

# Hydro Energy Development Corporation

A Puget Energy Company

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October 30, 2001

James Connaughton, Chair  
Council on Environmental Quality  
Executive Office of the President  
17<sup>th</sup> & G Streets, N.W.  
Washington, D.C. 20503  
Attention: Energy Task Force

## **Comments of Hydro Energy Development Corporation to the Task Force on Energy Project Streamlining**

Dear Chairman Connaughton:

On May 18, 2001, President Bush established an interagency task force to work with federal agencies in order to expedite review of permits or take other actions to accelerate the completion of energy projects. Hydro Energy Development Corporation ("HEDC") applauds this effort and hereby submits comments in response to the notice issued by the Council of Environmental Quality.

HEDC is a developer of small, run-of-the-river hydroelectric projects located in western Washington State, all of which fall under the jurisdiction of the Federal Energy Regulatory Commission licensing authority.

At the present time, through its subsidiaries, HEDC operates one licensed project: Black Creek, P.6221; holds licenses for three un-constructed projects: Calligan Creek, P.8864, Hancock Creek, P.9025, Youngs Creek, P.10359; and has license applications pending for six projects: Anderson Creek, P.10416, Clearwater Creek, P.11495, Irene Creek, P.10100, Martin Creek, P.10942, Rocky Creek, P.10311 and Warm Creek, P.10868. In addition, HEDC holds preliminary permits to study five other projects: Big/Grade, P.11842, Cumberland Creek, P.11847, Mill Creek, P.11848, O'Toole Creek, P.11849, and Skookum Creek, P.11850. These projects range in size from 3.7 to 10.1 megawatts. (See Project Table, Attached.)

Together, the HEDC projects with license applications pending and preliminary permits would add about 100 megawatts of capacity to the Northwest region's energy supply.

With a projected shortage of 3,000 megawatts of capacity in our region during the next four years, renewable and environmentally sound small hydro project development can benefit by the

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work of the Task Force by expediting licensing as much as possible. The current system of duplicative, redundant, expensive, and time-consuming layers of federal, state and local regulation is contrary to any notion of fair governance of the nation's waters. For example, all of HEDC's license applications have been pending for over a decade or more at the Federal Energy Regulation Commission, with no final decision in sight for most of them. (See Project Table, Attached.)

HEDC's small hydro project sites were selected in the late 1980s to be environmentally benign, renewable sources of energy (For example, all projects are sited above the anadromous fishery zone).

In 1988, an agreement was entered between HEDC's subsidiary license applicants, National Marine Fisheries Service, Washington State Department of Fisheries, Washington State Department of Wildlife, and Indian tribes in the project areas, which set forth studies to be performed. As also agreed, we applied site-ranking criteria developed by the Washington State Department of Fisheries to determine which projects would be pursued. The work under the agreement was completed years ago, yet virtually all of the selected projects are waiting for license approval.

Set forth below are HEDC's suggestions to help expedite new hydro project licensing.

**1. Agencies with jurisdiction over hydroelectric projects should be instructed to act in accordance with National Security objectives, and legislation sought where necessary.**

The current terrorist crisis underlines the value of hydroelectric projects in meeting national security objectives of adequate domestic supplies of reliable energy. Water is a domestic "fuel" which cannot be impeded or stopped by foreign adversaries. New hydro projects displace the need for reliance on imported fossil fuels. Most hydro projects are located in remote areas, unlikely to be targets. Hydropower is available instantly if other sources of energy are disabled. Dispersed hydro projects, including small facilities, offer electrical stability if transmission facilities have been damaged, causing electric flow redistribution.

Regulations should be adopted which require all federal entities and states with delegated authority over hydroelectric projects (e.g., the Clean Water Act) to: (a) give priority to hydro licensing and/or permitting approval, (b) base such approvals on the need for national energy security when balanced against other competing water or land uses, and (c) insure that hydro energy and capacity are developed to the maximum extent possible.

If there are regulatory entities which need new statutory authority to give priority to national security for hydro project approval, the Task Force should recommend that Congress adopt legislation providing such authority. (See, Coastal Zone Management Act, Section 303, 16 U.S.C. 1452(2)(D): State "...programs should at least provide for ... priority consideration being given to coastal-dependent uses ... for siting major facilities related to national defense, energy...").

FERC is required to examine the full range of public interest factors when making hydro

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licensing decisions, except when it must accept mandatory conditions submitted by the Secretaries of Agriculture and Interior for projects located on federal land. To insure that national security objectives are taken into account for all projects, Section 4(e) of the Federal Power Act should be amended to require the Secretaries approve only those mandatory conditions determined to be consistent with maintaining or enhancing the national security objectives of energy self-sufficiency, adequacy of supply, or reliability.

**2. Prior Administration policies stopping hydroelectric project development on Forest Service land should be revoked.**

Immediate action can be taken to prevent the Forest Service from stopping small hydro project development on its multiple-use public lands. With the adoption of the 1994 "Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl" ("ROD"), the prior Administration embarked on a program to stop small hydro development in the Mt. Baker/Snoqualmie National Forest, where six of HEDC's proposed projects are located.

The ROD contains special provisions for non-silvicultural activities, which apply specific standards to new hydro facilities: "...powerlines, pipelines, reservoirs, recreation sites, or other public works projects will be reviewed on a case-by-case basis and may be approved when adverse effects can be minimized and mitigated." Instead of applying this specific "minimize and mitigate" standard of review to hydro projects, the Forest Service has and continues during this Administration to apply standards, such as "neutral or beneficial," which should only apply to large-scale forest management, to small hydro facilities.

The prior Secretaries of Interior and Agriculture, by memorandum dated October 26, 2000, approved an interpretation of the ROD which said that "the nature and magnitude of public benefits are not factors contemplated by the ROD for use in determining conditions neutral or beneficial to the creation and maintenance of late-successional habitat." (Attachment A at p.4.) This interpretation distorts the specific new development language of the ROD, which says nothing about "neutral or beneficial" as a standard applied to items deemed to "provide significant public benefits," such as powerlines, pipelines, and reservoirs. (ROD at C-17.) Recently, Mt. Baker/Snoqualmie Forest Service staff has told HEDC representatives that it must continue to apply the ROD according to the Secretaries' joint memorandum until it is superseded.

HEDC urges the Task Force to recommend that the October 26, 2000 memorandum interpreting the ROD be revoked by the current Secretaries of Agriculture and Interior, and replaced by a directive reflecting the stand-alone nature of the new developments section of the ROD, with its standard of "minimize and mitigate" applying to hydro facilities. (Id. at C-17.)

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**3. The Forest Service should be prevented from intruding upon state jurisdiction under the Clean Water Act.**

Under the Riparian Reserves section of the 1994 ROD, hydroelectric projects are subjected to a regulation which presumably gives the Forest Service authority to establish "...in-stream flows and habitat conditions that maintain and restore riparian resources, favorable channel conditions and fish passage." (ROD at C-30.) Under Section 401 of the Clean Water Act, the State of Washington has been delegated the sole authority to establish minimum flows for FERC-licensed hydroelectric projects. (See PUD No. 1 of Jefferson County v. Washington State Department of Ecology, 511 U.S. 700 (1994).)

The Forest Service should be instructed to revoke all provisions of the ROD which intrude upon state jurisdiction under the federal Clean Water Act. Immediate notice of this action should be provided to FERC and license applicants whose projects are currently being reviewed by the Commission or the Forest Service.

**4. Immediate action should be taken to prevent use of the Coastal Zone Management Act by states and/or counties to intrude upon the exclusive jurisdiction of FERC under the Federal Power Act.**

Under the regulatory scheme set forth in the federal Coastal Zone Management Act, coastal states approve plans for regulation of the areas covered by that act. All of HEDC's projects are subject to CZMA approval, which, in the State of Washington, means, *inter alia*, obtaining a shoreline permit from the county in which the project is located, even though a 1991 decision by FERC held that requiring such a permit "...impermissibly duplicates the Commission's FPA licensing authority, but also amounts to an asserted veto power over Project No. 6221, and is prohibited under First Iowa." (Weyerhaeuser Company, Declaratory Order, 55 FERC Par. 61,079.)

Nothing in the CZMA repeals or alters Federal Power Act preemption of local regulation of federally licensed hydro projects. The Supreme Court has held that "(t)he detailed provisions of the (FPA) providing for the federal plan of regulation leave no room or need for conflicting state controls." (First Iowa Hydroelectric Cooperative, Inc. v. FPC, 328 U.S. 152, 181 (1946).) In spite of the Federal Power Act's clear preemptive authority, the State of Washington and its counties continue to insist that local shoreline permits be obtained by hydro project license applicants before state approval under the CZMA will be granted. Using the CZMA in a manner contrary to the Federal Power Act means that HEDC's projects have and are being subjected to three to four years of delay while permit applications are processed at the county level. In order to avoid equally time-consuming litigation, HEDC has and is cooperating with the counties within which its projects are located, but with no assurance of approval by counties whose activities are preempted by the Federal Power Act in the first place.

In order to expedite hydroelectric project licensing, the Secretary of Commerce should be

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directed to instruct all the states within the scope of the Coastal Zone Management Act to remove all provisions from their coastal management plans which impose state or local regulation on hydro projects regulated under the Federal Power Act.

**5. The U.S. Forest Service should cooperate and consult with FERC, rather than acting as an adversarial party in hydroelectric proceedings.**

Both the U.S. Forest Service and FERC have independent and joint responsibilities for protecting federal land. For example, there are specific statutory directives for Forest Service issuance of rights-of-way for reservoirs, pipelines, water impoundments and systems for the generation and transmission of electric energy. (43 U.S.C. 1761(a)(1),(4)). Hydro projects located on "public lands and reservations of the United States" must obtain a license from FERC. (16 U.S.C. 797). When a license application is filed with FERC and will occupy federal land, Congress has provided that such land will be withdrawn for the sole purpose of "power development." (16 U.S.C. 818). Yet, in spite of these overlapping responsibilities for jointly regulating federal multiple-use land, the Forest Service intervenes before the Commission and challenges the issuance of hydroelectric project licenses.

It is contrary to good public policy to have the Forest Service, with its independent mandatory conditioning authority, inject itself into FERC proceedings in order to influence the ultimate licensing decision. The Forest Service can protect its legitimate interests, set forth by Congress, through fair mandatory conditions under Section 4(e) of the Federal Power Act. The Task Force should recommend that the Forest Service refrain from intervening in FERC hydro licensing proceedings, unless related to mandatory conditions submitted to the Commission.

Respectfully submitted,



Robert M. Braukus, PE  
President

cc: Frank W. Frisk, Jr. Esq.

## **Hydro Energy Development Corporation Project Table**

### **Rocky Creek Hydroelectric Project**

Project number 10311, proposed by Skagit River Hydro, Inc., 8.3 MW project located in Skagit County, license application filed April 1990.

Approvals are required from the following agencies:

- Federal Energy Regulatory Commission
- US Army Corp of Engineers
- Washington Department of Ecology
- Washington Department of Natural Resources
- Washington Department of Fish and Wildlife
- Skagit County

### **Clearwater Creek Hydroelectric Project**

Project number 11495, proposed by Nooksack River Hydro, Inc., 6 MW project located in Whatcom County, license application filed August 1994.

Approvals are required from the following agencies:

- Federal Energy Regulatory Commission
- US Forest Service
- US Army Corp of Engineers
- Washington Department of Ecology
- Washington Department of Natural Resources
- Washington Department of Fish and Wildlife
- Whatcom County

### **Warm Creek Hydroelectric Project**

Project number 10865, proposed by Warm Creek Hydro, Inc., 3.7 MW project located in Whatcom County, license application filed August 1993.

Approvals are required from the following agencies:

- Federal Energy Regulatory Commission
- US Forest Service
- US Army Corp of Engineers
- Washington Department of Ecology
- Washington Department of Natural Resources
- Washington Department of Fish and Wildlife
- Whatcom County

**Anderson Creek Hydroelectric Project**

Project number 10416, proposed by Washington Hydro Development Company, 6.25 MW project located in Whatcom County, license application filed June 1991.

Approvals are required from the following agencies:

- Federal Energy Regulatory Commission
- US Forest Service
- US Army Corp of Engineers
- Washington Department of Ecology
- Washington Department of Natural Resources
- Washington Department of Fish and Wildlife
- Whatcom County

**Irene Creek Hydroelectric Project**

Project number 10100, proposed by Cascade River Hydro, Inc., 6.5 MW project located in Skagit County, license application filed January 1991.

Approvals are required from the following agencies:

- Federal Energy Regulatory Commission
- US Forest Service
- US Army Corp of Engineers
- Washington Department of Ecology
- Washington Department of Natural Resources
- Washington Department of Fish and Wildlife
- Skagit County

**Martin Creek Hydroelectric Project**

Project number 10942, proposed by Skykomish River Hydro, Inc., 10.2 MW project located in King County, license application filed February 1994.

Approvals are required from the following agencies:

- Federal Energy Regulatory Commission
- US Forest Service
- US Army Corp of Engineers
- Washington Department of Ecology
- Washington Department of Natural Resources
- Washington Department of Fish and Wildlife
- King County

**REGIONAL ECOSYSTEM OFFICE**

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**MEMORANDUM**

**DATE:** November 17, 2000

**TO:** Regional Interagency Executive Committee (See Distribution List)

**FROM:** Stephen J. Odell, Executive Director 

**SUBJECT:** Interpretation of the Northwest Forest Plan Standards and Guidelines Regarding New Developments in Late-Successional Reserves

Enclosed please find a memorandum signed by the Secretaries of the Interior and Agriculture approving an Interpretation of Northwest Forest Plan Standards and Guidelines Regarding New Developments in Late-Successional Reserves, followed by the Interpretation itself, which was developed by the Interagency Steering Committee. I just received the documents from Nancy Hayes, Senior Counselor to the Assistant Secretary of the Interior for Fish and Wildlife and Parks, who asked me to circulate them to all RIEC members on her behalf. The Secretaries make a special point of expressing their appreciation for the significant efforts of regional officials in achieving the goals of the Northwest Forest Plan in the final sentence of their memorandum.

A discussion of the Interpretation and its implications for NFP implementation has been added to the upcoming December RIEC meeting agenda. Please contact me if you have any questions.

cc:

Non-Federal IAC Members  
REO Reps  
PAC DFOs

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Attachment A

**To: Regional Interagency Executive Committee Members**

Anne Badgley, U.S. Fish & Wildlife Service  
John D. Buffington, USGS Western Region  
Mike Collopy, USGS Forest & Rangeland Ecosystem Science Center  
Col. Randall J. Butler, U.S. Army Corps of Engineers  
Donna Darm, Jr., National Marine Fisheries Service  
Mike Crouse, National Marine Fisheries Service  
Ken Feigner, Environmental Protection Agency  
Harv Forsgren, Forest Service  
Nancy Graybeal, Forest Service  
Bob Graham, Natural Resources Conservation Service  
Thomas Mills, Pacific Northwest Station, Forest Service  
Jennifer Orme-Zavaleta, Western Ecology Division, Environmental Protection Agency  
Stan M. Speaks, Bureau of Indian Affairs  
William C. Walters, National Park Service  
Jim Shevock, National Park Service  
Elaine Y. Zielinski, Bureau of Land Management  
Ed Shepard, Bureau of Land Management  
California Federal Executives  
Brad Powell, Forest Service  
Glenn Gottschall, Forest Service  
Michael J. Spear, U.S. Fish and Wildlife Service  
John Engbring, U.S. Fish and Wildlife Service  
Michael Poole, Bureau of Land Management  
Paul Roush, Bureau of Land Management



THE SECRETARY OF THE INTERIOR  
WASHINGTON

OCT 26 2000

Memorandum

To: Director, Bureau of Land Management  
Chief, USDA Forest Service  
Regional Interagency Executive Committee  
California Federal Executives

Subject: Interpretation of the Northwest Forest Plan Standards and Guidelines Regarding  
New Developments in Late-Successional Reserves

On April 13, 1994, the Secretaries of Agriculture and the Interior signed the Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl, otherwise known as the Northwest Forest Plan. Since that time, the agencies have made enormous progress in implementing the Forest Plan and the accompanying Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl.

In 1998, the Regional Forester and the Regional Director of the U.S. Fish and Wildlife Service requested guidance on the implementation of the provisions relating to new developments in Late-Successional Reserves. The Regional Executive Steering Committee subsequently elevated this issue to the Interagency Steering Committee, which developed the attached Interpretation to be used by Bureau of Land Management and Forest Service managers in implementing these provisions.

We believe the Interpretation accurately reflects both the spirit and the letter of the Northwest Forest Plan Record of Decision and Standards and Guidelines. We ask that you distribute the Interpretation to your field managers and request their assistance in implementing it. We deeply appreciate the tremendous effort on the part of all of the Regional Executives and their staffs toward fulfilling the goals of the Northwest Forest Plan, and congratulate all of you on your numerous outstanding achievements in that regard since 1994.

Secretary of the Interior

Secretary of Agriculture

**Attachment**

**cc: Dinah Bear, CEQ  
Peter Coppelman, DOJ  
ISC Members  
REO Representatives**

## INTERPRETATION OF NORTHWEST FOREST PLAN STANDARDS AND GUIDELINES REGARDING NEW DEVELOPMENTS IN LATE-SUCCESSIONAL RESERVES

### INTRODUCTION

The Record of Decision (ROD) for the Northwest Forest Plan (NFP), signed in April 1994, established several land allocations, including Late-Successional Reserves (LSRs). The ROD also adopted Standards and Guidelines (S&Gs) for land and resource management, including some that specifically address developments in LSRs. As new developments of various types have been proposed in LSRs, questions have arisen that indicate a need to clarify the interpretation of the S&Gs. This paper responds to that need by providing general guidance on the interpretation of the S&Gs regarding new developments in LSRs, with a set of Principles that should be used on a case-by-case basis to help interpret and implement the S&Gs in a consistent manner across the involved federal agencies.

Proper management of LSRs is crucial to achieving the goals of the NFP. In considering proposed developments in LSRs, it is imperative to consider such proposals within the context of the purposes that LSRs are designed to serve and the objectives for their management. Therefore, this paper begins with a section summarizing the origin and key aspects of LSRs.

### LSR BACKGROUND AND KEY PURPOSES

LSRs are critical components of the NFP. LSRs and the S&Gs for managing them were designed as a principal means of addressing concerns about the late-successional/old growth ecosystem in the Northwest and the hundreds of species that are part of this ecosystem. Reduction and fragmentation of the late-successional/old growth ecosystem has been substantial. The Forest Ecosystem Management Assessment Team (FEMAT) Report estimated that historically, about 65 percent of the Northwest landscape was covered by late-successional habitat in large blocks of roughly 1,000 acres or greater. (FEMAT Report, IV-50, IV-51). Today, the landscape looks much different:

*As a result of over a century of logging and fire control, the forests of the Pacific Northwest presently consist of a highly fragmented mosaic of recent clearcuts, thinned stands, and young plantations interspersed with uncut natural stands. (FEMAT Report, II-2).*

*From a regional perspective, the current area and diversity of late-successional/old-growth forest ecosystems has been reduced to less than 20 percent of the landscape (public and private land). (FEMAT Report, IV-76).*

Of the 24.5 million acres of federal land covered by the NFP, about 8.5 million acres (35 percent) is in late-successional/old growth condition. Of these 8.5 million acres, about 6.8 million acres (28 percent of the federal land) are within reserves of various types, including 3.15 million acres that are within LSRs. As a result of past management practices and natural conditions, individual LSRs vary considerably in the amount of late-successional and old growth habitat they contain. Overall, the 3.15 million acres of late-successional/old growth in LSRs is only about 42 percent of the total amount of federal land within the LSRs. (FSEIS 3&4-41; ROD at 6, 45).

In its analysis of options for managing the federal lands in the Northwest, the FEMAT Report highlighted three core functions serving as catalysts for the design of LSRs:

*First, they provide a distribution, quantity, and quality of old-forest habitat sufficient to avoid foreclosure of future management options. Second, they provide habitat for viable, well-distributed populations of species including the northern spotted owl and marbled murrelet that are associated with late-successional forests. Third, they will help ensure that the full range of late-successional biodiversity will be conserved. (FEMAT Report at IV-31).*

As further explained in the ROD, the LSRs, in combination with other land allocations and S&Gs, "... will maintain a functional, interactive, late-successional and old-growth forest ecosystem. [LSRs] are designed to serve as habitat for late-successional and old-growth related species including the northern spotted owl. . . . [LSRs] are to be managed to protect and enhance old-growth forest conditions." (ROD at 6, 8).

The S&Gs for LSR management were specifically intended to meet the objective of managing these areas to protect and enhance conditions of late-successional and old-growth forest ecosystems. (ROD at C-11). However, even with these measures, the extent to which such conditions can be restored is somewhat uncertain and even where it is possible, restoration to desired levels will take many decades:

*Stand level practices that have created dense young plantations within Reserves in all of the options have altered the typical pathways by which stands develop into old-growth. Artificially created overly dense young plantations may not develop late-successional conditions, such as multiple canopy layers, for long periods. (FEMAT Report at IV-76).*

None of the options analyzed by the FEMAT (including options that involved protection of more habitat than option 9, which was the basis for the alternative eventually adopted in the ROD) exceeded a 60 percent likelihood of producing, over the next 100 years, a late-successional/old-growth forest ecosystem with all attributes meeting or exceeding the estimated long-term average conditions. Explaining this outcome, the Report states:

*This occurs primarily because 100 years is not long enough for the cutover landscapes to return to late-successional conditions that approximate prelogging conditions. Many late-successional attributes require 200 to 500 years to develop. (FEMAT Report at IV-71).*

### LSR STANDARDS AND GUIDELINES FOR NON-SILVICULTURAL ACTIVITIES

As described above, the amount of late-successional/old growth habitat is much reduced from historic conditions, and what remains is substantially fragmented, even within LSRs. The extent to which desired conditions can be restored is somewhat uncertain, and will take many decades or even centuries. The LSRs are crucial to the goal of restoring desired late-successional/old-growth conditions and providing for viable populations of numerous species. Proper interpretation and implementation of the S&Gs for LSR management is critical to achieving the goals of the NFP. The NFP includes S&Gs that directly address proposed new developments in LSRs. These S&Gs are

found on pages C-16 and C-17 of the ROD, and read as follows:

***Standards and Guidelines for Multiple-Use Activities Other Than Silviculture***  
***The following standards and guidelines apply to Late-Successional Reserves and Managed Late-Successional Areas.***

***Introduction - As a general guideline, nonsilvicultural activities located inside Late-Successional Reserves that are neutral or beneficial to the creation and maintenance of late-successional habitat are allowed. (ROD, C-16)***

***Developments - Development of new facilities that may adversely affect Late-Successional Reserves should not be permitted. New development proposals that address public needs or provide significant public benefits, such as power lines, pipelines, reservoirs, recreation sites, or other public works projects will be reviewed on a case-by-case basis and may be approved when adverse effects can be minimized and mitigated. These will be planned to have the least possible adverse impacts on Late-Successional Reserves. Developments will be located to avoid degradation of habitat and adverse effects on identified late-successional species. Existing developments in Late-Successional Reserves such as campgrounds, recreation residences, ski areas, utility corridors, and electronic sites are considered existing uses with respect to Late-Successional Reserve objectives, and may remain, consistent with other standards and guidelines. Routine maintenance of existing facilities is expected to have less effect on current old-growth conditions than development of new facilities. Maintenance activities may include felling hazard trees along utility rights-of-way, trails, and other developed areas. (ROD, C-17)***

We believe that the following interpretation reflects the intent of the ROD and should be used as interagency field guidance in the evaluation of new development proposals. Final agency decisions regarding new development proposals should document the factors considered and findings made in applying the above-referenced S&Gs to the proposals for new developments. This interagency interpretation guidance does not amend the ROD or establish any new rule, standard, criteria or guideline. This interagency interpretation guidance does not constitute a final agency action, commitment of resources, or decision with regard to land management plans or project proposals.

While our interpretation relates to new developments, we note that the referenced text in the ROD also addresses existing developments and routine maintenance. The following interpretation does not address the existing development S&G or routine maintenance operations. The S&Gs for the management of LSRs in the NFP are found in several places in the ROD. They should be read and applied in their entirety and in the context of NFP goals and objectives and any other S&Gs that may apply.

#### **INTERPRETATION AND IMPLEMENTATION**

The S&Gs for LSRs (ROD, C-11) state: "*Objectives -- Late-Successional Reserves are to be managed to protect and enhance conditions of late-successional and old-growth forest ecosystems, which serve as habitat for late-successional and old-growth related species including the northern*

*spotted owl. These reserves are designed to maintain a functional, interacting, late-successional and old-growth forest ecosystem.*" The S&Gs allow new developments in LSRs, subject to certain conditions as spelled out in the ROD and as described in this interpretation. Generally, new developments will be located outside LSRs whenever possible. In addition, the nature and magnitude of public benefits are not factors contemplated by the ROD for use in determining conditions neutral or beneficial to the creation and maintenance of late-successional habitat. Therefore, we expect new developments in LSRs to occur infrequently and only when the public benefits associated with the new developments cannot be achieved outside LSRs.

## **PRINCIPLES**

The following numbered principles are to be used sequentially in implementing the S&Gs for new developments in LSRs. Mitigation measures will be considered in the design and environmental analysis of a proposed new development under the National Environmental Policy Act (NEPA).

1. Generally, locate new developments outside LSRs whenever possible.
2. Proposed new developments in an LSR that address public needs or provide significant public benefits that could not practicably be achieved by locating the proposed new development outside the LSR may be considered on a case-by-case basis.
3. The nature and magnitude of the public benefits are not factors contemplated by the ROD for use in determining conditions neutral or beneficial to the creation and maintenance of late-successional habitat at the appropriate spatial and temporal scales.
4. New developments should not be placed in LSRs unless the development is designed and mitigated to a condition that is neutral or beneficial to the creation and maintenance of late-successional habitat at the appropriate spatial and temporal scales. Consider all five of the following CEQ mitigation measures:
  - Avoiding the impact altogether by not taking a certain action or parts of an action.
  - Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
  - Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
  - Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
  - Compensating for the impact by replacing or providing substitute resources or environments.

All five types of mitigation measures must be considered in the design and environmental analysis of a proposed new development and be applied as appropriate to achieve a condition that is neutral or beneficial to the creation and maintenance of late-successional habitat at the appropriate spatial and temporal scales.

Onsite mitigation should be the first priority. Offsite mitigation is appropriate only where mitigation is not practicable within the affected area or greater environmental benefits for the creation and maintenance of late-successional habitat, consistent with the objectives for managing LSRs, would occur with offsite mitigation.

Principles 4a - 4c should be applied to ensure that proposed new developments will be located to avoid degradation of habitat and adverse effects on identified late-successional species, and to answer the question: "Does the new development, as mitigated, result in a condition neutral or beneficial (i.e., to the creation and maintenance of late-successional habitat at the appropriate spatial and temporal scales)?"

**4a. Spatial Context:** The determination of the neutrality or benefit of a new development, as mitigated, depends on its spatial context (or scale).

- Effects of land management activities, including new developments, are evaluated in several spatial contexts. These include the site and its adjacent environment, the watershed (or major sub-watershed), the LSR, adjacent LSRs and non-LSR lands.
- The evaluation of the effects of a new development will focus on conditions that contribute to the functioning and enhancement of a late-successional forest ecosystem. Among the factors to be considered are the mitigated new development's effects on habitat fragmentation and connectivity, effects on the resultant quality and amount of late-successional habitat, and effects on late-successional species.
- Where a new development's site-specific effects, as minimized and mitigated, result in an overall condition neutral or beneficial to the creation or maintenance of late-successional habitat, the new development would be consistent with the ROD. Whether mitigation occurs onsite or offsite, the evaluation of whether neutral or beneficial conditions have been met will be done at an appropriate scale that includes the site (and its adjacent environment) scale, the LSR scale, or at a scale that is a logical subdivision of the LSR, depending upon the species or habitat of concern and the environmental values impacted, in relation to the proposed new development. A logical subdivision of the LSR could be a subwatershed, a watershed, a sub-basin, or an elevation zone within the LSR. Where a new development's site-specific effects cannot be minimized and mitigated to a condition neutral or beneficial to the creation or maintenance of late-successional habitat, the new development would not be consistent with the ROD.

**4b. Temporal Context:** The determination of the neutrality or benefit of a new development as mitigated also depends on its temporal context (or scale.)

- The effect of the new development as mitigated on late-successional habitat is evaluated in several time frames. These include the effects of the seasons and duration of disturbance (for example, construction and use), and the time that would be required to regain or attain late-successional characteristics.
  - In some cases, when proposed projects would have heightened adverse effects because of their timing, the effects need to be mitigated to neutral or beneficial in the short-term, because the immediate effects would be unacceptable even if neutral or beneficial in the long term. In other cases, minimized adverse short-term effects may occur if the new development as mitigated is neutral or beneficial in the long term.
- 4c. **Cumulative Effects:** The determination of the neutrality or benefit of a new development as mitigated includes an analysis of the cumulative effects of other actions and events on the LSR and adjacent lands. These include recent and current management activities, reasonably foreseeable management actions, and recent natural events.
- 4d. **Monitoring:** New developments in LSRs and their effects, as mitigated, should be incorporated into late successional/old growth effectiveness monitoring.

#### EARLY PROJECT SCREENING

The screening process described here is intended to assist in identifying and resolving problems before significant planning resources are invested, and to assist in better achieving the objectives of the LSR network and the NFP. Individual agencies retain their regulatory and statutory authority.

Early in the consideration and analysis of a proposed new development in an LSR, Forest Service and BLM field offices will inform their NFP partner agencies. Information about the proposed new development and its mitigation can be shared informally, by letter, or through the regularly available schedule of proposed activities. If NFP partner agencies officials or Regional Ecosystem Office (REO) representatives have concerns about the proposed project's potential compliance with this guidance, they should work with the appropriate land management agency office early in the analysis process to explore alternate sites, designs, and mitigation measures. Field officials of all the agencies are encouraged to exchange concerns and suggestions and to keep each other informed as redesign, new information, and further analysis occurs.