



# United States Department of the Interior



NATIONAL PARK SERVICE  
Golden Gate National Recreation Area  
Fort Mason, San Francisco, California 94123

IN REPLY REFER TO:

L76 (GOGA-PLAN)

MAR 21 2003

Billie Blanchard  
California Public Utilities Commission  
c/o Aspen Environmental  
235 Montgomery Street, Suite 800  
San Francisco, California 94104-2906  
FAX: (415) 955-4776

Re: *Scoping Comments on PG&E Jefferson Martin 230 kV Project*

Dear Ms. Blanchard:

The Golden Gate National Recreation Area (GGNRA) submits the following scoping comments on the PG&E Jefferson-Martin 230 kV Transmission Project, which will be the subject of an Environmental Impact Report ("EIR") prepared by the California Public Utilities Commission. The GGNRA has reviewed the Proponent's Environmental Assessment ("PEA") submitted by PG&E to your agency, along with other documents relevant to this project.

**1. The EIR should disclose that the rights held by GGNRA under its easements impose a significant limitation on the types of projects that can occur on Watershed lands.**

The PEA contains a biased and inaccurate discussion of the GGNRA's ability to control this project. The GGNRA administers two easements covering a significant portion of the land on which PG&E plans to construct the proposed project. These easements total approximately 23,000 acres of land, and the lands are commonly referred to as the Peninsula Watershed lands, (The lands are shown in Figure 5-1 of the PEA.) The City and County of San Francisco owns the land and the San Francisco Public Utilities Commission ("SFPUC") maintains the land for the collection, storage, and transmission of water for human consumption. This use by the SFPUC is recognized in the easements. The easements were granted to the United States by the City of San Francisco in 1969 in exchange for increased federal funding for the construction of Highway 280.

The larger 19,000 acre easement is a Scenic Easement and the smaller 4,000 acre easement is a Scenic and Recreational Easement. (Acreages are approximate.) The easements contain largely identical terms, and the purposes of the easements are to "preserve the land in its present state as open space" and to "preserve the scenic and natural resources of the area." (Scenic and Recreation Easement, pages 1 and 4.) The Scenic and Recreational easement includes an

additional purpose which is to provide for “public use and enjoyment” of the land. (Scenic and Recreation Easement, page 1.)

The easements include numerous restrictive covenants limiting the types of activities that can occur on the land. For example, the Scenic and Recreation Easement states:

The land shall be preserved in its present natural state and shall not be used for any purpose other than for the collection, storage and transmission of water and protection of water quality; outdoor recreation; ecological preservation and other purposes, which shall be compatible with preserving said land as open-space for public use and enjoyment. (Scenic and Recreation Easement, page 5.)

The Scenic Easement contains a nearly identical provision.

The easements contain four additional restrictive covenants. These covenants prohibit projects involving the erection of structures; the granting of further encroachments to adjoining property owners; excavation or topographic changes; and the cutting or removal of timber or brush. These activities are prohibited unless the GGNRA concurs that the activity is compatible with the purposes of the easements. (Scenic and Recreation Easement, pages 5 - 6.)

While the easements include a reservation of rights for the City of San Francisco and its permittees to conduct certain types of activities on the easement lands, the reservation does not extend to activities included within the restrictive covenants.<sup>1</sup> In other words, projects involving topographic changes, the erection of structures and vegetation cutting are not free to proceed without GGNRA’s concurrence. California law also provides GGNRA with the ability to prohibit any activity that would constitute “unreasonable interference” with the easements. Camp Meeker Water v. PUC, 274 Cal.Rptr.2d 678, 691 (Cal. 1990).

In addition to administering the Peninsula Watershed lands pursuant to the terms of the easements, the GGNRA also administers the lands pursuant to the federal statute that established the park. The Peninsula Watershed lands were included within the legislative boundaries of the Golden Gate National Recreation Area in 1980. This legislation requires the GGNRA to “administer such land in accordance with the provisions of the documents entitled ‘Grant of Scenic Easement’ and ‘Grant of Scenic and Recreation Easement’, both executed on January 15,

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<sup>1</sup> The reservation states: “The Grantor for itself, its representatives and its successors, assigns and permittees reserves all of their rights *not specifically restricted herein*, including without limitation the perpetual right to use the below-described premises for purposes which they may find necessary or desirable for their water or other utility operations as now or hereafter conducted, including without limiting the generality of the foregoing the right to construct, maintain, repair, expand and reconstruct buildings (including caretaker’s cottages), storage facilities, reservoirs, pipe systems, cable systems, flumes, head walls, retention walls, bulkheads, cofferdams, pumphouses, dikes, roadways, public utilities and similar improvements upon the below-described premises.” (Scenic and Recreation Easement, page 7.)

1969, between the City and County of San Francisco and the United States.” 16 U.S.C. § 460bb-2(p). In addition, because the Peninsula Watershed lands are included within the boundaries of the GGNRA, the GGNRA must also administer the lands according to the overriding purpose for which the Golden Gate National Recreation Area was established. That purpose decrees that the GGNRA:

shall utilize the resources [of the park] in a manner which will provide for recreation and educational opportunities consistent with sound principles of land use planning and management. In carrying out the provisions of this subchapter, the Secretary shall preserve the recreation area, as far as possible, in its natural setting, and protect it from development and uses which would destroy the scenic beauty and natural character of the area.

16 U.S.C. § 460bb.

Both the easements and the GGNRA enabling legislation, invest the GGNRA with the discretionary authority to ensure that activities on the Peninsula Watershed lands are compatible with the purposes of the easements, namely the preservation of open space, scenic values, and natural resources. In the case of the Scenic and Recreation Easement, activities must be compatible with the additional purpose of public use and enjoyment. Projects involving topographic change, vegetation removal, and structural development may not proceed without GGNRA concurrence, and no project may proceed if it would “unreasonably interfere” with the purposes of the easements.

The EIR should therefore acknowledge GGNRA’s ability to control this project under the terms of the easements and the GGNRA enabling legislation.<sup>2</sup> We anticipate that PG&E may disagree with GGNRA’s interpretation of its legal rights, and in that event, the EIR should disclose to the public that there is a disagreement between GGNRA and PG&E over the scope of the GGNRA’s rights. Failure to disclose the GGNRA’s interpretation of its legal rights would render the EIR a misleading document in that members of the public and the PUC Commissioners would wrongly assume the GGNRA is unable to control projects occurring on easement lands.

**2. The Proposed Project presented in PG&E’s PEA unreasonably interferes with the purposes of the easements, and GGNRA would not concur that the project could be built.**

A. Impacts to Scenic Resources

In the PEA, PG&E concludes “*given the existing 60 kV transmission facilities’ presence*

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<sup>2</sup> This authority endows GGNRA with actual control over the proposed project. That is, GGNRA’s mandatory duty to administer the land in accordance with the provisions of both its easements and the GGNRA enabling legislation gives GGNRA sufficient control over the project to invoke the procedural requirements of the National Environmental Policy Act (“NEPA”). E.g., *Sierra Club v. Hodel*, 848 F.2d 1068 (10<sup>th</sup> Cir. 1988). The GGNRA is engaged in discussions with PG&E regarding NEPA obligations.

*within the Segment 1 Project route and the incorporation of mitigation measures described in Subsection 8.4, the Project would not result in significant visual impacts.”* The GGNRA strongly disagrees with this conclusion.

The project involves the construction of significantly higher and more massive towers on Peninsula Watershed lands. The project also involves the stringing of additional wires, excavation and grading, vegetation clearing, and other construction-related and maintenance-related activities that will adversely affect watershed lands. The impact of the project on scenic vistas and other scenic values would be significant and it is unlikely that any mitigation measures would be available to reduce the intensity of these impacts to a less than significant level.

The mitigation measures proposed by PG&E in Subsection 8.4 largely involve the planting of screening vegetation. Given the mass and height of the new towers, it is extremely unlikely that vegetation would fully screen the towers. Moreover, as PG&E admits in the PEA, PG&E will need to conduct ongoing vegetation clearing and thinning within an expanded right-of-way<sup>3</sup> to reduce fire risks. The need for ongoing vegetation clearing undermines the effectiveness of the proposed mitigation measures. The PEA also does not address the inability of these mitigation measures to reduce impacts from scenic vistas such as Sweeney Ridge, which includes the San Francisco Bay Discovery Site (National Historic Landmark) where viewers would be looking down on watershed lands. Since the towers would protrude above the tree line, even mature trees would not provide effective screening. In addition, non-native grasslands represent the greatest percentage of habitat type located at the towers and pull sites (88%). These areas will not support screening vegetation. These impacts to scenic values and scenic vistas would constitute an unreasonable interference with GGNRA’s ability to maintain the scenic values of its easement lands.

#### B. Impacts to Recreational Resources

The PEA concludes, in Section 5.3.2 (Impact 5.3), that the proposal’s construction-related impacts to recreational resources of the watershed lands will be minimal and less than significant. The PEA also concludes that the proposal will have no ongoing operational impacts on recreational resources.<sup>4</sup> The GGNRA disagrees with these conclusions and believes that the proposal is incompatible with the public use and enjoyment goals of the easements.

Construction-related work and noise will be extremely disruptive to the quality of the

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<sup>3</sup> GGNRA would object to the issuance of an expanded right-of-way to PG&E for the proposed project.

<sup>4</sup> Section 5.3.3.2 of the PEA states “*Operation of the Project will not impact existing or future recreational uses in affected parks and open-space areas. Segment 1 replaces an existing transmission route in a PG&E transmission-line corridor that does not currently directly affect recreational uses. Existing and proposed recreational trails that will be paralleled or crossed by the Project will not be impacted, because the transmission line will span these areas and no structures will be placed on the trails.*”

recreational experience for many users. As to operational impacts, while it may be true that the new towers will not pose a physical barrier to hiking, biking and other forms of recreation, in the long term, the increased mass and height of the towers will substantially impact the quality of the recreational experience for many users. In addition, an expanded vegetation clearing program within a wider right-of-way will directly and adversely impact the quality of the recreational experience. Thus, the GGNRA does not agree that there will be “no” impacts to recreation as a result of the proposed project.

In developing other alternatives to the proposal (see 3 below), the CPUC should evaluate mitigation measures wherein, PG&E would provide funding for the establishment of the Bay Area Ridge Trail’s (BART) Cahill Trail through the Watershed. BART has permission from the San Francisco Public Utilities Commission to establish this trail for public access to Watershed lands, and the project requires funding to establish the necessary protection for watershed resources and public access, including fencing, a reservation system, and rangers. The level of funding should be equal to the impact of the selected alternative.<sup>5</sup>

### C. Impacts to Natural Resources

#### (i) Vegetation

In Section 6.9.3 (Impact 6.1), the PEA acknowledges that the watershed lands are heavily vegetated, yet then concludes that the proposed project would have less than significant impacts on trees within the watershed because only a “*few trees, many of which are not native*” would be cut or trimmed. In Section 6.9 (Impact 6.12), the PEA states that “*no new impacts to vegetation will occur as a result of operations and maintenance*” despite the admission that areas around towers will continue to be “*mowed, plowed or cleared*” and that vegetation trimming will expand to cover a 100’ wide area rather than a 50’ wide area. The GGNRA does not agree that impacts to trees will be limited to only a few non-native trees, nor does the GGNRA agree that there will be no new impacts to vegetation over the long term.

To the extent that the EIR will include alternatives involving vegetation clearing on Watershed lands, the EIR would benefit from a more complete description of the nature and frequency of vegetation clearing activities than what is provided in the PEA. For example, the PEA indicates that trees may be allowed to grow higher because the wires will be higher. But, it is not clear what the height differential is.

Serpentine grassland is a rare and important habitat that supports numerous T/E species and the host plant for the federally threatened Bay Checkerspot butterfly. The PEA estimates that eight percent of the pull sites and 14 percent of the Tower and Tap Study areas are located in serpentine grassland habitat (Table 6-1), including three pull sites in serpentine grassland along Ralston-Pulgas Ridge and Haynes-Black Mountain Road (Watershed lands). These areas of

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<sup>5</sup> Although these scoping comments suggest various mitigation measures, these suggestions should not be construed as a determination by GGNRA that the mitigation would render any particular alternative compatible with the purposes of the easements.

serpentine grassland habitat will be disturbed by construction, including the movement of equipment and vehicles. The mitigation proposed is a temporary fix to the construction effects and does not mitigate for the long-term loss of habitat for a federally threatened species. Alternatives that avoid these impacts to serpentine grassland and the species that depend upon it should be developed.

#### (ii) Invasive Species

Ongoing vegetation clearing along the transmission line encourages the establishment of invasive species. Seeds of invasive species are spread to disturbed areas from the vehicles and PG&E maintenance crews and become established, replacing native species. The proposed project involves more vegetation clearing than what occurs now due to the expanded width of the right-of-way. Mitigation Measure 6.6 in the PEA is inadequate to mitigate these impacts. Alternatives that avoid the introduction or spread of exotics should be considered. To the extent that the EIR will include alternatives that involve vegetation clearing on Watershed lands, the EIR should require resources for the removal of invasive species and the restoration of native habitats in other areas of the watershed should be provided commensurate with the level of impact. Areas disturbed by construction are especially vulnerable to invasive plant species. These areas require intensive ongoing monitoring and maintenance to eliminate invasive exotics and to prevent them from spreading from the disturbed sites to adjacent natural areas. The Watershed has existing areas where invasive species are targeted for removal and contributing funding or crews to this effort may be an appropriate mitigation measure for the Project.

#### (ii) Raptors and Other Birds

In Section 6.9.4 (Impact 6.22 and 6.23), the PEA indicates that “no” impacts to raptors and other birds are anticipated. Also, the PEA indicates that the transmission lines do not cross important bird movement corridors. The GGNRA disagrees with these statements. Raptors generally perch on the highest point to hunt, and given the height of the new towers, it is likely that they would be attractive perching locations for birds. If the towers and poles are not constructed properly, bird electrocutions will likely occur. Alternatives that would underground transmission lines would avoid many of these impacts. To the extent the EIR will include alternatives involving new towers, the EIR should reflect that PG&E has entered into a Settlement Agreement with the U.S. Fish and Wildlife Service in USFWS v. PG&E, INV 2000102354 (copy attached) wherein PG&E has identified areas in the Watershed as “Raptor Concentration Zones.” The EIR should reflect PG&E’s commitment to construct all new towers and poles to be “raptor safe” in accordance with Section 2(a)(ii) of the Settlement Agreement. Raptor safe means that new construction should be effective to protect raptors, and this may mean more than simply framing the poles and towers with a 5’ phase separation. The EIR should also require more robust mitigation requirements if bird mortality occurs after construction. If mortality occurs, PG&E should be required to conduct additional mitigation to reduce or eliminate mortality.

The San Francisco Watershed is an important nesting and roosting site for birds, including raptors and songbirds. The PEA, in Impact 6.7, does not evaluate the effects of tree

trimming and removal during the nesting season, when bird species are most vulnerable to disturbance and predation. In addition, helicopter flights are also disruptive to nesting activity. These impacts can be detrimental to bird species.

**3. The EIR should analyze a reasonable range of alternatives, including undergrounding the transmission lines along Canada Road.**

To comply with CEQA, an EIR must analyze a reasonable range of alternatives. The GGNRA strongly believes that the alternative of undergrounding both the 60kV and the 230kV transmission lines in a new utility corridor under Canada Road is a reasonable alternative for analysis in the EIR. This alternative would reduce the context, intensity, and duration of new impacts and allow for the reduction of most of the ongoing impacts associated with the 60kV line. Construction impacts would be reduced because the construction would take place within or adjacent to an existing roadway. Long-term impacts from the towers on scenic, natural resource, and recreational values would be eliminated. Long-term impacts associated with tower and transmission line maintenance (such as vegetation clearing) would also be eliminated and the existing transmission tower corridor could be restored. Roads and infrastructure could be obliterated along the abandoned alignment.

In addition, the EIR should also include Alternative 1B, undergrounding only the 230kV line along Canada Road. While not achieving all of the benefits of the alternative discussed in the prior paragraph, Alternative 1B would reduce construction impacts on natural and cultural resources and would reduce visual impacts by eliminating the need to increase the height of the towers by up to 40 feet. However, GGNRA is not at this time prepared to endorse Alternative 1B because an impact analysis of this alternative is not available for our review.

The GGNRA does not support undergrounding the new 230 kV line in the existing corridor in the Peninsula Watershed lands. The trenching associated with this alternative will create unacceptable impacts to natural resources. The relocation of the current overhead alignment to more remote areas of the watershed is also not acceptable to the GGNRA because it would most certainly result in substantial impacts to previously undisturbed areas. These alternatives, therefore, would likely constitute an unreasonable interference with GGNRA's easements.

In addition to the need to consider a reasonable range of alternatives under CEQA, it is important for the CPUC to include alternatives in the EIR that would not constitute an unreasonable interference with GGNRA's easements. (See 1 above.) In other words, if the EIR were only to include alternatives that unreasonably interfered with GGNRA's easements, the GGNRA would have the right to halt implementation of the project. In order to avoid this conflict, the GGNRA is available to discuss particular alternatives at any time. We believe it is important for the CPUC to coordinate early and often throughout this process with other agencies having jurisdiction over the project, such as the GGNRA.

The GGNRA disagrees with the conclusion reached in the PEA related to the impacts of Route Option 1A (replacing overhead utility lines) as compared to Route Option 1B (undergrounding along Canada Road). The PEA reaches the conclusion that Route Option 1A

has “less significant potential environmental impacts than Route 1B (Page 3-12).” It is highly unlikely that underground construction in an existing roadway will entail greater impacts than construction of higher and more massive towers in environmentally sensitive areas. The EIR should re-evaluate this impact analysis.


**4. The EIR should discuss the impacts of each alternative on the GGNRA’s easements in the land use sections of the document.**

The description of the GGNRA’s easements in Section 5.2.1.3 of the PEA is biased and inaccurate. Please revise the description of the easements in accordance with comment 1 above. The list of land use topics in Section 5.3.1.1 of the PEA neglects to list the easements as a land use category. The EIR must address the land use impacts of each alternative on GGNRA’s easements. GGNRA encourages the CPUC to coordinate with the GGNRA in developing these sections of the EIR because the decision of whether a particular alternative unreasonably interferes with the easements rests with the GGNRA.

The Peninsula Watershed lands are part of the United Nations designated Golden Gate Biosphere Reserve. It is one of over 300 "biosphere reserves" in over 100 countries that serve as models of how to protect the extraordinary resources of wildlands and protected areas while providing non-destructive human use and enjoyment. The EIR should reflect the biosphere reserve status.

Thank you for working the GGNRA on this Project. Please call Jonathan Gervais on my staff at (415) 561-4841 with questions.

Sincerely,



Mai-Liis Bartling  
Acting General Superintendent