

# 5 Land Use Planning Commitments

## Land Use Planning: A Part of Plum Creek Business

### The Commitments

- L1: Land Use Principles
- L2: Federal Agency & Not-for-Profit Conservation Organization Dispositions
- L3: Conservation Dispositions and the Sale of Development Rights
- L4: Restricted Dispositions—Land Use Conservation Areas
- L5: “Conservation Neutral” Dispositions
- L6: Unrestricted Dispositions
- L7: Land Acquisitions
- L8: Land Exchanges
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After Plum Creek acquired the extensive Montana holdings of Champion International in 1993 (discussed in more detail in the next section), Plum Creek began to take a careful look at its land portfolio from a strategic perspective. On one hand, timberland acquisition was an important strategy to pursue to ensure continued supply of raw materials to manufacturing facilities, particularly because the opportunity to purchase timber from the Forest Service had almost entirely diminished. Yet it was clear that some

Plum Creek lands along rivers and lakefronts were becoming highly valuable real estate because of their recreational and aesthetic qualities. Many lands were identified as potentially being Higher and Better Use (HBU) lands in a land use planning study in 1995 that identified some 110,000 acres with much greater potential values for uses other than forestry. Other lands have been identified since then, though HBU lands still represent less than 10 percent of the Project Area. It seemed illogical to use this type of land for growing trees when a greater value could be realized from other uses. It has also become clear that many of these properties with high recreation and real estate values have important public values (Sorensen 1998).

As Plum Creek became involved in a more strategic approach to buying and selling land, the need to formalize a principled approach to land use planning became apparent. The Environmental Principles for forestry had been in effect since 1991 and had proven valuable in guiding the development of Environmental Forestry. So in 1995, Plum Creek implemented a set of Land Use Principles. Similarly, these principles provide guidance to addressing public values and responsible stewardship as the land sales program continued.

Selling land is not an activity that, in and of itself, changes habitats and provides risks to species. It is not an activity that can be determined to “take” species. The threat is that the subsequent landowner may have a

### Land Sales and Purchases Since 1993

- 867,000 acres purchased in Montana in 1993
- 538,000 acres purchased in Louisiana and Arkansas in 1996
- 905,000 acres purchased in Maine in 1998
  - Timberland purchases total 2.3 million acres
- 107,000 acres of non-HBU timberland sold in Washington and Idaho in 1996
- 21,000 acres of HBU land sold to Conservation Buyers, including 19,000 to the public
- 10,000 acres of other HBU sales (most in the Cascades)
  - Land sales total 138,000 acres

different purpose in mind for the land and that their unknown future activities could affect species. Because the Services are providing incidental take permit coverage for 30 years, they need to be assured the conservation benefit of the NFHCP measures committed to will be secured on behalf of the public. Therefore, the Services must consider how land sales might impact the ability to receive conservation benefits and make sure the NFHCP addresses these concerns.

## **Conservation-Oriented Land Use Planning**

It is important to understand the kinds of market incentives that influence the nature of land transactions and changing land uses. Landowners who lose a significant portion of the value of their land through heavy regulation are essentially given an incentive to sell to buyers who have in mind a less regulated use that may represent a larger threat to the species. This can create a spiral of regulation chasing land use or, as has been more the case historically, can result in a worse situation for the species. Essentially then, heavy regulation can negatively impact species recovery. Congress recognized this dilemma in 1982 when the Endangered Species Act (ESA) was amended to include HCPs and in 1998, the No Surprises rule.

The unique opportunity represented by Plum Creek lands is that one landowner controls large tracts of land, which facilitates creative land use planning. It is much more difficult to develop creative or consistent land use planning after lands have been split among a variety of landowners, yet this is the difficult situation that land use planners typically face. The goal of NFHCP commitments is to provide an incentive for Plum Creek to continue creative land use planning in a way that is compatible with native fish conservation.

### ***Who are the Landowners?***

Federal land ownership dominates the Planning Area for the NFHCP, totaling nearly 60 percent including national forests, national parks, and wilderness areas. Plum Creek owns about 10 percent, and the balance is largely smaller private ownership and a small portion of state lands.

Federal lands are managed more conservatively for public values, including native fish habitat. Wilderness areas and national parks typically provide a high level of conservation. Additionally, large portions of national forest lands are withheld from active management such as forestry. In the Flathead National Forest, for example, only one-third of the acres are considered for harvesting trees. Federal land managers are held to the highest standards of any landowner under the ESA, and where active management occurs, stringent federal guidelines are designed to protect fish habitat and other resources.

While Plum Creek is the second-largest single entity behind federal land ownership in the Planning Area, the combination of other miscellaneous private landowners constitutes 23 percent of the Planning Area. This is more than double the area of Plum Creek lands and ranges in character from towns and cities to ranches and recreational properties. Almost without exception, however, these areas are places where land uses that are more intensive than commercial forestry occur or could occur. In some cases, the current use may not represent a significant impact to fish, but the potential impacts associated with what is

reasonably foreseeable on those lands under current land use regulations is a point of concern for the Services. For example, a 40-acre tract with one residential structure may represent little current impact, but is bound by few regulations to protect native fish.

When Plum Creek sells lands to private entities, the land use may change from commercial forestry to something in the wide spectrum represented by the wishes of other private landowners. Some portions of the Planning Area have become sought after for recreational or rural residential uses. Because land sales to these kinds of markets are an important part of Plum Creek's business and will continue under the NFHCP, Plum Creek will implement the land use planning framework to ensure conservation certainty throughout the life of the NFHCP and beyond.

## **Principle-Based Land Use Planning**

The land use strategy embodied in the NFHCP starts by reiterating Plum Creek's Land Use Principles, and then turns to a series of measures governing land use, disposition, and acquisition by Plum Creek within the Planning Area.

### ***Land Use Principles (7/98)***

*Plum Creek's primary business is managing the forest resources on its ownership in a balanced, socially responsible and economical manner in accordance with its established Environmental Principles for forestry. In addition, certain of Plum Creek lands have a higher value for their non-timber amenities for which Plum Creek promotes responsible Land Use Principles. These principles will maintain or improve those non-timber amenities while providing for economic stability and accommodating future population growth.*

*As a landowner and employer, Plum Creek recognizes the need for land use guidelines that promote and provide for clean water and air, aesthetic values, fish and wildlife habitat, and recreational opportunities, which at the same time provide the ability to capture economic values.*

*Plum Creek's activities are conducted in accordance with the following Land Use Principles:*

- *Support comprehensive land use planning as a means of establishing certainty and predictability in the land use process in order to protect community values while accommodating sensible development. Base planning decisions on an appropriate and reasonable level of physical, environmental and economic analysis.*
- *Balance implementation of land use plans and zoning regulations with the maintenance and protection of private property rights.*
- *Work with other landowners and community members to understand and address land use related issues and potential impacts.*
- *Encourage the consideration of creative and innovative land use concepts that lead to environmentally responsible development.*
- *Meet, and where appropriate exceed, local, state, and federal standards for protection of air and water quality, and fisheries and wildlife habitat.*
- *Encourage and support productive natural resource management and responsible development that is consistent with sound land use and environmental principles.*

## **L1: Land Use Principles**

Plum Creek will be guided by its Land Use Principles (developed in 1995) for conservation-oriented land use planning.

These principles may be revised by Plum Creek from time to time, and are not intended to be inflexibly applied (in the context of this NFHCP or otherwise). Rather, they are statements of Plum Creek's philosophy and approach. While they do not compel any particular action by Plum Creek in the context of this NFHCP (unlike the balance of the Land Use Planning commitments), they do establish the role of land use principles in Plum Creek's business culture.

### ***Rationale:***

While the adoption of corporate or business "principles" does not provide conservation on the ground, their adoption create a corporate environment favoring innovative land use planning solutions. That corporate commitment is important to empowering and providing incentive to managers to keep public and amenity values in proper focus while pursuing business goals.

## **Land Use Planning Commitments and the Proportionality Approach**

Based on the foregoing concepts, Plum Creek has developed an approach to land use for the NFHCP that includes dispositions and acquisitions. This approach both requires and provides incentives to Plum Creek to promote land transactions creating conservation opportunities and benefits. To accomplish this, the HCP establishes a proportionality ratio that minimizes the uncertainty related to land dispositions while preserving the flexibility needed to accomplish successful and innovative conservation-oriented transactions.

Disposition of Project Area lands is treated differently under the NFHCP depending on the nature of the disposition and the level of continuing conservation benefit or certainty that will be in place following the disposition. For purposes of this NFHCP, a land disposition includes a transfer (by sale, gift, or otherwise) of Plum Creek lands within the Project Area to persons unrelated to Plum Creek or a change in Plum Creek's land use from predominantly forestry to an alternate use. Individual dispositions are "ranked" by level of conservation benefit. Those that enhance the overall conservation benefits or improve conservation certainty of the NFHCP are assigned positive values for purposes of measuring proportionality. Those that are determined to be "neutral" do not change the proportionality ratio. Those that reduce certainty of achieving the objectives of the NFHCP are assigned negative proportional factors. Under NFHCP direction, Plum Creek must manage its dispositions so the cumulative total of dispositions stays within a predetermined range of proportionality. Land exchanges are treated separately, as are land acquisitions.

The proportionality approach to land transactions is beneficial for several reasons.

- It creates an incentive for Plum Creek to put forth extra effort to achieve conservation-oriented land transactions.

- It minimizes the conservation uncertainty associated with land ownership changes.
- It promotes conservation while protecting land values.
- It provides a framework and incentive for extending NFHCP conservation benefits to other landowners.
- It is necessary given the size of the NFHCP and the need for corporate management flexibility in today's fast-paced business climate.

The commitments set forth later in this section describe five different categories of Project Area lands dispositions. They are ranked according to their contribution to ensuring native fish conservation and include the following:

1. Federal agency and not-for-profit conservation organization dispositions (L2)
2. Conservation dispositions (L3)
3. Restricted dispositions designated with land use conservation area status (L4)
4. "Conservation neutral" dispositions (L5)
5. Unrestricted dispositions (L6)

Commitment L7 covers land acquisitions from within the Planning Area. Acquisitions of land located outside the Planning Area can only be added to the HCP and incidental take permit (ITP) following NFHCP and Permit amendment (see Implementing Agreement [IA] §11.1.1). Commitment L8 addresses how land exchanges are handled under the NFHCP.

Finally, commitment L9 establishes the land transaction **proportionality rules** that govern the totality of dispositions under the NFHCP. This commitment is designed to ensure that a balance is maintained between property transactions that improve conservation certainty and those that reduce conservation certainty. If the transactions stay within the designated range of permitted proportionality, no ITP amendment is required for land dispositions. That is, land dispositions meeting the requirements of L9 may occur without prior approval by the Services and will not require an ITP amendment, but may be enacted by Plum Creek under the NFHCP as written. These provisions create direct incentives for Plum Creek to increase the amount of land placed into a status of high conservation value—that is, Plum Creek is given incentives to dispose of land to buyers that will ensure that the conservation benefits offered by the NFHCP persist in the future. Where federal agency transactions are involved, the acquisition, disposition, or exchange will not require an ITP amendment, but may still be subject to the review process prescribed under the National Environmental Policy Act and may also be subject to review under Section 7 of the ESA.

## L2: Federal Agency & Not-for-Profit Conservation Organization Dispositions

This category of dispositions of Project Area lands (termed “L2 dispositions”) includes the following:

- Dispositions to the U.S. Fish and Wildlife Service, National Marine Fisheries Service, U.S. Forest Service, Bureau of Land Management, or other land management or conservation agency of the federal government that has as one of its primary missions the conservation of threatened or endangered species and/or their habitat. This includes state agencies when the land is purchased for a conservation purpose.

L2 dispositions include dispositions to a not-for-profit or non-federal governmental entity that is created or organized for the bona fide purpose of holding or managing acquired lands for promoting conservation, or for transferring acquired lands to a federal or state fish, wildlife, or conservation agency. An example would be a disposition to the Nature Conservancy for subsequent sale to the U.S. Fish and Wildlife Service or to a state wildlife agency.

L2 dispositions are assigned a **proportionality factor** of 1.0.

A **proportionality factor** is an assigned value applied to NFHCP land transactions based upon relative certainty of conservation under changing ownerships. The use of proportionality factors is discussed under L9.

### ***Rationale:***

In many cases, society recognizes it may be more desirable to protect public values by placing certain important lands under public ownership than by imposing costly regulation onto private landowners. Ownership changes that match up land ownership objectives with the inherent value of the land are a part of responsible land use planning. The selling of certain land to a government agency by Plum Creek can be an important tool in protecting public values, such as native fish habitat, while preserving business value and flexibility.

#### **A River Runs Through It**

In the Fall of 1996, Plum Creek sold 12,000 acres that contained more than 20 miles of Montana’s Blackfoot River frontage to the Nature Conservancy. The Blackfoot River, immortalized in the Norman Maclean novel *A River Runs Through It*, provides important habitat for cutthroat and bull trout and is used by thousands of people each year for fishing, swimming, camping, and floating. The sale also included significant lengths of lower Gold and Belmont Creeks, important Tier 1 streams tributary to the Blackfoot. The Nature Conservancy recently conveyed this land into public ownership.

The transfer of land to most federal land or conservation agencies or bona fide conservation organizations will pose reduced risks of direct, adverse management-induced impacts to fish habitat compared to the risk of adverse impacts from Covered Activities under the NFHCP. Management by the Forest Service or a federal or state fish and wildlife agency or the interim holding of Project Lands by a not-for-profit conservation organization will enhance the chances of achieving conservation benefits. Thus, a positive proportionality factor (1.0) for L2 dispositions is assigned.

### **L3: Conservation Dispositions and the Sale of Development Rights**

This category of dispositions of Project Area lands (termed “L3 dispositions”) includes the following:

- Dispositions subject to a recorded conservation easement, conservation agreement, deed restriction, or other equivalent, legally enforceable restriction that meets the following minimum standards. Such agreement must be created and administered by an established land trust or similar organization:
  - The land use conservation area provisions specified in L4 shall apply to a larger area encompassing a zone 100 feet wide, slope distance on each side of a stream measured from the Channel Migration Zone (CMZ).
  - The density of development on land for L3 dispositions shall not exceed one dwelling unit per 40 acres, and any tract bordering a river shall have a minimum of 660 feet of river frontage.

If potential L3 dispositions become subject to a conservation agreement or easement that is materially the same as that described above but has specifications that do not appear to qualify in some aspects, Plum Creek may provide rationale and request that it be considered for L3 status. Such a request will trigger a mandatory collaborative management response.

- Transactions where the land is retained but the development rights are sold to the public. When development rights are sold, the acres that qualify for the assignment of a proportionality factor are those within quarter sections (usually 160 acres) or a previously defined parcel that contain a fish-bearing stream.
  - Commercial forestry will be allowed to continue, but residential or business development will be precluded for perpetuity.

L3 dispositions are assigned a proportionality factor of 0.5 (see L9).

#### ***Rationale:***

**Conservation easements.** In the West, open space and conservation opportunities are recognized and valued in land markets. The use of customized conservation easements by landowners is becoming much more commonplace. Under such an arrangement, a landowner works with an established land trust or organization to voluntarily place restrictions on the land that enhances the present enjoyment of the land by the landowner and gives the landowner the opportunity to contribute a legacy of conservation to the future. These potential conservation buyers represent an important opportunity for Plum Creek to sell land with higher values than that of commercial timberland while protecting the certainty of future conservation on that land.

L3 dispositions will be encumbered by legally enforceable restrictions on use of the disposed property. The restrictions will be no less stringent than those set forth in Commitment L3 above. Some land trusts create conservation easements that may be materially more restrictive than the restrictions set forth above but may not precisely meet those restrictions in one way or another. In such cases, Plum Creek may request consideration as an L3 disposal and the Services must address the request as a mandatory collaborative management response. The restrictions will provide enhanced conservation values and thus are assigned

positive proportionality factors. To qualify as L3 dispositions, the use restrictions must extend at least through the end of the term of the NFHCP. Such dispositions are assigned a 0.5 proportionality factor. Conservation easements and deed restrictions will be written so as to be enforceable by a government agency (including the FWS) or a bona fide conservation group organized for the purpose of holding and enforcing such restrictions.

**Selling development rights.** Some lands may be perfectly appropriate for commercial forestry, but high land values create incentives for landowners to sell land for possible other uses that may be more detrimental to fish. A sale of development rights to an entity that wishes to keep the land in an undeveloped condition would allow Plum Creek to keep lands for commercial forestry use while taking advantage of the increased market value of that particularly valuable land. A particular community or conservation group may wish to buy development rights to environmentally sensitive Plum Creek parcels to ensure that those lands are not developed in the future. This kind of transaction is not currently common, but represents a creative way to protect public values while maintaining private property rights and values. Currently, the state of Montana is working closely with Plum Creek to see if such a transaction can be completed in areas that are important to Montana sportsmen, but also happen to represent important values for native fish conservation.

Under this scenario, conservation actions on lands retained by Plum Creek where development rights have been sold will be the same as any land in the NFHCP. However, conservation certainty will be increased because future land uses will be restricted from development for perpetuity. Also, crafting these kinds of creative transactions requires a great deal of commitment to be successful. The positive proportionality factor of 0.5 provides an incentive to complete these complex transactions.

#### **L4: Restricted Dispositions—Land Use Conservation Areas**

Plum Creek will place certain lands into land use conservation area status. Land use conservation area (termed “LUCA”) provisions will govern non-forestry activities or uses that might occur in the event the land were sold or placed into alternate use by Plum Creek. In order for lands being disposed of to qualify for LUCA treatment, the appropriate parts of those lands (the areas described below) must be subject to the LUCA standards through a deed restriction, covenant or other agreement legally enforceable against the future owner.

Plum Creek commits to apply LUCA standards to all parcels that contain or abut perennial, fish-supporting streams within Tier I watersheds or Key Migratory Rivers. Additionally, Plum Creek may voluntarily choose to place LUCA standards on other parcels that contain perennial streams or lakes that support fish outside of Tier 1 and Key Migratory Rivers.

LUCA restrictions will apply within a zone 50 feet wide, slope distance on each side of the stream measured from the CMZ:

- The LUCA will be extended to include associated wetlands.
- Where the slope of the LUCA is greater than 35 percent, the distance will be extended to 100 feet or to the edge of a flat bench, whichever is less. A flat bench is 15 percent slope or less.

The restrictions governing activities within the LUCA zone are as follows:

1. No buildings shall be allowed.
2. No new road construction shall be allowed except where necessary to obtain access or to cross a stream or wetland.
3. New road construction will be constructed using forestry road BMPs to minimize the delivery of sediment to streams.
4. No gravel pits will be developed.
5. The amount of impervious surface area (such as paving) shall not exceed 10 percent of the total land area within the LUCA.
6. Natural vegetation shall be retained as follows:
  - No timber harvest will take place in the LUCA.
  - Shrubs and sub-merchantable trees must be protected and retained in the entire LUCA to the extent practical.
7. Areas cultivated for lawns, gardens, and pastures shall not exceed 25 percent of the area within the LUCA. Lawns will not be created or maintained in the CMZ.
8. Broadcast burning is prohibited.
9. The handling, storage, application, or disposal of hazardous or toxic materials in the LUCA in a manner that pollutes streams, lakes, or wetlands or that may cause damage or injury to humans, land, animals, or plants is prohibited.
10. Any application of herbicides, pesticides, or fertilizers must be done in a manner that such materials are not introduced into streams, lakes, wetlands, or other bodies of water through surface runoff or sub-surface flow.
11. No development of private ponds for fish stocking is allowed.

In addition to the above restrictions within the LUCA zone, the drain field for any septic system installed adjacent to the LUCA zone shall be a minimum of 200 feet, slope distance, from a stream, and otherwise comply with all applicable sanitation standards.

- If an alternative can be developed and approved by the appropriate department of health or sanitation that is a lower risk alternative for stream pollution than the 200 foot alternative, then the lower risk alternative may be used.

Mandatory L4 dispositions (those containing Tier 1 watersheds or along Key Migratory Rivers) will be assigned a proportionality factor of -0.5.

Voluntary L4 dispositions will be assigned a proportionality factor of 0.0.

***Rationale:***

Because real estate and recreational development occurs in a wide variety of geographical and social situations, regulating those activities is inconsistent and difficult. In the Project Area, the rigor of land use controls for landowner activities other than forestry is less protective of streams in forested areas than the restrictions that govern forestry. In the Bull Trout Final Rule (FR 1998a), the FWS views rural residential development as a major threat to bull trout restoration and endorses the use of conservation easements to minimize these threats. While the sale of lands does not impact riparian function, the increased uncertainty that those lands might end up in a less restricted land use is a concern of the Services. The commitment to require LUCA restrictions in certain areas and the incentive to voluntarily apply them in others minimizes the uncertainty associated with land sales.

Dispositions of land along fish-bearing streams within Tier 1 watersheds and along Key Migratory Rivers have been determined to be of higher priority concern than other dispositions. Thus, L4 dispositions represent the minimum protection level that will be allowed in these areas under the NFHCP. More restrictive dispositions are allowed (L2 or L3), but nothing less than an L4 disposition is permitted. The L4 restrictions were designed with the expectation that they would produce conservation values roughly equivalent to the NFHCP along streams and could be said to be conservation neutral. Even with LUCA restrictions applied, there is less certainty about future activities away from streams, however. Because of this, dispositions of lands subject to mandatory L4 restrictions are assigned a proportionality factor of -0.5. Plum Creek is given an additional incentive to voluntarily place LUCA restrictions on dispositions outside Tier 1 watersheds and along streambanks other than Key Migratory Rivers, in which case a proportionality factor of 0.0 is assigned.

**L5: “Conservation Neutral” Dispositions**

This category of dispositions of Project Area lands (termed “L5 dispositions”) includes the following:

- Dispositions to a non-federal entity that has obtained an ITP, or is covered by an incidental take statement, certificate of inclusion, or special rule of the Service(s), and such permit, statement, certificate, or rule (alone or in combination) covers all listed Covered Species.
- Dispositions to a non-federal entity that has entered into an agreement with the applicable Service(s) that the Service(s) agrees is sufficient to preclude compromising the effectiveness of the NFHCP. Such an agreement must, in the judgement of the Service(s), provide similar (or greater) benefits to covered species than does the NFHCP.
- Dispositions to a permitted assignee of the ITP.

L5 dispositions are assigned a neutral proportionality factor of 0.0 (see L9).

***Rationale:***

The development of a forestry HCP, such as the NFHCP, requires a large investment by the landowner in science and the development of commitments. If NFHCP Project Area lands are conveyed to another timberland owner with the NFHCP measures intact as in an L5 disposition, the land purchaser can participate in NFHCP conservation without the up-front investment that discourages many landowners. This has the benefit of bringing new landowners into conservation planning as well as preserving the conservation benefits developed under the original NFHCP.

L5 dispositions are transfers of Project Area lands to be managed in a manner designed to at least equal the conservation benefits under the Plum Creek NFHCP. Thus, native fish are not disadvantaged by the transfer. This is assured by either assignment of the Permit (and attendant NFHCP obligations), by the transferee obtaining “coverage” of the covered species through one or more of the ESA incidental take mechanisms, or by a determination from the federal agency with jurisdiction over the affected species that NFHCP effectiveness is not compromised.

**L6: Unrestricted Dispositions**

L6 dispositions include all dispositions other than those described in L2, L3, L4, or L5. In these transactions, no specific NFHCP-related restrictions shall be placed on the disposed property. L6 dispositions that become subject to use restrictions that subsequently qualify under another category (L2 through L5) will be “re-classified” into the category as appropriate and not counted as L6 dispositions.

Unrestricted dispositions are assigned a proportionality factor of -1.0 (see L9).

***Rationale:***

With a landscape the size of the Project Area, it is imperative that Plum Creek retain the ability to engage in some land transactions that are not subject to any ongoing conservation obligations. Unrestricted dispositions are assigned a negative proportionality factor (-1.0) to reflect the anticipated reduction in conservation certainty. However, much of the benefit of the NFHCP is derived from active mitigation of legacy impacts such as old roads. The required implementation schedules ensure that most of this kind of work is done in the early years of the plan. Therefore, even though lands may be sold as “unrestricted,” there is a high likelihood that many NFHCP conservation investments have already been made. While restrictions may not “go with the land,” the conservation improvements will.

### **L7: Land Acquisitions**

Private land that is not subject to the provisions of another HCP for fish within the Planning Area may be acquired. These lands that are then made subject to the terms and conditions of the NFHCP and IA are assigned a proportionality factor of 0.5.

- A positive value is assigned to give Plum Creek an incentive to acquire such parcels and improve conservation certainty on those lands by including them in the NFHCP.
- Lands acquired within watersheds that have not been designated as Tier 1 or Tier 2 will require a watershed designation determination by mutual agreement of Plum Creek and the Services based upon the same criteria used for the original designation of watersheds.

Acquisition of land already subject to use restrictions similar to those described in L2 through L5 will be assigned a proportionality factor of 0.0.

A neutral value is assigned because conservation certainty is not improved or diminished.

### ***Rationale:***

An incentive to add previously unrestricted land to the NFHCP improves conservation certainty and is therefore a conservation benefit. A strict comparison of lands managed under the NFHCP (assigned a 0.0 base proportionality factor) to unrestricted lands (L6 dispositions are assigned a -1.0) suggests a differential of 1.0. Treating acquisitions equal to dispositions would suggest giving Plum Creek a “credit” of 1.0 for bringing unrestricted lands within the NFHCP restrictions. However, because the Services would be granting additional incidental take coverage as well, allowing the sale of acres equal to the newly acquired lands does not fully protect their need for conservation certainty. Consequently, a proportionality factor of 0.5 is established to provide incentive while protecting certainty.

Acquisition of lands already restricted with the equivalent of an L2, L3, L4, or L5 level of restriction shall be treated as conservation neutral with a proportionality factor of 0.0. While it is theoretically possible an acquisition of agency managed land could decrease its conservation values, that is extremely unlikely to occur, given the disposition by the agency will be subject to its own environmental review under NEPA, and an ESA consultation and biological opinion. Agencies retain the ability to condition land dispositions to protect species and their habitat.

### **L8: Land Exchanges**

Project Area lands may be exchanged for other lands within the Planning Area without need for an ITP amendment. Only the net change of acres to NFHCP coverage because of an exchange will be evaluated and subject to the proportionality balance calculation of L9. That is, land acquired will be balanced against lands disposed of in the exchange, and only the “net” will be categorized as an L2 through L6 disposition or an L7 acquisition. (Example: Plum Creek conveys 100 acres in return for receiving 90 acres. The exchange is treated as a Plum Creek disposition of 10 acres.).

As used here, the term exchange includes any means by which Covered Lands are disposed in return for other lands, and shall include but not be limited to exchanges under Section 1031 of the Internal Revenue Code. Multiple-party or multi-step exchanges will be evaluated under this provision based only on the configuration of land ownership at the conclusion of the entire exchange process.

When an exchange with the federal government takes place (such as the Forest Service), the acres within the Planning Area for each party will be used to calculate the number of acres that are either a net acquisition or a net disposition. The proportionality factor used will apply to the net acres and will be 1.0 for a net L2 disposition or 0.0 for a net L7 federal land acquisition.

When an exchange with a private entity or a state whose lands are unrestricted takes place, the acres within the Planning Area for each party will be used to calculate the number of acres that are either a net acquisition or a net disposition. The proportionality factor used will apply to the net acres and will be -1.0 for a net L6 unrestricted disposition or a 0.5 for a net L7 unrestricted land acquisition. Exchanges involving lands both inside and outside the Planning Area will be evaluated separately. The lands inside the Planning Area will be treated as an exchange and the lands outside the Planning Area will be treated as independent dispositions or acquisitions.

### ***Rationale:***

Land ownership patterns occur the way they do for many reasons that have nothing to do with conservation or the objectives of landowners. The classic example is a checkerboard ownership where the U.S. Forest Service administers public lands for public values in alternate square mile sections to the sections belonging to a timber company managing lands for commercial forestry. When landowners with different objectives cooperate to exchange lands so the resulting ownership mix better meets each landowner's objectives, the ownership pattern becomes more appropriate. When public values are placed into public ownership and lands that can be managed for commercial forestry at reduced risk to public resources are placed in private ownership, a net conservation benefit can be achieved while

at the same time enhancing management opportunities. Land exchanges have been an essential tool in assembling some of our national public treasures, such as Montana's Glacier National Park and the Bob Marshall Wilderness Area.

L8 land exchange treatment applies proportionality factors to the net changes in acres resulting from a land exchange. This simplifies the accounting process specified in L9 (below) and ensures that exchanges can be pursued based upon the overall results.

Conservation certainty is protected because exchanges receiving this simplified net change approach are limited to those in the Planning Area, which are of a reasonably similar conservation benefit, acre for acre, and are being analyzed in the EIS. Also, when land exchanges occur with a public agency such as the U.S. Forest Service, separate

#### **Elk Creek Land Exchange**

Elk Creek is a premier Tier 1 bull trout spawning stream tributary to the Swan River in Montana. In 1998, the Montana Department of Fish, Wildlife, and Parks recorded an amazing 259 bull trout spawning nests in Elk Creek (more than any other stream in Montana). Recognizing the importance of this stream to bull trout, Plum Creek exchanged 1575 acres of land immediately adjacent to the spawning reach in Elk Creek for less sensitive U.S. Forest Service land that could be managed for long-term timber production.

environmental analysis is required. The L8 approach prevents the NFHCP from discouraging exchanges by requiring redundant and complicated analyses.

**L9: Proportionality Balance**

Measured over the term of the NFHCP, L2 through L8 transactions will be accounted for to ensure a high percentage of transactions that improve conservation certainty compared to those that reduce conservation certainty. Proportions will be accounted for by assigning a number to the transaction that is equal to the proportionality factor times the acres involved in the transaction. Prior to accounting for any land transactions, the balance or “score” will be 0 and transactions will add to or subtract from the balance as determined by the proportionality factor assigned to the transaction in L2 through L8. The NFHCP will be considered to be functioning as expected if the score is maintained within a range limit plus or minus zero. The range limit is a number equal to 8 percent of the Project Area acres as of the date the permit is issued. The balance sheet will begin as of 1/1/98. Each 5 years during the term of the NFHCP, Plum Creek shall report the proportionality calculations and balance sheet to the Services. If the balance drops below the range limit at a 5-year reporting point, Plum Creek shall conduct land use actions or transactions that will restore the balance within the range limit within the next 5-year period. If the balance exceeds the range limit (on the positive side), a conservation surplus will be recognized.

If, at the end of the NFHCP term, the proportionality balance remains below the range limit, then L2 through L5 restrictions must be applied to sufficient acreage within the Project Area to counterbalance the net deficiency in the proportionality balance to restore the balance within the range limit. The proportionality factors (from L2 through L8) are summarized as follows:

<b>Proportionality Factor</b>		
<b>L2</b>	1.0	Federal Agency Dispositions
<b>L3</b>	0.5	Conservation Dispositions and Sale of Development Rights
<b>L4</b>	0.0	Voluntary LUCA Dispositions on Tier 2 Lands
<b>L4</b>	-0.5	Mandatory LUCA dispositions, Tier 1 and Key Migratory River
<b>L5</b>	0.0	“Conservation Neutral” Dispositions
<b>L6</b>	-1.0	Unrestricted Dispositions
<b>L7</b>	0.0	Acquisitions: “Conservation Neutral”
<b>L7</b>	0.5	Acquisitions that bring new lands under NFHCP provisions
<b>L8</b>		Land Exchanges. Proportionality factor is calculated based upon net conservation effect

Shown below is a hypothetical example to illustrate the concept that cumulative transactions must stay within a designated range of proportionality.

<b>Date</b>	<b>Example Transaction</b>	<b>Type and Proportionality Factor</b>	<b>Acres</b>	<b>Proportionality Contribution</b>	<b>Balance</b>
1/1/98	Starting point				0
2001	Sale to Nature Conservancy	L2, 1.0	4500	4500	4500
2003	Unrestricted sale in Tier 2	L6, -1.0	2200	-2200	2300
2005	Sale along Key Migratory River with LUCA restrictions	L4, -0.5	5000	-2500	-200