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Forest Conference-Habitat Conservation Plans (HCPs)

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001. list	[Personally Identifiable Information] [partial] (1 page)	03/31/1994	b(6)

COLLECTION:

Clinton Presidential Records
Council on Environmental Quality
Kathleen "Katie" McGinty
OA/Box Number: 4301

FOLDER TITLE:

Forest Conference-Habitat Conservation Plans (HCPs)

2012-0769-F

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RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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- b(1) National security classified information [(b)(1) of the FOIA]
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- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]



Simpson Timber Company

Redwood Division P.O. BOX 1169

ARCATA, CALIFORNIA 95521-1169 (707) 822-0371 FAX (707) 822-4429

Handwritten initials, possibly "HLS", in the top right corner of the page.

April 7, 1994

Mr. Will Stelle
Deputy Director
Office of Environmental Policy
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. Stelle:

On behalf of all of your recent Simpson visitors, I want to thank you for meeting with us last week in Washington. As we mentioned, we had an opportunity to meet earlier in the day with Don Barry and Mike Spear of Interior and Rollie Schmitten and Laurie Sullivan of the National Marine Fisheries Service.

We appreciated having an opportunity to discuss Simpson's habitat conservation plan strategies with you and, in particular, our interest in pursuing a plan for anadromous fish and other aquatic species of concern on our California timberlands, as detailed in the prospectus we left with you. A solid working relationship, good communications and effective coordination among Simpson and various federal and state agencies will be essential, if we are to be successful. As we discussed, clarification as to the following will be very important before we proceed:

- Which agency will have lead responsibility for plan and pre-listing agreement approval?
- How will federal agencies coordinate their internal and interagency reviews?
- Subject to approval of the measures proposed in our plan, will participating agencies provide pre-listing assurances to Simpson regarding the species of concern?
- How will the plan be approved and during what time frame?

Mr. Will Stelle Letter
April 7, 1994
Page 2

In addition, I want to reiterate a key point we stressed last week: It is critical that we proceed with an adaptive plan--one that reflects the unique characteristics of our resources and gives us the flexibility to continue managing our properties. Simpson's Spotted Owl Habitat Conservation Plan is a good example of a successful adaptive plan based on site-specific science.

As we discussed, we have enjoyed an excellent working relationship with the Fish and Wildlife Service as we jointly developed the northern spotted owl HCP covering our California lands. We all learned a lot in that effort and we look forward to working cooperatively with some of the same folks, along with representatives of National Marine Fisheries Service.

Once again, it was a pleasure meeting with you last week. Please don't hesitate to call me for additional detail about our proposed conservation strategy or the key questions briefly recapped above. We will keep you posted on our efforts to move forward with the proposal we discussed with you last week.

Sincerely,

A handwritten signature in black ink, appearing to read "David W. Kaney", written in a cursive style.

David W. Kaney
Vice President & General Manager

cc: Maureen Frisch

February 15, 1994

TO: Kate McGinty
Will Stelle

FROM: Curt Smith

PHOTOCOPY
PRESERVATION

RE: Landowners Who Have or Will Be Doing HCPs

I just left Norm Dicks. He wants to reinforce the HCP effort as a method for moving toward ecosystems management. He said talk to Vice President Gore before the Vice President's speech.

The following landowners are or will be involved in HCPs:

1. The Washington State Department of Natural Resources is doing two multi-species HCPs. One HCP covers the Department's land on the Olympic Peninsula. The second HCP covers the Department's land on the coast. The two HCPs will be completed by the end of 1994. The DNR is a very important agency for HCPs. It is the only state agency that has the authority to issue HCPs. It is also the only state agency that has the authority to issue HCPs.

Murray Pacific Corporation has already completed an HCP for spotted owls. It was completed in November of 1993. They have committed to doing a multi-species HCP early next year. Tony Murray, Vice President of the company, is not very happy with how long it took to do an HCP for a single species. I told him we will do better on the multi-species effort. He is on panel at the Conference and will also be at the DNR fund raiser. Kate should be sure and meet him.

2. The Longview Fibre Company has committed to do a multi-species HCP. It will be in Washington State. It is relatively small, 21,000 acres. But if it goes well they will most likely do the rest of their lands. They have land in both Oregon and Washington. This was a tough decision for them. Other small and mid size companies will be watching this one closely.

3. The City of Seattle has committed to a multi-species HCP in the Cedar River Watershed (40,000 acres). This is a very important HCP because of its proximity to the state's largest urban area. Mayor Norm Rice and the City Council are very enthusiastic about doing an HCP. The Cedar River Watershed is the primary water supply for City of Seattle.

4. The Weyerhaeuser Company will be involved in two HCPs. They are doing an HCP for spotted owls on their Millicoma Tree Farm located in Coos and

**PHOTOCOPY
PRESERVATION**

Douglas Counties, Oregon. The Tree Farm is approximately 270,000 acres.

They will be announcing at the Watershed Conference the fact that they intend to do a multi-species HCP in Southwest Washington (100,000 acres). Obviously this is an important commitment for a number of reasons.

I would recommend that Norm and the vice president publicly acknowledge all the above for their "courage and farsighted" decision to move this region toward ecosystem management. And congratulate them for demonstrating that government and private land owner can work together for the benefit of all of us.

Call if you have questions.

cc. Congressman Norm Dicks



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Pacific Northwest Habitat Conservation Plan Program
3773 Martin Way East, Building C - Suite 101
Olympia, Washington 98501
(206) 534-9330 FAX: (206) 534-9331

February 23, 1994

TO: Kathleen McGinty, Director
White House Office on Environmental Policy
Will Stelle, Associate Director of Natural Resources
White House Office on Environmental Policy
George Frampton, Assistant Secretary
Department of the Interior
Jim Lyons, Assistant Secretary
Department of Agriculture
Mollie Beattie, Director
U.S. Fish and Wildlife Service
Don Barry, Counselor to the Assistant Secretary
Department of the Interior

FROM:  Curt Smitch, Program Supervisor

SUBJECT: **NEWSPAPER COVERAGE OF THE WATERSHED
CONFERENCE**

I am taking the liberty of sending you copies of articles from the major newspapers about the *Northwest Watershed Restoration/Partnership Conference*. Let me know if I am duplicating a "service" you already have in place.

Congratulations to all of you. I have heard nothing but good things about the administration's participation in the Conference. "The Feds had their act together," is a common statement being made.

The show of force, teamwork and intelligence was quite impressive. Keep up the great work.

CS:ef

Attachments

EDITORIALS

New thinking welcome on species preservation

AFTER years of agitation and litigation, a bracing jolt of innovation might break the gridlock on attitudes and efforts to protect wildlife and fish.

A Clinton administration team working on the Northwest forest plan proposes to give non-federal landowners an incentive to develop habitat preservation plans that cover the spectrum of threatened and endangered wildlife and fish, not just single species.

The reward would be to exempt cooperative landowners' land from future restrictions due to additions to the endangered-species list.

As with most innovations, this one builds on the past and carries a measure of risk, but it takes a creative leap over existing thinking.

The federal Endangered Species Act cannot compel landowners to create habitat to protect endangered species, but the law does protect critters from acts that would jeopardize their survival. As a result, timber companies leave swaths of trees standing to avoid spotted owls.

An exemption allows for the incidental demise of, say, an individual owl, if sufficient habitat is preserved to support the broader population of that species.

The exemption does not get much use. Producing plans species-by-species is cumbersome and expensive, and still fewer property owners want to risk getting their land locked up as habitat for some yet-to-be-identified endangered species. This has contributed to unprecedented harvests on private land.

This proposal, one of many aired last week at a regional conference on watershed restoration, goes to the heart of tensions that cloud the reauthorization of the Endangered Species Act by Congress. Environmentalists want to revise the act from a bureaucratic footrace with extinction to a habitatwide approach that keeps fragile species out of danger. Private property interests resent the act's iron-clad bias toward preservation over ownership prerogatives and economic impacts — favoring owls, murrelet or coho over people.

The proposed incentive recognizes both the economic value of land and the benefit of linking up contiguous property for meaningful preservation.

Before the incentive for habitat plans becomes real it faces a host of political, legal and scientific challenges. Writing the agreement to allow for re-opening discussions in the face of new information will be most delicate.

The federal government has no choice but to be innovative. With 800 species listed and thousands more in official limbo, the government does not have the time and money to continue business as usual.

New thinking is needed and welcome.

Timber spirit hailed

Cooperation called critical to saving region's wildlife

By Rob Taylor
P.I. Reporter

TACOMA — Powerful federal officials yesterday hailed the Northwest for launching a new era of cooperation to protect fish and wildlife after a decade of conflict, but added a crucial "or else."

Rep. George Miller, chairman of the House Interior Committee and Mollie Beattie, director of the U.S. Fish and Wildlife Service, both called this region a likely model for others for how to protect natural resources.

Their comments highlighted a two-day conference full of optimistic assessments that the region's timber wars were ending. But some skeptics questioned that premise, and Miller warned that if the conflicts continue, federal financial help will soon dry up.

If the region moves toward consensus solutions, Miller said, Congress will "want to help and will use you as a model of success." But if battles over timberlands continue, he said, federal aid will quickly end.

"Congress will walk away from you and there will be nothing your delegation can do for you," Miller said.

Cooperation and partnerships were leading themes of the conference, organized by Rep. Norm Dicks, D-Wash., to discuss how to spend about \$70 million that the federal government has ear-

Seattle Post-Intelligencer, Friday, February 18, 1994 C3

Logging: Real change doubted

From Page C1

marked for restoring watersheds damaged by logging and road-building.

That aid is part of more than \$300 million slated for the region this year in President Clinton's Northwest forest package.

Some at the conference were skeptical that the timber industry is entering a new, more sensitive era. Bonnie Phillips-Howard of the Pilchuk Audubon Society and Western Ancient Forest Campaign said that despite much talk, "people aren't changing their practices." And Jim Owens, executive director of the forest campaign, reserved the right to go to court to propel change.

On the optimistic side, Beattie predicted that state, private and federal landowners will cooperate in weaving a fabric of fish and wildlife habitat protection across the landscape.

Beattie called the conference "indeed a watershed event" when "everything starts flowing away from the courts and toward sustainable economies."

She said cooperation is imperative. "We know we can't buy and regulate our way to sustainable ecosystems," she said.

Federal officials here talked of a potent new incentive for private cooperation: a federal guarantee that if private owners draw up acceptable land management plans, they would be immune from additional federal species-protection mandates.

That would resolve a quandary faced by Murray-Pacific Co., which wrote Washington's first private spotted-owl protection plan only to face new logging restrictions to protect the marbled murrelet.

Weyerhaeuser Co. announced this week it has agreed to write a plan to preserve many species on about 100,000 acres of its land in southwest Washington. The timber giant expects that when federal officials approve the plan, they will agree not to demand more concessions at a later date. That would give the company regulatory stability that it has long sought.

Curt Smitch, former director of the Washington Department of Wildlife, said the administration supports the concept and the Interior Department's lawyers say it would need no new legislation.

The conference was timed to occur about a week before the Forest Service and Bureau of Land Management submit their final draft plan for protecting wildlife on Northwest federal lands.

If the plan is upheld by the courts, Smitch and other officials predict that more timber landowners and farmers will accept new responsibility to protect certain resources on private as well as public lands.

It is becoming clear to all, said Smitch and Miller, that lax regulation of logging will not return.

"You're not going to be able to roll the clock back," Smitch said.

See LOGGING, Page C3

*Watershed
Conference*

TACOMA NEWS-TRIBUNE, Friday, February 18, 1994

Private timber firms may get watershed-fixup incentives

By Sandi Doughton
The News Tribune

Property lines mean nothing to water or salmon, and they should be equally irrelevant to watershed restoration, state fisheries director Bob Turner said Thursday.

Many of the state's most damaged watersheds are on private land, Turner told participants at a conference on repairing the ecological harm from logging and creating new jobs for displaced timber workers.

But the bulk of the money for watershed restoration appears to be targeted at the state's national forest lands.

It doesn't make sense to spend those funds fixing up federal lands to restore salmon habitat when it's the poor conditions on private land that are often the biggest fish-killers, Turner said.

"The goal of our efforts here are to restore fish and wildlife resources and provide jobs," he said. "Neither one of those goals can be achieved on federal lands only."

The two-day conference, organized by U.S. Rep. Norm Dicks (D-Bremerton) and addressed Wednesday by Vice President Al Gore, is aimed at finding the best way to spend the \$72 million anted up by the federal government this year for watershed programs. About \$27 million of that total is to be spent on actual watershed restoration projects - work that would be done by the people who used to cut down trees and build logging roads.

"A job on private land is the same as a job on federal land," Turner said.

In Washington, private companies own about 40 percent of timber lands and pro-

duce 70 percent of the state harvest.

Generally, private lands are found in lower elevations, with federal lands located higher in the watersheds.

"Water runs downhill," said Jim Lyons, the assistant secretary of agriculture who oversees the U.S. Forest Service. "Before it gets to the sea, it might cross state lands, private lands, tribal lands, farm lands."

The cooperation of private landowners is crucial to the success of forest management that takes entire watersheds and ecosystems into account.

"It seems inconceivable that for so long we've continued to manage without considering the effect of our activities on the rest of the watershed, on the people downstream," Lyons said.

If private landowners are reluctant to embrace watershed restoration, the federal government could offer incentives, said Dave Frederick, director of the U.S. Fish and Wildlife Service's Washington branch.

Frederick's agency has been working for several years with private landowners on the Olympic Peninsula to shore up crumbling logging roads, revegetate bare slopes, fence livestock out of streams and re-create fish habitat in barren streams.

In many cases, federal cost-sharing is enough to gain the landowner's cooperation, he said. In other cases, public image is a factor.

Simpson Timber Company is one of the biggest landowners in the area and has been helping the Fish and Wildlife Service apply first aid to heavily logged watersheds. The company has been criticized for its past prac-

Please see **Watershed**, B3

Continued from B1

tices in the area and is eager to make amends, Frederick said.

"Public opinion means a lot to them."

But it's also important to private companies that dollars invested in restoration get the job done, said John Gorman of Simpson.

"You can spend a lot of money and not fix what needs to be fixed," he said.

Companies that don't take action to fix environmental problems on their property could face tougher regulations in the future, as more creatures land on the federal Endangered Species List.

"They have a financial risk associated with bad habitat," Turner said.

The federal government is encouraging private companies to develop management plans that will protect a broad range of wildlife species and help head off extinctions. In exchange for these voluntary habitat conservation plans, the government exempts the company from some logging restrictions.

In the future, such deals may also require agreement from the companies to conduct their own watershed restoration projects, Frederick said.

"Are there going to be some hellacious debates with big companies?" he asked. "You bet."

FEB 18 '94 05:04PM WDW INFORMATION

P.4/5

Seattle
Times 2/17/94

Clinton offers an incentive to preserve wildlife

*Landowners would
be insured against
future restrictions*

By ERIC PRYNE
Seattle Times staff reporter

TACOMA — The Clinton administration is dangling a big, new carrot in front of Northwest timber companies and other non-federal landowners to entice them to provide stronger protection for fish and wildlife on their lands.

Call it endangered-species insurance.

If property owners submit wildlife habitat plans that win federal approval, administration officials said yesterday, the deal probably

will include a government promise to exempt their lands from restrictions resulting from future additions to the endangered-species list.

"We're saying to the applicant, 'If you do your part and something happens, you won't be held responsible,'" said Curt Smitch, former director of the state Wildlife Department, who now heads a federal team trying to persuade non-federal landowners to write habitat plans.

"People are wanting some closure and some certainty," Smitch said.

Environmentalists said they wanted more detail but expressed concern about the concept. Some questioned its legality.

Rolie Schmitten, assistant ad-

PLEASE SEE *Wildlife* ON A.12

FEB 18 '94 05:04PM WDW INFORMATION

P.5/5

Clinton plan would offer incentive for landowners to save ecosystems

Wildlife

CONTINUED FROM PAGE 1

Administrator of the National Marine Fisheries Service, said it hasn't been tried before but is both legal and appropriate.

The issue emerged as a two-day conference on one element of Clinton's Northwest forest plan — restoring damaged watersheds — convened in Tacoma yesterday.

Vice President Al Gore, the conference headliner, called the region's long-running forest fight "the most difficult and vexing environmental issue in our nation," and Clinton's plan "the equivalent of the Manhattan Project for natural resources."

Gore repeated the administration's aim to promote partnerships with non-federal landowners to protect entire ecosystems, across property lines, rather than individual species such as the threatened northern spotted owl.

That hasn't been easy.

The only real leverage the government has had until recently are the "owl circles" that restrict logging on up to 4,000 acres around each spotted-owl nest on state and private lands. The Endangered Species Act says the circles can be superseded if owners submit and federal officials approve alternative habitat plans.

Clinton administration officials are pushing the plans, saying they both make more sense for wildlife and allow more logging than the circles. But so far only one has been adopted in Washington, for Murray Pacific Corp. in eastern Lewis County.

Landowners with no or few owls or other listed species on their property have had little incentive to submit plans. And some owners have complained that relief from owl-related restrictions could prove short-lived if more forest creatures — salmon, for instance — are listed as threatened or endangered.

Administration officials said yesterday that agreements to insulate landowners with approved plans from restrictions resulting from future listings would address both concerns.

"What they (landowners) want is certainty and some long-term ability to manage," said Schmitten, whose agency is responsible for salmon under the Endangered Species Act. "We have to do it with a carrot."

Smitch, who now works for the U.S. Fish and Wildlife Service, chief enforcer of the act, said agreements could provide for periodic reconsideration of plans as circumstances change.

The Weyerhaeuser Co. has agreed to prepare a habitat plan to protect all fish and wildlife on 100,000 acres it owns in Pacific and Lewis counties, land with few owls. Charley Bingham, executive vice president, said insurance against future endangered-species listings is one of the company's goals.

But environmentalists said such insurance could shortchange wildlife. In the 1970s, said Tim Cullinan of the National Audubon Society, biologists thought spotted owls required much less habitat than they now believe is needed.

If the government had issued endangered-species insurance to timber companies on that basis then, "where would we be today?" he asked.

Bob Doppelt, executive director of the Pacific Rivers Council, said insurance might be acceptable if habitat plans provide protection for salmon on non-federal lands similar to what Clinton proposes for federal forests — 300-foot-wide buffers along each side of fish-bearing streams.

Much less, Doppelt said, and "we'll probably oppose it."

In addition to Weyerhaeuser, the

state Department of Natural Resources has previously announced plans to write a habitat plan for its 2 million acres of forest. Yesterday, Gore announced two more agreements in Washington state.

Longview Fibre has agreed to write a plan for 21,000 acres in the Columbia River Gorge, he said. And the Seattle Water Department will prepare a plan for its 90,000-acre Cedar River watershed, site of declining sockeye and steelhead runs.

The endangered-species insurance idea also got a boost from George Frampton, assistant secretary of the Interior for fish, wildlife and parks. "We're trying to use what incentives we have to get people to work with us to do things on the land that we can't impose by fiat," he said in an interview.

If the public perceives the Endangered Species Act as imposing onerous restrictions on private property, the law's prospects for reauthorization could suffer, Frampton added.

In other developments in Tacoma yesterday:

• Gore announced the first two economic-development grants in Washington under Clinton's program to help hard-hit timber towns generate new jobs. Forks, Clallam County, will get \$280,000 to buy and improve

an industrial park; the Port of Centralia, in Lewis County, will get \$366,000 to expand a building that will house a clothing manufacturer.

"These are not massive projects," Gore said, "but they are practical ones."

• U.S. Rep. Peter DeFazio, D-Ore., charged Clinton's proposed 1995 budget provides only one-third of the money regional agencies said they need to carry out his forest plan.



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, D.C. 20240



FAX COVER PAGE

FAX NUMBER:

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PHONE NUMBER:

202/208-6416 or 202/208-3171

TO:

Will Stille

AGENCY/FIRM:

PHONE:

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FROM:

JAY ZIEGLER

COMMENTS:

There are 3 page(s) including this cover page.

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AUSTIN AMERICAN STATESMAN

WEDNESDAY, MARCH 16, 1994

Ruling threatens species habitat

■ Court says endangered species, not the ecosystem, must be kept from 'harm'

By Kim Tyson and Ralph K.M. Haurwitz
American-Statesman Staff

In a decision that could have dramatic ramifications in Austin and other areas where endangered species live, a federal appeals court has tossed out a key rule under the Endangered Species Act.

A three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit ruled 2-1 Friday that the Department of the Interior's Fish and Wildlife Service had overstepped its bounds in defining "harm" to an endangered species.

The service's definition includes not only direct harm to a species, but significant modification to its habitat. But the court said the service could not include habitat modification in the definition of "harm," and said that interpretation was neither reasonable nor authorized by Congress.

The wildlife service has relied on the "harm" rule to sharply restrict commercial and residential construction in many areas of the country, including thousands of acres in the Austin area.

"It truly is the biggest development under endangered species law since Congress last amended the act," said J.B. Ruhl, an Austin lawyer who frequently represents developers.

Developers applauded the ruling, environmentalists criticized it and federal officials said it was too early to assess its implications.

The ruling is a dramatic setback for the Clinton administration. Secretary of the Interior Bruce Babbitt

See Ruling, A6



Wednesday, March 16, 1994

Austin American-Statesman

Ruling could have major impact on development in Austin area

Continued from A1

has been a strong proponent of the Endangered Species Act and especially of habitat preservation efforts.

"We don't know whether we will appeal, and neither can we say specifically how this decision will affect our implementation (of the act) in your area or anyplace else in the country," said Bob Walker, a spokesman for the Interior Department.

The government could ask the full District of Columbia appeals court or the the Supreme Court to take up the case. Legal specialists said such a request could come later this year or in 1995.

If the ruling stands, it would have far-reaching implications, said John Macleod, the attorney who challenged the regulation on behalf of several timber companies, individuals and communities in the Pacific Northwest and the Southeast.

In the Austin area, for example, the ruling could dramatically alter the federal government's implementation of the act and also affect a habitat conservation effort known as the Balcones Canyonlands Conservation Plan.

In recent years, Fish and Wildlife Service officials have said that landowners in western Travis County would be violating federal law if they removed trees, brush and other potential habitat of federally listed endangered species. The issue has involved two species of migratory songbirds and several types of cave bugs.

Ruhl said the ruling, if upheld, could mean landowners would be free to clear land of habitat as long as they didn't directly harm an endangered species in the process.

"If you were to apply it here in Austin, it would mean that when the warbler and vireos fly south there would be no restrictions on habitat modification," Ruhl said.

However, Ruhl and other specialists cautioned landowners not to assume that it would be legal to destroy habitat.

"If there's anybody out there so blackhearted as to look at this decision as an opportunity to rush out and destroy habitat, they may run afoul of the act's prohibition on harassment," said Michael Bean, chairman of the wildlife program for the Environmental Defense Fund, a national conservation group.

He said the decision was disappointing.

"It is a decision that says it is, in effect, OK for someone to come demolish your home if you're not in the home at the time, to put it in a human context, because it says it is OK to destroy homes of endangered species," Bean said.

Local environmentalists also were upset.

"It has been our understanding that the intention of the act is to protect not just the endangered species itself, but also its habitat and the ecosystems that they are part of," said Craig Smith, secretary of the Austin Sierra Club.

"So to the extent that the opinion may detract from the protection of overall ecosystems in favor of some sort of tunnel-vision approach to species alone, then I think it's a narrow and a nonsensical interpretation of the act. The act only makes sense to the extent that it

west, where the spotted owl is found, and two timber associations in the Southeast, where the red-cockaded woodpecker is found.

Interior Department officials sought to cast the decision in a positive light. A statement by Kevin Sweeney, Babbitt's chief spokesman, noted that the Ninth Circuit Court of Appeals in San Francisco issued an opinion in 1988 upholding the wildlife service's interpretation of "harm."

Friday's decision "merely creates a split in the circuits and does not in any way change the definition of harm as it applies in the Ninth Circuit," Sweeney said.

Jana Grote, assistant field supervisor for the Fish and Wildlife Service in Austin, said the office is awaiting clarification on the meaning of the decision.

"At this point... we're continuing to make our call the same way," she said.

However, several lawyers said the earlier case did not squarely address the validity of the harm definition. It dealt with the palila, an endangered bird in Hawaii, and the impact of goats and sheep grazing on flowers needed for its survival.

Terry Bray, an Austin attorney, said Friday's ruling may also have implications for the Balcones plan, an effort by local community leaders to establish a multi-million-dollar regional preserve system to address the area's endangered species issues.

"There's been a concern that the plan is too graniose and costly," Bray said. "A substantially smaller, more circumscribed solution would suffice under the law that would involve less money, less land and perhaps fewer problems in trying to find landowners involved in helping to solve the endangered species problems that exist here."

The Endangered Species Act has become a major development hurdle for landowners in a large section of western Travis and Williamson counties since the late 1980s. Its effects have been magnified as Austin's economy has continued to mushroom, putting pressure on land developers to find new sites for subdivisions and increasing the value of land not hampered by such concerns.

As a consequence, the value of raw land in western sections of Travis County affected by endangered species has been discounted roughly 50 percent for purposes, according to officials with the Travis Central Appraisal District.

Steve Paulson, head of the Austin office of SWI Inc. Environmental Consultants, said thousands of acres in western Travis and Williamson counties are in a "gray area" because of vegetation that attracts endangered species.

"They're taking away a fairly strong weapon Fish and Wildlife has had to prevent people from developing or (to require landowners) to get permits," Paulson said.

"It was the first significant court decision that basically has told Fish and Wildlife that they can't exercise their power as much as they have in the past," said.

Regardless of the act, Austin development regulations will continue to restrict development on the west side, said David Armbrust, an Austin devel-

the act. It is not only the act itself but the intent that it protects habitat and ecosystems and not just the animals themselves."

The ruling was in the case of Sweet Home Chapter of Communities for a Great Oregon vs. Babbitt. The plaintiffs are a broad coalition of timber companies, individuals and communities in the Pacific North-

west, said David Armstrong, an Austin development attorney. He said the Save Our Springs ordinance passed in 1992 sharply restricts development in Southwest Austin while new revisions to the Comprehensive Watersheds Ordinance limit the density of projects and construction on slopes in Northwest Austin.

PRESTON
GATES ELLIS
& ROUVELAS
MEEDS

TELECOPIER COVER PAGE

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3-31-94

(Date)

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ATTN: Will Skille or
Assistant to Will Skille

FROM: Eva Labarge
2

(Company)

(Number of Pages -- including this cover sheet)

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COMMENTS

Forrest
Simpson HLP

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FOLDER TITLE:

Forest Conference-Habitat Conservation Plans (HCPs)

2012-0769-F

rs2976

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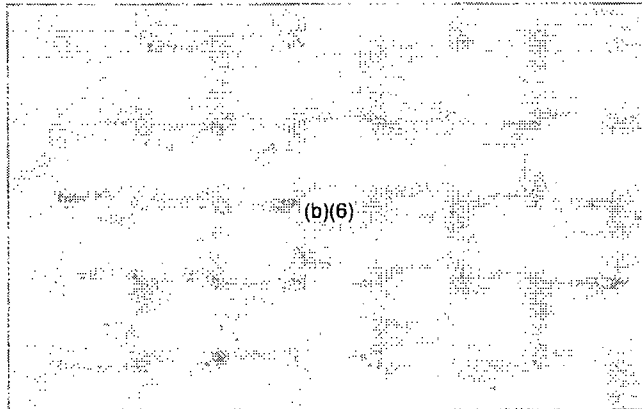
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b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Updated: 3/31

**SIMPSON TIMBER COMPANY MEETING
WITH WILL STELLE**

Thursday, March 31 -- 2:30 p.m.

Jim Brown
Maureen Frisch
John Gorman
Tom Ingham
Dave Kaney
Tharon O'Dell
Wayne Whitlock
Dick Barnes
(Preston Gates)



L-

SIMPSON TIMBER COMPANY
Strategies for Habitat Conservation Plans
California, Washington, Oregon Properties
March, 1994

Simpson Timber Company, with resources and operations in California, Washington and Oregon, has developed habitat conservation plan strategies for each state in which it owns forestlands and will proceed as follows:

California

Arcata Redwood Company continues work on a Habitat Conservation Plan for the Marbled Murrelet, which will be submitted later this year. Extensive research on and near company lands has shown that birds use adjacent Forest Service and Park properties for nesting and that Arcata's scattered residual type of timber is not suitable habitat for the murrelet. The HCP that is submitted for review and approval will reflect these conditions.

Simpson Redwood Company will initiate discussions with the Department of Interior, U.S. Fish and Wildlife Service, National Marine Fisheries Service and California state agencies to develop an aquatic HCP for its California lands. Simpson has collected significant data on aquatic issues; currently operates under a Northern Spotted Owl HCP, which also addresses habitat requirements of 39 other species; and is developing a long-term sustainable yield plan for its entire ownership, as required under state regulations.

Washington

Simpson Timber Company's Northwest Operations is continuing with research and data collection to evaluate the appropriate HCP approach for its Washington lands. The company's major thrust at this point is to collect additional fishery and wildlife data for its properties.

Oregon

Simpson's Oregon holdings consist of scattered properties with immature timber, which generally is unsuitable for owls or murrelets. In 1994, the company will focus on further owl and murrelet surveys and on analyses to increase the company's general understanding of fish and wildlife habitat needs. Late in 1994, the company will evaluate what has been learned and whether to develop an HCP for its Oregon properties.

SIMPSON OVERVIEW

From its beginning as a small timber company in Mason County, Wash., Simpson has grown into an international forest and building products company with operations in nine states. In 1990 the company marked its 100th anniversary, making it the second-oldest, continuously-operating forest products company in the Pacific Northwest. Today, Simpson operates three subsidiaries under a holding company, Simpson Investment Company of Seattle, Wash.

Simpson Timber Company, the company's original enterprise, is based in Shelton, Wash. Simpson Timber owns more than 773,000 acres of forestland on the West Coast where it grows trees to provide lumber and paper products for millions of people. In addition, Simpson produces coastal redwood, Douglas fir and western hemlock lumber, overlaid plywood, overlay papers and wood panel doors at its mills in California, Oregon and Washington.

Simpson Paper Company, headquartered in San Francisco, Calif., is the largest of the operating companies. It manufactures high-quality printing and writing papers, specialty papers, bleached and unbleached kraft wood pulp and linerboard at 11 mills and finishing facilities in nine states.

Simpson, under the name **Pacific Western Extruded Plastics Company (PWPipe)**, manufactures extruded plastic pipe for use in irrigation, water works and electrical applications. PWPipe operates six facilities plants in Washington, Oregon and California. Its home base is in Eugene, Ore.

Simpson Timber Company

Headquarters: Shelton, Wash.

Employees: 1,936

Timberland Holdings

- Simpson owns and manages some 773,000 acres of timberland in three states along the West Coast:
Washington 269,000
Oregon 120,000
California 384,000
- Most of what Simpson grows is either coastal redwood, Douglas fir or western hemlock.

Facilities

Simpson Timber operates 12 manufacturing facilities in seven West Coast communities including five sawmills, four planing mills, a plywood plant a door plant and a treated paper facility.

Production

Each year Simpson's building products facilities produce approximately:

Washington -

- 340,000,000 board feet of studs and dimension lumber
- 500,000 fir and hemlock interior and exterior doors
- 150,000,000 square feet of overlay panel products for concrete forms, signs, marine and industrial markets
- Logs, poles, piling, wood chips and wood fuel and leases its timberlands to people who collect flora and fauna for the florist business

Oregon -

- 1,000,000,000 square feet of treated paper

California -

- 240,000,000 board feet of redwood lumber, decking and siding
- Logs, wood chips and wood fuel

Markets

Most of the timber Simpson grows is converted into building products of paper -- everything from 2 x 4s to fine writing paper and intricately carved doors -- to be sold in the domestic or export markets.

Competitive Ranking

- Simpson Timber Company is the second-oldest forest products company the Pacific Northwest.
- Simpson was one of the first timber companies in the Northwest to retain its logged lands and replant them for future generations.
- Simpson is one of the few companies in the industry that employs full-time fisheries biologist.
- Simpson was the first forest products company in the country to have a habitat conservation plan for the northern spotted owl approved.
- STCo is recognized in the industry as a leader in tree tissue culture research.

Simpson's Tree Planting Program

In the early part of the century, when Simpson Timber Company was founded in Mason County, Wash., it was common for wood products companies to harvest their timber, then let the land go to the county in lieu of taxes. Simpson was one of the first forest products companies to maintain ownership of its lands in order to nurture healthy, forests for the future.

Since that time, Simpson has reforested more than 250,000 acres of forestland. Initially, open areas of the forests were allowed to reseed themselves -- an often slow process. In order to give the forest a head start, Simpson began to plant seeds, and later, seedlings. The practice of planting seedlings to enhance the natural life cycle of the forest is responsible for the thick, healthy forests we have today.

Simpson's first reforestation efforts occurred in 1943 in Mason County and were started on the company's lands in the Redwood Region of California in 1951. During the past 49 years, Simpson has planted more than 95 million seedlings and sown 59,000 pounds of tree seed.

Today, Simpson has its own nursery and support facilities in California and a seed orchard in Washington that produce the most vigorous and sturdy seedlings possible to help ensure healthy trees for tomorrow.

Wood and paper products are a vital part of the quality of our lives, and demand for these products is growing every day. Simpson's commitment to reforestation and sustainable forestry guarantees that our forests will always be here to provide a variety of benefits for current and future generations.

***A Prospectus for a
Habitat-Based Conservation Plan
for Anadromous Fish and Other Aquatic Species of Concern
on the California Timberlands of Simpson Timber Company***

**Simpson Timber Company
Arcata, California**

March 30, 1994

Concept and Goal

Simpson Timber Company is a privately-held corporation that owns and manages 383,000 acres of commercial forestland in California and 389,000 acres in Washington and Oregon. We have been in business for more than 100 years and have been an early and active proponent of science-based resource management. Our ongoing commitment to the long-term health and productivity of our timberlands is both a necessity for our staying in business and an expression of our philosophy regarding forest management.

In 1992, when our habitat conservation plan (HCP) for the northern spotted owl was approved by the U.S. Fish and Wildlife Service, we became one of only a few companies in the Pacific Northwest to successfully integrate protection of the owl into ongoing timber operations. Our success can be attributed in part to the investments we made prior to the listing of the owl in adaptive management practices, surveys of our property, and a geographic information system for our resource inventory. It also reflects what we see as the advantages of planning on a landscape scale.

Landscape planning is not a new concept or practice for Simpson. As you may know, we were active participants in the California Board of Forestry's development of new regulations addressing watershed, wildlife, and related issues through landscape planning. Under these regulations, landscape plans now may be prepared and submitted to the California Department of Forestry for approval to supplement existing timber harvest permits. Our own efforts at such planning began well before adoption of the new regulations. For example, in addition to the owl HCP, we completed a watershed management plan for Salmon Creek, one of our coastal watersheds, and are involved in an intensive stream assessment of other selected coastal streams on our property. The Salmon Creek plan was developed in coordination with the California Departments of Forestry and Fish and Game and includes best management practices and mitigation measures that go beyond the scope of California's already-stringent forest practice regulations. The stream assessment will yield data for additional watershed planning by Simpson, including estimates of fish abundance by species and age.

Simpson is now considering whether to make an additional investment in aquatic habitat planning by taking our efforts to the federal level. We are not seeking an incidental take permit because our operations do not threaten any currently listed aquatic species. However, in light of the possibility that future listings will affect our operations, we are considering a pre-listing agreement under the Endangered Species Act with federal agencies covering selected aquatic species.

Our concept is this:

- We would develop a plan in coordination with federal agencies to protect and improve habitat for anadromous fish such as Coho salmon and other aquatic species on our property.
- The plan would be habitat-based, meaning that it would focus on the mix of biological resources and physical conditions associated with rivers and streams on forested lands and would address the needs of individual aquatic species by managing and monitoring the habitat in which they occur.
- We would enter into an agreement with the federal agencies to assure them that the plan would be implemented and to assure us that, barring unforeseen circumstances, measures other than those identified in the plan would not be required for Simpson to qualify for an incidental take permit if species covered by the plan become federally listed.

From our perspective, multiple species would benefit, and multiple conflicts would be avoided.

Proposed Conservation Strategy

As currently conceived, our plan would entail a four-part conservation strategy:

1. An expanded assessment of aquatic resources and habitat conditions on our property;
2. Evaluation of the impacts, if any, of our operations on the species of concern;
3. Development and application of habitat management prescriptions on a landscape scale; and
4. Monitoring of habitat conditions, populations of key species, and plan implementation.

Resource and Impact Assessment

The assessment would entail an evaluation of the abundance and distribution of anadromous fish and other aquatic species of concern on our property. For conservation planning purposes, we would select species of concern that:

1. Are representative of both the diversity and sensitivity of aquatic species known to occur in the area; and
2. Would be "taken" by our operations if the species were listed.

We would continue to evaluate habitat conditions in terms of biological and physical variables indicative of the habitat requirements of the species of concern. These parameters would include water temperature, presence of suitable spawning gravels, channel structure necessary for summer and winter rearing habitat, and the condition of riparian area vegetation and structural habitat elements in relation to the needs of aquatic species. Priority areas for habitat management would be identified based on sensitivity of resources and expected timing of impacts from timber harvest operations.

Management Prescriptions

Where necessary to provide protection beyond that currently being provided, Simpson would develop additional habitat management prescriptions to minimize and mitigate effects of our timber operations that would constitute a taking of covered species. In addition, habitat conditions would be improved through restoration and enhancement projects.

Alternative harvesting prescriptions would be evaluated in terms of their feasibility and likely results, and the preferred options would be incorporated into landscape management plans. We would identify ways to avoid or reduce impacts through timber management practices, together with ways to mitigate impacts through on-site and off-site measures. Where possible, thresholds would be set to trigger additional evaluation and possible corrective measures in priority areas.

Habitat restoration and enhancement would be accomplished through in-channel and upslope projects. In-channel projects, such as changes in stream structure, would be undertaken in cooperation with state and federal agencies and stream restoration groups. We would manage riparian zones to improve long-term recruitment and contribution of woody debris and to maintain and develop critical vegetative composition and structure. Upslope projects, such as stream-crossing and road-drainage improvements, would be undertaken in priority areas.

Monitoring

Monitoring of habitat conditions, populations of key species, and plan implementation would be designed to provide a feedback loop between prescribed management measures and actual results. In this way, the conservation strategy would remain keyed to actual conditions and impacts and could be adapted accordingly.

The Federal Role

The participation of federal agencies in the planning process and conservation strategy will be essential to the ultimate success of Simpson's plan. For this reason, we are asking federal agencies to define and mutually agree to their respective roles at the start of the process. Our specific requests are as follow:

1. **Federal lead agency.** It is not clear whether the Department of Commerce or Department of the Interior would have lead agency responsibility for approval of a plan and pre-listing agreement for the species of concern. As we consider the species to be included in the plan, we request that representatives of the National Marine Fisheries Service and the Fish and Wildlife Service confer with one another and their legal counsels to determine which is the lead agency and what the role of the other agency will be.
2. **Interagency coordination.** Coordination between and within the two agencies will be an integral part of the planning process. We request that the federal agencies determine in advance how they will coordinate their internal and interagency reviews. We further request that the review process and definition of agency roles be identified in a memorandum of understanding among the agencies.
3. **Pre-listing agreement.** The commitment of federal government to habitat conservation planning for non-listed as well as listed species has been expressed in several actions in the past year, including at the forest summit in Portland, Oregon. We request that the federal agencies participating in the planning process affirm that, subject to their approval of the measures proposed in our plan, it is their intent and within their power to provide pre-listing assurances to Simpson regarding the species of concern.
4. **Facilitation of plan approval.** Last but not least, the role of the federal agencies should be to facilitate final actions on the plan. We request that the agencies identify and agree to a reasonable time frame for their actions and commit to making their best efforts to meet those deadlines.

Timing

Assuming quick resolution of the issues regarding the role of federal agencies in the planning process, we anticipate that a draft plan could be completed before the end of 1994. Currently, we are meeting with federal agency representatives regarding the plan's concepts and goals.

Contact

Mr. Tharon E. O'Dell
Timberlands Resource Manager
Simpson Timber Company
P. O. Box 1169
Arcata, CA 95521-1169
(707) 822-0371

March 3, 1994

Draft

**Proposal for A Facilitated Workshop
to Develop Forest Practice Guidelines
for Douglas County, Oregon**

Goal

The goal of the workshop is to develop a set of forest management practice guidelines that could be applied to private forestland within Douglas County in lieu of the existing take circles for spotted owls. The development of these forest practices will take into consideration the conservation benefits of adjacent or intermingled Federal lands, the planned forest practices on industrial forestlands, and underlying State law, including riparian practices, in comparison to the dispersal habitat needs of the spotted owl.

The workshop would be designed to develop guidelines to:

- facilitate, in particular, small woodlot owners compliance with the requirements of the ESA by providing for a consolidated conservation strategy designed to reduce the impact of the Act on private property rights, including the potential multi-species issues that affect Douglas County landowners;

- be sufficient, when added to conservation actions planned on Federal, State and industrial forestlands, to satisfy the dispersal habitat needs for the northern spotted owl without increasing the burden on private landowners beyond that imposed by the current owl circle requirements.

In addition, the workshop will consider various ways of implementing the guidelines, including

- a "no-take" agreement;
- inclusion in the 4(d) rule being drafted by the FWS;
- a county level HCP;
- issuance as enforceable County Regulations which would be incorporated into an HCP.

Handwritten notes:

2023951575;# 2/ 5

Will - Please make things certain the changes. Doug County only - why all small woodlot owners that may be in Douglas County?

Get this language out of here!

What kind of admissions are they making here?

$\mu_{Ca.}(yan)$

March 3, 1994

Draft

2

Incorporation of the guidelines into County regulations as part of an HCP would allow the FWS to issue incidental take permits for activities that are allowable under the guidelines.

Seeking agreement on a set of forest practice guidelines is intended to allow greater flexibility to small private landowners than current take circles for owls or the 4(d) special rule which the FWS announced it was considering in its December 29, 1993 *Federal Register* notice.

The basic concept being considered in the special rule is the establishment of certain Special Emphasis Areas within which timber harvest on private land would be restricted in order to provide dispersal habitat conditions for the spotted owl population and other Areas in which habitat conditions for both reproduction and dispersal would be maintained. Restrictions would be eased outside of Special Emphasis Areas, but would be retained within. A facilitated workshop approach could be pursued in addition to the ongoing 4(d) rule process.

Proposed Process

A series of facilitated workshops would be held in Douglas County. Participants would include Federal, State and County officials, biologists and technical experts, plus private landowners (both industrial and non-industrial). Landowners from adjacent counties whose land is included within any Special Emphasis Area that ultimately might be designated within Douglas County would also be encouraged to attend.

Information would be made available to the group on the dispersal habitat needs of the owl, the habitat conservation provided for on Federal and State forestland, and the contribution expected from Industrial forest owners and other private land owners in the absence of owl circles or other ESA restrictions. Spatial information on habitat conditions and information regarding landownership patterns in the county would be provided, hopefully through a Geographic Information System.

The facilitator would help the group to compare the landscape conditions in Douglas County needed for owl dispersal with the landscape conditions that would result from exiting plans and regulations absent owl circles. Gaps

March 3, 1994

Draft

3

would be identified and the facilitator will help the group to develop proposals for various forest management practices and their application across the landscape to address these gaps. These proposals would be designed to be economically feasible from the perspective of small and medium sized woodlot owners and would be evaluated by participating biologists to determine their adequacy for the spotted owl population. Adjustments would be discussed and made as appropriate until a set of guidelines emerged which was accepted by both the landowners and the owl biologists.

*Problems
Effect
Problems here*

Background

Douglas County, Oregon is frequently described as "ground zero" for the socio-economic impact and fallout from protection of habitat for the Northern spotted owl. Douglas County is a large county (about 3.2 million acres) in the southern part of Oregon. It extends from the Oregon coast on the West to the crest of the Cascade Mountains in the east and south to the Klamath province. Because of its size and shape, and its location at the confluence of the Cascade, Coast, and Klamath provinces of the spotted owl range, the forestlands in Douglas County, both Federal and private, play an important role in the overall owl conservation effort.

Nearly contiguous Forest Service ownership (in the Umpqua, Willamette, and Rogue River National Forests) dominates in the eastern part of the County, totaling ____ acres. BLM ownership (in the Roseburg, Medford and Coos Bay Districts) dominates the southern and western part of the County totaling ____ acres. (Get data) Unlike Forest Service ownership, BLM lands are not contiguous, but are intermingled with private lands, most often in a checkerboard pattern. About 51 percent of the land within the County boundaries is in Federal ownership.

Of the more than 50 counties affected by spotted owl habitat conservation, Douglas County was among the top five in the dependence of its economy and its employment on timber. In the late 1980s, about 20 percent of the employment in Douglas County was in the timber and wood products sectors. Furthermore, in the past, Douglas County lumber mills have been highly dependent on timber from Federal forests, drawing about 80 percent of their timber from Federal harvest.

March 3, 1994

Draft

4

The County Government has been highly dependent on its share of the Federal timber receipts. In 1990, the County received about \$50 million from Federal timber receipts, about 66 percent of its total revenues.

The President's Forest Plan will substantially reduce Federal timber harvest within Douglas County. The revised plan places ___ acres of Federal forestland within Douglas County into Late Successional Reserves, ___ acres into Adaptive Management Areas, and ___ acres into Riparian Reserves. Expected annual average timber sales levels over the next decade under the Plan would be 350 to 400 million board feet for the three National Forests and the three BLM Districts with land in Douglas County. Agency plans prior to the listing of the spotted owl provided for sales averaging 1,640 million board feet per year.

As a result of these lower rates of timber harvest, the County will receive less from Federal timber sales and will experience a substantial decline in timber dependent employment. (Provide estimates)

Private forestland owners are also an important part of the timber economy in Douglas County. For example, data from the late 1970s shows that there were nearly 3000 non-industrial forest landowners in the County owning about 420,000 acres. Of these, nearly 2000 owned less than 100 acres of forest land. Only one other county in Oregon had as many non-industrial owners. Similarly, a review of the Douglas County Assessors list of forest landowners showed that the non-industrial forestlands were owned by 5500 people in 1994.

With the decline in Federal timber harvest, private forestland could be expected to provide an important supply of logs to Douglas County mills. Harvest on a significant portion of these small woodlots is restricted, however, by the take prohibition of the ESA which protects owl habitat within circles around existing owl sites. (Describe owl circle specifications) Non-industrial forestland owners who participate voluntarily in the development and implementation of guidelines that would provide for dispersal habitat conditions may benefit by receiving relief from the owl circle restrictions. This would also provide an additional supply of logs for Douglas county mills.

*We need proper description
of Pres. Plan.*

*Yeah-but we're making
them work!
Douglas County is just
a second econ. dependence
product!*

BY FAX

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Washington, D.C. 20240
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To:

~~Will Stelle~~
Lois Schiffer
Jim Gilliland

456-2710

720-3351

fx 720-8666

FROM:

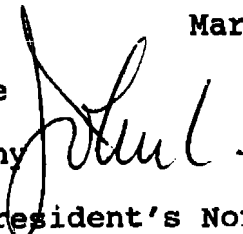
John Leshy

If you have any questions or there is a problem with transmission,
please call me, Mari Thomas on 208-4423. Thank you.

19 PAGES TO FOLLOW

March 23, 1994

To: Will Stelle

From: John Leshy 

Re: FACA and President's Northwest Forest Plan

Attached is a draft memorandum prepared by attorneys in my office that identifies a number of potential FACA problems with the implementation teams. It also outlines possible options for proceeding. Staff attorneys at Agriculture have seen this draft, but I do not believe Jim Gilliland has seen it. Rather than go forward with preparation of a final version, it may be more efficient for us (your office, mine, Gilliland's and Lois Schiffer's) to meet to discuss this. Or, if you prefer, our three agencies could sort through this and see if we could reach agreement on what corrective measures, if any, are necessary or advisable without involving you. I await your guidance.

cc: Jim Gilliland
Lois Schiffer
Tom Collier
Jim Pipkin

ATTORNEY WORK PRODUCT - E LIBERATIVE - DO NOT RELEASE OUTSIDE THE
FEDERAL GOVERNMENT - MARCH 23, 1994

DRAFT

Memorandum

To:

From:

Subject: FACA and the President's Northwest Forest Plan

The staffs of the Office of the Solicitor in the Department of the Interior and the Office of the General Counsel in the Department of Agriculture jointly have prepared the attached options paper to respond to the March 16, 1994, memorandum from Will Stelle.

We have concluded that many, perhaps all, of the groups envisioned by the NW Forest Plan raise potentially serious issues of compliance with the Federal Advisory Committee Act (FACA). The compliance issues arise because the NW Forest Plan creates a new approach to public involvement in federal land management planning that uses advice and coordination from numerous groups comprised of federal employees and non-federal individuals. Such an approach is allowed by FACA only when at least some formal FACA advisory committees are established as part of the planning process.

As you are aware the District Court for the District of Columbia decided the Northwest Forest Resource Council v. Espy case, holding that the FEMAT process violated the FACA, and cast into doubt the ultimate success of the President's Forest Plan. This decision underscored the importance of FACA compliance. While it is unlikely that FACA compliance in implementing the Forest Plan will change whatever results from the FEMAT case, we are confident that failure to comply with FACA from now on can only make matters worse.

During this process my staff became aware that the processes proposed to implement the forest plan appear to violate not only FACA, but also the statutes which delegate authority to the Secretaries to exercise their discretion in making the management decisions on these lands under multiple use and sustained yield principles. See for example, Federal Land Policy and Management Act, 43 U.S.C. § 1712(a), which delegates authority to the Secretary to develop, maintain and revise land use plans.

The federal government can obtain information from the public and work with the public as it makes decisions. The decisions, however, must be made by those federal employees with the legal ability to do so. The way to receive these recommendations legally is in accordance with the FACA. In addition, in order that it is

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FEDERAL GOVERNMENT - MARCH 23, 1994**

DRAFT

clear that the process of providing advice to the decision makers is separate from the decision making itself, we strongly recommend that line managers not serve on any advisory committee or task force. These are some of the concerns that were expressed by our legal staffs last summer.

We believe that decisions on the structure and composition of the various groups participating in carrying out the NW Forest Plan are being made without much policy or legal oversight. We understand that working groups involved in developing the implementation of the President's forest plan are formulating policies and guidance for these groups at the present time. These decisions implement the administration's desire for public participation but, as we see it, do not fit with the legal landscape, and are therefore exposing the Departments and the President to unnecessary risks. Activities underway now should be stopped until we can clarify these legal issues. Specifically, we recommend the following groups, described in detail in the option paper, stop meeting or functioning unless only federal employees are present: the Regional Interagency Executive Committees, the Regional Ecosystem Office, and the Provincial Interagency Executive Committees. If groups other than these regularly are discussing issues with non-federal individuals, we recommend the federal employees involved immediately consult with the regional legal offices for advice on whether the discussions violate the FACA.

In the attached options paper we have described the groups anticipated in the forest management and economic development components of the NW Forest Plan and detailed four options for achieving compliance with FACA:

- (1) Charter formal FACA committees for each advisory level;
- (2) Charter one or two formal FACA committees with the other groups operating as task forces of those two chartered committees;
- (3) Significantly alter the operations of the groups such that only federal employees are members of the groups, and that participation by states, tribes, and the public would occur only through a process similar to NEPA, such as public meetings and notice and comment; or
- (4) Obtain a statutory exemption from FACA for some or all of the groups.

If Option 4 is chosen, we recommend implementing one of the FACA-based options to avoid challenges to the NW Forest Plan while the exemption is pursued.

You also should be aware that the Department of Agriculture has a limitation in its FY 1994 appropriations limiting the amount of appropriated funds that it can spend on its advisory committees. Consequently, the Forest Service may be unable to contribute its

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FEDERAL GOVERNMENT - MARCH 23, 1994**

proportionate share of the costs of supporting the advisory committees and task forces during this fiscal year.

Our staffs are ready to assist you with the implementation of any of these options.

DRAFT

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FEDERAL GOVERNMENT - MARCH 21, 1994

BACKGROUND

DRAFT

On March 16, 1994, the White House requested information from the Solicitor of the Department of the Interior and the General Counsel of the Department of Agriculture on whether the implementation of the President's forest plan raised significant issues under the Federal Advisory Committee Act (FACA). The forest plan contemplates significant public involvement in all levels of managing federal land in the Oregon, Washington, and northern California. The involvement would vary from organized, structured committees to ad hoc informal meetings.

On March 23, 1994, the Solicitor and the General Counsel advised the White House that the planned public involvement raised significant FACA issues at several levels and that the forest plan either would need to be restructured or several (or possibly all) of the groups would need to be organized under FACA. In addition, the Solicitor and the General Counsel prepared and submitted this option paper to the White House.

Preparation of these options included reviewing the final SEIS and consulting members of the Regional Interagency Executive Committee. We made a concerted effort to gather the latest and most complete information.

Although the implementation of the forest plan is an evolving process and still very conceptual in many areas, it is clear that FACA violations are occurring now, that they must stop, and future violations must be avoided. We are aware that meetings are occurring with federal employees and non-federal individuals where policy issues are discussed and decisions are made. We understand that only the federal employees participate in the "vote" on the decisions. This perceived solution does not eliminate the ongoing violations of the FACA.

ASSUMPTIONS - "BIOLOGY TEAMS"

Regional Interagency Executive Committee (RIEC)

FACA applies.

Members on this committee include the State Director for Oregon BLM, the Regional Foresters for Regions 5 and 6, FS, representatives from the state governments of Oregon, Washington, and California, and tribal representatives. They provide recommendations to the state director and regional foresters. Complying with the FACA requirements at this level should pose relatively few problems.

Regional Ecosystem Office (REO)

FACA applies.

This office is staffed by federal employees and at

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least one tribal council employee. We understand that the states also may place representatives in this office. The office provides staff support to the RIEC and facilitates RIEC decision making, maintains the President's Plan, develops and maintains a regional resource information data base; and reviews and resolves consistency questions, referring unsolved problems to the RIEC. The REO receives recommendations from other groups discussed in this option paper, reviews and revises those recommendations, passes the recommendations to the RIEC, and rejects recommendations and returns them to the other groups.

This group presents a unique and troubling situation under FACA. REO appears to be an advisory committee operating on a full time basis. Compliance with FACA requirements such as publication of notices for meetings and deliberating in a public forum would be an administrative nightmare. Were the REO staffed only with federal employees, FACA would not be implicated. As it is, compliance with FACA is impractical, if not impossible.

Research and Monitoring Committee (RMC)
FACA applies.

We do not know if there will be more than one of these committees. We understand that this committee has not been formed but will include both federal employees and non-federal individuals and will provide advice to the RIEC through the REO. We are unaware whether FACA compliance will cause problems with this group(s).

Provincial Interagency Executive Committees (PIEC)
FACA applies.

There may be up to twelve of these teams, one for each province designated in the forest plan. These also are known as Provincial Planning Teams and Province Teams. Membership on the teams includes federal employees and non-federal individuals. These groups will provide recommendations to the Forest Supervisors and District Managers. Complying with FACA at this level is problematic because of a need for flexibility in reacting to situations as they arise.

Adaptive Management Area Teams (AMAT)
FACA applies.

There will be ten AMATs, one for each adaptive

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management area identified in the SEIS. The teams will include both federal employees and non-federal individuals and will provide recommendations to the PIECs. Complying with FACA requirements at this level becomes very problematic because of the need for more flexibility in developing innovative approaches and for reacting quickly to situations as they arise. It is expected that these groups will have frequent meetings, including some of a social nature designed to build trust with conflicting interest groups. Membership is also expected to be informally determined by the individual level of commitment and interest and will fluctuate considerably.

Watershed Analysis Groups (WAG)

FACA applies.

This discussion also applies to Late Successional Reserve Assessment Teams and similar groups that will be organized to meet challenges/situations as they arise. These groups will provide recommendations to the PIECs. The structure of these groups is uncertain, except that non-federal individuals will be involved. Concerns with complying with FACA are similar to those of the AMATs. The number of these groups could be in the hundreds. The requirements for watershed analysis that is proposed for adoption in the draft ROD are recognized as major factors in delaying implementation of timber sale programs. If FACA procedures are imposed on the WAGs, the delay could be greater than presently anticipated.

• The managers to whom the advice is given by the RIEC and PIECs are on those committees (e.g., the state director, BLM, is on the RIEC). The SEIS states that the line managers retain management authority and that the various committees will not make management decisions. On the other hand, the working groups developing the implementation of the President's decision are recommending collaborative decision-making with non-federal entities and the "participation of non-federal governments in all policy and technical decision making forums as equal partners for implementation of the President's Forest Plan." [source] The likely perception may be that the committees are in fact making decisions that the line managers are hard-pressed to reject. It is recommended, therefore, that line managers NOT be made members of any committee or working group.

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ASSUMPTIONS - "ECONOMY" TEAMS

Multi-Agency Command (MAC)

Members of this committee include individuals designated by the Secretaries and Administrators (the parties) who executed the Interagency Memorandum of Understanding for Economic Adjustment and Community Service. The committee is composed of one or more federal employees from OMB, Small Business Administration, EPA, the Departments of Agriculture, Interior, Commerce, Labor, HUD, and the White House. The MAC, under the guidance of the parties, has oversight and policy making authority and responsibilities as consistent with the authority delegated by each party.

Regional Community Economic Revitalization Team (R-CERT)

FACA applies.

The parties each designated one or more representative to participate in the R-CERT. Other members include two representatives each from Oregon, Washington, and California. One of the two representatives is designated by the governor, the other is designated by the non-federal member of R-CERT. The Secretary of Agriculture and the Secretary of the Interior designate two of the federal representatives to serve as co-chairs. Members of R-CERT include individuals from the Departments of Commerce, Labor, Agriculture, Interior, HUD, EPA, Washington State Governor's Office, Fifth District Supervisor in California, County Commission in Oregon, SBA, California State Governor's Office, International Timber Council, and Oregon Representatives. The R-CERT, under the guidance of the MAC and the parties, has decision authority as consistent with federal law and the Strategic Plan. Matters unsettled or disputed within R-CERT are forwarded to the MAC for resolution.

State Community Economic Revitalization Team (State CERT)

FACA applies.

The parties and the governors of Oregon, Washington, and California have established State CERTS. Each State CERT includes representatives of each federal agency with program responsibility, representatives of the state government appointed by the governor, and representatives of local governments appointed by the governor with the approval of local government

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organizations. The chair of each State CERT was selected by its non-federal members. The State CERTs have authority to implement daily the Strategic and Implementation Plans as consistent with federal and state law. Matters unsettled or disputed within a State CERT are forwarded to the R-CERT for resolution.

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REQUIREMENTS OF FACA:

Establishing the committees

Charter and departmental documentation (justification, Secretaries' certification, letters to GSA and OMB).

Members appointed

- Membership must be balanced in terms of the points of view represented and the functions to be performed by the advisory committee.
- The membership of the committees must be left to the discretion of the Secretaries. The nominees can be solicited from those entities (e.g., states, tribal councils, interest groups) that the Secretaries determine would represent the range of interests on the issues and therefore provide the required balance.

Compliance with Executive Order 12838 - OMB approval to establish administrative advisory committees.

Time Frames

The process of establishing advisory committees under FACA often is lengthy. If, however, necessary and appropriate contacts are made, the process can be expedited to avoid undue delay in implementing the forest plan, specifically:

- (1) contacting GSA and OMB to clear approval under the FACA and Executive Order 12838; and
- (2) verbally contacting the nominating authorities (governors, tribal counsels, environmental groups, etc.) to advise them to expect solicitations for nominations and to request prompt responses.

Soliciting nominations while the charters and other paperwork is being prepared is acceptable IF it is certain that the committee(s) will be established.

Committee operations

Notice of meetings published in Federal Register at least 15 days prior to the meeting (can be shortened in exceptional circumstances)

Agenda established for the meeting

Minutes for each meeting

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Public participation (type and frequency can be shaped
by committee bylaws)

Public access to all information considered by the
committee, subject to the FOIA

Transcripts must be made available upon request
(meeting therefore must be recorded).

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OPTIONS

The following options are presented:

1. Full FACA compliance at all possible levels.
2. FACA compliance at two levels with those committees using task forces at the lower levels.
3. Restructuring the groups to avoid the need to comply with FACA.
4. Legislative exemption.

RECOMMENDATIONS

1. We recommend that Option 2 be selected and that action to charter the RIEC and PIEC's begin immediately. In conjunction with that effort we recommend that contacts are made on the Hill to explore the likelihood that a legislative exemption (Option 4) would be received favorably.
2. We recommend that the Departments immediately provide FACA training for the line managers and employees in REO to ensure compliance with the statute.
3. We recommend that line managers and federal decision makers do not serve on any chartered advisory committee or task force.

ADVANTAGES TO STRUCTURING AND CHARTERING THE VARIOUS GROUPS AND COMMITTEES PURSUANT TO FACA:

- Structured public involvement blessed by law.
- Reduces challenge to decisions based on alleged FACA violations.
- Reliability of the process to follow to comply with FACA.
- Legally can reach consensus of wide-range of interests.
- Non-federal individuals routinely can provide advice and recommendations to managers in the context of the FACA process.

DISADVANTAGES TO STRUCTURING AND CHARTERING THE VARIOUS GROUPS AND COMMITTEES PURSUANT TO FACA:

- Advance notice of public participation.
- Limits ability to react quickly and develop innovative methods of involving the public in management issues.
- Balance requirement may be difficult to achieve

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- and specific groups may have grounds to object if they do not have representation on one or more of the committees.
- Delay in initiating the process (would not last beyond the time it takes for OMB approval, charter filing, appointment of members).
- Perception of federal dominance in the process.
- The numerous procedural requirements may multiply the opportunities for challenge depending on how faithfully the agencies follow the FACA procedures.
- The costs of operating these various implementation groups is increased.

RISKS OF NOT STRUCTURING AND CHARTERING THE VARIOUS GROUPS AND COMMITTEES PURSUANT TO FACA:

- Almost certain litigation to challenge structure and decisions based on recommendations from unchartered groups.
- Result of successful litigation challenge - significant delays in implementing forest plan, possible injunctions on taking action resulting from decisions that were based on recommendations from unchartered groups.

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OPTION 1 - FACA COMPLIANCE ON ALL LEVELS

As implementation of the forest plan is proposed in the SEIS, we believe there will be adverse legal consequences if the groups are established and function as described without being organized and managed pursuant to FACA. Under this option, all of the following groups would be chartered:

Regional Interagency Executive Committee

Probably an advisory committee at this time since they already have been meeting and making decisions and recommendations.

Regional Ecosystem Office

If non-federal individuals are on staff in this office, chartering should be considered. An alternative may be the Intergovernmental Personnel Act (IPA). 42 USC chapter 62. We have not analyzed this alternative in detail and make no recommendation as to whether it should be pursued.

Research and Monitoring Committee

Provincial Interagency Implementation Teams

Adaptive Management Area Teams

Watershed Analysis and Similar Groups

Advantages and Disadvantages:

- This options is the most conservative approach, is impractical, and could be overkill.
- The risk of FACA challenges would be very small, assuming that all of the groups carry out all FACA requirements consistently. This option, however, may create more opportunities for litigation if chartered groups do not comply with all FACA requirements. It may be very tempting at the ground level to ignore certain FACA requirements, such as established agendas and prior public notice of meetings.
- This process would be cumbersome, time consuming, and expensive. Delays would occur between the time a problem is identified and when a chartered committee could begin addressing the problem. This could result in either the agencies organizing groups in violation of FACA or making important management decisions without involving the public.
- The Secretaries' ability to structure the teams only

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with representatives of certain interests may be restricted but, when compared with the alternative of restructuring the forest plan for no need to comply with FACA (Option 3), this structure would better reflect the spirit of the forest plan. At least the most important interests can be brought to the table.

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**OPTION 2 CHARTERED ADVISORY GROUPS AT TWO LEVELS WITH
WORKING GROUPS REPORTING TO THEM**

The RIEC, the Research and Monitoring Committee, and the PIECs would be chartered advisory committees. The other groups would be task forces to provide information and recommendations to the managers only through the chartered committees.

**Regional Interagency Ecosystem Committee
Chartered**

Task force:

Regional Ecosystem Office

Research and Monitoring Committee

Chartered, however, to provide more flexibility, this group possibly could be structured as one or more task forces of the RIEC.

**Provincial Interagency Executive Committee
Chartered**

Task forces:

Adaptive Management Area Teams

Watershed Analysis Groups

Late Successional Reserve Assessment Groups

Other local projects

Advantages and Disadvantages

- This method is allowed under the GSA guidelines and has been approved in National Anti-Hunger Coalition v. Executive Committee, 557 F. Supp 524 (D.D.C.), aff'd 711 F.2d 1071 (D.C. Cir. 1983). The Department of Justice recently advised us (informally) that this is a valid approach to FACA compliance.
- This is a more flexible approach than Option 1, although it would require a great deal of coordination and training to implement properly.
- This option would compromise the ability to respond quickly to local conditions as expressed for the AMAs and individual projects, although not to the extent as in Option 1.
- Almost all decision making would be elevated to the

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province or regional level and thus greatly reduce the role of the on-the-ground line managers. The potential for delay as information is passed to line managers is increased.

- The risk of FACA challenges may be greater than Option 1, because of the chartered committee/task force structure. We think, however, that in light of the Anti-Hunger case, we successfully could defend a challenge to the structure.
- This process would be simpler, quicker, and less expensive than Option 1.
- This approach would leave more flexibility for the on-the-ground projects although the decision making level would need to be elevated.
- As with Option 1, the Secretaries' ability to structure the teams only with representatives of certain interests may be restricted but, is better than the alternative presented in Option 3.
- The balanced membership requirement does not apply to the task forces.

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**OPTION 3 - RESTRUCTURED MODEL TO AVOID NEED TO COMPLY WITH
FACA**

Under this option the RIEC, PIECs, Research and Monitoring Committees, Adaptive Management Area Teams, and the Watershed Analysis Teams would be comprised only of full time federal employees. The public could be brought into the process using methods similar to those used under NEPA, such as scoping, holding public hearings, and soliciting comments on proposed actions. In fact, the NEPA structure could be melded into the NW Forest Plan.

Advantages and Disadvantages

- Reduces risk of challenge under FACA.
- Teams could operate more efficiently and respond more quickly.
- Teams would not be saddled with FACA procedures.
- Federal line manager's decision making authority is clear.
- Public plays the role envisioned by Congress in NEPA.
- This approach essentially would eliminate the spirit of the Forest plan in involving other governments and the local citizenry in management decisions. The structure may not differ significantly from that of the past.
- Tribes, state governments, and others already have been given high expectations for playing a much larger role in managing federal lands. Changing now threatens loss of their support unless it is clear that the Administration had no choice because of the court's interpretation of FACA. In that case, these parties could be motivated to support a statutory exemption to FACA for implementing the NW Forest Plan. That same support also may result under Option 1 or Option 2.

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**OPTION 4 - CONGRESSIONAL EXEMPTION FROM FACA FOR SOME OR ALL
LEVELS**

The final alternative would be a legislative exemption from FACA for the forest plan. In order to minimize the perception that the agencies want to operate in the dark instead of in the open, the exemption must be structured so that public participation and openness is not compromised.

Advantages and Disadvantages

- No need to worry about fitting the public involvement structure within the more rigid boundaries of FACA.
- The Administration can create whatever structure it wants, although Congress can alter it.
- Delay in getting exemption through Congress
- If the Record of Decision implementation depends on these groups, considerable delay in starting implementation is likely.
- The structure for public involvement would need to be established in the statute, whereas the REO envisioned this structure to evolve over time and experience.
- Interest groups such as tribal associations, environmental groups, labor unions, fishermen, etc., all may lobby for inclusion in the RIEC and the PIEC where presently they are not represented. Congress may adopt an even more cumbersome process than is required by FACA.



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, D.C. 20240

TRANSMISSION NOTICE

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To:

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~~Kathie McCall~~

Agency Phone Number:

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From: A/S Staff Member:

Don Barry

Department of the Interior
Assistant Secretary for Fish
and Wildlife and Parks
1849 "C" Street N. W.
MS-MIB-3156
Washington, D.C. 20240

Number of Pages to follow:

3

Date:

03/15/94

Time:

7:45 AM



03/09/84 16:24 FAX 8243471

Corporate Headquarters
Tacoma WA 98477
Tel (206) 824 2348

March 9, 1994

Mr. Marvin Planert
Regional Director, Region 1
U.S. Fish & Wildlife Service
911 N.E. 11th Avenue
Portland, OR 97232-4181

Dear Mr. Planert:

Subject: Letter of Intent

This letter is to confirm our intentions relative to the management of Weyerhaeuser Company lands in southwest Washington located in the vicinity of spotted owls.

Concern has been expressed that the few owls that are currently in the region will not be protected while the Service works with landowners on plans to develop dispersal habitat. The Service has two commitments for plans in the region: one from Weyerhaeuser, the largest landowner, to develop a multi-species plan on 100,000 acres in the region, and the second from Washington's Department of Natural Resources, the second-largest landowner in the region.

Weyerhaeuser's objective in this letter of intent is to provide assurance that we will maintain suitable habitat in owl circles in the region. We will provide this assurance by working with the Service to design our logging operations in the area so as to avoid take of owls, as the Service has done with Port Blakely Tree Farms and others.

Specifically, Weyerhaeuser will provide the Service with management plans for the seven status 1, 2, and 3 owl circles (2.2 miles from the site centers) currently affecting company land in the area south of Highway 12 and west of Interstate 5 in Washington.

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03/09/94 16:25 FAX 9243421

WASH TIMBERLANDS

03/09/94

Mr. Marvin Planert

March 9, 1994

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These management plans will remain in effect for five years and will be prepared according to the following guidelines:

- a) Weyerhaeuser will work cooperatively with the Service to classify suitable habitat, using the Port Blakely standards and the work Weyerhaeuser has done with the Washington Department of Wildlife in the area.
- b) Weyerhaeuser will not harvest stands classified under (a) as suitable habitat within the 2.2-mile radius owl circles for the five years (unless the Service concurs that there is excess habitat).
- c) Where the owl site center is not located in suitable habitat, Weyerhaeuser will not harvest 70 acres of the best available habitat surrounding the then-current site center.
- d) Weyerhaeuser will lay out a five-year plan for all harvest on company land in the remainder of the owl circle. We may amend these plans by providing notice to the Service, as long as the amended plans conform to the these guidelines.
- e) The plans will include disturbance guidelines to be used during the nesting season.
- f) Weyerhaeuser will review its activities under the plans annually with the Service.

We expect to be able to provide these plans over the next three to four months, assuming we can use some of the habitat typing we have been doing with the state Department of Wildlife and perhaps some of the GIS-based typing techniques we are developing in Oregon.

These plans will be valid through spring of 1999, although individual plans may terminate sooner if replaced by a federally approved plan to manage wildlife habitat in the area, or if three years of surveys consistent with federal protocols show no occupancy by owls.

It is our understanding that, in the Service's view, harvesting under plans meeting the guidelines described in (a) through (f) above is likely to avoid take of the spotted owl. Weyerhaeuser will request the Service's technical assistance in developing

03/09/94 10:28 FAX 9243421

Mr. Marvin Plenert
March 9, 1994
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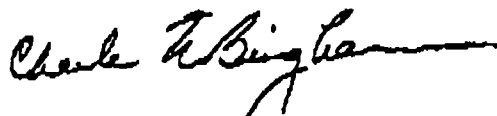
these plans, and it is our understanding that the Service will provide this assistance and concur in plans that conform to these guidelines.

This letter of intent reflects a very significant commitment by Weyerhaeuser which, when added to our previous commitment to develop and implement a habitat plan, should substantially relieve concerns about southwest Washington.

I hope this letter of intent accurately describes the Service's position on the matters discussed above. If so, I would appreciate your indicating your concurrence by signing below.

I look forward to continued work with you and the Service.

Very truly yours,



Charles W. Bingham
Executive Vice President

Concur:


Marvin Plenert
Regional Director



March 3, 1994

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**Proposal for A Facilitated Workshop
to Develop Forest Practice Guidelines
for Douglas County, Oregon**

Goal

The goal of the workshop is to develop a set of forest management practice guidelines that could be applied to private forestland within Douglas County in lieu of the existing take circles for spotted owls. The development of these forest practices will take into consideration the conservation benefits of adjacent or intermingled Federal lands, the planned forest practices on industrial forestlands, and underlying State law, including riparian practices, in comparison to the dispersal habitat needs of the spotted owl.

The workshop would be designed to develop guidelines to:

- facilitate, in particular, small woodlot owners compliance with the requirements of the ESA by providing for a consolidated conservation strategy designed to reduce the impact of the Act on private property rights, including the potential multi-species issues that affect Douglas County landowners;
- be sufficient, when added to conservation actions planned on Federal, State and industrial forestlands, to satisfy the dispersal habitat needs for the northern spotted owl without increasing the burden on private landowners beyond that imposed by the current owl circle requirements.

In addition, the workshop will consider various ways of implementing the guidelines, including

- a "no-take" agreement;
- inclusion in the 4(d) rule being drafted by the FWS;
- a county level HCP;
- issuance as enforceable County Regulations which would be incorporated into an HCP.

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Incorporation of the guidelines into County regulations as part of an HCP would allow the FWS to issue incidental take permits for activities that are allowable under the guidelines.

Seeking agreement on a set of forest practice guidelines is intended to allow greater flexibility to small private landowners than current take circles for owls or the 4(d) special rule which the FWS announced it was considering in its December 29, 1993 *Federal Register* notice.

The basic concept being considered in the special rule is the establishment of certain Special Emphasis Areas within which timber harvest on private land would be restricted in order to provide dispersal habitat conditions for the spotted owl population and other Areas in which habitat conditions for both reproduction and dispersal would be maintained. Restrictions would be eased outside of Special Emphasis Areas, but would be retained within. A facilitated workshop approach could be pursued in addition to the ongoing 4(d) rule process.

Proposed Process

A series of facilitated workshops would be held in Douglas County. Participants would include Federal, State and County officials, biologists and technical experts, plus private landowners (both industrial and non-industrial). Landowners from adjacent counties whose land is included within any Special Emphasis Area that ultimately might be designated within Douglas County would also be encouraged to attend.

Information would be made available to the group on the dispersal habitat needs of the owl, the habitat conservation provided for on Federal and State forestland, and the contribution expected from industrial forest owners and other private land owners in the absence of owl circles or other ESA restrictions. Spatial information on habitat conditions and information regarding landownership patterns in the county would be provided, hopefully through a Geographic Information System.

The facilitator would help the group to compare the landscape conditions in Douglas County needed for owl dispersal with the landscape conditions that would result from exiting plans and regulations absent owl circles. Gaps

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would be identified and the facilitator will help the group to develop proposals for various forest management practices and their application across the landscape to address these gaps. These proposals would be designed to be economically feasible from the perspective of small and medium sized woodlot owners and would be evaluated by participating biologists to determine their adequacy for the spotted owl population. Adjustments would be discussed and made as appropriate until a set of guidelines emerged which was accepted by both the landowners and the owl biologists.

Background

Douglas County, Oregon is frequently described as "ground zero" for the socio-economic impact and fallout from protection of habitat for the Northern spotted owl. Douglas County is a large county (about 3.2 million acres) in the southern part of Oregon. It extends from the Oregon coast on the West to the crest of the Cascade Mountains in the east and south to the Klamath province. Because of its size and shape, and its location at the confluence of the Cascade, Coast, and Klamath provinces of the spotted owl range, the forestlands in Douglas County, both Federal and private, play an important role in the overall owl conservation effort.

Nearly contiguous Forest Service ownership (in the Umpqua, Willamette, and Rogue River National Forests) dominates in the eastern part of the County, totaling ____ acres. BLM ownership (in the Roseburg, Medford and Coos Bay Districts) dominates the southern and western part of the County totaling ____ acres. (Get data) Unlike Forest Service ownership, BLM lands are not contiguous, but are intermingled with private lands, most often in a checkerboard pattern. About 51 percent of the land within the County boundaries is in Federal ownership.

Of the more than 50 counties affected by spotted owl habitat conservation, Douglas County was among the top five in the dependence of its economy and its employment on timber. In the late 1980s, about 20 percent of the employment in Douglas County was in the timber and wood products sectors. Furthermore, in the past, Douglas County lumber mills have been highly dependent on timber from Federal forests, drawing about 80 percent of their timber from Federal harvest.

March 3, 1994

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The County Government has been highly dependent on its share of the Federal timber receipts. In 1990, the County received about \$50 million from Federal timber receipts, about 66 percent of its total revenues.

The President's Forest Plan will substantially reduce Federal timber harvest within Douglas County. The revised plan places ____ acres of Federal forestland within Douglas County into Late Successional Reserves, ____ acres into Adaptive Management Areas, and ____ acres into Riparian Reserves. Expected annual average timber sales levels over the next decade under the Plan would be 350 to 400 million board feet for the three National Forests and the three BLM Districts with land in Douglas County. Agency plans prior to the listing of the spotted owl provided for sales averaging 1,640 million board feet per year.

As a result of these lower rates of timber harvest, the County will receive less from Federal timber sales and will experience a substantial decline in timber dependent employment. (Provide estimates)

Private forestland owners are also an important part of the timber economy in Douglas County. For example, data from the late 1970s shows that there were nearly 3000 non-industrial forest landowners in the County owning about 420,000 acres. Of these, nearly 2000 owned less than 100 acres of forest land. Only one other county in Oregon had as many non-industrial owners. Similarly, a review of the Douglas County Assessors list of forest landowners showed that the non-industrial forestlands were owned by 5500 people in 1994.

With the decline in Federal timber harvest, private forestland could be expected to provide an important supply of logs to Douglas County mills. Harvest on a significant portion of these small woodlots is restricted, however, by the take prohibition of the ESA which protects owl habitat within circles around existing owl sites. (Describe owl circle specifications) Non-industrial forestland owners who participate voluntarily in the development and implementation of guidelines that would provide for dispersal habitat conditions may benefit by receiving relief from the owl circle restrictions. This would also provide an additional supply of logs for Douglas county mills.



United States Department of the Interior



FISH AND WILDLIFE SERVICE

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FAX TRANSMITTALDATE 2/14/94TO Kathleen McGintyFAX 202-456-2710FROM Curt Smitch

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will and
briefing book



MESSAGE

NUMBER OF PAGES INCLUDING TRANSMITTAL SHEET 4



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Pacific Northwest Habitat Conservation Plan Program
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Olympia, Washington 98501
(206) 534-9330 FAX: (206) 534-9331



February 13, 1994

TO: Kathleen McGinty, Deputy Assistant to the President and
Director, White House Office Environmental Policy

FROM: Curt Smitch, Program Supervisor *Curt*
Pacific Northwest Habitat Conservation Plan Program

SUBJECT: STATUS OF HABITAT CONSERVATION PLANS (HCPs)

The February 16-17, 1994, Watershed Conference provides the opportunity for the administration to take the "high ground" on the forest/spotted owl issues. President Clinton and Vice President Gore promised to break the gridlock on this issue. Since April they have taken extensive steps to address the concerns of Judge Dwyer through the Forest Ecosystem Management Assessment Team (FEMAT) and are in the process of addressing the spotted owl/marbled murrelet problems on state and private lands. Yes, it has been slower than we had hoped. Yes, the forest issues have proven to be more difficult than anticipated. But gridlock will end!

In addition, the administration said they would 1) provide financial help to those communities impacted by harvest reductions, 2) initiate a watershed restoration program, and 3) move the region toward an ecosystem management approach for natural resources. The Watershed Restoration Conference is a perfect opportunity to describe how each of the above objectives is being accomplished.

The HCP program speaks directly to objective number three: moving toward ecosystem management. We must move away from species-by-species listings and toward a more holistic approach. Multispecies HCPs are the way to achieve this goal. A team has been established in Washington and Oregon to help state and private forest landowners develop multispecies HCPs in order to provide them with certainty and predictability regarding the management of their lands. *Smitch*

Kathleen McGinty
February 13, 1994
Page 2

To date, a number of forest landowners have either completed HCPs or are in the process of initiating one. Between FEMAT and HCPs, we are building a critical mass of forest lands in the Northwest that are being managed from an ecosystem perspective. This is the future of a viable forest industry and the long-term protection of fish, wildlife, water and Native American cultural values.

Katie, Norm Dicks is very high on this effort. I would suggest that he and the Vice President decide on Tuesday (2/15/94) how specific they want to be. Several landowners would love to be mentioned. Others are not so sure they want the "full support" of the Vice President at this time. The concept should be reinforced regardless. It is really a question of degree.

Call me if you have questions. I know this is not a very definitive memorandum on the matter, but it should help narrow the discussion.

CS:ef



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Pacific Northwest Habitat Conservation Plan Program
3773 Martin Way East, Building C - Suite 101
Olympia, Washington 98501
(206) 534-9330 FAX: (206) 534-9331

February 13, 1994

TO: Kathleen McGinty, Deputy Assistant to the President and
Director, White House Office Environmental Policy

FROM: Curt Smith, Program Supervisor *Curt*
Pacific Northwest Habitat Conservation Plan Program

SUBJECT: WATERSHED RESTORATION CONFERENCE - SHOULD
YOU COME?

The answer is yes. Among the folks involved in the forest issues that I have spoken with, the response was unanimous: you are one of the key players in this issue.

The Watershed Restoration Conference is clearly the biggest event concerning the forest issues in the Pacific Northwest since the President's Forest Conference last April. Nearly all of the major players will be in attendance. In addition, there will be a number of corporate leaders at the fund raiser on Wednesday night. It would be a great opportunity for you to meet some of them face-to-face.

I know you are extremely busy and this is a long ways from Washington, D.C., however, I would not recommend that you come if I didn't think it was a valuable use of your time.

Hang in there. Change is always hard, but the level of difficulty necessary to change to ecosystem management is unprecedented.

Please call me at (206) 534-9330 if you have any questions.

CS:cf

February 15, 1994

TO: Katie McGinty
Will Stelle

FROM: Curt Smitch

Curt

HCPs

*KM - I did not
get this until
2/16*

RE: Landowners Who Have or Will Be Doing HCPs

I just left Norm Dicks. He wants to reinforce the HCP effort as a method for moving toward ecosystems management. He will talk to Vice President Gore before the Vice President's speech.

The following landowners are or will be involved in HCPs:

1. The Washington State Department of Natural Resources is doing two multi-species HCPs. One HCP covers the Experimental Forest on the Olympic Peninsula. The second will be for all of DNR's forest lands. Over two million acres. Jennifer Belcher deserves credit for moving on these her first year in office.
2. Murray Pacific Corporation has already completed an HCP for spotted owls. It was completed in November of 1993. They have committed to doing a multi-species HCP early this year. Toby Murray, Vice President of the company, is not very happy with how long it took to do an HCP for a single species. I told him we will do better on the multi-species effort. He is on panel V at the Conference and will also be at the DNC fund raiser. Katie should be sure and meet him.
3. The Longview Fibre Company has committed to do a multi-species HCP. It will be in Washington State. It is relatively small, 21,000 acres. But if it goes well they will most likely do the rest of their lands. They have land in both Oregon and Washington. This was a tough decision for them. Other small and mid size companies will be watching this one closely.
4. The City of Seattle has committed to a multi-species HCP in the Cedar River Watershed (90,000 acres). This is a very important HCP because of its proximity to the state's largest urban area. Mayor Norm Rice and the City Council are very enthusiastic about doing an HCP. The Cedar River Watershed is the primary water supply for City of Seattle.
5. The Weyerhaeuser Company will be involved in two HCPs. They are doing an HCP for spotted owls on their Millicoma Tree Farm located in Coos and

Douglas Counties, Oregon. The Tree Farm is approximately 270,000 acres.

They will be announcing at the Watershed Conference the fact that they intend to do a multi-species HCP in Southwest Washington(100,000 acres). Obviously this is an important commitment for a number of reasons.

I would recommend that Norm and the vice president publicly acknowledge all the above for their "courage and farsighted" decision to move this region toward ecosystem management. And congratulate them for demonstrating that government and private land owners can work together for the benefit of all of us.

Call if you have questions.

cc. Congressman Norm Dicks

February 15, 1994

TO: Katie McGinty
Will Stelle

FROM: Curt Smitch



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