

## **Appendix B - Other Relevant Laws and Direction**

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### **Emergency Relief for Federally Owned Roads - ERFO**

This program is designed to help pay the unusually high cost of maintenance and repair caused by a natural disaster over a wide area. Funds are managed by the Federal Highway Administration and are allocated to each flood damage site. (FHWA-FLH-04-007, page 1-6.)

### **National Environmental Policy Act**

This A-EA has been prepared in accordance with regulations established under the National Environmental Policy Act of 1969 (NEPA).

### **Wild and Scenic River Act**

Section 703 of Public Law 90-625 amended the 1968 Wild and Scenic Rivers Act to designate selected segments of the Skagit, Cascades, Sauk, and Suiattle Rivers to the National Wild and Scenic River System (WSR). The Outstandingly Remarkable Values of the Skagit River System are fisheries, wildlife, and scenic quality (USDA Forest Service, 1983). Designated rivers are classified as either: wild, scenic, and recreational depending on the type and intensity of development. The mainstem Suiattle River segment is a 27.4-miles long and is classified as scenic, which is defined as “free of impoundments, with shorelines or watersheds still largely primitive and largely undeveloped, but accessible by road in places.”

Evaluation of water resources projects within the National Forest System is addressed in the Wild and Scenic Rivers Act (82 Stat. 906, as amended; 16 U.S.C. 1271 (Note), 1271-1287). Section 7 of the Act provides authority to the Secretary of Agriculture to evaluate and make a determination on water resource projects that affect wild and scenic rivers. Section 7(a) prohibits departments and agencies of the United States from assisting in the construction of any water resources project that “... would have a direct and adverse effect on the values for which such a river was established.” Water resources projects are those proposed activities that are federally assisted and within the bed and bank of a wild and scenic river.

Implementing rules to guide evaluation of proposed water resource projects are at Title 36, Code of Federal Regulations Part 297 (36 CFR 297). Additionally, the Forest Service must comply with the Interagency Guidelines for Eligibility, Classification, and Management of River Areas, published in the Federal Register on September 7, 1982 (47 FR 39454). Forest Service Manual 2654.76, details the process for conducting the Section 7 determination.

### **Endangered Species Act**

Section 7 (a)(2) of the Endangered Species Act of 1973 as amended, requires federal agencies to review actions authorized, funded, or carried out by them, to ensure such actions do not jeopardize the continued existence of federally listed species, or result in the destruction or adverse modification of listed critical habitat. The Forest Service consults with the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) if projects could potentially affect listed species or critical habitat. The Forest currently has three programmatic consultation documents with these regulatory agencies that cover most of the Forest’s program of activities for several years.

## **Magnuson-Stevens Fishery Conservation and Management Act**

The Magnuson-Stevens Fishery Conservation and Management Act as amended by the Sustainable Fisheries Act of 1996, requires Federal action agencies to consult with the Secretary of Commerce (NMFS) regarding certain actions. Consultation is required for any action or proposed action authorized, funded, or undertaken by the agency that may adversely affect essential fish habitat (EFH) for species managed in Federal Fishery Management Plans. For this project, the Pacific Coastal Salmon Plan manages for Chinook, coho, and pink salmon. According to EFH regulations, 50 CFR section 600.920(a)(1), EFH consultations are not required for completed actions or project-specific actions with a signed decision under the National Environmental Policy Act, and these regulations enable Federal agencies to use existing consultation and environmental review procedures to satisfy EFH consultation requirements.

## **National Historic Preservation Act**

The National Historic Preservation Act of 1966, Executive Order 11593, 36 CFR 800.9 (Protection of Historic Properties), Section 106 requires documentation of a determination of whether each undertaking would affect historic properties. The Mt. Baker-Snoqualmie National Forest operates under a programmatic agreement between the Washington State Historic Preservation Officer and the Advisory Council on Historic Preservation for consultation on project determination.

## **The Archaeological Resources Protection Act of 1969 (ARPA)**

The ARPA prohibits disturbance or removal of archaeological resources from federal lands without a permit from the responsible land manager. ARPA applies to both NRHP-eligible and non-eligible sites that are at least 100 years old.

## **The American Indian Religious Freedom Act of 1978 (AIRFA)**

The AIRFA protects the rights of American Indian people to believe, express, and exercise their traditional religions. AIRFA allows access to sites, use and possession of sacred objects, and freedom of worship through traditional ceremonies and practices. It also requires a review, in consultation with American Indian leaders, of federal agency policies and programs to determine changes necessary to protect and preserve religious and cultural practices of American Indians.

## **The Native American Graves Protection and Repatriation Act of 1990 (NAGPRA)**

The NAGPRA establishes the rights of lineal descendants and members of Indian tribes to certain human remains and precisely defined cultural items recovered from federal or Indian lands. NAGPRA also establishes procedures and consultation requirements for intentional excavation or accidental discovery of American Indian remains or cultural items on federal or tribal lands.

## **Executive Order 11593**

Executive Order 11593 directs federal agencies to inventory cultural resources under their jurisdiction, nominate all federally owned properties that meet the criteria of the NRHP, use due caution until the

inventory and nomination processes are completed, and assure that federal plans and programs contribute to preservation and enhancement of non-federally owned properties.

### **Executive Order 13007**

Executive Order 13007 – Indian Sacred Sites – directs executive branch agencies to accommodate access to and ceremonial use of American Indian sacred sites by Indian religious practitioners and to avoid adversely affecting the physical integrity of such sacred sites on federal lands to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions. The agencies are further directed to ensure that reasonable notice is provided of proposed land actions or policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of sacred sites.

### **Executive Order 13175**

Executive Order 13175 – Consultation and coordination with Indian tribal governments – requires federal agencies such as the USDA Forest Service (Forest Service) to develop an accountable process to ensure the meaningful and timely input by tribal officials in the development of regulatory policies that have substantial direct effects on one or more Indian tribes, on the relationship between the federal government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.

### **Protection of Historic Properties (36 CFR 800)**

These regulations implement the NHPA Section 106 and define how federal agencies take into account the effects of their undertakings on historic properties. The regulations identify consulting parties, and identify the goal of consultation: to identify historic properties potentially affected by the undertaking, assess its effects, and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.

### **National Register of Historic Places (36 CFR 60)**

These regulations establish the National Register of Historic Places as a planning tool to help federal agencies evaluate cultural resources in consultation with the State Historic Preservation Officer and the Advisory Council on Historic Preservation. 36 CFR 60.4 provides the criteria for determining whether cultural resources are eligible for listing on the NRHP.

### **Protection of Archaeological Resources Uniform Regulations (36 CFR 296)**

These regulations implement the ARPA by establishing uniform definitions, standards and procedures for federal land managers to follow in providing protection for archaeological resources located on public lands. The regulations define prohibited acts, and requirements for issuing permits under the authority of the ARPA.

## **Native American Graves Protection and Repatriation Regulations (43 CFR 10 Subpart B Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony from Federal or Tribal Lands)**

These regulations carry out provisions of the NAGPRA of 1990. The regulations pertain to the identification and appropriate disposition of human remains, funerary objects and objects of cultural patrimony, and pertain whether they are inadvertently discovered or excavated intentionally under a federal permit (Antiquities Act or ARPA).

### **U.S. Forest Service's Native American Policies**

The Forest Service's Native American policies are described in Forest Service Manual 1563 and Forest Service Publication FS-446 and FS-600. The Forest Service's Native American policies include maintaining a governmental relationship with federally-recognized tribal governments, implementing programs and activities in a way that honors Indian treaty rights and fulfills legally-mandated trust responsibilities to the extent that they apply to National Forest system lands (NFSL), administering programs and activities to address and be sensitive to traditional native religious beliefs and practices, and providing research, transfer of technology, and technical assistance to tribal governments.

### **The Federal Trust Responsibility**

The trust responsibility is the U.S. government's permanent legal obligation to exercise statutory and other legal authorities to protect tribal land, assets, resources, and treaty rights, as well as a duty to carry out the mandates of federal law with respect to American Indian and Alaska Native tribes (USDA Forest Service Publication FS-600). The Forest Service must carry out this responsibility to tribes while at the same time carrying out the intent of other federal laws, which the Forest Service has a similar duty to follow.

### **The Point Elliott Treaty**

This treaty was negotiated by Territorial Governor Isaac Stevens with various western Washington native people in January of 1855. This treaty gathered these people into five reservations within the same territory, under the jurisdiction of the Tulalip Agency. The Treaty of Point Elliott gave the U.S. government all Indian land from Puget Sound to the Canadian Border. Courts have recognized certain rights as being "reserved" by tribes from land cessions. Indian reserved rights continue to be exercised by tribes and their members today under tribal regulation and remain enforceable under the supremacy clause of the Constitution until extinguished by express congressional action.

### **Clean Air Act**

The Clean Air Act Amendments of 1977 gives federal land managers an affirmative responsibility to protect the air quality related values (including visibility) within Class 1 areas.

Wilderness areas are designated as Class 1 areas for air quality protection. Visibility is a value that is protected primarily within the boundaries of a Class 1 area, although the Clean Air Act includes provision for definition of vistas integral to a visitor's experience, even if these vistas extend beyond the boundaries of the Class 1 area.

## **Clean Water Act**

The Clean Water Act (CWA) of 1977 and subsequent amendments, established the basic structure for regulating discharges of pollutants into the waters of the United States. It gives the Environmental Protection Agency (EPA) the authority to implement pollution control programs, and to set water quality standards for all contaminants in surface waters. The Act makes it unlawful for any person to discharge any pollutant into waters of the United States, unless a permit has been obtained under its provisions. The EPA delegated implementation of the CWA to the States; the State of Washington recognizes the Forest Service as the Designated Management Agency for meeting CWA requirements on National Forest System lands.

Section 303(d) of the federal Clean Water Act requires Washington State (Department of Ecology) to periodically prepare a list of all surface waters where pollutants have impaired the beneficial uses of water (for drinking, recreation, aquatic habitats, etc.). Types of pollutants included high temperatures, fecal coliform, excess nutrients, low levels of dissolved oxygen, and toxic substances. The current Washington State list for these Water Quality Limited Waterbodies is dated 1998; a new list is in preparation but has not yet been approved by the EPA. The Forest Service Region 6 and the Washington State Department of Ecology meet this management mandate under a Memorandum of Agreement (MOA) with emphasis on reducing effects of roads on water quality.

### **Executive Orders 11988 (Floodplains) and 11990 (Wetlands)**

The purpose of these orders are to “...avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development...” and “avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands...”

### **Private Property Access (ANILCA)**

The Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980 (P.L. 96-487), Title XII; 94 Stat. 2457; 16 U.S.C. 3210) is not limited to the State of Alaska but has nationwide application to National Forest System lands. Sec. 1326. (a) Notwithstanding any other provisions of law, and subject to such terms and conditions as the Secretary of Agriculture may prescribe, the Secretary shall provide such access to nonfederally owned land within the boundaries of the National Forest System as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof: Provided, That such owner comply with rules and regulations applicable to ingress and egress to or from the National Forest System.

### **Invasive Species Management**

The 1999 Executive Order on invasive species (direction found in Forest Service Manual 2080) the National and Regional strategies for noxious weed management, and the Mediated Agreement of May 24, 1989, identify prevention as the preferred strategy for managing competing and unwanted vegetation. In addition to treatment of known infestations, measures intended to prevent further infestations and weed spread would be incorporated into the construction contract. These measures include cleaning of construction equipment, prompt re-vegetation of disturbed sites, and treatment of known weed sites

before they become larger. These measures come from the Forest Plan, as amended, Forest-wide Standards and Guidelines Prevention Strategies and Best Management Practices (BMPs) for noxious weeds (Forest Plan Amendment #14, 1999).

A Record of Decision has been signed for the Pacific Northwest Region Invasive Plant Program: Preventing and Managing Invasive Plants, Final Environmental Impact Statement (USDA October 2005). To date (January 2006), this decision is under administrative appeal: however, the management direction will be implemented over a period of time, with some standards applicable starting in March 2006. The goals and standards included in this ROD complement the MBS Prevention Strategies and Best Management Practices (Forest-wide Standards and Guideline) for noxious weeds.

## **Roads Analysis**

Forest-wide roads analysis, a process used to inform decisions related to road management, has been completed: Mt. Baker-Snoqualmie National Forest Roads Analysis, July 2003. Roads analysis is not a decision-making process but it assess Forest transportation management needs, long-term funding, and expected ecosystem, social, and economic effects. Each road segment on the Forest was assessed for both access need (e.g. needed for recreation, vegetation management, etc.) and by concern for resource damage. This information can be used to provide the responsible official with critical information needed to identify and manage the Forest road system.

## **Watershed Analysis<sup>11</sup>**

Watershed analysis has been completed for the Suiattle River Watershed (USDA Forest Service 2004). The Suiattle River Watershed Analysis (Suiattle WA) provides a landscape level or ecosystem perspective with findings and recommendations that give the context for road management within the watershed. The findings of the watershed analysis are incorporated into this Amended Environmental Assessment by reference. The proposed action is located within a Tier 1 Key Watershed. These watersheds are defined as sources for high water quality and contain at-risk anadromous fish (e.g., salmon) (1994 ROD p. 10).

## **Mt. Baker-Snoqualmie National Forest Fire Management Plan (2008)**

FMU#2 – General Forest; Management Constraints or Criteria Affecting Operational Implementation requires that cost-effective plans for the prevention of human-caused fires will be aimed at specific risks determined by ongoing monitoring of fire reports.

## **The Migratory Bird Treaty Act (MBTA)/Landbird Conservation Plan (Presidential Executive Order 13186, and FS/FWS MOU, Jan. 2001)**

This act requires federal agencies to assess project actions that may affect avian species covered by these doctrines and their habitats. The MBTA outlines responsibilities of federal land management agencies relative to landbird conservation and the MOU provides interim direction on implementation of the MBTA.

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<sup>11</sup> Forest Plan, as amended, standards and guidelines for Key Watersheds require completion of watershed analysis prior to management activities other than minor activities (USDA, USDI 1994, page C-7).

## **Section 4(f) of the Department of Transportation (DOT) Act of 1966**

This act requires analysis of effects to a section 4(f) resource if a transportation facility would ‘use’ the resource. The act states that “the Secretary shall not approve any program or project which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreation areas, wildlife and waterfowl refuge, or historic sites resulting from such use.” The 4(f) Section includes additional discussion on compliance with this act.

## **Court Order of January 9, 2006**

This Court order re-instated the 2001 ROD (as modified or amended as of March 21, 2004) and clarified Court direction dated October 11, 2006.

## **Interagency MOU on Grizzly Bear Habitat**

In regards to the North Cascades Grizzly Bear Recovery Area, the MOU between the Forest Service and U.S. Fish and Wildlife Service stipulates that there is to be no net loss of core habitat (1997). The effects discussion for grizzly bears provides more detail on compliance with this MOU.