

# HUCKLEBERRY LAND EXCHANGE

## Record of Decision

### and Forest Plan Amendment 16

Mt. Baker-Snoqualmie National Forest  
Skagit, Snohomish, King, Pierce, Lewis, Kittitas, and Cowlitz Counties,  
Washington

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### BACKGROUND

The land pattern on many areas of the Mt. Baker-Snoqualmie National Forest is a checkerboard of alternating National Forest System (NFS) lands and private land ownership. This ownership pattern imposes different—and often conflicting—land management objectives on alternating parcels. As a result, applying ecosystem management principles is difficult, and resource management is inefficient and expensive. Soil productivity, water quality, and fish and wildlife habitat for a variety of species may also be adversely affected by such inefficiencies.

In July 1991, the Forest Service and Weyerhaeuser Company (hereafter, Weyerhaeuser) signed a Statement of Intent to enter into a land exchange involving lands in the Huckleberry Mountain area and other

areas within and adjacent to the boundaries of the Mt. Baker-Snoqualmie National Forest.

The purpose for action is to consolidate land ownership on the Mt. Baker-Snoqualmie National Forest and for Weyerhaeuser lands; the exchange is driven by the following objectives:

1. Enhance future resource management and conservation, over large blocks of land, to better meet the objectives of the Forest Plan;
2. Improve efficiencies of management and improve opportunities to apply ecosystem management principles; and
3. Take advantage of the opportunity for the NFS to acquire areas with both high and potentially high scenic values within the Interstate 90 (I-90) (Mountains to Sound Greenway.”

#### Huckleberry Land Exchange Chronology

- July 1991 Statement of Intent to enter a land exchange signed by Forest Service and Weyerhaeuser.
- June 1994 Scoping initiated.
- July 1996 Draft EIS issued.
- November 1996 Final EIS issued, Record of Decision signed.
- March 1997 Appeals denied.
- December 1997 U.S. District Court upheld the November 1996 Record of Decision issued by the Forest Service.
- March 1998 Exchange completed; deeds recorded.
- May 1999 Ninth Circuit reversed decision of District Court in several areas related to NEPA and NHPA and remanded the case back to the District Court.
- Nov 1999-Feb 2000 Settlement talks were held among the plaintiffs, defendants, and other interested parties. No agreement was reached.
- December 1999 Forest Service initiated work on the Draft Supplemental EIS.
- September 2000 Release of Draft Supplemental EIS; public comment period extended to November 27, 2000.
- February 2001 Release of Final Supplemental EIS and ROD.

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Scoping and public involvement began in June 1994, continuing through late 1996. A Draft Environmental Impact Statement (EIS) was released in July 1996; three alternatives (including no action) were analyzed in detail to address the issues identified during scoping. On November 26, 1996, following a public comment period, the Forest Service issued a Final EIS and Record of Decision (ROD). The 1996 ROD called for implementation of the exchange through a modification of Alternative 3, as analyzed in the Final EIS.

### Appeal of 1996 Decision

In early 1997, the Pilchuck Audubon Society, Huckleberry Mountain Protection Society, and the Muckleshoot Indian Tribe filed administrative appeals of the ROD with the Regional Forester. The Regional Forester denied these appeals in early March 1997.

### Exchange Agreement, March 1997

On March 27-28, 1997, pursuant to the 1996 ROD, the Forest Service and Weyerhaeuser executed an exchange agreement. The Snoqualmie National Forest boundary was adjusted by Congress, so that certain parcels transferred to the Forest Service would be within the forest boundary.<sup>1</sup> The appraisals were finalized and accepted in March 1997.

### Complaints Filed in District Court

In the spring of 1997, the Pilchuck Audubon Society, along with the Huckleberry Mountain Protection Society and the Muckleshoot Indian Tribe, filed separate complaints in the United States District Court for the Western District of Washington. The District Court consolidated the two actions

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<sup>1</sup> PL 104-20, Section 325, "Snoqualmie National Forest Boundary Adjustment Act of 1996.

and granted Weyerhaeuser's motion to intervene. In December 1997, the District Court ruled the agency had met all applicable laws and denied the plaintiff's motion.

### Plaintiffs Appeal to Ninth Circuit, But Do Not Seek Stay of Activities

The plaintiffs did not seek a stay of the District Court's ruling pending appeal, but appealed the ruling regarding their claims under the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA) to the United States Court of Appeals for the Ninth Circuit.

### Land Exchange Finalized, Deeds Recorded, March 1998

Because there was no stay, Weyerhaeuser and the Forest Service finalized the exchange; the deeds and patents were recorded on March 6, 1998 (King, Snohomish, Pierce, Lewis, Cowlitz, and Kittitas Counties) and on March 11, 1998 (Skagit County).

The United States conveyed to Weyerhaeuser 4,362 acres, with mineral rights, plus 7,110 acres of severed mineral rights.<sup>2</sup>

Weyerhaeuser conveyed to the United States 30,254 acres, with 23,474 acres of mineral rights. The remainder of the mineral rights (6,780 acres) are owned by third parties. Weyerhaeuser also reserved a mineral royalty on 12,780 acres in the Greenwater and Clearwater parcels.

Note that Weyerhaeuser also donated a total of 1,977 acres to the United States (962 acres added to the Alpine Lakes Wilderness); the value of the lands donated was not included

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<sup>2</sup> A Bureau of Land Management ROD was signed in January 1997, to exchange the acres of the severed mineral estate managed by the BLM.

in balancing for value the NFS lands traded to Weyerhaeuser.

### **Ninth Circuit Court Reversed District Court**

On May 19, 1999, the Ninth Circuit reversed the District Court decision in three areas. The Ninth Circuit remanded the case back to the District Court with directions that it be remanded to the Forest Service for further proceedings, consistent with the Ninth Circuit opinion. Because the exchange had been finalized—and Weyerhaeuser had already begun harvesting timber on lands Weyerhaeuser acquired—the Ninth Circuit enjoined any further management activities on the land until the Forest Service satisfied the NEPA and NHPA obligations it identified.

### **Issues Raised by the Ninth Circuit**

The Ninth Circuit ordered the Forest Service to address the following issues:

- 1. Analyze Additional Alternatives:** In considering a wider range of alternatives, the Forest Service is to analyze in detail: (1) an alternative to purchase the Weyerhaeuser parcels by the government, even though there is no assurance that Congress would appropriate money for the purchase or that Weyerhaeuser would be a willing seller; and (2) an alternative that would restrict Weyerhaeuser's use of the lands it would acquire—e.g., manage under Forest Service standards, particularly Riparian Reserve standards and guidelines—either through deed restrictions or other modifications.
- 2. Expand The Cumulative Effects Analysis:** The Forest Service is to expand the cumulative effects analysis, to include all exchanges and land purchases that have occurred since the 1982 Alpine Lakes Land Exchange, and to include the

1999 I-90 Land Exchange. The Forest Service was also directed to more fully disclose all effects of activities on the 4,362 federal acres transferred to Weyerhaeuser in the Huckleberry Land Exchange.

- 3. Minimize Effects Of Transferring Segments Of The Huckleberry Divide Trail:** The Forest Service is to minimize the effects of transferring lands containing the intact portions of the Grass Mountain/Huckleberry Divide Trail<sup>3</sup> to Weyerhaeuser, to meet requirements of the National Historic Preservation Act. The Ninth Circuit also suggested that the Forest Service consider reopening its search for and evaluation of historic sites, and reconsider its treatment of historic properties on the exchange parcels relative to National Register nomination.

The Ninth Circuit did not order that the Huckleberry Land Exchange be undone but held that the government could "...accept reassignment of the property, if required" (United States Court of Appeals for the Ninth Circuit, 1999).

### **Settlement Talks**

From November 1999 through February 2000, a series of settlement talks were held in an attempt to develop an exchange package that addressed the issues raised by the Ninth Circuit and was also satisfactory to the Forest Service, Weyerhaeuser, the Muckleshoot Indian Tribe, Pilchuck Audubon Society, Huckleberry Mountain Protection Society, and other interested parties. No settlement was reached.

To address the issues raised by the Ninth

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<sup>3</sup> To accommodate both Tribal tradition and the Forest Service notation for this trail, the name "Grass Mountain/Huckleberry Divide Trail" has been adopted for the Supplemental EIS analysis.

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Circuit and to satisfy the NEPA obligations, the Forest Service decided to prepare a supplemental EIS.

### Implementation of the Huckleberry Land Exchange, Prior to Injunction

Both the Forest Service and Weyerhaeuser completed some project work on the newly-acquired lands, prior to the Ninth Circuit's May 1999 injunction on any further management activities. The list is not extensive; refer to page 1-4, *Physical Changes on the Exchange Parcels* in the Final Supplemental EIS for details.

Since March 1998, when Weyerhaeuser took possession of the 4,362 acres in the Huckleberry Parcel Group, but prior to the injunction, Weyerhaeuser completed some timber harvest and associated road construction. About 275 acres of 150-to 180-year old trees have been harvested, about 2 miles of roads were built, and the right-of-way was cut for another 0.7 mile of road. No timber harvest or road construction has occurred in Sections 26 or 30, T20N, R9E.

Weyerhaeuser obtained Ninth Circuit permission to remove trees already felled (if they were accessible without cutting or disrupting green trees, or via helicopter); to complete some logging clean-up work, including stabilizing exposed soils; and, subject to consultation with the Muckleshoot Indian Tribe, to engage in some stream restoration work. Tree planting, biological research, and protecting public safety (such as fire prevention) were also approved.

The Forest Service completed some repair work on a section of Road 70, which had been severely damaged by flooding. To improve the stability of the Greenwater River channel and protect fish habitat, the road was relocated away from a slide area; damaged

portions of the old road were decommissioned. About 2 of the 3.2 miles of reconstruction and 0.1 to 0.3 miles of new road construction occurred on acquired lands.

### Other New Information

Since the 1996 ROD, three species have been listed as Threatened under the Endangered Species Act (ESA) of 1973, as amended: chinook salmon (*Oncorhynchus tshawytscha*) listed on March 24, 1999; bull trout (*Salvelinus confluentus*) listed on November 1, 1999; and Canada lynx (*Lynx Canadensis*), listed on March 24, 2000.

The American peregrine falcon (*Falco peregrinus anatum*) was delisted on August 25, 1999; the species remains on the Forest Service, Pacific Northwest Region sensitive species list.

The Mt. Baker-Snoqualmie Forest Plan was amended (August 1999) to adopt Best Management Practices for noxious weed management.

New Emergency Forest Practices Rules (FPRs) (WAC 222) for the salmonid and water type rules became effective March 20, 2000. These rules implement portions of the Forests and Fish Report, an agreement negotiated between representatives of the National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (USFWS), state agencies, tribes, and forestland owners. The new emergency rules increase the width of stream buffers and provide other protection for water quality, fish, and other aquatic resources for state and private forestry practices in Washington State.

### GIS Acres Versus Actual Acres

Acres used throughout the analysis in the Final Supplemental EIS—and referenced in this ROD—are based on mapped acres from the Forest GIS. They may differ slightly from the actual acres, as recorded in the deeds, March 1998. (Features such as railroad rights-of-way, highways, and river meanders may not be accurately reflected in GIS acres.) Refer to Appendix C, Final Supplemental EIS, for a table showing actual acres.

### DECISION

The analysis presented in the Final Supplemental EIS responds to the mandate from United States Court of Appeals for the Ninth Circuit to analyze additional alternatives, expand the cumulative effects analysis, and minimize the effects of transferring lands containing intact portions of the Grass Mountain/Huckleberry Divide Trail. The Forest Service chose to respond to the direction of the Ninth Circuit by preparing a comprehensive, supplemental EIS.

Besides the implemented 1996 decision—which is Alternative 3-Modified—four new, “action” alternatives and a no action alternative are described and analyzed in detail. All of the action alternatives use, as a starting point, Alternative 3-Modified, the implemented 1996 decision, because this package of lands has been balanced for value. To allow the reader to fully compare the differences among alternatives, the No Action alternative is written as if the Huckleberry Land Exchange had not taken place.

And, while the “decision to be made” is written as if the exchange had not taken place, the Ninth Circuit recognized that the property transfer had occurred.

Therefore, in my decision to select an alternative, I will define the actual agency action to be implemented, in light of the property transfer that was completed in March 1998.

**It is my decision to select Alternative 7, with one additional mitigation measure for the Greenwater Special Area.**

**The agency action to be implemented includes three points.** As all other elements of Selected Alternative 7 are identical to Alternative 3-Modified—the implemented property transfer—no additional agency actions will be implemented. **The agency action to be implemented includes:**

(1) Compensation will be paid to Weyerhaeuser for the following lands in the Huckleberry Parcel Group, which will be re-acquired from Weyerhaeuser and added back to the NFS land base (acres are approximate, and mineral rights are included with the surface acres):

- 631 acres in Section 30, T20N, R9E;
- 80 acres in the E1/2 NE1/4 of Section 26, T20N, R9E; and
- 6 acres in the northeast corner of Section 28, T20N, R9E, inclusive of the Grass Mountain/Huckleberry Divide Trail and 200 feet on each side of the trail.

All identified and recorded portions of the Grass Mountain/Huckleberry Divide Trail on federal land will be retained by the Forest Service, and not traded to Weyerhaeuser.

Included in this action is a non-significant (under the National Forest Management Act [NFMA]) Forest Plan amendment—Amendment 16—allocating these acres to new Management Area (MA) 8D, Huckleberry Mountain Special Area: managed for the protection of cultural and

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historic features and to provide protection for old-growth forest, wildlife, fish, and water quality. The S1/2 of Section 26, T20N, R9E—retained in federal ownership by the March 1998 Exchange—will also be allocated to new MA 8D. Refer to Plate 1, enclosed with the Final Supplemental EIS. Refer to *Findings, Including Those Required by Law, National Forest Management Act*, below, for my determination of non-significance under NFMA for Forest Plan Amendment 16.

Streams, ponds, wetlands, and potentially unstable areas are allocated to Riparian Reserve. No scheduled timber harvest or road construction will be allowed. No motorized recreation will be allowed; management of the trails in MA8D will change to hiker and pack-and-saddle, via Forest Plan Amendment 16.

(2) In the Greenwater Parcel Group, acquired by the Forest Service in March 1998, the land allocation on up to 2,340 acres (out of the total 10,938 acres received) would be changed to new Management Area 8E, Greenwater Special Area, via Forest Plan Amendment 16. Refer to Plate 1, enclosed with the Final Supplemental EIS.

- 1,600 to 1,700 acres within the inventoried elk winter range in all or portions of Sections 13, 17, 19, 21, 23, and 31<sup>4</sup>, T19N, R10E, plus 640 acres of elk summer range in Section 33, T19N, R11E would be allocated to MA 8E, Greenwater Special Area.
- All other lands in the Greenwater Parcel Group—about 8,598 acres—remain allocated to Late Successional Reserve

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<sup>4</sup> Section 31, T19N, R10E would be reallocated to MA 8E and MA 8A, Mather Memorial Parkway.

(LSR). Riparian Reserve acres also remain unchanged.

The lands in new MA 8E, Greenwater Special Area would be managed to provide elk (and deer) forage habitat in portions of the inventoried winter range—plus one section of summer range—in conjunction with long-term protection for old-growth forest, fish, wildlife, and water quality. The goal will be no net loss of forage habitat, consistent with all other laws and regulations, such as the ESA.

Within the acres of inventoried elk winter range, and the Section 33 summer range, the Forest Service will have the ability to maintain or create small openings for elk (and deer) forage. The majority of openings will be no larger than 15 acres and would take advantage of any existing openings and meadows. Refer to page 2-13 in the Final Supplemental EIS.

Outside of any openings, the acres in MA 8E (roughly 1,700 acres) will be managed as late-successional forests, using the Forest Plan standards and guidelines for LSR.

**I am modifying Alternative 7, to add the following mitigation measure:** any forage openings will avoid suitable nesting habitat for the northern spotted owl (*Strix occidentalis caurina*) and marbled murrelet (*Brachyramphus marmoratus*)—as well as unstable slopes and Riparian Reserves, as described in the Final Supplemental EIS.

The analysis in the Final Supplemental EIS estimates that up to 400 to 500 acres in winter range and 100 to 130 acres in the Section 33 (T19N, R11E) summer range can be maintained as forage openings. Refer to page 2-14 and Appendix G.

A site-specific environmental analysis in compliance with NEPA and other relevant

laws, and in consultation with USFWS, will be completed prior to creation of any forage openings.

A detailed monitoring plan, prepared in cooperation with federal, state, and Tribal biologists and other specialists will be completed at the time of the site-specific analysis and any decision.

Note that the portion of Section 31, T19N, R10E that lies within the Mather Memorial Parkway is allocated to MA 8A, Special Area Mather Memorial Parkway and 8E; refer to Plate 1, enclosed with the Final Supplemental EIS. MA 8A is an existing Forest Plan management area for the Mather Memorial Parkway. This entire section lies within the inventoried winter range. The standards and guidelines for MA 8A would apply within the Parkway and, in general, would take precedent over MA 8E. Standards and guidelines for MA 8A include a goal of maintenance and enhancement of scenic and recreation qualities. Wildlife habitat improvements are appropriate. The desired future condition within the Parkway includes maintaining a range of tree sizes with a continuum of large trees. Currently, this 580-acre section contains fewer than 20 acres of mid-seral or older trees.

Type conversion—or permanently converting the existing vegetation (mostly early seral stage) to a grass-forb habitat—will be done using a variety of methods (mechanical, fire, hand, etc.) to be determined during site-specific environmental analysis. Road reconstruction and maintenance, as needed for management of any created forage openings, will be allowed.

Type conversion and maintenance of forage openings will be accomplished as funding—including funding for the environmental analysis and monitoring plan—is available.

(3) The Forest Service will enter into a cost-share agreement with Weyerhaeuser to gain administrative access, and public non-motorized access, to Section 30, T20N, R9E. Such access will be via Weyerhaeuser Road 6407, off the Slippery Creek Road 7125. This road segment is known as Forest Service Road 7120-310.

Not included in this decision are any mining activities. No mining activity of any kind is part of the proposed action, and any future mining activity would be evaluated in a separate NEPA or State Environmental Policy Act (SEPA) analysis.

As noted above, this decision does not authorize the site-specific creation of elk forage openings in MA 8E, Greenwater Special Area. Additional environmental analysis in compliance with NEPA and other relevant laws will be required prior to implementing such an action.

In addition, any potential future road closures or decommissioning identified in the Final Supplemental EIS are only preliminary recommendations made by the Forest Service, used to evaluate potential effects of each alternative. Final disposition of these roads would be evaluated in a separate access and travel management environmental analysis.

### REASONS FOR DECISION

In making my decision, I carefully reviewed the analysis that is documented in the Supplemental EIS and is responsive to the direction of the U.S. Court of Appeals for the Ninth Circuit (see *Issues Raised by the Ninth Circuit*, pages 1-3 to 1-4, in the Final Supplemental EIS and page 2 of this ROD). I was aware of the fact that the Huckleberry Land Exchange is a completed action.<sup>5</sup>

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<sup>5</sup> Deeds and patents were recorded in March 1998.

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I also read and reviewed the public, agency, and tribal comments received on the Draft Supplemental EIS. I considered the range of views expressed, and based on the public response, I incorporated a number of changes into Selected Alternative 7. I believe the decision I have made is reasonable, provides the best balance of resource use, and best meets the purpose and need for the land exchange. The **agency action that will be implemented**<sup>6</sup> provides additional balance to the project, within a framework of existing laws, regulations, and policies; better responds to public needs and demands and the capabilities of the land; and best responds to the significant issues—including the issues raised by the Ninth Circuit.

Weyerhaeuser, in its comments on the Draft Supplemental EIS and in other communications, has indicated its willingness to accept Alternative 7 if it can be implemented promptly.

Selected Alternative 7, and the **agency action to be implemented**, are consistent with the goals and objectives, standards and guidelines of the Mt. Baker-Snoqualmie National Forest Land and Resource Management Plan (USDA 1990a), as amended by the ROD for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl (USDA Forest Service and USDI BLM 1994b), and other amendments.

My decision will help meet the goals and objectives of the Forest Plan, as amended: the Huckleberry Land Exchange is included

as a proposed project under the Land Adjustment Plan (Appendix G) for the 1990 Mt. Baker-Snoqualmie Forest Plan; the land exchange will provide substantial benefits to LSR 125, in the Greenwater drainage; and the acquisition of the exchange lands will contribute to meeting objectives of the Aquatic Conservation Strategy. Refer to *Findings, Including Those Required by Law*, below.

Selected Alternative 7 will result in a net increase of 26,499 acres to the NFS in the Huckleberry Land Exchange area.<sup>7</sup> Large areas of land will be blocked in, in federal ownership, especially in the South Fork Snoqualmie/I-90 corridor and in the Greenwater drainage.

There are approximately 711 acres of mature and old-growth forest on the 717 acres to be reacquired in the Huckleberry Parcel Group. My decision is expected to benefit spotted owls, and—compared to the implemented land exchange—be more beneficial to marbled murrelets. Refer to *How Issues Are Addressed*, below.

Section 30, T20N, R9E, one of the parcels to be re-acquired by the federal government, will be somewhat isolated from the closest NFS lands. But this section will be allocated to a new Special Management Area 8D, with an emphasis on cultural and historic features and protection for old-growth forest, wildlife, fish, and water quality. Additional acres of Riparian Reserve will be reacquired, along with more miles of streams. Retaining Section 30 responds to concerns from a number of organizations, individuals, and the Muckleshoot Indian Tribe.

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<sup>6</sup> 1) Re-acquiring from Weyerhaeuser about 717 acres (via compensation) allocated to new MA 8D; 2) changing the land allocation on up to 2,340 acres in the Greenwater Parcel Group to new MA 8E and 8A/8E; and 3) entering into a cost share agreement for administrative access to Section 30.

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<sup>7</sup> And an increase of 12,665 acres of mineral estate in federal ownership.

One key reason for my decision is that as a result of the agency action to be implemented, all of the identified and recorded portions of the Grass Mountain/Huckleberry Divide Trail on federal land will remain in federal ownership. This responds to a significant issue for both the Ninth Circuit and the Muckleshoot Indian Tribe.

The exchange implemented in 1998 resulted in a net loss of stream miles and riparian reserve under Forest Service management in the Green River basin. Re-acquiring 717 acres—with about half located in the Lower Green River watershed—will somewhat offset those effects and will result in higher quality fish habitat in comparison to these acres remaining in private ownership. However, watershed management in the Lower Green River watershed will remain dominated by private landowners, who manage lands under the State Forest Practice Rules.

By changing the land allocation on up to 2,340 acres out of the total 10,938 acres acquired in the Greenwater drainage, and allowing future management for up to 630 acres of small, elk forage openings, Alternative 7 addresses the concern over declining amounts of effective elk forage habitat, while still blocking in LSR on about 8,598 acres, intermingled with the existing LSR. Outside of any forage openings, the acres in Management Area 8E will be managed under the standards and guidelines for late successional reserve. Prior to creation of any forage openings, a site-specific environmental analysis, in consultation with USFWS will be completed. As the Forest Service will avoid suitable nesting habitat for the northern spotted owl and marbled murrelet in creating any openings, this land allocation should provide significant

contribution to the recovery and survival of listed species.

I have chosen the Management Areas (MAs) indicated for Alternative 7 in Plate 1, particularly those for new MAs 8D, the Huckleberry Mountain Special Area, and 8E, the Greenwater Special Area, because they provide for balanced management of the acquired NFS lands and respond to major issues and public concerns. The allocations are related to adjacent, existing MAs and the existing or potential habitat or resources of these lands. Adoption of these new MAs, (and new standards and guidelines for MA 8D and 8E) is an amendment to the Forest Plan (Amendment 16). I have determined that this amendment will not result in a significant change to the Forest Plan and is non-significant, as per 36 CFR 219.10(f).<sup>8</sup> Refer to *Findings, Including Those Required by Law*, below.

### **RATIONALE FOR NOT SELECTING OTHER ALTERNATIVES**

I did not select Alternative 3-Modified—the 1996 decision that was implemented—because it would not fully respond to the issues raised by the Ninth Circuit, especially regarding the Grass Mountain/Huckleberry Divide Trail. Selected Alternative 7 also, in balance, better responds to all facets of Issues 1, 2, 6, and 7 than does Alternative 3-Modified. Refer to the discussion on *How Issues Are Addressed*, below.

While Alternative 4 (Purchase) is the environmentally preferred alternative, I did not select this alternative. Because an estimated \$45.5 million would be needed to

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<sup>8</sup> The 1982 Planning Regulations apply to this project, as it was initiated, with Notice of Intent published in the Federal Register, prior to the November 9, 2000 effective date of the new Planning Rule.

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purchase the 30,100 acres of Weyerhaeuser land, Congress would have to appropriate and/or reprogram that amount. Based on the history of Congressional appropriations for land acquisitions in this area, it is not likely that Congress would appropriate this large a sum of money, at least in one appropriation. As stated on page 2-6 of the Final Supplemental EIS, it would take an estimated five to seven years for Congress to appropriate funding to implement this alternative. There is no guarantee they would do so. Also, there is no guarantee that Weyerhaeuser would accept such an offer. Weyerhaeuser stated in its comments on the Draft Supplemental EIS that for this alternative to be acceptable, arrangements would have to be made to allow Weyerhaeuser to reinvest the purchase price in other lands on a tax-deferred basis (under Section 1031 of the Internal Revenue Code) or the sale would have to be considered involuntary. In other communications, Weyerhaeuser has indicated it would not accept this alternative unless it could be implemented in a very short timeframe.

I did not select Alternative 5 (Deed Restrictions) for several reasons: Weyerhaeuser indicated in its comments on the Draft Supplemental EIS that Alternative 5 was not acceptable and that it would be impossible to have the values balanced and retain a meaningful exchange. Fewer acres would be acquired by the NFS in this alternative than any other action alternative—thus adding fewer acres of key wildlife habitat, miles of streams, etc., to the NFS. Finally, Alternative 5 would not address the issues of the Grass Mountain/Huckleberry Divide Trail, nor the elk forage issue. Refer to Table 2-4, Section 2-5, and pages 4-175 to 4-177 and 4-215 to 4-224, Final Supplemental EIS.

I did not select Alternative 6 (Smaller Exchange) for two reasons: Weyerhaeuser indicated in its comments on the Draft Supplemental EIS that it could not accept this alternative as it was displayed and analyzed in the EIS. Also, I believe that Alternative 7 better addresses the same issues: it will retain all of the Grass Mountain/Huckleberry Divide Trail on federal lands in federal ownership, and many more acres of key wildlife habitat, riparian reserves, spotted owl suitable habitat, and miles of streams will remain in federal ownership in Alternative 7, compared to Alternative 6.

### **PUBLIC INVOLVEMENT**

The Huckleberry Land Exchange has a long history of consultation and public involvement. Scoping started in 1994. Public involvement was instrumental in identifying issues and formulating alternatives. Input from agencies, the Muckleshoot Indian Tribe, and the public was the key to formulating the November 1996 decision—implemented in March 1998. Refer to the chronology of the Huckleberry Land Exchange, on page 1-1 of the Final Supplemental EIS (summarized on page R-1 of this ROD).

The public involvement activities conducted for this Supplemental EIS have been extremely helpful in clarifying the issues, identifying additional alternatives, and in assisting me in making an informed decision.

As discussed on page 1-3 of the Final Supplemental EIS (and page R-3 of this ROD), a series of settlement talks were held from November 1999 through February 2000. Information from these talks was useful in clarifying alternatives to analyze in the Supplemental EIS.

In March 2000, I mailed a “scoping” letter to over 400 agencies, organizations, and

individuals—including the plaintiffs from the 1997 lawsuit and other interested parties. A Notice of Intent to prepare a Supplemental EIS was published in the *Federal Register* on March 21, 2000.

A Notice of Availability for the Draft Supplemental EIS was published in the *Federal Register* on September 29, 2000. After requests from the public, I extended the comment period to November 27, 2000. A total of 19 letters were received, from individuals, organizations, agencies, the Muckleshoot Indian Tribe, and Weyerhaeuser.

The input received was very useful in both improving the analysis in the Final Supplemental EIS and in modifying the preferred Alternative 7. Refer to Appendix I, Final Supplemental EIS, for copies of the letters and my response to each comment. Refer to Chapter 6, Final Supplemental EIS, for a list of those notified and/or involved in this analysis.

### **CONSULTATION WITH TRIBES**

In March 2000, I mailed letters to all potentially-affected, federally-recognized Indian Tribes, inviting government-to-government discussions on the supplemental analysis. All other potentially-affected Tribes were notified of the upcoming Supplemental EIS and invited to participate.

I met with the Muckleshoot Indian Tribe in a series of government-to-government meetings, from May 2000 through February 2001 (see page 1-9, Final Supplemental EIS, for a detailed discussion). These meetings assisted me in making a more informed decision. Also, consultation with the Tribe was very helpful in developing baseline information for the elk habitat analysis,

documented in Appendix G of the Final Supplemental EIS.

### **COORDINATION WITH OTHER AGENCIES**

Ongoing, informal consultation with NMFS and, especially, USFWS was crucial in clarifying the alternatives for this supplemental analysis. Refer to Chapter 6, Final Supplemental EIS, for a list of those agencies notified and/or involved in this analysis.

### **HOW ISSUES ARE ADDRESSED**

For this supplemental analysis, the significant issues for the 1996 Huckleberry Land Exchange (implemented March 1998) were reviewed and amplified, based on: issues raised during appeal of the 1996 ROD; issues identified by the Ninth Circuit; consultation with the Muckleshoot Indian Tribe; discussions at the settlement talks; public, agency, and Weyerhaeuser comments in response to the Notice of Intent; and internal Forest Service scoping.

A qualitative and quantitative description of how each of the alternatives responds to the issues is provided in Chapter 2, pages 2-31 through 2-52, of the Final Supplemental EIS.

In the following summary, I detail how (a) the selected Alternative 7, and (b) the agency action to be implemented addresses each of the significant issues.

### **Ninth Circuit Issues**

My decision and the Final Supplemental EIS respond specifically to the three major issues raised by the United State Court of Appeals for the Ninth Circuit.

The Ninth Circuit directed the Forest Service to analyze a wider range of alternatives. The Forest Service was to analyze in detail a

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purchase alternative and an alternative that would restrict (via deed restrictions, for example) Weyerhaeuser's use of the lands they acquire—e.g. manage under Forest Service standards, particularly the Riparian Reserve standards and guidelines. Refer to Issue 9, page 1-15 in the Final Supplemental EIS.

**The Final Supplemental EIS includes a wider range of alternatives than analyzed in detail in the 1996 EIS.** Alternative 4 is a purchase alternative, in which no federal land would be exchanged to Weyerhaeuser and the government would purchase 30,110 acres of Weyerhaeuser lands. Refer to Chapter 2, page 2-6, and to *All Alternatives Considered*, below, for more details. Alternative 5, analyzed in detail in the Final Supplemental EIS is a deed restriction alternative. The “design elements” of this alternative respond to those suggested by the Ninth Circuit. Refer to page 2-7 through 2-8 and to *All Alternatives Considered*, below. Finally, two additional alternatives—Alternatives 6 and 7—were analyzed in detail in the Final Supplemental EIS.

The Ninth Circuit also directed the Forest Service to expand the cumulative effects analysis. Refer to Significant Issue 3, page 1-11 in the Final Supplemental EIS.

**The cumulative effects analysis is substantially expanded in the Final Supplemental EIS, including consideration of the effects of past land exchanges since Alpine Lakes (1984) and other past, present, and reasonably foreseeable future land use actions (including the now-completed I-90 Land Exchange), by resource and by fifth-field watershed and/or by river basin.** Specifically, the effects of likely Weyerhaeuser activities on the lands transferred to Weyerhaeuser are

analyzed and disclosed, along with other past/present/likely future activities in the Green River Basin (Upper, Middle, and Lower Green fifth field watersheds). Refer to pages 4-257 through 4-302, Final Supplemental EIS, for more details.

Finally, the Ninth Circuit directed the Forest Service to minimize the effects of transferring lands containing intact portions of the Grass Mountain/Huckleberry Divide Trail, to meet the NHPA. The Ninth Circuit also suggested that the Forest Service consider reopening its search for and evaluation of historic sites, and reconsider its treatment of historic properties on the exchange parcels relative to National Register nomination.

**In selecting Alternative 7, as modified in this ROD, all intact portions of the Grass Mountain/Huckleberry Divide Trail that have been identified and recorded on federal land are retained by the Forest Service and not traded to Weyerhaeuser.** I consulted with representatives of the Muckleshoot Indian Tribe over the course of this analysis, during which time we discussed a variety of tribal concerns. No new historic properties were identified as a result of these discussions. I have determined this undertaking will have “no effect” on the Grass Mountain/Huckleberry Divide Trail, or on any other historic property listed or eligible for listing on the National Register of Historic Places. Refer to pages 2-49 to 2-50, and pages 4-224 to 4-225, in the Final Supplemental EIS and also to the discussion of *Issue 7*, below.

### **Issue 1: Wildlife Habitat—Late-Successional Forest Species, Elk and Deer Habitat**

Overall, the March 1998 Huckleberry Land Exchange reduced the level of fragmentation

and increased consolidation of habitat within the Mt. Baker-Snoqualmie National Forest. This was particularly significant in the vicinity of Alpine Lakes Wilderness, the Snoqualmie Pass area, the Greenwater watershed, and adjacent to the Clearwater Wilderness.

The **agency action to be implemented** will still result in significant consolidation of LSR in the Greenwater watershed, while addressing the major issue of loss of elk and deer forage habitat. Alternative 7 results in a net increase of 9,151 acres allocated to LSR. A total of 717 acres of late-successional and old-growth habitat in the Huckleberry Parcel Group will be reacquired. In addition, the standards and guidelines for new MA 8E include providing for the development of late-successional and old-growth habitat—outside of the elk forage openings—and intermingled with the existing LSR in this drainage. The agency action will provide a significant contribution to the recovery and survival of listed species.

At the same time, the agency action will help “move” the forest towards an MA 8E goal of no net loss of forage habitat, consistent with laws and regulations. Once site-specific analysis is completed, up to 630 acres of forage openings will result in 1,182 acres of high quality elk forage habitat in 20 years, and 2,208 acres in 50 years (compared to 447 and 1,454 acres under the 1998 Exchange). In addition to the forage openings, the agency action provides for a detailed monitoring plan to be prepared in cooperation with federal, state, and Tribal biologists, and other specialists. Refer to Table 2-4, page 2-32, and Section 4.9 in the Final Supplemental EIS.

### **Issue 2: Threatened, Endangered, and Sensitive Plant and Animal Species**

Over the long and the short term, northern spotted owls in the vicinity of the overall land exchange are expected to benefit. In 50 years, potential key habitat is expected to increase by nearly 4,000 acres and increase by 10,787 acres in the long term (200 years). This compares to a decrease in owl habitat with no exchange (decrease of 3,860 acres in 50 years and a decrease of 4,863 acres over the long term). Refer to Table 4.9-4, page 4-151, and also pages 4-150 to 4-156, Final Supplemental EIS.

The 1998 exchange was determined to have a negative impact on certain owl activity centers in the Huckleberry Parcel Group. With no land exchange, these same owls would have been impacted under Forest Service management under the Forest Plan, as amended by the 1994 ROD. The **agency action to be implemented** by this decision is expected to benefit spotted owls by maintaining current levels of suitable habitat for four owl activity centers in the Huckleberry Parcel Group. Reacquiring this higher-quality dispersal habitat should also better assist owl movements throughout LSR 125, the forest, and the Western Washington Cascades Province. Refer to *Findings, Including Those Required by Law – Endangered Species Act*, below, and the March 28, 2001 concurrence letter from USFWS, for more information. The re-allocation of about 2,340 acres in the Greenwater drainage to MA 8E is not expected to affect the function of the spotted owl Critical Habitat Unit in that area.

A final “Northern Spotted Owl Management Agreement for Weyerhaeuser Company Lands” was signed by USFWS and Weyerhaeuser on May 2, 1997; this document

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included a spotted owl dispersal plan and authorized incidental take of spotted owls, consistent with the terms of the Agreement. This Agreement remains in place. Refer to project files.

For the marbled murrelet, the overall land exchange involved transfer of up to 525 acres of potential murrelet habitat to Weyerhaeuser. Since March 1998, 65 acres of this habitat have been harvested. However, the exchange, overall, is expected to increase the amount of potential murrelet habitat, primarily in the White and Snoqualmie River sub-basins. The **agency action to be implemented** will add about 40 acres of suitable murrelet habitat back to the federal estate. Short-term decreases in the availability of suitable murrelet habitat in the Green River basin (of about 37 acres), will give way to long-term increases; refer to pages 4-156 to 4-158, Final Supplemental EIS. Any effects of reallocating lands in the Greenwater to MA 8E are expected to be minimal.

Since the March 1998 exchange, chinook salmon and bull trout have been listed as Threatened, pursuant to the ESA. The overall exchange—which results in many more miles of streams (30.3 miles of fish-bearing and 248 miles of non-fish-bearing) transferred to the Forest Service plus more acres of late-seral riparian vegetation (which provide intact, high-quality riparian areas)—will have a “may affect, not likely to adversely affect” impact to chinook salmon and to bull trout. The 5.3 miles of fish-bearing streams exchanged to Weyerhaeuser would be protected by buffers under the emergency or new Forest Practices Regulations (FPRs), outlined in the Forest and Fish agreement. In addition, Weyerhaeuser has pledged to complete watershed analysis in the Howard Hansen Watershed Analysis Unit prior to action on the parcels they receive, and to

abide by the emergency and new state FPRs, regardless of any legal challenge to them. Refer to NMFS concurrence letters dated January 12, 2001 and March 20, 2001, in the project files. Refer to Table 4.3-1, and pages 4-88 to 4-117, Final Supplemental EIS, and the March 8, 2001, Huckleberry Land Exchange Fisheries Biological Assessment and Biological Evaluation (in the project files).

The **agency action to be implemented** may beneficially affect the bald eagle, gray wolf, and grizzly bear; and will have no effect on newly-listed Canada lynx. Refer to *Findings, Including Those Required by Law – Endangered Species Act*, below, and the March 28, 2001, concurrence letter from USFWS, for more information.

Habitat gains in acres of wetlands and late-successional and old forest acquired by the Forest Service will result in more potential habitat for rare plant species and survey and manage species in federal ownership. Refer to pages 3-112 to 3-114, 4-130 to 4-131, and Table 2-4, Final Supplemental EIS.

### **Issue 3: Cumulative Effects of the Exchange**

Refer to the discussion under *Ninth Circuit Issues*, above.

The cumulative effects analysis is substantially expanded in the Final Supplemental EIS. The effects of past land exchanges since Alpine Lakes, in 1984, plus effects of other past, present, and reasonably foreseeable future land use actions, including the completed I-90 Exchange, are analyzed and disclosed. Cumulative effects are examined by resource and by fifth-field watershed and/or by river basin. The effects of likely Weyerhaeuser logging activities on the lands transferred to Weyerhaeuser are

analyzed and disclosed, along with other past/present/ likely future activities in the Green River Basin. The cumulative impacts to late-seral forests in watersheds with lands exchanged to Weyerhaeuser are also discussed in detail. Refer to pages 4-257 through 4-302, and especially Table 4.16-1; and Tables 4.16-3 through 4.16-7 in the Final Supplemental EIS.

### **Issue 4: Access for Recreation, Visual Quality, Unroaded Lands**

The March 1998 Exchange mitigated many of the original concerns regarding visual quality and recreation access. Several parcels in the Huckleberry Group were retained in federal ownership. Recreation access was provided via the Slippery Creek Road 7125, in cost share status with Weyerhaeuser, which provides good access to the Grass Mountain/Huckleberry Trail and general recreation in the area. Additional unroaded lands were added to the NFS lands. Recreation opportunities in Snoqualmie, Skykomish, and Greenwater River basins are expected to improve, and visual conditions along major travel corridors are expected to improve over the long term.

In my decision, the **agency action to be implemented** will still provide public (and tribal) access to trails in the Huckleberry Parcel Group, via the Slippery Creek Road 7125. As in the March 1998 Exchange, access across Weyerhaeuser lands will be subject to the Weyerhaeuser open lands policy. In addition, the Forest Service will obtain administrative access to Section 30 (and non-motorized public access) via a cost-share agreement with Weyerhaeuser, over the 6407 road. The standards and guidelines for the new Huckleberry Mountain Special Area 8D will result in a change in trail use on the Grass Mountain/Huckleberry Divide Trail to

non-motorized, hiker and pack-and-saddle stock, via Forest Plan Amendment 16. Refer to page 2-13, pages 4-238 to 4-239, and page 4-246, Final Supplemental EIS.

The **agency action to be implemented** will result in more acres of unroaded areas in federal ownership than in the March 1998 Exchange, for a total increase of 2,956 acres. Refer to Table 2-4, Final Supplemental EIS.

My decision to change the allocation on about 2,340 acres to Greenwater Special Area 8E—and a combination of 8A Mather Memorial Parkway and 8E, in Section 31, T19N, R10E—will still result in an improved visual condition along Highway 410 over the long term, from Moderately Altered to Slightly Altered. Refer to pages 2-14 and 2-46, plus Table 2-4, Final Supplemental EIS.

My decision will result in a decrease of public roads that provide access to areas used for hunting and gathering within the Huckleberry Parcel Group. However, I am maintaining public access on Forest Road 7125 (up Slippery Creek) to Section 26, T20N, R9E. This road will provide the public as well as members of the Muckleshoot Indian Tribe and other tribes with motorized access to the Grass Mountain/Huckleberry Divide Trail. From there, traditional hunting and gathering ground to the east, and on lands that would be transferred to Weyerhaeuser to the west, can be accessed by non-motorized means.

### **Issue 5: Timber Supply, Restoration Costs**

The long-term productivity of NFS lands relative to timber supply was increased by the March 1998 Land Exchange, though the short-term availability of lands with timber of harvestable age will be slightly reduced. The **agency action to be implemented** in my decision will result in a somewhat greater

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decrease in private commercial forest lands, as Section 30 and portions of Sections 26 and 28 (T20N, R9E) will be retained by the Forest Service, and allocated to a management area with “no harvest” standards and guidelines (a decrease of 17,265 acres compared to a decrease in Alternative 3-Modified of 16, 741 acres). In addition, federal commercial forest land will increase by a smaller amount than in the 1998 Exchange. Refer to Table 2-4, page 47, Section 4.8 (especially Table 4.8-2, page 4-134), and Appendix E, Final Supplemental EIS.

In the overall exchange, the Forest Service is acquiring more acreage and road mileage than it is exchanging, resulting in increased road maintenance costs (about \$60,000 to \$67,000 annually, compared to \$18,700 for no exchange) plus an estimated \$2 million of road decommissioning costs (over half of the roads acquired from Weyerhaeuser are likely to be decommissioned following access and travel management and NEPA analysis). The **agency action to be implemented** will not alter the effects of the 1998 Land Exchange (Alternative 3-Modified) as to the lands acquired from Weyerhaeuser.

### **Issue 6: Aquatic and Riparian Habitat, Water Quality, and Fish Habitat**

The overall effects of the Huckleberry Land Exchange on aquatic, riparian, and fish habitat, and on water quality are positive because of the gain in miles of streams: a net gain of 25 miles of fish-bearing streams and 211 miles of Class III and IV streams.

The exchange also results in net gains of 275 acres of wetlands, 501 acres of floodplains, and 6,306 acres of riparian areas. Even in the Green River basin, where slightly more than 1 percent of the streams in the basin would be

traded to Weyerhaeuser (20 stream miles, including 3.5 miles of fish-bearing streams), significant negative impacts are not expected, due to new, more highly protective State FPRs. Refer to Tables 2.4, 4.3-1, 4.6-4 and associated text in the Final Supplemental EIS, plus the text on chinook salmon and bull trout, under *Issue 2*, above.

The **agency action to be implemented**, including re-acquiring 717 acres in the Huckleberry Parcel Group will result in 7.8 fewer miles of streams transferred to Weyerhaeuser (0.3 miles are fish-bearing) and protected under Forest Plan Riparian Reserve standards and guidelines.

While many of riparian acres to be acquired by the Forest Service are in early-seral stage (refer to Table 4.6-1, Final Supplemental EIS), riparian habitat is expected to improve over the short- and mid-term, producing a substantial increase in late-seral stage riparian areas. For the overall exchange, 7,608 riparian acres will be acquired, with 728 acres in late-seral stage. Riparian acres transferred to Weyerhaeuser include about 841 acres of late-seral stage (out of 1,302 acres).

As noted in Section 4.6, Final Supplemental EIS, management in the Lower Green fifth-field watershed will continue to be dominated by private landowners, managing riparian areas under FPRs. Refer to *Issue 2*, above. Weyerhaeuser has pledged to complete watershed analysis in the Howard Hansen Watershed Analysis Unit prior to action on the parcels they receive, and to abide by the emergency or new FPRs outlined in the Forest and Fish agreement, regardless of any legal challenge to them. Refer to NMFS letter of concurrence for informal consultation. Also, refer to *Findings, Including Those Required by Law – Endangered Species Act*, below.

For the overall exchange, I expect to decommission about 167 miles of roads, with those rated high priority closed first, over a period of roughly 10 years. Refer to pages 4-210 to 4-211, Final Supplemental EIS.

### **Issue 7: Cultural Resources and Historic Properties**

Throughout the analysis for this action, I have consulted with the Muckleshoot Indian Tribe, the SHPO, and the Advisory Council for Historic Preservation (ACHP) to identify and evaluate heritage resources that may be affected and to develop alternatives to reduce or avoid adversely affecting resources determined to be eligible for the National Register of Historic Places. Alternative 7 and the **agency action to be implemented** results in all National Register-eligible properties being retained or re-acquired by the federal government, and therefore, will have no effect on such properties.

The Ninth Circuit specifically directed the Forest Service to minimize effects of transferring lands containing intact portions of the Grass Mountain/Huckleberry Divide Trail to Weyerhaeuser. Re-acquiring Section 30 and 6 acres in Section 28, T20N, R9E—along with the acres in the S 1/2 of Section 26, T20N, R9E that were retained in federal ownership by the March 1998 Exchange—means that all intact portions of the Grass Mountain/Huckleberry Divide Trail on federal land will remain in federal ownership (and allocated to new Special Management Area 8D, with an emphasis on cultural and historic features and protection of old-growth forest, wildlife, fish, and water quality). This also responds to a key issue from the Ninth Circuit.

Section 30, in the Huckleberry Parcel Group, will be somewhat isolated from the bulk of the forest acreage. But, retaining Section 30

(allocated to MA 8D) responds to concerns from a number of organizations and individuals, as well as the Muckleshoot Indian Tribe.

This issue also relates to Indian Tribal treaty rights. The Treaties of Point Elliott and Medicine Creek guarantee the Indian Tribes federally reserved rights to fish at usual and accustomed grounds and stations, and to hunt and gather on open and unclaimed lands.

The **agency action to be implemented** will not abrogate or affect the exercise of Treaty-reserved Indian rights, and therefore will have no direct effect on these rights. Effects to resources and harvest opportunities were fully analyzed for the Supplemental EIS. Refer to Sections 4.7 (Fish and Aquatic Invertebrates), 4.8 (Vegetation and Timber Resources), 4.9 (Wildlife) 4.10 (Transportation and Facilities), 4.14 (Recreation), and 4.12.2.2 (Effect to Hunting, Gathering and Fishing Practices) in the Final Supplemental EIS.

In the overall exchange, the Forest Service is acquiring more acres within the Medicine Creek Treaty ceded area, many more acres within the Point Elliott Treaty ceded area, and 154 more acres within the Yakima Treaty ceded area than it is exchanging; refer to Table 2-4, in the Final Supplemental EIS. This will continue to consolidate the land base in the Upper White River watershed, and consolidate much of the Greenwater watershed, resulting in an increase in the ability of the Forest Plan to achieve its aquatic habitat restoration objectives at a watershed and river system scale.

Additionally, by selecting Alternative 7, I am allocating lands in the Greenwater transferred to the Forest Service within inventoried elk winter range and one section of elk summer range to the Greenwater Special Management Area 8E, dedicated to elk habitat and late

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successional forest. This responds to an issue raised by the Muckleshoot Indian Tribe, regarding the availability of elk for hunting.

My decision will result in a decrease of public roads that provide access to areas used for hunting and gathering within the Huckleberry Parcel Group. However, I am maintaining public access on Forest Road 7125 (up Slippery Creek) to Section 26, T20N, R9E. This road will provide the public as well as members of the Muckleshoot Indian Tribe and other tribes with motorized access to the Grass Mountain/Huckleberry Divide Trail. From there, traditional hunting and gathering grounds to the east and on lands that would be transferred to Weyerhaeuser to the west, can be accessed by non-motorized means.

### Issue 8: Mineral Estate

Overall, the March 1998 Huckleberry Land Exchange somewhat reduced the imbalance in mineral acres exchanged (the exchange was balanced based on value). Approximately 4362 acres of mineral estate on the federal lands were conveyed to Weyerhaeuser, plus 7,110 acres of severed mineral estate owned by the United States, where Weyerhaeuser or another entity owned the surface estate. In return, the United States received approximately 23,474 acres of mineral estate on the lands Weyerhaeuser exchanged to the Forest Service. In addition, Weyerhaeuser reserved a mineral royalty on approximately 12,780 acres on lands in the Clearwater and Greenwater drainages that were exchanged to the Forest Service. With this mineral royalty, Weyerhaeuser would receive royalty payments if any of the minerals are leased or sold by the Forest Service. (Note that the Forest Service would control the decision whether to lease or sell minerals on these lands and the conditions of any mineral lease or sale.) Thus, the Forest Service obtained a

net increase in mineral acres owned and controlled, with this imbalance partially mitigated by the royalty interest retained by Weyerhaeuser.

The **agency action to be implemented** by my decision will result in the Forest Service reacquiring approximately 717 acres of mineral estate. This action will increase the imbalance of the mineral estate in the Forest Service's favor.

### ALL ALTERNATIVES CONSIDERED

As directed by the Ninth Circuit, additional alternatives were analyzed. Refer to Chapter 2 of the Final Supplemental EIS for more detail. Refer to *Decision*, above, for a more detailed description of Selected Alternative 7.

### Alternatives Eliminated from Detailed Study

In the Final Supplemental EIS, Alternative 2 and Alternative 3 were dropped from detailed study. These two alternatives—original alternatives from the 1996 EIS—were analyzed in detail in the Draft Supplemental EIS. Alternatives 2 and 3 differed only in their proposal for exchanging the mineral estate. They were dropped from detailed study in the Final Supplemental EIS, in response to public comment: both Alternatives 2 and 3 included the entire “pool” of possible exchange acres and were not balanced for value, based on the final appraisal and as required by regulation (Federal Land Exchange Management Act and 36 CFR 254.3(c)). Therefore, neither Alternative 2 nor 3 could have been implemented as described in the Draft Supplemental EIS. Refer to pages 2-2 to 2-3, Final Supplemental EIS, for more information on these alternatives.

### **Alternatives Considered in Detail**

Five action alternatives and the No Action alternative were considered for detailed study in the Final Supplemental EIS. For a complete description of each alternative (including maps), refer to Chapter 2 of the Final Supplemental EIS.

**Alternative 1 (No Action):** NFS lands and Weyerhaeuser lands would not be exchanged. This alternative was analyzed as if the Huckleberry Land Exchange had not taken place. The only exceptions were the donation and the physical changes that have occurred since March 1998, when the exchange took place. To implement Alternative 1 (No Action), the NFS and the Weyerhaeuser lands that have been conveyed would need to be returned back to the original ownership, with appropriate compensation for management activities that have been undertaken.

**Alternative 3-Modified:** This alternative represents the March 1998 exchange (deeds and patents were recorded in March 1998). The Forest Service would exchange 4,306 acres and Weyerhaeuser would exchange 30,110 acres; Weyerhaeuser would manage acquired lands in accordance with Washington FPRs, the final Habitat Management Agreement (1997), and other applicable laws. Weyerhaeuser would receive mineral rights to the 4,306 acres and to severed mineral rights currently owned by the federal government on an additional 7,110 acres. The Forest Service would receive about 23,376 acres of mineral rights currently owned by Weyerhaeuser, but Weyerhaeuser would retain a mineral royalty reservation on 12,814 of those acres.

**Alternative 4 (Purchase):** This alternative responds to instructions from the Ninth Circuit, calling for a purchase-only alternative. No NFS lands would be

exchanged. The federal government would purchase 30,110 acres of Weyerhaeuser lands and the subsurface mineral rights to about 23,376 acres currently owned by Weyerhaeuser. To implement this alternative, the Forest Service would request Congress to appropriate Land and Water Conservation funds for purchase. The Forest Service would make an offer; there is no guarantee that Weyerhaeuser would accept such an offer. An estimated \$45.5 million would be needed to purchase the 30,100 acres.

**Alternative 5 (Deed Restrictions):** This alternative responds to instructions from the Ninth Circuit, calling for a deed-restricted management alternative. The Forest Service would exchange 4,306 acres with deed restrictions, which would require Weyerhaeuser to manage the land under Forest Service standards and guidelines for Riparian Reserves, and to provide the Forest Service an easement for certain portions of the Grass Mountain/Huckleberry Divide Trail. Weyerhaeuser would exchange 22,160 acres. Weyerhaeuser would receive subsurface mineral rights to the 4,306 acres and to severed mineral rights currently owned by the federal government on an additional 7,110 acres. The Forest Service would receive about 18,048 acres of mineral rights currently owned by Weyerhaeuser. Weyerhaeuser would retain a mineral royalty reservation on 12,814 acres of the land exchanged to the Forest Service.

Fewer Weyerhaeuser acres would be exchanged to the NFS because the value of NFS land is reduced by the deed restrictions: a portion of the Huckleberry Parcel Group exchanged to Weyerhaeuser would not be available for timber harvest. To implement this alternative, the Weyerhaeuser lands dropped from exchange would need to be returned to the original ownership.

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**Alternative 6 (Smaller Exchange):** This alternative was developed following the settlement talks, in an attempt to address the issues of all parties. The Forest Service would exchange 3,611 acres and Weyerhaeuser would exchange 22,946 acres.

Two special management areas would be established within Forest Service lands, via a non-significant Forest Plan amendment: the Huckleberry Mountain Special Area (MA 8D), emphasizing cultural and historic features along with protection for old-growth forests, fish, wildlife, and water quality; and the Greenwater Special Area (MA 8E), which would allow for management for elk forage openings within inventoried elk winter range, in conjunction with long-term protection for old-growth forest, fish, and water quality.

Weyerhaeuser would receive mineral rights to the 3,611 acres and to the severed mineral rights currently owned by the federal government on an additional 7,110 acres. The Forest Service would receive about 17,243 acres of mineral rights currently owned by Weyerhaeuser. Weyerhaeuser would retain a mineral royalty reservation on 8,890 acres. To implement Alternative 6, the NFS and Weyerhaeuser lands dropped from the exchange would need to be returned to the original ownership.

**Alternative 7 (Selected):** This alternative was developed in response to public comments following the Notice of Intent for the Supplemental EIS, and also public comment received on the Draft Supplemental EIS.

The Forest Service would exchange 3,611 acres and Weyerhaeuser would exchange 30,110 acres. In one section (28, T20N, R9E), the Forest Service would retain in fee about 6 acres, inclusive of the Grass

Mountain/Huckleberry Divide Trail and 200 feet on either side of the trail. Note that Section 30 plus about 80 acres of Section 26, T20N, R9E, would be retained in federal ownership.

Two special management areas would be established within Forest Service lands, via a non-significant Forest Plan amendment: the Huckleberry Mountain Special Area, MA 8D (see Alternative 6); and the Greenwater Special Area, MA 8E, which would apply only to inventoried elk winter range plus one section of summer range. As more acres are exchanged to the NFS in Alternative 7 compared to Alternative 6, more forage openings could be created. Remaining lands in the Greenwater Parcel Group would be allocated to LSR. Refer to *Decision*, above, for additional details on Selected Alternative 7

Weyerhaeuser would receive mineral rights to the 3,611 acres and to the severed mineral rights currently owned by the federal government on an additional 7,110 acres. Weyerhaeuser would retain a mineral royalty reservation pertaining to 12,814 acres of the land exchanged to the Forest Service and the Forest Service would receive about 23,376 acres of mineral rights currently owned by Weyerhaeuser. To implement this alternative, the Forest Service would request Congress to reprogram existing appropriations from the Land and Water Conservation Fund and other sources to pay compensation to equalize values—about \$6.0 million would be needed.

### ENVIRONMENTALLY PREFERABLE ALTERNATIVE

The Council on Environmental Quality regulations for implementing NEPA specify that the alternative or alternatives that were considered to be environmentally preferable be identified in the Record of Decision (40

CFR Part 1505.2(b)). The environmentally preferable alternative is not necessarily the alternative that will be implemented, but is ordinarily the alternative that causes the least damage to the physical and biological environment, and best protects, preserves, and enhances historical, cultural, and natural resources.

Based on the quantitative comparison of alternatives shown in Table 2-4, page 2-35 to 2-39, Final Supplemental EIS, the qualitative comparison of the responsiveness of the alternatives to the issues described in Section 2.5, and after reviewing the effects—including the cumulative effects—disclosed in Chapter 4 of the Final Supplemental EIS, it is my conclusion that Alternative 4 (Purchase) would cause the least environmental disturbance, and is, therefore, the environmentally preferable alternative.

In Alternative 4 (Purchase), no NFS lands would be exchanged to Weyerhaeuser. If implemented, this alternative would result in the greatest increase in mature forest in federal ownership, and slightly more old forest to federal ownership, compared to Selected Alternative 7. Because no NFS lands are exchanged, Alternative 4 would result in more acres of late-successional habitat (LSH) and riparian areas, slightly more miles of streams, and the biggest increase in spotted owl suitable habitat (over 50 years) on NFS lands, compared to any of the alternatives.

This alternative, however, would not provide the most acres of available elk forage and would result in fewer acres of LSH in large forest patches, after 50 years, than would Alternatives 7 or 3-Modified.

Additionally, to implement this alternative, Congress would have to appropriate and/or reprogram about \$45.5 million. Based on the

history of Congressional appropriations for land acquisitions in this area, it is not likely that Congress would appropriate this large a sum of money, at least in one appropriation. As stated on page 2-6 of the Final Supplemental EIS, it would take an estimated 5 to 7 years for Congress to appropriate funding to implement this alternative. There is no guarantee that they would do so. Also, there is no guarantee that Weyerhaeuser would accept such an offer. Weyerhaeuser stated in its comments on the Draft Supplemental EIS that for this alternative to be acceptable, arrangements would have to be made to allow Weyerhaeuser to reinvest the purchase price in other lands on a tax-deferred basis (under Section 1031 of the Internal Revenue Code) or the sale would have to be considered involuntary. In other communications, Weyerhaeuser has indicated it would not accept this alternative unless it could be implemented in a very short timeframe.

### **ENVIRONMENTAL DOCUMENTS CONSIDERED IN THE DECISION**

A full listing of the environmental documents considered in making this decision is included in Chapter 5, Final Supplemental EIS.

A partial list of documents considered includes: the Final EIS and Land and Resource Management Plan for the Mt. Baker-Snoqualmie National Forest (1990), as amended by the ROD for Amendments to Forest Service and Bureau of Land Management Planning Documents within the Range of the Northern Spotted Owl (1994); the Final Supplemental EIS on Management of Habitat for Late-Successional and Old-Growth Related Species Within the Range of the Northern Spotted Owl (1994); and watershed analyses for the Beckler River; South Fork Snoqualmie River; Upper White River; Green

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River; South Fork Lower Stillaguamish River and Canyon Creek; Skykomish Forks; Middle Fork Snoqualmie River; and the Carbon River. A draft watershed analysis for the Upper Green/Sunday Creek WAUs, prepared for the Plum Creek Timber Company, the review draft of the Washington State Department of Natural Resources (WDNR) Howard Hanson and Middle White Watershed Analysis, and the Lester Watershed Analysis were also considered.

### FINDINGS, INCLUDING THOSE REQUIRED BY LAW

#### National Forest Management Act

The NFMA is an amendment to the Forest and Rangeland Renewable Resources Planning Act. The Forest Service published a revised set of NFMA planning regulations on November 9, 2000. However, because this supplemental analysis was initiated—including publication of a Notice of Intent—prior to the effective date of the new Planning Rule, the 1982 Planning Regulations apply to this project.

The overall Huckleberry Land Exchange and the **agency action to be implemented** are consistent with the Mt. Baker-Snoqualmie Land and Resource Management Plan (Forest Plan), as amended by the 1994 ROD for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl (the Northwest Forest Plan).

Part of the underlying need for the overall Huckleberry Land Exchange is the ability to apply ecosystem management on a larger scale; refer to pages 1-5 to 1-6, Final Supplemental EIS. Standards and Guidelines for both LSRs and the Aquatic Conservation Strategy (ACS) call for the use of land exchange if they provided benefits equal to or

better than current LSR conditions, and to help meet ACS objectives and facilitate restoring fish stocks and other at-risk species.

The overall land exchange will result in the “blocking in” of LSR 125, in the Greenwater, with lands allocated either to LSR or to new MA 8E, which includes LSR standards and guidelines outside of about 630 acres of small elk forage opening. There will be an immediate gain of 1,461 acres of total LSH, which will increase to a gain of over 5,900 acres of large patches (over 1,000 acres) of LSH after 50 years. (This compares to a total decrease in LSH of 1,574 acres with no land exchange.) The **agency action to be implemented** will result in reacquiring 717 acres of late successional and old growth forest, which should assist movement of northern spotted owls throughout LSR 125, thus supporting their recovery. The small elk forage openings are not expected to affect owls, as no suitable habitat will be removed. Refer to page 4-154, Final Supplemental EIS.

The intent of the ACS—a key component of the 1994 Plan Amendment—is to restore and maintain the ecological health of watersheds and aquatic ecosystems, to protect habitat for fish and other riparian-dependent species and resources. This approach seeks to prevent further degradation and restore habitat over broad landscapes as opposed to individual projects or small watersheds. The overall Huckleberry Land Exchange and the **agency action to be implemented** will contribute to the restoration and maintenance of the ecological health of watersheds and aquatic ecosystems, and in meeting the ACS. Refer to pages 4-117 to 4-123, Final Supplemental EIS.

The land exchange results in a gain of 249 miles of streams—including an increase of 25 miles of fish-bearing streams—with a

cumulative gain of 254 miles of streams in the exchange area since 1982. There will be a net gain of 275 acres of wetlands, 501 acres of floodplains, and 6,306 acres of riparian area. Reacquiring 717 acres in the Huckleberry Parcel Group will result in retention of 7 more miles of fish-bearing streams and 202 more acres of riparian area. Refer to Table 2-4, Final Supplemental EIS. All of these areas will be managed under the more-protective Riparian Reserve standards and guidelines of the Forest Plan, as amended. Note that in watersheds where land ownership is mixed, and dominated by private landowners, management practices by the Forest Service will still be less effective in meeting the ACS objectives.

**Forest Plan Amendment 16:** I have determined that the Forest Plan amendment included as part of my decision and agency action to be implemented is non-significant, in the context of the 1982 Forest Service Planning Regulations (36 CFR 219.10(f)). I am amending the Forest Plan to add two new special area land allocations—Huckleberry Mountain Special Management Area 8D and Greenwater Special Management Area 8E (see Plate 1)—and their associated standards and guidelines, as described above (see *Decision*). I am also amending the management of trails within MA 8D: the primary user group will be hiker and pack-and-saddle. I made this determination on the basis of the criteria outlined in FSM 1922.52 *Changes to the Forest Plan That Are Not Significant*, as follows:

1) *Actions that do not significantly alter the multiple-use goals and objectives for long-term land and resource management:* Re-acquiring 717 acres, and assigning a land management allocation of MA 8D, Huckleberry Mountain Special Area, with a goal of

management for protection of cultural and historic features, old-growth forest, wildlife, fish, and water quality, will further the long-term Forest Plan (as amended) goals and objectives by adding over 700 acres of late-successional forest land to federal ownership. Changing the land allocation, and assigning new MA 8E standards and guidelines to up to 2,340 acres out of 10,938 acres acquired in the Greenwater Parcel Group will not significantly alter the long-term Forest Plan (as amended) goals and objectives. Note that only 630 acres in MA 8E will be managed as elk forage openings (following site-specific NEPA analysis), with no suitable nesting habitat for spotted owls or murrelets removed. The remaining MA 8E acres will be managed under the standards and guidelines for LSR, as in the 1998 exchange, and intermingled with existing LSR 125.

- 2) *Adjustments of management area boundaries or management prescriptions resulting from further on-site analysis when the adjustments do not cause significant changes in multiple-use goals and objectives for long-term land and resource management:* The adjustments in management prescriptions are made as a result of supplemental, site-specific environmental analysis. As noted above, there will not be significant changes in the Forest Service land and resource management goals and objectives.
- 3) *Minor changes in standards and guidelines:* The changes being made are the application of a land management allocation (with standards and guidelines) for the 717 acres to be re-acquired, plus a minor change in standards and guidelines (new MA 8E) for about 2,340 acres out of 10,938 acres acquired in the Greenwater

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Parcel Group. Note that only 630 acres in MA 8E will be managed as elk forage openings (following site-specific NEPA analysis). The remaining MA 8E acres will be managed under the standards and guidelines for LSR, as in the 1998 exchange.

- 4) *Opportunities for additional management practices that will contribute to achievement of the management prescription:* There will be an opportunity for future, site-specific analysis, consistent with NEPA, ESA, and all other relevant laws and regulations, to authorize creation and maintenance of up to 630 acres of small, elk forage openings in the lands allocated to new MA 8E.

### **National Environmental Policy Act**

The National Environmental Policy Act and its implementing regulations established the basis, process, and content requirements for the preparation of detailed statements for proposed actions, and for supplements to those statements, such as the Huckleberry Land Exchange. The entire process for this Supplemental EIS followed the regulations and direction outlined in 40 CFR Parts 1500-1508, Forest Service Manual 1950 and Forest Service Handbook 1909.15. In particular, a full Supplemental EIS was prepared to address the issues raised by the Ninth Circuit. A full range of alternatives was examined in detail, including a no action alternative, written as if the exchange had not taken place to allow the reader to clearly compare the differences among alternatives, and between no land exchange and any of the action alternatives. There were extensive opportunities for public involvement during in this supplemental analysis. I used the comments received both during scoping and in response to the Draft Supplemental EIS to

develop and modify alternatives and my decision. Therefore, I find this decision fully complies with NEPA.

### **Weeks Law of 1911**

The land exchange and the agency actions to be implemented are consistent with Section 7 of the Weeks Law, which authorizes land exchanges that provide land within the boundaries of national forests. Refer to page 1-2, Final Supplemental EIS.

### **General Exchange Act of 1922 (As Amended)**

This act requires, among other provisions, that lands acquired by the Forest Service be located within the exterior boundaries of the National Forest, and that the offered lands be located in the same state as the selected lands. This project is consistent with the Act; refer to page 1-2, Final Supplemental EIS.

### **Federal Land Policy and Management Act of 1976**

This land exchange, as implemented in March 1998 and supplemented by the agency action to be implemented, will be in compliance with this Act with respect to: 1) the values of the exchange properties be equal in value, or if not, either party may make them equal by a cash payment not to exceed 25 percent of the Federal value; and 2) that the non-federal land owner is a corporation subject to the laws of the United States.

### **Comprehensive Environmental Response, Compensation and Liability Act of 1980**

A survey for hazardous materials on the lands that were acquired in March 1998, in accordance with Section 120(h) of this Act, was completed. There are no hazardous

materials sites located on any of the acquired lands. Refer to project files.

### **Snoqualmie National Forest Boundary Adjustment of 1996**

This land exchange and the agency actions to be implemented are consistent with this 1996 Act, which extended the boundary of the Mt. Baker-Snoqualmie National Forest to encompass lands in the Skykomish, High Lakes, and parts of the Snoqualmie Parcel Groups that were outside the Forest boundary. Refer to page 1-2, Final Supplemental EIS.

### **National Historic Preservation Act**

Issues connected with the requirements of NHPA were significant for both the 1996 EIS and this analysis. The Ninth Circuit also raised issues related to NHPA (see discussion above, under *Ninth Circuit and Related Issues and Issue 7*). Selected Alternative 7 and the **agency action to be implemented** comply with Section 106 of this Act and its implementing regulations (36 CFR 800) by taking into account the effects of the action on historic properties and by consulting with the SHPO, the ACHP, and the Muckleshoot Indian Tribe. In January 2001, I determined that Alternative 7 would have no effect on historic properties listed or eligible for listing on the National Register of Historic Places, and notified the SHPO and other consulting parties of my finding. Since the SHPO did not object to this finding, no further steps are required in the Section 106 process (36 CFR 800.5). Refer to pages 4-213 through 4-225, Final Supplemental EIS, for a discussion of the Section 106 process followed for the land exchange.

### **American Indian Religious Freedom Act of 1978**

The American Indian Religions Freedom Act (AIRFA) reaffirms the responsibility of federal agencies to evaluate their policies and procedures with the aim of avoiding infringements on Indian religious freedom, and to make a good faith effort to consult with Indian people about protecting Indian religious cultural rites and practices. The Forest Service has complied with AIRFA requirements through government-to-government consultation with Indian tribes that would potentially be affected by the land exchange.

### **Endangered Species Act**

Consultation on the alternatives analyzed in the 1996 Final EIS for the entire Huckleberry Land Exchange was conducted with the USFWS in accordance with Section 7 of the ESA. A Biological Opinion, dated February 7, 1997, was received, with a determination that adoption of any of the 1996 alternatives would not likely jeopardize the continued existence of any listed species. The 1998 Exchange, which transferred fewer acres to Weyerhaeuser, had fewer effects than those indicated in the USFWS Biological Opinion. A final "Northern Spotted Owl Management Agreement for Weyerhaeuser Company Lands" was signed by USFWS and Weyerhaeuser on May 2, 1997. This document included a spotted owl dispersal plan and authorized incidental take of spotted owls, consistent with the terms of the Agreement. Refer to project files.

As part of the supplemental analysis, a new Wildlife Biological Assessment (November 28, 2000 and amended March 15, 2001) was prepared by my staff. The amended analysis focuses on the **agency action to be implemented**, but it also assesses the effects

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of the implemented 1998 exchange on the Canada lynx and the bull trout, two species listed since the original decision.

In early March 2001, I requested informal consultation from USFWS. Because the Huckleberry Land Exchange is a completed action (deeds and patents recorded March 1998), only the activities described in my *Decision* (above)—the **agency action to be implemented**—constitute the proposed action for purposes of the ESA. Accordingly, I requested concurrence from USFWS for the following determinations of effect (refer to the Wildlife Biological Assessment, in the project files):

- “may affect, not likely to adversely affect”: the northern spotted owl, designated critical habitat for the northern spotted owl, marbled murrelet, designated critical habitat for the marbled murrelet, and Coastal/Puget sound distinct population segment of bull trout;
- “may beneficially affect” the bald eagle (*Haliaeetus leucocephalus*), gray wolf (*Canis lupus*), and the grizzly bear (*Ursus arctos horribilis*); and
- “no effect” for Canada lynx.

On March 28, 2001, USFWS issued a letter of concurrence with the above effects calls, completing informal consultation.

In 1999, Puget Sound chinook salmon (*Oncorhynchus tshawytscha*) was listed as Threatened under the ESA. Additionally, coho salmon (*Oncorhynchus kisutch*) are considered to be a candidate for listing in the Puget Sound ESU.<sup>9</sup>

As part of the supplemental analysis, a Fisheries Biological Assessment (BA) and

Biological Evaluation (BE) (November 2000 and amended March 2001) was prepared by my staff.<sup>10</sup> The Fisheries BA/BE focuses on the **agency action to be implemented**, but also assesses effects of the completed March 1998 exchange on species listed since the earlier decision.

I requested informal consultation with the NMFS for the effect determination of “may affect not likely to adversely affect” for Puget Sound Chinook. NMFS concurred with this determination (letters dated January 12, 2001 and March 20, 2001; refer to project files). NMFS noted that Weyerhaeuser has pledged to complete watershed analysis in the Howard Hansen watershed prior to action on the parcels they receive, and to abide by the emergency or new FPRs outlined in the Forest and Fish agreement, regardless of any legal challenge to them.

Finally, NMFS concluded that effects of the proposed action are transient, local, and of low intensity and are not likely to adversely affect Essential Fish Habitat (EFH) in the long term, and that mitigation measures proposed as an integral part of the actions would avert, minimize, or otherwise offset potential adverse impacts to designated EFH.

### Clean Water Act

All of the watersheds in the exchange area are classified by the state as either Class A (“excellent”) or Class AA (“extraordinary”). Refer to pages 3-20 to 3-23 in the Final Supplemental EIS for a discussion of streams and the Washington Department of Ecology water quality ratings.

This land exchange brings many more miles of streams, and many more acres of riparian

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<sup>9</sup> Ecologically Significant Unit.

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<sup>10</sup> No BA/BE was prepared for the 1996 decision, as no species were listed at that time.

zone, wetland, and floodplain into federal ownership than will be traded out of federal ownership. These lands will be managed under Forest Plan (as amended) Standards and Guidelines and the ACS. Riparian Reserve widths on all of these aquatic features would increase beyond those currently protected under Forests and Fish Report Emergency Rules (Washington Forest Practices Board 2000). Refer to pages 4-37 to 4-43, 4-45, and 4-269 to 4-289 in the Final Supplemental EIS.

### Executive Orders

#### **Executive Order 11988 (Floodplains):**

Executive Order 11988 directs federal agencies to avoid, to the extent possible, both long- and short-term impacts associated with modifications of floodplains. The overall Huckleberry Land Exchange and the **agency action to be implemented** do not have any specific actions on floodplains. The Forest Service will trade no floodplains to Weyerhaeuser, but will receive 501 acres of floodplain habitat, in four river basins. Refer to pages 4-85 to 4-87, Final Supplemental EIS. Managed under Forest Plan standards and guidelines for Riparian Reserves (width can include the entire 100-year floodplain), these acquired floodplains are expected to improve, and can, over the long term, develop into functioning floodplains. Compared to no exchange, acquiring 501 acres of floodplains is important to maintaining or improving the aquatic ecosystem.

**Executive Order 11990 (Wetlands):** This Executive Order directs federal agencies to avoid, to the extent possible, both long- and short-term adverse impacts associated with the destruction or modification of wetlands. The Huckleberry Land Exchange and the **agency action to be implemented** do not have any specific actions on wetlands. The acres of wetlands to be traded to

Weyerhaeuser are reduced by this decision, from 26 to 17 acres (all in the Lower Green River watershed). A total of 392 acres of wetlands will be acquired by the Forest Service, for a net gain for the overall exchange of 375 acres of wetlands in federal ownership; refer to pages 4-84 to 4-85, Final Supplemental EIS. The wetlands acquired by the Forest Service will be managed under Riparian Reserve standards and guidelines, with considerably more buffer protection than under current conditions. The 17 acres of wetlands transferred to Weyerhaeuser will receive some protection under State FPRs to maintain water quality, and moderate and preserve water quantity. In addition, Weyerhaeuser includes wetlands as a special management category, with a primary management goal of maintaining habitat uniqueness.

**Executive Order 12898 (Environmental Justice):** The potential for the overall Huckleberry Land Exchange and the **agency action to be implemented** to disproportionately affect minority or low income populations is carefully considered in Section 4.17.10 (pages 4-305 to 4-307) in the Final Supplemental EIS. The Muckleshoot Indian Tribe believes there is the potential for this project to severely, uniquely, and disproportionately affect the Tribe, when viewed from a cumulative effects standpoint as one of a series of exchanges that affect the Muckleshoot people on federal lands in the Green River watershed. As discussed in the Final Supplemental EIS, I have had continued government-to-government consultation, including NHPA Section 106 consultation for treatment of historic properties, with the Tribe. A variety of concerns related to access and resources interests of the Tribe have been identified. In my decision, Tribal and public access will be reserved through retention of Forest Road 7125 in cost share status.

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Weyerhaeuser has indicated they are willing and it is the Forest Service's intent, to maintain public access on trails in which the Tribe has expressed interest, including the Grass Mountain/Huckleberry Divide Trail.

Weyerhaeuser has also expressed its desire to work with the Tribe to minimize impacts to areas of cultural interest and has already met with the Tribal staff to discuss issues of spiritual and cultural concern to the Tribe.

**Executive Order 13007 (Indian Sacred Sites):** This Executive Order mandates federal agencies, to the extent practicable and permitted by law, to accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and avoid adverse physical effects to such sites. Further, Executive Order 13007 affirms that federal agencies should give reasonable notice of proposed actions or land management policies that may restrict future access to, or ceremonial use of, or may adversely affect the physical integrity of, sacred sites. For the Huckleberry Land Exchange, Executive Order 13007 is being implemented through government-to-government consultation with tribes that would potentially be affected by the exchange.

## **Federal and State Permits**

There are no federal or state permits required to implement the agency actions described in this ROD.

## **Other Laws, Regulations, and Direction**

I have considered other relevant laws and regulations in the analysis and in my decision; refer to citations in the Final Supplemental EIS, particularly pages 1-7, 1-17, and Section 4.17 (pages 4-303 to 4-307). The overall exchange and the **agency action to be**

**implemented** will not result in an irretrievable commitment of natural resources, nor would it have significant effects on prime forest land, range land, or farm land; nor on consumers, civil rights, minorities, or women. In addition, the exchange does not conflict with plans and policies of other jurisdictions, such as the Washington Forest Practices Act, local comprehensive plans, and the Coastal Zone Management Act. The lands exchanged to Weyerhaeuser will be managed in accordance with these various authorities, as disclosed on page 4-304, Final Supplemental EIS.

Other legislation relevant to Indian concerns and historic preservation (such as the Native American Graves Protection and Repatriation Act with its implementing regulations, and the Archeological Resources Protection Act with its implementing regulations) are discussed in Section 4.12.1, Final Supplemental EIS.

## **PUBLIC INTEREST DETERMINATION**

Based on the above reasons and the full analysis provided in the Final Supplemental EIS and its accompanying planning record, and in accordance with 36 CFR 254.3(b), it is my determination that the Huckleberry Land Exchange serves the public interest. The resource values and public objectives served by the acquisition of the Weyerhaeuser lands will exceed those of the federal lands being conveyed.

The intended use of the conveyed federal land will not substantially conflict with established management objectives on adjacent federal lands. Weyerhaeuser will manage these lands under the protective measures provided by the Washington State Forest Practices Act, and the Habitat Management Agreement, between

Weyerhaeuser and USFWS, for portions of the White River Tree Farm.

### IMPLEMENTATION

Implementation of this decision will occur no sooner than 45 days, plus five (5) business days, after publication of notice of this ROD in the *Seattle Post-Intelligencer*, Seattle, Washington, the official newspaper of record.

Following the appeal period (see below) the Forest Service and Weyerhaeuser intend to demonstrate to the United States District Court, Western District of Washington, that the Forest Service has satisfied its statutory obligations consistent with the opinion of the United States Court of Appeals for the Ninth Circuit, and will request that the injunction on activities on the exchange lands (federal and Weyerhaeuser) be lifted.

This decision will be implemented in accordance with the Forest Service Land Exchange Handbook. The appraisal procedure will follow the Uniform Standards of Professional Appraisal Practice and the Uniform Appraisal Standards for Federal Land Acquisition. Compensation will be used to balance this transaction. Based on the valuation completed for this exchange in 1997, approximately \$6.0 million in cash will be paid to Weyerhaeuser, to implement Alternative 7, as described in *Implementation of Alternative 7 (Preferred)*, page 2-15 in the Final Supplemental EIS and as modified by my decision, and to balance the exchange.

### RIGHT TO APPEAL

This decision is subject to administrative appeal, pursuant to Title 36 of the Code of Federal Regulations (CFR) part 215.7. Any written notice of appeal must be postmarked or delivered within 45 days of the date that legal notification of this decision is published

in the official newspaper of record, *The Seattle Post-Intelligencer*, and must be filed with:

Regional Forester  
ATTN: 1570 Appeals  
USDA Forest Service  
P.O. Box 3623  
Portland, OR 97208-3623

Any written notice of appeal must meet the content requirements of 36 CFR 215.14. This includes the responsibility to provide the Regional Forester with sufficient written evidence and rationale to show why the decision by the Forest Supervisor should be changed or reversed. The written notice of appeal must:

1. State that the document is a Notice of Appeal filed pursuant to 36 CFR Part 215;
2. List the name, address, and if possible, the telephone number of the appellant;
3. Identify the decision document by title and subject, date of decision, and name and title of the Responsible Official;
4. Identify the specific change(s) in the decision that the appellant seeks or portion of the decision to which the appellant objects; and
5. State how the Responsible Official's decision fails to consider comments previously provided, either before or during the comment period, and if applicable, how the appellant believes the decision violates law, regulation, or policy.

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## **CONTACT PERSON**

For additional information concerning the specific activities authorized under this decision, contact:

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