current Status of Fee Title Donations

After a robust process soliciting and evaluating land stewardship proposals from public entities and qualified nonprofit conservation organizations, the Stewardship Council board by consensus, has recommended that over 40,000 acres of watershed lands be transferred to qualified public entities and nonprofit organizations, including over 8,000 acres to Native American entities.

Many of the fee donation transactions are still being negotiated by the future fee title holder, the recommended conservation easement holder, and PG&E. To date, PG&E's advice letters seeking approval of 19 fee title donations have been approved by the CPUC. It is anticipated that PG&E will file approximately 23 more advice letters seeking approval of additional fee donation transactions.

iii. Current Status of Conservation Easement Transactions on Donated and PG&E Retained Lands

The beneficial public values associated with PG&E's Watershed Lands will be protected in perpetuity by conservation easements, or in the case of lands donated to the U.S. Forest Service ("USFS"), by conservation covenants held by the Sierra Nevada Conservancy.

The conservation easements will be held by non-profit organizations (primarily land trusts) and public agencies with expertise and experience holding conservation easements. Collectively, these organizations will negotiate approximately 98 individual conservation easement or conservation covenant transactions. To date, the Board has approved 68 conservation easement transactions and 10 conservation covenant transactions involving the USFS. Approximately 20 transactions remain to be finalized by the parties and found by the Stewardship Council to be in conformance with the provisions of the Settlement Agreement and Stipulation.

II. DRAFT POLICY'S ANTICIPATED ADVERSE EFFECT ON IMPLEMENTATION OF THE LAND CONSERVATION COMMITMENT

A. Tribes as Preferred Transferees

The draft policy includes the following language:

“Consistent with the goals of the Tribal Consultation Policy and Executive Order B-10-11, this policy provides a first right of refusal by California Native American tribes: for any future disposition of real property currently owned by investor owned utilities (IOUs), including PG&E retained lands pursuant to the Stipulation, not contained within the boundaries of a Federal Energy Regulatory Commission (FERC) jurisdictional project.”³

“Where an IOU seeks approval to transfer non-FERC jurisdictional watershed property, including retained land, within a tribe’s territory, the tribe shall be deemed the preferred transferee absent a finding supported by substantial evidence that it would be in the public interest to transfer the land to another entity.”

“The Commission will grant the tribe a first right of refusal for any IOU requests to transfer non-FERC jurisdictional watershed property, including retained lands. There will be a rebuttable presumption that it is in the public interest to provide tribal entities the first opportunity to acquire such property.”

The following points in the draft policy would conflict with the unique requirements of the Settlement Agreement and Stipulation and would be inconsistent with the land conservation plans developed by the Stewardship Council over the past decade:

1. Tribes as Potential Fee Title Donees to PG&E Watershed Lands

The construct of a first right of refusal for tribal entities conflicts with the provisions of the Settlement Agreement and Stipulation and the Stewardship Council’s responsibilities to develop a Land Conservation Plan for 140,000 acres of PG&E’s Watershed Lands.

Appendix E to the PG&E Settlement Agreement provides in part:

“The Watershed Lands and Carizzo Plains shall (1) be subject to permanent conservation easements restricting development of the lands so as to protect and preserve their beneficial public values, and/or (2) be donated in fee simple to one or more public entities or qualified non-profit conservation organizations, whose ownership will ensure the protection of the beneficial public values.”

Tribal entities were not referenced as potential fee title donees in the Settlement Agreement or Stipulation and the Stewardship Council’s governing documents did not provide tribal

³ Footnote 2 of the draft policy states: “The use of the terms ‘dispose of’ and ‘disposition’ in this Resolution refer to the transfer, sale, donation or disposition by any other means of a fee simple interest or easement in real property.”

entities (or in fact any other entities) with a priority right to acquire PG&E's Watershed Lands under the Land Conservation Commitment⁴. The Stipulation requires that the Land Conservation Plan which is developed by the Stewardship Council for each parcel include a finding that the intended grantee has funding and other capacity to preserve and/or enhance the beneficial public values. It would be inconsistent with the Stipulation for the Commission to approve the fee title transfer of lands subject to the Land Conservation Commitment to a tribal entity without that transfer including a finding that the grantee has funding, the capacity to preserve and/or enhance the beneficial public values, and that the grantee makes such a commitment and that the commitment is enforceable.

We understand that the provisions of the Settlement Agreement and Stipulation that require the PG&E Watershed Lands to be protected in perpetuity via conservation easements (among other requirements) may have dampened the interest of many Native American Tribes in acquiring PG&E Watershed Lands through the Land Conservation Commitment. Those who decided not to seek a fee title donation most often cited one or more of the following constraints as the basis for their decision:

- The required conservation easement would preclude types of development of the Watershed Lands which the tribal entity might consider desirable in the future.
- To ensure the enforceability of the conservation easement and various transactional agreements with PG&E, a federally recognized tribe was required to grant a limited waiver of sovereign immunity.
- To ensure that the conservation easement would remain enforceable, lands acquired from PG&E could not be placed into trust with the federal government. Some tribal representatives said that this restriction would likely prevent them from accessing federal funding for future management of the donated lands.
- To ensure consistency with the Stipulation requirement that donations made as part of PG&E's Land Conservation Commitment do not expand or limit PG&E's obligations or the rights of others in a FERC relicensing proceeding or otherwise under Part 1 of the Federal Power Act, the Tribe must agree not to petition the U.S. Department of Interior to have the subject lands taken into trust by the federal government.⁵

It could be difficult, costly and risky (in terms of potential liability to other interested third parties) to apply the first right of refusal proviso to any land transactions that the Stewardship Council has structured and recommended with respect to PG&E's Watershed Lands over the past decade. The Stewardship Council has thoughtfully applied criteria (following the mandate agreed in Bankruptcy Court and approved by the CPUC) to evaluate potential fee title donees and their capacity to own and manage Watershed Lands. In many cases where multiple land stewardship proposals were submitted by entities seeking a fee title donation, the Stewardship

⁴ Appendix E of the Settlement Agreement references fee simple title to "one or more public entities or qualified conservation organizations..." [underline emphasis added]. Based on legal research, the Stewardship Council determined that there were reasonable grounds to identify Native American Tribes as "public entities".

⁵ This Stipulation requirement limited the number of acres of PG&E Watershed Lands that the U.S. Forest Service could acquire and resulted in the Bureau of Land Management withdrawing its Land Stewardship Proposals for several thousand acres.

Council spent more than one year carefully evaluating the capacity of the organizations and their plans for the subject property to determine which entity would best protect and enhance the beneficial public values of the property. The CPUC's final order that modified and clarified the Proposed Settlement Agreement acknowledges the pivotal role of the Stewardship Council:

“Subject, of course, to the Commission's authority under, inter alia, Public Utilities Code Section 851 to approve the disposition of utility property, the determination of how best to protect these lands will be made by a board of a new California non-profit corporation which will present its recommendations and advice to the Commission.” (Decision 03-12-035 at pg. 15).

The Stipulation contemplated that the interests of a *highly* diverse range of groups be taken into consideration when the Stewardship Council Board makes decisions. Reaching consensus decisions for recommendations pertaining to fee donees from the diverse interests represented on the Stewardship Council Board was an added complexity; however, we believe that this inclusive decision-making construct helped to successfully ensure that multiple interests were considered and balanced.⁶

Finally, application of new rules for the process – specifically the proposed first right of refusal policy - to Land Conservation Commitment transactions would harm the recommended fee title donees and the recommended conservation easement holders who have devoted an extensive amount of public and nonprofit resources to apply for and negotiate the transactions documents to acquire a property interest in PG&E Watershed Lands. Essentially, the CPUC would be changing the rules (that had been previously approved by the CPUC) after the game has already been played for the benefit of one group of constituents. While we believe that the CPUC is well within its rights to change the rules (or start a new game), such a change would require amendments to the Settlement Agreement and Stipulation, and would necessitate provisions to ensure that the Stewardship Council Board and management is protected from liability for claims brought by the already identified fee donees and recommended conservation easement holders.

2. Tribal Entities as Potential Holders of Conservation Easements

As we read the draft policy, if an investor owned utility were to have a conservation easement placed on any of its lands, tribes would have a first right of refusal to hold the conservation easement even if a different conservation easement holder has been selected and vetted through the Stewardship Council's selection process. The Stewardship Council Board has completed its recommendations of conservation easement holders for all of the PG&E Watershed Lands which will be protected by a conservation easement. If this aspect of the draft policy were applied to Land Conservation Commitment transactions that have not yet been approved by the Commission through the Section 851 process, then it would not only unravel the Stewardship Council's thoughtful plan to recommend and fund experienced conservation easement holders pursuant to the rules established in the Settlement Agreement and Stipulation, but also cause direct economic harm to the land trusts which have devoted

⁶ Although the Stipulation expanded the number of directors on the Stewardship Council Board, it did not include a representative for Native American Tribes. The Stewardship Council Board quickly remedied this in 2004 by appointing a director to represent tribal interests.

countless resources and forgone other conservation opportunities to be engaged in the Stewardship Council's conservation easement program during the past decade. This would open the Stewardship Council up to liability from the recommended conservation easement holders.

The Stipulation requires that the Land Conservation Plan developed by the Stewardship Council demonstrate that the grantee of each conservation easement has funding and other capacity to preserve and/or enhance the beneficial public values of the subject property. To satisfy this requirement, the Stewardship Council decided only to recommend entities to hold conservation easements if the entity had significant experience negotiating and holding conservation easements on other properties. This policy resulted in the selection of ten land trusts to each hold a portfolio of conservation easements over PG&E Watershed Lands.⁷

The approach of bundling conservation easements with a single holder is beneficial in the following ways. First, the cumulative amount of conservation easement endowment funding being provided to land trusts by the Stewardship Council will give them sufficient funds to monitor the properties to ensure conservation easement compliance and to take legal action against the landowner if necessary. Second, the cumulative amount of transaction negotiation funding provided by the Stewardship Council to each land trust allowed the land trust to dedicate the necessary amount of staff time and consultant resources to the development of baseline documentation reports and the negotiation of the conservation easement and other transaction documents. Third, bundling conservation easements created efficiencies during the transaction negotiation phase of each transaction because after negotiation of the first transaction with a distinct landowner, the land trust could more quickly negotiate subsequent transactions with the same landowner.

B. Facilitating Tribal Government Access to Information

The section of the draft policy titled "Facilitating Tribal Government Access to Information" includes several noticing and comment processes that would likely delay the CPUC's processing of PG&E's advice letters and applications that are filed to fulfill its obligations under the Settlement Agreement and Stipulation. With the Stewardship Council's finite financial resources and an already very aggressive schedule to complete the remaining land transactions and dissolve the organization, any new layer of requirements for CPUC processing of advice letters and applications could jeopardize the Stewardship Council's ability to complete its obligations to implement the Land Conservation Commitment.

⁷ The California Department of Fish and Wildlife, Wetlands of America (Ducks Unlimited), and Western Shasta Resource Conservation District are the entities that were recommended to hold conservation easements that are not land trusts. Ducks Unlimited holds conservation easements throughout the United States, and Western Shasta Resource Conservation District holds conservation easements in their district. CDFW and the Feather River Land Trust will jointly hold the conservation easement over lands that will be donated to the Maidu Summit Consortium at Tasmam Kojom (Humbug Valley). CDFW holds many conservation easements over other properties in California.

III. CONCLUSION

We believe that the Stewardship Council has gone to great lengths to ensure that Tribal entities have meaningful opportunities to receive the benefits of the Land Conservation Commitment and to ensure that cultural resources are protected by the conservation easements being placed on PG&E's Watershed Lands. Attached to this comment letter is a summary document prepared for the CPUC in September 2018 and updated in August 2019, regarding the Stewardship Council's Native American Outreach and Engagement efforts.

We would welcome the opportunity to meet and discuss the draft policy or impacts of a revised policy, including additional opportunities the CPUC may want to consider to further enhance the protection of cultural resource values, such as through additional resource surveys.

As explained in the paragraphs above, most of the provisions of the draft policy would conflict with the unique requirements of the Settlement Agreement and Stipulation and would be inconsistent with the land conservation plans developed by the Stewardship Council over the past decade. Therefore, we request that transactions recommended by the Stewardship Council Board in order to fulfill PG&E's Land Conservation Commitment be exempted from any new policy.

Sincerely,



Heidi Krolick, Executive Director



Art Baggett, Stewardship Council
Board President

Cc via email:

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Exhibit A



STEWARDSHIP COUNCIL

NATIVE AMERICAN OUTREACH AND ENGAGEMENT EFFORTS

UPDATED - AUGUST 2019

SUMMARY

Since its formation in 2004, the Stewardship Council has made a concerted effort to extend the benefits of PG&E's Land Conservation Commitment to Native American Tribes and Native American entities in California¹. The Stewardship Council has:

- Clarified that Tribes and Native American entities were included in the definition of the "public entities" eligible to receive fee title donations of PG&E Watershed Lands even though Tribes were not specifically mentioned as potential donees in the PG&E Settlement Agreement and Stipulation Resolving Issues Regarding the Land Conservation Commitment.²
- Added a representative (and alternate) on the Stewardship Council Board of Directors (Board) for Native American Interests -- a significant action because the Board makes all decisions by "consensus" (unanimous vote).
- Clarified the definition of "historic values," a beneficial public value defined the Settlement Agreement to be protected by the conservation easements on both donated and PG&E retained lands, to include "cultural resources," ensuring Native Americans continued access to the watershed lands consistent with the access that exists at the time the conservation easement is recorded.
- Spent thousands of hours meeting in person with representatives of Native American entities and conducting other types of special outreach to ensure that Native American entities were aware about and provided full access for participation in the opportunities presented by PG&E's Land Conservation Commitment.
- Recommended that fee title to a portion of PG&E Watershed Lands be transferred to three Native American entities.
- Expended Stewardship Council funds to assist Native American entities to pay for transaction costs associated with fee donations and the negotiation of conservation easements on the lands they are acquiring.

¹ Note, for the purposes of this report, where applicable, term 'Native American entities' may be used to include both tribes as well as tribal organizations such as tribal nonprofits.

² The PG&E Bankruptcy Settlement Agreement and Stipulation Resolving Issues Regarding the Land Conservation Commitment were approved by the California Public Utilities Commission in Decision 03-12-035 (Dec. 18, 2003).

Exhibit A

- Committed a portion of the Stewardship Council’s funds to pay for future property tax obligations for lands being acquired by Tribes, as lands held in fee by Tribes are subject to local property taxes.
- Awarded enhancement program grants that involve Native Americans in the restoration of portions of PG&E’s Watershed Lands.
- Provided a major capacity building grant to the Maidu Summit Consortium to ensure that it has the organizational capacity and the funding to protect the Beneficial Public Values of the lands which PG&E will be donating to them.
- Encouraged fee title donees and conservation easement holders to build strong collaborative relationships with Tribes and Native American entities.
- With PG&E Settlement Agreement funding that the Stewardship Council received for its Youth Investment Program, grants were awarded to Native American entities to provide tribal youth with meaningful opportunities to spend time in nature. Furthermore, the Foundation for Youth Investment used Stewardship Council youth program funds to organize two well attended workshops where Native Americans shared a set of best practices for engaging tribal youth in the outdoors.

SIGNIFICANT POLICY DECISIONS BENEFITTING NATIVE AMERICAN TRIBES AND ENTITIES

Native American Entities as Eligible Fee Donees

Appendix E to the PG&E Settlement Agreement provides in part:

“The Watershed Lands and Carizzo Plains shall (1) be subject to permanent conservation easements restricting development of the lands so as to protect and preserve their beneficial public values, and/or (2) be donated in fee simple to one or more public entities or qualified non-profit conservation organizations, whose ownership will ensure the protection of the beneficial public values.”

Based on legal research by outside counsel, the Stewardship Council determined that there were reasonable grounds to treat Native American Tribes as “public entities” and therefore to include them in the array of organizations eligible to receive a fee title donation to PG&E Watershed Lands. This determination was made prior to the Stewardship Council soliciting Land Stewardship Proposals from eligible entities.

More recently, in 2018, the Board approved the following additional guidance regarding the donee selection process related to Native American entities:

“The watershed lands subject to the Land Conservation Commitment include lands of cultural importance to tribes. The Stewardship Council acknowledges this historical connection as a unique characteristic for tribes seeking ownership of lands available for donation and recognizes the value of such connection with extra consideration when assessing the qualifications of potential donees.”

Exhibit A

Addition of Board Seat Representing Native American Tribes

Although the Stipulation expanded the number of directors on the Stewardship Council Board, it did not add a representative for Native American Tribes. The Board quickly remedied this situation in 2004 by appointing a director to represent Tribal Interests. Larry Myers was appointed to serve on the Board to represent Tribal Interests in 2005, at which time he held the position of Executive Secretary of the Native American Heritage Commission. He continues to serve on the Board representing Tribal Interests.

This decision to add a board seat to represent Tribal Interests was very significant because the Stipulation requires all decisions of the Board to be made by “consensus.”

Conservation Easements Will Protect Tribal Access to Watershed Lands and Cultural Resources

The Stewardship Council has made sure that the conservation easements on PG&E Watershed Lands protect cultural resources and permit Native Americans to continue to access those lands consistent with the access that exists at the time the conservation easement is recorded, subject to reasonable landowner rules and regulations.³ The conservation easements that are being established on lands being retained by PG&E include as a Beneficial Public Value to be protected: “identified historical and cultural values, to the extent they are protected by state and federal law.” Likewise, the conservation easements on donated lands include language protecting cultural resources.

Funding Committed for Tribe’s Ongoing Property Tax Obligations on Donated Lands

The Settlement Agreement and Stipulation establishing the Land Conservation Commitment require that the Land Conservation Plan being developed by the Stewardship Council 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 each county.

To satisfy this tax neutrality requirement, the Stewardship Council is using a portion of its land conservation program funding to make in lieu payments to counties when a tax exempt entity receives a fee title donation. The Board has also agreed that it will set aside Stewardship Council funds to make payment to the applicable county for the Tribe’s future property tax obligations on

³ The conservation easements on watershed lands being retained by PG&E contain the following language:

“Grantor and Grantee recognize that the Property has been used by third parties for recreational, cultural, and other non-commercial or informal purposes without formal written agreements to conduct such activities (the “Informal Uses”). Grantor and Grantee further recognize that access is inherent or may be inherent in the enjoyment of the Beneficial Public Values and the Informal Uses. Consistent with the objectives articulated in the Governing Documents to provide continued reasonable access by the public to the Watershed Lands, Grantor shall allow public access to the Property (other than Hydro Operating Zones) that is substantially consistent with the public access existing on the Effective Date, subject to Section 7 and the following limitations:...”

The conservation easements on lands being donated by PG&E include similar language.

Exhibit A

donated lands, because the requirements of the Settlement Agreement preclude federally recognized tribes from petitioning the U. S. Department of the Interior to place lands they receive from PG&E into federal trust. Lands held in trust by the federal government are not subject to local property taxes, while lands held by Tribes in fee are subject to such taxes.

STEWARDSHIP COUNCIL OUTREACH ACTIVITIES

Outreach Activities Developed With Expert Assistance

To ensure that the Stewardship Council's outreach efforts to Native American entities were comprehensive and sensitive to Native American values and customs, the Stewardship Council took the following actions beginning early on: (1) retained an outside consultant who had extensive experience working with Native American entities, and engaged specialized expert legal counsel to assist on a variety of tribal matters; (2) engaged a Native American staff member who previously worked for tribal entities to help the Stewardship Council develop and implement an outreach plan over a several year period; (3) actively sought advice from Board Member Larry Myers; (4) held Board and staff trainings on cultural resources protection and Native American matters; and (5) with input from the Native American Heritage Commission, developed a comprehensive list of Native American entities for outreach and other communications.

Broad Range of Tribal Outreach Activities Conducted

The Stewardship Council's outreach and communications to Native American entities over the past thirteen years includes the following:

- Planning and outreach efforts included a series of general public outreach meetings and public planning workshops, where tribal entities participated.
- At Board field trips to visit the PG&E Watershed Lands, representatives of Native American entities were often invited to make a presentation to the Board members and the public about their interest in the subject lands.
- At a series of seven Native American focused regional meetings hosted in communities throughout the Watershed Lands, we sought Native American input on a draft document that described ways that Native American entities could be involved in the implementation of the Land Conservation Commitment.
- Before the Stewardship Council started soliciting proposals for fee donations, we met in person with individual representatives of Native American entities at their offices or at locations in close vicinity.
- We invited Native American entities to tour PG&E Watershed Lands and to submit Statements of Qualifications and Land Stewardship Proposals. We provided potential fee donees an ample amount of time to decide whether to apply and to prepare a proposal.
- Prior to the Board taking action to approve major land conservation program actions, emails are sent to the Stewardship Council's stakeholder database, which

Exhibit A

maintains a frequently updated contact list of individuals and group representatives within and surrounding the watershed lands. This list includes hundreds of Native American contacts across PG&E's Watershed Lands.

- We have sent individual letters to the chairs of Native American entities inviting them to review and comment on major land decisions before the Stewardship Council Board votes on such matters. This has been done in every instance for approvals of the individual Land Conservation and Conveyance Plans, and findings that a select parcel does not have "Significant Public Interest Value" and therefore should not be encumbered by a conservation easement.
- Whenever a Native American entity requests a meeting, a Stewardship Council staff member will travel to the place where the meeting is requested to enter into a dialogue.

FEE DONATION PROCESS AND OUTCOMES

Fee Donations and Status

To date, the Stewardship Council Board has recommended that three Native American entities receive fee donations to a total of over 8,050 acres. Below is more detail about each of the recommended donations.

Pit River Tribe

The Board has recommended that this federally recognized tribe receive three donations of land in three planning units. The Pit River Tribe has been recommended for 820 acres at the Hat Creek planning unit, which was approved by the Board in January 2019; and recommendations for donation of 1,506 acres at the Fall River Mills planning unit, and 1,878 acres in the Hat Creek and Lake Britton planning units were approved by the Board in January 2019. The Stewardship Council has been very involved in facilitating the fee donation and conservation easement transactions and has agreed to provide \$50,000 funding to the Pit River Tribe for its transaction costs. Additionally, the Stewardship Council has agreed to provide up to \$10,000 in additional funds to assist the Pit River Tribe with environmental due diligence related to the property. The Stewardship Council will also provide funding for closing costs and the Tribe's property tax obligation associated with these land donations because lands held in fee by tribal entities are subject to local property taxes.

Potter Valley Tribe

The Board recommended that this federally recognized tribe receive two fee title donations totaling 879 acres in the Eel River Watershed. The Board has approved Land Conservation and Conveyance Plans ("LCCPs") for both sets of parcels, and PG&E filed advice letters obtaining CPUC approval of the land donations. These two important fee title transfers closed escrow in July 2019, representing the completion of a historic milestone. The Stewardship Council provided funding for closing costs and the Tribe's property tax obligation associated with these land donations.

Exhibit A

Maidu Summit Consortium (MSC)

The Board recommended that the MSC receive fee title donations to approximately 2,961 acres of lands at Humbug Valley and four transactions at the Lake Almanor planning unit, all which have high cultural resource value. The MSC is a 501(c)(3) organization that is comprised of nine Native American entities. The Stewardship Council has been involved in facilitating the transactions and has provided approximately \$120,000 to the MSC to help defray its transaction costs. The Board has approved all of LCCPs that have been developed for fee donations to the MSC at the Lake Almanor and Humbug Valley planning units.

The 2,325-acre property at Humbug Valley, also known as Tàsman Kojòm in Maidu, is an example of how the Stewardship Council helped to facilitate the creation of a unique and ground-breaking collaborative partnership among the MSC, the California Department of Fish and Wildlife (“CDFW”), and the Feather River Land Trust (“FRLT”) to preserve and enhance the beneficial public values at the Humbug Valley property in the Feather River Watershed. In this creative arrangement, FRLT and CDFW will be the co-conservation easement holders and the MSC will be the fee title donee to lands in their ancestral territory. Between 2016–2017, the Stewardship Council began funding the development of a draft land management plan for Humbug Valley. The funding not only assisted with the consultation related to the draft land management plan but it also funded the hosting of several in person meetings in Chester, CA where the Stewardship Council, MSC, and CDFW worked collaboratively, with 15 other agencies and organizations in the development of the draft land management plan to protect and enhance the beneficial public values on the property, incorporating Traditional Ecological Knowledge. The groups represented included the MSC staff and board and tribal members, CDFW, USDA Natural Resource Conservation Service, United States Forest Service, US Fish and Wildlife Service, Collins Pine Company, UC Davis, UC Berkeley Center for Forestry and Point Blue Conservation Service, among others. Note, [Exhibit A](#) to this report includes an article from the *News From Native California* publication regarding the MSC’s efforts.

In addition, Stewardship Council staff and MSC are participating on a national effort to develop curriculum through the Land Trust Alliance on tribal engagement and utilizing the MSC, CDFW, FRLT and Stewardship Council model of collaboration and Traditional Ecological Knowledge on a national scale.

The Humbug Valley transaction is planned to close escrow in late August/early September 2019, marking a significant milestone for both the MSC and the Stewardship Council. This land conveyance of 2,325 acres represents the first of five land donations MSC and is an historic achievement for the Consortium.

Land Conservation Commitment Restrictions Hindered Tribal Interest in Fee Donations

Native American entities who decided not to seek a fee title donation most often stated one or more of the following reasons for that decision:

Exhibit A

- The required conservation easement would preclude types of development of the Watershed Lands which the tribal entity might consider desirable in the future.
- To ensure the enforceability of the conservation easement and various transactional agreements with PG&E, a federally recognized tribe was required to grant a limited waiver of sovereign immunity.
- To ensure that the conservation easement would remain enforceable, the Stewardship Council Board said that lands acquired from PG&E could not be placed into trust with the federal government. Tribal representatives said that this restriction would likely prevent them from accessing federal funding for future management of the donated lands.
- To ensure consistency with the Stipulation requirement that donations made as part of PG&E's Land Conservation Commitment do not expand or limit PG&E's obligations or the rights of others in a FERC relicensing proceeding or otherwise under Part 1 of the Federal Power Act, the Tribe must agree not to petition to have the subject lands taken into trust by the federal government.
- Some Tribes stated they had higher priorities for their time and resources, such as projects and activities that would further their economic development, or that their interests could be met in another way, such as through a partnership opportunity.

STEWARDSHIP COUNCIL FUNDING OF GRANTS FOR CAPACITY BUILDING AND ENHANCEMENT PROJECTS INVOLVING TRIBAL ENTITIES

To date, the Stewardship Council Board has awarded the following grants that involve Native American entities in enhancement projects on PG&E Watershed Lands:

Maidu Summit Consortium (MSC)

The Stewardship Council has awarded or anticipates awarding MSC a total of \$1,349,078 in capacity building and enhancement grants:

- Capacity Building Grants (\$746,508)
- MSC kiosk design and protective fence project at Humbug Valley (\$50,200)
- MSC Land Management Plan for Humbug Valley (\$350,000)
- Ethnographic Survey for Humbug Valley (\$23,670)
- Anticipated Tribal Cultural Park Enhancement Grant for Tàsmam Kojòm (\$178,700) – Pending board approval in September 2019

Hat Creek Habitat Restoration Project

The Stewardship Council awarded a large grant to CalTrout for enhancement projects on PG&E Watershed Lands in Shasta County. Approximately \$337,000 of a \$1.39 million grant was dedicated to a non-profit (Lomakatsi Restoration Project) to involve and employ 20 Pit River tribal members and youth in habitat restoration activities over a two-year period. The project was

Exhibit A

completed and on June 19, 2018 a Hat Creek dedication ceremony was hosted which honored several members of the Pit River Tribe for their active efforts in the restoration project.

Fall River Lake Trail Improvement and Ecocultural Project

In June 2018, the Stewardship Council Board approved the funding of \$299,230 for the Fall River Lake Trail Improvement and Ecocultural Project. The Fall River Community Services District, in partnership with the Lomakatsi Restoration Project and members of the Pit River Tribe, will work collaboratively with local youth to build a trail, install plant clusters in trailside areas that highlight culturally significant native plants, and complete habitat restoration projects on PG&E lands at Fall River Lake in the town of Fall River Mills, Shasta County.

The partners were able to complete the oak woodland restoration portion of the project in June 2019 by hiring twelve tribal adults and youth and contracting with Issi Wah Ecocultural Restoration Services, a local tribal business contracted by Lomakatsi. They worked together to restore 20 acres of oak habitat and enhance the production of acorns, an important indigenous food source. An additional benefit of the work is the reduction of fuel hazards, through ecologically-based thinning and controlled burning that will increase community protection from wildfire.

OTHER EFFORTS TO PROMOTE COLLABORATION WITH TRIBES

CAL FIRE Native American Advisory Council

Beginning in 2016, Stewardship Council staff facilitated discussions and ongoing collaboration with the California Department of Forestry and Fire (“CAL FIRE”) and the staff at the Natural Resources Agency regarding tribal engagement. CAL FIRE is anticipated to receive fee title to approximately 13,000 acres of PG&E Watershed Lands through the Land Conservation Commitment. CAL FIRE developed and reviewed with Stewardship Council their 2012 Native American Tribal Communities Relations Policy and developed the “CAL FIRE Pacific Gas and Electric Lands Action Plan for Native American Tribal Relations” (“Plan”). The first goal of the Plan was to reconstitute the CAL FIRE Native American Advisory Council⁴. Other action items in the Plan included: reviewing the Native American Tribal Communities Relations Policy for Currency as a result of AB 52; developing and providing periodic Departmental Training on the

⁴ The mission of the Native American Advisory Council (NAAC) is to assist CAL FIRE in establishing a cooperative and meaningful relationship with California tribes. A positive relationship will facilitate CAL FIRE's work toward achieving its goals and objectives while protecting places of significance to California tribes and actively involving tribes in all aspects of the Department's responsibilities that affect California Native Americans. For more information on the council contact Chris Browder at (916) 263-3370 or chris.browder@fire.ca.gov.
http://calfire.ca.gov/resource_mgt/archaeology-advisory_council

Exhibit A

Native American Tribal Communities Relations Policy; communicating with Tribes having ancestral lands related to the PG&E parcels which CAL FIRE hopes to acquire; and considering how to integrate Native American advisement into Executive Decisions. CAL FIRE continues to update the Stewardship Council on the progress from the Plan and to engage the Native American Advisory Council. They have several meetings per year and the agendas and minutes of those meetings are listed on their website.

California Department of State Parks

In 2007, State Parks adopted a Consultation Policy and program to ensure on-going, meaningful and timely consideration of the views of California Indian tribes in the protection and preservation of the California Indian heritage resources that are held in trust by the Department. On December 2, 2010, the Board recommended State Parks as the fee title donee for lands in the Lake Britton planning unit adjacent to McArthur Burney State Park. State Parks officials at the McArthur Burney State Park have been meeting with the Pit River Tribe on a regular basis on consultation and are drafting a Memorandum of Understanding (“MOU”) with the tribe. The Stewardship Council has been encouraging the continuation of those meetings, which occur every six months, and the development of the MOU.

University of California

The Board has recommended several donations to UC Center for Forestry, including 1,459 acres at Grouse Ridge in the Lake Spaulding planning unit, and 3,100 acres of property in the Pit River planning unit. UC has identified four key activities meant to create a positive environment for discussion, protection, and enhancement of cultural resources. They include: continue to engage with Native Americans with ties to the lands through field visits to identify potential collaborations; protect physical cultural resources as required when UC takes responsibility for new lands, as required by law; develop a plan to protect and enhance botanical cultural resources; and create a ‘living laboratory’ to test out ‘traditional (and other innovative) ecological knowledge’ practices.

Engagement activities include: UC College of Agricultural and Natural Resources hosted a two-day intensive training in March 2017 on approaches to increase collaboration between UC and Native American groups; and in 2014, the University of California and CAL FIRE, potential donees for parcels in the Pit River and Tunnel Reservoir planning units, toured some of the land with PG&E staff, Stewardship Council staff, and Darlene Machon, the Madesi Band cultural representative for the Pit River Tribe.

McArthur Swamp Planning Unit

On May 19, 2010, when the Board made its recommendation that the Fall River Resource Conservation District (“RCD”) receive fee title to lands at the McArthur Swamp planning unit, it recommended that the California Waterfowl Association, California State Parks, and the Pit River Tribe be Conservation Partners to actively participate in future efforts to preserve and enhance the beneficial public values on the lands to be conveyed.

Exhibit A

A three-member management team comprised of the RCD, the Pit River Tribe, and a Technical Advisory Committee will make future land management decisions. To ensure that the RCD and the Pit River Tribe had a solid understanding of how they would work together, the Stewardship Council funded the costs of a facilitator to assist the RCD and the Pit River Tribe to reach agreement on the provisions of a management charter.

Now that the RCD has received fee title to the property, the new management team will develop a land management plan. The management team now meets regularly on implementation of the land management plan and the Stewardship Council staff provides consultation as needed to the team. In January 2018, the Stewardship Council board approved \$40,000 of funding to the RCD to conduct cultural resource surveys. A cultural resource survey will be conducted as part of the development of the land management plan.

Manzanita Lake Planning Unit

On June 25, 2014, the Board recommended Madera County as the fee donee for the Manzanita Lake property. On May 2, 2018, the final LCCP was approved by the Board. During the time between the fee donation recommendation and the Board's LCCP approval, Stewardship Council staff encouraged the collaboration between the North Fork Rancheria of Mono Indians of California and Madera County. Since that time, they have collaborated on goals of land management for the property as well as the development of an enhancement proposal for the property. Madera County is preparing an MOU to be signed with the North Fork Rancheria of Mono Indians of California to partner in implementing the proposed enhancement project, protecting cultural resources, and pursuing ongoing maintenance and restoration for the lands the County will own at the Manzanita Lake planning unit.

Youth Investment Program Grants and Activities Benefitting Tribal Youth

With a portion of the \$30 million that the Stewardship Council was provided to implement a youth investment program to connect underserved youth to the outdoors, the Stewardship Council followed by Youth Outside (formerly the Foundation for Youth Investment), awarded multiple grants to Native American entities to support their efforts to connect tribal youth to the outdoors and involve them in conservation projects. See [Exhibit B](#) for the list of grant awards.

Furthermore, the Foundation for Youth Investment⁵ hosted two workshops for Native American entities where Native Americans shared their best practices to engage Native youth in outdoor programs. The Foundation for Youth Investment and the UC Davis Native American Studies Department sponsored the first of these two workshops in April 2010. In 2011, the Foundation for Youth Investment partnered with the Native American Health Center INC. Youth Services

⁵ The Foundation for Youth Investment was created by the Stewardship Council in 2010 as a way to sustain our Youth Investment Program beyond the life of the Stewardship Council.

Exhibit A

Program, the Stewardship Council, and Sierra Health Foundation to help support a gathering for Native American youth providers in Sacramento.



From left:
Yellow fields of Tásmam Kojóm.
Deer Creek, Tehama County.
Need to restore Tásmam Kojóm.

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Summer 2018 www.newsfromnativecalifornia.com

All photos courtesy of Ken
Holbrook.

THE MAIDU SUMMIT CONSORTIUM

UNITED VOICES FOR THE MOUNTAIN MAIDU HOMELAND

By Beth Rose Middleton Manning, Ben Cunningham, Lorena Gorbet, Les Hall, Marvena Harris, Kenneth Holbrook, Melany Johnson, Allen Lowry, Danny Manning, Beverly Ogle, and Ricky Prows

THE MAIDU SUMMIT Consortium is a unique 501(c)3 Native California nonprofit organization governed by the elected representatives of nine Mountain Maidu entities, including two federally recognized tribes (Greenville and Susanville Rancherias), two petitioning tribes (Tsi' Akim Maidu and United Maidu Nation), three nonprofit organizations (Roundhouse Council, Inc., Maidu Cultural and Development Group, and Tásmam Kojóm Foundation), and two community organizations (Big Meadows/Nakam Koyom Maidu Historical Preservation and Mountain Maidu Historical Preservation Association). In 2018, the Maidu Summit will receive fee title to 3,009 acres of Pacific Gas and Electric Company land in the North Fork Feather River watershed. This will become the largest recognized Maidu land base since European contact.

Led by a core group including Farrell Cunningham *yatam*, Marvena Harris, Allen Lowry, and Tommy Merino *yatam*, the Maidu Summit was formed around 2003, amidst post-9/11 efforts to ramp up homeland security, with a focus on protecting the Mountain Maidu homeland. Prior to the formation of the Summit, each of the member groups, as well as individual families, had been working diligently throughout the Maidu homeland on land and water rights and cultural protection. "Then when we joined the Summit, it continued on from there as more of a united voice,"

remembered Summit board member Melany Johnson. Maidu Summit board treasurer Lorena Gorbet agreed: "That was the one thing we—recognized tribes, unrecognized tribes, and organizations—could all agree on, was the protection of sites." The Summit's first effort was to stop destructive recreational use of a sacred lake in the Plumas National Forest where Maidu doctors were traditionally trained. At that time, eleven groups signed a resolution requesting that the Forest Service close the road, remove recreational infrastructure, and stop planting non-native fish in the lake. The Forest Service responded positively, and the Summit continued with other resolutions to protect Chu-ChuYamBa (Soda Rock) and oppose the proposed thermal curtain at Lake Almanor. In 2004, representatives of the Summit's member groups began attending Stewardship Council meetings to advocate for the return of PG&E lands.

The PG&E land divestiture issued from a 2003 Settlement Agreement between PG&E and the California Public Utilities Commission (CPUC). The agreement required PG&E to place conservation easements on 140,000 acres of watershed lands not essential to power production, and to donate 44,000 of those acres for conservation and public benefit.

There are 53,185 acres of PG&E land going through this process in the Upper Feather River Planning Unit, which includes portions of Plumas, Lassen, Butte, and Tehama

Counties, all within the Maidu homeland (Mountain Maidu in the upper portions and Konkow Maidu in the lower North Fork Feather River canyon). Many of the mountain valleys that are now PG&E reservoirs (including Mountain Meadows, Lake Almanor, Butt Valley, and Bucks Lake) were full of culturally important features, including gathering areas, villages, and spiritual sites. Following the non-ratification of treaties and legalized violence toward Indigenous people in California, the lands were seized by force in the late nineteenth and early twentieth centuries, and non-Indian individuals and companies built the reservoirs to provide water and power to downstream users. No lands were ever provided in lieu of those taken. While these Maidu histories were not discussed in the PG&E/CPUC settlement, Maidu people voiced them at public meetings of the Pacific Forest and Watershed Lands Stewardship Council, the nonprofit foundation that administers the settlement lands.

The Summit submitted an initial land management plan to the Council in 2007, outlining how they would manage former PG&E lands around Lake Almanor, Mountain Meadows, Butt Valley, Humbug Valley, and in the Feather River Canyon. In 2010, they formally incorporated as a nonprofit organization to make it easier for them to receive title to the lands. In 2013, the Council agreed to transfer the largest parcel—Humbug Valley (Tásmam Kojóm)—to the Summit. In 2017, the Summit completed a detailed land management plan for Tásmam Kojóm with the support of consultants funded by a capacity building grant from the Council.

From its inception in 2003 to its present status in 2018, the Summit has grown steadily in staff, budget, and programs. Board members are proud of the pending land transfer, the Summit board's ability to sustain the organization through challenges, and the group's ability to form partnerships with outside agencies and groups. According to Maidu Summit board member Les Hall, "the collaboration of multiple Maidu/Native American organizations for the benefit of land re-acquisition is no small accomplishment." Similarly, board vice-chair Beverly Ogle reflected on the importance of having Maidu land for ceremony and stewardship: "We would have to pay people to go out and have a ceremony...or to have a place to have programs and meetings...these different entities [Forest Service, Fish & Game, etc.] were telling us you can't do this, you can't pick those plants, and now they have opened up to us as we have to them, it's a good thing."

Summit board members also see the land acquisition as just part of larger goals of land stewardship, continued intra-community collaboration, and building Mountain Maidu cultural infrastructure. The largest parcel, Tásmam Kojóm, will become Tásmam Kojóm Maidu Cultural Park. According to Summit board chair Ben Cunningham, obtaining the land is just the first step in a much longer process: "We are trying to get all of this [land transaction paperwork, legal

steps] behind us, so that we can get something done." Board members including Ogle and Gorbet outlined a full slate of goals for the Summit on the parcels that will be transferred to them at Lake Almanor and in Humbug Valley, including the development of a cultural center, nature trails, a living village, educational facilities, forest health projects, designated ceremonial and plant gathering areas, and a curation facility to bring home basketry, archives, and other cultural items held by distant institutions.

According to the 2017 Maidu Summit Annual Report by the Summit's director, Ken Holbrook, by the end of 2018 the Summit will no longer be dependent on a single funder, but will have multiple grants from federal, state, and private sources. The Summit and member tribes and organizations are leading restoration projects, providing Maidu education in classrooms and on field tours, providing consulting services on land stewardship, and developing a land stewardship crew. For Chairman Cunningham, the goals of the group for the future are clear:

"To continue working together...it's good to see us all on the same page, all pulling together."

Summit member Ricky Prows agreed: "People are seeing we are not going to go away, many organizations have come and gone, [but] we are different, we are a group of tribes and organizations, not just one family group...it's cool to see that and to show people we are still here, we still love this land." Indeed, the land is coming back into the stewardship of Maidu who never agreed to give it up and never stopped caring for it. As Summit member Danny Manning reflected, this land that will be held by the Summit is "a place to grow our basket materials, our medicines and foods, to bring our children and teach the ways of our ancestors in a place with so much of our history embedded in the landscape.... Our elders tell us stories about our ancestors in legends that are connected to the land. We have always been here, and we will always be here."

Those interested in learning more about the Maidu Summit and supporting the organization can visit www.maidusummit.org, call the office in Chester at (530) 258-2299, and attend the annual Friends of Humbug gathering in Humbug Valley (Tásmam Kojóm) on July 21, 2018.

For maps and additional information about each planning unit, see the Pacific Forest and Watershed Lands Stewardship Council website, www.stewardshipcouncil.org/land_conservation/planning_units/index.htm.

**Attachment 2
(to Exhibit A)**

Foundation for Youth Investment/Youth Outside Native American Grantees		
YEAR	GRANTEE	PURPOSE
2008 Grantee	Karuk Tribe	Eco-Cultural Youth Camps and Scientific Academic Advancement Program
2010 Grantee	Native American Health Center Youth Services	Chae-Mal Wilderness Program
2010 Grantee	Native Alliance of the Sierra Nevada Foothills	Youth Conservation Internship Program
2011 Grantee	Native American Health Center Youth Services	Chae-Mal Wilderness Program
2011 Grantee	Native Alliance of the Sierra Nevada Foothills	Native Youth Conservation Project
2012 Grantee	Native American Health Center Youth Services	Chae-Mal Wilderness Program
2012 Grantee	Native Alliance of the Sierra Nevada Foothills	Native Youth Conservation Project
2013 Grantee	Native Alliance of the Sierra Nevada Foothills	Native Youth Conservation Project
2014 Grantee	Native Alliance of the Sierra Nevada Foothills DBA Sierra Native Alliance	Native Youth Conservation Project - Native youth engage in a year-long environmental internship, which focuses on social, cultural, economic and outdoor engagement

**Attachment 2
(to Exhibit A)**

2015 Grantee	Native Alliance of the Sierra Nevada Foothills DBA Sierra Native Alliance	Grant Program - Program empowers Native youth and families in the Sierra Nevada Foothills through education, cultural resources and environmental activities
2015 Grantee	Sunrise Special Services	Pomo Youth Projects - Native youth participants have opportunity to document native plants and wildlife using video camera and supporting technology and software
2016 Grantee	Native Alliance of the Sierra Nevada Foothills DBA Sierra Native Alliance	Grant Program - Program empowers Native youth and families in the Sierra Nevada Foothills through education, cultural resources and environmental activities
2017 Grantee	Sierra Native Alliance	Grant Program - Program empowers Native youth and families in the Sierra Nevada Foothills through education, cultural resources and environmental activities
2017 Grantee	Sunrise Special Services	Grant Program - Programs that promote outdoor education including cultural components of protecting & restoring Lake County watersheds

**Attachment 2
(to Exhibit A)**

2018/2019	Amah Mutsun Land Trust	Support Native American youth ages 12 - 17 to participate in summer camp programming focused on Traditional Ecological Knowledge (TEK) and conservation along the California Coast
2018/2019	CA Indian Museum and Cultural Center	Empower youth to reclaim California Indian environmental stewardship of oak woodlands through culturally relevant caretaking
2018/2019	Movimiento	Develop leadership and life skills via outdoor adventure, counseling and therapy, cultural exchange, service-learning, farming, and indigenous youth events
2018/2019	Warrior Institute	Provide holistic, innovative solutions to organize and build indigenous leadership in the northern California region by forging new generations of young leaders with balanced minds, bodies, and spirits



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August 29, 2019

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California Public Utilities Commission
Public Advisor's Office
505 Van Ness Ave.
San Francisco, CA 94102

Re: Comment on Proposed Tribal Land Transfer Policy

To Whom it May Concern:

Thank you for the opportunity to submit comments on the California Public Utilities Commission's Proposed Tribal Land Transfer Policy. The Habematolel Pomo of Upper Lake ("Tribe") applauds the efforts of Commissioner Guzman Aceves, Commissioner Shiroma and the Commission's Emerging Trends Committee to advance the interests of Native American Tribes in California by respecting tribal sovereignty and protecting tribal sacred sites and cultural resources. The Tribe has reviewed the draft Policy and desires to submit the following comments.

Overall, the Tribe is encouraged by the idea of returning tribal land back to its rightful owner and wholeheartedly supports such a concept. However, the policy, as written, is simply too basic, leaves too many vital questions unanswered, and does not provide meaningful notice to tribes. Specifically, the Tribe has the following comments and recommendations regarding the draft Policy:

1. Type, Character and Status of Property. The draft Policy requires IOUs to notify California tribe(s), through the Native American Heritage Commission, at the time the IOU determines it will dispose of surplus properties or retained land located in or adjacent to a tribe's aboriginal territory. While the Tribe supports this idea and is certainly interested in the return of its ancestral lands, the Policy is unclear regarding the type, character, and status of the property proposed to be transferred. Specifically, the policy does not answer the following questions: What is the type of property that will be transferred? Does the property have conservation easements or covenants tied to the land? Is there hazardous waste on the property and if so, who is responsible for the clean-up? Is the land transferred "as is?" Is there old utility equipment on the property that the Tribe would then be responsible for? What type of public access is on each parcel of property? What environmental reviews are completed prior to the transfer?

Recommendation: If guidelines, regulations, or state law currently exist regarding transfer of property by IOU's, the Tribe recommends referencing those provisions in the policy, so Tribe's may be more educated regarding the transfer requirements prior to discussions of possible transfers with IOU's. Additionally, the Tribe recommends the addition of language requiring the IOU to provide disclosures regarding the type, character and status of the property at its initial discussion with any interested tribes, so that the tribes receive all the information up front before lengthy discussions progress.

2. Format of Land Transfer. The Policy is silent as to the format of the Land Transfer and thus it is unknown if the land transfer is done by donation to the tribe or if the land would be sold to the tribe.

Additionally, if there are multiple tribes interested in the transfer of a particular piece of land, especially one with cultural significance (since many tribes have overlapping aboriginal territories), how would the IOU's pick which tribe to transfer it to? Would it be transferred to the highest bidder or best proposal? Could tribes join together to purchase or have the land donated to them or would they be required to some sort of consortium that it is then donated to? Furthermore, for the transfer to be processed, are Land Conservation and Conveyance Plans prepared? If so, who is responsible for the development and cost of those plans?

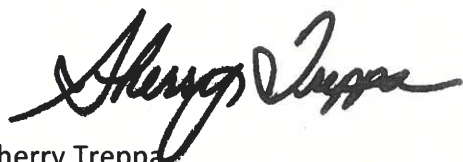
Recommendation: The Tribe recommends that the draft Land Transfer Policy be revised to include more detail regarding the format of the land transfer, including: whether the transfer is a donation or sale, how the IOU's would select which tribe to transfer the land to if multiple tribes are interested, any requirements regarding transfer to joint parties, and who is responsible for the preparation of any transfer documents.

3. Notice Provided by IOUs. Tribes across California are familiar with notice letters sent in accordance with AB 52. However, it is the Tribe's opinion that typical notice under AB 52 is insufficient in this context. Most tribe's in California receive upwards of 50+ letters each week regarding activities under AB 52. Those letters are often received and processed by the MLD, and in small tribes with limited resources, by a staff member who is already overburdened. Notice of land transfers described in the draft Policy should be highlighted in a different manner to show that they are different than traditional AB 52 notice letters and delivered directly to the Tribal Chairperson who would be best designated to handle such discussions.

Recommendation: The Tribe recommends implementing additional notice provisions beyond those outlined in AB 52. These additional requirements could be as simple as requiring notice be printed on a specific bright colored paper or that personal phone calls must be made to the Chairperson of the eligible tribes. Additionally, the Tribe recommends that IOU's be required to provide more notice than a simple letter, preferably at least three (3) attempts if they have not heard from the tribe regarding their participation, and that all communication be addressed directly to the Chairperson.

Thank you again for the opportunity to comment on the CPUC's Proposed Land Transfer Policy. If you have any questions, please contact Tracey Treppa, Vice-Chairperson of the Executive Council and designated Tribal Historic Preservation Officer (THPO) for the Tribe, at ttreppa@hpultribe-nsn.gov/707-363-0248. We look forward to continuing the dialogue regarding this draft policy.

Sincerely,



Sherry Treppa
Chairperson
Habematolel Pomo of Upper Lake
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September 29, 2019

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Recommendation: If guidelines, regulations, or state law currently exist regarding transfer of property by IOU's, the Tribe recommends referencing those provisions in the policy, so Tribe's may be more educated regarding the transfer requirements prior to discussions of possible transfers with IOU's. Additionally, the Tribe recommends the addition of language requiring the IOU to provide disclosures regarding the type, character and status of the property at its initial discussion with any interested tribes, so that the tribes receive all the information up front before lengthy discussions progress.

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Additionally, if there are multiple tribes interested in the transfer of a particular piece of land, especially one with cultural significance (since many tribes have overlapping aboriginal territories), how would the IOU's pick which tribe to transfer it to? Would it be transferred to the highest bidder or best proposal? Could tribes join together to purchase or have the land donated to them or would they be required to some sort of consortium that it is then donated to? Furthermore, for the transfer to be processed, are Land Conservation and Conveyance Plans prepared? If so, who is responsible for the development and cost of those plans?

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3. Notice Provided by IOUs. Tribes across California are familiar with notice letters sent in accordance with AB 52. However, it is the Tribe's opinion that typical notice under AB 52 is insufficient in this context. Most tribe's in California receive upwards of 50+ letters each week regarding activities under AB 52. Those letters are often received and processed by the MLD, and in small tribes with limited resources, by a staff member who is already overburdened. Notice of land transfers described in the draft Policy should be highlighted in a different manner to show that they are different than traditional AB 52 notice letters and delivered directly to the Tribal Chairperson who would be best designated to handle such discussions.

Recommendation: The Tribe recommends implementing additional notice provisions beyond those outlined in AB 52. These additional requirements could be as simple as requiring notice be printed on a specific bright colored paper or that personal phone calls must be made to the Chairperson of the eligible tribes. Additionally, the Tribe recommends that IOU's be required to provide more notice than a simple letter, preferably at least three (3) attempts if they have not heard from the tribe regarding their participation, and that all communication be addressed directly to the Chairperson.

Thank you again for the opportunity to comment on the CPUC's Proposed Land Transfer Policy. If you have any questions, please contact Tracey Treppa, Vice-Chairperson of the Executive Council and designated Tribal Historic Preservation Officer (THPO) for the Tribe, at ttreppa@hpultribe-nsn.gov/707-363-0248. We look forward to continuing the dialogue regarding this draft policy.

Sincerely,



Sherry Treppa
Chairperson
Habematolel Pomo of Upper Lake
streppa@hpultribe-nsn.gov

Commissioner Guzman Aceves

DRAFT POLICY

California Public Utilities Commission

Investor-Owned Utility Real Property- Land Disposition – First Right of Refusal for Aboriginal Properties to California Native American Tribes

On April 26, 2018, the California Public Utilities Commission (Commission) adopted a Tribal Consultation Policy. Consistent with the goals of the Tribal Consultation Policy and Executive Order B-10-11,¹ this policy provides a first right of refusal by California Native American tribes for: any future disposition² of surplus real property currently owned by investor owned utilities (IOUs), including any future disposition of PG&E retained lands³ pursuant to the Stipulation,⁴ not contained within the boundaries of a Federal Energy Regulatory Commission (FERC) jurisdictional project.

Executive Order B-10-11 declares that “the State is committed to strengthening and sustaining effective government-to-government relationships between the State and the Tribes by identifying areas of mutual concern and working to develop partnerships and consensus.” The Executive Order directs state executive agencies and departments to “encourage communication and consultation with California Indian Tribes.” It further directs state agencies and departments “to permit elected officials and other representatives of tribal governments to provide meaningful input into the development of legislation, regulations, rules, and policies on matters that may affect tribal communities.”

As recognized in the Commission’s Tribal Consultation Policy, California is home to over 170 California Native American tribes.⁵ Executive Order B-10-11 applies to

¹ Adopted September 19, 2011.

² The use of the terms “dispose of” and “disposition” in this Resolution refer to the transfer, sale, donation or disposition by any other means of a fee simple interest or easement in real property.

³ All land currently retained by PG&E that is included in the LCP is referred to here as “retained land.”

⁴ The Land Conservation Plan (LCP) was developed in accordance with the Settlement Agreement, dated December 19, 2003, among PG&E and the Commission and the related Stipulation Resolving Issues Regarding the Land Conservation Commitment (Stipulation). See D.03-12-035, D.08-11-043, D.10-08-004. Any transfers of utility property, including real property, require Commission approval pursuant to Public Utilities Code section 851. All further statutory code references refer to the Public Utilities Code unless otherwise noted.

⁵ “California Native American tribe” means a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004. See Cal. Pub. Res. Code § 21073. California Native American tribes include both federally recognized tribes and tribes that are not recognized by the federal government. Nothing in the policy prevents tribes from consulting with other Native American groups that demonstrate an ongoing connection to a specific place or cultural resource, or issue falling under the jurisdiction of the Commission.

federally-recognized tribes and other California Native Americans. For purposes of this policy, the terms “tribes” and “tribal governments” refer to elected officials and other representatives of federally-recognized tribes and other California Native Americans.

This policy is to be read consistent with the Commission’s Tribal Consultation Policy, which requires that the Commission: provide notification of Commission proceedings to tribes, encourage tribal participation in Commission proceedings, and meaningfully consider tribal interests and the protection of tribal sacred places and cultural resources.

This policy requires IOUs to notify the appropriate California tribe(s) at the time the IOU determines it will dispose of surplus properties or retained land located in or adjacent to a tribe’s territory.⁶ This policy adopts a preference for the transfer of non-FERC jurisdictional surplus property, including retained land, to California tribes consistent with specific considerations, and to the extent that a conflict does not exist with applicable laws or regulations.

The Commission, in adopting this policy, recognizes that:

- The IOUs collectively own a significant amount of undeveloped property located within the aboriginal territories of California tribes. This includes lands both within and without the FERC jurisdictional boundaries. Approximately 140,000 acres of undeveloped watershed property owned by PG&E was identified in the LCP. Some of this land has been transferred to third parties, is in the process of being transferred to third parties or is/will be retained by PG&E consistent with the Stipulation.
- California law and policy encourages consultation and cooperation with tribal governments, particularly concerning the protection of tribal sacred places and cultural resources.⁷
- These surplus properties hold historical and spiritual significance for California tribes: some of these lands include the remains of California Native Americans; others are places of spiritual and cultural importance where California Native Americans have prayed, held ceremonies, and gathered traditional and medicinal plants.

⁶ Tribal territory is defined as the territory designated by the Native American Heritage Commission for notice of projects under AB 52. All notices and consultations required by this policy are to follow the timeframes set out in AB 52 for CEQA consultations.

⁷ Consistent with California law and policy, three of the five Commissioners individually expressed that they would like to see more of the Stewardship Council lands donated to tribes. February 8, 2018 Commission Voting Meeting.

- Executive Orders, state laws, policies, and regulations acknowledge legal rights of access to certain lands and require state consultation with affected California Native American tribes prior to taking actions impacting such lands.

Policy Goals: The goals of this policy are as follows:

- Recognize and respect tribal sovereignty.
- Protect tribal sacred places and cultural resources.
- Ensure meaningful consideration of tribal interests and the return of lands within the tribe's aboriginal territory to the appropriate tribe.
- Encourage and facilitate notice and participation in matters before the Commission that involve land transfers subject to Section 851 through either applications or advice letter processes.

The Commission's review of an IOU's request to dispose of surplus property may affect tribes and tribal members in several ways, including, but not limited to: 1) impacts to land use activities on or near tribal communities; 2) the ability to protect and access tribal sacred places and cultural resources; and, 3) provide opportunities to return lands to California tribes that are within their tribal territories.

Facilitating Tribal Government Access to Information:

The Commission will encourage and facilitate tribal government access to information concerning matters before the Commission that involve land transactions that may be of interest to tribes and that include transfer of surplus properties.

- The Commission will require the IOUs to notify tribal governments of any plans to dispose of surplus properties, including retained lands, within a tribe's territory.
- The Commission will give special consideration to tribal government requests to participate in Commission proceedings involving requests by IOUs in accordance with section 851 to dispose of surplus properties, including retained lands. The Commission will grant a tribal government's request to become a party in such proceedings and consider the tribe's comments or protest of IOU's request for Commission approval of the transaction.⁸ If an IOU fails to provide notice to the appropriate tribe(s) before submitting an application or advice letter requesting

⁸ This will include requests made through application or advice letter.

Commission approval of the transaction, the Commission will provide the tribe additional time to participate in the proceeding.

- Commission staff and Administrative Law Judges shall ensure that relevant information the Commission receives from a tribe is submitted into the record of a proceeding (including presenting such information to Commissioners where the land transfer is the subject of an advice letter), consistent with the confidentiality provisions set forth in the Commission's Tribal Consultation Policy.
- Where an IOU seeks approval to transfer non-FERC jurisdictional surplus property, including retained land, within a tribe's territory, the tribe shall be deemed the preferred transferee absent a finding supported by substantial evidence that it would be in the public interest to transfer the land to another entity.
- This policy applies to all proposed transfers of non-FERC jurisdictional surplus properties, including retained lands.

If an IOU submits an application or advice letter consistent with section 851 and relevant Commission decisions for the disposition of surplus property, including retained lands, the application or advice letter must include a showing of notice and consultation to the appropriate tribe(s) consistent with the identified tribal territory recognized by the Native American Heritage Commission.⁹ This includes:

- A request to the Native American Heritage Commission to identify tribal entities interested in the area where the property being disposed of is located.
- Written notice of any proposed disposition of surplus properties, including retained lands in the Tribe's territory prior to any disposition of such land.
- Documentation of communication between the IOU and the Tribe regarding whether or not the Tribe is interested in acquiring the surplus property at issue.

The Commission will grant the tribe a first right of refusal for any IOU requests to transfer non-FERC jurisdictional surplus property, including retained lands. There will be a rebuttable presumption that it is in the public interest to provide tribal entities the first opportunity to acquire such property.

For land transfers pursuant to section 851 for surplus property, including retained lands, located within a FERC jurisdictional project, the Commission will consider any request by a tribal entity, as well as comments regarding potential impacts on tribal cultural

⁹ The timeframes for notice and response set out in AB 52 will apply for purposes of this policy.

resources and suggested mitigation measures that should be included in any authorization of the Commission for the disposition of such assets as part of the proceeding.

Tribal Liaison:

Consistent with the Commission's Tribal Consultation Policy, the Commission's tribal liaison will assist in implementing this policy. The tribal liaison will act as a point of contact for tribes to seek advice on participating in proceedings and inquiries regarding pending section 851 applications/advice letters; filing documents; contacting Commissioners, advisors, or staff; and other related matters. The Tribal Liaison, Stephanie Green, can be contacted at Stephanie.Green@cpuc.ca.gov or (415) 703-5245 Alternatively, tribal governments may contact the Commission's Public Advisor for this assistance (E-mail: Public.Advisor@cpuc.ca.gov or phone: (866) 849-8390).

DRAFT



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September 30, 2019

Martha Guzman Aceves, Commissioner
Genevieve Shiroma, Commissioner
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Subject: PG&E Comments on Proposed Tribal Land Transfer Policy

Dear Commissioners Guzman Aceves and Shiroma:

Pacific Gas and Electric Company (PG&E) appreciates the opportunity to comment on the Draft Tribal Land Transfer Policy¹ (Draft Policy) and looks forward to working with the California Public Utilities Commission (CPUC or Commission), California's Native American Tribes (Tribes) and stakeholders to finalize the Tribal Land Transfer Policy.

I. INTRODUCTION

PG&E supports the Commission's objective to provide enhanced opportunities for Tribes to acquire lands within their aboriginal territories. PG&E's discussion and proposed modifications to the Draft Policy are provided in the spirit of maximizing both the opportunity for and efficacy of future transfers of utility lands to Tribes.

Additionally, it is unclear if the Draft Policy intends to include or exclude dispositions arising from PG&E's Land Conservation Commitment (LCC).² Either way PG&E strongly recommends that the Draft Policy be revised to clearly exclude LCC transactions. PG&E also acknowledges and supports the comments regarding this proposed policy provided to the Commission by the Stewardship Council on August 23, 2019.

¹ Commissioner Martha Guzman Aceves and Genevieve Shiroma. Draft Policy: Investor-Owned Utility Real Property-Land Disposition-First Right of Refusal for Aboriginal Properties to California Native American Tribes. Retrieved from: https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/News_Room/NewsUpdates/2019/Proposed%20Land%20Transfer%20Policy.pdf

² The Land Conservation Commitment (LCC) was established and implemented in accordance with Commission Decisions 03-12-035 and 08-11-043.

In Section II, PG&E provides feedback on key topics in the Draft Policy, along with a discussion that supports the proposed modifications to the Draft Policy. While PG&E supports the overall objectives of the Draft Policy, numerous areas need to be refined and clarified to ensure effective implementation. PG&E encloses suggested revisions to effectuate these changes.

Additionally, given the gravity and complexity of the issues, PG&E strongly recommends that the Commission hold public workshops that allow for meaningful dialogue to develop mutual understanding and agreement among stakeholders around how best to define and accomplish the Commission's goals expressed in the Draft Policy.

In summary, PG&E recommends:

Providing the Tribes with a Right of First Offer in place of a Right of First Refusal.

Limiting the dispositions subject to the Policy to conveyances of fee simple interest in IOU Real Property that is known to contain or is likely to contain culturally significant resources.

- Limiting the dispositions subject to the Policy to those that are subject to approval by the Commission in accordance with Section 851.
- Clarifying references to FERC jurisdiction in the Draft Policy.
- Identifying the timing of notification to Tribes be at the time the IOU initiates the Real Property disposition process.
- Removing the requirement to notify Tribes for disposition of Real Property located adjacent to a Tribe's aboriginal territory.
- Including in the Draft Policy a process to resolve conflict if more than one Tribe is interested to acquire fee interest in IOU Real Property.
- Defining "specific considerations" in the context of the Commission's preference for transfer of IOU Real Property to Tribes.
- Including language that the Draft Policy that ensures implementation will not conflict with the requirements of PG&E's Land Conservation Commitment.
- Clearly defining the requirements for IOUs to consult with Tribes, as well as the specific evidentiary requirements for IOUs seeking to transfer Real Property through a Section 851 filing.
- Including clarifying language regarding the role of the Commission in authorizing IOUs to transfer Real Property.
- Clarifying that the Commission's consideration of impacts to tribal cultural resources should be in accordance with its obligations under the California Environmental Quality Act (CEQA) and FERC jurisdiction under the Federal Power Act.

II. DISCUSSION

A. Policy Scope and Contractual Rights

The Draft Policy articulates the intent for Tribes to be afforded a first right of refusal for any future disposition of Real Property owned by an IOU. The Policy defines disposition of property as being “the transfer, sale, donation or disposition by any other means of a fee simple interest or easement in surplus real property” and further describes surplus real property to include PG&E retained lands subject to its LCC.

1) **PG&E recommends that the Draft Policy be revised to provide the Tribes with a Right of First Offer in place of a First Right of Refusal.**

The Draft Policy provides for Tribes to be offered a “first right of refusal,” which customarily means the right to match an offer negotiated by the seller with another buyer. A “right of first offer” and a “right of first negotiation” are typically rights giving a potentially interested party the opportunity to offer to purchase a specific property before the seller markets and/or negotiates any other offers for purchase. The terms of each right of first offer/negotiation can vary but generally include specific rules around how long the contingency can last, the process to exercise the right, requirements around how the sales price is determined, and any exceptions based on property-specific circumstances. Lack of clarity around this term can create significant challenges both to how the property interest is marketed, the willingness of buyers to engage, and for the establishment of disposition terms. PG&E believes the right of first offer is the most appropriate implementation approach for this Policy, since many buyers would not be interested in investing in significant negotiations on a transaction that is subject to a right of first refusal. Moreover, the structure of any agreements with a Tribe are likely to be fundamentally different than agreements with non-tribal entities, creating the inability for a Tribe to accept the specific terms of a sale to another party.

2) **PG&E recommends that the “dispositions” subject to the Policy be limited to conveyances of fee simple interest in IOU Real Property and not include easements.**

PG&E recommends that the dispositions subject to the Policy be limited to conveyances of fee simple interest in IOU Real Property and not apply to all easements. Property owners grant easements for myriad reasons. These easements and similar rights are granted to governmental entities, other utilities, non-governmental organizations, and private parties for such things as public roads and other public infrastructure, private property access, parking, construction laydown, encroachments and/or boundary line agreements, gas and electric utility uses, grazing/agriculture, public recreation, environmental protection, etc. These types of grants are generally specific and limited uses that neither lend themselves to the advancement of the proposed Policy nor are they typically on lands unnecessary to fulfill other utility purposes. Conservation easements are negative easements restricting the property owner’s right to engage in certain activities on the encumbered property. The incorporation of “easement” interests in IOU Real Property subject to the right of first offer significantly expands the requirements for IOUs and does not achieve the primary objective

of returning lands to Tribes. It would unduly burden the Tribes with requests relating to rights that bear no relationship to the Tribes' interests.

3) PG&E recommends that the policy be limited to dispositions subject to approval by the Commission in accordance with Section 851.

The Draft Policy identifies lands subject to the Policy as those that are Real Property currently owned by IOUs. For clarity and consistency with relevant regulatory requirements, PG&E believes the Draft Policy should limit the applicability of the Policy to that IOU Real Property whose disposition is subject to approval by the Commission in accordance with Section 851, and where the lands are known to contain or are likely to contain culturally significant resources.

4) PG&E recommends clarifications to references to FERC jurisdiction in the Draft Policy.

The Draft Policy rightly excludes land “contained within the boundaries of a [FERC] jurisdictional project.” In addition, the Draft Policy should be revised to reflect that additional land—beyond that included in the FERC Boundary—would be essential for project operations and thus not available for transfer, as explained below.

FERC licenses typically include all dams, reservoirs, other engineered structures, as well as property rights in lands and waters as necessary for construction, operation, and maintenance of a project. The license establishes a project boundary which includes all such structures, lands, and waters. However, the selection of which lands and waters to include is somewhat discretionary, as a function of FERC’s determination of which are necessary for mitigation of project impacts. In many circumstances, project works such as natural water courses, lands that serve as buffers between hydroelectric projects and other uses, or lands that provide access to public recreation, are not included within FERC project boundaries.

In the case of the LCC, of the approximately 85,000 total acres of PG&E watershed land located outside of FERC project boundaries, PG&E made about 60,000 acres available for donation as it determined approximately 25,000 acres of land outside of FERC project boundaries were necessary for utility operations. Of the 60,000 acres made available for donation, approximately 40,000 acres are expected be transferred to others through the LCC process. It is also important to note that lands donated through the LCC process are not only encumbered by a Conservation Easement but also a reservation of various rights for ongoing utility needs.

B. Notification Requirements and Laws, Rules and Regulations Governing Operations

The Draft Policy establishes tribal notification requirements for IOUs related to the disposition of Real Property along with the preference for the transfer of IOU Real Property to Tribes consistent with specific considerations, and to the extent that a conflict does not exist with applicable laws or regulations.

PG&E believes that clarification of the process that IOUs must follow on the disposition of Real Property will improve the opportunity for the transfer of lands to Tribes. Specifically:

1) PG&E recommends that the Policy clearly identify that the timing of notification to Tribes be at the time the IOU initiates the disposition process.

To avoid or minimize lapses of time between notification and actual engagement with a Tribe on the potential disposition of IOU Real Property, the timing of notification to a Tribe should be at the time it initiates the actual disposition process (i.e., initiates marketing of the property for sale) rather than when it determines it will dispose of the property.

2) PG&E recommends that the Commission include in the Policy a process to resolve conflict if more than one Tribe is interested to acquire fee interest in Real Property.

The identification of both the Tribe with whom IOUs must consult and the definition of tribal territory within which a Real Property is located or adjacent are not always clear or undisputed. Moreover, requiring notification for the disposition of IOU Real Property adjacent to a Tribe's aboriginal territory inherently creates the likelihood that more than one Tribe would have to be notified of a proposed disposition. It is PG&E's understanding that NAHC (Native American Heritage Commission) will not attempt to resolve claims or disputes resources among and between Tribes regarding connection to specific places or cultural resources. Should the NAHC identify more than one affected or interested Tribe or determine that the Real Property proposed for disposition is located within more than one or within a disputed tribal territory, the IOUs must be provided a process to resolve such conflict or allowed the discretion to determine the best course of action based on the specific circumstances.

3) PG&E recommends that the Commission define "specific considerations" in the context of the Commission's preference for transfer of Real Property to Tribes.

PG&E is uncertain regarding what is meant by the term "consistent with specific considerations" and believes that the definition of such is essential to enable meaningful evaluation of this Draft Policy.

4) PG&E recommends that the Policy clearly define how it will not conflict with applicable laws and regulation, including PG&E's LCC and other contractual obligations.

PG&E supports the requirement that any transfer to Tribes must not conflict with applicable laws or regulations. It also believes that such requirement be expanded to include that any transfers to Tribes must not conflict with the requirements of the LCC implemented in accordance with Commission Decisions 03-12-035 and 08-11-043.

The Draft Policy includes a description of the Commission's goal to respect tribal sovereignty. PG&E believes that the goal to recognize and respect tribal sovereignty should be clarified to account for the need to ensure the preservation of tribal sovereignty is considered on balance with the need to ensure enforceability of agreements between the

IOU and Tribe, to honor existing agreements on IOU Real Property transferred to the Tribe (such as existing easements to others), and to protect against unintended adverse impacts to IOU operations (such as a transfer that results in a Tribe's ability to obtain mandatory conditioning authority in accordance with Section 4(e) of the Federal Power Act). A right of first offer/negotiation with a Tribe should not result in material increases to IOU transactional costs, material changes to the market value/sales price of the IOU Real Property or create an inability for the IOU to enforce agreements related to the disposition. Accordingly, execution of a limited waiver of its sovereign immunity may be necessary to effectuate a transfer of IOU Real Property and would be intended to maintain parity among the Tribes and other potential transferees.

C. Requirements of Section 851

1) PG&E recommends that the Policy clearly define the requirements of IOUs to consult with Tribes and provide evidence of such in Section 851 filings.

PG&E believes it is important to be clear and specific about the actual IOU consultation requirements with a Tribe. The footnote reference to the requirement that all notices and consultations required by this Policy are to follow the timeframes set out in AB 52 for CEQA consultations should be set forth in greater detail within the Policy language to ensure absolute clarity of the requirements.

The Draft Policy articulates the requirements for the IOU to make a showing regarding its compliance to engage with Tribes in its Section 851 filings related to the disposition of Real Property subject to this Policy. PG&E believes the provisions of this section should be modified to provide clear description of the requirements that will be implemented for IOUs seeking to transfer Real Property through a Section 851 filing.

2) PG&E recommends clarifying language regarding the role of the Commission in authorizing IOUs to transfer Real Property.

The Draft Policy states the Commission's intent to ensure IOUs provide Tribes with a right of first refusal related to the disposition of Real Property. PG&E supports the Commission's objective to provide opportunities for Tribes to acquire lands within their aboriginal territories and that the Tribe will be deemed the preferred transferee with certain exceptions. However, the language proposed in the Draft Policy implies that the Commission itself will provide a Tribe with a right of first refusal to acquire IOU Real Property. Although the Commission has the authority to deny authorizations sought by the IOU to transfer Real Property if the IOU does not fulfill the requirements for such authorizations, it does not have the legal authority to convey the legal interest in properties already owned by the IOUs. As discussed previously, PG&E believes the right of first offer and not a right of first refusal is the most appropriate implementation approach for the Draft Policy

3) PG&E recommends that the Commission's consideration of impacts to tribal cultural resources should be in accordance with the California Environmental Quality Act (CEQA) and FERC jurisdiction under the Federal Power Act.

The Draft Policy states the Commission's intent to consider and mitigate impacts that a disposition of IOU Real Property may have on tribal cultural resources. PG&E understands the Commission's objective to ensure any action it takes regarding the disposition of Real Property appropriately considers input from Tribes regarding how such action could adversely impact tribal cultural resources and, where appropriate, that such action by the Commission include requirements to mitigate adverse impacts to tribal cultural resources. However, it is also important for the Commission to consider any proposed mitigation measures in the context of the legal and regulatory framework governing such requirements. The Commission is obligated to ensure that its actions comply with the requirements of the California Environmental Quality Act (CEQA). Any Commission evaluation of impacts (including any resulting mitigation measures) associated with the disposition of Real Property should be conducted in accordance with the requirements of CEQA.

The Commission's statement that it will consider imposing mitigation measures on lands within FERC project boundaries must recognize the potential risk of conflict and/or inconsistency with the requirements of a specific FERC project license governing the IOUs activities on the project lands and/or jurisdictional authorities established in the Federal Power Act. The proposed Policy language effectively adds conditions to the FERC license to mitigate actions that have already been addressed by FERC. FERC will have considered cultural resources within the licensing process and will have included its own version of mitigation (e.g., Historic Properties Management Plan, etc.). Additional conditions from the CPUC may be preempted by FERC.

III. CONCLUSION

PG&E and looks forward to working with the CPUC, Tribes and stakeholders to finalize the Tribal Land Transfer Policy. PG&E would be happy to discuss these comments if needed.

Sincerely,



Erik B. Jacobson
Director, Regulatory Relations

cc: Jonathan Koltz, Legal Advisor to Commissioner Martha Guzman Aceves
Leuwam Tesfai, Chief of Staff, Commissioner Genevieve Shiroma
Stephanie Green, Tribal Liaison
Allison Brown, Public Advisor (at Public.Advisor@cpuc.ca.gov)
Deidre Cyprian, Special Project Manager

Commissioner Guzman Aceves

DRAFT POLICY

California Public Utilities Commission

**Investor-Owned Utility Real Property- Land Disposition – First Right of Refusal for
Aboriginal Properties to California Native American Tribes**

On April 26, 2018, the California Public Utilities Commission (Commission) adopted a Tribal Consultation Policy. Consistent with the goals of the Tribal Consultation Policy and Executive Order B-10-11,¹ this policy provides guidance regarding implementation of a first-right of first offer process refusal by for California Native American ~~tribes Tribes (Tribes) for-~~ related to any future disposition² of ~~surplus real Real property Property currently owned~~ by investor owned utilities (IOUs), including any Real Property³ ~~contained within the hydro watershed lands retained by Pacific Gas and Electric Company (PG&E) through implementation of its Land Conservation Commitment (LCC)~~⁴. ~~future disposition of PG&E retained lands~~⁵ pursuant to the Stipulation,⁶ ~~not contained within the boundaries of a Federal Energy Regulatory Commission (FERC) jurisdictional project.~~

Executive Order B-10-11 declares that “the State is committed to strengthening and sustaining effective government-to-government relationships between the State and the Tribes by identifying areas of mutual concern and working to develop partnerships and consensus.” The Executive Order directs state executive agencies and departments to “encourage communication and consultation with California Indian Tribes.” It further directs state agencies and departments “to permit elected officials and other representatives of tribal governments to provide meaningful input into the development of legislation, regulations, rules, and policies on matters that may affect tribal communities.”

¹ Adopted September 19, 2011.

² The use of the terms “dispose of” and “disposition” in this Resolution refer to the transfer, sale, donation or disposition by any other means of a fee simple interest ~~or easement in real Real property Property.~~

³ “Real property” subject to this Policy is defined as any undeveloped IOU property whose disposition is subject to approval in accordance with California Public Utilities Code Section 851 (Section 851), and where the property contains or is likely to contain culturally significant resources.

⁴ The Land Conservation Commitment (LCC) was established and implemented in accordance with Commission Decisions 03-12-035 and 08-11-043.

⁵ All land currently retained by PG&E that is included in the LCP is referred to here as “retained land.”

⁶ The Land Conservation Plan (LCP) was developed in accordance with the Settlement Agreement, dated December 19, 2003, among PG&E and the Commission and the related Stipulation Resolving Issues Regarding the Land Conservation Commitment (Stipulation). See D.03-12-035, D. 08-11-043, D.10-08-04. Any transfers of utility property, including real property, require Commission approval pursuant to Public Utilities Code section 851. All further statutory code references refer to the Public Utilities Code unless otherwise noted.

As recognized in the Commission's Tribal Consultation Policy, California is home to over 170 California Native American tribes.⁷ Executive Order B-10-11 applies to federally-recognized tribes and other California Native Americans. For purposes of this policy, the terms "tribes" and "tribal governments" refer to elected officials and other representatives of federally-recognized tribes and other California Native Americans.

This policy is to be read consistent with the Commission's Tribal Consultation Policy, which requires that the Commission: provide notification of Commission proceedings to tribes, encourage tribal participation in Commission proceedings, and meaningfully consider tribal interests and the protection of tribal sacred places and cultural resources.

~~This policy requires IOUs to notify the appropriate California tribe(s) at the time the IOU determines initiates the disposal of Real Property it will dispose of surplus properties or retained land located in within or immediately adjacent to a tribe's Tribe's territory.⁸, the IOU is required to notify the Tribe. All notices and consultations required by this Policy are to follow the timeframes set out in AB 52 for CEQA consultations with Tribes⁹. This policy establishes a Commission adopts a preference for the transfer of non-FERC jurisdictional surplus Real Property to Tribes, including retained land, to California tribes consistent with specific considerations¹⁰, and to the extent that a conflict does not exist with applicable laws or regulations. In the case of PG&E Real Property, transfers to Tribes shall not conflict with the implementing requirements of Commission Decision 03-12-035 and 08-11-043 for the LCC, including the resulting land conservation protections.~~

The Commission, in adopting this policy, recognizes that:

⁷ "California Native American tribe" means a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004. See Cal. Pub. Res. Code § 21073. California Native American tribes include both federally recognized tribes and tribes that are not recognized by the federal government. Nothing in the policy prevents tribes from consulting with other Native American groups that demonstrate an ongoing connection to a specific place or cultural resource, or issue falling under the jurisdiction of the Commission.

⁸ Tribal territory is defined as the territory designated by the Native American Heritage Commission for notice of projects under AB 52. ~~IOUs shall attempt to resolve any disputes regarding the Tribe with whom it is required to provide notice and/or the location of the tribal territory within which the subject Real Property is located or to which it is immediately adjacent through discussion with the Tribes identified by NAHC. Should the IOU be unable to resolve identified disputes, it shall exercise reasonable discretion and best judgement to determine how best to proceed with the required notification.~~

All notices and consultations required by this policy are to follow the timeframes set out in AB 52 for CEQA consultations.

⁹ ~~Noticing and consultation requirements of AB 52 provide the Tribe 30 days following receipt of notification to request consultation and for the Lead Agency (for purposes of this Policy, the IOU) to begin the consultation process within 30 days of receiving the Tribe's request for consultation. CA Public Resources Code 21080.3.2(b) provides that consultation ends when either the parties agree or a party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.~~

¹⁰ Define the meaning of "specific considerations" here.

- The IOUs ~~collectively own~~ Real a significant amount of undeveloped pProperty located within the aboriginal territories of California tribes. This includes lands both within and ~~without outside project boundaries defined in the~~ Federal Energy Regulatory Commission (-FERC) jurisdictional boundaries/licenses. Approximately 140,000 acres of ~~undeveloped~~-watershed property owned by PG&E was identified in the LCPLCC for permanent protection. Some of this land has been ~~transferred donated~~ to third parties, some is in the process of being ~~transferred donated~~ to third parties, and some -or is- will be retained by PG&E consistent with the Stipulation/terms of the LCC.
- California law and policy encourages consultation and cooperation with tribal governments, particularly concerning the protection of tribal sacred places and cultural resources.¹¹
- These ~~surplus properties~~Real Properties may hold historical and spiritual significance for California tribes: some of these lands include the remains of California Native Americans; others are places of spiritual and cultural importance where California Native Americans have prayed, held ceremonies, and gathered traditional and medicinal plants.
- Executive Orders, federal and state laws, policies, and regulations acknowledge legal rights of access to certain lands and require state consultation with affected California Native American tribes prior to taking actions impacting such lands.

Policy Goals: The goals of this policy are as follows:

- Recognize and respect tribal sovereignty¹².
- Protect tribal sacred places and cultural resources.
- Ensure meaningful consideration of tribal interests and the return of lands within the tribe's aboriginal territory to the appropriate tribe.
- Encourage and facilitate notice and tribal participation in matters before the Commission that involve land-Real Property transfers subject to Section 851

¹¹ Consistent with California law and policy, three of the five Commissioners individually expressed that they would like to see more of the Stewardship Council-lands subject to the LCC donated to tribes. February 8, 2018 Commission Voting Meeting.

¹² In certain circumstances, the IOU may require the Tribe to provide a limited/partial waiver of its sovereign immunity with respect to the enforceability of disposition-related agreements between the IOU and Tribe.

through either applications or advice letter processes.

The Commission's review of an IOU's request to dispose of surplus property may affect tribes and tribal members in several ways, including, but not limited to: 1) impacts to land use activities on or near tribal communities; 2) the ability to protect and access tribal sacred places and cultural resources; and, 3) provide opportunities to return lands to California tribes that are within their tribal territories.

Facilitating Tribal Government Access to Information:

The Commission will encourage and facilitate tribal government access to information concerning matters before the Commission that involve disposition of Real Property, land transactions that may be of interest to tribes and that include transfer of surplus properties.

- The Commission will require the IOUs to notify tribal governments of ~~any plan~~their intent to dispose of ~~surplus pany Real roperties~~Property, including retained lands, within and immediately adjacent to a tribe's-Tribe's aboriginal territory.
- The Commission will give special consideration to tribal government requests to participate in Commission proceedings involving requests by IOUs in accordance with ~~section~~Section 851 to dispose of ~~surplus properties~~Real Property, including retained lands. The Commission will grant a tribal government's request to become a party in such proceedings and consider the ~~tribe's-Tribe's~~ comments or protest of IOU's request for Commission approval of the transaction.¹³ If an IOU fails to provide notice to the appropriate ~~tribe~~Tribe(s) before submitting an application or advice letter requesting Commission approval of the transaction, the Commission will provide the tribe reasonable additional time to participate in the proceeding.
- Commission staff and Administrative Law Judges ~~shall~~will ensure that relevant information the Commission receives from a ~~tribe-Tribe~~ is submitted into the record of a proceeding-(including presenting such information to Commissioners where the land transfer is the subject of an advice letter), consistent with the confidentiality provisions set forth in the Commission's Tribal Consultation Policy.
- Where an IOU seeks approval to transfer ~~non-FERC jurisdictional surplus- Real property~~Property, including retained land, within or immediately adjacent to a tribe's-Tribe's territory, the IOU shall provide the Tribe with a right of first offer, pursuant to which the tribe-Tribe shall be deemed the preferred transferee absent a finding supported by ~~substantial~~ evidence

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¹³ This will include requests made through application or advice letter approved by the Commission via Resolution.

that: a) the Tribe is not interested to acquire the subject Real Property (e.g., the Tribe does not request consultation or otherwise confirms that it is not interested); b) the Tribe intends to acquire the Real Property for reasons other than the protection of cultural resources; c) the IOU acted in good faith and, after reasonable effort, was unable to come to agreement with the Tribe on terms for the transfer of the subject Real Property; d) conveyance of the subject Real Property to another entity is necessary to achieve IOU operational requirements or otherwise comply with requirements of any law, rule, or regulation governing IOU and/or its operations; or e) conveyance of the Real Property to another entity would be in the public interest to transfer the land to another entity.

- This policy applies to all proposed transfers of non-FERC jurisdictional surplus properties, including retained lands.

If an IOU submits an application or advice letter consistent with section 851 and relevant Commission decisions for the disposition of surplus Real property, including retained lands, the application or advice letter must include a showing of notice and consultation to the appropriate tribe(s) consistent with the identified tribal territory recognized by the Native American Heritage Commission.¹⁴⁹ This The evidence to be provided by IOUs in its application or advice letter necessary to demonstrate compliance with the notice requirement includes:

- A copy of its written request to the Native American Heritage Commission to identify tribal entities whose tribal territory contains or is immediately adjacent to the subject Real Property interested in the area where the property being disposed of is located.
- A copy of its written notice to the Tribe of the IOU's intent to dispose of the subject Real Property, any proposed disposition of surplus properties, including an offer to consult with the Tribe regarding the Tribe's interest to acquire the subject Real Property retained lands in the Tribe's territory prior to any disposition of such land.
- Documentation of communication between the IOU and the Tribe regarding whether or not the Tribe is interested in acquiring the surplus subject Real property Property at issue. If the Tribe does not request consultation within 30 days of IOU providing notification, the IOU's notice requirement shall have been satisfied.

¹⁴⁹The timeframes for notice and response set out in AB 52 will apply for purposes of this policy.

~~If the IOU does not make the necessary showings that it has complied with the requirements set forth in this Policy and is unable to cure any deficiencies, The the Commission will may deny, without prejudice, the application or advice letter submitted by the IOU seeking authorization for the disposition of the subject Real Property grant the tribe a first right of refusal for any IOU requests to transfer non-FERC jurisdictional surplus property, including retained lands. There will be a rebuttable presumption that it is in the public interest to provide tribal entities the first opportunity to acquire such property.~~

~~As parts of its review of any disposition of Real Property in accordance with For land transfers pursuant to section 851 for surplus pReal Property, including retained lands, located within a FERC jurisdictional project, the Commission will consider any requests by from a tribal-Tribe entity, as well as comments regarding potential impacts on tribal cultural~~

resources and suggested mitigation measures that should be included in any authorization of the Commission for the disposition of such ~~assets-Real Property as part of the proceeding. Such review and consideration of impacts to cultural resources will be in accordance with the requirements of the California Environmental Quality Act (CEQA) and consistent with all laws, rules, and regulations governing the protection of cultural resources on the subject Real Property.~~

Tribal Liaison:

Consistent with the Commission's Tribal Consultation Policy, the Commission's tribal liaison will assist in implementing this policy. The tribal liaison will act as a point of contact for tribes to seek advice on participating in proceedings and inquiries regarding pending section 851 applications/advice letters; filing documents; contacting Commissioners, advisors, or staff; and other related matters. The Tribal Liaison, Stephanie Green, can be contacted at Stephanie.Green@cpuc.ca.gov or (415) 703-5245 Alternatively, tribal governments may contact the Commission's Public Advisor for this assistance (E-mail: Public.Advisor@cpuc.ca.gov or phone: (866) 849-8390).

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DRAFT

6

Commissioner Guzman Aceves

DRAFT POLICY

California Public Utilities Commission

Investor-Owned Utility Real Property- Land Disposition – First Right of Refusal for Aboriginal Properties to California Native American Tribes

On April 26, 2018, the California Public Utilities Commission (Commission) adopted a Tribal Consultation Policy. Consistent with the goals of the Tribal Consultation Policy and Executive Order B-10-11,¹ this policy provides guidance regarding implementation of a right of first offer process for California Native American Tribes (Tribes) related to any future disposition² of Real Property by investor owned utilities (IOUs), including any Real Property³ contained within the hydro watershed lands retained by Pacific Gas and Electric Company (PG&E) through implementation of its Land Conservation Commitment (LCC)⁴.

Executive Order B-10-11 declares that “the State is committed to strengthening and sustaining effective government-to-government relationships between the State and the Tribes by identifying areas of mutual concern and working to develop partnerships and consensus.” The Executive Order directs state executive agencies and departments to “encourage communication and consultation with California Indian Tribes.” It further directs state agencies and departments “to permit elected officials and other representatives of tribal governments to provide meaningful input into the development of legislation, regulations, rules, and policies on matters that may affect tribal communities.”

¹ Adopted September 19, 2011.

² The use of the terms “dispose of” and “disposition” in this Resolution refer to the transfer, sale, donation or disposition by any other means of a fee simple interest in Real Property.

³ “Real property” subject to this Policy is defined as any undeveloped IOU property whose disposition is subject to approval in accordance with California Public Utilities Code Section 851 (Section 851), and where the property contains or is likely to contain culturally significant resources.

⁴ The Land Conservation Commitment (LCC) was established and implemented in accordance with Commission Decisions 03-12-035 and 08-11-043.

As recognized in the Commission's Tribal Consultation Policy, California is home to over 170 California Native American tribes.⁵ Executive Order B-10-11 applies to federally-recognized tribes and other California Native Americans. For purposes of this policy, the terms "tribes" and "tribal governments" refer to elected officials and other representatives of federally-recognized tribes and other California Native Americans.

This policy is to be read consistent with the Commission's Tribal Consultation Policy, which requires that the Commission: provide notification of Commission proceedings to tribes, encourage tribal participation in Commission proceedings, and meaningfully consider tribal interests and the protection of tribal sacred places and cultural resources.

At the time the IOU initiates the disposal of Real Property within a Tribe's territory⁶, the IOU is required to notify the Tribe. All notices and consultations required by this Policy are to follow the timeframes set out in AB 52 for CEQA consultations with Tribes⁷. This policy establishes a Commission preference for the transfer of Real Property to Tribes, consistent with specific considerations⁸, and to the extent that a conflict does not exist with applicable laws or regulation. In the case of PG&E Real Property, transfers to Tribes shall not conflict with the implementing requirements of Commission Decision 03-12-035 and 08-11-043 for the LCC, including the resulting land conservation protections.

The Commission, in adopting this policy, recognizes that:

- The IOUs own Real Property located within the aboriginal territories of California tribes. This includes lands both within and outside project boundaries defined in Federal Energy Regulatory Commission (FERC) licenses. Approximately

⁵ "California Native American tribe" means a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004. See Cal. Pub. Res. Code § 21073. California Native American tribes include both federally recognized tribes and tribes that are not recognized by the federal government. Nothing in the policy prevents tribes from consulting with other Native American groups that demonstrate an ongoing connection to a specific place or cultural resource, or issue falling under the jurisdiction of the Commission.

⁶ Tribal territory is defined as the territory designated by the Native American Heritage Commission for notice of projects under AB 52. IOUs shall attempt to resolve any disputes regarding the Tribe with whom it is required to provide notice and/or the location of the tribal territory within which the subject Real Property is located or to which it is immediately adjacent through discussion with the Tribes identified by NAHC. Should the IOU be unable to resolve identified disputes, it shall exercise reasonable discretion and best judgement to determine how best to proceed with the required notification.

All notices and consultations required by this policy are to follow the timeframes set out in AB 52 for CEQA consultations.

⁷ Noticing and consultation requirements of AB 52 provide the Tribe 30 days following receipt of notification to request consultation and for the Lead Agency (for purposes of this Policy, the IOU) to begin the consultation process within 30 days of receiving the Tribe's request for consultation. CA Public Resources Code 21080.3.2(b) provides that consultation ends when either the parties agree or a party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.

⁸ Define the meaning of "specific considerations" here.

140,000 acres of watershed property owned by PG&E was identified in the LCC for permanent protection. Some of this land has been donated to third parties, some is in the process of being donated to third parties, and some will be retained by PG&E consistent with the terms of the LCC.

- California law and policy encourages consultation and cooperation with tribal governments, particularly concerning the protection of tribal sacred places and cultural resources.⁹
- These Real Properties may hold historical and spiritual significance for California tribes: some of these lands include the remains of California Native Americans; others are places of spiritual and cultural importance where California Native Americans have prayed, held ceremonies, and gathered traditional and medicinal plants.
- Executive Orders, federal and state laws, policies, and regulations acknowledge legal rights of access to certain lands and require consultation with affected California Native American tribes prior to taking actions impacting such lands.

Policy Goals: The goals of this policy are as follows:

- Recognize and respect tribal sovereignty¹⁰.
- Protect tribal sacred places and cultural resources.
- Ensure meaningful consideration of tribal interests and the return of lands within the tribe's aboriginal territory to the appropriate tribe.
- Encourage and facilitate notice and tribal participation in matters before the Commission that involve Real Property transfers subject to Section 851 through either applications or advice letter processes.

The Commission's review of an IOU's request to dispose of surplus property may affect tribes and tribal members in several ways, including, but not limited to: 1) impacts to land use activities on or near tribal communities; 2) the ability to protect and access tribal sacred places and cultural resources; and, 3) provide opportunities to return lands to California tribes that are within their tribal territories.

⁹ Consistent with California law and policy, three of the five Commissioners individually expressed that they would like to see more of the lands subject to the LCC donated to tribes. February 8, 2018 Commission Voting Meeting.

¹⁰ In certain circumstances, the IOU may require the Tribe to provide a limited/partial waiver of its sovereign immunity with respect to the enforceability of disposition-related agreements between the IOU and Tribe.

Facilitating Tribal Government Access to Information:

The Commission will encourage and facilitate tribal government access to information concerning matters before the Commission that involve disposition of Real Property..

- The Commission will require the IOUs to notify tribal governments of their intent to dispose of any Real Property within a Tribe's aboriginal territory.
- The Commission will give special consideration to tribal government requests to participate in Commission proceedings involving requests by IOUs in accordance with Section 851 to dispose of Real Property. The Commission will grant a tribal government's request to become a party in such proceedings and consider the Tribe's comments or protest of IOU's request for Commission approval of the transaction.¹¹ If an IOU fails to provide notice to the appropriate Tribe(s) before submitting an application or advice letter requesting Commission approval of the transaction, the Commission will provide the tribe reasonable additional time to participate in the proceeding.
- Commission staff and Administrative Law Judges will ensure that relevant information the Commission receives from a Tribe is submitted into the record of a proceeding(including presenting such information to Commissioners where the land transfer is the subject of an advice letter), consistent with the confidentiality provisions set forth in the Commission's Tribal Consultation Policy.
- Where an IOU seeks approval to transfer Real Property within a Tribe's territory, the IOU shall provide the Tribe with a right of first offer, pursuant to which the Tribe shall be deemed the preferred transferee absent a finding supported by evidence that: a) the Tribe is not interested to acquire the subject Real Property (e.g., the Tribe does not request consultation or otherwise confirms that it is not interested); b) the Tribe intends to acquire the Real Property for reasons other than the protection of cultural resources; c) the IOU acted in good faith and, after reasonable effort, was unable to come to agreement with the Tribe on terms for the transfer of the subject Real Property; d) conveyance of the subject Real Property to another entity is necessary to achieve IOU operational requirements or otherwise comply with requirements of any law, rule, or regulation governing IOU and/or its operations; or e) conveyance of the Real Property to another entity would be in the public interest.

If an IOU submits an application or advice letter consistent with section 851 and relevant Commission decisions for the disposition of Real Property, the application or

¹¹ This will include requests made through application or advice letter approved by the Commission via Resolution.

advice letter must include a showing of notice and consultation to the appropriate Tribe(s) consistent with the identified tribal territory recognized by the Native American Heritage Commission. The evidence to be provided by IOUs in its application or advice letter necessary to demonstrate compliance with the notice requirement includes:

- A copy of its written request to the Native American Heritage Commission to identify tribal entities whose tribal territory contains or the subject Real Property.
- A copy of its written notice to the Tribe of the IOU's intent to dispose of the subject Real Property, including an offer to consult with the Tribe regarding the Tribe's interest to acquire the subject Real Property.
- Documentation of communication between the IOU and the Tribe regarding whether the Tribe is interested in acquiring the subject Real Property. If the Tribe does not request consultation within 30 days of IOU providing notification, the IOU's notice requirement shall have been satisfied.

If the IOU does not make the necessary showings that it has complied with the requirements set forth in this Policy and is unable to cure any deficiencies, the Commission may deny, without prejudice, the application or advice letter submitted by the IOU seeking authorization for the disposition of the subject Real Property..

As parts of its review of any disposition of Real Property in accordance with section 851 for Real Property, the Commission will consider requests from a Tribe, as well as comments regarding potential impacts on tribal cultural resources and suggested mitigation measures that should be included in any authorization of the Commission for the disposition of such Real Property. Such review and consideration of impacts to cultural resources will be in accordance with the requirements of the California Environmental Quality Act (CEQA) and consistent with all laws, rules, and regulations governing the protection of cultural resources on the subject Real Property.

Tribal Liaison:

Consistent with the Commission's Tribal Consultation Policy, the Commission's tribal liaison will assist in implementing this policy. The tribal liaison will act as a point of contact for tribes to seek advice on participating in proceedings and inquiries regarding pending section 851 applications/advice letters; filing documents; contacting Commissioners, advisors, or staff; and other related matters. The Tribal Liaison, Stephanie Green, can be contacted at Stephanie.Green@cpuc.ca.gov or (415) 703-5245 Alternatively, tribal governments may contact the Commission's Public Advisor for this assistance (E-mail: Public.Advisor@cpuc.ca.gov or phone: (866) 849-8390).



Ewiiapaayp Tribal Office

Ewiiapaayp Band of Kumeyaay Indians

4054 Willows Road
Alpine, CA 91901
TEL: (619) 445-6315
FAX: (619) 445-9126
E-mail: ceo@leaningrock.com

October 1, 2019

Stephanie Green, Tribal Liaison
CA Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298
Stephanie.Green@cpuc.ca.gov
415-703-5245

RE: California Environmental Quality Act Public Resources Code section 21080.3, subd. (b)
Request for Formal Notification of Proposed Projects Within the Tribe's Geographic Area of
Traditional and Cultural Affiliation

Dear Ms. Green:

In accordance with Public Resources Code Section 21080.3.1, subd. (b), the Ewiiapaayp Band of Kumeyaay Indians (the Tribe), which is traditionally and culturally affiliated with a geographic area within the California Public Utilities Commission's (CPUC) area of jurisdiction, requests formal notice of proposed projects located in the county of San Diego for which the CPUC will serve as a lead agency under the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq.

We designate the following person as the tribe's lead contact person for purposes of receiving notices of proposed projects from the CPUC:

Name: Will Micklin
Title: CEO
Address: 4054 Willows Road, Alpine, CA 91901
Phone Number: (619) 368-4382
Cell Phone Number: (619) 368-4382
Fax Number: (619) 445-9126
Email Address: ceo@leaningrock.com

We request that all notices be sent via electronic mail. Following receipt and review of the information the CPUC provides, within the 30-day period proscribed by Public Resources Code § 21080.3.1, subd. (d), the tribe may request consultation (as defined by Public Resources Code § 21080.3.1, subd. (b)) pursuant to Public Resources Code § 21080.3.2 to mitigate any impacts a specific project may cause to tribal cultural resources.

Should you have any questions, please contact the Tribe's Chief Executive Officer, Mr. Will Micklin [tel: (619) 368-4382, E-mail: ceo@leaningrock.com]. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Robert Pinto Sr". The signature is written in a cursive, slightly slanted style.

Robert Pinto, Sr.
Tribal Chairman
Ewiiapaayp Band of Kumeyaay Indians

cc: Honorable Governor Gavin Newsom
Governor, State of California
State Capitol, Suite 1173
Sacramento, CA 95814

Amy Dutschke, Regional Director
Pacific Regional Office
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95814



October 1, 2019

Commissioners
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Comments on Proposed Tribal Land Transfer Policy

Dear Commissioners:

On behalf of the Yocha Dehe Wintun Nation, a federally recognized tribal government located in Brooks, California, which is located approximately 45 minutes northwest of Sacramento, I am pleased to provide comments on the proposed Tribal Land Transfer Policy.

The Yocha Dehe Wintun Nation supports the first right of refusal for surplus properties to California Native American Tribes within their ancestral territories. In these areas, tribes persist in their responsibility to protect their resources, and monitor and maintain cultural sites. We support the Public Utilities Commission in moving forward with the adopted Tribal Consultation Policy and offer the following comments for your consideration:

1. While the definition of a "California Native American Tribe" is correct as stated in footnote 5, the authority of the Native American Heritage Commission (NAHC) is incorrect in footnote 6. The NAHC does not designate tribal territories. Tribes are the primary source for the definition of tribal territories for notice under AB-52. A secondary source for territories that are not specifically defined by tribes under AB-52 is the Handbook of North American Indians (1978, Sturtevant, Smithsonian Institution), volumes 8, 10, and 11. This information should be corrected.
2. Additionally, footnote 9 refers to the timelines set forth in AB-52 (Gatto, 2014) as the timeframe for notice and response for tribal land transfers. Given the nature of land transfers (land use and long-term planning issues), and the knowledge that some tribal councils meet only once monthly, the timelines set forth in SB-18 (Burton, 2004), referred to in footnote 5 as Chapter 905 of the Statutes of 2004, Pub. Res. Code § 21073, are more appropriate for notice and response. We request that you replace the reference to AB-52 with a reference to SB-18 for timeframes.

Yocha Dehe Wintun Nation

PO Box 18 Brooks, California 95606 p) 530.796.3400 f) 530.796.2143 www.yochadehe.org

October 1, 2019

Page 2

3. Finally, tribes must be consulted at the earliest planning stages and before this policy is finalized and adopted in its final form. While we are supportive at this time, we are interested in knowing which lands may be made available with this policy as soon as possible. Not having this information makes it difficult to fully assess the impact of your efforts. We request that a list of lands with property description and associated map be provided to us and the other tribes as soon as it is available.

We thank you for your consideration and work on this issue. If you have any further questions, please contact our Resources Policy Manager, Gayle Totton at GTotton@yochadehe-nsn.gov.

Wile bo,



Anthony Roberts
Tribal Chairman

cc: Commissioner Guzman Aceves, Emerging Trends Committee
Commissioner Genevieve Shiroma, Emerging Trends Committee
Stephanie Green, Tribal Liaison



NATIVE AMERICAN LAND CONSERVANCY

TO ACQUIRE, PRESERVE, AND PROTECT OUR SACRED LAND
A 501C(3) NONPROFIT REGISTERED WITH STATE OF CALIFORNIA

September 30, 2019

California Public Utilities Commission
Public Advisor's Office
505 Van Ness Avenue
San Francisco, CA 94102

RE: Investor-Owned Utility Land Disposition - First Right of Refusal for Aboriginal Properties to California Tribes

Dear Commissioners,

I am writing on behalf of the Native American Land Conservancy (NALC) to provide comments to the California Public Utilities Commission (Commission) proposed Tribal Land Transfer Policy. The NALC lauds the Commission's efforts to address the historical wrongs suffered by California Native Americans and the legacy of these adverse impacts that continues to impact tribes today. This policy provides a meaningful opportunity for California tribes to seek return of lands within their ancestral territory and protect tribal cultural resources.

The NALC is a non-profit, inter-tribal organization established in 1998. Our mission is to acquire, preserve, and protect sacred lands through education, cultural programming, and the survey and monitoring of tribal historic properties. The NALC provides culturally appropriate protective management for natural and cultural heritage areas. Currently, NALC administers a 2,560-acre area known as the Old Woman Mountains Preserve located at the junction of three great deserts: the Colorado, the Mojave, and the Great Basin Deserts, allowing youth to explore ancient tribal life ways across diverse desert landscapes. Our programs engage tribal communities in California, Arizona, and Nevada. Through our Learning Landscapes program, we inspire tribal youth to engage their history and culture.

The Commission's proposed policy to establish a first right of refusal by Native American tribes for any future disposition of surplus real property currently owned by investor owned utilities is a historically significant step in recognizing California tribes' inherent rights to their homelands. The requirement that tribes be noticed of planned disposition of surplus properties or retained land located in or adjacent to a tribe's traditional territory is a significant first step. The definition of tribal territory included in the proposed language provides clarity and consistency in determining which properties will be subject to the policy. The policy also provides concrete steps that define how the Commission will facilitate tribal government access to information and full participation in proceedings that may impact lands within or adjacent to a tribe's territory.

The NALC appreciates the opportunity to provide comments and fully supports the proposed Tribal Land Transfer Policy which so clearly recognizes tribal sovereignty and sets forth a lasting process to protect tribal sacred places and cultural resources.

In Sincerity and Respect,

Michael J. Madrigal, President

AGUA CALIENTE BAND OF CAHUILLA INDIANS



October 8, 2019

Via Electronic Mail

California Public Utilities Commission
Public Advisor's Office
505 Van Ness Avenue, San Francisco, California 94102
public.advisor@cpuc.ca.gov

Re: Comment on Proposed Tribal Land Transfer Policy

To Whom It May Concern:

The Agua Caliente Band of Cahuilla Indians appreciates the opportunity to provide comment on the proposed Tribal Land Transfer Policy (the “**Policy**”) proffered by the California Public Utilities Commission (“**CPUC**”). The Agua Caliente Band of Cahuilla Indians is a federally recognized Indian tribe (“**Tribe**”) exercising the powers of self-government according to the Constitution and Bylaws of the Agua Caliente Band of Cahuilla Indians, as amended, which was duly approved by the Department of the Interior, and exercising sovereign authority and jurisdiction over the lands of the Agua Caliente Indian Reservation (the “**Reservation**”). The Secretary of the Interior has acknowledged that the Tribe is a tribal entity that the United States recognizes and deems eligible to receive funding and services from the Bureau of Indian Affairs.¹

The Tribe's Reservation was established on May 15, 1876 by the Executive Order of President Ulysses S. Grant from lands in the Coachella Valley, which the Cahuilla Indians have used and occupied since time immemorial. The Reservation was subsequently expanded on September 29, 1877 by the Executive Order of President Rutherford B. Hayes and other administrative acts. In 1896, the Secretary of the Interior started issuing patents to the Tribe declaring the United States would hold the lands of the Reservation in trust for the Tribe as authorized by the Mission Indian Relief Act of January 12, 1891. Today, the Reservation exceeds 31,000 acres of land, all located within the aboriginal territory of the Tribe.

While the Reservation now exceeds 31,000 acres of land, the Tribe has lost thousands of acres of its original aboriginal territory both within and beyond the Reservation. This loss is due to initial divesture by the federal government when the Reservation was created and subsequent federal allotment and condemnation policies. The Tribe has purchased and acquired various parcels within and beyond the Reservation over the last 75 years in an attempt to reestablish its original aboriginal territory lost during the last 143 years. Acquiring lands within the Tribe's original aboriginal territory furthers Tribal sovereignty, promotes self-sufficiency, and allows the Tribe to protect lands that hold historical, cultural, and spiritual significance to the Tribe. To this end, the Tribe believes the proposed Policy, with modification, will assist the Tribe in achieving these goals.

¹ *Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs*, 84 Fed. Reg. 1200 (February 1, 2019).



Tribal Notification

The proposed Policy requires that an investor-owned utility (“IOU”) notify the appropriate California Native American tribe(s) at the time the IOU determines that it will dispose of surplus property located in or adjacent to a tribe’s territory.² Citing statutory law, the proposed Policy defines a “California Native American tribe” as a “Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004”³ and defines a “tribe’s territory” by reference to Public Resources Code section 21080.3.1. For purposes of complying with the California Environmental Quality Act (Pub. Resources Code, §§ 21000 *et seq.*), Section 21080.3.1 requires, upon the occurrence of several events, that a lead agency consult with a California Native American tribe that is “traditionally and culturally affiliated with the geographic area” of a proposed project prior to the release of a negative declaration, mitigated negative declaration, or an EIR for the project.

By defining a tribe’s territory by reference to Section 21080.3.1, the proposed Policy essentially requires that an IOU provide notice to appropriate California Native American tribes when the IOU seeks to dispose of surplus property within or adjacent to a tribe’s traditional and culturally affiliated lands. For many federally recognized tribes, the lands that are traditionally and culturally affiliated with a tribe include those lands that are located within the tribe’s reservation; but, arguably, also include lands located beyond the reservation boundaries. In addition, it is not uncommon for several tribes to claim a historical, cultural, or spiritual connection to the same lands. In other words, the lands that are traditionally and culturally affiliated with one tribe could also be the lands that are traditionally and culturally affiliated with another tribe. For this reason, the proposed Policy may portend multiple tribal claims to surplus property that an IOU wishes to dispose since more than one tribe may claim that the property is within or adjacent to its traditional and culturally affiliated lands (*i.e.*, a tribe’s territory). The Tribe wishes to avoid such conflicts.

To avoid future conflicts, the Tribe proposes that the CPUC revise the proposed Policy to require that when an IOU determines that it will dispose of surplus property and the surplus property is within or adjacent to a federally established Indian reservation, then the IOU is only obligated to notify the tribe with civil regulatory jurisdiction over the reservation where the property is located or is adjacent to. This rule would operate as an exception to the notification requirement that the CPUC is proposing when surplus property is located within or adjacent to a federally established Indian reservation. The Tribe believes this approach diminishes unnecessary conflict.

² *Investor-Owned Utility Real Property – Land Disposition – First Right of Refusal for Aboriginal Properties to California Native American Tribes - Draft Policy*, California Public Utilities Commission (July 3, 2019), p. 2. (hereinafter the “**Draft Policy**”).

³ *Id.* at p. 1 (citing Pub. Resources Code, § 21073).



Finally, the Tribe proposes that the CPUC amend the first and fourth bullets under “Facilitating Tribal Government Access to Information” on pages 3 and 4 of the proposed Policy as follows so that they are consistent with the second paragraph on page 2:

“● The Commission will require IOUs to notify tribal governments of any plans to dispose of surplus properties, including retained lands, within or adjacent to a tribe’s territory.”

“● Where an IOU seeks approval to transfer non-FERC jurisdictional surplus property, including retained land, within or adjacent to a tribe’s territory, the tribe shall be deemed the preferred transferee absent a finding supported by substantial evidence that it would be in the public interest to transfer the land to another entity.”

Meaningful Consultation

The proposed Policy also requires that the application or advice letter of an IOU for the disposition of surplus property include a showing of notice to and “consultation” with the appropriate California Native America tribe(s).⁴ The process of consultation is fundamental to tribal interests in that it provides tribes an opportunity to protect historical, cultural, and spiritual resources. For this reason, the Tribe recommends that the proposed Policy establish a clear standard for “meaningful” consultation. “Meaningful consultation means tribal consultation in advance with the decision maker or with intermediaries with clear authority to present tribal views” to the IOU.⁵ This should comprise meetings or a series of communications, during which an IOU notifies the appropriate tribe of the proposed disposition, provides its reasoning for the disposition, and provides enough information about the surplus property to tribal decision makers or their intermediaries so that the tribe can adequately assess whether historical, cultural, or spiritual resources are impacted by the disposition and make an informed decision whether to participate in CPUC disposition proceedings and acquire the property. A tribe may then issue a motion, resolution, or letter regarding whether or not it is interested in acquiring the surplus property. To be clear, a boilerplate letter to several tribes, informal communication with a tribal member or lower level tribal staff, or a single meeting or communication with a tribe, is not meaningful consultation.

The Tribe does not believe that requiring documentation of communications between an IOU and the appropriate tribe regarding a surplus property disposition, in and of itself, is

⁴ Draft Policy at p. 4.

⁵ *Lower Brule Sioux Tribe v. Deer*, 911 F.Supp.395, 401 (D.S.D. 1995) (citing *Hoopa Valley Tribe v. Christie*, 812 F.2d 1097 (9th Cir. 1987)).



California Public Utilities Commission
October 8, 2019
Page 4 of 5

meaningful consultation. It is important that communications involve tribal decision makers or their intermediaries and that these communications provide tribes adequate facts and information to inform tribal acquisition decisions. For purposes of the proposed Policy, the Tribe believes the goals of consultation are best achieved if the CPUC requires that consultation be “meaningful” and provide clarity to IOUs on what constitutes “meaningful consultation.”

Right of First Refusal, Prioritization

The proposed Policy also states that the CPUC will grant a right of first refusal to a California Native American tribe for any IOU request to transfer non-FERC jurisdictional surplus property.⁶ However, the Policy does not explicitly state how the CPUC would determine which California Native American tribe it would grant a right of first refusal to. The Tribe assumes, based on its review of the proposed Policy, that the CPUC would grant the right of first refusal to a tribe who has requested to participate in the relevant CPUC surplus property disposition proceeding, who has expressed a desire to acquire the IOU surplus property at issue, and where the surplus property at issue is actually located within or adjacent to the tribe’s territory (*i.e.*, lands that are traditionally and culturally affiliated with the tribe). This assumption is based on the fact that the proposed Policy requires that “IOUs notify the appropriate California tribe(s) at the time the IOU determines it will dispose of surplus properties or retained lands *located in or adjacent to a tribe’s territory.*”⁷ But, out of an abundance of caution, the Tribe recommends that the CPUC clarify the right of first refusal by amending the second paragraph on page 4 as follows, otherwise the rule could result in confusion:

“The Commission will grant the tribe a right of first refusal for any IOU requests to transfer non-FERC jurisdictional surplus property, including retained lands when (i) the tribe has participated in Commission proceedings involving requests by IOUs in accordance with section 851 to dispose of the surplus property at issue, including retained lands; (ii) the tribe has expressed a desire to acquire the surplus property at issue, including retained lands; and (iii) the surplus property at issue is located within or adjacent to the tribe’s territory.”

As previously explained, the Tribe believes conflicts may arise if an IOU seeks to dispose of surplus properties that are located within or adjacent to a tribe’s territory since tribal territories may overlap. Therefore, the Tribe recommends that the CPUC revise the proposed Policy so that if surplus property is located within or adjacent to a federally established Indian reservation, then

⁶ Draft Policy at p. 4.

⁷ *Id.* at p. 2.



California Public Utilities Commission
October 8, 2019
Page 5 of 5

the CPUC will grant a right of first refusal to the tribe with civil regulatory jurisdiction over the Indian reservation where the surplus property is located or is adjacent to. Similar to the Tribe's recommended notification rule, this rule would operate as an exception to the CPUC's proposed right of first refusal when surplus property is located within or adjacent to a federally established Indian reservation.

Conclusion

The Tribe would like to thank the CPUC for affording tribes the opportunity to weigh in on the proposed Policy. The Tribe looks forward to working with the CPUC and all other stakeholders in developing a policy that recognizes tribal sovereignty and furthers the goals self-sufficiency and the protection of tribal resources. Please direct any inquiries to my office at (760) 699-6837.

Sincerely,

John T. Plata
General Counsel
AGUA CALIENTE BAND OF CAHUILLA INDIANS



Laura Genao
Managing Director
State Regulatory Affairs
Laura.Genao@sce.com

October 11, 2019

Public Advisor's Office
505 Van Ness Avenue
San Francisco, CA 94102

Re: Southern California Edison's Comments on Proposed Tribal Land Transfer Policy

Dear Public Advisor's Office:

Southern California Edison (SCE) appreciates the opportunity to provide comments to the draft policy entitled "Investor-Owned Utility Real Property-Land Disposition-First Right of Refusal for Aboriginal Properties to California Native American Tribes" (the "Draft Policy"). SCE supports the California Public Utilities Commission's (CPUC or Commission) efforts to ensure California Native American Tribes (Tribes) are engaged and meaningfully considered in the disposition of Investor-Owned Utility lands. SCE also supports the Draft Policy's intent to provide notice to Tribes when seeking approval to dispose of assets pursuant to Public Utilities Code Section 851.

SCE has identified ambiguities along with gaps in the Draft Policy and proposes certain clarifications and modifications regarding the types of transactions subject to disposition, resources to identify the appropriate Tribe within a geographic scope, and process challenges associated with "right of first refusal" and timing gaps during the process.

First, SCE recommends the scope of transactions applicable to this Draft Policy be clarified to include only those requiring full commission approval pursuant to Section 851 and not the types of minor conveyances subject to General Orders 173 or 69-C. Such minor conveyances are typically made to governmental entities or developers as a condition to their development projects. Second, there are unintended challenges associated with a geographic scope that could result in multiple tribes laying claim to a property. To address this potential conflict, SCE recommends using the geographic bounds of recognized reservations. Lastly, there are also process concerns associated with providing a Tribe a "right of first refusal" that would result in unnecessary expenditure of time and resources by an initial prospective third party purchaser or lessee and could potentially jeopardize SCE's ability to negotiate with third parties. SCE recommends establishing a "right of offer" to a Tribe that would ensure the Tribe is provided with notice and is afforded an opportunity to present an offer prior to the Commission completing its deliberations on a disposition. Timing should also be clarified so that a utility has the ability to notify the Tribe and solicit an offer either prior to filing a Section 851 application or during the course of the Commission's 851 review. SCE also recommends including a timeframe within which the Tribe would be required to submit its offer.

SCE further details its proposed modifications and respectfully requests clarifications as explained below.

Nature of Disposition

SCE respectfully recommends the Draft Policy should be clarified such that it only applies to conveyances that would otherwise require full Commission review and not to the types of minor conveyances typically made to governmental entities or developers as a condition to their development projects where such conveyances are subject to General Orders 173 or 69-C, or to the types of transactions that involve a land-swap rather than monetary compensation. The Draft Policy currently defines the term “disposition” to mean “...the transfer, sale, donation or disposition by any other means of a fee simple interest or easement in real property.” SCE is frequently asked to grant a variety of minor encumbrances to government agencies and third parties. For example, SCE may be asked to convey a portion of operational right of way to a jurisdiction to enable the widening of a public road. Including transactions that are outside the scope of Section 851(e.g., road widening or easements) would delay and/or add cost to these projects or otherwise interfere with orderly land planning.

It is unclear to SCE whether the Draft Policy is applicable to:

- (i) Transactions requiring formal approval by the Commission through a formal decision pursuant to Public Utilities Code Section 851,
- (ii) Minor conveyances made following an advice letter filing pursuant to General Order 173; or
- (iii) Dispositions without additional approval required by the Commission pursuant to General Order 69-C.

Pursuant to Section 851 of the Public Utilities Code, SCE is required to seek formal Commission approval prior to selling, leasing, assigning, mortgaging, or otherwise disposing of or encumbering the whole or any part of property that is “necessary or useful in the performance of its duties to the public...” For qualified transactions in excess of five million dollars (\$5,000,000), a formal order from the Commission is required. For transactions under five million dollars (\$5,000,000) an advice letter filing may be utilized as set forth in General Order 173. Uncontested advice letters may be approved by the executive director or director of the applicable division (typically the Energy Division for SCE’s filings).

The Commission has provided public utilities with advance approval for certain forms of encumbrances and dispositions pursuant to General Order 69-C. That General Order allows utilities to “grant easements, licenses or permits” for “rights of way, private roads, agricultural purposes, or other limited uses...whenever it shall appear that the exercise of such easement, license, or permit will not interfere with the operations, practices and service...” Pursuant to General Order 69-C, such grants to parties other than the United States government, State of California, or political subdivisions (such as counties or cities) are conditional upon the right of the utility to resume use of the property on the utility’s own motion or by order of the Commission. SCE interprets this provision to be a right to recapture or terminate the encumbrance. Because conveyances under General Orders 173 and 69-C are designed to

be minor or routine, SCE respectfully submits that the Draft Policy should not apply to such conveyances.

SCE further recommends that the Draft Policy must be limited to transactions involving the exchange of monetary consideration. By way of example, if SCE agreed to a “land-swap” because it had a greater need for an alternative parcel of property, a Tribe should not be engaged or involved with the transaction because it does not own the specific property SCE may need to pursue its project.

Geographic Scope

SCE recommends that the Draft Policy should apply only to lands within an established reservation. The Draft Policy requires that publicly regulated utilities provide a Tribe with a right of first refusal prior to seeking approval to dispose of an asset “within or adjacent to Tribal territory.” Per footnote 6, “Tribal territory is defined as the territory designated by the Native American Heritage Commission (NAHC) for notice of projects under AB 52.” SCE understands there could be disputes between Tribes regarding such areas outside of the recognized bounds of a reservation. In particular, the NAHC may reference multiple contacts for a Tribe or several different Tribes for a single parcel of property. SCE is concerned that it may inadvertently notify or show preference to one Tribe as opposed to another where there are competing claims or where ownership is otherwise unclear. The Draft Policy does not clarify what protocol should be used to the extent two or more Tribes lay claim to the same property. SCE further submits that the Draft Policy should not be applied to areas that may be adjacent to Tribal territory given the unintended confusion the Draft Policy would cause. Therefore, SCE suggests that the Draft Policy be calibrated to the geographic bounds of recognized reservations. In the event SCE’s recommended modification regarding recognized reservations is not implemented, SCE requests the Commission consider providing a detailed map with associated single points of contact for providing the requisite notice.

Right of Refusal v. Right of Offer

SCE respectfully requests that the Draft Policy be amended to provide the applicable Tribe with a “right of offer” as opposed to a “right of first refusal.” A “right of first refusal” provides a third party with the right to acquire property on the same or better terms as had been proposed by a bonafide purchaser.¹ SCE believes that its ability to extend and negotiate offers for the disposition of property would be adversely impacted if a third party was on notice that any potential agreement could be unwound should a Tribe decide to accept an agreement with identical terms.

The acquisition of property by a third party may require the expenditure of time and resources by a prospective purchaser or lessee on a wide range of issues. These negotiations frequently occur prior to the transaction being submitted to the Commission for approval pursuant to Section 851 of the Public Utilities Code. If a transaction could be unwound due to a Tribe’s right of first refusal, SCE anticipates

¹ See generally, *Smyth v. Berman*, 31 Cal. App. 5th 183, 192 (Cal. App. 2d Dist. 2019) (“...a right of first refusal is a species of option to purchase: It is a conditional option that entitles the holder, if the seller decides to sell property and has obtained an acceptable, bonafide offer from a third party buyer, to make an offer that meets or beats the third party’s offer.”).

that third parties would be less willing to negotiate for the acquisition of SCE's real property assets unless and until the subject Tribe confirms that it will not pursue the property on its own. SCE therefore does not believe the Draft Policy would be in the best interest of ratepayers as currently written. In contrast to a right of first refusal, a right of offer would ensure that Tribes are provided with notice and are afforded an opportunity to present an offer prior to the Commission completing its deliberations on a disposition. Both utilities and the Commission would further preserve their discretion to either approve the offer or to move forward with the transaction after having balanced the interest of ratepayers, utilities, Tribes, and the public.

The timing for the utility to make the right of first offer or right of first refusal (as selected by the Commission) should also be provided. For example, the parameters of an agreement would be known to SCE and the third party at the time of filing an application for Commission approval pursuant to Section 851 of the Public Utilities Code. Therefore, SCE suggests that the Draft Policy give the utility the option to both notify the Tribe and solicit an offer either prior to filing the 851 application or during the course of the Commission's deliberations. SCE respectfully submits that the Draft Policy should clarify a timeframe within which the Tribe would be required to submit its offer (e.g., within 10 days of being notified)

SCE appreciates the opportunity to provide comments regarding the CPUC's Draft Tribal Land Transfer Policy. With the requested revisions and clarifications to the Draft Policy to focus on disposition of properties subject to Section 851 filing, defining geographic scope, providing a right of offer to Tribes rather than first right of refusal, and identifying timelines, SCE supports the implementation of this Draft Policy. If you have any questions regarding this matter, please do not hesitate to contact me. We look forward to continuing discussions regarding the Draft Tribal Land Transfer Policy.

Sincerely,

/s/ Laura Genao

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October 17, 2019

California Public Utilities Commission
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Re: Comment on Proposed Tribal Land Transfer Policy

Dear Commissioners Guzman Aceves and Shiroma:

San Diego Gas & Electric Company (“SDG&E”) appreciates the opportunity to provide comments on the Commission’s Draft Policy on Investor-Owned Utility Real Property – Land Disposition – First Right of Refusal for Aboriginal Properties to California Native American Tribes (“Draft Policy”) published on July 3, 2019.¹

SDG&E also appreciates the Commission’s continued interest in tribal consultation and strengthening effective relationships with tribal governments. There are nearly 20 federally recognized tribes served within our service territory and their land holdings cover 193 square miles—accounting for approximately five percent of San Diego County’s total area. SDG&E also provides service to three non-federally recognized tribes and groups. Like the Commission, SDG&E believes in building strong partnerships with our tribal communities, and maintains a dedicated tribal liaison position to ensure those partnerships are meaningful and lasting.

SDG&E understands that the Draft Policy is intended to extend similar land disposal benefits to tribes as agreed to by Pacific Gas and Electric Company (“PG&E”) in its Land Conservation Commitment² to all investor owned utilities (IOUs) throughout the State. However, the Draft Policy does not seem to consider some important differences between the retained lands subject to the PG&E Land Conservation Commitment and other IOU-owned properties. SDG&E notes that the retained lands subject to the PG&E Land Conservation Commitment were large holdings (*i.e.*, up to thousands of acres) associated with PG&E’s hydroelectric generating system that were not being used or necessary for a utility purpose. SDG&E does not maintain any hydroelectric generating facilities, and unlike PG&E’s retained

¹ SDG&E will provide additional comments on the revised draft dated October 14, 2019, in a subsequent letter.

² See D.03-12-035, Appendix A.

lands, SDG&E does not have any similarly situated large tracts of land that are not being used for utility purposes that could be considered “surplus.”

Given the complexity of the issues raised in the Draft Policy, including the potential that such land may be subsequently taken into trust by the federal government after transfer to a tribe, SDG&E recommends that the Commission first hold public workshops to allow for additional input and dialogue on these issues from a broad range of affected stakeholders. Implementation of any land transfer policy will require coordination among the Commission, utilities, tribal governments, state and federal agencies, and other interested parties.

Additionally, based upon SDG&E’s review, to provide improved certainty and fairness to all parties, SDG&E believes that, if adopted by the Commission, the Draft Policy would benefit from some additional clarification. To that end, SDG&E respectfully offers the following comments to aid in the Policy’s development and implementation.

I. REQUESTED CLARIFICATION #1: RIGHT OF FIRST OFFER

The Draft Policy provides a “first right of refusal” to interested tribes. A right of first refusal is commonly understood as the right to match or better an offer to purchase received by the land owner. On the other hand, a “right of first offer” requires the land owner to offer to sell the property to the holder of the right before offering it to anyone else.³ To avoid confusion, facilitate timely decision-making, and promote efficient transactions, SDG&E requests that the Commission revise the Draft Policy to clarify that a “right of first offer” is being provided when a property is identified for disposition by the IOU. By way of analogy, this is consistent with the approach in the California Surplus Lands Act (“SLA”),⁴ and would allow for more specificity in the procedures for negotiations, as described below, as well as take into consideration that the terms of any agreement will differ depending upon the transacting party (for example, the potential need for waivers of sovereign immunity). Additionally, providing for a “right of first offer” would allow for the development of a clear set of procedures for the sale process and expectations on all sides.

II. REQUESTED CLARIFICATION #2: DEFINITION OF “SURPLUS PROPERTY”

SDG&E requests additional clarification of the term “surplus property,” which the Draft Policy does not define. SDG&E again suggests that the Commission consider utilizing a definition similar to that contained in the SLA.

As background, the SLA directs local agencies, such as cities, counties, or special districts, to prioritize the development of low-income housing or other vital public goods, such as parks and schools, when selling or leasing surplus land. Under the SLA, “surplus land” is

³ See California Real Property Sales Transactions (4th ed. Cal CEB), § 8.58.

⁴ California Government Code §§ 54221 *et al.*

defined as “land owned by any local agency, that is determined to be no longer necessary for the agency’s use, except property being held by the agency for the purpose of exchange.”

Here, the SLA definition could be utilized with additional clarifications for the utility context. Specifically, SDG&E recommends that the Draft Policy define “surplus land” as “land owned by any IOU, that is determined by the IOU to be no longer necessary for the IOU’s use, except property being held by the IOU for the purpose of exchange”, subject to certain exemptions as discussed below.

III. REQUESTED CLARIFICATION #3: THE SCOPE OF DISPOSITIONS OF “SURPLUS PROPERTY” THAT WOULD BE IMPACTED; EXEMPTIONS

The Draft Policy currently applies to “any future disposition of surplus real property currently owned by investor owned utilities (IOUs), including any future disposition of PG&E retained lands pursuant to the Stipulation, not contained within the boundaries of a Federal Energy Regulatory Commission (FERC) jurisdictional project.” (Draft Policy, p. 1.) The Draft Policy defines “disposition” as the “transfer, sale, donation, or disposition by any other means of a fee simple interest or easement in real property.” (*Ibid.*) As proposed, SDG&E is concerned that this definition is overly broad, and that the Draft Policy could be read to apply to any transaction involving IOU land transactions.

First, as a threshold matter, and for consistency with applicable requirements, any policy should be limited to those land transactions necessitating compliance with California Public Utilities Code (“P.U. Code”) Section 851 and subject to approval by the Commission. SDG&E recommends that the Commission clarify the scope of dispositions impacted accordingly.

Second, IOUs are sometimes required to establish and then transfer conservation easements in connection with proposed development as a form of compensatory mitigation to specified parties, including state and federal agencies. As currently drafted, the Draft Policy would appear to apply to these sorts of transactions and could result in conflict with the requirements of other state or federal laws. Further, as currently defined, the “disposition of surplus real property” would capture routine land transactions, such as when an easement is relocated to accommodate a customer’s or landowners’ needs. SDG&E therefore recommends that all transactions related to easements – which by their very nature encumber land already owned by third parties – be exempted from the policy. Third, certain types of fee simple transactions should also be exempted from the policy. Thus, SDG&E requests that the Commission clarify the scope of any potential policy to revise the definition of “disposition” to exempt categories of land transactions, including all easements, such as those related to:

- Environmental or biological mitigation lands;
- Conservation and open-space easements;
- Conveyances to or from local, state, or federal agencies (for example, for rights-of-way, trails, parks, or other public needs);
- Condemnation;

- Relocation of easements on private property;
- Quitclaim of easements back to underlying property owners, including easements located on tribal lands;
- Conveyances to any other party required by local, state, or federal law, regulation, or any contractual obligations entered into prior to the adoption of any final policy by the Commission; and
- Transactions that have commenced prior to the adoption of any final policy by the Commission.

IV. REQUESTED CLARIFICATION #4: FAIR MARKET VALUE

While payment of fair market value for surplus property is implicit in the Draft Policy, SDG&E recommends that such a requirement be made explicit in any policy adopted by the Commission, to clarify and manage expectations associated with the disposition of surplus property. *Requiring* donation of property would constitute an impermissible taking prohibited by both the California and United States Constitutions.

V. REQUESTED CLARIFICATION #5: DELETION OF “OR ADJACENT TO”

As proposed, the Draft Policy would apply to any land “located in or adjacent to a tribe’s territory” without setting any specific geographic thresholds. SDG&E requests deletion of the term “or adjacent to.” It is currently unclear how or when property qualifies as being “adjacent to a tribe’s territory.” Additionally, certain tribes claim overlapping aboriginal territories, adding to the complexity of the language proposed by the Commission. SDG&E recommends that the Commission allow for the greatest certainty for all parties by clearly limiting application of the policy, if adopted, to surplus lands *located within* a tribe’s aboriginal territory. SDG&E also recommends that the Commission, in consultation with the Native American Heritage Commission and individual tribes, prepare a map to provide to IOUs that identifies each tribe’s aboriginal territory.

VI. REQUESTED CLARIFICATION #6: PROCEDURAL CLARIFICATIONS

The Draft Policy appears to omit a number of procedural provisions necessary to provide guidance to the Commission, utilities, and tribal governments upon its implementation. SDG&E believes that further procedural clarifications would benefit all parties, and request the following additions or clarifications:

- (A) Notice. The Draft Policy “requires IOUs to notify the appropriate California tribe(s) at the time the IOU determines it will dispose of surplus properties or retained land located in or adjacent to a tribe’s territory.” (Draft Policy, p. 2.) Further, should an IOU fail “to provide notice to the appropriate tribe(s) before submitting an application or advice letter requesting Commission approval of the transaction, the Commission will provide the tribe with additional time to participate in the proceeding.” (Id., pp. 3–4.) Given the number of tribes in California and in SDG&E’s

service territory specifically, SDG&E proposes that the Commission incorporate the notification process used when notifying tribes in connection with General Order 131-D filings, rather than creating a new process as part of this Draft Policy. Pursuant to that process, notice on the Native American Heritage Commission “shall constitute notice on California Indian Reservation Tribal Governments.” (General Order No. 131-D, §§ IX.A.1.g, IX.B.1.d.) Centralizing notice requirements would minimize confusion and ensure that all tribal governments are appropriately informed of dispositions of property in their territories in as efficient a way as possible, and allows those tribes potentially interested in providing fair market value for the surplus property to step forward. SDG&E believes that the Draft Policy could be strengthened by requiring indications of interest from tribes⁵ for surplus property within 30 days of such notice to the Native American Heritage Commission, which would then be provided to the Commission as part of an application or advice letter package.

- Procedures for negotiations. Notwithstanding tribal participation in proceedings under P.U. Code § 851, the Draft Policy does not currently provide any procedures or time limitations for the negotiations or transfer of land from an IOU to a tribe upon payment of fair market value. SDG&E requests that the Commission incorporate specific procedures and time limits as a framework for transactions between IOUs and tribes.

Analogous language in the SLA is again instructive. Government Code § 54223 provides: “After the disposing agency has received notice from the entity desiring to purchase or lease the land, the disposing agency and the entity shall enter into good faith negotiations to determine a mutually satisfactory sales price or lease terms. If the price or terms cannot be agreed upon after a good faith negotiation period of not less than 90 days, the land may be disposed of without further regard to this article[.]” (Gov. Code, § 54223.)

- (B) Including similar language in the Draft Policy would encourage parties to work together cooperatively and efficiently and reduce the likelihood of disputes requiring Commission intervention. Specifically, here, SDG&E requests that the Draft Policy be revised to provide for a maximum 60-day time period after an interested tribe has submitted its indication of interest for the IOU and the interested tribe to negotiate the terms of the transfer (including, for example, responsibilities for any required or desired environmental or cultural resource studies) and a mutually satisfactory price. If the IOU and the interested tribe are unable to reach agreement on such terms within that maximum 60-day period, then the IOU should be permitted to place the land on the open market at that time.

⁵ SDG&E further believes that the definition of tribe should be clarified to those with established governments.

- (C) Multiple interested tribes. As noted above, San Diego County is home to nearly 20 federally recognized tribes and three non-recognized tribes. SDG&E has already experienced situations where multiple tribes claim overlapping territories within its service territory. In the event that multiple tribes are interested in making an offer on a piece of surplus land, the Draft Policy should provide specific procedures for determining priority among the interested tribes. For example, the SLA provides procedures for resolving priority among multiple parties. (Gov. Code, § 54227.) Although not directly applicable to the Commission’s Draft Policy, the SLA’s procedures underscore the necessity of such a framework to avoid disagreements and a finite time period for negotiations. Accordingly, SDG&E requests that the Commission incorporate additional provisions to identify priority among interested tribes.
- Substantial evidence standard. The Draft Policy states that “[w]here an IOU seeks approval to transfer non-FERC jurisdictional surplus property, including retained land, within a tribe’s territory, the tribe shall be deemed the preferred transferee absent a finding supported by *substantial evidence* that it would be in the public interest to transfer the land to another entity.” (Draft Policy, p. 4.) SDG&E requests that Commission clarify the term “substantial evidence” by either defining it or by reference to its definition in other authority (e.g., the California Environmental Quality Act, Cal. Code Regs., tit. 14, § 15384), or by striking “substantial.” SDG&E also requests clarification regarding who will determine whether the evidentiary standard has been met. If the Commission will make such determinations (presumably as part of the application or advice letter process), SDG&E recommends that the policy clearly describe the Commission’s role and any associated procedures. Further, SDG&E requests that the policy clarify that evidence that (1) a tribe is not interested in acquiring the surplus property (for example, evidence of a tribe’s failure to respond to notification or other communications indicating that the tribe is not interested in a purchase), (2) the IOU and a tribe were unable to reach agreement on the terms of the transfer within the maximum 60-day period recommended above, or (3) conveyance of the surplus property to another entity is required to comply with applicable laws, rules, or regulations, is sufficient to satisfy the applicable evidentiary standard.
 - Failure to comply. The SLA also provides that “[t]he failure of a local agency to comply with this article shall not invalidate the transfer or conveyance of real property to a purchaser or encumbrancer for value.” (Gov. Code, § 54230.5.) Without taking a position on whether the provision codified in the SLA is sound, SDG&E recommends providing language in the Draft Policy clarifying the consequences of transfers that fail to comply with the Draft Policy’s requirements, as well as any course of action that Commission is likely to take as a result.

VII. RECOMMENDATION #5: IMPLEMENTATION OF THE POLICY AS A PILOT PROJECT

The Policy represents a shift in the Commission's current approach to the disposition of utility property. Accordingly, SDG&E recommends that the Commission first implement the Policy as a one-year pilot project in select areas or for select dispositions, prior to final adoption. Implementation of a pilot project will undoubtedly yield valuable information that the Commission can use to develop the most beneficial and practical policy for all parties.

SDG&E appreciates the opportunity to provide input on the Draft Policy and look forward to further involvement in the Commission's process. Thank you for your time and attention to these comments.

Sincerely,

/s/ Clay Faber
Clay Faber
Director - Regulatory Affairs



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October 15, 2019

California Public Utilities Commission
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San Francisco, CA 94102

Re: Additional Comment on Proposed Tribal Land Transfer Policy

To Whom it May Concern:

Thank you for the opportunity to submit comments on the California Public Utilities Commission's Proposed Tribal Land Transfer Policy. The Habematolel Pomo of Upper Lake ("Tribe") attended the Tribal Leaders Meeting regarding the proposed Tribal Land Transfer Policy on September 30, 2019 and wishes to submit additional comments on the draft Tribal Land Transfer Policy to accompany its August 29, 2019 comment letter.

Specifically, after attending the Tribal Leaders Meeting, the Tribe continues to be concerned that the policy, as written, is simply too basic and leaves too many vital questions unanswered. The Tribe has the following comments and recommendations regarding the draft Policy:

1. Scope of Eligibility for Land Transfer. The draft Policy requires IOUs to notify California tribe(s), through the Native American Heritage Commission, at the time the IOU determines it will dispose of surplus properties or retained land located in or adjacent to a tribe's aboriginal territory. The draft Policy is vague as to what lands it would consider to be the tribe's aboriginal territory and exactly what "adjacent to a tribe's aboriginal territory" means. As such, the Tribe recommends that the draft Policy be revised to reflect that tribes would be eligible for lands within their aboriginal territory, as outlined in maps submitted by tribes to the Native American Heritage Commission, and the area surrounding their aboriginal territory (not just adjacent) in order to provide tribe's with the greatest opportunity to restore their lands.

2. Cost of Land Transfer. The draft Policy is silent as to whether or not the land would be transferred free of charge or be transferred at some cost. As you may know, historically most tribe's across California had their land brutally taken away from them or sold by the state for pennies on the dollar. As such, the Tribe formally requests that any land transferred under this draft Land Transfer Policy be done free of charge in an effort to restore lands to tribes that were once taken from them. Alternatively, the Tribe requests that the property be transferred at a cost well below market value, just as tribal land was once sold for pennies on the dollar.

3. Indemnification by IOUs. If land is transferred to tribes under this draft Policy and IOU equipment or transmission lines remain on the transferred land, tribes are subject to liability of that equipment or those lines. Thus, the Tribe requests that any land transfer agreements contain indemnification language that would transfer liability to the IOU for any IOU equipment, transmission lines, or hazardous waste remaining on the transferred land.

4. Land Status. The Tribe recognizes that there may be an occasion where the land set for transfer is currently in the trust of the United States. The Tribe requests that if such land is transferred to a tribe, that the land retain the trust status and be transferred directly to the tribe in trust, or in trust of the United States for the benefit of the tribe.

Thank you again for the opportunity to comment on the CPUC's Proposed Land Transfer Policy. If you have any questions, please contact Tracey Treppa, Vice-Chairperson of the Executive Council, at ttreppa@hpultribe-nsn.gov/707-363-0248. We look forward to continuing the dialogue regarding this draft policy.

Sincerely,



Sherry Treppa
Chairperson
Habematolel Pomo of Upper Lake
streppa@hpultribe-nsn.gov

October 25, 2019

California Public Utilities Commission
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RE: Comment on CPUC *Updated Proposed Tribal Land Transfer Policy*

Dear Public Advisor's Office,

The Pacific Forest and Watershed Lands Stewardship Council ("Stewardship Council") has reviewed the October 2019 redlined updated policy titled: "Investor-Owned Utility Real Property - Land Disposition - First Right of Refusal for Disposition of Real Property Within the Ancestral Territories of California Native American Tribes." We offer the following comments to supplement the comments we submitted on the first draft of the policy on August 23, 2019.

The first paragraph of the redlined draft policy states that "... this policy provides guidance regarding a first right of refusal by California Native American Tribes (Tribes) regarding any future disposition of Real Property by investor owned utilities (IOUs), including any Real Property contained within the hydro watershed lands retained by Pacific Gas and Electric Company (PG&E) through implementation of its Land Conservation Commitment (LCC)."

To make it crystal clear that the final set of land dispositions by PG&E to implement the LCC will not be subject to this policy, we recommend that footnote 7 be revised to read as follows (additional recommended text underlined below):

"The Land Conservation Commitment (LCC) was established and is being implemented in accordance with the Commission Decision (D.) 03-12-035 and D.08-11-043. Implementation of this policy shall not conflict with implementation of the LCC nor shall it impose any additional requirements on PG&E or the Pacific Forest and Watershed Lands Stewardship Council with regard to the transfer of PG&E's property interests via fee title transfers or grants of conservation easements that take place as part of the implementation of the LCC."

Additionally, we suggest that footnote 11 be revised to refer to the lands as PG&E hydro watershed lands instead of "Stewardship Council lands."

Sincerely,

A handwritten signature in blue ink that reads "Heidi Krolick".

Heidi Krolick, Executive Director

A handwritten signature in blue ink that reads "Art Baggett".

Art Baggett, Board President

Cc via email:

Stephanie Green stephanie.green@cpuc.ca.gov

Darcie Houck darcie.houck@cpuc.ca.gov

3300 Douglas Blvd.
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October 28, 2019

California Public Utilities Commission
Public Advisor’s Office
505 Van Ness Ave., San Francisco, CA 92102
public.advisor@cpuc.ca.gov

Re: Comments on Revised Proposed Tribal Land Transfer Policy

Dear Commissioners Guzman Aceves and Shiroma:

San Diego Gas & Electric Company (“SDG&E”) appreciates the opportunity to provide comments on the Commission’s revised Draft Policy now entitled “Investor-Owned Utility Real Property – Land Disposition – First Right of Refusal for Disposition of Real Property Within the Ancestral Territories of California Native American Tribes” (“Revised Draft Policy”) published on October 14, 2019. SDG&E also appreciates the Commission’s interest in tribal consultation and believes that the Revised Draft Policy includes important clarifications for both investor-owned utilities (“IOUs”) and tribes. However, SDG&E continues to have serious concerns about the lack of clarity regarding scope and the many complex issues raised by the Revised Draft Policy, such as its potential dampening effect on important infill and affordable housing development goals. SDG&E therefore urges the Commission to provide a formal process and additional time for public input by all parties and stakeholders who may be impacted, indirectly or otherwise.

SDG&E previously provided comments on the Commission’s July 3, 2019, Draft Policy on October 17, 2019, which SDG&E continues to believe are important to include in any policy the Commission may adopt on this subject for clarity and implementability for all parties, including clear exemptions to the policy. In the interest of brevity, SDG&E will not repeat those comments in detail here.¹ Rather, this letter focuses on issues raised in the Revised Draft Policy, and SDG&E respectfully offers the following additional comments and requests additional opportunities in a formal process for discussion on these topics.

I. REQUESTED CLARIFICATION #1: THE SCOPE OF DISPOSITIONS OF REAL PROPERTY THAT WOULD BE IMPACTED; EXEMPTIONS

The Revised Draft Policy applies to “any future disposition of any Real Property by investor owned utilities . . .” (Revised Draft Policy, p. 1.) The Revised Draft Policy defines “disposition” as the “transfer, sale, donation, or disposition by any other means of a fee simple

¹ SDG&E hereby incorporates its October 17, 2019, comments on the Draft Policy by reference.

interest or easement in real property.” (*Ibid.*) The Revised Draft Policy further defines the “Real Property” subject to the policy as “any IOU property whose disposition is subject to approval in accordance with California Public Utilities Code section 851.” (*Id.*, p. 1, fn. 4.) While SDG&E appreciates this clarification, SDG&E is concerned that this definition continues to be overly broad, and that the Revised Draft Policy could be read to apply to any transaction involving IOU land transactions. Accordingly, SDG&E asks that the Commission review and consider the comments SDG&E provided on this topic in its October 17, 2019 letter, and include clear exemptions for categories of transactions in any policy that may be adopted as referenced in that letter.

In particular, SDG&E is concerned that the Revised Draft Policy continues to apply to easements. (Revised Draft Policy, p. 1, fn. 3.) SDG&E receives requests to vacate or relocate easements—which, by their very nature, encumber land already owned by third parties—to accommodate a customer’s or landowner’s needs. For example, SDG&E may relocate an easement to provide for affordable housing developments on the encumbered land. Requiring IOUs to offer such easements to tribes prior to quit claims or relocation would not provide the tribe with any fee simple interest in the land and may violate the property rights retained by the underlying property owner while frustrating efforts to bring affordable housing developments to market promptly. Accordingly, SDG&E continues to strongly recommend that all transactions related to easements be exempted from this policy.

II. REQUESTED CLARIFICATION #2: OVERLAPPING ANCESTRAL TERRITORIES

As noted in SDG&E’s October 17, 2019, letter, San Diego County is home to nearly 20 federally recognized tribes and three non-recognized tribes. SDG&E has already experienced situations where multiple tribes have indicated an ancestral tie in overlapping portions of its service territory. Accordingly, SDG&E is very concerned about the Revised Draft Policy’s requirement that IOUs attempt to resolve disputes with tribes concerning ancestral territory and notice requirements. (Revised Draft Policy, p. 2, fn. 9; *id.*, p. 7.)

Placing IOUs in the position of attempting to resolve disputes among sovereign nations as outlined on page 7 of the Revised Draft Policy is untenable for several reasons. First, IOUs do not have the appropriate expertise nor the authority to make an informed judgment about which sovereign nation holds a superior claim or has a stronger “connection to the surplus property at issue.” (Revised Draft Policy, p. 7.) Second, requiring IOUs to make such determinations has the potential to erode trust and damage relationships between IOUs and tribes. Third, the process described in the Revised Draft Update may create an unequal playing field among tribes, favoring larger tribes with more financial resources or exacerbating existing resource inequalities between tribes.

Further, the Revised Draft Policy’s reference to “Indian Country” on page 4 and footnote 12 results in ambiguity. The definition of “Indian Country” under the federal statute (18 U.S.C. § 1151) quoted in the policy addresses criminal and civil jurisdiction, a highly complex determination, further refined by application of Public Law 280, 67 Stat. 588, in California. IOU’s are ill-suited to make this sort of a determination. Requiring an IOU to determine the extent of a tribe’s “Indian County” would be an unwieldy and ambiguous process, and there may

be overlapping claims by tribes. A more straightforward approach would be to identify existing tribal lands and allotments held by tribal members for purposes of prioritizing application of any refined policy, as the Revised Draft Policy appears to be suggesting with the “Indian Country” language in this section.

In light of these concerns, SDG&E reiterates its requests in SDG&E’s October 17, 2019, letter that the Revised Draft Policy be further revised to provide specific procedures for determining priority among interested tribes, including as discussed herein. To the extent that there are remaining disputes between tribes, the Commission’s tribal liaison should provide a clear dispute resolution process between tribes to allow for implementation of this policy.

III. REQUESTED CLARIFICATION #3: PROCEDURAL CLARIFICATIONS

SDG&E appreciates the additional procedural provisions included in the Revised Draft Policy. However, SDG&E continues to believe that further procedural clarifications would benefit all parties, and requests the following additions or clarifications:

- Time to Respond to Notice. The Revised Draft Policy provides that tribes will have 90 days to respond to notification from an IOU and indicate interest in the Real Property proposed for disposal. (Revised Draft Policy, p. 5.) SDG&E recognizes that tribes do need time to assess property issues; however, requiring a 90-day notice period would greatly impact IOUs’ ability to move forward with routine land transactions. Therefore, SDG&E recommends that the time period for indicating initial interest in a property be reduced to 30 days.
- Time Period for Negotiations. The Revised Draft Policy does not currently provide any time limitations for the negotiations between an IOU and a tribe. Instead, the Revised Draft Policy requires that the IOU act in good faith and engage in “reasonable effort[s]” “within a reasonable time period, as determined by the Commission.” (Revised Draft Policy, p. 1, fn. 2; *id.*, p. 5.) SDG&E is concerned that this standard could result in disputes between IOUs, tribes, and the Commission over what constitutes “reasonable efforts” and a “reasonable time period.” Accordingly, SDG&E reiterates its request that the Commission incorporate specific procedures and time limits as a framework for transactions between IOUs and tribes, and consider incorporating analogous language from the SLA.²
- Implementation Guidelines. The Revised Draft Policy states that the Commission will develop implementation guidelines for the final policy, in consultation with the Office of the Governor – Tribal Advisor, IOUs, and other stakeholders. (Revised Draft Policy, p. 5.) SDG&E recommends that the Commission hold additional noticed workshops and

² Specifically, Government Code §54223 provides: “After the disposing agency has received notice from the entity desiring to purchase or lease the land, the disposing agency and the entity shall enter into good faith negotiations to determine a mutually satisfactory sales price or lease terms. If the price or terms cannot be agreed upon after a good faith negotiation period of not less than 90 days, the land may be disposed of without further regard to this article[.]” (Gov. Code, § 54223.)

provide for at least two rounds of public comment on the implementation guidelines so that appropriate procedural details can be identified and incorporated into the guidelines.

- Costs. While SDG&E supports the Commission’s goals set forth in the Revised Draft Policy, the policy will result in additional transactional and external costs for IOUs in the form of cultural resource and tribal consultants, outside counsel, duplicate escrow charges for failed transactions, longer negotiation and transaction timelines, and other similar costs.

IV. ACKNOWLEDGEMENT OF OFFER PROCESS

In the October 17, 2019, letter, SDG&E requested that the Commission revise the Draft Policy to clarify that a “right of first offer” is being provided when a property is identified for disposition by the IOU, consistent with the approach in the California Surplus Lands Act (“SLA”).³ SDG&E appreciates the additional detail provided in footnote 2 of the Revised Draft Policy, which clarifies that surplus property will be offered to eligible tribes to indicate their interest in moving forward with negotiations to acquire property before the IOU moves forward to market the property to third parties. As indicated above, SDG&E believes that a reasonable time period for negotiations should be included in any policy for clarity and to facilitate negotiations among the parties.

SDG&E appreciates the opportunity to provide input on the Draft Policy and the Revised Draft Policy. SDG&E continues to believe that the Policy raises many complex issues that continue to require clarity and that providing a formal process and additional time for broader public input is critical. SDG&E looks forward to continued involvement in the Commission’s process. Thank you for your time and attention to these comments.

Sincerely,

/s/ Clay Faber
Clay Faber
Director - Regulatory Affairs

³ California Government Code §§ 54221 *et al.*



Manzanita Band of the Kumeyaay Nation

October 30, 2019

California Public Utilities Commission
Public Advisor's Office
505 Van Ness Avenue
San Francisco, CA 94102

RE: Investor-Owned Utility Land Disposition - First Right of Refusal for
Aboriginal Properties to California Tribes

Dear Commissioners:

The Manzanita Band of the Kumeyaay Nation ("Tribe), also known as the Manzanita Band of Diegueno Mission Indians, is a federally recognized Self-Governance Indian Tribe that operates pursuant to its Constitution and Bylaws adopted on July 12, 1975 pursuant to the Indian Reorganization Act and approved by the Commissioner of Indian Affairs on January 9, 1976, and possesses inherent powers of self-governance with duties, rights, responsibilities, and with power and authority over the lands within the exterior boundaries of the Manzanita Indian Reservation.

The Manzanita Band is one of twelve Bands of the Kumeyaay Nation. Our territory is recognized by the State of California in Assembly Joint Resolution No. 60, adopted by the California State Assembly on 29th day of August, 2002 and adopted by the California State Senate August 26, 2002.

The Kumeyaay Nation has occupied and traversed the southern California and Baja California region from the Pacific Ocean to the desert approximately 75 miles north and 75 miles south of the international border separating the United States and Mexico since time immemorial. We are continually linked to the ancient people and our spiritual connection cannot be questioned. The Manzanita Band also strives to protect known and unknown cultural resources within the territory. We recognize the importance of creating spiritual and intimate relationships with Mother Earth and all living things including our winged, finned, four-legged and plant kin.

Today, I am writing to provide comments to the California Public Utilities Commission (Commission) proposed Tribal Land Transfer Policy. The Manzanita Band recognizes the efforts of the CPUC to address the historical wrongs suffered by California Native Americans and the legacy of these adverse impacts that continues to impact tribes today. This policy provides a significant opportunity for California tribes to seek the return of lands within our ancestral territory and enhance protection of tribal cultural and biological resources.

The Commission's proposed policy to establish a first right of refusal by Native American tribes for any future disposition of surplus real property currently owned by investor owned utilities is a historically significant step in recognizing California tribes' inherent rights to their homelands. The requirement that tribes be noticed of planned disposition of surplus properties or retained land located in or adjacent to a tribe's traditional territory is a significant first step. The definition of tribal territory included in the proposed language provides clarity and consistency in determining which properties will be subject to the policy. The policy also provides concrete steps that define how the Commission will facilitate tribal government access to information and full participation in proceedings that may impact lands within or adjacent to a tribe's territory.

The Manzanita Band appreciates the opportunity to provide comments and fully supports the proposed Tribal Land Transfer Policy which so clearly recognizes tribal sovereignty and sets forth a lasting process to protect tribal sacred places and cultural resources.

Furthermore, the Manzanita Band requests a map of lands that are potentially subject to the proposed policy within our traditional territory. Should you need any additional information, please contact Lisa Haws, Tribal Administrator, at lisahaws@msn.com or (619) 733-7697. Thank you.

Sincerely,



Ms. Angela Elliott Santos, Chairwoman
Manzanita Band of the Kumeyaay Nation

October 25, 2019

California Public Utilities Commission
Public Advisor's Office
505 Van Ness Ave.
San Francisco, CA 94102
public.advisor@cpuc.ca.gov



RE: Comment on CPUC *Updated* Proposed Tribal Land Transfer Policy

Dear Public Advisor's Office,

The Pacific Forest and Watershed Lands Stewardship Council ("Stewardship Council") has reviewed the October 2019 redlined updated policy titled: "Investor-Owned Utility Real Property - Land Disposition - First Right of Refusal for Disposition of Real Property Within the Ancestral Territories of California Native American Tribes." We offer the following comments to supplement the comments we submitted on the first draft of the policy on August 23, 2019.

The first paragraph of the redlined draft policy states that "... this policy provides guidance regarding a first right of refusal by California Native American Tribes (Tribes) regarding any future disposition of Real Property by investor owned utilities (IOUs), including any Real Property contained within the hydro watershed lands retained by Pacific Gas and Electric Company (PG&E) through implementation of its Land Conservation Commitment (LCC)."

To make it crystal clear that the final set of land dispositions by PG&E to implement the LCC will not be subject to this policy, we recommend that footnote 7 be revised to read as follows (additional recommended text underlined below):

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Additionally, we suggest that footnote 11 be revised to refer to the lands as PG&E hydro watershed lands instead of "Stewardship Council lands."

Sincerely,

Heidi Krollick, Executive Director

Art Baggett, Board President

Cc via email:

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Laura Genao
Managing Director
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November 15, 2019

California Public Utilities Commission
Public Advisor's Office
505 Van Ness Avenue
San Francisco, CA 94102

Re: Southern California Edison's Supplemental Comments on Proposed Tribal Land Transfer Policy

Dear Public Advisor's Office:

Southern California Edison (SCE) writes to supplement its comment letter of October 11, 2019. Following submittal of SCE's letter, the Commission's staff posted a revised policy on or about October 14, 2019. SCE appreciates and acknowledges the efforts made to address issues raised by parties. However, the revised policy continues to have ambiguities and gaps regarding disposition of properties subject to Section 851 filing, defining geographic scope, providing a right of offer to Tribes rather than first right of refusal, and identifying timelines that we recommend addressing and resolving prior to Commission adoption of this policy. Below are ongoing open issues for Commission consideration:

- The applicable types of land dispositions remain ambiguous. For example, should the policy apply to discreet/minor sales, leases, or easements that may be approved via advice letter filing per General Order 173 or transactions with a right of recapture pursuant to General Order 69-C? Such dispositions frequently include conveyances to local governments to accommodate road widenings or other public works related projects. Therefore, SCE recommends that the policy only apply to dispositions of fee simple ownership or leases extending beyond 50 years where approval of the Commission pursuant to Section 851 is required. Discreet conveyances pursuant to General Orders 69-C (conveyances with a right of recapture or to jurisdictions with the power of eminent domain) or 173 (dispositions by advice letter filing) should be exempted.
- Additional clarity is still needed regarding which geographic areas the policy applies to. The revised policy uses the term "Indian Country." SCE's initial comments notes that lands outside of the bounds of a recognized reservation may be subject to multiple/conflicting claims and the term Indian Country is susceptible to different interpretations. SCE has requested that the Commission provide a map with single points of contact to the extent the policy is outside of a reservation. SCE would also request a formal dispute resolution protocol to use.

- The current proposed timeline with the right of first refusal adoption presents potential delays and challenges. SCE shares the views expressed by San Diego Gas and Electric (SDG&E) in its letter of October 28, 2019. Notably, SCE respectfully submits that providing a Tribe with 90 days to respond to a notification of a land sale would be problematic and that this period should be reduced to a more reasonable 60 days. A substantial delay coupled with an uncertain standard of review would likely disincentivize other potential purchasers from performing due diligence or entering into negotiations. Moreover, given that the scope of the notice is not limited to large transactions, a 90 day review could also delay public improvement projects such as road widenings dependent on the receipt of an easement or other right of way instrument.
- In addition, using a “reasonable efforts” standard regarding negotiations with a Tribe could prove to be problematic. Therefore, SCE continues to support replacing the “right of first refusal” with a “right of offer” without an obligation on the part of the utility to accept the offer. This would not impact the Tribe’s right to file an objection if and when the utility proceeds with an application to dispose of property to a third party pursuant to Section 851 of the Public Utilities Code. Doing so would further enable the Commission to balance the interest of the public, tribes, and ratepayers because it mitigates risk third parties would perceive in negotiating with utilities for land rights, affords ratepayers with the potential for a reasonable rate of return, and preserves the intent of the Tribal Land Transfer Policy.

SCE agrees with SDG&E that the IOUs, Tribal representatives, other impacted parties, and Commission staff should discuss the policy in workshops. Thank you for your continued consideration of SCE’s comments and concerns.

Sincerely,

/s/ Laura Genao

Laura Genao
Managing Director – State Regulatory Affairs
Southern California Edison Company
601 Van Ness Avenue, Suite 2030
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