

143 FERC ¶ 61,046  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony Clark.

Public Utility District No. 2 of Grant County,  
Washington

Project No. 2114-208

ORDER MODIFYING AND APPROVING SHORELINE MANAGEMENT PLAN

(Issued April 18, 2013)

1. On March 2, 2010, Public Utility District No. 2 of Grant County, Washington (Grant PUD), licensee of the Priest Rapids Project No. 2114, filed an application for Commission approval of its Shoreline Management Plan (SMP). Grant PUD supplemented its proposed plan on April 29, 2010, and October 27, 2010. For the reasons discussed below, the Commission finds that the proposed SMP, as modified herein, is in the public interest because it comprehensively manages the project shoreline in a manner that protects environmental and public recreation resources, preserves historic and cultural resources, and protects scenic quality and aesthetic resources. Accordingly, the Commission approves Grant PUD's proposed plan, as modified below.

2. Grant PUD and other stakeholders agree as to nearly every aspect of the SMP. We find that the only contested matter – a disagreement between Grant PUD and private entities as to whether Grant PUD must renew or extend a lease that allows the private entities to maintain facilities on project lands – is outside the scope of our review. We have neither required nor precluded Grant PUD from renewing the lease, nor has it requested authorization from us regarding its actions: Grant PUD has independently determined that not renewing the lease is in the best interest of it and its ratepayers.

## **Background**

### **A. Project Description**

3. An original license for the project was issued in 1955,<sup>1</sup> and the Commission issued a new 44-year license for the project in April 2008 (relicense order).<sup>2</sup>

4. The project, which is located on the mid-Columbia River in portions of Grant, Yakima, Kittitas, Douglas, Benton, and Chelan Counties, Washington, consists of the Wanapum development and the Priest Rapids development, and has a combined authorized capacity of 1,893 megawatts. The project occupies about 12,909 acres of land (excluding the reservoirs), which includes about 3,052 acres of federal land managed by the Bureau of Reclamation, the Bureau of Land Management, the U.S. Department of the Army, the U.S. Fish and Wildlife Service (FWS), and the U.S. Department of Energy.

5. The Wanapum development consists of the 38-mile stretch of the Columbia River beginning approximately 0.5 miles downstream of Rock Island Dam<sup>3</sup> and continuing downstream to Wanapum Dam at river mile (RM) 415. The Priest Rapids development begins immediately below Wanapum Dam, continues 18 miles downstream to Priest Rapids Dam (RM 397), and ends approximately 2 miles below Priest Rapids Dam. The project boundary includes lands along the shoreline that generally average from 100 to 150 feet inland from the full pool elevation at both reservoirs, extending to as much as 2,000 feet in some locations to include such features as project recreation sites. The project boundary is established primarily by metes and bounds property lines.

6. Project lands include an area called Crescent Bar Island, which includes Crescent Bar Island (formed by the construction of Wanapum Dam) and a portion of the mainland shoreline just to the north of, and across a short bridge from, the island itself. The 160-acre area is situated along the shore of the Wanapum reservoir, approximately 20 miles upstream from Wanapum Dam. About 105 acres of the island have been privately developed with condominiums, recreational vehicle (RV) lots, related

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<sup>1</sup> *Public Utility District No. 2 of Grant County, Washington*, 14 F.P.C. 1067 (1955).

<sup>2</sup> *Public Utility District No. 2 of Grant County, Washington*, 123 FERC ¶ 61,049 (2008) (*Relicense Order*).

<sup>3</sup> The Rock Island Dam is part of the Public Utility District No. 1 of Chelan County's Rock Island Project No. 943. *Public Utility District No. 1 of Chelan County, Washington*, 46 FERC ¶ 61,033 (1989).

permanent infrastructure, and recreation areas and facilities open to the public.<sup>4</sup> Currently, approximately 50 percent (52 acres) of the developed portion of the island is under private use by individuals who have leasehold interests in the condominiums and RV lots. Many of the RV lots have been modified with permanent fixtures built on or around the RV units. In addition, there are 5 commercial recreation areas on the island and mainland area that are open to the public: a day-use park, boat launch and fuel dock, beach, campground with 35 tent sites, and nine-hole golf course.

7. In 1998, groups representing business lessees, condominium lessees, and recreational vehicle tenants on Crescent Bar Island attempted to force the licensee to remove from the project boundary the Crescent Bar Island lands occupied by the condominiums, RVs, and related infrastructure. The groups filed complaints with the Commission, claiming that the lands underlying their businesses and residences were not needed for project purposes and thus must be excluded from the project boundary.<sup>5</sup>

8. In 1999, the Commission dismissed the complaints.<sup>6</sup> The Commission explained that the “[l]ong-term leasing of project lands to private parties is at odds with our policy of maximizing public recreation at licensed projects” and that its:

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<sup>4</sup> Grant PUD owns the island, but leased it to the Port of Quincy in 1962 for a term that expired in June 2012. The lease provided that the leased lands would be “used and managed for the highest and best public purposes consonant with the obligation of the several contracting parties to the public and to the taxpayers of Grant County . . . .” June 5, 1962 Lease (attached to complaint, filed May 28, 1998, by Crescent Bar, Inc., Crescent Bar Homeowners Association, Crescent Bar Resort Condominium Association, and Commercial Leaseholders, jointly) at 4-5. In 1970, the Port of Quincy subleased the land to a developer that later sold its interest to Crescent Bar, Inc., another developer. In 1973, Grant PUD amended the Port of Quincy lease to permit the division of portions of the property and the operation and maintenance of facilities that had been built on the island. Crescent Bar, Inc. further sublet to individuals, homeowner associations, and commercial enterprises. The Commission has never approved the leases entered into by Grant PUD. *Public Utility District No. 2 of Grant County, Washington*, Order on Complaints, 88 FERC ¶ 61,012, at 61,031 (1999).

<sup>5</sup> These groups alleged that Grant PUD was in violation of the FPA by not seeking a license amendment that would exclude this land from the project boundary.

<sup>6</sup> *Public Utility District No. 2 of Grant County, Washington*, Order on Complaints, 88 FERC, at 61,031 (1999); *reh’g denied*, 89 FERC ¶ 61,177 (1999); *aff’d sub nom.*

(continued...)

longstanding policy is to eliminate private residences from within a project's boundary, but only upon a showing that the underlying lands are unneeded for project purposes. Specific project purposes include project operation and maintenance, public recreation, public access, shoreline control (including aesthetic values), flowage, and protection of environmental resources.[<sup>7</sup>]

9. The Commission found that "all the lands in question are needed for the project purposes of flowage, public recreation, and aesthetic values."<sup>8</sup> Accordingly, there was no basis for concluding that the licensee was violating the FPA by declining to ask the Commission to exclude the lands in question from the project boundary.<sup>9</sup>

### **B. SMP Requirement**

10. On October 29, 2003, Grant PUD filed its relicense application, which included a draft shoreline management plan that the licensee had elected to develop.<sup>10</sup> The draft plan proposed to classify project lands in seven land use categories (Project Facilities, Conservation, Agriculture, Public Recreation - Dispersed, Public Recreation - General Development, Single-Family Residential, and Planned Development).

11. Grant PUD classified Crescent Bar Island as Planned Development (55 acres) and Conservation (105 acres). The draft plan defined "Conservation" as "lands that contain fish, wildlife, scenic, historic and/or archaeological resources that have exceptional and

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*Crescent Bar Homeowners Association v. FERC*, No. 00-70035, 2 F. App'x 722 (9th Cir. 2000).

<sup>7</sup> 88 FERC at 61,032-33.

<sup>8</sup> *Public Utility District No. 2 of Grant County*, 89 FERC ¶ 61,177, at 61,549 (1999). See also *Public Utility District No. 2 of Grant County* (issuing new license for Priest Rapids Project), 123 FERC ¶ 61,049 at P 127 (2008) (stating "Crescent Bar Island is necessary for project purposes of flowage, public recreation, and aesthetic values").

<sup>9</sup> *Id.*

<sup>10</sup> The draft Shoreline Management Plan (dated August 2003) was included in Grant PUD's October 29, 2003 Relicense Application, Exhibit E8 Report on Land Management and Aesthetics, at pp. 112-200. Accession No. 20031029-0224. The pages of the draft SMP are numbered separately from the rest of Exhibit E8.

specific value(s) that require special protection” and “Planned Development” as lands that had “intensive residential, vacation home, and/or commercial development” within or adjacent to the project.<sup>11</sup> The primary use of Planned Development land would be “public recreation and conservation” and the primary use of Conservation land would be “conservation and protection of fish, wildlife, scenic, historic, archaeological, and cultural values.”<sup>12</sup> The Planned Development designation called for development of a master recreation and conservation plan, which would guide future development and public access to these lands.

12. Commission staff analyzed Grant PUD’s proposal in the Final Environmental Impact Statement (FEIS) for the relicensing proceeding,<sup>13</sup> and the Commission adopted staff’s recommendations in the relicense order. The order explained that Crescent Bar Island is designated as a Washington Department of Fish and Wildlife (Washington DFW) Riparian Priority Habitat and provides habitat for wintering bald eagles.<sup>14</sup> Grant PUD’s draft SMP proposed to permit additional development on the island (e.g. marinas, docks, a trail, and residential lawn areas). However, the relicense order concluded that, with the exception of a proposed hiking trail (which would be located primarily in already-disturbed areas), further development on the island could potentially result in adverse effects, such as habitat fragmentation and loss of riparian habitat and associated species, potential exclusion of public access to project lands and waters, and potential adverse effects on juvenile Chinook salmon that use near-shore habitat.<sup>15</sup> The relicense order concluded that Crescent Bar Island is necessary for project purposes of flowage, public recreation, and aesthetic values and that, based on the potential effects from further development, no further development on Crescent Bar Island should occur beyond the existing disturbed footprint (except for the proposed 5.5-mile-long hiking trail).<sup>16</sup>

13. The Commission included Article 419 in the license, requiring Grant PUD to file for Commission approval a final SMP by April 17, 2009.<sup>17</sup> The final SMP was to

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<sup>11</sup> Draft SMP at 15, 18.

<sup>12</sup> *Id.* at 15, 19.

<sup>13</sup> FEIS issued November 17, 2006, in Project No. 2114-116.

<sup>14</sup> *Relicense Order*, 123 FERC ¶ 61,049 at P 127.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 61,335.

include, among other things, general land use policies, procedures for processing non-project use applications, a land use classification system that included the seven classifications proposed in the draft SMP, the allowable and prohibited uses for each classification, and provisions for updating the plan every six years.

14. With respect to Crescent Bar Island, Article 419 required that the final SMP include provisions for certain project recreation facilities<sup>18</sup> and for managing the island (and related mainland) under two land use classifications, Planned Development and Conservation, “except that no further development shall occur beyond the existing disturbed footprint (except for the [new] trail [required by the license]).”<sup>19</sup> Grant PUD was to prepare the plan in consultation with FWS, Washington DFW, Washington Recreation Conservation Office, Washington Department of Natural Resources, and the Wanapum Indians.

15. On March 5, 2009, Grant PUD requested a one-year extension of the April 17, 2009 deadline to file its SMP, explaining that it needed to perform additional work and consultation on its proposed plan due to changes in land use and state guidelines since it prepared the draft plan in 2003 and additional public outreach. Commission staff granted the extension.<sup>20</sup>

16. Grant PUD filed its proposed SMP on March 2, 2010. The SMP describes Grant PUD’s public outreach process in preparing the proposed SMP.<sup>21</sup> During 2008 and 2009, it solicited comments on the proposed SMP from homeowners associations, county and state agency representatives, members of the public, and others. Grant PUD provided public information and solicited comments through news releases, public workshops,

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<sup>18</sup> Specifically, Grant PUD was to: (1) build a trail that extended from the mainland to the island, (2) dredge the existing boat channel and lengthen the existing boat launch on the mainland, (3) remove six existing RV campsites on the mainland, (4) provide a directional sign, and (5) provide picnic tables and a vault toilet on the mainland. On February 10, 2012, Commission staff approved Grant PUD’s request to remove these measures from the SMP and instead include them in Grant PUD’s Recreation Resource Management Plan with other recreation measures required by the license. *Public Utility District No. 2 of Grant County, Washington*, 138 FERC ¶ 62,114, *reh’g denied*, 140 FERC ¶ 61,201 (2012).

<sup>19</sup> *Relicense Order*, 123 FERC ¶ 61,049 at 61,336 (Article 419).

<sup>20</sup> May 1, 2009 letter from Commission staff to Grant PUD.

<sup>21</sup> SMP at Appendix A-2.

individual and small group meetings, the Grant PUD website, and online and paper comment forms. From June through September 2009, Grant PUD specifically solicited comments on the potential future uses of Crescent Bar Island.<sup>22</sup>

17. Among other things, instead of the seven land use classifications contemplated by Article 419, the SMP proposes three land use classifications: Project Facilities, Public Recreation Development, and Resources Management. Grant PUD stated that it would improve public access when its lease with the Port of Quincy expired in 2012.

18. By letter dated March 10, 2010, Commission staff asked Grant PUD to provide additional information on Grant PUD's intended proposals with respect to Crescent Bar Island. Grant PUD responded on April 29, 2010, explaining that its full Commission had voted to not renew the lease when it expires in 2012 and that all residential uses would end with the expiration of the lease. On October 27, 2010, Grant PUD provided additional information regarding its decision to not renew its lease with the Port of Quincy and its future plans for identifying appropriate public recreation enhancements to the island.

### **C. Public Notices, Comments, and Interventions**

19. On May 26, 2010, the Commission issued a public notice of the SMP filing, soliciting comments and motions to intervene and establishing a June 28, 2010 deadline for submittals.<sup>23</sup> In response to the notice, Washington DFW, the Crescent Bar Condominium Master Association (Condominium Association), the Crescent Bar Recreational Vehicle Homeowners Association (RV Association), and Pat Kelleher filed timely motions to intervene.<sup>24</sup> In addition, the Crescent Bar South RV Park Owners Association (South RV Association) and 234 other private entities or individuals filed comments in the proceeding.<sup>25</sup>

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<sup>22</sup> *Id.* Appendix A-2 of the SMP contains detailed summaries of these comments.

<sup>23</sup> 75 Fed. Reg. 30,807 (June 2, 2010).

<sup>24</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2012).

<sup>25</sup> Throughout this order, the Condominium Association, RV Association, and the South RV Association will be referred to as the "Associations" or the "RV and Condominium Associations."

20. Colleen Kelleher BCSCBN Inc. d/b/a Vantage Bay (Vantage Bay) filed a late motion to intervene. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,<sup>26</sup> we will grant the late motion.

21. Most of the intervenors and commenters, which have property interests in the RV lots and condominiums on the island or are associations that represent the RV and condominium owners, object to Grant PUD's decision to not renew the lease with the Port of Quincy.<sup>27</sup>

22. On June 23, 2011, Commission staff issued for public comment an environmental assessment (EA) analyzing the potential effects of the proposed SMP and alternatives on water quality, fisheries, terrestrial resources, threatened and endangered species, recreation, cultural resources, land use, and socioeconomics. The Condominium Association, RV Homeowners, South RV Association, and approximately 50 individuals filed timely comments on the EA. Most of the comments reiterate their objections to the SMP's proposed measures for Crescent Bar Island and argue that the EA is flawed and represents an inadequate environmental review.

23. As discussed below, we have considered the comments and motions to intervene and Commission staff's EA in deciding whether, and under what conditions, to approve the proposed SMP.

### **Proposed SMP**

#### **A. Goals**

24. The overall goal of an SMP is to:

develop a tool that will help [the licensee] fulfill its license responsibilities and obligations for the project, including protecting and enhancing the project's environmental, scenic, and recreation values. In addition ..., a licensee should establish other goals, as appropriate, related to the protection of project specific purposes and resources.[<sup>28</sup>]

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<sup>26</sup> 18 C.F.R. § 385.214(d) (2012).

<sup>27</sup> See EA at 38-40 and appendix A for a detailed description of comments.

<sup>28</sup> Commission staff's "Guidance for Shoreline Management Planning at Hydropower Projects" at 17. The document is on the Commission's website at <http://www.ferc.gov/industries/hydropower/gen-info/guidelines/smpbook.pdf>.

25. Grant PUD's SMP will guide its decisions regarding requests for non-project use of Grant PUD-owned project lands and waters, as well as decisions that may be required by the terms of flowage easements on non-Grant PUD-owned project lands and waters.<sup>29</sup> The SMP will also guide Grant PUD in its (1) coordination with other public entities to cooperatively manage publicly owned lands within and adjacent to the project boundary consistent with common goals and license requirements, including the requirements of the project's Wildlife Habitat Management Plan,<sup>30</sup> Recreation Resources Management Plan (Recreation Plan),<sup>31</sup> and Historic Properties Management Plan;<sup>32</sup> and (2) efforts to preserve, protect, and enhance the environmental, scenic, and recreational values of the project.<sup>33</sup>

26. The "[a]vailability of public access and use of project lands is a key component" of the proposed SMP.<sup>34</sup> The SMP favors permitting public access to project lands and adjacent project waters, consistent with safety and security considerations. Grant PUD's public access policy is to keep public access to project lands and waters non-exclusive and preserve such project lands and waters for use by all members of the public.<sup>35</sup>

27. Article 420 of the license<sup>36</sup> allows Grant PUD to grant permission, without prior Commission approval, for the use and occupancy of project lands and waters for minor

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<sup>29</sup> SMP at 1.

<sup>30</sup> Order Approving Wildlife Habitat Management Plan Pursuant to Article 409, 132 FERC ¶ 62,142 (2010); and Order Modifying and Approving Wildlife Habitat Monitoring, Information, and Education Plan Pursuant to Article 410, 132 FERC ¶ 62,154 (2010).

<sup>31</sup> See Article 418 of the license, *Relicense Order*, 123 FERC, at 61,334-35 (2008), as modified in 2012, at 138 FERC ¶ 62,114 (2012) and 140 FERC ¶ 61,201 (2012).

<sup>32</sup> Order Approving Historic Properties Management Plan, 137 FERC ¶ 62,081 (2011).

<sup>33</sup> SMP at 1.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 12.

<sup>36</sup> *Relicense Order*, 123 FERC at 61,336-37.

activities, as long as such uses are consistent with the purposes of protecting and enhancing the scenic, recreational, and environmental values of the project. Grant PUD must request prior Commission approval before granting permission for other non-project uses not addressed in Article 420. Under the SMP, all non-project uses of project lands or waters require prior written authorization by Grant PUD, and Grant PUD states that it would continually monitor such non-project uses to ensure that they are consistent with established policies and license requirements.<sup>37</sup>

## **B. Shoreline Classifications**

28. Article 419 states that the SMP should include seven land use classifications. However, rather than the seven classifications proposed in the draft SMP, the SMP proposes to classify all project lands using only three land use categories: Project Facilities, Resources Management, and Public Recreation Development.<sup>38</sup> Grant PUD explains that, due to the “lack of land use complexity and limited development opportunities associated with the terrain and public landownership patterns of the project,” it has “re-designated all lands within the Project under the land use classification system that better depicts the types of shoreline environments and license-related management objectives and avoids an overly complicated classification system.”<sup>39</sup>

29. In evaluating authorizations for non-project use of project lands, Grant PUD states that it would maintain its rights to perform activities necessary to fulfill its license and other management objectives across all three land use classifications, as well as the right to deny, approve, and approve with conditions, non-project use requests. In addition, particular properties may be managed solely for resource protection and enhancement in which case non-project activities would be limited or prohibited. Grant PUD would evaluate and make determinations on proposed non-project uses and activities consistent with the intent of the SMP and other relevant management plans.

30. For each land use classification, the SMP identifies the non-project uses that Grant PUD would consider authorizing, as well as those uses that it would prohibit.<sup>40</sup>

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<sup>37</sup> SMP at 6.

<sup>38</sup> *Id.* 18.

<sup>39</sup> *Id.* at 17.

<sup>40</sup> *Id.* at 23, Table 3.

31. The **Project Facilities** classification includes lands used, or with the potential to be used in the future, for: (1) electrical power generation and transmission; (2) project fish hatcheries and related project waterways; (3) facilities for project maintenance and offices; (4) education and interpretation facilities; (5) project recreation facilities that are located within or immediately adjacent to project facilities related to power; and (6) other project buildings in close proximity to generation facilities. While Grant PUD would not fully exclude public use from these lands, it would control the use and access to these lands to protect public health and safety and to provide for project security. Grant PUD would consider approving various non-project uses on these lands (e.g., fish and wildlife enhancements, landscaping, utility structures, roads).<sup>41</sup> Grant PUD proposes to include 5,313 acres of project lands in this classification. No part of Crescent Bar Island would be in this category.

32. Grant PUD would manage lands in the **Resources Management** classification to protect fish, wildlife, scenic, historic, archaeological, and cultural resources. Lands in this classification would include: (1) lands important for fish or wildlife conservation and enhancement, (2) lands intended for restoration or mitigation for project area actions, (3) lands with specific development restrictions not suitable for other land use classifications, and (4) lands owned by Grant PUD that have very limited access or are highly susceptible to environmental degradation. Grant PUD proposes to classify 5,520 acres as Resources Management. These acres include the undisturbed areas of Crescent Bar Island.

33. The **Public Recreation Development** classification includes existing recreation areas, as well as those areas set aside by the licensee for future public recreation purposes.<sup>42</sup> Thus, the primary use of these lands would be for future project recreation infrastructure and the recreation facilities required by the project's Recreation Plan. Grant PUD states that "uses and activities proposed within the [Public Recreation Development] classification must demonstrate substantial public benefit and open access within the context of approved elements of the [project's Recreation Plan], and approved [Public Recreation Development Plan], and any associated use agreements."<sup>43</sup> In

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<sup>41</sup> SMP at 23.

<sup>42</sup> Grant PUD explains that it consolidated "Public Recreation - General Development" and "Planned Development" from its draft plan into the "Public Recreation Development" category. SMP at 18.

<sup>43</sup> SMP at 21. Small marinas, boat launches, docks, piers, floats, and boat lifts could be allowed on Public Recreation Development lands, with the prior approval of Grant PUD and, if not authorized under license Article 420, by the Commission as well.

Appendix F to the proposed SMP, “Public Recreation Development Planning Process,” Grant PUD proposes to develop individual Public Recreation Development Plans for various areas of the shoreline, which it would use to consider applications at those sites for non-project uses of lands or waters within this classification. These plans would be designed to “ensure that public recreation and resource conservation needs are met, while considering the adjacent private property owners.”<sup>44</sup> Grant PUD explains that developing the plans would be a cooperative process generally involving Grant PUD, community organizations, agencies, and tribes as well as the recreating public. Grant PUD proposes to classify 2,076 acres as Public Recreation Development, including the developed portion of Crescent Bar Island.

### C. Crescent Bar Island

34. With respect to Crescent Bar Island, the SMP states its implementation would satisfy the requirement in Article 419 that the SMP “contain a provision to protect and enhance Crescent Bar Island.”<sup>45</sup>

Specifically, measures to improve public recreation access and use, while protecting and enhancing wildlife habitat and the scenic quality of Crescent Bar Island will occur after the existing lease with the Port of Quincy expires in 2012. Grant PUD will ensure that any future uses and/or land use agreements at Crescent Bar Island adequately fulfill these improvement measures, along with other relevant safety, health, Project operation, and license-related objectives.<sup>[46]</sup>

35. By letter dated March 10, 2010, Commission staff asked Grant PUD to provide additional information on its proposals with respect to improving public recreation access land use and protecting and enhancing wildlife habitat and scenic quality of Crescent Bar Island upon expiration of the existing leases in 2012.

36. On April 29, 2010, Grant PUD filed its response, explaining that Grant PUD staff had prepared, and on March 29, 2010, presented to the Grant PUD Commission, two options for the disposition of Crescent Bar Island. Under Option A, all residential uses would end with the expiration of the lease in 2012, and the “post-2012 Crescent Bar

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<sup>44</sup> SMP, Appendix F, “Public Recreation Development Planning Process” at 1.

<sup>45</sup> *Relicense Order*, 123 FERC at 61,335.

<sup>46</sup> SMP at 4.

Island enhancement plan would include public recreation enhancements and associated facilities upgrades, wildlife habitat enhancements, and other cleanup and enhancement measures.”<sup>47</sup> Under Option B, Grant PUD would enter into new, short-term transitional leases for a period up to eleven years. The leases would require, among other things, that the lessees pay fair market rent, pay a fee to mitigate for the loss of public recreation, share costs for needed infrastructure upgrades on the island, and for RV owners, bring their RVs and lots up to code.<sup>48</sup> While some comments favored renewal of the lease with the Port of Quincy, others supported returning the island to full public use as soon as possible.<sup>49</sup> On April 26, 2010, the Grant PUD Commission voted unanimously for Option A.

37. On October 27, 2010, Grant PUD filed additional information regarding its decision to not renew its lease with the Port of Quincy and thereby end private residential use upon lease and sublease expirations. Grant PUD explained how the original lease, meant to inure to the benefit of the public, had evolved to something else: “This original lease was developed with the intent to provide for public recreation facilities and commerce; however, subsequent subleases have resulted in private development and use occurring on nearly half of the developed portion of Crescent Bar Island.”<sup>50</sup>

38. Grant PUD explained: “The decision was based on Grant PUD Commission’s direction to provide full public recreation access, and to comply with FERC policy regarding private exclusive residential use.”<sup>51</sup> Grant PUD further explained that:

the high costs associated with necessary facility upgrades (wastewater, water system), achieving fire and building code compliance, property mitigation, and substantial increases in fair market rent values would have been necessary to allow short term private use and was deemed inconsistent with

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<sup>47</sup> Grant PUD April 29, 2010 filing at 6.

<sup>48</sup> *Id.* at 7-8.

<sup>49</sup> *See id.*, Appendix A at 3-4.

<sup>50</sup> Grant PUD October 27, 2010 filing at 1.

<sup>51</sup> *Id.* at 2.

Grant PUD's core mission to generate and deliver low-cost power to Grant PUD customers.<sup>52]</sup>

39. Grant PUD stated that, after the lease ends in 2012 and all RVs and personal property have been removed, it would consider the following public facilities for the island: short-term RV and tent camping, pedestrian trails, golf course, improved beach areas, improved parking and access, restroom facilities and comfort stations, wildlife protection and enhancement measures, interpretative and educational signs and kiosks, public recreation commercial options, operation and maintenance facilities, and on-site security.<sup>53</sup>

40. The Condominium and RV Associations (and individuals represented by the Associations) oppose Grant PUD's proposal to end exclusive residential use of Crescent Bar Island in 2012 and to thereafter expand public recreational use of, and enhance wildlife habitat on, the island. They argue that: (1) allowing the private residences to remain would not violate Commission policy, (2) Grant PUD's proposal to end private residential use of Crescent Bar Island is contrary to the requirements of Grant PUD's license; and (3) Grant PUD's proposal to not renew the leases and thus end private residential use of the island was done hastily, without the benefit of sufficient notice to the leaseholders, and constituted an "about-face" by Grant PUD that was contrary to Grant PUD's earlier promises to renew the leases until 2023.

#### **1. Consistency with Commission policy**

41. The Associations argue that the Commission does not preclude private use of project lands where such use is consistent with the objectives of the SMP and the requirements of the license, and the Commission therefore should allow the private residential uses to remain on Crescent Bar Island. In support, the Associations cite to a number of cases where the Commission has allowed such private use.

42. Section 10(a)(1) of the Federal Power Act (FPA) provides that licensed projects shall be best adapted to a comprehensive plan for improving or developing the waterway for beneficial public purposes, including recreation.<sup>54</sup> The Commission's policy with

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<sup>52</sup> October 27, 2010 filing at 2.

<sup>53</sup> Grant PUD will have to submit, for Commission approval, an application to amend its license to authorize the construction, operation, and maintenance of appropriate public facilities for Crescent Bar Island.

<sup>54</sup> 16 U.S.C. § 803(a)(1) (2006).

respect to recreational development at licensed projects is set forth in section 2.7 of the Commission's regulations.<sup>55</sup> Its key provision is that the "Commission will ... seek, within its authority, the ultimate development of [recreation] resources...." To this end, the Commission expects licensees to "develop suitable public recreational facilities upon project lands and waters and to make provisions for adequate public access to such facilities and waters...."<sup>56</sup>

43. In the cases cited by the Associations, the Commission has allowed certain private, non-residential uses of project lands and waters, such as boat docks and marinas, where such use does not interfere with project purposes. In none of those cases did the Commission require the licensee to permit such uses. Moreover, the Commission has generally concluded that the long-term leasing of project lands for private residential purposes is at odds with its policy of maximizing public recreation at licensed projects.<sup>57</sup>

44. Here, Grant PUD has not proposed to extend its lease with the Port of Quincy, so the question of whether, or under what conditions, we would consider approving the continued private residential use of the island is not before us. We have not ordered Grant County to not renew the leases; it has independently determined that doing so is in the best interest of it and its ratepayers. We have no authority to require a licensee to authorize private uses of project lands and waters that do not relate to a project's public purposes.

## **2. Consistency with license requirements**

45. The Associations argue that Grant PUD's proposal is inconsistent with Article 419 of its license. That article states that the land classification system in the SMP is to describe seven land use classifications, including Planned Development and Conservation, and that Grant PUD is to manage Crescent Bar Island under the Planned Development and Conservation classifications. They argue that reducing the classifications to three, eliminating the Planned Development and Conservation classifications, and classifying the existing disturbed footprint of Crescent Bar Island as Public Recreation Development and the remainder as Resources Management is inconsistent with Article 419. They argue, moreover, that Article 419 contemplates that

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<sup>55</sup> 18 C.F.R. § 2.7 (2012).

<sup>56</sup> 18 C.F.R. §2.7(b) (2012).

<sup>57</sup> See, e.g., *Public Utility District No. 2 of Grant County, Washington*, 88 FERC ¶ 61,012, at 61,033 (1999); *Central Maine Power Company*, 75 FERC ¶ 61,052, at 61,192 (1996).

the existing residential development on the island would remain.<sup>58</sup> Thus, they argue, Grant PUD's SMP cannot now propose anything different from what Article 419 requires.

46. We disagree. Although Article 419 described the seven land use classifications proposed in Grant PUD's 2003 draft plan, the requirement that Grant PUD prepare a final SMP in consultation with various agencies and the Wanapum Indians left the door open to the possibility that the final SMP could differ from the draft plan as a result of the consultation process, the availability of more specific information, or changed circumstances. Indeed, Grant PUD explains that its SMP proposes three land use classifications instead of seven based on Commission SMP guidelines and "inventory, analysis, and characterization work, and the required consultation with stakeholders under Article 419."<sup>59</sup> FWS and Washington DFW, two of the agencies Grant PUD consulted with in preparing its SMP, support the reduced number of land use classifications. FWS states that it should improve Grant PUD's ability to implement the SMP, and Washington DFW states that the three classifications "better depict the types of shoreline environments and license-related management objectives. ... [and] should improve [Grant PUD's] ability to implement the SMP by concisely categorizing a land use to a specific land use classification."<sup>60</sup>

47. Nor can Article 419 be read as authorizing, or requiring, the continued private residential use of Crescent Bar Island past 2012. To the contrary, the license specifically recognizes that the Commission would have to approve any extension of the lease beyond that date.<sup>61</sup> Moreover, even under the Planned Development classification referred to in Article 419, Grant PUD would be free to decide to not renew the lease.<sup>62</sup>

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<sup>58</sup> They cite to the provision in Article 419 that says: "Crescent Bar Island shall be managed under two land use classifications as Planned Development and Conservation, except that no further development shall occur beyond the existing disturbed footprint (except for the trail)." *Relicense Order*, 123 FERC, at 61,336 (2008).

<sup>59</sup> Grant PUD's July 9, 2010 filing, at 9.

<sup>60</sup> These letters are included in the SMP at Appendix A-1.

<sup>61</sup> *Relicense Order*, 123 FERC ¶ 61,049, at P 124. (2008).

<sup>62</sup> The Associations' reliance on Commission staff statements in FEIS for the relicensing proceeding is misplaced. An FEIS is Commission staff's description of a proposed action and an analysis of that action's potential environmental impacts and, as such, it neither authorizes nor requires specific actions.

48. We agree that the SMP's three land use classifications, as modified below, properly reflect the nature of the lands within the project boundary and will enable Grant PUD to better implement the SMP. The land use classifications apply to all 12,909 acres of project lands, and represent a comprehensive effort to protect project lands and waters and to make them available to the public to the maximum extent practicable. The goal of the three classifications and the activities that would be allowed or prohibited within each classification is to minimize land use effects on project resources. Moreover, whether the SMP contains three or seven classifications has no bearing on whether Grant PUD decided to renew the lease with the Port of Quincy, and thus is not relevant to the Associations' concerns.

### 3. Stakeholder involvement

49. The Associations argue that Grant PUD's proposal to not renew the lease with the Port of Quincy and thus end private residential use of the island was done hastily, without the benefit of sufficient notice to the leaseholders, and constituted an "about-face" by Grant PUD that was contrary to its earlier promises to renew the leases until 2023. The Associations point to a 14-day comment period that Grant PUD initiated on March 29, 2010, which was the date Grant PUD staff presented its Preliminary Compliance Analysis and Recommendation Report to the Grant PUD Commissioners.

50. The sufficiency under state or local law of Grant PUD's notice to leaseholders regarding its decision to cease private residential use of the island upon expiration of the lease with the Port of Quincy is not a matter within the Commission's purview and outside the scope of this proceeding. The Commission has no jurisdiction to rule on private lease terms and other property rights; such matters must be resolved in an appropriate court. Furthermore, whether or when Grant PUD may have changed its position concerning lease renewal is not relevant to the issue here – appropriate development of project lands and waters. In any event, Grant PUD explains that it considered not renewing its lease with the Port of Quincy as early as 2008. As a result, the Associations scheduled a workshop with the Grant PUD Commissioners in which they expressed a desire for a long-term lease with Grant PUD.<sup>63</sup> Grant PUD states that from June-September 2009 it engaged in a public outreach process on the development of the final SMP during which it proposed reducing the land use classifications "such that residential use would not be accommodated on the island."<sup>64</sup> During that time, the various condominium and RV associations, individuals with homes and RVs on the

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<sup>63</sup> Grant PUD's July 7, 2010 filing at 11-12.

<sup>64</sup> Grant PUD's July 7, 2010 filing at 12.

island, and members of the public submitted comments on the proposed SMP.<sup>65</sup> Grant PUD contends moreover that the comment period prior to the Grant PUD Commission's vote on April 29, 2010, was sufficient, as evidenced by the more than 250 comments Grant PUD received prior to the vote.<sup>66</sup> Almost 20 percent of these comments supported Grant PUD's proposal to not renew the lease with the Port of Quincy and return the island to full public use.<sup>67</sup> Most of the remaining comments were submitted by residents of the island, their families, and the various associations representing the residents and supported lease renewal.<sup>68</sup>

51. After receiving Grant PUD's proposed SMP and the April 2010 supplement, the Commission, on May 26, 2010, issued public notice of the filings and requested comments by June 26, 2010. Entities were given an additional opportunity to comment on Commission staff's EA. There is no question that sufficient public notice was given with respect to our action here – consideration of the SMP.

#### **D. Other SMP Measures**

##### **1. General**

52. Grant PUD's SMP includes general information regarding: (1) the process for securing approval for non-project uses, (2) authorization instruments, (3) the need for external permits, (4) monitoring compliance, (5) renewal of authorizations, and (6) revocability and non-transferability of authorizations.<sup>69</sup> Grant PUD will develop a "Priest Rapids Project Procedures and Standards Manual for Shoreline Management," which will provide the public with additional detail regarding Grant PUD applications, fees, and other costs associated with processing and implementing non-project use applications, will serve as an adaptive management tool, and will be updated by Grant PUD in conjunction with future SMP updates.<sup>70</sup> Grant PUD states that it will ensure that

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<sup>65</sup> Appendix A-2 of the SMP describes the outreach process and summarizes the comments submitted to Grant PUD on the proposed SMP.

<sup>66</sup> Grant PUD's July 9, 2010 filing at 11. These comments are summarized in Grant PUD's April 29, 2010 filing.

<sup>67</sup> See Grant PUD's April 29, 2010 filing, Appendix A, at 3-4.

<sup>68</sup> See *id.*

<sup>69</sup> SMP at 24-25.

<sup>70</sup> *Id.* at 25.

any non-project use proposal that it approves would not adversely affect project operations, other project purposes, or license requirements.

53. Grant PUD states that, following approval of the SMP, it will review all authorizations, permits, leases, or use agreements issued prior to April 17, 2008 to determine consistency with the current license provisions. If Grant PUD determines the existing authorization is not consistent with the new license and project purposes, the existing authorization may be terminated.

54. We find these measures to be reasonable and approve them.

## **2. Clarification of allowed non-project uses**

55. Table 3 on page 23 of the March 2, 2010 SMP provides a detailed listing of all the non-project uses that Grant PUD would allow and those that it would prohibit under each land use classification. Although the table purports to address only non-project uses, some of the listed activities would appear to be more appropriately categorized as relating to project purposes (e.g., public access, camping, vegetation control, and fish and wildlife enhancement).

56. In addition, while the SMP states that lands classified as Project Facilities are reserved for licensed project works (e.g., generation facilities, fish hatcheries), it is not clear why or under what circumstances Grant PUD would consider allowing certain non-project uses by other entities (e.g., fences, access barriers, private trails and roads, wildlife enhancements, public access). While there may be circumstances unique to this project, there are no doubt areas occupied by project works where no non-project uses should be considered by Grant PUD. Similarly, it is not clear why Grant PUD would consider authorizing some non-project uses on lands classified as Public Recreation Development (e.g., private roads, access barriers, fences, water intake or pumping facilities, wildlife enhancements). Therefore, ordering paragraph (C) requires Grant PUD to provide a description and maps of those lands within the Project Facilities and Public Recreation Development classifications on which no non-project uses would be authorized.

## **3. Monitoring and compliance**

57. The SMP proposes to develop and implement a monitoring and compliance program to ensure that non-project uses and activities on Grant PUD-owned and managed project lands and waters are consistent with authorization instruments and the terms and conditions of the license.

58. In the EA,<sup>71</sup> Commission staff recommended that this program establish methods and schedules for monitoring and reporting and include procedures for addressing non-compliance issues. Commission staff also recommended that a program be developed in consultation with relevant state and federal agencies and tribes and be submitted to the Commission for approval. We agree, and these requirements are accordingly included in ordering paragraph (D) of this order.

#### **4. Progress reports**

59. Grant PUD proposes to file reports to describe the progress made toward implementing the transition from private residential use to development of public recreation and wildlife enhancements on Crescent Bar Island.<sup>72</sup> Commission staff recommended that Grant PUD include within the progress reports for Crescent Bar Island a schedule and duration for closures of facilities and beaches on the island during the demolition and construction period associated with transitioning land uses at Crescent Bar Island.

60. Regarding the work to be done on Crescent Bar Island, the Commission agrees with the staff recommendation that Grant PUD include a schedule and duration for closures within the Crescent Bar Island progress reports. Should Grant PUD decide to remove structures from the island, it will have to demonstrate to the Commission that any construction activity will be conducted in an environmentally appropriate manner.

#### **5. Periodic updates of SMP**

61. In the EA,<sup>73</sup> staff recommended that, following completion of the six-year plan review process, Grant PUD file a report for Commission approval describing the review process, stakeholder comments, and Grant PUD's response to comments. Staff recommended Grant PUD identify any proposed amendments to the SMP as a result of the six-year review. If resource agencies recommend changes to the SMP that Grant PUD does not propose adopting, Grant PUD should provide the basis for such conclusions using project specific information. This order adopts these recommendations.

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<sup>71</sup> EA at 97-98.

<sup>72</sup> Grant PUD October 27, 2010 filing at 4.

<sup>73</sup> EA at 98.

## 6. GIS data

62. Ordering paragraph (F) of this order requires the licensee to file GIS data regarding the reservoir area and shoreline management classifications. This will allow detailed tracking of shoreline resources and uses, and facilitate future reviews.

### National Environmental Policy Act (NEPA) Issues

63. The RV and Condominium Associations jointly filed comments on the EA, arguing that: (1) the Commission staff failed to adequately analyze environmental impacts and erroneously relied on an EA rather than an EIS; (2) the EA mistakenly assumed the tenancies would terminate in 2012 irrespective of the Commission's actions which caused Commission staff to fail to identify properly the environmental baseline and the no action alternative; and (3) the Commission staff improperly rejected alternatives that contemplate continued residential use of Crescent Bar Island when it improperly concluded that the Grant PUD proposed SMP was consistent with the project license. Separately, eleven individuals filed comment letters expressing dissatisfaction with the EA.<sup>74</sup>

#### A. Adequacy of EA and Need for an EIS

64. Commission staff's EA included a comprehensive analysis of Grant PUD's proposed SMP and a thorough analysis of how Grant PUD's proposal, and reasonable alternatives to it, would affect the environment. Contrary to the assertions of the RV and Condominium Associations, the Commission was not required to prepare an EIS in this case.

Agencies "need not prepare a full EIS," if they initially prepare the less detailed environmental assessment (EA) and, based on the EA, issues a finding of no significant impact' (FONSI), concluding that the proposed action will not significantly affect the environment."<sup>75]</sup>

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<sup>74</sup> Terry Tyrrell's July 20, 2011 comment letter is representative of these letters. The following filed substantially similar letters: Marilyn Larson; Joan, Larry, and Aaryn Ailiment; Tim Church; James Whitcomb; George Neffner; Steven Suskin; Karin and Randy Hills; Sharon Svien; Tex and Nancy Steere; Jeffrey McKee; and Janice Shabro.

<sup>75</sup> *Lee v. United States Air Force*, 354 F.3d 1229, 1237 (10th Cir. 2004) (quoting *S. Utah Wilderness Alliance v. Norton*, 301 F.3d 1217, 1237 (10th Cir. 2002)).

65. CEQ regulations state that “economic or social effects are not intended by themselves to require preparation of an environmental impact statement.”<sup>76</sup> The EA concluded that Grant PUD’s proposed SMP, as modified, will protect water quality, fisheries, terrestrial resources, threatened and endangered species, recreation, cultural resources, land use and socioeconomics, while providing increased opportunities for public access to project lands and waters. Commission staff concluded its analysis by finding that Grant PUD’s proposed SMP, along with staff recommendations, would not constitute a major federal action significantly affecting the quality of the human environment. Accordingly, there was no need to prepare an EIS.<sup>77</sup>

66. The EA nevertheless included an extensive analysis of the effects of the expiration of the lease under the heading “socioeconomics,”<sup>78</sup> including the effects on the condominium leaseholders.<sup>79</sup> While the Associations disagree with the substance of Commission staff’s recommendations in the EA, the requirements of NEPA are procedural, not substantive.<sup>80</sup> That the EA took a “hard look” at all consequences of the decision not to renew the lease is sufficient, and there is no “basis to expect that an EIS would have been more thorough or would have reached different conclusions.”<sup>81</sup>

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<sup>76</sup> 40 C.F.R. § 1508.14 (2012).

<sup>77</sup> We also note that the 103-page EA goes well beyond the level of detail required by CEQ. *See Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations*, 46 Fed. Reg. 18,026 (1981) at 36a (stating that an EA should be “approximately 10-15 pages”).

<sup>78</sup> EA at 74-97.

<sup>79</sup> The Associations allege that the EA failed to adequately analyze the potential environmental impacts of possible modifications to the island’s wastewater treatment facilities and demolition activities relating to removal of residential structures, and failed to collect sufficient information regarding potential impacts to cultural and historical resources. We believe that the EA’s discussion of these issues was adequate. *See* EA at 47, 66-68, 69-71, and 74. In any event, these matters are not relevant to the Associations’ interest in this proceeding, i.e., for Grant PUD to renew the leases.

<sup>80</sup> *Utahans for Better Transp. v. U.S. Dept of Transp.*, 305 F.3d 1152, 1162-63 (10th Cir. 2002); *Friends of the Bow*, 124 F.3d at 1213.

<sup>81</sup> *Southern California Edison Co.*, 134 FERC ¶ 61,195, at P 26 (2011).

**B. No Action Alternative**

67. The Associations assert that the Commission's approval of the proposed SMP is a "prerequisite to the [Grant] PUD's decision to follow through on its eviction plans" and therefore concludes that the Commission's analysis was flawed because it assumed that, under the no action alternative, the leases would not be renewed.<sup>82</sup>

68. To the extent that the Associations argue that the proper no action alternative should have been the maintenance of the *status quo*, we agree. A no action alternative should be premised on current conditions remaining the same. Even if the lease has expired and arguably the owners of the private structures have no legal right to maintain them on Grant PUD's property, as a physical matter, the structures remain. Thus, the no-action alternative includes the current structures. As a practical matter, under the no-action alternative, the project would continue to operate as it does currently and there would be no significant change to the existing environmental setting or project operation. The FEIS issued in the relicensing proceeding contained a similar finding, concluding that:

[u]nder the No-Action Alternative as defined by the staff, the project would continue to operate as it is currently. There would be no significant change to the existing environmental setting or project operation. No new environmental measures would be implemented.<sup>83</sup>

69. We conclude that the EA provides all the information necessary for us to take a hard look at the proposed action.

70. Regardless, the EA reasonably concluded that the lease agreement between Grant PUD and the Port of Quincy expires in 2012. While there is ongoing litigation surrounding this issue, any environmental conclusions based on pending litigation are speculative and form no basis for the Commission to conclude that Grant PUD has ongoing legal responsibilities to leaseholders.

71. Also, the SMP (the only matter before us) does not include any final plan for removing private structures from project lands. At such time as Grant PUD does make such a proposal, we would examine it and its potential environmental impacts, to ensure its consistency with resource management and project purposes.

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<sup>82</sup> Associations' July 22, 2011 filing at 5-6.

<sup>83</sup> November 17, 2006 FEIS at 381.

### C. Choice of Reasonable Alternatives

72. The Associations assert that while NEPA requires the Commission to develop appropriate alternatives and to adequately describe these alternatives, the EA is defective because it fails to consider an alternative that would allow continued residential use until 2023 or beyond. Further, the Associations assert that the EA did not contain a cogent reason for rejecting an alternative with more shoreline management classifications. The Associations request that the Commission also consider an alternative they proposed which contemplates a 40-year lease extension with the addition of some infrastructure and recreational improvements. Citing a number of instances where the Commission has authorized private uses and structures within project boundaries, the Associations assert that the EA's rejection of their alternative was flawed because it mistakenly relied on the fact that the alternative was inconsistent with Commission policy and Grant PUD's proposed SMP.

73. NEPA requires action agencies to take a "hard look" at the potential environmental consequences of their proposed action.<sup>84</sup> However, in carrying out their NEPA responsibilities, federal agencies are governed by a rule of reason.<sup>85</sup> The range of alternatives that must be considered is a matter within an agency's discretion.<sup>86</sup> The discussion of alternatives need not be exhaustive and need only provide sufficient information to permit a reasoned choice of alternatives, i.e., "reasonable" alternatives.<sup>87</sup> There is no requirement to examine each proposed mitigation or enhancement measure (or groups of such measures submitted by an entity) as a separate alternative or alternatives.<sup>88</sup> In contrast to an EIS, an EA must provide only "brief discussions" of the

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<sup>84</sup> *Committee for Auto Responsibility v. Solomon*, 603 F.2d 992, 1002 (D.C. Cir. 1979), *cert. denied*, 445 U.S. 915 (1980).

<sup>85</sup> *Natural Resources Defense Council v. Morton*, 458 F.2d 827, 837 (D.C. Cir. 1972).

<sup>86</sup> *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 551-52 (1976).

<sup>87</sup> See section 102(2)(C)(iii) of NEPA, 42 U.S.C. § 4332(2)(C)(iii) (2006); and *North Carolina v. FPC*, 533 F.2d 702, 707 (D.C. Cir. 1976) (citing *NRDC v. Morton*, 458 F.2d 827 (D.C. Cir. 1972)).

<sup>88</sup> *Idaho Power Co.*, 110 FERC ¶ 61,242, at PP 80-85 (2005).

environmental impact of the proposed action and alternatives to the proposed action.<sup>89</sup> In *Richard Balagur*, the Commission explained:<sup>90</sup>

[A] discussion of environmental alternatives need not be exhaustive and need provide sufficient information to permit a reasoned choice of alternatives. Further, the range of alternatives that must reasonably be considered decreases as the environmental impact of the proposed action becomes less substantial. Thus, an agency's finding of no significant impact, if otherwise valid, permits the agency to consider a narrower range of alternatives than it might be obliged to assess before undertaking an action that would significantly affect the environment. [Footnotes omitted.]

74. The EA did not ignore the Associations' alternative. Rather, the EA considered that alternative and eliminated it from detailed analysis.<sup>91</sup> Excluding an alternative that contemplates a 40-year lease extension was reasonable,<sup>92</sup> given that Grant PUD has elected to not renew the lease and the Commission has no authority to require Grant County to extend the lease, and given the EA's conclusion that continued residential use of Crescent Bar Island would not be consistent with providing public recreation on project lands and waters.<sup>93</sup>

75. The Associations assert that the EA did not cite any "authority precluding continued residential use of [Crescent Bar Island]." It is true, as the Associations note, that the Commission has authorized residential uses on project properties.<sup>94</sup> And it is also

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<sup>89</sup> Section 1508.9(b) of the CEQ regulations, 40 C.F.R. § 1508.9(b) (2011). CEQ typically recommends that EAs be 10-15 pages long. *See Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, 46 Fed. Reg. 18,026 at 18,027 (March 23, 1981) (Question 36a).

<sup>90</sup> *Richard Balagur*, 57 FERC ¶ 61,315, at 62,018 (1991), *aff'd sub nom. Friends of the Ompompanoosuc v. FERC*, 968 F.2d 1549, 1556-57 (2nd Cir. 1992).

<sup>91</sup> EA at 35-36.

<sup>92</sup> *Id.* at 35.

<sup>93</sup> *Id.* at 36.

<sup>94</sup> Associations' July 22, 2011 filing at 21 n.59.

true that the Commission has stated that, while public access to project lands and waters for recreation is an important project purpose, it is appropriate for the Commission to authorize licensees to permit private recreation facilities where there is no dispute that the public has sufficient access to recreation at a project and where the private facilities do not unduly interfere with any other project purposes.<sup>95</sup> However, those limited circumstances do not exist here. Grant PUD has decided not to extend the lease. As the EA recognized, “Grant PUD’s decision to not renew the leases on Crescent Bar Island would benefit the public by increasing access to project recreational resources.” Grant PUD has proposed an SMP consistent with advancing project purposes – specifically, recreation and environmental protection. There is no precedent supporting the Commission’s rejection of a licensee’s proposal to hold project property for public purposes and instead requiring that project property be set aside for private use.

### **Conclusion**

76. The Commission herein is faced with a proposal to make the Priest Rapids project property available to the general public for recreational purposes. We recognize that Grant PUD’s proposal is contrary to the desires of the Crescent Bar Island leaseholders, many of whom view their leasehold interests as much more than a temporary property interest. However, Grant PUD’s proposal, a matter within its sole discretion, not to extend the lease on its lands was made for its own business and public policy reasons as well as to be consistent with its license obligations, and is consistent with the FPA, Commission regulations, and Commission precedent.<sup>96</sup> Thus, the Commission concludes that Grant PUD’s proposed SMP for the Priest Rapids project, with the changes discussed above, would allow for the protection of the project’s scenic, recreational, and environmental resources while providing adequate opportunities for access to project lands and waters and should be approved.

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<sup>95</sup> *Duke Power*, 114 FERC ¶ 61,183, at P 15 (2006).

<sup>96</sup> *See, e.g.*, Response of Grant PUD to March 10, 2010 Additional information Request as to Crescent Bar Island: Project No. 2114 at 2 (filed April 29, 2010), stating that “after review and discussion, Grant PUD Commissioners stated that new leases were considered to be inconsistent with Project purposes and objectives of Grant PUD under its FERC license, both from a business decision and FERC compliance standpoint. Moreover, they expressed concern over the extensive and costly capital facility upgrade requirements that would be needed to facilitate continued private exclusive use. . . . Upon reviewing and assessing all information received, Grant PUD Commissioners unanimously supported the decision to terminate all existing residential leases upon expiration of the existing lease with the Port of Quincy in 2012”).

The Commission orders:

(A) The Shoreline Management Plan filed March 2, 2010, and updated October 27, 2010, pursuant to Article 419 of the license, is approved, as modified by Ordering Paragraphs (B) through (E) below.

(B) The progress reports that Grant PUD files as proposed in its SMP shall include a schedule and duration for closures of facilities and beaches on Crescent Bar Island during the demolition and construction period associated with transitioning land uses at the island.

(C) Within 90 days of the date of this order, Grant PUD shall file, for approval, a description and maps of those lands within the Project Facilities and Public Recreation Development classifications on which no non-project uses will be authorized by the licensee.

(D) Within 180 days of the date of this order, Grant PUD shall file, for approval, a monitoring and compliance plan containing methods and schedules for monitoring non-project uses, requirements for reporting non-project uses that do not comply with the SMP or other conditions of the license, and procedures for addressing such non-compliance issues. Grant PUD shall develop the plan in consultation with relevant state and federal agencies and tribes and submit the plan to the Commission for approval.

(E) The licensee shall review its shoreline management plan every 6 years to assess whether any changes are needed to provisions of the plan. Grant PUD should file, for Commission approval, the first review and update of the shoreline management plan within 6 years from date of issuance of this order. The filing shall include documentation of consultation with the U.S. Fish and Wildlife Service, Washington Department of Fish and Wildlife, Washington Recreation Conservation Office, Washington Department of Natural Resources, and Wanapum Indians. In the event that the licensee determines that modifications to the shoreline management plan or the classifications prior to the 6 year review, the licensee shall file the proposed modifications, for Commission approval, along with documentation of consultation with the above-listed entities.

(F) Within 45 days of Commission approval of the filing required by Ordering Paragraph (C) of this order, the licensee shall file two separate sets of GIS data in a georeferenced electronic file format (such as ArcView shape files, GeoMedia files, MapInfo files, or a similar GIS format) with the Secretary of the Commission, ATTN: OEP/DHAC. The data shall include a) polygon files of the project reservoir(s) surface area including a separate polygon for the tailrace area, and b) polyline files representing the shoreline management classifications and the information provided pursuant to Ordering Paragraph (C). The filing must be in CD or diskette format and shall include polygon data that represents the surface area of each reservoir/tailrace, as shown on the

project boundary exhibits, and polyline data that represents the linear extent of each shoreline classification segment as shown on maps in the shoreline management plan.

A polygon GIS data file is required for the reservoir(s)/tailrace; with each reservoir separately identified. The attribute table for each reservoir/tailrace must include at least the reservoir name, water elevation, and elevation reference datum. A polyline GIS data file is required for the shoreline classifications associated with each reservoir. The attribute table for each reservoir must include at least the reservoir name and management classification description for each polyline, consistent with the shoreline management plan.

All GIS data must be positionally accurate to  $\pm 40$  feet in order to comply with National Map Accuracy Standards for maps at a 1:24,000 scale. The file name(s) shall include: FERC Project Number, data description, date of this order, and file extension in the following format [P-2114, reservoir name polygon/or reservoir name shoreline polyline data, MM-DD-YYYY.SHP]. The filing must be accompanied by a separate text file describing the spatial reference for the georeferenced data: map projection used (i.e., UTM, State Plane, Decimal Degrees), the map datum (i.e., North American 27, North American 83), and the units of measurement (i.e., feet, meters, miles). The text file name shall include: FERC Project Number, data description, date of this order, and file extension in the following format [P-2114, project reservoir/or shoreline classification metadata, MM-DD-YYYY.TXT].

(G) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the FPA, 16 U.S.C. § 8251 (2006), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2012). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.