



United States Department of Agriculture
Forest Service

Tribal Relations Report

Colville National Forest Plan Revision

Draft Environmental Impact Statement

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Introduction

The United States and federally recognized American Indian Tribes have a special and unique government-to-government relationship of one sovereign nation to another. The Federal Government has a trust responsibility (duty) to each tribal government based on the U.S. Constitution, treaties and statutes. The federal trust duty imposes fiduciary standards on the conduct of executive agencies. Therefore, the Forest Service has certain legal responsibilities to American Indian Tribes. These legal responsibilities are clarified in statutes, executive orders, and case law enacted and interpreted for the protection and benefit of federally recognized American Indian Tribes. In meeting these responsibilities the Forest Service must administer their programs in a manner that does not interfere with tribal rights and resources. When American Indian Tribes ceded lands to the United States government, rights and privileges to off-reservation lands (including the lands of the Colville NF) were reserved for their Tribal members.

Forest managers are required to consult Tribes when proposed policies or management actions may affect their interests. The following American Indian tribes and communities are known to have cultural ties with the lands of the Colville National Forest based on current and past consultation: Colville Confederated Tribe, Kalispel Tribe of Indians, and Spokane Tribe of Indians. Each tribe has their own history, traditions, and relationship to the land and other groups. The CNF shares a common boundary of 29 miles with the Colville Confederated Tribe and 14.7 miles with the Kalispel Tribe of Indians. The lands and resources of the CNF have been used and continue to be used by many of the tribes for a variety of traditional cultural and religious activities. Consultations with each tribe can identify the tribe's historic and present day traditional use areas and sacred sites.

This report evaluates and discloses the potential environmental consequences on the American Indian Rights and Interests that may result with the adoption of a revised land management plan. It examines six different alternatives for revising the 1988 Colville NF land management plan (1988 forest plan).

Relevant Laws, Regulations, and Policy that Apply

Important laws and their accompanying regulations and Executive Orders that affect the Forest Services' responsibilities to fulfill the government's Federal Trust Duty and manage traditionally used areas and resources by American Indians include the following:

Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701)

Section 202(b) provides that: "In the development and revision of land use plans, the Secretary of Agriculture shall coordinate land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian tribes by, among other things, considering the policies of approved tribal land resource management programs " (42 U.S.C. 1712)Section 202 (c)(9)directs the Secretary to coordinate land use planning with Tribes, to the extent the Secretary finds practical, by keeping apprised of tribal land use plans; ensuring that consideration is given to those tribal plans that are germane in the development of land use plans for public lands; assisting in resolving inconsistencies between Federal and tribal plans; and providing for meaningful involvement in the development of land use programs, land use regulations, and land use decisions for public lands.

National Forest Management Act of 1976 (NFMA) (16 U.S.C. 1701)

The National Forest Management Act requires the Secretary of Agriculture to assess forest lands, develop a management program based on multiple-use, sustained-yield principles, and implement a resource management plan for each unit of the National Forest System. It is the primary statute governing the administration of National Forests. It directs the Secretary of Agriculture to coordinate National Forest

System land use plans with the land use planning and management programs of and for Indian tribes by considering the policies of approved tribal integrated resource management programs..

In the 1982 planning regulations, the requirements for interacting with tribes are set out in 219.1: Purpose and Principles. (b)(6) Protection and preservation of the inherent right of freedom of American Indians to believe, express, and exercise their traditional religions. (b)(9) Coordination with land and resource management planning efforts of other Federal agencies, State and local governments, and Indian tribes.

National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq)

Directs all Federal agencies to consider and report the potential environmental impacts of proposed Federal actions, and established the Council on Environmental Quality. It also requires Federal agencies to invite Indian tribes to participate in the scoping process for projects and activities that affect tribes requiring an environmental impact statement (refer to appendix).

Food, Conservation & Energy Act of 2008 (2008 Farm Bill) (Public Law 110-246 , 122 Stat.1651) Title VIII – Forestry, Subtitle B

Subtitle B: Cultural and Heritage Cooperation Authority. Authorizes the Secretary of Agriculture to provide forest products to Indian tribes for traditional and cultural purposes; to protect the confidentiality of certain information, including information that is culturally sensitive to Indian tribes; to utilize National Forest System land for the reburial of human remains and cultural items, including human remains and cultural items repatriated under the Native American Graves Protection and Repatriation Act; prevent the unauthorized disclosure of information regarding human remains or cultural items reburied on National Forest System land; to ensure access to National Forest System land, to the maximum extent practicable, by Indians and Indian tribes for traditional and cultural purposes; to increase the availability of Forest Service programs and resources to Indian tribes in support of the policy of the United States to promote tribal sovereignty and self-determination; and to strengthen support for the policy of the United States of protecting and preserving the traditional, cultural, and ceremonial rites and practices of Indian tribes, in accordance with the American Indian Religious Freedom Act (42 U.S.C. 1996).

Tribal Forest Protection Act of 2004 (Public Law 108-278)

Authorizes the Secretary of Agriculture and the Secretary of the Interior to enter into an agreement or contract with Indian tribes meeting certain criteria to carry out projects to protect Indian forest land.

National Historic Preservation Act (NHPA) of 1966 as amended, (16 U.S.C. 470)

Sets forth the Federal government's policy to preserve and protect historical and cultural resources. This Act states that the historical and cultural foundations of the Nation should be preserved as a living part of the Nation's community life and development in order to give a sense of orientation to the American people. Directs all Federal agencies to take into account the effects of their undertakings (actions, financial support, and authorizations) on properties included in or eligible for the National Register.

Establishes inventory, nomination, protection, and preservation responsibilities for federally owned historic properties. As amended extends the policy in the Historic Sites Act to State and local historical sites as well as those of national significance, expands the National Register of Historic Places, establishes the Advisory Council on Historic Preservation and the State Historic Preservation Officers, and requires agencies to designate Federal Preservation Officers. The 1992 amendment strengthens the participation afforded to Tribes and Native Hawaiians. Specifically, the amendments discussing properties of traditional religious and cultural importance to an Indian tribe. The amendments afforded those historic properties eligible protection under NHPA; required agency officials to consult with Tribes concerning the effects of undertakings on historic properties of traditional and cultural importance to Tribes; and clarified Tribes' authority to assume the functions of State Historic Preservation Officers.

Archaeological Resources Protection Act of 1979 as amended (ARPA) (16 U.S.C. 470aa et seq).

This act establishes a permit process for the excavation on or removal of any archeological resources from Federal lands. If a permit issued may result in harm to, disturbance to, or destruction of, any religious or cultural site, as determined by the Federal land manager, the Federal land manager shall notify any federally recognized Tribe which may consider the site as having religious or cultural importance. This law also establishes criminal and civil penalties for illegally excavating, removing, damaging, or defacing any archeological resources on Federal lands. It further establishes provisions for the confidentiality of archeological resources on public lands.

American Indian Religious Freedom Act (AIRFA) of 1978, as amended (42 U.S.C. 1996)

Protects and preserves for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use, and possession of sacred objects and the freedom to worship through ceremonial and traditional rites.

Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) (25 U.S.C. 3001)

Provides a process for Federal agencies to return Native American human remains, funerary objects and sacred objects to the ancestors and appropriate Native American tribe. Includes provisions for the intentional excavation and unanticipated discovery of Native American cultural items on Federal and Tribal lands, and penalties for noncompliance and illegal trafficking. The act requires agencies to identify holdings of such remains and objects and to work with appropriate Native American groups toward their repatriation.

Religious Freedom Restoration Act (RIFRA) (42 U.S.C. § 2000bb)

Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except when the government demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest; and is the least restrictive means of furthering that compelling governmental interest.

Confederated Tribes of the Colville Reservation: Executive Order of 1872; North-Half Agreement of 1891 (27 Stat. 62)

At its inception by an Executive Order issued by President Grant on April 9, 1872, the Colville Indian Reservation was in a different location from today's reservation. A subsequent executive order was issued on July 2, 1872 by President Grant which moved the Colville Indian Reservation to its present location. On April 19, 1879 and March 6, 1880, two tracts of land called the Moses Columbia Reservation, where the present day City of Wenatchee lies. Twenty years after the Colville Indian Reservation was moved to its present location, the north half of the reservation was ceded to the United States by an act of Congress (27 Stat. 62).

Kalispel Tribe: Executive Order Number 1904 (1914)

On March 23, 1914, President Wilson, by executive order, formally set aside and reserved the territory described for the use and occupancy of the Kalispel Indians.

Spokane Tribe of Indians: Executive Order of 1881

On January, 18, 1881, President Hayes, by executive order, formally set aside and reserved the territory described in the agreement of August, 1877, for the use and occupancy of the Spokane Indians.

Executive Memorandum (April 29, 1994) Government-to-Government Relations with Native American Tribal Governments. (59 Fed. Reg. 22951)

Directs executive departments and agencies that undertake activities affecting Native American Tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of Tribal sovereignty.

Executive Order 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, (1994)

Addresses Environmental Justice in minority and low-income populations and is designed to focus Federal attention on the environmental and human health conditions in minority communities and low-income communities with the goal of achieving environmental justice. The order is also intended to promote nondiscrimination in Federal programs substantially affecting human health and the environment, and to provide minority communities and low-income communities' access to public information on, and an opportunity for public participation in, matters relating to human health or the environment.

Executive Order 13007, Indian Sacred Sites (24 May 1996)

Requires each executive branch agency with statutory or administrative responsibility for the management of Federal lands, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, to accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and to avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (November 2000)

Promotes regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, strengthens the United States government-to-government relationships with Indian tribes, and reduces the imposition of unfunded mandates upon Indian tribes. Although not a legal requirement, Executive Order 13175 calls for early consultation with tribes in the development of regulatory policies that have tribal implications.

43 CFR 10 Native American Graves Protection and Repatriation Act Regulations

Implements the provisions of the Native American Graves Protection and Repatriation Act of 1990.

36 CFR 60 National Register of Historic Places

Sets forth the procedural requirements for listing properties on the National Register.

36 CFR 63 Determinations of Eligibility for Inclusion in the National Register of Historic Places

Developed to assist agencies in identifying and evaluating the eligibility of properties for inclusion in the National Register, and to explain how to request determinations of eligibility.

36 CFR 296 Protection of Archaeological Resources

Implements the provisions of the Archaeological Resources Protection Act.

36 CFR 800 Protection of Historic Properties

Sets forth the provisions for the administration of the National Historic Preservation Act.

Forest Service Manual 1500 External Relations, Chapter 1563 American Indian and Alaska Native Relations.

Provides the basis for specific Forest Service policies, objectives and guidelines for tribal relations. Additional guidelines and procedures are found in Forest Service Handbook (FSH) 1509.13 American Indian and Alaska Native Relations Handbook. Policies and guidelines regarding timber and special forest products are found in Forest Service Timber Sale Preparation Handbook FSH 2409.18-2011-1 Chapter 80 Uses of Timber Other than Commercial Timber Sales Special Forest Products Forest Botanical Products.

Methodology and Analysis Process

The analysis includes a review of the current conditions, alternatives and an assessment of the potential impacts each alternative could have on Tribal access and use of the forest. The American Indian Rights and Interests area of potential effect includes the lands and resources of the CNF and the potential effect to Tribal resources and/or rights within lands adjacent to the forest. Limited information exists on Traditional Cultural Properties (TCPs) and Sacred Sites on the CNF. An ethnographic overview of the CNF has not been conducted. The existing condition was determined by reviewing the National Register of Historic Places, a review of the forest's heritage site and inventory files, cultural resource management overviews, ethnographic inventory overviews, articles, books, and the heritage Geographic Information System (GIS) database, and prior Tribal responses from consultation.

The American Indian Religious Freedom Act declares that the policies of the United States shall preserve and protect the American Indian's Freedom to practice their religion. This includes the right to have access to religious sites, to use and retain sacred objects, and to conduct ceremonies and practice traditional rites on the forests. The Religious Freedom Restoration Act (RIFRA) states that the government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except when the government demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest. To determine how the alternatives would affect the use and access to religious sites (1) an inventory of the known Traditional Cultural Properties (TCPs), Sacred Sites were identified through known and accessible ethnographic reports, archaeological reports, and tribal consultation responses; and (2) a review of the past and current accommodations to Tribes to access and use TCP's, Sacred Sites and resources for ceremonial purposes was completed.

Sacred sites are defined in E.O. 13007 as "any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site."

The E.O. directs the Forest Service and other federal land management agencies, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions: to accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners; to avoid adversely affecting the physical integrity of such sacred sites; and to maintain the confidentiality of Sacred Sites where appropriate.

Traditional Cultural Properties (TCP) are defined in National Register Bulletin 38 as properties associated “with cultural practices or beliefs of a living community that (a) are rooted in that community’s history, and (b) are important in maintaining the continuing cultural identity of the community”: for example TCPs might be structures, mountains and other landforms, plant gathering locations, communities or other types of properties. These areas are considered historic properties that may be eligible to the National Register of Historic Places.

Section 106 of NHPA requires that federal agencies take into consideration the effects of their undertakings on historic properties, which are defined in 36 CFR 800.16(l) as any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register of Historic Places (NRHP). The “Section 106 review process,” entails five steps: 1) determining whether the proposed action is an undertaking that has the potential to affect historic properties); 2) identifying historic properties; 3) evaluating the significance of historic properties; 4) assessing effects; and 5) consulting with interested parties (including Native People), the State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation (ACHP). Section 110 (Federal Agencies’ Responsibility to Preserve and Use Historic Properties) of the NHPA provides direction to federal agencies to establish programs and activities to identify and nominate historic properties to the NRHP and to consult with tribes. The Pacific Northwest Region has a programmatic agreement with the ACHP and Washington SHPO that stipulates the Forest Service’s responsibilities for complying with NHPA.

Under Section 106 regulations an adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property’s eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative. Specific examples of adverse effects cited in statute include (36 CFR 800.5):

- Physical destruction of or damage to all or part of the property.
- Removal of the property from its historic location.
- Change of the character of the property’s use or of physical features within the property’s setting that contribute to its historic significance.
- Introduction of visual, atmospheric or audible elements that diminish the integrity of the property’s significant historic features.

A review of tribal rights (hunting, fishing and gathering rights) was conducted to determine how the alternatives would potentially affect tribal rights. There are no known reserved hunting and gathering rights stated in treaties that involve lands of the CNF; however executive order tribes may have won certain rights and privileges under State law and regulation (Colville Confederated Tribes – Antoine v. Washington, 420 U.S. 1994 [1975]). For members of the Kalispel Tribe “Waterfowl bag limits and hunting seasons on the Kalispel Indian Reservation are determined annually to concur with limits and seasons set forth through the U.S. Fish and Wildlife Service (USFWS) Migratory Bird Program (Kalispel Tribes of Indians Hunting and Fishing Regulations 2014).” The Kalispel tribe regulates and enforcement their hunting and fishing rights through their own tribal law and order code. The Kalispel Tribe also have Memoranda of Understandings with the Washington Department of Wildlife concerning fisheries resources (WDFW 1993; WDFW 1994). The Forest Service is not party to these understandings as they effect only Kalispel reserved lands.

Consultation letters were sent to the three Tribal Governments (Colville Confederated Tribes, Kalispel Tribe of Indians, and Spokane Tribe of Indians regarding the plan revision (refer to appendix).

Assumptions

In the analysis for this resource, the following assumptions have been made:

- The land management plan provides a programmatic framework for future site-specific actions.
- The plan decisions (desired conditions, objectives, standards, guidelines, special areas, suitability, monitoring) would be followed when planning or implementing site-specific projects and activities.
- Analysis and impacts to American Indian Rights and Interests from site-specific actions would be addressed at the time site-specific decisions are made.
- Members of American Indian Tribes would continue to access, use, and/or conduct religious pilgrimages and ceremonies at known TCPs and sacred sites; and collect forest and botanical resources.
- Generally the lands and resources of the CNF used by American Indian Tribes for traditional cultural purposes and traditional use are for personal and community use.
- Law, policy, and regulations would be followed when planning or implementing site-specific projects and activities.
- The agency has the capacity (e.g. funding, personnel, other resources) to accomplish the minimum planned objectives.
- Burning could occur across all NFS lands.
- Unplanned ignitions are analyzed at the time of the fire's start and documented in the Wildland Fire Decision Support System (WFDSS). Management response to a wildfire is based on objectives appropriate to conditions of the fire, fuels, weather, and topography to accomplish specific objectives for the area where the fire is burning. Affects to cultural resources are considered when determining the objectives and management response to a wildfire
- The kinds of resource management activities allowed under the prescriptions are reasonably foreseeable future actions to achieve the goals and objectives of the forest plan. The specific location, design and the extent of such activities are generally not known. The effects analysis is intended to be useful for comparing and evaluating alternatives on a forest-wide basis. It is not intended to be applied directly to specific locations on the forests.
- Prior to making a project-level decision that is subject to National Historic Preservation Act (NHPA), the forest would consult tribes to identify TCPs and sacred sites, evaluate TCPs for the National Register of Historic Places (NRHP), and analyze the effects of the proposed use or activity in compliance with the *Programmatic Agreement Among the United States Department of Agriculture, Forest Service, Pacific Northwest Region (Region 6), the Advisory Council on Historic Preservation, and the Washington State Historic Preservation Officer Regarding Cultural Resources Management on National Forests in the State of Washington* (Forest Service, 1997), and/or memorandum of understandings with tribes. Following the identification and recording of TCPs, mitigation measures appropriate to the proposed undertaking would be implemented. Measures would be determined through consultation and might include avoidance by redesigning the project boundaries and/or changing the time/season of when the project is implemented. In cases where specific activities would constitute an adverse effect and avoidance cannot be accomplished, the adverse effects would be resolved in accordance with 36 CFR 800.

Revision Topics Addressed in this Analysis

American Indian Rights and Interests may be affected by the issues addressed in the revision topics: maintenance and improvement of ecosystems and community forest interaction. This analysis will address two issues identified by the Tribes that are related to AIRFA, RIFRA, E.O 13007 and the federal trust responsibility

The three tribes affiliated with the Colville National Forest have identified three main issues regarding forest land management in consultation and collaboration efforts conducted by the Forest (various Tribal Communications 2014):

1. The effects of management practices on resources used in traditional activities

Indicator: Qualitative discussion of potential effects to TCP's, Sacred Sites, and tribal rights from ecosystem restoration treatments, recreation, and special uses (Meeting Notes from November 4, 2014 and November 12, 2014).

2. The accommodation of traditional use activities such as visiting offering places, medicinal plant gathering, visitation of sites identified in oral histories, pilgrimages, and other such cultural activities (Meeting Notes from November 4, 2014 and November 12, 2014)

Indicator: Qualitative assessment of the potential effects on the access and use of those resources for traditional and religious purposes.

3. The effects of vegetation management on fire behavior and its potential to effect tribal lands adjacent to the forest (refer to the following: *Colville Confederated Tribes Integrated Resource Management Plan*, June 3, 2014, Congressional Testimony of DeSautel April 10, 2014, Colville Confederated Tribes Comment letter dated April 13, 2009, and Meeting Notes from January 23, 2004).

Indicator: Assessment and monitoring of future ecosystem restoration treatments.

Summary of Alternatives

A summary of alternatives, including the key differences among alternatives, is outlined in the Draft Environmental Impact Statement.

Affected Environment (Existing Condition)

Fourteen American Indian tribes represented by three tribal governments have cultural ties to lands within the CNF. Forest Service consultations with appropriate members of each tribe can identify the Tribe's historic and present day traditional uses and sacred sites of the area. The lands, resources, and the archaeological sites within the Forests are considered traditionally significant to all affiliated tribes and in some cases certain resources or areas are considered sacred to one or more. These traditional cultural properties may be eligible to the National Register of Historic Places because of their association with cultural practices and beliefs rooted in history and their importance in maintaining the cultural identity of ongoing American Indian communities. Consultations about these uses and sites are governed and/or mandated by the NHPA, as amended in 1992, (U.S.C. 470 et seq.), the American Indian Religious Freedom Act 1978 (42 U.S.C. 1996), the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C. 3001 et seq.), Executive Order 13007 Executive Order 13175, Consultation and Coordination with Indian Tribal Governments.

Colville Confederated Tribes

During the past 6,000 years, the region has been utilized by diverse groups of people for a variety of activities. The project area lies within the traditional use area of the Colville Confederated Tribe. The Colville is a sub-group of the Salishan speaking groups that include the following cultural traditions: Wenatchee, Columbia, Chelan, Methow, Okanogan, Nespelem, Sanpoil, Spokane, Coeur D'Alene, Lakes and Kalispel. Ethnographic accounts indicate that the Colville practiced wintertime deer drives and maintained resident fisheries along the Columbia, Kettle, and San Poil Rivers. In addition to hunting deer and fishing, the Colville harvested camas and other root crops (*Camassia* species) (Holstine 1987).

A Presidential Executive Order established the Colville Indian Reservation in 1872 (Colville Confederated Tribe 2004). The reservation originally extended across the entirety of present day Ferry County. The Colville Reservation, as established in July 1872, comprised about 2,900,000 acres. Except for certain 80 acre allotments to individual Indian's, the so-called "North Half" of the Reservation was ceded to the United States by an Agreement which was made with the Indians of the Reservation on May 9, 1891. The United States agreed to pay \$1,500,000 for the Lands of the North Half. The Agreement provided that it was to go into effect after its ratification by Congress. However, by the Act of July 1, 1892 (27 Stat. b2), Congress opened the North Half to settlement without ratifying the Agreement and without providing for the payment of the \$1,500,000. Subsequently, by the Act of June 21, 1906 (34 Stat. 525, 377-378), for the purpose of carrying into effect the 1891 Agreement, Congress directed that \$1,500,000 be set aside in the Treasury for the use and benefit of the Indians of the Colville Reservation in full payment for the ceded North Half. Thereafter, pursuant to the Act of June 21, 1906, and by way of ratifying the 1891 Agreement, Congress appropriated \$1,500,000 in five successive installments of \$300,000 each under each of five Acts of Congress, namely Act of March 1, 1907 (34 Stat. 1015, 1050), Act of April 30, 1908 (35 Stat. 70, 96), Act of March 3, 1909 (39 Stat. 781, 8131), Act of April 4, 1910 (36 Stat. 269, 286), Act of March 3, 1911 (36 Stat. 1058, 1075).

Kalispel Tribe of Indians

The Lower Bands of Kalispel typically wintered in the Pend Oreille Basin and were an Interior Salish-speaking population bounded on the south by the Spokane and Coeur d'Alene people; on the north by the Northern Okanogan, Lakes, Colville, and Kootenai; and on the east by the Flathead and Pend Oreille. Many of the languages were mutually intelligible and the communities were conversant in more than one language. The commonalities in language, the practice of marrying outside one's own community, the right of mutual seasonal use of resources in neighboring watersheds, and a high degree of social mobility to gather resources all contributed to creating a porous social matrix that de-emphasized rigid territoriality.

Since 1855 the Lower Kalispels remained in their aboriginal territory and opposed any attempt to remove them. Over the next 50 years the U. S. government attempted to move them to other reservations; some of the members did move the Flathead Reservation in Montana. However a small group remained and stayed in the valley near Cusick and Usk (Lahren 1998). The Kalispel Indian Reservation was established by President Woodrow Wilson by Executive Order No. 1904 on March 23, 1914. The executive order reserved approximately 4,629 acres for the Kalispel Tribe. The Pend Oreille River forms the western boundary of the reservation.

Spokane Tribe of Indians

The Spokane Tribe was comprised of three bands: the Lower Spokane had a principle settlement near Little Falls, the Middle Spokane settled near Hangman or Latah Creek, and the Upper Spokane settled along the Little Spokane River up from the junction of Hangman Creek (Ross 1998). Each of the bands had the potential to utilize the portion of the area now managed by the Colville National Forest. Generally

speaking the portion of the Forest that is near/surrounding Chewelah, across Flowery Trail, and South of the Pend Oreille River were within the traditional use areas of the Spokane Tribe.

In the past the Spokane occupied approximately 3 million acres in Northeastern Washington. The Spokane Reservation was created by executive order in January of 1881 by President Hayes. This order moved the Spokane Tribe of Indians from their ancestral homelands to the Spokane Indian Reservation.

Tribal Rights

In addition to laws listed in the Regulatory Framework the following apply specifically to Tribal Resources. The Executive Orders that established the three Tribal Reservations in the area are as follows:

- Confederated Tribes of the Colville Reservation: Executive Order of 1872; North-Half Agreement of 1891 (27 Stat. 62)
- Kalispel Tribe: Executive Order Number 1904 (1914)
- Spokane Tribe of Indians: Executive Order of 1881

Environmental Consequences

The land management plan provides a programmatic framework that guides site-specific actions but does not authorize, fund, or carryout any project or activity. Because the land management plan does not authorize or mandate any site-specific projects or activities (including ground-disturbing actions) there can be no direct effects. However, there may be implications, or longer term environmental consequences, of managing the forests under this programmatic framework.

Under the provisions of the National Historic Preservation Act (NHPA 1966, as amended; 16 U.S.C. §470), adverse effects to cultural resources include a variety of criteria affecting the potential eligibility of cultural resources for inclusion on the National Register of Historic Places (36 CFR §800.9b). Specifically, effects may be deemed adverse according to the following (36 CFR §800.5[1]):

An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

Tribal consultation for specific actions would be conducted prior to approving site-specific projects in compliance with Federal law and Forest Service policy. Prior to the forests making a decision on a site-specific action that is subject to NHPA, the forests would consult the Tribes to identify TCPs and sacred sites, evaluate TCPs for the NRHP and analyze the effects of the proposed use or activity in compliance with the programmatic agreement and/or the Memorandum of Understanding with the Tribe/s. Following the identification and recording of TCPs, mitigation measures appropriate to the proposed undertaking would be implemented. Measures would be determined through consultation. For example, they might include avoidance by redesigning the project boundaries, or changing the time/season of when the project is implemented. In cases where specific activities would constitute an adverse effect and avoidance could not be accomplished, the adverse effects would be resolved in accordance with 36 CFR 800.

Some Sacred Sites may not meet the definition and criteria for a TCP and would not be subject to the NHPA. Executive Order 13007 states that the federal government should avoid adversely affecting the physical integrity of Sacred Sites. Tribal consultation for specific actions would be conducted prior to

approving site specific projects. Consultation with the appropriate Tribe/s could determine if the proposed action would affect the physical integrity of the Sacred Site. The physical integrity of a Sacred Site can be adversely affected by non-ground disturbing activities, such as but not limited to using treated sewage water on the Sacred Site for making snow or irrigation; using the location for touch and go landings of aircraft; pumping ground water from a different location that affects the flow and water quality of sacred springs; mining or drilling underneath the Sacred Site; building facilities and/or permitting land use activities that change the visual, vegetative, and sound qualities of an area which are attributes of the Sacred Site. At times, the only mitigation measure to not adversely affect a Sacred Site is avoidance. Other measures may be identified through consultation with the affected Tribe/s.

AIRFA provides for the protection and preservation of the inherent rights of American Indians' freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, and use, and the freedom to worship through ceremonials and traditional rites. Some actions may not affect the access but may temporarily and/or permanently alter or destroy the use of a site or religious ceremony by impacting the physical integrity of the location, setting or resources, and/or defiling the primary attributes that make the location a holy place. Certain resources or ceremonies may only be collected and/or conducted on a specific location by specific individuals at a specific time. Activities that are approved that limit or change the use and access of traditionally used resources or TCP/Sacred Sites may have permanent adverse effects by altering or removing a specific traditionally used resource, or impacts the process and/or continuation of the ceremonial rite.

The federal trust duty requires the Forest Service to administer their programs in a manner that does not interfere with tribal rights and resources. Actions that may affect tribal rights and resources include but are not limited to special use permits that allow pumping or diverting water resources, vegetation management treatments that could potentially reduce the risk of wildfires crossing jurisdictions or improve the quality of wildlife habitat along reservation boundaries, grazing and range improvements that prevent trespass issues, and transportation management that provides necessary access and discourages illegal access to reservation lands.

Effects Common to All Alternatives

The CNFs consults with three different tribal governments that have a cultural affiliation to the area. At present, Tribes have not identified concerns or issues that the proposed plan and alternatives would result in adverse impacts to known and unidentified TCPs and Sacred Sites or the use of those locations. The Tribes have expressed interest on the affects to wildlife (caribou and native fish species), the effects of vegetation management (forest health and wildfire spread to adjacent tribal lands), and the need to prevent additional adverse impacts from activities to TCPs and Sacred Sites. It should be noted that some tribes may not reveal specific locations of traditional use or Sacred Sites to non-practitioners because of cultural restrictions and/or religious beliefs unless that location is at risk of being adversely impacted by project activities. Government to government consultation would continue between the CNFs and the Tribes. If tribal consultation results in identification of additional, currently unidentified, traditional uses and traditional cultural properties, impacts to those areas would be considered during project-specific environmental assessments.

Traditional Cultural Properties and Sacred Sites

The 1988 forest plan (Alternative A) has not been amended to reflect the 1992 requirements and amendments to the NHPA. The 1992 amendment Section 101 (d)(6) states that properties of traditional religious and cultural importance to an Indian tribe or native Hawaiian organization may be determined eligible for inclusion on the National Register. It also states a Federal agency shall consult with any Indian tribe that attaches religious and cultural significance to these properties. The forest plan also does not address the requirements of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), Executive Order 13007 Indian Sacred Sites and Executive Order 13175 Consultation and

Coordination with Indian Tribal Governments. The focus of management and guidelines for forest resources within the 1988 plan were developed prior to the passage or issuance of these statutes which lead to more impacts to TCPs. Emphasis was on use of timber and multiple use activities that incorporate the location of TCPs and Sacred Sites that may not be compatible with those uses. In the action alternatives the proposed plan would incorporate the passage of these statutes and issuance of executive orders providing for increased consideration and management to avoid or minimize the impacts to TCPs and Sacred Sites, to allow access, and preserve their cultural value and use.

Tribal Interests

The Forest's proposed treatments in all of the alternatives provide for sustainability and improvement of wildlife habitat. The alternatives are not expected to reduce or limit the long term availability and use of traditionally used wildlife. The tribes have not identified any concerns that the proposed treatments would affect their access and use of traditionally used forest products and minerals. Road access and access in general are vitally important for tribal members, particularly elder tribal members, to continue to utilize culturally significant resources, Traditional Cultural Properties, and Sacred Sites.

Relationship of Short-Term Uses and Long-Term Productivity

Traditional cultural areas used for hunting wildlife and collecting forest resources could be affected by the temporary closure of areas from wildland fires and treatments. Many of the traditionally used plants respond to fire by increasing productivity. The alternatives allow approximately the same number of acres to be treated by fire, and fuels treatments would potentially increase the long term productivity of traditionally used forest resources and availability of those resources across the landscape. Access to visiting TCPs and Sacred Sites could be affected in the short term during implementation of prescribe burn treatments or during management of wild fires. Conducting prescribed burns have the potential to restore the natural and cultural landscape, and the natural fire regime, reducing the potential for permanent adverse effects from high intensity, high severity fires. Mechanized treatments have the similar benefits to TCPs by reducing the potential for permanent adverse effects from fire, but these treatments have the highest potential for long term indirect effects from erosion caused from intensive ground disturbance near sites. Also, slash from mechanized treatments is often piled and burned resulting in more locations with hydrophobic soils, thus increasing erosion to sites if the piles were located near TCPs.

Cumulative Environmental Consequences

American Indian rights and interests may be affected by the issues addressed in the revisions which increase maintenance and improvement of ecosystems and community forest interaction. Current and previous Forest Service management activities, public resource procurement and recreational use and natural processes have impacted TCPs and Sacred Sites. The analysis area consists of lands that include American Indian TCPs and Sacred Sites within the state of Washington associated with Tribes culturally affiliated with the lands of the CNFs. Tribes view Sacred Sites and TCP's that are part of their traditions as interconnected places/features of the religious and traditional landscape. Effects to these places or features may directly or indirectly affect the access and use by the tribes to conduct ceremonial and/or traditional practices of other Sacred Sites or TCPs that are part of their traditions. There are several known activities, projects or planned projects and/or plans located on lands that have or would adversely affect TCPs and Sacred Sites.

Unavoidable Adverse Impacts

The land management plan provides a programmatic framework that guides site-specific actions but does not authorize, fund, or carry out any project or activity. Before actions take place, they must be authorized in a subsequent site-specific environmental analysis. Therefore none of the alternatives cause unavoidable

adverse impacts. Mechanisms are in place to monitor and use adaptive management principles in order to help alleviate any unanticipated impacts that need to be addressed singularly or cumulatively.

Irreversible and Irretrievable Commitment of Resources

The land management plan provides a programmatic framework that guides site-specific actions but does not authorize, fund, or carry out any project or activity. Because the land management plan does not authorize or mandate any site-specific project or activity (including ground-disturbing actions), none of the alternatives cause an irreversible or irretrievable commitment of resources.

Adaptive Management

All alternatives assume the use of adaptive management principles. Forest Service decisions are made as part of an on-going process, including planning, implementing projects, and monitoring and evaluation. The land management plan identifies a monitoring program. Monitoring the results of actions would provide a flow of information that may indicate the need to change a course of action or the land management plan. Scientific findings and the needs of society may also indicate the need to adapt resource management to new information.

Consistency with Law, Regulation, and Policy

All alternatives are designed to guide Colville National Forests' management activities in meeting federal law, regulations, and policy.

Other Planning Efforts

There are no conflicts between the alternatives and the adjacent Tribal land use plans.

References

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- Washington Department of Fish and Wildlife [WDFW]. 1993. *Memorandum of understanding: Kalispel Tribe and Department of Wildlife*.
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Appendix: Government to Government Correspondence

Table 1—Correspondence with Colville Confederated Tribe

Doc	Date	From	To	Type	Topic
127	3/23/2006	D. Nemeth	general	email	notice of orientation meeting
128	5/19/2006	M. Morris	FS	email	May 19 meeting
231	4/14/2009	B. Gunn	Heath/Kelly	email	Comments on FPR
378	9/4/2003	A. Quan	J. Pakootas	letter	update letter and meeting reminder
380	3/31/2005	J. Boynton	J. St. Pierre	letter	follow-up letter about meeting
381	5/25/2006	R. Brazell	H. Moses	letter	work group invitation
385	8/19/2008	Hartzell	Chairperson	letter	informational letter
467	1/22/2009	M. Morris	FS	email	update on fpr
488	09/2-3/2008	G. Bauer	B. Coles	PCR	transfer of GIS info
490	6/10/2008	Hartzell	Potts/Miller	PCR	documents mtg
492	7/8/2009	Hartzell	CCT	PCR	update on fpr
493	7/9/2009	Hartzell	KTI	PCR	update on fpr
498	5/3/2005	Hartzell	CCT	PCR	2004 planning rule
884	4/26/2011	D. Kelly	D. Brudevold	email	update on mtg agenda
886	4/29/2011	D. Kelly	J. Stensgar	email	cancellation of mtg
910	11/30/2009	J. Vittello	Hartzell/Harris/Gunn	fax	BIA letter
1070	7/13/2011	D. Kelly	D. Brudevold	email	checkin on fpr review
1071	9/8/2011	D. Kelly	Moura	email	follow-up on review
1072	10/6/2011	FS	B. Coles	email	update on fpr
1073	7/19/2011	D. Kelly	FS	email	update on May 17th mtg
1074	7/19/2011	D. Kelly	FS	email	coordination letter
1075	9/6/2011	D. Kelly	Moura	email	follow-up on fpr comments
1076	11/16/2011	D. Kelly	D. Brudevold	email	update on B. Coles letter
1077	9/8/2011	D. Kelly	M. Smith	email	meeting participants and agenda
	8/27/2008	D. Kelly	CCT	PCR	update on FPR
	9/30/2008	D. Kelly	M. McDougal	PCR	native plants
	11/20/2010	D. Kelly	CCT	PCR	update on FPR
	8/19/2008	Hartzell	J. Jerred	letter	info update
	9/28/2011	M. Finley	LJ West/Hartzell/Heath	letter	tribal comments
	5/1/2009	D. Gereaux	D. Kelly	email	request for letters sent to CCT
	12/20/2011	Hartzell	CCT	PCR	meeting to provide update
	8/12/2008	J. St. Pierre	Heath/Kelly	letter	comments from BIA
	3/25/2014	K. Ward	CCT/CNF	mtg	TFPA discussion
	4/30/2014	K. Ward	CCT/CNF	email	Anchor Forest and TFPA
	6/17/2014	Hartzell	L.J. West	PCR	update on meeting

Doc	Date	From	To	Type	Topic
	4/10/2014	CCT	FS	letter	CCT testimony before oversight committee
	10/10/2014	L. J. West	J. Boyd	Letter	Request for consultation on FPR changes
	10/21/2014	L. J. West	A. Beat	Email	Meeting with CCT about FPR changes

Table 2—Correspondence with Kalispel Tribe of Indians

Doc	Date	From	To	Type	Topic
375	2/7/2003	FS	G. Nenema	Letter	request for consultation
382	4/1/2005	FS	G. Nenema	Letter	info and CD
383	5/25/2006	FS	G. Nenema	Letter	invite to work group
384	8/19/2008	FS	G. Nenema	Letter	update on FPR
1081	9/8/2011	T. Shuhda	KTI	Email	request for input
1082	8/24/2011	D. Kelly	D. Osterman	Email	providing info
1083	7/7/2011	D. Kelly	D. Osterman	Email	coordination with KTI
	7/9/2009	Hartzell	KTI	PCR	briefing
	9/28/2011	B. George	L. J. West	Email	thank you
	10/10/2014	L. J. West	G. Nenema	Letter	Request for consultation on FPR changes
	10/15/2014	K. Lyons	A. Beat	Phone	Follow-up on 10/10/2014 letter
	10/30/2014	A. Beat	D. Osterman	Phone	Follow-up on 10/10/2014 letter - Left Msg
	10/30/2014	A. Beat	D. Osterman	Email	Follow-up on 10/10/2014 letter added new dates for mtg times
	11/13/2014	L. J. West	D. Osterman	Phone	Follow-up on 10/10/2014 letter and meeting request.
	11/14/2014	A. Beat	J. Seymour	Email	Follow-up on 11/13/2014 phone call; requested a meeting.

Table 3—Correspondence with the Spokane Tribe of Indians

Doc	Date	From	To	Type	Topic
130	1/23/2004	D. Gereaux	FS	notes	FPR mtg notes with STI
376	2/10/2003	FS	A. Peone	letter	Request for consult on planning rule
386	8/19/2008	Hartzell	Chairperson	letter	info update
387	5/25/2006	D. Donzalez	Greg Abrahamson	letter	working group invite
1084	9/6/2011	D. Kelly	Randy Abrahamson	letter	follow-up on request for comment
	10/10/2014	L.J. West	Rudy Peone	letter	request for consult on FPR changes
	10/15/2014	R. Abrahamson	Alicia Beat	phone	info request and meetin info
	10/15/2014	R.	Alicia Beat	phone	set meeting date in SO for 11/4/14

		Abrahamson			
	11/4/2014	L.J. West	Randy Abrahamson	meeting	Provided an update on the FPR and requested input/comments.

Table 4—Correspondence with the Coeur D’Alene Tribe

Doc #	Date	From	To	Type	Topic
	12/1/2014	Alicia Beat	Jill Wagner	phone	Inquired if the CDA wished to consult on the FPR. Jill asked for shapefiles to make determination.
	12/1/2014	Alicia Beat	Jill Wagner	email	Provided shapefiles to Jill Wagner.

DRAFT